



>> Research indicates that there is not one best custody arrangement.¹ Studies confirm that relationships with both parents matter, but that it is the quality of the relationships that matter, not the quantity or frequency of contact.² Healthy father-child relationships can thrive in many different custody and parenting time arrangements. We recognize and endorse that joint physical custody can be beneficial for many children and families. This is tied to whether parents have the necessary attributes to make it work, such as adequate trust and regard between parents, ability to make joint decisions and cooperate, a child-centered approach, flexibility, effective containment of conflict, and pragmatic concerns such as flexible work schedules and geographical proximity.³ Often parents with these attributes choose joint physical custody of their own accord and so would not benefit from—nor need—a presumption of joint physical custody. Likewise, parents who cannot agree to joint physical custody and therefore litigate custody are the ones who are likely to benefit from a presumption but who do not likely share the attributes necessary to make shared care work well.

>> There are good reasons to be concerned about the effect on children of shared care when there is high-conflict between parents. When analyzing what will be best for children, fathers and families, we considered that the two major predictors of children’s adjustment following separation of their parents is their exposure to inter-parental conflict and the quality of the parent-child relationship.⁴ There is evidence from the United States and Australia, for example, that when a presumption of shared care is enacted, the number of high-conflict parents who end up with shared care increases and that it does not improve the quality of parents’ relationship or improve cooperation.⁵ In Australia, at the litigious and high end of the spectrum, review of two court and mediation samples found shared parenting was the mediated result in 27% of cases and court ordered in 46% of family court cases studied.⁶ (Recent research from Australia is instructive, since that country enacted new legislation in 2006 that is akin to a presumption of joint physical custody, with at least a 35:65% time split.) Yet, 73% of parents involved in shared care arrangements reported “almost never” cooperating with each other after the court decision and 39% reported “never” being able to protect their children from conflict.⁷

In those cases when children are caught in the middle of parental conflict, shared care compounds the risks of poor outcomes for children, such as a high degree of emotional distress.⁸ Conflict between parents has an adverse impact on their ability to parent sensitively, and inter-parental conflict brings a higher likelihood of harsh styles of discipline and diminished emotional responses.⁹ These parenting behaviors are associated ultimately with a child’s emotional insecurity and social withdrawal.¹⁰

Also of great importance, shared care in these situations is often not durable. Frequently it reverts to primary care within a year or two. For example, two-thirds of high-conflict parents who mediated a shared care arrangement in Australia no longer had that arrangement one year later.¹¹ Stability of shared care was 2.4 times more likely in families who had voluntarily entered this arrangement prior to mediation.¹² Reversion to one primary parent can leave that parent without sufficient financial resources to provide for the child, and leaves questions as to the future involvement of the non-primary care parent.



We believe, therefore, that custody decisions should not rest on a presumption of joint physical custody, but instead should be individualized to consider what works best for the child and family.

>> We also believe that important reforms can be made to increase healthy father involvement and we point out the following examples. (this is not an exhaustive list)

- A presumption of joint physical custody does not guarantee meaningful, healthy or enduring relationships between parents and children but these are important factors that should be considered in crafting public policy. In particular, we are concerned that a presumption of joint physical custody as proposed in Minnesota does not take into account the attributes parents need to make it work successfully. Moreover, Minnesota has scarce free or low-cost resources to help parents improve their co-parenting relationship to make shared care work. In addition, legal and other resources are dwindling (such as free mediation services), and filing fees have skyrocketed. Plus, our court system has become more difficult to access with the closing of public service hours and longer waits for court hearings, etc. These factors compound the inability of parents to dispute a presumption should one be enacted or to make changes should it not prove workable.
- The current best interest factors contained in Minnesota Statutes section 518.17, and those relating to parenting time in section 518.175, may need to be reexamined to see how they can better incorporate and promote the meaningful involvement of both parents over time, the reduction of parental conflict, and a family systems approach. Current law provides incentives for parents to show they cannot cooperate—to defeat a claim of joint custody—instead of providing incentives for parents to show that they *can* cooperate.
- We support more investment in resources to improve co-parenting relationships, particularly for low-income families who cannot access available resources due to the costs. We believe this will help increase meaningful, healthy and long-term father involvement because the single most powerful predictor of fathers' engagement with their children is the quality of men's relationships with the mothers, no matter what the legal relationship between the parents.¹³
- We believe that families going through child custody disputes can benefit from promising methods to improve meaningful, healthy and enduring parent-child relationships, particularly for fathers and children. For example, a "child inclusive" intervention in Australia for parents who are mediating parenting disputes incorporates information from school age children in a carefully managed process. One year later, this group had significantly better outcomes than families not receiving this intervention. *Better outcomes included children's experience of improved emotional availability of their fathers and greater sense of closeness to him, and greater satisfaction of fathers with care and contact arrangements of their children despite initially lower levels of overnight contact than the other treatment group.* Parents in this process were significantly more likely to negotiate less than 35:65% care ratios but had greater stability in their parenting time arrangements, and children's overall mental health tended to improve over the year after intervention.¹⁴

For more information about MFFN, or to contact us, please see our website at www.mnfathers.org.



ADDENDUM RESEARCH ENDNOTES

¹ See, e.g., Diane N. Lye, *What the Experts Say: Scholarly Research on Post-Divorce Parenting and Child Well-being*, Report to the Washington State Gender and Justice Commission and Domestic Relations Commission (June 1999).

² Paul R. Amato and Joan G. Gilbert, *Nonresident fathers and children's well being: A meta analysis*, *Journal of Marriage and the Family*, 61: 557-573 (1999).

³ Jennifer E. McIntosh, *Legislating for Shared Parenting: Exploring Some Underlying Assumptions*, *Family Court Review* (July 2009).

⁴ Australian Government, Attorney-General's Department, Civil Justice Division, *Impact of Separation on Children*, at: [http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/\(CFD7369FCAE9B8F32F341DBE097801FF\)~Impact+of+Separation+on+Children.pdf/\\$file/Impact+of+Separation+on+Children.pdf](http://www.ag.gov.au/www/agd/rwpattach.nsf/VAP/(CFD7369FCAE9B8F32F341DBE097801FF)~Impact+of+Separation+on+Children.pdf/$file/Impact+of+Separation+on+Children.pdf).

⁵ See McIntosh, *Legislating for Shared Parenting: Exploring Some Underlying Assumptions*, note 3 and Bruce Smyth, *A 5-year retrospective of post-separation shared care research in Australia*, *Journal of Family Studies*, 15: 36-59 (2009).

⁶ Jennifer McIntosh and Richard Chisholm, *Shared Care and Children's Best Interests in Conflicted Separation: A Cautionary Tale from Current Research*, *Australian Family Lawyer*, 20:1, p. 3 (January 2008).

⁷ Id.

⁸ Id.

⁹ Id., p. 4-5.

¹⁰ Id.

¹¹ McIntosh, *Legislating for Shared Parenting: Exploring Some Underlying Assumptions*, p. 6.

¹² Id.

¹³ Philip A. Cowan, Carolyn P. Cowan, Nancy Cohen, Marsha K. Pruett, and Kyle Pruett, *Supporting fathers' engagement with their kids*, in Jill D. Berrick and Neil Gilbert (Eds.), *Raising Children: Emerging needs, modern risks, and social responses* (pp. 44-80), New York: Oxford University Press (2008).

¹⁴ Australian Government, Attorney-General's Department, Civil Justice Division, *Impact of Separation on Children*, citing Jennifer E. McIntosh and Caroline M. Long, *Children Beyond Dispute, a Prospective Study of Outcomes from Child Focused and Child Inclusive Post-Separation Family Dispute Resolution Final Report*, Family Transitions Pty Ltd/ La Trobe University, p. 7 (October 2006), and McIntosh, *Legislating for Shared Parenting: Exploring Some Underlying Assumptions*.