



SHARED PARENTING AFTER SEPARATION AND DIVORCE

A REVIEW OF

LEGISLATIVE DEVELOPMENTS WORLDWIDE

NATIONAL MEN'S COUNCIL OF IRELAND MISSION STATEMENT

Our mission in the National Men's Council of Ireland is to seek, both through our own activities and through our involvement with the education of our future generation of parents, to play a proactive role in creating a culture of shared family responsibilities, enabling women and men equally to realise their optimum potential, both in their family lives and careers.

In recognition of the Irish Constitution, UN Convention on the Rights of the Child and the European Convention of Human Rights, the National Men's Council of Ireland aims to achieve Parity of Esteem for all members of the Family System.

In furtherance of this goal, the National Men's Council of Ireland undertake to support, promote, and encourage, with due respect for the freedom of the individual, increased participation for men as carers in the family system, and opportunities for women to open up their traditional domain as childcarers.

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THE FAMILY ARTICLE 41

1 1° The State recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.

2° The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State.

2 1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

3 1° The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

2° A Court designated by law may grant a dissolution of marriage where, but only where, it is satisfied that –

i at the date of the institution of the proceedings, the spouses have lived apart from one another for a period of, or periods amounting to, at least four years during the previous five years,

ii there is no reasonable prospect of a reconciliation between the spouses,

iii such provision as the Court considers proper having regard to the circumstances exists or will be made for the spouses, any children of either or both of them and any other person prescribed by law, and

iv any further conditions prescribed by law are complied with.

3° No person whose marriage has been dissolved under the civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this Constitution shall be capable of contracting a valid marriage within that jurisdiction during the lifetime of the other party to the marriage so dissolved.

ARTICLE 42 OF THE IRISH CONSTITUTION

1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

This article imposes an inescapable duty on each parent of a child without differentiation between gender, to provide for the religious and moral, intellectual, physical and social education of their children. This article clearly and without equivocation guarantees to respect this inalienable right and duty of parents. Therefore all parents and children have the right to expect that the government of the Irish State facilitate in a proactive, respectful and substantive manner, each and every parent in fulfilling what is an inalienable constitutional obligation to their children.

Commission on the Family “Strengthening Families for Life”

REPORT TO THE MINISTER FOR SOCIAL, COMMUNITY AND FAMILY AFFAIRS

Principles to Underpin a Family Policy

Principle No.3

Continuity and Stability are major requirements in family relationships

Continuity and stability in family relationships should be recognised as having a major value for individual well-being and social stability, especially as far as children are concerned.

Joint parenting should be encouraged with a view to ensuring as far as possible that children have the opportunity of developing close relationships with both parents – which is in the interests both of children and their parents.

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

ARTICLE 2

‘States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.’

ARTICLE 9, 1

‘States parties shall ensure that a child shall not be separated from his or her parents against their will, except where competent authorities subject to judicial review determine... that such separation is for the best interests of the child...’

ARTICLE 9.3.

‘States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child’s best interest...’

ARTICLE 18.1.

‘States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child...’

ARTICLE 18.2

For the purposes of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities.

EUROPEAN CONVENTION ON HUMAN RIGHTS

ARTICLE 5 OF THE PROTOCOL 7 OF THE EUROPEAN CONVENTION OF HUMAN RIGHTS, ADDED IN NOVEMBER 1984 – EQUALITY BETWEEN SPOUSES

Spouses shall enjoy equality of rights and responsibilities of a private law character between them, and in their relations with their children, as to marriage, during marriage and in the event of its dissolution.

ARTICLE 6 OF THE EU COUNCIL RECOMMENDATION 92/241/EEC OF 31/03/92 RECOMMENDS THAT “As regards responsibilities arising from the care and upbringing of children, it is recommended that Member states should promote and encourage, with due respect for the freedom of the individual, increased participation by men, in order to achieve a more equal sharing of parental responsibilities between men and women and to enable women to have a more effective role in the labour market.”

ARTICLE 8

- right to a fair and public hearing

ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

– freedom from discrimination in respect of the right to respect for family life

ARTICLES 12 & 13

– right to respect of privacy, honour, reputation and family life

ARTICLE 16

– parent’s right to have their children taught in line with religious and philosophical convictions to be respected

ARTICLE 22

– ban on discrimination based on sex, race, colour or ethnic or social origin, association with a national minority, property, birth, disability, age or sexual orientation. Promotion of equality between men and women.

ARTICLE 39

– right to reconcile family and professional life

A REVIEW OF LEGISLATIVE DEVELOPMENTS WORLDWIDE

INTRODUCTION

In accord with our Mission Statement, Connacht Branch of National Men's Council of Ireland are producing amongst other projects a series of research documents. We see this as vital background information necessary for policy makers to inform themselves of the issues raised for Parents and especially Children involved in Separation and Divorce.

This document gathers together a selection of papers from other Jurisdictions showing their approaches and legislative solutions to this problem that all western societies have in common. Of interest is how certain States in the USA, Canada and Sweden have arrived at the same conclusions that National Men's Council of Ireland have been promoting for the past seven years. USA , Canada, Australia and the UK have been experiencing the problems of devastated and dismembered families in a much more widespread and severe form for the past thirty years and we should both heed their trauma and see what mistakes they feel they made. By doing that and addressing the problems here in Ireland along similar lines, using their experiences and insights, we could and should be able to avoid twenty five years of pain and misery for our families in Ireland.

The term "shared parenting", refers to a post-separation and divorce parenting arrangement that attempts to approximate the parent-child relationships in the original two-parent home, in which both parents have not only equal rights and responsibilities for their children's welfare and upbringing but have an active role to play in the daily routines of their children's care and development, and in which each other remain salient attachment figures in their children's lives. As the living arrangement that most closely resembles the pre-separation and divorce family in cases where both parents had an active parenting role before separation and divorce, shared parenting encompasses both shared physical caretaking (the actual day-to-day care of children) and equal authority regarding children's education, medical care, and religious upbringing."

Kruk, Edward, Ph.D

"Although the dispute is symbolised by a 'versus' which signifies two adverse parties at opposite poles of a line, there is in fact a third party whose interests and rights make of the line a triangle. That person, the child who is not an official party to the lawsuit but whose well-being is in the eye of the controversy, has a right to shared parenting when both are equally suited to provide it. Inherent in the express public policy is a recognition of the child's right to equal access and opportunity with both parents, the right to be guided and nurtured by both parents, the right to have major decisions made by the application of both parents' wisdom, judgment and experience. The child does not forfeit these rights when the parents separation and divorce."

Presiding Judge Dorothy T. Beasley, Georgia Court of Appeals, "In the Interest of A.R.B., a Child," July 2, 1993

GOOD NEWS ABOUT SEPARATION AND DIVORCE

By Richard Morin, Sunday, January 25, 1998; Page C05

Here's one way to cut down the separation and divorce rate: Whenever practical, require separation and divorced parents to share custody of a child, rather than giving custody to just one parent, say Richard Kuhn of the Children's Rights Council and John Guidubaldi of Kent State University. Separation and divorce rates are plummeting in states where courts typically award custody of children to both parents, while states with policies that favour sole custody have significantly more separation and divorces involving couples who have children, according to Kuhn and Guidubaldi. The researchers found that states with higher levels of joint custody awards in 1989 and 1990 "have shown significantly greater declines in separation and divorces in the following years through 1995, compared with other states." Their conclusions are based on 19 states for which appropriate data were available, including Michigan and Pennsylvania, as well as Montana and Nebraska.

Overall, separation and divorce rates declined nearly four times faster in high-joint custody states, compared with states where joint custody is relatively rare. One big reason is that joint custody "removes the capacity for one spouse to hurt the other by denying participation in raising the children."

SHARED PARENTING is an egalitarian approach which allows each fit parent substantial time with the child. Because both parents remain involved, the children do not lose their relationship with either parent. This eliminates many "single parent" issues.

SHARED PARENTING makes sense now because the old model of a "stay-at-home mom" has been replaced by the 1990's reality that most kids have two parents who work, both before and after separation and divorce. Shared parenting after separation and divorce benefits mothers. By dividing the parental time commitment, shared parenting gives Mom time off to pursue her education, work late to advance in her career, or to enjoy some leisure. Moms with shared parenting are less stressed, and therefore better parents and workers. Shared parenting is the best solution for children after separation and divorce. Kids enjoy continued love and interaction with both parents, and the extended families of both parents, lessening the emotional trauma of separation and divorce. Kids in shared parenting spend more time with a parent and less time with a paid babysitter. Kids in shared parenting arrangements have egalitarian role models. Kids also benefit from geographic stability: because the separated and divorced parents do not move away, the children are more likely to remain in one school and to maintain their circle of friends. When neither parent is lost to a child, relationships with step parents are enhanced, because the step parent is not expected to take the place of a parent.

PRESUMPTIVE SHARED PARENTING LAWS: the basis for such laws is simple: divorcing parents may agree to any schedule of physical time with the children. But if the parents do not agree and if both are fit, the court will order 50-50 placement. National Men's Council of Ireland advocates this approach because it encourages both parents to take equal responsibility in raising the children. Can divorcing parents really work out shared parenting agreements? Yes, with education in co-parenting, and access to mediation services.

The following extract is taken from the background notes given by the District of Columbia in how Joint Custody was arrived at. There are numerous parallels to the development from a rural society to today where there has been a perhaps too-rapid absorption of mores from other cultures where the rural aspect has not had the same significance.

THE PATH TO JOINT CUSTODY IN COLUMBIA

Throughout most of our nation's history and in much of the world today, the law contained a strong or conclusive presumption that sole custody would be awarded to the father in the event of family dissolution. The early feminist meeting in Seneca Falls, New York in 1848, for example, included the fact that fathers automatically received custody as a principal complaint in its Declaration of Sentiments. Prior to the industrial revolution, most parents worked side-by-side with the children on the family farm or in the family trade. Children were nurtured and educated through almost continuous contact with both parents and child-rearing books through the 18th and mid-19th century emphasised the father's centrality in raising the children and preparing them for the adult world.

As the industrial revolution accelerated through the 19th century by pushing more fathers out of the family enterprise and into the factories, social theorists began to exalt rigid sex role separations with father as external wage earner and mother as home-bound nurturer. Still, the pendulum swung slowly and the pro-feminist philosopher John Stewart Mill observed that, while the idea was interesting, the public was insufficiently prepared to discuss mother custody. Continued industrialisation, coupled with the then perceived virtue of getting women out of the paid workforce in order to create jobs for returning servicemen at the end of World War I, culminated in a full-blown "cult of motherhood" and the establishment of the "tender-years doctrine" in most states.

The pendulum of public prejudice, having swung from one extreme to the other, then enforced automatic mother custody with the same rigidity as the earlier enforcement of automatic father custody. In the 1960's and 1970's, the pendulum began swinging toward a more centred position and most states abrogated the tender-years doctrine through statute or court decision as a violation of equal protection. Virtually all states began at least to give lip service to the principle that custody decisions should be made in accordance with the "best interests" of the children rather than by reference to the parents' gender. Although gender bias remained, all states acknowledged that either the mother or the father could "win" the battle for custody of the child.

While the law was advancing to the point of recognising that either mother or father could be the better parent, social science research confirmed that the best parent is both parents. Ten years ago, it was considered impolite to suggest that children of separation and divorce needed anything more than a custodian and a support check. The ongoing “custody revolution” described by Warshak grows out of social science research showing that separation and divorce does not diminish children’s need for both parents and that the insecurities generated by the separation and divorce itself increase the children’s need for assurance that they will not lose Mom or Dad. Increased sensitivity to children’s needs has led to a re-thinking of the court’s role in custody determinations.

Courts are most accustomed to adversarial presentations that are resolved by the selection of a winner and a loser. The system works well in commercial disputes. The court picks a winner and a loser, the loser is ordered to pay the winner, then the litigants move on to the next deal. The difference in domestic relations cases is that it is destructive to treat children as prizes to be awarded to a winner and denied to a loser.

The trend toward joint custody is premised on the understanding that most parents are simply ordinary people who love their children. The typical contested custody determination involves a choice between two parents who are both fit and eager to provide for the care of their children. Neither of these parents deserves to be a “winner.” Neither deserves to be a “loser.” In a society that does not suffer from an excess of parenting, courts and legislatures have increasingly come to realise that the important task is to encourage and preserve maximum two-parent involvement rather than pick a winner and a loser. Joint custody is a recognition that the child needs a substantial relationship with both parents and that both parents have important contributions to make to the child’s growth and development.

Under prior District of Columbia law, “close cases” were the most hard-fought, costly, and difficult to decide. As between two fit and loving parents, it is difficult to decide which is marginally “better” and there should be no need to try. The establishment of a rebuttable presumption in favour of joint custody is expected to reduce litigation, particularly in “close cases”, because neither parent stands to become the winner nor the loser. They can expect simply to remain as joint custodians.

SHARED PARENTING IS ADVOCATED BY FEMINISTS

like Karen DeCrow: President of National Organisation of Women (NOW) 1964-67

“Putting aside the foolish ego gratification of being invited (to the White House), I was pleased to present my long-held ideas on the subject of equal parenting. If we are to end the battle between the sexes—in a manner which will ensure fairness, decency and civility—we must address the issue of shared parenting. Of all the areas of life which cause strife between women and men, this one is the most contentious . . .” “If there is a separation and divorce in the family, I urge a presumption of joint custody of the children. Whereas it is impossible to change thousands of years of sex-role stereotyping through legislation, we can hope, in an existential fashion, that attitudes can be changed through education and the passage of laws.” “The Clinton administration has been dedicated to gender equality from the first moments of the campaign. Part of ending sexism involves eliminating the inhuman practice of awarding a parent ‘visitation’ to his or her own child.” “Shared parenting is not only fair to men and to children, it is the best option for women. After observing women’s rights and responsibilities for more than a quarter- century of feminist activism, I conclude that shared parenting is great for women, giving time and opportunity for female parents to pursue education, training, jobs, careers, professions and leisure.” excluding the men, and forever holding the women and children, as if in swaddling clothes themselves, in eternal loving bondage. Most of us have acknowledged that women can do everything the men can do. It is now time to acknowledge that men can do everything women can do.”

excerpted from Syracuse New Times, 1/5/94 article by Karen DeCrow

COUNTRIES AND US STATES WHERE

SHARED PARENTING IS THE LAW

OKLAHOMA

A presumptive parenting plan bill, HB1313 was passed overwhelmingly in the House and Senate in the last 24 hours of this years session. The Bill was signed into law by the Honourable Governor Frank Keating on May 28, 1999 and takes effect on November 1 of this year.

With simple language it requires judges to order as near equal parenting time as is possible in a temporary custody hearing if requested by either parent. Further, a sole custody requesting parent has to prove that joint custody would be detrimental to the child. This is the first step to making automatic sole custody a thing of the past. From trends in other states, when parents can no longer count on automatic custody and the other parents income the separation and divorce rate drops.....which is usually good for children. This law does the following:

- 1) It covers separation and divorce and out-of-wedlock births.
- 2) It requires judges to order equal parenting time at the request of either parent for temporary custody. This is important because most parents lose custody in the temporary hearing when one parent is made the CP and then the later custody hearing just reinforces the original decision. The race to the courthouse will be over.
- 3) Just as best interest of the child is undefined and hard to defend against a judges awarding sole custody, proving that a parent having custody will be detrimental to the child without conviction of abuse, neglect, etc. will be very difficult.
- 3) Once granted the right to parent in a temporary hearing it is up to either parent to retain or lose custody through their actions during the following several months. Single parenting is not easy and over the next several months both parents can adapt to sharing the responsibilities of raising their children. This last year in the Fallin case (Lt. Governor Mary Fallin) the mother argued for sole custody in the temporary hearing, but the judge after over 12 hours of testimony and worthless charges kicked both parents out of the home and gave them equal parenting time. We would like to think that news spots we did that day, our kids need both parents buttons being worn while packing the courtroom impacted the Fallin case. Now 12 months later both parties agreed to joint custody as they found it worked...no hoopla as the orders were signed in the Judge's chamber.
- 4) There is a provision that will reduce CS in shared custody situations to zero for basic CS if both parents earn the same, etc. even with the 1.5X multiplier because time is the key.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 110.1 of Title 43, reads as follows:

It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interests of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage. To effectuate this policy, if requested by a parent, the court shall provide substantially equal access to the minor children to both parents at a temporary order hearing, unless the court finds that such shared parenting would be detrimental to such child. The burden of proof that such shared parenting would be detrimental to such child shall be upon the parent requesting sole custody.

OKLAHOMA

NEW JERSEY

SENATE, No. 2073
STATE OF NEW JERSEY
208th LEGISLATURE
INTRODUCED SEPTEMBER 23, 1999
Sponsored by:
Senator ANTHONY R. BUCCO
District 25 (Morris)
Senator WALTER J. KAVANAUGH
District 16 (Morris and Somerset)

SYNOPSIS

Provides for presumption of joint physical custody and shared physical custody responsibility in child custody determinations; addresses relocation.

This bill would provide in child custody determinations for a presumption in favour of joint physical custody and shared physical custody responsibility if it is in the best interests of the child. "Shared physical custody responsibility" shall mean that the child shall reside equally with each parent for specified periods of time and that the parents shall share decision-making authority and responsibility as to the important decisions affecting the child's welfare.

The bill provides in subsection c. of section 2 that a court, in making a custody determination shall consider and evaluate certain delineated factors. The bill also provides that the court shall state on the record the reasons for the awarding of custody including enumerating which of the factors are applicable. The bill in section 3 provides that when joint physical custody and shared physical custody responsibility is ordered, the court may include a restriction prohibiting either parent from relocating if that relocation would unreasonably interfere with the relationship that the children have with the other parent.

No presumption shall arise in favour of or against the relocation request. In subsection d. of section 3 the bill sets forth other factors for the court's consideration in determining whether relocation will promote the best interests of the child.

The intent of the sponsor is to promote a public policy of ensuring that joint custody of a minor child is awarded to both parents to include provisions for shared residential arrangements so that the child reside with each parent in accordance with the needs of the child and the parent and to make provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare.

As introduced.

An Act concerning child custody and supplementing Title 2A of the New Jersey Statutes. Be It Enacted by the Senate and General Assembly of the State of New Jersey: 1.

The Legislature finds and declares that:

- a. It is the intent of the Legislature through the adoption of this act to promote the public policy of this State to endorse the principle that children have frequent and continuing physical time with their parents when the parents live separately or after parental separation or dissolution of marriage.
- b. This act provides that joint physical custody and shared physical custody responsibility is the preferred custody arrangement where it is in the best interests of the children of the parties. The preference for joint physical custody is not intended to otherwise disturb the primary caretaker doctrine but only to promote the best interests of the child, which is to have frequent contact with both parents.
- c. This act promotes the best interests of children by ensuring that both parents are able and available to spend time with their children.
- d. This act discourages children from being alienated or disenfranchised from their parents' lives by the geographical relocation away from either parent or through the interference of one parent.
- e. This act establishes clear legislative policy regarding interference with the relationship of children with their parents following separation or dissolution of marriage and promotes the interests of children and helps concerned parties understand the importance of access to both parents.

2. There shall be a presumption in court determinations of child custody that joint physical custody and shared physical custody responsibility shall be ordered if it is in the best interests of the child. Upon request of one or both parents for joint physical custody, the court shall so order unless it finds compelling reasons to not award joint physical custody. If joint physical custody is not ordered, the court's order shall include findings why joint physical custody is not in the best interests of the child. "Shared physical custody responsibility" as used in this act shall mean: a. that the child shall reside equally with each parent for specified periods of time. This does not mean that the child is required to reside with each parent for an equal amount of time during any given period; and b. that the parents shall share decision-making authority and responsibility as to the important decisions affecting the child's welfare. c. A court, in making a custody determination pursuant to this section and the provisions of N.J.S. 2A:34-23 shall consider and evaluate the following factors:

- (1) The love, affection and other emotional ties between the parents, other involved parties and child;
- (2) The capacity and disposition of the parents and other involved parties to give the child love, guidance and affection;
- (3) The capacity and disposition of the parents and other involved parties to continue the education and religious education of the child;
- (4) The capacity and disposition of the parents and other involved parties to provide food, clothing, medical care;

- (5) The length of time the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity;
- (6) The mental and physical health and moral fitness of the parents and other involved parties;
- (7) The home, school and community record of the child;
- (8) The preference of the child if the court considers the child of sufficient age or maturity to express a preference;
- (9) The willingness and ability of each of the parents to facilitate and encourage a close and continuing relationship between the child and the other parent;
- (10) Any other factors set forth in guidelines promulgated by the Supreme Court. d. The court shall state on the record the reasons for the awarding of custody pursuant to this section including enumerating which of the factors set forth in subsection c. of this section are applicable.

3. a. When joint physical custody and shared physical custody responsibility is ordered, the court may include a restriction prohibiting either parent from relocating if that relocation would unreasonably interfere with the relationship that the child has with the other parent, unless the relocating parent first obtains written consent of the other parent or a court order. No presumption shall arise in favour of or against the relocation request.

b. The relocating parent shall file and serve a notice of intent to relocate. If the other parent does not file and service notice of an objection to the relocation on the other parent within 20 days of receipt of notice, such failure to respond shall be evidence of consent and a court may approve the relocation based on the best interests of the child.

c. When contested, a court may approve a parent's request to relocate with the child if the court determines by written findings, after an evidentiary hearing for which notice has been provided to all concerned parties that the relocation will promote the best interests of the child in accordance with the considerations set forth in subsection

d. of this section. The relocating parent has the burden of proof at that evidentiary hearing. If uncontested, a court may approve such request upon written stipulation of the parties, without the requirement of a hearing. d. In determining whether relocation will promote the best interests of the child, the court shall consider the following:

- (1) Whether the child will lose substantial contact, joys and the rearing of the other parent if the relocation is approved;
- (2) Whether the relocation would improve the general quality of life for the child, giving due consideration to the disruption, if any, caused by the day to day relationship between the parent not relocating and the child;
- (3) Each parent's motive in seeking or opposing the relocation;

- (4) Whether the costs of transportation or revised access time is financially affordable by the parents;
- (5) Whether the relocation of either parent will cause undue burden on the parent;
- (6) Access to extend family support if needed;
- (7) Whether there has been any history of sexual or physical abuse; and
- (8) The impact on the parent requesting the relocation; and
- (9) The impact on the child including whether the relocation is harmful to health or well being of the child. e. Every court order approving a relocation request in accordance with this section shall include an access schedule consistent with the child's best interests.

4. This act shall take effect on the 30th day after enactment. STATEMENT

COLUMBIA

The District of Columbia's New "Joint Custody of Children Act":

On April 18 1999, the District of Columbia's new child custody statute became effective. The new statute is the first revision in the District's child custody statute in nearly twenty years and comes after a period of great national change in the handling of child custody determinations. When the District's law was last changed in 1977, joint custody was virtually unknown and the statute did not even acknowledge the existence of the concept.

Today, Richard Warshak, author of *The Custody Revolution*, and David L. Levy, author of *The Best Parent is Both Parents*, note that joint custody, also known as shared custody or shared parenting, has been established by statute or appellate case law in virtually every state. The District's new statute breaks a silence on joint custody that is apparently now maintained only by South Carolina and North Dakota. Although the District of Columbia comes late to the recognition of joint custody, advocates have seen a silver lining in that the delay permitted the District of Columbia City Council to sift through the merits of the many variations that have been enacted among the states. Where some states simply permit joint custody to be ordered, other states actively promote it. Where some states give little guidance regarding the factors to be considered by the courts, others have extensive and detailed listings. Where some states leave the sharing of parental responsibility to ad hoc determinations, other states provide detailed guidelines or require the submission of parenting plans by the litigants which articulate each parent's proposed responsibilities toward the child.

The approach adopted by the District begins with the proposition that children are born with, want, love and need two parents. Regardless of the social problem that is under consideration — teenage pregnancy, suicide, drug abuse, poor academic performance, juvenile delinquency, school drop-out or any of the other pathologies that plague today's youth — the uniform answer from researchers is that, on average, children with two actively involved parents fare better. As the American Psychological Association Division of School Psychology reported to the United States Commission on Child and Family Welfare:

"The research reviewed supports the conclusion that joint custody is associated with certain favourable outcomes for children including father involvement, best interests of the child for adjustment outcomes, child support, reduced relitigation costs, and sometimes reduced parental conflict.

In drafting the new joint custody statute for the District of Columbia, the central question debated by the Council was "who should have the burden of proof in a custody litigation?" Since children are in unrestricted joint custody unless and until a court order places restrictions upon the parents, the Council decided that the parent seeking sole custody and reduction of the other parent to visitor status should have the burden of overcoming a rebuttable presumption that joint custody was in the best interests of the child. The statute thus recognises that a custody order is a use of the court's injunctive power that places restrictions upon previously unrestricted parties. The new custody statute, like all other injunctive proceedings, now places the burden of proof on the party who seeks control (sole custodian of the child) and who seeks to restrict the other party (visitor to the child).

In addition to establishing the rebuttable presumption that joint custody is in the best interests of children, the new statute makes a series of other significant changes to custody practice in the District of Columbia. Among these are provisions relating to submission of parenting plans by the litigants, appointment of guardians ad litem or attorneys for the children, and procedures for modification of existing orders, all of which are described more fully in the section-by-section analysis below. In recognition of the facts that children's needs do not vary with the marital status of their parents and that there are constitutional barriers to discrimination against non-marital children, the statute applies to all custody cases "regardless of marital status."

The Path to Joint Custody

Throughout most of our nation's history and in much of the world today, the law contained a strong or conclusive presumption that sole custody would be awarded to the father in the event of family dissolution. The early feminist meeting in Seneca Falls, New York in 1848, for example, included the fact that fathers automatically received custody as a principal complaint in its Declaration of Sentiments. Prior to the industrial revolution, most parents worked side-by-side with the children on the family farm or in the family trade. Children were nurtured and educated through almost continuous contact with both parents and child-rearing books through the 18th and mid-19th century emphasised the father's centrality in raising the children and preparing them for the adult world. As the industrial revolution accelerated through the 19th century by pushing more fathers out of the family enterprise and into the factories, social theorists began to exalt rigid sex role separations with father as external wage earner and mother as home-bound nurturer. Still, the pendulum swung slowly and the pro-feminist philosopher John Stewart Mill observed that, while the idea was interesting, the public was insufficiently prepared to discuss mother custody. Continued industrialisation, coupled with the then perceived virtue of getting women out of the paid workforce in order to create jobs for returning servicemen at the end of World War I, culminated in a full-blown "cult of motherhood" and the establishment of the "tender-years doctrine" in most states. The pendulum of public prejudice, having swung from one extreme to the other, then enforced automatic mother custody with the same rigidity as the earlier enforcement of automatic father custody. In the 1960's and 1970's, the pendulum began swinging toward a more centred position and most states abrogated the tender-years doctrine through statute or court decision as a violation of equal protection. Virtually all states began at least to give lip service to the principle that custody decisions should be made in accordance with the "best interests" of the children rather than by reference to the parents' gender. Although gender bias remained, all states acknowledged that either the mother or the father could "win" the battle for custody of the child. While the law was advancing to the point of recognising that either mother or father could be the better parent, social science research confirmed that the best parent is both parents. Ten years ago, it was considered impolite to suggest that children of separation and divorce needed anything more than a custodian and a support check. The ongoing "custody revolution" described by Warshak grows out of social science research showing that separation and divorce does not diminish children's need for both parents and that the insecurities generated by the separation and divorce itself increase the children's need for assurance that they will not lose Mom or Dad. Increased

sensitivity to children's needs has led to a re-thinking of the court's role in custody determinations.

Courts are most accustomed to adversarial presentations that are resolved by the selection of a winner and a loser. The system works well in commercial disputes. The court picks a winner and a loser, the loser is ordered to pay the winner, then the litigants move on to the next deal. The difference in domestic relations cases is that it is destructive to treat children as prizes to be awarded to a winner and denied to a loser.

The trend toward joint custody is premised on the understanding that most parents are simply ordinary people who love their children. The typical contested custody determination involves a choice between two parents who are both fit and eager to provide for the care of their children. Neither of these parents deserves to be a "winner." Neither deserves to be a "loser." In a society that does not suffer from an excess of parenting, courts and legislatures have increasingly come to realise that the important task is to encourage and preserve maximum two-parent involvement rather than pick a winner and a loser. Joint custody is a recognition that the child needs a substantial relationship with both parents and that both parents have important contributions to make to the child's growth and development.

Under prior District of Columbia law, "close cases" were the most hard-fought, costly, and difficult to decide. As between two fit and loving parents, it is difficult to decide which is marginally "better" and there should be no need to try. The establishment of a rebuttable presumption in favour of joint custody is expected to reduce litigation, particularly in "close cases", because neither parent stands to become the winner nor the loser. They can expect simply to remain as joint custodians.

District of Columbia Legislative History

The late enactment of joint custody legislation in the District of Columbia was not caused by a lack of awareness regarding the issues among members of the City Council. John Ray, Frank Smith, and others on the Council were longtime supporters of joint custody. While Wilhelmina Rolark chaired the Judiciary Committee, however, no hearings were held and no action was taken on any joint custody proposal. When Rolark lost her bid for re-election, Jim Nathanson became chairman of the Judiciary Committee. Nathanson held the District's first hearings on proposed joint custody legislation but momentum was lost when Nathanson was defeated in his bid for re-election to the current Council session.

This Council session brought Bill Lightfoot to the Chairmanship of the Judiciary Committee. Joint custody legislation was introduced by Council Member Harold Brazil and Mr. Lightfoot scheduled hearings and committee mark-up sessions which led to the Committee's report of a joint custody bill to the full Council. On January 4, 1996, the full Council voted final approval of the joint custody legislation and the review process of the Financial Control Board and the U.S. Congress was begun. On April 18, 1996, the Congressional review period ended and the legislation became effective.

While individual Council members supported a variety of positions with respect to how best to implement joint custody in the District of Columbia, all thirteen members were

united in support for the enactment of joint custody legislation. Mrs. Cropp, although voting in the minority on the rebuttable presumption issue, nevertheless summed up the feelings of the Council with her statement that :

“To a great extent, we were saying a lot of the same things, but we were saying it differently. I believe that everyone on the dais believed strongly that there should be joint custody for the children. I don’t think that was an issue. The issue was how we arrive at, I guess, the definition of the joint custody or how that decision was to be made. But we all agreed that when you can have two parents for a child, that is better.”

Section by Section Analysis

Creation of the Rebuttable Presumption; Section 16-911(a)(5)

Under the prior legislation, a significant number of Superior Court judges had reached the conclusion that they were not empowered to order joint custody, absent parental agreement, because of the old statute’s silence with respect to joint custody. The new statute makes it clear that “the court may award joint or sole custody according to the best interests of the child.” With respect to the choice between joint or sole custody, the statute states that:

“There shall be a rebuttable presumption that joint custody is in the best interests of the child or children, except in instances where a judicial officer has found by a preponderance of the evidence that an intra-family offense....child abuse....child neglect....or parental kidnapping....has occurred.”

If any of the exceptions is present, there is a rebuttable presumption that joint custody is not in the best interests of the child.

In cases where one of the exceptions is not present, the parent seeking a sole custody/visitor relationship has the burden of overcoming the rebuttable presumption that shared custody is in the best interests of the child. In most states, the courts have understood joint custody to comprise two components: joint legal custody and joint physical custody. Joint legal custody means shared decision-making. Joint physical custody refers to the amount of time that the child is permitted to have with each parent.

Like most joint custody statutes around the nation, the District’s new law does not contain a precise definition of a “standard” joint custody order. The principal reason for the omission here and elsewhere is the inherent flexibility of joint custody arrangements. An arrangement which gives the child substantially equal time with both parents may, nevertheless, be structured in small or large time increments, during or out of school, before or after the children have reached school age, with parents who live close together or far apart, and with a host of other variables. Physical joint custody is thus an inherently flexible concept that is understood by courts to mean that the child will have substantial relationships with both parents. Physical joint custody is generally defined by what it is not: It is not the traditional visitation schedule.

The lack of a specific definition of joint physical custody in the new statute also reflects the fact that a definition has already been in effect and in use in the Superior Court since 1990

for purposes of implementing the child support schedule. Under D.C. Code ' 16-916.1(n), "Shared custody" means that time with the parent having the lesser share "exceeds 40% of the year." This definition, which is consistent with the practice in other states, indicates that the statute's rebuttable presumption for shared physical custody should result in an arrangement which allows the child to be with each parent somewhere between 40 and 60 percent of the time. Since this arrangement still allows the child's time with each parent to be increased from 40% to 60% or decreased from 60% to 40%, the court will want to pay particular attention to the parenting plans submitted by each parent pursuant to '16-911(a-2)(2).

Rebutting the Presumption;

Section 16-911(a-2)(6)(B)

The legislative debate regarding the availability of joint custody focused primarily on whether a "hostile parent veto" should be permitted. Essentially, the argument was that parties who did not agree to joint custody could not implement joint custody. Under prior practice in the Superior Court, some judges would refuse to order joint custody if one parent objected even though the other parent sought joint custody and joint custody was otherwise in the child's best interests. All of the Council members agreed that legislation was needed to eliminate the "hostile parent's veto" and the only question was how far to move away from this past practice. Chairman Clark proposed a small adjustment which would eliminate the veto but would permit a rebuttable presumption against joint custody if one parent objected. Chairman Clark's proposal drew only his own vote and an interim, sympathy vote from Council Member Thomas, who ultimately voted in favour of the pro-joint custody presumption which has now been enacted into law. To make the point clear, the statute states not only that there is a presumption in favour of joint custody but adds further in ' 16-911(a-2)(6)(B): "An objection by one parent to any custody arrangement shall not be the sole basis for refusing the entry of an order that the court determines is in the best interests of the minor child or children." Fashioning the Custody Decree; Section 16-911(a)(5)(A through Q).

The statute requires the court's consideration of all factors relevant to the best interests of the child including 17 enumerated factors:

- (A) the wishes of the child as to his or her custodian, where practicable;
- (B) the wishes of the child's parent or parents as to the child's custody;
- (C) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interests;
- (D) the child's adjustment to his or her home, school and community;

- (E) the mental and physical health of all individuals involved;
- (F) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare; (G) the willingness of the parents to share custody; (H) the prior involvement of each parent in the child's life;
- (I) the potential disruption of the child's social and school life;
- (J) The geographical proximity of the parental homes as this relates to the practical considerations of the child's or children's residential schedule;
- (K) the demands of parental employment;
- (L) The age and number of children;
- (M) the sincerity of each parent's request; (N) the parents' ability to financially support a custody arrangement;
- (O) the impact on Aid to Families with Dependent Children and medical assistance;
- (P) the benefit to the parents; and
- (Q) evidence of an intra-family offense as defined in section 16-1001(5).

The list is meant to be illustrative ("including, but not limited to") and establishes no particular weighting of the factors. Although the effort to be inclusive has resulted in some redundancy, most of the factors are self-explanatory. At the same time, several of these factors merit individual comment:

(H) The Prior Involvement of Each Parent in the Child's Life

In every household, there is an allocation of responsibilities during the marriage and some degree of temporary role specialisation. When the household separates, these roles will necessarily change. The former stay-at-home spouse will need to work. The former career-oriented spouse will need to cook, clean, and otherwise handle domestic life. There is nothing sex-specific about any of these tasks. Both spouses had to perform the full range of activities before joining into a single household and both spouses need to perform the full range of activities after separating into two households. The task for the court is to determine whether both spouses were contributing to the joint enterprise for the child's

economic, physical, and emotional well-being prior to the separation. The court should not engage in mechanical point-scoring (one point for changing a diaper; one point for carrying it out to the trash). Rather, the court should inquire as to whether both parents are functioning within any temporary role specialisation to provide a safe, secure and loving environment which attends to the child's economic, physical and emotional needs.

(I) The Potential Disruption of the
Child's Social and School Life; and

(J) The Geographical

Proximity of the Parental Homes as this Relates to the Practical Considerations of the Child's or Children's Residential Schedule

Where the parents live close to one another, particularly in the same school district, there is little to be weighed under this factor since joint physical custody will normally maintain the child's social and school life. If one parent chooses to relocate to a distant point, the court must evaluate the impact of the move upon social and school life. In such situations, joint physical custody is normally maintained by providing longer periods of physical custody with fewer exchanges, for example, school year in the unmoved household with winter break, spring break and summer vacation in the moved household.

(K) The Demands of Parental Employment

The child's opportunity to spend time with either parent may be impacted by each parent's employment commitments. For example, if one parent has extensive out-of-town travel commitments, the court may find it necessary to structure the physical custody schedule to account for these commitments. One obvious accommodation is to provide less week-night time and more weekend time with the parent whose work requires travel.

(L) The Age and Number of Children

Research indicates that younger children have less highly developed long-term memories with the result that frequent contact with each parent is important to prevent regression in the relationship. Frequent contact is particularly important during the preschool years to allow bonding with both parents. Since younger children are also home-centred rather than peer-centred, frequent exchanges of custody are also more easily accommodated.

(M) The Sincerity of Each Parent's Request This factor requires the court to be attentive to the possibility of punitive or other improper motives. A parent who desires a particular custody arrangement for the purpose of excluding or reducing the other parent's involvement in the child's life is to be noted.

(N) The Parents' Ability to Financially Support a Custody
Arrangement

A parent who seeks sole custody of a child, even with a child support order, is generally less able to provide for the child's needs than is the case when both parents are providing direct support to the child through substantial periods of residence in each household. The

custody schedule also should not make paid workforce participation unduly difficult for either parent. Shared physical custody shares the burden of child care and allows both parents to have significant workforce participation thereby increasing total family income.

(O) The Impact on Aid to Families With Dependent

Children and Medical Assistance

This is a new factor which is addressed specifically to the court's tendency to award custody without regard to whether the custodial order will increase welfare dependence. Under the new legislation, the courts are ordered to examine the impact of custodial determinations upon welfare dependency. In many cases under prior practice, a sole custody award, even when coupled with a child support order, nevertheless adds the child to the welfare rolls. Joint physical custody can reduce the likelihood of welfare dependency by providing that the child receives substantial, direct support in each of the two households and by reducing child care burdens such that both parents are better able to participate in the paid work force.

(P) The Benefit to the Parents

This factor recognises that a parent who is allowed to be a parent and to maintain a substantial relationship with his or her child is likely to function better with respect to a variety of responsibilities. For example, the Bureau of Census has reported that child support compliance is 90.2% in cases of joint custody, drops to 79.1% where only visitation is protected, and drops to 44.5% where neither joint physical custody nor visitation are protected.

(Q) Evidence of an Intra-Family Offense as Defined in

Section 16-1001(5)

This factor ties back to the rebuttable presumption against joint custody where an intra-family offense, child abuse, child neglect, or parental kidnapping have been found. The Parenting Plan; Section 16-911 (a-2)(2)(A)

The new statute provides that the court may "order each parent to submit a detailed parenting plan which shall delineate each parent's position with respect to the scheduling and allocation of rights and responsibilities that will best serve the interests of the minor child or children." The statute provides that the parenting plans may include but are not to be limited to provisions for:

(i) The residence of the child or children; (ii) The financial support based on the needs of the

child or children and the actual resources of the parent; (iii) Visitation;

(iv) Holidays, Birthdays and Vacation Time; (v) Transportation of the child or children between the

residences;

(vi) Education;

(vii) Religious training, if any;

(viii) Access to the child's or children's educational,

medical, psychiatric and dental care records; (ix) Except in emergencies, the responsibility for

medical, psychiatric and dental treatment decisions; (x) Communication between the child and the parents; and (xi) Resolving conflicts such as a recognised family counselling or mediation service before application to the court to resolve a conflict.

The purposes of the parenting plans are both to provide information to the court for identifying specific areas of disagreement and to empower the parents. Rearing children is a very big job. Experience in other states with parenting plan statutes indicates that the exercise of articulating each parent's plans for the rearing of the children helps the parents to realise the enormity of the task and facilitates communication and agreement on how to share the task. Implementation of the parenting plan provision in other states has been accomplished by preparation of a standard form. The form is made available to all litigants and identifies the major decisions and responsibilities that must be allocated. Where parents are in agreement, a joint parenting plan can be submitted and can form the basis for the entry of the court's order. When the parents are in disagreement, submission of the plans identifies the specific areas of disagreement and facilitates the judge's inquiry into and resolution of the disagreements. In the hearings held by the City Council, opponents of shared parenting argued that parenting plans are too complex for the citizens of the District of Columbia. This position was properly rejected. The point of the parenting plan is to demystify the custody process and to empower the parents. Filling out a standard form which identifies such things as the parents' ideas for the allocation of holidays will not overstrain our citizens. Instead, the court will have the benefit of the parents' wishes rather than a mysterious "black box" from which the court issues a custody order. The parenting plan is particularly important for the great many litigants who are not represented by counsel in the District of Columbia. The parenting plan allows these pro se litigants to articulate their wishes in concise, unambiguous terms that are readily presented to the court. The importance of the parenting plan in empowering parents is reinforced by '16-911(a-2)(2)(B) which provides that "the court shall consider the parenting plan submitted by the parents in evaluating the factors set forth in this subsection and in fashioning a custody order." In other words, the views of the parents, the two people on Earth who know the child best, must be taken into consideration during review of and decision on the final custody order. Emphasis on Private Decision-Making; Section 16-911(a-2)(6)(A) and (6)(D)

The new statute encourages parents to resolve disputes and reach agreement rather than resort to court intervention. Toward this end, the statute contains provisions which articulate the mandate that the court must give deference to the knowledge and agreements of the parents. Accordingly, the statute provides that:

"The court shall enter an order for any custody arrangement which is agreed to by both parents unless clear and convincing evidence indicates that such arrangement is not in the

best interests of the minor child or children.” To reduce the “black box” aspect of custody decisions, the statute also requires that:

“The court shall place on the record the specific factors and findings which justify any custody arrangement not agreed to by both parents.”

Additional Child Focused Provisions; Section 16-911(a-2)(2)(C), (2)(D) and(5)

The statute provides that:

(2)(C)“The court may also order either or both parents to attend parenting classes.”

(2)(D)“The court shall designate the parent who will make the major decisions concerning the health, safety and welfare of the child that need immediate attention.”

and

(5)“The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child’s or children’s interests.” Child Support; Section 16-911(a-2)(3)

One stereotype fostered by opponents of joint custody has been the claim that fathers seek joint custody only to avoid child support. Since the corollary of this claim would be that mothers seek sole custody only to obtain child support, the need to reject stereotypes should be self-evident. Moreover, the statute specifically states that:

“Joint custody shall not eliminate the responsibility for child support in accordance with the applicable child support guideline as set forth in ‘16-916.1.”

Since 1990, the District of Columbia child support guideline has had specific provisions for the computation of child support in cases of physical joint custody. The enactment of the presumption in favour of physical joint custody will simply mean that more child support orders will be calculated under the joint custody portion of the guideline rather than the sole custody portion of that same guideline.

Modification of Existing Orders; Section 16-911 (a-2)(4) and 16-914 ‘16-911 creates modification jurisdiction but the new legislation also makes conforming changes to ‘16-914 to assure that there is no confusion as to this point. Modification or termination of an existing award of custody may be made upon motion of one or both parents or on the court’s own motion. If the modification is agreed to by both parents, “the court shall enter an order for any custody arrangement which is agreed to by both parents unless clear and convincing evidence indicates that such arrangement is not in the best interests of the minor child or children.” On a party’s contested motion to modify or on the court’s sua sponte motion, there must be a determination that there has been “a substantial and material change in circumstances and that such modification or termination is in the best interests of the child.” The burden of proof to establish the existence of such conditions is on the moving party “by a preponderance of the evidence.” A final point is that: “The mere enactment of this Act does not, in and of itself, constitute a substantial and material change in circumstances and, therefore, may not constitute the sole basis for modifying or terminating a custody award.” Accordingly, a petitioner may cite the new legislation and its

presumption that joint custody is in the best interests of the child but cannot rely on this alone as the “sole basis for modifying or terminating a custody award.” Conclusion

After nearly 20 years without revision, the District of Columbia now has a child custody statute that is strongly focused on the child’s right to two parents. By discouraging winner/loser contests between mother and father, the statute positions the court to seek the best rather than the worst from each parent. The presumption of shared custody reduces every parent’s visceral fear of being shut out of the child’s life and allows both the parents and the court to focus on the means of assuring the greatest combined parental contribution to the welfare of the child.

Sweden has had a joint custody presumption for married (divorcing) parents for quite some time. In the past, mother's had veto power over the joint custody presumption. Literally, the law instructed judges to ask the mother if she approved of joint custody. If she said "no," she got sole custody. In October of last year, mother's veto power over the joint custody presumption was abolished for married (divorcing) couples. The current discussion has to do with extending the joint custody presumption to never married parents.

News Article: Sticking Up For Single Fathers STOCKHOLM (Reuters) - Swedes came out in droves in support of single fathers Tuesday after a child expert said young children were better off living with their mothers. The statement came from chief physician Torgny Gustavsson who is the government-appointed child expert on a committee investigating whether unmarried parents should automatically have joint custody of children, like married parents. At present single mothers in Sweden automatically receive full custody of the child and it is only with the woman's permission — or court intervention — that the father can also take on some of the care. Gustavsson's view that children under the age of five should live with their mothers has caused uproar in egalitarian Sweden where more than half of all children are born to unmarried parents.

"As long as there is no research that shows children are worse off by joint custody, men should be regarded as being as suitable parents as women," said an editorial in tabloid Expressen that set up a telephone line to hear readers' views. "Giving automatic custody to the mothers is strengthening old gender roles."

Gustavsson, who is based at a child psychiatry clinic in Vaxjo, southern Sweden, came under fire from all quarters for saying it was harmful for the child to keep swapping homes. "Of course there are fathers who can take good care of their small children and in many cases it could be as good for the children to live with their father as their mother," Gustavsson said in his advice to Justice Minister Laila Freivalds. "But normally the best thing for children who are only a few years old is to live with their mother and see their father regularly, at least a few times a week." Sociology professor Lars Tornstam was a vocal critic in tabloid Aftonbladet, saying research proved the opposite. "Studies show unequivocally that it is better for children to have rotating homes," said Tornstam, 55, whose five-year-old son spends two days with him then two days with his mother. "Children who lived alternately with their mother then father developed better than those living with just one parent.

WEST VIRGINIA

Family Law sets the rules which govern the ongoing responsibilities of family members to each other, both at the time families are formed and after relationships dissolve. The West Virginia Legislature has recently adopted a new family law bill. The bill has been signed by the Governor. It will become effective shortly §51-2A-1. Family court division established in circuit court; designation of division. §51-2A-2. Appointment of commissioners to be designated as family law masters; administrative and judicial functions of family law master. §51-2A-3. Assignment of law masters by family court regions. §51-2A-4. Qualifications of family law masters. §51-2A-5. Term of office of family law master; elections. §51-2A-6. Vacancy in the office of family law master. §51-2A-6a. Terms of family law masters continued. §51-2A-7. Procedure for removal, suspension or discipline of family law master; appeal; grounds. §51-2A-8. Compensation and expenses of family law masters and their staffs. §51-2A-9. Rules of practice and procedure; applicability of rules of evidence; local administrative rules. §51-2A-10. Matters to be heard by a family law master. §51-2A-11. Contempt powers of family law master. §51-2A-12. Effects of certain repealers or re-enactments.

PHYSICAL PLACEMENT IN WISCONSIN STATUTES

In 1999 and effective May 1, 2000, the Wisconsin legislature passed family law reform including more specific directions to family law courts as regards the standards for legal and physical placement. As is normal after the legislature acts, the impact of a law is not fully known until it is interpreted in practice by those in the executive branch and lower courts and interpreted more definitively through judicial review in the appeals courts. Since contested family law cases normally take 9-18 months to reach resolution along with an additional 2 year period for appeal court cases to issue definitive rulings, the interpretation of new standards must come from the straight language of the statute.

The family law reforms of 1999 were an outgrowth of Senate Bill 520 and Assembly Bill 442. I mention this because one method to interpret legislation is to ascertain what the legislation intended to say and accomplish. These bills would have eliminated the "best interest of the child" standard rather than the absolute right of each parent to the presumption of legal and physical placement. The legislature rejected the "one formula fits all" standard. The final language of the reforms that passed regarding placement did not specify 50/50 or absolute equal placement to each parent. The legislation eliminated by the governor's veto, the obligation of the court to accept two parents' stipulated agreement.

WHAT THE LAW SAYS. What are the standards under today's statutes. In 767.24 the court is directed to provide provisions as it deems just and reasonable concerning legal and physical placement. The court shall presume that joint legal custody is in the best interest of the child, but provided a rebuttable response to this presumption. The court spells out its underlying principle in the allocation of physical placement. Except when a parent "would endanger the physical or emotional health of a child, and after consideration of each case, the court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent which maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households." The court shall consider the factors for custody and placement as spelled out in 767.24(5). A court may not deny placement with a parent for failure to pay his or her financial obligation to the child. The legislature then edited and added numerous factors for the court to follow in the consideration of its physical placement determination.

What do we learn from the plain language of the statute. First, the court retains the right when parents are divided on custody to allocate both legal custody and physical placement. Legal custody is presumed by the law unless rebutted by evidence in court. Not only do parents have a right to placement time with their child, but a child is entitled to periods of physical placement with its parents. Each parent apart from endangerment to a child is entitled to equal treatment without regard to their gender. Make no mistake, from all the testimony and public hearings these new statutes were enacted because parents were being discriminated against on the basis of gender. The legislature meant to give some specific directions to the courts in defining the "best interest of the child"

standard and protecting the rights of both parents. The legislature uses "shall" not "may" in giving its instruction to the courts as to the principle of placement.

Previous to the family law reforms passed in 1999, Wisconsin courts have been steadily recognizing the right of each parent to maintain legal custody of their child. We must remember that when married couples have a child each of them de facto has both joint legal and physical custody. When a couple seeks a divorce, a court is not giving custody and placement time to one parent, it is issuing a restraining order that takes away the right of one or the other parent to the legal and physical custody that parent enjoyed before the court intervened. The legislature recognized from all the facts and studies that have been done over the past 20 years that in most cases, it is in a child's best interest to have two parents active in its life. The legislature recognized that the process of raising a child is hard work and that the children of Wisconsin are not suffering from too much parenting, but from too little parenting, especially those children from divorced families. Thus, the legislature enacted statutes for joint legal custody, maximum physical placement for each parent, and tough enforcement mechanisms to make sure a child will have two loving and caring parents in its life.

The new statutes, first off, recognize that geographic separations and accommodation are a critical factor in physical placement. If one parent lives far away from the child's school district, that would effect the ability to follow the principle of placement which maximizes the time to each parent. If the dad is an over-the-road truck driver with a different schedule each week, he will not be available to fulfill his obligations for regularly occurring maximum placement. If mom remarries and lives 125 miles from the desired original household of both the dad and the child, she will not be physically able to fulfill her obligation for maximum placement. However, if the standard is regularly occurring, meaningful periods which are maximized to each parent, then given the limitation of geographic separation, it would seem that the separated parent would be entitled to the majority of time when the child is not in school during the holiday periods, long weekends, and summer vacations when the separated parent is available.

Geographic issues are not a consideration in a majority of contested divorce cases as regards physical placement. Most parents after divorce continue to live close to their previous original pre-divorce homestead. The physical placement standard which the legislature enacted is a "soft presumption of joint physical placement." Regularly occurring refers to consistently occurring at fixed and certain intervals. Meaningful refers to having function and purpose. The function and purpose is for a parent to have the time and opportunity to help form his child from dependence to a full functioning adult who will contribute to society. Finally, since there are two parents, to maximize placement time to each parent is to give each 50% of the time; this is a mathematical truism inherent in the language of the statute. By the definition of the words above, it is for this reason, I have stated that for each parent to have regularly occurring, meaningful placement which maximizes the time to each parent is essentially a "soft presumption" of joint physical placement. That is what the legislature intended without definitively spelling out an "one-size-fits-all" strict 50/50 placement. Flexibility was left for the courts to make adjustments in the name of the best interests of the child.

While the legislature granted only a soft physical joint custody standard, which still maintained the best interests of the child standard, they enacted substantial changes to the factors for custody and placement. These changes were enacted to change biases which were in practice, to change the weighting of factors, and to address abuses in the family law system as regards custody placement.

In the past the amount and quality of time spent with a child was a prominent criteria of custody. Considering the traditional role functions of fathers and mothers, this often meant that mothers who traditionally stayed at home received priority over fathers who worked outside the home. This alone often determined mom for primary physical placement. The roles of men and women have been significantly changing for the past 35 years and the legislature finally caught up with the realities of our culture. They changed this factor recognizing that for most families who are middle class today, both mom and dad work both at home and outside the home. The legislature recognized that the roles which parents voluntarily chose within the context of a marriage in which both parties chose their duties to get the whole work of the family done, cannot be freely chosen by most moms or dads at divorce. Even with child support, a 100% stay-at-home-mom cannot live. Even coming from a traditional family dad will have to learn to change diapers, shop, cook, clean house, and wash laundry. The legislature changed the factor that the necessary changes to the parent's custodial roles and the reasonable life style changes that a parent proposes in order to be able to spend with their child, are just as valid as what parents voluntarily agreed to do within the marital family.

The age of the child and the child's developmental and educational needs at different stages was recognized as a new factor. Not only did this recognize the needs of the various children in the family, but it statutorily opened the door to building into a final agreement a future re-opening of placement based on this new criteria. A custody placement order put in place when a child is 2 years old is not necessarily in its best interest when the child is 15 years old.

The need for regularly occurring and meaningful placement was repetitiously placed into the factors for custody to emphasize that a child needs predictability and stability and that this is normally best provided by both parents.

In the past the most angry, adamant, and uncompromising parent was given more placement time. It is difficult for courts to deal with parents who would not cooperate and the courts often leaned their way to appease them and bring the litigation to a conclusion. The legislature has reversed that skewed notion. How could this have ever been seen as being in a child's best interest? The legislature enacted that the party who unreasonable refuses to cooperate or communicate with the other party will be considered in a negative light regarding custody matters. The effort to cooperate and communicate will be rewarded, not the opposite. This addition to the factors for custody puts each parent on notice that no matter how angry their feelings toward the other parent, whether they wish to continue an old marital fight, or they just simply want vengeance, the court will protect the child and the parent who is trying to reach beyond this life tragedy. The law cannot change the feelings in people's hearts, but it can demand behavior which will promote the good of the child's long term interest. The pain of a failed marriage has its most intense

effects after separation and too often a custody dispute can be gasoline thrown on this emotional fire. Good attorneys should now advise their clients to control their behavior and raw feelings. Parents should be advised that to control their raw emotions is now in their own best interest. The addition of this new factor will save many children from the cross fire of their parents' anger.

In the pre 1999 statutes, the reports of appropriate professionals was built into the general text for the determination of custody. These reports held a more statutorily prominent place in determining custody. The legislature has come to accept that these reports, while valuable, come from people who have little actual knowledge of the child or either parent. They have had little predictive qualities as to a child's best interest. The legislature recognized that the inherent right and desires of the child and either parent is primary. Professional reports were relegated to one of the factors of custody from a primary consideration of the custody determination. Of all the changes in the statutes, the courts and Family Court Counseling Services have seemingly ignored this change. However, the legislature does not make such changes as a mere accident. There was intent in changing the focus of the importance that a court should give to these "professional" reports.

In summary, the legislature significantly reformed the physical and legal placement in Wisconsin. While rejecting a one size fits all, mandatory, 50/50 placement, it posited that children would be best off by receiving maximum care from each parent as is possible considering the geographic circumstances, physical or emotional endangerment to the children, and common-sense factors that recognize the good will of each parent in loving their child. They meant to partially define what is the best interest of the child by giving specific directions to the courts. Finally, the legislature wanted to remove gender bias as a factor in custody-recognizing that the love and care of either a mother or father is not superior or inferior, but a healthy and necessary portion for their children to become productive, functional adult citizens.

STATUTE 767.24 CUSTODY AND PHYSICAL PLACEMENT.

(1) GENERAL PROVISIONS. In rendering a judgment of annulment, divorce, legal separation or paternity, or in rendering a judgment in an action under s. 767.02 (1) (e) or 767.62 (3), the court shall make such provisions as it deems just and reasonable concerning the legal custody and physical placement of any minor child of the parties, as provided in this section.

(1m) PARENTING PLAN. In an action for annulment, divorce or legal separation, an action to determine paternity or an action under s. 767.02 (1) (e) or 767.62 (3) in which legal custody or physical placement is contested, a party seeking sole or joint legal custody or periods of physical placement shall file a parenting plan with the court before any pretrial conference. Except for cause shown, a party required to file a parenting plan under this subsection who does not timely file a parenting plan waives the right to object to the other party's parenting plan. A parenting plan shall provide information about the following questions:

- (a) What legal custody or physical placement the parent is seeking.
- (b) Where the parent lives currently and where the parent intends to live during the next 2 years. If there is evidence that the other parent engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (a), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she currently lives and intends to live during the next 2 years.
- (c) Where the parent works and the hours of employment. If there is evidence that the other parent engaged in interspousal bat-tery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (a), with respect to the parent providing the parenting plan, the parent providing the parenting plan is not required to disclose the specific address but only a general description of where he or she works.
- (d) Who will provide any necessary child care when the parent cannot and who will pay for the child care.
- (e) Where the child will go to school.
- (f) What doctor or health care facility will provide medical care for the child.
- (g) How the child's medical expenses will be paid.
- (h) What the child's religious commitment will be, if any.
- (i) Who will make decisions about the child's education, medi-cal care, choice of child care providers and extracurricular activi-ties.
- (j) How the holidays will be divided.
- (k) What the child's summer schedule will be.

(L) Whether and how the child will be able to contact the other parent when the child has physical placement with the parent providing the parenting plan.

(m) How the parent proposes to resolve disagreements related to matters over which the court orders joint decision making.

(n) What child support, family support, maintenance or other income transfer there will be.

(o) If there is evidence that either party engaged in interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (a), with respect to the other party, how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.

(2) CUSTODY TO PARTY; JOINT OR SOLE. (a) Subject to pars. (am), (b) and (c), based on the best interest of the child and after considering the factors under sub. (5), the court may give joint legal custody or sole legal custody of a minor child.

(am) The court shall presume that joint legal custody is in the best interest of the child.

(b) The court may give sole legal custody only if it finds that doing so is in the child's best interest and that either of the following applies:

1. Both parties agree to sole legal custody with the same party.
2. The parties do not agree to sole legal custody with the same party, but at least one party requests sole legal custody and the court specifically finds any of the following:
 - a. One party is not capable of performing parental duties and responsibilities or does not wish to have an active role in raising the child.
 - b. One or more conditions exist at that time that would substantially interfere with the exercise of joint legal custody.
 - c. The parties will not be able to cooperate in the future decision making required under an award of joint legal custody. In making this finding the court shall consider, along with any other pertinent items, any reasons offered by a party objecting to joint legal custody. Evidence that either party engaged in abuse, as defined in s. 813.122 (1) (a), of the child, as defined in s. 48.02 (2), or evidence of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (a), creates a rebuttable presumption that the parties will not be able to cooperate in the future decision making required.
- (c) The court may not give sole legal custody to a parent who refuses to cooperate with the other parent if the court finds that the refusal to cooperate is unreasonable.

(3) CUSTODY TO AGENCY OR RELATIVE. (a) If the interest of any child demands it, and if the court finds that neither parent is able to care for the child adequately or that neither parent is fit and proper to have the care and custody of the child, the court may declare the child to be in need of protection or services and transfer legal custody of the child to a

relative of the child, as defined in s. 48.02 (15), to a county department, as defined under s. 48.02 (2g), or to a licensed child welfare agency. If the court transfers legal custody of a child under this subsection, in its order the court shall notify the parents of any applicable grounds for termination of parental rights under s. 48.415.

(b) If the legal custodian appointed under par. (a) is an agency, the agency shall report to the court on the status of the child at least once each year until the child reaches 18 years of age, is returned to the custody of a parent or is placed under the guardianship of an agency. The agency shall file an annual report no less than 30 days before the anniversary of the date of the order. An agency may file an additional report at any time if it determines that more frequent reporting is appropriate. A report shall summarize the child's permanency plan and the recommendations of the review panel under s. 48.38 (5), if any.

(c) The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under par. (b). At least 10 days before the date of the hearing, the court shall provide notice of the time, date and purpose of the hearing to the agency that prepared the report, the child's parents, the child, if he or she is 12 years of age or over, and the child's foster parent, treatment foster parent or the operator of the facility in which the child is living.

(d) Following the hearing, the court shall make all of the determinations specified under s. 48.38 (5) (c) and, if it determines that an alternative placement is in the child's best interest, may amend the order to transfer legal custody of the child to another relative, other than a parent, or to another agency specified under par. (a).

(e) The charges for care furnished to a child whose custody is transferred under this subsection shall be pursuant to the procedure under s. 48.36 (1) or 938.36 (1) except as provided in s. 767.29 (3).

(4) ALLOCATION OF PHYSICAL PLACEMENT. (a) 1. Except as provided under par. (b), if the court orders sole or joint legal custody under sub. (2), the court shall allocate periods of physical placement between the parties in accordance with this subsection. 2. In determining the allocation of periods of physical placement, the court shall consider each case on the basis of the factors in sub. (5). The court shall set a placement schedule that allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households.

(b) A child is entitled to periods of physical placement with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health.

(c) No court may deny periods of physical placement for failure to meet, or grant periods of physical placement for meeting, any financial obligation to the child or, if the parties were married, to the former spouse.

(cm) If a court denies periods of physical placement under this section, the court shall give the parent that was denied periods of physical placement the warning provided under s. 48.356.

(d) If the court grants periods of physical placement to more than one parent, it shall order a parent with legal custody and physical placement rights to provide the notice required under s. 767.327 (1).

(5) FACTORS IN CUSTODY AND PHYSICAL PLACEMENT DETERMINATIONS. In determining legal custody and periods of physical placement, the court shall consider all facts relevant to the best interest of the child. The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian. The court shall consider the following factors in making its determination:

(a) The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial.

(b) The wishes of the child, which may be communicated by the child or through the child's guardian ad litem or other appropriate professional.

(c) The interaction and interrelationship of the child with his or her parent or parents, siblings, and any other person who may significantly affect the child's best interest.

(cm) The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future.

(d) The child's adjustment to the home, school, religion and community.

(dm) The age of the child and the child's developmental and educational needs at different ages.

(e) The mental and physical health of the parties, the minor children and other persons living in a proposed custodial household.

(em) The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.

(f) The availability of public or private child care services. (fm) The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.

(g) Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.

(h) Whether there is evidence that a party engaged in abuse, as defined in s. 813.122 (1)

(a), of the child, as defined in s. 48.02 (2).

(i) Whether there is evidence of interspousal battery as described under s. 940.19 or 940.20 (1m) or domestic abuse as defined in s. 813.12 (1) (a).

(j) Whether either party has or had a significant problem with alcohol or drug abuse.

(jm) The reports of appropriate professionals if admitted into evidence.

(k) Such other factors as the court may in each individual case determine to be relevant.

(6) FINAL ORDER. (a) If legal custody or physical placement is contested, the court shall state in writing why its findings relating to legal custody or physical placement are in the best interest of the child.

(am) In making an order of joint legal custody, upon the request of one parent the court shall specify major decisions in addition to those specified under s. 767.001 (2m).

(b) Notwithstanding s. 767.001 (1s), in making an order of joint legal custody, the court may give one party sole power to make specified decisions, while both parties retain equal rights and responsibilities for other decisions.

(c) In making an order of joint legal custody and periods of physical placement, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purpose of determining eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 or for any other purpose the court considers appropriate.

(d) No party awarded joint legal custody may take any action inconsistent with any applicable physical placement order, unless the court expressly authorizes that action.

(e) In an order of physical placement, the court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to implement any law providing relief for interference with custody or parental rights.

(7) ACCESS TO RECORDS. (a) Except under par. (b) or unless otherwise ordered by the court, access to a child's medical, dental and school records is available to a parent regardless of whether the parent has legal custody of the child.

(b) A parent who has been denied periods of physical placement with a child under this section is subject to s. 118.125 (2) (m) with respect to that child's school records, s. 51.30 (5) (bm) with respect to the child's court or treatment records, s. 55.07 with respect to the child's records relating to protective services and s. 146.835 with respect to the child's patient health care records.

(7m) MEDICAL AND MEDICAL HISTORY INFORMATION.

(a) In making an order of legal custody, the court shall order a parent who is not granted legal custody of a child to provide to the court medical and medical history information

that is known to the parent. The court shall send the information to the physician or other health care provider with primary responsibility for the treatment and care of the child, as designated by the parent who is granted legal custody of the child, and advise the physician or other health care provider of the identity of the child to whom the information relates. The information provided shall include all of the following:

1. The known medical history of the parent providing the information, including specific information about stillbirths or congenital anomalies in the parent's family, and the medical histories, if known, of the parents and siblings of the parent and any sibling of the child who is a child of the parent, except that medical history information need not be provided for a sibling of the child if the parent or other person who is granted legal custody of the child also has legal custody, including joint legal custody, of that sibling.

2. A report of any medical examination that the parent providing the information had within one year before the date of the order.

(am) The physician or other health care provider designated under par. (a) shall keep the information separate from other records kept by the physician or other health care provider. The information shall be assigned an identification number and maintained under the name of the parent who provided the information to the court. The patient health care records of the child that are kept by the physician or other health care provider shall include a reference to that name and identification number. If the child's patient health care records are transferred to another physician or other health care provider or another health care facility, the records containing the information provided under par. (a) shall be transferred along with the child's patient health care records. Notwithstanding s. 146.819, the information provided under par. (a) need not be maintained by a physician or other health care provider after the child reaches age 18.

(b) Notwithstanding ss. 146.81 to 146.835, the information shall be kept confidential, except only as follows:

1. The physician or other health care provider with custody of the information, or any other record custodian at the request of the physician or other health care provider, shall have access to the information if, in the professional judgment of the physician or other health care provider, the information may be relevant to the child's medical condition.

2. The physician or other health care provider may release only that portion of the information, and only to a person, that the physician or other health care provider determines is relevant to the child's medical condition.

(8) NOTICE IN JUDGMENT. A judgment which determines the legal custody or physical placement rights of any person to a minor child shall include notification of the contents of s. 948.31.

(9) APPLICABILITY. Notwithstanding 1987 Wisconsin Act 355, section 73, as affected by

1987 Wisconsin Act 364, the parties may agree to the adjudication of a custody or physical placement order under this section in an action affecting the family that is pending on May 3, 1988.

History: 1971 c. 149, 157, 211; 1975 c. 39, 122, 200, 283; 1977 c. 105, 418; 1979 c. 32 ss. 50, 92 (4); 1979 c. 196; Stats. 1979 s. 767.24; 1981 c. 391; 1985 a. 70, 176; 1987 a. 332 s. 64; 1987 a. 355, 364, 383, 403; 1989 a. 56 s. 259; 1989 a. 359; 1991 a. 32; 1993 a. 213, 446, 481; 1995 a. 77, 100, 275, 289, 343, 375; 1997 a. 35, 191; 1999 a. 9.

NOTE: 1987 Wis. Act 355, which made many changes in this section, contains a “legislative declaration” in section 1 and explanatory notes. Impropriety of the award of custody of a child to the mother cannot be predicated on the guardian ad litem’s contrary recommendation. *Heiting v. Heiting*, 64 Wis. 2d 110, 218 N.W.2d 334.

The award of custody to the father was reversible error where the trial court should have recognized the rule of comity and declined to exercise its jurisdiction. *Sheridan v. Sheridan*, 65 Wis. 2d 504, 223 N.W.2d 557.

In a child custody dispute between the children’s father, who was divorced by his wife, and the wife’s parents, subsequent to her death, the trial court erred in concluding that it had no choice but to award custody to the surviving natural parent unless it found him unfit or unable to care for the children. *LaChapell v. Mawhinney*, 66 Wis. 2d 679, 225 N.W.2d 501.

Res judicata is not to be applied to custody matters with the same strictness as to other matters. *Kuesel v. Kuesel*, 74 Wis. 2d 636, 247 N.W.2d 72. Consideration of evidence concerning a mother’s attempts to frustrate the father’s visitation privileges was proper in awarding custody. *Marotz v. Marotz*, 80 Wis. 2d 477, 259 N.W.2d 524.

In a post-divorce child custody dispute where the original award was by stipulation, a full-scale hearing was necessary. *Haugen v. Haugen*, 82 Wis. 2d 411, 262 N.W.2d 769.

The trial court may not order a custodial parent to live in designated part of the state or else lose custody. *Groh v. Groh*, 110 Wis. 2d 117, 327 N.W.2d 655 (1983). In a custody dispute between a parent and a third party, unless the court finds that the parent is unfit or unable to care for the child or that there are compelling reasons for denying custody to the parent, the court must grant custody to the parent. *Barstad v. Frazier*, 118 Wis. 2d 549, 348 N.W.2d 479 (1984).

Custody and visitation are controlled by statute and case law and cannot be contracted away. A co-parenting contract between a parent and a non-parent is unenforceable. *In re Interest of Z.J.H.* 162 Wis. 2d 1002, 471 N.W.2d 202 (1991).

Revision of s. 767.24 to allow joint custody in cases where both parties did not agree was not a “substantial change in circumstances” justifying a change to joint custody.

Licary v. Licary, 168 Wis. 2d 686, 484 N.W.2d 371 (Ct. App. 1992).

Section 767.001 (2m) confers the right to choose a child's religion on the custodial parent. Reasonable restrictions on visitation to prevent subversion of this right do not violate the constitution. *Lange v. Lange*, 175 Wis. 2d 373, N.W.2d (Ct. App. 1993). There is no authority to order a change of custody at an unknown time in the future upon the occurrence of some stated contingency. *Koeller v. Koeller*, 195 Wis. 2d 660, 536 N.W.2d 216 (Ct. App. 1995).

A custodial parent's right to make major decisions for the children does not give that parent the right to decide whether the actions of the noncustodial parent are consistent with those decisions. *Wood v. DeHahn*, 214 Wis. 2d 221, 571 N.W.2d 186 (Ct. App. 1997).

Neither sub. (4) (b) nor s. 767.325 (4) permits a prospective order prohibiting a parent from requesting a change of physical placement in the future. *Jocius v. Jocius*, 218 Wis. 2d 103, 580 N.W.2d 708 (Ct. App. 1998).

Section 813.122 implicitly envisions a change of placement and custody if the trial court issues a child abuse injunction under that section against a parent who has custody or placement of a child under a divorce order or judgment. *Scott M.H. v. Kath-leen M.H.* 218 Wis. 2d 605, 581 N.W.2d 564 (Ct. App. 1998).

Sub. (5) (b), while requiring consideration of the child's wishes, leaves to the court's discretion whether to allow the child to testify. That the child is a competent witness under s. 906.01 does not affect the court's discretion. *Hughes v. Hughes*, 223 Wis. 2d 111, 588 N.W.2d 346 (Ct. App. 1998).

Sub. (4) requires allocation of placement between the parents. Before a court may deny a parent all placement or contact with a child, it must find that the contact would endanger the child's physical, mental or emotional health. A parent who seeks to deny all contact by the other parent has the burden of proving the danger to the child. *Wolfe v. Wolfe*, 2000 WI App 93, 234 Wis. 2d 449, 610 N.W.2d 222. Wisconsin's Custody, Placement and Paternity Reform Legislation. Walther. Wis.Law. April 2000.

Custody—to which parent? Podell, Peck, First, 56 MLR 51. The best interest of the child doctrine in Wisconsin custody cases. 64 MLR 343 (1980). Debating the Standard in Child Custody Placement Decisions. Molvig. Wis. Law. July 1998.

767.242 Enforcement of physical placement orders.

(1) DEFINITIONS. In this section:

(a) "Petitioner" means the parent filing a petition under this section, regardless of whether that parent was the petitioner in the action in which periods of physical placement were awarded under s. 767.24.

(b) "Respondent" means the parent upon whom a petition under this section is served, regardless of whether that parent was the respondent in the action in which periods of physical placement were awarded under s. 767.24.

(2) WHO MAY FILE. A parent who has been awarded periods of physical placement under s. 767.24 may file a petition under sub. (3) if any of the following applies:

(a) The parent has had one or more periods of physical placement denied by the other parent.

(b) The parent has had one or more periods of physical placement substantially interfered with by the other parent.

(c) The parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement.

(3) PETITION.

(a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and that the petitioner has been awarded periods of physical placement.

2. The name of the respondent.

3. That the criteria in sub. (2) apply.

(b) The petition shall request the imposition of a remedy or any combination of remedies under sub. (5) (b) and (c). This paragraph does not prohibit a judge or family court commissioner from imposing a remedy under sub. (5) (b) or (c) if the remedy was not requested in the petition.

(c) A judge or family court commissioner shall accept any legible petition for an order under this section.

(d) The petition shall be filed under the principal action under which the periods of physical placement were awarded.

(e) A petition under this section is a motion for remedial sanction for purposes of s. 785.03 (1) (a).

(4) SERVICE ON RESPONDENT; RESPONSE. Upon the filing of a petition under sub. (3), the petitioner shall serve a copy of the petition upon the respondent by personal service in the same manner as a summons is served under s. 801.11. The respondent may respond to the petition either in writing before or at the hearing under sub. (5) (a) or orally at that hearing.

(5) HEARING; REMEDIES. (a) A judge or family court commissioner shall hold a hearing on the petition no later than 30 days after the petition has been served, unless the time is extended by mutual agreement of the parties or upon the motion of a guardian ad litem and the approval of the judge or family court commissioner. The judge or family court commissioner may, on his or her own motion or the motion of any party, order that a

guardian ad litem be appointed for the child prior to the hearing. (b) If, at the conclusion of the hearing, the judge or family court commissioner finds that the respondent has intentionally and unreasonably denied the petitioner one or more periods of physical placement or that the respondent has intentionally and unreasonably interfered with one or more of the petitioner's periods of physical placement, the court or family court commissioner:

1. Shall do all of the following:

a. Issue an order granting additional periods of physical placement to replace those denied or interfered with. b. Award the petitioner a reasonable amount for the cost of maintaining an action under this section and for attorney fees.

2. May do one or more of the following:

a. If the underlying order or judgment relating to periods of physical placement does not provide for specific times for the exercise of periods of physical placement, issue an order specifying the times for the exercise of periods of physical placement.

b. Find the respondent in contempt of court under ch. 785.

c. Grant an injunction ordering the respondent to strictly comply with the judgment or order relating to the award of physical placement. In determining whether to issue an injunction, the judge or family court commissioner shall consider whether alternative remedies requested by the petitioner would be as effective in obtaining compliance with the order or judgment relating to physical placement.

(c) If, at the conclusion of the hearing, the judge or family court commissioner finds that the petitioner has incurred a financial loss or expenses as a result of the respondent's failure, intentionally and unreasonably and without adequate notice to the petitioner, to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement, the judge or family court commissioner may issue an order requiring the respondent to pay to the petitioner a sum of money sufficient to compensate the petitioner for the financial loss or expenses.

(d) Except as provided in par. (b) 1. a. and 2. a., the judge or family court commissioner may not modify an order of legal custody or physical placement in an action under this section.

(e) An injunction issued under par. (b) 2. c. is effective according to its terms, for the period of time that the petitioner requests, but not more than 2 years.

(6) ENFORCEMENT ASSISTANCE.

(a) If an injunction is issued under sub. (5)

(b) 2. c., upon request by the petitioner the judge or family court commissioner shall order the sheriff to assist the petitioner in executing or serving the injunction. (b) Within 24

hours after a request by the petitioner, the clerk of the circuit court shall send a copy of an injunction issued under sub. (5) (b) 2. c. to the sheriff or to any other local law enforcement agency that is the central repository for orders and that has jurisdiction over the respondent's residence. If the respondent does not reside in this state, the clerk shall send a copy of the injunction to the sheriff of the county in which the circuit court is located.

(c) The sheriff or other appropriate local law enforcement agency under par. (b) shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any injunction issued under sub. (5) (b) 2.

c. The information need not be maintained after the injunction is no longer in effect.

(8) PENALTY. Whoever intentionally violates an injunction issued under sub. (5) (b) 2. c. may be fined not more than \$10,000 or imprisoned for not more than 2 years or both.

History: 1999 a. 9. Wisconsin's Custody, Placement and Paternity Reform Legislation. Walther. Wis.Law. April 2000.

STATE OF NEW YORK

2818

2001-2002 Regular Sessions

I N S E N A T E

February 21, 2001

Introduced by Sens. JOHNSON, SPANO, TRUNZO – read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law, in relation to establishing a presumption of shared parenting of minor children in matrimonial proceedings

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Legislative findings. The legislature hereby finds and declares that it is the public policy of the state to assure minor children have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and that it is in the public interest to encourage parents to share the rights and responsibilities of child-rearing in order to effectuate this policy. At the outset and thereafter, in any proceeding where there is at issue the custody of a minor child, the court may, during the pendency of the proceeding or at any time thereafter, make such order for the custody of 10 minor children as may seem necessary or proper. The provisions of this act establish a presumption, affecting the burden of proof, that shared parenting is in the best interests of minor children.

S 2. Subdivision (a) of section 70 of the domestic relations law, as amended by chapter 457 of the laws of 1988, is amended to read as follows:

(a) Where a minor child is residing within this state, either parent may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, {may} 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, for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets { } is old law to be omitted.

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may at any time thereafter vacate or modify such order. {In all cases there shall be no prima facie right to the custody of the child in either parent, but the} THE BURDEN OF PROOF THAT SUCH SHARED PARENTING WOULD BE DETRIMENTAL TO SUCH CHILD SHALL BE UPON THE PARENT REQUESTING SOLE CUSTODY. THE court shall determine solely what is for the best interest of the child, and what will best promote {its} THE CHILD`S welfare and happiness, and make award accordingly.

S 3. Paragraph (a) of subdivision 1 of section 240 of the domestic relations law, as separately amended by chapters 150 and 214 of the laws of 1998, is amended to read as follows:

(a) (i) in any action or proceeding brought

(1) to annul a marriage or to declare the nullity of a void marriage, or

(2) for a separation, or

(3) for a divorce, or

(4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child`s custody and support, including any prior orders, and shall enter orders for custody and support as, in the court`s discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section.

Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section. An order directing the payment of child support shall contain the social security numbers of the named parties. {In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction}

(ii) custody shall be awarded in the following order of preference, according to the best interests of the child: 38 (1) to both parents jointly pursuant to section two hundred forty-d of this article. In such cases the court must require the parents to submit a parenting plan as defined in subdivision two of section two hundred forty-d of this article for implementation of the custody order or the parents acting individually or in concert may submit a custody implementation plan to the court prior to issuance of a custody decree. There shall be a presumption, affecting the burden of proof, that shared parenting is in the best interests of a minor child unless the parents have agreed to an award of custody to one parent or so agree in open court at a hearing for the purpose of determining custody of a minor child of the marriage or the court finds that shared parenting would be

detrimental to a particular child of a specific marriage. For the purpose of assisting the court in making a determination whether an award of shared parenting is appropriate, the court may direct that an investigation be conducted. If the court declines to enter an order awarding shared parenting pursuant to this paragraph, the court shall state in its decision the reasons for denial of an award of shared parenting. In jurisdictions having a private or publicly-supported conciliation service, the court or the parties may, at any time, pursuant to local rules of court, consult with the conciliation service for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy which has arisen in the implementation of a plan for custody. Any order for shared parenting may be modified or terminated upon the petition of one or both parents or on the court's own motion if it is shown that the best interests of the child require modification or termination of the shared parenting order. Any order for the custody of a minor child of a marriage entered by a court in this state or in any other state, subject to jurisdictional requirements, may be modified at any time to an order of shared parenting in accordance with the provisions of this section.

(2) to either parent, in which case, the court, in making an order for custody to either parent shall consider, among other factors, which parent is more likely to allow the child or children frequent and continuing contact with the noncustodial parent, and shall not prefer a parent as custodian because of that parent's gender. The burden of proof that shared parenting would not be in the child's best interest shall be upon the parent requesting sole custody. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental and school records, shall not be denied to a parent because the parent is not the child's custodial parent.

(3) if to neither parent, to the person or persons in whose home the child has been living in a nurturing and stable environment.

(4) to any other person or persons deemed by the court to be suitable and able to provide a nurturing and stable environment. Before the court makes any order awarding custody to a person or persons other than a parent without the consent of the parents, it shall make a finding that an award of custody to a parent would be detrimental to the child and the award to a non-parent is required to serve the best interests of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue. The

court shall state in writing the reason for its decision and why the award made was found to be in the best interests of the child. Any direction made pursuant to this subdivision shall make provision for child support out of the property of {either or} both parents.

The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be

enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child.

Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of family assistance must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the s. 2818 4 manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required.

The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties` marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party.

Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. In addition, the order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available through an employer or organization that may be extended to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

35 s 4. The domestic relations law is amended by adding a new section 36 240-d to read as follows:

37 s 240-d. Custody of children.

1. Where the court considers awarding shared parenting pursuant to the provisions of paragraph (a) of subdivision one of section two hundred forty of this article, "shared parenting" shall mean an order awarding custody of the child to both parties 41 so that both parties share equally the legal responsibility and control of such child and share equally the living experience in time and physical care to assure frequent and continuing contact with both parties, as the court deems to be in the best interests of the child, taking into consideration the location and circumstances of each party. The term "shared parenting" shall be considered interchangeable with "nearly equal shared parenting". An award of joint physical and legal custody obligates the parties to exchange information concerning the health, education and welfare of the minor child, and unless allocated, apportioned or decreed, the parents or parties shall confer with one another in the exercise of decision-making rights, responsibilities and authority.

2. For the purposes of this article a "parenting plan", required to be submitted to the court pursuant to clause one of subparagraph (ii) of paragraph (a) of subdivision one of section two hundred forty of this article, shall include but not be limited to:

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- (a) the legal responsibilities of each parent;
- (b) a weekly parenting schedule;
- (c) a holiday and vacation parenting schedule;
- (d) a schedule for special occasions, including birthdays;
- (e) a description of any specific decision making areas for each parent; provided, however, that both parents shall confer and jointly determine major issues affecting the welfare of the child including health, education, discipline and religion;
- (f) if applicable, the need for any and all of the parties to participate in counseling;
- (g) any restrictions on either parent when in physical control of the child or children; and
- (h) provisions for mediation of disputes.

3. One parent may be designated as a public welfare recipient in situations where public welfare aid is deemed necessary and appropriate. In making an order of shared parenting, the court shall specify the right of each parent to the physical control of the child in sufficient detail to enable a parent deprived of that control to enforce the court order and to enable law enforcement authorities to implement laws for relief of parental kidnapping and custodial interference.

S 5. This act shall take effect on the first day of november next succeeding the date on which it shall have become a law and shall apply to actions and proceedings commenced on or after such date.

HEW HAMPSHIRE:

HB 1301, *No* no-fault divorce for parents with minor children

Rep. Gary S. Hopper, Hills 5, New Hampshire, is introducing Bill HB1301, "AN ACT relative to grounds for divorce for persons with minor children. This bill permits no fault divorce based on irreconcilable differences only IF THERE ARE NO MINOR CHILDREN OF THE PARTIES." (Details after Rep. Hopper's introduction)

Life starts with unlimited dreams. We look to mom and dad for the hand we need to realize them, but for so many little ones the hand they reach for is only there every other weekend.

In 1960, 1 in 100 children tried to end their lives. In 1990, 1 in 20 became so desperate as to make an attempt on their life. We have to send the kids to schools that have metal detectors, many pack their books in clear packs for security reasons.

Why are young people killing each other? Why have our test scores declined? Why are our daughters becoming mothers far too soon, and why, with so much, are our children so unhappy?

While Blacks are disproportionately represented in jail, Asian youth are disproportionately seen in Harvard. 3/4th of Asian children are raised with both biological parents, only 1/4th of Blacks children are brought up in a home with both mom and dad.

As we march our children off to school this fall, we shouldn't blame the teachers for our children's failings, we should look to ourselves, for we have robbed them of the security they need to thrive. When one in two marriages end in divorce, it should come as no surprise that our children seem to fight just to keep their heads above water.

by Representative Gary S Hopper Weare New Hampshire
e-mail: Gary S Hopper [4pickles@mindspring.com] Tel: (603) 529 7728

_____ HB 1301 - AS INTRODUCED

<http://gencourt.state.nh.us/legislation/2001/HB1301.html>

2001 SESSION

01-2115

05/10

HOUSE BILL 1301

AN ACT relative to grounds for divorce for persons with minor children.

SPONSORS: Rep. Hopper, Hills 5; Rep. Matthew Quandt, Rock 20; Rep. Gilman, Graf 1; Rep. Stohl, Coos 1; Sen. Boyce, Dist 4; Sen. Roberge, Dist 9; Rep. Johnson, Dist 3

COMMITTEE: Children and Family Law

ANALYSIS

This bill permits no fault divorce based on irreconcilable differences only if there are no minor children of the parties. [Full text at <http://gencourt.state.nh.us/legislation/2001/HB1301.html>]

HB 1301 - AS INTRODUCED

2001 SESSION

01-2115

05/10

HOUSE BILL 1301

AN ACT relative to grounds for divorce for persons with minor children.

SPONSORS: Rep. Hopper, Hills 5; Rep. Matthew Quandt, Rock 20; Rep. Gilman, Graf 1; Rep. Stohl, Coos 1; Sen. Boyce, Dist 4; Sen. Roberge, Dist 9; Rep. Johnson, Dist 3

COMMITTEE: Children and Family Law

ANALYSIS

This bill permits no fault divorce based on irreconcilable differences only if there are no minor children of the parties.

Explanation: Matter added to current law appears in capitals.

Matter removed from current law appears [in brackets.]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

01-2115

05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand One

AN ACT relative to grounds for divorce for persons with minor children.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Causes for Divorce; Absolute Divorce, Irreconcilable Differences; Limited to Cases Without Minor Children. Amend RSA 458:7-a to read as follows: 458:7-a Absolute Divorce, Irreconcilable Differences. A divorce from the bonds of matrimony shall be decreed, irrespective of the fault of either party, on the ground of irreconcilable differences which have caused the irremediable breakdown of the marriage IF THERE ARE NO MINOR CHILDREN OF THE PARTIES. In any pleading or hearing of a libel for divorce under this section, allegations or evidence of specific acts of misconduct shall be improper and inadmissible, except [where child custody is in issue and such evidence is relevant to establish that parental custody would be detrimental to the child or] at a hearing where it is determined by the court to be necessary to establish the existence of irreconcilable differences. If, upon hearing of an action for divorce under this section, both parties are found to have committed an act or acts which justify a finding of irreconcilable differences, a divorce shall be decreed and the acts of one party shall not

negate the acts of the other nor bar the divorce decree. The court's findings and decree may be based on oral testimony or written stipulations of the parties.

2 Effective Date. This act shall take effect January 1, 2003.

Information concerning the ravages visited on children through divorce and separation:

1.) Fagan, Patrick and Robert Rector ~ The Effects of Divorce on America, A Heritage Foundation report that identifies beyond any doubt that the epidemic of divorce is destroying society.

<http://www.heritage.org/library/backgrounder/bg1373es.html>

Each year, over 1 million American children suffer the divorce of their parents; moreover, half of the children born this year to parents who are married will see their parents divorce before they turn 18. Mounting evidence in social science journals demonstrates that the devastating physical, emotional, and financial effects that divorce is having on these children will last well into adulthood and affect future generations.

Fiscal conservatives should realize that federal and state governments spend \$150 billion per year to subsidize and sustain single-parent families. By contrast, only \$150 million is spent to strengthen marriage.

Thus, for every \$1,000 spent to deal with the effects of family disintegration, only \$1 is spent to prevent that disintegration

2.) Fagan, Patrick ~ "How Broken Families Rob Children of Their Chance for Future Prosperity" a Heritage Foundation Report, June 11, 1999 (Available as a PDF document at

<http://www.heritage.org/library/backgrounder/bg1283es.html>)

3.) Fagan, Patrick F. and Dorothy B. Hanks. ~ "THE CHILD ABUSE CRISIS: THE DISINTEGRATION OF MARRIAGE, FAMILY AND THE AMERICAN COMMUNITY" A compelling

status report and useful suggestions for solutions to the disintegration of our families. <http://www.heritage.org/library/categories/family/bg1115.html>

4.) The Impact of Divorce on Our Children

<http://www.fathersforlife.org/divorce/chldrndivstats.htm>

SEPARATING AND DIVORCING PARENT:

HINTS TO HELP THE CHILD'S ADJUSTMENT TO THE DISSOLUTION

For more than two decades, the dissolution rate for first marriages has been quite high, with some studies noting that the rate is about 50 percent. Some studies indicate that children of separated parents have up to three times the number of emotional and behavioural problems as do children who live with both parents: 25 percent of them struggle academically or drop out of school; 65 percent of them do not have a good relationship with their father after separation and divorce. To help your children get through the tough times of dissolution, consider the following:

- * Make sure both parents stay involved in the child's life. Children may interpret lack of involvement as rejection. Often, they think the parent who is not involved in their life loves them less. Staying involved means more than just a visit every other weekend, but also an involvement and interest in the child's schoolwork, doctor appointments, and outside activities, etc.
- * Do not introduce a child to a significant other too quickly. Studies show that parents need to put dating on hold. Many use one year as a good frame of reference. Typically, children need even more quality time with their parents now, because they too, are under stress of their own.
- * Do not fuel the fantasy of reconciliation. Do not say to the child that you may get back together with the other parent when you do not know if that will happen. Nearly all children fantasise that their parents will reunite and they will all live happily together again. To have this hope raised, and then shattered, may significantly harm the child.
- * Take a long-term view toward your child's adjustment and your own. Studies show that it takes children about a year to adjust to their new life, while parents often need more time than that before they feel more secure with their own new lives.
- * Keep routines consistent as much as possible. Since your child is already undergoing a major change in his/her family unit because of the separation and divorce, it is best to limit the number of additional changes in a child's life. Try to keep children in the same school and doing the same activities with the same friends.
- * Do not abandon all attempts to impose limits on your child. By setting consistent limits, parents can actually help ease a child's adjustment to the separation. When children live with two parents, they are used to having rules and boundaries. When the same structure is kept in place after a separation, children tend to feel more secure, and often less like they are losing their total world.
- * Do not engage in one-upmanship with the other parent. Some parents try to make up for the separation and divorce by buying their child everything. In some situations, these gifts are designed to show up the other parent. Usually, children learn quickly how to play the game and play one parent against the other. Most

likely, what the child really needs now is attention, love and consistency, not the hottest toy of the season.

* Do not use kids as pawns. Some custodial parents mistakenly believe that if the other parent is not current with support payments, he/she should not be allowed to see the child. But that is not fair to the child. Studies show that parents who are denied access to their children are less likely to fully pay child support on time, than parents who remain involved in their kids' lives. Parents need to put their child's best interests first, and not involve the child in disputes between the adults.

* Ease the transition from one home to the other. In order to ease the transition for the child at either the beginning or end of a visitation period, many parents will try to prepare the child for the transition an hour to an hour and half before leaving one parent to go with the other. Additionally, non-custodial parents should keep some of the child's favourite books, toys, and family photos around to help the child feel more comfortable.

* Do not repeatedly miss scheduled visits with your child. Do not cancel visitation with your child. These visits are important for children. If a parent repeatedly does not show up as planned, it may make the child feel as though he/she is not loved, that he/she is not important. Often, it is also more difficult for the child to have a relationship with someone who repeatedly fails to keep promises.

* Protect your child's childhood. A common, unfortunate mistake that some parents make is to let their children hear too much. Bad-mouthing of the other parent to a child or sharing adult issues, such as dating, will often backfire and could prove to be devastating to the child.

DIVORCING PARENT'S TEN DO'S AND DON'TS

As parents go through the emotional turmoil that is often associated with a dissolution, many times their children get caught in the middle. Often without even intending to do so, one's actions may cause the child to become embroiled in the dispute of his or her parents. Some simple guidelines to help avoid hurting the children are below. Following these guidelines will not insulate a child completely from harm during the dispute, but perhaps, it may help serve as a reminder of how a parent's behaviour may affect their child during this vulnerable time in their life. DO's

1. Do specifically tell your children that you love them.
2. Do specifically tell your children that the dissolution is not their fault.
3. Do establish positive patterns of child care from the beginning of the separation.
4. Do let your child be a child.
5. Do encourage your child to have a healthy relationship with your spouse.
6. Do establish and maintain a calm, secure and stable environment for your children.
7. Do establish and maintain regular patterns of visitation.
8. Do inform your child's teachers and/or child care providers about the dissolution and any accompanying changes in living arrangements.
9. Do include your spouse in important decisions and events in your child's life.
10. Do reassure your children that even though you and your spouse no longer love each other, you will always love and care for them.

DON'Ts

1. Do not have hostile fights or arguments in front of the children.
2. Do not ask your child to choose where he or she would like to live.
3. Do not use the child for your emotional support.
4. Do not discourage visitation.
5. Do not disparage your spouse in front of the child, no matter how strongly you may feel about them.
6. Do not use your child to deliver notes, messages or communication of any form to your spouse.
7. Do not attempt to prevent your spouse's family (parents and other relatives) from having access to the child.
8. Do not allow issues of visitation to become linked to issues of support and maintenance.

9. Do not make appointments for your child (i.e. medical/dental) when they are scheduled to be with your spouse.
10. Do not hamper or interfere with your child's ability to take their clothing and possessions from your home to the other parent's residence.

Law Offices of Raj Bains, P.S.C. Washington State Resource Directory

