

# Summary of Research on Shared vs. Primary Custody Schedules and New Legislation on Maximizing Time for Both Parents

Presentation by

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# Use of Terms in the Research

- Terms used in the proposed legislation:

Shared vs. Primary Physical Custody

- Terms used in the research we reviewed:

JPC: Joint Physical Custody

SPC: Sole Physical Custody

# Definition of JPC and SPC in the Research We Reviewed

- Social scientists have generally defined JPC as custody schedules that provide at least 35% of time to each parent.



# Some Context About This Field of Research

- Field of study since the 1970's
- Our focus is on studies in multiple (English-speaking) countries
- Studies have included children from the ages of 3 – young adults
- Studies are necessarily correlational in design

# Some Challenges to Drawing Conclusions From This Body of Research

- Studies vary in design; some use surveys, some interviews, some are based on review of records.
- Many studies only examined responses from mothers. Few included data from children and both parents.
- Studies vary in terms of how old children were when parents divorced, and in terms of how old the children were at time of the research.
- Studies look at different variables; some controlled for parental conflict, level of education and/or family income – other studies did not.

# Sampling of Some Repeated Conclusions



- Children in JPC arrangements report greater sense of well-being and parents report they have better general health than those in SPC arrangements; this has been found across several different countries.

# Continued…..

- Children in JPC arrangements have been found to have better cognitive functioning, and better academic performance than those in SPC arrangements.



# Continued…

- Children and parents report, and health records reveal, that children in JPC arrangements have better sleep, and experience fewer symptoms of depression and anxiety than children in SPC arrangements.



# Continued….



Children in JPC arrangements report more positive relationships with *<u>both</u>* parents than do children in SPC arrangements.

A linear relationship has been found between the number of overnights and the closeness of relationships between young adults and both parents - even when the divorce was high conflict.

When fathers had less than 40% of parenting time, their relationships with children deteriorated from 7th to 10th grade.

# Continued….

Children in JPC arrangements look more similar to children in intact families on various measures of psychological and physical health than they look to children in SPC arrangements.



# Continued…

- A few studies have looked at very young children (under 5 y.o.) and found positive benefits of JPC compared with SPC in terms of relationships with both parents, physical health and emotional health.
- Fathers stay more involved over time when they have significant time with their children.



# Continued….



- When college students are surveyed about their parents' divorce, the majority report a wish that they had spent more time with fathers
- Those whose parents did not share custody equally report feeling that arrangement was unfair to them, and to their fathers.

# Red Herring Concerns About JPC

- One factor that critics reference when debating the wisdom of any presumption of maximizing time with both parents is that this would put children at risk in families suffering from domestic violence.

- No social scientists or groups supportive of a presumption have ever suggested that DV issues be ignored. The fact is that Courts and attorneys can always attend to specific facts in a given case and move to minimize time with any parent who poses a risk to their children.

# Another red herring is that when parents have significant conflict, JPC is unwise

- Many researchers note that positive benefits for children are found in JPC arrangements **even when parents report significant conflict**. However it is true that many studies did not control for level of conflict. We need more data on this factor.

- The few studies that found JPC to have no positive effects when parental conflict was significant obtained reports *only from mothers*. ***We have no data from fathers on whether children do well in JPC arrangements when parents experience conflict in the relationship.***

# Arizona Study of Impact of Presumption of 50-50

- Researchers surveyed judges, attorneys, mental health professionals who worked with divorced families, and court staff, and asked about their perceptions of what impact the new presumption in the law had on families (4 years later).
- No children or parents were surveyed in this study.

- MHPs and Attorneys were neutral overall on the benefits or problems associated with this presumption.
- Judges were neutral to positive overall on the benefits of the presumption.
- Court staff was strongly positive on the benefits of the presumption.

# Myths about Shared Custody Presumptions

- JPC only works when conflict is low.
- JPC only works because the families who have shared custody arrangements were already very cooperative.
- JPC means 50-50 and nothing else.
- There isn’t enough data to know if shared custody differs from sole or primary custody arrangements.

# We came, we reviewed, we are convinced….

- Braver and Votruba (2018)reviewed many of the studies we read and refer to in this presentation.
- They assert that the benefits of JPC for children's adjustment are not primarily due to the fact that a unique set of families choose it. Even when parents are in conflict, and JPC is assigned by a Court, outcomes appear to be better for the children in those families.
- They conclude that virtually all studies to date support the idea that JPC is correlated with more positive outcomes for children *even when one parent opposes it.*
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# What's Virginia Doing About It?

**§ 20-124.2. Court-ordered custody and visitation arrangements.**

B. In determining custody, the court shall give primary consideration to the best interests of the child. The court shall consider and may award joint legal, joint physical, or sole custody, and there shall be no presumption in favor of any form of custody. ***The court shall assure minor children of frequent and continuing contact with both parents, when appropriate,*** and encourage parents to share in the responsibilities of rearing their children.

The National Parents Organization (NPO) has been lobbying unsuccessfully for several years to update the language of Va. Code § 20-124.3 to prevent judges from defaulting to "axe-murderer visitation" (every other weekend + dinner visits)

# NPO's Proposed Legislation

**§ 20-124.3. Best interests of the child; visitation.**

In determining best interests of a child for purposes of determining custody or visitation arrangements including any *pendente lite* orders pursuant to § 20-103, the court shall*, upon the request of either party, assure minor children of frequent and continuing contact with both parents so as to maximize the amount of time minor children spend with each parent, except in cases where there is abuse, neglect or other pressing safety concern. The Court shall consider the following factors when determining the particular custodial schedule that will meet the best interests of a child: …*

Delegate Elizabeth Guzman (D – 31st District) and Delegate Glenn Davis (R – 84th District) are co-chairing a bill for the 2022 Session.

# What are other states doing?

**11 states have a presumption of joint or shared LEGAL custody**

Arizona, Arkansas, District of Columbia, Florida, Idaho, Kentucky, Louisiana, Minnesota, Nevada, West Virginia, Wisconsin

**9 states have a presumption of joint or shared PHYSICAL custody**

Arkansas, District of Columbia, Idaho, Iowa, Kentucky, Louisiana, Nevada, New Mexico, Oregon

**7 states require MAXIMIZING PARENTING TIME**

Arizona, Illinois, Iowa, Minnesota, Tennessee, Vermont, Wisconsin

# What language are other states using?

**Arizona Revised Statutes 25-403.02**

A. If the child's parents cannot agree on a plan for legal decision-making or parenting time, each parent must submit a proposed parenting plan. B. Consistent with the child's best interests…***the court shall adopt a parenting plan that provides for both parents to share legal decision-making regarding their child and that maximizes their respective parenting time***.

**Illinois Compiled Statutes 602.7**

It is presumed both parents are fit and the court shall not place any restrictions on parenting time…unless it finds by a preponderance of the evidence that a parent's exercise of parenting time would seriously endanger the child's physical, mental, moral, or emotional health.... ***The court shall conduct a trial or hearing to determine a plan which maximizes the child's relationship and access to both parents*** and shall ensure that the access and the overall plan are in the best interests of the child.

**Minnesota Statutes 518.17**

In evaluating the best interests of the child for purposes of determining issues of custody and parenting time, the court must consider and evaluate all relevant factors, including...(10) ***the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent... Joint physical custody does not require an absolutely equal division of time.***

# What language are other states using?

**Tennessee Code 36-6-106**

In taking into account the child's best interest, ***the court shall order a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child*** consistent with the factors set out in this subsection (a), the location of the residences of the parents, the child's need for stability and all other relevant factors.

**Vermont Statutes 15-011-003-650**

The legislature finds and declares as public policy that after parents have separated or dissolved their civil marriage, ***it is in the best interests of their minor child to have the opportunity for maximum continuing physical and emotional contact with both parents***, unless direct physical harm or significant emotional harm to the child or a parent is likely to result from such contact.

**Wisconsin Statutes 767.41**

Except as provided in par. (d), the court shall presume that joint legal custody is in the best interest of the child.... ***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.***

# How is the “maximizing time” language interpreted by courts in other states?

**Tennessee**

“Our statute does require our courts to order a custody arrangement permitting both parents to enjoy the maximum participation possible, but it goes on to state consistent with the custody factors, and there are a laundry list of factors to consider. So, the way this has worked out practically speaking is that it still leaves the door wide open for judges to fashion a parenting plan consistent with whatever they want so long as their findings of fact go through all the custody factors and make findings of fact on them, and how they impact the parenting plan."

**Vermont**

“For our judges, maximizing continuing contact is a bit more of a range in the middle of 50/50 vs. alternating weekends. While it is not a presumption of shared custody, it is usually something close to equal and of course depends on the circumstances. In a divorce without extenuating circumstances of violence or unavailability, our courts will come close to if not order 50/50. We tend to break it down to how many overnights in a 14 day period as our courts define parenting time based on overnights. We have some judges who go directly to 7/14 but depending on the ages and circumstances, 5/14 or 6/14 seems to satisfy their interpretation. It is unusual for a parent to get the alternating weekend with a mid-week dinner; we refer to that as the ‘bad parent’ schedule.”

**Wisconsin**

“Most judges here apply that to mean equal shared placement. While there is no presumption of equal shared placement, many judges, but not all, will question ‘why not equal shared’ vs. ‘why equal shared.’ An alternating weekend and mid-week dinner type schedule would almost always require some basis of poor parenting/issues for the court to order the same.”

# Thank you for listening. We all care about families!

