Final Report of the
Divorce Laws Study Committee

A petition signed by twenty-six members of the Iowa General Assembly was submitted to the Chairman of the Legislative Research Committee in October, 1967 requesting that the Research Committee authorize a study of the Iowa divorce laws during the remainder of the 1967-1969 legislative interim and establish a Study Committee to conduct the study.

The petition requested that attention be directed to the following matters during the course of the study:

1. The need for requiring that when a divorce suit is filed, there be a mandatory counseling procedure with the couple involved to explore all possibilities of reconciliation before the divorce is granted.

2. A mandatory 120-day waiting period between filing of a suit for divorce and granting of the final divorce decree.

3. When it appears that there is no possibility of reconciling husband and wife, mandatory appointment of an attorney to protect the interests of children of the couple seeking the divorce.

4. Fairness and relevance to present day conditions of existing law and practices with respect to alimony and other financial arrangements involved in divorce.

In accordance with this request, the Research Committee appointed in March, 1968 a Study Committee composed of ten members of the General Assembly and four nonlegislative advisory members.

The membership of the Study Committee is as follows:

Legislative Members

Senator John Leonard Buren, Forest City
Senator Joseph W. Cassidy, Walcott
Senator Alden J. Erskine, Sioux City
Senator Chester O. Hougen, Waterloo
Representative John Camp, Bryant
Representative A. June Franklin, Des Moines
Representative Arlo Hullinger, Leon
Representative Bernard J. O'Malley, Des Moines
Representative Elizabeth Orr Shaw, Davenport
Representative Marvin W. Smith, Paullina

Advisory Members

Judge Robert O. Frederick, Fifth Judicial District, Winterset
Mr. James McNally, Iowa Catholic Conference, Des Moines
Pastor Bruno Schlachtenhaufen, American Lutheran Church, Des Moines
Mr. Ted Sloane, Attorney at Law, Des Moines

Representative Marvin W. Smith was designated by the Research Committee to serve as Study Committee Chairman. At the Study Committee's organizational meeting on April 18, 1968, Senator John Leonard Buren was appointed Committee Vice Chairman.

Initial meetings involved representatives of the State Department of Public Instruction, Department of Social Services, Polk County Juvenile Court, The Lutheran Social Service of Iowa, and the Black Hawk County Welfare Department meeting with Study Committee members to discuss the problems that confront members of a family, both prior to and following the granting of a divorce and which have come to the attention of such representatives.

I. TRENDS, PROCEDURES, PROBLEMS UNDER CURRENT DIVORCE LAW

A. Divorce Rate Trend

According to statistics made available by the Division of Vital Statistics of the State Department of Health, Iowa courts granted a total number of 6,018 decrees of divorce in calendar year 1967. This figure represents an increase of 8.8% over the 5,532 decrees granted during 1966. The

1967 total represents an increase of 47% over the 4,091 decrees granted in 1957. The increasing number of divorces, together with the problems generated by divorce, constitutes a matter of considerable concern to the public.

B. Grounds

Section 598.8, *Code of Iowa* (1966), authorizes a divorce to be decreed against the husband for the following causes:

1. When he has committed adultery subsequent to the marriage.

2. When he willfully deserts his wife and absents himself without a reasonable cause for the space of two years.

3. When he is convicted of a felony after the marriage.

4. When after marriage, he becomes a chronic alcoholic.

5. When he is guilty of such inhuman treatment as to endanger the life of his wife.

Section 598.9 of the Code states that a husband may obtain a divorce from his wife for any of the causes set forth in section 598.8 "and also when the wife at the time of the marriage was pregnant by another than the husband, of which he had no knowledge, unless such husband had an illegitimate child or children then living, which at the time of the marriage was unknown to the wife."

Divorce actions are most often brought alleging the cause of inhuman treatment since this is the ground more applicable to most situations where there is a breakdown of the marriage. This ground has been construed by the Iowa Supreme Court to be applicable to many situations.

C. Doctrine of Recrimination

English common law provides that civil actions may be tried at law or in equity. When no specific remedy is provided by law, the action must be tried in equity. A party who brings an action in a court of equity must satisfy the court that he is not at fault in regard to the action to be tried. He must come into court with "clean hands." If both the plaintiff and the defendant are at fault with respect to the action to be tried, no relief may be granted by the court. This common law principle is known as the doctrine of recrimination.

Actions for divorce in Iowa are tried as actions in equity, and as such are subject to the doctrine of recrimination which holds that neither party to the action may be granted a divorce if both parties have grounds (are at fault). The application of this doctrine is illustrated by the following example. The Iowa divorce law sets forth causes or grounds for which a divorce may be decreed against either the husband or the wife. A wife may obtain a divorce from her husband on proof of any of the statutory causes against the husband, unless he is able to demonstrate proof of any of the causes against the wife. Under such circumstances no divorce can be granted to either party.

D. Adversary Nature of Divorce Proceedings

Since divorce is a remedy obtained in an action in equity, and since that remedy is not available unless one party to the action can demonstrate fault in the other party, divorce proceedings are adversary in nature. The adversary nature of the proceedings is demonstrated by the following procedures under the Iowa divorce law.

1. Allegations in Petition

The Iowa divorce law and the Rules of Civil Procedure require the petition for divorce to set forth the facts constituting the cause of action asserted and for which the plaintiff claims the relief sought. Unless the parties have mutually agreed to a divorce prior to commencement of the proceedings, in which event the case will be tried as an uncontested case or default action, the defendant is confronted with having to deny the allegations of the petition with respect to grounds as well as the claims for alimony, child support, and property disposition. This situation intensifies feelings of antagonism which exist between the parties prior to commencement of the proceedings and places the parties in an adversary position in a legal sense once proceedings are initiated. Each party strives to prove that the other party was at fault by alleging specific acts committed by the opposite party which constitute grounds for divorce. The result of this moral joust may prove to be quite ironic, because if both parties successfully prove the other to be guilty of improper conduct constituting a ground for divorce, the doctrine of recrimination prevents either one of them from securing a divorce.

Thus an unfortunate marital situation may be intensified and perpetuated. The children of the marriage are often victimized in such situations by being caught in the middle of the controversy.

2. Sixty-Day Waiting Period

Section 598.25 of the Code sets forth a waiting period of sixty days between service of original notice of the divorce action and the granting of the decree, subject to the provision that the court may grant a decree prior to the expiration of such period under certain circumstances.

Although it is possible that the parties may on their own initiative resolve their differences during the waiting period and dismiss the action, circumstances are usually such that neither party is willing to actively participate in efforts directed toward reconciliation. The absence of statutory authority expressly providing for a program of conciliation services further hinders conciliation during this period.

During the sixty-day waiting period the parties submit their respective pleadings and motions. Because of the inflammatory nature of the pleadings and the absence of legislation authorizing or requiring efforts directed toward reconciliation, the result of the current sixty-day waiting period is often a further intensification of antagonism between the parties, accentuation of the adversary position assumed by each party, and the creation of an atmosphere not conducive to effecting a reconciliation.

E. Uncontested or Default Actions

As previously mentioned in this report, there are five grounds or causes for divorce in Iowa. Since the first four are often not available to the parties, considerable reliance is placed on the fifth ground—"inhuman treatment as to endanger life . . . . " Reliance on this ground is common because it has been broadly construed by the courts and it is perhaps the most innocuous of the grounds. However, this ground often does not accurately reflect the true circumstances of the marriage since in many cases no danger exists to the life of either party. In such cases, if the marriage is to be terminated, it would seem more appropriate to grant the divorce on grounds or evidence not currently provided for by statute. Also, the concept of fault in equity actions requires that the divorce be decreed against one of the parties, when in fact both parties may have contributed to a deterioration or breakdown of the marriage relationship.

Many divorce actions are tried as uncontested or default actions when both parties have concluded that the marriage should be terminated with a minimum amount of adversity. By avoiding a contested action, the danger that the doctrine of recrimination will be invoked is also avoided.

F. Rights of Children Not Adequately Protected

Uncontested or default actions can produce a number of undesirable consequences quite apart from the issue of grounds. Some of these consequences are stated below:

1. Lack of Adequate Information Concerning Financial Circumstances of the Parties

In uncontested divorce cases, the parties often compromise and reach an agreement with respect to alimony, custody, and disposition of property. Although the case may be tried as an uncontested action, one party often requires concessions from the other as a condition to abstaining from a contested action or agreeing to seek the divorce. Such circumstances often result in stipulated agreements as to child support and alimony that do not accurately reflect the husband's ability to provide for the needs of his family or the wife's ability to support herself. Sometimes the amounts agreed upon are too low, while on other occasions they may be excessive. If the amounts agreed upon are too low, the family may not receive an income adequate to maintain a reasonable standard of living, and the needs and interests of the children may be neglected.

A related problem occurs if as a consequence of an inadequate support agreement reached by compromise the mother must apply for public assistance to make up the difference between the total income needed to maintain the home and the amount of child support awarded by the court. The burden is then placed upon the taxpayers to pay, in the form of public assistance, amounts which should be taxed to the father as child support. Although in many instances the incomes of parties to an action for divorce are

so limited that a portion of the cost of maintaining the mother and children must be absorbed by the public assistance program, it is nevertheless desirable for the courts to have adequate information concerning the financial circumstances of the parties on which to base a judgment of alimony and child support. If applications for awards of alimony or child support were accompanied by detailed financial statements, the courts might find this information useful in making awards in those cases where the court has reason to believe that stipulated agreements will not adequately provide for the family's needs or reflect the actual financial circumstances of the parties.

2. Custody and Visitation

In cases where no aspect of the divorce proceedings is contested in court, the parties normally arrive at an agreement prior to trial with respect to custody of minor children and visitation rights. The plaintiff usually receives custody of the children and the defendant is allowed visitation rights. Since the circumstances of many divorce actions are such that both parties have contributed to a breakdown of the marriage relationship, the court might find it useful to have access to reports or other information concerning the respective fitness of both parties to receive custody. In some cases it is possible that neither party should receive custody and that custody should be vested in a third party or a child welfare agency. A custody investigation or the appointment of an attorney to represent the interests of the children during the proceedings could be of assistance to the court in rendering a decision on matters of custody and visitation.

G. Effects of Disrupted Homes

Although all members of a family suffer from the consequences of divorce, the effects of a disrupted home are likely to be particularly acute for the children. Although it can be scarcely argued that to force parents, who are unable to resolve their differences, to live together in an atmosphere of animosity and hostility is conducive to the welfare of their children, there is evidence to show that the consequences of divorce are often destructive to the normal and healthy development of the children. The juvenile probation department of one metropolitan Iowa county has found that a substantial number of referrals come from homes where a divorce or separation of the parents has occurred. A substantial number of additional referrals arise in situations where normal home life has been disrupted because of circumstances requiring the absence of one or both parents for a period of time.

II. RESEARCH FOR THE IOWA DIVORCE LAWS STUDY

In compiling background information for the divorce laws study, the Legislative Research Bureau sent questionnaires to eleven states requesting information on the procedures used in family courts or conciliation courts of those states. The states contacted were: Arizona, California, Colorado, Michigan, Montana, New Jersey, Ohio, Oregon, Rhode Island, Washington, and Wisconsin. In addition to evaluating the information received from these states, the Research Bureau consulted a number of law review articles and surveyed the laws of the various states with respect to conciliation procedures, waiting periods, and matters relating to custody. This research supplemented the information presented at Committee hearings.

Of the states contacted, only two have statutes providing for the courts to exercise jurisdiction over the broad spectrum of domestic relations matters affecting both adults and juveniles. These states are Ohio and Rhode Island. By statute or rule, courts in these states exercise jurisdiction over proceedings involving divorce and legal separation; delinquent, neglected, and dependent children; adults contributing to delinquency, dependency, and neglect; abandonment; and paternity. In addition, the Rhode Island Court has jurisdiction over adoption proceedings. The jurisdiction of the courts of other states is primarily limited to offering counseling or conciliation services to persons experiencing marital problems.

Information compiled by the Research Bureau indicates that there are several procedures for commencing conciliation proceedings by persons experiencing marital problems. Some states allow petitions for conciliation to be filed on a voluntary basis either prior to or after commencement of the divorce action. One state, Wisconsin, requires that conciliation proceedings under court auspices be commenced only in conjunction with the divorce action. The Wisconsin statutes require that all divorce actions be commenced in a manner that will permit the parties

to have an opportunity to participate in efforts directed toward reconciliation.

The Wisconsin Family Code, which was enacted in 1960, made the family court procedure applicable to all counties of the state. In the four years preceding adoption of the Code, 39% of the cases in Milwaukee County were dropped before trial. Four years after enactment of the Code, the percentage of cases dropped before trial rose to 48%.

Another jurisdiction that has experienced considerable success in effecting reconciliations is Los Angeles. Los Angeles has established a conciliation court as a division of the superior court, which is a court of general jurisdiction. In Los Angeles, conciliation proceedings may be commenced in the conciliation court prior to or after commencement of the divorce action in the superior court. In 1963, the conciliation court had a successful reconciliation rate of 64.2% in cases where both parties participated. The reconciliation percentage for 1965 was 58.9%.

It is important to note several distinctions between the conciliation procedures used by both Wisconsin and Los Angeles. The basic difference is that the Wisconsin procedure is mandatory, while the Los Angeles method is at the option of the parties. Only a limited number of divorce actions adjudicated by the Los Angeles Superior Court are ever referred to the conciliation court. Because of this selective approach, divorce actions involving thousands of marriages are heard by the court without the benefit of conciliation services. Many of these divorce proceedings involve parties with children.

The Wisconsin concept of mandatory application of conciliation procedures is based on the premise that although many parties with marital problems demonstrate an attitude of antagonism toward each other, such cases often present favorable prospects for conciliation. The Wisconsin procedure is mandatory only in that the parties are required to submit to the jurisdiction of the court for the purpose of determining whether a reconciliation is possible and for determining the method by which the reconciliation should be attempted.

The Wisconsin Family Code provides stringent protection of the rights and interests of minor children with respect to matters of support and custody in divorce actions. The Ohio statutes also emphasize protecting the rights of children in divorce actions.

Attention should be directed to the fact that neither the Wisconsin family court nor the Los Angeles conciliation court has jurisdiction over matters relating to dependency, neglect, juvenile delinquency, or adoption.

The conciliation courts of a number of states emphasize effecting an amicable settlement of issues relating to alimony, child support, custody, and visitation rights in cases where the parties are unable to resolve their marital differences through the counseling services offered by the courts and the action proceeds to the trial stage. Law review articles surveyed indicate that some states have experienced success in the resolution of such problems even though the marriage itself could not be saved. A family court judge from a western state observed, in his reply to a Research Bureau questionnaire, that the sole function of a family court is not necessarily to effect a reconciliation of the parties. Some marriages cannot be saved and in fact should be terminated for the best interests of all concerned. However, in such cases the family court can function in a very important manner by helping the parties to arrive at an equitable solution of the problems of child support and custody.

With respect to the role of the family court judge, one study observed that the judge should be a specialist in the field of domestic relations with tenure adequate to insure the development of the skills required for adjudicating domestic relations problems. The study indicated that these standards have particular application to the appointment of judges to courts exercising jurisdiction over the broad spectrum of domestic relations problems affecting both juveniles and adults.

On the basis of information obtained through research, the presentations at Committee hearings, and instructions received from the Study Committee, legislation has been prepared to establish a system of family courts in Iowa.

III. VARIOUS APPROACHES FOR THE DEVELOPMENT OF FAMILY COURT LEGISLATION

The first draft of the family court legislation studied by the Committee provided for mandatory establishment of a family court division

of the district court in every county having a population of 25,000 or more persons. Provision was made for counties of less than 25,000 to establish a family court on an optional basis or to participate in the joint establishment of a court. Only the counties within a specific judicial district could participate in establishing a multiple-county family court. However, a review of the divorce statistics indicated that the number of cases filed and adjudicated in counties in the 25,000 population range did not justify establishment of a family court in each such county. Consequently a decision was made to establish a family court for each judicial district.

Since the original draft did not contemplate mandatory establishment of a family court in each county, the effect of that study bill was to leave jurisdiction over juvenile matters divided between district courts, municipal courts, and family courts where established. In accordance with the Study Committee's directions that each judicial district be required to establish a family court, the first draft was further amended to authorize the court to exercise jurisdiction over all juvenile matters.

The first draft also vested the family court with jurisdiction over criminal matters involving the members of a family. A decision was made to limit the jurisdiction of the family court over criminal matters to adjudicating juvenile delinquency proceedings of a criminal nature and contempt proceedings in divorce and child support actions.

Another problem occurred in providing for service of the original notice and the divorce petition. The current Rules of Civil Procedure authorize several methods of notifying a defendant of the commencement of an action for divorce. The plaintiff may cause the original notice to be personally served on the defendant with a copy of the divorce petition attached to the notice. An alternative method of personal service requires service of only the original notice setting forth the cause of action and notifying the defendant that the divorce petition is on file in the office of the clerk of court. If personal service cannot be had, the original notice may be published.

The first draft of the family court proposal required service of two original notices to commence both conciliation and divorce proceedings. A petition for conciliation was designed to give original notice of the commencement of conciliation proceedings, and a petition for divorce was to give original notice of commencement of the divorce action, should the matter proceed to the stage where the action could be tried. After reviewing this matter extensively, the Study Committee concluded that there should be service of only one original notice and petition which would give the court jurisdiction over both conciliation and divorce proceedings. By requiring service of only one original notice, the present Rules of Civil Procedure will be preserved without having to enact a special amendment to apply to divorce proceedings initiated in the family court.

IV. COMMITTEE RECOMMENDATIONS

The Study Committee has prepared a legislative proposal authorizing the establishment of a family court system for Iowa. The procedures for establishing the court, together with matters relating to jurisdiction and commencement of proceedings, are summarized as follows.

A. Establishment and Jurisdiction of Family Court in Each Judicial District

The Committee recommends establishment of a family court to function in each judicial district of the state. The family court will function as a division of the district court and exercise jurisdiction over most domestic relations actions and proceedings. The proposed legislation defines domestic relations as the field of law which pertains to marriage, dissolution of marriage, annulment of marriage, separate maintenance, alimony, support of children, custody of children, third party interference with marriage, neglected and dependent children, legitimation of children, adoption, paternity, juvenile delinquency, relations between parent and child, and any other matters involving the legal relationships between members of a family unit. The proposed legislation will have the effect of transferring jurisdiction over all such matters to the family court although a new court is not in fact being created, rather a specialized unit within the structure of the district court system is established.

B. Judges and Staff of the Family Court

It is recommended that the State Supreme Court be authorized to appoint a sufficient num-

ber of judges from each judicial district to serve as family court judges and hear matters within the jurisdiction of the court. It is believed that by creating a family court division within the structure of the district court system, less confusion will result than would be the case if a completely new court system were to be established. Existing facilities, personnel, and procedures may continue to be used and followed in many cases, and there does not appear to be any resulting conflict with a proposed reorganization of the minor court system in Iowa.

The chief judge of each judicial district will appoint a family court commissioner and such assistant commissioners, counselors, investigators, stenographers, and other assistants as are determined to be necessary to staff the family court. Such commissioner will succeed to the duties presently exercised by probation officers and it could conceivably happen that persons presently serving as probation officers will become family court commissioners. It may also happen that an assistant will perform all probation duties depending upon the needs of the specific judicial districts. Qualifications will be prescribed by the Supreme Court for such appointments. Salaries of staff members will be fixed by the chief judge of the judicial district.

C. Commencement of Actions Involving Marital Disputes

The Committee recommends that the term "divorce" be changed to "dissolution of marriage" following proposed family court legislation in California.

An action for dissolution of marriage or separate maintenance would be commenced by personal service upon the defendant of an original notice together with a petition for conciliation or dissolution of marriage. In cases where personal service could not be obtained, the defendant would be apprised of the action by publication of the original notice in accordance with the Rules of Civil Procedure. The original notice must set forth all information required by the Rules of Civil Procedure in addition to information required by the family court act. The original notice will direct the defendant to appear for purposes of scheduling a conciliation conference.

The petition for conciliation or dissolution may allege that the defendant has committed an act or acts which constitute a breakdown of the marriage relationship. By restricting the allegation to a general statement that the defendant has caused the breakdown of the marriage, an attempt has been made to mitigate the antagonism which exists between persons experiencing marital problems, which antagonism is accentuated when the defendant receives a divorce petition alleging specific acts which constitute a ground or cause for divorce.

In the event service must be made by publication, the published notice will contain the allegation that would otherwise be set forth in the petition for conciliation or dissolution.

The petition will notify defendant that the court will retain jurisdiction of the action for the purpose of determining whether the marriage should be dissolved in the event a reconciliation is not effected or the action dismissed.

The petition must state that the plaintiff will submit to the jurisdiction of the court for the purpose of determining if a reconciliation of the parties can be effected or if the marriage should be terminated.

A period of sixty days is set aside for purposes of conciliation, subject to waiver under certain conditions. A sixty-day period is also provided after the order to plead is entered and before the marriage may be dissolved, subject to waiver in specified cases.

D. Conciliation Conferences

Under the proposed legislation, the family court commissioner will hold a hearing to be attended by both parties to the action for the purpose of inquiring into the marital dispute and determining the prospects for reconciliation. The family court commissioner will schedule the hearing at the earliest possible time consistent with the time established for appearance of the defendant set forth by the Rules of Civil Procedure. It is believed that an early hearing on the matter, together with prohibiting the petition from setting forth allegations of an inflammatory nature, will help create an atmosphere conducive to reconciling the parties. If it appears that the parties can be reconciled, the family court commissioner is authorized to refer the parties to counseling services provided by the court or recommend that

they consult qualified agencies or persons offering counseling services. All communications between one or both parties and the counselor are privileged, and no person participating in a counseling relationship with the parties shall be permitted to divulge to the court any communications received from the parties.

If at the initial hearing the family court commissioner concludes that the marital dispute cannot be resolved, he may certify his findings to the court and recommend that the remainder of the sixty-day conciliation period be waived. The sixty-day conciliation period may also be waived upon written motion by either party supported by an affidavit setting forth grounds of emergency and necessity and facts which satisfy the court that immediate action is warranted or required to protect the substantive rights or interests of any party or person who might be affected by the decree.

Upon waiver or expiration of the conciliation period, the court will enter an order instructing the defendant to plead, which order commences the running of the second sixty-day period. The order to plead will be entered in all cases where the defendant has appeared as required by the original notice. The order to plead will also be entered when the court sets aside a default entered against the defendant for failure to appear as required by the original notice, and when no default is taken against the defendant for failure to appear as required by the original notice. Upon the expiration of the second sixty-day period or waiver of such period the trial court considers whether the evidence justifies termination of the marriage.

E. Appearance by the Family Court Commissioner in Default Actions

The proposal provides for the family court commissioner to participate in the trial of actions for dissolution of marriage or separate maintenance when either of the parties fails to appear in the action. For the purposes of this portion of the proposed bill, the term "failure to appear" is construed as meaning failure of the defendant to submit an answer to plaintiff's petition or the failure of the plaintiff to support the petition or oppose any counterclaim by the defendant.

The purpose of providing for the participation of the family court commissioner in default actions is to ensure that evidence presented by the party seeking to prevail is valid and would justify a decree dissolving the marriage and in order to protect the interests of the parties involved as well as the public interest. To this end the family court commissioner is required to make a fair and impartial investigation and submit his findings to the court. All such findings must be substantiated by competent evidence.

F. Custody Determinations and the Appointment of Attorneys to Represent the Interests of Minor Children

The Committee recommends that, in the trial of an action for dissolution of marriage, the family court should be authorized at its discretion to cause an investigation to be made with respect to the fitness of the parties to receive custody of minor children. The proposed bill provides that the person conducting the investigation shall prepare a report which shall be made available to the court and the attorney for each party. The report may at the discretion of the court be received into evidence without the stipulation or consent of the parties subject to the right of examination and cross-examination of the person preparing the report and the persons furnishing information on which the report is based.

The court has discretion to cause such investigation and report to be prepared in the trial of any action where minor children are involved. The court might also find it advantageous to use this procedure in default actions where there is no evidence presented by one of the parties to the action and this power is granted to the court in the proposed legislation. In addition, the family court is authorized to appoint an attorney to represent the interests of the children at any stage of a proceeding for dissolution of marriage. Wisconsin has authorized this procedure to be used in cases when the issue of custody and visitation rights is hotly contested by both parties to the action.

G. Alimony, Child Support, and Disposition of Property

1. Financial Statements Pertinent to the Granting of Alimony and Child Support

Currently in default or uncontested actions, the courts must rely on the evidence presented by the plaintiff to substantiate the claims for alimony and child support set forth in the divorce

petition. Even in contested actions adequate financial information may not be made available to the court. Consequently, the plaintiff may ask for and receive awards of alimony and child support that do not adequately reflect the needs of the plaintiff and minor children or the ability of the defendant to contribute to their support.

The Committee recommends that any application for temporary or permanent alimony and child support be supported by affidavits setting forth detailed information concerning the financial circumstances of the parties. The financial statements submitted must be adequate for setting both temporary and permanent alimony and support. The statements required to be submitted by the plaintiff with respect to temporary claims will have to include the plaintiff's income and the best estimate of the income of the defendant. Information with respect to personal expenses and debts required to be paid during the anticipated pendency of the action will also have to be included. The defendant will be required to file a financial statement at the time he or she files an application for alimony and child support, or whenever he or she desires to resist the application by the plaintiff, or when the court so orders. If an application for temporary alimony and support is filed with the petition and the court acquires personal jurisdiction over the defendant through service of the original notice, the notice shall inform defendant that a hearing will be held on plaintiff's application at a date and time specified therein.

The affidavits submitted must also contain information satisfactory for the purpose of enabling the court to make an award of permanent alimony, child support, and disposition of property. A detailed listing of income, assets, liabilities, and obligations must be submitted to the court.

2. Applications for Public Assistance

Currently a problem can arise when persons of limited income become parties to an action for divorce. The plaintiff may seek an award of public assistance and at the same time set forth in the divorce petition a claim for either temporary or permanent alimony or child support. On other occasions no demand for alimony or support may be made. A claim set forth in the petition may also be too low to accurately reflect the ability of the defendant to contribute to the support of his family. There appears to be a lack of coordination between the courts and welfare officials. The proposed bill provides that when the petition contains an application for child support, the commissioner shall, if he has entered into an agreement with the welfare department to do so, furnish the welfare department with a copy of the financial statement in cases where either of the parties is receiving welfare assistance, has applied for welfare assistance, or where application for such assistance appears likely. The court clerk will also furnish the welfare department with copies of any orders or decrees awarding child support. Such information will assist the welfare department with respect to determining the eligibility of the plaintiff to receive public assistance and computing the amount of assistance to be awarded.

H. Payment of Alimony and Child Support to the Clerk of Court—Assignment of Support

The Committee recommends that child support and alimony payments be made to the recipient through the clerk of the court. The proposed legislation further authorizes the commissioner to enter into agreements with the welfare department which provide for reimbursement of grants of public assistance made to a party in an action for dissolution of marriage. In such cases the amount of child support required to be paid by temporary order or final decree will be paid to the clerk of court and remitted to the welfare department. The welfare department has the right to initiate contempt proceedings where a delinquency in payments occurs. The success of the provisions of this portion of the proposed bill may depend to a great extent upon the willingness of county welfare departments to cooperate with the family courts in implementing the procedures enumerated.

I. Contempt Proceedings

In the legislative proposal, the Committee has directed attention to several problems which occur under the present procedures for initiating contempt proceedings against a party who has been delinquent in making alimony and child support payments. Currently a party who has defaulted in making payments can avoid punishment for contempt by paying the amounts in default immediately prior to the contempt hearing date. For example, the party required to pay can delay making the payments until the person en-

titled to them is forced to initiate contempt proceedings and the contempt citation is avoided by a last minute payment. To correct this situation, the proposed legislation sets forth procedures in accordance with which the delinquent party shall be required to attend a hearing and if it is shown that the default in payments has been willful, the party may be punished for contempt, regardless of whether he has paid the amounts in default prior to the hearing. It is felt that such an allowable procedure will aid in preventing habitually late payments of alimony and support. The Committee also recommends that when a party entitled to support payments initiates contempt proceedings and the defaulting party is found to be in contempt, such party will be taxed with the cost of the contempt action.

Although the current statutes do not require an employer to accept a wage assignment, the recommended legislation provides for the court to request an assignment as the result of a finding that the delinquent party has been in willful default. If the employer accepts the assignment, an amount equal to the amount of alimony and child support required to be paid will be deducted from the employee's salary and remitted to the clerk of court. The assignment shall apply to amounts in default as well as payments to be made in the future.

An amendment to the current statute provides that willful defaults in payment of temporary, as opposed to permanent, alimony and child support shall be subject to contempt proceedings. Currently, only defaults in final judgments of alimony and support appear to be subject to contempt proceedings.

J. Courts Exercising Concurrent Jurisdiction

During the course of the study, the Committee was informed that proceedings affecting a divorce decree may be subsequently commenced in a court other than the court granting the decree. Since the court issuing the decree retains jurisdiction to modify the terms of the decree with respect to matters of alimony, child support, and custody, it is possible that courts in two separate judicial districts may adjudicate the same issues. In such cases, both courts might issue orders that are in direct conflict. For example, if adoption proceedings involving the minor children of a divorced couple were commenced in a court other than the court granting the decree, each court might enter an order affecting such children without the knowledge of the action of the other court. The court hearing the adoption proceeding might enter an order granting the adoption with the consent of the parent who had been granted custody by the divorce decree. Just prior to the entering of such order, the court granting the decree might hold a hearing on an application to modify custody, and as a result enter a conflicting order giving custody to the other parent.

To remedy this situation, the Committee recommends that whenever a proceeding involving the parties to a divorce decree is commenced in a court other than the court granting the decree, such court must serve notice of such proceeding upon the parties to the original action, if the parties can be located. The court, or either of the parties to the decree, may request that a copy of the transcript of the proceedings of the court which granted the decree be made available for the consideration of the court in which the proceedings for adoption or modification of alimony, support, or custody are pending.

K. Grounds for Dissolution of Marriage—Repeal of Doctrine of Recrimination

The grounds or causes for which a decree of divorce may be granted have been previously mentioned in this report. Although the grounds are available to either the husband or the wife, they are, under the adversary system, predicated on one of the parties being at fault. A divorce decree may be granted upon proof of any of the grounds or causes, provided both parties have not been at fault.

The Committee recommends that the statutes with respect to grounds be replaced by a provision authorizing the court to enter a decree dissolving a marriage upon satisfactory evidence that there has been a breakdown of the marriage relationship to the extent that the legitimate objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. The court will be authorized to consider all evidence presented, including, but not limited to, the commission of adultery; willful desertion without reasonable cause for a space of two years; conviction of a felony after the marriage; chronic alcoholism; inhuman treat-

ment affecting physical or mental well-being; incurable mental illness for a continuous period of three years immediately preceding the filing of the action, requiring confinement to an institution, home, or other facility and based upon the testimony of a qualified member of the medical profession that such spouse is incurably mentally ill; pregnancy of the wife at the time of the marriage, unknown by the husband, by a person other than the husband; when the husband and wife have voluntarily lived entirely separate for three years next preceding the commencement of the action; and the existence of an illegitimate child or children of one of the spouses, then living, which is unknown to the other spouse at the time of the marriage.

No marriage dissolution decree granted due to the mental illness of one of the spouses shall relieve the other spouse of any obligation imposed by law as a result of the marriage for the support of the mentally ill spouse, and the court may make an order for such support.

The current grounds are thus included as evidence to be considered by the court. It should also be noted that the doctrine of recrimination is repealed by the proposd bill.