

Developing Beneficial Parenting Plan Models for Children Following Separation and Divorce

By
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Introduction

With the dramatic rise in the divorce rate in the 1960's, courts were increasingly called upon to settle disputes regarding living arrangements for children following their parents' separation and divorce. Courts drew upon cultural and societal views of fathering and parent-child relationships at that time, and visiting arrangements emerged that delegated mothers, with rare exception, as the primary caretakers, and fathers as "visitors" in children's lives.¹ This maternal preference reflected society's view that fathers were not particularly important in the development of children's overall social, intellectual, and emotional well-being, a view reinforced by Freudian psychoanalytic theory, which dominated the training and thinking of mental health professionals for decades.² Early studies of children's attachment processes also focused exclusively on mothers and infants, and the field of child development had not yet studied the father's influence and role in children's overall development.

Child development and divorce research of the past twenty-five years provides ample evidence that the traditional alternating weekend visiting pattern failed to meet the psychosocial and emotional needs of many separated children in both the short and longer-term. These empirical findings have shaped the emergence of appropriate and beneficial parenting plan options, which consider children's developmental and psychological needs, and provide alternatives for parents, courts, and professionals to consider as they decide upon the shape of children's

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¹ Joan B. Kelly, *The Determination of Child Custody*, 4 FUTURE OF CHILD.: CHILD. & DIVORCE 121, 122 (1994).

² *Id.*

future relationships with each of their parents. This article highlights this accumulating body of social science research relevant to this new development. In Part I, the overall post-divorce risks for children of divorce are summarized, and problems with traditional visiting patterns are described. Part II focuses more specifically on empirical research that is relevant to developing appropriate parenting plans for children, including attachment formation, daycare, and overnights; the views of children and adolescents about contacts with their fathers; the relationship between children's adjustment and father involvement; and the impact of conflict. In Part III, different types of co-parental relationship after divorce are described and Part IV summarizes the rationale for developing parenting plan models that offer multiple access options to parents for professionals and courts to consider, and which are more likely to meet the diverse developmental and psychological needs of children and families.

I. Adjustment of Children in Divorced and Married Families

A. Empirical Research Regarding Post-Divorce Risk

A large body of empirical research provides ample evidence that separation and divorce increase the risk for social and emotional adjustment and academic achievement problems in children and adolescents, when compared with children from continuously married families.³ Whereas 10% of children in married families have serious psychological and social problems, between 20-25% of children in divorced families have similar problems, as measured on multiple objective tests.⁴ Researchers have identified various factors that are associated with increased risk; in particular, the stress engendered by the separation and

³ Paul R. Amato, *The Consequences of Divorce for Adults and Children*, 62 J. MARRIAGE & FAM. 1269 (2000); E. Mavis Hetherington, *Should We Stay Together for the Sake of the Children?*, in *COPING WITH DIVORCE, SINGLE PARENTING, AND REMARRIAGE: A RISK AND RESILIENCY PERSPECTIVE* 93, 95 (E. Mavis Hetherington ed., 1999); Joan B. Kelly & Robert E. Emery, *Children's Adjustment Following Divorce: Risk and Resilience Perspectives*, 52 FAM. REL. 352, 355 (2003).

⁴ E. Mavis Hetherington & John Kelly, *FOR BETTER OR FOR WORSE: DIVORCE RECONSIDERED* (2002).

divorce process; continuing high levels of parental conflict; diminished parenting following separation and divorce; loss of important relationships; remarriage and repartnering; and reduced economic opportunities.⁵ With the continuing refinement and replication of these findings, a parallel search for protective factors reducing risk has been ongoing.⁶ A number of studies have pointed to the extent of involvement of the nonresident parent post-separation and divorce as a potential protective factor for children.⁷ Since visitation guidelines have historically determined parental access and involvement, the need to address the limitations of traditional access schedules became evident.

B. *Problems with Traditional Visiting Patterns and Guidelines*

For reasons not entirely clear, the specific visiting pattern of every other weekend with the nonresident parent, usually the father, became the favored and traditional arrangement for children following separation. This alternating weekend pattern may have gained favor because it was easy to apply, requiring no judicial or psychological analysis. It simply divided the child's leisure time during the school year between parents, assigning divorced mothers all the work of raising children, including discipline, homework, and childcare, and typically excluding fathers from these normal parenting responsibilities and opportunities. In the 1980's, as the courts gradually adopted best interests standards as a basis for determining custody and access arrangements following separation, the primary caretaker guideline, with every other weekend visits with the nonresident parent, became the accepted definition of children's "best interests," in formal and informal visiting guidelines in most jurisdictions in the United States and elsewhere.⁸

Such guidelines are inherently flawed because of the one-size-fits-all standard, and because they do not, in fact, address the

⁵ Kelly & Emery, *supra* note 3, at 352-355.

⁶ *Id.* at 356.

⁷ Paul R. Amato & Joan G. Gilbreth, *Nonresident Fathers and Children's Well-being: A Meta-Analysis*, 61 J. MARRIAGE & FAM. 557 (1999); Kelly & Emery, *supra* note 3, at 356, 357.

⁸ Kelly, *supra* note 1, at 128 (King County, WA "By 3, an overnight or weekend"; Mohave County, AZ: "Alternate weekends, one additional afternoon/weekend per month".)

best interests of many children.⁹ They failed to consider children's ages, gender, and developmental needs and achievements, the history and quality of the child's relationship with each parent, quality of parenting, and family situations requiring special attention.¹⁰ Rigid and mindless adherence to such prescriptive guidelines most often resulted in those children with a warm and supportive relationship with their nonresidential fathers restricted to seeing their fathers only four out of each twenty-eight days, because of the default use of the guidelines, the same amount of time as for children with a self-absorbed, disinterested, or emotionally abusive father.¹¹ Children accustomed to interacting with a parent on a daily basis were suddenly required, as a sole result of the parents' separation, to wait twelve days before seeing that parent for forty-eight hours, and then wait, yet again, another twelve days for the next forty-eight hour contact. This protracted separation from a loved parent caused great anguish and confusion for many children, particularly for the youngest children, with poor memory and sense of time, limited or no language skills, and no cognitive capacity to understand why this abrupt decrease in their contact with the object of their affection occurred.¹² While older children had the capacity to understand the visiting schedule, intense dissatisfaction, upset, longing and feelings of deprivation, and in some cases, depression and anxiety about their changed circumstances was common.¹³ Early clinical research also documented many fathers' intense dissatisfaction, pain, and anger with the sudden and arbitrary limitations on their paternal role.¹⁴

⁹ Joan B. Kelly, *The Best Interests of the Child: A Concept in Search of Meaning*, 35 *FAM. & CONCILIATION CTS. REV.* 377, 380 (1997).

¹⁰ Kelly, *supra* note 1, at 130.

¹¹ Author clinical and research observations.

¹² JUDITH S. WALLERSTEIN & JOAN B. KELLY, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* 46-47, 55-64 (1980); 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, 304 (2000).

¹³ WALLERSTEIN & KELLY, *supra* note 12, at 57-64; Paul R. Amato, *Family Processes in One-Parent, Stepparent and Intact Families: The Child's Point of View*, 49 *J. MARRIAGE & FAM.* 327 (1987).

¹⁴ TERRY ARENDELL, *FATHERS AND DIVORCE* (1995); WALLERSTEIN & KELLY, *supra* note 12, at 123-28; James R. Dudley, *Noncustodial Fathers Speak*

It is remarkable that professionals in the field of mental health did not anticipate the devastating impact that this odd and restrictive schedule would have on children's emotional well-being and their future relationships with their visiting parents. It is even more striking that as divorce research convincingly demonstrated how inadequate and child-unfriendly such guidelines and rules were, they persisted with such tenacity, including to the present day. The Approximation Rule recently adopted by the American Law Institute,¹⁵ which is essentially a modern day guideline, is not an improvement on the traditional guidelines, because it, once again, does not consider the quality and meaning of children's relationship with each parent, the age and developmental needs of children, or the substantial changes in parental role and function necessarily precipitated by the separation of the parents.

II. Child Development and Divorce Research Relevant to Parenting Plans

A. *Traditional Views and Contemporary Research*

In the early 1970's, researchers in the child development field began to consider the role of the father in children's development,¹⁶ and commenced intensive study of attachment processes, parent-child relationships, and cognitive, social and emotional development continued thereafter with both mothers

About Their Parental Role, 34 FAM. & CONCILIATION CTS. REV. 410 (1996); Edward Kruk, *Psychological and Structural Factors Contributing to the Disengagement of Noncustodial Fathers After Divorce*, 30 FAM. CT. REV. 81 (1992).

¹⁵ AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 2.08(1)(2002) (stating that "the court should allocate custodial responsibility so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caregiving functions prior to the parents' separation or, if the parents never lived together, before the filing of the action"). See also Elizabeth S. Scott, *Pluralism, Parental Preference, and Child Custody*, 80 CAL. L. REV. 615, 617 (1992) (proposing the approximation rule).

¹⁶ For reviews, see Michael E. Lamb, *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* (Michael E. Lamb ed., 3rd ed. 1997); Ross A. Thompson, *Early Sociopersonality Development*, in 3 *HANDBOOK OF CHILD DEVELOPMENT PSYCHOLOGY: SOCIAL, EMOTIONAL, AND PERSONALITY DEVELOPMENT* 25 (William Damon & Nancy Eisenberg eds., 5th ed. 1998).

and fathers. These studies, combined with day care and separation and divorce research have contributed to the evolution of more appropriate parenting plans for children.¹⁷ Initially, in the 1950's, psychiatrist John Bowlby speculated that infants formed a single relationship, before all others, which remained preeminent, a notion which was never supported empirically. This theory guided clinicians, judges, and custody evaluators for decades in their belief that continuity in the mother-child relationship was more important to preserve than continuity in the father-child relationship, and little thought was given to the psychosocial and economic advantages of maintaining meaning in both relationships in the long-term for children when fathers provided appropriate and nurturing care as well.¹⁸

Research on father-infant attachment processes provided ample evidence that most infants form attachments to both parents at approximately the same age, between six and seven months, even though fathers typically spend less time with their infants than do mothers.¹⁹ As these attachments consolidate during the next eighteen months, children are at risk if parents separate and attachment relationships are weakened or disrupted as a result of infrequent contact and prolonged separation. Even if children "prefer" their primary caretaker at this age, a preference which often disappears by eighteen months, the infant-fa-

¹⁷ See, e.g., JOHN BOWLBY, *A SECURE BASE: PARENT-CHILD ATTACHMENT AND HEALTHY HUMAN DEVELOPMENT* (1988); Hetherington, *supra* note 3, at 103; Michael E. Lamb, *Non-custodial Fathers and Their Impact on the Children of Divorce*, in *THE POST-DIVORCE FAMILY: CHILDREN, PARENTING, AND SOCIETY* 105 (Ross A. Thompson & Paul R. Amato eds., 1999); Michael E. Lamb, *Nonparental Childcare: Context, Quality, Correlates, and Consequences*, in *4 HANDBOOK OF CHILD DEVELOPMENT: CHILD PSYCHOLOGY IN PRACTICE* 73 (William Damon, et al. eds., 5th ed., 1998); Michael E. Lamb, Kathleen J. Sternberg & Ross A. Thompson, *The Effects of Divorce and Custody Arrangements on Children's Behavior, Development, and Adjustment* in *PARENTING AND CHILD DEVELOPMENT IN "NONTRADITIONAL" FAMILIES* 125 (Michael E. Lamb, ed., 1999); Sarah S. McLanahan, *Father Absence and the Welfare of Children*, in Hetherington, 1999, *supra* note 3, at 117-118; Ross A. Thompson & Deborah J. Liable, *Noncustodial Parents* in *PARENTING AND CHILD DEVELOPMENT IN "NONTRADITIONAL" FAMILIES* 103 (Michael E. Lamb ed., 1999).

¹⁸ Kelly, *supra* note 9 at 381.

¹⁹ Michael E. Lamb, *The Development of Father-Infant Relationships*, in *THE ROLE OF THE FATHER IN CHILD DEVELOPMENT* 104-120, 332-342 (Michael E. Lamb ed., 3rd ed. 1997).

ther attachment is still psychologically meaningful to the child.²⁰ Because of immature memory and poor sense of time, very young children with interested and adequate fathers benefit from multiple contacts with nonresident parents during each week to sustain and consolidate the deepening attachment, and to minimize separation anxiety, just as do mothers. This is important because the loss of important attachment relationships in childhood has been found to cause a profound sense of loss and anxiety among young children and an increased risk of severe depression in later life.²¹

One of the more sharply contested issues in custody and access disputes has been whether infants can tolerate overnights away from their primary caretakers, usually mothers, to spend night or weekend time with their fathers.²² Various writers and researchers cautioned that any overnight time away from mothers before age three²³ or age four²⁴ is harmful to the mother-infant attachment, and therefore strongly recommended against overnights with fathers. No empirical support has sustained these recommendations, including the research of psychologists Judith Solomon and Carol George,²⁵ but the prohibitions against overnights for young children with their fathers, who are

²⁰ See 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, 306 (2000) (discussing Judith Solomon & Carol George, *The Development of Attachment in Separated and Divorced Families: Effects of Overnight Visitation, Parent, and Couple Variables*, 1 ATTACHMENT & HUM. DEV. 2 (1999).

²¹ *Id.* at 303-305.

²² Marsha K. Pruett, *Applications of Attachment Theory and Child Development Research to Young Children's Overnights in Separated and Divorced Families*, in *OVERNIGHTS AND YOUNG CHILDREN: ESSAYS FROM THE FAMILY COURT REVIEW*, 5-12 (2005).

²³ WILLIAM F. HODGES, *INTERVENTIONS FOR CHILDREN OF DIVORCE: CUSTODY, ACCESS, AND PSYCHOTHERAPY* (1991).

²⁴ Judith Solomon & Zeynep Biringen, *Another Look at the Developmental Research: Commentary on Kelly and Lamb's 'Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children'*, 39 FAM. CT. REV. 355, 361 (2001).

²⁵ Richard A. Warshak, *Blanket Restrictions: Overnight Contacts Between Parents and Young Children*, 38 FAM. & CONCILIATION CTS. REV. 422 (2000) (cataloguing research that supports continued post-divorce involvement with both parents).

not strangers but a second important attachment figure, remain central in popular thinking, custody evaluation recommendations, and judicial decision-making.²⁶

More recently, empirical longitudinal research reported that no detriment to children from birth to three years is associated with overnights with fathers.²⁷ Mothers and fathers of those children who had overnights reported fewer social and attention problems in their children, and less withdrawn behavior among girls, compared to those without overnights. Among children from age four to six, overnights were associated with significantly fewer psychological adjustment problems, when compared to those without overnights. Consistency of schedule was a most important predictor of good adjustment, as children with inconsistent schedules were reported by mothers and fathers to have more social problems and internalizing symptoms.

Daycare research also indicates that young children can successfully sleep apart from their primary attachment figures, and when non-parent daycare is adequate, brief regular separations from mothers do not foster insecure infant-mother attachments.²⁸ One could assume that this would be true as well when young children spend short but regular time periods with fathers who provide adequate care.

Although evidence exists of gender differences in the parenting of fathers and mothers (for example, fathers play with their young children proportionately more than do mothers; physical care giving is a larger component of mother-infant interactions, compared to fathers), parents are more similar in interacting with their young children than different, and both parents make significant contributions to their children's social and cognitive development and their emotional well-being through their nurturance, interest, and approval.²⁹ Ample evidence abounds that children in both two- and single-parent families appear bet-

²⁶ Author experience as family law judicial trainer and presenter at national and international divorce conferences.

²⁷ Marsha K. Pruett, et al., *Critical Aspects of Parenting Plans for Young Children: Interjecting Data into the Debate About Overnights*, 42 FAM. CT. REV. 39, 53-56 (2004), (study excluded families with a history of domestic violence.)

²⁸ NICHD Early Child Care Research Network, *The Effects of Infant Child Care on Infant-Mother Attachment Security: Results of the NICHD Study of Early Child Care*, 68 CHILD DEV. 860 (1997).

²⁹ Lamb, *supra* note 16.

ter adjusted in multiple dimensions when both parents are involved in warm and supportive relationships with their children.³⁰

Decades of divorce research investigating children's reactions and adjustment to their parents' separation and divorce has provided an increasingly reliable and rich source of information for shaping developmentally and psychologically appropriate parenting plans. Children's views of access, as children and later as young adults, paternal involvement and child adjustment, impact of high conflict, sole versus joint physical custody, and the nature of the co-parental relationship are among the research relevant for consideration.

B. Children's Views about Access and Father Involvement

Over three decades, children have routinely reported the loss of one parent as the most negative aspect of divorce, and with the passage of time, have described their fathers as increasingly peripheral to their lives: no longer involved in discipline, or providing emotional support, more like an uncle or distant relative.³¹ Father-child relationships weaken and deteriorate over time as a result of limited time with each other, as well as gradual paternal withdrawal, continued anger and co-parental conflict, and moves to new locations.³² Based on early research, statutes appeared in the 1980's stressing children's needs for frequent and continuing contact with their nonresidential parent,³³ however,

³⁰ ROBERT E. EMERY, MARRIAGE, DIVORCE, AND CHILDREN'S ADJUSTMENT (2d ed. 1999); Amato & Gilbreth, *supra* note 7, at 557-573; Hetherington, *supra* note 3, at 95-104; Joan B. Kelly, *Children's Adjustment in Conflicted Marriage and Divorce: A Decade Review of Research*, 39 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 963 (2000); Lamb, *supra* note 16; McLanahan, *supra* note 17; Ronald L. Simons, et al., *Explaining the Higher Incidence of Adjustment Problems Among Children of Divorce Compared with Those in Two-Parent Families*, 61 J. MARRIAGE & FAM. 1020 (1999).

³¹ WALLERSTEIN & KELLY, *supra* note 12, at 242-250; Amato, *supra* note 13, at 327.

³² E. MAVIS HETHERINGTON & JOHN KELLY, *supra* note 4; WALLERSTEIN & KELLY, *supra* note 12, at 236-63; Constance R. Ahrons & Jennifer L. Tanner, *Adult Children and Their Fathers: Relationship Changes Twenty Years After Parental Divorce*, 52 FAM. REL. 340 (2003); Joan B. Kelly & Michael E. Lamb, *Developmental Issues in Relocation Cases Involving Young Children: When, Whether, and How?* 17 J. FAM. PSYCHOL. 193 (2003).

³³ Kelly, *supra* note 1, at 131.

alternating weekend visitation remained the standard pattern in most jurisdictions.

In more recent studies, approximately half of children state a desire for more contact with their fathers, about half think the amount of current contact is just about right, and one-third want the contacts to be longer. Two percent wanted less contact, typically when fathers were difficult, angry, or disinterested.³⁴ Retrospective studies of adolescent and young adult views regarding what type of parenting plans they would have liked when they were younger indicate that between one-third³⁵ and one-half³⁶ of these seasoned divorced youngsters wanted equal time with both parents, or at least a substantial number of overnights with the nonresident parent.

Few children and adolescents are adequately informed or invited to ask questions about the many changes initiated in their lives by the parental separation.³⁷ The majority want the opportunity to provide input to parents or others regarding their living arrangements, including the wish for some reasonable flexibility in schedules to accommodate their lives.³⁸ When input is permitted through talking directly with parents or in mediation-related child interviews, child and adolescent satisfaction with the pro-

³⁴ Anne B. Smith, et al., *Re-Thinking Children's Involvement in Decision-Making After Parental Separation*, 10 CHILDHOOD 201, 205 (2003); Anne B. Smith & Megan Gollop, *Children's Perspectives on Access Visits*, BUTTERWORTHS FAM. L.J. 259, 259-66 (2001).

³⁵ Smith, et al., *supra* note 34.

³⁶ William V. Fabricius & Jeff A. Hall, *Young Adults' Perspectives on Divorce: Living Arrangements*, 38 FAM. & CONCILIATION CTS. REV. 446 (2000); Lisa Laumann-Billings & Robert E. Emery, *Distress Among Young Adults from Divorced Families*, 14 J. FAM. PSYCHOL. 671 (2000); Patrick Parkinson et al., *Adolescents' Views on the Fairness of Parenting and Financial Arrangements After Separation*, 43 FAM. CT. REV. 429, 433 (2005).

³⁷ Judy Dunn, et al., *Family Lives and Friendships: The Perspectives of Children in Step-, Single-Parent, and Nonstep Families*, 15 J. FAM. PSYCHOL. 272 (2001).

³⁸ Joan B. Kelly, *Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice*, 10 VA. J. SOC. POL'Y & L. 129, 147-52 (2002); Kelly & Emery, *supra* note 3 at 353; Parkinson, *supra* note 36 at 434; Carol Smart & Bren Neale, *'It's My Life Too' – Children's Perspectives on Post-Divorce Parenting*, 30 FAM. L. 163 (2000); Smith, et al., *supra* note 34, at 207.

cess is high.³⁹ Adolescents are more likely to view their living arrangements as fair and more satisfactory when they have input, and when they can see the nonresidential parent whenever they desire.⁴⁰

C. Father Access and Children's Adjustment

Research assessing the extent of access and father involvement on children's adjustment following divorce gives ample evidence that when children of different ages have involved fathers, they are more likely to achieve better social and behavioral outcomes. With children from birth to six years, higher levels of paternal involvement were associated with better adaptive behavior skills, and for the four to six year olds, better communication and socialization skills, compared to those young children with less paternal involvement.⁴¹ School aged children with close relationships with their fathers, who had frequent contacts and actively involved fathers, had more positive adjustment and better academic performance than did those with less involved fathers.⁴² Active involvement included: help with homework and projects, appropriate expectations for their children, the use of authoritative discipline, and monitoring of adolescents' activities. Reduced father involvement has been linked to more conduct problems for boys; however, when both mothers and fathers were actively involved, and used authoritative discipline, including monitoring, adolescent boys from divorced families had no greater involvement in delinquency than did adolescents in married families.⁴³ To enable this amount and type of focused activity and parenting to occur, it seems apparent that children's contacts with their adequate and interested fathers should occur during some part of each school week, as well as on alternate weekends, resulting in, more time with their children than has been possible with the alternating weekend schedule.

³⁹ Kelly, *supra* note 38, at 162.

⁴⁰ Parkinson, *supra* note 36 at 434-435.

⁴¹ Marsha K. Pruett, et al., *Family and Legal Indicators of Child Adjustment to Divorce Among Families with Young Children*, 17 J. FAM. PSYCHOL. 169, 169-80 (2003).

⁴² Amato & Gilbreth, *supra* note 7, at 557.

⁴³ Hetherington, *supra* note 3 at 103-104; Simons, et al., *supra* note 30, at 1030.

More nonresident paternal involvement in their youngster's school was also found to be associated with fewer suspensions, better grades, and a more positive attitude toward school, compared to those whose fathers were less involved.⁴⁴ The probability of adolescents completing high school and entering college increased as fathers were more actively engaged and provided financial support, compared to either active engagement or providing support separately.⁴⁵

Among adolescents and college students, more frequent access is generally associated with more closeness in the parent-child relationship. Many studies indicate that young adults from divorced families are less affectionate with and have less trust in their fathers than those whose parents did not divorce.⁴⁶ However, with frequent access in the context of a good parent-teen relationship, distrust is diminished, and divorced and non-divorced young adults do not differ.⁴⁷ A second study found that with each incremental increase in access time that children and their fathers had in the prior decade, college students reported an associated increase in closeness with fathers.⁴⁸

Racial and ethnic differences exist in amount of contact and type of activity between fathers and their adolescents.⁴⁹ Overall, white adolescents had more overnight visits, contacts, and phone and letter contacts than did Black or Hispanic Adolescents, with Asians reporting the most contacts. White boys had more contact of all types with their fathers than did white girls, and boys in all groups reported being closer to their fathers than did girls. White fathers with high school education or less had the lowest levels of involvement; white fathers with the highest education were most involved, and most close to their adolescents, com-

⁴⁴ CHRISTINE WINQUIST NORD, ET AL., *FATHERS' INVOLVEMENT IN THEIR CHILDREN'S SCHOOLS* (1997).

⁴⁵ Chadwick L. Menning, *Absent Parents Are More than Money: The Joint Effects of Activities and Financial Support on Youths' Educational Attainment*, 23 J. FAM. ISSUES 648, 661-65 (2002).

⁴⁶ Paul R. Amato & Alan Booth, *A Prospective Study of Divorce and Parent-Child Relationships*, 58 J. MARRIAGE & FAM. 356, 364 (1996).

⁴⁷ Valarie King, *Parental Divorce and Interpersonal Trust in Adult Offspring*, 64 J. MARRIAGE & FAM. 642 (2002).

⁴⁸ Fabricius & Hall, *supra* note 36, at 446.

⁴⁹ Valarie King, et al. *Racial and Ethnic Diversity in Nonresident Father Involvement*, 66 J. MARRIAGE & FAM. 1 (2004).

pared to the other groups. Across groups, attending religious services and working on projects (but not playing sports) was strongly associated with adolescent well-being.

D. Joint Physical and Sole Physical Custody Arrangements

Meta-analysis of thirty-three studies found that children living in joint physical custody arrangements had better emotional, behavioral and general adjustment on multiple objective measures, and better academic achievement, when compared to children living in the sole physical custody of mothers.⁵⁰ In fact, children in joint physical custody did not differ in their adjustment from married family children. Joint physical custody, generally defined by researchers as between 33 - 50% time with one parent and the remainder with the other, maintained its benefits even after controlling for the greater amount of conflict between parents in the sole physical custody sample.⁵¹ Another study indicated fewer behavioral problems in children in shared physical custody, compared to those in sole physical custody, when controlling for other variables such as interparental aggression and mother-child relationship.⁵² The benefits of shared physical custody were reduced or suppressed by high levels of interparental aggression and child's feelings of sadness.⁵³ With respect to joint decision-making, parents with joint legal custody did not have more conflict, compared to those where one parent had sole legal custody, after controlling for twenty-eight pre-divorce factors.⁵⁴

Traditional visiting plans appear to result in less closeness in father-child relationships over time, and more pain, when compared to those plans which have expanded visitation or shared living arrangements. College students who had lived for ten

⁵⁰ Robert Bauserman, *Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review*, 16 J. FAM. PSYCHOL. 91, 95-99 (2002).

⁵¹ *Id.* at 97.

⁵² Mo-Yee Lee, *A Model of Children's Postdivorce Behavioral Adjustment in Maternal- and Dual-Residence Arrangements*, 23 J. FAM. ISSUES 672, 688 (2002).

⁵³ *Id.* at 688-693.

⁵⁴ 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).

years in sole physical custody arrangements were more likely to report painful childhood memories and experiences; feelings of loss and missing their fathers; wondering if their fathers loved them; and more often viewed their lives through a lens of divorce, compared to students in shared physical custody arrangements.⁵⁵ Ten percent of this sample lived in joint physical custody, and 90% of these young adults reported being satisfied with their shared arrangement.

E. *The Varied Impact of High Conflict*

The majority of parents reduce their conflict within the first two to three years following divorce, but 8–20% remain highly conflicted, depending on the study and measures used.⁵⁶ When parental conflict remained very intense, including violence at transitions, more frequent visits were associated with poorer adjustment, presumably because of increased opportunities for one or both parents to act out their hostilities during the transition.⁵⁷ High levels of anger and co-parental conflict, during separation and post-divorce, are also associated with less father involvement, fewer overnights, and more problems long-term in father-child relationships, compared to parents with lower levels of conflict.⁵⁸

The more recent trend to make transitions between households at neutral locations, for example, with drop offs and pick ups at the beginning or end of school or day care, has not been empirically studied. Based on considerable experience with this type of parenting plan in many jurisdictions, mediators (including this author), clinicians, and lawyers report reduced exposure to

⁵⁵ Laumann-Billings & Emery, *supra* note 36, at 671-687.

⁵⁶ ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* (Harvard University Press 1992); Hetherington, *supra* note 3, at 98; Valerie King & Holly E. Heard, *Non-resident Father Visitation, Parental Conflict, and Mother's Satisfaction: What's Best for Child Well-Being?*, 61 J. MARRIAGE & FAM. 385 (1999).

⁵⁷ Paul R. Amato & Sandra J. Rezac, *Contact with Residential Parents, Interparental Conflict, and Children's Behavior*, 15 J. FAM. ISSUES 191 (1994); Janet R. Johnston, *Research Update: Children's Adjustment in Sole Custody Compared to Joint Custody Families and Principles for Custody Decision Making*, 33 FAM. CONCILIATION CTS. REV. 415 (1995).

⁵⁸ Ahrons & Tanner, *supra* note 32, at 340; Pruett, et al., *supra* note 41, at 169-180.

conflict for children on a daily basis. In this respect, parenting plans that extend weekends to Monday morning and use mid-week overnights (assuming adequate parenting skills) rather than a brief visit, should be preferred and have been incorporated into many models of parenting plans. While low parental conflict is clearly a protective factor for children following separation and divorce, some conflict appears to be normative and acceptable to parents.⁵⁹

When intense conflict continues following separation, some studies report negative impact on children's adjustment,⁶⁰ but other research indicates that intense marital conflict is a more potent predictor of later adjustment than is post-divorce conflict.⁶¹ It is important to note that high levels of parental conflict following separation and divorce are not universally associated with more symptoms or problems for children and adolescents. Protective buffers have been identified that diminish the impact of conflict on children, including a good relationship with at least one caregiver or mentor, parental warmth, a supportive relationship with a sibling, and the ability of parents to encapsulate their conflict and not express their anger through their children.⁶² When parents do not put their children in the middle of their disputes, by asking them to carry hostile messages, for example, or denigrating the other parent, or expressing verbal or physical aggression in front of the child, youngsters with high conflict parents do not differ in depression and anxiety from those with low conflict parents.⁶³

This does not mean that high levels of parental conflict are not painful, however. Young adults who lived in a high conflict environment for ten years following divorce reported more pain-

⁵⁹ King & Heard, *supra* note 56.

⁶⁰ JANET R. JOHNSTON & VIVIENNE ROSEBY, *IN THE NAME OF THE CHILD: A DEVELOPMENTAL APPROACH TO UNDERSTANDING AND HELPING CHILDREN OF CONFLICT AND VIOLENT DIVORCE* (1997); Hetherington, *supra* note 3, at 101.

⁶¹ Alan Booth & Paul R. Amato, *Parental Predivorce Relations and Offspring Postdivorce Well-Being*, 63 J. MARRIAGE & FAM. 197, 206 (2001); Marsha Kline, et al., *The Long Shadow of Marital Conflict: A Model of Children's Postdivorce Adjustment*, 53 J. MARRIAGE & FAM. 297 (1991).

⁶² See Kelly & Emery, *supra* note 3, at 357.

⁶³ Christy M. Buchanan, et al., *Caught Between Parents: Adolescents' Experience in Divorced Homes*, 62 CHILD DEV. 1008 (1991).

ful memories, feelings of loss, and viewed their life more through the lens of divorce, compared to those whose parents had low or moderate conflict, but they did not differ on measures of depression or anxiety.⁶⁴

III. Co-Parental Relationships Following Divorce

Along the dimensions of conflict, cooperation, and communication following divorce, parents generally divide into three types of co-parental relationships. Approximately 25-30% of parents have a cooperative co-parental relationship, characterized by joint planning, flexibility of schedule, provision of some parenting support to each other, and coordination of children's activities and schedules. The majority, more than half, settle into parallel parenting in which emotional disengagement, low conflict, and minimal communication about their children predominate. While this is less optimal for children than cooperative co-parenting, children do thrive in these arrangements, particularly when the quality of parenting in each home is nurturing and adequate. The remaining parents, about 20%, have a continuing conflicted relationship, with poor communication and little if any cooperation.⁶⁵ Particularly with parents engaged in parallel and conflicted parenting, it is important to include specific language in parenting plans that indicates which child-related decisions will be jointly made, if any; what types of child-related information will be shared between parents; and what intervention processes, such as mediation, parenting coordination, or counseling, will be used if parents can not reach agreements on their own.

It is also worth noting that while some parents fully and mutually engage in angry behaviors and conflicted communications with each other for many years, there are parents who have emotionally disengaged from a still-angry ex-spouse and are not promoting or instigating the conflict.⁶⁶ These parents are reluctantly

⁶⁴ Laumann-Billings & Emery, *supra* note 36, at 676, 678-680.

⁶⁵ MACCOBY & MNOOKIN, *supra* note 56, at 233-237; Hetherington & Kelly, *supra* note 32 at 137-140.

⁶⁶ Michael Friedman, *The So-Called High-Conflict Couple: A Closer Look*, 32 AM. J. FAM. THERAPY 101 (2004); Joan B. Kelly, *Parents with Enduring Child Disputes: Multiple Pathways to Enduring Disputes*, 9 J. FAM. STUD. 37, 38 (2003).

drawn into court as a result of vengeful court filings, noncompliance with orders, and problems with visiting arrangements. The reflexive labeling of “high conflict couple” in such instances is inaccurate and unfair, and suggests that more attention be given to identifying the behaviors and the impact of these angry parents, who often have serious personality disorders and mental illness, and what specialized interventions are necessary to reduce such behaviors and attacks and protect the less angry parent and the children.⁶⁷

IV. Building Useful Parenting Plan Models

As empirical research on divorce converged into more reliable findings in the 1990’s, it became apparent that research-based models of parenting plans would improve decisions regarding children’s living arrangements by focusing on factors promoting resiliency and decreasing risk. Instead of one standard visiting pattern, a menu of different time-sharing options for children of different ages would encourage parents, professionals, and courts to consider children’s ages and developmental needs and achievements; the quality of parent-child relationships; parents’ interest in being involved with their children; and children’s voices and input. Mediation research also suggested that providing a range of possible time-share plans to parents would assist in settlement of custody and access disputes, as contrasted to a single option.⁶⁸ Such options range from various forms of shared physical custody, to expanded forms of visitation, to more traditional visiting formats involving limited access to accommodate the enormous variety of parent-child relationships and parenting capacities. They generally include highly detailed templates to guide and include parental choices with respect to legal decision-making and parental responsibilities for inclusion into final divorce agreements.

The newly developed AAML Model for a Parenting Plan represents an excellent example of time-sharing and parental responsibility options and choices which can assist family lawyers

⁶⁷ See JOHNSTON & ROSEBY, *supra* note 60, at 220; Kelly, *supra* note 66, at 39-40; Kelly, *supra* note 38, at 142-147.

⁶⁸ Raymond A. Whiting, *Family Disputes, Nonfamily Disputes, and Mediation Success*, 11 *MEDIATION Q.* 247 (1994).

in guiding parents and in drafting comprehensive, useful, and family-specific plans.⁶⁹ Most model parenting plans have been designed to be broadly informative and accessible for parents, some in the form of a workbook, so that parents could work together to settle or narrow the myriad child-related decisions that should be included in agreements, rather than litigate these issues. Several parenting plan models include highly readable research-based information about what situations and parental behaviors are known to harm and or benefit children, and encourage the use of mediation and other dispute resolution interventions when parents can not reach agreement. It is anticipated that more widespread familiarity and use of models for parenting plans will reduce parental conflict following separation, and promote the selection of appropriate parenting time-share schedules which address the needs of children and their parents.

⁶⁹ For other examples of parenting plan models, *see* Alaska Court System, Model Parenting Agreement, www.state.ak.us/courts/forms/dr-475.pdf; State Bar of Arizona, Model Parenting Time Plans—for Parent/Child Access, http://www.supreme.state.az.us/dr/Pdf/Parenting_Time_Plan_Final.pdf; Association of Family and Conciliation Courts, Planning for Shared Parenting, www.afccnet.org (follow “Resource Center” from menu; then follow “Resources for Parents”); jbkellyphd@mindspring.com (for research annotated schedules.)