Social Implications of Laws Pertaining to Paternity Proceedings in the Midwestern States

Astrid Margaret Strai

Loyola University Chicago

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SOCIAL IMPLICATIONS OF LAWS PERTAINING
TO PATERNITY PROCEEDINGS IN
THE MIDWESTERN STATES

by

Astrid Margaret Strai

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of Loyola University in Partial Fulfillment of
the Requirements for the Degree of
Master of Social Work

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CHAPTER I

INTRODUCTION

The purpose of this study is to determine the attitude of the law toward each of the three parties involved in paternity proceedings, namely the mother, the father, and the child. It is hoped that it will be possible to determine whether the law is punitive or protective, and how well it meets the needs of each party. The positive and negative factors of the total picture may then be pointed up, as suggesting the direction future legislation might take. A comparison of existing laws with the Uniform Illegitimacy Act will also be made.

Although Vernier in 1936 published a legal study showing some similarities and differences between the laws of the forty-eight states, there does not exist any comparison made from the point of view of the social implications of these laws. Nor is there much social literature dealing with this subject. Moreover the laws generally are not new, and many have had no major revisions in the twentieth century.

1 Chester G. Vernier, American Family Laws, IV, Stanford University, 1936, 144-188.
The forty-eight states have been divided into six geographical areas, each containing eight states, and each area will be studied by one person. It is felt that when the six resulting theses are compared, significant similarities and trends may be seen within each area. This particular thesis will deal with the Midwestern states.

The Midwestern states consist of the following: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Seven of these have illegitimacy acts. Missouri includes illegitimate children in its laws relating to the parental responsibility of support and care for children. Laws on legitimation and special provisions for birth registration of illegitimate children are generally not a part of the illegitimacy acts but will nevertheless be included in this study because of their pertinence.

The study will be based on material collected from the statutes of these states and from judicial decisions relating to the statutes. Legal and social literature will be used to gain background knowledge of the subject. Correspondence with public welfare officials of a few large cities will give some information concerning the use of social services in connection with paternity proceedings. Conferences with the individuals studying the other geographical areas will be used to achieve a degree of uniformity of approach to the problem and uniformity of presentation of results.
CHAPTER II

THE LAWS AS THEY RELATE TO THE MOTHER

Some aspects of the illegitimacy laws simultaneously involve all three parties, namely, the mother, the father, and the child. However for purposes of this study, the laws will be considered as they might affect each of these three persons individually. In this chapter relating to the mother, four main items will be discussed. First, the complainant is ordinarily the mother, therefore the complaint procedure, as it relates to her, will be considered. Next will be a consideration of evidence as this is apt to affect her. Also, the provisions under the law for the support of the child will be reviewed since the mother is the one likely to be concerned with this. Custody of the child will also be considered since the mother is the one ordinarily responsible for this.

Complaint may be made by the mother in each state. The Uniform Illegitimacy Act, upon which the Iowa complaint procedure is based, also makes this provision. In Iowa an interested per-

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son may make complaint on behalf of the mother. The Uniform Illegitimacy Act does not include this. Ohio provides that if the mother dies, a guardian or a representative of the welfare department may file a complaint, while for the same reason Iowa permits a child, through its guardian, to enter a complaint. Minnesota authorizes a representative of the welfare department to initiate the complaint. Iowa and Michigan also permit this in cases where a child is, or will likely become financially dependent on the community. Wisconsin is similarly concerned about the dependent child and specifies that the district attorney may file a complaint, if he believes this to be the best plan for the child.

The complaint in Illinois, Michigan, Minnesota, Ohio, and Wisconsin may be made to a justice of the peace, but in Illinois it may instead be entered with the judge of the court having jurisdiction. In Minnesota it may, instead, be entered in the

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Municipal Court, and in Ohio in the Juvenile Court. Indiana permits a complaint to be made only in the Juvenile Court. In Iowa the complaint may be made to the county attorney who then files it in court. The Uniform Illegitimacy Act differs here, stating it may be made to any judge or magistrate having the power to commit for trial.

Ohio does not specify in which county complaint may be made, but Illinois says it shall be entered in the county where the mother lives. In Indiana, Iowa, Michigan, and Minnesota it can be made in the county where any of the three parties reside.

Wisconsin prescribes no limitation at all, permitting the complaint to be entered in any county in that state.

Complaint may be made either before or after the child's birth in all but Ohio which says nothing about this point. Illinois, Indiana, and Iowa state that the complaint may not be made after the child's second birthday, but some exceptions are included under this rule. If the father in Illinois acknowledges paternity in open court, or if in Indiana and Iowa the father acknowledges paternity either in writing, or by giving of support

8 Harrison Burns, ed., Annotated Indiana Statutes, II, Indianapolis, 1948, sec. 3-632.


10 Burns, Indiana Statutes, II, citing Canfield v. State ex rel. Shepherd, 58 Ind. 168.
to the child, then the complaint may be made no later than two years after such acknowledgment. If in Illinois the father leaves the state, or if, in Indiana, he cannot be found in the state, the length of time he is unavailable is not counted as part of this two-year period. Wisconsin permits the complaint to be made up to five years after the birth of the child, and in Minnesota the opinion of an attorney general was that complaint could be made even after ten years. 11 Michigan and Ohio give no such time limits.

In Illinois, Indiana, Iowa, Ohio, and Wisconsin, the fact that the mother or child may live in another state is no bar to the mother's making complaint against the father who lives in these states mentioned. 12 But a decision in a Michigan court stated the complaint could not be initiated in a case where the child lived outside the state, even though it was conceived in Michigan. 13

During the preliminary hearing the mother is examined

by the justice or judge of the court where the complaint is made, under oath, regarding the paternity of the child. In the regular hearing the mother in each state may testify. In Minnesota, she must be present as a witness if either the welfare representative or the defendant demands it. The Iowa law follows the Uniform Illegitimacy Act in these respects.

The Indiana statute is the only one which mentions corroboration, and it specifies that the mother's evidence must be corroborated if the putative father is dead. Otherwise it need not be corroborated. An Illinois decision was to the effect that the mother's testimony needed corroboration if the defendant denied paternity. Decisions handed down in Iowa and Minnesota stated the verdict of guilty could be sustained even if the mother's evidence was unsupported. The Uniform Illegitimacy Act

14 Minnesota Statutes, XVII, sec. 257.18.
15 Burns, Indiana Statutes, II, sec. 3-639.
16 Burns, Indiana Statutes, II, citing Evans v. State ex rel. Freeman, 165 Ind. 389, 74 NE 244.
says nothing about the type of evidence allowed in the hearing.

In Minnesota there have been decisions to the effect that any declarations by the mother regarding the paternity of the child are not admissible in evidence unless given in court under oath, and this includes her declaration in travail. In Iowa similar declarations may be admitted in evidence if the mother is dead. In Illinois the fact that the mother named the child after the reputed father is inadmissible as evidence. The type of evidence admissible does not include evidence of the mother's general character and reputation for chastity or lack of it, in Illinois, Iowa, Minnesota, and Wisconsin. But such evidence which bears directly on the paternity of this particular child is admissible in Illinois, Iowa, Minnesota, Ohio, and Wisconsin. In one Michigan decision evidence concerning the

19 Minnesota Statutes, XVII, citing State v. Spencer, 73 Minn. 101, 75 NW 893; Ibid., citing State v. Watzek, 158 Minn. 351, 197 NW 689.

20 Iowa Code, LIII, citing Hopp v. Petkin, 222 Iowa 609, 269 NW 758.


22 Ibid., citing Zimmerman v. People ex rel. Smith, 117 Ill. App. 54; Iowa Code, LIII, citing State v. Engstrom, 145 Iowa 205, 123 NW 948; Minnesota Statutes, XVII, citing State v. Cotter, 187 Minn. 263, 209 NW 4; Mason's Wisconsin Annotations, 1948, citing Ray v. State, 231 Wis. 189, 265 NW 374.

23 Smith-Hurd Illinois Statutes, chap. 17, citing Zimmerman v. People ex rel. Smith, 117 Ill. App. 54; Iowa Code, LIII, citing State v. Engstrom, 145 Iowa 205, 123 NW 948; Minnesota
mother's reputation around the time of conception was not admitted in evidence, but in another Michigan case the defendant was permitted to bring in witnesses to testify of their having had sexual relations with the mother around the time of conception.

When the evidence has been heard and the court adjudges the defendant to be the father of the child, the important matter of support and payment arises. The states vary considerably as to these provisions. The Iowa statute is almost identical with the Uniform Illegitimacy Act.

The statutes of Indiana, Iowa, and Michigan mention the responsibility of both parents to share in the support of the child, and Illinois, Minnesota, Ohio, and Wisconsin mention only the father's support duties under the illegitimacy laws. In a Minnesota decision it was stated that any father of a child, whether it be legitimate or illegitimate, has a primary responsibility for the support of the child, while the mother's responsibility is a secondary one. Missouri, which has no illegitimacy act, differs from these states in putting on the mother the total support.

Statutes, XVII, citing State v. Stephon, 179 Minn. 80, 228 NW 335; Page, Ohio Code, VII, citing Reams v. State ex rel. Favor, 53 O. App. 19, 4 NE 2d 151; Mason's Wisconsin Annotations, citing Jacobson v. State, 205 Wis. 304, 237 NW 142.


responsibility for the child's support. The putative father is definitely not responsible for the support of the child, even if he has promised to support it. The one exception to this would be if the father had entered into a contract to marry the mother, included with an agreement to support the child. In such case the contract would bind the father.

Indiana and Iowa have very broad provisions stating that the parents of an illegitimate child have the same responsibility of support as do the parents of a legitimate child. Minnesota similarly gives the father the same support obligations as the father of a legitimate child. Indiana and Minnesota also add that the court order must be adequate for the child's support. Moreover each of the eight states mentions one or more specific items which are to be used as a guide by the courts in fixing the amount of judgment. All states include the item of support, or its equivalent. In Illinois, Indiana, Iowa, Minnesota, and Missouri, provision is also to be made for the child's education.

27 Missouri Revised Statutes Annotated, I, St. Paul, 1942, sec. 375.
30 Burns, Indiana Statutes, II, sec. 3-623; Iowa Code, LIII, sec. 675.1.
31 Minnesota Statutes, XVII, sec. 257.23.
Indiana provides for medical expenses, but an Ohio decision indicated a father was not responsible for the child's medical expenses, as the statute did not include this item. Indiana and Iowa include liability for the child's funeral expenses. In the event the child dies before judgment, Minnesota and Wisconsin courts may order the father to pay the necessary medical and funeral expenses. Ohio in such an instance makes the father liable for funeral expenses of the child.

In Iowa and Missouri, the child is entitled to support until the age of sixteen and in Ohio and Wisconsin until the child is eighteen years old. Indiana may provide support for the child until he becomes of age or is emancipated. A child in Minnesota is provided for as long as are legitimate children, and in Michigan the court is free to make a decision as to the length of time support is needed. Only Minnesota specifies in its statute that the father's obligation ceases when the child dies, but in decisions entered in Illinois and Michigan this was also indicated. If a child in Ohio dies prior to judgment, the father is expected to pay a part of its support from the time of birth until the

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death of the child. In addition, the father is liable for a child's support from the time of birth until judgment in Minnesota and Wisconsin, but Indiana and Iowa limit this liability to two years prior to judgment. The Iowa mother may however recover for more than two years prior to judgment if she has made demands for support by the father, in writing.

The father is usually required to make payments periodically, although payment may be made in a lump sum in Minnesota and Wisconsin where this seems advisable. Ohio specifies weekly amounts, Wisconsin monthly ones, and Illinois quarterly sums. The remaining states permit whatever payment intervals the courts think best.35

With the exception of Illinois, the statutes do not give any figures, either maximum or minimum, as to the amount the court may order the father to pay, and no current figures are available as to the actual amounts of payment ordered by the courts in the several states. The Illinois statute states the court order may not exceed two hundred dollars for the child’s first year of life, nor exceed one hundred dollars annually for the nine years thereafter.36

After the original support order has been made, there is

provision in the statutes of Indiana, Iowa, Michigan, and Wisconsin for a modification in the amount or method of payment of the order, provided the one who petitions the court for a change can show sufficient reason for it. Decisions entered in Minnesota and in Ohio also indicate this same practice.37

The only states which specify that the father's financial ability and circumstances are to be considered along with the needs of the child and mother, in deciding the amount of the judgment, are Indiana and Wisconsin. In one Iowa case the needs and abilities of the three parties were similarly considered.38 However in a Minnesota case it was stated that the court should examine only the father's ability to support, without any reference to the mother's ability to support the child.39

The money may be paid directly to the mother, if she be the complainant, in Indiana, Iowa, Michigan, and Ohio, and in Illinois it is paid through the clerk of the court to the mother. In Wisconsin it goes first to a trustee who then gives it to the mother in such way as the court directs.40 In Illinois and Wis-


38 Iowa Code, LIII, citing Mills County v. Hamoker, 11 Iowa 206.


40 Conway, Wisconsin Statutes, sec. 166.11.
consin money may be paid to the one having legal custody of the child, if this is someone other than the mother. At the court’s discretion, payments may be made to a trustee, in Indiana and Iowa. In Michigan, Minnesota, and Ohio, the party who makes the complaint is also the recipient of the support money, and is to use it on behalf of the child. As a safeguard, statutes of Indiana, Iowa, and Wisconsin specify that the party who handles the money must give to the court a periodical accounting of money received and how it is used.

In addition to paying for the child's support and other items, the man adjudged the father is also held responsible for certain other expenses. In Iowa, Minnesota, Ohio, and Wisconsin, the father is expected to pay the necessary expenses in connection with the mother's confinement, and in Michigan he is to help the mother pay these expenses. The Indiana provision is similar but more detailed, specifying that the father is to help with the expenses of prenatal care, delivery, hospitalization, post-natal care, and even funeral expenses if the mother dies as a result of the child-birth. If the infant is stillborn the father in Indiana and Ohio will be liable for expenses but a father in Iowa will not be thus liable.41 Ohio makes mention of the father’s responsibility for the mother’s maintenance in connection with childbirth.

41 Burns, Indiana Statutes, II, citing Evans v. State ex rel. Rinert, 58 Ind. 587; Iowa Code, LIII, citing State v. Beatty, 61 Iowa 307, 18 NW 149.
but Minnesota is more explicit, stating the mother may recover for her own maintenance from eight weeks before until eight weeks after childbirth.\textsuperscript{42}

In several states, namely Illinois, Michigan, Minnesota, Ohio, and Wisconsin, the father must also pay the costs of prosecution if he is adjudged to be the father. If he is acquitted, the mother in Illinois pays these costs, but in Iowa the county pays the expense. The Uniform Illegitimacy Act makes no mention of prosecution costs. On a voluntary petition in Indiana, neither party is expected to pay court costs.

In Indiana and Iowa, third persons who have been furnishing support to the child may by legal action recover such support from the adjudged father. Under similar circumstances a social agency in Michigan, and a public agency in Minnesota may recover from the father.\textsuperscript{43} The public agency may also recover for support furnished to the mother, but a Michigan social agency may not thus recover.\textsuperscript{44}

Material on custody is far less plentiful than that available about payments ordered by the courts, even though the custody of the child is as important as, if not more important

\textsuperscript{42} Minnesota Statutes, XVII, sec. 257.24.

\textsuperscript{43} Henderson, Michigan Statutes, citing Mitchell v. Maurer, 328 Mich. 233.

\textsuperscript{44} Ibid.
than its support, if one considers the development of the whole child. Only Illinois and Iowa mention it in their statutes. The law of Iowa is the most complete, providing that it is the duty of the court to award custody of the child, taking into consideration what would be best for the child. In the matter of custody the court has continuing jurisdiction.\textsuperscript{45} Iowa follows the Uniform Illegitimacy Act in its provisions for custody of the child. Illinois and Indiana follow the common law rule that the mother has a right to the child's custody whereas the father has no claim at all to custody.\textsuperscript{46} Missouri also considers the mother the natural guardian of her illegitimate child.\textsuperscript{47} In one Ohio case where the mother of an illegitimate child deserted it, the person claiming to be its father was given custody without having first been adjudged its father.\textsuperscript{48}

The complaint procedure, a certain portion of the evidence, support provisions, and custody of the child—these are the aspects of a paternity proceeding which are more closely connected

\begin{itemize}
\item \textsuperscript{45} \textit{Iowa Code}, LIII, sec. 675.31.
\item \textsuperscript{47} \textit{Missouri Statutes}, I, citing Marshall v. Wabash R. Co., 120 Mo. 275, 35 SW 179.
\end{itemize}
with the mother than with either the father or the child.
CHAPTER III

THE LAWS AS THEY RELATE TO THE FATHER

In this chapter concerning the law relating to the father there will be included a discussion of the basis of the legal system in the several states as well as some clarification of the nature of the proceedings, that is, whether they be civil or criminal. The actual procedure will then be considered, beginning with the method of bringing the father into court, followed by the preliminary and regular court hearings, the father's competency as a witness, the type of evidence admissible, and finally the methods used to enforce the court's judgment when the defendant is found to be the father. Since the parties involved sometimes attempt to settle out of court, the opinion of the law on the legality of such compromise and the provision of the law in some states for settling the matter in ways other than the ordinary court hearing will conclude this chapter.

Historically, the laws of most of the American states, including the Midwestern ones, are based on the English commonlaw.

Under the early common law the illegitimate child was without legal rights, and considered the child of neither the mother nor of the father. Thus neither parent had the right to custody nor the responsibility of support. The father was ignored, and the mother who was considered the offender was liable to be punished for her immoral conduct. The child was without a legal name, although it usually gained one by reputation. Subsequent marriage of the parents did not legitimate the child. It was felt moreover that this stern attitude toward mother and child was needed in order to preserve the family unit, and any leniency toward them would increase the birthrate of children born out of wedlock. The result was that the parish was often left with the responsibility for the support of the illegitimate child. With a view to indemnifying the public a statute was set up making both parents responsible for the child's support and establishing a procedure by which the mother of the child could recover a small amount from its father.

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2 Ibid., 493-494.
4 Abbott, Child and State, 513.
6 Abbott, Child and State, 513.
8 Abbott, Child and State, 495.
Later the father's share of responsibility was somewhat increased. Although most American states included in their early laws many of these concepts, and may still retain some of them, it is also true that in certain areas some of the states have gone beyond the common law rules, setting up by statute, rules which favor the illegitimate child more than formerly.  

The laws of several countries of Continental Europe had considerable influence in this direction.  

There are several ideas found in these European laws which are also seen in varying degrees in the laws of some states. Legitimation by subsequent marriage is probably the most common one.  

Another is considering the child a ward of the state and making the state responsible for establishing paternity. There exists also the idea that rather than making parents responsible to maintain the child at the poor law level, they ought to support it on a standard which is in keeping with their own economic level. If in the father's case he is unable to pay an amount needed by the child, due to inadequacy of income or the responsibility of supporting

10 Abbott, Child and State, 513.
12 Ibid., 743.
13 Abbott, Child and State, 498.
his legitimate family, this is taken into account in fixing the amount under the order.14 Enforcement of support against a father's estate after his death is found in Continental laws.15 These laws moreover put more emphasis on the needs and best interests of the child than on indemnifying the public.16 Custody moreover is awarded with the child's best interests in mind rather than automatically to the mother.17 Although perhaps found in other American states, none of the Midwestern states go to the extent of some European countries in considering the affiliated child the legitimate child of its natural parents, with all the rights of a legitimate child.18

In addition to considering the origin of the law, the nature of the paternity proceedings may be scrutinized. There are certain characteristics which are generally found in civil proceedings rather than in criminal proceedings, and which will be of help in determining the nature of paternity proceedings in a particular state. In a civil action no crime is involved, and extradition is not possible. The object is to obtain a remedy at

15 Ibid., 745.
16 Abbott, Child and State, 498.
17 Ibid., 527-528.
law rather than to protect the common good, and speedy trial is not of the essence. Moreover no indictment is required in a civil action as is the case in a criminal proceeding. A summons rather than a warrant is used to bring the defendant to court. If process has been properly served, it is not essential that the defendant be present at the hearing. The case is prosecuted by a civil law officer or a private attorney rather than by the district attorney. A jury is not essential, and where one is used, full agreement by jury members may not be necessary. A preponderance of evidence is needed rather than proof beyond a reasonable doubt. Parties to the action are responsible for costs of action. Money put out by third persons may not be used to satisfy a civil judgment. In regard to enforcement, states do not allow imprisonment for debt, but where it is allowed in a civil action it is not a form of punishment for the wrong done to the complainant, but rather a consequence of failing to comply with the judgment ordered by the court under a citation for contempt. The probation feature is not a civil one. Actually, several states have paternity proceedings which have some civil and some criminal characteristics, and proceedings in those states are sometimes termed quasi-criminal in nature.  

The Uniform Illegitimacy Act is of this nature.

Court decisions and opinions in the Midwestern states

19 Sohatkin, Disputed Paternity, 50-102.
clearly indicate how a particular state views its paternity pro-
ceedings. Indiana, Iowa, Minnesota, Ohio, and Wisconsin decisions
state paternity proceedings are civil in nature.20 One early
Michigan decision calls these proceedings in Michigan "quasi-crim-
inal" and this sums up the ideas found in other Michigan decisions
since then.21 In Illinois some decisions termed paternity pro-
ceedings as being civil in nature,22 while others also pointed out
the criminal aspects found in them.23

The father's part in these paternity proceedings begins
when he is called in to answer the complaint. In Illinois, Mich-
igan, Minnesota, Ohio, and Wisconsin a warrant is used, but in
Wisconsin a summons may be used instead if the complainant con-
sents to this. The provision of the Uniform Illegitimacy Act is

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20 Burns Annotated Indiana Statutes, Indianapolis,
1951, citing State ex rel. Carvin v. Barger, 225 Ind. 180, 73 NE
2d 673; Iowa Code, LIII, citing State v. Devore, 225 Iowa 815,
281 NW 740; Mason's Minnesota Annotations, St. Paul, 1952, citing
Annotated, Cincinnati, 1952, citing State ex rel. Davis v. Brown,
60 O.L.A. 183 C.P.; Mason's Wisconsin Annotations, 1948, citing

21 Henderson, Michigan Statutes, citing Cross v. Peo-
ple, 8 Mich. 113.

22 Smith-Hurd Illinois Statutes, chap. 17, citing Mann
v. People, 35 Ill. 457; Ibid., citing Kanorowski v. People, 113
Ill. App. 488; Ibid., citing People v. Glees, 323 Ill. 189, 152
NE 575.

23 Ibid., citing Kelly v. People, 29 Ill. 287; Ibid.,
citing Rich v. People, 68 Ill. 513; Ibid., citing People v. Tice,
200 Ill. App. 617.
identical with the Wisconsin provision for bringing the father into court. In Indiana a summons is used unless the court feels a warrant would be better in a particular instance. Iowa uses the original notice as in other civil cases. In Minnesota, if someone other than the mother makes the complaint, a summons is used to bring the mother before the court for further information.

At the preliminary hearing, the court receives the testimony of both complainant and defendant in Illinois, Michigan, Minnesota, Ohio, and Wisconsin, and hears the mother's testimony in Iowa. The provisions of the Uniform Illegitimacy Act concerning the hearing before the court, as well as methods of enforcing the court order, in general correspond with the provisions of the majority of the states, and any outstanding differences will be noted. The information received at the preliminary hearing is reduced to writing in Iowa, Michigan, Minnesota, Ohio, and Wisconsin, but in Illinois it is not necessary to put it in writing.24 The defendant in Minnesota may waive his right to a preliminary hearing if he makes a written request. In Indiana there is no preliminary hearing.

In Illinois, Michigan, Minnesota, Ohio, and Wisconsin if it appears probable that the defendant is the father of the child, he is required to give bond or recognizance, with sufficient security or sureties, and if he fails to do so he is com-

mitted to jail until the time of hearing. In Iowa a lien is put on his property to secure his appearance at the trial. 25

The trial may be continued until the mother is delivered and able to attend in Illinois, Indiana, Iowa, Michigan, Ohio, and Wisconsin. However in Indiana and Iowa the trial may be had before the child's birth if the defendant consents to this. Michigan, Ohio, and Wisconsin will also grant continuance if other good reason can be shown.

If a child dies before final judgment, the proceeding does not abate in the seven states which have paternity proceedings, although if in Iowa the child is still-born, the proceeding does abate. 26 The Uniform Illegitimacy Act does not say what happens if the child dies before judgment. If the mother dies, or for some reason is unable to continue the action, other persons may be substituted in Indiana, Iowa, Minnesota, Ohio, and Wisconsin, and in these states the action need not abate. 27 Nor is the death of the mother cause for abatement in Illinois and Michigan. 28

25 Ill. Code, LIII, sec. 675.16.


If the defendant in Indiana or Iowa dies action does not abate, for in these states it can be maintained against the personal representatives of the defendant. This provision is based on the Uniform Illegitimacy Act. Failure of the defendant to appear at the trial in Indiana, Minnesota, Ohio, and Wisconsin is no cause for abatement. 29

The Iowa statute says the action must be maintained in the county in which it arose. But Wisconsin allows one change of venue, if it appears that no fair and impartial trial can be held in the county where the action originated. In one Minnesota case it was ruled that the defendant might request change of venue before the start of the trial. 30

The regular hearing is held in the juvenile court in Illinois, Indiana, and Ohio. In Illinois it may also be held in other courts of competent jurisdiction and in Ohio it may be held in the court of common pleas. Iowa and Minnesota have the hearing in the district court and Michigan and Wisconsin in the circuit court. The Uniform Illegitimacy Act does not specify any court.

Provision is made in Indiana, Iowa, Minnesota, and Wisconsin for the county or district attorney to prosecute the case on complainant's behalf. In Indiana this is optional. In Wisconsin the complainant may have private counsel appear with the dis-

district attorney. A Minnesota decision recently stated the purpose of using the county attorney was to help the mother conduct the trial rather than to deprive her of her interests in the paternity action.31 The Uniform Illegitimacy Act says nothing about the use of attorneys.

A jury is used in Minnesota, and agreement by five-sixths of the jury is needed.32 A recent Minnesota decision stated the supreme court of that state definitely did not approve of using the informal conference method to determine an award for support of an illegitimate child.33 In Illinois a jury is often used but its use is optional.34 Ohio uses a jury if the defendant pleads not guilty or fails to appear in court, and in such instances only three-fourths of the jury need to concur.35 A Michigan decision ruled that a defendant was entitled to trial without jury.36 The court makes the decision in Indiana, Iowa, and Wis-

32 Minnesota Statutes, XVII, citing State v. Jeffery, 188 Minn. 476, 247 NW 692.
consent, unless either party demands a jury. This is identical with the Uniform Illegitimacy Act.

There are provisions in several states concerning the exclusion of the general public from the hearing, and the inclusion of only those persons who have a direct interest in the case. This is required in Indiana and Iowa, unless either party in Iowa objects to the privacy. In Minnesota and Wisconsin the public may be excluded at the judge's discretion and shall be excluded in Minnesota at the request of either party. Indiana, Minnesota, and Wisconsin moreover provide that court records and papers be considered confidential and examined only upon order of the court, with the exception that in Minnesota the public welfare representatives, and in Wisconsin the parties to the action and their attorneys, be permitted to see the records without court order. The Uniform Illegitimacy Act does not provide for privacy of hearing or for confidentiality of court records.

Only Illinois and Indiana illegitimacy statutes state specifically that the defendant is a competent witness at the hearing, but Indiana adds that he cannot be forced to give evidence. 37 The Indiana statute here is identical with the Uniform Illegitimacy Act. Ohio says the defendant may appear in person or by counsel to make his defense. Court decisions in Minnesota were noted which said the man might defend himself, and when cross-

37 Burns, Indiana Statutes, II, sec. 3-638.
examined could refuse to answer questions which might incriminate him.39

There is little information available as to the type of evidence of the defendant's character admissible. In an Iowa decision evidence of the father's reputation in regard to the specific traits involved in a paternity proceeding was admissible but evidence of his behavior and morality in general was not allowed.39 In an Ohio case evidence regarding the defendant's general moral character was also ruled out.40 In a Minnesota case it was ruled that testimony concerning the defendant's reputation for chastity and morality should have been allowed.41

An admission by the defendant in Illinois and Ohio that the charges against him are true, may be allowed in evidence. In Indiana and Iowa the defendant's acknowledgement of paternity in writing, or evidence of his contribution to the child's support in partial fulfillment of his obligations, is admissible. The Uniform Illegitimacy Act makes the same provision. Several judi-


41 Minnesota Statutes, XVII, citing State v. Oslund, 199 Minn. 604, 273 NW 76.
cial decisions give further information concerning admissibility of other evidence. In Illinois evidence of the defendant's giving presents to the mother was admitted. Evidence of an Iowa defendant's increased interest in the mother, and of promises by Minnesota and Ohio defendants to marry the mother after learning of her pregnancy, was admitted. Evidence of offers by the defendant to compromise and settle out of court was not admitted in cases in Iowa, Michigan, and Ohio, but was admitted in another Ohio case. Where a defendant in Iowa had a reputation in the neighborhood for being the father, this evidence was admissible.

Only Ohio and Wisconsin statutes mention the use of blood tests in evidence, and the provisions of these two states have several points of similarity. In Ohio blood tests may be


43 Iowa Code, LIII, citing State v. Engstrom, 145 Iowa 205, 123 NW 948; Minnesota Statutes, XVII, citing State v. Stephenson, 175 Minn. 80, 228 NW 335; Page, Ohio Code, VII, citing Mc Gilton v. Wise, 14 O.L.A. 279.


46 Brown, Laws of Ohio, sec. 8006-16; Conway, Wisconsin Statutes, sec. 186.105.
ordered on the defendant's motion and in Wisconsin by order of
the court. In Ohio the tests must be relevant to the defense,
and in Wisconsin they must be relevant to the prosecution or to
the defense. In both states tests must be made by qualified phy-
icians or pathologists. In Ohio tests must be made in accordance
with the court's restrictions and directions, and in Wisconsin
those administering tests are to be appointed by the court. The
results of the tests may be allowed in evidence in both states
only if it definitely excludes the possibility of the defendant
being the father. Otherwise it could be prejudicial. The ex-
pert who testifies may be cross-examined by both parties. Unless
good reason can be shown, if either party refuses to take the
blood tests after the court has ordered them, this fact is re-
ceivable in evidence. Current information as to whether or not
the courts in these states render verdicts in accordance with the
expert testimony, is not available. However in a Wisconsin case
in 1939, where a defendant was adjudged the father of the child
in spite of expert testimony that blood tests excluded him from
being the father, the decision was reversed on appeal by the Wis-
consin Supreme Court since the tests had apparently been performed
correctly. In an Ohio case in 1939 the expert testimony that

47 Page's Ohio Code, 1952, citing State ex rel. Freeman v. Morris, 156 O.0. 333, 46 O.0. 183, 102 NE 2d 450.

the defendant could not be the child’s father was not admitted as conclusive proof of non-paternity because the weight of other evidence went contrary to this. The court felt that since science had not been infallible in the past, there could also have been a mistake in this instance. However in a case in 1938, where a man was adjudged the father even though blood tests resulted in an exclusion, a new trial was granted. The judge’s act was later affirmed on appeal. One writer states that almost without exception, the courts in Ohio and Wisconsin now accept an exclusion as conclusive proof of the defendant’s non-paternity. Iowa also makes some use of blood tests, although in one case in 1950 these were not granted because the defendant failed to show the necessity and value of the tests, and filed his application for the tests a very short time before the trial. The Uniform Illegitimacy Act makes no reference to blood tests.

Illinois, Indiana, Iowa, Michigan, Minnesota, and Ohio require that there must be a preponderance of evidence against the defendant in order to adjudge him the father of the child.


50 Ibid., citing State v. Wright, 59 O. App. 191, 17 NE 428.

51 Schatkin, Disputed Paternity, 189, 194.

but in Wisconsin proof is required beyond a reasonable doubt. The Uniform Illegitimacy Act gives no indication as to which is preferable.

If the defendant is adjudged to be the father of the child and the amount and method of payment has been fixed, the matter of getting him to comply with the court order arises. Most states use a variety of methods. The first and most common method is that of requiring a bond with sufficient securities. This is asked for in Illinois, Michigan, Minnesota, Ohio, and Wisconsin, and may be asked for in Indiana. In Indiana and Michigan the judge at his discretion may instead place the defendant under the care of a probation officer as long as regular payments are made on the judgment. The Uniform Illegitimacy Act also states that probation may be used in lieu of a bond. When the courts of the six states mentioned insist on a bond and the defendant fails to furnish the same he may be committed to jail. The Wisconsin court may stay execution of the commitment as long as the defendant makes the required payments on the judgment. When the de-

fendant is sent to jail he must remain there until he either pays
the judgment, gives bond, or is discharged as other debtors in
these states are discharged. Discharge for inability to pay can-
not take place until the defendant has been imprisoned for at
least six months in Illinois and at least ninety days in Minnesota,
Ohio, and Wisconsin. In Indiana the defendant may be imprisoned
up to a year. This is also the length of time provided for in
the Uniform Illegitimacy Act. Michigan does not specify a time
limit. When the petition for discharge from jail is heard in
Minnesota and Ohio, and it appears the defendant is unable to pay
or give security, he may be released on certain conditions. In
Ohio the condition is that he pay a weekly amount until judgment
is paid in full, and in Minnesota discharge may be conditioned
upon his making payments on the judgment according to his earning
capacity, or if he has property, upon his making some arrangement
to use this towards payment on judgment.

If there is default of payment, whether the defendant
has given bond, been excused from giving bond, or has been jailed,
and perhaps released on certain conditions, there is another method
which can be used, namely contempt of court proceeding, which in-
volves imprisonment. This is used in Illinois, Indiana, Michigan,
Minnesota, Ohio, and Wisconsin. Contempt proceedings may not how-
ever be instituted in Illinois when the defendant has already been
imprisoned for inability to pay, nor in Minnesota when it is known
the defendant is actually unable to pay. Michigan has a provision which differs from all other states. The man imprisoned for contempt is expected to work in jail, and pay part or all of his earnings towards the amount of judgment due until it is paid in full. He may not be so imprisoned for more than a year at a time but the contempt procedure may be repeated for later defaults. Minnesota also allows repeated contempt proceedings if it appears the defendant is able to pay but refuses to do so. Illinois states that after a man has been in jail, the debt still remains. The Uniform Illegitimacy Act makes the same statement. Iowa does not allow contempt proceedings in paternity cases, for it allows no imprisonment for debts of any kind. Missouri will use imprisonment in connection with the mother of an illegitimate child. If such a mother deserts or fails to support her child without good reason, she may be convicted and punished by either imprisonment up to a year, or by a fine up to one thousand dollars, or by both imprisonment and fine. For failure to support the child on


55 Sharkoff, Laws of Michigan, IV, sec. 723.605.

56 Iowa Code, LIII, citing State v. Devore, 225 Iowa 815, 231 NW 740.

57 Missouri Statutes, XIII, sec. 4430.
carry out the judgment of the court, the father under the Uniform Illegitimacy Act may in addition to the common aforementioned penalties be guilty of a misdemeanor and punished by a fine up to one thousand dollars or by imprisonment up to a year, or by both fine and imprisonment.

Another way of enforcing payment of judgment is by placing a lien on the property of the defendant. In Iowa this is done automatically whenever complaint is filed, and later if necessary, the amount of property needed to fulfill the judgment is seized. Illinois and Michigan also attach property if it becomes necessary. In Ohio, an order of attachment on property up to one thousand dollars may be granted if the complainant files an affidavit to the effect that the putative father either is not a resident of Ohio, or has absconded to avoid paternity proceedings, or left his county to avoid warrant, or hides so warrant cannot be served. If he is adjudged the father and does not pay, his property will be sold to the extent necessary to fulfill judgment.

If a man is adjudged the father or acknowledges paternity of a child during his lifetime, two states, Indiana and Iowa, make judgment enforceable against his estate if he dies before judgment is satisfied. In this they follow the Uniform Illegitimacy Act. In determining the amount thus enforceable, the court is to consider the mother's ability to support the child, the size of the estate, and the needs and rights of the father's legitimate family, if any. A Michigan decision specifically stated the fath-
er's estate was not thus liable. 58

If necessary, execution may also issue against the sureties to the recognizance, for the amount due on the judgment in Illinois, Indiana, Michigan, Ohio, and Wisconsin. Illinois, Indiana, and Michigan first call the defendant and sureties in to show cause why such execution should not issue. This also is provided in the Uniform Illegitimacy Act.

Ohio and Wisconsin moreover provide that the father of an illegitimate child is subject to all the penalties for non-support to which the father of a legitimate child of similar age and capacity, is subject. Iowa makes its laws relating to deserting and abandoning children applicable to the father of an illegitimate child. Minnesota says that if the putative father absconds from the state between the beginning of the third month of pregnancy and two months after the child's birth, and thereby intends to avoid the paternity proceedings, he has committed a felony and may be imprisoned up to two years in the state prison. 59 In Wisconsin extradition may be had for the alleged father of the unborn child if he has abandoned the same. 60

Two states make provision for cases where the defendant

58  Henderson, Michigan Statutes, citing People v. Kempo-
painen, 163 Mich. 186.

59  Minnesota Statutes, XXXI, sec. 617.17.

60  Mason's Wisconsin Annotations, 1948, citing 19 OAG 589.
on whom judgment has been obtained in another state comes to
either of these two states to live. Indiana permits such a judg-
ment to be enforced as are other judgments on paternity cases,
provided such judgment is for either a specific lump sum, or for
specific amounts to be paid at given intervals. In Iowa such a
judgment may also be enforced to the extent the stated sum or
sums are not inconsistent with the laws of Iowa. This provision
of Iowa is based on the Uniform Illegitimacy Act.

Sometimes financial arrangements are made apart from
the regular paternity proceedings heretofore described. Three
states have rather detailed special procedures whereby such ar-
rangements may be made on a voluntary basis. In Indiana the pu-
tative father may file a petition requesting the juvenile court
to enter a judgment for an adequate amount of support for the
child. Whenever possible the mother shall also join in this pe-
tition. The petition shall include sufficient facts to indicate
that the putative father is responsible for the child's support,
plus other pertinent facts. The clerk is to refer this at once
to the court, making no record of it, and without issuing a sum-
mons or warrant. An informal, private hearing, without a jury is
then held, for the purpose of hearing the testimony of both pe-
titioners and their witnesses if any. If the court wishes or
feels it necessary, it may use probation officers and welfare de-
partment facilities for further investigation or for any reason
necessary to make an appropriate disposition of the case. When
sufficient information is available, judgment may be entered. This is enforceable and security may be requested as in any other judgment. 61

Michigan has somewhat similar provisions. If the father acknowledges paternity of a child and the regular paternity proceedings have not been instituted, then either the mother or the father may file a complaint in a circuit court in chancery, requesting that a decree for the support of the child be entered. The court may require the friend of the court or the prosecuting attorney to investigate and make a report on the facts of the case. After the hearing an order of support similar to that given in the ordinary paternity proceedings is entered, and this may be enforced. After this proceeding in chancery has been initiated, it is considered a bar to the issuance of a warrant and to prosecution according to regular paternity proceedings. 62

The Wisconsin statute also provides for a voluntary agreement between the mother and father. They may come in voluntarily before process is served, and under the guidance of the district attorney, draw up an agreement which includes information usually included in a judgment. If the father admits paternity, by the terms of the agreement he must permit the judge to enter a judgment. But if he denies paternity, the agreement must show

61 Burns, Indiana Statutes, II, sec. 3-630.
this and no judgment shall be entered against him until there is a default in the payment. One court decision explained that one result of the denial of paternity was that it prevented the child from claiming any inheritance from the man. Whether or not judgment is entered immediately, the judge's approval is necessary before the agreement is valid. In the case of a dependant child, the district attorney may in a similar manner draw up an agreement with the man.

Other states have compromise provisions which are less detailed. In Illinois the mother may settle with the father on such terms as the court may approve. In Iowa the mother or some person acting on her behalf may make an agreement with the father. In order to be binding, court approval is needed, the provision for the child must be adequate, and payment of the amount agreed upon must be properly secured. Other remedies at law are barred to the mother if the father carries out his agreement. Iowa's compromise provision is identical with that contained in the Uniform Illegitimacy Act. In Michigan either the circuit court, or the public welfare representatives may compromise with the father for a fair amount and the father then has no further liability. If sometime before final judgment in an Ohio court, the putative father pays or secures to be paid to the complainant the amount


64 Conway, Wisconsin Statutes, sec. 166.07.
she is willing to take for her claims, he may be discharged, and a memorandum of this is made by the judge. An opinion of a Wisconsin attorney general regarding compromise provisions is interesting. He felt it would afford all parties involved better protection if they would follow through with paternity proceedings in the regular manner prescribed by statute. 65

In some instances the mother and father do make a private settlement, out of court, and the question may later arise as to whether or not such a settlement is binding, that is, whether or not it is a bar to the paternity proceedings prescribed by statute. In Illinois, unless the amount of such a settlement is at least eight hundred dollars, it is no bar to paternity proceedings. 66 In Indiana a settlement is not binding unless it can be shown that the provision for support of the child is adequate, and that the father moreover, has fulfilled his part of the agreement. 67 In an Iowa decision it was stated that a settlement which was fair would be a bar to paternity proceedings. 68 One Michigan decision said a private settlement was allowable as the statute did not prevent it, but in another case the opinion

65 Mason's Wisconsin Annotations, 1948, citing 29 OAG 108.
67 Burns, Indiana Statutes, II, sec. 3-646.
68 Iowa Code, LIII, citing State v. Meier, 140 Iowa 540, 118 N.W. 792.
of the attorney general was that such a settlement was no bar to
paternity proceedings since the amount of settlement was a mere
twenty-five dollars and because the consent of the welfare author-
ities was not obtained. No information is available on private
settlements in Ohio, and in Minnesota it is known only that if the
settlement is made after paternity proceedings are initiated, it
is not legally binding unless it is in harmony with provisions
which would be made according to statute. The Wisconsin statute
specifically says no type of agreement other than that provided
for in the statute is considered valid.

Of the three parties being considered in this thesis, it
may be said that the putative father is the one most directly in-
volved in the court hearing and evidence, as well as with the en-
f orcement and compromise provisions of the laws. Insofar as the
laws are criminal or civil in nature, they are criminal or civil
in their attitude towards and treatment of the putative father.
Although the laws have their basis in common law, the statutes
have in many instances deviated from this.

69 Henderson, Michigan Statutes, citing Ronk v. Ronk,

70 Minnesota Statutes, XVII, citing Op. Atty. Gen. 605-
  B-36, June 3, 1928.
CHAPTER IV

THE LAWS AS THEY RELATE TO THE CHILD

Several areas of the law on paternity proceedings may be thought of as relating more closely to the child than to the parents. The terminology which is used, for example, may be a clue not only to the attitude of the law towards the parents, but even more so towards the innocent child. How the law feels about showing the child in court as evidence is important to the child as well as to the parents. The requirements for a child's legitimation, accompanied by a corresponding change of the birth certificate, plus special birth certificate provisions which conceal from the general public the fact of illegitimacy if no legitimation is possible, are very practical and important matters which may have either good or adverse effects on the child throughout his whole lifetime. The purpose of the law usually involves either the protection of the child, or the protection of the common good, or a combination of both. The use of social services is also properly considered in this chapter, since adequate planning with the parents may at least help minimize the problems which intimately touch upon the life of the child.

The Midwestern states generally use similar and fairly objective terms in referring to the mother and the father. The
mother may be referred to also as the woman, the unmarried mother, and the complainant. The father may moreover be referred to as the alleged, putative, or reputed father, and defendant. The child may also be called the illegitimate child and the child born out-of-wedlock. The term, bastard, which has a rather vulgar connotation, is found in the Illinois and Ohio statutes, but it is not the only term used in these statutes. Indiana and Iowa have special provisions patterned after the Uniform Illegitimacy Act, relating to terminology. Records and papers may show that the mother is the parent having custody of the child, or that the child is in the custody of the mother, but there may be no indication that a child is illegitimate. Birth records and records of paternity proceedings are exceptions to this rule.

In the hearing there are four states which according to the court decisions available do not admit in evidence any real or imaginary resemblance or lack of it between the child and the defendant. These states are Illinois, Indiana, Iowa, and Wisconsin. An Iowa decision included the opinion that particularly in the case of a child under two years old, its features were too immature to give a reliable idea as to whether or not there was any resemblance.

actual resemblance between the two.\(^2\) In the above-mentioned states it is however permissible for the mother to keep the child with her while in court,\(^3\) if in Wisconsin no reference is made to resemblance or lack of it,\(^4\) and if in Indiana and Iowa the jury is instructed by the court not to take note of any apparent resemblance when it makes its decision.\(^5\) Illinois, Iowa, and Wisconsin have made exceptions in cases where racial differences were involved. In an Illinois case exhibition of the child was permitted when it proved a man of the defendant's race could not be the father of the child, and in Iowa it was permitted when consideration of the baby's features and coloring would tend to corroborate other evidence given.\(^6\)

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4 Mason's *Wisconsin Annotations*, 1948, citing Johnson v. State, 133 Wis. 453.


In a Minnesota decision of 1900 it was ruled improper to compare a three-month-old child with the father since it might prejudice the jury, but in another case in 1926 a child was exhibited and the court gave the jury no instruction to be cautious. In Michigan it was ruled that if the child were in the courtroom, the court could not keep the jury from noticing whether or not there was any resemblance to the defendant, and it was more over permissible for the jury to consider this with the rest of the evidence. In another case the appellate court thought the use of resemblance as evidence somewhat preposterous, but would not reverse a judgment because of this. In a third instance where a thirty-nine-day-old child was exhibited, the court admitted this in evidence but it carried less weight because of the child's immaturity.

The Ohio courts seem to have quite consistently permitted a child to be exhibited, and they admit this in corroboration of the mother's testimony. Either parent may so exhibit the

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7 Minnesota Statutes, XVII, citing State v. Brathovde, 81 Minn. 501, 84 NW 340; Ibid., citing State v. Harris, 168 Minn. 516, 209 NW 887.

8 Henderson, Michigan Statutes, People v. White, 53 Mich. 537.

9 Ibid., citing People v. Wing, 115 Mich. 698.


child. The defendant may be requested to stand directly in front of the jury so that better comparison may be made of their features. Even a two-months-old child was shown in one case, although it was pointed out that exhibition of an older child would carry more weight due to greater maturity of features.

In one case where the mother of the child was the defendant's grandniece, exhibition of the child was permitted.

Only Illinois includes legitimation in its laws on paternity action, but information on legitimation is available from the probate or marriage sections of the several statutes. In Iowa, Minnesota, and Wisconsin, marriage of the parents is sufficient to legitimate the child, while in Illinois, Indiana, Missouri, and Ohio, marriage of the parents plus acknowledgment of paternity by the father is required. In Illinois acknowledgment of paternity

12 Ibid., citing Yerian v. Brinker, O. App., 35 NE 2d 878.
15 Ibid., citing Zell v. State, 15 O. App. 446.
16 Iowa Code, XXXIX, sec. 595.18; Minnesota Statutes, XXXI, sec. 517.19; Conway, Wisconsin Statutes, sec. 245.36.
is not needed if the court has adjudged the man to be the father. Michigan says a child may be legitimated either by the marriage of its parents, or by the acknowledgment of the parents in writing that the man is the father of the child. The mother may be excused from joining in this acknowledgment if for some reason it is impractical for her to do so. The matter of legitimation is not included in the Uniform Illegitimacy Act.

After legitimation, new birth certificates showing legitimacy of the child may be made in Indiana, Iowa, Minnesota, Ohio, Wisconsin, and in Illinois upon request. Illinois, Minnesota, and Ohio require documentary evidence of legitimation. The same states and Iowa moreover provide that the old birth certificates shall no longer be a part of the public record but shall be sealed and opened only by order of the court. In Minnesota the state registrar may if necessary open these without court order.

After adjudication also, several states notify the office of vital statistics and turn in various data identifying the father of the child. These states are Indiana, Iowa, Minnesota,
and Wisconsin. The Indiana statute adds that this information is to be attached and made a permanent part of the birth record, and in Wisconsin a new birth certificate based on this information is to be made. The Uniform Illegitimacy Act makes no mention of birth records.

In relation to vital statistics, several states have special protective provisions for the illegitimate child. Michigan and Wisconsin have a separate, confidential file for birth certificates of such child, and this file may be opened for inspection only upon court order. Michigan adds that no copies of the birth certificate is to be issued to persons other than the illegitimate person himself, his parents, or his legal representative. Moreover the fact of a person's illegitimacy is to be considered a privileged communication, and any disclosure of this fact by court and state personnel, by medical people attending the birth, or by personnel of the institution in which the birth occurred, will be considered a misdemeanor. In Indiana and Minnesota also, any direct or indirect disclosure by those in charge of vital statistics of the fact that a child is illegitimate, must not be made unless the court orders this for the purpose of determining property rights. In Minnesota certain representatives of the welfare department may inspect or secure copies of the birth certificate of an illegitimate child without court order.

21 Sharkoff, Laws of Michigan, II, sec. 325.12; Conway, Wisconsin Statutes, sec. 69.30.
nois moreover has available a special birth certificate form which gives no indication of whether or not a child is legitimate. The use of this is optional. But in Minnesota when a birth certificate is sent out upon request, only that part which gives no clue to the child's illegitimacy may be given.

There seem to be three primary purposes of paternity action brought out in the statutes and decisions of the various states. Indiana and Minnesota statutes say the purpose is to see that the illegitimate child gets as nearly as possible the same support, education, protection, and opportunities as a child born in wedlock, and Wisconsin states the chapter on paternity proceedings is to be construed in a way which will protect the interests of the child. A Minnesota decision of 1950 showed it was the father's duty to pay expenses for a three-fold reason, namely his duty towards the mother, towards the child, and towards the public, to prevent the child from becoming its charge. In a Wisconsin decision the child and the public were described as being the innocent parties. The main object of a paternity proceeding was therefore to promote the welfare of the child, while the secondary

23 Minnesota Statutes, XI, sec. 144.168.
object was to protect the public from having to support the child.\textsuperscript{25} The Uniform Illegitimacy Act does not directly state the purpose of paternity proceedings, but it implies that they are intended to protect the best interests of the child, the public, and the mother, in that order.

From the few Iowa and Michigan decisions available it would appear that protecting the public from the support of the child would be a major aim in these states.\textsuperscript{26} Of the numerous Illinois decisions found relating to the purpose of the paternity proceedings, the protection of the public from liability for the child was consistently the chief purpose.\textsuperscript{27} The Ohio courts on the other hand have ruled that the purpose of the proceeding is not for the protection of the public, but primarily for the sake of helping the mother.\textsuperscript{28}

Special provisions regarding use of social services are

\textsuperscript{25} Schatkin, \textit{Disputed Paternity}, 41, citing Franken v. State, 209 NW 766.


found in the Minnesota and Wisconsin statutes, and although these are not a part of the paternity laws, they are being mentioned since they do affect many illegitimate children. These laws provide that those in charge of maternity hospitals determine whether a child is legitimate, and if illegitimate, report this fact at once to the public welfare department. 29 Minnesota requires this of infant homes, regular hospitals, private physicians, and midwives as well, and adds that personnel of such institutions are to keep the fact of illegitimacy in as strict confidence as possible in planning for the child. In both states when the public welfare department is notified of the birth or pending birth of an illegitimate child, that department is to take proper legal and other action, and offer such services as are necessary and as will promote the best interests of the child and secure for it as nearly as possible the care, support, education, and opportunities which it would be given if legitimate. 30 The Uniform Illegitimacy Act does not mention use of social services in connection with paternity action.

Although no concerted effort has been made to obtain information on social services in connection with paternity proceedings, some information is available. There are many variations

29 Minnesota Statutes, XVII, secs. 257.14, 258.06, 258.09; Conway, Wisconsin Statutes, sec. 48.45.

30 Conway, Wisconsin Statutes, sec. 48.03.
among the states, and even within one state. In some large cities procedures may differ from those found in other parts of the state. In some states or areas the parties in a paternity action will undoubtedly come to the attention of some social service department or agency, while in other areas they will not necessarily be serviced by any such department or agency.

In the socialized courts, social services attached to the court system may be available to the mother and putative father. In some states the public welfare departments may be requested to make their services available if they are not already active on a particular case. They often work very closely with the court. In other states private agencies may be used primarily where the cases are not active with any public welfare agency.

Although the type of services given the mother may vary, under the more complete systems, the mother or expectant mother may be aided with such matters as finances, confinement arrangements, plans for the baby, her own feelings around her problem, her family's feelings about it, as well as with taking the necessary legal measures to obtain payment of support and other expenses from the putative father. Not infrequently one particularly qualified to work with unmarried mothers is the worker.

The putative father also may, under the more ideal setups, be helped by a worker particularly equipped to work with fathers of illegitimate children. The worker obtains from the father the social information necessary for planning for the
child, and helps him to assume his full and proper responsibility towards planning for and supporting the child. It would seem that the trend of the social service departments is first to try to get the putative father to enter into a voluntary settlement or agreement in those states where this is allowed. If this cannot be worked out, in some states the matter is carried no further, while in others the regular paternity proceedings are initiated. In Aid-to-Dependent-Children cases it is usually necessary for the departments to make attempts to obtain voluntary support for the child from the putative father, and where this is not obtained, some departments stop there, whereas in other states regular paternity proceedings must be initiated.

The miscellaneous legal provisions then, which are perhaps of special importance in relation to the child, are those dealing with terminology, use of resemblance as evidence, legitimation, birth records, the purpose of the law, and availability of the social services in connection with planning for the child.
CHAPTER V

CONCLUSION

In the conclusions will be pointed up some of the factors in the law which may be considered as being either positive or negative in their effect upon the mother, the father, or the child. The purpose of the law and terminology will introduce the discussion. Provisions for voluntary agreement will be considered next, followed by the regular proceeding which involves the complaint, the method of bringing the father in, the hearing, evidence, custody, support and its enforcement. Legitimation and birth records will then be considered, and the use of social services will conclude this discussion.

It would seem that those states which put the interests of the child first, and attempt through legislation to give the illegitimate child as nearly as possible the support, education, protection, and opportunity which the child would be given if it were legitimate, have the most positive purpose. In this they go beyond the Uniform Illegitimacy Act. It is true that the mother also has important interests which need to be considered, such as her own reputation, the custody of the child, and financial assistance. And the public's right to be protected, where possible,
from having to support children, whether legitimate or illegitimate, must also be remembered. However the latter two may well be considered secondary to the primary purpose of furthering the best interests of the child. It may be added that while the laws are not set up for the benefit of the putative father, he certainly is entitled to a hearing which is as fair and just as possible.

The terminology used in the Midwestern states to refer to the mother, the father, and the child, is generally satisfactory, with the possible exception of two states which still use the rather vulgar word, bastard, in referring to the child. Since these states do not consistently use this term however, it is felt that this term is used to indicate the child's legal status, and is not indicative of any punitive or derogative attitude toward the child. The terms illegitimate or born-out-of-wedlock would seem to be more positive than the term bastard. The Uniform Act and two of these states provide that various records and papers show the mother as the parent having custody of the child rather than labeling the child as illegitimate, and this is a protection for both mother and child.

Before discussing the regular paternity proceeding, it would be well to point out the special advantages of making provision for voluntary agreements as do several of the Midwestern states. Although provisions vary with each state, these are some of the procedures found. The mother and putative father may come
into court voluntarily, and no process need be served. Instead
of setting the mother and putative father against each other and
on opposite sides as might tend to be the case in a regular patern-
ity proceeding, this is a more cooperative effort by the two
parties. This may also make it easier for them to work out their
other problems and feelings which do not involve financial matters.
The support order may be drawn up privately and informally, in a
court of chancery. When the father is thus permitted to come in
on his own initiative, and his cooperation is courteously enlisted,
not only will the whole court experience be more comfortable for
him, but he will probably also be more cooperative in following
through on the support order. This will benefit both mother and
child, and also the public welfare department in case financial
assistance is involved. Another thing which may encourage the
man to cooperate is the fact that although the voluntary agree-
ment is enforceable as are the regular support orders, the man
who is party to a voluntary agreement may not need to post a bond
and be put in jail for failure to give such a bond. Instead he
is given a chance to show whether he will comply with the agree-
ment. If there is later a default in payment and he cannot show
good cause, then payment will be enforced as in ordinary patern-
nity proceedings. Since these voluntary agreements must be as
adequate as ordinary support orders, the child and the mother are
not at any disadvantage financially. These extensive provisions
for voluntary agreements are not found in the Uniform Act.
In compromise agreements where the mother and putative father may make a quick, private settlement, wishing for a number of reasons to keep the matter out of court, the financial arrangement is not always so adequate. An inadequate settlement solves little and may later leave the mother dissatisfied and in financial difficulty. The Illinois provision that a compromise settlement is binding if it is eight hundred dollars, would seem quite inadequate since at minimum subsistence standards it would feed and clothe the child only a few years at most. In order to protect the best interests of the child, the mother, and in some instances the welfare department also, it would seem advisable that such compromise agreements be considered invalid until they are approved by the court. If after proper investigation it is determined that a particular agreement is adequate, considering the ability of the father to pay, and the financial needs of the mother and child, it would appear advisable, as is done in several states, for a court to declare the private agreement binding and a bar to further action other than the ordinary enforcement of this agreement which would no longer be strictly a private agreement.

When the father does not come in on a voluntary basis the need for making financial arrangements for the mother and child remains. Where the mother dies or is for some reason unable to enter a complaint in court, it would seem advisable to permit a representative of the mother or child, or a welfare department representative in the case of a dependent child, to enter such a
complaint. It is helpful when the complaint can be entered in the county where either the mother, the child, or the father resides, as is provided in the Uniform Act. Another Uniform Act provision which all states would be wise to follow is that which allows a mother from another state to enter a complaint against the father in the state in which he resides. This might prevent absconding and is better than using extradition. It would seem that the provision limiting the time for complaint to two years from the date of birth of the child or its last acknowledgment, is a protection for the father and a sufficient safeguard for the mother and child.

In bringing the father into court, it would seem that a summons is preferable to a warrant, since the former notifies the putative father that he is expected to attend the hearing, but leaves with him the responsibility for his actually appearing. A warrant involves arrest of the putative father, and is generally used when a crime is involved. The Uniform Act provides for use of either warrant or summons.

If process has been served, and the defendant does not appear it would seem advisable for the sake of the mother and child to continue the proceeding and if he is found to be the father of the child, to order support and enforce this judgment when opportunity arises. The provision of the Uniform Act to maintain action against the personal representatives of the defendant in case of his death offers further protection for the mother and the child. If the mother dies, or is for some reason
unable to continue the action, it is moreover in the best interests of the child that the action be continued and an adequate support order be given. Even should the child die before final judgment, action should not abate, for the mother may still be entitled to help from the defendant for her own expenses, and the child's expenses until the time of death.

The Uniform Act does not indicate which court would be preferable, but it would seem advisable to have paternity proceedings in a court which is both a court of chancery, and which specializes in cases involving children, or domestic relations cases. Several states do use the juvenile court. Not only does such a court attempt to individualize and be as equitable as possible with respect to both mother and putative father, but it is also more likely to constantly keep the best interests of the child in mind. A juvenile court can be more flexible in its total handling of a case than can another court. Privacy and informality of hearing are not mentioned in the Uniform Act, but are some of the advantages of the juvenile court hearing. By statute other courts may also make paternity proceedings private. Paternity hearings of necessity involve matters which are likely to attract the curious. If provision is made for privacy of hearing, the curiosity-seekers will be excluded and the regrettable details of the lives of the mother and putative father will be less likely to be spread around amongst their friends, relatives, and business associates. Moreover, because of this both parties may be less tempted to dis-
pense with paternity proceedings or to discontinue them after they have been initiated. The increased comfort of a private hearing for the two parties may indirectly affect the comfort of the child and increase his chances for adequate support. Confidentiality of court records and papers is an additional protective provision for the three parties.

The Uniform Act provision that the court make the decision unless either party demands a jury, would seem to be a fair one. Even though there is not a criminal charge against the defendant, if he is nevertheless adjudged the father of the child, and given a support order which is really adequate for the child, he does have a big responsibility before him, and in some states he is also likely to be imprisoned for failure to secure payment or for a default in payment. Therefore if he feels that in so important a matter a jury can more accurately and fairly determine whether or not he is the father of the child, the defendant should be entitled to a jury trial. The same holds true for the mother who is also anxious that a fair decision be made in this matter.

The mother's competency as a witness is indicated in the several states, but the defendant's right to testify is not shown in all the statutes, although possibly all the states allow this in actual practice. The Uniform Act provision which makes the defendant a competent witness but does not compel him to testify would seem to be a very fair provision. This act gives no
clue as to the type of evidence which should be allowed regarding
the mother and the putative father, and only a little information
is available from the court decisions of the states. It would
seem that general evidence of character of either party could be
very prejudicial, and moreover prove nothing. However, if the
character evidence were confined to the period during which con­
ception likely occurred, and to the specific character traits
which would have a bearing on the question of the paternity of
this particular child, then it would seem to be fair and least
prejudicial to the parties involved in the action.

Because the defendant will be held responsible for con­
siderable financial payments if found to be the father of the
child, it is important that the court be quite sure whether or
not the defendant really is the father. It would therefore seem
only fair that the mother be required to corroborate her state­
ments against the putative father unless he readily admits patern­
ity. Furthermore it would seem more correct to require the com­
plainant to show the truth of her charges against the defendant,
than to leave it primarily up to the defendant to disprove the
same. According to the Uniform Act, if the mother can show that
the defendant has acknowledged paternity in writing, or contrib­
uted to the child's support, this will heavily weight the evi­
dence in her favor, and justly so.

It is somewhat surprising that a minority of the Mid­
western states still admit in evidence any real or imaginary re­
semblance between the defendant and the child, since this is a highly subjective process and certainly of no value or accuracy from a scientific point of view. This is true particularly in the case of very young children who are generally involved in paternity actions. Probably the one place resemblance could be validly used as evidence would be where a difference of race is involved, and comparison of the defendant and child shows that the defendant could not possibly be the father of the child. It would seem advisable where a jury is used and the child happens to be in the court-room, for the judge to specifically instruct the jury that any real or imaginary resemblance between the defendant and the child is not to be considered as valid evidence. A young child would suffer little from being brought into court, but the child's supposed resemblance to the father, or lack of it, could be prejudicial against either the mother or the putative father.

The large number of reliable blood tests available today were not available when the Uniform Act was drawn up, and thus that act makes no provision for blood tests or their use in evidence. Primarily for the protection of the defendant, it would seem wise to give blood tests where the defendant denies paternity and is willing to take these tests. One writer points out that taking of blood tests can hardly be regarded as either an unreasonable requirement or as essentially embarrassing or dis-
When test results exclude the defendant from being the father, it would be only fair to admit this as conclusive evidence of the defendant's innocence, regardless of the weight of other evidence, for if tests are properly performed, they are far more objective and dependable than verbal testimony which can be highly subjective. Where tests have been ordered by the court and either of the parties refuses to take them, this should be admitted in evidence if no good cause for refusal can be shown. It is interesting to note that Ohio, which is one of the few states to use scientific blood tests, is also one of the states which uses the non-scientific process of comparing the defendant and the child for possible trace of resemblance between them.

One writer tells of an interesting study made. Blood tests were given to a number of former parties to paternity actions. Those cases in which the defendants were adjudged to be the fathers of the children, and where the evidence was not as conclusive as would have been desirable, were found to have a relatively high percentage of exclusions, showing the courts had been in error in their decisions. When the mothers were confronted with this evidence, almost without exception they admitted they had relations with other men who could be the fathers of their children. On the other hand, in cases where the evidence of pa-

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ternity had been pretty conclusive, hardly any exclusions resulted from the blood tests.²

Because of the considerable financial obligation and the enforcement provisions involved, a fairly good argument exists for protecting the defendant by requiring that evidence show beyond a reasonable doubt that he is the father of the child. But this is difficult to do in such a matter as proving a child's paternity, and it might mean that many a mother might be left with the total responsibility for her child when she could have proven the identity of the father by a preponderance of evidence. If the type of evidence used is the type indicated as preferable in the above paragraphs, then it would seem that preponderance of evidence would be sufficient, and fair to the mother, the father, and the child involved in the action.

If the defendant is adjudged the father of the child, the matter of custody arises. It is true that normally a mother is best fitted psychologically to care for her very young child. But it is also true that many an unmarried mother is a troubled person, and therefore may not always be the ideal person to care for her child. It would seem that wherever the mother genuinely wants custody of her child, and is reasonably fit to care for it, she should be given a high priority as to custody. The sections on paternity laws generally do not mention this matter, and it

² Schatkin, Disputed Paternity, 225.
would seem that the provision of the Uniform Act, although brief, is very sound. In reserving for the court the duty of awarding custody of the child, taking into consideration what would be best for the child, it does protect the child from automatically being left with the mother who may in some cases be unfit to care properly for the child. If the mother is dead or for some reason unable to care for the child, the court may under the Uniform Act presumably award custody to the father if he is able and willing to give it adequate care. Considering each case on its individual merits would seem to be preferable to having set rules as to what person may and what person may not be given custody of an illegitimate child.

Since both parents are responsible for bringing the child into the world, it would seem that the laws which follow the Uniform Act and state that both parents have support obligations, are most sound. The act moreover provides that the parents are financially responsible for the illegitimate child as are parents of the legitimate child, and this includes such items as support and education until the child is sixteen years old. This is an excellent provision in that it carries out on a very practical level the primary purpose of paternity action which is to promote the welfare of the child whose legal status is that of illegitimate. Those states which most nearly put support of illegitimate children on a par with support of legitimate children would seem to have the most positive attitudes toward the child.
It would seem that periodical payments, as for example a certain amount per month, would be the best plan for all concerned. The father can then pay as he earns the money, and the mother will receive the payments regularly and when she needs them. It would seem that with lump sums the mother might be tempted to use such a sum up during the first few years when needed, and consequently the child will not be adequately protected during the latter years of childhood. Although there might be an advantage for the mother and child in having the well-to-do father pay the full amount at once, yet this could be quite unfair to him in case the child should for example die at an early age. Moreover in ordering lump sum payments there is apparently a tendency to make them less than the total amount the father would have to pay under the periodical plan, and thus the child loses out. The provision of the Uniform Act that where advisable a trustee may be appointed to receive and distribute the money, is a good protection for the child, and particularly so where a lump sum settlement is involved. However, in ordinary cases, unless there is reason to believe that the mother would not handle the money responsibly, it would seem right to permit the mother to be the direct recipient of the money.

Since the actual amounts of the court orders are not available, the real adequacy of support for the child cannot be determined. Nor can it be determined how fully is carried out the third purpose of the law on paternity, namely that of pro-
tecting the public from supporting the dependent child. About Illinois however, it may be said that the eleven hundred dollar maximum order is not very much more satisfactory than the eight hundred dollars allowed for valid compromise agreements, when one compares it with the amount of money needed to adequately support a child from the time of birth until he reaches adulthood. This amount is not even sufficient to keep the child off public assistance when the mother is poor.

The practice of individualizing, and of taking into consideration the reality factors such as the needs of the child, and the financial means of both parents, in either fixing the court order or in considering later modifications in the order, would seem to be fair for all three parties. If the mother for example has a comfortable income whereas the father has a relatively small one and is perhaps responsible for supporting his legitimate family, then it would seem better for the court to make the order proportionately small. If the father sees the amount of his court order as hopelessly large, it will not encourage his to comply with the order. On the other hand, if the mother has little money but the father has a rather sizeable income, it might be well to make the father responsible for a larger share of the child's needs than would be true in the former case.

Although the child's needs should first be met, the mother may also need financial help, not only with medical expenses, but also with her own maintenance in the weeks immediately
before and after the birth of the child, when she is unable to support herself through private employment. It would seem advisable for the father to share in these expenses to the extent he is able to help. Moreover when the defendant is adjudged the father of the child, he may well be responsible for prosecution costs, but where the decision is in his favor it would not be fair to hold him thus responsible. Nor would it seem correct to make the mother pay, for this type of a policy might discourage some mothers from initiating court action, and consequently both mother and child would lose out on their proper rights to financial help from the putative father. The Indiana provision that neither party is expected to pay court costs on a voluntary petition, is an excellent one.

In enforcing these support provisions it would seem advisable to use a variety of methods which will be as effective as possible, and at the same time as non-punitive as possible toward the father. The Iowa provision whereby a lien is placed on property of the defendant would seem to be one of the better methods in cases where the defendant has property. Where the defendant has no property, it would seem that putting the defendant on probation, as is permitted in the Uniform Act, would be preferable to putting him in jail if he is not able to give a bond. If the father is on probation he has an opportunity to obtain employment or continue working, and thus begin payment on his support order, but if he is put in jail not only does this keep him
from beginning to make payments, but it is also likely to make him defensive and bitter, and actively opposed to following through on the order. Probation gives the father an initial reasonable chance to show whether or not he intends to be cooperative. In regard to the Michigan provision for putting the father in jail and using his earnings to pay on the judgment, it would seem less punitive and more effective if the father were allowed to obtain private employment and a garnishee put on his earnings.

When there is default in payment and a bond or recognizance with sufficient security or sureties has been given, execution on the same may partially pay the order. It would seem that the contempt proceeding might well be saved until there is serious default in payment, until other methods have been tried but are unsuccessful, and only in those cases where it is known the father is able to pay but refuses to do so. The Uniform Act provision which makes the father's estate liable after his death is an excellent protection for the child when the father does have such property and the judgment has not been fully satisfied.

One very practical provision in the Uniform Act is that of making judgment obtained in one state enforceable in other states. To the extent that states reciprocate in this, it may discourage the father from leaving the state and increase the chances of the mother and child for receiving full payment on the judgment.

It would seem that the natural law intends that child-
ren be brought up in a family where they receive protection and physical care, education, and where their social-emotional needs are met. In accordance with this law then, it would appear advis- ible that an illegitimate child be legitimated by the marriage of its parents plus either the father's permission that the child be considered his legitimate child, or a judicial decision that he is the father of the child. In either case he will be responsible for the child's support. The family is the basic unit in society, and to declare the child to be the legitimate child of its natural parents upon adjudication, when these do not marry each other would not seem to promote and might possibly detract from the importance and validity of the family unit. To offici- ally make a child completely legitimate without the marriage of its parents would be like setting a legal approval on illegiti- macy and undermining the institution of the family.

Nevertheless it is felt that things should not be made more difficult than necessary and that the issuing of a birth certificate which does not give any clue as to legitimacy or il- legitimacy, is a practical protective provision for the illegiti- mate child who after all did not violate the natural law as did his parents. When the child begins school or accepts employment in later years, and possibly on other occasions also, it cer- tainly can cause him much embarrassment and pain to have the fact of his legitimacy directly or indirectly indicated on the birth certificate he may be required to show. Mothers also try to con-
oeal the fact of the child's illegitimacy, and may be distressed by birth certificates which show the legal status of the child. The Uniform Act does not have such a protective provision.

In the area of social services Minnesota and Wisconsin are apparently far ahead of the Uniform Act and the other Midwestern states. By the laws of these states not only do a large percentage of the illegitimate births come to the attention of the welfare department, but that department makes available a great deal of help directed towards enabling the parents to meet and handle their total situation as adequately and smoothly as possible. This in turn, as the statutes indicate, will tend to promote the best interests of the child and aid in securing for it as nearly as possible the care, support, education, and opportunities which it would be given if legitimate. Included in this help to the parents and the child is the attempt to keep the child from having to be financially dependent upon the public. In other words, social services have the same basic aims for the mother, the father, the child, and the public, as do the laws relating to illegitimacy.

In making statutory provision for the use of social services, the two states apparently recognize the fact that the illegitimate child is likely to have more problems than the average legitimate child, from the time of birth and on. He is often dependent, needing either financial help or custodial care, or both. His death rate is relatively high. His total environment
is not always too satisfactory. He may not be wanted by the
mother or by the father. Even if his situation is a fairly good
one, the mother may not initiate paternity action and thereby
safeguard the rights of the child, the public, and herself, for
several reasons. She may for example lack knowledge concerning
legal action; she may be unwilling to bring action against the
putative father for various reasons; she may be careless about
safeguarding her child's rights and best interests. It is for
these numerous reasons that Minnesota and Wisconsin consider it
so important to play an active role in promoting the child's wel-
fare. Even if the rest of the Midwestern states do not make the
welfare departments available in the manner previously described,
it would appear strongly advisable for them to see that social
services are available either through social service departments
attached to the court, or through private agencies.

When the laws of the Midwestern states are compared
with the Uniform Act, it is found that the Uniform Act has some
provisions identical with those found in the states, and others
which are more positive than the comparable provisions found in
some of these states. On the other hand some of the states have
provisions which are very positive and have no equivalent in the
Uniform Act. Although the Uniform Act may not on the whole be as
progressive as one would like, it must be remembered that it is
many years old and at the time it was recommended it was a defi-

3 Abbott, Child and State, 505.
nite improvement over the laws of some states. Moreover most states were not ready to accept provisions which they considered too radical.

When one considers the provisions of the several Midwestern states, one finds that some of the provisions have negative implications for the mother, father, and child, but many provisions have positive implications for these parties. In considering the child particularly it may be said that nothing can substitute for normal family living where parents of the illegitimate child cannot or do not want to marry. Legislation cannot solve all the problems which may face an illegitimate child. But as has been indicated in this study, laws can and do in some states see that paternity is established and that the child is adequately supported and under proper custody. Laws can also provide for the use of social services in illegitimacy cases, thereby meeting many needs which cannot be met by paternity action alone.


Burns, Harrison, ed., Annotated Indiana Statutes, Vols. II, secs. 3-623 to 3-657, III, sec. 6-2310, Indianapolis, 1946.

Burns Annotated Indiana Statutes, Supplement, Indianapolis, 1951, secs. 3-623 to 3-657.


Mason's Wisconsin Annotations, St. Paul, 1948, secs. 166.01-168.23.


