

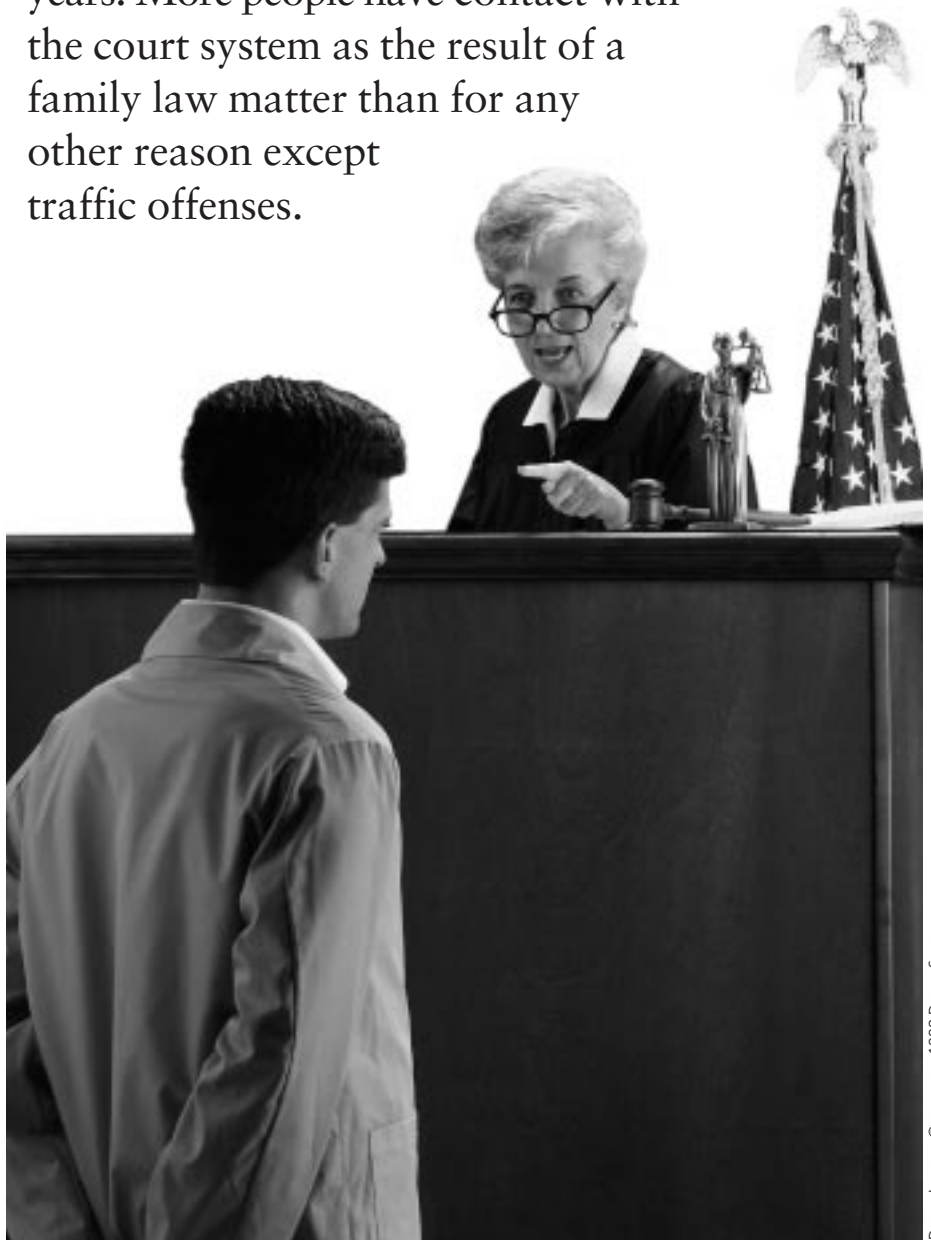
North Carolina's Experiment with Family Court

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In December 1996 the Commission for the Future of Justice and the Courts in North Carolina (the Futures Commission) recommended sweeping changes in North Carolina's court system.¹ The Futures Commission acknowledged that, for decades, North Carolina has been recognized as a national model for court reform. The North Carolina General Court of Justice is a uniform, state-funded system² that has provided high-quality service to all the people of the state at a relatively low cost to taxpayers since its creation in the late 1960s. However, the Futures Commission found that, over the last three decades, "the lives, behavior, and needs of the people" whom the system serves have changed significantly. The commission concluded that "the gap between the system of the past and the needs of the present and the future has resulted in rising dissatisfaction both inside and outside the court system."³

Nowhere is the gap felt more acutely than in the handling of family disputes—matters such as divorce, child custody, child support, juvenile delinquency, and protection of abused and neglected children. According to the commission, the number of family cases filed annually in North Carolina has increased by 483 percent in the last 25 years. More people have contact with the court system as the result of a family law matter than for any other reason except traffic offenses.⁴ Further, as the numbers have grown, the courts also have had to respond to the increasingly complex social issues affecting families, such as juvenile crime, domestic violence, and substance abuse.

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The current court system was not designed to meet the present-day needs of troubled families. Judges, lawyers, and the public all agree that “the handling of domestic cases is where the courts can improve most.”⁵ As part of a solution, the commission recommended the creation of a unified family court—a separate division within the court system responsible for all cases involving family-related legal issues. In family court, specially trained judges and staff provide a coordinated response to the comprehensive needs of individual families. (For a history of family court, see below.)

Although most of the recommendations of the Futures Commission are being debated throughout the state, the General Assembly quickly embraced the family court concept. As part of the sweeping Juvenile Justice Reform Act of 1998, the General Assembly directed the Administrative Office of the Courts (AOC) to test the concept of family court by conducting pilot projects in three judicial districts. The pilots began March 1, 1999, and will run through June 1, 2001. During its 1999 session, the General Assembly directed the AOC to expand the pilot program into three more judicial districts beginning January 1,

2000.⁶ (For sample mission statements of the pilot programs, see page 17.)

This article discusses ways in which the court system’s present method of handling family conflict is inefficient and less than satisfactory to the public, and explains how a unified family court might solve some of the problems. The article also identifies some obstacles to the long-term success of family court in North Carolina.

The Present System

Family matters now are heard in the district court division of the North Carolina General Court of Justice. The district court is the lower division of North Carolina’s two-tiered trial court system. Family matters include divorce and all related economic issues; paternity, child custody, and child support; juvenile delinquency; protection of abused and neglected children; adoption; and protection against domestic violence. District court judges also are responsible for other types of cases, among them all traffic cases and misdemeanor criminal actions, appeals from magistrates, and civil law cases in which the amount in controversy is less than \$10,000.

To illustrate the present system’s method of handling family matters, consider the following divorce case:

After ten years of marriage, Pam decides that she can no longer tolerate Steve’s heavy drinking and chooses to separate from him. Pam and Steve have two children. Pam is a homemaker, Steve an insurance salesman. Pam’s attorney files a legal action, asking the court to grant her possession of the marital home and custody of the children. The action also asks the court to order Steve to pay child support as well as support for Pam, and to divide all marital property.

Although Pam and Steve’s case as just represented is a typical, relatively uncomplicated divorce, numerous court hearings and trials will be required to resolve all the legal issues. A hearing early in the case will establish temporary child custody and child support. Another hearing will settle temporary support for Pam, and yet another may be necessary to deal with Pam’s request for possession of the home. Later there will be a trial on the issues of permanent custody and permanent support. Property distribution will require a separate trial and may involve several pretrial court actions. In addition, Pam and Steve likely will be required to meet at least twice with a custody mediator before a trial on custody or visitation issues.⁷ After Pam and Steve have been separated for at least one year, one of them must file a separate legal action requesting an absolute divorce. Another court hearing will be required to finalize the divorce.

Each court hearing results in legal fees for both Pam and Steve. Each day in court will be a day that Pam must pay for child care and Steve cannot go to work. The chances are good in most judicial districts that each court hearing will be set before a different district court judge. Thus with each hearing, a new judge will have to be educated about the family, increasing the risk of conflicting orders. Because of overcrowded dockets, it will be difficult for Pam’s attorney to schedule the various hearings and easy for either Pam’s or Steve’s attorney to delay hearings for tactical reasons. Resolution of all the

HISTORY OF FAMILY COURT

Family court is not a new idea. Other states have experimented with the concept since the early 1900s.¹ Interest in finding a more comprehensive response to the complex needs of families in the court system grew significantly in the 1980s and early 1990s.² In 1980 the American Bar Association adopted a policy in support of family court, and in 1994 it reaffirmed the commitment.³ At present, ten states—Delaware, Florida, Hawaii, Massachusetts, New Jersey, New York, Rhode Island, South Carolina, Vermont, and Washington—and the District of Columbia have a division within their court system designated as a uniform family court, and numerous other states are experimenting with the concept. The details of the existing courts differ significantly, but all emphasize intensive case management by court personnel, coordination of all legal matters relating to a family, and coordination of court and community resources to address family problems.⁴

Notes

1. Catherine Ross, *The Failure of Fragmentation: The Promise of a System of Unified Family Courts*, 32 FAMILY LAW QUARTERLY 3, 13 n.26 (1998), stating that the first family court was created in Cincinnati, Ohio, in 1914.

2. Jay Folberg, *Family Courts: Assessing the Trade-Offs*, 37 FAMILY AND CONCILIATION COURTS REVIEW 448, 449 (1999).

3. See *American Bar Association Policy on Unified Family Courts*, adopted Aug. 1994. A copy of the policy can be found in 32 FAMILY LAW QUARTERLY 1, 2 (1998).

4. Barbara Babb, *Where We Stand: An Analysis of America’s Family Law Adjudicatory Systems and the Mandate to Establish Unified Family Courts*, 32 FAMILY LAW QUARTERLY 31, 38 n.45 (1998). This article includes a comprehensive comparison of jurisdictions with family courts.

family's legal issues will take a significant amount of time, frustrating family members' efforts to begin rebuilding their lives.

As well as being expensive, fragmented, and slow, the present system treats family cases the same way it treats all other cases in the court system—that is, as adversarial proceedings focused on deciding specific legal issues in favor of one party or the other. Many experts believe that this traditional adversarial process, which serves the court system well in other situations, does little to provide families with the resources they need to function without future assistance from the court. Indeed, many experts believe that the extended process of litigation actually deepens family conflict.⁸ Such a result is especially troublesome in cases involving children, because parties often must continue to be parents even after the end of their marriage.

Still, Pam and Steve's case as stated earlier is relatively straightforward. Consider the following complications:

After the court enters an order giving Pam temporary custody of the children and Steve visitation rights, Pam learns that Steve's

drinking has increased significantly. Pam charges in court that Steve neglected the children during a weekend visit by leaving them unattended while he went to a local bar. One child says that Steve was physically abusive to her while

he was intoxicated. After a Department of Social Services case worker visits Steve to investigate the allegations of child abuse and neglect, Pam alleges that Steve told her over the telephone he "will kill all of us" before he will let a court

FAMILY COURT MISSION STATEMENTS

Durham Family Court

Supporting Families in Crisis

Our mission is to provide services which are family focused, individualized and coordinated, timely, courteous, professional and respectful.

Durham's Family Court believes that functional families are the cornerstone of a successful community. The mission of our family court is to provide a less adversarial forum for the fair, just and prompt resolution of family disputes. The Family Court will utilize the least intrusive intervention necessary, provide individualized response by linking families with appropriate community resources and offer a full complement of alternative dispute resolution options. We pledge to protect and preserve the rights of family members, treating all with courtesy, professionalism and respect.

North Carolina Family Court

26th Judicial District, Mecklenburg County

Mission: To help resolve cases involving children and families through the combined efforts of the family, the Court and community services in ways that are the least adversarial and intrusive, and that are just, safe, timely, efficient, courteous and accessible.



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take his children away. Pam asks the court for protection against domestic violence.

With these additional serious allegations, the Department of Social Services may initiate a separate legal action to address the issues of child abuse and neglect. The protection against domestic violence may be requested in yet another action or be brought as an additional claim in Pam's pending divorce case. Again, it is very likely that different judges will hear each claim, and each judge will address only the specific legal issue before him or her at a particular hearing. If both Pam and Steve have an attorney, the judges probably will know about the other court proceedings involving this family. If, however, neither Pam nor Steve is represented by an attorney, or if their attorneys do not know about the other pending matters, there is no mechanism to ensure that the judge has a complete understanding of the family's legal history. Whether or not lawyers are involved, the judge addressing each legal claim has neither the time nor the resources necessary to address the comprehensive needs of this family.

The Unified Family Court

According to the Futures Commission, the goal of a unified family court is to "provide a unified, rational, and caring forum for the resolution of all judicial proceedings involving family members." To that end, family court separates family-related matters from other types of cases in the court system and subjects the family cases to intensive management by specially trained judges and staff. Family court, while still responsible for providing a forum and ensuring a fair process for settlement of legal disputes, also is responsible for "promot[ing] the best interest of the family and help[ing] families structure their own solutions."⁹ Therefore, family court strives to resolve the immediate legal issues of the family in a way that minimizes the harmful effects of litigation. In addition, when necessary, family court attempts to address the long-term needs of individual families, in the hope that by dealing with problems that cause legal disputes, it will render families less likely to need court intervention.

The working details of the family court system currently being tested in North Carolina vary by judicial district, but the basic components are the same, as follows.

Comprehensive jurisdiction over all family cases. In each pilot district, a separate family court division has been created within the district court. All family-related cases are assigned to this division: all juvenile matters, including abuse and neglect of children and delinquency; adoptions; domestic violence protection orders; child custody, paternity, and child support; divorce, property distribution, and alimony; adult protective services; guardianship; and mental health commitments.¹⁰

Specialized family court judges and staff. Individual district court judges are assigned to family court. They spend the majority, if not all, of their time hearing family matters. The Futures Commission recommended that judges be assigned to family court for a minimum of three years to ensure that each judge has the opportunity to become a true specialist in family matters.¹¹

In addition, the General Assembly has allocated resources for employment of staff to assist judges in the management of family court.¹² All pilot districts employ one family court administrator to coordinate the pilot project and a varying number of case managers, depending on the district's volume of family court cases and the number of judges assigned to family court.

Both judges and staff participate in specialized training designed to increase their expertise in family matters. In addition to family law, training topics include family dynamics and child development, substance abuse assessment and treatment, and the effects of domestic violence on children. The goal of the additional training, as stated by the Futures Commission, is to "provide citizens with a judiciary that is competent, sensitive, compassionate, and well versed in family law."¹³

A structure of one judge or one manager working with one family. Often cited as the most critical component of any successful family court, this structure ensures that each family coming into family court is assigned to a specific judge or to a team of court personnel.

The assigned judge and court staff maintain responsibility for the family as long as any family member remains within the court system. The obvious purpose is to avoid the fragmentation, the duplication of effort and expense, and the potential for conflicting court orders highlighted earlier in the case of Pam and Steve. In some districts a family is assigned to an individual judge, and various court staff assist the judge in managing the case. In other districts the case is assigned to a case manager who coordinates the case with the goal of ensuring that all matters are heard by the same judge to the extent possible. In either circumstance, someone in the family court is responsible for coordinating all issues associated with a single family.

Intensive case management by the court. In most North Carolina judicial districts, attorneys and parties control the pace at which a family matter moves through the court system. In those districts a judge hears family issues only when an attorney or a party requests a court hearing. According to the Futures Commission, the result is that family litigation moves "too slowly through the courts." The lack of court control over cases "allows litigants to manipulate the system, to engage in piecemeal litigation and to obtain inconsistent court orders."¹⁴ To address this problem, family courts implement case management guidelines. The court, rather than the parties, is responsible for ensuring that cases move through the court system at a pace intended to lessen expense, delay, and stress on the family. Timelines are established for each step in the case, with the goal of resolving all of a family's legal issues within one year. Only family court judges are allowed to extend deadlines or alter set schedules.

All case management plans in family court must incorporate use of alternative techniques of dispute resolution. The Futures Commission concluded that "[f]amily issues are not well-suited to the traditional adversarial model of the courts." Therefore the commission recommended that services such as mediation and arbitration "be used to reduce the emotional damage to the individuals involved, to empower the weaker parties, and to come up with solutions that preserve amicable rela-

tionships among family members.”¹⁵ Because studies indicate that early intervention is most effective in producing settlement of disputes, each pilot district refers family members to alternative dispute resolution programs as soon as possible after a case is originally filed. In addition, family court staff and judges in each pilot district are working to increase the availability of alternative dispute resolution resources within their court and community.

The Futures Commission’s report stated that family court services “should be fully accessible to citizens, regardless of economic status.” To address this goal, pilot districts allow access to court services such as mediation or arbitration at no charge or at a reduced rate for families unable to pay.¹⁶ In addition, each pilot district is developing management procedures and policies designed to make family court accessible to those who cannot afford to hire an attorney. For example, the three original pilot districts have developed pamphlets and legal forms for use by litigants without lawyers. District 26, Mecklenburg County, has created a Pro Se Clinic, in which court staff assist litigants without attorneys by providing forms and other information.

Coordination of court and community resources. Family court staff work to ensure that each family maximizes use of available court and community resources. Accepting the premise that the court must be responsible for more than the immediate legal issues of a family, family court judges and staff direct families to the community services available to address the underlying problems that brought the family into the system. For example, litigants are directed to family counseling services, substance abuse treatment programs, and domestic violence intervention programs. Family court judges and staff closely monitor cases referred to outside agencies and programs to make sure that they provide necessary services in a timely manner.

In addition, family court makes use of court-based services designed to lessen the emotional distress of family litigation. Alternative dispute resolution programs, discussed earlier, are examples of such services. Another example is a parent education program designed

to help parents recognize and lessen the effect of divorce on children.¹⁷ The three original pilot districts also have established programs that promote visitation between noncustodial parents and their children.¹⁸ Mecklenburg County uses custody coordinators to protect the needs of children in high-conflict custody cases, and it has established another program to provide expert assistance to the court in cases involving allegations of child sexual abuse. In District 14, Durham County, the family court is working directly with local middle schools in a truancy prevention project. In District 20—Anson, Richmond, Stanly, and Union counties—family court staff coordinate Day One Conferences, which bring together a wide variety of community service providers and court officials to address the needs of children alleged to be abused, neglected, or dependent, on the day immediately following the filing of a court petition.

Pam and Steve in Family Court

How would the case of Pam and Steve be handled in a family court? Perhaps most important, the case filed by the Department of Social Services would be coordinated with the pending divorce case. All court personnel would be aware of the threat of domestic violence and knowledgeable about how best to ensure the safety of family members. The family would be referred to com-

munity resources capable of addressing Steve’s substance abuse problem as well as the long-term effect that his problem will have on the family. Active case management by the court would guard against the unnecessary delays often associated with such complicated cases.

Family Court’s Future in North Carolina

On April 1, 2000, the AOC submitted a report to the General Assembly on the progress of the family court experiment.¹⁹ The General Assembly will determine whether and to what extent family court will be expanded throughout the state. However, the pilot districts did not begin actual operation of the family court model until April 1999.²⁰ Such a comprehensive change to an established system takes time, and a meaningful evaluation of the success of the program in meeting the goals set out by the Futures Commission will not be possible for a number of years.

According to court personnel participating in the pilot projects, the long-term success of family court depends primarily on the continued availability of adequate funding. Put simply, family court is more expensive to operate than the present method of dealing with family cases. Whereas most district court judicial districts employ no staff to manage cases, the family court model depends on family court administrators and case managers to accomplish the



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labor-intensive case management and service coordination. In addition, family court requires a comprehensive, automated information system for case management, currently unavailable in North Carolina. Without appropriate technology, it is impossible to track and manage the ever-increasing number of families in the system. Further, the additional staff and services created by family court in turn generate a need for more court facilities, which are not readily available throughout the state.

Despite the up-front expense, supporters argue that family courts save money in the long run. By actively managing and coordinating cases, they avoid duplication of resources and promote efficiency. Perhaps more important, they address the problems underlying family conflict, thereby reducing the number of times that families must return to the court system for assistance.

Family court represents an expansion of the role of courts in society. While continuing to provide a neutral, fair forum for dispute resolution, family court undertakes the additional responsibility of coordinating a community's response to critical societal issues affecting families. Family court judges become problem solvers in addition to neutral arbitrators.²¹ Permanent integration of these additional responsibilities will require not only more resources but also willingness on the part of those within the present system to embrace such a fundamental change in the traditional role of judges and the court.

Notes

1. COMMISSION ON THE FUTURE OF JUSTICE AND THE COURTS IN NORTH CAROLINA, WITHOUT FAVOR, DENIAL OR DELAY: A COURT SYSTEM FOR THE 21ST CENTURY (Raleigh, N.C.: the commission, Dec. 1996) (hereinafter Commission Report). James Exum, former chief justice, created the commission in 1994 in response to evidence of growing public dissatisfaction with the North Carolina court system. Justice Exum's successor, Chief Justice Burley Mitchell, continued the commission. The charge to the commission was to study public concern and to propose changes that would "meet the public's demand for a better [court] system." The twenty-seven commission members, representing all regions of the state, included lawyers as well

as people from business, newspaper publishing, social services, law enforcement, academe, and the legislature. There were no incumbent court officials on the commission, but a number of judges, prosecutors, clerks, and others served as advisory members.

2. See generally N.C. GEN. STAT. ch. 7A (hereinafter the North Carolina General Statutes will be cited as G.S.).

3. COMMISSION REPORT at 3. The Futures Commission obtained information about the public's perception of the court system through a telephone survey conducted in 1995 by Wilkerson and Associates of Louisville, Kentucky.

4. COMMISSION REPORT at 45, 47. This is consistent with courts throughout the country. See Catherine Ross, *The Failure of Fragmentation: The Promise of a System of Unified Family Courts*, 32 FAMILY LAW QUARTERLY 3, 3 (1998). Studies by the National Center for State Courts indicate that domestic relations matters are the "largest and fastest growing segment of state court civil case loads." Ross, *The Failure* at 6.

5. COMMISSION REPORT at 45.

6. SL 1998-202, § 25, authorized the pilot projects and specified that the family court operate in accordance with the report issued by the Futures Commission. The 1998 Appropriations Act, SL 1998-212, § 8.1(a)(15), appropriated \$318,228 for the first three pilot districts: District 14 (Durham County), District 20 (Anson, Richmond, Stanly, and Union counties), and District 26 (Mecklenburg County). SL 1998-202, § 25, authorized the pilot program to run through December 1, 2000. During its 1999 session, the General Assembly extended the duration of the pilot program through June 1, 2001. Also, it provided funding for three more pilot districts beginning January 1, 2000: District 5 (New Hanover and Pender counties), District 6A (Halifax County), and District 12 (Cumberland County). SL 1999-237.

7. The custody mediation program is administered by the AOC. See G.S. 7A-494. It currently operates in 28 of the state's 39 district court judicial districts. G.S. 50-13.1 requires that all child custody and visitation issues raised in a district with a custody mediation program be referred to mediation. Expert mediators meet with parents in an attempt to resolve the custody disputes without actual litigation. The General Assembly has provided that the custody mediation program expand to all district court judicial districts as funds become available.

8. See Andrew Schepard, *Parental Conflict Prevention Programs and the Unified Family Court: A Public Health Perspective*, 32 FAMILY LAW QUARTERLY 95, 95 (1998). According to the author, "[o]verall, the adversary procedure usually does children more harm than good." The Futures

Commission reached a similar conclusion. COMMISSION REPORT at 47 ("Family issues are not well-suited to the traditional adversarial model of the courts").

9. COMMISSION REPORT at 45-46.

10. COMMISSION REPORT at 46.

11. COMMISSION REPORT at 46.

12. SL 1998-202, § 25.

13. COMMISSION REPORT at 46. The commission suggested that training include substantive legal issues, basic principles of mediation and other techniques of alternative dispute resolution, sociology, psychology, child development, family systems, family-based services, and social work. COMMISSION REPORT at 47.

14. COMMISSION REPORT at 48.

15. COMMISSION REPORT at 47. The commission recommended that court-monitored alternative dispute resolution be mandatory in the following types of cases: child custody and visitation, property distribution, alimony, and some child support cases. The commission also recommended that alternative services be available in all other cases except those involving domestic violence protection orders.

16. COMMISSION REPORT at 45. Other services discussed later, such as parent education classes, also are available to families unable to pay the normal fee.

17. SL 1999-237, § 17.16.

18. The AOC accepted a \$100,000 grant from the North Carolina Child Support Enforcement Office of the North Carolina Department of Health and Human Services to fund access and visitation programs in the first three pilot districts.

19. The AOC is required to report to the chair of the Appropriations Subcommittee on Justice and Public Safety in both the Senate and the House, and to the General Assembly's Fiscal Research Division by April 1, 2000. SL 1998-202, § 25. (The legislation required a report by March 1, 2000. However, the General Assembly subsequently granted the AOC an extension to April 1.) The report must evaluate the success of the pilot programs in bringing consistency, efficiency, and fairness to the resolution of family matters and the impact of the pilot programs on the caseloads of the districts. SL 1998-202, § 25.

20. The General Assembly ordered the project to begin March 1, 1999. Although staff began working in March, it took them about one month to complete the administrative details necessary to begin actually operating family court.

21. See David Rottman & Pamela Casey, *Therapeutic Justice and the Emergence of Problem-Solving Courts*, NATIONAL INSTITUTE OF JUSTICE JOURNAL, July 1999, at 12, 14 (chart outlining differences between "traditional" court process and "transformed" process).