

# **Senate Committee on Jurisprudence**

**Interim Report to the  
77th Legislature**



**November 2000**

## **Interim Charges**

The Committee shall:

1. Review Chapter 153 of the Family Code to identify ways to improve the enforcement of child custody orders. The Committee shall study alternative methods of enforcement to improve court time efficiency and to expedite the process.
2. Monitor the implementation of SB 368, 76<sup>th</sup> Legislature, Regular Session relating to court-ordered child support, including the child support enforcement functions of the Office of the Attorney General and the sunset review of those functions and the implementation of the child support enforcement provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 within the established time requirements.

### **Reports**

The Committee shall submit copies of its final report as soon as possible, but no later than September 1, 2000. This date has been chosen so that the work of the Committee can be considered when the Legislative Budget Board is developing performance and budget recommendations to the 77<sup>th</sup> Legislature. Copies of the final report should be sent to the Lieutenant Governor, Secretary of the Senate, Legislative Council and Legislative Reference Library. The Lieutenant Governor recently amended the submission date from September 1, 2000 to November 1, 2000.

The final report of the Committee should be approved by a majority of the voting members of the Committee and include any recommended statutory changes. Draft legislation containing any recommended statutory changes should be attached to the report. Recommended agency rule changes should also be attached to the report.

### **Budget and Staff**

The Committee shall use its existing staff, including any subcommittee staff, and the budget that will be approved by the Senate Committee on Administration. Where appropriate, the Committee should obtain assistance from the Senate Research Center and legislative agencies, including the Legislative Budget Board, the Legislative Council and the State Auditor. The Committee should also seek the assistance of appropriate Executive Branch agencies with responsibilities in the areas of the Committee's interim charges.

## **Hearings by the Senate Interim Committee on Jurisprudence**

September 30, 1999	Austin	Organizational
March 3, 2000	San Antonio	Charges # 1 and 2
March 28, 2000	Houston	Charges # 1 and 2

## **ACKNOWLEDGMENTS**

The Committee Chairman would like to acknowledge the efforts of the Committee members for their work in the critical areas of child custody enforcement and child support enforcement.

The Committee Chairman would also like to acknowledge the valuable assistance and expertise of Cindy Merrill, formerly with the Harris County District Attorney's Office, Professors Ellen Marrus and Laura Oren, with the University of Houston Law Center, Stewart Gagnon and Ellen Yarrell, family law practitioners in Houston, and Professor Jack Sampson of the University of Texas Law School.

The Committee would also like to thank everyone who took the time to testify, submit written reports, or otherwise assist in the interim study. We would like to express our special appreciation to the Child Support Division of the Office of Attorney General, for its contribution of time and expertise to the study.

The Committee would also like to thank the University of Houston Law Center and St. Mary's Law School for hosting the Committee for its hearings.

# Executive Summary

## Summary of Recommendations

### Charge #1

*Review Chapter 153 of the Family Code to identify ways to improve the enforcement of child custody orders. The Committee shall study alternative methods of enforcement to improve court time efficiency and to expedite the process.*

1. The Legislature should require the Judicial Section of the State Bar and the various judicial education centers to increase the amount of judicial education relating to child custody and child support enforcement issues. This can be accomplished either through continuing legal education courses or specific courses targeted to judges. Specific courses should be implemented that would target judges who do not exclusively hear family law cases.
2. The Family Code should be amended to require a notice in all divorce decrees, child custody orders, and modifications that a non-custodial parent has the right to modify a child custody order if there is a change in circumstances. Such language should be clear and conspicuous and fully inform litigants of their *right* to a modification in the event of a change in circumstances. In addition, all forms used by the Office of Attorney General should contain a notice of the right to modify a child custody decree should there be a change in circumstances.
3. The Legislature should urge judges and family law courts to increase the use of alternative dispute resolution and mediation in solving child custody disputes.
4. The Family Code should be amended to provide clear statutory authority for judges to order parental counseling and cooperative parenting courses as a condition to obtaining or retaining custody of a child or modifying custody, visitation, and support orders.
5. The Legislature should urge the courts to increase the use of suspension of professional and driver's licenses for the failure to comply with court-ordered custody and visitation. The time of a license suspension should be increased from the standard 30-day suspension.
6. The Legislature should create a pilot project to enable parents and litigants to have better access to the courts to enforce violations of child custody and possession orders. Particular attention should be made to opening courts at non-traditional hours and encouraging associate

and visiting associate judges to hear more civil contempt cases.

7. The Legislature should establish a pilot project in the Office of Attorney General to encourage the Attorney General to enforce child custody and possession orders.
8. The Legislature should amend the Family Code to standardize court forms regarding child support, possession, and custody for *pro se* litigants. The form should contain clear and conspicuous language so that it is easy for *pro se* litigants to fully understand their rights and responsibilities.
9. The Committee recommends that counties, in coordination with existing alternative dispute resolution centers and domestic relations offices, look at developing a secure environment that would allow for the safe exchange of children during visitation with non-custodial parents, especially in instances where domestic violence has occurred.

## **Charge #2**

***Monitor the implementation of SB 368, 76<sup>th</sup> Legislature, Regular Session relating to court-ordered child support, including the child support enforcement functions of the Office of the Attorney General and the sunset review of those functions and the implementation of the child support enforcement provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 within the established time requirements.***

1. The Legislature should call upon the appropriate state agencies to study the issue of using private collection agencies to supplement the work of the Office of Attorney General in the collection of child support payments.
2. The Legislature should study the issue of moving the child support collection functions from the Office of Attorney General to another state agency or creating a new agency solely responsible for the collection of child support.
3. The Legislature should require the Office of Attorney General to increase its outreach and educational programs relating to child support enforcement. Parents who are engaged in child support cases should be fully informed about the legal process, the impact of parental disputes on minor children, the rights and responsibilities of litigants involving child support cases, and the ability to modify support orders.
4. The Legislature should amend Section 154.182 of the Family Code to address changes due to the implementation of the Children's Health Insurance Program (CHIP) and the closing of the Texas Healthy Kid's Corporation. Remove the reference to the Texas Healthy Kid's

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Corporation, and replace it with a general provision that would cover any insurance program available to custodial parents for the support of their children.

## Child Custody Orders

*Review Chapter 153 of the Family Code to identify ways to improve the enforcement of child custody orders. The Committee shall study alternative methods of enforcement to improve court time efficiency and to expedite the process.*

### Recommendations

1. The Legislature should require the Judicial Section of the State Bar and the various judicial education centers to increase the amount of judicial education relating to child custody and child support enforcement issues. This can be accomplished either through continuing legal education courses or specific courses targeted to judges. Specific courses should be implemented that would target judges who do not exclusively hear family law cases.
2. The Family Code should be amended to require a notice in all divorce decrees, child custody orders, and modifications that a non-custodial parent has the right to modify a child custody order if there is a change in circumstances. Such language should be clear and conspicuous and fully inform litigants of their *right* to a modification in the event of a change in circumstances. In addition, all forms used by the Office of Attorney General should contain a notice of the right to modify a child custody decree should there be a change in circumstances.
3. The Legislature should urge judges and family law courts to increase the use of alternative dispute resolution and mediation in solving child custody disputes.
4. The Family Code should be amended to provide clear statutory authority for judges to order parental counseling and cooperative parenting courses as a condition to obtaining or retaining custody of a child or modifying custody, visitation, and support orders.
5. The Legislature should urge the courts to increase the use of suspension of professional and driver's licenses for the failure to comply with court-ordered custody and visitation. The time of a license suspension should be increased from the standard 30-day suspension.
6. The Legislature should create a pilot project to enable parents and litigants to have better access to the courts to enforce violations of child custody and possession orders. Particular attention should be made to opening courts at non-traditional hours and encouraging associate and visiting associate judges to hear more civil contempt cases.
7. The Legislature should establish a pilot project in the Office of Attorney General to encourage the Attorney General to enforce child custody and possession orders.
8. The Legislature should amend the Family Code to standardize court forms regarding child



support, possession, and custody for *pro se* litigants. The form should contain clear and conspicuous language so that it is easy for *pro se* litigants to fully understand their rights and responsibilities.

9. The Committee recommends that counties, in coordination with existing alternative dispute resolution centers and domestic relations offices, look at developing a secure environment that would allow for the safe exchange of children during visitation with non-custodial parents, especially in instances where domestic violence has occurred.

### ***Child Custody***

Enforcement of child custody issues is a serious issue that often has implications on the welfare of the children involved. Judges that hear family law cases recognize that the decisions they make can have profound effects on childhood development, parent-child relationships, and parent-to-parent relationships.

During the interim, the Senate Jurisprudence Committee solicited testimony from judges, attorneys, legal scholars, fathers' rights groups, mothers' rights groups, government officials, anti-domestic violence advocacy groups, and the general public to assess the complexity and magnitude of the problem of enforcing child custody orders and other associated problems with child custody and visitation orders. The hearings primarily focused on ways that the state of Texas, either through legislative recommendations, changes in state law, or a call to action, can better enforce child custody and visitation orders.

Child custody law is a complex process in Texas. While some people tend to link child custody, visitation and access, and child support obligations, the issues are quite distinct and are treated as distinct by Texas law. It is the public policy of the state of Texas to prohibit a court from rendering an order that conditions access to a child on the payment of child support.<sup>1</sup> It is also the public policy and the law of the state that the judicial system must make the "best interests of the child" the primary consideration in custody issues.

Texas courts and judges treat violations of child custody orders and interference with child custody as serious matters. Under current Texas law, an aggrieved parent has several options if someone interferes with child custody. The person that is interfering with child custody (oftentimes the other parent) can be held in contempt of court, liable for damages, or can be criminally charged under § 25.03 of the Texas Penal Code.<sup>2</sup>

Under § 25.03 of the Penal Code, a parent who does not have the exclusive right to establish primary residence of the child under a joint custody agreement can be charged with a state jail felony, if the express terms of the child custody agreement are violated. It is clear that if the joint custody agreement names one specific county as the county of primary residence, the child

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cannot be moved by either parent out of that county's jurisdiction without violating the express terms of the agreement. It is also clear that if the mother is named the manager with the right to establish the primary residence of the child, the father cannot move the child out of the area without penalties.

Texas law also provides for parents to have joint custody of a child and to make certain decisions independent of the other, such as seeking medical treatment for the child. Texas law, however, does not give both parents the right to decide where the child lives.<sup>3</sup> The court is responsible for giving one parent the right to establish primary residence of the child or the county of residence of the child.

The joint custody situation - in which the parent, who is named the manager with the right to establish the primary residence of the child, moves - apparently leaves little recourse for the other parent. In many situations monetary disincentives are written into the joint custody decree in order to shift the monetary burden of child visitation to the parent that moves with the child. For example, if the manager with the right to establish the primary residence of the child moves more than a certain distance from the other parent, the managing parent must pay for the child to visit the other parent. However, in practice, this shifting of the monetary burden is not consistently stipulated in custody agreements.

There are other options for the aggrieved parent to pursue. These options all require the aggrieved party to go back to the court with jurisdiction over the case to get the court to rule that the other parent is in violation of the child custody order. Once a finding of contempt has been entered, the judge has a number of options that he can pursue. Those options include:

- make-up visitation to compensate for visitation which was wrongfully withheld<sup>4</sup>;
- bonds to be posted by the custodial parent which would be forfeited for wrongful denial of visitation<sup>5</sup>;
- fines<sup>6</sup>;
- imprisonment for contempt of court<sup>7</sup>;
- suspension of driver's licenses or other professional licenses<sup>8</sup>;
- payment of attorney's fees<sup>9</sup>;
- entry of an order to attend counseling or education sessions regarding the importance of children having regular contact with both parents<sup>10</sup>; and
- performance of community service<sup>11</sup>.

The Committee heard testimony from judges, lawyers, legal professionals, and the public who all testified that the best way to prevent child custody disputes and encourage better relationships between children and their parents is education. Significantly, the judges who testified indicated that innovative parental counseling and cooperative parenting courses have been shown to reduce tension between parents battling over custody.

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To that end, the Committee recommends that the Family Code be amended to allow family court judges and other judges that hear family law cases to have the authority to order parenting courses as a condition to obtaining or retaining custody or modifying custody and visitation orders.

Because education of parents has been shown to be effective in reducing the tension between parents regarding custody disputes, the Committee was also interested in learning what type of family law education is required of judges, both family law judges and other judges who hear family law cases. Testimony from the judges indicated that the judicial training centers do a very good job in educating judges about family law, but the judges agreed that more family law education would be beneficial. The Committee was of the opinion that more family law education should be mandated by the different judicial training centers. The Committee felt that more judicial training in the area of family law could best be accomplished by a Senate Resolution that asks the State Bar of Texas to encourage more family law education.

The Committee was very interested in finding other solutions to child custody disputes that would lessen the need for disputes to end up in court. The Committee was interested in the alternative dispute resolution and mediation practices that have been used across the state. In San Antonio, Judge John Specia uses alternative dispute resolution to aid in the resolution of child custody and visitation disputes. According to Judge Specia, early use of alternative dispute resolution has proven very effective in preventing protracted court battles. The Committee was encouraged by the use of alternative dispute resolution as a way of solving child custody problems. The Committee recommends that courts and counties use alternative dispute resolution and mediation as a way to resolve custody disputes.

### *Contempt Cases*

During its hearings the Committee discovered that one of the main obstacles to the enforcement and prosecution of violations of child custody and possession orders is the burdensome process of criminal contempt in Texas. The obstacles to bringing a contempt action for violations of custody orders are in direct correlation to the low number of criminal contempt violations that local law enforcement agencies prosecute. Testimony from the Harris County District Attorney's Office confirmed this problem. Harris County testified it only prosecutes between twelve and fifteen child custody order violations per year.

Civil contempt violations of child custody orders are just as difficult for parents to enforce. The time constraints of initiating, answering, and trying a civil contempt case are often too much for single parents who work to support their children. In addition, it is difficult for parents to find an attorney willing to take on a case of a violation of the custody order. The costs and time needed to prepare a civil contempt case usually outweigh the probability of success.

The Committee recommends that the state initiate a pilot project in select counties that would

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help ease the administrative burden of filing and trying civil contempt cases. Innovative practices have been established in other states modeled after “probable cause courts.” The idea behind this pilot project would be to open courthouses at non-traditional hours so that more litigants would be able to participate in child custody contempt hearings. One possibility would be to allow counties to establish night courts one to two times a week that would enable parents to bring an action for violations of custody orders. Nontraditional hours would give more people access to the court system.

In addition, the Legislature, over the last several sessions, has increased the number of associate judges and visiting associate judges that hear family law cases. The Committee recommends that counties and courts that utilize associate judges and visiting associate judges encourage these judges to handle more of the civil contempt cases for violations of child custody orders.

### *Domestic Relations Offices*

The Texas Family Code provides for the formation of domestic relations offices.<sup>12</sup> The Legislature established domestic relations offices to help counties collect and disburse child support payments, file suits to establish paternity, enforce court orders for possession of and access to a child, and modify or clarify existing child support orders.<sup>13</sup>

The Texas Family Code entitles a domestic relations office to file suit to enforce child support orders or to gain possession and access to a child *only* in those cases where an existing court order is already in place. The Committee urges that local domestic relations offices become more involved in the enforcement of contempt violations of child custody orders. Once a finding of contempt has been made by a court of competent jurisdiction, domestic relations offices should intervene, where appropriate, to enforce those orders.

### *Domestic Violence*

The Committee also heard testimony from law enforcement, legal scholars, and anti-domestic violence advocates who spoke about the problems that parents and children encounter in visitation when there has been a history of domestic violence.

A significant part of the testimony indicated that there is a serious strain on the resources of law enforcement when the courts choose police stations as the exchange point for visitation. Local law enforcement often does not have the training to cope with child visitation disputes. In addition, there is a great deal of trauma that is forced on the children when they have to be taken to police stations to be turned over to the other parent.

The Committee recommends that counties use existing alternative dispute resolution centers and domestic relations offices as a safe place for the exchange of children. Domestic violence is a serious issue and its impact on children should be minimized. Safe environments for parents to exchange children would be a first best step in reducing children’s exposure to trauma.

## Child Support Enforcement

*Monitor the implementation of SB 368, 76<sup>th</sup> Legislature, Regular Session relating to court-ordered child support, including the child support enforcement functions of the Office of the Attorney General and the sunset review of those functions and the implementation of the child support enforcement provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 within the established time requirements.*

### Recommendations

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4. The Legislature should amend Section 154.182 of the Family Code to address changes due to the implementation of the Children's Health Insurance Program (CHIP) and the closing of the Texas Healthy Kid's Corporation. Remove the reference to the Texas Healthy Kid's Corporation, and replace it with a general provision that would cover any insurance program available to custodial parents for the support of their children.

Senate Bill 368 was passed during the 76th Legislature. Senate Bill 368 created statutory modifications for the implementation of the child support enforcement provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The legislation requires the Office of Attorney General to biennially report to the Legislature on the status of enforcement tools and the impact of using private contractors. In addition, Senate Bill 368 requires the Child Support Division to investigate revenue sources for the child support program and to report its findings to the Sunset Advisory Commission by October 15, 2000.

The Child Support Division of the Office of Attorney General testified at the March 2000 hearing in Houston and provided the Committee with documentation of the progress of the

implementation of Senate Bill 368.

***State Disbursement Unit***

Federal law requires that employers be given one location to send both Title IV-D collections and certain non-IV-D collections subject to income withholding. The federal mandate to create a State Disbursement Unit (SDU) posed a challenge to the Office of Attorney General in terms of resources and existing relationships with county payment registries.

The staff of the Child Support Division developed an operational plan to meet federal requirements by the April 1, 2000 deadline. The plan was consistent with the Attorney General's principles of not disrupting child support payments, minimizing taxpayer costs, reducing the burden on employers and maintaining local involvement. Working with county representatives, the Child Support Division also secured a limited federal waiver to the SDU to allow local disbursement to continue in a number of counties.

In February 2000, the State Auditor's Office audited the Child Support Division of the Office of Attorney General and determined that the Attorney General had developed a feasible design for two-day processing of child support payments as required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.<sup>14</sup> At that time, the State Auditor determined that if an SDU was not established before April 1, 2000, the Office of Attorney General would be subject to losing between \$1.2 million and \$14.5 million in federal funding over the next two years.<sup>15</sup>

Although the Office of Attorney General did not meet the federally mandated deadline for the establishment of a State Disbursement Unit, the Office worked closely with the Texas Congressional delegation to have federal law changed in order to prevent penalties from being imposed.

The Office of Attorney General established a State Disbursement Unit on July 1, 2000 when Lockheed Martin opened the State Disbursement Unit facility in San Antonio, Texas. Lockheed is currently processing IV-D payments being paid directly to the state registry. According to the Office of Attorney General, the vendor is scheduled to begin redirection of non IV-D orders to the SDU on an employer by employer basis beginning October 1, 2000. Also, at this time, all new IV-D orders will be directed to the SDU. Employer conversion is scheduled to be completed by October 31, 2001.

The Office of Attorney General and Lockheed have been meeting weekly with the county workgroup to address outstanding county-related issues. The workgroup has developed and approved a number of documents that will allow the counties and the SDU to better serve individuals in the child support collection process. Planning is underway to implement local disbursement in the counties that were approved in the federal waiver request.

***Employers New Hire Directory / Administrative Income Withholding - Automated***

Federal law mandates that states establish a new hire directory to which employers will report within twenty days the name and Social Security number of all new employees. The directory in turn is to match automatically the names it receives against the IV-D case file, and when the match determines that a new hire has a IV-D case, the IV-D agency or its agent is to issue automatically an employer's order for income withholding within two days of the match. States are also required to have standardized income withholding forms that are transmitted to employers. Texas has complied with this requirement.

The Administrative Income Withholding-Automated (AIWA) process begins when an employer submits the name and Social Security number to the state's new hire directory. The new hire information received from employers is verified and matched against those cases on TXCSES (Texas Child Support Enforcement System, mandated by the federal Family Support Act of 1988) that have an established child support order. When a match occurs, a withholding order is sent directly to the employer for garnishment of income.

The OAG implemented the AIWA system throughout the summer of 1999. Initially, matches were run against a limited number of cases to identify and correct system problems prior to full implementation. In August 1999, the Field Operations workgroup determined that the system was ready for full volume matching through the State Directory of New Hires (Texas data). In December 1999, the National Directory of New Hires (containing information on new hires from all over the country) was added. Collections gained through the automated AIWA process have risen dramatically since full implementation in September as the table below shows:

<b>Monthly Amount Attributed to AIWA</b>	
September	\$ 2,402,312
October	\$ 4,248,712
November	\$ 5,813,828
December	\$ 8,255,327
January	\$ 9,340,536
February	\$10,973,773
March	\$15,177,247
April	\$14,057,457
May	\$19,342,837
June	\$20,783,567
July	\$20,862,772
August	\$24,650,049
Total	\$155,908,417

***Implementation of Acknowledgment of Paternity (AOP)***

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) mandates that a new acknowledgment of paternity process be developed in order to expedite the voluntary establishment of paternity. In order to comply with this federal mandate, the Texas Legislature enacted a law in 1999 making a signed acknowledgment of paternity a legal finding. The OAG implemented this new law as soon as it became effective. As of the second quarter of the federal fiscal year, 22,455 AOPs have been signed for the 41,054 children born out of wedlock. Public service announcements are presently under development on the AOP program.

Hospitals and birthing centers are required to be certified and then recertified each year. To prepare for the September 1999 effective date, the OAG used the existing hospital-based program structure to retrain birth registrar staff for certification so that the voluntary establishment of paternity under the new legislation could be correctly handled. Staff from 1,400 hospitals, birthing centers, local registries, and foundations were trained during the summer prior to implementation. A paternity handbook and a toll free number about the AOP process were created to inform persons of their rights and responsibilities. In addition, video and brochures were provided to the hospitals, local registrars, and other certified entities. Training and retraining of hospital and birthing center staffs is ongoing.

During the summer of 1999, the OAG and the Bureau of Vital Statistics (BVS) began retraining those individuals responsible for registering births - hospital and birthing center staff, and midwives. Community-based organizations and school paternity programs have also been reached. Extra effort has been made to include local registrars, teen parent education programs, and clinics in the training. To date, 2,643 individuals have been certified.

The OAG and BVS developed the Acknowledgment of Paternity form. The OAG funded staff and equipment for BVS to scan and enter birth record dates so that AOPs could be processed in a timely manner. A new system was developed for interfacing BVS records against the OAG caseload. A link was changed to notify the OAG when AOP forms are filed on IV-D cases. As of September 1, 2000, the capability of viewing birth records and accessing AOPs will be available via the Internet in OAG field offices.

A survey has been developed that will assess compliance of AOP provisions by hospital and birthing center staff and midwives. Parents will have an opportunity to respond to whether they had an opportunity to sign an AOP, and the rights and responsibilities associated with signing an AOP. The completed surveys will be filed in medical records and will be available for program review and audits by the Joint Commission of Accreditation of Health Care.

***License Suspension***

The PRWORA requires states to revise their automated systems to withhold or suspend drivers',



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professional, and recreational licenses of individuals owing overdue child support, or who fail after appropriate notice to comply with child support proceedings.

The OAG had an automated license suspension process in place before it implemented TXCSES, but this functionality was lost when TXCSES was implemented. However, the OAG has since reautomated the mass mailing of License Suspension Delinquency Notices, which is a system generated letter mailed to non-custodial parents. The first batch of 10,000 letters was sent in June 2000. The Delinquency Notice is sent monthly as non-custodial parents qualify based on the following criteria:

- noncustodial parent possesses a valid Texas license;
- license does not expire within 60 days;
- the noncustodial parent has at least 90 days of child support arrears;
- there is a known address for the noncustodial parent;
- there is a court order or written agreement to pay arrears;
- the noncustodial parent has not followed the repayment schedule for the past three months.

Data from two important source agencies for license suspension, the Department of Public Safety and Texas Parks and Wildlife, has been successfully matched and uploaded. All 60 state agencies required to provide data will furnish a report by the end of the fiscal year.

A six-month manual pilot on judicial suspensions was completed by four field offices in March 2000. The program was well accepted by Court Masters. Approximately 700 cases were filed and some large amounts were recouped. For example, in one case the OAG received a \$35,000 payment in a fishing license case.

Analysis required for Administrative and Judicial Suspension remedy tracking along with the automated case referral function has been completed. October 2000 is the scheduled date for the completion of programming and implementation of the automated license suspension program.

***Financial Institution Data Match (FIDM)***

The PRWORA requires the OAG to enter into agreements with financial institutions doing business in the state for the purpose of securing information leading to the enforcement of child support orders. In coordination with these financial institutions, a data match system will be developed in which each financial institution will provide quarterly the name, record address, social security number or other taxpayer identification number for each noncustodial parent who maintains an account and who owes past-due support. The federal Office of Child Support Enforcement has been authorized to assist states in conducting data matches with multi-state institutions, and the OAG is receiving transmissions from the federal matching system.

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Office of Attorney General staff has participated in meetings focused on the creation of an alliance of states working together to address instate financial data matching. The purpose of such an alliance is to provide the most cost effective means to perform the data matching, standardize the data matching process, outsource instate operations, and oversee the related contracts. At the close of the last fiscal year, it had been decided that the OAG would participate in the consortium during the procurement phase of this development effort.

The OAG participated in the consortium, or what is now referred to as “the Alliance,” along with fourteen other states jointly seeking a vendor service contract to provide the financial data matching solution. The formal contract award was made to Tier Technologies on March 23, 2000, and on March 29, 2000, contract negotiations began with Michigan, the Alliance lead state. The vendor will negotiate a separate contract with each of the Alliance states. Contract negotiations for the State of Texas began in June 2000 and are expected to be completed at the end of October 2000.

Office of Attorney General staff continues to develop computer programs and requirements necessary to modify TXCSES. Completion of this analysis is scheduled for December 2000, provided that adequate resources can be made available for programming changes and contract negotiations with the vendor are successfully completed.

### *Liens*

The PRWORA requires states to establish and use administrative and judicial procedures that impose liens to enforce child support obligations. A lien attaches to a noncustodial parent’s nonexempt real and personal property.

The OAG files lien notices manually in the appropriate county on cases with arrearages of \$5,000 or more. Internal technical enhancement requirements have been completed to automate the processing and tracking of these liens. Programming and implementation are expected to be completed by summer 2001.

As part of the Financial Institution Data Match project, information is received from the federal Office of Child Support Enforcement on liquid assets in institutions such as banks, savings and loan associations, and brokerage houses. Technical enhancement requirements have also been completed to automate the processing of these liens and the implementation schedule is the same as for county record liens. In the meantime, the information is undergoing analysis and options for manual processing are being considered for interim implementation.

Several alternative approaches are being considered to streamline the legal process requirements. The OAG has been gathering and analyzing other states’ approaches, and in particular, those that utilize a more administrative child support lien process. When all issues and contingencies have been identified, the Office of Attorney General will make a decision on the appropriate administrative approach and prepare proposed legislative changes to implement that approach.

***Regional Phone Centers***

Customer service is the number one priority for the Child Support Division of the Office of Attorney General. The greatest improvement in customer service has been in the area of telephone accessibility. The OAG receives about half a million child support telephone inquiries per month, the vast majority of which involve questions about payments. According to the Attorney General, the office answers more than 90% of these calls, which puts it on a par with private customer service phone operations.

In order to improve accessibility and local resolution of complaints, the Attorney General decided to decentralize the call center and an exceptional item request was made in the Legislative Appropriation Request for this purpose. The Legislature appropriated \$6.5 million for fiscal year 2000 to fund 114 call center staffers. In addition, eighty-three state office positions were moved to field positions and designated as customer service staff. Analysis of call traffic indicated that most calls (60%) come from the largest counties (Dallas/Tarrant, Harris, Bexar, and Travis). In each of the four areas, regional call centers were implemented and fully operational by January 2000. Units not supported by a Regional Call Center designated customer service staff to handle calls.

Reporting allows management to track and analyze the results of this project. Since implementation of regional call centers, there has been a significant improvement in the number of calls answered. In June 2000, statewide staff answered 94% of the 455,951 calls received with an average wait time of 40 seconds. During the same period, the regional call centers answered 94% of the 164,155 call received with an average wait time of 41 seconds.

***Customer Satisfaction***

In an effort to further improve the workings of the Child Support Division, Attorney General Cornyn has recommended that a statewide study on customer satisfaction be conducted in 2001. The survey will contain sufficient identifying information to track results by geographic area and then compare the new information with the year 2000 survey.<sup>16</sup>

According to the Office of Attorney General, customer satisfaction increased from 51 percent to 63 percent between 1998 and 2000. This has resulted in a 24 percent increase in the level of customer satisfaction with the work of the Child Support Division.<sup>17</sup>

The Attorney General has identified a number of specific areas regarding customer satisfaction that will be targeted for improvement. Those areas include: improving follow-up by staff on reported information; improving timeliness of action on cases; more proactive follow-ups on missed payments; facilitating requesting and receiving modifications; non-custodial parent perception of treatment as “deadbeat” dads by staff; lack of visitation access for non-custodial parents; amount of child support obligation (too high for non-custodial parents and too low for custodial parents); and the amount of interest charged.<sup>18</sup>

***Progress in Child Support Collection***

The Attorney General announced in September 2000 that child support collections had exceeded \$1 billion in a state fiscal year for the first time in the history of the Texas child support program. The more than \$1 billion collected in state fiscal year 2000 represents an increase of 19 percent from the \$868 million collected in state fiscal year 1999 and a 36 percent increase over the \$757 million collected in state fiscal year 1998.<sup>19</sup>

The Attorney General also has recently reported that the Child Support Division's customer service representative phone call answer rate has improved dramatically from 14 percent to 94 percent in the two years that he has been in office. The increased phone call answer rate can be attributed to a decentralized call center and the hiring of more staff.

The Committee was interested in the prospect of expanding the use of private collection agencies to help the Office of Attorney General in collecting child support payments. According to the National Conference of State Legislatures, as of November 1999, Texas is one of twenty-seven jurisdictions that allow for private collection agencies to collect child support payments.<sup>20</sup> The Committee was of the opinion that if private collection agencies are used to a greater degree, this would help the Office of Attorney General in the collection rate of the cases that it retains. In addition, if more child support is collected by both private collection agencies and the Attorney General, then more of the child support can be distributed to the families and children that are owed the money.

While acknowledging that private collection agencies will charge a percentage of the amounts recovered, the Committee is interested in further studying this issue. The Committee recommends that a comprehensive statewide study be initiated that would provide an analysis of benefits and disadvantages to increasing the use of private collection agencies to collect child support payments.

According to the National Conference of State Legislatures, only Texas, Oregon, and Hawaii use the Office of Attorney General or Department of Justice as the primary means for collecting child support obligations.<sup>21</sup> An overwhelming majority of the jurisdictions utilize their health, human, and social services agencies to collect child support.<sup>22</sup> The remainder of the jurisdictions use either tax collecting agencies or other agencies whose sole function is to collect child support.<sup>23</sup>

The Committee recommends that the Legislature, Office of Attorney General, and other interested state agencies commission a study of whether the child support collection functions should be transferred to another agency or whether a new agency should be created to be solely responsible for collecting child support obligations.

## **Office of the Attorney General Child Support Division's Guidelines Progress Report**

Section 111.001 of the Texas Family Code requires the standing committees of each house of the legislature having jurisdiction over family law issues to review and, if necessary, recommend revisions to the child support guidelines found in Chapter 154 of the Texas Family Code. The Code also requires the Office of Attorney General, as the state's Title IV-D agency, to prepare a report for the committees by December 1 of each even numbered year. This report is to be used to determine whether changes need to be made to the Texas child support guidelines. The report is to include:

- economic data from the US Department of Agriculture concerning the cost of rearing children;
- an analysis of case data on the application or deviation from the guidelines; and
- a summary of federal legislation enacted since the last review of guidelines.

The Child Support Division presented their guidelines report to the Senate Committee on Jurisprudence. After reviewing the report, the committee makes no recommendations regarding revisions to the child support guidelines.

## **Endnotes**

1. Texas Family Code, Sec. 153.001(b)
2. Texas Family Code, Sec. 153.002
3. Texas Family Code, Sec. 153.132
4. Texas Family Code, Sec. 157.168
5. Texas Family Code, Sec. 153.011
6. Texas Family Code, Sec. 157.166
7. Texas Family Code, Sec. 157.166
8. Texas Family Code, Sec. 232.001 - 232.016
9. Texas Family Code, Sec. 157.167
10. Texas Family Code, Sec. 153.010 and 105.009
11. Texas Family Code, Sec. 157.211
12. Texas Family Code, Sec. 203.001 et seq.
13. Texas Family Code, Sec. 203.004
14. State Auditor's Report No. 00-009, February 2000
15. Ibid.
16. September 5, 2000 letter from Attorney General John Cornyn to Senator Rodney Ellis.
17. Ibid.
18. Ibid.
19. Press Release, Office of Attorney General, September 20, 2000.
20. National Conference of State Legislatures, *Child Support Project*, "States with Privatized Child Support Collections," November 1999.

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21. National Conference of State Legislatures, *Child Support Project*, “State Child Support Oversight Table,” April 1999.

22. Ibid.

23. Ibid.

## Estimated Fiscal Impact of Report Recommendations from the Senate Committee on Jurisprudence

### Estimated Fiscal Impact to LOCAL, First Full Year of Implementation (if recommendations were written into law)

Charge	Recommendation	First Full Year Probable Savings/(Costs); Gains/(Losses)	Estimate Source	Comments
1	1. The legislature should urge the Judicial Section of the State Bar and various judicial education centers to increase the amount of judicial education relating to child custody and child support issues.	No fiscal impact	LBB staff	Charge 1: Review Chapter 153 of the Family Code to identify ways to improve the enforcement of child custody orders. The Committee shall study alternative methods of enforcement to improve court time and efficiency and to expedite the process.
	2. The Family Code should be amended to require notice in all divorce decrees, child custody orders, and modifications to state that a non-custodial parent has the right to modify a child custody order if there is a change in circumstances.	(\$1,000-\$285,000) per county	Travis County Clerk's Office	Local costs will vary depending upon the clerk's efforts to identify affected parties. The least expensive method of noticing parties is adding language to the current notice form sent to all parties in a civil suit. The most expensive method is having the clerk identify specific parties for which the notice is applicable, based upon an assessment of individual orders issued.
	3. The legislature should urge judges and family law courts to increase use of alternative dispute resolution and mediation in child custody disputes.	No fiscal impact	LBB staff	
	4. The Family Code should be amended to give judges authority to order parental counseling and cooperative parenting courses.	No fiscal impact	LBB staff	



	5. Courts should increase the use of suspension of professional and driver's licenses for failure to comply with court ordered custody or visitation.	No fiscal impact	LBB staff	
	6. The legislature should create a pilot project to enable parents and litigants greater access to courts to enforce violations of child custody and possession orders. The focus should be on opening courts at non-traditional hours and encouraging associate and visiting judges to hear more civil contempt cases.	(\$148,300) per county minimum	Denton County	Estimate based on the assumption that the court would operate an additional four hours a day, from 6 p.m. to 10 p.m. Also, no additional office space would be necessary.  The estimate is based on figures for Denton County, assuming the county would use a state-paid visiting judge for its night court. Local costs for other counties will fluctuate with county size and type of judge (county-level or district-level, active or visiting) presiding over the court.
	7. The legislature should establish a pilot project in the Office of the Attorney General to allow the Attorney General to enforce child custody and possession orders.	No significant fiscal impact	LBB staff	
	8. The Family Code should be amended to standardize court forms regarding child support, possession, and custody for <i>pro se</i> litigants.	No significant fiscal impact	LBB staff	

Charge	Recommendation	First Full Year Probable Savings/(Costs); Gains/(Losses)	Estimate Source	Comments
2	1. The legislature should study the issue of using private collection agencies to aid the Office of the Attorney General in the collection of past due child support.	No fiscal impact	LBB staff	Charge 2: Monitor the implementation of SB 368, 76 <sup>th</sup> Legislature, Regular Session relating to court ordered child support, including the child support enforcement functions of the Office of the Attorney General and the sunset review of those functions and the implementation of the child support enforcement provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 within the established time requirements.
	2. The legislature should study the issue of moving the child support collection functions from the Office of the Attorney General to another agency or creating a new agency solely responsible for the collection of child support.	No fiscal impact	LBB staff	
	3. The Office of the Attorney General should increase its outreach and educational programs relating to child support enforcement.	No fiscal impact	LBB staff	

LBB Staff: JK, JN, MF, TB, SC, TB

## Estimated Fiscal Impact of Report Recommendations from the Senate Committee on Jurisprudence

### Estimated Fiscal Impact to STATE, First Full Year of Implementation (if recommendations were written into law)

Charge	Recommendation	First Full Year Probable Savings/(Costs); Gains/(Losses)	Estimate Source	Comment
1	1. The legislature should urge the Judicial Section of the State Bar and various judicial education centers to increase the amount of judicial education relating to child custody and child support issues.	No significant fiscal impact	LBB staff	Charge 1: Review Chapter 153 of the Family Code to identify ways to improve the enforcement of child custody orders. The Committee shall study alternative methods of enforcement to improve court time and efficiency and to expedite the process.  This estimate is based on the assumption that this is a simple curriculum change and does not require additional hours of training.
	2. The Family Code should be amended to require notice in all divorce decrees, child custody orders, and modifications to state that a non-custodial parent has the right to modify a child custody order if there is a change in circumstances.	No fiscal impact	LBB staff	
	3. The legislature should urge judges and family law courts to increase use of alternative dispute resolution and mediation in child custody disputes.	There is not enough information at this time to complete a cost estimate.	LBB staff	
	4. The Family Code should be amended to give judges authority to order parental counseling and cooperative parenting courses.	No fiscal impact	LBB staff	

	5. Courts should increase the use of suspension of professional and driver's licenses for failure to comply with court ordered custody or visitation.	No fiscal impact	LBB staff	
	6. The legislature should create a pilot project to enable parents and litigants greater access to courts to enforce violations of child custody and possession orders. The focus should be on opening courts at non-traditional hours and encouraging associate and visiting judges to hear more civil contempt cases.	(\$0-\$109,969) per county	Comptroller Judiciary Section	State costs will vary depending upon whether the local family court uses county-level judges (\$0 cost to the state) or district-level judges. Under current provisions, a visiting former judge working four hours a day is paid the rate for a full day of work.
	7. The legislature should establish a pilot project in the Office of the Attorney General to allow the Attorney General to enforce child custody and possession orders.	(\$531,414)	Office of the Attorney General	The Office of the Attorney General based this estimate on the assumption that a pilot project would involve one field office, requiring 6 FTEs. The first year cost estimate will be greater than succeeding years due to a one time technology cost.
	8. The Family Code should be amended to standardize court forms regarding child support, possession, and custody for <i>pro se</i> litigants.	No significant fiscal impact	Office of the Attorney General	The Office of the Attorney General assumes standardized forms would be issued by the State Bar. Further, this fiscal impact estimate assumes the forms currently generated by the Office of the Attorney General's Automated Legal Processing System would have to be modified to comply with the standardized forms. Additional work could be absorbed with existing resources.

Charge	Recommendation	First Full Year Probable Savings/(Costs); Gains/(Losses)	Estimate Source	Comments
2	1. The legislature should study the issue of using private collection agencies to aid the Office of the Attorney General in the collection of past due child support.	No significant fiscal impact	LBB staff	Charge 2: Monitor the implementation of SB 368, 76 <sup>th</sup> Legislature, Regular Session relating to court ordered child support, including the child support enforcement functions of the Office of the Attorney General and the sunset review of those functions and the implementation of the child support enforcement provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 within the established time requirements.
	2. The legislature should study the issue of moving the child support collection functions from the Office of the Attorney General to another agency or creating a new agency solely responsible for the collection of child support.	No fiscal impact	LBB staff	
	3. The Office of the Attorney General should increase its outreach and educational programs relating to child support enforcement.	(\$637,162)	Office of the Attorney General	The Office of the Attorney General assumes that the annual publication costs of approximately \$35,000 would double as a result of this proposal. Ten additional Volunteer Services Coordinator positions would be required in order to bring staffing levels to three in each of the eight Child Support Division regions. One new position would be required in the State Office to oversee additional outreach activities. The first year cost estimate will be greater than succeeding years due to a one time capital equipment expenditure.

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