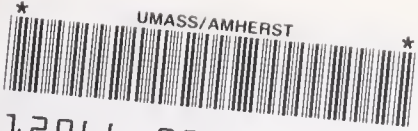


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Recommendations of
The Governor's
Commission on

Child Support



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Michael S. Dukakis, Governor
Commonwealth of Massachusetts
October 1985



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Recommendations of the
Governor's Commission
on
CHILD SUPPORT

submitted to

MICHAEL S. DUKAKIS
Governor

Chairperson
CATHERINE M. DUNHAM
Director, Governor's Office of Human Resources

October, 1985



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

MICHAEL S. DUKAKIS
GOVERNOR

October 1, 1985

Dear Governor Dukakis:

I am pleased to present to you this report of the Child Support Commission appointed by you last December as required by the Child Support Enforcement Amendments of 1984 (Public Law 98-378).

The report is a summary of the work of 32 commissioners representing all aspects of the child support system. Over the past eight months, the Commission has examined the operation of child support collection and enforcement in Massachusetts and formulated recommendations based on its investigation.

The recommendations are designed to bring Massachusetts into compliance with the federal amendments and to create a child support system that is predictable, effective and fair.

Your strong commitment to improving the lives of children in the Commonwealth has been demonstrated by your policies and programs in the areas of day care, child nutrition and child protection. Improvement in child support enforcement and services will bring an additional measure of security to thousands of children in the state who are deprived of economic support which is rightfully theirs.

Addressing the issues raised by the Commission will require maximum cooperation between the executive, legislative and judicial branches of state government. The Commission stands ready to assist in this effort. We look forward to your response to our recommendations.

Sincerely yours,

A handwritten signature in cursive script that reads "Catherine M. Dunham".

Catherine M. Dunham
Director, Governor's Office of Human Resources
Chairperson, Child Support Commission

ACKNOWLEDGEMENTS

Members of the Commission have given generously of their time for Commission meetings and Committee work. A special thanks to Commission members Frank Anderson, Carolyn Famiglietti, George Kelly, Jon Laramore and Marilyn Ray Smith for chairing the Committees established by the Commission.

The Massachusetts Society for Prevention of Cruelty to Children, Family Services Association of Greater Boston, Suffolk University Law School and Boston Municipal Court provided meeting space for the Commission and its Committees.

Secretary of Human Services Philip W. Johnston and Public Welfare Commissioner Charles Atkins fully supported the work of the Commission, including staff assistance and provision of a budget for the operation of the Commission.

Hugh Galligan, Director of Health & Human Services' Regional Office of Child Support Enforcement, met with the Commission and provided consultation to the Commission throughout its deliberations.

The staff support for the Commission was directed by Connie Williams, Chief Policy Analyst in the Governor's Office of Human Resources. She was assisted by Dennis Thomson, Patricia Lynch and Peter Atkins. From the Department of Public Welfare, Robert Bolster and Susan Solomon provided staff and research assistance. Linda Joyce-Smith provided secretarial services for the Commission including the production of this report. This report was written by Connie Williams and Jon Laramore in consultation with other Commission members. Staff assistants to the Judges, District Attorneys, Commissioner of Probation, Commissioner of Public Welfare and the Executive Office of Administration and Finance met regularly with the Commission and served on Committees. They were valuable resources on child support in their respective agencies.

TABLE OF CONTENTS

I.	<u>INTRODUCTION</u>	1
	A. Child Support and Its Social Context	
II.	<u>BACKGROUND</u>	2
	A. State Commission on Child Support	
	B. Requirements of the Federal Statute	
	1. Masters	
	2. Income Assignment	
	3. Tax Offset	
	4. Equal Services	
	5. Guidelines	
III.	<u>COMMISSION STRUCTURE</u>	5
	A. Commission Meetings	
	B. Committees	
	C. Public Hearings	
	D. Conferences and Speaking Engagements	
IV.	<u>THE COMMISSION'S MAJOR FINDINGS</u>	7
	A. Fragmentation	
	B. Lack of Uniformity	
	C. Inadequate Provision of Services	
	D. Inadequate Use of Available Enforcement Tools	
V.	<u>RECOMMENDATIONS OF THE COMMISSION</u>	9
	A. Administration of Child Support Enforcement	
	B. Guidelines	
	C. Jurisdiction	
	D. Income Assignment	
	E. Expedited Process	
	F. Tax Intercept	
	G. Notification of Credit Agencies	
	H. Continuation of Commission	
VI.	<u>CHILD SUPPORT COMMISSION MEMBERSHIP LIST</u>	13
VII.	<u>COMMITTEE MEMBERSHIP LIST</u>	16

I. INTRODUCTION

A. Child Support and Its Social Context

Rising rates of divorce, separation and out-of-wedlock births during the past decade have increased the necessity for careful examination of social policies and practices related to family issues. One of the most visible of these issues is child support. However, one cannot consider child support without also paying attention to the total context in which child support occurs. The impact of child support policies and practices on children, custodial and non-custodial parents, and reconstituted families is far-reaching.

Policies related to child custody and the access of children to both parents are inextricably tied to continued emotional commitment and financial responsibility assumed by parents. While this Commission could not consider all of these issues in depth, it attempted to keep child support in this larger context.

Commission members held widely divergent points of view on many of these issues. There was, however, complete agreement that the emotional and economic costs of divorce, separation and single parenthood are high for all parties involved and no party pays a higher price than the innocent child. For this reason, all members of the Commission are committed to improving the Commonwealth's child support system.

An improved system will narrow the widening gap between children in one-parent and two-parent families. The staggering figures show that a two-parent family with children under 18 has a median income of \$23,1833, while a single-parent family has a median income of just \$7,393. That figure is only \$4,588 when the children in the single-parent family are under 6.¹

Many experts have linked this poverty to failure to collect child support.² More than half of existing child support orders are not fully paid, and even the average order that is paid amounts to just \$1,700 per year.³ When these amounts are taken together with the fact that most working women earn less than \$10,000 annually, it is no wonder that most female-headed families have incomes below the poverty line.⁴ The figures

¹ 1980 Massachusetts census data.

² Laramore, Economic Child Abuse, sources cited at 7.

³ U.S. Census data, 1981.

⁴ Roberts, ameliorating the feminization of Poverty, 18 Clearinghouse Review, 883, 885. House Hearing 98-41, Ways and Means Committee Hearing on Child Support, p. 15.

show that economic troubles multiply when families split, and that children's living standards often plummet when the chief breadwinner leaves the household.⁵

These families often turn to public assistance. According to the Office of Child Support Enforcement (OSCE) of the U.S. Department of Health and Human Services:

"It is a fact that of those receiving Aid to Families with Dependent Children (AFDC) payments, 87% are receiving assistance because there is no father in the home to provide the support. As a result, mothers and children are left to their own meager resource, resulting in what many have termed the 'feminization of poverty.'

It has been estimated that single parent families receiving government assistance cost the taxpayers \$20 to \$30 billion a year. In addition, the Census Bureau has reported that of the \$9.9 billion owed in child support payments just in 1981, only \$6.1 billion were actually collected."⁶

These compelling facts kept the Commission focused on the well-being of children.

II. BACKGROUND

The Governor's Child Support Commission was appointed by Governor Michael S. Dukakis in December, 1984 and sworn in on January 29, 1985. The Commission has 32 members who represent all constituencies interested in child support enforcement and all state agencies involved in the enforcement process. As chair of the Commission, the Governor appointed Catherine M. Dunham, Director of the Governor's Office of Human Resources.

Child Support is the financial support that parents are obligated to provide for the care and well-being of their children. For our purposes, child support is the cash payment by parents who are not the primary custodians of the children on whose behalf support is paid. The support obligation is based in law and the amount of support that is to be paid is often set by court order.

⁵ Weitzman, The Economics of Divorce, 28 U.C.L.A. Law Review 1181, 1238.

⁶ OCSE Pamphlet, "Child Support...New Help is Available."

A. State Commission on Child Support

Establishment of the Commission was mandated by the Child Support Enforcement Act Amendments of 1984, Federal Public Law 98-378. This statute promulgated new federal requirements to be met by all states as a condition of continued receipt of federal funding under Title IV-D of the Social Security Act. The law required commissions to examine each state's support enforcement system and to recommend improvements in the system.

According to the federal statute, section (c),

"It shall be the function of each State Commission to examine, investigate and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children."

The Commission found that the federally-mandated changes were an important incentive in the examination of the support collection system in Massachusetts. It discovered that while Massachusetts ranks seventh among those states most successful in collecting child support, and has the highest ratio of child support collections to AFDC costs, that even greater effectiveness can be achieved in a better coordinated system.

The federal guidelines require the Commission to report by October 1, 1985 to the Governor and in turn to the Secretary of Health and Human Services. Hugh Galligan, Director of the Regional Child Support Enforcement Office, graciously agreed to extend this due date until mid-October. It was also the wish of several members that the Commission not disband at this time in order to attend to the implementation of its recommendations. The Commission agreed to continue for three months (until January 1, 1986).

This report focuses on the major recommendations agreed upon by the total Commission. They relate closely to the federally-mandated requirements with which the state must comply. The requirements are listed below.

An additional volume will contain full reports on the work of the committees, including recommendations not acted upon by the total Commission.

B. Requirements of the Federal Statute

The federal law mandates several important changes for Massachusetts, and the Commission has developed legislation to implement those requirements. A major theme of the legislation is the requirement that all states install certain support enforcement techniques that have proven effective in other locales. For example, the federal law looked to Massachusetts and a few other states to find models for income assignment laws that have increased collections.

Massachusetts already has some of the techniques required by federal law; therefore, the Commission did not have to address them. These include the availability of liens on property and the requirement to post security as tools for support enforcement. The state also meets the federal requirement that support orders include medical insurance whenever possible.

1. Masters

One of the more sweeping changes is the requirement that the state create an "expedited process" for the hearing of all support-setting and enforcement actions. This requirement stems from the success of such special systems in other jurisdictions, such as Illinois and Rhode Island. An "expedited process," under the law, is a system that hears cases more quickly than the court system and that is presided over by a judge-surrogate.

The federal requirement is that this system be used to hear all cases involving support enforcement and the setting of support orders. This requirement has been used in other states to reduce the role of judges in child support, but the system proposed by the Commission for Massachusetts retains most of their role.

2. Income Assignment

For the purpose of this report, "income assignment" is the distribution of a portion of earnings deducted from the non-custodial parent's net income and paid to the custodial parent for child support.

A second requirement of the federal statute is alteration of the state's income assignment statutes, c. 208, sec. 36; c. 209, sec. 32E; c. 273, sec. 5; and c. 273A, sec. 10. The federally mandated alterations are of marginal impact. The statute must be amended to require automatic

implementation of an assignment whenever the total arrearage in a case exceeds 30 days. Implementation of the assignment must be administrative, without provision for approval by a judge unless the obligor contests the fact that the arrearage exists. Income assignment also must be available in interstate cases, and as an additional remedy even in cases handled prior to enactment of the current statute, where no assignment was executed.

3. Tax Offset

Since 1975, the federal government has made available to the states a program allowing them to recoup child support owed to state welfare departments through interception of obligors' income tax refunds. Since 1982, Massachusetts has made this tool available to the Welfare Department for state tax refunds as well. Under the federal law, these programs must be opened to private individuals who are not involved in the welfare system.

4. Equal Services

The fourth federal mandate is that all services that any state provides to persons on welfare to help them collect support must be made available to those not on AFDC. The state must publicize the availability of these services in an effort to get more citizens to use the resources available to improve support collection.

5. Guidelines

Finally, by October 1, 1987, the state must have in place a system of numerical guidelines that may be used by all those who set child support orders to determine how much support should be given in a particular case. Guidelines are designed to bring uniformity to the current system and to deal with the failure of many support orders to meet children's most basic needs. The guidelines need not be binding, and may be promulgated by law, or by judicial or administrative action.

III. COMMISSION STRUCTURE

A. Commission Meetings

Between January 29 and October 1, 1985, the Commission met eight times, including one all-day meeting devoted to adopting recommendations developed by committees.

Commission meetings served as an important and useful forum for the exchange of information and a balancing of perspectives on

child support enforcement and its impact on children, as well as custodial and non-custodial parents. During these proceedings, members of the Commission developed appreciation for the impact of child support policies and practices on the lives of thousands of families.

B. Committees

During its first meeting in February, 1985, the Commission chose to proceed with its work in four committees, later adding a fifth. These committees, which benefited from the active participation of many Commission members, broke down the Commission's task into manageable areas and did the real work of the body. The four original committees were:

- o Enforcement: George Kelly, Chair
- o Expedited Procedures: Jon Laramore, Chair
- o Guidelines: Marilyn Ray Smith, Chair
- o Services to Non-AFDC Clients: Frank Anderson, Chair

(The Services Committee expanded its role to look at services delivered to families on welfare as well.)

After these committees finished the bulk of their work, a fifth committee on Legislation, chaired by Carolyn Famiglietti, was formed to help mold the Commission's work into a proposal for statutory change.

C. Public Hearings

Three public hearings were conducted by the Commission, one in each of the following locations: Springfield, Worcester and Boston. Sixty-three persons testified before the Commission. They represented a broad cross-section of citizens concerned and knowledgeable about every aspect of the child support system, including:

- custodial and non-custodial parents;
- civic and professional organizations;
- court personnel;
- attorneys and paralegals from legal service organizations;
- family law practitioners;
- law enforcement officials;
- social workers and family therapists;
- guidance counselors;
- legislators;
- district attorneys;
- mediation experts;
- children of divorce;
- men's groups; and,
- women's groups.

Written testimony submitted to the Commission is available in the Commission files.

D. Conferences and Speaking Engagements

Since the establishment of state child support commissions, the Department of Health and Human Services has sponsored regional and national conferences on child support. The Commission chairperson was invited to speak at a national conference in Colorado and a member of the Commission attended another national conference in South Carolina. In both instances, travel expenses were paid by the federal office of Child Support Enforcement.

One regional Health and Human Services conference in Vermont was attended by a commissioner and a staff person whose expenses were paid by the state IV-D agency. Several commissioners attended, at their own expense, the American Bar Association Conference on Child Support in Washington, D.C.

IV. THE COMMISSION'S MAJOR FINDINGS

It is the goal of the Commission that its recommendations result in the following:

- o An efficient system. The time it takes to obtain and enforce a child support order should be shortened. An expedited process (master system) will accomplish this goal.
- o A fairer system. The establishing of a formula to guide masters in setting support amounts will introduce fairness by treating persons in similar circumstances equitably.
- o An adequate system. Adequate awards are more likely to occur if guidelines for setting support orders are in place.

In examining the system for support collection in Massachusetts, the Commission identified several overarching difficulties which were universally experienced.

- o Fragmentation - The involvement in child support matters of executive branch agencies, the district and probate courts, and law enforcement agencies results in a complex system accountable to no single authority.
- o Lack of Uniformity - The administration of child support varies widely in various jurisdictions in which it is carried out: 69 district courts, 13 probate courts, 11 district attorney offices, and over 60 Child Support Enforcement Units in the Department of Public Welfare. Those who use the system are aware that persons in similar circumstances cannot count on similar treatment.

- o Inadequate Provision of Services - There is no client-oriented printed information available to inform citizens about the system and how to use it. All agencies with child support functions have other duties with greater claims on their resources than child support enforcement.

- o Inadequate Use of Available Enforcement Tools - Two examples of the inadequate use of available enforcement tools are the underutilization of wage assignment under the current statute and the inadmissibility of blood tests in determining paternity.

V. RECOMMENDATIONS OF THE COMMISSION

The implementation of the following recommendations will address the issues of fragmentation, lack of uniformity, inadequate services and inadequate enforcement. These recommendations are only a first step. Over the next three months the Commission will continue its deliberations. Many of the proposed changes require legislative action. Other changes may be carried out by executive or administrative action. These legislative changes will be presented for consideration as amendments to Senate 2357, the Child Support Bill, currently before the Senate Ways and Means Committee. The Commission hopes that the governor and the legislature will find its work helpful as they make decisions about child support enforcement in Massachusetts.

The Commission's work will be particularly useful in suggesting actions necessary to bring the Commonwealth into compliance with the 1984 federal amendments. Compliance with the federal regulations will produce a better coordinated approach to child support while increasing the possibility for increased revenue from the federal government. To these ends, the Commission makes the following recommendations.

A. Administration of Child Support Enforcement

The Commission recommends a strong IV-D (IV-D refers to part D of title IV of the Social Security Act) agency centralizing the collection, services and enforcement functions, sensitive to consumers including children, custodial and noncustodial parents, and providing equal services to AFDC and non-AFDC families.

Between October 1, 1985 and January 1, 1986, the Commission will address the functions of the IV-D agency. A report by a consultant engaged by the Regional Child Support Enforcement Office will be issued in October, 1985, and will address organizational concerns related to child support in Massachusetts. This report will be available to the Commission for potential guidance in its discussion of these issues.

B. Guidelines

The Commission reviewed a report from the Guidelines Committee based on extensive research and long deliberations. Because of the complexity of the subject matter, the Commission adopted the set of principles developed by the Committee and a process by which guidelines should be promulgated.

Principles Governing the Development of Guidelines

1. The economic impact on the child of family break-up should be minimized whenever possible.

2. Both parents should share responsibility for supporting their children, in proportion to their income.
3. Child support should meet a child's survival needs in the first instance, but to the extent either parent enjoys a higher standard of living, the child is entitled to share that higher standard.
4. The guidelines should be structured to accommodate the subsistence needs of parents at the low end of the income range, but should always require at least a token payment. This payment helps maintain a psychological bond between the absent parent and child, establishes a pattern of regular payment, to be increased when income goes up, and enables the enforcement agency to maintain contact with the obligor.
5. The guidelines should avoid creating adverse effects on other life decisions of the parents. The scope of the child support obligation should be predictable so that both parents can plan other parts of their lives accordingly. Second families, whether providing additional resources from a current spouse or creating new obligations for new dependents, should not affect pre-existing child support obligations.
6. The guidelines should take into account the non-monetary contributions of the custodial parent, such as time, services and opportunity costs.
7. The guidelines should be simple--easy to prove for the parties and easy to administer for the courts. Recognizing that subtlety would undoubtedly be sacrificed in some individual cases, the Committee nevertheless concluded that the benefits of simplicity in reducing opportunities for manipulating evidence and prolonging litigation outweighed its drawbacks.
8. The guidelines should reach most cases, again acknowledging the need for flexibility in the treatment of cases with unique circumstances.

Process for the Promulgation of Guidelines

The child support guidelines will be promulgated by a committee chaired by the Chief Administrative Justice of the Trial Court. This committee will include members of the judiciary appointed by the Chief Administrative Justice of the Trial Court and members of the Child Support Commission and others appointed by the Governor.

The Committee's decision will include consideration of socio-economic factors as well as legal ones, and guidelines should be in place at the time the master system is implemented.

C. Jurisdiction

All support orders should be set in civil proceedings, reserving criminal prosecution for punishment. A civil proceeding to obtain support only should, therefore, be created for married persons in the probate and district courts, while preserving criminal non-support jurisdiction in the district court.

Paternity proceedings shall be changed to civil proceedings to allow for faster processing of cases and a civil standard of proof. Blood and genetic tests should be allowed as evidence in these proceedings. Paternity proceedings should be within the jurisdiction of both the probate and district courts.

When support is set in the district court in a paternity matter, any issue concerning visitation or custody still must be heard in the probate court (but is not to be heard until the district court makes its decision on paternity or support). The probate court must respect the support order of the district court unless a substantial change of circumstances exists justifying modification of that order. Even after probate court action on custody or visitation, enforcement of the support order must be accomplished in district court. Any future modification based on changed circumstances may be brought in either probate or district court. Probate court may enforce any order it modifies.

D. Income Assignment

An immediate income assignment will automatically be ordered in every case unless the court or master, for good cause shown (including agreement of the parties that it should not be immediate), determines that it should be suspended. When a suspension of an income assignment is ordered, the suspension will remain in effect so long as the support order remains in effect. If the court or master choose not to order an immediate assignment, he or she will have to note reasons in writing.

In a case where an immediate assignment is not ordered, the conditions of suspension are as follows: when two weekly or one monthly payment is missed, the court has a responsibility to notify the obligor and his employer that the assignment is to be implemented. The obligor then has the option of requesting a hearing to get the assignment suspended again, if it was erroneously put into place. Only new cases and cases coming before the court for enforcement or modification are subject to this provision; other cases are treated as suspended as described above.

E. Expedited Process

To comply with federal law, there will be a master system to handle setting and enforcing support orders. When a person comes to court to obtain or enforce support, the case will be handled by the master.

Masters must be lawyers. Masters are to be full time employees of the judicial department with salaries set on the judicial department's pay scale. Members of the ten-person committee selecting masters are to be appointed by the Governor for a fixed term. The parental representatives on the committee are to be non-lawyers. The list formed by the committee shall contain more names than the number of masters needed, but not substantially more. The masters will be assigned to various courts by the chief administrative justices of the various court departments.

When a master acts in a support case, his order is reviewable by a justice. When one of the parties appeals, the judge hears all the evidence and argument over again (rather than reviewing the record) and may change the master's decision if it is legally incorrect, unsupported by substantial evidence, or arbitrary or capricious and after stating in writing his reasons.

If the decision is not appealed, the judge must review the master's decision and sign it if he approves it. If he does not approve it, he may alter it after calling in the parties for a hearing as described above and entering written findings based on the standard described above. The master's order shall be in effect by operation of law pending review or change by the judge unless the judge stays the order. If the judge stays the order, he must hold a hearing within seven calendar days of suspension. Appeals should be filed within three days of the master's decision.

F. Tax Intercept

The program allowing the IV-D agency to intercept state and federal income tax refunds to pay past due child support should be expanded to persons not receiving public assistance.

G. Notification of Credit Agencies

To comply with federal law, the state should notify credit reporting agencies when any obligor compiles a child support arrearage of \$1,000 or more.

H. Continuation of Commission

To deal with issues of implementation and management, the term of the Child Support Commission should be extended to January 1, 1986.

GOVERNOR'S COMMISSION ON CHILD SUPPORT

MEMBERSHIP LIST

Chairperson: Catherine M. Dunham
Director
Governor's Office of Human Resources
State House, Room 109
Boston, MA 02133

Frank E. Anderson
President
Parents Without Partners
New England Regional Council
1217 North Shore Road
Revere, MA 02151

Charles Atkins
Commissioner
Department of Public Welfare
180 Tremont Street
Boston, MA 02111

Stanley Fred Battle
Associate Professor
Boston University School
of Social Work
676 Dedham Street
Newton Centre, MA 02159

Honorable Kevin P. Blanchette
House of Representatives
Chairman, Committee on Public Service
495 Lowell Street
Lawrence, MA 01841

Kevin Burke
District Attorney
Essex County District Attorney's
Office
Superior Court House
Salem, MA 01970

Donald Cochran
Commissioner
Department of Probation
One Ashburton Place, Room 405
Boston, MA 02108

Jacqueline Dittrich
Paralegal
Legal Services for Cape Cod
and Islands, Inc.
Box 211, Route 130
Forestdale, MA 02644

Carolyn Famiglietti
Attorney
Greater Boston Legal Services
68 Essex Street
Boston, MA 02111

Cindy Foster
Mothers United to Receive Child
Support for Children Through
Legislative Efforts
88 South Street
Williamsburg, MA 01089

Joseph Gallant
Associate Commissioner
Project Management
Department of Public Welfare
180 Tremont Street
Boston, MA 02111

Honorable Theodore A. Glynn
Chief Administrative Justice
Boston Municipal Court
380 Old Court House
Boston, MA 02108

Richard G. Hoffman
President
Massachusetts Bar Association
7 West Street, P.O. Box 289
Walpole, MA 02081

Philip W. Johnston
Secretary
Executive Office of Human
Services
One Ashburton Place, 11th Floor
Boston, MA 02108

Jon Laramore
Attorney
Child Support Project
South Middlesex Legal Services
36 Concord Street
Framingham, MA 01701

Honorable Arthur Mason
Chief Administrative Justice
Trial Courts
317 New Court House
Boston, MA 02108

Marc G. Perlin
Professor of Law
Suffolk University Law School
Beacon Hill
Boston, MA 02114

Joan Quinlan
Governor's Advisor on Women's
Issues
State House, Room 109
Boston, MA 02133

Joyce Sampson
Director
Child Support Enforcement
600 Washington Street
Boston, MA 02111

Mary Haskell
Attorney
2343 Massachusetts Avenue
Cambridge, MA 02140

Ruth-Arlene Howe
Professor of Law
Boston College
885 Centre Street
Newton, MA 02159

George R. Kelly
Chairman
Concerned Fathers
72 Humphrey Lane
West Springfield, MA 01089

Joseph Leavey
Executive Director
Communities for People, Inc.
690 Beacon Street
Boston, MA 02215

William C. O'Malley
District Attorney
Plymouth County District Attorney's
Office
32 Belmont Street, P.O. Box 1665
Brockton, MA 02403

Honorable Alfred L. Podolski
Chief Administrative Justice
Probate & Family Courts
P.O. Box 840
Dedham, MA 02026

Patrick Riley
Executive Director
Family Service Association of
Greater Boston
34½ Beacon Street
Boston, MA 02108

Honorable Susan D. Schur
House of Representatives
State House, Room 279
Boston, MA 02133

Marilyn Ray Smith
Attorney
100 Goddard Avenue
Brookline, MA 02146

Leah Sprague
General Counsel
Department of Public Welfare
180 Tremont Street
Boston, MA 02111

Dawn Blake Thomas
127 Mt. Vernon Street
New Bedford, MA 02740

Barry Walker
Attorney
Bikofsky, Walker & Tuttle
281 Pleasant Street, P.O. Box 2547
Framingham, MA 01701

Honorable Samuel E. Zoll
Chief Administrative Justice
District Courts
209 Essex Street
Salem, MA 01970

COMMITTEE MEMBERS

Enforcement Committee

George Kelly, Chair
Kevin Burke
Donald Cochran
Carolyn Famiglietti
Patrick Riley

Guidelines

Marilyn Ray Smith, Chair
Representative Kevin Blanchette
Joseph Gallant
Judge Theodore A. Glynn
Mary Haskell
Ruth-Arlene Howe
Jon Laramore
Judge Arthur Mason
William O'Malley

Services to AFDC and Non-AFDC

Families

Frank Anderson, Chair
Stanley Battle
Jacqueline Dittrich
Cindy Foster
Jon Laramore
Joseph Leavey
Joan Quinlan

Expedited Process

Jon Laramore, Chair
Richard Hoffman
Marc Perlin
Judge Alfred Podolski
Representative Susan Schur
Marilyn Ray Smith
Leah Sprague
Barry Walker
Judge Samuel Zoll

Legislation

Carolyn Famiglietti, Chair
Frank Anderson
Kevin Burke
Richard Hoffman
George Kelly
Jon Laramore
Marc Perlin
Representative Susan Schur
Marilyn Ray Smith
Judge Samuel Zoll

The following persons also attended Commission meetings and participated on committees of the Commission:

Robert Anastas, Department of Public Welfare
Vincent Basile, Department of Probation
Jonathan Blodgett, Essex County District Attorney's Office
William Carito, Department of Public Welfare
Janet Corvini, Plymouth County District Attorney's Office
Mark Coven, Executive Office of Human Services
Naomi Goldstein, Executive Office of Administration and Finance
Joseph Green, Essex County District Attorney's Office
Elton Jenkins, Office of Chief Administrative Justice of the Trial Court
Deborah Propp, District Court Department of the Trial Court
William Ryan, Office of Chief Administrative Justice Probate and Family Courts
Helen Upshur, Representative Blanchette's Aide

