MINNESOTA SUPREME COURT

ADVISORY TASK FORCE ON VISITATION

AND CHILD SUPPORT ENFORCEMENT

FINAL REPORT

January 27, 1997

STATE OF MINNESOTA

IN SUPREME COURT

C1-95-2120

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AND CHILD SUPPORT ENFORCEMENT

FINAL REPORT

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MINNESOTA SUPREME COURT
STATE COURT ADMINISTRATION
OFFICE OF RESEARCH AND PLANNING
120 MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE
ST. PAUL, MN 55155
(612) 297-7587

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

PART I: INTRODUCTION

A. ACKNOWLEDGEMENTS

The members of the Minnesota Supreme Court Advisory Task Force on Visitation and Child Support Enforcement wish to thank all who assisted in and supported the work of the Task Force. In particular:

We are truly grateful to those parents, judicial officers, and court administrators who significantly contributed to the work of the Task Force by responding to detailed questionnaires. We also appreciate the contributions of those individuals who participated in focus group meetings.

We are especially thankful to the court administration personnel from Becker, Dakota, Hennepin, and Stearns counties who collected data from thousands of dissolution and paternity court files. The Task Force would have been unable to fulfill its objectives without the hard work and dedication of these individuals.

Special appreciation is expressed to those individuals who submitted materials and made presentations to the Task Force regarding the purpose, design, and effectiveness of education and visitation assistance programs.

Finally, thank you to those individuals who helped the Task Force refine its work product by submitting written and oral comments regarding the preliminary recommendations proposed by the Task Force.

PART I: INTRODUCTION

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PART I: INTRODUCTION

B. TASK FORCE MEMBERS

TASK FORCE CHAIRS:

Honorable Arthur Boylan,[1] Chief Judge, Eighth Judicial District
Julie Brunner, County Administrator, St. Louis County
Peter Parilla, Associate Professor, Department of Sociology, University of St. Thomas

SUBCOMMITTEE CHAIRS:

Data Collection Subcommittee:

Honorable William Howard, District Court Judge, Fourth Judicial District
Peter Parilla, Associate Professor, Department of Sociology, University of St. Thomas

Program Research Subcommittee:

Linda Aaker, Attorney at Law; Director, University of Minnesota Student Legal Services
Julie Brunner, County Administrator, St. Louis County

TASK FORCE MEMBERS:

Christa Anders, Child Support Enforcement Division, Minnesota Dept. of Human Services
Diane Anderson, R-KIDS; Noncustodial Parent Advocate
Len Biernat, Professor, Hamline University School of Law
Honorable Manuel Cervantes, Referee, Second Judicial District
Pi-Nian Chang, Ph.D., Pediatrics Department, University of Minnesota Hospitals and Clinics
Kim Clement, Minnesota Coalition for Battered Women
Honorable Margaret Daly, Referee, Fourth Judicial District
Kris Davick-Halfen, Assistant Morrison County Attorney
Kate Fitterer, President, Minnesota Association of Guardians Ad Litem
Honorable Sharon Hall, District Court Judge, Tenth Judicial District
Paul Hildebrand, Ph.D., Psychologist, Lutheran Social Services
Mary Hawkinson, Custodial Parent; ACES (Assoc. for Children for Enforcement of Support)

[1] Judge Boylan was appointed by the Minnesota Supreme Court as the initial Chair of the Task Force. Upon his appointment as a Federal Magistrate and his subsequent resignation from the Task Force, Julie Brunner and Peter Parilla were appointed by the Court as Co-Chairs.

PART I: INTRODUCTION

Greg Hubinger, Parent with shared custody
Honorable Doris Huspeni, Judge, Minnesota Court of Appeals
Christopher D. Johnson, Attorney at Law
Bruce Kennedy, Attorney at Law; Minnesota State Bar Association
Willena Marshall, Public Member; Grandparent
Anne Martineau, Child Support Enforcement Division, Minnesota Dept. of Human Services
Jayne Barnard McCoy, Attorney at Law; Legal Aid Society of Minneapolis
Honorable Jan Nelson, Attorney at Law; Administrative Law Judge, Office of Admin. Hearings
Laverna Noll, Grandparent, Grandparents Preserving Families
Rebecca Picard, Attorney at Law; Mediator; Father's Resource Center
Tammy Pust, Assistant Attorney General
Deborah Randolph, Attorney at Law; Guardian Ad Litem
Patti Schneider,[2] Minnesota Coalition for Battered Women
Inna Turchman, Social Worker, Washington County Social Services

SUPREME COURT LIAISON:
Honorable A.M. Keith, Chief Justice, Minnesota Supreme Court

STAFF:
Janet K. Marshall, Director, Research and Planning, State Court Administration
Judith C. Nord, Staff Attorney, Research and Planning, State Court Administration
Julie Stenberg, Staff Attorney, Research and Planning, State Court Administration

SUPPORT STAFF:
Ruth McCoy, Secretary, Research and Planning, State Court Administration
Heidi E. Green, Manager, Research and Evaluation, State Court Administration
Eric Stumne, Research Analyst, Research and Evaluation, State Court Administration

[2]Ms. Schneider began representing the interests of the Minnesota Coalition for Battered Women upon Kim Clement's withdrawal from the Task Force in November 1996.

PART II: EXECUTIVE SUMMARY

A. THE ISSUES

Attention has long been directed toward the establishment and enforcement of child support orders and the financial well-being of children. Under relatively recent federal legislation, for example, child support agencies and courts are required to use aggressive techniques to establish paternity, establish and update child support orders using guidelines that more accurately reflect the costs of raising children, and enforce child support orders using automatic wage withholding and tax intercept procedures.

Like child support issues, visitation issues and their emotional impact upon children have also long been topics of discussion. Some contend, however, that the attention paid to visitation issues has not been as aggressive as that paid to child support issues. In Minnesota, as elsewhere, some custodial and noncustodial parents fail to comply with visitation orders, often causing or escalating conflict between the parents. Some children lack the emotional support of their noncustodial parent because of their custodial parent's denial of or interference with court-ordered visitation. Other children lack the emotional support of their noncustodial parent because of the parent's failure to exercise visitation or maintain a relationship with the child. Still other children are emotionally impacted by their parents' often ongoing disagreements regarding the date or time of visitation, whether the parent was on time picking up or dropping off the child, whether appropriate clothing was sent along or whether it was returned cleaned, and other visitation-related issues. Regardless of the issue, failure to comply with a visitation order and any subsequent conflict between the parents negatively impacts the children involved.

B. PURPOSE OF TASK FORCE

Over the past decade the Minnesota Legislature has frequently addressed the issues of child support and visitation. These issues were revisited during the 1995 legislative session as the Legislators considered concerns raised by noncustodial parents regarding denial of court-ordered visitation. As part of that discussion it was suggested that the problem might be curbed if the issues of child support and visitation were linked. It was specifically suggested that the Legislature should statutorily authorize judicial officers to allow noncustodial parents to withhold or reduce child support upon a finding that visitation had been denied. Lacking accurate data regarding the extent to which denial of visitation occurs and the impact that such legislation might have on children and families, the Legislature instead requested that the Minnesota Supreme Court establish a Task Force to study these and other visitation-related issues.

Pursuant to the Legislature's request, on November 11, 1995, the Minnesota Supreme Court issued an Order establishing the Advisory Task Force on Visitation and Child Support Enforcement ["Task Force"]. Mirroring the language set forth in the legislative request, the Order establishing the Task Force directed the Task Force to examine the extent to which (1) custodial parents deny noncustodial parents court-ordered visitation and other parental rights; (2)

noncustodial parents fail to exercise their court-ordered visitation; (3) lack of access to the court prevents timely resolution of visitation matters; and (4) visitation impacts noncustodial parents' compliance with court-ordered child support.

Upon completion of its study, the Task Force was directed to make recommendations regarding: (1) methods for resolving visitation matters in an efficient, nonadversarial setting that is accessible to parties at the lowest possible cost; (2) statutory changes that would encourage compliance with court-ordered visitation; and (3) the effectiveness and impact of a policy linking visitation and payment of child support.

C. OVERVIEW OF TASK FORCE ORGANIZATION AND PROCEDURES

At the initial Task Force meeting on December 15, 1995, Task Force members discussed the objectives of the Task Force, as well as the members' general questions and concerns regarding establishment and enforcement of visitation and child support rights and responsibilities. During subsequent meetings, detailed presentations were made to acquaint Task Force members with Minnesota's existing visitation and child support laws and enforcement mechanisms. To efficiently carry out the research portion of the Task Force's charge, two subcommittees were formed: the Data Collection Subcommittee and the Program Research Subcommittee.

From March through August each subcommittee conducted extensive data collection and program research efforts. Specifically, the Data Collection Subcommittee distributed separate questionnaires to parents, judicial officers, and court administrators; conducted reviews of dissolution with children and paternity court files; and held focus group meetings. The Program Research Subcommittee studied the design, purpose, characteristics, and effectiveness of numerous parent programs education and visitation assistance programs implemented throughout Minnesota, the United States, and Canada. Each subcommittee submitted to the full Task Force a report summarizing the details and results of its respective five-month investigation. The subcommittee reports are set forth in Part VI of this Report as *Appendix A* and *Appendix B*, respectively.

The full Task Force reconvened in September 1996 at which time the members began discussing the findings of the subcommittees. The results of the subcommittees' research and data collection endeavors were used as a foundation upon which to base policy decisions. These policy decisions were then drafted into the format of Preliminary Recommendations responding to the issues identified by the Supreme Court in the Order establishing the Task Force. In October 1996, the Preliminary Recommendations were distributed for review and comment to over 600 individuals and advocacy groups throughout Minnesota. On November 7, 1996, the Task Force also held a public hearing during which oral comments regarding the provisions of the Preliminary Recommendations were received. The Task Force received extensive written

and oral comments, including over 100 pages of written comments and nearly four hours of oral comments.

During meetings held in November and December 1996, and January 1997, the Task Force members carefully considered the comments of the public as they continued to debate the issues set forth in the Supreme Court Order. Through this process, the Task Force members refined and finalized their recommendations, which are summarized below in Section D of this *Executive Summary*, and which are fully set forth in Part V of this Report, *Deliberations and Recommendations*.

D. SUMMARY OF RECOMMENDATIONS

To most effectively deal with visitation-related conflicts experienced by families involved in dissolution and paternity proceedings, the Minnesota Supreme Court Advisory Task Force on Visitation and Child Support Enforcement makes the following recommendations:

1. Methods for Resolving Visitation Matters in an Efficient, Nonadversarial Setting that is Accessible to Parties at the Lowest Possible Cost

RECOMMENDATION 1: The Legislature should amend Minnesota Statutes section 518.157 to require: (a) implementation of one or more Parent Education Programs in each judicial district; (b) mandatory participation (with some limited exceptions) in a parent education program by all parents involved in dissolution and paternity proceedings where custody or visitation is contested; and (c) evaluation of such programs by the State Court Administrator within 24 months of implementation. The specific language recommended for amendment of the statute is set forth in Part V of this Report, *Deliberations and Recommendations*.

RECOMMENDATION 2: The Minnesota Supreme Court should promulgate minimum standards for the implementation and administration of parent education programs. The specific language recommended for the minimum standards is set forth in Part V of this Report, *Deliberations and Recommendations*.

RECOMMENDATION 3: The Legislature should amend the existing Cooperation for the Children Program language, 1995 Minn. Laws 257, art. 1, sec. 14, by substituting language establishing a Cooperation for the Children Program pilot project in at least one metro and one nonmetro county which would: (a) require mandatory participation (with some limited exceptions) in the program as a prerequisite to requesting a court hearing; and (b) apply to all persons seeking enforcement or modification of an existing visitation order or establishment of visitation rights in a recognition of parentage case. The specific language recommended for amendment of the existing language is set forth in Part V of this Report, *Deliberations and Recommendations*.

RECOMMENDATION 4: The State Court Administrator should implement the Cooperation for the Children Program pilot project in accordance with the minimum standards recommended by the Task Force. The specific language recommended for the minimum standards is set forth in Part V of this Report, *Deliberations and Recommendations*.

RECOMMENDATION 5: The Minnesota Supreme Court Office of Continuing Education should regularly incorporate into the judicial officer curricula and instructional materials information regarding visitation issues, including statutory changes; tools for enforcing visitation orders; remedies for violation of visitation orders; alternative dispute resolution options; information regarding child development, family dynamics, the impact of domestic violence on children, the impact of divorce, restructuring of families, and conflict upon children, and awareness of and resources for persons from diverse communities; and other related topics.

2. Statutory Changes that Would Encourage Compliance with Court-Ordered Visitation

RECOMMENDATION 6: The Legislature should amend Minnesota Statutes section 518.175, subd. 6, regarding remedies for violation of a visitation order to: (a) require the court to either award compensatory visitation or make specific findings as to why a request for compensatory visitation is denied; (b) strengthen the language regarding the type and nature of compensatory visitation to be awarded; and (c) require the court to order sanctions if it determines that a custodial parent, noncustodial parent, or other party has wrongfully failed to comply with an existing visitation order. The specific language recommended for amendment of the statute is set forth in Part V of this Report, *Deliberations and Recommendations*.

RECOMMENDATION 7: The Legislature should amend Minnesota Statutes section 518.18(d), regarding modification of a custody order, to add that the court shall retain the custody arrangement established by the prior order unless "for a period of three months or longer there has been a pattern of persistent and willful denial of or interference with visitation and it would be in the best interests of the child, as defined in section 518.17, to modify the custody order." The specific language recommended for amendment of the statute is set forth in Part V of this Report, *Deliberations and Recommendations*.

RECOMMENDATION 8: The Minnesota Supreme Court should promulgate "reasonable visitation guidelines." The guidelines should be effective in those cases where parents with court-ordered "reasonable visitation" are unable to agree about what is "reasonable" and in all other cases as ordered by the court. The "reasonable visitation guidelines" should take into consideration the developmental milestones and needs of children, an example of which is set forth in Part VI of this Report at *Appendix C*. The district courts should make these guidelines available to all parties as "Appendix B." "Appendix B" should be attached to each court order or judgment and decree which initially determines custody or visitation. The Legislature should amend Minnesota Statutes section 518.68, subd. 2, number 3, "Rules of Support, Maintenance,

Visitation," to add the following language: "(h) "Reasonable visitation guidelines" are set forth in Appendix B, which is available from the court administrator."

RECOMMENDATION 9: The Legislature should amend Minnesota Statutes section 518.1751, regarding visitation expeditors, to encourage more use of visitation expeditors and to clarify their purpose, qualifications, role, and authority. The specific language recommended for amendment of the statute is set forth in Part V of this Report, *Deliberations and Recommendations*.

RECOMMENDATION 10: The Legislature should amend Minnesota Statutes section 626.556, subd. 2(j), to include visitation expeditors among those persons mandated to report child abuse and neglect. The specific language recommended for amendment of the statute is set forth in Part V of this Report, *Deliberations and Recommendations*.

RECOMMENDATION 11: The Legislature and Minnesota Supreme Court should amend Minnesota's family law statutes and rules to utilize language that is less stigmatic, is less likely to foster conflict, and more accurately describes parenting responsibilities. Suggestions include replacing the term "legal custody" with "parental decision making," "physical custody" with "residential arrangement," and "visitation" with "child access" or "parenting time."

3. The Effectiveness and Impact of a Policy Linking Visitation and Payment of Child Support

RECOMMENDATION 12: The Legislature should not link the issues of visitation and child support. Specifically, the Legislature should not enact legislation authorizing noncustodial parents to withhold court-ordered child support if court-ordered visitation is interfered with or denied, and the Legislature should not enact legislation authorizing custodial parents to withhold court-ordered visitation if court-ordered child support is not paid. Legislation statutorily linking the issues of visitation and child support may encourage adversarial behavior on the part of parents and may negatively impact the emotional and financial well-being of the children involved.

4. Other Recommendations

RECOMMENDATION 13: The Minnesota Supreme Court should charge the Task Force with the continuing responsibility of advising the Court in regard to implementation and evaluation of the recommendations set forth in this Report.

PART II: EXECUTIVE SUMMARY

E. OVERVIEW OF REPORT

This report summarizes the background, duties, findings, deliberations, and recommendations of the Task Force. The report is divided into six parts, including the ***Introduction*** (Part I), and this ***Executive Summary*** (Part II).

Part III, ***Overview of Issues and Task Force***, frames the issues giving rise to establishment of the Task Force, including the denial of or interference with visitation by some custodial parents, the failure to exercise visitation by some noncustodial parents, and the negative impact upon children caused by parental conflict. Part III also provides an overview of the Task Force, including its duties, organization, and procedures.

Part IV, ***Research Results***, identifies the objectives and methodologies of the five data collection tools and the program research efforts used to study the issues set forth in the Order establishing the Task Force. Part IV also summarizes the results of the research efforts in response to the issues raised in the Supreme Court Order.

Part V, ***Deliberations and Recommendations***, summarizes the discussions and policy considerations of the Task Force. Included is a statement of each issue identified by the Supreme Court in its Order establishing the Task Force, a summary of the Task Force's deliberations regarding each issue, and the Task Force's recommendations regarding each issue.

Part VI, ***Appendices***, sets forth four appendices, including: ***Appendix A*** which summaries the details and results of the Task Force's five data collection efforts; ***Appendix B*** which summarizes the 24 parent education programs and visitation assistance programs studied by the Task Force; ***Appendix C*** which sets forth model language recommended for use by the Supreme Court in establishing the "reasonable visitation guidelines"; and ***Appendix D*** which summarizes each county's current use of visitation expeditors, family court mediators, parent education programs, supervised visitation centers, and visitation exchange facilities.

PART III: OVERVIEW

A. FRAMING THE ISSUES

High rates of divorce and separation, as well as births to unmarried parents, are prevalent throughout the United States. Of all marriages begun today in the United States, one-half will end in divorce,[3] an increase of 16 percent since 1970.[4] Approximately 60 percent of those divorces will involve children, thus affecting the lives of nearly 1.5 million children each year.[5] In 1990, for example, 1,175,000 couples were divorced, and 1,045,750 children were involved in those families.[6] The number of children born out of wedlock has also increased significantly. During the period from 1970 to 1990 the number of births to unmarried parents increased 300 percent.[7] In 1992, for example, the number of births to unmarried parents totaled over 1,200,000 nationwide.[8] As of 1993, nationwide more than 18 million children under the age of 18 lived with only one parent.[9]

Minnesota is likewise experiencing high rates in the annual number of divorces and out of wedlock births. During the period from January through December 1995, the number of dissolution with children proceedings in Minnesota totaled 9,733,[10] the number of paternities established by the 87 counties totaled 8,282,[11] and the number of recognition of parentage filings totaled 8,424[12] (although some of the latter two categories may overlap).

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[3]U.S. Department of Commerce, *National Data Book and Guide to Sources, Statistical Abstract of the United States* (109th Ed.) (1989).

[4]U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the U.S.* 101, Table 144 (1993).

[5]McLanahan, S., & Bumpass, L., "Intergenerational Consequences of Family Disruption," *American Journal of Sociology* 94, 130-152 (1988).

[6]Brown, J.H., Portes, P., and Cambron, M., "Families in Transition: A Court-Mandated Divorce Adjustment Program for Parents and Children," *Juvenile and Family Court Journal* 27, 27 (1994).

[7]*Report of the U.S. Commission on Child and Family Welfare*, "Parenting Our Children: In the Best Interest of the Nation" 12 (Sept. 1996) (citing U.S. Department of Health and Human Services, National Center for Health Statistics, *Monthly Vital Statistics Report*).

[8]*Id.*

[9]*Id.* at 11 (citing U.S. Department of Commerce, Bureau of the Census).

[10]Source: Minnesota Supreme Court, State Court Administration, Office of Research and Planning.

[11]Minnesota Department of Human Services, *1995 Annual Child Support Enforcement Report* 23 (1995).

[12]*Id.* at 4.

PART III: OVERVIEW

The separation of families requires parents to address various parenting issues, including child support and child access. In attempting to reach agreement regarding these issues, many parents recognize that "most children do best when they receive the emotional and financial support of both parents."[13] For some children, however, the breakup of their families has jeopardized their emotional and financial support because of the inability or unwillingness of their parents to reach agreements regarding such parenting issues or, in other cases, to comply with such agreements once a decision has been made. It is for these types of cases that the legislative and judicial branches of national and state governments have been called upon to develop and utilize child support and visitation enforcement mechanisms.

For nearly a century, much attention has been directed toward the various problems that occur when noncustodial parents fail to provide financial support to their children. A first step toward rectifying these nationwide problems came in 1910 when the Uniform Desertion and Non-Support Act, a measure aimed at easing the growing fiscal impact of nonpayment of child support upon state and local governments, was approved by various State Commissioners.[14] Since then, various congressional endeavors have attempted to enhance the financial well-being of the nation's children. Under the Child Support Enforcement Amendments of 1984[15] and the Family Support Act of 1988,[16] for example, child support agencies and courts are required to use aggressive techniques to establish paternity, establish and update child support orders using guidelines that more accurately reflect the costs of raising children, and enforce child support orders using automatic wage withholding and tax intercept procedures.[17]

Like child support issues, establishment of and compliance with visitation orders have also long been topics of nationwide debate. Some contend, however, "that the increasingly aggressive enforcement of child support obligations has not been matched by an equally aggressive enforcement of visitation."[18] Lack of compliance with visitation orders by some

[13] *Report of the U.S. Commission on Child and Family Welfare*, "Parenting Our Children: In the Best Interest of the Nation" 1 (Sept. 1996) (citing, e.g., Wallenstein, J., "Initial and Long-Term Effects of Divorce on Children: Factors in Good and Poor Outcomes," *Testimony before the U.S. Commission on Child and Family Welfare, San Fancisco, California* (May 10, 1995); McLanahan, S., & Sandefeur, G., "Living with a Single Parent: What Helps, What Hurts" (1994)).

[14] U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, *Uniform Interstate Family Support Act Handbook* 1-1 (1995).

[15] Pub. L. No. 98-378, 98 Stat. 1305 (1984).

[16] Pub. L. 100-485, 102 Stat. 2343 (1988).

[17] Child Support Enforcement Amendments of 1984, Pub. L. 98-378, 98 Stat. 1305, 1306 (1984); Family Support Act of 1988, Pub. L. 100-485, 102 Stat. 2243, 2348-2356 (1988).

[18] Pearson, J., and Anhalt, J., Center for Policy Research, *Final Report, The Visitation Assistance Program: Impact on Child Access and Child Support* 1 (Sept. 30, 1992).

custodial and noncustodial parents threatens the emotional well-being of their children. Some children are in jeopardy because of their custodial parent's denial of or interference with the noncustodial parent's court-ordered visitation. Other children are in jeopardy because of their noncustodial parent's decision to not maintain a relationship with the child or failure to exercise visitation.[19] Still other children are emotionally impacted by their parents' often ongoing disagreements regarding the date or time of visitation, whether the parent was on time picking up or dropping off the child, whether appropriate clothing was sent along or whether it was returned cleaned, and other parenting issues. Regardless of the issue, failure to comply with a visitation order and any subsequent conflict between the parents negatively impacts the children involved.

In response to concerns regarding compliance with and enforcement of visitation orders, Congress has urged that:

> (1) State and local governments must focus on the vital issues of child support, child custody, [and] visitation . . . ; (2) all individuals involved in the domestic relations process should recognize the seriousness of these matters to the health and welfare of our Nation's children and assign them the highest priority; and (3) a mutual recognition of the needs of all parties involved in divorce actions will greatly enhance the health and welfare of America's children and families.[20]

In an effort to implement its policy decision to focus on the needs of children and families regarding visitation issues, and responding to the criticism that child support and visitation have not been treated evenhandedly, in 1988 Congress authorized states to establish and conduct demonstration projects to "develop, improve, or expand activities designed to increase compliance with child access provisions of court orders."[21] Demonstration projects identified to receive funding were those promoting the "development of systematic procedures for enforcing access provisions of court orders, the establishment of special staffs to deal with and mediate disputes involving access (both before and after a court order has been issued), and the dissemination of information to parents."[22]

A more recent congressional endeavor is the 1995 establishment of the U.S. Commission on Child and Family Welfare.[23] The broad charge of the Commission was to investigate a wide

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[19] *See id.*

[20] Child Support Enforcement Amendments of 1984, Pub. L. 98-378, 98 Stat. 1305, 1330 (1984).

[21] *Id.*

[22] *Id.*

[23] *Report of the U.S. Commission on Child and Family Welfare*, "Parenting Our Children: In the Best Interest of the Nation" 6 (Sept. 1996).

variety of issues that affect the best interests of children, and to provide to the President and Congress recommendations regarding those issues.[24] Many of the Commission's recommendations[25] are similar to the recommendations of this Task Force.

B. RESPONSE OF MINNESOTA LEGISLATURE

In Minnesota, the procedure for establishing visitation rights depends upon whether the case is a dissolution or paternity proceeding. With respect to dissolution proceedings, Minnesota's law provides that upon the request of either parent, except in cases where a child may be endangered, the court is required to "grant such rights of visitation on behalf of the child and noncustodial parent as will enable the child and the noncustodial parent to maintain a child to parent relationship that will be in the best interests of the child."[26] In paternity cases, the procedure for establishing visitation rights depends upon whether paternity has been acknowledged and established.[27]

Over at least the past decade the Minnesota Legislature has enacted statutory methods for enforcing visitation orders,[28] methods of aiding in child access,[29] as well as sanctions and remedies for violation of visitation orders.[30] The Legislature has also established various

[24] *Id.*

[25] *Id.* at 3-5.

[26] Minn. Stat. ∋ 518.175, subd. 1(a) (1996).

[27] *Id.* at 257.541. The law provides that if paternity has been acknowledged under a declaration of parentage and paternity has been established under the Parentage Act, "the father's rights of visitation or custody are determined under section 518.17 and 517.175." *Id.* at subd. 2(a). If paternity has not been acknowledged under a declaration of parentage and paternity has been established under the Parentage Act, "the father may petition for rights of visitation or custody in the paternity proceeding or in a separate proceeding under 518.156." *Id.* at subd. 2(b). If paternity has been recognized through a signed recognition of parentage form, "the father may petition for rights of visitation or custody in an independent action under section 518.156." *Id.* at subd. 3.

[28] *See, e.g.*, Minn. Stat. ∋ 518.175, subd. 1(b) (1996) (authorizing the court to order "a law enforcement officer or other appropriate person to accompany a party seeking to enforce or comply with visitation").

[29] *See, e.g.*, Minn. Stat. ∋ 256F.09 (1996) (authorizing the awarding of grants for establishment of family visitation centers to be used for supervised visitation and visitation exchanges).

[30] *See, e.g.*, Minn. Stat. ∋ 518.175, subd. 4 (1996) (providing that "proof of an unwarranted denial of or interference with duly established visitation may constitute contempt of court and may be sufficient cause for reversal of custody"); Minn. Stat. ∋ 518.175, subd. 6 (1996) (establishing remedies available to judicial officers upon a finding of denial of or interference with visitation, including compensatory visitation, a civil penalty, and posting a bond).

nonadversarial methods for resolving visitation disputes, including the "Cooperation for the Children Program" pilot project,[31] and the use of "visitation expeditors."[32]

During the 1995 legislative session, the Legislature again revisited the issues of compliance with child support and visitation orders as it debated the provisions of an omnibus family law bill.[33] Among the myriad issues discussed was the concern raised by some noncustodial parents regarding the denial of court-ordered visitation. To resolve this problem it was suggested that visitation should be closely linked to payment of child support. Advocates of this concept proposed that judicial officers should be statutorily authorized to allow a noncustodial parent to withhold or reduce child support in response to denial of or interference with visitation. On the opposite side of the debate, however, were those who asserted that the issues of visitation and child support should remain separate, and that any linkage of the two concepts would not be in the best interests of the children involved. They asserted that families and, therefore, children, will be best served by independent but equally vigorous enforcement of both child support and visitation.

In response to the concerns of noncustodial parents, the Senate passed the following amendment to the omnibus family law bill: "The court, administrative law judge, or public authority shall also consider the impact of any failure of the obligee to cooperate with visitation and other parental rights of the obligor on the obligor's failure to make timely support payments."[34] The House of Representatives passed amendments to the bill that were not identical to those passed by the Senate.[35] As a result, the bill, including the language linking visitation and child support, was forwarded to a Conference Committee for refinement.[36]

Conference Committee members lacked data regarding the extent to which violation of visitation orders by both custodial and noncustodial parents occurs, and also lacked data regarding the impact that legislation linking visitation and child support might have on children

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[31]1995 Minn. Laws 257, art 1., ∋ 14 (a demonstration program established "as an effort to promote parental relationships with children"). Details of the Cooperation for the Children Program are discussed in regard to Task Force Recommendations 3 and 4, set forth in Part V of this Report, *Deliberations and Recommendations*.

[32]Minn. Stat. ∋ 518.1751 (1996) (an effort to provide low cost visitation dispute resolution assistance to parents). The provisions of the visitation expeditor statute are discussed in detail in regard to Task Force Recommendation 9, set forth in Part V of this report, *Deliberations and Recommendations*.

[33]H.F. 966, 79th Legislature, 1 *Journal of the House* 412 (Feb. 27, 1995); S.F. 217, 79th Legislature, 1 *Journal of the Senate* 122-23 (Jan. 30, 1995).

[34]S.F. 217, 79th Legislature, 3 *Journal of the Senate* 3302-03 (May 8, 1995).

[35]H.F. 966, 79th Legislature, 4 *Journal of the House* 4135, 4243 (May 10, 11, 1995).

[36]S.F. 217, 79th Legislature, 3 *Journal of the Senate* 3584-85, 3862, 3866-67 (May 17, 18, 1995).

and families. Rather than enacting the amendment linking visitation and child support without the benefit of such data, Conference Committee members agreed to delete the amendment and replace it with language requesting that the Minnesota Supreme Court establish a Task Force to study these and other visitation-related issues.[37] The Conference Committee report, including the language requesting establishment of a Task Force, was adopted and approved by both the House and the Senate, and was ultimately enacted.[38]

C. SUPREME COURT ORDER ESTABLISHING TASK FORCE

Pursuant to the Legislature's request, on November 11, 1995, the Minnesota Supreme Court issued an Order establishing the Advisory Task Force on Visitation and Child Support Enforcement ["Task Force"].[39] The provisions of the Order mirror the Legislature's language regarding the duties and charge of the Task Force, and provides that:

1. The Minnesota Supreme Court Advisory Task Force on Visitation and Child Support Enforcement be and hereby is established to examine the extent to which:

    a. custodial parents deny noncustodial parents court-ordered visitation and other parental rights;

    b. noncustodial parents fail to exercise their court-ordered visitation;

    c. lack of access to the court prevents timely resolution of visitation matters; and

    d. visitation impacts noncustodial parents' compliance with court-ordered child support.

2. The study shall include recommendations on the following:

    a. methods for resolving visitation matters in an efficient, nonadversarial setting that is accessible to parties at the lowest

[37] S.F. 217, 79th Legislature, 4 *Journal of the Senate* 4685 (May 22, 1995).

[38] *Id.* at 4706-07, 4727-28, 5025-26, 5248 (May 22, 1995). *See* 1995 Minn. Laws 257, art. 1, э 33 (request for visitation study).

[39] Minnesota Supreme Court Order, *In Re the Advisory Task Force on Visitation and Child Support Enforcement*, File No. C1-95-2120 (November 11, 1995).

possible cost;

b. statutory changes that would encourage compliance with court-ordered visitation; and

c. the effectiveness and impact of a policy linking visitation and payment of child support.[40]

The Supreme Court directed the Task Force to report to the Court by December 15, 1996. In November 1996, the Court granted the Task Force's request for an extension of time in which to submit the report.

D. TASK FORCE ORGANIZATION AND PROCEDURES

The thirty individuals appointed by the Supreme Court to the Task Force come from diverse backgrounds, and include custodial and noncustodial parents and their respective advocates, grandparents, child advocates, a pediatrician, guardians ad litem, district and appellate court judges, family court referees, an administrative law judge, child support enforcement officers, legal aid attorneys, private family court attorneys, an assistant county attorney, an assistant attorney general, a law school professor, a sociologist, a mediator, an advocate for battered women, a county administrator, a psychologist, and a social worker.

The initial meeting of the Task Force was convened on December 15, 1995. Task Force members discussed the objectives of the Task Force, as well as the members' general questions and concerns regarding establishment and enforcement of visitation and child support rights and responsibilities. During subsequent meetings, detailed presentations were made to acquaint Task Force members with Minnesota's existing visitation and child support laws and enforcement mechanisms. To efficiently carry out the research portion of the Task Force's charge, two subcommittees were formed: the Data Collection Subcommittee and the Program Research Subcommittee.

From March through August 1996, the subcommittees conducted extensive data collection and program research efforts. In early September 1996, each subcommittee submitted to the full Task Force a report detailing the objectives, methodology, and results of its five-month investigation. The report of the Data Collection Subcommittee is set forth in Part VI of this report as *Appendix A*, and the report of the Program Research Subcommittee is set forth in Part VI as *Appendix B*. The major findings of the data collection and program research efforts are discussed in Part IV of this report, *Research Results*.

The full Task Force reconvened in September 1996 at which time the members began

[40] *Id.* at 1.

discussing the findings of the subcommittees. Utilizing the research results as a foundation for their discussions, the Task Force members debated the issues set forth in the Supreme Court Order establishing the Task Force. During the deliberation process Task Force members brought to the table their own expertise, experiences, and specific concerns, which were bolstered as well as challenged by the research results, national literature, public comments, and other Task Force members. The Task Force ultimately reached a consensus regarding each of the policy considerations raised by the topics set forth in the Supreme Court Order. The Task Force members then undertook the challenge of drafting recommendations based upon their policy decisions. Details of the Task Force's deliberations are set forth in Part V of this report, *Deliberations and Recommendations*.

On October 25, 1996, the Preliminary Recommendations were distributed for review and comment to over 600 individuals and public and private organizations, advocacy groups, and interest groups throughout Minnesota. Among those receiving a copy of the Preliminary Recommendations were custodial and noncustodial parents and their respective advocates; child advocates; guardians ad litem; grandparents; all trial court judges, referees, and administrative law judges; legal aid attorneys, private family court attorneys, public defenders, and county attorneys; visitation expeditors; mediators; social workers; court services personnel; all district administrators; and all court administrators. In addition, anyone who requested a copy of the Preliminary Recommendations received a copy, bringing the total number of copies distributed to nearly 700.

The Task Force requested that written comments regarding the provisions of the Preliminary Recommendations be submitted by November 11, 1996. While the Task Force realized that the time period in which to submit comments was limited, the time frame was dictated by the Supreme Court's directive that the final report of the Task Force be submitted to the Court by December 15, 1996. Despite the limited time frame, the Task Force received over 100 pages of written comments from parents, grandparents, judicial officers, attorneys, and court personnel throughout Minnesota.

All persons receiving a copy of the Preliminary Recommendations were also notified of the opportunity to provide oral comment regarding the provisions of the Preliminary Recommendations at the public hearing scheduled for November 7, 1996. During the public hearing, Task Force members heard nearly four hours of comments, even though each person was limited to about eight minutes of speaking time. Most sobering was the experience of listening to parents who came forward to share problems they had encountered regarding visitation issues and their perceptions of how the court system must change.

The written and oral comments underscored the Task Force's understanding that visitation-related problems exist throughout Minnesota, including lack of compliance with and enforcement of visitation orders, lack of mediation and other alternative dispute resolution mechanisms, and lack of low cost methods for resolving visitation disputes.

PART III: OVERVIEW

During meetings held in November and December 1996, and January 1997, the Task Force members carefully considered the public's comments (and the policy considerations they raised) as they further debated the issues set forth in the Supreme Court Order. Through this process the Task Force members refined and finalized their recommendations, which are set forth in Part V of this report, *Deliberations and Recommendations*.

PART IV: RESEARCH RESULTS

A. RESULTS OF DATA COLLECTION EFFORTS

1. Data Collection Objectives and Methodology

Pursuant to the Supreme Court Order establishing the Task Force, the four data collection objectives of the Task Force were to study the extent to which: (1) custodial parents deny noncustodial parents court-ordered visitation and other parental rights; (2) noncustodial parents fail to exercise their court-ordered visitation; (3) lack of access to the court prevents the timely resolution of visitation matters; and (4) visitation impacts noncustodial parents' compliance with court-ordered child support.

To fulfill these objectives, the Task Force members decided to use five separate data collection tools to gather information from individuals with either a personal or professional interest in visitation-related issues. While a detailed description of the methodology and results of each data collection effort is set forth in Part VI of this Report at *Appendix A*, generally they included the following:

! **Parent Survey**: A questionnaire was distributed to 3928 custodial and noncustodial parents who were involved in dissolution with children and paternity cases during the period from 1993 to 1995. Names of parents were drawn from case files in four Minnesota counties which were selected to ensure a mix of urban and rural locations: Becker (rural), Dakota (suburban), Hennepin (urban), and Stearns (rural-urban). In Dakota, Hennepin, and Stearns counties, case files were randomly selected. In Becker county, all cases were selected. Of the 3928 questionnaires mailed, 1174 were undeliverable due to bad addresses (e.g., the person moved and left no forwarding address). Of those that were delivered, 1265 were completed and returned. This translates into a response rate of 32% of the total mailed, and a response rate of 46% of the questionnaires that were delivered. It is important to note that because parents in only four counties were surveyed, generalizations as to the State of Minnesota as a whole are problematic.

! **Judicial Survey**: A questionnaire was mailed to each of Minnesota's 250 judges and referees. A total of 187 judicial officers returned the questionnaire, a response rate of 75%.

!**Court Administrator Survey**: A questionnaire was sent to each of Minnesota's 87 court administrators. All 87 questionnaires were returned, a response rate of 100%.

!**File Review**: Data were collected from 1357 court files, including 842 dissolution with children files and 495 paternity files. These files were selected from the same four counties used for the parent survey: Becker, Dakota, Hennepin, and Stearns.

!**Focus Groups**: The Task Force conducted nine focus groups involving approximately 100 individuals from 42 counties. Individual sessions were arranged so that Task Force members could separately hear from custodial parents; noncustodial parents (two groups, one metro and

one non-metro); grandparents; court services personnel and social workers; visitation expeditors, guardians ad litem, and mediators; judges and referees (two groups, one metro and one non-metro); and legal aid, county, and private attorneys. The Task Force also made efforts to conduct a focus group meeting with young adults ages 18-24 whose parents had been involved in divorce or paternity proceedings. Unfortunately, those efforts were unsuccessful.

2. Responses to Issues Raised in Supreme Court Order

a. The nature and extent of visitation disputes

One of the goals of the Task Force was to collect data regarding the nature and extent of visitation disputes in Minnesota. For the purposes of this research, the phrase "visitation dispute" was defined as any claim by a custodial or noncustodial parent that the other parent had interfered with visitation or violated a visitation order.

In conducting its research, the Task Force was mindful of the difficulty of validly measuring incidents where custodial parents deny access to noncustodial parents or where noncustodial parents fail to exercise visitation. At times, honest misunderstandings or miscommunication can lead to a situation where one parent has an expectation, not shared by the other, that a visit is to occur. In such cases it can be difficult, if not impossible, to ascertain which parent is to blame for no visit occurring. It is also true that some denials of visitation or failures to exercise visitation may be willful but not "wrongful" because of the circumstances involved. Data from the parent survey and the focus groups provide strong support for the contention that there are legitimate reasons for custodial parents to deny visitation to noncustodial parents. For example, there was a nearly unanimous belief among the participants of all focus groups that it is in the best interest of the child to deny visitation to a noncustodial parent who is under the influence of drugs or alcohol at the time the visitation is to take place. Similarly, the data provide support for the view that there are good reasons which justify a decision of a noncustodial parent to not exercise visitation. An example mentioned in several focus groups was that hazardous weather conditions may justifiably preclude visitation.

Because of the complications surrounding the accurate measurement of visitation problems, the Task Force sought to collect information that captured not just the frequency of visitation problems but their nature as well. It is important to note that this research is limited to parents' accounts of conditions relating to visitation disputes. Due to time constraints, independent verification of the parents' claims was not possible.

In seeking to determine the extent of post-decree visitation disputes in dissolution and paternity cases in Minnesota, the Task Force sought to approach the question by triangulating from various data sources. Each source provided a very different estimate of the scope of the problem. Data from the file review, for example, reveal that of the 1357 dissolution and paternity files reviewed, only 40 cases (2.9%) returned to court regarding a post-decree visitation dispute. As is often the case with such official statistics, however, there is good reason to believe

that this figure severely underestimates the extent of the problem in the population because most disputes do not end up in court. In addition, cases that do return to court often entail multiple problems and the visitation dispute may not be the issue of record in the file.

Judges and referees were also asked about their perceptions regarding the frequency with which post-decree visitation disputes appeared before them. Of five problems which frequently arise in post-decree proceedings in both dissolutions with children and paternity cases, judicial officers ranked visitation disputes as being the second most often at issue for both types of proceedings. Only child support problems ranked ahead of visitation conflicts. In assessing the seriousness of visitation disputes for post-decree proceedings, a large majority of judicial officers (82.3%) stated that compared to other issues visitation disputes were "a serious problem" in dissolution cases with children. Almost 60% of the judicial officers responding rated visitation disputes as "a serious problem" in paternity cases.

The Task Force's best estimate of the incidence and prevalence of visitation disputes comes from the parent survey because, unlike the previous two data sources, it provides information about disputes even if they do not come to the attention of the court. All parents were asked how serious a problem visitation disputes were for them since the time of their final divorce or paternity order. Nearly 60% of the parents reported that visitation disputes were "not a problem." At the other extreme, 12% of the parents reported that visitation disputes were "a serious problem."

Figure 1 provides information regarding how a parent's status as to physical custody is related to his or her response regarding the seriousness of visitation disputes. An analysis of the data in Figure 1 reveals that there is a statistically significant difference between a parent's physical custody status and the parent's response regarding the level of seriousness of visitation disputes.[41] Parents with joint physical custody (i.e., the parents equally share parenting responsibilities and the children reside in both parents' homes on some scheduled basis) or split physical custody (i.e., each parent has sole custody of one or more children and the children have visitation with the other parent) were most likely to answer that visitation did not present problems. Noncustodial parents were most likely to characterize visitation disputes as a serious problem.

[41]In this report, contingency table analysis is utilized using the chi-square test to determine if differences are statistically significant. Statistical significance is measured at the level of .001.

PART IV: RESEARCH RESULTS

Figure 1
Parents' Perceptions as to Seriousness of
Visitation Disputes Based Upon Physical Custody Status
N= 1179[42]

The parents' questionnaire also asked about the frequency of visitation disputes since the date of the final divorce or paternity decree. Slightly over one-half of the parents (54%) reported never having had a visitation dispute, while 46% reported having at least one post-decree dispute. The frequency with which these disputes arose varied significantly. Eleven percent of those responding indicated that they had visitation disputes either "monthly" (6.5%) or "nearly every visitation" (4.5%). Twenty-five percent reported that visitation disputes occurred between one and eleven times a year. The data also indicate that when visitation disputes are present, they tend to occur soon after the final decree. Of those parents reporting at least one visitation

[42]Throughout Part IV of this report, "N" refers to the number of individuals responding to any given question.

dispute, 68% percent indicated that the first dispute arose within the first six months after entry of the final decree. In sum, approximately one-half of the parents experienced at least one post-decree visitation dispute and one-tenth of the parents reported having frequent disputes. These disputes included both denial of visitation by custodial parents and failure to exercise visitation by noncustodial parents.

b. The extent to which custodial parents deny noncustodial parents court-ordered visitation and other parental rights

One specific mandate of the Task Force was to explore the extent to which custodial parents deny noncustodial parents court-ordered visitation and other rights. Like estimates regarding the extent of visitation disputes in general, estimates regarding the extent of denial of visitation vary according to the source of the information.

As indicated above, the file review showed that 40 (2.9%) of the 1357 files included a visitation dispute. Of these forty cases, five contained a claim of wrongful denial of visitation. In another eleven cases, each parent claimed that the other interfered with a scheduled visitation. This total of sixteen cases represents only 1% of all the files reviewed.

Information obtained from judges and referees provides evidence that the denial of visitation is more widespread than the number of incidents reported in the file review. Judicial officers were asked to indicate how often they encountered instances where the custodial parent "flatly denied" visitation to the noncustodial parent. Approximately one-fifth of the judicial officers (21%) revealed that they "frequently" hear such claims. Another 57% say that they hear this claim "sometimes." Judicial officers also identified how often they hear complaints that the noncustodial parent is precluded from exercising visitation because the custodial parent arbitrarily changed the day or time of visitation or refused make-up visitation. Twenty-one percent of the judicial officers stated they "frequently" hear such claims, and 66% say they "sometimes" hear them.

The judicial officers' survey also sought information regarding the frequency with which they heard certain reasons and justifications by custodial parents for denying visitation. It is important to note that these data report on the frequency with which such reasons or justifications were offered and not the judicial officers' assessments of the accuracy of these claims. According to the data, judicial officers are most likely to hear that denials occur because the custodial parent fears for the child's safety. The claims that judicial officers hear most frequently are that the noncustodial parent is using drugs or alcohol or that the noncustodial parent will abuse the child. Table 1 provides information regarding the frequency with which judicial officers hear various justifications for the denial of visitation.

PART IV: RESEARCH RESULTS

Table 1
Frequency With Which Judicial Officers Hear
Justifications by Custodial Parents for Denying Visitation
N= 151

Justification	Never	Rarely	Sometimes	Frequently
Failure of noncustodial parent to pay child support	4%	28%	50%	18%
Drug/alcohol use by noncustodial parent	1%	3%	38%	56%
Abuse of child while in care of noncustodial parent	1%	17%	52%	29%
Abuse of custodial parent by noncustodial parent	3%	41%	40%	16%
Fear of child not being returned	5%	30%	54%	11%

Percentages may not equal 100% due to rounding.

In interpreting the views of judges and referees, it is important to recognize that cases that come before judicial officers tend to be more serious and, therefore, may be unrepresentative of disputes encountered by most parents. Most judicial officers believe that they hear only cases where visitation disputes are an on-going problem rather than a one time dispute. Eighty-five percent of judicial officers reported that parents are "not likely" to return to court based on a one time denial or interference with visitation, whereas 77% stated that parents are "very likely" to return to court as a result of recurring patterns of denial of visitation. Judicial officers who participated in a focus group shared the view that the visitation disputes that come to them are often the most intransigent in terms of parents being able to resolve them. Data from the parent survey support this view, and establish that most parents return to court only for recurring visitation disputes.

The parents' survey also sheds light on the extent to which court-ordered visitation was denied to noncustodial parents. Those parents who reported having at least one post-decree visitation dispute were asked a series of questions to learn more about the extent and nature of their experiences. The data in Table 2 reveal how noncustodial parents responded to the following question: "Since your final divorce or paternity decree has been entered, how often has the custodial parent denied or interfered with court-ordered visitation in the following manner?"

In interpreting Table 2, it is important to remember that these questions were only asked

of the noncustodial parents who responded that they had experienced at least one post-decree visitation dispute. Their responses are found in the columns to the right of the darkened line. The 40% in row one, column two of Table 2 can be interpreted to mean that of the 181 noncustodial parents who reported having at least one post-decree visitation dispute, 40% have never had the particular problem of a custodial parent flatly denying them visitation. The figures to the right of the darkened line exclude the 147 noncustodial parents who reported that they had never had a visitation dispute. If one were to combine the 147 noncustodial parents who reported never having a visitation dispute with those who claimed that they did not experience the particular problem (e.g., being flatly denied visitation), it is possible to obtain some idea of the overall frequency of each problem (i.e., for all the noncustodial parents in the sample.) These frequencies are presented in the column labeled "Total Never." In row one, column one of the table, for example, the figure 68% should be interpreted to mean that 68% of all the noncustodial parents in the study had never had a custodial parent flatly deny them visitation.

Table 2
Extent to Which Noncustodial Parents Claim to Have Experienced Denial of or Interference With Visitation

Claim by Noncustodial Parent	Total Never	Never	Rarely	Some-times	Frequently	Always	Number
Custodial parent flatly denied visitation	68%	40%	19%	21%	9%	11%	167
Custodial parent arbitrarily changed day or time of visitation and refused make-up visitation	63%	29%	17%	27%	16%	11%	161
Custodial parent moved too far away for you to exercise visitation	87%	76%	6%	5%	4%	9%	175
Custodial parent moved without disclosing address	89%	79%	2%	6%	2%	11%	176
Custodial parent schedules child's events (e.g., vacation, camp) during visitation time	66%	36%	18%	27%	8%	11%	170
Custodial parent does not allow child to go on visitation when ill	75%	53%	21%	15%	3%	8%	166

Percentages may not add up to 100% due to rounding.

Custodial parents also provided information regarding the frequency and nature of

instances where court-ordered visitation was denied to noncustodial parents. The findings in Table 3 describe how frequently they said they denied visitation, along with reasons for such denials. Again, the figures to the right of the darkened line include only those custodial parents who reported having at least one post-decree visitation dispute. Thus, in row one, column two of the table, the number 90% means that 90% of the custodial parents who experienced at least one post-decree visitation dispute reported that they have never denied visitation because the noncustodial parent failed to pay child support. As before, it is possible to calculate a figure indicating the percent of all custodial parents in the study who have never denied visitation because of the reasons presented in the table. These figures are reported in the column labeled "Total Never." In row one, column one, for example, the figure 95% should be interpreted to mean that 95% of all the custodial parents in the study stated they have never denied visitation to a noncustodial parent because the noncustodial parent failed to pay child support.

Focus group participants spoke at length about reasons why custodial parents deny visitation. Many of the reasons in Table 3 were voiced by those attending these meetings. Other reasons that were mentioned included unresolved anger or animosity toward the noncustodial parent and a desire to retaliate or punish the noncustodial parent.

Table 3
Extent to which Custodial Parents Claim to Have Denied Visitation

Reason for Denying Visitation	Total Never	Never	Rarely	Some-times	Frequently	Always	Number
Failure of noncustodial parent to pay support	95%	90%	4%	2%	0%	4%	250
Drug/Alcohol use by noncustodial parent	90%	77%	5%	8%	4%	6%	247
Abuse of child while in care of noncustodial parent	95%	89%	3%	5%	0%	3%	250
Threat of abuse toward custodial parent	91%	80%	9%	5%	3%	4%	250
Child too ill to go	80%	58%	27%	15%	0%	0%	247
Noncustodial parent refuses to disclose home address	93%	86%	6%	4%	2%	3%	249
Failure of noncustodial parent to visit child	80%	56%	7%	16%	11%	11%	245
Other	93%	78%	8%	10%	1%	3%	146

Percentages may not add up to 100% due to rounding.

c. The extent to which noncustodial parents fail to exercise their court-ordered visitation

PART IV: RESEARCH RESULTS

A second mandate for the Task Force was to examine the extent to which noncustodial parents fail to exercise their court-ordered visitation. Data from the file review reveal that it is relatively rare for parents to return to court because the noncustodial parent fails to exercise visitation. Of the 1357 files reviewed, only five of the cases (.4%) include a claim that the noncustodial parent had failed to visit as required. Proportionately, these five cases constitute 12.5% of the forty files that dealt with visitation claims at all.

Information from the survey of judges and referees gives a clear impression that cases relating to the failure to exercise visitation by noncustodial parents are not likely to come to their attention. When asked how likely it would be for parents to return to court because of a one-time failure of the noncustodial parent to exercise visitation, 97% of the judicial officers responded "not likely." When asked how likely it would be for parents to come to court because of a recurring pattern where the noncustodial parent failed to visit, nearly half of the judges (48%) still stated "not likely." Another 39% responded "somewhat likely," and 14% answered "very likely." In comparing these responses to those previously reported regarding the likelihood of returning to court for denying visitation, it is clear that judicial officers perceive that visitation disputes involving failure to exercise visitation are far less likely to come to their attention than disputes where denial of visitation is at issue.

Data from the judicial officers' survey and from the focus groups of judges and referees reveal that judicial officers are often hesitant to use legal sanctions to enforce visitation orders requiring noncustodial parents to visit their children. Judicial officers were asked whether they agreed or disagreed with the following statement: "If a noncustodial parent fails or refuses to exercise visitation, consequences should be imposed upon that parent." Only one-third (35%) of the judges answered "strongly agree" or "agree," while 65% responded "disagree" or "strongly disagree." Judges participating in focus groups provided some insights regarding the survey findings. Despite their strong belief that it is in the best interest of children for visitation to be regularly exercised so that the bond with both parents can be maintained, they also expressed reluctance for imposing consequences for failure to do so. Their rationale was that there is no way for the court to mandate that a noncustodial parent have a relationship with a child. Furthermore, forced visitation may prove counterproductive and not serve the child's best interests. It is worth noting that this view was not unique to judges. The sentiment expressed in most of the focus groups was that consequences should not be imposed upon a noncustodial parent who fails to exercise visitation.

The parents' survey also provides some information about the nature and extent of instances where noncustodial parents fail to exercise court-ordered visitation. A series of questions were asked of custodial parents regarding the frequency with which noncustodial parents had either failed to exercise visitation or had interfered with it. The results of these questions are found in Table 4. Interpretation of Table 4 is similar to that of Tables 2 and 3. The columns to the right of the darkened line exclude parents who reported never experiencing a post-decree visitation dispute. The column labeled "Total Never" combines those custodial

parents who have never had a post-decree visitation dispute with those who answered "never" to the particular question.

Table 4
Reports by Custodial Parents on Frequency of Noncustodial Parents' Failure to Exercise Visitation or Interference with Visitation

Claim by Custodial Parents	Total Never	Never	Rarely	Some-times	Frequently	Always	Number
Noncustodial parent arbitrarily changed day of visitation	67%	27%	14%	35%	20%	5%	244
Noncustodial parent moved too far away to exercise visitation	93%	84%	3%	5%	5%	4%	239
Noncustodial parent doesn't have child ready on time	81%	58%	17%	11%	8%	5%	241
Noncustodial parent fails to return clothes, toys, etc.	76%	51%	19%	12%	10%	8%	245

Percentages may not add up to 100% due to rounding.

Noncustodial parents were also asked about the extent of and reasons for their failure to exercise visitation. In some instances they reported that they could not exercise visitation because the custodial parent had moved too far away. While this is not a frequent situation, 13% of the noncustodial parents who have experienced visitation disputes stated that this is either always or frequently a factor for failure to exercise visitation. The focus groups with noncustodial parents shed additional light on the causes underlying this problem. Several parents commented that it was not financially tenable for them to continue to visit because of the costs associated with travelling. Others suggested that some parents do not exercise visitation because of the lack of a relationship between the parents (most often in paternity cases) which then carries over into a lack of relationship with the child.

The parents' survey indicates that another reason noncustodial parents do not exercise visitation is because the custodial parent interferes with their relationship with the child. Such interference is perceived to occur quite frequently by noncustodial parents. Forty-three percent indicated that it occurred "always" or "frequently," and 57% responded that it occurred "never," "rarely," or "sometimes." Unfortunately, it is unclear from the response the extent to which

such interference leads to a failure to visit or whether it just makes visitation more difficult.

Finally, parents were asked whether they believed that consequences should be imposed upon a noncustodial parent who fails or refuses to exercise visitation. The responses of parents were quite similar to those of judicial officers in regard to this question, with the majority responding that consequences should not be imposed. While 38% of parents either "strongly agreed" or "agreed" that consequences should be imposed, 50% either "strongly disagreed" or "disagreed" with the imposition of sanctions, and 13% had no opinion. In comparing the responses of custodial parents and noncustodial parents there is a statistically significant difference, with custodial parents being more likely to agree that sanctions should be imposed and noncustodial parents more likely to disagree. Participants in several focus groups suggested that in cases where the noncustodial parent is not required to exercise visitation, that parent should instead be required to pay additional support to allow the custodial parent to take time out from the responsibilities of being the sole caregiver for the child.

d. The extent to which lack of access to the court prevents timely resolution of visitation matters

A third mandate of the Task Force was to examine the extent to which lack of access to the courts prevents timely resolution of visitation disputes. Questions about this issue were asked of court administrators, judicial officers, parents, and the participants of the focus groups. The responses reveal a clear difference of opinion regarding whether access is a problem.

Those who work in the justice system tend to believe that access is not a problem. Eighty-three percent of the court administrators responded "no" to the following question: "Did lack of access to the court system result in untimely resolution of any visitation disputes?" Only 17% responded "yes" to this question. Judicial officers similarly believed that access was not a serious problem. Asked whether they agreed or disagreed with the statement "There is a lack of access to the court system that has resulted in untimely resolution of visitation disputes," 65% responded that they "disagreed" or "strongly disagreed" with it, while 35% either "agreed "or "strongly agreed" with it.

The perception of parents was considerably different. Over one-half of the parents (58.5%) responded "no opinion" to a similar statement about access to the courts. This reflects the fact that most parents had either never experienced a visitation dispute or had dealt with their dispute outside the court system. In examining the responses of those who did offer an opinion, 77% either "agreed" or "strongly agreed" that there is a lack of access to the court system for post-decree visitation disputes. Only 23% "disagreed" or "strongly disagreed" with the statement.

The most obvious interpretation for this difference in perceptions regarding access to the court system is that court administrators and judicial officers, who understand the workings of the justice system, do not fully comprehend the obstacles, both real and perceived, that parents face.

PART IV: RESEARCH RESULTS

It is important, however, to keep in mind an alternative explanation that relates to the difference in how the surveys were conducted. The surveys of court administrators and judicial officers were conducted statewide, whereas the parent questionnaire was distributed to parents in only four counties, one of which has the busiest family court in Minnesota. If these four counties are more inaccessible than others, it could also account for the difference in perceptions.

The Task Force sought to learn more about the experiences of persons with visitation disputes and their efforts to resolve them. The 557 parents who reported having at least one post-decree visitation dispute were asked if their dispute(s) had been resolved and, if so, how. Approximately, one-half of these parents (52%) reported that they had resolved their visitation dispute; the remaining 48% reported that their visitation dispute had not yet been resolved. Table 5 provides information about the means used by the 289 parents who were successful in resolving their visitation disputes. As can be seen in Table 5, most resolutions occurred outside the court system.

Table 5
Percent of Parents With Visitation Disputes Who Report Resolving Them
N= 289

Method of Resolving Dispute	Percent*	Number
Dispute resolved between parents	74%	213
Dispute resolved with help of friends or relatives	7%	21
Dispute resolved with help of a non-court professional (e.g., pastor or counselor)	3%	8
Dispute resolved by a mediator	3%	9
Dispute resolved by a judge or court referee	5%	14
Other	24%	69

*Percentages add up to more than 100% because some parents used more than one method for resolving a dispute.

The data also show that relatively few parents rely on the police to deal with their problems. The vast majority of parents reporting visitation disputes (88%) indicated that they had never called the police. Another 7% said they had called the police, but that the police refused to resolve the issue (most often because it was a civil not a criminal matter). Finally, 5% answered that they had called the police and the police resolved the issue.

As discussed above, most parents do not utilize the courts to resolve visitation disputes.

PART IV: RESEARCH RESULTS

When parents experiencing problems were directly asked if they had ever sought help from the court, the vast majority (88%) answered "no." Of the 12% who answered "yes," 5.6% had been to court once; 3.4% had been there between two to five times; and slightly fewer than 1% had done so six or more times. The Task Force sought additional information to see if parents perceived obstacles to accessing the courts. Table 6 presents information regarding reasons why parents who were engaged in visitation disputes did not seek help from the court. One-third of the parents identified reasons other than those listed on the questionnaire for not returning to court. Among the "other" reasons most often identified by parents for not returning to court were that the dispute was not serious enough to require court intervention, and that it was only a one-time dispute not a recurring dispute.

Table 6
Reasons Why Parents with Post-Decree Visitation Disputes
Did Not Seek Help From the Court
N= 522

Reason	Percent*	Number
Decree orders post-decree disputes to be resolved by a mediator	9%	47
Could not afford an attorney	30%	158
Unable to find attorney willing to handle visitation dispute	1%	6
Did not have time to go to court	10%	51
Did not know how to go to court without an attorney	14%	73
Afraid that other parent might retaliate	21%	109
Court time to resolve dispute took too long	9%	46
Legal aid office unable to help because it represents other parent	2%	10
Legal aid office unable to help because does not handle post-decree disputes	1%	5
Afraid of unknown outcome (e.g., judge may revise existing schedule)	11%	56
Other (e.g., dispute not serious enough, only one-time dispute)	30%	155

*Percentages add up to more than 100% because parents could identify more than one reason.

Judicial officers also provided their perceptions regarding the major obstacles to court access for resolving visitation disputes. Their responses, which in many ways parallel those of parents, are found in Table 7.

PART IV: RESEARCH RESULTS

Table 7
Judges Perceptions Regarding the Reasons
Why Parents with Disputes Did Not Seek Help From the Court
N= 152

Reason	Percent*	Number
Parties unaware that the court system handles visitation disputes	5%	7
Cost of attorney discourages use	86%	131
Parties cannot find attorney willing to take a visitation dispute	45%	68
Parties do not have time to go to court	9%	13
Parties do not know how to proceed without legal representation	59%	90
Parties afraid that other parent might retaliate	36%	55
Legal aid office unable to help	66%	100

*Percentages add up to more than 100% because parents could identify more than reason.

The issue of access was also raised in the focus group sessions. Judicial officers and attorneys tend to support the notion that access was not a problem. Parents, however, were more likely to express concern about the lack of access. For some participants in several of the focus groups, increased access to alternative dispute resolution services, such as mediation or counseling, was considered more critical than increased access to the courts because of the belief that parenting issues are best resolved in nonadversarial settings. In discussing the barriers to access, a variety of reasons were described, including finances, lack of understanding of one's rights and responsibilities, unfamiliarity with the workings of the court, and fear of abuse or retaliation from the other parent.

A common theme in the focus groups was that timeliness of access was crucial in resolving visitation disputes. Several participants mentioned that the longer the delay to get into court, the greater the chances that parental conflict would escalate. In comparing the survey responses of judicial officers and parents, it is clear that their perceptions differ regarding the time it takes to get into court. In response to a question about the average length of time it takes from the date a hearing is requested until the first available opening on the hearing calendar, 49% of judicial officers answered "two weeks to a month"; 42% responded "one to two months"; 8% reported "two to three months"; and 1% said "more than three months." The time frame described by parents was considerably longer than the ones provided by judicial officers. In response to a similar question, 18% of parents answered"two weeks to a month"; another 18% responded "one to two months"; 9% indicated "two to three months"; and 10.9% said "more

than three months." Almost half (49%) of the parents trying to access the courts responded that "my case has not yet been heard." Unfortunately, the data do not allow us to determine how long they have been waiting. Once again, it is important to remember that while the judicial officers' survey was distributed throughout the entire state, the parents' survey includes only four counties. If these counties are slower in hearing cases than others, this could account for the difference in responses.

e. The extent to which visitation impacts noncustodial parents' compliance with court ordered child support

The final mandate of the Task Force was to study the extent to which visitation impacts noncustodial parents payment of child support. In other words, are noncustodial parents more likely to timely and completely pay court-ordered child support if they have access to their children, and, in contrast, are some noncustodial parents likely to withhold payment of child support because of denial of visitation? The Task Force also chose to study the opposite scenairo -- the extent to which custodial parents deny visitation because of nonpayment of child support.

Time constraints precluded the Task Force from undertaking the type of long term, longitudinal research that is necessary to fully understand the complex interrelationship between visitation and child support. Furthermore, the Task Force was precluded from conducting any research whereby the receipt of visitation or child support would have been conditioned upon receipt of the other because Minnesota law, like that of many other states,[43] precludes parents from arbitrarily withholding child support based upon a denial of visitation, and vice versa. Minnesota Statutes section 518.612 provides:

> Failure by a party to make support payments is not a defense to: interference with visitation rights . . . . Nor is interference with visitation rights . . . a defense to nonpayment of support. If a party fails to make support payments, or interferes with visitation rights, . . . the other party may petition the court for an appropriate

[43] *See, e.g.*, Colo. Rev. Stat. §§ 14-10-121, 14-10-129.5 (requiring courts to separate the issues of child support and parenting time, and prohibiting courts from conditioning child support upon parenting time and vice versa); Fla. Stat. § 61.13 (stating that if a noncustodial parent fails to pay court-ordered child support or alimony, the custodial parent shall not refuse to honor visitation rights, and further providing that if a custodial parent refuses to honor visitation rights, the noncustodial parent shall not fail to pay court-ordered support or alimony); Ohio Rev. Code Ann. 3109.05 (providing that a court shall not authorize the withholding of child support because of a denial of or interference with visitation); Utah Code Ann. § 30-3-33 (providing that neither visitation nor child support shall be withheld due to either parent's failure to comply with a court-ordered visitation schedule); Wash. Rev. Code § 26.09.160 (specifying that "the performance of parental functions and the duty to provide child support are distinct responsibilities in the care of a child. If a party fails to comply with a provision of a decree or temporary order of injunction the obligation of the other party to make payments for support or maintenance or to permit contact with children is not suspended").

order.[44]

For the reasons mentioned above the Task Force was unable to give equal priority in its data collection efforts to the question of the impact of visitation on compliance with child support. Nevertheless, the Task Force did to the extent possible study the issue by asking parents and judicial officers several factual and policy-based questions regarding the topic and by reviewing literature regarding the subject.

Despite Minnesota's statute precluding parents from withholding visitation or child support based upon a denial of the other, parents participating in focus groups offered anecdotal evidence that some parents nevertheless link the two issues. To gain an understanding of the frequency with which such linkage occurs, participants in the parent survey were asked whether the noncustodial parent had ever withheld court-ordered child support on the grounds that the other parent had interfered with or denied court-ordered visitation. Of the 1059 parents who answered this question, only 43 (4%) answered "yes" and 1016 (96%) responded "no." In addition, custodial parents were asked how often they had denied court-ordered visitation because of the failure of the noncustodial parent to pay child support. Of the 423 custodial parents answering this question, 380 (90%) stated they had "never" denied visitation for this reason. It is worth noting that 15 (4%) of custodial parents claimed to "always" deny visitation because child support was not being paid.

Judicial officers were also asked about the frequency with which they hear custodial parents justify denial of visitation based upon failure to pay child support. The data previously reported in Table 1 shows that 18% of judicial officers "frequently" hear this justification; 50% hear it "sometimes"; 28% "rarely" encounter it; and 4% "never" hear this claim.

Parents and judicial officers were also asked two policy-based questions relating to the issue of linkage. Parents and judicial officers were asked whether the law should provide a mechanism for the noncustodial parent to legally withhold payment of child support if a custodial parent wrongfully denies court-ordered visitation. Of the 1202 parents responding to this question, 54% either "strongly agree" or "agree" with the statement, and 38% either "disagree" or strongly disagree" with the statement The responses of judicial officers to this question are in sharp contrast to those of parents. Of the 152 judicial officers responding to the question, only 19% either "strongly agree" or "agree" with the statement, while 81% either "disagree" or "strongly disagree" with the statement.

Parents and judicial officers were also asked whether the law should provide a mechanism for the custodial parent to legally deny visitation if the noncustodial parent withholds child support. Of the 1186 parents responding to this question, 64% either "strongly agree" or "agree" with the statement, and 24% either "disagree" or "strongly disagree" with the statement. Again,

[44]Minn. Stat. ∋ 518.612 (1996, effective 1978).

the responses of judicial officers sharply differ from those of parents. Of the 152 judicial officers responding to the question, only 19% either "strongly agree" or "agree" with the statement, while 82% either "disagree" or "strongly disagree" with the statement.

Most of what the Task Force learned about the connection between child support payment and visitation came from previous studies on this topic. In reviewing the research examining the relationship between visitation and payment of child support, the Task Force found a variety of often conflicting results. While a small number of researchers have found no relationship between the two issues,[45] most studies have uncovered a positive relationship between visitation and child support payments.[46] These studies have found that noncustodial parents who visit frequently are more likely to make timely and complete child support payments. Conversely, noncustodial parents who do not visit tend to pay less or no support.

What has been more difficult to uncover is the causal mechanism underlying this link. Some studies conclude that while child support payments and contact are correlated, the relationship is not a causal one. Instead, each is being influenced by a third factor. A variety of studies have sought to determine what these factors might be. Several variables have been proposed to explain both payment and visitation, although none are consistent predictors. These include parental attachment, parental responsibility, and the quality of the relationship between the parents.[47]

The Task Force found a small number of studies showing a causal link between child support payment and visitation. One argument is that visitation and child support are complementary activities with one affecting the other.[48] For example, visitation might increase the amount or frequency of payment of child support if the visits increase the noncustodial

[45]*See* Berkman, B., "Father Involvement and Regularity of Child Support in Post-divorce Families," 9 *Journal of Divorce* 67 (1986); Arditti, J., and Keith, T., "Visitation Frequency, Child Support Payment, and the Father-Child Relationship Postdivorce," 55 *Journal of Marriage and the Family* 699 (August 1993).

[46]*See* Furstenberg, F., Jr., Nord, C.W., Peterson, J.L., and Zill, N., "The Life Course of Children of Divorce: Marital Disruption and Parental Contact," 48 *American Sociological Review* 656 (1983); Seltzer, J., Schaeffer, N., and Charng, H., "Family Ties After Divorce: The Relationship Between Visiting and Paying Child Support," 55 *Journal of Marriage and the Family* 1013 (November, 1989). *See also* Pearson, J., and Anhalt, J., Center for Policy Research, *Final Report, The Visitation Assistance Program: Impact on Child Access and Child Support* 11-15 (Sept. 30, 1992).

[47]*See* Seltzer, J., "Relationships Between Fathers and Children Who Live Apart: The Father's Role After Separation," 53 *Journal of Marriage and the Family* 79 (1991); Braver, S., "Frequency of Visitation by Divorced Fathers: Differences in Reports by Fathers and Mothers," 3 *American Journal of Orthopsychiatry* 448 (July, 1991); Seltzer, J., Schaeffer, N., and Charng, H., "Family Ties After Divorce: The Relationship Between Visiting and Paying Child Support," 55 *Journal of Marriage and the Family* 1013 (November, 1989).

[48]Seltzer, J., Schaeffer, N., and Charng, H., "Family Ties After Divorce: The Relationship Between Visiting and Paying Child Support," 55 *Journal of Marriage and the Family* 1013, 1027 (November, 1989).

parent's knowledge about a child's material needs that the noncustodial parent can satisfy by paying support. Alternatively, parents who invest economic resources in a child may be more inclined to visit to determine how these resources are being expended. The researchers conclude that "our finding that paying support and visiting may also be complementary activities suggests that legal reforms to the child support system will increase the amount of time that noncustodial parents and children spend together. Improved child support enforcement is especially likely to increase visiting if parents define their role as having both economic and social components."[49] One recent study claims that the noncustodial parent's payment of child support and the custodial parent's interference with visitation appear to be causally linked.[50] These researchers, however, do not offer any policy recommendations based upon this finding.

The Task Force found no research assessing the impact or effectiveness of a policy linking child support and visitation. More particularly, the Task Force was unable to identify any studies regarding whether the withholding of child support deters denial of visitation by the custodial parent, or vice versa.

f. Survey responses to policy questions

In addition to collecting data on the four mandated issues described above, the Task Force also sought information about the opinions of judicial officers and parents regarding possible policy changes relating to the handling of visitation disputes. Their reactions proved helpful to Task Force members in developing their recommendations.

Judicial officers were asked whether they agreed or disagreed with the a number of policy statements regarding visitation disputes and the courts. Their responses are found in Table 8.

[49] *Id.*

[50] Bay, R.C., "Child Support Non-Compliance/Visitation Interference: Empirically Disentangling the Causal Sequence, *Symposium - Family Differences: Conflict and its Legacy*, Toronto, Canada, at 14 (August, 1993).

PART IV: RESEARCH RESULTS

Table 8
Extent to Which Judicial Officers Agree with Policy Statements
N= 152

Policy Statement	Strongly agree	Agree	Disagree	Strongly Disagree	No Opinion
Before proceeding on an initial dissolution or paternity petition, both parents should be required to attend classes regarding the impact on children.	52%	37%	5%	4%	1%
Public information, such as brochures and forms, should be developed to aid pro se parties to bring visitation disputes to court.	24%	48%	13%	11%	3%
Parents should be required to resolve post-decree visitation disputes using methods of alternative dispute resolution e.g. mediation.	40%	42%	12%	3%	3%
Family law should be changed to focus more on parental rights and less on the needs and best interests of the child.	1%	1%	20%	76%	2%
Minnesota's counties should establish a weekly "visitation court" where the notice requirement is lessened and parties could immediately have the dispute heard.	5%	18%	36%	31%	11%
If a custodial parent wrongfully denies court-ordered visitation, the law should provide a mechanism for the noncustodial parent to legally withhold payment of child support.	2%	17%	33%	48%	1%
If a noncustodial parent wrongfully fails or refuses to pay child support, the law should provide a mechanism for the custodial parent to legally deny visitation.	4%	15%	38%	44%	0%

Percentages may not add up to 100% due to rounding.

Parents' responses to a similar set of policy statements are provided in Table 9. Parents

were asked whether they agreed or disagreed with each policy statement.

Table 9
Extent to Which Parents Agree with Policy Statements

Policy Statement	Strongly Agree	Agree	Disagree	Strongly Disagree	No Opinion
Before the first hearing of a case between parents involving children, parents should be required to attend classes regarding the impact on children. (N= 1202)	38%	38%	12%	4%	8%
Public information, such as brochures and forms, should be developed to aid parents without an attorney to bring visitation disputes to court. (N= 1202)	43%	44%	4%	2%	8%
Family law should be changed to focus more on parental rights and less on the needs and best interests of the child. (N= 1197)	6%	9%	25%	49%	11%
If a custodial parent wrongfully denies court-ordered visitation, the law should provide a mechanism for the noncustodial parent to legally withhold payment of child support. (N= 1202)	27%	27%	19%	19%	9%
If a noncustodial parent wrongfully fails or refuses to pay child support, the law should provide a mechanism for the custodial parent to legally deny visitation to the noncustodial parent. (N= 1211)	27%	31%	21%	14%	8%
The sanctions for unjustifiably denying visitation should be the same as for not paying child support (e.g. fines, drivers license suspended, business license suspended, etc.) (N= 1186)	32%	32%	16%	8%	12%

Percentages may not add up to 100% due to rounding.

PART IV: RESEARCH RESULTS

A comparison of the data in Tables 8 and 9 reveals a number of areas of agreement between the views of judicial officers and parents, and also some areas of considerable disagreement. Parents and judicial officers are both strongly supportive of a policy which would require parents to attend education classes regarding the impact of dissolution and visitation disputes on children. Similarly, both groups favor providing more public information to assist parents in bringing visitation disputes to court. Finally, both judicial officers and parents tend to disagree with a proposal to change family law to place more emphasis on parental rights rather than the needs and best interests of children, although a higher percent of parents than judicial officers favored this change.

The opinions of judicial officers and parents were dissimilar on the issue of linking child support and visitation either by allowing the withholding of child support for visitation denials or allowing the denial of visitation for failure to pay child support. The majority of judicial officers disagreed with any statutory changes that would allow such linkage, while the majority of parents agreed with a linkage in both directions.

It is also worth noting that a comparison of the responses of custodial parents and noncustodial parents reveals a number of statistically significant differences in their opinions. Noncustodial parents were more likely than custodial parents to agree that the law should be changed to focus more on parental rights rather than on the needs and best interests of children. Noncustodial parents were also more likely to agree with a policy which would allow noncustodial parents to withhold child support if the custodial parent wrongfully denied visitation. Seventy-eight percent of noncustodial parents agreed with the statement, compared with 36% of custodial parents. Somewhat surprisingly, there was not a statistically significant difference in the responses to the policy statement that a custodial parent be permitted to legally deny visitation when the noncustodial parent fails to pay child support. Sixty percent of custodial parents agreed with this concept, while 59% of noncustodial parents agreed. Finally, custodial parents differed from noncustodial parents in their reaction to the idea that the sanctions for denying visitation should be similar to those given for failure to pay child support. While the majority of both groups favored such an initiative, the size of the majority was different. Fifty-five percent of custodial parents agreed with making the sanctions similar, while 79% of noncustodial parents favored it.

PART IV: RESEARCH RESULTS

B. RESULTS OF PROGRAM RESEARCH EFFORTS

1. Objectives and Methodology of Program Research

The four program research objectives of the Task Force were to: (1) gather information regarding the impact and effectiveness of parent education programs and visitation assistance programs existing in Minnesota, other states, and elsewhere; (2) identify characteristics of both types of programs most effective at preventing and resolving visitation disputes; (3) submit to the Task Force initial recommendations regarding educational and remedial models that might work best in Minnesota for preventing and resolving visitation disputes; and (4) identify the extent to which parent education programs, visitation expeditors, family court mediators, supervised visitation centers, and visitation exchange facilities are currently used in Minnesota.

To fulfill these objectives, Task Force members met with representatives of, and/or reviewed videotapes, brochures, instructional materials, and performance evaluations from, parent education programs and visitation assistance programs throughout Minnesota, the United States, as well as Canada. Details of the 24 educational and visitation assistance programs studied by the Task Force are set forth in Part VI of this report at *Appendix B.* Task Force members also distributed a questionnaire to each of Minnesota's 87 court administrators seeking information regarding the extent to which parent education programs, visitation expeditors, mediators, and visitation centers are currently used. The responses of court administrators to these questions are summarized in the table set forth as *Appendix D* to this report.

2. Results of Research Regarding Parent Education Programs

a. Impact and Effectiveness

One goal of the Task Force was to research the impact and effectiveness of court-connected parent education programs. When separating, divorcing, and unmarried parents come to court for resolution of the matter, they are usually unfamiliar with court procedures, the legal issues that may be involved, and the options available to them for resolving the various issues. Even when represented by counsel, many parents have only a limited understanding of the way the system works. In reviewing national literature on the subject of court-connected parent education programs, Task Force members learned that such programs have been successfully implemented in many states to give parents a basic framework for understanding the process and facing the challenges it poses as their case moves through the legal system. More importantly, parent education programs can also help parents understand and prepare for the effects their decisions will have on their lives and the lives of their children.

In addition to providing basic information regarding the divorce or paternity process, parent education programs can also provide information regarding conflict and its impact on child development, as well as communication techniques that help parents amicably resolve their disputes thus minimizing the impact on children. Task Force members learned that, although the

actual process of divorcing or establishing paternity may be a relatively short term experience, its effects on children are not. Common effects among children of divorce are internalized behaviors, such as anxiety, depression, and withdrawal. In addition, in comparison with children of non-divorced families, children of divorce are more likely to exhibit externalized behaviors, including "more aggressive, impulsive, and antisocial behaviors, and they are likely to have more difficulties in their peer relationships, are less compliant with authority figures, and show more problem behaviors at school."[51] While the effects of divorce upon children are clear, "[t]he causes of children's poor post-divorce adjustment appear to be numerous, and vary for different families and different children."[52] However, "most studies strongly implicate parental conflict, loyalty pressures, quality of parenting, adjustment of the residential parent, access and closeness of the nonresidential parent, type of residential parenting plan, and form of decision making (e.g., litigation versus mediation)" as factors contributing to children's negative divorce-related behaviors.[53]

One traditional method of helping children overcome the effects of divorce is individual psychotherapy. Therapy, however, "is not a plausible intervention for the majority of children of divorce" for a variety of reasons, including cost, the failure of parents to notice the difficulties their children may be having, and the mistaken belief of some parents that their children are adjusting to the divorce.[54] Court-connected parent education programs, a less traditional method of helping family members cope with separation and divorce, are now becoming more prevalent. In response to a heightened awareness of the personal and societal costs of divorce on parents and children, "judges are increasingly requiring parents to attend programs to make them more aware of the impact of divorce on children."[55] Interest in and the establishment of parent education programs is increasing to such a degree that in 1994 the First International Congress on Parent Education Programs, sponsored by the Association of Family and Conciliation Courts, took place and was attended by approximately 400 people from 39 states.[56]

Data from one study regarding the impact and effectiveness of parent education programs suggest that parents who participated in such programs are better able to focus on the needs and

[51]Arbuthnot, J., Segal, D., Gordon, D.A., Schneider, K., "Court Sponsored Education Programs for Divorcing Parents: Some Guiding Thoughts and Preliminary Data," *Juvenile and Family Court Journal* 77, 77 (1994).

[52]*Id.*

[53]*Id.*

[54]*Id.* at 78.

[55]Brown, J.H., Portes, P., and Cambron, M., "Families in Transition: A Court-Mandated Divorce Adjustment Program for Parents and Children," *Juvenile and Family Court Journal* 27, 27 (1994).

[56]Schepard, A., and Schlissel, S.W., "Planning for P.E.A.C.E.: The Development of Court-Connected Education Programs for Divorcing and Separating Families," 23 *Hofstra L. Rev.* 845, 847 (1995).

best interests of their children during the restructuring of their family.[57] In addition, parents involved in the programs reported a more favorable view of the judicial system and legal process after completion of the programs.[58] Other researchers who conducted a six-month evaluation of parent education programs found that the comments occasionally received from some parents or their attorneys that parent education classes are "unnecessary, inconvenient, or burdensome" are unfounded.[59] The researchers reported that, on the contrary, the data show that once having completed a program parents find them to be "relevant, realistic, and useful."[60] These researchers also found that programs that utilized interactive teaching methods, rather than only a short video or a traditional lecture, were more likely to be successful in helping parents.[61] The researchers recommend that "planners should provide for small classes of long enough duration to allow for ample parent participation and skills practice."[62]

Among the policy considerations raised by Task Force members during their discussions regarding court-connected parent education was whether courts should be involved in the parent education business. The following captures the consensus of the Task Force:

> Few parents are prepared by either schooling or life experience to deal with the new stresses and demands created by divorce and the restructuring of the family. This lack of knowledge and skill is further compounded by parents' defensiveness about their parenting . . . , and their attendant lack of awareness that their own behaviors contribute to their children's difficulties.
>
> Courts are in a unique position to serve as a gateway through which divorcing and relitigating parents must pass. Furthermore, the courts, unlike most other community agencies, have the authority to mandate that parents acquire specific divorce-related parenting skills. If courts do not provide the mechanisms for divorcing parents to learn the skills they need in order to protect and help their children during and after the divorce process, it is unlikely that the vast majority of these families will have access to such training in any other fashion. In addition, if the courts do not provide such services, it is a certainty that a large

[57] *Id.* at 851.

[58] *Id.*

[59] Arbuthnot, J., Gordon, D.A., "Does Mandatory Divorce Education For Parents Work? A Six-Month Outcome Evaluation," 34 *Family and Conciliation Courts Review* 60, 74 (Jan. 1996).

[60] *Id.*

[61] *Id.* at 75.

[62] *Id.*

> number of the children of divorcing families will continue to require community resources in various forms, including mental and physical health services, police and court time, property damages due to delinquency, and added burdens for the school systems. It is an ounce-of-prevention-or-a-pound-of-cure phenomenon.[63]

As part of its data collection efforts, the Task Force asked judicial officers and parents whether parents should be required to attend parent education classes prior to being permitted to proceed with their divorce or paternity proceedings. Of the 150 judicial officers responding to the question, 137 (91%) stated that they either "strongly agree" or "agree" with the statement, while only 13 (9%) reported that they "disagree" or "strongly disagree." A similar positive response was reported by parents. Of the 1202 parents responding to the question, 920 (77%) reported that they either "strongly agree" or "agree" with such a policy, 191 parents (16%) either "disagree" or "strongly disagree," and 91 (8%) offered no opinion.

b. Current Existence and Usage of Parent Education Programs in Minnesota

Another goal of the Task Force was to study the extent to which court-connected parent education programs are currently available in Minnesota. In 1995, the Minnesota Legislature enacted legislation authorizing judicial officers to order parents involved in custody, support, and visitation cases to attend an education program.[64] The Task Force learned that court-connected parent education programs are becoming more widely available in Minnesota. Court administrators were asked whether a parent education program is available in their respective counties. Forty-seven (54%) of the court administrators reported that a program is available, 37 (43%) reported that no program is available, and 3 (3%) were unaware of whether a program is available. A Table identifying which counties do and do not currently have parent education programs is set forth in Part VI of this report at *Appendix D.*

The Task Force also attempted to ascertain data regarding the current usage of parent education programs in Minnesota. Court administrators reported that even when parent education programs are available, judicial officers do not routinely require parents, especially those involved in paternity cases, to participate. Of the 47 counties with programs, court administrators in 24 counties (54%) stated that participation in a parent education program is mandatory for parties involved in dissolution cases and in 5 counties (11%) participation is mandatory for parents involved in paternity cases. Court administrators stated that participation is ordered at the judge's discretion for parties involved in dissolution cases in 21 counties (47%), and in 13 counties (29%) participation is discretionary for parties involved in paternity cases. In

[63]Arbuthnot, J., Segal, D., Gordon, D.A., and Schneider, K., "Court-Sponsored Education Programs for Divorcing Parents: Some Guiding Thoughts and Preliminary Data," *Juvenile and Family Court Journal* 77, 79 (1994).

[64]Minn. Stat. ∋ 518.157 (1995).

27 counties (60%) parent education is never ordered for parties involved in paternity cases.

To gain another perspective on the usage of parent education programs, all parents answering the Task Force's questionnaire were asked whether they had been court-ordered to attend a parent education class as part of their divorce or paternity proceeding. Of the 1217 parents responding to the question, 1110 (91%) reported that they had not been ordered to attend and did not voluntarily attend such a class. Significantly, however, of the 107 parents who had been ordered by the court to attend a parent education class, the majority (68%) found the class to be beneficial, while 31% did not find it helpful.

c. Ideal Characteristics of Parent Education Programs

Given the research suggesting the positive impact of court-connected parent education at reducing conflict (and thus reducing the number of returns to court), the Task Force decided to develop a set of ideal characteristics for a parent education program best suited for use in Minnesota. The complete set of characteristics is set forth in Part VI of this report at *Appendix B.* Generally, however, Task Force members agreed that the purpose of an educational program should be to serve as an early intervention mechanism to encourage cooperation between parents before adversarial behavior has a chance to develop or escalate. Among the goals of such a program should be to teach parents positive communication techniques and dispute resolution skills, and to help them understand that the best interests of the children should be placed above the parents' "rights." The educational program should be applicable to parents and/or parties regardless of whether a marriage relationship exists.

Overall, the most comprehensive educational program reviewed was "Parents Forever," developed by the University of Minnesota Extension Service and currently in use in at least 13 Minnesota counties. Favorable factors identified by the Task Force include the fact that its subject matter is comprehensive in nature, it was developed by individuals from diverse backgrounds, volunteers are often used to facilitate and teach the classes, the entire curriculum (instructor's manual, participants' manuals, handouts, instructional materials, charts, etc.) is available to counties at a minimal cost (approximately $350), the cost to participants is low and a sliding fee scale is available, and it is designed to be offered at flexible times to accommodate the needs of parents.

3. Results of Research Regarding Visitation Assistance Programs

a. Impact and Effectiveness

PART IV: RESEARCH RESULTS

Another goal of the Task Force was to research the impact and effectiveness of programs designed to resolve visitation disputes and other parental conflicts. Through anecdotal evidence received during focus groups, as well as a review of literature on the subject, Task Force members learned that many divorcing, separating, and unmarried parents are able to focus on the best interests of their children. They try to assure that their separation has a minimal impact on the children. They plan together how to share decision-making about the children's schooling, religious upbringing, medical care, and parental responsibilities. They agree on what rules and kinds of discipline should be used with the children. They agree on where the children will live and they make reasonable arrangements about sharing parenting time. Although some disagreements may arise, these parents, more often than not, are able to continue working together in a positive manner for the benefit of their children.

For other parents, however, any hostility that may have been present during their marital or other relationship is often heightened by the divorce or paternity proceeding. Under such circumstances it is often difficult for these parents to agree about who will get the pots and pans, let alone the future role each will play in their children's lives.

Once a parenting issue such as visitation is resolved, regardless of whether it is the result of a mutual agreement of the parties or a decision of the court, some parents nevertheless experience post-decree conflict regarding the issue. The data from the Task Force's survey of parents reveal that 46% of the parents had experienced one or more post-decree visitation disputes. While generalization of that data to the entire State is problematic given that parents in only four counties were surveyed, such a generalization is nevertheless helpful in understanding the general magnitude of the problem. In Minnesota in 1995 there were a total of 26,439 dissolutions with children filed, paternities established, and recognitions of parentage filed (although some of the latter two categories may overlap). Assuming for purposes of example that 46% of the families involved in these cases experienced at least one post-decree visitation dispute, that would mean that in just one year over 12,000 families experienced such conflict. The data from the parents' survey further shows that only about 50% of the parents had been able to resolve the post-decree visitation conflict. Applying that data to the entire State, 6,000 couples would not have resolved their conflict.

Parents who are unable to resolve a matter between themselves generally have two options available for resolution of the dispute: return to court or seek assistance of a third person (e.g., counselor, visitation expeditor, private mediator). Returning to court, however, means resorting to an adversarial system that does little to ensure that the parents work together to resolve the dispute or to achieve what is best for the children involved. Litigation is almost always confrontational in nature, pitting parent against parent. The process usually involves vollies of affidavits (often containing language that heightens any hostility felt by the other parent), time-consuming court appearances (often including intimidating and harsh examination and cross-examination), and a decision made by someone other than the parents -- a decision where one parent is perceived as the "winner" and the other as the "loser." Because of its

adversarial nature, returning to court to resolve a post-decree visitation dispute simply is not a good way to induce cooperation between parents and best address the interests of children.

A review of the literature suggests that the preferred approach to resolving parental disputes is negotiation, not confrontation. The U.S. Commission on Child and Family Welfare found that:

> Moving away from traditional, adversarial court processes to procedures and services that help parents come to their own agreements about their children's care can have several salutary effects. It can reduce the hostility that so often accompanies the resolution of custody and visitation issues and help parents minimize conflict in the ongoing relationship they must have with each other in order to have effective relationships with their children.[65]

Some courts have implemented procedures for early referral of parents to services that help them come to agreement about what is best for their children before thrusting them into the adversarial process of the court. These courts have found that "by helping parents resolve together the arrangements for their children's care, continuing conflict between the parents is diminished, greater compliance with court orders is achieved, and costs to both parents and the courts are reduced -- all to the benefit of children."[66]

Although the Task Force studied a variety of programs designed to resolve visitation disputes, of specific interest to the Task Force was Minnesota's Cooperation for the Children program. Enacted by the Legislature in 1995, the program was implemented as a pilot project "to promote parental relationships with children."[67] The program was designed with three distinct components: "(1) addressing the needs of parents for educational services pertaining to issues of child custody and visitation arrangements; (2) providing a nonjudicial forum to aid in the resolution of custody and visitation issues through facilitation of written agreements; and (3) providing mediation services to resolve conflicts related to custody and visitation issues, when appropriate."[68] The legislation implementing the program mandated that participation in the program was to be voluntary.[69] The legislation also provided that services were to be provided to persons who were "parents by virtue of birth or adoption of a child, individuals adjudicated as

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[65] *Report of the U.S. Commission on Child and Family Welfare*, "Parenting Our Children: In the Best Interest of the Nation," 21 (Sept. 1996).

[66] *Id.* at 29.

[67] 1995 Minn. Laws 257, art. 1, ɔ 14, subd. 1.

[68] *Id.*

[69] *Id.* at subd. 2(a).

parents through a paternity action or through the recognition of parentage process, or individuals who have experienced a marriage dissolution."[70]

In an effort to ascertain the effectiveness of the Cooperation for the Children program, the Task Force received a January 1997 draft of the program's report to the Legislature. The draft report indicates that two counties established pilot projects: Ramsey County in July 1996 and Carlton County in September 1996.[71] The program provides four services: educational services, facilitation services, mediation services, and pro se forms to access to district court.[72] The draft report provides that "in Ramsey County, 1,220 people contacted the program between March 1, 1996, and December 31, 1996. The majority of people who contacted the program were seeking help with a visitation problem. . . . In each case the program facilitator explained the dispute resolution options, answered questions about visitation issues, and provided a referral to other resources or pro se forms [to access district court]."[73] Of all couples who contacted the Ramsey County program, 11 "indicated a willingness to try mediation and were referred to the mediation providers for resolution of a parenting issue. Of the 11 couples referred to mediation, four attended at least one mediation session."[74] The draft report provides that the Carlton County program has only recently begun assisting parents as program staff have "focused on drafting a brochure, researching local resources, drafting pro se forms, and meeting with groups and individuals to plan the development of the program."[75]

Given that over 1,200 people contacted the program during a nine-month period, the draft report indicates that "we learned there is a definite need for a program that helps parents with custody and visitation matters."[76] The draft report also establishes that "the people who contact the program do not use the mediation and facilitation services to the extent we anticipated," often because of the voluntary nature of the program.[77]

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[70] *Id.*

[71] Office of Administrative Hearings, *Cooperation for the Children: A Report to the Legislature*, at 5 (Draft: January 1997).

[72] *Id.* at 5-6.

[73] *Id.* at 6.

[74] *Id.*

[75] *Id.* at 6-7.

[76] *Id.* at 9.

[77] *Id.*

b. Current Existence and Use of Visitation Assistance Programs in Minnesota

Among the goals of the Task Force was to determine the extent to which various visitation assistance options are currently available in Minnesota. In this regard, court administrators were asked about the extent to which visitation expeditors, family court mediators, supervised visitation centers, and visitation exchange facilities are currently available in their counties. A Table summarizing their respective responses to each of these questions is set forth in Part VI of this report as *Appendix D.* In summary, 37 court administrators (43%) stated that they have visitation expeditors available in their county, 51 (59%) reported that family court mediators are available, 49 (56%) indicated that supervised visitation facilities are available, and 47 (54%) reported that visitation exchange facilities are available.

c. Ideal Characteristics of Visitation Assistance Programs

Based upon the national literature and data suggesting that nonadversarial processes are more effective than adversarial processes in helping parents to resolve visitation disputes, Task Force members began studying examples of visitation assistance programs. In 1990, the Center for Policy Research, under the sponsorship of the State Justice Institute, began exploring the range of approaches used by courts throughout the nation to resolve visitation disputes.[78] The researchers conducted a national survey to identify visitation enforcement programs used in state courts.[79] Five programs, each utilizing different approaches to resolve visitation disputes, were then selected for intensive analysis.[80] These five programs came to be known as the "Waive I" programs. Various combinations of methods were used by the five programs to address visitation problems, including expedited complaint procedures, supervised visitation, warning letters, telephone monitoring of visitation episodes, mediation, and group education. As a result of their study, the researchers were able to characterize the types of individuals who utilized the various programs, the types of visitation-related problems parents experience, the visitation outcomes they were able to achieve through program participation, and the parents' reactions to the programs.[81]

Analysis of the five programs reveals that visitation problems occur in all types of physical custody arrangements and regardless of whether the mother or the father has primary

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[78]Pearson, J., and Anhalt, J., Center for Policy Research, "*Final Report, The Visitation Enforcement Program: Impact on Child Access and Child Support*" 2 (Sept. 30, 1992).

[79]*Id.*

[80]*Id.* The Task Force undertook its own study of these five programs, along with other programs. Summaries of the five programs are set forth in Part VI of this report at *Appendix B.*

[81]*Id.* at 3.

physical custody.[82] When visitation problems occur, "they are extremely vexing to those involved. Typically, these couples use and reuse the court system over and over again, so their impact on the court system is disproportional to their incidence."[83] The researchers found that "the importance of providing a quality intervention and creating a climate conducive to compliance."[84] They also found that "[s]ince regular client contacts appeared to produce the most promising results, one approach would be to allocate more resources to visitation enforcement programs to enable staff to make more frequent contact with troubled families. Alternatively, couples may need help aimed not only on fixing their present problems, but learning a different way of communicating and addressing post-separation impasses."[85]

Of significance to Task Force members was the researchers' assessment of "the most promising types of remedial interventions and services."[86] Parents were asked to assess the probable effectiveness of a variety of interventions. The responses of custodial and noncustodial parents at all sites reveal that they favored specified visitation orders, one-on-one interventions with court personnel, attendance at education programs, and monitoring by court workers to ensure compliance with orders.[87] Noncustodial parents favored "tough" enforcement measures, including use of make-up visitation, fines and changing custody arrangements, while custodial parents favored supervised visitation arrangements.[88]

[82] *Id.* at 186.

[83] *Id.* at 186-87.

[84] *Id.* at 187.

[85] *Id.* at 192-193.

[86] *Id.*

[87] *Id.* at Executive Summary

[88] *Id.*

PART V: DELIBERATIONS AND RECOMMENDATIONS

A. DELIBERATIONS AND RECOMMENDATIONS REGARDING ISSUES SET FORTH IN SUPREME COURT ORDER ESTABLISHING TASK FORCE

After lengthy discussion and debate regarding numerous policy issues that were raised, the Task Force succeeded in achieving a consensus regarding all recommendations responding to the issues identified in the Supreme Court Order establishing the Task Force. Following is a statement of each issue identified by the Supreme Court, the Task Force's recommendations regarding each issue, and a summary of the Task Force's deliberations regarding each issue.

To most effectively deal with visitation-related conflicts experienced by families involved in dissolution and paternity proceedings, the Minnesota Supreme Court Advisory Task Force on Visitation and Child Support Enforcement makes the following recommendations:

1. Methods for Resolving Visitation Matters in an Efficient, Nonadversarial Setting that is Accessible to Parties at the Lowest Possible Cost

RECOMMENDATION 1: The Legislature should amend Minnesota Statutes section 518.157 as set forth below to require: (a) implementation of one or more Parent Education Programs in each judicial district; (b) mandatory participation (with some limited exceptions) in a parent education program by all parents involved in dissolution and paternity proceedings where custody or visitation is contested; and (c) evaluation of such programs by the State Court Administrator within 24 months of implementation.:

Minn. Stat. ∋ 518.157. ~~ORIENTATION~~ PARENT EDUCATION PROGRAM IN PROCEEDINGS INVOLVING CHILDREN.

Subdivision 1. Implementation; Administration. On or before January 1, 1998, the chief judge of each judicial district, or designee, shall implement one or more parent education programs within the judicial district for the purpose of educating parents about the impact that divorce, the restructuring of families, and judicial proceedings have upon children and families, methods for preventing visitation conflicts, and dispute resolution options. Each parent education program shall enable persons to have timely and reasonable access to education sessions.

Subd. 2. Minimum Standards; Plan. The Minnesota Supreme Court should promulgate minimum standards for the implementation and administration of a parent education program. The chief judge of each judicial district, or designee, shall submit to the Minnesota Conference of Chief Judges for approval a plan for the implementation and administration of a parent education program within the judicial district. The plan shall be consistent with the minimum

standards promulgated by the Minnesota Supreme Court.

Subd. 3. Attendance. In a proceeding under this chapter or sections 257.51 to 257.75 ~~involving custody, support, or visitation of children,~~ where custody or visitation is contested, ~~the court may require the parties to~~ the parents of a minor child shall attend an orientation and education program that meets the minimum standards promulgated by the Minnesota Supreme Court ~~regarding the proceedings and the impact on the children~~. In all other proceedings involving custody, support, or visitation the court may order the parents of a minor child to attend a parent education program. Persons who are separated or contemplating involvement in a dissolution, paternity, custody, or visitation proceeding may attend a parent education program without a court order. Participation in a parent education program shall occur as early as possible. Parent education programs shall offer an opportunity to participate at all phases of a pending or post-decree proceeding. Upon request of a party and a showing of good cause, the court may ~~shall~~ excuse the party from attending the program. ~~Parties may be required to pay a fee to cover the cost of the program, except that if a party is entitled to proceed in forma pauperis under section 563.01, the court shall waive the fee or direct its payment under section 563.01.~~ If past or present domestic abuse, as defined in chapter 518B, is alleged, the court shall ~~may~~ not require the parties to attend the same parent education ~~orientation~~ sessions and shall enter an order setting forth the manner in which the parties may safely participate in the program.

Subd. 4. Sanctions. The court may impose sanctions upon a parent for failure to attend or complete a parent education program as ordered.

Subd. 5. Confidentiality. Unless all parties agree in writing, statements made by a party during participation in a parent education program are inadmissible as evidence for any purpose, including impeachment. No record shall be made regarding a party's participation in a parent education program, except a record of attendance at and completion of the program as required under this section. Instructors shall not disclose information regarding an individual participant obtained as a result of participation in a parent education program. Parent education instructors shall not be subpoenaed or called as witnesses in court proceedings.

Subd. 6. Fee. Except as provided in this subdivision, each person who attends a parent education program shall pay a fee to contribute to the cost of the program. A party who qualifies for waiver of filing fees under Minnesota Statue section 563.01 shall be exempt from paying the parent education program fee and the court shall waive the fee or direct its payment under section 563.01. Program providers shall implement a sliding fee scale.

Subd. 7. Evaluation. By December 15, 1999, the state court administrator shall submit to the legislature a report evaluating the parent education program. The report shall be based upon at least 12 months of data from the parent education program.

Subd. 8. Appropriation. $_____ is appropriated to the trial courts to develop and implement one or more parent education programs in each judicial district. $_____ is appropriated to the state court administrator to evaluate the parent education program.

Deliberations Regarding Recommendation 1:

The Task Force recommends statewide implementation of parent education programs and mandatory participation by parents who are contesting the issues of custody or visitation. This recommendation is based upon the consensus of the Task Force that prevention is a significant factor in decreasing the extent to which visitation and other parental disputes may occur. It is also based upon the belief that by teaching parents early in the divorce or paternity process how to avoid conflicts and how to amicably resolve conflicts that may occur in the future, the scare resources of courts and social service agencies will be less utilized in the future.

The U.S. Commission on Child and Family Welfare recently made a similar recommendation to the President and Congress, stating that "courts should require separating, divorcing, and unmarried parents to attend orientation and education programs that help them understand court processes and the effect that their decisions will have on their lives and the lives of their children."[89] The Task Force concurs with the Commission's finding that "[o]rientation and education programs can lessen parental anxiety about the court process by describing how the court operates, what services it provides, and how it can help parents reach agreement about what is in the best interests of their children. These programs can provide basic, rudimentary information about legal requirements that affect parental decisions."[90]

More significantly, it is the consensus of the Task Force that parent education is a significant factor in preventing visitation disputes. A consensus of the Task Force members believe that parents who fully understand the negative impact that conflict has upon their children are more likely to cooperate with each other in resolving their disputes. It is also believed, however, that many parents are unable to effectively communicate with each other to resolve their disputes. Thus, another goal of court-connected parent education programs should be to

[89] *Report of the U.S. Commission on Child and Family Welfare*, "Parenting Our Children: In the Best Interest of the Nation" 33 (Sept. 1996).

[90] *Id.* at 32.

serve as an early intervention mechanism to encourage cooperation between parents before adversarial behavior and conflict has a chance to either develop or escalate.

As discussed above in Part IV, and as shown in the Table set forth in *Appendix D* to this report, over one-half (54%) of all Minnesota counties currently utilize parent education programs. Task Force members believe, however, that all parents, including those in large geographical areas, should have reasonable access to such programs. For that reason, the Task Force recommends that parent education programs be implemented throughout the State with one or more programs in each judicial district as dictated by the needs and resources of the counties within each district. Given that low-cost, well-developed parent education programs and curricula already exist, such as "Parents Forever" developed by the University of Minnesota Extension Service, there is no need for judicial districts and counties to develop their own curricula, though they may do so if they wish. Those courts that utilize existing parent education programs may continue to do so, so long as those programs meet the minimum standards identified below in Recommendation 2.

Among the policy considerations discussed by Task Force members was whether participation in a parent education program should be mandatory or voluntary. Some suggested that mandatory participation might seem coercive in nature. Others suggested, however, that voluntary participation does not seem to be nearly as effective given the data which suggests that parents rarely avail themselves of voluntary programs. As one study found, "[p]arents find many reasons not to go out of their way to attend such classes, including the press of other matters as well as the more defensive posture of believing that it is their ex-spouse who needs the training, not themselves."[91] This data was corroborated by the parents surveyed by the Task Force, 91% of whom were not court-ordered to attend a parent education program and did not voluntarily do so. Another factor weighing in favor of mandatory participation is the belief of a vast majority of the judicial officers (91%) and parents (77%) who participated in the Task Force's surveys that parents should be required to attend parent education programs before being permitted to proceed with their divorce or paternity actions.

Task Force members also discussed at length who should be required to complete such programs. Some Task Force members suggested that all parents involved in dissolution and paternity proceedings should be required to attend. Others suggested that only those parents who are unable to reach pre-decree agreements regarding custody or visitation arrangements should be required to attend. Because there are no accurate predictors about which parents will or will not be able to work together to resolve any disputes that may occur in the future, Task Force members reached a consensus that all parents involved in dissolution and paternity cases where custody or visitation is contested should be required to attend a parent education program. The court should have discretion to require other parties to attend parent education classes. In addition, other parents, including those individuals contemplating separation or divorce, should

[91]Arbuthnot, J., Segal, D., Gordon, D.A., Schneider, K., "Court Sponsored Education Programs for Divorcing Parents: Some Guiding Thoughts and Preliminary Data," *Juvenile and Family Court Journal* 77, 79 (1994).

also be allowed to attend if they so choose.

Safety of participants was another consideration discussed by Task Force members. Parents ordered by the court to attend education programs should not be forced to attend the same sessions as their spouses, although they may do so if they wish. In cases where domestic abuse is alleged, the Task Force strongly recommends that the court shall not require the parties to attend the same session and the court must issue an order setting forth the manner in which the parties may safely participate.

Ease of program administration was yet another consideration discussed by Task Force members. Rather than the court issuing a separate order directing attendance by the parents in each individual case, the Task Force recommends that the chief judge of each judicial district enter a blanket order directing parents to participate in a parent education program as required under the statute. At a minimum, such an order should include identification of the program(s) available in the judicial district and the consequences for failure to attend and complete the program. Upon the filing of a petition for dissolution or paternity, the court administrator could be directed to forward the order to the parties, their attorneys, or both. Dakota County in the First Judicial District currently follows this practice. A certification of completion would be submitted by program personnel to the court administrator.

The Task Force members believe that parents who pay a fee to participate are more likely to feel they have a vested interest in the program. As a result, the Task Force recommends that all parents should be required to pay a fee based upon a sliding fee scale. However, the court and the program should have discretion to waive the payment of such fees.

The Task Force recommends future evaluation of the parent education program in an effort to identify its overall impact upon the court system and its effectiveness at preventing visitation and other disputes, and to suggest improvements that may need to be made to the overall program or to programs implemented in specific judicial districts.

It is the consensus of the Task Force that funding is critical to the development, implementation, and maintenance of the parent education program(s) to be established in each judicial district. Because the Task Force recommends statewide implementation of parent education programs, it also recommends that the funding for the initial development and implementation of such programs be appropriated by the Legislature. Thereafter, the Task Force recommends that either the judicial districts or the counties appropriate funding for the continued operation of such programs. There was no consensus as to whether funding from the judicial districts or the counties would best serve the needs of the programs.

RECOMMENDATION 2: The Minnesota Supreme Court should promulgate minimum standards for the implementation and administration of parent education programs. The minimum standards should incorporate the following provisions:

PART V: DELIBERATIONS AND RECOMMENDATIONS

a. Purpose. The purpose of a parent education program shall be to serve as an early intervention mechanism to encourage cooperation between parents before adversarial behavior and conflict has a chance to develop. Among other goals, the parent education program should educate parents about positive communication techniques, the impact that divorce, the restructuring of families, and judicial proceedings have upon children and families, methods for preventing visitation conflicts, and dispute resolution options, and should encourage parents to always place the best interests of the children above what they may perceive as their own "rights."

b. Implementation and Administration. The plan submitted to the Conference of Chief Judges by the chief judge of each judicial district, or designee, shall include a plan for funding the program(s) within the district. Parent education programs may be implemented and administered in each county or in a group of counties. Education programs may be operated by the judicial district, counties, private or government agencies, or non-profit or for-profit organizations. Existing parent education programs may be utilized, so long as the programs comply with these minimum standards.

c. Certificate of Completion. A certificate of completion shall be provided by the program to each participant or, at the direction of the court, to the court to verify completion of the program. The certificate of completion shall, at a minimum, include the court case number, the participant's name, and the date(s) of attendance.

d. Safety. Consideration shall be given to the safety of the parent education program participants.

e. Fees. Participant fees shall be as inexpensive as possible.

f. Child Care. Child care should be available.

g. Length and Nature of Program. The parent education program sessions should be offered at least monthly, be available at flexible times (i.e., days, evenings, and weekends), and be at least four to eight hours in length to adequately cover the topics set forth below in paragraph k.

h. Instructors. Parent education program sessions should be conducted by one male and one female instructor using interactive teaching approaches (e.g., role playing, group discussions, etc.). Each instructor should have training or experience in family life education, family dynamics, domestic relations, marriage and family therapy, counseling, psychology, social services, child welfare, or a closely related field. Training for instructors should include information on the dynamics of domestic violence and sexual assault and their impact upon children.

i. Solicitation for Other Services. Providers and instructors who offer

private mediation or other services are prohibited from soliciting program participants as clients.

j. Language and Cultural Needs. The parent education program should take into account the language and cultural needs of the participants.

k. Curriculum. While additional topics may be covered, all parent education programs shall include information on the following topics:

- Resources in the community to obtain additional help
- Overview of judicial process and proceedings (dissolution and paternity)
- Overview of legal issues (dissolution and paternity)
- Overview of the function of the court (dissolution and paternity)
- Alternatives for settling custody/visitation disputes
- Phases of divorce/paternity proceeding
- Role of custody study
- Role of attorney
- Role of guardian ad litem
- Role of mediator/mediation
- Developmental needs/stages of children
- Impact of divorce/separation/conflict upon adults
- Impact of divorce/separation/conflict upon children
- Dynamics of domestic violence and sexual assault and impact upon children
- Communication skills
- Co-parenting skills
- Conflict resolution skills
- Keeping children out of the middle of conflict
- Cost of raising a child
- Emotional and financial responsibilities of parents
- Coping with stress
- Safety planning
- Child support issues (obligations/services)
- Visitation issues (planning and problems)
- Impact and realities of step families

l. Evaluations by Participants. After completing a parent education program, participants should provide feedback, including an evaluation of the topics discussed, course content, timing, instructors, satisfaction, and other issues. In addition, at fixed intervals following completion of a course, program personnel should conduct follow-up evaluations to monitor whether participants have successfully incorporated into their lives the tools and concepts learned during the parent education program.

m. Program Evaluation. The evaluation conducted by the state court administrator shall, at a minimum, include information regarding: the number and types (e.g.,

dissolution, paternity, etc.) of cases ordered into the program; the number of participants whose participation was mandatory, court ordered, or voluntary; participant characteristics (e.g., custodial parents, noncustodial parents, grandparents, etc.); participant satisfaction; course content; effectiveness of program for preventing visitation disputes; the fiscal, operational, and administrative impact upon the district/counties; and recommendations for improving the program.

Deliberations Regarding Recommendtion 2:

To ensure uniformity in and appropriate dissemination of information, the Task Force recommends that the Court establish minimum standards for the implementation and administration of parent education programs. In developing the minimum standards, Task Force members reviewed characteristics of programs existing in Minnesota and elsewhere. Much of the language contained in the minimum standards is based upon the "Parents Forever" program developed by the University of Minnesota Extension Service.

Task Force members recognize the diversity of Minnesota's judicial districts, including their geographical size, population, number of divorce and paternity cases, and resources. Given this diversity, it is the consensus of the Task Force that, utilizing the minimum standards established by the Court, each judicial district should develop its own plan for implementing and administering one or more programs. Some districts may decide that the needs of parents require only one program, while others may find the need to implement several programs.

In deciding upon the number of programs to be implemented in any given judicial district, Task Force members strongly believe that reasonable and timely (early) access is critical. For this reason, it is the recommendation of the Task Force that parent education programs be offered at least monthly. So that all parents may attend without interruption of their work schedules, sessions should be offered at various times, including days, evenings, and weekends.

In establishing parent education programs, judicial districts must take into account the safety of participants, some of whom may be involved in domestic violence. Parent education programs should also take into account the language and cultural needs of the participants. Child care options should also be taken into consideration.

Each session should be facilitated by two qualified instructors, one male and one female, using interactive teaching approaches. Specific topics, however, may be taught by persons with expertise or experience regarding those topics. In some existing programs, for example, local attorneys are called upon to volunteer their time to teach sessions regarding law-related issues, such as an overview of the court system, legal issues that may arise, the purpose and use of custody and visitation evaluations, and other issues. This may be an opportunity for attorneys to receive continuing legal education credits or to work toward the Supreme Court's suggested

aspirational goal of annually providing 50 hours of pro bono service. Likewise, social services personnel and child development experts could be called upon to volunteer their time to provide information regarding topics such as child development and the impact of conflict upon children. Instructors should be precluded from soliciting parents as clients.

It is the consensus of the Task Force that the topics identified under "curricula" are essential, although other topics may be added at the discretion of the individual programs. The recommended topics are included in the "Parents Forever" parent education curricula.

The Task Force recommends future evaluation of the parent education program in an effort to identify its overall impact and effectiveness upon the court system and at preventing visitation and other disputes, and to suggest improvements that may need to be made to the overall program or to programs implemented in specific jurisdictions.

RECOMMENDATION 3: The Legislature should amend the existing Cooperation for the Children Program language, 1995 Minn. Laws 257, art. 1, sec. 14, by substituting the following language establishing a pilot project in at least one metro and one nonmetro county which would: (a) require mandatory participation (with some limited exceptions) in the program as a prerequisite to requesting a court hearing; and (b) apply to all persons seeking relief in regard to enforcement or modification of an existing visitation order or establishment of visitation rights in a recognition of parentage case:

Minn. Stat. ∋ _____. COOPERATION FOR THE CHILDREN PROGRAM.

Subdivision 1. Establishment; Pilot Project. On or before January 1, 1998, the state court administrator shall develop and implement a Cooperation for the Children Program as a twenty-four-month pilot project in at least two counties as an effort to promote parental relationships with children. The state court administrator may allow additional counties to participate in the pilot project if those counties provide their own funding or if other funding becomes available. The provisions of Minnesota Statutes section 518.1751, subdivision 6, pertaining to mandatory visitation dispute resolution programs do not apply to counties participating in the Cooperation for the Children program pilot project.

Subd. 2. Participation. (a) Except as provided in this subdivision, in cases where visitation is the sole issue in conflict the person seeking relief in regard to a visitation dispute must first seek assistance from the Cooperation for the Children Program before filing with the court or serving upon the other party a motion requesting a court hearing.

(b) An individual who submits to the program proof that the person has used, or has in good faith attempted to use, the services of a visitation expeditor or

mediator or other alternative dispute resolution process to resolve the visitation dispute may upon request be exempted from mandatory participation in the Cooperation for the Children Program and the person may seek assistance from the court by filing a motion requesting a hearing.

(c) In cases where visitation is not the only issue in conflict, the person seeking relief may either file with the court a motion seeking resolution of all issues or may seek resolution of the visitation issue with the Cooperation for the Children Program and resolution of the other issues with the court. In cases where the person seeking relief chooses to proceed in the forum of the court, the court shall have discretion to determine whether the non-visitation issues are or are not valid. If the court determines that the non-visitation issues are not valid or that the non-visitation issues were raised for the purpose of avoiding participation in the Cooperation for the Children Program, the court may order the parties to the Cooperation for the Children Program or may resolve the dispute if both parties are present.

Subd. 3. Fee. Except as provided in this subdivision, each person who participates in the Cooperation for the Children Program shall pay a fee to contribute to the cost of the program. A party who qualifies for waiver of filing fees under Minnesota Statue section 563.01 shall be exempt from paying the program fee and the court shall waive the fee or direct its payment under section 563.01. Program providers shall implement a sliding fee scale.

Subd. 4. Evaluation. By December 15, 1999, the state court administrator shall submit to the Legislature a report evaluating the Cooperation for the Children Program pilot project. The report shall be based upon at least 12 months of data from the Cooperation for the Children Program pilot project.

Subd. 5. Appropriation. $_____ is appropriated to the state court administrator to implement and evaluate the Cooperation for the Children Program pilot project.

Deliberations Regarding Recommendation 3:

In recommending development and implementation of a revised Cooperation for the Children Program, two policy considerations were foremost in the minds of the Task Force members: establishing an expedited process for resolving visitation disputes and offering visitation assistance favoring nonadversarial services.

PART V: DELIBERATIONS AND RECOMMENDATIONS

As discussed above in Part IV, the Task Force's research shows that adversarial processes often cause a negative impact upon children and families. Moving away from the adversarial court process to nonadversarial programs that assist parents in making their own agreements about their children's well-being can be beneficial in several ways. First, nonadversarial programs can help to reduce the hostility that often accompanies parenting issues such as visitation disputes. Second, such processes can also help parents minimize the conflict they have with each other, thus minimizing any negative consequences for their children. Third, nonadversarial processes can also improve voluntary compliance with visitation orders, thus greatly reducing the need for enforcement actions and court resources devoted to such actions.

The Cooperation for the Children Program recommended by the Task Force differs from the existing Cooperation for the Children Program in three significant respects. First, the Task Force recommends that persons in the pilot project counties who are experiencing a conflict regarding a visitation issue should be required to access the program before going to court. The current program does not have this prerequisite and, instead, participation is voluntary. As discussed in Part IV, the draft report of the Cooperation for the Children Program establishes that because of the voluntary nature of the existing program only eleven (1%) of 1,200 individuals who contacted the Ramsey County program agreed to utilize mediation or other alterative dispute resolution services to resolve the dispute.

Second, the Task Force recommends the establishment of an expedited process with procedures in place to ensure quick access processing by the program and, if necessary, quick access to court in the event the parties are unable to resolve their conflict. The current program lacks procedures specifically providing for expedited resolution of the conflict.

Third, the Task Force recommends that program staff should have the authority (upon the agreement of the parties) to serve as a mediator or visitation expeditor. The current program authorizes program personnel to refer cases to external mediation services. Although personnel in the existing program have the authority to draft stipulations if the parties have reached an agreement resolving their dispute, it is unclear whether they also have the authority to facilitate such agreements. The Task Force believes that program personnel should have this authority thus saving the parties time and money.

The function of the Cooperation for the Children Program recommended by the Task Force also differs from the function of a visitation expeditor in several ways. Unlike a visitation expeditor who is appointed by the court for the sole purpose of either resolving a one-time dispute or to be "on call" to resolve recurring disputes, the Cooperation for the Children program personnel would serve numerous functions. Cooperation for the Children program personnel would serve as educators by providing to parents information about the relative advantages and disadvantages of dispute resolution options, including the court system, mediation, visitation expeditors, and other alternative dispute resolution options. Program personnel would also serve as assessors in that they would determine whether specific couples would benefit from or are appropriate candidates for the use of alternative dispute resolution options such as mediation.

Program personnel would also serve as disseminators of information by answering questions about the court system and by providing pro se forms for accessing the court system. As necessary, program personnel would also assist parties in obtaining an expedited court hearing. Finally, in those cases where an expedited hearing is sought, program personnel would also assist the court by identifying the types of dispute resolution assistance already attempted by the parties, identifying the issues in dispute, and making recommendations for court-ordered processes, such as evaluation of visitation issues, special magistrate, or judicial proceeding.

RECOMMENDATION 4: The State Court Administrator should implement the Cooperation for the Children Program pilot project in accordance with the following minimum standards:

a. Purpose. The purpose of the Cooperation for the Children Program should be to provide parents and extended family members with an easily accessible, expedited process emphasizing nonadversarial methods to resolve visitation disputes.

b. Assistance Offered. The program shall offer assistance regarding the following types of requests:

!enforcement of existing visitation orders, including temporary orders and post-decree matters;

!modification of existing visitation orders, including temporary orders, post-decree matters, cases where paternity has been adjudicated, cases where the issue of visitation is reserved, and cases where the child is moving or has moved out of state; and

!establishment of visitation rights in Recognition of Parentage cases.

c. Claims addressed. In providing assistance, the Program shall address the following types of claims (subject to the safety precautions identified below):

!denial of court-ordered visitation;

!failure to maintain contact with the child and failure to exercise court-ordered visitation;

!grandparents and other third party claims;

!clarification of "reasonable visitation," including modification of an existing visitation order to include a specific schedule or a definition of "reasonable

visitation";
!cases involving visitation disputes in which there are past or present allegations of domestic abuse between parents or between a parent and the child; and
!cases where the noncustodial parent resides out of state.

d. Case Manager. The chief judge of each judicial district, or designee, shall designate one or more case managers in each judicial district to carry out the responsibilities set forth below in paragraph e. A case manager may delegate the screening responsibilities set forth below in paragraph e(2). A case manager need not be a court employee or an attorney, but could be a district administrator, a court administrator, or a member of a court administrator's staff. To be eligible to serve as a case manager an individual must have training or experience in social services, a minimum of 40 hours of family mediation training as certified by the Minnesota Supreme Court, and knowledge and understanding of family law issues.

e. Process.

1. Application. A person seeking assistance must complete a "plain language" application identifying the names and addresses of the parties and children involved, previous and pending cases (e.g, dissolution, domestic abuse, juvenile, support, etc.), the nature of the dispute, any previous attempts by the parties to resolve the dispute, the type of help requested (e.g., enforcement, modification, or establishment of visitation rights) (all available types of relief should be listed so that the person may simply check off the type(s) requested), and a copy of relevant visitation orders. The case manager shall have discretion to accept other types of requests for assistance, including voice mail requests and "walk-in" requests.

2. Screening.

(a) Upon receipt of an application or other request for assistance the case manager shall review the application or request and decide to either keep or reject the case. A case will be rejected if the dispute is not visitation related or if it does not fall into one of the categories listed above in paragraphs b or c.

(b) If the case is rejected, the case manager will so notify the applicant in writing. The notice will include information about the availability of alternative dispute resolution options and district court to resolve the problem, including the availability of pro se forms for use in district court.

(c) If the case is accepted, the case manager will so notify the parties in writing. The notice will also provide a statement regarding the purpose of the program, information regarding the program's expedited process and use of nonadversarial dispute resolution methods, the dispute resolution options available through the program, and the

requirement of mandatory participation in the program. The notice will require each person to contact the case manager to schedule a conference which shall take place within 10 days of the date of the notice. At the discretion of the case manager, the conference may be in person or over the telephone. The notice will also state that failure to schedule or attend a conference will result in the case manager certifying that fact to the court. Upon its own motion the court may issue an Order to Show Cause and schedule an expedited hearing regarding why the person should not be required to attend a conference. The notice will also state that if past or present domestic abuse, as defined in chapter 518B, is alleged, the parties must still participate in the program and the program shall make arrangements to permit the parties to safely participate in the program. The notice will also state that, unless otherwise provided by the court or the program, each party must pay a program fee based upon a sliding fee scale.

3. Conference.

(a) If a party fails to schedule a conference or fails to attend a scheduled conference, the case manager shall certify that fact to the court and the court on its own motion may issue an Order to Show Cause and schedule an expedited court hearing regarding why the person should not be required to attend a conference. At the hearing the court may resolve the underlying visitation dispute if both parties are present or may order the parties to the Cooperation for the Children Program.

(b) At the first conference the case manager shall explain to the parties the dispute resolution options available as part of that program and their relative advantages and disadvantages. The options may include: private mediation, visitation expeditor services, court services mediation, authorizing the case manager through written waivers and releases to serve as a mediator, arbitrator, or visitation expeditor (unless the case requires ongoing visitation expeditor services), or other case management services such as facilitating the drafting of a joint statement of the case as described below in paragraph e.

(c) If the parties use the services of the case manager or someone other than the case manager and they reach an agreement resolving the dispute, the agreement shall be reduced to a written stipulation, submitted to the parties for their review and signatures, and forwarded to the court in the form of a proposed order. If the case manager facilitated the agreement, the case manager shall draft and submit the written stipulation. If a private mediator, visitation expeditor, or other individual facilitated the agreement, the parties or their attorneys shall draft and submit the written stipulation. An objection to the written stipulation must be made within 10 days of the date the stipulation is filed by filing with the court a motion for an expedited hearing.

(d) If the parties elect to use the services of someone other than the case manager and within 21 days they are unable to reach an agreement resolving the dispute, they shall so notify the case manager and the case manager shall certify the case for an expedited court hearing as set forth below in paragraph 4.

(e) If the parties elect to use the services of the case manager but during the process the case manager determines that the parties are unable or unwilling to cooperate or if within 21 days no agreement is reached, the case manager shall certify the case for an expedited court hearing, as set forth below in paragraph 4, unless both parties agree in writing to continue working with the case manager. If the parties agree to continue working with the case manager, the case manager may continue attempting to facilitate an agreement or, if both parties agree, may facilitate the drafting of a joint statement of the case. The joint statement should set forth the pertinent facts, the nature of the parties' disagreement, and the outcome each party seeks from the court. The joint statement must be agreed upon and signed by both parties or it shall not be submitted to the court. As part of the joint statement the parties may waive a court hearing and request that the court issue an order based solely upon on the joint statement of the case. If the parties agree to draft a joint statement of the case, but are unable to agree to its terms, the case manager shall certify the case for an expedited court hearing as set forth below in paragraph 4.

4. Certification for Expedited Court Hearing. The case manager shall certify a case for an expedited court hearing if: (a) the parties are unable to reach an agreement using one of the alternative dispute resolution options available through the program; (b) the case manager determines that the parties will not, for any reason, benefit from the program's options, or (c) the case manager determines that alternative dispute resolution is inappropriate because of an imbalance of power between the parties or the existence of domestic violence. The certification shall include: (a) identification of all conferences and dispute resolution processes attended by the parties; (b) identification of the issue(s) in dispute; (c) a statement that the parties have been unable to resolve the dispute; (d) recommendations for court-ordered processes, such as evaluation of visitation issues, special magistrate, or a judicial proceeding; and (e) a request for an expedited court hearing. The case manager shall not make recommendations regarding substantive issues.

5. Case Monitoring Services. Upon the request of a party or order of the court, the case manager shall arrange for monitoring of the parties' compliance with the stipulation or order.

6. Failure to Follow Agreement. If a party fails to follow an agreement reached through use of one of the alternative dispute resolution options or court proceeding, the other party may file with the court a motion seeking any of the sanctions available under Minnesota statutes section 518.175, subdivision 6(c), and may file a motion for contempt of court.

f. Fees. Except as otherwise noted below, each party shall pay a fee (based upon a sliding fee scale) to contribute to the cost of the program. The fee shall be payable upon acceptance of the case. A party who qualifies for waiver of filing fees under Minnesota Statue section 563.01 shall be exempt from paying the program fee. The Program shall have discretion

to waive the program application fee upon proof of indigency.

g. Diversity Issues. The Cooperation for the Children Program and its personnel shall receive diversity training and shall be sensitive to the needs of persons from diverse communities and non-english speaking individuals. All program forms, instructions, brochures, and other information shall be in "plain" language. Appropriate accommodations shall be made for non-English speaking, deaf, blind, and special needs persons.

h. Program Evaluation. In evaluating the performance of the Cooperation for the Children Program pilot project, the State Court Administrator shall, at a minimum, include information regarding: the number and types of requests for assistance (e.g., enforcement, modification, or establishment of visitation); the number of cases accepted into the Program; the number of cases rejected by the Program and the reasons for rejection; the types of claims addressed (e.g., denial of visitation, failure to exercise visitation, grandparent or extended family issues, etc.); participant characteristics (e.g., custodial parents, noncustodial parents, grandparents, etc.); program outcomes (e.g., number/types of cases where parties agree to resolve issue, number/types of cases where parties unable to agree and referred to court); the extent to which mediators and visitation expeditors were used to resolve issues; the effect of case monitoring; parent satisfaction; the fiscal, operational, and administrative impact upon the pilot project counties; and recommendations for improving the program.

Deliberations Regarding Recommendation 4:

Through focus group meetings and review of literature on the subject, Task Force members learned that visitation disputes that are not quickly resolved will often result in heightened conflict between parents. Task Force members further learned that a child caught in the middle of such conflict will likely be negatively impacted. In an attempt to gain an understanding of the length of time it takes for visitation matters to be resolved by the courts, parents who had returned to court at least once regarding a post-decree visitation dispute were asked about the length of time it took from the date a hearing was requested until the day the case was heard by the court. Of the parents responding, 18% reported that it took 2 weeks to 1 month, another 18% responded that it took 1 to 2 months, 9% stated that it took 2 to 3 months, and 11% reported that it took more than 3 months.

Given the data on the subject, the Task Force members believe it is imperative that an expedited process for resolving disputes be established. The expedited process recommended by Task Force contains three key time triggers. First, the process requires immediate review of a request for assistance to determine whether the claim is of the type for which assistance is available under the program (e.g., the claim would be rejected if it is one for establishment of custody in a dissolution case). An individual whose claim is rejected by the program would be given pro se forms and information about accessing the court to resolve the problem. Upon

acceptance of a case, the program would immediately send out a notice to the parties so notifying them. Second, the process requires the parties to contact the program to schedule a conference to take place within 10 days. Although the first conference is intended to be an informational conference, the parties would not be precluded from reaching an agreement resolving the dispute at the time of the conference. Others, however, may choose to utilize the services of a mediator or visitation expeditor, or to come back at a later date to meet with a program case manager to resolve the conflict. Regardless of which of these options is chosen by the parties, the third time trigger mandates that the case manager certify the case to the court for an expedited hearing if the parties have been unable to reach an agreement within 21 days.

In addition to establishing an expedited, nonadversarial process, Task Force members also discussed the type of assistance that should be offered through the program. While there was immediate consensus that disputes regarding the enforcement or modification of existing visitation orders should be included, significant debate occurred regarding other types of assistance to be offered. As part of its research efforts the Task Force members learned that there are significant numbers of recognition of parentage filings each year -- in 1995, for example, 8,424 were filed. Signing a recognition of parentage form legally establishes the father and child relationship when the father is not married to the mother. Signing such a form, however, does not establish custody or visitation rights and, under existing law, the man must begin a court action to obtain such rights. Given the annual number of recognition of parentage cases, the Task Force reached a consensus that the program should also address establishment of visitation rights in recognition of parentage cases.

Another issue considered by the Task Force was the types of claims to be addressed by the program. Through focus group meetings and other data collection efforts, the Task Force members learned that many types of visitation disputes exist throughout Minnesota. Among the types claims the Task Force heard about were the following: denial of visitation, nonexercise of visitation, problems with an existing visitation schedule not meeting the current needs of the parents or child, inability to agree about when visitation is to occur when the order provides for "reasonable visitation," nonexercise of visitation because the noncustodial parent moved without identifying the new address, inability to exercise visitation because the custodial parent moved from the State, grandparents being precluded from exercising court-ordered visitation, concerns regarding supervised or unsupervised visitation, and concerns about allowing or exercising visitation when allegations of domestic abuse are present. Because each of these types of claims are "typical," the Task Force reached a consensus that the program should address all of these types of claims. If the program were also to address establishment of visitation rights in dissolution and paternity cases, it is likely that the number of program participants would significantly increase, as would the cost implications. For that reason, it is the consensus of the Task Force that, at least for purposes of the pilot project, establishment of visitation rights in dissolution and paternity cases should not be included among the types of claims to be addressed by the program.

PART V: DELIBERATIONS AND RECOMMENDATIONS

RECOMMENDATION 5: The Minnesota Supreme Court Office of Continuing Education should regularly incorporate into the judicial officer curricula and instructional materials information regarding visitation issues, including statutory changes; tools for enforcing visitation orders; remedies for violation of visitation orders; alternative dispute resolution options; information regarding child development, family dynamics, the impact of domestic violence on children, the impact of divorce, restructuring of families, and conflict upon children, and awareness of and resources for persons from diverse communities; and other related topics.

Deliberations Regarding Recommendation 5:

It is the consensus of the Task Force that education is essential not only for parents, but also for judicial officers. Judicial officers currently receive training and continuing education regarding family law issues in general. It is the recommendation of the Task Force, however, that judicial officers should also have some basic knowledge of family dynamics and an understanding of the changing needs of children as they grow older. Judicial training and education should regularly and specifically include information regarding child development, family dynamics, the impact of domestic violence, and other non-legal issues. Judical training and education should also regularly and specifically include information regarding visitation issues, including statutory changes, tools for enforcing visitation orders, and remedies for violation of visitation orders. A similar recommendation was recently made to the President and Congress by the U.S. Commission on Child and Family Welfare.[92]

2. Statutory Changes that Would Encourage Compliance with Court-Ordered Visitation

RECOMMENDATION 6: The Legislature should as set forth below amend Minnesota Statutes section 518.175, subd. 6, regarding remedies for violation of a visitation order to: (a) require the court to either award compensatory visitation or make specific findings as to why a request for compensatory visitation is denied; (b) strengthen the language regarding the type and nature of compensatory visitation to be awarded; and (c) require the court to order sanctions if it determines that a custodial parent, noncustodial parent, or other party has wrongfully failed to comply with an existing visitation order:

[92] *Report of the U.S. Commission on Child and Family Welfare*, "Parenting Our Children: In the Best Interest of the Nation" 41 (Sept. 1996).

PART V: DELIBERATIONS AND RECOMMENDATIONS

Minn. Stat. ~ 518.175. VISITATION OF CHILDREN AND NONCUSTODIAL PARENT.

* * * * *

Subd. 6. REMEDIES.

(a) The court may provide for one or more of the following remedies for denial of or interference with court-ordered visitation as provided under this subdivision. All visitation orders must include notice of the provisions of this subdivision.

(b) If the court finds that a person has been ~~wrongfully~~ deprived of court-ordered ~~the duly established right to~~ visitation, the court shall order the custodial parent to permit additional visits to compensate for the visitation of which the person was deprived or the court shall make specific findings as to why a request for compensatory visitation is denied. If compensatory visitation is awarded, additional visits must be:

(1) at least of the same type and duration as the deprived ~~wrongfully denied~~ visit and, at the discretion of the court, may be in excess of or of a different type than the deprived visit;

(2) taken within one year after the deprived ~~wrongfully denied~~ visit; and

(3) at a time acceptable to the person deprived of visitation.

(c) If the court finds that a custodial parent, a noncustodial parent, or any other party has wrongfully failed to comply with a visitation order or a binding agreement of the parties or a binding decision ~~under section 518.1751,~~ the court ~~may~~ shall order an appropriate remedy which shall include one or more of the following:

(1) impose a civil penalty of up to $500 on the party; ~~or~~

(2) require the party to post a bond with the court for a specified period of time to secure the party's compliance~~.~~;

(3) award reasonable attorney's fees and costs;

(4) require the party who violated the visitation order or binding agreement or decision of the visitation expeditor to

reimburse the other party for costs incurred as a result of the violation of the order or agreement or decision; or

(5) award any other remedy that the court finds to be in the best interests of the child(ren) involved.

A civil penalty imposed under this paragraph must be deposited in the county general fund and must be used to fund the costs of a visitation expeditor program in a county with this program. In other counties, the penalty must be deposited in the state general fund.

Deliberations Regarding Recommendation 6:

Noncustodial parents participating in the Task Force's focus groups and responding to the parent survey expressed concern that some judicial officers fail or refuse to award compensatory visitation even though visitation was found to have been denied. Though not to the degree expressed by parents, these concerns are substantiated by data from the judicial officer survey which indicates that 4% of judicial officers are unlikely to award compensatory visitation even if it has been determined that a visitation has been wrongfully denied. In contrast, however, 54% of judicial officers stated they "frequently" award compensatory visitation upon a finding of **wrongful** denial of visitation.

Noncustodial parents participating in focus groups also stated that they were rarely given a reason as to why compensatory visitation was not awarded. In discussing circumstances under which compensatory visitation is not awarded, judicial officers participating in focus groups stated that in a "he said - she said" situation, where neutral witnesses to the events are a rare occurrence, they are often unable to make a finding that the denial was **wrongful** and, therefore, are precluded from awarding compensatory visitation. Other reasons offered by judicial officers for not awarding compensatory visitation included: often it is not requested by the noncustodial parent, and in some cases the custodial parent was justified in withholding visitation (e.g., the noncustodial parent was intoxicated at the time of the visit) and under such circumstances the noncustodial parent is not entitled to make-up visitation.

Task Force members also heard evidence that other sanctions for violation of visitation orders (by both custodial and noncustodial parents alike) are not often ordered. Again, while not to the degree stated by parents, data from the judicial officer survey substantiates this concern. For example, upon a finding that a parent has violated a visitation order, 90% of the judicial officers participating in the survey stated that they "never" fine a parent, 12% stated they "never" find a parent in contempt of court and 70% do so only "occasionally," 86% stated they "never" require a visitation bond, 49% stated they "occasionally" modify a visitation schedule, and 41% stated they "never" reverse custody and 59% do so "occasionally."

PART V: DELIBERATIONS AND RECOMMENDATIONS

To promote parental compliance with and more uniform enforcement of visitation orders by judicial officers, the Task Force recommends that the compensatory visitation portion of the "remedies" statute be amended. The revisions recommended by the Task Force require the court to make a finding as to whether visitation has been denied, and then either (1) order compensatory visitation or (2) make specific findings as to why a request for compensatory visitation is denied. In an attempt to deter additional future violations, the recommendation also gives the court discretion to order compensatory visitation that is in excess of or of a different type than the deprived visit.

In addition, the Task Force recommends that the remainder of the "remedies" provisions be strengthened by mandating that the court award an appropriate remedy or remedies if either parent or any other party wrongfully fails to comply with a visitation order. To the existing list of remedies the Task Force added attorney's fees, reimbursement of costs incurred as a result of the other person's violation of the order (e.g., day care expenses), and any other remedy that the court may find to be in the best interest of the child. In discussing remedies that would promote compliance with visitation orders, the Task Force briefly discussed but rejected the suggestion that Minnesota law be amended to establish a presumption of joint physical custody. This concept was also rejected by the U.S. Commission on Child and Family Welfare.[93]

It is important to note that even though the Task Force recommends a mandated sanction for failure to comply with a visitation order, the Task Force does not intend for the statute to be utilized to force noncustodial parents to visit their children. The consensus among Task Force members, as well as among participants of all focus group, was that forced visitation may prove counterproductive and is unlikely to serve the child's best interests. Rather, it is the intent of the Task Force that this provision be utilized upon a finding that a noncustodial parent has in other ways failed to comply with a visitation order, such as failing to timely pickup or return the child or a pattern of arbitrarily changing the schedule.

RECOMMENDATION 7: The Legislature should amend Minnesota Statutes section 518.18(d), regarding modification of a custody order, to provide as follows:

Minn. Stat. ə 518.18. MODIFICATION OF CUSTODY ORDER.
* * * * *

(d) If the court has jurisdiction to determine child custody matters, the court shall not modify a prior custody order unless if finds, upon the basis of facts, including unwarranted denial of or interference with a duly established visitation schedule, that have arisen since the prior order or that were unknown to the court at the time of the prior order, that a change has occurred in the

[93] *Report of U.S. Commission on Child and Family Welfare*, "Parenting Our Children: In the Best Interest of the Nation" 21 (Sept. 1996). *See also* "Child Custody and Support," 5 *CQ Researcher* 32-33 (Jan. 13, 1995).

circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custody arrangement established by the prior order unless:

(i) both parties agree to the modification;

(ii) the child has been integrated into the family of the petitioner with the consent of the other party; ~~or~~

(iii) the child's present environment endangers the child's physical or emotional health or impacts the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(iv) for a period of three months or longer there has been a pattern of persistent and willful denial of or interference with court-ordered visitation and it would be in the best interests of the child, as defined in section 518.17, to modify the custody order.

Deliberations Regarding Recommendation 7:

The Task Force received testimony at the public hearing and through the focus groups that some custodial parents repeatedly deny visitation without valid justification (e.g., noncustodial parent intoxicated at time of visit). It is the consensus of the Task Force that children need the financial and emotional support of both parents, and that unjustified denial of or interference with visitation is an impediment to the relationship between the child and the noncustodial parent. For that reason, the Task Force recommends that physical custody should be modified if there has been a pattern of persistent and willful interference with or denial of visitation for a period of three months or longer but only if a change of custody is in the best interests of the child. The Task Force hopes that this statute will act as an incentive to custodial parents to not unjustifiably deny visitation.

RECOMMENDATION 8: The Minnesota Supreme Court should promulgate "reasonable visitation guidelines." The guidelines should be effective in those cases where parents with court-ordered "reasonable visitation" are unable to agree about what is "reasonable" and in all other cases as ordered by the court. The "reasonable visitation guidelines" should take into consideration the developmental milestones and needs of children, an example of which is set forth in Part VI of this Report at *Appendix C*. The district courts should make these guidelines available to all parties as "Appendix B." "Appendix B" should be attached to each court order or judgment and decree which initially determines custody or visitation. The Legislature should amend Minnesota Statutes section

518.68, subd. 2, number 3, "Rules of Support, Maintenance, Visitation," to add the following language: "(h) "Reasonable visitation guidelines" are set forth in Appendix B, which is available from the court administrator." In addition, the Legislature should provide an effective date of January 1, 1998, for this provision.

Deliberations Regarding Recommendation 8:

Data from the parent survey shows that in 48% of the cases the visitation order included a specific visitation schedule and in 52% of the cases "reasonable visitation" was ordered without a specific schedule. This data is corroborated by the responses of judicial officers, 53% of whom indicated that they usually set forth a visitation schedule, 8% of whom stated that they set forth a schedule only if requested or agreed upon by the parties, and 23% of whom stated that they usually provide for "reasonable visitation."

It is the consensus of the Task Force that the inclusion of a specific schedule in visitation orders will decrease the likelihood of future conflict and that whenever possible such schedules should be included. In the alternative, however, in those cases where "reasonable visitation" is ordered, the Task Force recommends that guidelines be established to assist parents in determining what is reasonable if they are otherwise unable to do so. The guidelines recommended by the Task Force as set forth in Part VI of this report at *Appendix C* take into consideration the developmental needs and milestones of children. Similarly, the U.S. Commission on Child and Family Welfare recommends that "[s]pecial care should be taken in parenting plans to address the changing needs of children as they grow older."[94] It is also recommended that both parents and judicial officers utilize these guidelines in establishing a visitation schedule.

RECOMMENDATION 9: The Legislature should amend Minnesota Statutes section 518.1751, regarding visitation expeditors, to encourage more use of visitation expeditors and to clarify their purpose, qualifications, role, and authority:

Minn. Stat. ə 518.1751. VISITATION DISPUTE RESOLUTION.

Subdivision 1. Visitation Expeditor. ~~(a)~~ Upon request of either party, the parties' stipulation, or upon the court's own motion, the court may appoint a visitation expeditor to resolve visitation disputes that occur under a visitation order while a matter is pending under this chapter, chapter 257 or 518A, or after a

[94]*Report of U.S. Commission on Child and Family Welfare*, "Parenting Our Children: In the Best Interest of the Nation" 33 (Sept. 196).

decree is entered. ~~Prior to appointing the visitation expediter, the court shall give the parties notice that the costs of the visitation expediter will be apportioned among the parties and that if the parties do not reach an agreement, the visitation expediter will make a nonbinding decision resolving the dispute.~~

Subd. 2~~7~~. Exceptions. A party may not be required to refer a visitation dispute to a visitation expeditor under this section if:

a) one of the parties claims to be the victim of domestic abuse by the other party;

(b) the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party; or

(c) the party is unable to pay the costs of the expeditor, as provided under subdivision 5.

In circumstances where the court is satisfied that the parties have been advised by counsel and have agreed to use the visitation expeditor process which shall not involve face-to-face meeting of the parties, the court may direct that the visitation expeditor process be used.

Subd. 3~~2~~. Purpose; Definitions. (a) The purpose of a visitation expeditor is to resolve visitation disputes by enforcing, interpreting, clarifying, and addressing circumstances not specifically addressed by an existing visitation order and, if appropriate, to make a determination as to whether the existing visitation order has been violated. A visitation expeditor may be appointed to resolve a one-time visitation dispute or to provide ongoing visitation dispute resolution services.

(b) For purposes of this section, "visitation dispute" means a disagreement among parties about visitation with a child, including a dispute about an anticipated denial of a future scheduled visit. "Visitation dispute" includes a claim by a custodial parent that a noncustodial parent is not visiting a child as well as a claim by a noncustodial parent that a custodial parent is denying or interfering with visitation.

(c) A "visitation expeditor" is a neutral person authorized to use a "mediation-arbitration" process to resolve visitation disputes. A visitation expeditor shall attempt to resolve a visitation dispute by facilitating negotiations between the parties to promote settlement and, if it becomes apparent that the dispute cannot be resolved by an agreement of the parties, the visitation expeditor shall make a decision resolving the dispute.

Subd. 4~~2~~. Appointment~~; Costs~~.

(a) Parties select. The parties may stipulate to the appointment of a visitation expeditor or a team of two expeditors without appearing in court by submitting to the court a written agreement identifying the name(s) of the individual(s) to be appointed by the court, the nature of the dispute, the responsibilities of the visitation expeditor including whether the expeditor is appointed to resolve a specific issue or on an ongoing basis, the term of the appointment, and the apportionment of fees and costs. The court shall review the agreement of the parties.

(b) Court selects. ~~The court shall appoint the visitation expeditor and indicate the term of the appointment. If the parties cannot agree on a visitation expeditor, the court shall present a list of candidates with one more candidate than there are parties to the dispute.~~ If the parties cannot agree on a visitation expeditor, the court shall provide to the parties a copy of the court administrator's roster of visitation expeditors and shall require the parties to exchange the names of three potential visitation expeditors by a specific date. If after exchanging names the parties are unable to agree upon a visitation expeditor, the court shall select the visitation expeditor and, in its discretion, may appoint one expeditor or a team of two visitation expeditors. In the selection process the court must give consideration to the financial circumstances of the parties and the fees of those being considered as visitation expeditors. ~~In developing the list of candidates, the court must give preference~~ Preference shall be given to persons who agree to volunteer their services or who will charge a variable fee for services based on the ability of the parties to pay for them. ~~Each party shall strike one name and the court shall appoint the remaining individual as the visitation expeditor. In its order appointing the visitation expeditor, the court shall apportion the costs of the visitation expeditor among the parties, with each party bearing the portion of costs that the court determines is just and equitable under the circumstances. If a party files a pro se motion regarding a visitation dispute and there is not a court order that provides for apportionment of the fees costs of an expeditor, the court administrator may require the party requesting the appointment of an expeditor to pay the costs of the expeditor in advance. Neither party may be required to submit a dispute to a visitation expeditor if the party cannot afford to pay for the costs of an expeditor and an affordable expeditor is not available, unless the other party agrees to pay the costs. After costs are incurred, a party may by motion request that the costs be reapportioned on equitable grounds. The court may consider the resources of the parties, the nature of the dispute, and whether a party acted in bad faith. The court may consider information from the expeditor in determining bad faith.~~

(c) An order appointing a visitation expeditor shall identify the name of the individual to be appointed, the nature of the dispute, the responsibilities of the

visitation expeditor including whether the expeditor is appointed to resolve a specific issue or on an ongoing basis, the term of the appointment, the apportionment of fees, and notice that if the parties are unable to reach an agreement with the assistance of the visitation expeditor, the visitation expeditor is authorized to make a decision resolving the dispute which shall be binding upon the parties unless modified or vacated by the court.

Subd. 5. Fees. Prior to appointing the visitation expeditor, the court shall give the parties notice that the fees of the visitation expeditor will be apportioned among the parties. In its order appointing the visitation expeditor, the court shall apportion the fees of the visitation expeditor among the parties, with each party bearing the portion of fees that the court determines is just and equitable under the circumstances. If a party files a pro se motion regarding a visitation dispute and there is not a court order that provides for apportionment of the fees of an expeditor, the court administrator may require the party requesting the appointment of an expeditor to pay the fees of the expeditor in advance. Neither party may be required to submit a dispute to a visitation expeditor if the party cannot afford to pay for the fees of an expeditor and an affordable expeditor is not available, unless the other party agrees to pay the fees. After fees are incurred, a party may by motion request that the fees be reapportioned on equitable grounds. The court may consider the resources of the parties, the nature of the dispute, and whether a party acted in bad faith. The court may consider information from the expeditor in determining bad faith.

Subd. 6. Roster of Visitation Expeditors. Each court administrator shall maintain and make available to the public and judicial officers a roster of individuals available to serve as visitation expeditors. The roster shall include each individual's name, address, telephone number, and fee charged (if any). A court administrator shall not place on the roster the name of an individual who has not completed the training required in subdivision 7. If the use of a visitation expeditor is initiated by stipulation of the parties, the parties may agree upon a person to serve as a visitation expeditor even if that person has not completed the training described in subdivision 7. The court may appoint a person to serve as a visitation expeditor even if the person is not on the court administrator's roster, but may not appoint a person who has not completed the training described in subdivision 7, unless so stipulated by the parties. To maintain one's listing on a court administrator's roster of visitation expeditors, an individual shall annually submit to the court administrator proof of completion of continuing education requirements.

Subd. 7. Training and Continuing Education Requirements. To qualify for listing on a court administrator's roster of visitation expeditors an individual shall complete a minimum of 40 hours of family mediation training that has been

certified by the Minnesota Supreme Court, which must include certified training in domestic abuse issues as required under Rule 114 of the Minnesota General Rules of Practice for the District Courts. To maintain one's listing on a court administrator's roster of visitation expeditors an individual shall annually attend three hours of continuing education about alternative dispute resolution subjects.

Subd. 8~~3~~. Agreement or Decision. (a) Within five days of notice of the appointment, or within five days of notice of a subsequent visitation dispute between the same parties, ~~If a visitation dispute arises,~~ the visitation expeditor shall meet with the parties together or separately ~~within five days~~ and shall make a diligent effort to facilitate an agreement to resolve the visitation dispute. If a visitation dispute requires immediate resolution, the visitation expeditor may confer with the parties through a telephone conference or similar means. An expeditor may make a decision without conferring with a party if the expeditor made a good faith effort to confer with the party, but the party chose not to participate in resolution of the dispute.

(b) If the parties do not reach an agreement, the expeditor shall make a decision resolving the dispute as soon as possible but not later than five days after receiving all information necessary to make a decision and after the final meeting or conference with the parties. The visitation expeditor is authorized to award ~~Resolution of a dispute may include~~ compensatory visitation under section 518.175, subdivision 6~~.~~, and may recommend to the court that the non-complying party pay attorney's fees, court costs, and other costs under section 518.175, subdivision 6(d), if the visitation order has been violated. The visitation expeditor shall not lose authority to make a decision if circumstances beyond the visitation expeditor's control make it impracticable to meet the five-day timelines.

(c) Unless the parties mutually agree, the visitation expeditor shall ~~may~~ not make a decision that ~~modifies visitation rights ordered by the court.~~ is inconsistent with an existing visitation order, but may make decisions interpreting or clarifying a visitation order, including the development of a specific schedule when the existing court order grants "reasonable visitation."

(d) The expeditor shall put an agreement or decision in writing~~,~~ and provide a copy to the parties. ~~, and file a copy with the court.~~ The visitation expeditor shall have discretion to include or omit reasons for the agreement or decision. An agreement of the parties or a decision of the visitation expeditor is binding on the parties unless vacated or modified by the court. If a party does not comply with an agreement of the parties or a decision of the expeditor, any party may bring a motion with the court ~~to resolve the dispute.~~ and shall attach a copy of the parties' written agreement or decision of the expeditor. The court may enforce, modify, or vacate ~~consider~~ the agreement of the parties or the decision of the expeditor. ~~, but neither is binding on the court.~~

Subd. 9~~4~~. Other Agreements. This section does not preclude the parties from voluntarily agreeing to submit their visitation dispute to a neutral third party or from otherwise resolving visitation disputes on a voluntary basis.

Subd. 10. Confidentiality.

(a) Inadmissibility. Statements made and documents produced as part of the visitation expeditor process which are not otherwise discoverable are not subject to discovery or other disclosure and are not admissible into evidence for any purpose at trial or in any other proceeding, including impeachment.

(b) Sworn Testimony. Sworn testimony may be used in subsequent proceedings for any purpose for which it is admissible under the rules of evidence. Visitation expeditors, and lawyers for the parties to the extent of their participation in the visitation expeditor process, shall not be subpoenaed or called as witnesses in court proceedings.

(c) Records of Visitation Expeditors. Notes, records, and recollections of visitation expeditors are confidential and shall not be disclosed to the parties, the public, or anyone other than the visitation expeditor unless: (1) all parties and the visitation expeditor agree in writing to such disclosure, or (2) required by law or other applicable professional codes. Notes and records of visitation expeditors shall not be disclosed to the court unless after a hearing the court determines that the notes or records should be reviewed in camera. Such notes or records shall not be released by the court unless it determines that they disclose information showing illegal violation of the criminal law of the state.

Subd. 11~~5~~. Immunity. A visitation expeditor is immune from civil liability for actions taken or not taken when acting under this section.

Subd. 12. Removal. If a visitation expeditor has been appointed on a long-term basis, a party or the visitation expeditor may file a motion seeking to have the expeditor removed for good cause shown.

Subd. 13~~6~~. Mandatory Visitation Dispute Resolution.

(a) Subject to subdivision 2~~7~~, a judicial district may establish a mandatory visitation dispute resolution program as provided in this subdivision. In a district where a program has been established parties may be required to submit visitation disputes to a visitation expeditor as a prerequisite to a motion on the dispute being heard by the court, or either party may submit the dispute to a visitation expeditor. A party may file a motion with the court for purposes of obtaining a court date, if necessary, but a hearing may not be held until resolution of the dispute with the visitation expeditor. The appointment of a visitation expeditor shall be in

accordance with subdivision 4. Visitation expeditor fees shall be paid in accordance with subdivision 5.

~~(b) If a visitation expeditor has not been previously appointed for the parties under subdivision 1 and the parties cannot agree on a visitation expeditor, the court or court administrator shall appoint a visitation expeditor from a list of candidates established by the judicial district, giving preference to candidates who agree to volunteer their services or charge a variable fee based on the ability of the parties to pay.~~

~~(c) Notwithstanding subdivision 1, an agreement of the parties or decision of the visitation expeditor under this subdivision is binding on the parties unless vacated or modified by the court. The expeditor shall put the agreement or decision in writing, provide a copy to the parties, and file a copy with the court. The court may consider the agreement of the parties or the decision of the expeditor, but neither is binding on the court.~~

~~Subd. 7. Exceptions. A party may not be required to refer a visitation dispute to a visitation expeditor under this section if:~~

~~(1) the party has obtained an order for protection under chapter 518B against the other party; or~~

~~(2) the party is unable to pay the costs of the expeditor, as provided under subdivision 2.~~

Deliberations Regarding Recommendation 9:

It is the consensus of the Task Force that use of visitation expeditors to resolve visitation disputes could be an expedited, low-cost, non-adversarial tool. Data from the court administrator survey shows that 43% of all Minnesota counties currently appoint visitation expeditors, though most do so infrequently. Through discussion of their own personal and professional experiences, and through focus group sessions, however, the Task Force learned that there is not a clear understanding of the role and authority of visitation expeditors. To encourage more use of visitation expeditors, and to clarify their purpose, qualifications, role, and authority, the Task Forces recommends that the visitation expeditor statute be revised.

The Task Force recommends that the purpose of a visitation expeditor should be to resolve a visitation dispute by serving as a facilitator or a decision maker or both. The expeditor should first attempt to facilitate an agreement between the parties but, if an impasse is reached, the expeditor should then have the authority to make a decision that is binding upon the parties. In some cases, the visitation expeditor may be appointed to resolve a one-time visitation dispute.

In other cases where visitation disputes regularly recur, the visitation expeditor should be appointed on an on-going basis.

The Task Force also recommends that while the court should issue an order appointing the visitation expeditor, parties should be given the opportunity to stipulate to the appointment a specific individual or team of individuals without having to appear in court. This would not only allow for an expedited appointment process, but would also be less adversarial in nature and less costly to the parties. So that it is clear to all parties, as well as the visitation expeditor, the court order should clearly delineate the purpose and role of the expeditor, the length of the appointment, the apportionment of fees (if any), and the authority of the expeditor to make a binding decision if the parties do not reach an agreement regarding the conflict.

It is recommended that counties recruit, and that judicial officers give preference to, individuals willing to offer visitation expeditor services either at no cost or at a low cost. For attorneys serving as visitation expeditors, this may be an opportunity to meet the Minnesota Supreme Court's aspirational goal of annually providing 50 hours of pro bono services.

Given the mediation/arbitration role of a visitation expeditor, it is the consensus of the Task Force that such individuals receive mediation training and continuing education, unless otherwise agreed to by the parties. The training requirements set forth in subdivision 7 are modeled after those required of family law mediators as mandated in Rule 114.13(c) of the Minnesota Rules of General Practice for the District Courts. The provision set forth in subdivision 6 that allows parents to stipulate to the appointment of a visitation expeditor who has not met the training requirements is modeled after Rule 114.13(f) of the Minnesota Rules of General Practice for the District Courts which provides that "neutral fact-finders selected by the parties for their expertise need not undergo training nor be included on the State Court Administrator's roster."

The "exceptions" provision of the statute was moved from subdivision 7 to subdivision 2 so that judicial officers and parents do not read through the entire statute only to learn that the statute may not be applicable. The "exceptions" provision has also been revised to comply with Rule 310 of the Minnesota General Rules of Practice for the District Courts regarding the types of family law matters that are excepted from alternative dispute resolution and, therefore, from visitation expeditor services.

RECOMMENDATION 10: The Legislature should amend Minnesota Statutes section 626.556, subd. 2(j), as follows to include visitation expeditors among those persons mandated to report child abuse and neglect:

Minn. Stat. ə 626.556. REPORTING OF MALTREATMENT OF MINORS.
* * * * *

Subd. 2. Definitions. As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

* * * * *

(j) "Practice of social services," for the purposes of subdivision 3, includes but is not limited to employee assistance counseling and the provision of guardian ad litem and visitation expeditor services.

Subd. 3. Persons mandated to report. (a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused . . . or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, police department, or the county sheriff if the person is:

(1) a professional or a professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, child care, education, or law enforcement; or . . .

Deliberations Regarding Recommendation 10:

Like social services personnel and guardians ad litem, visitation expeditors are in a position to learn about the maltreatment of children. For this reason the Task Force recommends that visitation expeditors be included among those identified as mandatory reporters of child abuse and neglect.

RECOMMENDATION 11: The Legislature and Minnesota Supreme Court should amend Minnesota's family law statutes and rules to utilize language that is less stigmatic, is less likely to foster conflict, and more accurately describes parenting responsibilities. Suggestions include replacing the term "legal custody" with "parental decision making," "physical custody" with "residential arrangement," and "visitation" with "child access" or "parenting time."

PART V: DELIBERATIONS AND RECOMMENDATIONS

Deliberations Regarding Recommendation 11:

The terms "custody" and "visitation" "evoke a world in which one parent has 'dominion' over the child and the other parent is merely a 'visitor' in that dominion."[95] Through the public hearing and focus group sessions Task Force members heard testimony suggesting that such terms foster conflict rather than cooperation between parents. The Task Force recommends that this mind-set should be changed and these and related family law terms should be replaced with terms that more accurately describe the responsibilities of both parents in providing for their children's care and support. The Task Force believes that such a change will have a positive impact on parental cooperation and the well-being of children. The replacement terms should "neither convey a sense of ownership over the child, nor imply that one parent is merely a transitory figure in a child's life."[96] A similar recommendation was recently made to the President and Congress by the U.S. Commission on Child and Family Welfare.[97]

3. The Effectiveness and Impact of a Policy Linking Visitation and Payment of Child Support

RECOMMENDATION 12: The Legislature should not link the issues of visitation and child support. Specifically, the Legislature should not enact legislation authorizing noncustodial parents to withhold court-ordered child support if court-ordered visitation is interfered with or denied, and the Legislature should not enact legislation authorizing custodial parents to withhold court-ordered visitation if court-ordered child support is not paid.

Deliberations Regarding Recommendation 12:

As discussed in Part IV, for nearly two decades Minnesota's law has expressly prohibited a parent from withholding child support or visitation based upon a denial of the other. It is the consensus of the Task Force that the Legislature should not revise Minnesota's laws to link the issues of visitation and child support. The U.S. Commission on Child and Family Welfare recently made a similar recommendation to the President and Congress:

[P]arents should financially support their children in accordance with State child

[95] *Report of U.S. Commission on Child and Family Welfare*, "Parenting Our Children: In the Best Interest of the Nation" 30 (Sept. 1996).

[96] *Id.*

[97] *Id.* at 31.

> support guidelines. Moreover, although child support issues are often interwoven with other issues of parental responsibility, the Commission believes that **payment of child support and access to children are separate and distinct issues. Denial of one should not be a justification for the refusal to provide the other**."[98]

It is the consensus of the Task Force that child support and visitation are mutually independent parental responsibilities. The right of visitation should not be quid pro quo for the payment of child support. Minnesota's courts grant visitation rights to "enable the child and noncustodial parent to maintain a child to parent relationship that will be in the best interest of the child."[99] In deciding whether to grant such rights the courts look to various factors (e.g., the bond between parent and child) to see if visitation is in the child's best interests. The noncustodial parent's financial contributions to the child are not among the factors considered. Similarly, the obligation to pay child support should not be quid pro quo for the exercise of visitation. Payment of child support is intended as a contribution toward meeting the financial needs of the child, not as a payment for having access to the child.

It is also the consensus of the Task Force that legislation statutorily linking the issues of visitation and child support may encourage adversarial behavior between parents, as well as non-compliance with court orders. More significantly, legislation linking visitation and child support is likely to negatively impact the emotional and financial well-being of the children involved. Some suggest that "[c]onditioning these parental obligations upon each other as a remedy when violation occurs only serves to deprive the child of [the other] right on the basis of the contumacious conduct in which the child has played no part."[100]

B. OTHER RECOMMENDATIONS

RECOMMENDATION 13: The Minnesota Supreme Court should charge the Task Force with the continuing responsibility of advising the Court in regard to implementation and evaluation of the recommendations set forth in this Report.

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[98]"Parenting Our Children: In the Best Interest of the Nation," *Report of the U.S. Commission on Child and Family Welfare* 17 (Sept. 1996) (emphasis added).

[99]Minn. Stat. ∋ 518.175, subd. 1(a) (1996).

[100]Note, "Making Parents Behave: The Conditioning of Child Support and Visitation Rights," 84 *Columbia Law Review* 1059, 1069 (1984).

PART V: DELIBERATIONS AND RECOMMENDATIONS

Deliberations Regarding Recommendation 13:

The Task Force members would like to be of future service to the Court and the Legislature in implementing the recommendations set forth in this report. More specifically, the Task Force members would like to be involved in the evaluations to be conducted in regard to the proposed parent education program and the proposed Cooperation for the Children Program.

Respectfully Submitted,

Minnesota Supreme Court Advisory Task Force
on Visitation and Child Support Enforcement

APPENDICES

APPENDIX A

SUMMARIES OF FIVE DATA COLLECTION METHODS AND THEIR RESPECTIVE RESULTS

The Supreme Court Order establishing the Task Force directs the Task Force to study the extent to which: (1) custodial parents deny noncustodial parents court-ordered visitation and other parental rights; (2) noncustodial parents fail to exercise their court-ordered visitation; (3) lack of access to the court prevents timely resolution of visitation matters; and (4) visitation impacts noncustodial parents' compliance with court-ordered child support.

To fulfill these objectives, the Task Force collected data from a variety of sources using five data collection methods, including distributing separate questionnaires to court administrators, judicial officers, and custodial and noncustodial parents; conducting reviews of dissolution with children and paternity court files; and holding focus group meetings.

Separate reports detailing the complete results of each data collection method are on file with the Minnesota Supreme Court. This Appendix sets forth a summary of the methodology and major findings of each data collection method.

A. CUSTODIAL AND NONCUSTODIAL PARENT QUESTIONNAIRE

In July 1996, a questionnaire was distributed to 3928 custodial and noncustodial parents who were involved in dissolution with children and paternity cases during the period from 1993 to 1995. Reminder postcards were mailed to parents who had not returned their questionnaires by the due date. In early August, a follow-up letter and a second questionnaire were mailed to each parent who still had not responded.

Names and addresses of parents were drawn from court files in four Minnesota counties which were selected to ensure a mix of urban and rural locations: Becker (rural), Dakota (suburban), Hennepin (urban), and Stearns (rural-urban). In Dakota, Hennepin, and Stearns counties, names were drawn from randomly selected case files. In Becker county, names were drawn from all cases files. Of the 3928 questionnaires mailed, 362 were sent to names from Becker County files, 1307 were sent to names from Dakota County files, 1495 were sent to names from Hennepin County files, and 764 were sent to names from Stearns County files.

Of the 3928 questionnaires mailed, 1174 were undeliverable due to bad addresses (e.g.,

the person moved and left no forwarding address). Of those that were delivered, 1265 were completed and returned. This translates into a response rate of 32% of the total mailed, and a response rate of 46% of the questionnaires that were delivered. The sampling error based on the total number of respondents (N= 1265) is + /-3% at the 95% confidence level. It is important to note that because the parent questionnaire surveyed parents from only four counties, generalizations as to the State of Minnesota as a whole are problematic.

Complete results of the questionnaire are set forth in the Parent Questionnaire Report dated September 6, 1996, on file with the Minnesota Supreme Court. The major findings from the Parent Questionnaire Report are as follows:

1. Demographic and Background Information

a. Of the 1265 individuals who completed the questionnaire, 1017 (82%) were involved in dissolution cases, 219 (17%) were involved in paternity cases, and 29 did not answer the question.

b. Of the 1265 who completed the questionnaire, 703 (56%) were females, 556 (44%) were males, and 6 did not answer the question.

c. Of the 1265 who completed the questionnaire, 880 (72%) were represented by an attorney during their divorce or paternity proceeding, 334 (28%) were not represented, and 51 did not answer the question. In addition, 785 (66%) said the other party was represented by an attorney, 399 (34%) stated the other party was not represented by an attorney, and 81 did not answer the question.

d. Of the 1265 who completed the questionnaire, 95 (8%) cases were resolved by default (one parent failed to respond to the dissolution or paternity petition), 710 (61%) cases were settled by mutual agreement of the parties without a trial, 67 (6%) cases were settled by the parties without a trial as one or both could not financially afford trial, 47 (4%) cases were settled by the parties without a trial as one or both feared the unknown outcome of trial, and 179 (15%) cases were decided by a judge following a trial regarding one or more of the issues.

e. Parent education classes were rarely ordered as part of the divorce or paternity process. Of the 1217 parents answering the question, 1110 (91%) stated they were NOT ordered to attend parent education classes. Of the 107 couples who were ordered to attend parent education classes, 73 (68%) stated that the classes were beneficial, and 34 (32%) stated the classes were not beneficial.

PART VI: APPENDICES

2. Legal and Physical Custody

a. Of the 1218 answering the question, in 236 (19%) cases the person answering the survey was granted sole legal custody in the final decree, in 121 (10%) cases the other parent was granted sole legal custody, in 818 (68%) cases the parents were granted joint legal custody, in 16 (1%) cases custody is split with each parent being granted sole legal custody of one or more children, and in 27 (2%) cases the person answering the questionnaire is unaware of who has legal custody. In 23 (2%) cases legal custody was reversed following entry of the final decree, with 17 (1%) cases experiencing a reversal based upon a mutual agreement of the parties, 3 (2%) cases where the person answering the survey requested a reversal and the court granted it, and 3 (2%) cases where the other party requested a reversal and the court granted it.

b. Of the 1220 parents answering the question, in 600 (49%) cases the person answering the survey was granted sole physical custody in the final decree, in 345 (29%) cases the other parent was granted sole physical custody, in 236 (19%) cases the parents were granted joint physical custody, in 23 (2%) cases custody is split with each parent having sole physical custody of one or more children, and in 16 (1%) cases the person answering is unaware of who has physical custody. In 51 (4%) cases physical custody was reversed following entry of the final decree, with 35 (3%) cases experiencing a reversal based upon mutual agreement of the parties, 5 (2%) cases where the person answering the questionnaire requested a reversal and the court granted it, and 8 (1%) cases where the other person requested a reversal and the court granted it.

3. Child Support

a. Of the 1190 parents answering the question, in 472 (40%) cases child support is automatically withheld from the wages of the noncustodial parent by his/her employer and paid to other parent or county, in 302 (25%) cases the noncustodial parent directly pays the custodial parent, in 42 (4%) cases a determination regarding the amount of child support is reserved for future decision, and in 142 (12%) cases child support has not been ordered (e.g., paternity case where father not found and/or paternity not adjudicated).

b. Of the 1227 parents answering the question, in 1016 (83%) cases the person answering the survey reported that the noncustodial parent had never withheld or refused to pay court-ordered child support on the grounds that the other parent had interfered with or denied court-ordered visitation, while 43 (4%) individuals indicated that child support had been withheld for that reason.

4. Visitation Order

a. Of the 795 parents answering the question, in 379 (48%) cases the visitation order includes a specific visitation schedule, in 416 (52%) cases "reasonable" visitation is ordered without inclusion of a specific schedule, in 103 (11%) cases no visitation is ordered

because the parents have joint physical custody, in 24 (3%) cases no visitation is permitted because of child safety or other reasons, and in 57 (6%) cases the issue of visitation is not addressed in the court order.

5. Seriousness and Frequency of Post-Decree Visitation Disputes

a. Of the 1221 parents answering the question, 725 (60%) stated that in comparison with other issues (e.g., spousal maintenance, child support, etc.) that have arisen since entry of the final decree visitation is "not a problem," 176 (14%) responded that visitation is "a minor problem," 172 (14%) responded that visitation is "somewhat of a minor problem," and 148 (12%) responded that visitation is "a serious problem."

b. Of the 1198 parents answering the question, 641 (54%) responded that since entry of the final decree the parties have "never" had a conflict regarding visitation, 54 (5%) responded that a problem occurs "nearly every visitation," 203 (17%) responded that a problem occurs "one to five times per year," 55 (5%) responded that a problem occurs "six to eleven times per year," 78 (7%) responded that a problem occurs "monthly," and 38 (3%) responded that visitation problems arise "usually just during the holiday."

c. For those parents who stated they had experienced a post-decree visitation dispute, in most cases it occurred within 1 to 6 months after entry of the final decree. Of the 571 parents answering the question, 385 (68%) stated they experienced the first problem during the first six months after entry of the final decree, 61 (11%) experienced the first problem 6 to 12 months after entry of the final decree, and 4 (7%) experienced the first problem after one year.

d. The majority of noncustodial parents reported that they have never been denied visitation. Of the 259 noncustodial parents answering the question, 137 (53%) reported that the custodial parent had "never" denied visitation, 51 (20%) stated visitation had "rarely" been denied, 49 (19%) reported visitation had "sometimes" been denied, 22 (8%) stated visitation had been "frequently" denied, and 25 (10%) stated visitation had "always" been denied.

e. The majority of custodial parents reported that they have never denied visitation based upon a failure of the other parent to pay child support. Of the 408 custodial parents answering the question, 380 (90%) stated that they had "never" denied court-ordered visitation for failure to pay child support, 17 (4%) stated visitation had "rarely" been denied for failure to pay child support, 10 (2%) reported it had "sometimes" been denied for failure to pay child support, 1 (3%) reported it had "frequently" been denied for failure to pay child support, and 15 (4%) stated it had "always" been denied because of failure to pay child support.

6. Access to Court to Resolve Post-Decree Disputes

a. Of the 1177 parents answering the question, 171 (15%) stated they "strongly agree" that there is a lack of access to the court system for resolving post-decree visitation disputes, 211 (18%) "agree," 89 (8%) "disagree," 18 (2%) "strongly disagree," and 688 (59%) offered no opinion.

b. Of the 595 parents answering the question, 522 (88%) stated they had not returned to court to resolve a post-decree visitation problem, 34 (6%) had returned to court once, 20 (3%) had returned to court 2 to 5 times, 1 (2%) had returned to court 6 to 10 times, and 4 (1%) had returned to court more than 10 times.

c. In cases where the parties were experiencing post-decree visitation disputes, the person responding to the questionnaire did not seek help from the court to resolve the problem because in 53 (4%) cases the decree requires mediation before a return to court, in 173 (14%) cases the person could not afford an attorney, in 7 (1%) cases the person could not find an attorney willing to take on a post-decree visitation dispute, in 55 (4%) cases the person did not have the time to return to court, in 81 (6%) cases the person did not know how to go to court without an attorney, in 118 (9%) cases the person was afraid the other parent would retaliate if he/she sought help from the court, in 50 (4%) cases the person responded that returning to court would take too long, in 13 (1%) cases the person stated that the legal aid office was unable to help because it represents the other parent, in 6 (2%) cases the person stated that the legal aid office was unable to help because it doesn't handle post-decree visitation disputes, in 60 (5%) cases the person responded that he/she was afraid of the unknown outcome (e.g., judge may revise existing schedule), and in 24 (2%) cases the person responded that he/she had already been to court on a similar issue and the judge did nothing.

d. For those cases that have returned to court regarding a post-decree visitation dispute, of the parents answering the question, 23 (18%) reported that the average length of time it took from the day a hearing was requested to the day the case was heard by the judge was 2 weeks to 1 month, 23 (18%) responded that it took 1 to 2 months, 12 (9%) responded that it took 2 to 3 months, and 14 (11%) responded that it took more than 3 months.

7. Sanctions and Remedies for Violation of Visitation Order

a. In cases where the parties had returned to court regarding a post-decree visitation dispute, of the parents answering the question, 6 (2%) reported that a visitation expeditor was appointed by the court to resolve the dispute, 26 (2%) stated a guardian ad litem was appointed, and 33 (3%) stated a mediator was appointed.

b. In cases where the parties had returned to court regarding a post-decree visitation dispute, of the parents answering the question, 99 (79%) stated that compensatory visitation had not been requested. In those cases where it was requested, 10 (8%) reported that compensatory visitation was awarded and 17 (15%) reported it was not awarded.

c. In cases where the parties had returned to court regarding a post-decree visitation dispute, of the parents answering the question, 100 (87%) reported that a finding of contempt of court had not requested for violation of the order. In those cases where it had been requested, a parent was found to be in contempt in 3 (3%) cases, and no such finding was made in 13 (11%) cases.

8. Opinions Regarding Policy Statements

a. Of the 1202 parents answering the question, 322 (27%) "strongly agree" that the law should provide a mechanism for a noncustodial parent to legally withhold child support if the custodial parent wrongfully denies visitation, 318 (27%) "agree," 224 (19%) "disagree," 226 (19%) "strongly disagree," and 112 (9%) offered no opinion.

b. Of the 1211 parents answering the question, 332 (28%) "strongly agree" that the law should provide a mechanism for a custodial parent to legally deny visitation if the noncustodial parent wrongfully fails to pay child support, 369 (31%) "agree," 248 (21%) "disagree," 165 (14%) "strongly disagree," and 97 (8%) offered no opinion.

c. Of the 1206 parents answering the question, 653 (54%) "strongly agree" that under certain circumstances (e.g., the noncustodial parent is intoxicated) a custodial parent is justified in withholding visitation on that occasion, 401 (33%) "agree," 22 (2%) "disagree," 53 (4%) "strongly disagree," and 77 (6%) offered no opinion.

d. Of the 1202 parents answering the question, 458 (38%) "strongly agree" that parents should be required to attend parent education classes before the first hearing, 462 (38%) "agree," 140 (12%) "disagree," 51 (4%) "strongly disagree," and 91 (8%) offered no opinion.

B. JUDICIAL OFFICER QUESTIONNAIRE

In June 1996 the Task Force distributed a questionnaire to each of Minnesota's 250 judges and referees. Follow-up letters were mailed in July to those judicial officers who had not yet returned their surveys.

A 78% response rate was achieved in regard to the questionnaire, with 187 judicial officers (169 judges and 18 referees) completing and returning the questionnaire. Because the entire population of judges and referees was included in the survey, no issue of sampling error exists. The return rate of 78% is generally considered to be very good for a mailed survey. Still, the 22% non-response rate and any problems related to question wording may result in other errors in the results. These errors cannot be estimated. It is also worth noting that while all judges and referees in the State received a questionnaire, those who do not annually preside

over at least one dissolution with children and one paternity case were screened out early in the questionnaire. This eliminated 36 judicial officers. The complete results of the questionnaire are summarized in the Judicial Officer Questionnaire Report dated July 23, 1996, on file with the Minnesota Supreme Court. The major findings from the Report are as follows:

1. Demographic Information

a. Of the 179 judicial officers answering the question, 58 (31%) reside in Hennepin or Ramsey County, 33 (18%) reside in suburban Twin Cities counties, 27 (14%) reside in urban cities located outside the Twin Cities metro area, and 61 (33%) reside in rural cities located outside the Twin Cities metro area.

b. The judicial officers who responded annually preside over the following number of dissolution and paternity cases (151 of the 187 preside over both dissolution and paternity cases):

No. Annual Cases	Dissolution	Paternity
No cases	36 judicial officers	49 judicial officers
1 to 25 cases	33 judicial officers	87 judicial officers
25 to 50 cases	42 judicial officers	21 judicial officers
50 to 100 cases	33 judicial officers	12 judicial officers
Over 100 cases	40 judicial officers	18 judicial officers

2. Seriousness and Frequency of Post-Decree Visitation Disputes

a. In both dissolution and paternity cases, the majority of judicial officers reported that child support is the issue most often in conflict in a post-decree dispute, followed by visitation, custody, attorneys' fees, and property distribution issues.

b. In dissolution cases, of the 147 judicial officers answering the question, 121 (82%) believe that post-decree visitation disputes are a "serious problem" in comparison with other post-decree disputes, 26 (18%) believe they are a "minor problem," and 0 believe them to be "not a problem."

c. In paternity cases, of the 138 judicial officers answering the question, 82 (59%) believe that post-decree visitation disputes are a "serious problem" in comparison with other post-decree disputes, 54 (39%) believe they are a "minor problem," and 2 (1%) believe they are "not a problem."

d. Of the 149 judicial officers answering the question, 4 (3%) reported that they have "never" presided over a post-decree visitation dispute involving parties who have previously returned to court, 9 (6%) responded "rarely," 91 (60%) responded "sometimes," and 45 (30%) responded "frequently."

e. Concerns regarding the child's safety are most often given by custodial parents as reasons for denying court-ordered visitation. Judicial officers were asked to identify the frequency with which they hear the following statements from custodial parents as justifications for having denied visitation (N = 151):

Justification	Never	Rarely	Some-times	Fre-quently
!Failure of noncustodial parent to pay child support	4%	28%	50%	18%
!Drug/alcohol use by noncustodial parent	1%	3%	40%	56%
!Abuse of child while in care of noncustodial parent	1%	17%	52%	29%
!Abuse of custodial parent	3%	41%	40%	16%
!Threat by noncustodial parent to not return child	5%	3%	54%	11%

3. Visitation Orders

a. In both dissolution and paternity cases, of the 131 judicial officers answering the question, 69 (53%) reported that they usually set forth a visitation schedule, 11 (8%) usually set forth a visitation schedule only if agreed upon by the parties, 30 (23%) provide for "reasonable visitation" without setting forth a schedule, and 21 (16%) deal with visitation in another manner.

b. Of the 62 judicial officers who do not provide a visitation schedule, 4 (3%) responded that they do not do so because there are too many cases and too little time to develop a schedule for each case, 10 (7%) responded that they don't like establishing rigid schedules that leave little flexibility for the parties, 11 (7%) responded that in some cases the parties and/or attorneys do not request schedule, 26 (17%) responded that they do not set forth a schedule when the parties seem able to resolve matters between themselves, and 11 did not respond to the question.

4. Access to Court System

a. Judicial officers were asked to identify the average length of time from the day a hearing is requested until the first available opening on the hearing calendar. Of the 148 judicial officers answering the question, 72 (49%) reported the matter is heard within 2 weeks to one month, 62 (42%) reported the matter is heard within 1 to 2 months, 13 (8%) reported the matter is heard within 2 to 3 months, and 1 (3%) reported the matter is heard after more than 3 months.

PART VI: APPENDICES

5. Sanctions and Remedies for Violation of Visitation Orders

a. Judicial officers reported ordering parties to attend parent education classes with the following frequency:

Type of Case	Never	Occasion-ally	Frequently	Every Case
Dissolution (N= 147)	8%	32%	35%	26%
Paternity (N= 111)	15%	50%	29%	6%

b. Judicial officers identified the following remedies and sanctions as ones they would be unlikely to use even if it has been determined that a visitation order has been violated:

Remedy or Sanction	**Unlikely** to use if a custodial parent violates an order	**Unlikely** to use if a noncustodial parent violates an order
Compensatory visitation	4%	Not Applicable
Fines	58%	51%
Contempt of court	6%	8%
Visitation bond	58%	50%
Modify visit. schedule	39%	3%
Reverse custody	25%	Not Applicable
Appoint visit. exped.	11%	11%
Appoint mediator	9%	8%
Appoint guardian ad litem	3%	4%
Modify child support	60%	53%
Modify spousal maint.	66%	59%

c. After finding that a custodial or noncustodial parent has wrongfully violated a visitation order, judicial officers utilize the following "sanctions" with the following frequency:

Sanction	Never	Occasion-ally	Frequently	Every Case
Compensatory Visit. (N= 150)	1%	36%	54%	9%
Fined parent (N= 150)	90%	9%	1%	0%
Contempt Found (N= 148)	12%	70%	19%	0%
Visitation bond (N= 151)	86%	14%	0%	0%
Modified schedule (N= 151)	1%	49%	48%	2%
Reversed custody (N= 147)	41%	59%	1%	0%

6. Opinions Regarding Policy Statements

a. Of the 151 judicial officers answering the question, 13 (9%) "strongly

agree" that there is a lack of access to the court system that has resulted in untimely resolution of visitation disputes, 39 (26%) "agree," 54 (36%) "disagree," and 44 (29%) "strongly disagree."

b. The following were identified by judicial officers as barriers preventing or hampering access to the court system to resolve post-decree visitation disputes:

- 131 (70%) responded that the cost of an attorney discourages use,
- 100 (53%) responded that legal aid offices are unable to help (e.g., overbooked, don't handle visitation disputes),
- 90 (48%) responded that parties do not know how to proceed without attorney,
- 68 (36%) responded that parties can't find private counsel willing to take on a post-decree visitation dispute, and
- 55 (30%) responded that parties are afraid the other parent will retaliate.

c. Of the 152 judicial officers answering the question, 61 (40%) "strongly agree" that parents should be required to resolve post-decree visitation disputes using alternative dispute resolution methods, 64 (42%) "agree," 18 (12%) "disagree," and 5 (3%) "strongly disagree."

d. Of the 151 judicial officers answering the question, 7 (5%) "strongly agree" that Minnesota should establish "visitation courts" to help resolve visitation disputes and more efficiently manage the court's time, 27 (18%) "agree," 55 (36%) "disagree," and 46 (30%) "strongly disagree."

e. Of the 151 judicial officers answering the question, 3 (2%) "strongly agree" that a noncustodial parent should be permitted to withhold payment of child support if the custodial parent wrongfully denies court-ordered visitation, 25 (17%) "agree," 49 (32%) "disagree," and 73 (48%) "strongly disagree."

f. Of the 151 judicial officers answering the question, 6 (4%) "strongly agree" that a custodial parent should be permitted to withhold court-ordered visitation if the noncustodial parent wrongfully fails to pay court-ordered child support, 22 (15%) "agree," 57 (38%) "disagree," and 67 (44%) "strongly disagree."

g. Of the 151 judicial officers answering the question, 80 (53%) "strongly agree" that parents should be required to attend parent education classes prior to being permitted to proceed on their divorce or dissolution petition, 57 (38%) "agree," 7 (5%) "disagree," and 6 (4%) "strongly disagree."

C. COURT ADMINISTRATOR QUESTIONNAIRE

In April 1996 the Task Force distributed a questionnaire to each of Minnesota's 87 court

administrators. A 100% response rate was achieved in regard to the court administrator questionnaire, an excellent response to a mailed questionnaire. Because the entire population of court administrators was included in the survey, no issue of sampling error exists. Similarly, because the response rate was 100%, no problems with non-response are involved.

One concern with the responses to this survey relates to the validity and reliability of responses because of the lack of accurate records relating to questions which were asked. Consequently, the information provided is somewhat less precise than anticipated. Several court administrators noted, for example, that their counties do not track the number of visitation expeditor and family court mediator appointments or the average hourly fees of visitation expeditors and family court mediators. Other court administrators noted that they were personally unaware of the answers to some questions (e.g., whether and to what extent pre-service training is required of visitation expeditors and family court mediators, and whether the county has any visitation exchange facilities). Several further noted that they did not seek out information from other sources (e.g., judges, visitation expeditors, etc.) to help them complete the questionnaire or confirm their responses.

While the information obtained through the use of the court administrator questionnaire is less detailed than anticipated, it nevertheless provides a general picture of the current availability and use of various methods for preventing and/or resolving visitation disputes. The data establish, for example, that nearly every county has persons available to resolve visitation disputes, regardless of whether that person is appointed as a visitation expeditor, a family court mediator, or a guardian ad litem. While 51 of 87 counties reported that they do not appoint "visitation expeditors" and 36 of 87 counties reported that they do not appoint "family court mediators," the vast majority of those counties nevertheless appoint other persons (most often guardians ad litem) to resolve visitation disputes.

Complete results of the questionnaire are set forth in the Court Administrator Questionnaire Report dated June 17, 1996, on file with the Minnesota Supreme Court. The major findings from the Report are as follows:

PART VI: APPENDICES

1. Visitation Expeditors

a. 37 (43%) counties reported appointing visitation expeditors to resolve post-decree visitation disputes, and 50 (57%) counties reported that they do not appoint visitation expeditors. Of the 50 counties that do not appoint visitation expeditors, the following were reported as reasons (several counties identified more than one reason):

! 2 (6%) were unaware of the statute providing for use of visitation expeditors,
! 7 (19%) stated it was too costly for the county and/or the parties to use visitation expeditors,
! 5 (14%) stated that instead their counties use mediators to resolve visitation disputes,
! 20 (56%) stated that instead their counties use guardians ad litem to resolve visitation disputes, and
! 1 (1%) reported "other reasons," including they have no visitation expeditors, they instead use mediators, human services, or court services, or such appointments are not requested.

b. The number of visitation expeditor appointments steadily increased during the period from 1990 through 1995. In 1990 there were approximately 20 visitation expeditor appointments in Minnesota and by 1995 the number of appointments had increased to approximately 136. During the period from 1990 to 1993 the largest number of visitation expeditor appointments in any one county was 10. The number tripled to 31 during 1994 and increased slightly to 39 in 1995. Of the 37 counties that appoint visitation expeditors, 29 counties (78%) reported that their responses regarding the annual number of appointments were estimates because they do not keep specific records regarding that subject, 4 counties (11%) reported that their responses were based on specific records, and 4 counties checked "other."

c. Each county was asked to identify the category(s) of persons most often appointed to serve as visitation expeditors. Of the 37 counties that appoint visitation expeditors, the following are their responses (several counties identified more than one category of persons):

! in 7 (20%) counties private attorneys serve as visitation expeditors,
! in 13 (36%) counties lay persons serve as visitation expeditors,
! in 5 (14%) counties visitation expeditors are members of the staff of family court,
! in 3 (8%) counties visitation expeditors are members of the probation department,
! in 2 (5%) counties visitation expeditors are members of a mental health services agency,
! in 5 (14%) counties visitation expeditors are members of a private mediation service, and
! 14 (39%) counties checked "other" (e.g., not sure as rarely used, social services, guardians ad litem).

d. Of the 37 counties that appoint visitation expeditors, 14 (38%) reported that they maintain a list of visitation expeditors, 19 (58%) reported that they do not maintain such a list, and 4 did not answer the question. Of the 14 counties that maintain a list, 1 (7%) reported that the list includes only individuals available to serve as visitation expeditors, while the remaining 13 counties (93%) reported that the list also includes persons available to serve as guardians ad litem and/or mediators.

e. Of the 37 counties that appoint visitation expeditors, 17 (46%) require pre-service training of visitation expeditors before they may be appointed to serve on their first case, 15 counties (47%) require no pre-service training, and 5 (14%) did not answer the question. The pre-service training requirements vary from county to county, with some counties requiring guardian ad litem training and others requiring 40 hours of mediation training.

f. Of the 37 counties that appoint visitation expeditors, 14 (38%) were able to provide at least a "guesstimate" regarding the average hourly fee charged by visitation expeditors, 11 counties (44%) were unable to identify the average hourly fee without conducting a survey of visitation expeditors, and 12 (32%) did not answer the question. The minimum hourly fee was reported as $0.00 in those counties where volunteers are utilized, the maximum hourly fee was reported as $112.00 (most often by private attorneys serving as visitation expeditors), and the mean hourly fee was $23.00.

g. Each county was asked whether it had ever studied the effectiveness of visitation expeditors at resolving and/or preventing the recurrence of visitation disputes. Of the 37 counties that appoint visitation expeditors, none had formally studied their effectiveness, and only 1 county (Marshall) reported that its judicial officers sometimes informally talk to parents about their experiences with visitation expeditors.

2. Family Court Mediators

a. Each court administrator was asked whether the county appoints mediators to resolve disputes in family court matters. 51 counties (59%) reported that they appoint family court mediators, and 40 counties (46%) do not appoint family court mediators. Of the 40 counties that do not appoint family court mediators, the following were reported as reasons (several counties identified more than one reason):

- 1 (3%) was unaware of the statute providing for use of family court mediators,
- 6 (18%) stated it is too costly for the county and/or parties to use family court mediators,
- 1 (3%) instead use visitation expeditors to resolve disputes,
- 19 (58%) instead use guardians ad litem to resolve visitation disputes, and
- 6 (18%) checked "other," (e.g., few trained as mediators, family court mediator not requested).

b. Of the 47 counties that appoint family court mediators, 39 counties (82%) reported that their responses regarding the annual number of appointments were estimates because they do not keep specific records regarding that subject, 4 counties (9%) reported that their responses were based on specific records, and 4 did not answer the question. During the period from 1990 through 1995 the number of appointments fluctuated. The number of appointments in 1990 was approximately 1087, during 1991 the number was 1066, as of 1992 the number was 1104, by 1993 the number of appointments was 1106, in 1994 the number was 1148, and in 1995 the number of appointments was 1080. During each of the years from 1990 through 1995, the largest number of family court mediator appointments in any one county was approximately 750 in Ramsey County. In Dakota County, during each of the years from 1993 through 1995 an average of 1350 cases were ordered to attend a mandatory orientation classes regarding the option of using family court mediation. No data was available regarding the actual number of cases that were resolved through use of mediation and, as a result, the 1350 cases are not included in the figures reported in this paragraph.

c. Each county was asked to identify the category(s) of persons most often appointed to serve as family court mediators. The following are the responses of the 47 counties that appoint family court mediators (several counties identified more than one category of persons):

- in 27 (56%) counties private attorneys serve as family court mediators,
- in 19 (40%) counties lay persons serve as family court mediators,
- in 6 (13%) counties family court mediators are members of the professional staff of family court (e.g., court services),
- in 11 (23%) counties family court mediators are members of the probation department,
- in 7 (15%) counties mediators are members of mental health services agency,
- in 20 (42%) counties family court mediators are members of a private mediation service, and
- 10 (21%) counties checked "other" (e.g., social services, guardians ad litem, retired judge, probation agent).

d. Of the 47 counties that appoint family court mediators, 34 (74%) maintain a list of family court mediators, 12 (26%) do not maintain such a list, and 1 did not answer the question. Of the 34 counties that maintain a list, 23 counties (68%) responded that the list includes only individuals available to serve as family court mediators, while the remaining 11 counties (32%) reported that the list also includes persons available to serve as guardians ad litem and/or visitation expeditors.

e. Of the 47 counties that appoint family court mediators, 38 counties (80%) require pre-service training before an individual may be assigned to his/her first mediation case, 6 counties (13%) do not required pre-service training, and 3 did not answer the question. Of the 38 counties requiring training, 9 counties (24%) require that at a minimum each person must be trained regarding visitation issues prior to his/her first assignment as a family court mediator, 23

counties (61%) require each person to complete a minimum of 40 hours of certified mediation training prior to his/her first assignment as a family court mediator, and the remaining 6 counties (16%) identified other types of training that must be undertaken.

f. Of the 47 counties that appoint family court mediators, 22 were able to provide at least a "guesstimate" regarding the average hourly fee charged by family court mediators, while the remaining 25 counties were unable to identify the average hourly fee. Of those responding, the minimum hourly fee was reported as $10.00, the maximum hourly fee was reported as $112.00 (most often by private attorneys serving as family court mediators), and the mean hourly fee was $34.00.

3. Parent Education Classes

a. Each county was asked whether it has available parent education programs that discuss the topics of preventing and resolving visitation and child support disputes. 47 (54%) reported that such programs are available in the county, 38 (44%) reported that such programs are not available, and 2 were unaware of the answer.

b. Of the 47 counties that have parent education programs available, in 24 counties (51%) participation is mandatory for parties involved in dissolution cases, and in 5 counties (11%) participation is mandatory for parties involved in paternity cases. In 21 counties (45%) participation is discretionary for parties involved in dissolution cases, and in 13 counties (28%) participation is discretionary for parties involved in paternity cases. In 27 counties (57%), parent education is never ordered for parties involved in paternity cases.

4. Visitation Exchange and Supervision Facilities

a. Each county was asked whether any supervised visitation centers and visitation exchange facilities are available in the county. 49 counties (56%) have supervised visitation programs or facilities, while 38 counties (44%) do not have such programs or facilities. 47 counties (54%) have visitation exchange facilities, while 40 (46%) counties have no exchange facilities.

5. Access to Court System

a. Each court administrator was asked whether during the period from 1990 through 1995 he or she had received any complaints that lack of access to the court system resulted in untimely resolution of a visitation dispute. Of the 72 counties that responded to the question, 62 counties (86%) reported that they had not received such complaints, while 10 counties (14%) reported that they had received such complaints.

b. Each court administrator was asked to provide an opinion as to whether lack of access to the court system resulted in the untimely resolution of any visitation disputes

during the period from 1990 through 1995. Of the 75 court administrators who responded to the question, 62 administrators (83%) responded "no," while 13 administrators (17%) responded "yes" and provided written explanations.

c. Each court administrator was asked whether the court has in place any mechanisms for receiving and/or processing complaints regarding the court system's handling of visitation disputes. Of the 74 responses, 65 (85%) reported that they have no complaint handling process, while 9 (12%) reported that they have a complaint process and then proceeded to describe that process.

D. REVIEW OF COURT FILES

During the months of June and July 1996, court files were reviewed to gain additional statistical information regarding the issues to be studied. During non-court hours, court administration personnel collected data from 1357 dissolution with children and paternity files in four selected counties: Becker, Dakota, Hennepin and Stearns counties. In Dakota, Hennepin, and Stearns counties, files were randomly selected without replacement. A total of 366 files were reviewed in Hennepin County, 385 files were reviewed in Dakota County, and 381 files were reviewed in Stearns County. Dakota, Hennepin, and Stearns had a sampling error of + /-5% at the 95% level of confidence. All files (225) were reviewed in Becker County, thus no issue of sampling error exists.

The file review results from each county, as well as the four-county combined results, are summarized in the File Review Report dated September 9, 1996, on file with the Minnesota Supreme Court. The major findings from the Report are as follows:

1. Demographic and Background Information

a. Of the 1357 total files reviewed, 63% were dissolution files and 37% were paternity files.

b. The mother appeared pro se in 24% of the cases and was represented by an attorney in 74% of the cases; the father appeared pro se in 43% of the cases and was represented by an attorney in 43% of the cases.

c. In 19% of the cases the divorce or paternity proceeding was settled by default (i.e., one party failed to respond to the petition), 74% of the cases were settled by stipulation of the parties, 3% of the cases were resolved following a trial of one or more of the issues, and 4% of the cases were resolved through the administrative process.

2. Legal and Physical Custody

a. In 32% of the cases the final decree granted the mother sole legal custody, in 1% of the cases the father was granted sole legal custody, in 66% of the cases the parties were granted joint legal custody, and in the remaining cases custody was either reserved or each parent was granted sole legal custody of one child.

b. In 80% of the cases the final decree grants the mother sole physical custody, in 6% of the cases the father was granted sole physical custody, in 13% of the cases the parties were granted joint physical custody, and in the remaining cases custody was either reserved or each parent was granted sole physical custody of one child.

3. Child Support

a. In 26% of the cases the final decree provides that child support be automatically withheld from the obligor's paycheck, in 34% of the cases child support was ordered to be paid by one parent directly to the other party, in 13% of the cases child support was ordered to be paid to the county, and in 21% of the cases the issue of child support was reserved.

4. Visitation Order

a. With respect to visitation orders, in 61% of the cases "reasonable" visitation was ordered without setting forth a schedule, 26% of the cases had a specific visitation schedule, 6% of the cases had the issue of visitation reserved, and in the remaining cases either visitation was not allowed or the issue was reserved or visitation was not addressed (e.g., where the parents had joint or split physical custody).

b. In 24% of the cases the final decree requires the parties to seek non-judicial assistance (e.g., mediation, visitation expeditor, etc.) prior to returning to court regarding a post-decree matter.

5. Post-Decree Visitation Disputes

a. In 17 (2%) cases at least one party sent an ex parte message to the court seeking assistance regarding a post-decree visitation problem without filing any motions or requesting a hearing on the matter.

b. Of the 1357 cases, 40 (3%) returned to court regarding a post-decree visitation dispute, with 23 (70%) returning to court one time, and 10 (30%) returning two or more times.

c. Of the 40 cases that returned to court, in 18% of the cases the mother appeared pro se and in 82% of the cases the mother was represented by an attorney; in 24% of the cases the father appeared pro se and in 74% of the cases the father was represented by an attorney.

d. Of the 40 cases that returned to court with post-decree visitation disputes, in 37% of the cases the claim was brought by the custodial parent, in 26% of the cases the claim was brought by the noncustodial parent, and in 37% of the cases the parents brought counterclaims.

e. Of the 40 cases that returned to court with post-decree visitation disputes, the parties' claims were as follows (more than one response was possible):

- in 5 (13%) cases the claim was that of wrongful denial of visitation,
- in 11 (28%) cases the claim was that one or both parents interfered with a scheduled visitation,
- in 5 (13%) cases the claim was that the noncustodial parent failed to exercise visitation, and
- in 23 (58%) cases other claims were made.

f. Of the 40 cases that returned to court with post-decree visitation disputes, in 32% of the cases the parties resolved the dispute between themselves prior to a hearing and in 68% of the cases the dispute was decided by the court following a hearing.

g. Of the 40 cases that returned to court with post-decree visitation disputes, the court ordered the following:

- in 5 cases a guardian ad litem was appointed,
- in 0 cases a visitation expeditor was appointed,
- in 0 cases at least one person was ordered to educational classes,
- in 2 cases the parties were ordered to mediation,
- in 8 cases the parties were ordered to court services,
- in 0 cases social services was contacted,
- in 0 cases a chemical dependency evaluation was ordered,
- in 2 cases a psychological evaluation was ordered,
- in 6 cases a custody evaluation was ordered, and
- in 6 cases a visitation evaluation was ordered.

h. Of the 40 cases that returned to court with post-decree visitation disputes, the outcome of the hearing was that:

- in 1 case the frequency of visits were decreased,
- in 2 cases the frequency of visits were increased,
- in 1 case the visits were ceased/terminated,
- in 22 cases a schedule was set or revised,
- in 4 cases visitation was ordered to be supervised,
- in 1 case compensatory visitation was ordered,
- in 4 cases no final order had yet been entered,
- in 5 cases no change was made,
- in 6 cases other orders were made, and
- in 5 cases physical custody was reversed (although the data does not indicate whether custody was changed based upon an agreement of the parties or a decision of the court).

i. Of the 40 cases that returned to court with post-decree visitation disputes, the court ordered the following sanctions or remedies:

- fines were never ordered against either parent in any case,
- contempt of court was never ordered against either parent in any case,
- a visitation bond was never ordered against either parent in any case,
- the visitation schedule was modified in 11 cases (although the data does not indicate whether visitation was increased or decreased),
- there were no cases in which the mother was ordered to pay the father's attorney's fees, but there were 2 cases in which the father was ordered to pay the mother's attorney's fees,
- in 28 cases no sanctions were ordered against either parent, and
- in 2 cases other action was taken in regard to the mother and in 1 case other action was taken in regard to the father.

E. FOCUS GROUP MEETINGS

The file reviews and the questionnaires sent to court administrators, judicial officers, and parents were designed to seek specific information concerning the extent to which visitation-related issues exist in Minnesota. They were not designed, however, to provide much anecdotal or opinion-based information. As a result, the Task Force decided to conduct focus group meetings for the purpose of gaining opinion-based information and a richer understanding of the issues involved in regard to visitation disputes.

During June 1996, nine Focus Group meetings were held with nearly 100 individuals

from 42 counties representing the following groups: grandparents (metro and nonmetro); court services personnel and social workers (metro and nonmetro); visitation expeditors, guardians ad litem, and mediators (metro and nonmetro); custodial parents (metro); custodial parents (nonmetro); noncustodial parents (metro); noncustodial parents (nonmetro); judges and referees (metro); judges (nonmetro); and county, family court, and legal aid attorneys (metro and nonmetro). Task Force members also attempted to arrange a focus group meeting with young adults ages 18 to 24 whose parents were involved in divorce or paternity proceedings, but were unsuccessful. An average of eight focus group participants were present at each meeting to offer their opinions in regard to specific open-ended questions regarding visitation-related issues. The same questions were asked of each group of participants, with Task Force members present to listen to the responses and ask follow-up questions.

Complete results of the focus group meetings are set forth in the Focus Group Report dated July 1996, on file with the Minnesota Supreme Court. The major findings from the Report are as follows:

1. Custodial Parents' Interference with or Denial of Visitation

a. Of the various reasons offered as to why some custodial parents withhold or deny visitation, there was nearly unanimous agreement among the participants of all focus groups that a custodial parent is justified in withholding court-ordered visitation if the child is in risk of endangerment.

b. There was a consensus among the participants of all focus groups that a child is at "risk of endangerment," and that the custodial parent is justified in withholding visitation, if:

!There is evidence that the noncustodial parent is under the influence of drugs or alcohol at the time the child is to go on visitation or abuses drugs or alcohol during visitation.

!There is evidence that the child has been physically or sexually abused while in the care of the noncustodial parent.

c. Although there was some disagreement between focus groups as to other circumstances that should be included within the meaning of "risk of endangerment," the following were offered by one or more focus group participants as other circumstances under which a custodial parent would be justified in withholding a scheduled visitation:

!Evidence that the noncustodial parent would be driving without a license while the child was in the car.

!If the custodial parent reasonably believes it would be emotionally traumatic for the child to have contact with the noncustodial parent because the noncustodial parent has not seen the child in a significant period of time.

!If the child is seriously ill (e.g., high temperature, stayed home from school, etc.).

!Evidence of drunk driving while child is in care of noncustodial parent.

!If the noncustodial parent is suffering from mental illness and not in control because of failure to take prescribed medications.

!If the noncustodial parent is continuously substantially late without any reasonable explanation.

!Evidence of violence against the custodial parent.

!If the noncustodial parent has attempted or made explicit threats to remove child from jurisdiction and not return.

!If the custodial parent learns that a young child has been left alone or with an unsuitable caretaker.

!Evidence of child neglect (i.e., if the child is asthmatic and the noncustodial parent smokes around the child).

!If noncustodial parent refuses to disclose his/her address of where the child will be.

d. There was nearly unanimous agreement among the participants of all focus groups that consequences or sanctions should be imposed upon a custodial parent who unreasonably or wrongfully denies or interferes with court-ordered visitation. However there was disagreement between focus groups (and sometimes among the members of each focus group) regarding the timing, nature, and extent of such consequences.

PART VI: APPENDICES

2. Noncustodial Parents' Non-Exercise of Visitation

a. Of the various reasons offered as to why some noncustodial parents fail to exercise visitation, there was nearly unanimous agreement among the participants of all focus groups that there are some circumstances under which the failure to exercise visitation is justified.

b. The following were offered by participants of one or more focus groups as circumstances under which a noncustodial parent is justified in not exercising court-ordered visitation:

!When custodial parent makes false claims of domestic or child abuse.

!When older child doesn't want to visit.

!When there is severe parent alienation.

!Where the noncustodial parent is going through some sort of psychological or drug treatment program where the parent is not emotionally equipped to attend to a child's needs.

!If the noncustodial parent is in the throes of a psychological disorder or chemical dependency behavior.

!If the distance between the children's residence and the noncustodial parent's residence is so great that weekend visitation would not be meaningful or it would be of such great expense that the noncustodial parent would suffer a financial burden in exercising visitation.

!A physical disability or illness that prevents or inhibits ability to reasonably follow through with a defined visitation schedule.

!Weather conditions that prevent safe exercise of visitation.

!An occasional variation from an established schedule is reasonable if an important event occurs (unplanned travel outside of the state, significant personal commitments that conflict with visitation schedule), although any decision about deviating from a schedule should be made jointly by both parents whenever possible.

!When the trauma for the child is high because of confrontation between the parents.

!If the noncustodial parent is constantly assailed to pay child support when they are struggling financially is unfortunately a rather common situation and they end up staying away from their children because they aren't paying the bills -- in many relationships that was the only real role that the noncustodial parent played and, when he does not meet that role he has very little if any standing with the custodial parent.

!To avoid volatile confrontations with the other parents.

c. The majority of focus group participants believed that noncustodial parents have a moral obligation to maintain contact with their children. The majority of focus group participants also recognized, however, that it is nearly impossible to enforce such a moral obligation and, if it was enforced against the person's will, the forced contact may cause more harm than benefit to the child. It was for that underlying reason that nearly every focus group participant agreed that consequences should not be imposed upon a noncustodial parent who fails to exercise court-ordered visitation. It was suggested, however, that consequences should be imposed for other reasons, such as a pattern of not picking up or returning the child on time.

3. Access to the Court System

a. There was a consensus among the participants of all focus groups that parents do not lack access to court system, although there are barriers that may hamper access or prevent timely access:

!Parents have adequate access to the court system, regardless of whether they are or are not represented by counsel. The crucial issue, however, is the timeliness of access. For example, while parents in many counties are able to get into court within two weeks, in some counties hearing dates are not available for one or two months, unless an expedited hearing is requested (and many are unaware of this option). Timeliness of access to the court system is critical because delays often cause the parental conflict to escalate.

!Increased access to alternative dispute resolution services is more critical than increased access to the court system because parenting and relationship issues are best resolved in a nonadversarial setting such as counseling or mediation and because the court system will unlikely be able to resolve all of these ongoing relationship problems.

!Once parents do get into court for their hearing, generally those without legal representation lack an understanding of or the emotional maturity to identify the issues at hand and are unaware of the legal options

available to the court to resolve the issue. This often leads to chaos in the courtroom and inappropriate use of court time (e.g., if both parents appear pro se, it sometimes takes over an hour to get through what would otherwise be a 15 minute hearing).

!Parents are able to access the court system even without aid of legal counsel. The problem, however, is timeliness of access as delays escalate conflicts.

!Although timeliness of access is an issue, expedited hearings may be requested.

!The court system is reasonably accessible to parents and others, but we need to consider ways to resolve issues between them without court intervention (e.g., educational programs in which parents may participate to further their understanding of their rights and responsibilities in legal proceedings).

!Many parents who experience the court system ultimately realize its limitation in regard to mandating and enforcing parental relationships and either seek other means of resolving such conflicts or simply stop trying.

b. Some focus group participants felt that parents do lack access to the court system and gave the following reasons:

!Parents lack access to the court system for a variety of reasons ranging from financial to emotional to basic lack of understanding regarding rights.

!Many parents may be experiencing visitation disputes but may not be coming to court for a variety of reasons, so judges may be unaware of the actual numbers.

4. Policy Linking Visitation and Child Support

a. The majority of focus group participants in every focus group believe that a noncustodial parent should not be permitted to withhold child support because of the custodial parent's wrongful denial of visitation.

b. The majority focus group participants in every focus group believe that custodial parents should not be permitted to withhold visitation based upon the noncustodial parent's failure to pay child support.

PART VI: APPENDICES

APPENDIX B

SUMMARIES OF PARENT EDUCATION PROGRAMS AND VISITATION ASSISTANCE PROGRAMS STUDIED BY TASK FORCE

The four program research objectives of the Task Force were to: (1) gather information regarding visitation dispute prevention and resolution programs existing in Minnesota, other states, and elsewhere; (2) critique the existing visitation and child support programs and statutes; (3) identify those programs most effective at preventing and resolving visitation disputes; and (4) submit to the Task Force initial recommendations regarding educational and remedial models that might work best in Minnesota for preventing and resolving visitation disputes. Task Force members also studied the extent to which parent education programs and visitation assistance programs are currently used in Minnesota.

To fulfill these objectives, Task Force members met with representatives of, and/or reviewed videotapes, brochures, instructional materials, and performance evaluations from, parent education programs and visitation assistance programs in Minnesota and other States, as well as Canada. Task Force members agreed that, overall, the most comprehensive educational program reviewed was "Parents Forever," developed by the University of Minnesota Extension Service.

Details of the educational and visitation assistance programs studied by the Task Force are set forth below.

PART VI: APPENDICES

A. SUMMARY OF EDUCATIONAL PROGRAMS STUDIED BY TASK FORCE

1. Minnesota Educational Programs Studied

a. Consider the Kids (State Court Administration Video)

This three-segment educational videotape presentation regarding divorce issues was developed by the State Court Administrator's Office and has been distributed to each of Minnesota's 87 court administrators. Several videos from other states, including Ohio and Texas, were reviewed in the process of developing the video. One segment entitled "Consider the Kids" shows the impact of divorce upon children and provides divorcing adults with co-parenting suggestions, including not criticizing the other parent in front of the children, not making children choose between parents, and always considering the needs of the children first. The videotape is not used in all counties.

b. Co-Parenting Program (Storefront/Youth Action)

This four-hour educational seminar, available in Hennepin, Ramsey, Anoka, Washington, and Dakota Counties, is offered to all parties involved in divorce proceedings, paternity matters, separate maintenance actions, change of custody or visitation matters, or other domestic relations actions, excluding domestic violence and contempt actions. The program is designed to help minimize the negative impact of divorce upon children and focuses on the needs of children, including their developmental needs and typical reactions, effective co-parenting skills, skills that help children cope, how families experience divorce, stages of grief, financial obligations, conflict management, dispute resolution, community resources, stress and loss issues in divorce, the emotional and psychological aspects of divorce, and how to rebuild and restructure families and lives after a divorce. One program goal is to reduce the need for further court intervention.

The program, led by a male and a female facilitator, is interactive in nature and includes group discussions and role playing. The program, which is 2 1/2 years old, is mandatory in Hennepin County and receives referrals from most metro counties. Court-ordered participation in the class occurs early in the dissolution process. Currently 12 to 15 classes are offered per quarter, with about 35 participants attending each session. Each participant is charged a $30 fee, although a sliding fee scale is available. A $5.00 cancellation fee is charged. Spouses need not attend the same session.

Participant surveys are used to conduct post-program evaluations. While program personnel provided data regarding the responses received from persons who attended sessions during July through December 1994 (35 of 137 participants responded), the data was not analyzed or summarized, thus making it difficult to critique the effectiveness of the program. A cursory review of the responses indicates, however, that most participants feel the class did not reduce their need for further legal action, often because the other parent refused to participate or

because participation in the educational program came too late in the process.

c. Dads Make a Difference

This paternity education program for middle school children is designed to teach them about the role fathers play in children's lives and to discourage young people from becoming parents before they are ready. Since younger students more easily identify with high school students than with adults, the program is taught by high school students and includes use of handouts, a videotape featuring youth who are parents, and group discussions. Family information is discussed, and students are told that having a child means having an 18-year relationship with the other parent.

Initial funding for development of the program came in July 1993 from the Ramsey County Board of Commissioners. Since its inception, the curriculum has been distributed throughout the State and is currently used in 60 middle schools. Not all districts use the program as it is sometimes difficult to get the student "instructors" to the various middle schools. The program has not been overly controversial in the school districts in which it is presented. A curriculum for adults is in the process of being developed. Additionally, the program has hired someone to tailor the program to the Minneapolis and St. Paul schools; it is expected that this person will address diversity issues.

Program evaluations show that youth learn about establishment of paternity and child support. While there is no data yet regarding whether those who participate in the program are less likely to become teen parents, there is anecdotal evidence that young women who do become, or are, mothers are more likely to involve the father in the lives of their children, and that young men who do become, or are, fathers are more likely to be involved in the lives of their children.

d. Education for Families in Transition

This five-session educational program is used in some southern Minnesota Counties (e.g., Houston County) and is designed not only for divorcing parents but also for parents involved in paternity proceedings. Issues addressed include community resources, the legal aspects of divorce, mediation options, the impact of separation upon adults and children, shared parenting, safety planning, conflict resolution, communication skills, income maintenance, child support issues, custody studies, step-family development and relationships, and the needs of children. The cost per participant is $25.00.

Unlike most educational programs, four free sessions are offered for children whose parents participate in the parent component. The children's sessions include discussions regarding divorce, their feelings, reassurance, and coping strategies.

e. Kids, Custody, and You

This five-week parent education program offered primarily in southern Minnesota addresses the legal aspects of divorce and paternity, the effects of break-up and remarriage, how to keep children out of the middle of parents' conflicts, custody and visitation issues, court-ordered custody studies, mediation options, guardians ad litem, and child support issues. The cost per participant is $35.00, although reduced fees are available to individuals who qualify. Some judges mandate completion of the program and, as a result, certificates of completion are provided so long as all fees are paid and all classes have been attended. Some locations offer classes via in-house TV for those who do not wish to be in the same room as their spouse.

f. Kids First

This four-hour parent education seminar focuses on the needs of children during times of stress, such as when their parents are going through a divorce. While attendance is generally voluntary, the court has discretion to order attendance by parties involved in divorce, paternity, maintenance, change of custody, and visitation actions. Topics include how families experience divorce, typical reactions of children, developmental needs of children, skills that help children cope, and pitfalls to avoid. The program is currently in place in Carlton, Cook, Lake, and St. Louis counties. All sessions are held on Thursday evenings form 6:00 p.m. to 10:00 p.m. The fee is $40.00 per person, although a $10.00 reduced fee is available. Certificates of attendance are issued. Child care is not provided. A separate component is available (at no charge) to children whose parents have enrolled in the parent's component.

g. Parents Forever (Minnesota Extension Service)

This six-session parent education program was first developed and implemented by the University of Minnesota Extension Service in Winona County three years ago under the title of "Education for Families in Divorce Transition." The first session had 48 participants and, since then, an additional 382 individuals have completed the Winona program.

In Winona, sessions have been offered quarterly since 1994. Each participant was asked to complete a post-program evaluation form. A summary of the 1994 and first-half of 1995 responses indicates that 80% of the participants believe the course was helpful, 67% found the course to be helpful in working with the spouse in regard to the children, 40% consulted local resources after the course, and 47% found five sessions to be appropriate. Of the 81 comments received, 20% responded that for a variety of reasons the course resulted in "no effect" (e.g, "just as bitter as before, I was divorced before I took the course, and our case was almost settled before I started taking the class"); 19% responded that the course resulted in a "positive personal effect" (e.g., "increased knowledge, assertiveness, more questions for attorney, reduction in anger and stress"); 7% responded that the course resulted in "positive effects in parenting

children" (e.g., "better understanding of what children are going through, better understanding of how to help children cope"); 6% noted "positive effects for spouse relationship" (e.g., "opened lines of communication, better understanding of feelings, flexibility"); and 6% reported "negative effects for spouse relationship" (e.g., "gave spouse ideas to use against me in court, worse now that trying to be assertive with spouse, assisted a manipulative person to develop more power to win").

In their evaluation forms (through August 7, 1996) participants suggested that the process be revised to require participation as early as possible in the dissolution process and to have smaller size classes. Participants also suggested that additional topics be incorporated into the course, including physical and verbal abuse issues; men's support groups; more information on how to help children cope; a class for children to attend; more regarding the impact upon and dealing with older children; a mentoring session taught by those who have been successful in their post-divorce lives; how to deal with the other party who is constantly angry and refuses to be reasonable or to cooperate; chemical abuse; and more information for couples who have been married for longer periods (e.g., 25 years) rather than only young couples.

In 1995 members of the Legislature contacted personnel from the Winona program regarding the possibility of implementing the program on a statewide basis. Although comprehensive in nature, the Winona program had not been designed for use throughout the State. As a result, the Extension Service established an advisory board which began conducting research and holding focus group meetings to discuss the need for a statewide program, the basic content of any curriculum that might be developed, and the most effective methods for instructing participants. The board determined that a standard curriculum should be developed and distributed throughout the State. The curriculum development process began in 1995.

The curriculum has been developed, 13 sites are pilot testing the curriculum and each has established its local collaboration of coordinators to oversee implementation of the program, and training of local instructors had begun. Several counties have decided to jointly implement the program, especially in those areas where fewer resources and/or fewer divorce and paternity cases exist. The pilot sites and/or clusters are: Chisago/Isanti, Chippewa/Yellow Medicine/Lac Qui Parle/Swift, Meeker/Kandiyohi/Renville, Pope/Stevens/Grant/Traverse/Wilkin, Rock, Sibley, Ottertail, and Mower. Four counties (Carver/Scott and Lincoln/Lyon) have adapted the former curriculum to their needs. An extensive evaluation and revision process will take place following the pilot testing of the curriculum. It is anticipated that the curriculum will be available for distribution by June 1, 1997. Extension Service educators are located in every Minnesota county and through their network they will promote implementation of the Parents Forever program. It is anticipated that it will also be promoted by word of mouth.

Although each program is managed by local coordinators, the general processes and procedures for implementing the program must be strictly adhered to by each site's coordinators. The curriculum, which must also be strictly adhered to, includes detailed instructors' and participants' manuals, instructors' guides regarding the appropriate methods of providing

instruction for each topic (e.g., videotape, role playing, overhead slides, group discussions), and handouts. The curriculum is taught by local instructors from interdisciplinary backgrounds, including attorneys, judges, social workers, therapists, mediators, etc. Extension Service personnel conduct various train-the-instructors sessions. All local instructors are screened by each site's coordinators to ensure that personal "agendas" will not pursued. Each instructor receives a list of "cans" and "cannots" (e.g., no advertising of one's law firm or corporation or mediation service, no stressing of one dispute resolution option over another, etc.). Each instructor is required to sign an agreement acknowledging understanding of "the rules" before becoming an authorized instructor.

The Parents Forever "kit" costs approximately $350.00 and includes the collaboration guide (i.e., how to set up and administer a program), facilitator's guide, evaluation process guide and forms, handouts, transparencies, instructor's manuals, and participants' manuals. Each additional instructor's manual costs approximately $15.00 and each additional participant's manual costs approximately $9.00. At this time the Extension Service is pilot testing whether it will make copies of all instructors' and participants' manuals and distribute them to those who want them or whether one of each of the manuals should be sent to each site so they it can make sufficient copies.

A "full track" series is offered for parties with children and a "short track" option is available for parties without children. The cost per participant is $20.00, including fees paid to site coordinators and instructors (if any). Sites have the option of permitting scaled fees. Parents may, but are not required, to attend sessions together. Participants who miss a session will be allowed to check out a videotape of the session after depositing a refundable $50.00 fee. The Extension Service recommends that each site make child care available. Judges in each county will have the discretion to decide whether participation is mandatory or discretionary, and the timing of participation (e.g., as part of the divorce or paternity proceeding or only in response to post-decree conflicts).

The curriculum consists of six two-hour sessions, including an overview of the classes and curriculum; the impact upon children (stages of loss, how children are affected by divorce, psychological issues, positive parenting, communication, conflict reduction, problem solving skills, co-parenting, the impact of new relationships upon children); the impact upon adults (understanding the divorce process, understanding the dynamics of divorce, examining unrealistic expectations, family history, understanding anger and conflict, safety planning, and communication skills); financial issues (adjusting to suddenly-reduced income, the cost of raising children, talking to children about money); legal issues (how to select a lawyer, legal/attorney's fees, the legal divorce process, the option to mediate, important terminology, who is representing the interests of the children, when and how custody studies are conducted, and how decisions about custody are made); divorcing well (four basic principles of divorce, three tasks to accomplish for a healthy divorce, planning a healthy divorce for the children, and seven key questions regarding mediation); and community resources (it was noted that, with respect to the Winona program, by the end of each program nearly 40% of the participants had contacted one

or more local resources for further information and/or assistance).

B. CHARACTERISTICS OF AN IDEAL PARENT EDUCATION PROGRAM

Based upon their study of parent education programs, Task Force members identified the following as characteristics of an ideal parent education program best suited for use in Minnesota:

1. Generally, the purpose of an educational program would be to serve as an early intervention mechanism to encourage cooperation between parents before adversarial behavior has a chance to develop. Among the goals of the program would be to teach parents positive communication techniques and dispute resolution skills, and to help them understand that the best interests of the children should be placed above the parents' "rights."

2. There was a consensus that only those families who are experiencing some type of conflict or inability to reach a mutual agreement regarding a child-related (e.g., custody, visitation, support) issue should be required to attend parent education classes. However, three subcommittee members felt that since one cannot predict which individuals will and will not experience post-decree disputes, regardless of their present ability to negotiate an agreement, all parents and/or parties involved in divorce, separation, paternity, custody, visitation, child support, and other family law matters should be required to attend an educational program. All agreed that absent a court order, there should be no option to opt out of participation in the program. Because active participation is a key to successful completion of the program, participation by watching videotaped sessions should be limited.

3. Regardless of whether a conflict exists regarding a child-related matter, the educational program should be made available to other parents and/or parties involved in family law matters, as well as to those who are contemplating involvement in such a proceeding, so that they may participate at their discretion.

4. The educational program should be applicable to parents and/or parties regardless of whether a marriage relationship exists

5. A separate educational component should be applicable to children of varying ages and developmental abilities whose parents are contemplating or involved in family law matters.

6. Participation in the program should occur as early as possible during the process and should be available at every phase of a divorce, separation, paternity, custody,

visitation, or other family law matter, including the following stages: filing of petition, temporary hearing, pre-decree, post-decree.

7. Information shared or discussed during an educational class should be confidential and should not be available for use as part of the court proceedings.

8. A certificate of completion should be provided to the participant and submitted to the court to verify completion of the program (especially in cases where participation is mandatory).

9. Consideration should be given to the safety of participants, including allowing the parents and/or parties to attend separate educational sessions and/or (if available) having both parties participate during the same sessions but with one seated in a separate room and participating via in-house TV.

10. The participant fees should be as low as possible, with a fee waiver option and/or sliding fee scales for low income participants.

11. On-site child care should be provided.

12. The sessions should be offered several times each month/quarter during a variety of morning, afternoon, and evening hours to permit participation by all segments of the population.

13. While a standard, comprehensive curriculum should be implemented on a statewide basis, the educational program should be flexible in nature so that it may be adapted to the needs and resources of each district/county.

14. The sessions should be taught by gender-balanced teams of instructors using an interactive approach (e.g., role playing, group discussions, etc.).

15. Participants should provide post-course feedback regarding the course content, timing, etc. In addition, follow-up evaluations should be conducted at certain post-court intervals to monitor the parties' ability to successfully use the tools learned during the course.

16. A list of curriculum topics should be developed, including discussion of issues that provide an overview of the judicial process, availability of alternative dispute resolution options, child development issues, impact of divorce and conflict upon children.

PART VI: APPENDICES

C. SUMMARY OF VISITATION ASSISTANCE PROGRAMS STUDIED BY TASK FORCE

1. Minnesota Visitation Assistance Programs Studied

a. Mediation Center (Minneapolis)

The Mediation Center is a nonprofit corporation founded in 1981. Its panel of over 100 mediators includes behavioral science professionals, experienced attorneys, and retired judges. The Center provides mediation services, mediation training, consultations with state and local government agencies, and research regarding the approaches to conflict used by various ethnic communities. In addition, the Center may begin providing visitation expeditor services. Fees for mediation services are determined by the parties' individual gross incomes. Administrative fees range from $5 to $200 and are payable prior to initial scheduling; hourly fees range from $2 to $180 and are payable at the end of each session. The Center has a sliding fee scale for low income families.

When providing mediation services, mediators will address any issues that the parties agree to mediate, often including the issues of visitation and child support. The Center uses mixed male and female teams to mediate; one mediator is an attorney and the other has a counseling background. Approximately 50% of the Center's clients are involved in a divorce proceeding, 20% are involved in paternity proceedings, and another 20% are involved in post-decree proceedings. It was reported that it has been difficult to get parties to mediate visitation disputes as custodial parents often have little incentive to participate. It is especially difficult for never-married parents who have not had much of a relationship with each other.

Generally, the Center does not provide services when safety is an issue, such as when domestic abuse has occurred. In cases where abuse is suspected, a discussion will be had with the victim regarding the appropriateness of mediation, and case intake personnel will make the determination as to whether mediation is appropriate. Other cautionary steps may be taken when domestic abuse is or has been an issue, including requiring the party's attorney or an advocate to attend, and staggering start and stop times. Mediation may be terminated if there appears to be a gross imbalance of power between the parties, though some mediators effectively handle these types of cases. About 10% of all callers are screened out of mediation, mostly because of concerns regarding domestic abuse.

In addition to its existing services, in 1994 the Mediation Center began conducting a statewide needs assessment regarding the availability and present use of mediation in the area of family law. A survey was distributed to attorneys, battered women's advocates, alternative dispute resolution providers, social services agencies, and court personnel throughout the State.

PART VI: APPENDICES

As of the date of the presentation to the Subcommittee (May 1996), a 10% response rate had been achieved. While a complete analysis had not yet been conducted, some trends had been observed. It was noted, for example, that while the Willmar area needs more ADR services, the Duluth area is fairly well served, and ADR programs are just being developed in the areas of Rochester and St. Cloud. As part of its study, the Center is developing a statewide network of qualified mediators who will provide affordable services to low income families. The Center intends to provide a statewide access point for such services.

b. Visitation Centers (Minn. Stat. ə 256F.09)

The Minnesota Family Preservation Act (Minn. Stat. Chapter 256F) provides that "the public policy of this State is to assure that all children live in families that offer a safe, permanent relationship with nurturing parents or caretakers." To help achieve this goal, in 1995 the Legislature mandated that the commissioner of human services "shall issue a request for proposals from existing local nonprofit, nongovernment, or governmental organizations to use existing local facilities as family visitation centers which may also be used as visitation exchanges." While other titles may be used in regard to existing facilities, the phrase "family visitation center" is to be used in regard to facilities established under this statute. Grants in amounts up to $50,000 are to be awarded for the purpose of "creating or maintaining family visitation centers in an effort to reduce children's vulnerability to violence and trauma related to family visitation where there has been a history of domestic violence or abuse within the family." The grants are to be awarded in such a manner as "to provide the greatest possible number of family visitation centers and to locate them to provide for the broadest possible geographic distribution of the centers throughout the state."

Each visitation center "must use existing local facilities to provide a healthy, interactive environment for parents who are separated or divorced and for parents with children in foster homes to visit with their children. The centers must be available for use by district courts who may order visitation to occur at a family visitation center. The centers may also be used as drop-off sites, so that parents who are under court order to have no contact with each other can exchange children for visitation at a neutral site. Each center must provide sufficient security to ensure a safe visitation environment for children and their parents."

In addition to establishing visitation facilities, the statute provides that "each county or group of counties is encouraged to provide supervised visitation services in an effort to fill the gap in the court system that orders supervised visitation but does not provide a center to accomplish the supervised visitation as ordered." The statute further provides that "each family visitation center may provide parenting and child development classes and offer support groups to participating custodial parents and hold regular classes designed to assist children who have experienced domestic violence and abuse."

Part VI of this report at *Appendix D* identifies which counties currently have supervised visitation centers and visitation exchange facilities. Each visitation center has its own rules and

offers different services. Most centers require each parent to participate in an intake/screening interview to determine whether the center will be able to provide services. Most centers require each parent to pay a fee each time the center is used. With respect to services offered, most centers provide only weekday evening services, some also offer services during weekend hours, and a few centers provide overnight services. Some facilities serve only as exchange facilities, while others also serve as supervised visitation facilities complete with observation notes that may be submitted to the court and/or other agencies as necessary. Some visitation centers request that the visitation order NOT state the day and time that visitation is to take place as it may conflict with the services available through the center. Some require that if the services of the center are not court ordered, then both parties must agree to use the center.

c. Visitation Expeditors (Minn. Stat. ∋ 518.175)

A visitation expeditor is an individual appointed by the court "to facilitate an agreement" between parties or to make a decision resolving a visitation dispute regarding an existing visitation order. A visitation expeditor has no authority to establish visitation rights and no authority to modify existing visitation rights.

As revised during the 1995-96 legislative session, the Visitation Expeditor Statute provides that "upon request of either party or upon the court's own motion, the court may appoint a visitation expeditor to resolve visitation disputes" that occur as part of dissolution and paternity proceedings. "A party may not be required to refer a visitation dispute to a visitation expeditor if (1) the party has obtained an order for protection under chapter 518B against the other party; or (2) the party is unable to pay the costs of the expeditor." The term "visitation dispute" is defined to mean "a disagreement among parties about visitation with a child, including a dispute about an anticipated denial of a future scheduled visit" and "includes a claim by a custodial parent that a noncustodial parent is not visiting a child as well as a claim by a noncustodial parent that a custodial parent is denying or interfering with visitation."

The Visitation Expeditor statute requires no special training for visitation expeditors and offers no funding to counties to establish visitation expeditor programs.

Counties that currently use visitation expeditors are set forth in Part VI of this report at *Appendix D.*

d. Cooperation for the Children (Minn. Stat. ∋ 256.996)

This visitation-related-project was mandated by 1995 legislation authored in response to concerns that there has been an emphasis on collection of child support and less attention directed to resolution of visitation conflicts, including remedies for wrongful denial of visitation. The Legislature mandated that the commissioner of human services, in consultation with the office of administrative hearings and the office of the attorney general, along with input from community groups, "develop and implement the cooperation for the children program as an effort to promote

parental relationships with children."

The legislation requires that the program include three distinct components: "(1) addressing the needs of parents for educational services pertaining to issues of child custody and visitation arrangements; (2) providing a nonjudicial forum to aid in the resolution of custody and visitation conflicts through written agreements; and, (3) providing mediation services to resolve conflicts related to custody and visitation, when appropriate." Cases are not accepted for mediation when domestic abuse is alleged.

e. Dakota County Divorce Education and Mediation Program (Erickson Mediation Institute)

This two-phase divorce education and mediation program implemented by Dakota County in 1993 is operated by Erickson Mediation Institute. The program mandates participation for all parties involved in Dakota County divorce proceedings. At the discretion of the court, individuals involved in paternity and post-decree matters may also be ordered to participate in the program.

For each case, upon the filing of the divorce petition the Court Administrator sends each party's attorney a letter, a brochure explaining the process and purpose of the two-step program (an education class and a mediation consultation), and a copy of the chief judge's order mandating participation. Each attorney is ordered to forward the information to the client. It was noted that some parties, sometimes apparently at the suggestion of their attorneys, avoid participation in the program by filing a Marital Termination Agreement along with the divorce petition. These individuals may then seek an order allowing them to opt out of the program.

The first phase of the program is an educational component designed for individuals who are in the early stages of a dissolution proceeding and for persons considering divorce, regardless of whether the couples have children. During the first of two, two-hour sessions an Erickson Mediation attorney outlines the legal steps involved in the divorce process, from filing of the petition to filing of the final decree. Also included is a summary of the relevant law, financial issues, and property issues. Litigation and mediation, both alternatives for divorce, are discussed, as are their respective advantages and disadvantages. The second two-hour session includes a discussion of the emotional aspects of divorce (what is normal, what to expect, and what to do to alleviate some of the pain), the impact of divorce upon children (normal and expected reactions of children), and custody versus parenting. Couples without children need not attend the portion of the program relating to child issues. Classes are held at several Twin Cities locations from 6:30 to 8:30 p.m. most Tuesday and Thursday evenings. While pre-registration is required, the cost is $20 for each person who pays at the door, or $17.50 for those who pay in advance. Couples need not attend the same sessions.

The second phase of the program involves a free, one-hour consultation with an Erickson Mediation mediator. A joint meeting of the parties is held during which the mediation process is

discussed as an alternative to litigation. In cases where an Order for Protection or a Restraining Order exists, one of the parties is directed to arrive 15 minutes prior to the arrival of the other party. The first party is then placed in a separate room so there is no contact between the parties prior to the time they meet with the mediator. Before the joint meeting is held, the mediator meets separately with each party to make sure each feels safe meeting with the other in the mediation room. If both parties agree, the consultation is then held. If not, the case is determined to be inappropriate for mediation and the parties leave separately. If the parties agree during the consultation to proceed with the mediation process, a separate mediation conference is scheduled.

While an independent evaluation is not conducted, Erickson Mediation Institute annually provides to Dakota County an evaluation of the program. Participants complete post-class evaluations forms. While a high percentage (88%) of participants indicated they would recommend the class to others, some suggested that the program seems to overemphasize mediation. The 1994 Project Report indicates that during that year 444 court orders were received from Dakota County Judges. In addition, parties to 5 paternity cases and 11 post-decree matters were ordered to participate. Of the 444 dissolution cases ordered into the project, 195 couples complied with all conditions of the order. To comply with the terms of the order, each party had to complete the education program and the mediation consultation. Of the 195 consultations held in 1994, 120 decided to mediate their divorces. Eighty-two of the 120 couples completely settled their divorce through mediation and 16 couples were in the process of doing so at the time the report was prepared. Of the remaining 22 couples, most settled one or more issues through mediation and returned to their lawyers to complete the divorce settlement. Several couples did not settle their cases and discontinued mediation to seek a court settlement of their divorce. Of the 82 cases that were completely settled through mediation, 19 involved couples where either threats of violence or actual violence had occurred during the marriage.

The 1994 Project Report suggests that "the main problem at this point seems to be non-compliance with the court orders, especially failure to attend the consultation." Of the 444 cases ordered to attend in 1994, 195 couples (44%) fully complied with the orders, 184 couples (19%) complied with the first but not the second step, 165 couples (37%) did not comply with the order at all, and 27 cases were not appropriate for the project and were referred elsewhere. Another issue addressed in the report is that the order mandating participation does not identify any consequences for non-compliance and, as a result, program personnel are unable to respond to participants' questions about what happens if only one person participates. The Project Report recommends a meeting with judges and court personnel to resolve some of these issues.

f. Parent's Fair Share Program

This child support-related program initiated in Anoka County is designed for use when the custodial parent is receiving AFDC and the noncustodial parent is either unemployed or underemployed and is not paying child support. Among the participants are the chronically unemployed and former inmates. The goals of the program are to increase collection of child

support and increase the parenting skills of the noncustodial parent. Peer support and mediation are also offered, as are job training seminars and assistance in finding a job. The program is funded by a State appropriation, and Federal matching funds are available. A Ford Foundation grant was awarded to replicate the program, and it has now been expanded to Ramsey and Dakota Counties. Similar programs operate in six to eight other states.

Participation in the program begins when an obligor has been ordered to appear at a contempt hearing as a result of nonpayment of support. The obligor's options from the contempt hearing are either entry of a support order or jail. As an alternative to jail, noncustodial parents are urged to participate in the program. As an incentive to agree to participate, obligors are required to pay only $50.00 per month in child support, rather than the amount required under the child support guidelines. Participation may last for up to one year.

An independent evaluation of the program indicates favorable results. It was noted, for example, that successful participation increases visitation and improves the relationship with the custodial parent. Because of cost prohibitions, the program has not been expanded beyond AFDC cases.

2. Overview and Findings of National "Waive I" Study

In 1988 Congress passed the Family Support Act which, in part, authorized states to implement projects demonstrating innovative techniques to resolve child access and visitation problems. In 1990 the Center for Policy Research in Denver, Colorado, received a grant from the State Justice Institute to examine methods of visitation enforcement in American courts. After reviewing a list of national visitation enforcement programs (prepared by the Association of Family and Conciliation Courts), the Center selected five innovative programs (now known as the "Waive I" programs[101]) for intensive analysis. The five "Waive I" programs, each of which is summarized below, are: Expedited Services Program (Maricopa County, Arizona); Family Court Services (Wyandotte County, Kansas); Friend of the Court Visitation and Child Support Enforcement Program (Michigan); Pre-Contemptors/Contemptors Group (Los Angeles, California); and Support and Visitation Enforcement (Lee County, Florida).

To assess each program, evaluators conducted site visits, observed various types of

[101]In 1990 Congress appropriated funds for the evaluation of three demonstration projects aimed at testing the impact of mediation on the resolution of bitterly-waged child access disputes. Other funds were appropriated in 1991 authorizing four additional demonstration projects, each of which were to use interventions other than mediation to resolve frequently-recurring visitation disputes. These seven programs are now known as the "Waive II" programs. During 1996, Policy Studies, Inc., and the Center for Policy Research of Denver, Colorado, the entities hired by the Federal Government to evaluate the seven Waive II programs, submitted to Congress the results of their evaluations. The report, however, is currently unavailable for publication as it must first be reviewed and cleared by Congress. The director of the project was unable to provide a "guesstimate" as to when the report would be made available.

services in use, and interviewed key staff and relevant legal and judicial personnel. In addition, evaluators selected a random sample of parents served by each program, studied the information they provided as part of the program, reviewed their court files, and conducted follow-up telephone surveys. The five Waive I programs use various combinations of methods to address visitation problems, including expedited complaint procedures, supervised visitation, monitored visitation exchanges, warning letters, contempt procedures, case monitoring, mediation, and education.

With respect to the demographics of the types of cases handled by the five programs, the Executive Summary of the Waive I report includes the following major findings:

- In 77-84% of the cases at each site the mother had physical custody of the children;

- Approximately 34-53% of the cases in Arizona, Michigan, Florida, and Kansas, and 14% of the cases in California, had "reasonable" visitation orders while the remainder had visitation orders that included a specific schedule "that rarely called for the child to spend more than 30 percent of his/her time with the nonresidential parent";

- Most of the cases at all sites had both visitation and child support problems, with 39% of the cases involved in visitation programs also having support arrearages and three-quarters of the cases in Michigan and Florida having arrearages (note that, unlike Minnesota today, none of the five sites had available to them automatic income withholding mechanisms);

- Most cases at all sites involved "long histories of previous litigation over access and child support matters," with the onset of the disputes most often occurring within the first twelve months after entry of the final order. The history of prior litigation ranged from 50% in Michigan, to 63% in Arizona and Florida, and 94% in California. In one-third of all cases, a court action involving child support enforcement or modification was immediately followed by the filing of a visitation-related action;

- Custodial and noncustodial parents cited different types of visitation complaints. Both custodial and noncustodial parents complained about fighting during pick-up and drop-off, being denigrated in front of the children, and lack of specificity in visitation orders; noncustodial parents most often complained that access was not being permitted; and custodial parents of both sexes contended that the other parent failed to exercise visitation and also often cited concerns for the child's safety when visitation was being exercised; and

- Although there was no way for the evaluators to corroborate any of the

allegations, about one-half of all cases at all sites involved an allegation of parental misconduct (usually against the father).

With respect to the effectiveness of the five programs at resolving visitation and child support disputes, the Executive Summary of the Waive I report includes the following major findings:

- Overall, "there was no change in the reported regularity of visitation at any of the sites following program participation." Following participation, about one-half of the noncustodial parents who previously had little or no visitation experienced an increase, and about one-half of the noncustodial parents who had regular visitation experienced a decrease in visitation (declines in the amount of visitation were related to child support payment behaviors rather than to participation in the program);

- At each site about one-half of all parents reported continuing visitation problems following program participation, another group experienced some improvement, and about one-third of the parents reported no improvement;

- While parents in the same families gave differing reports regarding whether child support was or was not current at the time participation in the program began, following participation "there appeared to be a modest improvement in child support payment behaviors";

- The most common outcome at every site was establishment of a specific visitation schedule where there had previously been only "reasonable" visitation (in Arizona, Michigan, and Florida, about 39% of the cases with reasonable visitation received specific schedules either by agreement of the parties or court involvement);

- Although the laws of each of the five states permitted use of aggressive enforcement remedies, including make-up visitation, fines, jail sentences, bench warrants, or citations for contempt, punitive remedies were rarely invoked at any of the sites. While approximately 8% of the cases at each site experienced a change in physical custody, most of the changes occurred because of an agreement between the parents rather than because of court intervention;

- Custodial and noncustodial parents at all sites favored specified visitation orders, one-on-one interventions with court personnel, attendance at education programs, and monitoring by court workers to ensure compliance with orders as among the most effective methods of resolving visitation disputes; and

- While at least one-half of the parents at each site expressed "at least modest

satisfaction" with their participation in the visitation programs, at the same time few parents felt optimistic about the participation in the program leading to actual improvements in the behavior of the other parent, the regular payment of child support, or the ability to exercise visitation.

With respect to the effectiveness of the five programs at decreasing the amount of time spent by courts in resolving visitation and child support disputes, the Executive Summary of the Waive I report includes the following major findings:

! The rate of relitigation over visitation issues decreased significantly with program participation, while the rate of relitigation regarding child support issues did not change.

Based upon their findings the Waive I evaluators arrived at the following conclusions which are set forth in the report:

! The programs appear to have helped at least half of the clients they served";

! "Those who were not helped probably needed more intensive interventions. One approach would be to stress case monitoring approaches with frequent client contacts, since the most promising relitigation results occurred in programs with this type of approach. Another approach with this population might be a longer-term therapeutic type intervention:' and

! "It might be worth experimenting with mandatory, preventive education programs to attempt to avoid having visitation problems develop in the first place."

3. Five "Waive I" Visitation Assistance Programs

Following is a summary of each of the five programs assessed as part of the Waive I evaluation:

a. Expedited Services Program (Maricopa County, Arizona)

This program deals with both divorce and paternity actions. While both visitation and support enforcement issues may be addressed, they are dealt with by separate and independent components of the program. Regardless of whether a case has both visitation and child support issues in dispute, separate conference officers handle each issue and do not interact with each other regarding other issues that may be involved in the case.

The child support component of the program was established to comply with an Arizona statue requiring expedited procedures for petitions alleging non-compliance with an existing child support order. The program offers both enforcement services and monitoring of payments. The

enforcement service is designed to help parents who are not receiving the child support, medical coverage, or spousal maintenance ordered by the court. A custodial parent who is not receiving the amount ordered may file a pro se form requesting that the matter be reviewed. The cost of the filing fee is $49.50, although the custodial parent may request that the noncomplying party to be directed to reimburse the filing fee amount. Upon the filing of a request for services, a conference officer independently calculates the amount of the child support arrearage and, if it is at least one month past due, the other party is notified.

The parties then meet with the conference officer in an attempt to reach an agreement regarding the amount that is past due and to set a payment plan. If the parties reach an agreement, the conference officer submits to the court a report and a proposed order identifying the amount past due and the payment plan. The court then signs the order, which includes a judgment for the amount past due. If the parties are unable to reach an agreement, the conference officer submits to the court and the parties a report identifying the amount of the arrearage as calculated by the officer and recommending a payment plan. The judge adopts the recommendations by signing the order that accompanied the report. The parties have 15 days from the date the order is signed to appeal the decision.

Regardless of whether the order is entered based upon the parties' agreement or the conference officer's recommendation, all child support cases are then monitored for a period of six months. Case workers weekly monitor all payments received to make sure all obligors are complying. Failure to timely submit a payment will result in issuance of a court order which requires the person to appear at a court hearing to show cause why the person should not be jailed for contempt of court. All noncompliance cases are heard together during one court session. The person will be jailed if the past due amount is not paid.

The child support component of the program also offers employment monitoring services for clients who are seeking employment in order to meet their child support obligations. Clients referred to this service must submit employment search information to the program on a bi-weekly basis for verification purposes.

The visitation component of the program was established in 1988 to comply with an Arizona statute requiring expedited procedures for petitions alleging non-compliance with an existing visitation order. The program is available for parents, grandparents, and any other party alleging violation of an existing visitation order. A party who believes a violation has occurred may file a pro se form requesting that the matter be reviewed. The cost of the filing fee is $49.50, although the person requesting services may seek an order from the court directing the other party to reimburse the filing fee amount.

Within seven days of the filing of a request for services a conference officer meets with the parties in an attempt to reach an agreement resolving the dispute. All conference officers hold a Masters' level degree in a behavioral science, plus at least two years of post-Masters' experience, and all have received mediation training. If the parties reach an agreement, the

conference officer submits to the court a report discussing the nature of the dispute and its resolution and a proposed order setting forth the agreement. The court will then sign the proposed order.

If the parties are unable to reach an agreement, the conference officer submits to the court and the parties a report setting forth the nature of the dispute, the parties' positions, recommendations for resolving the dispute, and a proposed order. On an as-needed basis, the conference officer may also include in the report recommendations regarding modification of the existing visitation or custody order, drug or alcohol treatment, supervised visitation, supervised exchange, counseling, random urinalysis, or other services. The judge then signs the proposed order (unless a change of custody is recommended, in which case a hearing is always held). The parties have 15 days from the date the order is signed to object to the decision. A hearing is held if a party timely submits an objection. In the absence of any objection, the interim order becomes a final order.

In addition to providing dispute resolution services, the program also offers a case monitoring service where compliance with the visitation order is monitored, usually for a six-month period. During the six-month period a party can call the conference officer to report a violation of the order. The conference officer automatically schedules a hearing and issues an order to show cause regarding the dispute. If wrongful noncompliance is found, the court has a number of options available to enforce compliance, including contempt charges, fines, and, if the best interests of the child are being jeopardized, ordering the conference officer to file a child in need of protection or services petition with the social services office. The program also provides supervised visitation services through community providers.

Case managers from both the child support and visitation components recently began preparing weekly in-house reports regarding the number of clients served, whether parties appeared at conferences and/or hearings, whether an existing order was enforced or modified, if an order was modified, whether it was modified by agreement of the parties or decision of the court, and what other decisions (judicial or otherwise) were made. The program staff has not yet analyzed the data presented.

b. Family Court Services (Wyandotte County, Kansas)

This program offers both educational and remedial case management services. While the program addresses visitation conflicts, it is not available for resolution of child support disputes (these are referred to the Court Trustee, private attorneys, or the social and rehabilitation services office).

The parent education program, entitled "Sensible Approach to Divorce (SAD)," is a two-hour "preventative session" offered on a weekly basis. Attendance is mandatory for all divorcing parents with minor children. An order directing attendance at the class is immediately issued upon the filing of a divorce petition. To promote attendance, judges have the authority to

withhold issuance of the final divorce decree or to hold the offending party in contempt of court until compliance has occurred.

The case management component of the program is a court-ordered service for couples who have recurring visitation problems. It was designed to help parents overcome "petty grievances" and to head off more serious communication blocks. Court-ordered case management services may include telephone contacts with one or both parents, in-person meetings, and recommendations to the court. The program may lead to referrals for various services, including mental health treatment and supervised visitation. All program participants are referred by the court, and tend to be parents with private attorneys rather than pro se litigants. There is no charge to the parties for the services rendered. Salaries are paid by the State, and other costs are paid by each county. Annual costs total approximately $110,000.

c. Friend of the Court Visitation and Child Support Program (Michigan)

The Friend of the Court (FOC) Office is an agency of each circuit court of Michigan and is responsible for enforcing orders and delivering services related to divorce proceedings, paternity actions, support matters, and interstate proceedings. The FOC Office provides assistance to the court in matters over which the court cannot exercise personal supervision, and furnishes the court with recommendations related to support, custody, and visitation. The expenses of the FOC are paid by the state and county, with the an average cost of $100 per case.

With respect to child support issues, the FOC Office provides assistance related to collection, disbursement, investigation of arrearages, enforcement, and modification of support orders. In cases where child support arrearages exist, the FOC Office must commence enforcement actions before the arrearage is greater than one month's payment. In cases where public assistance is received, the FOC Office must conduct a child support investigation at least once every 24 months.

With respect to custody and visitation issues, the FOC Office serves as both an investigative agency and an enforcement authority. Custodial and noncustodial parents with an existing visitation order may file a pro se complaint alleging violation of the order. Upon the filing of a complaint, program personnel investigate the allegation and attempt to resolve the problem in a variety of ways, including (1) telephone and in-person conferences to educate parents and resolve disputes; (2) formal mediation interventions; (3) referrals for counseling, parent education, drug and alcohol treatment, and other services; (4) initiation of civil contempt proceedings; (5) documentation of visitation arrearages; and (6) show cause hearings conducted by hearing officers and judges. As part of its investigation, the FOC Office has authority to mandate remedies for violation of an existing visitation order, including compensatory visitation, modification of the existing visitation schedule, and supervised visitation. It is the only entity providing on-going case management in domestic relations actions. The FOC Office need not investigate more than one request from a party each 24 months.

d. Pre-Contemptors/Contemptors Group (Los Angeles, California)

Implemented in 1988 as part of each court services office, this program offers both educational and remedial services. The educational component of the program includes classes regarding custody and visitation laws, the effects of parental conflict and litigation upon children, the developmental needs of children, and techniques to improve communication and develop problem-solving skills. The program is mandatory for parents found to be in contempt of custody and/or visitation orders. It is also mandatory for those who are heading toward contempt charges or who are engaging in behavior which produces continuing litigation because of noncompliance with previous court orders. All program participants are referred by judges.

As a separate component, the program offers mandatory mediation for post-decree visitation disputes. Since 1981 California law has required parents involved in custody or visitation disputes to attempt mediation before their matter can be set for a court hearing. The 1992 Report regarding the State's mandatory mediation service indicates that during 1991 there were an estimated 65,500 mediation sessions. In addition to serving as a facilitator, the mediator has the authority to: determine whether attorneys may be present during mediation sessions; recommend custody evaluations or investigations; recommend restraining orders; and render custody or visitation recommendations to the court when a mediation does not result in a full agreement on all issues.

Other services available through the program include settlement conferences, counseling, assessments, and case screening services. Some programs (5 courts) will also address support issues. Although many courts charge fees for the services rendered, financial support is built into each court's budget. Most mediators and clients rate the program favorably.

e. Support and Visitation Enforcement "SAVE" (Lee County, Florida)

Created in 1986, this program deals with both child support and visitation issues in one setting. It was designed to enable parents to participate in mediation, pretrial conferences, and judicial hearings to identify and remedy visitation and/or child support disputes. To access services, parents must have an existing visitation and/or child support order. The program does not deal with establishment or modification of visitation or support rights. Parents requesting services meet with a program mediator and/or court attorney who conducts a brief pretrial conference. Attendance by the other party is compelled by an order to show cause. If the parties are unable to reach an agreement either through the pretrial conference or mediation, the attorney presents the case to a judge who also reviews all private agreements made by the parties. Certain cases, as determined by the program staff, may also receive monitoring and enforcement services. Parents must pay a $35 application fee for the program, and, for the monitoring and enforcement services, an annual $15 fee. Additional fees may be assessed for special services. Failure to comply with the court order may result in a finding of contempt and/or other sanctions.

4. Other United States and Canadian Visitation Assistance Programs

PART VI: APPENDICES

In addition to studying programs that were part of the Federal Waive I evaluations, Task Force members also reviewed programs found in other States and Countries, each of which is summarized below.

a. Access Assistance Project (Manitoba, Canada)

Like Minnesota's courts and legislature, the judicial and legislative branches of Manitoba's government have long recognized that some divorcing couples experience visitation problems and a certain percentage of the population experiences recurring conflicts. In response to this concern, in 1986 the Manitoba Department of Justice conducted a survey of access (noncustodial) parents to determine the extent to which there was noncompliance with access (visitation) orders. The "study confirmed the need for an alternative to voluntary mediation and private litigation that already existed in the community to resolve access violations." As a result of the survey, an interdisciplinary pilot project was developed to "(a) assist in facilitating the right of the child to have a positive, continuing relationship with the access parent; (b) assist the access parent in maintaining or reestablishing a long-term relationship with the child; and (c) assist the custodial parent in promoting reliable and consistent access patterns." Working on the premise that the best interests of the child are usually served by contact with both parents, the program offers a combination of legal and counseling approaches, including a "this is the law" message and a "let's work together for the child" message. The project does not offer service "where there have been allegations or proven incidents of child sexual abuse."

There are two prerequisites to participation in the program: (1) there must be an access (visitation) order in place and it must include a specific access schedule rather than only a statement that visitation shall be "reasonable"; and (2) each couple must have first attempted mediation or the case must have been assessed by a mediator as inappropriate for mediation.

Access to the project begins with a referral, which may come from the court, the custodial or noncustodial parent, lawyers, or community agencies. During an intake meeting all applicants are screened to make sure services are appropriate and to review both legal and therapeutic implications for service. Next is an interdisciplinary pre-service meeting, attended by parents and their lawyers, designed to clearly present what the program has to offer and how it works. The focus of the meeting is getting the parents to realize what is best for the child. At this meeting the access parent is informed that the best plan for the child is to gradually increase access, rather than venting and "wanting my rights enforced now." The custodial parent is simultaneously "pushed" to realize that contact with both parents is in the child's best interests and that he/she should assist the child to develop a positive relationship with the other parent. One of the counselors will also meet with the child. Next, the access parent will have one supervised visit with the child so that the child's situation and emotional state may be assessed. To help the custodial parent ease into allowing visitation, the custodial parent may observe this assessment visit. Both parents are asked to sign an agreement for service which provides that they agree to the assessment phase, understand it is not a confidential process, and agree to

complete post-service evaluation questionnaires.

The next phase is a systematic assessment that takes approximately one month to complete. The goal is to form "an accurate determination of the parents' and child's resistance to maintaining a stable access arrangement that is predictable for the child." Once the assessment is completed, written recommendations are delivered to the parents, and their suggestions and feedback may be incorporated into the plan. If a parent rejects the plan, the parents and their attorneys may be called to a settlement meeting, chaired by the program's lawyer. The recommendations are reviewed with an eye toward the child's best interest. If no consensus is reached, the program lawyer makes it clear that the program will next proceed to court on contempt charges. Once a plan is implemented, volunteers (who are screened and then trained) may be assigned to assist in telephone monitoring of access, supervision of the exchange between parents, or supervising visitation.

The project was implemented in 1993 and evaluated in 1995. The evaluation process took into consideration the population served, the services offered, the results in terms of resolution of visitation problems, the participants' co-parent relationship, the predictability of the child's schedule, and the child's adjustment. The results of the evaluation indicated that the project was not as successful as anticipated. For example, while many families who received parent education classes and other assistance were able to learn methods to resolve their visitation disputes, many others were not helped because of a lack of or ineffective tools for enforcing compliance (mainly by custodial parents). Because the primary intent of the program was to aid families with ongoing or recurring visitation problems, it was considered unsuccessful. For that reason, and because of cost constraints, the Department of Justice decided to not fund the project on an ongoing basis and the project is now defunct.

b. Court Mediation Services (Maine)

Implemented as part of Maine's Judicial Department, the goal of this mediation services program is to assist parties involved in litigation "to reach an informed, consensual, and expeditious resolution of their disputes and, in matters affecting children, to help parents reach agreements that will serve the best interests of their children." Maine's statutes provide for mandatory mediation of all contested domestic relations cases in which minor children are involved, including divorce and paternity actions, and all phases of each action (ranging from temporary orders to final orders to post-decree matters). Specifically included are custody and visitation disputes. The court may order a waiver from mandatory mediation if extraordinary circumstances exist. Mediation services are also available for child support issues, although it is not mandatory. Parties attending mediation are required to make a good faith effort. The court may order sanctions for parents who fail to attend mandatory mediation sessions. Parties are encouraged to have their attorneys present at the mediation sessions. A one-time fee of $120 per case is assessed, although the fee may be waived for indigency. The State Court Administrator's budget for this statewide program is $252,000.

PART VI: APPENDICES

In 1992 the Commission to Study the Future of Maine's Courts utilized a panel of experts to review the performance of the mediation service program. The Fall 1992 Newsletter of the Association of Family and Conciliation Courts briefly discusses the program and reports that the experts found the program "to have widespread support of the judges, lawyers, users, and the legislature," and further that the program "deserves recognition" for "remaining accessible and affordable." User comments are solicited from every participant in the program, and these responses have been favorable. A comprehensive performance evaluation funded by a grant from the State Justice Institute is under way, but will not be completed for several years.

c. Family Court Conflict Resolution Services (Wichita County, Kansas)

This two-component program offers both educational and remedial services for parents involved in divorce and paternity proceedings. The educational portion of the program includes a four-hour "Children of Divorce" workshop (mandatory program for parents) and "My Changing Family" (optional program for children). The parents' program is designed to help parents avoid making basic mistakes in parenting during and after a divorce process. It emphasizes avoidance of conflict, the six phases of divorce, avoiding destructive games, "normal" problems experienced by children, child development, and coping strategies. The children's program is presented by the Wichita Area Girl Scouts in four 12-hour sessions. It is available for children ages six through 14 who are experiencing divorce in their family. Using various child-oriented activities, the program is designed to help children understand and cope with the emotional stress of divorce. The cost is $26 per person for the Children of Divorce workshop and $30 per family for the My Changing Family program.

The program also offers a variety of conflict resolution services, including mediation, therapeutic (extended) mediation, intensive weekend workshops, dispute resolution counseling, child custody investigations, case management, and child protection services. The program literature suggests that mediation is a service that can be used to settle custody and visitation disputes. Therapeutic mediation is described as a more complex mediation process, often involving step-parents, the parents' respective significant others, and an interview with the children involved. The cost of mediation is equally shared by the parties, unless the court orders otherwise or the parties agree to a different arrangement. Mediators set their own fees, ranging from $150 per hour to $25 per party (sliding scale).

The intensive weekend workshop is offered four times per year with up to 10 families attending each session. Parents, step-parents, and significant others attend Friday and Saturday evening sessions, and children have their session on Saturday. Couples are separated, with fathers and mothers in mixed-gender groups. The parents review educational materials, discuss their disputes, hear the other gender's viewpoint, and (hopefully) discover the underlying cause of their conflict, why it continues, and tools for resolving future disputes.

Dispute resolution counseling, used by "highly conflicted families" and available only by stipulation of the parties or court order, is designed to help families reach agreements to resolve

the disputed issues. The counselor is experienced in both family therapy and therapeutic mediation. The parties are seen alone, in combinations, and/or with the child. The counselor also works with the attorneys and other therapists to form a therapeutic team.

Child custody investigations are used only for specific cases, such as when neglect, unsanitary conditions, school failure, or remarriage violence are alleged. The investigation is court ordered and all privileges are waived. The investigator makes recommendations to the court regarding necessary services, including mental health treatment, chemical dependency evaluations, visitation supervision or limitations, custody changes, etc.

Case management involves the appointment of a neutral to address issues and resolve disputes in cases where there is ongoing, recurring conflict. The literature suggests that "this service is intended for the 1% to 2% of the cases which continue to have active conflict despite other interventions." Included are cases where conflict continues despite all other attempts at conflict resolution, cases with a history of spousal violence, cases where child protection issues are present, and cases with confirmed, active addiction or mental illness in a parent or child. The case manager remains on the case until the youngest child turns 18 or until the court rescinds the order. When conflicts arise, the parties are ordered to contact the case manager and must attempt to settle the issues prior to filing any motions. The case manager uses mediation techniques and, over time, attempts to teach the parties how to solve their own disputes. If the parties cannot settle issues or do not follow agreements, the case manager makes recommendations to the court in the form of temporary orders. If they are not objected to within 10 days, they become permanent orders. Any recommendations for change of custody, however, are heard by the court. The process is not confidential, and the case manager has access to all records and third parties, including extended family members, step-parents, significant others, etc. The cost of case management is shared equally by the parties, assigned by income proportions, or assessed against one party.

d. Mediation Program (Idaho)

This program is designed for all family court actions involving a conflict over custody or visitation, regardless of whether the conflict is pre- or post-decree. The program does not address child support issues. Upon finding that mediation is in the best interest of the children and is not otherwise inappropriate, the court orders parties into the program. Unless invited by the mediator, attorneys are excluded from the sessions. During the initial conference the mediator has a duty to define and describe for the parties the process of mediation and its costs. The description must include the difference between mediation and other forms of conflict resolution, including therapy and counseling; the fact that any agreement reached will be reached by mutual consent of the parties; and that the parties have the right to have an attorney review the agreement before it is submitted to the court. No information is available regarding the effectiveness of the program.

PART VI: APPENDICES

e. Visitation and Custody Mediation Program (North Carolina)

North Carolina has adopted "Uniform Rules Regulating Mediation of Child Custody and Visitation Disputes." The Uniform Rules provide that "all actions involving unresolved issues as to the custody or visitation of a minor child shall be ordered to mediation on such issues prior to the trial of the matter." Included in the mandatory program are "actions for custody or visitation in which no order has been previously entered, motions to modify orders previously entered, and actions to enforce custody and visitation orders." Failure to attend the mediation session may result in contempt proceedings and/or other sanctions. The goal is to reach a "parenting agreement" that involves both parents. While child support is not addressed, the program's brochure includes "testimonials" by attorneys who have found that mediation of custody and visitation issues often improves the parents' ability to negotiate financial settlements, including support issues. The parties are not charged any fees; the program is funded out of the State's general fund. Sixteen programs in 14 out of 39 counties cost $700,000. It is estimated that a statewide program would cost around $1.3 million.

PART VI: APPENDICES

APPENDIX C

MODEL LANGUAGE FOR "REASONABLE VISITATION GUIDELINES"

The following "reasonable visitation guidelines" are in use in the Fourth Judicial Circuit Court of South Dakota:

A powerful cause of stress, suffering, and maladjustment in children whose parents are divorced, separated, or were never married is not simply the divorce itself, but the continuing conflict between the parents before, during, and after the divorce or paternity proceeding. To minimize conflict over the children, parents should have a parenting arrangement that is most conducive to the children having frequent and meaningful contact with both parents with as little conflict as possible.

When parents' maturity, personality, and communication skills are adequate, the ideal arrangement is reasonable visitation upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed visitation agreement made by the parents to fit their particular needs and, more importantly, the needs of the children. If the parents are unable to agree, the following guidelines will help them to know what is reasonable, unless special circumstances require a different arrangement. (See Paragraph 1.16 below.)

Unless these guidelines are set forth in a court order, they are not compulsory rules, only a general direction for parents.

1. GENERAL RULES

Parents should always avoid speaking negatively about the other and should firmly discourage such conduct by relatives or friends. In fact, each parent should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other parent. Children should never be used by one parent to spy on the other. The basic rules of conduct and discipline established by the custodial parent should be the base-line standard for both parents and any step-parents, and consistently enforced by all, so that the children do not receive mixed signals.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. Usually the children will visit with their paternal relatives during times they are with their father and will visit with the maternal relatives during times they are with their mother.

PART VI: APPENDICES

In cases where both parents resided in the same community at the time of separation, and then one parent left the area, thus changing the visitation pattern, the court will consider imposing the travel costs for the children necessary to facilitate future visits on the parents who moved. The court will also consider other factors, however, such as the economic circumstances of the parents and the reasons prompting the move.

1.1 Parental Communication. Parents should always keep each other advised of their home and work addresses and telephone numbers. As much as possible, all communication concerning the children shall be conducted between the parents themselves in person or by telephone at their residences and not at their places of employment. The children should not carry messages from one parent to the other.

1.2 Grade Reports and Medical Information. The custodial parent shall provide the noncustodial parent with grade reports and notices from school as they are received and shall permit the noncustodial parent to communicate concerning the child directly with the school and with the children's doctors and other professionals outside the presence of the custodial parent. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. The custodial parent shall notify the noncustodial parent of all school or other events (e.g., Church or Scouts) involving parental participation. If the child is taking medications, the custodial parent shall provide a sufficient amount and appropriate instructions for the visitation periods.

1.3 Visitation Clothing. The custodial parent shall send an appropriate supply of children's clothing with them, which shall be returned clean (when reasonably possible), with the children, by the noncustodial parent. The noncustodial parent shall advise, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.

1.4 Withholding Support or Visitation. Neither visitation nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and visitation, neither of which is dependent upon the other. In other words, no support does not mean no visitation, and no visitation does not mean no support. If there is a violation of either a visitation or a support order, the only remedy is to apply to the court for appropriate sanctions.

1.5 Adjustments in this Visitation Schedule. Although this is a specific schedule, the parties are expected to fairly modify visitation when family necessities, illnesses, or commitments reasonably so require. The requesting parent shall act in good faith and give as much notice as circumstances permit.

1.6 Custodial Parent's Vacation. Unless otherwise specified in a court order or agreed by the parties, the custodial parent is entitled to a vacation with the children for a reasonable period of time, usually equal to the vacation time the noncustodial parent takes with the children. The custodial parent should plan a vacation during the time when the noncustodial parent is not

exercising extended visitation.

1.7 Insurance Forms. The parent who has medical insurance coverage on the children shall supply, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to a doctor, dentist, or other provider not so approved or qualified should pay the additional cost thus created. However, when there is a change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parties to what is more important: allowing the child to remain with the original provider or the economic consequences of changing. When there is an obligation to pay medical expenses, the parent responsible therefor shall be promptly furnished with the bill by the other. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was paid.

1.8 Child Support Abatement. Unless a court order otherwise provides, support shall not abate during any visitation period.

1.9 Missed Visitation. When a scheduled visitation cannot occur due to events beyond either parents' control, such as illness of the parent exercising visitation or the child, a mutually agreeable substituted visitation date shall be arranged, as quickly as possible. Each parent shall timely advise the other when a particular visitation cannot be exercised. Missed visitation should not be unreasonably accumulated.

1.10 Visitation a Shared Experience. Because it is intended that visitation be a shared experience between siblings, all of the children shall participate in any particular visitation, unless these Guidelines, a court order, or circumstances, such as age, illness, or the particular event, suggest otherwise. Toddlers and preschoolers may be able to enjoy the same extended visitation schedule along with their older brothers and sisters.

1.11 Telephone Communication. Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The custodial parent may call the children at reasonable hours during those periods when the children are on visitation. The children may, of course, call either parent, though at reasonable hours, frequencies, and at the cost of the parent called if it is a long distance call. During long vacations the parent with whom the child is on vacation is only required to make the child available to telephone calls every five days. At all other times the parent the child is with shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the child will be made available.

PART VI: APPENDICES

1.12 Mail Contact. Parents have an unrestricted right to send cards, letters, packages, audio tapes, and video cassettes to their children. The children also have the same right to send items to their parents. Neither parent should interfere with this right. A parent should provide a child with self-addressed stamped envelopes for the child's use in corresponding with that parent.

1.13 Privacy of Residence. A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence. The parent dropping off the children should not leave until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is their own, and the children's time with that parent is equally private.

1.14 Special Considerations for Adolescents. Within reason the parent should honestly and fairly consider their teenager's wishes on visitation. Neither parent should attempt to pressure their teenager to make a visitation decision adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

1.15 Day Care Providers. When parents reside in the same community they should use the same day care provider. To the extent possible the parents should rely on each other to care for the children when the other parent is unavailable.

1.16 Special Circumstances.

A. Child Abuse. When child abuse has been established and a continuing danger is shown to exist, all visitation should cease or only be allowed under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases.

B. Spouse Abuse. Witnessing spouse abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse, may be capable of doing so with children as well. Depending on the nature of the spouse abuse and when it occurred, the court may require an abusive spouse to successfully complete appropriate counseling before being permitted unsupervised visitation.

C. Substance Abuse. Visitation should not occur when a noncustodial parent is abusing substances.

D. Long Interruption of Contact. In those situations where the noncustodial parent has not had an ongoing relationship with the child for an extended period, visitation should begin with brief visits and a very gradual transition to the visitation in these guidelines.

E. Kidnapping Threats. Noncustodial parents who have threatened to kidnap or hide the children should have no visitation.

F. Breast Feeding Child. Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has occurred without forcing, a nursing infant should have visits of only a few hours each. A parent should not use breast feeding beyond the normal weaning age as a means to deprive the other parent of visitation.

G. A Parent's New Relationship. Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parent's separation and divorce.

H. Religious Holidays and Native American Ceremonies. Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and cooperate with each other on visitation to achieve these goals. These goals should not be used to deprive the noncustodial parent of visitation.

I. Other. The court will limit or deny visitation to noncustodial parents who show neglectful, impulsive, immoral, criminal, assaultive, or risk-taking behavior with or in the presence of the children.

2. VISITATION OF CHILDREN UNDER AGE FIVE

Infants (children under 18 months of age) and toddlers (18 months to three years) have a great need for continuous contact with the primary caretaker who provides a sense of security, nurturing, and predictability. Generally, overnight visits for infants and toddlers are not recommended unless the noncustodial parent is very closely attached to the child and is able to provide primary care. Older preschool age children (three to five) are able to tolerate limited separations from the primary caretaker. The following guidelines for children under age five are designed to take into account the child's developmental milestones as a basis for visitation. Since children mature at different rates, these may need to be adjusted to fit the child's unique circumstances. These guidelines may not apply to those instances where the parents are truly sharing equally all the caretaking responsibilities for the child and the child is equally attached to both parents. Yet in the majority of situations where the custodial parent has been the primary caretaker and the noncustodial parent has maintained a continuous relationship with the child but has not shared equally in child caretaking, the following guidelines should generally apply:

A. Infants - Birth to Six Months. Alternate parenting plans: (1) Three two-hour visits per week, with one weekend day for six hours, or (2) Three two-hour visits per week, with

one overnight on a weekend for no longer than a twelve hour period, if the child is not breast feeding and the noncustodial parent is capable of providing primary care.

B. Infants - Six to Eighteen Months. Alternate parenting plans: (1) Three three-hour visits per week with one weekend day for six hours, or (2) Same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the noncustodial parent is capable of providing primary care, or (3) Child spends time in alternate homes, but spends significantly more time at one of them and no more than two twelve-hour overnight visits per week at the other. This arrangement should be considered only for mature, adaptable children and very cooperative parents.

C. Toddlers - Eighteen to Thirty-Six Months. Alternate parenting plans: (1) The noncustodial parent has the child up to three times per week for a few hours on each visit, on a predictable schedule, or (2) Same as (1) but with one overnight per week, or (3) Child spends time in alternate homes, but more time in one than the other with two or three overnight visits spaced regularly throughout the week. This requires an adaptable child and cooperative parents.

D. Preschoolers - Three to Five Years Old. Alternate parenting plans: (1) One overnight visit (i.e., Saturday morning to Sunday evening) on alternate weekends and one midweek visit with the child returning to the custodial parent's home at least one-half hour before bedtime, or (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other home. In addition, for preschoolers, a vacation of no longer than two weeks with the noncustodial parent.

E. Children in Day Care. In families where a child has been in day care prior to the parental separation, the child may be able to tolerate flexible visits earlier because the child is more accustomed to separations from both parents. The noncustodial parent who exercises visitation of a child under age five should not during the visits place the child with a babysitter or day care provider. If the noncustodial parent cannot be with the child personally, the child should be returned to the custodial parent. Visiting for short periods with relatives may be appropriate, if the relatives are not merely serving as babysitters.

3. VISITATION OF CHILDREN AGE FIVE AND OVER WHERE THERE IS SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND PARENTS RESIDE NO MORE THAN 200 MILES APART

3.1 Weekends. Alternate weekends from Friday at 5:30 p.m. to Sunday at 7:00 p.m. (the starting and ending times may change to fit the parents' schedules) or an equivalent period of time if the visiting parent is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits of two to three hours. All transportation for the midweek visits are the responsibility of the visiting parent.

PART VI: APPENDICES

3.2 Mother's Day - Father's Day. The alternate weekends will be shifted, exchanged, or arranged so that the children are with their mother each Mother's day weekend and with their father each Father's Day weekend. Conflicts between these special weekends and regular visitation shall be resolved pursuant to Paragraph 1.9 - Missed Visitation.

3.3 Extended Visitation. One-half of the school summer vacation. At the option of the noncustodial parent the time may be consecutive or it may be split into two blocks of time. If the child goes to summer school and it is impossible for the noncustodial parent to schedule this visitation time other than during summer school, that parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in the noncustodial parent's community.

3.4 Winter (Christmas) Vacation. One-half of the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the noncustodial parent shall have the first half in even-numbered years. When the parents live in the same community, the parents should alternate each year Christmas Eve (overnight) and Christmas Day (9:00 a.m. to 9:00 p.m.) so that the children spend equal time with each parent during this holiday period. Such Christmas visitation shall also be applicable to toddlers and preschoolers.

3.5 Holidays. Parents shall alternate the following holiday weekends: New Year's Day, Easter, Memorial Day, the 4th of July, Labor Day, and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day Weekends will begin on Friday and end on Monday evening; Easter Weekend will begin on Thursday evening and end on Sunday evening; the 4th of July, when it does not fall on a weekend, shall include the weekend closest to the 4th. Holiday weekends begin at 5:30 p.m. and end at 7:00 p.m. on the appropriate days.

3.6 Children's Birthdays. Like the holidays, a child's birthday shall be alternated annually between the parents. If the birthday falls on a weekend, it shall extend to the full weekend, and any resulting conflict with regular visitation shall be resolved pursuant to Paragraph 1.9 - Missed Visitation. If the birthday falls on a weekday, it shall be celebrated from 3:00 p.m. to 9:00 p.m. (or as much of that period as the noncustodial parent elects to use).

3.7 Parents' Birthday. The children should spend the day with the parent who is celebrating their birthday unless it interferes with a noncustodial parent's extended visitation during vacation, and any resulting conflict with regular visitation shall be resolved pursuant to Paragraph 1.9 - Missed Visitation.

3.8 Conflicts Between Regular and Holiday Weekends. When there is a conflict between a holiday weekend and the regular weekend visitation, the holiday takes precedence. Thus, if the

noncustodial parent misses a regular weekend because it is the custodial parent's holiday, the regular alternating visitation schedule will resume following the holiday. If the noncustodial parent receives two consecutive weekends because of a holiday, regular alternating visitation will resume the following weekend with the custodial parent. The parents should agree to make up missed weekends due to holiday conflicts.

3.9 Visitation Before and During Vacations. There will be no visitation the weekend(s) before the beginning of the noncustodial parent's summer vacation visitation period(s), regardless of whose weekend it may be. Similarly, that parent's alternating weekend visitation(s) shall resume the second weekend after each period of summer vacation that year. Weekend visitation "missed" during the summer vacation period will not be "made up." During any extended summer visitation of more than three consecutive weeks, it will be the noncustodial parent's duty to arrange, for a time mutually convenient, a 48-hour continuous period of visitation for the custodial parent unless impracticable because of distance.

3.10 Notice of Canceled Visitation. Whenever possible, the noncustodial parent shall give a minimum of three days' notice of intention not to exercise all or part of the scheduled visitation. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the reason therefor, shall be given. Custodial parents shall give the same type of notice when events beyond their control cancels or modifies a visit because the child has a schedule conflict, and the noncustodial parent should be given the opportunity to take the child to the scheduled event or appointment.

3.11 Pick Up and Return of Children. When the parents live in the same community, the responsibility of picking up and returning the children should be shared. Usually the noncustodial parent will pick up and the custodial parent will return the child to that parent's residence. The person picking up or returning the children during times of visitation has an obligation to be punctual: to arrive at the agreed time and not substantially earlier or later. Repeated, unjustified violations of this provision may subject the offender to court sanctions.

3.12 Additional Visitation. Visitation should be liberal and flexible. For many parents these guidelines should be considered as only a minimum direction for interaction with the children. These guidelines are not meant to foreclose the parents from agreeing to such additional visitation as they find reasonable at any given time.

4. VISITATION OF CHILDREN AGE FIVE AND OVER WHEN SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND PARENTS RESIDE MORE THAN 200 MILES APART.

PART VI: APPENDICES

4.1 Extended and Holiday Visitation. All but three weeks of the school summer vacation period and, on an alternating basis, the school Winter (Christmas) vacation and spring break.

4.2 Priority of Summer Visitation. Summer visitation with the noncustodial parent takes precedence over summer activities (such as Little League) when the visitation cannot be reasonably scheduled around such events. Even so, conscientious noncustodial parents will often be able to enroll the child in a similar activity.

4.3 Notice. Notice of at least 60 days should be given of the date for commencing extended visitation so that the most efficient means of transportation may be obtained and the parties and the children may arrange their schedules. Failure to give the precise number of days of notice does not entitle the custodial parent to deny visitation.

4.4 Additional Visitations. Where distance and finances permit, additional visitation, such as for holiday weekends or special events, are encouraged. When the noncustodial parent is in the area where the child resides, or the child is in the area where the noncustodial parent resides, liberal visitation shall be allowed and because the noncustodial parent does not get regular visitation, the child can miss some school during the visits so long as it does not substantially impair the child's scholastic progress.

PART VI: APPENDICES

APPENDIX D

COUNTIES' CURRENT USE OF VISITATION EXPEDITORS, MEDIATORS, PARENT EDUCATION PROGRAMS, SUPERVISED VISITATION CENTERS, AND VISITATION EXCHANGE FACILITIES

The Table on the following pages summarizes data received from Minnesota's 87 court administrators in response to a survey regarding each county's use of visitation expeditors, family court mediators, parent education programs, supervised visitation facilities, and visitation exchange facilities. An "X" means the court administrator reported that the county uses the identified program, a blank space means the court administrator reported that the county does not use the program, and a "?" means the court administrator was unaware of the answer.

While a court administrator may have reported that the county and its judicial officers utilize a program (e.g., parent education classes), that response does not necessarily mean that the program is actually available in that county. Instead, several court administrator responded that programs or facilities from nearby counties are sometimes used.

In reviewing the Table, one must keep in mind that the validity and reliability of the data is less precise than anticipated because of the lack of accurate records relating to some of the questions posed to court administrators. Several court administrators noted, for example, that their counties do not track the number of appointments for visitation expeditors and family court mediators. Others noted that they were personally unaware of the answers to some questions (e.g., use of parent education programs). In addition, several court administrators noted that they did not seek out information from judges or other sources to verify their responses.

Based upon the court administrators' responses, 37 counties (43%) utilize visitation expeditors, 51 counties (59%) use family court mediators, 47 counties (54%) use parent education programs, 49 counties (56%) use supervised visitation centers, and 47 counties (54%) use visitation exchange facilities.

PART VI: APPENDICES

County	Visit. Exped.	Fam. Ct. Medi-ator	Parent Educ.	Super. Visit. Facil.	Visit. Exchng. Facil.	County Total
FIRST JUDICIAL DISTRICT						
Carver	X	X				2 of 5
Dakota	X	X		X	X	4 of 5
Goodhue	X	X	X			3 of 5
LeSueur				X	X	2 of 5
McLeod		X	X	X		3 of 5
Sibley			X			1 of 5
Scott						0 of 5
Dist. Total	**3 of 7**	**4 of 7**	**3 of 7**	**3 of 7**	**2 of 7**	**15 of 35**
SECOND JUDICIAL DISTRICT						
Ramsey	X		X	X	X	4 of 5
Dist. Total	**1 of 1**	**0 of 1**	**1 of 1**	**1 of 1**	**1 of 1**	**4 of 5**

PART VI: APPENDICES

THIRD JUDICIAL DISTRICT						
Dodge				X	X	2 of 5
Fillmore			X		X	2 of 5
Freeborn		X	X			2 of 5
Houston		X	X	X	X	4 of 5
Mower		X	X	X	X	4 of 5
Olmsted	X	X	X	X		4 of 5
Rice		X		?	?	1 of 5
Steele		X	X			2 of 5
Wabasha	X	X				2 of 5
Waseca		X			X	2 of 5
Winona	X	X	X	X		4 of 5
Dist. Total	**3 of 11**	**9 of 11**	**7 of 11**	**5 of 11**	**5 of 11**	**29 of 55**
FOURTH JUDICIAL DISTRICT						
Hennepin	X	X	X	X	X	5 of 5
Dist. Total	**1 of 1**	**1 of 1**	**1 of 1**	**1 of 1**	**1 of 1**	**5 of 5**

PART VI: APPENDICES

FIFTH JUDICIAL DISTRICT						
Blue Earth			X	X	X	3 of 5
Brown		X				1 of 5
Cottonwood		X	X		X	3 of 5
Faribault	X	X				2 of 5
Jackson		X	X	X	X	4 of 5
Lincoln	X	X	X			3 of 5
Lyon	X	X	X	X		4 of 5
Martin		X		X		2 of 5
Murray	X		X			2 of 5
Nicollet	X		X	X		3 of 5
Nobles			X		X	2 of 5
Pipestone	X		X			2 of 5
Redwood				X	?	1 of 5
Rock	X		?	?		1 of 5
Watonwan			X			1 of 5
Dist. Total	**7 of 15**	**7 of 15**	**10 of 15**	**6 of 15**	**4 of 15**	**34 of 75**
SIXTH JUDICIAL DISTRICT						
Carlton	X	X	X	X	X	5 of 5
Cook			X	X	X	3 of 5
Lake			X	X	X	3 of 5
St. Louis		X	X	X	X	4 of 5
Dist. Total	**1 of 4**	**2 of 4**	**4 of 4**	**4 of 4**	**4 of 4**	**15 of 20**

PART VI: APPENDICES

SEVENTH JUDICIAL DISTRICT						
Becker		X		X	X	3 of 5
Benton			X			1 of 5
Clay					X	1 of 5
Douglas		X	X	X	X	4 of 5
Mille Lacs			X			1 of 5
Morrison		X	X	X		3 of 5
Ottertail	X	X	X	X	X	5 of 5
Stearns	X		X	X	X	4 of 5
Todd					X	1 of 5
Wadena				X	X	2 of 5
Dist. Total	**2 of 10**	**4 of 10**	**6 of 10**	**6 of 10**	**7 of 10**	**25 of 50**

PART VI: APPENDICES

EIGHTH JUDICIAL DISTRICT						
Big Stone	X					1 of 5
Chippewa				X	X	2 of 5
Grant	X		X	X	X	4 of 5
Kandiyohi	X		X	X	X	4 of 5
La Qui Parle		X				1 of 5
Meeker	X	X		X	X	4 of 5
Pope	X		X	X	X	4 of 5
Renville	X	X				2 of 5
Stevens	X	X	X	X	X	5 of 5
Swift	X		X	X		3 of 5
Traverse			X	X	X	3 of 5
Wilkin				X	X	2 of 5
Yellow Med.						0 of 5
Dist. Total	**8 of 13**	**4 of 13**	**6 of 13**	**9 of 13**	**18 of 13**	**35 of 65**

PART VI: APPENDICES

NINTH JUDICIAL DISTRICT						
Aitkin	X	X	X		X	4 of 5
Beltrami						0 of 5
Cass		X		X	X	3 of 5
Clearwater		X			X	2 of 5
Crow Wing	X	X		X		3 of 5
Hubbard	X	X				2 of 5
Itasca		X		X	X	3 of 5
Kittson		X		X	X	3 of 5
Koochiching			X	X	X	3 of 5
Lake Woods	?	?	?	?	?	0 of 5
Mahnomen		X	X		?	2 of 5
Marshall	X	X		X	X	4 of 5
Norman						0 of 5
Pennington				X	X	2 of 5
Polk	X	X		X	X	4 of 5
Red Lake		X		X	X	3 of 5
Roseau	X	X				2 of 5
Dist. Total	**6 of 17**	**12 of 17**	**3 of 17**	**9 of 17**	**10 of 17**	**40 of 80**

PART VI: APPENDICES

TENTH JUDICIAL DISTRICT						
Anoka		X	X	X	X	4 of 5
Chisago	X	X	X			3 of 5
Isanti	X	X	X	X	X	5 of 5
Kanabec						0 of 5
Pine	X	X	X	X	X	5 of 5
Sherburne		X			X	2 of 5
Washington	X	X	X	X	X	5 of 5
Wright	X	X	X	X	X	5 of 5
Dist. Total	**5 of 8**	**7 of 8**	**6 of 8**	**5 of 8**	**6 of 8**	**29 of 40**
State Total	**37 of 87 43%**	**51 of 87 59%**	**47 of 87 54%**	**49 of 87 56%**	**47 of 87 54%**	**231 of 435**