

FORCES CHANGING FAMILY LAW IN MINNESOTA

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I. INTRODUCTION

To a large extent, family law mirrors the constantly changing values of a society. The law evolves and changes in order to meet the needs and goals of that society because these laws have such a significant and personal impact on individual lives. Nevertheless, society is never in perfect harmony and any large society may have internally conflicting values. Thus, there may be many who may disagree with the law. Moreover, there may be other forces beyond the affected society that can influence the evolution of family law.

In the United States, family law is largely a creature of state law and not federal law. The domestic relations exception to federal jurisdiction limits the role of the federal courts.¹ Because social values vary from state to state, one would suspect that each of the fifty states would have its own unique system of family law. But, that is not entirely the case. Although significant differences exist from

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1. See, e.g., *Ankenbrandt v. Richards*, 504 U.S. 689, 703 (1982); *Santosky v. Kramer*, 455 U.S. 745, 769 (1982); *Ohio ex rel. Popovici v. Agler*, 280 U.S. 379, 383-84 (1930); *Ex parte Burrus*, 136 U.S. 586, 593-94 (1890); *Barber v. Barber*, 62 U.S. (21 How.) 582, 584 (1858).

state to state, there are forces that are making portions of state family law increasingly become more similar. At the same time, there are forces that cause a state to make its family law system more unique.

As a member of the Minnesota House of Representatives since 1997, I have seen the forces that are changing family law in the state of Minnesota. Clearly, one force is the growing role of the federal government, especially in the child support area. The state gets substantial federal money for child support collection. However, as a condition of receiving this money, the state must comply with numerous federal regulations.

A second force is the need for more uniformity among states on a wide variety of issues that relate to interstate jurisdiction. Changes in either state or federal law may create conflicts between and among states in disputes involving interstate issues. As a result, there seems to be growing support for bills being advanced by the National Conference of Commissioners on Uniform State Laws.

The organized bar remains a force in changing laws that have an impact on the practice of family law. This may include the need to restrict or alter the development of case law created in the state. At the same time, the courts may become a force by restricting or interpreting statutes that prove to be inconsistent with legislative intent or in conflict with the state constitution.

Finally, an individual legislator may prove to be a powerful force to push vigorously for family law reform. One legislator with strong beliefs, who is willing to make a major effort to influence others, can make a significant difference.

This article will examine each of these forces and the impact they have had on changing family law in Minnesota since 1997. In some ways these forces have resulted in Minnesota family law becoming more similar to the family laws in other states. Yet, in other ways, Minnesota has taken a vastly different approach.

II. THE FEDERAL INFLUENCE ON STATE FAMILY LAW

Even though family law is primarily state law and not federal law, there has been a growing influence by the federal government to alter state family law in order to meet federal objectives. This is accomplished by the threat of withholding federal funds from states that do not comply with federal directives. This can be illustrated by the unprecedented growth in the federal regulation of the amount and the collection process of child support. The

goal of Congress is to collect more child support in order to reduce expenditures on federal welfare programs. A state may be penalized for not following federal regulations by a reduction in federal funds.² There is a lot at stake for Minnesota. In state fiscal year 2000, Minnesota's child support programs received \$88.4 million in federal funding.³

Prior to 1935, child support was almost exclusively a state concern. However, in that year Congress established the Aid to Families with Dependent Children (AFDC) program.⁴ The Act provided appropriations to states that adopted welfare programs that were approved by federal agencies. This allowed the states to provide minimum monthly subsistence payments to families meeting established federal-need requirements.

In 1974, Congress passed the Family Support Act (FSA), Title IV-D of the Social Security Act, requiring states receiving AFDC funds to establish and enforce child support obligations.⁵ The primary goal of this Act was to reduce the federal cost of welfare programs by increasing the enforcement of child support obligations. In 1984, Congress went beyond child support collection efforts and moved into determining that child support awards were adequate to meet the needs of children by requiring states to establish child support guidelines in setting awards.⁶

The practical effect of the federal involvement has been to require states, as a condition for participation in federal welfare programs, to enact certain minimum provisions for enforcing private support obligations. These may extend to matters such as the use of support guidelines, the garnishment of wages, parent locator provisions, and stronger paternity laws.

In August of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) became law.⁷

2. See 42 U.S.C. § 655 (1994); 45 C.F.R. § 305.61 (2000).

3. Letter from Christa Anders, Child Support Enforcement Division, Minnesota Department of Human Services, to Minnesota Representative Len Biernat (June 29, 2001) (on file with author).

4. Title IV of the Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (currently codified at 42 U.S.C. §§ 601-617 (1994)).

5. Social Security Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337 (codified as amended at 42 U.S.C. §§ 651-665 (1994)).

6. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (codified as amended at 42 U.S.C. §§ 657-662 (1994)).

7. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (principally codified at 42 U.S.C. §§ 601-619 (1994 & Supp. 2000)). The Act was attacked in federal court as an

This Act required states to make substantial changes in their child support enforcement programs. It also abolished the AFDC program and replaced it with a new program called Temporary Assistance for Needy Families (TANF), which provided block grants to the states. The Act requires that the state must operate a child support enforcement program pursuant to an approved IV-D plan.⁸ Failure to have such an approved plan jeopardizes both the state's child support program funding as well as TANF funding.⁹

During the 1997, 1998, and 1999 legislative sessions, Minnesota adopted statutory and procedural changes to comply with the federal regulations.¹⁰ Because of the concern about losing federal funding if the state did not comply with federal regulations, the legislature adopted the changes with little opposition.¹¹ Most of the concern in committee centered around the requirements to withhold, suspend, or restrict drivers' licenses, professional and occupational licenses, and recreational licenses of individuals who owe child support. The right to hunt or fish should never be infringed upon, according to the view of some legislators.¹²

In 1997, child support legislation in Minnesota also became the vehicle for some political maneuvering. Because of the amount of money at stake, this was a bill that had to be passed. Therefore, opponents of gay marriage amended the bill in committee to insure that Minnesota would not recognize gay marriages that were performed legally in other states.¹³ This was in response to congressional action in passing the Defense of Marriage Act

unconstitutional intrusion by the federal government into a purely local area. The Kansas District Court rejected this argument because the collection of child support is for the general welfare. *Kansas v. United States*, 24 F. Supp 2d 1192, 2000 (D. Kan. 1998).

8. 42 U.S.C. § 602(a)(2) (1994 & Supp. 2000).

9. *Id.* §§ 603(a), 655(a)(1)(A).

10. *See generally id.* § 666(a) (setting forth the federal mandate).

11. For more detail on the new federal mandates, see generally PAULA ROBERTS, CENTER FOR LAW AND SOCIAL POLICY, GUIDANCE FROM THE FEDERAL GOVERNMENT ON IMPLEMENTATION OF THE CHILD SUPPORT RELATED PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 AS AMENDED BY THE BALANCED BUDGET ACT OF 1997 AND THE CHILD SUPPORT PERFORMANCE AND INCENTIVE ACT OF 1998 (rev. 1999).

12. *Cf.* MINN. STAT. § 518.551, subs. 12-15 (2000) (permitting courts to suspend the occupational, recreational, and drivers' licenses of delinquent child support obligors).

13. No states allow gay marriage. However, the issue was reviewed by the Supreme Court of Hawaii. *See Baehr v. Lewin*, 852 P.2d 44, 57 (Haw. 1993) (holding that same-sex couples do not have a fundamental right to marry).

(DOMA), which permitted states to deny recognition of gay marriages despite the Full Faith and Credit Clause of the U.S. Constitution.¹⁴

When the child support bill with the Defense of Marriage Act reached the House Floor, the leading proponent of DOMA moved to amend the bill in order to remove this language from the bill in order to force all legislators to vote on this single issue so that there would be a political record on a legislator's position of recognizing gay marriage. The vote to remove was 24 yeas and 105 nays.¹⁵ The Senate accepted the DOMA language in Conference Committee and the provision eventually became law.¹⁶ At least twenty-five other states have enacted legislation to specifically deny legal recognition to same-sex marriages solemnized in other states.¹⁷

III. SUPPORT FOR MORE UNIFORM STATE LAWS

In July 1997 the National Conference of Commissioners on Uniform State Laws adopted the Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) to replace the Uniform Child Custody Jurisdiction Act of 1968. The Act was approved by the American Bar Association's House of Delegates in February 1998. The original Act and the revision are designed to avoid jurisdictional conflicts in custody cases and to promote cooperation between different states.

The new version was necessary to address the need for uniform laws regarding interstate visitation disputes and to address some of the conflicts with federal law resulting from passage of the Parental Kidnapping Prevention Act in 1980,¹⁸ which established national standards for determining subject matter jurisdiction over custody matters. The UCCJEA also clarifies sections of the UCCJA that had been interpreted inconsistently by the states.¹⁹

It took almost twenty years before all states had adopted the original Act. Minnesota did not adopt the 1968 version of the Act

14. Defense of Marriage Act, Pub. L. No. 104-199, 110 Stat. 2419 (1996) (codified at 1 U.S.C. § 7 and 28 U.S.C. § 1738C (Supp. 2000)).

15. 3 H. JOURNAL, 80th Sess., at 3257 (Minn. April 28, 1997).

16. See MINN. STAT. § 517.03 (2000).

17. WALTER WADLINGTON & RAYMOND C. O'BRIEN, DOMESTIC REL. 128 (4th ed. 1998).

18. 28 U.S.C. § 1738A (1994).

19. See generally Gerald O. Williams Jr., *Lawyer at Large: Interstate Child Custody and Visitation*, BENCH & B. OF MINN., Nov.-Dec. 1998, at 37.

until 1977.²⁰ The reluctance by some states to pass the Act may have been attributable to the fear of losing some autonomy in the area of family law. The Act now seems to have nationwide acceptance and popularity because there was a need for uniform standards and for full faith and credit recognition for custody decrees.

The growing support for this type of legislation is evidenced by the actions of the Minnesota Legislature. The bill was introduced in the House on January 11, 1999, using the exact language proposed by the Commissioners.²¹ The bill quickly moved through both the Senate and House committees with no opposition and no amendments. The bill was adopted unanimously by both the House and Senate without amendment.²² On January 1, 2000, the new act became law in Minnesota.²³

In 2002, the legislature is expected to consider a new version of the Uniform Parentage Act.²⁴ The proposal has some sections that might be controversial in the area of assisted reproduction because it limits parentage to married couples and biogenetic parents. There could be opposition from both liberal and conservative groups to this provision. This could test the strength of Minnesota's support for uniform state laws. However, a simple solution might be to exclude the controversial section from consideration.

IV. THE IMPACT OF THE ORGANIZED BAR AND COURTS

Obviously, new statutes and court decisions have a direct impact on the practice of family law. Therefore, the organized bar is a force that works to influence the development of family law. That force proved powerful in the 2000 legislative sessions when it pushed to overturn a recent Minnesota Supreme Court opinion on family law. In turn, the supreme court can also be a powerful force in changing family law. In 1999, the court overturned a legislative scheme for child support collection.

The Family Law Section of the Minnesota State Bar Association

20. See MINN. STAT. § 518A (1998) (repealed 1999).

21. H.F. 53, 81st Sess. (Minn. Jan. 11, 1999) (authored by Representatives Biernat, Smith, Bishop and Dawkins).

22. 1 S. JOURNAL, 81st Sess., at 673 (Minn. March 15, 1999); 1 H. JOURNAL, 81st Sess., at 1948 (Minn. April 8, 1999).

23. See MINN. STAT. § 518D (2000).

24. See Unif. Parentage Act, 9B U.L.A. 287 (1987 & Supp. 2001).

is always vigilant during the legislative session. Several practitioners monitor all legislative proposals to determine the potential impact on the practice of family law. They were active participants on the parenting plan proposals and served on the Supreme Court Task Force to study the issue.²⁵ The Family Law Section also asked individual legislators to introduce bills to clarify parts of the statutory scheme that impact family law practice. Most of these proposals were simply clarifications of the statutes.

However, in 2000 several practitioners asked for legislation to overturn a recent decision of the Minnesota Supreme Court. In addition, the Supreme Court Task Force on Parental Cooperation recommended that the case be overturned and that parents be allowed to stipulate to a best interest modification standard when a custodial parent wants to move out of state.²⁶

The court in *Frauenshuh v. Giese* held that the standard of child endangerment applies to cases in which the custodial parent wants to move out of state, even if the parties agreed to use the best interest standard instead of the endangerment standard.²⁷ The court stated that under the current Minnesota statute, if the custodial parent wishes to move the child out of Minnesota that parent only has to demonstrate that the move would not endanger the child or that the purpose of the move was not to interfere with the non-custodial parent's visitation rights.²⁸ Therefore, the noncustodial parent cannot prevent the custodial parent from moving with the child even if the parties had agreed otherwise.

The reasoning behind the present statutory standard of child endangerment is that the child should have the stability of being with the primary caretaker who is the parent with custody. Yet, a move out of state changes this stability and makes visitation more difficult for the noncustodial parent. In addition, many noncustodial parents agreed to give the other parent custody only on condition that the custodial parent would not move out of state unless it was in the best interest of the children. Many lawyers prepared custody agreement with this condition. The court stated that the statutory language allowed such agreements for joint custody, but was silent on allowing this type of agreement for sole

25. See *infra* Part V.

26. MINNESOTA SUPREME COURT, PARENTAL COOPERATION TASK FORCE, FINAL REPORT 30 (2000) [hereinafter TASK FORCE FINAL REPORT].

27. *Frauenshuh v. Giese*, 599 N.W.2d 153, 158 (Minn. 1999).

28. MINN. STAT. § 518.18(d) (2000).

custody. Therefore, the court noted that the legislature must have intended that the best interest standard would only be available in joint custody cases.²⁹

The Task Force recommendations were part of House File 1323.³⁰ Both the House and the Senate agreed to allow parents to stipulate to the best interest standard. However, the Senate took the position that this should apply only to new agreements while the House wanted it to be a retroactive date so that prior agreements would be valid. The Family Law Section pushed for a retroactive provision in order to validate all agreements currently in effect. The conference committee agreed not to put in a specific date. Instead, the following language was approved: "Section 5, paragraph (d), clause (i), is effective the day following final enactment, and applies to written agreements approved by a court before, on, or after that date."³¹ Thus, all prior agreements would now be valid.

In 1995, the Minnesota Legislature enacted a major change in family law by requiring each county to implement an administrative child support process to resolve child support matters.³² The legislature was responding to a congressional mandate that states create expedited administrative and judicial procedures for procuring, modifying, and enforcing child support orders for people receiving public assistance or seeking government help in enforcing child support orders.³³

The new scheme used administrative hearings in front of administrative law judges from the executive branch instead of judges or referees from the judicial branch. The administrative law judges (ALJs) would have "all powers, duties, and responsibilities conferred on judges of district court to obtain and enforce child and medical support and parentage and maintenance obligations."³⁴ In addition, these ALJs had the power to modify child support orders, even those granted by district courts.³⁵

On January 28, 1999, the Minnesota Supreme Court, in *Holmberg v. Holmberg*, declared that the administrative child support process was unconstitutional because it violated the state

29. *Frauenschuh*, 599 N.W.2d at 158.

30. H.R. 1323, 81st Sess. (Minn. Mar. 3, 2000).

31. 2000 Minn. Sess. Law Serv. ch. 444 sec. 8 (West).

32. See MINN. STAT. § 518.5511 (2000).

33. See 42 U.S.C. § 666(a)(2) (1994).

34. MINN. STAT. § 518.5511 subds. 1(e), 4(d), 4(e), 6 (1996).

35. *Id.* § 518.5511, subd. 1(a), (b) (1996).

constitutional constraints on separation of powers.³⁶ In essence, the legislature had delegated to an executive agency the district court's inherent equitable power by creating ALJs with power and responsibility comparable with district court judges and with the power to modify district court decisions.³⁷

The Minnesota Supreme Court also expressed grave concern that the statute allowed child support officers to draft pleadings and appear at hearings to represent the public authority without attorney supervision. Thus, the statute granted these officers the power to practice law without the court having disciplinary authority.³⁸

In nullifying the administrative child support process, the court was aware of the consequences of the decision on prior and current cases. Therefore, the court stayed the decision until July 1, 1999, giving the legislature time to modify the system consistent with the decision.³⁹

During the 1999 Legislative Session, court staff and administrative staff worked with legislators and legislative staff to develop a new system that would meet federal concerns and be consistent with the state constitution. The House and Senate worked cooperatively, knowing that the bill had to be passed during the session.⁴⁰ In addition, the court developed interim rules for the transition from the old system to the new system.⁴¹ All three branches of government worked together in order to develop a system that would serve the needs of the state. Because of this cooperation, the bill passed unanimously on the House floor with very little debate.⁴²

The new legislation requires the supreme court to establish an expedited child support hearing process that meets federal requirements. The new system will use child support magistrates appointed by the chief judges of the judicial districts, with supreme court confirmation. Therefore, the entire system would seem to be under the control of the judicial branch. However, most of the

36. *Holmberg v. Holmberg*, 588 N.W. 2d 720, 726 (Minn. 1999).

37. *Id.* at 725.

38. *Id.* at 726.

39. *Id.* at 727.

40. *See generally* S.F. 23, 81st Sess. (Minn. Jan. 7, 1999); H.F. 510, 81st Sess. (Minn. Mar. 30, 1999).

41. Order Establishing Transition Rules For Child Support Matters, C4-99-404 (Minn. April 15, 1999).

42. 3 H. JOURNAL, 81st Sess., at 3799 (Minn. May 5, 1999).

changes were written into a statute instead of having the court adopt rules to establish the new process. This does insure that the legislature will have input into any future modifications of the system because changes would have to occur in the legislative arena.

V. THE IMPACT OF INDIVIDUAL LEGISLATORS

The financial incentives provided by the federal government are causing states to adopt more uniform laws concerning the collection of child support. Nevertheless, determining child custody along with the amount of financial support are issues that remain with the state. The general trend among states has been to move toward a system of shared custody by encouraging various forms of joint legal and physical custody.

The state of Washington (and a pilot project in the state of Tennessee) recently took the concept of shared parenting further by going away from the traditional custody approach and adopting the concept of parenting plans.⁴³ A parenting plan is a written document, made and agreed to by both parents, that sets out the specific arrangement of how both parents will bring up their children. The document is approved by the court as part of the marital dissolution. The goal is to keep both parents involved in child rearing and to avoid bitter custody disputes in which one party “wins custody” while the other party becomes a “visitor.”

The state of Minnesota moved in this direction in 2000, largely through the efforts of one legislator who vigorously advanced the concept at the legislature and battled resistance from the courts and the state bar. Over a three year process, he effectively convinced his legislative colleagues and compromised to meet the concerns of opponents in order to pass a statute that established the use of parenting plans. Therefore, one legislator moved his state out of the norm of other states to adopt a major change in family law.

Prior to being elected to the Minnesota House of Representatives in 1987, State Representative Andy Dawkins was an attorney in St. Paul with a practice that included family law. As an

43. See, e.g., WASH. REV. CODE. ANN. § 26.09.181 (West 1999). Tennessee had a pilot project on parenting plan that operated in 1998. For a detailed explanation of the Washington and Tennessee plans, see Heather Crosby, *The Irretrievable Breakdown of the Child: Minnesota's Move Toward Parenting Plans*, 21 HAMLINE J. PUB. L. & POL'Y 489, 508-15 (2000).

attorney, he became increasingly frustrated over the way that Minnesota dissolution and custody laws were structured. He felt that unless the parties agreed to having a joint physical custody award, they would be forced into an unnecessary, expensive, demeaning custody battle that forced the parties to say negative things about the other that would poison their relationship and become a barrier to future parental cooperation.⁴⁴ He was also concerned that a parent who voluntarily granted custody to the other would not be able to prevent the custodian from moving to another state with the child.

Dawkins took his frustration with him to the state capitol where he was eventually appointed Chair of the Family Law Committee in 1997. He decided to use this position to push for major reform in the custody statutes of the state. In 1997, he introduced House File 1323, which made the change from custody to parenting plans.⁴⁵ His bill set forth ways to restructure the dissolution system in order to decrease conflict between parents and to help parents work together in rearing their children.⁴⁶

There was immediate and fierce opposition to the bill from the state bar association, the courts, women's groups, and the government agency in charge of child support. All the opponents said that the bill would increase, rather than decrease, litigation. Undaunted, Dawkins conducted six public hearings throughout the state before conducting legislative hearings at the Capitol. After hours of testimony and debate, the Family Law Committee voted in favor of the bill. Many legislators supported the bill because of the numerous complaints they heard about the unfairness of the current system. Moreover, they were persuaded by the strong case that Dawkins had made about the need for change. The bill was eventually supported by the full House on a vote of 110 to 24.⁴⁷

Under the bicameral legislative process in Minnesota, a bill must pass both the House and the Senate. There was no advocate in the Senate who had been as forceful as Dawkins had been in the House. Thus, the Senate refused even to hear the bill. This did not stop Dawkins. He amended HF 1323 onto a Senate file that

44. Andy Dawkins, *A Sea Change in Family Law Takes More Than One Session*, at 1 (2000) (unpublished article) (on file with author).

45. H.F. 1323, 80th Sess. (Minn. March 19, 1997).

46. For a detailed explanation of the bill, see Crosby, *supra* note 43, at 514-22.

47. Dawkins, *supra* note 44, at 4.

dealt with child support. This forced the issue to be considered in a Conference Committee.⁴⁸ The Committee compromised by approving a \$75,000 appropriation to the Minnesota Supreme Court to appoint a task force to study parenting plans and parental cooperation. The report was presented to the Legislature in January 2000.⁴⁹

The task force was composed of various interest groups, including the courts and the legislature. Representative Dawkins was a member of this group. He was a strong advocate for his position and was able to get support from the Senate members of the group. Thus, he was able to convince some senators to push the parenting plan concept in the Senate. The final report included many expected compromises from various interests groups in order to get a consensus on the issues. The overall recommendation was for a system of "voluntary" parenting plans as one of the options in custody.⁵⁰ Most of the recommendations were adopted by both the House and the Senate. The bill was passed by the Senate with a vote of 59 to zero and the House by a vote of 116 to 12.⁵¹

The final legislation was far different from the original Dawkins proposal for mandatory use of parenting plans. The final version was entirely voluntary with encouragement by the Courts to enter this type of arrangement for better parental cooperation. However, Dawkins had moved Minnesota to start following a new approach that could benefit parents and children in the state. His tenaciousness demonstrates how one legislator with vision and determination can bring about major reform. The use of parenting plans in Minnesota will be monitored in terms of their effectiveness in increasing parental involvement. Without a doubt, Representative Dawkins will be gathering additional information for future legislative proposals. At the same time, the courts and the Family Law Section of the state bar will also be analyzing the effectiveness of the new law.

48. *Id.*

49. *See generally* TASK FORCE FINAL REPORT, *supra* note 26.

50. For a discussion of the task force report and final legislation, see Crosby, *supra* note 43, at 523-28.

51. 5 S. JOURNAL, 81st Sess., at 5971 (Minn. March 27, 2000); 7 H. JOURNAL, 81st Sess., at 8245 (Minn. March 30, 2000).

VI. CONCLUSION

Each year the family law system in Minnesota changes. Some of the changes are relatively minor and are the result of changing federal mandates or the need to clarify some statutes. However, lawyers practicing family law need to be aware of even seemingly minor statutory changes. Many of these lawyers are frustrated by the constant modification of the statutes and are asking for more stability in the statutory scheme.

At the same time, some lawyers and judges complain that the statutes are very detailed and proscriptive, giving them little flexibility to handle a specific case. They argue for reducing statutory language and creating more specific language in court rule. They believe that courts handle the actual cases and should be able to know what rules and procedures are needed instead of having the legislature prescribe rules through statute. In addition, judges are asking for more discretion to decide cases without being second-guessed by the appellate courts.

Nevertheless, the process that is used to alter statutes is very open and inclusive, to allow all potential stakeholders input into the process. Before any major change occurs, the issue is studied fully for several years. The Minnesota Supreme Court used a task force to study visitation issues in 1997⁵² and a new task force to study the issue of parenting plans in 2000. These task forces were able to study the issue fully in a careful and deliberate manner outside the tension of a legislative session. The fact that the Minnesota Supreme Court approved the recommendations of the task force was given great respect by the legislative committees. In addition, several legislators were members of these task forces and thereby gained detailed knowledge of any proposed changes in statutes. These legislators became strong advocates in support of the task force reports and were instrumental in convincing the committees to accept the recommendations. The state bar association also had representation on these task forces, which aided in getting support.

On the other hand, some could argue that because the task forces represented most of the current stakeholders, the end result has been incremental changes because of the desire to maintain the status quo and to accommodate the concerns of stakeholders. Several of the task force members on parenting plans wrote

52. See generally TASK FORCE FINAL REPORT, *supra* note 26.

minority reports because they felt that the majority did not go far enough.⁵³ Yet, the legislature adopted most of the recommendations of these task forces, which created significant, although not radical, changes to the family law system in the state. One could expect that the task force process will be used in the future in order to get a consensus before major changes are made in our system.

The consensus process was also used when the supreme court invalidated Minnesota's entire child support system. The court provided the legislature time to alter the system to meet the constitutional concerns. Court staff worked with legislators and legislative staff to revise the system prior to the deadline.

The family law system in the state of Minnesota will continue to evolve. The federal government may continue to place requirements on states as a condition of receiving federal money. The current political climate is calling for a reduction in government spending. Therefore, additional federal regulations can be expected. This may force modifications in the statutes.

In addition, legislators may also push for reform. Several proposals were heard in the House committee at the request of an individual legislator. During the past two sessions, some legislators introduced bills to return to using fault in divorce based on the system of covenant marriage adopted by Louisiana.⁵⁴ The bill was approved by one House committee but was not heard in the Senate. House leadership did not advance the proposal further because of political concerns. Any proposal that might prove to be too controversial will not move forward without the strong support of the majority of members. In addition, major proposals will not move forward unless there is some support from the courts. The covenant marriage proposal seemed to have little support at the legislature and no support from the courts. Nevertheless, individuals may attempt to push other proposals further following

53. *Id.* at 17.

54. Covenant Marriage Act, 1997 La. Acts 1380 (codified at LA. REV. STAT. ANN. §§ 9:272-:275.1 (West Supp. 2001)). *See also* H.F. 1571, 81st Sess. (Minn. March 8, 2001); S.F. 883, 81st Sess. (Minn. February 19, 2001); S.F. 1998, 81st Sess. (Minn. March 22, 2001); H.F. 53, 81st Sess. (Minn. January 8, 2001). *See generally* Katherine Shaw Spaht, *Louisiana's Covenant Marriage: Social Analysis and Legal Implications*, 59 LA. L. REV. 63 (1998); Laura Bradford, Note, *The Counterrevolution: A Critique of Recent Proposals to Reform No-fault Divorce Laws*, 49 STAN. L. REV. 607 (1997); Erin Melnick, Note, *Reaffirming No-Fault Divorce: Supplementing Formal Equality with Substantive Change*, 75 IND. L.J. 711 (2000).

the tenacious approach used by Representative Dawkins.⁵⁵

However, neither the courts nor the legislature can work in isolation from the other to bring about change. Rather, the courts and the legislature need to work cooperatively to improve the system to meet the needs of families in Minnesota. This is the process that Minnesota has been using in a very effective manner. And, this is the approach that Minnesota should continue to use in the future.

55. See *infra* Part V.