

Report of the Family Court Study Committee Established by Act 259, 2012

Act 259 of 2012 establishes the Family Court Study Committee. The Act provides that the Family Court Study Committee must study the feasibility of tracking the outcome of contested temporary and final custody proceedings in family court. The Act further provides that the study committee must consist of the following individuals: 1) one member of the Judiciary appointed by the Chief Justice of the Supreme Court; 2) the Director of Court Administration, or her designee; 3) the Speaker of the House, or his designee; 4) the President Pro Tempore of the Senate, or his designee; 5) the Chairman of the House Judiciary Committee, or his designee; 6) the Chairman of the Senate Judiciary Committee, or his designee; and 7) the South Carolina Crime Victims' Ombudsman, or his designee. According to the Act, the study committee must submit its findings by January 31, 2013.

After the Act was signed into law, the following individuals were appointed to serve on the study committee: 1) The Honorable Rochelle Y. Conits, Family Court Judge, 13th Judicial Circuit; 2) Ms. Rosalyn Frierson, Director of Court Administration; 3) The Honorable George M. Hearn, Former Representative from House District 105; 4) The Honorable C. Bradley Hutto, Senator from Senate District 40; 5) The Honorable J. David Weeks, Representative from House District 51; 6) The Honorable Creighton B. Coleman, Senator from Senate District 17; and 7) Ms. Debbie Curtis, South Carolina Crime Victims' Ombudsman. The study committee had its initial meeting on November 28, 2012. At that time, Senator Hutto was elected as the committee chairman. Testimony was taken from interested parties, and it was brought to the study committee's attention that the State of Washington was currently tracking information about how residential time of children is divided between mothers and fathers. During that meeting, the study committee determined the meaning of "feasibility" to be more than merely whether or not it would be possible to collect any data of this nature in the State of South Carolina. The study committee decided that the real test of feasibility was whether data to be collected would be informative, instructive, reliable, and capable of being collected without being cost prohibitive. With that in mind, the members raised the following issues: a) the type of information that should be collected; b) how that information would be used; c) the determinations that could be made by collecting the information; and d) whether or not this data would have an effect on judicial decisions. Finally, the committee raised concerns about what the cost would be to the State of South Carolina to track this information. At the conclusion of the first meeting, the study committee instructed staff to do the following: a) contact individuals in the State of Washington to determine the purpose of their data collection efforts, the manner in which they use the information, the manner in which they gathered the information, and the existence of any penalty for failing to report or for filing a false report; and b) contact South Carolina Court Administration to determine what the associated costs would be to perform a function in South Carolina similar to that being performed in Washington, including the cost of gathering very basic information and the cost of gathering highly detailed information.

As instructed, staff contacted Dr. Carl McCurly, manager for the Center of Court Research in the State of Washington. A summary of the information learned from Dr. McCurly is attached to this report (Attachment 1). Staff also worked with South Carolina Court Administration to determine estimated costs that would be associated with the collection of

very basic information, costs that would be associated with the collection of the same type of information as that being collected in the State of Washington, and costs associated with gathering highly detailed information. The information received from South Carolina Court Administration is attached to this report (Attachment 2).

The study committee met again on January 29, 2013, to discuss the information received from the State of Washington and from South Carolina Court Administration. After reviewing the attached reports, the study committee determined that tracking the outcome of contested temporary and final custody proceedings in family court would not be feasible. The study committee found that, if South Carolina only tracked the most basic information or tracked information in a similar manner to what is being done in the State of Washington, the data would not be statistically significant and would likely be skewed and, therefore, unreliable. The committee further found that tracking highly detailed information would increase the reliability of the data; however, that manner of tracking would be cost prohibitive. As such, the committee recommends not tracking the outcome of contested temporary and final custody proceedings in family court in South Carolina.

These findings are the official findings of the Family Court Study Committee. Please see the attached page containing the signatures of all study committee members (Attachment 3).

ATTACHMENT 1

Staff Findings Concerning the Legislation Enacted and Forms Created in Washington State

After our last study committee meeting, staff contacted Dr. Carl McCurly, manager for the Center of Court Research in Washington. Dr. McCurly stated that the purpose of establishing the law and creating the Residential Time Summary Form was to look at the distribution of residential time between mothers and fathers. He also stated that the data derived from the forms is used to bring to the court's attention and to the public's attention how residential time is divided, because there was a general need to examine that issue.

The forms are completed by the parties and are submitted to the court. There are no penalties for not reporting, and there are no penalties for giving false information. Dr. McCurly stated that the quality of the data is subject to question because the data is not verified with the court order. Dr. McCurly also stated that, if Washington had a more capable automated court management system, Court Research would not have to rely on the parties for this information. However, they do not have that capability at this point. Dr. McCurly concluded that these reports are an informative indicator, but they are not 100% accurate.

ATTACHMENT 2

Family Court Study Committee Court Administration Report January 2013

The Family Court Study Committee, created pursuant to Act 259 of 2012, is tasked with studying the feasibility of tracking the outcomes of contested temporary and final custody proceedings in the family court. In furtherance of this purpose, the Committee requested information from Court Administration concerning the anticipated cost and process for tracking such information. The Committee further requested that Court Administration's response take into consideration the possibility of gathering this information in three different formats, with varying degrees of specificity.

In 2007, the Washington State Legislature passed similar legislation, RCW 26.18.230 (a copy of which is attached), requiring their Administrative Office of the Courts to work with the Child Support Division of the Department of Social and Health Services to develop a residential time summary report form to provide for the reporting of summary information in every case in which residential time with children is to be established or modified. In Washington, we were informed that the Division of Child Support received approximately \$100,000 to compile the information. Their expenses included adding a part-time FTE to handle the compilation of the data. The Administrative Office of the Courts did not receive any funding for their part in tracking the data received from the Division of Child Support. However, unlike South Carolina, their Administrative Office of the Courts contains a Division of Research.

During the fiscal year of 2009-2010, Washington State received 5,732 Residential Time Summary Reports with orders.

Washington has carried out this mandate in the following manner:

- When an order is filed with the court, the litigant is responsible for completing the Residential Time Summary Report (a copy of which is attached) and filing it with the order.
- The Division of Child Support then compiles and electronically transmits the information provided to the Administrative Office of the Courts for tracking the following information:
 - Residential time awards by parent;
 - Enforcement practices;
 - Representation status of the parties;

- The existence of domestic violence, child abuse, chemical dependency, or mental health issues; and
- Whether the matter was agreed or contested.

Since Washington has been tracking information for several years, the Committee requested that Court Administration use Washington's form as a template for South Carolina. Court Administration now provides the following information in response to the Family Court Study Committee's request.

Approximate Number of Actions Involving Custody Determinations

In estimating the number of actions each year which involve custody determinations, we used data provided by the Family Court Nature of Action Codes (NOAs). (Plaintiffs complete a cover sheet when filing an action and identify the primary nature of the action.) Based on our best estimates, there would likely be more than 17,000 per year. The following NOA were included in the estimate:

- 610 Child Custody/Visitation
- 615 Modification of Custody/Visitation
- 699 Custody/Visitation Other
- 110 Divorce (55%)¹
- 130 Separate Support and Maintenance (67%)²

We did not include Orders of Protection cases, even though these orders often include a temporary custody determination, as these orders are generally issued after an abbreviated hearing and are issued as a result of allegations of domestic violence. Additionally, NOAs for child support and paternity were not included. While it is possible that some of these actions may result in orders which include custody or visitation, such issues are not the primary purpose of these actions.

Additionally, the numbers provided by the NOAs do not account for temporary or interim orders during the pendency of an action, or for cases which may have been dismissed or abandoned prior to the issuance of an order.

¹ Statistics indicate that 49-61% of divorces involve minor children. Therefore, we are including the average of 55% of divorces to estimate the number of custody determinations.

² Certain less reliable statistics indicate that as many as 67% of divorces involve children. Operating under the assumption that individuals who are seeking a divorce with children would be more likely to file an action for separate support and maintenance, we used the 67% figure for this calculation.

Given that only the final orders are issued after full litigation, we would recommend that should the committee decide to recommend the compilation of information relating to custody determinations, only final orders be included.

Methodology for Compiling Data

Ultimately, all data would need to come to one central location for compilation. In the state of Washington, the data is forwarded to the Division of Child Support for compilation and then transmitted electronically to the Administrative Office of the Courts for tracking purposes.

If this method were followed in South Carolina, the Clerks of Court would forward the completed forms on a regular (monthly) basis to the child support division of the Department of Social Services (DSS). This could be accomplished by mailing the forms to Columbia, or by scanning them and forwarding them electronically. Once DSS compiled the data, it would be forwarded electronically to Court Administration for tracking the outcomes in cases concerning child custody and visitation. However, given that S.C. DSS is not generally involved in the collection of information related to custody matters and funding will likely not be provided, this method may not be feasible. The Clerks of Court would forward the completed forms on a regular (monthly) basis to Court Administration in hard copy form to be entered electronically and compiled.

The estimated number of final orders each year which involve custody determinations would be approximately 17,028, based on the average of filings during the 2010 and 2011 fiscal years. (Numbers are based on filings as we have no way to determine at the state level how many custody cases were ended without a final order.)

During the initial meeting of the Study Committee, the Committee heard testimony from individuals who appeared to be interested in collecting data relating to the specific rulings of individual judges. The three scenarios described below do not take into account a compilation of data which would identify specific trends in custody orders by individual judges. While the data collected currently by Washington identifies trends within the state, their annual reports do not break down the trends by individual judges.

SCENARIO #1

The first scenario would provide a form which would be filed with each order. This form would include the case caption, and indicate whether the court awarded "Sole Custody", "Joint Custody" or a modified form of "Joint Custody" with additional designations of primary and secondary custody. The basis for including these three designations would be to mirror the three options provided on the Proposed Parenting Plan.

Of concern is the fact that while the recent legislation defines both sole and joint custody, the trial judge maintains the ability to structure the custody arrangement in a fashion keeping with the wishes of the parents, and/or the best interest of the child(ren). The terminology used within the order is often a matter of semantics as joint custody does not necessarily require equal parenting time.

For these reasons, this option would provide very limited information. Additionally, the attorney or self-represented litigant filing the order would complete the form. As a result, the reporting may not always accurately reflect the true nature of the custody arrangement. In order to collect accurate data, it would be necessary to ensure a form was always filed with an order. However, due to the possible legal ramifications of the clerk of court refusing to file an order without the form attached, we would recommend that signed orders be filed regardless of whether or not the custody form is provided.

SCENARIO #2

The second scenario involves using a form identical to the form used in Washington. In completing the Washington form, there are 44 different data options which could be identified and checked on each form. For each completed form, the individual entering data would need to enter 12 different pieces of information. Therefore, the monthly and annual compilation of an annual report similar to Washington's would require a significant number of hours. With 17,000 or more reports being filed, it is likely that additional staff would be required to compile this information.

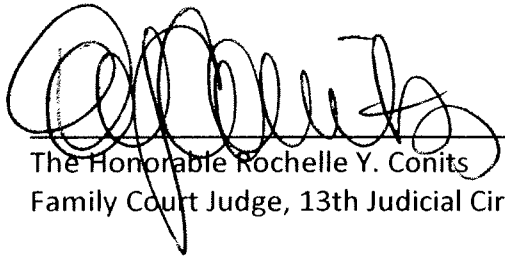
In this scenario, it is envisioned that the forms would be "self-reported" by either attorneys or self-represented litigants filing final orders with the clerk. As a result, the integrity of the data collected would be compromised. If monthly spreadsheets were compiled at the county level, I would anticipate that the clerks would be requesting additional funding to cover their cost. The hours required by Court Administration would depend upon whether or not each county was compiling their information into a spreadsheet which would be forwarded electronically to Court Administration, or simply mailing the forms to our office in Columbia. Either way, the hours required to enter 12 pieces of information for each of over 17,000 forms, would be significant. Additionally, this data would need to be compiled into a report similar to the one which is produced in Washington and, therefore, would possibly require an additional FTE within Court Administration.

SCENARIO #3

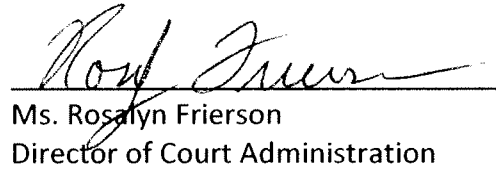
The third scenario involves using a form identical to the form used in Washington, and explained in Scenario #2. However, in order to increase reliability, in

the third scenario, the trial judge or their staff would complete the form for each final order signed by the court.

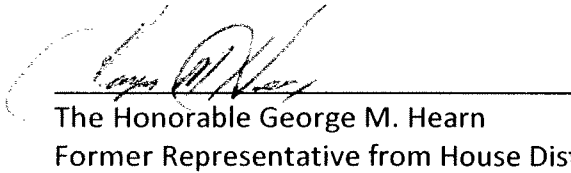
If monthly spreadsheets were compiled within each judge's office, as opposed to being compiled by the county clerks, there would be approximately 58 individuals/judges responsible for the initial collection and compilation as opposed to 46 (assuming a monthly spreadsheet was completed at the county level). Once again, the hours required by Court Administration would depend upon whether or not each court was compiling their information into a spreadsheet which would be forwarded electronically to Court Administration, or simply mailing the forms to our office in Columbia. The hours required at the state level would again be significant in light of the sheer number of anticipated forms, as well as the number of data elements involved, and therefore, would possibly require an additional FTE within Court Administration.



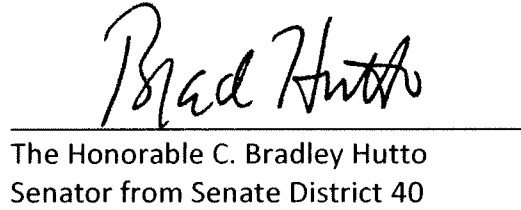
The Honorable Rochelle Y. Conits
Family Court Judge, 13th Judicial Circuit



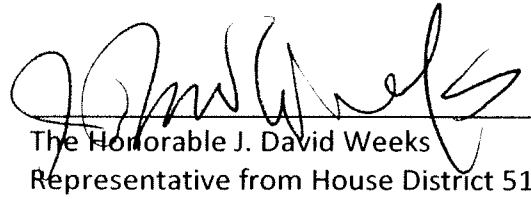
Ms. Rosalyn Frierson
Director of Court Administration



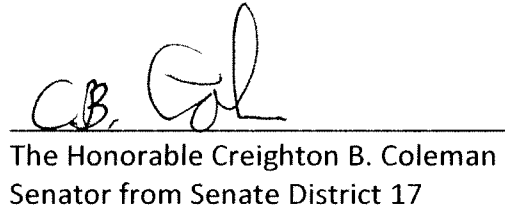
The Honorable George M. Hearn
Former Representative from House District 105



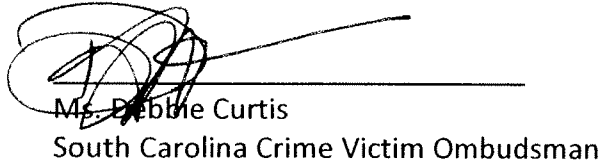
The Honorable C. Bradley Hutto
Senator from Senate District 40



The Honorable J. David Weeks
Representative from House District 51



The Honorable Creighton B. Coleman
Senator from Senate District 17



Ms. Debbie Curtis
South Carolina Crime Victim Ombudsman