

TEXAS LEGISLATIVE INFORMATIONAL PACKET

EQUAL PROTECTION FOR CHILDREN ~ A REFORM LONG OVERDUE ~

“The scientific research documented in 40 studies combined with the consensus of 112 social scientists prove that children desire associating and bonding with both their mothers and their fathers, and children excel and prosper when both parents are equal contributors to their upbringing and well-being, even when the parents live in two separate homes. We assert that the constitution protects a child from having a parent taken without cause and without justification.”

...with Special Thanks to Texas TFRM and ALFRA

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What the Experts Say About Children of Divorce

- **Dr. Richard Warshak, The University of Texas**

"Parenting plans that provide children with contact no more than six days per month with a parent, and require the children to wait more than a week between contacts, tax the parent-child relationships. This type of limited access schedule risks compromising the foundation of the parent-child bond. It deprives children of the type of relationship and contact that most children want with both parents. The research supports the growing trend of statutory law and case law that encourages maximizing children's time with both parents. This may be even more important for young children in order to lay a strong foundation for their relationships with their fathers and to foster security in those relationships."^[1]

- **112 Social Scientists:**

"This is ground-breaking to get 112 social scientists to agree – and they agreed that based on the scientific literature, shared parenting should be the norm for parenting plans for children of all ages." –Dr. Linda Nielsen, Wake Forrest University.

- **Senior Texas Appellate Judge:**

"I write separately to express my belief that the standards currently used in making and reviewing orders that have the effect of limiting a parent's access to his or her children do not reflect the legislative mandate regarding parental access, nor do they adequately respect the scope of the liberty interest enjoyed by a parent in rearing his or her own children. Because of the gravity of the constitutional rights and interests at stake in such proceedings, and because the current standard is based upon outdated notions of parenting that predate the family code and run counter to the legislature's stated policy concerning children's best interests, trial courts should justify deviation from maximum feasible time with both parents by clear and convincing evidence and make factual findings, and appellate courts should carefully review those findings. Sadly, in many cases, trial courts attempting to dispose of messy divorces as equitably and expeditiously as possible simply automatically adopt the minimum outlined in the standard possession order without considering whether that order will impose limits upon possession and access in excess of those necessary to protect the best interests of the children. " --Justice David Puryear, In re JRD, 169 SW 3d 740 - Tex: Court of Appeals, 3rd Dist. 2005, Concurring Opinion.

- **Chief Justice, Texas Appellate Judge:**

"Whatever latitude courts have in setting possession periods, they do not have the discretion to automatically adopt the minimum and ignore the legislature's explicit directive in section 153.193 to allow maximum feasible time with both parents unless doing otherwise would impair the children's interests." --Chief Justice Massey, In re JRD, 169 SW 3d 740 - Tex: Court of Appeals, 3rd Dist. 2005.

- **Federal District Court Judge:**

The judge is "To safeguard the right of parents to raise their children as they see fit, free of government intrusion, except in cases of neglect and abandonment, is to safeguard each child's need for continuity." -- Doe v. Irwin, 441 F. Supp. 1247 (Dist. Court, WD Michigan 1977) AT 1256, 1257"

What's Wrong with the Current Possession Policies?

- Current state policies affect over one million children per year.^[2]
- In 2015, approximately 100,000^[3] children in Texas were impacted by the Texas family courts. The current family court policies drive the loss of one of their biological parents by choosing a parent who is deemed by the court to be the favorable parent.
- The law fails to protect the child's fundamental right to freely associate with both parents.
- The existing possession schedules are rooted in flawed and outdated studies and biases which do not reflect the current consensus of the scientific community.
- The law fails to align child custody law with current research, which states "equal or approximately equal time-sharing with a minor child by both fit parents is in the best interest of the child."
- Currently the Texas Family Code only provides two possession schedules. Neither one of which provides the child the benefits of equal access to both parents. Standard Possession Order (~76/22)/Extended Standard Possession Order (~65/35).
- The Texas Family Code presumes that the possession schedule which provides the least contact between the child and the non-custodial parent is in the best interest of the child.
Sec. 153.252. REBUTTABLE PRESUMPTION. In a suit, there is a rebuttable presumption that the standard possession order in Subchapter F:
 - (1) provides reasonable minimum possession of a child for a parent named as a possessory conservator or joint managing conservator; and
 - (2) is in the best interest of the child.
- The Texas Family Code's minimum possession schedule is being used as the default schedule by judges and has become the most common possession schedule order between fit disagreeing parents.^[4]
- The current possession schedules promote a winner / loser struggle where parents are put in opposition to one another to see who will remain a parent and who will be downgraded to a visitor in their child's life.
- The family code promotes parental conflict, which is the best predictor of poor outcomes for children of divorce.^[5]
- Current possession orders are perceived as unfair by the non-custodial parent and thus conflict ensues long after the divorce is over.
- The psychologically important attachment bonds with both parents are not possible within the constraints of the existing possession schedules.^[6]
- The current possession model is highly correlated with parental alienation and parental disengagement^[7]

Senior Justice David Puryear Concurring Opinion

Court of Appeals of Texas, Austin.
In the Interest of J.R.D. and T.C.D.
No. 03-04-00311-CV.
Decided: July 14, 2005

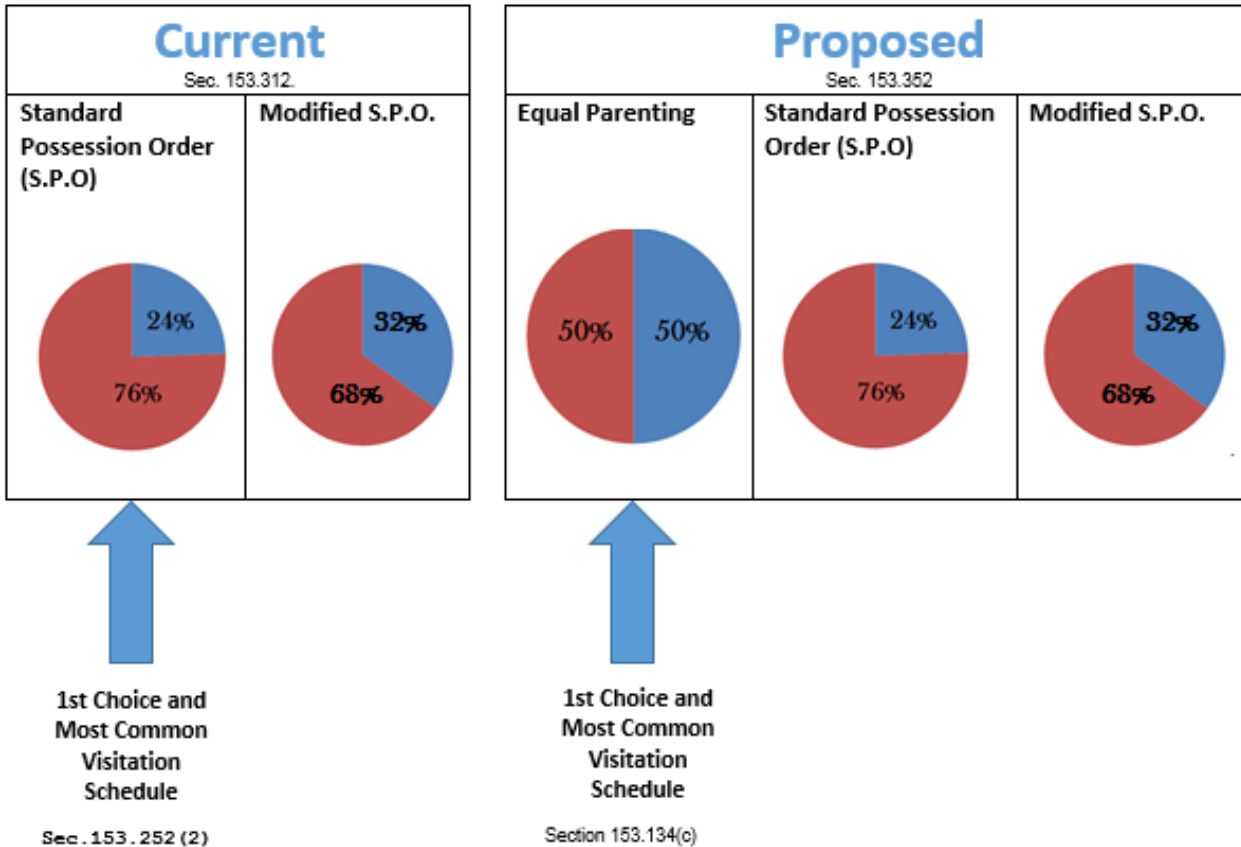
Concurring opinion by Justice PURYEAR.

Sadly, in many cases, trial courts attempting to dispose of messy divorces as equitably and expeditiously as possible simply automatically adopt the **minimum** outlined in the standard possession order without considering whether that order will impose limits upon possession and access in excess of those necessary to protect the best interests of the children. The trial court's emphasis on the standard possession order in this case is illustrative. The court, in granting Duck's request for Thursday overnight stays, explained, "That's in the standard possession schedule and there's no reason why he can't make that election and have the standard schedule that every other dad gets." In denying the Sunday night overnight request, the court opined that the standard possession order was appropriate and that it did not include that night.² The court awarded fees to the mother, although she only partially prevailed, because she had to defend against Duck's unpersuasive Constitutional claims, saying "I think that really if dad had just wanted a Thursday overnight, pursuant to the standard schedule, that would have been hard for mom to resist," implying that, had Duck merely requested the statutory **minimum**, the court would not have awarded fees against him.³ The court appears to have inadvertently substituted the word "reasonable" where the legislature used "**minimum**" in section 153.137's direction for the proper application of the standard possession order. The family code does not envision limiting a parent's time with a child to what "every other dad gets."

Courts have a responsibility to do more than automatically adopt a standard **minimum**. Instead, in making and reviewing these decisions we need to recognize that the circumstances of each case will dictate different custody arrangements and that, for the children of Texas, one size does not fit all. Reading sections 153.193 (allowing only necessary limitations on parent's access), 153.137 (standard order presumptive **minimum**), and 153.251 (standard order sets **minimum** for joint managing conservators) together, it appears that, to comply with the family code, every court that imposes limitations on a parent's right to possession of or access to a child by adopting the standard possession order has made an express or implied finding of fact that that particular limitation on the parent's time with the child is required to protect the best interests of the child. The legislature has declared a presumption that it is in the child's best interest to have the **minimum** amount of time with any reasonably safe parent, and it makes no sense-nor is it authorized-to blindly apply that same **minimum** of time to a parent who is not merely safe but is an interested and active influence in his or her child's life without regard to the degree of emotional engagement or bonding between the parent and child. Whatever latitude courts have in setting possession periods, they do not have the discretion to automatically adopt the **minimum** and ignore the legislature's explicit directive in section 153.193 to allow maximum feasible time with both parents unless doing otherwise would impair the children's interests.

What HB453 Does

1. Adds a visitation schedule to the existing two schedules already in place.
2. Specifies that an equal parenting schedule will be the first choice.



What HB 453 Does Not Do

1. HB 453 does not affect child support
 - Judges are allowed to order child support in equal possession parenting:
 - Sec. 153.138. CHILD SUPPORT ORDER AFFECTING JOINT CONSERVATORS. The appointment of joint managing conservators does not impair or limit the authority of the court to order a joint managing conservator to pay child support to another joint managing conservator.
2. HB 453 does not remove or affect in any way the strenuous protections the Texas Code has against child abuse or neglect.
3. HB 453 does not affect a judge's authority to protect a child.
4. HB 453 does not change each parent's duties and responsibilities to their child.

State of Children in Texas

Each year, approximately 100,000 children in Texas are subject to orders that restrict them to a minimum amount of time that they can see and spend time with their other fit parent. In 2015, Texas had approximately 2.4^[8] million kids living in a single parent household. Many of these children had a parent taken from them where the parent did not do anything wrong. The perception within society is that the court considers the best interests of the child and makes these decisions for the greater good. When this isn't the case however, the parent and child can be made to feel very helpless with no remedy. The Texas Family Code does not correspond with American family values concerning parental involvement in their children's lives and protection of fundamental family rights between two fit and involved parents. The social science also supports that affecting the integrity of each child-parent relationship without proper caution is possibly the most destructive thing that the court could do to a child. A child of divorce or separated parents could be left to spend a lifetime trying to overcome the loss and deficit of the absent parent.

Kids Living in Single Parent Families

Did you know?

According to the Annie E. Casey Foundation, Texas ranked 43rd among the 50 states in overall child well-being based on measures in four categories:

- Health
- Education
- Economic well-being
- Family & community

According to several surveys and studies...

- 63% of youth suicides^[9] (5 times the national average)
- 75% of juvenile drug abuse^[10] (10 times the national average)
- 85% of youths in prison^[11] (20 times the national average)
- 71% of school dropouts^[12] (9 times the national average)
- 71% of teen pregnancies^[13] (9 times the national average)
- 90% of homeless and runaway children^[14] (32 times the national average)
- 85% of children with behavior problems^[15] (20 times the national average)

...are children with limited or no contact with one of their parents.

In 2015 approximately 2.4 Million children lived in single-parent homes.

Shared* Parenting is Linked to Equal or Better Outcomes for Children of All Ages

According to the summary of 40 Studies on Outcomes for Children, shared parenting can improve Texas' overall child well-being based on measures in five categories:**

- Academic or cognitive outcomes, which include school grades and scores on tests of cognitive development such as language skills;
- Emotional or psychological outcomes, which include feeling depressed, anxious, or dissatisfied with their lives;
- Behavioral problems, which include aggression or delinquency, difficult or unmanageable behavior at home or school, hyperactivity, and drug or alcohol use;
- Physical health and smoking, which also include stress-related illnesses such as stomach aches and sleep disturbances; and
- Quality of father-child relationship, which includes how well they communicate and how close they feel to one another.

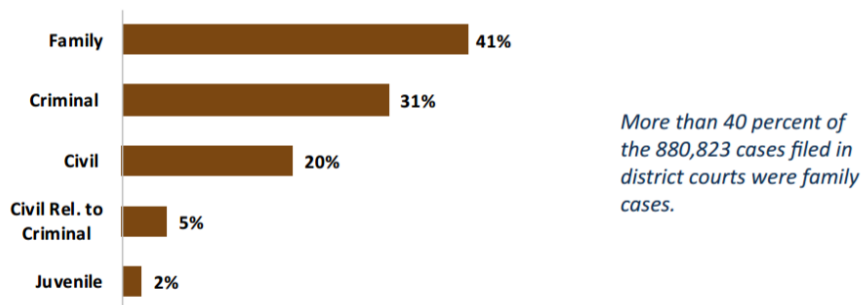
*Do not confuse the word "shared" or "joint" with "equal". Just as "separate" was not "equal" during the time of school desegregation, "shared" and "joint" is not "equal" in terms of child custody possession policy.

** According to the Annie E. Casey Foundation, Texas ranked 43rd^h among the 50 states in overall child well-being.

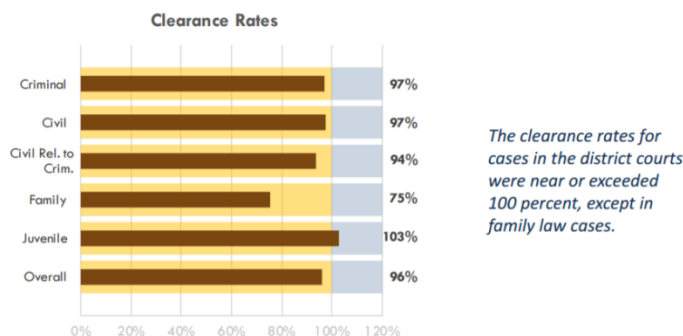
Equal Parenting is Linked to Better Outcomes for Children of All Ages

AND the State of Texas

- Reduction of negative social impact on children to include juvenile detention, teen pregnancies, suicides, school dropouts, drug abuse, sex trafficking, better educational performance, less single-parenting abuse, lower morbidity, etc.
- Reduction of time required in the court for fights over possession time will free up court dockets for cases regarding child abuse, domestic violence, and criminal cases.
- Reduction of court dockets can reduce workload and reduce judicial turnover.
 - More than 40% of the 880,823 cases filed in district courts were family cases.^[16]



- 89% of divorce cases were filed in district courts.^[16]
- Family cases take the longest to clear off of the courts case load.^[16]



-
- More fair administration of justice increases satisfaction and decreases court filings:
 - Protection of rights would decrease litigation.
- Reduction of financial burden on tax payers.
- Cost savings for Texans and budget savings for Legislature.

Equal Parenting is Linked to Higher Compliance with Child Support Payments

- Child support compliance was 90.2% in cases of joint custody;
- Child support compliance was 79.1% where access to the child was protected by a visitation order; and
- Child support compliance was only 44.5% where neither joint custody nor access were protected by an order.^[17]

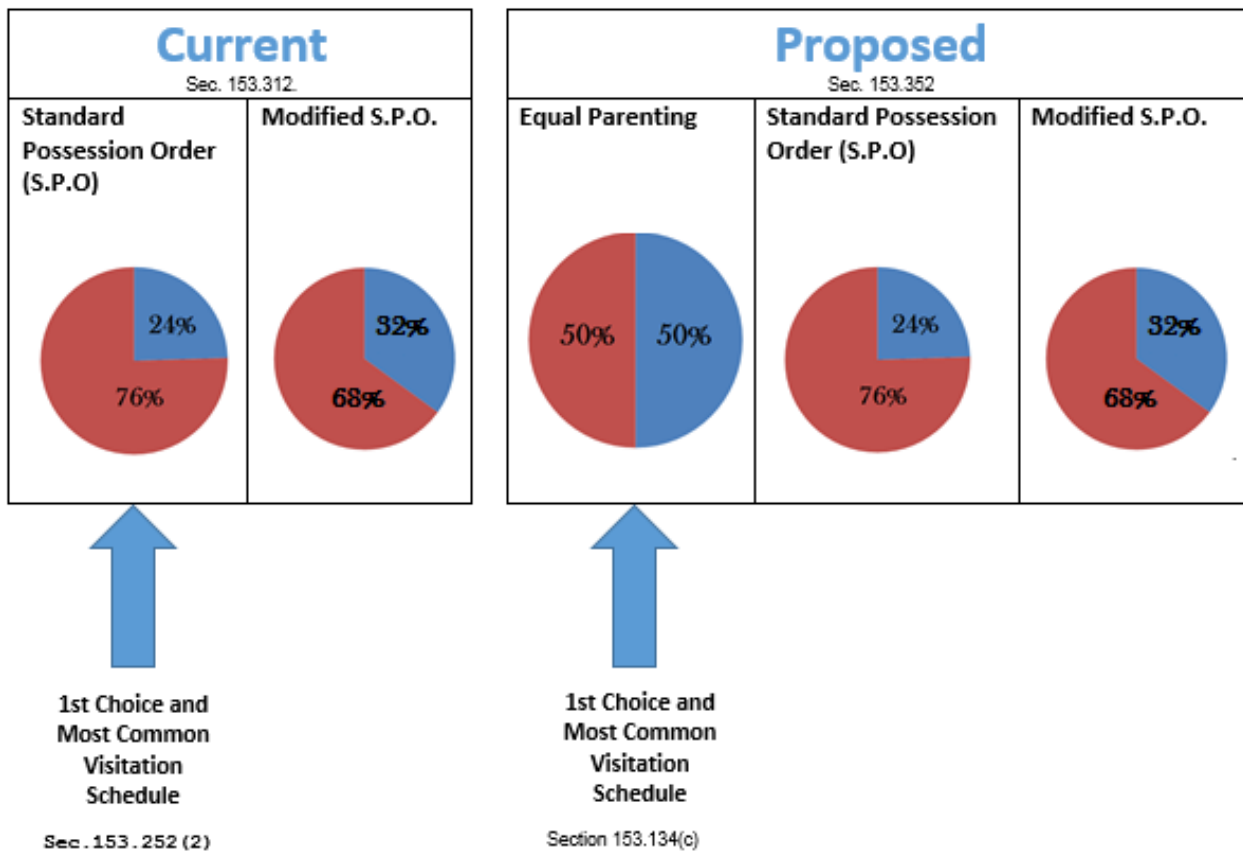
Title IV-D (child support) cases accounted for **40 percent** of the 337,387 family cases filed.^[16]

More Parenting time increases child support compliance and decreases the need for enforcement filings.

MYTHS VS. FACTS

Myth 1: Texas already has equal parenting.

Fact: Texas Standard Possession Order is a 76/24 split, on a yearly average. (80/20 split if you ignore the month of July)



Standard Possession Order for 2017	
Hours in A year	8760 hrs
Hours with Non-Custodial Parent	2060 hrs (24%)
Nights in a year	365 nights
Overnights with non-custodial parent	80 Overnights (22%)

January								April								July								October							
S	M	T	W	T	F	S		S	M	T	W	T	F	S		S	M	T	W	T	F	S		S	M	T	W	T	F	S	
1	2	3	4	9.00	24.00	24.00								24.00				1	2	3	4	9.00	24.00	24.00							
24.00	8.00	10	11	9.00	8.00	14		24.00	8.00	4	5	9.00	24.00	24.00		24.00	24.00	24.00	24.00	24.00	24.00	24.00	18.00	0.00		24.00	8.00	14	24.00		
15	16	17	18	9.00	24.00	24.00		24.00	8.00	11	12	9.00	24.00	8.00	15											15	16	17	18	9.00	24.00
24.00	8.00	24	25	9.00	8.00	28		16	17	18	19	9.00	24.00	24.00		6.00	24.00	24.00	24.00	24.00	24.00	24.00		24.00	8.00	24	25	9.00	8.00	28	
29	30	31						24.00	8.00	25	26	9.00	8.00	29		24.00	24.00	24.00	24.00	24.00	24.00	24.00			29	30	31				
								30								24.00	31														
February								May								August								November							
S	M	T	W	T	F	S		S	M	T	W	T	F	S		S	M	T	W	T	F	S		S	M	T	W	T	F	S	
				1	9.00	24.00	24.00												1	2	3	9.00	24.00	24.00							
24.00	8.00	7	8	9.00	8.00	11		24.00	8.00	9	10	9.00	8.00	13		24.00	8.00	8	9	10	11	12		18.00	8.00	7	8	9.00	24.00	24.00	
12	13	14	15	9.00	24.00	24.00		14	15	16	17	9.00	24.00	24.00		13	14	15	16	17	9.00	24.00		12	13	14	15	9.00	24.00	24.00	
24.00	8.00	21	22	9.00	8.00	25		24.00	8.00	23	24	9.00	8.00	27		24.00	8.00	22	23	9.00	8.00	26		24.00	24.00	24.00	24.00	24.00	24.00	24.00	
26	27	28						28	29	30	31					27	28	29	30	9.00					18	27	28	29	9.00		
March								June								September								December							
S	M	T	W	T	F	S		S	M	T	W	T	F	S		S	M	T	W	T	F	S		S	M	T	W	T	F	S	
				1	9.00	24.00	24.00						1	9.00	24.00							24.00	24.00								
18.00	8.00	7	8	9.00	10	11		24.00	8.00	6	7	8	9	10		24.00	8.00	5	6	9.00	24.00	9		24.00	8.00	5	6	2.00	8	9	
12	13	14	15	16	17	18		11	12	13	14	15	16	17		10	11	12	13	9.00	8.00	24.00		10	11	12	13	9.00	8.00	16	
19	20	21	22	9.00	8.00	25		0.00	19	20	21	22	23	24		24.00	8.00	19	20	9.00	24.00	23		17	18	19	20	21	22	23	
26	27	28	29	9.00	24.00			25	26	27	28	29	9.00			24															

Modified Standard Possession Order for 2017	
Hours in A year	8760 hrs
Hours with Non-Custodial Parent	2902 hrs (33%)
Nights in a year	365 nights
Overnights with non-custodial parent	139 Overnights (38%)

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MYTHs VS. FACTs

Myth 2: An equal possession order causes instability and confusion for the children.

Fact: The Standard Possession Order is far more confusing and distressing than equal parenting. Child caring responsibilities are split nearly equally between cohabitating parents so it is unusual to a child to transfer the majority of child care to one parent.

- Children strongly favor equal parenting (Fabricius 2003; Finley and Schwartz 2007)
- Adults who went through divorce as children would have preferred equal parenting [70% of primary residence and 93% of shared parenting arrangements] (Fabricius 2003)
- Children of primary residence arrangements had feelings of insecurity and rejection by the non-custodial parent as well as anger towards both parents for not allowing an opportunity for a meaningful relationship with both parents (Fabricius 2003)
- Primary residence arrangements highly correlated with parental alienation and parental disengagement (Kruk 2010a, Kruk 2010b, Amato, Meyers and Emery 2009)

MYTHS VS. FACTS

Myth 3: Equal parenting forces kids to live out of a suitcase.

Fact: A Standard Possession Order requires a child to switch households 12-14 times per month.

The most common equal parenting schedule (one week with mom, one week with dad) is only 4-6 transfers per month.

September						
S	M	T	W	T	F	S
					9.00	24.00
18.00	4	5	6	2.00	8	9
10	11	12	13	2.00	9.00	24.00
18.00	18	19	20	2.00	22	23
24	25	26	27	2.00	9.00	24.00

"1,2"

"3-10"

"11-13"

13 exchanges in one month with the current standard possession order.

September						
S	M	T	W	T	F	S
					24.00	24.00
24.00	15.00	5	6	7	8	9
10	9.00	24.00	24.00	24.00	24.00	24.00
24.00	15.00	19	20	21	22	23
24	9.00	24.00	24.00	24.00	24.00	24.00

"2"

"4"

"1"

"3"

4 exchanges in one month with equal parenting. And notice, all the exchanges are at school so parents don't even have to interact, which shields children from conflict, if there is any.

MYTHs VS. FACTs

Myth 4: Allowing the children to live primarily with one parent is empirically supported, equal parenting is not.

Fact: Several studies have demonstrated the CONSENSUS among social scientists condemning our current possession model and agreeing on equal parenting.

Dr. Warshak from the University of Texas has published an analysis of four decades of research regarding parenting plans entitled “STEMMING THE TIDE OF MISINFORMATION: INTERNATIONAL CONSENSUS ON SHARED PARENTING AND OVERNIGHTING”. The analysis was endorsed by 112 other researchers indicating a consensus among researchers condemning our current presumption that a child should spend the majority of time with only one of their parents.

Dr Linda Nielsen from Wake Forrest University has published “Shared physical custody: Summary of 40 studies on outcomes for children.” Where she determined from 40 studies that *“Overall the children in shared parenting families had better outcomes on measures of emotional, behavioral, and psychological well-being, as well as better physical health and better relationships with their fathers and their mothers, benefits that remained even when there were high levels of conflict between their parents.”*

Additionally, Dr. Nielsen is about to release similar study “Shared physical custody versus sole physical custody: Summary of 51 studies on outcomes for children” where she finds that *“In 42 of the 51 studies, children who lived in shared physical custody families had better outcomes than children who lived in sole physical custody families.”*.

Equal Parenting and effects on Education

- Shared parenting results in better academic performance than a primary residence visitation schedule (Holstein, 2015)
- Children in shared-parenting arrangements achieve far better academic test results than those living in single-parent households where sole custody is in place (Bergstrom, 2015).
- Research shows that shared parenting would result in fewer cases of truancy, delinquency, gang-related activity, few juvenile crime, and teen pregnancies. (Holstein, 2015)
- A meta-analysis of 33 studies also reported better emotional, behavioral, and academic functioning for children in joint physical custody compared to children in sole custody, regardless of the level of conflict between parents (Bauserman 2002)
- The Stanford Custody Project followed children from 1,100 divorced families over a 4-year period. In sum, shared parenting was linked to better emotional, academic, psychological, and social well-being over the 4 years, as well as to more enduring relationships with their fathers. (Maccoby & Mnookin, 1992)
- Of 1,200 families studied, half had shared parenting plans. Three years after their parents' divorce, the shared parenting children had better relationships with their fathers, and their fathers were more likely (90%) to be involved in school activities than the other fathers (60%). (Melli & Brown, 2008)

Active Fathers effects on Education

- Active engagement... and on-going school-related discussions between fathers and their adolescents significantly lowered the probably of school failure when compared to adolescents with less actively engaged fathers (Lamb, M.E. & Kelly, J.B. 2009)
- Higher levels of paternal involvement in their children's schools was associated with better grades, better adjustment, fewer suspensions, and lower dropout rates than were lower levels of involvement (Nord, Brimhall, & West, 1997)
- When a child's father is actively involved in his or her life, the child has better academic results. (Jones & Mosher, 2013)

Fatherless effects on Education

(5/6 noncustodial parents are fathers)

- Father loss after divorce is associated with difficulties in children's school-based, social and personal adjustment and diminished self-concept. (Parish 1987)
- There is a decrease in post-divorce academic performance of 30% of the children with absent fathers following divorce. Access to both parents seemed to be the most protective factor in academic performance. (Bisnaire, Firestone and Rynard 1990)
- 70% of all high-school drop outs come from a single-parent home. (Holstein, 2015)

Equal Parenting Effects on Mental Health

Divorce is the second most common Adverse Childhood Experience (ACE) which predicts health and social problems as an adult. (CDC)

- Children involved in shared parenting suffer less depression and exhibit less anger, hyperactivity, and delinquency. (Holstein, 2015)
- Children from shared parenting families were better adjusted (across measures of emotional and behavioral adjustment, self-esteem, ... than children in sole residence families, **and they were very similar to children in intact families.** (Bauserman 2002)
- Children of divorce in Wisconsin had fewer stress related illnesses as well as less depression and other health problems in shared physical custody compared to sole mother custody (Melli and Brown 2008)
- Amato (1993) reviewed the literature on frequency of contact with nonresident fathers and children's well-being and found 15 studies in which frequent contact appeared to benefit academic achievement, psychological adjustment, self-esteem... (Fabricius, W., & Luecken, L. (2007).)
- In a longitudinal study of post-divorce custody arrangements children in shared physical custody were better off academically, emotionally and psychologically and less stressed (Turunen, J. 2014)
- The Stanford Custody Project followed children from 1,100 divorced families... the shared parenting children were better off on all measures of emotional, academic, and behavioral well-being... Maccoby & Mnookin, 1992)
- We can thus conclude that having equally shared residence is associated with markedly lower likelihood of stress for the children (Turunen, J. 2014)
- Children in shared arrangements experienced much less initial distress at parental separation. Four years later, the children reported in interviews that they had not experienced the feeling of loss of one parent, nor adjustment problems (Pearson, J., & Thoennes, N. (1991).)
- Children sharing residences equally, have lower likelihood of experiencing high levels of stress. (Turunen, J. 2014)

Fatherless effects on Mental Health

(5/6 noncustodial parents are fathers)

- The lingering situation of minimal parenting time with fathers for great numbers of children is a serious public health issue. (Fabricius, W., Sokol, K., Diaz, P., & Braver, S. 2012)
- Adolescents between the ages of 14-19 have higher self-esteem and less depression when they have greater intimacy with their fathers. (US Department of Health and Human Services, 2015)
- In response to the loss of a father after divorce... The three most commonly occurring problems were psychological distress, affecting 69% of the sample, academic problems, affecting 47% and aggression towards parents, affecting 41%. (Legg, Mendell and Riemer 1989)
- A longitudinal study has shown that father involvement correlates with lower levels of child emotional distress (Ramchandani et al., 2013);
- Custodial parents overwhelmed by the sole responsibility of care are less physically and emotionally available (Lamb and Kelly 2009; Kelly 2007; Kelly 2003)

6,474,144 Texans have a mental illness. This number includes over 5 million adults and over **1.4 million children**. (The U.S. Surgeon General)

211,234 Texans Received Services in the Texas mental health system in 2012: (Texas Department of State Health Services)

\$374,077,387 Funding for Individuals Person Served by the Texas Mental Health System in 2012 (Texas Department of State Health Services)

Texas Parenting Bills (Proposed - Current)

- TX SCR2 | 2017-2018 | (85th R.S.), Caption: Urging Congress to propose and submit to the states for ratification the Parental Rights Amendment to the U.S. Constitution.
- TX HB453 | 2017-2018 | (85th R.S.), Caption: Summary Relating to equal parenting orders in suits affecting the parent-child relationship.
- TX HB 1617 | 2017-2018 | (85th R.S.), Caption: Relating to procedures in a suit for dissolution of a marriage or a suit affecting the parent-child relationship. Temporary orders during appeal.
- TX HB 1361 | 2017-2018 | (85th R.S.), Caption: Relating to the dismissal of certain suits affecting the parent-child relationship in which the court has rendered a temporary order.
- TX SB 874 | 2017-2018 | (85th R.S.), Caption: Relating to the mandatory dismissal of certain suits affecting the parent-child relationship involving the Department of Family and Protective Services.
- TX SB 1495 | 2017-2018 | (85th R.S.), Caption: Relating to the rendition of certain temporary orders during the pendency of a suit for modification of an order that provides for the conservatorship, support, or possession of or access to a child.
- TX SB 816 | 2017-2018 | (85th R.S.), Caption: Relating to the modification of an order establishing the conservatorship of a child.
- TX SB 816 | 2017-2018 | (85th R.S.), Caption: Relating to the rendition by a court in a suit affecting the parent-child relationship of an order that is contrary to the expressed wishes of the child's parent.
- TX HB 1899 | 2017-2018 (85th R.S.), Caption: Relating to the rendition by a court in a suit affecting the parent-child relationship of an order that is contrary to the expressed wishes of the child's parent.

Texas Parenting Bills (Proposed - Past)

- 2015: HCR 36, Caption: Urging Congress to propose and submit to the states for ratification the Parental Rights Amendment to the U.S. Constitution, was introduced by Rep. Burkett on Jan. 8 and assigned to the House State and Federal Power and Responsibility Committee. STATUS: Died.
- 2015: HB 2363 (84th R.S.) Caption: Relating to equal parenting orders in suits affecting the parent-child relationship. STATUS: Died.
- 2013: HCR 38, Caption: Urging Congress to propose and submit to the states for ratification the Parental Rights Amendment to the U.S. Constitution, was introduced by Rep. Burkett in March. It passed the House Committee on State Sovereignty by a vote of 4-1 and passed the House, but could not be brought before the Senate in time.
- 2011: HCR 60, Caption: Urging Congress to propose and submit to the states for ratification the Parental Rights Amendment to the U.S. Constitution, introduced by Rep. Burkett on Feb. 10, passed the House Select Committee on State Sovereignty on April 14 by a vote of 5-1 (with 1 absent). It passed the House May 18, 2011, by a vote of 123-21 (2 pnv, 4 absent). It failed to move quickly through the Senate.
- 2011: HB 1229 (82nd R.S.), Caption: Relating to equal parenting orders in suits affecting the parent-child relationship. STATUS: Failed to receive affirmative vote in committee.
- 2011: SB 522 (82nd R.S.) Caption: Relating to equal parenting orders in suits affecting the parent-child relationship. STATUS: Died
- 2007: HB 2927, (80th R.S.), Caption: Relating to equal parenting orders in suits affecting the parent-child relationship. STATUS: Left pending in committee

Equal parenting Provisions in Other States

(Texas has none!!)

Alaska Sec. 25.20.060.

“(c) The court may award shared custody to both parents if shared custody is determined by the court to be in the best interests of the child. An award of shared custody shall assure that the child has frequent and continuing contact with each parent to the maximum extent possible.”

Arizona 25-403.02(b)

“Consistent with the child's best interests in section 25-403 and sections 25-403.03, 25-403.04 and 25-403.05, the court shall adopt a parenting plan that provides for both parents to share legal decision-making regarding their child and that maximizes their respective parenting time. The court shall not prefer a parent's proposed plan because of the parent's or child's gender.”

Idaho 32-717B.

"Joint custody" means an order awarding custody of the minor child or children to both parents and providing that physical custody shall be shared by the parents in such a way as to assure the child or children of frequent and continuing contact with both parents. The court may award either joint physical custody or joint legal custody or both as between the parents or parties as the court determines is for the best interests of the minor child or children. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody.”

Iowa 598.41

“The court may provide for joint custody of the child by the parties. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage”

Louisiana LA Civ Code 132

“If the parents agree who is to have custody, the court shall award custody in accordance with their agreement unless the best interest of the child requires a different award.

In the absence of agreement, or if the agreement is not in the best interest of the child, the court shall award custody to the parents jointly”

Minnesota 518.17(a)

“.. the court must consider and evaluate all relevant factors, including:(10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent...”

Minnesota 518.175 subd. 5

“A modification of parenting time which increases a parent's percentage of parenting time to an amount that is between 45.1 to 54.9 percent parenting time is not a restriction of the other parent's parenting time.”

Mississippi 93-5- 24 (1)

“(1) Custody shall be awarded as follows according to the best interests of the child:

(a) Physical and legal custody to both parents jointly pursuant to subsections (2) through (7).”

2016 Missouri 452.375(5)

“Prior to awarding the appropriate custody arrangement in the best interest of the child, the court shall consider each of the following as follows:

(1) Joint physical and joint legal custody to both parents, which shall not be denied solely for the reason that one parent opposes a joint physical and joint legal custody award. The residence of one of the parents shall be designated as the address of the child for mailing and educational purposes”

Nebraska 42-364(3)

“Custody of a minor child may be placed with both parents on a joint legal custody or joint physical custody basis, or both.”

South Dakota 25-5- 7.1

“If the court awards joint legal custody, it may also order joint physical custody in such proportions as are in the best interests of the child, notwithstanding the objection of either parent.”

Utah 30-3- 10.2.

“(1) The court may order joint legal custody or joint physical custody or both if one or both parents have filed a parenting plan in accordance with Section 30-3-10.8 and it determines that joint legal custody or joint physical custody or both is in the best interest of the child.

Washington 26.16.125

"Henceforth the rights and responsibilities of the parents in the absence of misconduct shall be equal, and one parent shall be as fully entitled to the custody, control and earnings of the children as the other parent, and in case of one parent's death, the other parent shall come into full and complete control of the children and their estate."

Equal Parenting bills proposed across the country this year

Alabama SB186

“This bill would create a rebuttable presumption that both parents are fit to make parenting decisions and to have maximum parenting time with their child.”

Connecticut HB6645

“That section 46b-56a of the general statutes be amended to provide that in cases involving the custody of a child, there shall be a presumption that a shared parenting arrangement that provides the parents with equal access to the child is in the best interests of the child, unless the court is provided with overwhelming evidence to the contrary.”

Iowa HF71

“If joint legal custody is awarded to both parents, the court shall award joint physical care to both joint custodial parents upon the request of either parent, unless the court determines that joint physical care is not in the best interest of the child.”

Kentucky HB492

“In making an order for temporary custody, there shall be a presumption that the parents or a de facto custodian joined under subsection (7) of this section shall have temporary joint custody and shall share equally in 16 parenting time.”

New Hampshire HB236

“ There shall be a rebuttable presumption that shared parenting and shared residential rights and responsibilities are in the best interest of the child or children.....

“Shared parenting” means an arrangement by which:

(a) A child has comparable time with each parent appropriate to:

- (1) The developmental age and status of the child;
- (2) The child’s routine schedule of school and other activities;
- (3) Holidays and other child-centered special events; and
- (4) The parent’s availability to fulfill parenting responsibilities.

(b) The child’s material, developmental, educational, and emotional needs are provided by the parents according to the parents’ individual capability.”

New York SB257

“SHALL award the natural guardianship, charge and custody of such child to [either parent] BOTH PARENTS, IN THE ABSENCE OF AN ALLEGATION THAT SUCH SHARED PARENTING WOULD BE DETRIMENTAL TO SUCH CHILD”

New York SB2267

“The provisions of this act establish a presumption, affecting the burden of proof, that shared parenting is in the best interests of minor children.”

North Dakota HB1392

“In any proceeding dealing with a dispute between the parents of a child over the parental rights and responsibilities over a child, there is a presumption that each parent is fit to care for the child and to make with the other parent joint decisions for the child. In any proceeding in which that presumption is not rebutted, if requested by either parent, the court may not apply the best interest analysis mandated in subsection 1 of this section and shall award each parent equal decisionmaking responsibility and equal parenting time and residential responsibility.”

Oregon SB550

“It is the policy of this state to: (6) Presume, subject to rebuttal, that equal parenting time is in the best interests of the child.”

South Dakota SB72

“If joint legal custody is awarded, pursuant to § 25-5-7.1, there shall be a rebuttable presumption that both parents have joint physical custody of their children. Joint physical custody of the children is defined as equal time-sharing. The burden of overcoming the presumption rests on the parent challenging the presumption. The presumption may be overcome by demonstrating that joint physical custody would not be in the best interest of the children by weighing the factors set forth in §§ 25-4A-21 to 25-4A-27, inclusive, or by one”

Texas HB453

“(c) If the court renders an order appointing the parents joint managing conservators under this section, the court shall enter a possession order under Subchapter F-1 that provides for equal parenting”

Vermont HB166

“To the extent that it is reasonable and in the best interests of the 6 child, the court shall order shared parental rights and responsibilities and equal 7 parent-child contact.”

Washington HB1554

“There is a presumption that it is in the best interest of the child p. 3 HB 1554 1 to establish an equal residential schedule that provides each parent with equal time and contact with the child unless...”

West Virginia SB189

“The court shall consider granting shared physical and shared legal custody in cases where the parents do not agree to shared custody. If the court does not grant shared custody under this subsection, the court shall cite clear and convincing evidence that shared custody is unreasonable and not in the best interest of the child to the extent that the legal custodial relationship between the child and a parent should be severed.”

A Special Letter from Dr. Linda Nielsen



Subject: Shared physical custody research

From: Dr. Linda Nielsen

Professor of Adolescent and Educational Psychology

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www.wfu.edu/~nielsen nielsen@wfu.edu

I am frequently invited to present research seminars to judges, lawyers, mental health workers and legislative committees who are interested in what the empirical studies have concluded about the advantages or disadvantages to children who live in shared physical custody families.

In my peer reviewed academic journal articles, I have summarized and critiqued all of the existing studies published in English in academic journals that have compared the outcomes for children in shared physical custody to the outcomes for children in sole physical custody. In these research studies “shared physical custody” means that the children live year-round at least 35% and usually 50% of the time with each parent. In contrast, “sole physical custody” means that the children live primarily or exclusively with one parent and spend less than 35% of the time with their other parent.

The children’s well-being in these studies is measured by standardized instruments and is then assessed using various statistical procedures. The outcomes that have been studied include: academic performance, emotional and psychological problems (primarily depression and anxiety), physical health, stress related health problems (such as insomnia and stomach aches), the quality of the relationships with parents, stepparents and grandparents, behavioral problems, self-esteem and life satisfaction, and the use of drugs, alcohol, or nicotine.

In 42 of the 51 studies, children who lived in shared physical custody families had better outcomes than children who lived in sole physical custody families. In 4 of the 51 studies the outcomes were mixed, meaning that children in shared physical custody did better on some outcomes and worse on others. In 5 of the 51 studies, the children did equally well in both types of families. It is important to note that, in the studies that considered family income and parental conflict before comparing the children’s outcomes, children in the shared physical custody families still had better outcomes.

Please email me if you would like a copy of any of my research articles.

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Expert Opinion on Shared Parenting , Dr. Linda Nielsen (Testimony Excerpt)

Dr. Linda Nielsen (a nationally recognized expert on the parent-child relationship) provided testimony in an Alabama court on August 10, 2015.

- Dr. Nielsen has been teaching, researching, and writing about adolescents and father-daughter relationships since 1970.
- She is a member of the American Psychological Association, National Council on Family Relationships, Council on Contemporary Families, and the Association of Family and Conciliation Courts.

Her expert testimony included the following:

- Over the past 25 years, there have been 40 published, peer reviewed studies that compare two family types: (1) sole custody and (2) shared parenting.
- A summary of 40 studies and consensus of over a hundred social scientists.
- The 40 studies and 112 experts agreed “shared parenting should be the norm for parenting plans for children of all ages.”

Trial Deposition of Dr. Linda Nielsen

1) 3 Minute Video Excerpt on Shared Parenting Research

- [Video](#)

2) 3 Minute Video Excerpt on Parallel Parenting

- [Video](#)

1 So anybody who wanted to sit down and read the
2 40 studies could make exactly the same chart that I
3 made.

4 Q. All right. Let's go ahead and move on to what's
5 pre-identified as Exhibit 2. Is there any consensus
6 among social scientists about shared parenting; if so,
7 what do they advise?

8 A. If you'd asked me this a year ago, I would have said
9 no, we don't have any consensus.

10 But we had a ground-breaking event in January
11 of 2014. 112 social scientists from around the world
12 reached a consensus on shared parenting. They wrote
13 this in an article. It's written by Richard Warshak.
14 It was published in an American psychological journal
15 called Psychology, Public Policy and Law.

16 Those 112 experts agreed -- again, this is
17 ground breaking to get 112 social scientists to
18 agree -- and they agreed that based on the scientific
19 literature, shared parenting should be the norm for
20 parenting plans for children of all ages.

21 They also agreed, these 112 experts agreed,
22 the Court should rely on evidence that goes beyond the
23 issue of conflict, such as the quality of parenting.

24 These 112 people also agreed if the conflict
25 is generated by a parent who feels the other parent is

1 trying to marginalize his or her participation in
2 raising the children, the Court should make an effort
3 to educate the gatekeeping parent about the benefits of
4 parenting plans in order to strengthen children's
5 relationships with both parents.

6 These 112 people also agreed that there are
7 some parents who are unfit, meaning they abuse their
8 children, they have drug and alcohol problems.
9 Obviously the 112 experts are saying these are children
10 who would need to be protected from those parents even
11 when the parents were living together. Those parents
12 are not candidates for shared parenting.

13 But again, it's a -- it's a phenomenal paper.
14 I really want to mention here that of these 112 experts
15 were two former presidents of the American
16 Psychological Association, editor of the Journal of
17 Child Attachment, five deans of universities, seventeen
18 department chairs, eight professors with endowed
19 chairs, and some of the most renowned researchers in
20 the world who have spent their careers looking at the
21 research on children of divorce.

22 Q. Okay. One of the things you said that the judge should
23 look at is the quality of parenting. What do you mean
24 by that?

25 A. When we define quality parenting, we're -- as social

1 A. Yes, let me just glance through here a minute.

2 (Witness reviews document)

3 I think you've pretty much covered the
4 highlights there, because the -- the question that you
5 were initially asking is, but all families are unique,
6 so we can't apply a one size fits all, you know, and
7 again, what we're saying is, yes, all families are
8 unique. All children are unique. All parents are
9 unique. All the people in these studies were unique
10 from one another. That doesn't negate the outcome of
11 the shared parenting.

12 Q. Basically it's a universal rule that shared parenting
13 is preferable so long as both of the parents are fit?

14 A. Yes.

15 Q. All right. Let's continue on to Exhibit 8. For shared
16 parenting to work, don't the parents have to get along
17 and be friends, or at least friendly?

18 A. No. This is some of the most surprising research. To
19 me actually, this was the research that I spent the
20 most time looking at.

21 The assumption that social scientists started
22 with, assumption, hypothesis, guesswork, we were
23 guessing that parents who do shared parenting, they
24 have to be friendly and cooperative and communicative,
25 low conflict, they work closely together, they're a

1 co-parenting team, you know, they're teammates, they're
2 working on the same time, they have the same parenting
3 styles. That's the assumption that we started from.
4 That was the hypothesis that we started with. I mean,
5 it's -- that just sort of makes sense intuitively.

6 What we found when we actually looked at the
7 data -- we've put our gut feelings aside -- when we
8 looked at the data, what the studies were showing us
9 was that the parents who are doing the shared
10 parenting, the parents who are in these 40 studies,
11 most of them are not co-parenting. Co-parenting sounds
12 like you're working together, okay?

13 What we found is that most of them are doing
14 what -- the term we've come up with now is, they are
15 parallel parenting. This means they don't communicate
16 a lot with one another. They do have conflicts over
17 parenting issues. They don't try to coordinate
18 everything between their households. They
19 parallel-parent, just like parallel tracks on a
20 railroad track. You leave one another alone. You have
21 a very detailed parenting plan that helps you work out
22 the sorts of issues that you'd normally have to talk
23 about, like transportation issues. Co-parenting only
24 works for a very small percentage of the parents who
25 have shared parenting.

1 So what we've seen now is, we were wrong,
2 okay? We started with the wrong hypothesis. And what
3 we see now is, if the parents have a businesslike
4 relationship, they leave one another alone, they don't
5 have to be in a lot of conversation together, they
6 don't have to even have contact with one another, they
7 don't have to deliver the children door-to-door --
8 door-to-door delivery is a bad idea. Exchange the kids
9 at school, okay?

10 So we do things in parallel parenting to keep
11 the parents' conflict low by keeping the parents as
12 separate as possible. You don't set your goal of,
13 let's make these two people friendly co-parents like a
14 team.

15 So we were wrong. We started with the wrong
16 hypothesis and fortunately what the research has shown
17 is, parallel parenting works fine. The kids benefit
18 from that. If the co-parenting team can happen, that's
19 great. But if it doesn't happen, it doesn't matter.

20 Q. Well, in a lot of cases I've -- you know, generally
21 speaking, parents are encouraged to try and come to
22 some sort of an agreement on how they can -- how they
23 can work together. Now, if parents don't and they're
24 ordered into shared parenting and it's not a matter of
25 their agreement but just purely a Court order, do the

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- [12] Source: National Principals Association Report on the State of High Schools.)
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Appendix A: Sixteen arguments for an equal-parental-responsibility presumption

Dr. Edward Kruk

1. Equal parenting preserves children's relationships with both parents.

- Primary residence arrangements highly correlated with parental alienation and parental disengagement (Kruk 2010a, Kruk 2010b, Amato, Meyers and Emery 2009)
- Children of primary residence arrangements spend 30% more time in substitute care (Melli and Brown 2008, Lamb and Kelly 2009)
- Regular interaction with both parents is psychologically important for toddlers (Lamb and Kelly 2009, Pruett et al 2003)

2. Equal parenting preserves parent's relationships with their children.

- The constraints of traditional access is strongly associated with contact loss, 30% of children of divorce have no contact with their nonresidential fathers (Kruk 2010 a/b; Amato, Meyers and Emery 2009)
- Parents who lose contact with their children after divorce manifest post-traumatic stress (Kruk 2010a/b)
- Suicide among divorced parents 2.4 times higher than non-divorced (Kposowa 1999)
- Suicide among divorced fathers 9.8 times more likely than divorced mothers (Kposowa 2000)
- Custodial parents overwhelmed by the sole responsibility of care and are less physically and emotionally available (Lamb and Kelly 2009; Kelly 2007; Kelly 2003)
- Sole custody reinforces women's traditional economic dependence on men, equal parenting would put pressure on governments to address the wage gap between men and women (Pulkingham 1994)

3. Equal parenting decreases parental conflict and prevents family violence.

- Equal parenting schedules usually provide less parental contact than a s.p.o. schedule
- Negative consequences of parental conflict on children are diminished with shared parenting (Pruett et al 2003)
- Positive effects of equal parenting are independent of parental conflict (Sandler et al 2008, Gunnoe and Braver (2001), Bauserman (2002) and Fabricius and Leucken (2007)
- Equal parenting counters the harmful effects of parental conflict (Fabricius, Diaz and Braver 2012)
- Analysis of 50 North American studies conclude that equal parenting was associated with less parental conflict and less relitigation (Bauserman 2012)
- Parental conflict increases with primary residence arrangements (Bauserman 2012 and 2002, Melli and Brown 2008)
- Half of first time family violence occurs after divorce in the context of a primary residence system (Ellis and Wight-Peasley 1986; Hotton 2003; Johnson and Hotton 2003, Johnston , Roseby and Keuhnle 2009)
- If the wrong choice is made in a primary residence based system, a child could end up in the care of a more abusive, adversarial and alienating parent (Richardson 2006)
- Most parents can learn to minimize conflict if incentivized and equal parenting provides that incentive (Kruk 2008)
- Conflict should not be a factor in determining the parenting plan, unless the conflict involves documented history of physical abuse or violence (Nielsen 2013)

4. Equal parenting reflects children's preferences and views about their needs and best interest.

- Children strongly favor equal parenting (Fabricius 2003; Finley and Schwartz 2007)
- Adults who went through divorce as children would have preferred equal parenting [70% of primary residence and 93% of shared parenting arrangements] (Fabricius 2003)
- Children of primary residence arrangements had feelings of insecurity and rejection by the non-custodial parent as well as anger towards both parents for not allowing an opportunity for a meaningful relationship with both parents (Fabricius 2003)

5. Equal parenting reflects parent's preferences and views about their children's needs and best interest.

- Public opinion polls suggest 80% of population want equal parenting (Nanos Research 2009; Fabricius et al 2010)
 - Disconnection between the opinion of legal professionals and public opinion (Pruett, Hoganbruen, and Jackson 2000)
 - Parents agree that equal parenting is in the best interest of the child (Kruk 2010a/b)
- 6. Equal parenting reflects child care-giving arrangements before divorce.**
- Children form primary attachment bonds with both parents (Rutter 1995; Lamb and Kelly 2009)
 - Parental responsibilities are nearly equally shared in marriage (Atwood 2007; Marshall 2006; Bianchi, Robinson and Milkie 2006, Pew Research Center 2015)
- 7. Equal parenting enhances the quality of parent-child relationships.**
- Equal parenting arrangements allow parents to exercise all of their parental responsibilities (Flouri 2005)
 - Attachment bonds are formed through participation in daily routines (Lamb and Kelly 2009; Fabricius et al 2010)
 - Parents need quantity of time to get quality of time (Amato and Dorius 2012)
 - There is a direct relationship between quantity of time and quality of parent-child relationships (Amato and Dorius 2012; Lamb and Kelly 2009; Kruk 2010a; Fabricius et al 2010, Fabricius et al 2011)
 - For children, attachment and feelings of “mattering”, cared for and cared about are not possible within the constraints of a primary residence arrangement (Trinder 2009)
 - Closeness, warmth and mutual understanding are elusive within constraints of the traditional primary residence model (Smyth 2009)
 - Equal parenting puts less burden and stress on parents (Bauserman 2012)
- 8. Equal parenting decreases parental focus on “mathematizing time” and reduces litigation.**
- Too much debate in litigation is spent on “mathematizing time” (Smyth 2009)
 - Scarcity of resources due to ongoing litigation accounts for much of the negative impact of divorce (Semple 2010)
 - Less hostile litigation is a key factor in contributing towards co-parenting (Bonach 2005)
 - In Australia, after equal parenting was implemented, 72% of parents now settle divorces without legal services (Kaspiew et al 2010; Kaspiew et al 2009)
- 9. Equal parenting provides an incentive for inter-parental negotiation, mediation and the development of parenting plans.**
- In Australia, after equal parenting was implemented, 72% of parents now settle divorces without legal services (Kaspiew et al 2010; Kaspiew et al 2009)
 - Ordered equal parenting within a hostile divorce gradually gives way to cooperative co-parenting (Birnbaun and Fidler 2005)
- 10. Equal parenting provides a clear and consistent guideline for judicial decision making.**
- In making decisions regarding custody and access judges do not consult relevant research (Kelly and Lamb 2000) and are highly susceptible to error bias (Firestone and Weinstein 2004; McMurray and Blackmore 1992)
 - Judges routinely make mistakes and award custody to the more litigious parent, children then run the risk of being exclusively in the care of an abusive parent (Melton 1989)
 - Although many cases are settled out of court, the judges decisions set the precedence (Kruk 1991)
 - Equal parenting provides a clear evidence based definition of the child's needs in divorce (Emery 2007)
- 11. Equal parenting reduces the risk and incidence of parental alienation.**
- Parental alienation affects a sizeable number of children of divorce (Bernet et al 2010; Baker 2005; Bala, Hunt and McCarney 2010)
 - Consensus is that severe alienation is abusive to children (Fidler and Bala 2010)
 - Parental alienation flourished when one parent has exclusive care and control (McMurray and Blackmore 1992)

12. Equal parenting enables enforcement of parenting orders, as parents are more likely to abide by an equal parenting order.

- Access denial is endemic in primary residential arrangements (Kruk 2010a)
- Rank ordering of parents fuels discord (Warshak 2007)
- With equal parenting neither parents relationship with their child or their parental identity is threatened (Kelly 2007, Kruk1993b)
- Parents more likely to abide by an equal parenting order which is perceived as fair, than a traditional visitation order which they perceive as giving them veto power or is inherently biased (Brinig 2001)

13. Equal parenting social justice imperatives regarding protection of children's rights.

- Children with married parents have the protection of the "strict scrutiny" due process measure, which must be observed before their parents can be taken away. Whereas children of non-married parents have a less strenuous standard, the "best-interest-of-the-child" discretionary standard.

14. Equal parenting social justice imperatives regarding parental authority.

- No basis in law or psychology for choosing one parent over the other, when both are "good enough" (Kelly and Johnson 2005)
- Unequal parenting arrangements are perceived as unfair and ths more likely to break down than equal parenting arrangements (Warshak 2007; Melli and Brown 2008; Brinig 2001)
- Shared and equal parenting arrangements are stable over time (Berger et al 2008; Cashmore and Parkinson 2010; Brinig 2001)

15. The discretionary best-interest-of-the-child/sole custody module is not empirically supported.

- The legislatures continue to enact or maintain laws and family judges issue residential orders that directly contradict empirical research data and the teachings of child psychologist and sociologist specializing in child welfare. (Kelly 1991)

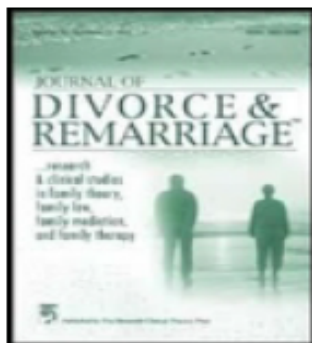
16. A rebuttable legal presumption of equal parenting responsibility is empirically supported.

- Meta-studies comparing equal parenting and non-equal parenting arrangements found significantly better outcomes for children in equal parenting homes on all measures of general and divorce-specific adjustment (Bauserman 2002/2012)
- Studies comparing court ordered equal parenting (against objections of parents) and self selected equal parenting found both fared equally well, confirming the findings of earlier studies that equal parenting works equally well for conflictual families (Benjamin and Irving 1989; Brotskey, Steinman and Zimmelman 1988)
- Mounting evidence reflects consensus on the issue that equal parenting is optimal for the majority of children of divorce whose parents are in dispute (Fabricius et al 2010; Bauserman 2012; Nielson 2013)
- In Australia where equal parenting has been enacted, to a degree, a review of equal parenting legislation indicates that an equal parental responsibility presumption is widely supported by both parents and professionals, is beneficial and is working well for children, including children under three, according to parents; child custody litigation rates have dropped and most families of divorce settle within a year with no use of legal services; they are making use of alternate dispute resolution centers; equal parenting arrangements are durable and there is no evidence that high conflict has a more negative affect for children in equal parenting homes than children in primary residence home. (Kaspiew et al 2009)

Appendix B: Shared Physical Custody: Summary of 40 Studies on Outcomes for Children

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Shared Physical Custody: Summary of 40 Studies on Outcomes for Children

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Shared Physical Custody: Summary of 40 Studies on Outcomes for Children

LINDA NIELSEN

Department of Education, Wake Forest University, Winston-Salem, North Carolina, USA

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KEYWORDS *joint physical custody, parenting plans, shared parenting, shared residential custody*

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50–50 shared parenting plan and one fourth had a 25% time share (Bartfeld, 2011). Likewise, in 2008 in Washington State almost half of the children were living at least 35% with each parent in 4,354 parenting plans (George, 2008). In Arizona, half of the parents who filed for divorce in 2002 shared the residential parenting time 20% to 32% and another 15% shared 33% to 50% of the time (Venohr & Kaunelis, 2008). It is especially noteworthy that in Wisconsin there are nearly as many infants and toddlers (42%) as there are 6- to 10-year-olds (46%) in shared parenting families for those couples who have separated in recent years (Bartfeld, 2011). In other countries a similar trend has emerged. Rates of shared parenting have tripled in Belgium since 1990 from 9% to more than 30% (Sodermans, Vanassche, & Matthijs, 2013), have risen in Denmark and in the Netherlands to 20% (Spruijt & Duindam, 2010), and have increased to nearly 50% for parents who have recently separated in Sweden (Swedish Government, 2011).

The question, therefore, is not whether shared parenting families are on the rise. Clearly they are. The question is this: Are the children in these families any better or worse off than children living primarily with their mother and living less than 35% of the time with their father? Put more bluntly, is the inconvenience of living in two homes worth it? Fortunately, there are now 40 studies that have addressed this question. Throughout this article, the term *shared parenting* is used to refer to families where the children live with each parent at least 35% of the time and generally 50% of the time. The term *sole residence* is used to refer to children who continue to see their fathers, but who live primarily or exclusively with their mothers. In the sole residence families, the exact amount of time that the children spent with their fathers was not designated. As noted in Table 1, in 24 of the 40 studies, all of the shared parenting children lived 50% of the time with each parent. In the other 12 studies, the children lived with their fathers anywhere from 35% to 50% of the time.

LIMITATIONS OF THE RESEARCH

Trying to determine what impact shared parenting has on children has been difficult for at least two reasons. First, children whose parents have higher incomes or have the least conflict might have the better outcomes after their parents separate, regardless of the parenting plan. So unless the study controls for income and level of conflict, this leaves open the possibility that it was not the shared parenting per se that made the difference. Unfortunately, only 16 of the 40 studies have included these controls, as noted in Table 1. Still, even in those studies where income and conflict were not considered, it would be a mistake to presume that those two factors mattered more than the shared parenting because a number of studies have found no differences in income or conflict between sharing and nonsharing couples (Buchanan &

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(Continued)

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Sokal		=	270-383	320-364	1 & 3					
Spruiell	C \$	=	135	250	10-16	Equal	Better (girls)	Better (girls)		Equal attachment
Smart		= ^a	21	96	6-22		Mixed ^b			Better
Tornello		≠ ^a	51-71	597-847 ^b	0-5					Better
Turunen	+ C \$	=	255	595	10-18		Better	Better		Mixed attachment
Vanasche	C	≠	395	1,045	12-19		Boys better Girls worse			Better
Westphal	+ C \$	=	966	2,217	4-16		Better	Better		
Total no. of children			29,586	81,354						
Total no. of parents			59,172	162,172						

Note. + = Researchers stated that high-conflict and litigating parents were in the study; = = Equal; All children lived 50% with each parent; ≠ = Not equal; children lived 35%-50% with each parent; C = study controlled for levels of conflict or there were no differences between the two groups; \$ = study controlled for income or there were no differences between the two groups of parents or mixed; outcomes differed by age and gender.

^a Some data came from instruments or procedures with no established validity or reliability. ^b Sample sizes and outcomes varied widely on different measures and for different age groups.

Maccoby, 1996; Cashmore & Parkinson, 2010; Kline, Tschann, Johnston, & Wallerstein, 1989; Sodermans, Matthijs, & Spicewood, 2013).

A second limitation is that the parents' characteristics and marital status are not the same in all the studies—and those differences can affect the outcomes for children independent of the parenting plan. For example, the majority of parents in some studies were not married or living together when their children were born—a situation that often goes hand in hand with higher rates of poverty, incarceration, physical abuse, and substance abuse. Along the same lines, some studies draw their conclusions from extremely small, nonrandom samples, whereas others have impressively large, random samples. As each study is presented, the unique characteristics of the sample and the samples sizes are noted.

A third limitation is that although most of the researchers used standardized instruments and valid procedures, others used measures that had no established validity or reliability. Sample sizes also varied greatly. Describing the methodological details and naming the many standardized tests used in each of the 40 studies is beyond the scope of this article. However, the limitations of each study and whether the data came from standardized measures will be briefly noted as a way of acknowledging that the findings from some studies merit more weight than others.

METHOD

The 40 studies were identified by searching the databases in PsycINFO and Social Science Research Index. The keywords used in the search were shared parenting, shared care, joint or shared physical custody, shared or dual residence, and parenting plans. Although 85% of the studies were published in peer-reviewed academic journals, the remainder were reported in government-sponsored reports. The findings of the studies were grouped into five broad categories of child well-being as presented in Table 1: (a) academic or cognitive outcomes, which includes school grades and scores on tests of cognitive development such as language skills; (b) emotional or psychological outcomes, which includes feeling depressed, anxious, or dissatisfied with their lives; (c) behavioral problems, which include aggression or delinquency, difficult or unmanageable behavior at home or school, hyperactivity, and drug or alcohol use; (d) physical health and smoking, which also includes stress-related illnesses such as stomach aches and sleep disturbances; and (e) quality of father-child relationships, which includes how well they communicate and how close they feel to one another.

Positive Outcomes for Children in Shared Parenting Families

We begin by summarizing the positive outcomes in the shared parenting families. Twelve of the 40 studies included children under the age of 6, but

only 3 of those 12 focused exclusively on children under the age of 5, which is why they are summarized separately.

U.S. STUDIES

Beginning with the oldest studies, the Stanford Custody Project collected data from 1,100 divorced families with 1,406 children randomly chosen from the county's divorce records. At the end of 4 years, the 51 adolescents in the shared parenting families made better grades, were less depressed, and were more well-adjusted behaviorally than the 355 adolescents who lived primarily with their mother. The data came from interviews with the adolescents, parents' questionnaires, and a battery of standardized tests measuring depression, anxiety, substance use, antisocial behavior, truancy, cheating, and delinquency. The shared parenting children were better off on these measures than the other children of divorce. The quality of the parent-child relationship and how often they felt caught between their parents was also assessed through interviews. The shared adolescents were less likely to be stressed by feeling the need to take care of their mother. Moreover, having closer relationships with both parents seemed to offset the negative impact of the parents' conflicts in those families where the conflict remained high. Importantly, this study controlled for parents' educations, incomes, and levels of conflict; used standardized measures to assess the children's well-being; used a randomized sample; followed the children over a 4-year period; and gathered data from both parents and the children (Buchanan & Maccoby, 1996; Maccoby & Mnookin, 1992).

Five smaller studies conducted in the late 1980s and early 1990s also found equal or better outcomes for the shared children. The first study included 35 shared parenting and 58 sole residence children ages 3 to 11 with White, college-educated parents (Kline et al., 1989). Standardized tests were used to measure the parents' anxiety and depression and the children's social, emotional, and behavioral problems, in addition to clinicians' observations of parent-child interactions. Although there were no differences in the children's social or behavioral adjustment scores, the shared children were better adjusted emotionally. Having a depressed mother, having parents in high conflict (which was similar in both types of families), or the child's having a difficult temperament was more closely linked to the children's well-being than was the parenting plan. In another study of similar size, 3 years after the divorce, the 62 shared parenting children were less depressed, less stressed, and less agitated than the 459 children in sole residence based on standardized tests completed by the mother about the child's mental state and behavior. Especially important is that all of the children had similar scores 3 years earlier when their parents divorced, suggesting that the shared parenting was indeed having a positive impact (Pearson & Thoennes, 1991). The other study by these same researchers should be

viewed more speculatively because there were only 9 children in shared parenting families compared to 83 children living with their mothers. Using a standardized child behavior checklist, the two groups of mothers reported no differences in their children's depression, aggression, delinquency, or somatic complaints (Pearson & Thoennes, 1991). In another very small study with only 11 shared parenting families and 16 sole mother and 16 sole father families 4 years after divorce, the parents reported no differences in how well adjusted the children were on standardized measures of their well-being and based on researchers' interviews with the parents and the children (Luepnitz, 1991). In yet another study with small samples, high-conflict parents who had volunteered for free counseling to resolve their coparenting issues reported, at the end of 1 year, the 13 shared children were better off in regard to stress, anxiety, behavioral problems, and adjustment than the 26 sole residence children. Notably, the children whose parents needed the most intensive counseling at the outset to make the shared parenting work ended up faring as well as the children whose parents initially got along best. The data were derived from clinicians' assessments of the children on standardized measures, interviews with both parents, and feedback from teachers and day care workers at the time of separation, then again at 6 months and 1 year. It is worth noting that the shared parenting children ranged in age from 1 to 10 and that in both types of families children under the age of 4 were better adjusted than the older children (Brotsky, Steinman, & Zimmelman, 1991). In a larger study in Toronto that was based on the researchers' nonstandardized 114-item questionnaire, only one third of the 201 parents in shared parenting families said their parenting plan worked out well from the outset. Despite this, at the end of 1 year, 91% of these parents said their children were happy and well adjusted, compared to only 80% of the 194 couples without shared parenting plans (Irving & Benjamin, 1991). Overall then, even though the sample sizes were small in these studies, the findings were consistent with the larger studies in regard to the benefits of shared parenting.

More recent studies with far larger samples that gathered data from both parents have reached similar conclusions. In a large, randomized sample in Wisconsin, the children in the 590 shared parenting families were less depressed, had fewer health problems and stress-related illnesses, and were more satisfied with their living arrangement than the children in the 590 sole residence families (Melli & Brown, 2008). The data came from both parents' answers to a series of questions asked in telephone interviews. Ranging in age from 1 to 16, the shared parenting children were 30% less likely to have been left with babysitters or in day care. Nearly 90% of their fathers attended school events, compared to only 60% of the other fathers. Almost 60% of the mothers said the fathers were very involved in making everyday decisions about their children's lives. In fact 13% of the mothers wished the fathers were less involved. In a smaller study with 10- to 16-year-olds,

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Tornello		≠ ^a	51-71	597-847 ^b	0-5					Better
Turunen	+ C \$	=	255	595	10-18		Better	Better		Mixed attachment
Vanasche	C	≠	395	1,045	12-19		Boys better Girls worse			Better
Westphal	+ C \$	=	966	2,217	4-16		Better	Better		
Total no. of children			29,586	81,354						
Total no. of parents			59,172	162,172						

Note. + = Researchers stated that high-conflict and litigating parents were in the study; = = Equal; All children lived 50% with each parent; ≠ = Not equal; children lived 35%-50% with each parent; C = study controlled for levels of conflict or there were no differences between the two groups; \$ = study controlled for income or there were no differences between the two groups of parents or mixed; outcomes differed by age and gender.

^a Some data came from instruments or procedures with no established validity or reliability. ^b Sample sizes and outcomes varied widely on different measures and for different age groups.

Maccoby, 1996; Cashmore & Parkinson, 2010; Kline, Tschann, Johnston, & Wallerstein, 1989; Sodermans, Matthijs, & Spicewood, 2013).

A second limitation is that the parents' characteristics and marital status are not the same in all the studies—and those differences can affect the outcomes for children independent of the parenting plan. For example, the majority of parents in some studies were not married or living together when their children were born—a situation that often goes hand in hand with higher rates of poverty, incarceration, physical abuse, and substance abuse. Along the same lines, some studies draw their conclusions from extremely small, nonrandom samples, whereas others have impressively large, random samples. As each study is presented, the unique characteristics of the sample and the samples sizes are noted.

A third limitation is that although most of the researchers used standardized instruments and valid procedures, others used measures that had no established validity or reliability. Sample sizes also varied greatly. Describing the methodological details and naming the many standardized tests used in each of the 40 studies is beyond the scope of this article. However, the limitations of each study and whether the data came from standardized measures will be briefly noted as a way of acknowledging that the findings from some studies merit more weight than others.

METHOD

The 40 studies were identified by searching the databases in PsycINFO and Social Science Research Index. The keywords used in the search were shared parenting, shared care, joint or shared physical custody, shared or dual residence, and parenting plans. Although 85% of the studies were published in peer-reviewed academic journals, the remainder were reported in government-sponsored reports. The findings of the studies were grouped into five broad categories of child well-being as presented in Table 1: (a) academic or cognitive outcomes, which includes school grades and scores on tests of cognitive development such as language skills; (b) emotional or psychological outcomes, which includes feeling depressed, anxious, or dissatisfied with their lives; (c) behavioral problems, which include aggression or delinquency, difficult or unmanageable behavior at home or school, hyperactivity, and drug or alcohol use; (d) physical health and smoking, which also includes stress-related illnesses such as stomach aches and sleep disturbances; and (e) quality of father-child relationships, which includes how well they communicate and how close they feel to one another.

Positive Outcomes for Children in Shared Parenting Families

We begin by summarizing the positive outcomes in the shared parenting families. Twelve of the 40 studies included children under the age of 6, but

only 3 of those 12 focused exclusively on children under the age of 5, which is why they are summarized separately.

U.S. STUDIES

Beginning with the oldest studies, the Stanford Custody Project collected data from 1,100 divorced families with 1,406 children randomly chosen from the county's divorce records. At the end of 4 years, the 51 adolescents in the shared parenting families made better grades, were less depressed, and were more well-adjusted behaviorally than the 355 adolescents who lived primarily with their mother. The data came from interviews with the adolescents, parents' questionnaires, and a battery of standardized tests measuring depression, anxiety, substance use, antisocial behavior, truancy, cheating, and delinquency. The shared parenting children were better off on these measures than the other children of divorce. The quality of the parent-child relationship and how often they felt caught between their parents was also assessed through interviews. The shared adolescents were less likely to be stressed by feeling the need to take care of their mother. Moreover, having closer relationships with both parents seemed to offset the negative impact of the parents' conflicts in those families where the conflict remained high. Importantly, this study controlled for parents' educations, incomes, and levels of conflict; used standardized measures to assess the children's well-being; used a randomized sample; followed the children over a 4-year period; and gathered data from both parents and the children (Buchanan & Maccoby, 1996; Maccoby & Mnookin, 1992).

Five smaller studies conducted in the late 1980s and early 1990s also found equal or better outcomes for the shared children. The first study included 35 shared parenting and 58 sole residence children ages 3 to 11 with White, college-educated parents (Kline et al., 1989). Standardized tests were used to measure the parents' anxiety and depression and the children's social, emotional, and behavioral problems, in addition to clinicians' observations of parent-child interactions. Although there were no differences in the children's social or behavioral adjustment scores, the shared children were better adjusted emotionally. Having a depressed mother, having parents in high conflict (which was similar in both types of families), or the child's having a difficult temperament was more closely linked to the children's well-being than was the parenting plan. In another study of similar size, 3 years after the divorce, the 62 shared parenting children were less depressed, less stressed, and less agitated than the 459 children in sole residence based on standardized tests completed by the mother about the child's mental state and behavior. Especially important is that all of the children had similar scores 3 years earlier when their parents divorced, suggesting that the shared parenting was indeed having a positive impact (Pearson & Thoennes, 1991). The other study by these same researchers should be

viewed more speculatively because there were only 9 children in shared parenting families compared to 83 children living with their mothers. Using a standardized child behavior checklist, the two groups of mothers reported no differences in their children's depression, aggression, delinquency, or somatic complaints (Pearson & Thoennes, 1991). In another very small study with only 11 shared parenting families and 16 sole mother and 16 sole father families 4 years after divorce, the parents reported no differences in how well adjusted the children were on standardized measures of their well-being and based on researchers' interviews with the parents and the children (Luepnitz, 1991). In yet another study with small samples, high-conflict parents who had volunteered for free counseling to resolve their coparenting issues reported, at the end of 1 year, the 13 shared children were better off in regard to stress, anxiety, behavioral problems, and adjustment than the 26 sole residence children. Notably, the children whose parents needed the most intensive counseling at the outset to make the shared parenting work ended up faring as well as the children whose parents initially got along best. The data were derived from clinicians' assessments of the children on standardized measures, interviews with both parents, and feedback from teachers and day care workers at the time of separation, then again at 6 months and 1 year. It is worth noting that the shared parenting children ranged in age from 1 to 10 and that in both types of families children under the age of 4 were better adjusted than the older children (Brotsky, Steinman, & Zimmelman, 1991). In a larger study in Toronto that was based on the researchers' nonstandardized 114-item questionnaire, only one third of the 201 parents in shared parenting families said their parenting plan worked out well from the outset. Despite this, at the end of 1 year, 91% of these parents said their children were happy and well adjusted, compared to only 80% of the 194 couples without shared parenting plans (Irving & Benjamin, 1991). Overall then, even though the sample sizes were small in these studies, the findings were consistent with the larger studies in regard to the benefits of shared parenting.

More recent studies with far larger samples that gathered data from both parents have reached similar conclusions. In a large, randomized sample in Wisconsin, the children in the 590 shared parenting families were less depressed, had fewer health problems and stress-related illnesses, and were more satisfied with their living arrangement than the children in the 590 sole residence families (Melli & Brown, 2008). The data came from both parents' answers to a series of questions asked in telephone interviews. Ranging in age from 1 to 16, the shared parenting children were 30% less likely to have been left with babysitters or in day care. Nearly 90% of their fathers attended school events, compared to only 60% of the other fathers. Almost 60% of the mothers said the fathers were very involved in making everyday decisions about their children's lives. In fact 13% of the mothers wished the fathers were less involved. In a smaller study with 10- to 16-year-olds,

the 207 shared children were more likely than the 272 in sole residence to have parents with authoritative parenting styles, which was linked to less anxiety and less depression as measured by standardized tests (Campana, Henderson, & Stolberg, 2008). In a very small study with 6- to 10-year-olds, the 20 children in shared parenting were no less aggressive and had no fewer behavioral problems according to the standardized tests than the 39 children in sole residence after controlling for parental conflict and the quality of the mother-child relationship. Because the mothers of the shared children said they had more physical and verbal conflict with the fathers than the sole residence mothers, this suggests that whatever benefits might have accrued from the shared parenting were erased by the higher conflict (Lee, 2002).

Studies with college-age children have also found better outcomes for those from shared parenting families. In the oldest study, the 30 U.S. college students from the shared parenting families reported having better relationships with both parents than the 201 who had lived with their mothers. In fact, they rated their relationships with their fathers higher than the students from intact families (Fabricius, 2003). Similarly, 105 Canadian students from shared parenting families gave their mothers higher ratings than the 102 students from intact families and rated their fathers almost as highly (Frank, 2007). In an even larger study, the 340 shared parenting students reported having closer relationships with their fathers than the 686 who had lived with their mothers. What was especially important was that the quality of their relationships was linked incrementally to how much overnight time the fathers and children had spent together. That is, as the actual amount of overnight time they spent together during adolescence increased from 1% up to 50%, the young adults' positive ratings of their relationships with their fathers also increased. Even the worst relationships got higher ratings when the father and child had spent more time together during the teenage years (Fabricius, Sokol, Diaz, & Braver, 2012). Similarly in a very small study, the 5 college students from shared parenting families reported better relationships with their fathers and felt that their parents were equal in terms of their authority compared to the other 22 students with divorced parents (Janning, Laney, & Collins, 2010). And, as was true in the studies with younger children, 75 young adults from shared parenting homes reported having fewer health problems and fewer stress-related illnesses than the other 140 students with divorced parents (Fabricius & Luecken, 2007). The young adults' ratings of their relationships with their parents in all of these studies came from questionnaires created by the researchers.

INTERNATIONAL STUDIES

Studies from other countries have yielded similar results to those in the United States and Canada. The one British study (Smart, 2001) only had 21 children in shared parenting to compare to the 96 children living with their

mothers, with children ranging from age 6 to 16. The study is methodologically weak because the researchers merely summarized their unstructured interviews with the children. Some children adapted well and appreciated the benefits of living equally with both parents. Others felt stressed living in two homes, especially if the parents remarried, stepsiblings lived with them, or the children had trouble keeping track of their things and schedules.

A fuller picture emerges from six studies that were conducted in Sweden, using national data from standardized tests and national surveys of drug and alcohol use. In the first study, 443 shared parenting children had more close friends and fewer problems making friends than the 2,920 children in sole residence, and were no different in regard to being aggressive or violent, using drugs, and drinking (Jablonska & Lindberg, 2007). In the second, the 17,350 shared adolescents rated themselves higher on 7 of the 11 scales of well-being than the 34,452 in sole residence (Bergstrom et al., 2013). The shared children were better off in regard to their emotional, social, and psychological well-being, peer relationships and social acceptance, and physical health. Interestingly, too, the 15-year-olds were even more similar than the 12-year-olds to the 112,778 children living in intact families, suggesting either that the benefits might become more pronounced after several years or that older teenagers benefit even more than preteens. More important still, the shared parenting teenagers felt the most comfortable talking to both of their parents. In the third study, the 270 shared adolescents fared better than the 801 in sole residence families in regard to smoking, having sex before the age of 15, getting drunk, cheating, lying, stealing, losing their tempers, fighting, bullying, and disobeying adults (Carlsund, Eriksson, Lefstedt, & Sellstrom, 2012). In the fourth study, the 888 shared children reported being more satisfied with their lives, feeling less depressed, and having fewer stress-related health problems. Importantly, after controlling for their parents' incomes and educations, the shared children were not significantly different from the intact family children in regard to having stress-related health problems and feeling comfortable talking to their parents about things that bothered them (Carlsund et al., 2012). In the fifth study, the 225 10- to 16-year-olds who lived equal time with each parent were less stressed than the 595 who lived primarily with one parent. Trained interviewers administered a questionnaire to the children as well as interviewing both the parents and the children. Importantly, this study took account of parental conflict, socioeconomic status, and the quality of the parent-child relationship. Interestingly, too, regardless of family type, the amount of conflict that the parents reported was not linked to the amount of stress their children reported (Turunen, 2014).

Similar results have emerged in Norway and in the Netherlands. In the Norwegian study, although the 41 shared adolescents were no less likely to drink or use drugs than the 409 adolescents in sole residence, they were less likely to smoke, to be depressed, to engage in antisocial behavior, or to

have low self-esteem. The study used standardized tests and controlled for the father's educational level (Breivik & Olweus, 2006). In the Netherlands, for 135 children aged 10 to 16, the shared girls were less depressed, less fearful, and less aggressive than the girls in the 250 sole residence families, as measured by standardized tests. There were no differences for the boys. Moreover, both the boys and the girls in the sharing families reported being as close to their fathers as the children from intact families, even though the sharing parents had similar levels of conflict and the same socioeconomic status as the nonsharing parents (Spruijt & Duijndam, 2010). Similarly in another study, the 405 shared adolescents rated their relationships with both parents higher than the 1,045 adolescents who lived with their mother, although they were no less likely to report feeling depressed (Vanassche, Sodermans, & Matthus, 2014). Using a standardized questionnaire with children age 4 to 16, the third study also found that the 966 shared children were better off than the 2,217 children who lived with their mother in regard to their prosocial behavior, hyperactivity, peer relationships, behavioral problems, and psychological problems. Importantly, this study controlled for parents' incomes, levels of conflict, and how involved the father was with the children before the parents separated. Half of the positive impact was linked to the parents having higher incomes and less conflict in the sharing families and half to the shared parenting arrangement itself (Westphal & Monden, 2014).

The more positive outcomes for children in shared parenting families could be related to the possibility that their fathers might be more likely than other divorced fathers to have an authoritative parenting style—the style that has been associated with better outcomes for children in various types of families. The one shared parenting study that tested this hypothesis found this to be true. Nearly 40% of the 139 shared parenting children between the ages of 10 and 18 rated their fathers' parenting as authoritative compared to 30% of the children in intact families and 22% of the 227 children who lived primarily with their mother. Interestingly, the shared parenting fathers were more authoritative (40%) than the fathers in married families (30%). This might help to explain why the shared children had higher scores on a standardized test of self-esteem and reported being more satisfied with their lives than the sole residence children (Bastaits, Ponnet, & Mortelmans, 2014).

Turning to Australia, the largest study was based on data from a national survey involving 1,235 children in shared care (the term used in Australia for shared parenting) and 6,435 children in primary care (Kaspiew et al., 2009). Unlike all of the studies discussed so far, half of these parents were not married when their children were born. Notably, even though the two groups of parents were just as likely to say there had been violence between them, "children in shared care time arrangements seem to fare no worse than children in other care time arrangements where there has been a history of violence or where there is ongoing high conflict between the parents" (Kaspiew et al., 2009, p. 273). Importantly, even after accounting for parents' levels of

education and violence, the shared care children had marginally better outcomes on the behavioral and emotional measures according to their fathers, and had similar outcomes according to their mothers. On the other hand, if the mothers were concerned about the safety of the children when they were with their fathers, they reported worse outcomes for the children in shared care. In three other Australian studies (Cashmore & Parkinson, 2010), shared care was again more advantageous based on data from standardized tests. In the first study, 84 shared care and 473 primary care children were assessed at ages 4 and 5 and then again 2 years later. The shared care children were less hyperactive and had fewer social or academic problems than children in primary care. In the second study, the 90 shared care parents reported better outcomes for their children than the 411 primary care parents in regard to overall happiness, problems moving between homes, and the children's relationships with their parents and their grandparents. Again though, those mothers who had concerns about their children's safety in their father's care reported worse outcomes for the children in shared care. In the third study, even though the 110 children in primary care and the 26 in shared care were equally satisfied with their living arrangement, more than 40% of the primary care children said they wanted more time with their father.

Smaller Australian studies confirm the findings from these larger studies. Four years after the parents separated, 42 young adolescents in a high-conflict, sometimes violent, nonrandom sample of shared parenting families were compared to 44 children living with their mothers. The shared care children said they felt caught in the middle of their parents' conflicts more often—which is not surprising as the other children's fathers had often disengaged or virtually disappeared from their lives. This might help explain why the shared children did not feel more stressed than the other children and why they had better relationships with their fathers. There were no differences in their mental health scores and the children who were hyperactive at the outset tended to remain that way over 4 years regardless of the parenting plan. The researchers also cautioned that the findings should not be generalized because these children had far more mental health issues than the normal population (McIntosh, Smyth, Kelaheer, & Wells, 2010). Another 105 adolescents living in shared care, compared to 398 living with their mother and 120 living with their father, reported having the best relationships with both parents, their stepparents, and their grandparents 2 years after their parents' separation. They were no different on social adjustment and academic achievement. But they were much more likely than those in sole residence to confide in their fathers (80% vs. 45%) and to say they had a close relationship with him (97% vs. 65%; Lodge & Alexander, 2010). In a smaller study with 10-year-olds, the 27 shared care children were reported by their mothers as being less hyperactive than the 40 children in primary care. The children reported being equally satisfied with either parenting plan, but the shared care parents reported being more satisfied and less stressed

than the other divorced parents. The researchers suggested that being less stressed might have enabled the sharing parents to provide higher quality parenting that, in turn, helped reduce their children's hyperactivity (Neoh & Mellor, 2010).

Only one shared parenting study has included children from different countries (Bjarnason, 2012; Bjarnason et al., 2010). These researchers analyzed data from 40 countries involving nearly 200,000 children: 148,177 in intact families, 25,578 in single-mother families, 3,125 in single-father families, 11,705 in mother-stepfather families, 1,561 in father-stepmother families, and 2,206 in shared parenting families. The data came from the World Health Organization's national surveys of 11-, 13-, and 15-year-olds. Consistent with the studies already discussed, only 29% of the shared parenting children said it was difficult to talk to their fathers about things that really bothered them, compared to 43% of the children who lived with their single mother or with their mother and stepfather. In fact, the children from shared families were somewhat less likely (29%) than those in intact families (31%) to have trouble talking to their fathers. What is especially important about this study is that, in all types of families, how satisfied the children felt with their lives was closely related to how well they felt they communicated with their fathers. In contrast, their satisfaction was not related to how well they believed their family was doing financially. Because the shared parenting children felt they communicated best with their fathers, they were the most satisfied with their lives, regardless of the family's financial situation. Unfortunately, daughters were twice as likely as sons to say it was hard to talk to their fathers about things that were worrying them, regardless of family type.

In that vein, another question is whether girls benefit any more or any less than boys do from shared parenting. Girls' relationships with their fathers are generally more damaged by their parents' divorce or separation than boys' relationships (Nielsen, 2011, 2012). Given this, we might ask: Do girls benefit more than boys from living with their fathers at least 35% of the time after the parents separate? According to several studies, the answer is yes. Although adolescent girls felt more caught in the middle of their parents' arguments than the boys did, the girls in shared parenting felt closer to their fathers and felt less need to take care of their mothers than the girls in sole residence (Buchanan & Maccoby, 1996). This suggests that even though girls tend to get more embroiled in their parents' problems, living with their fathers helps to offset the damage this would otherwise do to the father-daughter relationship. Likewise, unlike the boys, adolescent Dutch girls in shared parenting families were less depressed, less fearful, and less aggressive than the girls who lived with their mothers, even though they saw their fathers regularly (Spruijt & Duindam, 2010). Even for 3- to 5-year-olds in shared parenting, the girls were better adjusted than the boys (Kline et al., 1989). Similarly, 4- to 6-year-old girls were less socially withdrawn when

they spent one or two nights a week with their fathers than when they never spent overnight time in his care. For the boys, however, the overnighing made no difference (Pruett, Ebling, & Insabella, 2004). On the other hand, in a Dutch study where parent conflict was extremely high, the girls were more depressed and more dissatisfied than the boys when they lived in a shared parenting family (Vanassche et al., 2014). This suggests that boys might find it easier than girls to remain uninvolved in their parents' conflicts.

Overall then, children in shared parenting families had better outcomes than children in sole residence in terms of their psychological, emotional, and social well-being, as well as their physical health and stress-related illnesses. Of equal if not greater importance, they had closer, more communicative, and more enduring relationships with their fathers.

Shared Parenting for Infants, Toddlers, and Preschoolers

Only six studies have focused exclusively on infants, toddlers, and preschoolers who overnighed in their father's care after the parents separated (Table 2). Even though the children in two of those studies were not actually in "shared parenting" where they overnighed 35% to 50% of the time (Pruett, Ebling, & Insabella, 2004; Solomon & George, 1999), their findings are nonetheless summarized here because they are so often discussed in the debate over parenting plans for infants and toddlers.

In the oldest study (Solomon & George, 1999) 44 infants ages 0 to 2 were only overnighing one to four times a month—often with fathers who went weeks without seeing the infant and who had never lived with the baby's mother. When compared to the 49 infants who never overnighed, there were no differences in insecure attachment scores or in their interactions with their mothers on a challenging task in the laboratory setting. Even though the overnighing infants, unlike the non-overnighters, had more "disorganized" (cannot be classified) attachments than children in married families, the researchers attributed this to factors other than the overnighing, namely the parents' violence and their never having lived together. Moreover, the overnighters did not have significantly more disorganized attachments than the non-overnighters.

In the second study, with 2- to 6-year-olds, the 99 overnighters were only overnighing an average of eight nights a month (Pruett, Insabella, & Gustafson, 2005). The other 33 children spent no overnight time with their fathers, but did have contact with him. Unlike the previous study, the parents were a representative sample of lower middle-class couples with average levels of conflict and no history of substance abuse or physical abuse. Most were married and living together (75%) when their children were born. All data came from standardized tests.

For the 2- to 3-year-olds, there were no significant differences between the overnighters and non-overnighters in regard to sleep problems,

TABLE 2 Overnighting: Outcomes for Children Ages 0 to 5

Oldest to most recent studies	Sample size	Children's ages	No. of overnights monthly with father	Outcomes: Frequent overnighting compared to some or no overnighting	% of parents married before separating
Solomon & George (1999)	46 40 7	0-2	None 1-3 > 4	No difference in insecure attachment scores No difference on challenging tasks with mother	80%
Pruett, Ebling, & Insabella (2004)	33 99	2-5	None 4-8	No differences 2-3-year-olds Better outcomes 4-6-year-olds, especially girls	79%
McIntosh et al. (2010)	115-346 ^a 14-200 ^a 5-59	0-5	None 1-3 4-15	No differences on 5 of 7 measures Wheezing: less for frequent overnighters Irritability: more but same as babies in intact families Difficult behavior: more, but still in normal range Mixed results: task persistence and monitoring mother	10%-30%
Tomello et al. (2013)	310-540 ^a 171-313 ^a 51-103 ^a	0-5	None 1-3 4-21	No differences on 5 of 7 measures of well-being Better behavior at age 5 Better attachment to mother if overnighting with dad > 55% Mixed results: attachments to mother < 55% Better relationship with father as young adults	15%
Fabrizius (2014)	28 28 16	0-3	None 1-4 5-14	Overnighting Better relationship with father as young adults	All
Sokol (2014)	Age 1 364 270 Age 3 320 383		None 1-18	No correlation between number of overnights and insecure attachment scores	15%

^aNumber of children differed on several measures and in different age groups.

depression, anxiety, aggression, attentiveness, or social withdrawal. Likewise, for the 4- to 6-year-olds, overnighting was not linked to any negative outcomes, but was associated with more positive outcomes in regard to social problems, attention problems, and thought problems (strange behaviors and ideas, hallucinations, psychotic symptoms). Unlike the 2- to 3-year-olds, there were gender differences on several outcomes for the 4- to 6-year-olds. The girls who overnights were less socially withdrawn than girls who did not overnight, whereas there were no differences for the boys. The girls were also less anxious than the boys when the parenting schedule was inconsistent and when several different people were taking care of them throughout the day. The researchers attributed this to the fact that girls are more socially and verbally mature than boys their age.

Importantly, this study examined the impact of having a number of different people taking care of the child throughout the day. This is important because one of the arguments against overnighting and shared parenting for infants and toddlers is that children this young will be more anxious and distressed if several different adults are taking care of them. As it turned out, the 4- to 6-year-olds with multiple caregivers had fewer social, behavioral, and attention problems, but had more anxiety and sleep problems. Surprisingly, though, having multiple caregivers had no impact at all on the 2- to 3-year-olds. Given this, the researchers emphasized that there is no reason to be concerned about toddlers' being taken care of by many adults in an overnighting parenting plan. On the other hand, having a consistent, unchanging schedule and having a good relationship with each parent was more closely related to children's outcomes than whether or not they overnights. Overall, though, overnighting had no negative impact on the 2- to 3-year-olds and had a positive impact on the 4- to 6-year-olds, especially the girls.

The third study (McIntosh et al., 2010) compared Australian children—most of whose parents had not been married—in three types of families: no overnights, occasional overnights (1–3 nights monthly for infants and 1–9 nights for the 2- to 5- year-olds), and frequent overnights (4–15 overnights a month for infants and 10–15 overnights for the 2- to 5-year-olds). For the 4- and 5-year-olds, there were no differences on any of the six measures of well-being or physical health. For the infants and toddlers, there were no differences on overall physical health, developmental problems, or reactions to strangers. The shared parenting toddlers wheezed less often and their scores on the behavioral problems test were perfectly within normal range, although higher than the less frequent overnights' scores. The shared parenting mothers said their babies stared at them and tried to get their attention more often, which the researchers claimed was a sign of insecurity on their three-question test, which had no reported validity or reliability. The shared parenting mothers also said their babies were more irritable than the infants who overnights one to three times monthly.

There seems no reason to be alarmed by this finding, however, because their irritability scores were identical to those of infants from intact families and were no higher than infants who never overnights. Likewise, although the 19 shared parenting toddlers' scores were worse on the task persistence scale, the scale did not differentiate healthy or normal scores from unhealthy or abnormal ones. This means there is no way to determine whether the frequent overnights had any noticeable or significant problems that would generate any concern about lack of persistence at tasks or at play.

Unlike the other studies on shared parenting, this particular study has been frequently criticized for its methodological shortcomings and its speculative interpretations of the data. Among these shortcomings were a lack of standardized measures, very small sample sizes for the occasional overnights babies, the high numbers of parents who had never been married or lived together (60%–90%) and the practical insignificance of many of the findings. For these reasons, social scientists have concurred that this study contributes very little to our understanding of the impact of shared parenting and provides no convincing evidence that overnights or shared parenting is bad for infants or toddlers (Cashmore & Parkinson, 2011; Lamb, 2012; Ludolph & Dale, 2012; Nielsen, 2013; Parkinson & Cashmore, 2011; Pruett, Cowan, Cowan, & Diamond, 2012; Warshak, 2012, 2014). Given these concerns, it is troubling that this study has been frequently misrepresented or “woozled” in the media and in academic settings as evidence that overnights has a “deleterious impact” on infants and toddlers (Nielsen, 2014).

The fourth and fifth studies are distinct in that they focused exclusively on inner-city, impoverished, never married, poorly educated, minority parents with high rates of incarceration who were part of an ongoing Fragile Families study in 20 large U.S. cities (McClanahan, 2011). In the first study (Tornello et al., 2013) five standardized measures of well-being were used to compare 103 5-year-olds who had overnights 128 to 256 nights a year when they were 3 years old to 528 5-year-olds who never overnights and 505 who overnights fewer than 128 nights a year. Only one difference emerged on these five measures: The 5-year-olds who had overnights more than 128 nights displayed more positive behavior than those who had less frequently or never overnights. A second difference, based on the way these researchers chose to separate the 703 3-year-olds into “frequency of overnights” groups, was that 22 of the 60 3-year-olds who had overnights anywhere from 50 to 260 times a year at age 1 and anywhere from 128 to 260 times at age 3 were rated as insecurely attached by their mothers—a larger percentage (37%) than those who never overnights (18%), yet almost the same percentage (33%) as those who overnights 1 to 12 times a year. Unfortunately, attachment data were not available for 40% of the children and, as critics of the study have pointed out (Milar & Kruk, 2012), the mothers rated their children's behavior on a modified version of the attachment

test, rather than having trained observers do the rating on a validated version of the test. This raises doubts about what was actually being measured by this unusual procedure (van Ijzendoorn, Vereijken, Kranenburg, & Walraven, 2004).

More important still, the fifth study used exactly the same data as Tornello et al. (2013) and found no correlation at all between the actual number of overnights and each individual child's attachment score (Sokol, 2014). That is, rather than assigning the children to four different groups and then comparing the entire group's attachment scores, Sokol correlated each child's individual score with the exact number of overnights for that child. Using this more exact way of analyzing the data, frequent overnights were not associated with attachment insecurity. Given Sokol's findings and the questionability of the attachment procedure itself, it is troubling that the Tornello et al. study has been misrepresented as evidence that overnighting interferes with infants becoming securely attached to their mothers. For example, the British Psychological Society reported the study under the headline "Staying Away Affects a Baby's Attachment" (British Psychological Society, 2013) and the University of Virginia's press release headline read "Overnights Away from Home Affect Children's Attachments" (Samarrai, 2011).

In part because data from these three studies have been so widely misunderstood and misreported, a group of 111 international experts endorsed the recommendation of Warshak (2014) in his review of the literature on infant and toddler overnighting: "Research on children's overnights with fathers favors allowing children under four to be cared for at night by each parent rather than spending every night in the same home. We find the theoretical and practical considerations favoring overnights for most young children to be more compelling than concerns that overnights might jeopardize children's development" (p. 59). "There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers" (p. 60). "The social science evidence . . . supports the view that shared parenting should be the norm for parenting plans for children of all ages, including very young children" (p. 59).

In the most recent study, the 16 children who had overnighted from 6 to 14 nights a month when they were under the age of 4 had closer relationships with their fathers when they were young adults than the 28 who had never overnighted and the 28 who had overnighted less frequently. Importantly, this study controlled for the parents' levels of conflict and education (Fabricius, 2014).

Negative Outcomes for Children in Shared Parenting

Overall then, the 40 studies show that children generally fared better in families where most of them lived half of the time with each parent. This does not

mean, however, that all of these children were doing as well or better than children who were living with their mother and spending varying amounts of time with their father. Under some circumstances, the outcomes were worse for the shared parenting children. What were those circumstances?

Not surprisingly, one of the factors that sometimes diminished the benefits of shared parenting was high, ongoing conflict in which the children became involved. But did intense, ongoing conflict have any worse impact on children in shared parenting families? The answer appears to be no. On the one hand, teenagers in shared parenting families were more likely to feel caught in the middle when their parents were disagreeing. But their parents were no more likely than other divorced parents to be in conflict. More important, the problems between their parents were not related to the quality of their relationships with either parent, and, regardless of conflict levels, the shared parenting adolescents fared better in all measures of their emotional and behavioral well-being (Buchanan & Maccoby, 1996). For college students, those whose parents had the most conflict after their divorce were not as close to their fathers, regardless of the parenting plan. Still, living with their father more than 35% of the time was linked to a closer relationship regardless of the conflict level. These researchers also pointed out that the negative outcomes often attributed to conflict might, in fact, be the consequence of too little fathering time, because children spend less time with their fathers when the conflict level is high (Fabricius & Luecken, 2007). Remember, too, that children whose parents had the most conflict initially in shared parenting had just as favorable outcomes 1 year later as the children whose parents initially had the least conflict in shared parenting (Brotsky et al., 1991). In sum, the benefits of shared parenting are diminished, but not erased, when conflict between the parents remains high. Put differently, shared parenting is more likely to decrease the negative impact of high, ongoing conflict than sole residence parenting plans.

Remember, too, that gender seemed to influence the impact that conflict had on the children in shared and in sole parenting families. Girls tended to feel more caught in the middle of the conflicts than the boys did, but the girls in the shared parenting families felt closer to their father and felt less need to take care of their mother (Buchanan & Maccoby, 1996). Likewise, in Belgium the adolescent girls were more depressed and less satisfied with their lives than the boys if their parents were in high conflict (Vanassche et al., 2014). For college students, conflict in married, shared, or sole parenting families hurt the girls' relationships with their fathers more than it hurt the boys' relationships. Again, though, the girls in shared parenting had better relationships with both parents than the girls in sole residence (Frank, 2007).

A second factor that diminished the benefits of shared parenting was having a poor relationship with their father. Adolescents who had bad relationships with their fathers were more dissatisfied and more depressed in

shared parenting families (Vanassche et al., 2014). More seriously, when the father's relationship with the children was one where the mother had concerns about the children's safety when they were with him, the mothers reported worse outcomes for the children in shared than in sole residence families (Cashmore & Parkinson, 2010; Kaspiew et al., 2009). On that note, a recent study examined the links between conflict, fathering time, and the quality of the father-child relationship. All of these parents had been designated as high conflict by a judge, and all were litigating over parenting time or other custody issues. The lower the conflict, the more overnight time the 140 adolescents spent with their father and the more highly they rated their relationship with him. However, the children only had fewer behavioral problems when they lived with their father more than seven nights a month and when they said they had a good relationship with him. When the children felt the relationship was not a good one, then living with their father more than seven nights a month was linked to more behavioral problems (Sandler, Wheeler, & Braver, 2013).

Although not a negative outcome in the sense of creating significant or long-lasting problems for the children, living in two homes was more inconvenient for adolescents than for younger children. Given their more complicated social and academic lives, this is not particularly surprising. Nevertheless, even the adolescents reported that living in two homes was worth the trouble, namely because they maintained close relationships with both parents. These studies were based on interviews with 22 children (Campo & Fehlberg, 2012) and 105 adolescents (Lodge & Alexander, 2010) in Australia, 40 Swedish adolescents (Haugen, 2010; Singer, 2008), 21 British adolescents (Smart, Neale, & Wade, 2001), and 22 elementary age children (Luepnitz, 1991) and 80 college students in the United States (Fabricius & Hall, 2000).

CONCLUSION

While acknowledging that some studies were more methodologically sophisticated and used more valid and reliable measures than the others, the fact remains that the 40 studies reached similar conclusions. First, shared parenting was linked to better outcomes for children of all ages across a wide range of emotional, behavioral, and physical health measures. Second, there was not any convincing evidence that overnighting or shared parenting was linked to negative outcomes for infants or toddlers. Third, the outcomes are not positive when there is a history of violence or when the children do not like or get along with their father. Fourth, even though shared parenting couples tend to have somewhat higher incomes and somewhat less verbal conflict than other parents, these two factors alone do not explain the better outcomes for the children. By acknowledging and by disseminating the

findings from these 40 studies, we can help dispel many of the myths about shared parenting and promote a fuller understanding of this parenting plan option.

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Appendix C: STEMMING THE TIDE OF MISINFORMATION: INTERNATIONAL CONSENSUS ON SHARED PARENTING AND OVERNIGHTING

[Link to PDF](#)

STEMMING THE TIDE OF MISINFORMATION: INTERNATIONAL CONSENSUS ON SHARED PARENTING AND OVERNIGHTING

Richard A. Warshak, Ph.D.*

ABSTRACT

Warshak, with the review and endorsement of 110 researchers and practitioners, analyzed more than four decades of research and issued a peer-reviewed consensus report on parenting plans for young children. As intended, the report stemmed a tide of misinformation that was threatening to resurrect myths about child development and enshrine them in professional practice and family law. The list of endorsers and their professional accomplishments reflect the widespread acceptance of the consensus report's findings that favor shared parenting and overnighting for young children under normal circumstances. Two years after its publication, the conclusions and recommendations of the Warshak consensus report remain supported by science.

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INTRODUCTION

Main Issues

Judges and lawmakers hear competing versions from the mental health field about what type of parenting plans are best for very young children. Discussions of parenting time for young children who are raised by parents who live apart from each other generally address three main issues.

1. Should young children's time be concentrated predominantly under the care and supervision of one parent, or should their time be more evenly divided between parents?
2. Should young children under the age of four spend nights in each parent's home, or should they sleep in the same home every night?
3. Are the benefits to the child of involvement with both parents, or overnight care, diminished or erased if the parents disagree about the parenting plan, or if one or both parents feel great discomfort or hostility toward the other?

Differences of opinion regarding shared parenting time for children under the age of four years focus on the issue of whether giving children more time with their fathers, aimed at strengthening father-child relationships, risks harming mother-child relationships. The concern is that spending too much time away from the mother, or having overnights away from her, rather than increasing the odds that a child will have a high quality relationship with both parents, will result in the child having poor relationships with both parents.

Background

Our society holds a curious double standard when it comes to encouraging hands-on shared parenting. For instance, we want dads involved with their infants and toddlers—diapering, feeding, bathing, putting to bed, soothing in the middle of the night, cuddling in the morning. But when parents separate, some people think that young children need to spend every night in one home, usually with mom, even when this means losing the care their dad has been giving them. Despite all strides in cracking gender barriers, many of us still think that it is primarily the mother's role to care for infants and toddlers, and that we jeopardize young children's wellbeing if we trust fathers to do the job.

Where does science stand on these issues? A body of research from the 1970s to the 1990s challenged stereotypes and prejudices that had governed child custody decisions throughout most of the 19th and 20th centuries. The results of social science studies throughout the United States converged to support the

position that most children needed and wanted more contact with their fathers after divorce than they were having.¹

In 1994 a multidisciplinary group of experts, sponsored by the U.S. National Institute of Child Health and Human Development (NICHD), met to evaluate the empirical evidence regarding the ways in which children are affected by divorce and the impact of various custody arrangements. In 1997, eighteen experts from the NICHD group issued a consensus statement concluding:

Time distribution arrangements that ensure the involvement of both parents in important aspects of their children's everyday lives and routines—including bedtime and waking rituals, transitions to and from school, extracurricular and recreational activities—are likely to keep nonresidential parents playing psychologically important and central roles in the lives of their children. How this is accomplished must be flexibly tailored to the developmental needs, temperament, and changing individual circumstances of the children concerned.²

Over time, custody policy and decisions increasingly reflected the importance of frequent and continuing contact between children and both parents, including giving children more contact with their fathers. Nevertheless, professional opinions continued to favor the practice of denying infants and toddlers overnight contact with their fathers, even those children who had been accustomed to seeing their dads every day and experiencing his care at bedtime, in the middle of the

¹ See, e.g., SANFORD L. BRAVER & DIANE O'CONNELL, *DIVORCED DADS: SHATTERING THE MYTHS* (1998) (Arizona); CHARLENE E. DEPNER & JAMES H. BRAY, *NONRESIDENTIAL PARENTING: NEW VISTAS IN FAMILY LIVING* (1993) (Arizona); E. Mavis Hetherington, Martha Cox, & Roger Cox, *Effects of Divorce on Parents and Children*, in *NONTRADITIONAL FAMILIES: PARENTING AND CHILD DEVELOPMENT* 233 (Michael E. Lamb ed., 1982) (Virginia); E. MAVIS HETHERINGTON & JOHN KELLY, *FOR BETTER OR WORSE: DIVORCED RECONSIDERED* (2002) (Virginia); John W. Santock & Richard A. Warshak, *Father Custody and Social Development in Boys and Girls*, 34 *J. SOC. ISSUES* 112 (1979) (Texas); JUDITH S. WALLERSTEIN & JOAN BERLIN KELLY, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* (1980) (California); RICHARD A. WARSHAK, *THE CUSTODY REVOLUTION* (1992) (Texas); Richard A. Warshak, *Father-Custody and Child Development: A Review and Analysis of Psychological Research*, 4 *BEHAV. SCI. & L.* 185 (1986) (Texas); Richard A. Warshak & John W. Santrock, *The Impact of Divorce in Father-Custody and Mother-Custody Homes: The Child's Perspective*, in *CHILD. & DIVORCE* 29, 38, 42-43 (Lawrence A. Kurdek ed. 1983) (Texas).

² Michael E. Lamb, Kathleen J. Sternberg, & Ross A. Thompson, *The Effects of Divorce and Custody Arrangements on Children's Behavior, Development, and Adjustment*, 35 *FAM. & CONCILIATION CTS. REV.* 393, 400 (1997).

night, and in the morning.³ I labeled presumptions against “overnighting” until children reach the age of four or five, *blanket restrictions*.

Between 2000 and 2002 a well-cited exchange of articles in *Family Court Review* addressed the wisdom of guidelines that restricted young children from sleeping in their fathers’ home. One group of authors supported flexible, individualized parenting plans rather than absolute rules favoring or prohibiting overnights.⁴ Those authors recommended that decision makers consider the option of overnights with fathers for its potential benefits to the children’s developing stable and lifelong relationships with both parents. Those opposing this view conceded the need for some relaxation of blanket restrictions, but continued to emphasize the potential harm rather than potential benefits of overnights.⁵ They proposed that overnights should be viewed with caution rather than prohibited or contraindicated on an a priori basis, thus accepting that in some cases overnights with their fathers might be in young children’s best interests.

In the aftermath of the 1997 consensus statement, subsequent articles on parenting plans for young children, and a growing body of research relevant to parenting plans, the importance of providing sufficient opportunities for children to develop and maintain high quality relationships with both parents became generally recognized as the accepted and settled science with respect to child custody issues.⁶ The decade between 2001 and 2011 saw increasing acceptance of overnights for infants and toddlers among mental health professionals, courts, and parents. This remained the zeitgeist until 2011.

³ Richard A. Warshak, *Blanket Restrictions: Overnight Contact Between Parents and Young Children*, 38 FAM. & CONCILIATION CTS. REV. 422 (2000) (giving examples of guidelines in the professional literature advocating restrictions against overnights).

⁴ Joan B. Kelly & Michael E. Lamb, *Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children*, 38 FAM. & CONCILIATION CTS. REV. 297 (2000); Michael E. Lamb & Joan B. Kelly, *Using the Empirical Literature to Guide the Development of Parenting Plans for Young Children: A Rejoinder to Solomon & Biringen*, 39 FAM. CT. REV. 365 (2001); Warshak, *supra* note 3; Richard A. Warshak, *Who Will Be There When I Cry In the Night? Revisiting Overnights—A Rejoinder to Biringen et al.*, 40 FAM. CT. REV. 208 (2002).

⁵ Zeynep Biringen et al., *Commentary on “Blanket Restrictions: Overnight Contact Between Parents and Young Children”* 40 FAM. CT. REV. 204 (2002); Judith Solomon & Zeynep Biringen, *Another Look at the Developmental Research: Commentary on Kelly and Lamb’s “Child Development Research to Make Appropriate Custody and Access Decisions for Young Children”*, 39 FAM. CT. REV. 355 (2001).

⁶ See, e.g., Gordon E. Finley & Seth J. Schwartz, *The Divided World of the Child: Divorce and Long-term Psychosocial Adjustment*, 48 FAM. CT. REV. 516 (2010); Seth J. Schwartz & Gordon E. Finley, *Troubled Ruminations About Parents: Conceptualization and Validation With Emerging Adults*, 88 J. COUNSELING & DEV. 80 (2010). See also, Marsha Kline Pruett, Rachel Ebling, & Glendessa Insabella, *Critical Aspects of Parenting Plans for Young Children: Interjecting Data Into the Debate About Overnights*, 42 FAM. CT. REV. 39, 55 (2004) (stating: “This initial glimpse suggests that, for the behavioral and emotional outcomes under study, the worry about implementing overnights and parenting plans with multiple caretakers for infants and toddlers is misplaced. . .”).

Controversy over the previous decade's accepted science with respect to overnights for young children reignited in 2011 when the Association for Family and Conciliation Courts (AFCC) gave a unique platform to Jennifer McIntosh via an invitation to guest edit a special issue of the *Family Court Review* (FCR) in which McIntosh listed herself as author of nine articles (eight of which were edited transcripts of interviews that McIntosh conducted with commentators). AFCC then invited McIntosh to deliver a plenary address at its annual conference in 2012.⁷ McIntosh advocated that one parent should be designated the primary caregiver, discouraged joint physical custody for children under the age of four, and called for the resurrection of blanket restrictions unless overnights were necessary and helped the primary caregiver.⁸ Subsequent articles criticized AFCC, FCR, and McIntosh for presenting a narrow perspective.⁹ Joan Kelly

⁷ See, e.g., Peter Salem & Arnold T. Shienvold, *Closing the Gap Without Getting to Yes: Staying with the Shared Parenting Debate*, 52 FAM. CT. REV. 145, 146 ("AFCC and FCR were criticized for allowing one side of a controversial issue to be represented in FCR without counterpoint in the same issue and for highlighting that same perspective in a plenary session without an alternative view during the same session. Hindsight is 20/20 and in retrospect, we would have made adjustments in order to create the best possible discussions.") See also Joan B. Kelly, *Paternal Involvement and Child and Adolescent Adjustment After Separation and Divorce: Current Research and Implications for Policy and Practice*, 2 INT'L. FAM. L., POL'Y & PRAC. 5, 10 (2014) ("These heated controversies in the United States and elsewhere in the last decade were exacerbated by a *Family Court Review* special issue on attachment (McIntosh, 2011), which focused on infant-mother attachment research and policy conclusions regarding overnights.").

⁸ Jennifer E. McIntosh, *Guest Editor's Introduction to Special Issue on Attachment Theory, Separation, and Divorce: Forging Coherent Understandings for Family Law*, 49 FAM. CT. REV. 418, 424 (stating that McIntosh and the commentators she interviewed concurred strongly that "Overnight stays away from the primary caregiver in early infancy are generally best avoided, unless of benefit to the primary caregiver."). Also see Jennifer McIntosh, *Special Considerations for Infants and Toddlers in Separation/Divorce: Developmental Issues in the Family Law Context*, in *ENCYCLOPEDIA ON EARLY CHILDHOOD DEVELOPMENT* [online] 1, 4 (Robert E. Emery, topic ed., Richard E. Tremblay, Michel Boivin, Ray DeV. Peters eds., 2011), available at <http://www.child-encyclopedia.com/divorce-and-separation/according-experts/special-considerations-infants-and-toddlers>. (In a section titled "Implications for Parents, Services and Policy," McIntosh states: "In early infancy [defined by McIntosh as under 2 years old], overnight stays are contra-indicated, undertaken when necessary or helpful to the primary caregiver. . . .")

⁹ See, e.g., Kelly, *supra* note 7, at 10. See also Michael E. Lamb, *A Wasted Opportunity to Engage with the Literature on the Implications of Attachment Research for Family Court Professionals*, 50 FAM. CT. REV. 481 (2012) (commenting on the restricted range of views in the issue of *Family Court Review* that McIntosh guest edited: "The resulting special issue contained a total of 11 articles—an introduction by McIntosh, two invited articles, and the edited transcripts of eight interviews by McIntosh with one or (in three cases) several commentators. Nine of the articles were 'authored' by the editor, and (remarkably) all 11 listed her as a corresponding author, underscoring the narrowness of the perspective offered to readers of the special issue.") See also Pamela S. Ludolph, *The Special Issue on Attachment: Overreaching Theory and Data*, 50 FAM. CT. REV. 486, 493 (2012) (noting: "[T]he Special Issue, and particularly its summary [the one article in the

noted “the absence of any articles or consideration of infant-father attachments, and the limited and methodologically flawed research used to establish broad conclusions that substantial time with fathers and overnights after separation were detrimental.”¹⁰

CURRENT CONSENSUS OF SOCIAL SCIENTISTS ON PARENTING PLANS FOR YOUNG CHILDREN

Practitioners and scholars in the field of child custody expressed concerns that this seeming reversal of a decade-long endorsement of shared parenting for preschool children was generating widespread confusion and uncertainty about where the scientific community stood on these issues. To give voice to those concerns, and in an effort to right a ship that was listing from a tide of misinformation, I spent two years reviewing the relevant scientific literature. Then I vetted my analyses by incorporating feedback from an international group of experts in the fields of attachment, early child development, parent-child relations, and divorce. The results appeared in *Social Science and Parenting Plans for Young Children: A Consensus Report* published in the American Psychological Association’s journal, *Psychology, Public Policy, and Law*, that is edited by Cambridge University Professor Michael Lamb, a prominent child development scholar.¹¹ The report was published with the endorsement of 110 of the world’s leading researchers and practitioners, several who contributed seminal studies cited in the report.

The first goal was to provide a balanced and accurate overview of settled, accepted research from the past 45 years relevant to parenting plans for children under the age of four whose parents lived apart. The second goal was to provide empirically informed guidelines for policy makers and for people involved in making custody decisions.

No support was found for the idea that children under four need or benefit from restrictions with parents who are loving and attentive. Warnings against infants and toddlers spending overnight time with each parent are inconsistent with what we know about the development of meaningful, positive parent-child relationships in the first few years of children’s lives. Babies and toddlers need

journal issue solely authored by McIntosh] overreaches the available research data, doing so by remarkable omissions and over-generalizations. The voluminous literature on the role of fathers in early childhood was barely touched upon. Monotropy was reified, despite its being an idea unsupported by empirical evidence. The serious attention many researchers have given to the attachment capabilities of both parents was virtually unmentioned. Serious losses of childhood were confounded with trivial ones.”).

¹⁰ Kelly, *supra* note 7, at 10.

¹¹ Richard A. Warshak, with the endorsement of the researchers and practitioners listed in the Appendix, *Social Science and Parenting Plans for Young Children: A Consensus Report*, 20 PSYCHOL., PUB. POL’Y. & L. 46 (2014). This article, available to legal and mental health professionals on request from the author, lists in the Appendix the names and positions of the endorsers, and provides reference citations for all the studies included in the consensus report literature review and analysis. Others can purchase the article at <http://psycnet.apa.org/journals/law/20/1/46/>.

parents who respond consistently, affectionately, and sensitively to their needs. But infants and toddlers do not need, and most do not have, either parent's full-time, round-the-clock presence. Many married mothers work night shifts that keep them away from their infants and toddlers at night without damaging their children's secure attachment or their development. As a result, most mothers separated from the other parent should have no reason to worry about leaving their children in the care of the other parent.

To maximize infants' chances for a secure lifelong bond with both parents, public policy should encourage both parents to actively participate in daytime and overnight care of their young children. Scholars who study the benefits of children's relationships with both parents find no empirical support for the belief that mothers are more important than fathers in their infants' and toddlers' lives. In short, after their separation, both parents, in most circumstances, should seek to maximize the time they spend with their young children, including the sharing of overnight parenting time. This lays a strong foundation for parent-child relationships and allows children to enjoy the unique and overlapping contributions of each parent to the children's development and well-being.

ANALYTIC GAPS BETWEEN SCIENTIFIC EVIDENCE AND BLANKET RESTRICTIONS

An extensive knowledge base, drawn from more than four decades of research directly relevant to this topic, informed the conclusions of the international consensus report. The consensus report refutes the claim that a scientific foundation exists for a general policy of limiting or discouraging young children's overnights with one parent when their parents live apart. Those who advocate such a policy often cite two studies to support their concerns about the risks of shared parenting and overnights for children under the age of four.

The first study was a 2010 report written by McIntosh, Smyth, and Kelaher, issued by the Attorney General's department in Australia, and copyrighted by a clinic founded by the study's first author.¹² The second study, by Tornello et al., was published in 2013.¹³ The consensus report identified significant problems and limitations in both studies that should affect the admissibility and weight of

¹² Jennifer McIntosh, Bruce Smyth & Margaret Kelaher, *Parenting Arrangements Post-separation: Patterns and Developmental Outcomes, Part II. Relationships Between Overnight Care Patterns and Psycho-emotional Development in Infants and Young Children: Report to the Australian Government Attorney-General's Department*, in POST-SEPARATION PARENTING ARRANGEMENTS AND DEVELOPMENTAL OUTCOMES FOR INFANTS AND CHILDREN: COLLECTED REPORTS 85 (Jennifer McIntosh, Bruce Smyth, Margaret Kelaher, Yvonne Wells & Caroline Long eds., 2010), available at <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyLawSystem/Documents/Postseparationparentingarrangementsanddevelopmentaloutcomesforinfantsandchildrencollectedreports.PDF>. The report is copyrighted by Family Transitions, a private clinic founded and directed by McIntosh.

¹³ Samantha L. Tornello, Robert Emery, Jenna Rowen, Danile Potter, Bailey Ocker, and Yishan Xu, *Overnight Custody Arrangements, Attachment, and Adjustment Among Very Young Children*, 75 J. MARRIAGE & FAM. 871 (2013).

testimony that relies on these studies.¹⁴ The U.S. Supreme Court in *General Electric Co. v. Joiner* noted: “[C]onclusions and methodology are not entirely distinct from one another. . . . A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.”¹⁵ The analytical gap metaphor offers a useful critique of some experts who have expressed opinions based on these two studies. Understanding several kinds of gaps in the testimony of these experts should inform trial examinations of the reports and testimony of these experts.¹⁶

Gaps Between Research Participants and Custody Litigants

One obvious and wide gap between the findings from these two studies and expert witness testimony is the difference between the populations studied and typical custody litigants. The Australian study’s sample is not representative of parents who are going through a divorce because most of the parents in the study were never married to each other (90% for the sample of infants and 60% for toddlers), and 30% had never even lived together. Nothing is known about the behavior and relationships between the parents and children prior to the couples’ separations. Even if the study reached verifiable conclusions, the differences between Australian children of unmarried fathers who may or may not have had any pre-separation relationship with their children and American children whose married parents are divorcing and who are accustomed to their fathers’ care is too wide a gap to bridge. The consensus report affirmed that optimal parenting plans are different for children who have a pre-existing relationship with both parents and those who do not.

The second study similarly focused predominantly (85%) on children whose parents had never been married or lived together (30%). Tornello et al.’s sample was even less typical than the Australian sample of most parents who take a custody dispute to trial or who mediate a settlement with lawyers. The study’s data came from the Fragile Families sample of inner-city children born in impoverished circumstances: 62% of the age 1 sample lived below the poverty line, 60% of the parents were imprisoned before the children’s fifth birthdays, 85% were Black or Hispanic, 65% had parents who had nonmarital births from more than one partner in their teenage or young adult years, and nearly two-thirds had not completed high school.¹⁷ In sum, even if the results from these two studies are trustworthy their relevance to U.S. custody disputes is slim.

¹⁴ See *Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579 (1993).

¹⁵ *General Elect. Co. v. Joiner*, 522 U.S. 136, 146 (1997). See also JOHN A. ZERVOPOULOS, *CONFRONTING MENTAL HEALTH EVIDENCE* 8 (2nd ed. 2015) (Referencing *General Elect. Co. v. Joiner*, *supra*: “Courts may view opinions with analytical gaps that are too wide as unreliable and thus inadmissible.”)

¹⁶ For a discussion of strategies to cross-examine mental health experts who rely on unwarranted inferences from unreliable data, see JOHN A. ZERVOPOULOS, *HOW TO EXAMINE MENTAL HEALTH EXPERTS* (2013).

¹⁷ Sara McLanahan, *Fragile Families and Child Wellbeing Study Fact Sheet* (2013), available at <http://www.fragilefamilies.princeton.edu/documents/FragileFamiliesandChildWellbeingStudyFactSheet.pdf>.

Gaps Between Methodology and Conclusions

In-depth analyses of the McIntosh et al. study, published in the consensus report and in other papers, reveal multiple problems in the study's measures, procedures, data analyses, and data reporting—problems that expose wide gaps between the study's methodology and conclusions and between the data reported and opinions based on the data. Two examples of analytic gaps that undermine the trustworthiness of the study's conclusions are found in one sentence from the synopsis: "Infants under two years of age living with a nonresident parent for only one or more nights a week were more irritable and were more watchful and wary of separation from their primary caregiver than those primarily in the care of one parent."¹⁸ The first author subsequently described these negative outcomes as "a cluster of stress regulation problems."¹⁹

Only in the Appendix of the 169-page report can readers discover that the irritability score for babies with no overnights actually is slightly worse than the score for babies who spent one or more nights per week with their other parent.²⁰ Also, the mean irritability score for the frequent overnights and the infants in intact families was identical, and the mean irritability score for all groups was within the normal range. Since, for these researchers, the irritability scores generated such concern about "stress regulation" for overnighting infants, they should have expressed equal concern about infants being raised in intact, two-parent Australian homes.

Another problem with generalizing from the McIntosh et al. sample—other than the gap between the composition of the sample and most parents who are separating—is the study's tiny sample sizes. The result reported for irritability of infants with occasional overnights was based on a sample of 14 infants. Only 11 infants saw their fathers on a schedule that would fit standard definitions of shared parenting. The sample size for the group of 2- to 3-year-olds with frequent overnights ranged from 5–25 depending on the variable analyzed (e.g., 5 subjects for a rating of conflict with the child made by teachers and daycare attendants). An analysis based on five respondents is unlikely to provide meaningful data.²¹

The second analytic gap revealed in the sentence quoted from the synopsis is the discrepancy between a substandard measure and the conclusion based on the results from that measure. The synopsis concluded that the overnighting infants

¹⁸ McIntosh et al., *supra* note 12, at 9.

¹⁹ McIntosh, *Special Considerations*, *supra* note 9, at 3.

²⁰ McIntosh et al., *supra* note 12, at 166.

²¹ Although the sample size in Tornello et al., *supra* note 13, is larger than previous studies, recently Emery and McIntosh, as coauthors, include in a list of limitations of the Tornello et al. study that it relied on "small subsample sizes for the attachment indicator." Bruce M. Smyth, Jennifer E. McIntosh, Robert E. Emery, & Shelby L. Higgs Howarth, *Shared-Time Parenting: Evaluating the Evidence of Risks and Benefits to Children*, in *PARENTING PLAN EVALUATIONS* (2ND ED.), in *PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT* (2ND ED.) 118, 133 (Leslie Drozd, Michael Saini & Nancy Olesen eds., 2016).

were more “watchful and wary of separation from the primary caregiver.”²² The implication is that overnighing had somehow damaged the security of the babies’ relationships with their mothers. This conclusion, repeatedly cited to discourage overnights for children younger than two years of age, came from three questions that the researchers extracted from a standardized scale designed to measure young children’s cognitive development. The resulting non-standard measure is unreliable in the sense that it is untrustworthy as an index of what it purports to measure.²³

Scientists take pains to ensure that the measures they use are properly calibrated so that the results can be trusted. Scales need to yield consistent results, known as the instrument’s *reliability*, and the instrument must measure what it is intended to measure, known as its *validity*. McIntosh and her team used scales with insufficient, if any, indications of reliability or validity. For instance, without adequate calibration a scale that lacks reliability can one day show a readout of ten pounds for a ten-pound package, and the next day show a readout of fifty pounds for the same ten-pound package. If the scale lacks validity, the scale can be off by five pounds even though it might reliably show the same incorrect weight every time you weigh the package.

A central concern with both the McIntosh et al. and the Tornello et al. studies is their use of sub-standard measures and reliance on results of those measures to draw unwarranted inferences. The Warshak consensus report observed that none of the four significant outcomes reported by McIntosh et al. were derived from measures that met basic scientific standards,²⁴ a point also noted by Nielsen in greater detail.²⁵

McIntosh et al. concluded that a child under the age of two who spends more than three nights a month with dad is more likely to have “emotional regulation” problems reflected in the child’s “insistent visual monitoring” of the mother.²⁶ To measure this, the study asked each mother (only about four percent of the respondents were fathers) three questions: does your child sometimes or often try to get your attention, look to see if you are watching her or him at play, and try to get you to notice other objects?²⁷ There was no rating of “insistence.” The authors made the dubious assumption that because infants when anxious look at their mothers and try to get her attention, being anxious is the only reason infants look at their mothers, and that the more infants look at their mothers, the more anxious

²² McIntosh et al., *supra* note 12, at 9.

²³ Daubert v. Merrell Dow Pharmaceuticals, *supra* note 14.

²⁴ Warshak et al., *supra* note 11, at 55. In addition to the problems with the visual monitoring scale, the reliability of the irritability scale falls in the “questionable” range; the persistence measure lacked any reported validity, reliability, or norms; and the scale of behavior problems with the mother, abridged from a standard measure, had no measure of reliability or validity for the new instrument.

²⁵ Linda Nielsen, *Woozles: Their Role in Custody Law Reform, Parenting Plans, and Family Court*, 20 PSYCHOL., PUB. POL’Y. & L. 164 (2014).

²⁶ Jennifer E. McIntosh, Bruce M. Smyth & Margaret A. Kelaher, *Responding to Concerns About a Study of Infant Overnight Care Postseparation, with Comments on Consensus: Reply to Warshak* (2014), 21 PSYCHOL., PUB. POL’Y. & L. 111, 116 (2015).

²⁷ Warshak et al., *supra* note 11, at 55, FN 1.

the infants must be. This error in logic is known as affirming the consequent. No one, including McIntosh et al., has ever shown that these three questions yield reliable information—would the answers be the same a week later? Nor have McIntosh et al. shown that the questions yield valid information having anything to do with a baby's emotional health, anxiety, ability to manage stress, or ability to regulate emotions. In fact, the three questions were extracted from a longer instrument that has been validated as a measure of how ready the child is to learn to talk. More frequently looking at the mother and trying to her attention indicates advanced cognitive development, not impaired emotional regulation as McIntosh et al. stated.²⁸

Similarly, Tornello et al. assessed the child's attachment to the mother with a measure that had no established reliability or validity. The Warshak consensus report and other scholars have questioned the validity of the attachment measure and the meaning of findings based on the measure because the instrument was completed by mothers rather than by trained professional raters.²⁹ Other researchers using this same attachment measure have acknowledged that it lacks objectivity,³⁰ which is an important factor in determining the admissibility and weight of opinions based on this measure.

Tornello et al. acknowledged that their measure of attachment was questionable, but nevertheless reported that children who at age 1 had frequent overnights (1 to 5 overnights per week) were more likely than those with some overnights to be insecurely attached to their mothers at age 3. The press release issued by the lead investigators' university, while failing to mention the

²⁸ AMY M. WETHERBY & BARRY M. PRIZANT, *COMMUNICATION AND SYMBOLIC BEHAVIOR SCALES DEVELOPMENTAL PROFILE- PRELIMINARY NORMED EDITION* (2001).

²⁹ See Warshak et al., *supra* note 11, at 54. See also, e.g., Paul Millar & Edward Kruk, *Maternal Attachment, Paternal Overnight Contact, and Very Young Children's Adjustment: Comment on Tornello et al. (2013)*, 76 J. MARRIAGE & FAM. 232 (2014); Nielsen, *Woozles*, *supra* note 25, at 170; Marsha Kline Pruett, Carolyn P. Cowan, Philip A. Cowan, Lisa Pradham, Sarah Robins, & Kyle D. Pruett, *Supporting Father Involvement in the Context of Separation and Divorce*, in PARENTING PLAN EVALUATIONS (2ND ED.), *supra* note 21, at 85, 102; Marinus H. van IJzendoorn et al., *Assessing Attachment Security With the Attachment Q Sort: Meta-Analytic Evidence for the Validity of the Observer AQS*, 75 CHILD. DEV. 1188 (2004); Everett Waters, *Assessing Secure Base Behavior and Attachment Security Using the Q-sort Method*. Stony Brook University, State University of New York (2013), available at http://www.psychology.sunysb.edu/attachment/measures/content/aqs_method.html 2013.

³⁰ Sangita Pudasainee-Kapri & Rachel Razza, *Attachment security among toddlers: The impacts of coparenting and father engagement*. Fragile Families Working Paper WP13-01-FF, pp. 29, 48, and 51 (2013), available at <http://cfcw.princeton.edu/publications/publications.asp> (stating: "[B]ecause the AQS is not an objective assessment of parent-child attachment, it is possible that the mothers' tendencies toward socially desirable responses may have resulted in higher levels of reported attachment security."). This may account for the fact that all the groups of children rated by their mothers in the Tornello et al. study had lower percents of insecure attachment than what would be expected for these children who were living in poverty with poorly educated mothers.

unreliability of the attachment measures, incorrectly claimed that infants who spent at least one night per week away from their mothers had more insecure attachments than babies who saw their fathers only during the day. In fact they did not.³¹

Gaps Between Data and Interpretation

Even overlooking that Tornello et al. used a nonstandard attachment measure administered in a nonstandard manner, the results were ambiguous. Insecurity in the infants was more common among the frequent overnights, followed by the never overnights, followed by the occasional overnights. A similar, nonlinear pattern characterized the McIntosh et al. results.³² Thus, as the Warshak consensus report and others have noted, frequency of overnights did not predict insecurity in either study.³³

Interpreting the attachment findings is complicated by another fact that Tornello et al. did not report: More than half of the infants classified as frequent overnights lived predominantly with their fathers. But the data were reported and interpreted as if the mother was always the “resident” parent and the babies were overnights with a “nonresident” father. Thus the “resident” and “nonresident” parents were mislabeled. Without knowing more about why these babies were living with their fathers it would be a mistake to assume that frequent overnights in their fathers’ home caused the children’s insecure attachment to their mothers. The gap between the data and the conclusion is too wide to bridge. The mothers in this sample were drawn from a population of women who had higher rates of substance abuse, depression, and incarceration.³⁴ These factors and others, such as domestic violence, affect the quality of parent-child relationships. Even if the attachment measure had met scientific standards, these results should

³¹ Fariss Samarrai (2013, July). Overnights Away From Home Affect Children’s Attachments, Study Shows. UVA Today News Release (July 18, 2013), available at <https://news.virginia.edu/content/overnights-away-home-affect-children-s-attachments-study-shows>. Also, there were no significant links between overnights between the ages of 1 and 3 and attachment.

³² See William V. Fabricius, Karina R. Sokol, Priscilla Diaz & Sanford L. Braver, *Father–Child Relationship: The Missing Link Between Parenting Time and Children’s Mental and Physical Health*, in PARENTING PLAN EVALUATIONS (2ND ED.), *supra* note 21, at 74, 81 (“Ambiguous U-shaped patterns emerged in both studies, in which the ‘no overnights’ group did not differ from the ‘frequent overnights’ group (suggesting that frequent overnights were not harmful), but the ‘some overnights’ group showed fewer negative child outcomes than the ‘frequent’ group (suggesting they were). It is unclear how to interpret these U-shaped patterns. More clarity might have been achieved by not grouping all families into a few categories, but instead testing for linear relations between overnights and outcomes.”). Sokol, *infra* text accompanying note 59, conducted a test for linear relations in the Tornello et al. data and found no correlation in these data between the absolute number of overnights with father and insecurity with mother.

³³ See, e.g., Fabricius et al., *supra* note 32, at 81; Michael E. Lamb, *Critical Analysis of Research on Parenting Plans and Children’s Well-Being*, in PARENTING PLAN EVALUATIONS (2ND ED.), *supra* note 21, at 182.

³⁴ McLanahan, *supra* note 17.

not be relied upon in making decisions about parenting plans for most divorcing parents, especially for parents with the resources to take a custody dispute to trial or to hire lawyers to negotiate and mediate out-of-court settlements.

Additional Gaps Between Data and Opinions

Policy makers, decision makers, and expert witnesses who rely on the data from these two studies to discourage overnight parenting plans for young children often fail to mention the results from these two studies that do not support this conclusion, in addition to the significant limitations discussed above that undermine their usefulness as a basis for custody decisions. For instance, one of the authors of the Tornello et al. study recently coauthored a chapter which provided this interpretation of their study's results: "Spending frequent overnights [with fathers] between the ages of 1 and 3 years did not predict attachment insecurity at age 3 but did predict positive behavior at 5 years of age."³⁵ Yet Tornello et al. cautioned that the link between overnights and positive behavior—derived from a standard, well established instrument with strong evidence for its reliability and validity and administered in the standard manner—could be due to chance. Tornello et al. did not mention this positive finding for overnights in the article's Abstract. Instead the authors placed more confidence in the finding linking overnights to attachment insecurity, despite having acknowledged the uncertain trustworthiness of the attachment measure.

Furthermore, experts who rely on these two studies should be aware that data were available only from one parent, not both. Yet reports of mothers and fathers about their children's wellbeing often vary significantly as previous research has demonstrated.

Given the wide gap between the circumstances and characteristics of the parents in these two studies and those of most separating parents (especially custody litigants), the gaps between the flawed measures and the conclusions drawn from those measures, and the gaps between the actual data and opinions proffered about the data, the Warshak consensus report agrees with other scholars³⁶ that these two studies provide no reliable basis to support custody

³⁵ Smyth et al., *supra* note 21, at 153.

³⁶ See, e.g., Judy Cashmore & Patrick Parkinson, *Parenting Arrangements for Young Children: Messages from Research*, 25 AUSTL. J. FAM. L. 236 (2011); Lamb, *supra* note 9; Pamela S. Ludolph & Milfred D. Dale, *Attachment in Child Custody: An Additive Factor, Not a Determinative One*, 46 FAM. L. Q. 1 (2012); Linda Nielsen, *Shared Residential Custody: A Recent Research Review (Part Two)*, 27 AM. J. FAM. L. 123 (2013); Linda Nielsen, *Parenting Plans for Infants, Toddlers, and Preschoolers: Research and Issues*, 55 J. DIV. & REMARRIAGE 315 (2014); Nielsen, *Woozles*, *supra* note 25; Patrick Parkinson & Judy Cashmore, *Parenting Arrangements for Young Children: A Reply to Smyth, McIntosh and Kelaher*, 25 AUSTL. J. FAM. L. 284 (2011); Richard A. Warshak, *Securing Children's Best Interests While Resisting the Lure of Simple Solutions*, 56 J. DIV. & REMARRIAGE 57 (2015).

policy, recommendations, or decisions that restrict overnight shared parenting for young children.³⁷

CONFLICT AND PARENTING PLANS

A common response to research that finds positive outcomes for children and parents in shared physical custody and overnighting arrangements is to challenge the relevance of that research for parents who litigate custody or display high levels of conflict when interacting with each other.³⁸ Some psychologists dismiss the positive outcomes found in these shared parenting studies as relevant only to those couples who voluntarily agree to share physical custody from the outset. Their hypothesis is that couples who settle out of court for shared physical custody begin with lower levels of conflict and that the same factors that play a role in their agreeing to share custody may also contribute to the positive outcomes for the children in these families.

This hypothesis lacks empirical support. The Stanford Child Custody study³⁹ found that children in joint physical custody (living at least one-third of the time with their fathers) compared with children in sole physical custody were most satisfied with the custody plan and showed the best long-term adjustments, even after controlling for factors that might predispose parents to select joint physical custody (such as education, income, and initial levels of parental hostility).⁴⁰ In fact in 80% of the joint physical custody families one or both parents initially did not want and did not agree to the arrangement.⁴¹ Other studies found that parents with joint physical custody had no less conflict than those with sole physical custody.⁴²

³⁷ For extensive evidence about the impact of the McIntosh et al. study on custody policy, recommendations, and decisions, see Linda Nielsen, *Pop Goes the Woozle: Being Misled by Research on Child Custody and Parenting Plans*, 56 J. DIV. & REMARRIAGE 595 (2015), and Nielsen, *supra* note 25.

³⁸ The consensus report cited a 2011 keynote address by Martindale as an example of support for this position, however in a personal communication Martindale clarified that in using the phrase “joint custody” he was referring to shared decision-making authority and not shared physical custody arrangements. Nevertheless, others have discounted the relevance of shared physical custody research for parents in conflict. See, e.g., Smyth et al., *supra* note 21, at 118.

³⁹ ELEANOR MACCOBY & ROBERT MNOOKIN, *DIVIDING THE CHILD* (1992).

⁴⁰ Eleanor E. Maccoby et al., *Postdivorce Roles of Mother and Fathers in the Lives of Their Children*, 7 J. FAM. PSYCHOL. 24, 34–35 (1993).

⁴¹ William V. Fabricius, Karina R. Sokol, Priscilla Diaz & Sanford L. Braver, *Parenting Time, Parent Conflict, Parent–Child Relationships, and Children’s Physical Health*, in *PARENTING PLAN EVALUATIONS: APPLIED RESEARCH FOR THE FAMILY COURT* 188, 200 (Kathryn Kuehnle & Leslie Drozd eds, 2012) (drawing on data from the Stanford Child Custody Study (data set now available at <http://www.socio.com/srch/summary/afda/fam25-27.htm>)).

⁴² E.g., Marygold S. Melli & Patricia R. Brown, *Exploring a New Family Form—The Shared Time Family*, 22 INT’L J. L., POL’Y AND THE FAM. 231 (2008). For comprehensive reviews and analyses of the research literature on shared time arrangements and parental conflict, see Linda Nielsen, *Shared Residential Custody: A*

A meta-analysis of 33 studies also reported better emotional, behavioral, and academic functioning for children in joint physical custody compared to children in sole custody, regardless of the level of conflict between parents.⁴³ Studies that measured the amount of the father's parenting time found that more time with the father is not associated with poorer child outcomes in high-conflict families (with the exception of families where there is violence or abuse).⁴⁴ In a large-scale Australian study (not the one critiqued earlier), one to two years after separation, conflict was neither more nor less damaging for children in shared care-time arrangements than for children in other custody arrangements (with the exception of reports by mothers who had concerns about children's safety in the care of the father).⁴⁵ Rather than magnify harmful effects of parental conflict, several studies suggested that shared parenting may protect children from some of its negative consequences.⁴⁶

One way in which shared parenting time can reduce children's exposure to tension-filled communications between parents is that spending longer periods of time with each parent reduces the number of transfers between parents. For instance, spending two hours with one parent and then returning to the other parent's home the same day means the child makes two transitions in one day. Simply extending the two-hour evening contact into an overnight reduces the transitions between homes to only one per day.

Recent Research Review (Part One), 27 AM. J. FAM. L. 61 (2013) and Linda Nielsen, *The Conflict About Conflict: Re-examining the Research on Parental Conflict and Child Custody* (in preparation).

⁴³ Robert Bauserman, *Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review*, 16 J. FAM. PSYCHOL. 91, 99 (2002).

⁴⁴ Fabricius et al., *supra* note 41.

⁴⁵ Rae Kaspiew et al. Evaluation of the 2006 Family Law Reforms Melbourne: Australian Inst. Fam. Stud. (2009) available at <https://aifs.gov.au/sites/default/files/publication-documents/evaluationreport.pdf>.

⁴⁶ SANFORD L. BRAVER & DIANE O'CONNELL, *DIVORCED DADS: SHATTERING THE MYTHS* (1998); William V. Fabricius, Sanford L. Braver, Priscila Diaz & Clorinda E. Velez, *Custody and Parenting Time: Links to Family Relationships and Well-Being After Divorce*, in *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* 201 (Michael E. Lamb, ed., 5th ed. 2010); Fabricius et al., *supra* note 41; Marjorie Lindner Gunnoe & Sanford L. Braver, *The Effects of Joint Legal Custody on Mothers, Fathers, and Children Controlling for Factors that Predispose a Sole Material Versus Joint Legal Award*, 25 LAW & HUM. BEHAV. 25 (2001); Irwin Sandler, Jonathan Miles, Jeffrey Cookston, & Sanford Braver, *Effects of Father and Mother Parenting on Children's Mental Health in High- and Low-Conflict Divorces*, 46 FAM. CT. REV. 282 (2008). See also Irwin N. Sandler, Lorey A. Wheeler & Sanford L. Braver, *Relations of Parenting Quality, Interparental Conflict, and Overnights With Mental Health Problems of Children in Divorcing Families With High Legal Conflict*, 27 J. FAM. PSYCHOL. 915, 921 (2013) (noting that in their study of high conflict divorces, positive parenting by fathers was associated with children's better mental health when the children spent an average of approximately 12-21 overnights per month with their fathers, but not when the average number of overnights was 2.61 per month). It is important to note, however, that as with most research on the impact of divorcing parents' conflict on child adjustment Sandler et al. studied older children and not children younger than four years.

Should Parental Conflict Trump Shared Parenting Time?

A policy of automatically restricting children's time with one of the parents when a couple is labeled as "high conflict" brings additional drawbacks and deprives children of the protective buffer of a nurturing relationship with one of their parents.⁴⁷ This policy sends parents the message that generating or sustaining conflict can be an effective strategy to override shared custody.⁴⁸ This discourages civil communication and cooperation, and may reduce children's time with the parent who is less angry, who does a better job of shielding the children from conflict, and who recognizes and supports the children's need for positive relationships with both parents.⁴⁹ Any policy that encourages the instigation and maintenance of conflict between parents by suggesting that such behavior might be rewarded with more parenting time puts the needs of the children second to the desires of whichever parent opposes sharing parenting time. Such a policy contradicts the best-interest standard whose primary purpose is to ensure that the child's welfare trumps parental entitlements.⁵⁰ A policy focused on children's best interests will decrease the risks of harm to them by discouraging rather than encouraging inter-parental conflict.⁵¹

⁴⁷ See Kelly, *supra* note 7, at 14 (citing ROBERT E. EMERY, *THE TRUTH ABOUT CHILDREN AND DIVORCE: DEALING WITH EMOTIONS SO YOU AND YOUR CHILDREN CAN THRIVE* (2004) "Some authors (e.g., Emery, 2004) have recommended that when the co-parental relationship is highly conflicted that children's time with one of the parents should be restricted as a way of reducing the impact of conflict on the children. Since mothers are most often the 'primary' parent and the fathers the non-resident parents, such a recommendation is likely to disproportionately reduce father-child time. It also ignores the reality that mothers are just as often impaired in their functioning and are as hostile as fathers, but nevertheless are designated the primary residential parent. Relying on more current research, others have argued that this broad policy recommendation will deny children adequate time with supportive, competent fathers. The Emery proposal does not differentiate the type of conflict, consider whether the child is exposed to the conflict, identify the parent primarily fueling the conflict, and consider the parenting skills and mental health of each parent. Moreover, such a recommendation ignores the fact that the majority of parents with high conflict after separation substantially diminish their conflict in the first and second year after final court orders (citations omitted)."

⁴⁸ See Joan B. Kelly, *Risk and Protective Factors Associated with Child and Adolescent Adjustment Following Separation and Divorce: Social Science Applications*, in PARENTING PLAN EVALUATIONS, *supra* note 41, at 49; Richard A. Warshak, *Parenting by the Clock: The Best Interests of the Child Standard, Judicial Discretion, and the American Law Institute's "Approximation Rule,"* 41 U. BALT. L. REV. 83 (2011).

⁴⁹ See, e.g., Benjamin D. Garber, *Security by Association? Mapping Attachment Theory Onto Family Law Practice*, 50 FAM. CT. REV. 467 (2012). See also Kelly, *supra* note 7.

⁵⁰ Warshak, *supra* note 48, at 97

⁵¹ See, e.g., Sanford L. Braver, *The Costs and Pitfalls of Individualizing Decisions and Incentivizing Conflict: A Comment on AFCC's Think Tank Report on Shared Parenting*, 52 FAM. CT. REV. 175, 178 (2014) (stating: "What policy will instead deincestivize conflict? One, for example, is eliminating the blanket opportunity for one parent to unilaterally veto shared custody.").

When considering the impact of parental conflict on the most beneficial parenting plans for children, it is important to recognize the heterogeneity of the dynamics of inter-parental conflict.⁵² The label *high conflict couple* implies that both parents actively engage in conflict. Although this is true in some cases, in other cases the label is a misnomer because one parent may be a victim of the other parent's rage or attempts to marginalize the parent's role in raising the child.⁵³ In some cases the amount, intensity, and type of conflict resembles the level and type of disagreements over child-rearing decisions that occur normally between married or cohabiting parents who have different opinions about what is best for the child.

Recommendations to Reduce Children's Exposure to Parental Conflict

Because of the consistency of findings that children are more likely to suffer worse outcomes when their parents use them as pawns or when they consistently witness their parents' frequent, intense, and ongoing conflict,⁵⁴ the Warshak consensus report recommended the following:⁵⁵

- When feasible, parents should be encouraged to create parenting plans through a collaborative, nonadversarial process, that increases the likelihood that both parents will be satisfied with the plan and can give it relatively unambivalent support.
- Interventions such as mediation and parenting coordination can help parents better manage conflict and reduce its negative impact on children.
- When considering the implications of conflict for custody dispositions, courts, operating under the best-interest standard, can hear evidence that goes beyond identifying the presence of conflict and sheds light on the dynamics of the conflict, the contributions of each party to it, and the quality of parenting.

⁵² See Joan B. Kelly, *Parents with Enduring Child Disputes: Multiple Pathways to Enduring Disputes*, 9 J. FAM. STUD. 37 (2003); Kelly, *supra* note 7.

⁵³ See, e.g., Michael E. Friedman, *The So-Called High-Conflict Couple: A Closer Look*, 32 AM. J. FAM. THERAPY 107 (2004); Kelly (2003) *supra* note 52; Kelly, *supra* note 48; Joan B. Kelly & Robert E. Emery, *Children's Adjustment Following Divorce: Risk and Resilience Perspectives*, 52 FAM. CT. REV. 352, 353 (2003) (noting: "[I]t is not uncommon to find one enraged or defiant parent and a second parent who no longer harbors anger, has emotionally disengaged, and attempts to avoid or mute conflict that involves the child."); Warshak, *supra* note 36, at 70.

⁵⁴ See generally HETHERINGTON & KELLY, *supra* note 1); Kelly, *supra* note 48, at 59. See also Richard A. Warshak, *Ten Parental Alienation Fallacies That Compromise Decisions in Court and in Therapy*, 46 PROF. PSYCHOL.: RES. & PRAC. 235, 241-243 (2015); Richard A. Warshak, *Parental Alienation: Overview, Management, Intervention, and Practice Tips*, 28 J. AM. ACAD. MATRIM. LAW. 181 (2015).

⁵⁵ Warshak et al., *supra* note 11, at 57.

- Where tension and conflict accompany transfers of children from one home to the other, rather than reduce children's time with one parent as a response to concerns about parental conflict, consideration should be given to conducting transfers at neutral sites where both parents are not present at the same time.⁵⁶ For instance, the children can be dropped off at daycare by one parent and picked up by the other. This protects children from exposure to parental conflict.
- To the extent that conflict is generated by a father who opposes the mother's efforts to marginalize his participation in raising the young child, efforts should be made to educate the mother about the benefits to children of parenting plans that give more opportunities for the development and strengthening of father-child relationships and that keep fathers more involved.
- Both parents should be encouraged to understand the emotional difficulty that can attend being apart from a young child for extended time periods, difficulty that is multiplied when a parent's employment keeps him or her away from the child for most of the weekdays. Parents should be encouraged to provide regular feedback to each other about the young child's routines, behavior, and health, and to the extent possible assuage each other's concerns about the child's development when in the care of the other parent.

INTERNATIONAL EXPERT CONSENSUS RECOMMENDATIONS⁵⁷

The endorsers of the parenting plans consensus report, all accomplished researchers or practitioners, agree that the current state of the scientific literature supports the following conclusions and recommendations. This statement should provide strong direction for policy guidelines and decision-making.

1. Just as we encourage parents in intact families to share care of their children, we believe that the social science evidence on the development of healthy parent-child relationships, and the long-term benefits of healthy parent-child relationships, supports the view that shared parenting should be the norm for parenting plans for children of all ages, including very young children. We recognize that some parents and situations are unsuitable for shared parenting, such as those mentioned in point #7 below.
2. Young children's interests benefit when two adequate parents follow a parenting plan that provides their children with balanced

⁵⁶ Mary Main, Erik Hesse & Siegfried Hesse, *Attachment Theory and Research: Overview with Suggested Applications to Child Custody*, 49 FAM. CT. REV. 426, 447 (2011).

⁵⁷ Warshak et al., *supra* note 11, at 58-60.

and meaningful contact with each parent while avoiding a template that calls for a specific division of time imposed on all families.

3. In general the results of the studies reviewed in this document are favorable to parenting plans that more evenly balance young children's time between two homes. Child developmental theory and data show that babies normally form attachments to both parents and that a parent's absence for long periods of time jeopardizes the security of these attachments. Evidence regarding the amount of parenting time in intact families and regarding the impact of daycare demonstrates that spending half time with infants and toddlers is more than sufficient to support children's needs. Thus, to maximize children's chances of having good and secure relationships with each parent, we encourage both parents to maximize the time they spend with their children. Parents have no reason to worry if they share parenting time up to 50/50 when this is compatible with the logistics of each parent's schedule.
4. Research on children's overnights with fathers favors allowing children under four to be cared for at night by each parent rather than spending every night in the same home. We find the theoretical and practical considerations favoring overnights for most young children to be more compelling than concerns that overnights might jeopardize children's development. Practical considerations are relevant to consider when tailoring a parenting plan for young children to the circumstances of the parents.

Overnights create potential benefits related to the logistics of sharing parenting time. Parents of young children are more likely than parents of older children to be at an early stage in their career or employment at which they have less flexibility and control over their work schedules. Parenting schedules that offer the father and child 2-hr blocks of time together, two or three times per week, can unduly stress their contacts. Overnights help to reduce the tension associated with rushing to return the child, and thus potentially improve the quality and satisfaction of the contact both for the parent and child. Overnights allow the child to settle in to the father's home, which would be more familiar to the child who regularly spends the night in the home compared with one who has only one-hour segments in the home (allowing for transportation and preparation for the return trip). Spending the night allows the father to participate in a wider range of bonding activities, such as engaging in bedtime rituals and comforting the child in the event of nighttime awakenings. An additional advantage of overnights is that in the morning the father can return the child to the daycare; this avoids exposing the child to tensions associated with the parents' direct contact with each other.

Nonetheless, because of the relatively few studies currently available, the limitations of these studies, and the predominance of

results that indicate no direct benefit or drawback for overnights per se outside the context of other factors, we stop short of concluding that the current state of evidence supports a blanket policy or legal presumption regarding overnights. Because of the well-documented vulnerability of father-child relationships among never-married and divorced parents, and the studies that identify overnights as a protective factor associated with increased father commitment to child rearing and reduced incidence of father drop-out, and because no study demonstrates any net risk of overnights, decision makers should recognize that depriving young children of overnights with their fathers could compromise the quality of their developing relationship.

5. Parenting plans that provide children with contact no more than six days per month with a parent, and require the children to wait more than a week between contacts, tax the parent-child relationships. This type of limited access schedule risks compromising the foundation of the parent-child bond. It deprives children of the type of relationship and contact that most children want with both parents. The research supports the growing trend of statutory law and case law that encourages maximizing children's time with both parents. This may be even more important for young children in order to lay a strong foundation for their relationships with their fathers and to foster security in those relationships.
6. There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers. Maintaining children's attachment relationships with each parent is an important consideration when developing parenting plans. The likelihood of maintaining these relationships is maximized by reducing the lengths of separations between children and each parent and by providing adequate parenting time for each parent. Such arrangements allow each parent to learn about the child's individual needs and to hone parenting skills most appropriate for each developmental period. The optimal frequency and duration of children's time with each parent will differ among children, depending on several factors such as their age and their parents' circumstances, motivations, and abilities to care for the children. Other important considerations include children's unique relationship histories with each parent and their experience of each parent's care and involvement. In each case where it is desirable to foster the parent-child relationship, the parenting plan needs to be sensitive to the child's needs, titrating the frequency, duration, and structure of contact.
7. Our recommendations apply in normal circumstances, for most children with most parents. The fact that some parents are negligent, abusive, or grossly deficient in their parenting—parents

whose children would need protection from them even in intact families—should not be used to deprive the majority of children who were being raised by two loving parents from continuing to have that care after their parents separate.

AFTERMATH OF THE CONSENSUS REPORT

The list of endorsers and their stature and accomplishments reflect the field's general acceptance of the consensus report's findings as rooted in settled science from more than four decades of research directly relevant to this topic, including seminal studies by many of the endorsers. This research "provides a growing and sophisticated fund of knowledge about the needs of young children, the circumstances that best promote their optimal development, and the individual differences among children regarding their adaptability to different circumstances, stress, and change."⁵⁸ The endorsements reflect agreement that the report's conclusions and recommendations are well grounded, generally accepted in the field, and expressed in measured language that is useful to decision makers.

Recent Studies

After the Warshak consensus report was published, two new studies lent additional weight to the report's conclusions. Reanalyzing the data set used by Tornello et al., Sokol examined the correlation between the absolute number of overnights with father and the incidence of insecure attachments to mother. In her preliminary findings, Sokol found no correlation and concluded that overnights with father do not harm the mother-child relationship.⁵⁹

Fabricius reported long-term benefits to college students who, in the first three years of life, spent overnights with their fathers after their parents separated.⁶⁰ These teenage and young adult children felt more important to their fathers than

⁵⁸ Warshak et al., *supra* note 11, at 46.

⁵⁹ Karina Sokol, Short-term Correlates of Overnight Parenting Time for Infants: The Current Literature and Re-analyses. Address at the Association of Family and Conciliation Courts Annual Conference (May 31, 2014). Sokol's study was presented at a professional conference and the results have not yet appeared in a peer-reviewed journal article. In using the absolute number of overnights, rather than categories of overnight frequency, Sokol avoided potential problems in Tornello et al.'s methodology which grouped together infants who spent one overnight per week with their fathers with those who lived primarily with their fathers (up to five nights per week). Tornello's group analyses apparently obscured differences in mother-custody versus father-custody families that affect the results. Note that the composition of the sample and the problems with the attachment measure reported by Tornello et al. (discussed *supra* text accompanying notes 17, 29, and 34) equally limit the conclusions that can be drawn from Sokol's study and its relevance to most separating parents.

⁶⁰ William Fabricius, New Findings on Relocation and Infant Overnights. Address at the Association of Family and Conciliation Courts-Texas Chapter Annual Conference (Jan. 23, 2015). Although Fabricius presented this study at two professional conferences, because data is still being collected, the results should be considered preliminary until they appear in a peer-reviewed journal article.

did those who had been deprived of overnights early in their lives. They had better relationships with their fathers at no cost to the quality of their relationships with their mothers. On the other hand, having fewer overnights with fathers during infancy was associated with more long-term harm to the father-child relationship. Also, there were no indications of any long-term stress-related health problems related to overnight parenting time for infants with their fathers.⁶¹ The study concluded: “[I]nfant behaviors that have caused the concern about overnight parenting time are either temporary, or they do not signal the long-term effects that were feared.”⁶² And, “Of much greater concern is the substantial detriment to the long-term father-child relationship associated with lack of overnight parenting time with fathers. . . .”⁶³ Overall the study concluded, “We see long-term risks to the father-child relationship in the absence of overnight parenting time during the first 3 years, but only benefits to both parents with the presence of overnight parenting time.”⁶⁴ And, “Maximizing parenting time protects children from harm to the father-child relationship, from harm to the mother-child relationship, and from harm due to parent conflict.”⁶⁵

Reactions to the Consensus Report

In addition to the 110 researchers and practitioners behind the consensus report, prominent social scientists, such as Joan Kelly, cited the report favorably in their presentations and literature reviews.⁶⁶ The paper has been translated into at least eighteen languages and has informed legislative deliberations throughout the U.S. and parliamentary deliberations in several countries including the United Kingdom, Canada, Israel, Finland, Romania, Croatia, and Sweden. Two years after its publication the consensus report continues to be one of the most downloaded papers from the journal’s website.

Michael Lamb summarized his understanding of the relevant literature in statements fully consistent with the conclusions reached by Warshak and the

⁶¹ Responding to concerns raised by results reported by McIntosh et al., *supra* note 12 and by Tomello et al., *supra* note 13 Fabricius states, *supra* note 60, at 50, “The infant wheezing, and early communication bids to the mother [3-question visual monitoring scale], and self-reports by the mother of her infants’ attachment behaviors toward her are apparently not deserving of too much concern.”

⁶² Fabricius, *supra* note 60, at 50.

⁶³ *Id.*, at 50.

⁶⁴ *Id.*, at 52.

⁶⁵ *Id.*, at 58.

⁶⁶ Joan B. Kelly, *supra* note 7, at 11 (referring to the consensus report’s “in-depth analysis of 16 shared parenting studies.”) Dr. Kelly, a prominent authority on divorce, also coauthored an earlier article on overnights with McIntosh. It is noteworthy that Kelly’s analysis of the literature, *supra*, at 9, agreed with Warshak et al., *supra* note 11, on the important issue of whether young children develop an attachment hierarchy in which mothers are predominant: “Consistent with other recent studies, there was no support for the primacy of the mother as an attachment figure in predicting future outcomes. Nor was there support for the belief that infants and toddlers have a gender bias in attachment formation or develop an attachment hierarchy in which mothers are consistently preferred.”

endorsers of the consensus report: “When both parents have established significant attachments and both have been actively involved in the child’s care, research suggests that overnight visits will consolidate attachments and child adjustment, not work against them.”⁶⁷ “Children whose parents were both highly involved before separation benefit from continued involvement with both parents. That involvement should include overnight contact with nonresident parents when there is a pre-separation history of involvement.”⁶⁸

It was anticipated that some colleagues would disagree with the consensus report opinions and recommendations. But in the two years since its publication, no article, including those by McIntosh et al., has explicitly identified any errors in the report or disputed any of its conclusions and recommendations. Confronted with the critiques of their studies, one might expect researchers either to show where the consensus report and other scholars’ critiques are mistaken or to modify their previous interpretations of their data and communicate their amended conclusions to colleagues and the general public.

McIntosh et al. have not yet acknowledged or addressed concerns about three of the four measures in their study. But after the consensus report was published, they conceded in one article that their 3-item visual monitoring scale has “relatively low” reliability and is a “weak link” in their study.⁶⁹ Otherwise, Smyth and McIntosh have ignored the critiques that their measures were untrustworthy.

To date, McIntosh et al. have not acknowledged that: 1) the results that raised their concern about overnights and young children’s ability to regulate stress rest on a flimsy foundation and do not stand up to scrutiny, 2) the substandard measures used in their study do not support trustworthy conclusions, and 3) the infants with frequent overnights looked no worse than those with no overnights. Instead, McIntosh et al. have continued to report that the infants in their study with weekly overnights had “higher levels of emotionally dysregulated behaviors”⁷⁰ and showed “a greater cluster of stress regulation problems compared with infants with fewer overnight stays,” and that “regardless of the context of their parents’ separation, more frequent overnight stays might be more challenging for emotional regulation processes in young children under 4 years of age than for children aged 4 years and over.”⁷¹ These continued assertions of McIntosh et al. are the equivalent of reporting an object’s weight on a broken scale whose readout cannot be trusted, while concealing the fact that the scale is faulty.

In response to the consensus report and other critiques, McIntosh et al. have tried to bolster confidence in the “veracity and reliability” of their study’s findings, by repeatedly claiming that other studies, such as the one by Tornello et al., replicated their study.⁷² This is incorrect. Tornello et al. used different

⁶⁷ Lamb, *supra* note 33, at 180.

⁶⁸ *Id.*, at 192.

⁶⁹ McIntosh et al., *supra* note 26, at 116.

⁷⁰ Smyth et al., *supra* note 21, at 153.

⁷¹ McIntosh et al., *supra* note 26, at 113.

⁷² McIntosh et al., *supra* note 26, at 113 (“One standard approach to assessing the veracity and reliability of findings is in their replication. Recently, Tornello and

measures with a different population in their study. Further, as previously noted, Sokol's preliminary analysis of the data in Tornello et al. found no correlation between overnights and insecure attachments in infants.⁷³ However, McIntosh et al., in a significant concession, noted that their findings "do not substantiate cautions against *any* overnight care in healthy family circumstances."⁷⁴ This acknowledgment is another sign that the consensus report is achieving its primary goal of stemming the tide of misinformation.

Pruett (who coauthored a 2014 article with McIntosh on overnights) et al. issued a statement very similar to that of McIntosh and her coauthors. Pruett et al. (2016) wrote that "results from these studies do not substantiate cautions against *any* overnight care or overnight care for *all* children during the first 3 years." They added, "Overall it is clear that these studies do not tell us enough to make policy recommendations against overnights; they leave us only with cautions about what to study in order to know more about how these types of transitions affect children in different situations differently."⁷⁵

Despite these general statements, Pruett and McIntosh, writing with Kelly in 2014, nonetheless concluded that sufficient basis exists for certain cautions about overnights, noting that "the small group of relevant studies to date substantiates caution about high frequency overnight time schedules in the 0-3 year period, particularly when the child's security with a parent is unformed, *or parents cannot agree on how to share care of the child*."⁷⁶ But at the outset of their article, under the heading "Key Points for the Family Court Community," the authors narrow the criteria for cautions against high frequency overnights:

Cautions against overnight care during the first three years are not supported. The limited available research substantiates some caution about higher frequency overnight schedules with young children, particularly when the child's relationship with a second

colleagues conducted an investigation similar to ours, using a large U.S. sample of children. They replicated many of the Australian findings. Specifically, they found: . . . (b) 'frequent infant overnights were significantly related to attachment insecurity assessed at age 3'. . . " (citations omitted)). Yet McIntosh et al., *id.*, at 112, state clearly that their study did not measure attachment ("Our study, however, was not a study of attachment." And, "We did not, and could not examine attachment, simply because attachment data were not part of the longitudinal dataset we employed, namely the Longitudinal Study of Australian Children.") See also Smyth et al., *supra* note 21, at 153 (referring to findings from McIntosh et al., *supra* note 12, and Tornello et al., *supra* note 13, as "replicated findings for infants" thus repeating the error of identifying outcomes from the two studies as "replicated findings" when in fact they are not.).

⁷³ Sokol, *supra* note 59.

⁷⁴ McIntosh et al., *supra* note 26, at 118.

⁷⁵ Pruett et al., *supra* note 29, at 97.

⁷⁶ Marsha Kline Pruett, Jennifer E. McIntosh, and Joan B. Kelly, *Parental Separation and Overnight Care of Young Children, Part I: Consensus Through Theoretical and Empirical Integration*, 52 FAM. CT. REV. 240, 250 (2014).

parent has not been established and/or parents are in frequent conflict to which the child is exposed.⁷⁷

The last six words of the above statement make a significant difference. In practice, a blanket policy that cautions against overnights for a young child whose parents do not agree on custody discourages courts from ordering shared parenting and overnights in litigated cases. By contrast, a policy that discourages overnights only if the child is exposed to frequent conflict, means that courts need to consider the impact of conflict on the child, a practice recommended by the Warshak consensus report.⁷⁸ Because of the significant difference in the two statements by Pruett, McIntosh, and Kelly about conflict and overnights, it is not clear which position the authors intended to guide “the family court community.”

Perhaps the difference between the two recommendations in the same article reflects differences among the three coauthors. In her previous and subsequent work, Kelly argued against reducing the child’s time with the father or reducing the father’s caregiving for the child at bedtime, when the child awakes during the night, and in the morning. Instead Kelly promoted other solutions that reduce the child’s exposure to conflict.⁷⁹

By contrast, McIntosh offers on her website a chart and profile (CODIT) to guide parents and professionals making overnight decisions.⁸⁰ Although not intended for use as a diagnostic instrument or as the sole basis for decisions this document asserts, “Even when all parenting conditions are met, high numbers of overnights (more than weekly) are not generally indicated for young infants 0-18 months subject to family law disputes.”⁸¹ This guideline sets up a rebuttable presumption against more than one overnight per week for children younger than 18 months even with parents who consistently and sensitively meet the children’s needs.

⁷⁷ *Id.* at 240, emphasis added.

⁷⁸ Warshak et al., *supra* note 11, at 57.

⁷⁹ See, e.g., Kelly, *supra* note 7, at 15 (stating: “Rather than restricting appropriate father-child relationships, other interventions and remedies designed to reduce high conflict should be universally available and provided soon after separation.”). For a similar view see Nicole E. Mahrer, Irwin N. Sandler, Sharlene A. Wolchik, Emily B. Winslow, John A. Moran, & David Weinstock, *How Do Parenting Time and Interparental Conflict Affect the Relations of Quality of Parenting and Child Well-Being Following Divorce?*, in PARENTING PLAN EVALUATIONS (2ND ED.), *supra* note 21, at 63, 70 (2016) who, based on their understanding of the literature and on Sandler, Wheeler, & Braver’s study, *supra* note 46, state that “although high quality parenting does not negate the pathological effects of interparental conflict on children’s well-being, high quality parenting by either parent can be a protective factor when parents have moderate or greater levels of contact.” Mahrer et al. conclude, *supra* at 63, “Recommendations should not decrement parenting time of parents with good quality relationships or the potential for good quality relationships with their children because of a high level of interpersonal conflict between the parents.”

⁸⁰ This tool is called “Charting Overnight Decisions for Infants and Toddlers (CODIT)” and is available at <http://childrenbeyonddispute.com/resources-for-parents/>.

⁸¹ *Id.*, at 4.

Although lacking a scientific foundation, this presumption in practice would give most mothers the power to deprive children of more than one overnight a week with their fathers for the first one-and-a-half years. To frustrate the father's desire to have a larger role in bedtime rituals and morning routines the mother need only register an objection, thus creating a custody dispute. The mother's preference prevails even if her motives are vindictive, even if her objection is capricious, and even if the father demonstrates superior parenting.

The CODIT includes subjective rating scales with no known reliability or validity. For instance, child adjustment is rated using criteria such as "excessive clinging on separation," "frequent crying," "aggressive behavior," and "low persistence in play & learning" with no anchors to distinguish between troubling behavior within normal limits and atypical behavior. Including such factors in a tool to guide overnight decisions reflects an assumption that troubling behaviors in an infant or toddler that persist more than two weeks are associated with—and can be eliminated by—restricting one parent's overnight contact with the child. The CODIT includes multiple factors that allow gatekeeping parents to use this tool to restrict their children's overnights with the other parent.

Two years after their coauthored article Pruett came out in favor of a position more in line with her previous coauthor Kelly. Writing without McIntosh, but with five other coauthors, Pruett significantly amended her statement about parental conflict:

The small group of relevant studies to date substantiates caution about *high-frequency* overnight time schedules in the 0- to 3-year period when the child's relationship with a parent is not established (e.g., parents never lived together and nonresidential parent spent little to no time with the baby), or when parents cannot agree on how to share care of the child *and their conflict interferes with the child's care*.⁸² (second emphasis added).

These six authors are among the scholars who agree with the consensus report's conclusion that the mere presence of conflict between parents over how to share care of their child (i.e., a dispute over custody) is not a sufficient reason to be cautious about overnights. Instead, decision makers should attend to the nexus between the expressions of conflict and their impact on the child.

Misunderstandings of the Consensus Report

Pruett et al. (2016) hold the same position as the Warshak consensus report about the importance of the coparenting relationship when considering decisions about shared parenting. Yet Pruett et al. left the appearance of disagreement when they mistakenly reported:

Warshak (2014) argues that children benefit from a more evenly balanced amount of time between parents, and that this should be

⁸² Pruett et al., *supra* note 29, at 97

protected regardless of the co-parenting dynamic, since reducing one parent's time in the face of conflict favors the parent with more access as that parent can perpetuate conflict as an excuse not to share parenting. This may be true, but it ignores the needs of the infant or toddler from a child-centric perspective, if the shared parenting results in the child's consistent exposure to conflict.⁸³

The consensus report offered no such generalization or rationale for shared parenting. And as explained earlier, because a blanket policy prioritizes parents' desires over children's needs, such a policy of reducing a child's time with a parent when the parents are in conflict is hardly "child-centric."⁸⁴ A blanket policy provides an incentive to a parent to escalate and involve children in conflict if the parent believes that initiating and sustaining conflict is a path to winning sole physical custody.⁸⁵ In many cases there are better ways to protect a child from consistent exposure to conflict than to disproportionately deprive the child of important time with a parent.⁸⁶

Contrary to Pruett et al.'s (2016) assertion, the consensus report explicitly identified coparenting dynamics as one among several factors to consider in reaching a custody decision, a position that Warshak has consistently held in his publications during the past twenty-five years.⁸⁷ Naturally, shared parenting and overnighting are not for all families. On this point the consensus report is clear:

Some circumstances depart significantly from the norm and do not lend themselves to the same general recommendations that apply to the majority of parenting plan decisions. These circumstances include a history of intimate partner violence, a history or credible risk of neglect, physical abuse, sexual abuse, or psychological abuse toward a child, manifestations of restrictive gatekeeping such as persistent and unwarranted interference with parenting

⁸³ Pruett et al., *supra* note 29, at 96.

⁸⁴ *Supra* text accompanying notes 46-51.

⁸⁵ Braver, *supra* note 51, at 178.

⁸⁶ See, e.g., Kelly, *supra* note 7, at 15 (stating: "Rather than restricting appropriate father-child relationships, other interventions and remedies designed to reduce high conflict should be universally available and provided soon after separation."). Also see *supra* text accompanying note 55.

⁸⁷ See, e.g., Warshak, *supra* note 48 (supporting a multi-factored best-interest standard). See also, Warshak, *Parental Alienation*, *supra* note 54, at 218-222 (describing the rationale for courts to find it in children's best interests to reduce their time with a parent who denigrates the other parent to the child, encourages the child to reject the other parent, interferes with the court-ordering parenting plan, and in other ways acts as a restrictive gatekeeper). This position is consistent with Pruett's position on gatekeeping: William G. Austin, Linda Fieldstone, & Marsha Kline Pruett, *Bench Book for Assessing Parental Gatekeeping in Parenting Disputes: Understanding the Dynamics of Gate Closing and Opening for the Best Interests of Children*, 10 J. CHILD CUSTODY 1, 12 (2013) ("Limiting time with the parent exerting unjustified RG [restrictive gatekeeping] may be a consideration, especially when all else fails.).

time (Austin, Fieldstone, & Pruett, 2013; Pruett, Arthur, & Ebling, 2007; Pruett et al., 2012; Warshak et al., 2003), a history of child abduction, a child's special needs (e.g., cystic fibrosis or autism), and a significant geographical separation between the parents.⁸⁸

Note that in stressing the importance of coparenting dynamics, the consensus report cited three of Pruett's articles. The report unambiguously and repeatedly acknowledged the importance of the coparenting relationship and specifically recommended that courts not only identify the presence of conflict, but also consider evidence that "sheds light on the *dynamics of the conflict*, the contributions of each party to it, and the quality of parenting."⁸⁹ And, "our recommendations apply to children who have a relationship with both parents. If a child has a relationship with one parent and no prior relationship with the other parent, or a peripheral, at best, relationship, different plans will serve the goal of building the relationship versus strengthening and maintaining an existing relationship."⁹⁰

Pruett et al. (2016) also misunderstood why the consensus report opposed a blanket policy of allowing one parent to veto joint physical custody merely by claiming a conflicted relationship with the other parent. The consensus report's opposition to such a policy has nothing to do with a concern that it rewards the parent who has more contact with the children. The consensus report proposed that conflict between parents does not automatically eliminate the possibility that children can benefit from shared parenting. Warshak and the endorers of the consensus report favor a policy that protects children by reducing a parent's motivation to initiate, sustain, and escalate conflict. Again, this has nothing to do with favoring one parent over the other. Indeed, there is no reason to assume that such a policy would favor the parent who perpetuates conflict. By statute a majority of states instruct courts to consider coparenting behavior (using various labels for the concept) as one factor in determining the custody arrangement that serves the children's best interests. The parent who perpetuates conflict may find that such behavior, rather than reducing the other parent's time with the children, has the opposite outcome.⁹¹ Braver and his colleagues found that the public favors a policy that would reduce parenting time for the parent who is identified as the primary instigator of conflict.⁹²

⁸⁸ Warshak et al., *supra* note 11, at 58.

⁸⁹ *Id.*, at 57, emphasis added.

⁹⁰ *Id.*, at 60. The importance of a preexisting parent-child relationship when crafting a parenting plan than includes overnights is generally recognized in the literature. See, e.g., Ludolph & Dale, *supra* note 36, at 33: "In regard to overnights in particular, there are no compelling empirical or theoretical reasons to believe that overnight parenting time in itself will create difficulties for a young child who has experienced a meaningful relationship with the noncustodial parent before the parental separation."

⁹¹ See, e.g., Austin et al., *supra* note 87, at 12.

⁹² Sanford L. Braver, Ira M. Ellman, Ashley M. Votruba, & William V. Fabricius, *Lay Judgments About Child Custody After Divorce*, 17 PSYCHOL., PUB. POL'Y. & L. 212 (2011). See also Braver, *supra* note 51, at 178 (noting that such a policy would decrease

Instead of a blanket policy that denies children the potential benefits of shared parenting, the consensus report offers recommendations to protect children from consistent exposure to conflict.⁹³ These recommendations are applicable in situations where parents share overnights and in situations where children live predominantly with one parent and see the other parent less frequently (e.g., a schedule of every other weekend and mid-week contacts with or without overnights).

Pruett et al. (2016) leave the impression that they dissent from the consensus report on the important role of the coparenting relationship and the importance of the child's prior relationship with a parent when in fact their position reiterates the consensus view. Indeed, Pruett et al.'s seven "points of consensus" echo the conclusions of the consensus report published two years earlier.⁹⁴

MEANING AND VALUE OF THE CONSENSUS REPORT ENDORSEMENTS

McIntosh et al. tried to diminish and distract from the meaning and value of the 110 endorsements of the consensus report. McIntosh et al. asserted that the accomplished scholars and practitioners who endorsed the consensus report put their reputations and integrity on the line by signing a document based solely on "sentiment" and not science, and that the endorsers did not necessarily agree with the evidence for the conclusions and recommendations that they endorsed.⁹⁵ This is incorrect.⁹⁶ The endorsers received and read the whole paper. As would be

incentive to promote conflict and instead "would make it worthwhile for the angry parent to bury the hatchet.").

⁹³ See *supra* text accompanying note 55.

⁹⁴ Pruett et al., *supra* note 29, at 97.

⁹⁵ McIntosh et al., *supra* note 26, at 111 and 117.

⁹⁶ See *supra* text accompanying notes 55 and 57, for the full text of the consensus report's conclusions and recommendations. Note that these consensus opinions include multiple references to the evidence discussed in the report and to the accuracy and validity of the literature review that preceded the section titled "Conclusions and Recommendations." Following are some excerpts of such references in the statement endorsed by the 110 researchers and practitioners (all emphases added to highlight references to the research and to the evidence): "Research allays such concerns. . . . The research reviewed earlier on parenting time in intact families shows Combined with the daycare studies, this research should put to rest the idea that children are inevitably harmed by extended separations from their mothers. . . . The results of the 16 studies relevant to parenting plans generally support rather than oppose shared parenting and overnights for young children. But predominantly the studies show little direct impact of overnights in the short run. The three studies that often are cited as evidence for the harmful effects of greater father involvement with young children actually found mixed or ambiguous results perhaps because the measures used were inadequate by scientific standards. . . . The research on children being raised by parents who live apart from each other, in the larger context of scientific knowledge about the factors that foster optimal child development and the formation and maintenance of healthy parent-child relationships, offers guidelines that should inform decision makers and those who assist them, such as parents, mediators, child custody experts, lawyers, and judges." (p. 58)

expected, none would have endorsed the paper if they agreed with the conclusions but disagreed with the evidence that supported the conclusions. In fact, the conclusions referred explicitly and extensively to the evidence reviewed and analyzed in the preceding sections. Rather than enumerate the significant contributions of the endorers to our base of scientific knowledge, the reader is encouraged to note the names of the scholars and their credentials listed at the end of the consensus report. The qualifications of the endorers to vet the literature reviews and analyses and to judge the conclusions and recommendations that flow from those analyses are beyond dispute.

Some have questioned the value of publishing a paper with scientists' endorsements. But such papers are not unprecedented. An example is the 1997 article co-signed by eighteen experts that clarified implications of social science evidence for custody arrangements.⁹⁷ Similarly, the Warshak consensus report clarifies the social science relevant to parenting plans for young children.

Having the paper reviewed by the endorers of the Warshak report brought two advantages. The first was the benefit of feedback and vetting from this group on the consensus report's analysis of the bodies of literature on attachment, daycare, parenting plans, and divorce. The endorers included prominent international authorities in attachment, principal investigators for the celebrated NICHD Study of Early Child Care and Youth Development, and leading researchers who have studied the impact of divorce since the mid-1970s. The second advantage was that the stature of the signatories—with their outstanding

And, "To the extent that policy and custody decisions seek to express scientific knowledge about child development, the analyses in this article should receive significant weight by legislators and decision makers. . . . [W]e believe that the social science evidence on the development of healthy parent-child relationships, and the long-term benefits of healthy parent-child relationships, supports the view that shared parenting should be the norm for parenting plans for children of all ages, including very young children. . . . In general the results of the studies reviewed in this document are favorable to parenting plans that more evenly balance young children's time between two homes. Child developmental theory and data show that babies normally form attachments to both parents and that a parent's absence for long periods of time jeopardizes the security of these attachments. Evidence regarding the amount of parenting time in intact families and regarding the impact of daycare demonstrates that spending half time with infants and toddlers is more than sufficient to support children's needs. Thus, to maximize children's chances of having a good and secure relationship with each parent, we encourage both parents to maximize the time they spend with their children. . . . Research on children's overnights with fathers favors allowing children under four to be cared for at night by each parent rather than spending every night in the same home." (p. 59) And, "The research supports the growing trend of statutory law and case law that encourages maximizing children's time with both parents. This may be even more important for young children in order to lay a strong foundation for their relationships with their fathers and to foster security in those relationships. . . . There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers. . . . Rather it is our conviction that our analyses meet the test of scientific validity and reliability, and thus are trustworthy in the legal sphere. (p. 60).

⁹⁷ Lamb et al., *supra* note 2.

careers as social scientists—brings attention to decision makers for the report's conclusions and recommendations.

In sum, the consensus report does not maintain that its conclusions are scientific merely because 110 well-qualified researchers and practitioners endorse the conclusions—science is not settled at the ballot box. Rather, the consensus report reflects that the endorsers, based on their understanding of the literature and on their professional experiences, accept the report's research-based conclusions.

CONCLUSION

Warshak, with the review and endorsement of 110 researchers and practitioners, analyzed more than four decades of research and issued a peer-reviewed consensus report on parenting plans for young children.⁹⁸ As intended, the report stemmed a tide of misinformation that was threatening to resurrect long-discarded myths about child development and enshrine them in professional practice and family law. The list of endorsers and their professional accomplishments reflect the widespread acceptance of the consensus report's findings that favor shared parenting and overnighting for young children under normal circumstances. Two years after its publication, the conclusions and recommendations of the Warshak consensus report remain supported by science.

⁹⁸ Warshak et al., *supra* note 11.

