

FAMILY COURTS IN OTHER STATES

BACKGROUND

The development of family law in the courts is primarily a phenomenon of the 20th century. While women's and children's rights as individuals and divorce laws developed in the 19th century, most of the significant events in family law began after the turn of the century, more specifically, in the last 40 years.

The recognition by courts and legislatures of the special status of children resulted in the specialization of courts hearing juvenile cases. The first juvenile court was established in 1899 in Chicago, Illinois. A separation of juvenile and family issues has encouraged further experimentation with alternative means of resolution of family disputes including the development of family courts.

In 1914 the first family court was established in Ohio. Rhode Island began the first statewide comprehensive family court in 1961. In 1965 Hawaii passed a family court act which at that time set forth the most comprehensive jurisdiction in the country. Thereafter, family courts were established in Delaware (1971), South Carolina (1968), District of Columbia (1970), Louisiana (1979), New Jersey (1984), and Vermont (1990). Pilot family court programs have taken place in a number of states.

WHAT IS A FAMILY COURT?

The states with family courts have a variety of jurisdictions for their courts, with no one single pattern adopted by all. New York has a court known as a "family court"; however, the court has no jurisdiction over divorce. Florida is considered a family court state; however, its "family court" does not have jurisdiction over juvenile delinquency.

The model family court is one of a unified, comprehensive court with jurisdiction over all family-related legal matters. These include abuse and neglect, adoption, child and spousal support, child custody and visitation, dissolution of marriage, domestic violence, juvenile delinquency and noncriminal misbehavior by youths, termination of residual parental rights, and paternity, as well as control over such child-related matters as emancipation. Some experts in the area have suggested that the family court should also have jurisdiction over intrafamilial criminal cases involving adults, appeals of agency decisions affecting children, commitment of minors to mental health and mental retardation facilities, and at least some motor vehicle offenses involving young people.

The unified family court has worked well for some states. The Hawaii court has especially been singled out for high praise for its comprehensive jurisdictional

structure and strong emphasis on child and family advocacy.

FAMILY COURTS IN OTHER STATES

At present, 11 jurisdictions in the United States determine family law matters for the entire jurisdiction within a separate family court or within a separate family division or department of an existing trial court. These jurisdictions are Delaware, the District of Columbia, Florida, Hawaii, Massachusetts, New Jersey, New York, Rhode Island, South Carolina, Vermont, and Washington. Among these 11 jurisdictions, five (Delaware, New York, Rhode Island, South Carolina, and Vermont) have a completely separate and distinct family court; five (the District of Columbia, Florida, Hawaii, New Jersey, and Washington) handle family law matters within a separate division of a trial court; and Massachusetts assigns family law cases to a separate department of a trial court.

Fourteen states--Alabama, Colorado, Kansas, Louisiana, Mississippi, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, and Wisconsin--manage family law cases within a separate family court or within a separate family division of an existing trial court only in selected areas of the state. Among these 14 states, Louisiana and Mississippi have created separate family courts in limited geographic areas. Nine states--Alabama, Colorado, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Pennsylvania, and Wisconsin--have created family divisions within existing trial courts; two states--Kansas and Oregon--utilize departments of existing trial courts to hear family law matters; and Texas has separate courts in larger counties and divisions of existing courts in smaller counties. Nine states--California, Georgia, Illinois, Kentucky, Maine, Maryland, Michigan, New Hampshire, and Virginia--have planned or currently operate pilot family court projects in an effort to explore new ways to handle family law matters. Seven states among the nine already operate pilot family court projects (California, Georgia, Illinois, Kentucky, Maine, Maryland, and New Hampshire), six as divisions of existing trial courts and one (New Hampshire) as a separate family court. Michigan and Virginia have received legislative mandates to design and implement family courts. Michigan plans to operate the court as a division of the trial court, and Virginia expects to establish a separate family court.

The remaining 17 states--Alaska, Arizona, Arkansas, Connecticut, Idaho, Indiana, Iowa, Minnesota, Montana, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, Utah, West Virginia, and Wyoming--do not possess any specialized or

separate system to handle family law matters. These states process family law cases as part of the general civil trial docket.

SUBJECT-MATTER JURISDICTION

The family law subject-matter jurisdiction of the 11 statewide family law adjudicatory systems varies considerably. Six jurisdictions--Delaware, the District of Columbia, Hawaii, New Jersey, Rhode Island, and South Carolina--assign comprehensive jurisdiction to the courts, which enables the courts to decide the broad range of family legal issues. The remaining five states--Florida, Massachusetts, New York, Vermont, and Washington--limit the courts' jurisdiction to hear various aspects of family law cases. For example, the New York Family Court does not have jurisdiction over divorce actions, although it maintains jurisdiction over support, child custody, and distribution of marital property proceedings. Of the 14 states with separate family courts, divisions, or departments within selected areas of the state (Alabama, Colorado, Kansas, Louisiana, Mississippi, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, and Wisconsin), only Nevada authorizes comprehensive subject-matter jurisdiction. Among the nine states that recently have begun the process of implementing pilot or planned family courts, four--Georgia, Maryland, Michigan, and Virginia--have chosen to offer comprehensive subject-matter jurisdiction and five--California, Illinois, Kentucky, Maine, and New Hampshire--have assigned limited family law subject-matter jurisdiction.

CASE ASSIGNMENT METHODS AND LENGTH OF JUDGES' TERMS

The 11 jurisdictions with fully operational statewide family courts, divisions, or departments also differ with regard to the length of a judge's term in this setting as well as with regard to their method of assigning cases to a judge. The length of a judge's term within these systems varies from nine months in the District of Columbia to a life term upon appointment to the court in Massachusetts and Rhode Island. Five states--Hawaii, New Jersey, New York, Rhode Island, and Vermont--generally assign family law cases to the judges for the duration of the case, including any motions or modifications related to the case. Only Delaware assigns a particular family to a specific judge so that each time family members appear in court on any family law matter, they appear before the same judge. Florida's preferred method is to assign a particular family to a specific judge, although each

judicial circuit may adopt its own case assignment method. Four jurisdictions--the District of Columbia, Massachusetts, South Carolina, and Washington--assign family law cases to judges in the same manner as other civil assignments, on a daily, weekly, monthly, or other regularly scheduled basis; thus, one judge may not hear a case from start to finish.

The term length for a judge assigned to a family law tribunal in the 14 states with separate family courts, divisions, or departments within selected areas of the state ranges from two years in New Mexico to an indeterminate assignment in Kansas. Four states--Louisiana, Nevada, Ohio, and Oregon--among the 14 assign family law cases to judges in the traditional manner of civil assignment and at regular intervals so that the potential exists for more than one judge to hear aspects of the same case. Four states--Kansas, Mississippi, Oklahoma, and Pennsylvania--assign one judge to a family for all family law proceedings involving the family, and three states--Colorado, Missouri, and Texas--assign one judge to one family in some areas of the state. Three states--Alabama, New Mexico, and Wisconsin--follow the one judge/one case method of case assignment, where one judge completes a case yet will not necessarily hear another family law proceeding involving the same family.

The term length for judges in the nine states that recently have begun the process of implementing pilot or planned family courts varies from one or several days at a time in Maine to permanent judicial assignments in Kentucky. Four states--California, Illinois, Kentucky, and New Hampshire--operate pilot family court projects and assign cases by the one judge/one family method. Maine assigns cases by the traditional manner of assignment at regular intervals. Georgia and Maryland have not yet determined how to assign cases. The planned family courts in Michigan and Virginia intend to assign one judge to one family for all family law matters. Seventeen states--Alaska, Arizona, Arkansas, Connecticut, Idaho, Indiana, Iowa, Minnesota, Montana, Nebraska, North Carolina, North Dakota, South Dakota, Tennessee, Utah, West Virginia, and Wyoming--process family law cases as part of the court system's general civil trial assignment with no coordinated approach to family law decision-making and with no foreseeable plan to alter this system. In these states, family members can appear in as many as four courts for resolution of various family legal issues. Within these 17 states, the average number of courts with jurisdiction over family law matters is two.