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2014 Maine State Bar Association Annual Meeting/
2014 Access to Justice Symposium

January 31, 2014

***Family Justice System Reform: A Blueprint To
Construct A Unified Family Court***

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University of Baltimore School of Law



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Mission of the Sayra and Neil Meyerhoff Center for Families, Children and the Courts (CFCC)



- Family justice system reform
- Identifying structures and processes to improve families' and children's lives
- Creation of Unified Family Courts (UFCs)



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Sayra and Neil Meyerhoff Center for Families, Children and the Courts

Website: <http://law.ubalt.edu/centers/cfcc/>

Facebook Page: <https://www.facebook.com/CFCCatUBaltLaw>

Blog: <http://law.ubalt.edu/centers/cfcc/>

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Family Law Litigants by the Numbers (% relative to entire trial court caseload)

Maryland = 46%

Kentucky = 49%

Nevada = 63%



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Problems With Existing Family Justice Systems

1. Overwhelmed with cases and self-represented litigants
2. Time consuming, expensive, cumbersome, duplicative court process
3. Child-related issues do not receive proper attention; children often used as pawns
4. Inadequate resort to ADR



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Problems With Existing Family Justice Systems (continued)

5. Inadequate coordination of litigation involving the same family
6. Lack of interest, temperament, understanding by some judges hearing family cases
7. Judges often deciding psycho-social matters without proper training
8. Lack of attention to needs of poor and unrepresented litigants
9. Insufficient coordination among various professionals working with families and children



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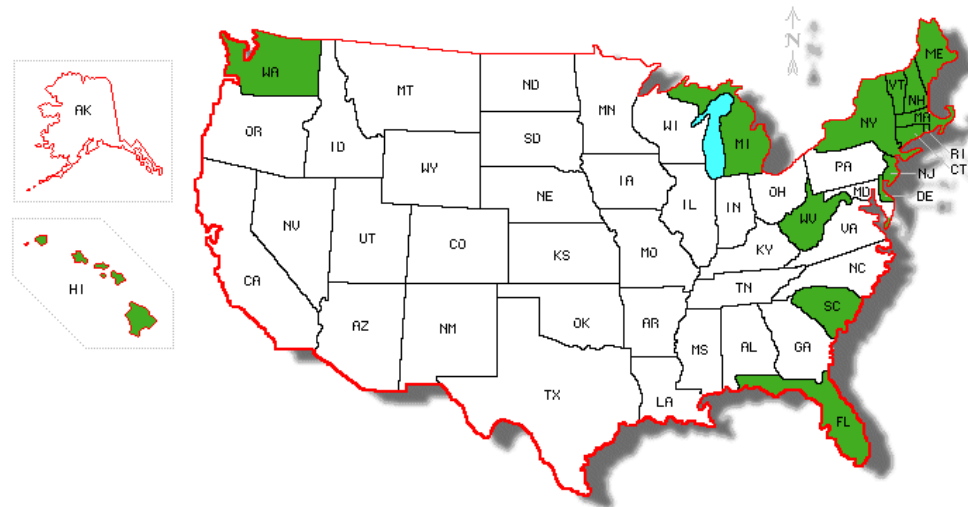
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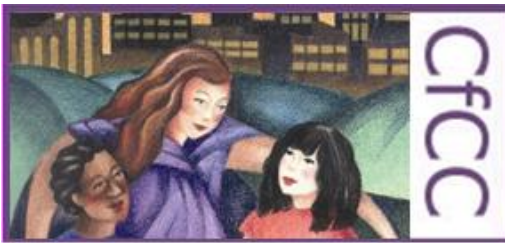
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Where We Stand – Overview of U.S. Family Justice Systems

16 states have fully operational statewide family courts:

Connecticut, Delaware, District of Columbia, Florida, Hawaii, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Rhode Island, South Carolina, Vermont, Washington, West Virginia



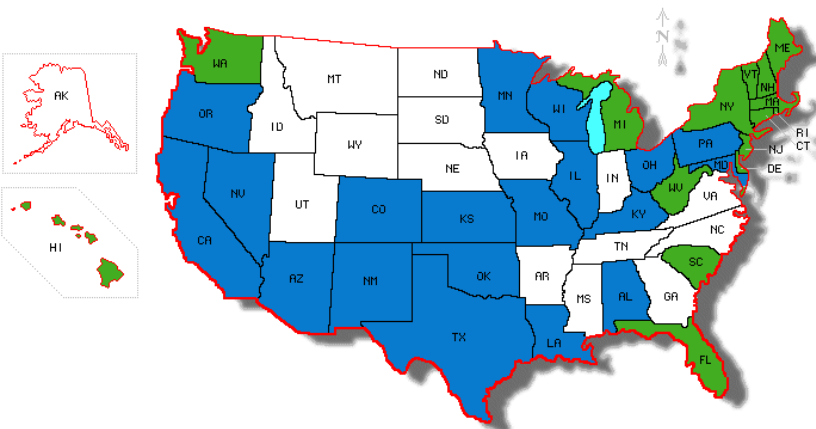


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Where We Stand – Overview of U.S. Family Justice Systems (continued)

19 states have family courts in selected areas of the state:



Alabama, Arizona, California, Colorado, Illinois, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Wisconsin



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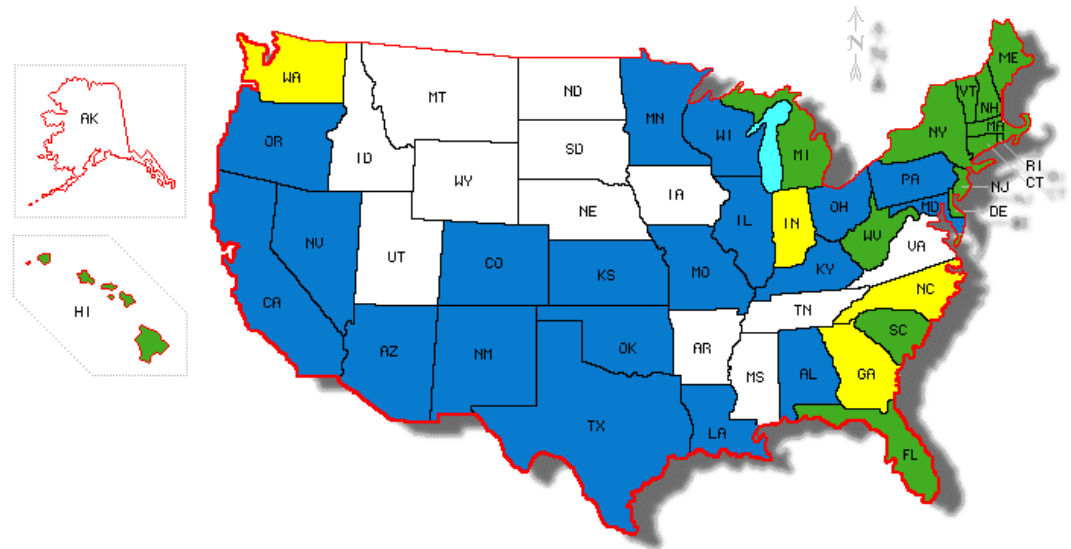
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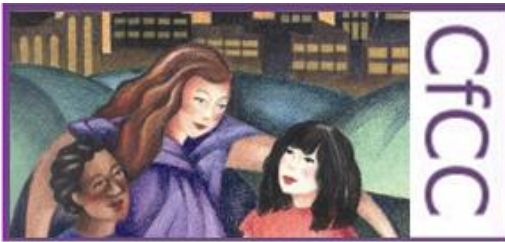
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Where We Stand – Overview of U.S. Family Justice Systems (continued)

4 states have pilot or planned family courts:

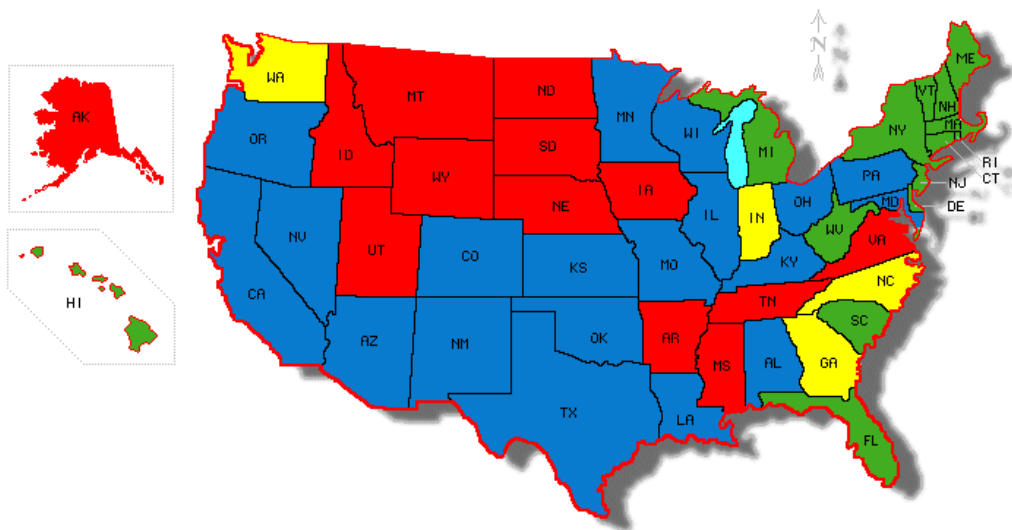
Georgia, Indiana, North
Carolina, Washington





Where We Stand – Overview of U.S. Family Justice Systems (continued)

13 states have no specialized system to handle family legal issues:



Alaska, Arkansas, Idaho,
Iowa, Mississippi, Montana,
Nebraska, New Dakota,
South Dakota, Tennessee,
Utah, Virginia, Wyoming



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Unified Family Court

- Single court system
- Comprehensive subject-matter jurisdiction
- Specially trained / interested judges
- Address legal, social, emotional issues – holistic treatment





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Unified Family Court (continued)

- Informal court processes / social services / resources
- Comprehensive resolution
- Tailored to individual family's legal, personal, emotional, social needs



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Unified Family Court (continued)



- One family / one judge or one case / one judge or one family / one team
- Efficiency, compassion



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Blueprint To Establish A Unified Family Court

Court structure

- specialized separate court
- division / department of existing court
- specialized judges

Comprehensive subject-matter jurisdiction



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Blueprint To Establish A Unified Family Court (continued)

Specialized case management / case processing system

- early and hands-on case processing
- link families with needed services
- ongoing process



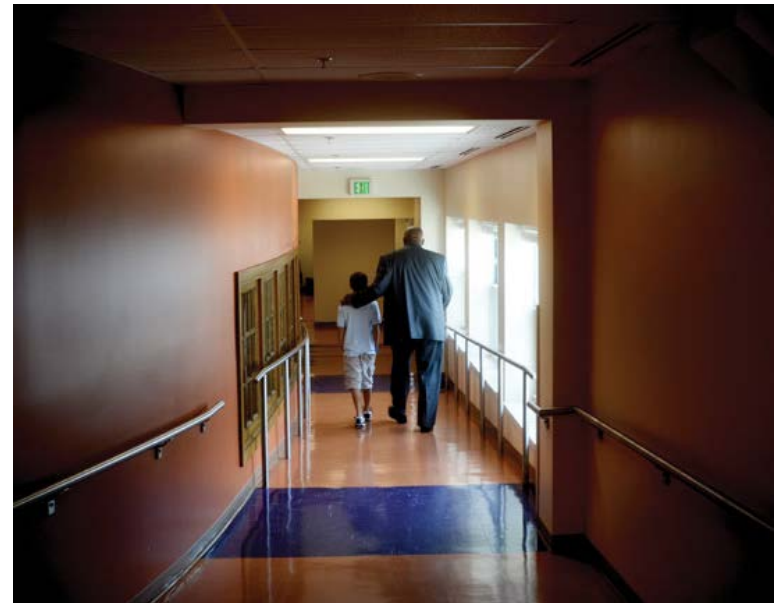
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Blueprint To Establish A Unified Family Court (continued)

- one judge / one case
- one judge / one family
- one team / one family





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Blueprint To Establish A Unified Family Court (continued)

- Greater sense of responsibility to families
- Fashioning more effective legal outcomes
- Requires high degree of court administration, organization



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Blueprint To Establish A Unified Family Court (continued)

Services

- Court-supplied
- Court-connected
- Determine essential services for client population
- Fosters community involvement with court
- Earliest possible delivery of service



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Blueprint To Establish A Unified Family Court (continued)

User friendly court

- Accessible to all litigants
- Accommodating litigants in most therapeutic way possible



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“How deeply into the domestic realm can or should government go when it intervenes in the lives of families and children? Conversely, what is government’s duty to families and children who are in legal and social distress? These political and philosophical questions still bedevil public officials in America today. Yet when society chooses to intervene, it must be done well and there must be accountability.”

Michael A. Town, *The Unified Family Court: Therapeutic Justice for Families and Children 1* (Mar. 11, 1994) (transcript available in Chicago Bar Association Building).



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Therapeutic Jurisprudence

Studies role of law as a therapeutic agent



Law as a social force that can produce

- therapeutic consequences
- anti-therapeutic consequences



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Therapeutic Jurisprudence (continued)

Consequences flow from

- substantive rules / law
- behavior of legal actors



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Therapeutic Jurisprudence (continued)

Task: Identify and examine empirically
relationships between

- legal arrangements
- therapeutic outcomes



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TJ Is Individualized

- Therapeutic outcome determined by individual's own viewpoint
- Courts must identify, assess, and attempt to honor



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TJ Does Not Trump Other Considerations

(i.e. community safety, due process, rule of law)





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Therapeutic Jurisprudence (continued)

Therapeutic jurisprudence becomes a “lens” to shed light on the therapeutic impact of the law

Website of the International Network on Therapeutic
Jurisprudence

<http://www.therapeuticjurisprudence.org>



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Consequences Of Adopting A Therapeutic Approach

- Empower individuals by allowing them to learn self-determining behavior
- Empower judges by allowing them to be creative and consider alternatives
- Protect families and children from present/future harms
- Decrease emotional turmoil



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Consequences Of Adopting A Therapeutic Approach (continued)

- Promote family harmony or preservation
- Encourage a therapeutic role for all court personnel
- Provide individualized and efficient, effective justice based upon parties' needs as opposed to legal rights



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How, then, does the notion of therapeutic jurisprudence contribute to court reform in family law? According to Professors Wexler and Winick, “therapeutic jurisprudence is merely a ‘lens’ designed to shed light on interesting and important empirical and normative issues relating to the therapeutic impact of the law. The therapeutic jurisprudence perspective sets the stage for the articulation and debate of those questions, . . . but it does not itself provide any of the answers.”

David B. Wexler & Bruce J. Winick, *Patients, Professionals, and the Path of Therapeutic Jurisprudence: A Response to Petrila*, in *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* at 707,708(citation omitted).



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The Ecology Of Human Development

Microsystem: Situations in which child has contact with influential others

Mesosystem: Relationships and connections between microsystems

Exosystem: Settings in which child does not participate but in which significant decisions are made affecting child and adults



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The Ecology Of Human Development (continued)

Macrosystem: “Blueprints” for defining and organizing institutional life of society



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Advantages/Benefits Of A UFC

- Authority to resolve all family legal matters
- Coordination of legal issues
- Timely resolution of issues
- Reduction or elimination of conflicting or redundant orders
- Reduction in litigation



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Advantages/Benefits Of A UFC (continued)

- Early intervention/"hands on" approach--preventive measures
- Less adversarial dispute resolution—problem-solving approach
- Connections for families to services
- More positive outcomes/results for families and children
- Judiciary more informed about families' and children's lives — more responsive decision-making



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Advantages/Benefits Of A UFC (continued)

- Increased judicial satisfaction
- Emphasis on interdisciplinary training for judges
- Participative management by court staff/personnel
- Increased court/community connection
- Increased public trust and confidence in the family justice system



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UFC Concerns

- Decreased confidentiality due to greater access to family information
- Judges' reluctance to hear family law matters/ "burnout"
- Perception that assignment to UFC is not as prestigious as hearing other case types
- Judges' unwillingness to function as problem-solvers
- Potential bias of judge due to increased information/family contact
- Requires considerable administrative resources
- Requires training of court personnel and time to implement



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UFC Concerns (continued)

- Funding issues
- Requires effective data/case management system
- May require legislation or court rule to implement



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Role Of Limited Jurisdiction Courts

- Concurrent family law subject-matter jurisdiction--confusing to litigants
- Can lead to forum shopping
- May result in duplication of efforts/inconsistent orders
- Might address initially through the creation of UFC pilot projects
- Can provide limited jurisdiction courts with concurrent jurisdiction over very specific issues (i.e., ex parte civil protection orders)



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Role Of Limited Jurisdiction Courts (continued)

- May need to consolidate family law subject-matter jurisdiction of limited jurisdiction court in UFC subject-matter jurisdiction
- Need to elevate the importance of family law matters within the court structure



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Issues Relative To Rural Jurisdictions

- Often function as de facto UFC's
- Services needs of litigants likely to differ from litigants within urban jurisdictions
- May be easier to establish and sustain a UFC
- May serve as a good UFC pilot site

The Court Reform Process

3 C's—coordination, collaboration, creativity

Need a “what if?” team and a “how to?” team



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Stakeholders/Change Agents In Court Reform Process

- Court systems
- Judicial officers
- Institutions that serve families and children
- Court users
- Academia
- Legislators
- Multi-disciplinary professionals
 - Lawyers
 - Mental health professionals
 - Doctors
 - Social service professionals
 - Law enforcement
- Advocacy groups



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The Court Reform Process (continued)

Steps:

1. Identify the need for change
2. Explore alternative models
3. Design a system to meet the needs of your particular jurisdiction
4. Identify barriers/ways to overcome



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The Court Reform Process (continued)

- Need to identify key leaders—must have judicial leadership
- Some activities: focus groups, public hearings, bench/bar meetings, draft legislation, testify, lobby, persuade, publicize, visit other courts, bring in outsiders
- Helpful to have fiscal analysis/cost savings
- Dogged determination



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Mission of Maine's Family Divisions of the District Courts

“to provide a system of justice that is responsive to the needs of families and the support of their children” 4 M.R.S.A. §183





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Goal Of Maine's Family Divisions

- To promote a timely resolution of family cases
- To address promptly the establishment, modification and enforcement of child support orders and other orders in family proceedings
- To provide effective case management for family cases involving children
- To facilitate parenting arrangements in the best interest of children at an early stage in the proceedings
- To promote education for the parties about parenting issues and to inform litigants about community services available to help them address family problems



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Goal Of Maine's Family Divisions (continued)

- To provide court users with a better understanding of court processes
- To identify domestic relations cases in which there is domestic abuse or a power imbalance in order to protect children and adults and to ensure a fair resolution of the case
- To promote civility in divorce and other family law proceedings
- To minimize the harm to children caused by family law cases
- To make appropriate referrals to alternative dispute resolution services

Maryland's Family Division – Rule 16-204 (enacted 1998)

- Establishes the Family Division
- Confers comprehensive subject-matter jurisdiction
- Identifies essential family support services
- Requires allocation of judicial resources and case management plans
- Creates Family Support Services Coordinator position for all Circuit Courts



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Maryland's Essential Family Support Services

- Mediation
- Custody investigation
- Trained personnel to respond to emergencies
- Mental health evaluations and evaluations for alcohol/drug abuse
- Information services, including assistance for self-represented litigants
- Information about lawyer referral services
- Parenting coordination services
- Parenting seminars
- Any additional services that can be funded



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Mission Statement of Maryland's Family Division

- ◆ Provide a fair and efficient forum
- ◆ Resolve family legal matters in a problem solving manner
- ◆ Goal of improving the lives of families and children who appear before court



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Mission Statement of Maryland's Family Division (continued)

- ◆ Make available appropriate services for families who need them
- ◆ Provide an environment that supports judges, court staff, and attorneys to respond effectively to legal and non-legal issues



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System Values And Intended Outcome Of Maryland's Family Division

- Preserving the rule of law
- Stabilizing families in transition
- Providing forums for prompt conflict resolution
- Promoting co-parenting relationships



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System Values And Intended Outcome Of Maryland's Family Division (continued)

- Fostering parents as primary family decision-makers
- Maximizing the use of alternative dispute resolution methods and programs
- Providing safety and protection
- Preserving family relationships where possible



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System Values And Intended Outcome Of Maryland's Family Division (continued)

- Supporting linkages between resource needs and available resources on behalf of parents and their children
- Increasing access to the family justice system
- Using judicial time efficiently by providing comprehensive information to judges and masters to assist them in making the most informed decisions possible



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System Values And Intended Outcome Of Maryland's Family Division (continued)

- Developing a familiarity with each family
- Increasing cultural competency





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Baltimore City Family Division Services

- Substance Abuse Services
- Supervised Visitation Program
- Medical Services Office
- Neutral Drop-Off
- Family Mediation Services

Baltimore City Family Division Services (continued)

- Domestic Violence Ex Parte Project
- Protective Order Advocacy and Representation Project
- Assisted Pro Se Litigation Project
- Parenting Seminars
- Third-Party Parenting Seminars
- Children's Groups

Baltimore City Family Division Services (continued)

- Volunteer Attorney Settlement Panel
- Daycare
- Book Loan



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How Do We Know What Works? Bureau Of Justice Assistance Trial Court Performance Standards

- ◆ Access to justice
- ◆ Expedition and timeliness
- ◆ Equality, fairness and integrity
- ◆ Accountability and independence
- ◆ Public trust and confidence



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Performance Standards and Measures for Maryland's Family Divisions

<http://www.courts.state.md.us/family/publications/performancestandards.pdf>

Under each standard, identified

- Issues
- Practical recommendations
- Measurement systems

Used by the legislature, the executive branch, the judiciary, and the practicing bar



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“Ultimately, as Justice Felix Frankfurter reminded us, the authority of the court is a moral one, rooted in fundamental shared values and the good character of its officers. And, ultimately, that authority rests on our ability as judges to live up to those values, to meet the reasonable expectations of litigants and the public, to put a human face on who we are, what we do, and how we do it, to show that we care about the people affected by our processes and decisions—in short, to demonstrate that we are worthy of the public’s trust.”

Judge Roger K. Warren, *Public Trust and Procedural Justice*, 37 CT REV. 12, 16 (2000).