

The Effect of Joint Physical Custody Following Divorce on Children and Adolescents

Ryan D. Schroeder, Ph.D.
Associate Professor
Department of Sociology
University of Louisville



EXECUTIVE SUMMARY

Research across a variety of disciplines has clearly shown that children from divorced families experience significantly worse developmental outcomes than children from two-parent married families. Compared with children who have continuously married parents, children with divorced parents score lower on a wide range of emotional, behavioral, social, health, and academic outcomes, and these problems associated with parental divorce persist into adulthood. Active father involvement in the lives of their children, however, mitigates much of the negative consequences of divorce on developmental outcomes. Joint physical custody is associated with greater active paternal involvement, and therefore more positive developmental outcomes, following a divorce. Public policies that encourage joint physical custody following a divorce, including at least 30% overnights with each parent, will strengthen families and lessen the negative consequences of divorce for children.

Key points:

- **Joint Legal Custody v. Joint Physical Custody.** Although state statutes vary widely, joint legal custody generally refers to contexts in which both parents “...confer and make decisions together, with the result that neither has a final ‘say,’ or the legal ability to override the other, in the event of a disagreement” (Ver Steegh and Gould-Saltman, 2014, p. 263). Joint legal custody applies to nonemergency issues affecting a child’s health, education, and religion and generally does not include stipulations for parenting time or living arrangements. Joint physical custody, also known as “shared parenting” or “co-parenting,” is generally defined as an arrangement where the both parents are responsible for the everyday supervisions and care for the children and where children spend overnights with each parent more than 30 percent of the time (Morgan, 1998),
- **Effects of Divorce on Children.** A very wide body of research has documented the negative consequences of divorce for children. A 2001 meta-analysis of post-divorce adjustment problems among children that evaluated 67 published research studies using a variety of different samples (i.e., nationally representative samples, clinical samples, and convenience samples) and a wide range of statistical techniques revealed that children from divorced families fare statistically significantly worse in terms of academic achievement (i.e., standardized test scores, grades), behavioral conduct (aggression, misbehavior, delinquency), psychological adjustment (depression, anxiety, general happiness), self-concept (self-esteem, self-efficacy), and social relations (popularity, cooperativeness, quality friendships) (Amato, 2001). The average effect size of parental divorce on these outcomes ranged from -.024 to -0.33, meaning that children from divorced families score one-fourth to one-third of a standard deviation worse on important developmental outcomes.
- **Parenting Time v. Active Parental Involvement.** The current research clearly shows that nonresidential parents, mainly nonresidential fathers, simply spending time with children is not sufficient to mitigate the negative developmental outcomes associated

with divorce; rather, the quality of the nonresidential parent-child relationship is of tantamount importance to enhancing the well-being of children and adolescents. In a meta-analysis of 63 research studies that assessed the influence of child support payments, time spend with children, the degree of closeness between the nonresidential parent and the child, and the use of an authoritative parenting style by the nonresidential parent (high in control and supervision, high in caring and warmth), Amato and Gilbreth (1999) found that how often a nonresidential father sees his children is less important in reducing problems with academic performance (test score, grades), externalizing problems (misbehavior at home or school, delinquency, aggression), and internalizing problems (depression, anxiety, low self-esteem) than the quality of the interactions between nonresidential fathers and children.

Specifically, because traditional visitation arrangements (i.e., every other weekend, alternating holidays) create a context where fathers want to ensure that their children enjoy themselves during the visit, these arrangements create a context where nonresidential fathers have a recreational relationship with their children (i.e., movies, restaurants). Additionally, because men with traditional visitation arrangements fear that their relationships with the children are tenuous, nonresidential fathers tend to be reluctant to set firm rules or discipline children. Therefore, the time spent with children under traditional visitation arrangements does not create a context in which high-quality, authoritative parenting styles can be developed or enacted.

Rather than focusing solely on parenting time, Amato and Dorius (2010) show that active parenting is critical for developing bonds between nonresidential father and children. Although not completely separate from parenting time, active parenting involves engagement across a wide range of “regular” daily activities with children, including cooking meals, running errands, getting ready for school, doing homework, and going to medical appointments. These everyday activities create a context in which strong bonds can be build and maintained between nonresidential parents and children, as well as situate the nonresidential parents to set and enforce rules and sustain strong emotional bonds with children.

In a sophisticated study of 1,030 university students, Fabricius, Diaz, and Braver (2011) show that the strongest predictor of active parenting by nonresidential fathers, and by extension the quality of relationships with nonresidential fathers, was the number of days that the students lived with their fathers. Each increment in days lived with fathers was associated with statistically significant improvements in the quality of relationships with the fathers up to 13-15 days (or approximately 50% of time living with each parent). Days lived with the father beyond 13-15 days does not who any statistically significant improvements in father-child bonds. Importantly, this pattern was similar for the students whose parents were high and low in conflict.

In a different study of 60 adolescents, Cashmore, Parkinson, and Taylor (2008) report that overnights spent at their father’s home was associated with stronger relationships

with their fathers than adolescents who only saw their fathers during the day, a finding that remained when the overall amount of time spent with fathers was equal and regardless of the amount of conflict between the divorced parents.

In sum, parenting time is not as important as the quality of parenting by a nonresidential parent. Quality of parenting is enhanced when children live with the other parent and/or spend overnights at the nonresidential parent's home. Data show that the ideal arrangement for children with divorced parents is to live with each parent, including overnight stays, at least 30% of the time. Ideally, children of divorced parents should live with each parent 50% of the time.

- ***The Influence of Parental Conflict in Joint Physical Custody Arrangements.*** The primary objections to joint physical custody, whether it be physical or legal custody, are centered on high-conflict couples (Johnston et al., 2009). High-conflict relationships often involve physical violence and consume the majority of time and resources in family courts. In divorce cases that involve physical violence, joint physical custody is absolutely not recommended (see McIntosh et al., 2009 for research that shows the negative outcomes of shared parenting among very high-conflict couples). For the vast majority of divorce cases that do not include physical violence (85-90% of divorces), however, joint physical custody benefits children following a divorce, even when the parents do not get along (Fabricius, Daz, and Braver, 2011). In fact, earlier research on 1,100 divorced families found that couples with joint physical custody were not more cooperative and did not communicate better than other divorced couples (Maccoby and Mnookin, 1992), yet children benefit from joint physical custody arrangements regardless of the nonphysical conflict between their parents.

More recent research on 1,194 divorced families in Wisconsin (half were joint physical custody families, half were maternal residence families) again showed an equal degree of non-physical conflict between parents in both types of custody arrangements—15% of divorced relationships were rated as “hostile” in both groups and most parents in the study reported a distant, business-like relationship with the other parent that included a significant degree of nonphysical conflict (Melli and Brown, 2008).

The conclusion is that “...parents with shared residential custody do not get along with one another exceptionally better than other divorced parents...Given this, it is worth noting that the general consensus among experts is that nonphysical conflict should not be used as an excuse for limiting the amount of time that children spend with either parent after their divorce” (Nielsen, 2011, p. 594-595).

- ***How Stressful is Having Two Homes for Children?*** Two British studies of 117 children, 73 of whom lived an equal time with each parent or every other weekend with alternating parents revealed that living in two homes had practical inconveniences, such as having to pack belongings frequently, needing to inform friends of where they were staying on any given day, and having to stay organized. Other problems with joint

physical custody were identified, including needing to adjust to each parent's rules, finding one parent more boring than the other, and liking the creature comforts in one house better than the other. Despite these inconveniences and frustrations, most of the children preferred living with both parents after a divorce than living with just one parent (Smart, 2001). Other benefits of joint physical custody including getting a break from each parent, having a better relationship with both parents, and feeling loved and secure. This research concluded that although transitioning between two homes is difficult and stressful, joint physical custody was viewed as beneficial compared to sole custody arrangements. Importantly, the research found that the most stressed and unhappy children in the study were those who lived with their mother and rarely saw their father (Smith, 2001).

Joint physical custody arrangements also appear to be remarkably stable. Research from the late 1980s revealed that although transitions from joint physical custody arrangements to sole custody arrangements occurred in about 50% of the cases, most of the transitions were among low-income families where the father could no longer afford suitable housing for the children or because one parent, usually the father, had to move a long distance to find work. These transitions occurred because joint physical custody was no longer feasible, not because shared parenting failed (Maccoby and Mnookin, 1992). The more recent research of 1,194 Wisconsin families found that three years after the divorce, 90% of the children in the study were still living at least one-third of the time with their fathers and that the amount of contact with fathers was the same or greater than at the outset of the joint physical custody agreement (Berger et al., 2008). Therefore, the research indicates that most divorced families with joint physical custody are stable. In the cases where joint physical custody failed, it is important to note that that "instability" is not necessarily bad for child outcomes; rather, changes in initial physical custody arrangements are often a sign of parental flexibility and responsiveness to the needs of the children (Smyth, 2009).

- ***Does the age of the child matter?*** There very little debate as to whether very young children (0-48 month) benefit from overnight stays away from their mothers. Warshak (2014) summarized the entire body of research on the benefits and drawbacks to shared parenting for children under 4 years old and concluded that there are many benefits to very young children and nonresidential parent-child relationships to shared parenting. Importantly, the research shows that there are no risks to overnights among very young children with nonresidential parents. One hundred and ten of the top child development researchers in the U.S. endorsed Warshak's (2014) review of the research and policy recommendations on shared parenting among very young children.

Warshak (2014), however, notes that shared parenting is the best custody arrangement for very young children *in normal circumstances*. Like shared parenting among older children, shared parenting for children under 4 years of age is not recommended in situations where there is intimate partner violence, a history of abuse or neglect, physical or sexual abuse of the child, persistent attempts by one parent to interfere in

the parenting arrangements for the other parent, when there is a nonexistent or weak relationship with the nonresidential parent, or when the child has special needs. Under these non-normal circumstances, special safeguards to protect the child are needed.

The general conclusion from the body of research on parenting plans for children under 4 years of age is that shared parenting, including overnights with each parent, is not harmful to very young children (see Pruett et al, 2014 for further support of shared parenting among very young children), and in fact provides many benefits for both the child and the relationship between the child and the nonresidential parent (Warshak, 2014).

Conclusion:

Parental divorce is associated with a wide variety of behavioral, emotional, and educational problems for children involved. Maintaining regular and positive contact with the nonresidential parent, however, is associated with more positive child developmental outcomes following a divorce. Statutory efforts that encourage and support the full involvement of both parents in the lives of their children following a divorce are critical to mitigating the negative outcomes associated with divorce for children. Legislation should recognize that having active involvement of both parents following a divorce is “in the best interests of the child” and operate from the assumption that parents will share legal and physical custody (including overnights with each parent at least 30% of the time) of the child, as long as there is no physical violence or other critical mitigating factors within the family. For very young children (0-48 months), the benefits are strong and the research has not documented any risks to very young children under normal circumstances. In family contexts of abuse, neglect, or deliberate attempts to interfere in the parenting time of the nonresidential parent, however, more individualized plans for very young children are necessary.

An article written by DiFonzo (2014) for *Family Court Review* describes in detail the changes to state laws that have been occurring in response to the research showing the benefits of shared parenting. In 2013, for example, Arkansas passed legislation that emphasizes that joint custody is “favored,” defined as “the approximate and reasonable equal division of time with the child by both parents individually as agreed to by the parents or as ordered by the court.” Louisiana has also established a rebuttable presumption that joint custody, including physical custody, is in the best interests of the child: “[to] the extent it is feasible and in the best interest of the child, physical custody of the children should be shared equally.” Additionally, Georgia defines joint physical custody to mean “that physical custody is shared by parents in such a way as to assure the child of substantially equal time and contact with both parents.” Although definitions of joint physical custody vary widely from state to state, the Nevada Supreme Court determined that joint custody means that each parent should have physical custody of the child at least 40 percent of the time, or 146 days per year. Utah similarly has a statute defining joint physical custody to mean that “the child stays with each parent overnight for more than 30% of the year.” Minnesota has a rebuttable presumption that each parent has at least 25% of

parenting time each year, which is calculated, in part, by the number of overnights that a child has with each parent.

In line with recent advancements of legislation promoting shared parenting, DiFonzo (2014, p. 226-228) provides an overview of the current state of child custody law, including definitions of key terms, as well as options related to decision-making and parenting time:

“ I. Core Emerging Statutory Elements

A. Basic Principles

Best Interest of the Child Standard: The child’s best interest, including health, safety, and welfare, is the paramount consideration in a decision-making and parenting time determination. Frequent, continuing, and meaningful contact with both parents is in the child’s best interests in most circumstances. The court shall ensure that the parenting plan agreed to by the parents is consistent with the child’s best interests. In the event that the parents do not agree on a parenting plan, the court shall adopt a parenting plan that, consistent with the child’s best interests, provides for both parents to share legal decision-making regarding their child and that maximizes their respective parenting time.

Abusive behavior: The “perpetration of child abuse or domestic violence in a household where the child resides is detrimental to the child.”

Parental gender irrelevant: No preference shall be given to either parent because of that parent’s gender.

Preference for Alternative Dispute Resolution: Litigation should be used as a last resort, after mediation and other dispute resolution methods have been seriously attempted.

B. Definitions

Parenting Plan: A parenting plan allocates legal decision-making and parenting time.

A parenting plan sets out the responsibility of each parent in providing for the child’s care both at the time of implementation and as the child ages and matures. A parenting plan must contain provisions for the resolution of future disputes between the parents, initially through non-adversarial dispute resolution methods.

Legal Decision-making: Legal decision-making (formerly known as legal custody) refers to the legal right and responsibility to make all nonemergency legal decisions for a child including those regarding welfare, education, health care, and religious training. Joint legal decision-making means that both parents share all parental rights, privileges, duties, powers, responsibilities, and obligations, except for specified decisions as

set forth in the parenting plan.

Parenting Time: Parenting time (formerly known as physical custody) shall be allocated in the parenting plan in a manner to assure the child of frequent, continuing and meaningful contact with both parents. Joint parenting time allocation means that the parents have significant periods of time during which a child resides with or is under the care and supervision of each of the parents. These periods of time are not necessarily equal, but must result in the child staying with each parent overnight for more than thirty percent of the year.

II. Shared Parenting Determinations: Presumptions, Preferences, and Best Interests Factors

A. Presumptions Options

A1: Joint Legal Decision-Making Presumption

Joint legal decision-making is presumed to be in the best interests of a child in an initial determination, except in cases where the court finds any of the following:

- a) Domestic violence in the home or in the presence of the child;
- b) Particular physical or mental needs of a parent or child, making joint legal decision making inadvisable;
- c) Geographical distance between the residences of the parents, making joint decision making impractical; or
- d) Any other factor the court considers relevant.

A2: Joint Parenting Time Allocation Presumption

Joint parenting time allocation is presumed to be in the best interests of a child in an initial determination, except in cases where the court finds any of the following:

- a) Domestic violence in the home or in the presence of the child;
- b) Particular physical or mental needs of a parent or child, making joint legal custody inadvisable;
- c) Geographical distance between the residences of the parents, making joint parenting time allocation impractical; or
- d) Any other factor the court considers relevant.

B. Preferences Options

B1: Joint Legal Decision-Making Preference

Legal decision-making authority should be granted in the following order of

preference according to the best interest of the child:

- a) Jointly to the parents;
- b) Specific areas of responsibility allocated to each parent;
- c) Solely to either parent.

B2: Joint Parenting Time Allocation Preference

Parenting time should be allocated in the following order of preference according to the best interest of the child:

- a) Jointly to the parents;
- b) Primarily to one parent, with the other parent entitled to parenting time to ensure that the child has frequent, meaningful, and continuing contact with that parent.

C. Best Interests Factors Options

C1: Joint Legal Decision-Making Factors

Legal decision-making authority should be granted according to the best interest of the child as set forth in the jurisdiction's statute and case law.

C2: Joint Parenting Time Allocation Factors

Parenting time should be allocated according to the best interest of the child, with each parent in most circumstances receiving frequent, meaningful, and continuing contact with the child."

REFERENCES:

- Amato, P. R. 2001. Children of divorce in the 1990s. An update of the Amato and Keith (1991) meta-analysis. *Journal of Family Psychology* 15: 355-370.
- Amato, P. R. and J. G. Gilbreth. 1999. Nonresident fathers and children's' well-being: A meta-analysis. *Journal of Marriage and Family* 63: 1038-1051.
- Amato, P. R. and C. Dorius. 2010. Father, children and divorce. In M. Lamb (ed.), *The Role of the Father in Child Development*: 177-201.
- Berger, L., P. Brown, E. Joung, M. Melli, and L. Wimer. 2008. Stability of child physical placements after divorce. *Marriage and Family* 70: 273-283.

- Cashmore, J., P. Parkinson, and A. Taylor. 2008. Overnight Stays and Children's Relationships with Resident and Nonresident Parents After Divorce. *Journal of Family Issues* 29: 707-733.
- DiFonzo, J. H. 2014. From the rule of one to shared parenting: Custody presumption in law and policy. *Family Court Review* 52: 213-239.
- Fabricius, W., S. Braver, P. Diaz, and C. Schenck. 2010. Custody and parenting time. In M. Lamb (ed.), *The Role of the Father in Child Development*: 201-241.
- Johnston, J., V. Roseby, and K. Kuehnle. 2009. *In the Name of the Child: Understanding and Helping Children of Conflicted and Violent Divorce*. New York, NY: Springer.
- Maccoby, E. and R. Mnookin. 1992. *Dividing the Child*. Cambridge, MA: Harvard University Press.
- Melli, M. and P. Brown. 2008. Exploring a new family form: The shared time family. *International Journal of Law, Policy and Family* 22: 231-269.
- Morgan, L. W. 1998. Child Support Guidelines and the Shared Custody Dilemma. *Divorce Litigation*. Retrieved May 15, 2017.
<<http://childsupportguidelines.com/articles/art199906.html>>
- Nielsen, L. 2011. Shared parenting after divorce: A review of shared residential parenting research. *Journal of Divorce and Remarriage* 52: 586-609.
- Pruett, M.K., R. Ebling, and G. Insabella. 2004. Critical aspects of parenting plans for young children. *Family Court Review* 42: 39-59.
- Pruett, M.K., J.E. McIntosh, and J.B. Kelly. 2014. Parental separation and overnight care of young children, part I: Consensus through theoretical and empirical integration. *Family Court Review* 52: 240-255.
- Smart, C. 2001. *The Changing Experience of Childhood: Families and Divorce*. Cambridge, UK: Polity.
- Smyth, B. 2009. A 5 year retrospective of shared care research in Australia. *Journal of Family Studies* 15: 36-59.
- Tornello, S.L., R. Emery, J. Rowen, D. Potter, B. Ocker, and Y. Xu. 2013. Overnight custody arrangements, attachment, and adjustment among very young children. *Journal of Marriage and Family* 75: 871-885.

Warshak, R.A. 2014. Social Science and Parenting Plans for Young Children: A Consensus Report. *Psychology, Public Policy, and Law* 20: 46-67.

Ver Steegh, N. and D. Gould-Saltman. 2014. Joint legal custody presumptions: A troubling legal shortcut. *Family Court Review* 52: 263-270.

