SUMMARY OF RESEARCH RELATED TO THE DEBATE ABOUT
JOINT PHYSICAL CUSTODY (JPC) AND SOLE PHYSICAL CUSTODY (SPC)
Or The Implications of Being a "Part-Time Child"

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INTRODUCTION

This is a summary of research that has been published over several decades, with an emphasis on studies either conducted, or reviewed, within the last six years. This body of literature uses the terms Joint Physical Custody and Sole Physical Custody, which we understand relate to the legal terms, Shared or Primary Physical Custody, favored in the legal world in several jurisdictions. In the literature, the definition of Joint Physical Custody (JPC) for social scientists is the arrangement in which each parent has at least 35% of parenting time. A few studies have defined JPC as 35-50% of time, and Sole Physical Custody (SPC) as providing the non-resident parent with less than 25% time.

Our review of the literature powerfully illustrates that in the vast majority of studies, investigators conclude that children of all ages benefit from growing up with two very involved parents. There are a handful of studies that have found no significant differences in child adjustment outcomes stemming from different custody arrangements. A small number of studies have found that the level of conflict, affluence, and/or quality of communication between children and parents modulate the strength of differences in outcomes for children growing up in JPC or SPC.

Researchers have examined the question of whether it is the quality of time, or quantity of time, or both that can affect well-being and functioning in children of divorced parents. While we found a single study indicating the quality of time is the key factor, all of the other studies we reviewed suggest that quantity of time is key. Some studies have even been able to show a linear relationship between number of overnights and impact on parent-child relationships.

One "giant" in this area of research has been Joan Kelly, Ph.D. She has noted: "With the dramatic rise in the divorce rate in the 1960's, courts were increasingly called upon to settle disputes regarding living arrangements for children following their parents' separation and divorce. Courts drew upon cultural and societal views of fathering and parent-child relationships at that time, and visiting arrangements emerged that delegated mothers, with rare exception, as the primary caretakers, and fathers as "visitors" in children's lives…….For reasons not entirely clear, the specific visiting pattern of every other weekend with the nonresident parent, usually the father, became

the favored and traditional arrangement for children following separation. This alternating weekend pattern may have gained favor because it was easy to apply, requiring no judicial or psychological analysis. It simply divided the child's leisure time during the school year between parents, assigning divorced mothers all the work of raising children, including discipline, homework, and childcare, and typically excluding fathers from these normal parenting responsibilities and opportunities."

Kelly goes on to say: "Such guidelines are inherently flawed because of the one size-fits-all standard, and because they do not, in fact, address the best interests of many children. They failed to consider children's ages, gender, and developmental needs and achievements, the history and quality of the child's relationship with each parent, quality of parenting, and family situations requiring special attention.

Rigid and mindless adherence to such prescriptive guidelines most often resulted in those children with a warm and supportive relationship with their nonresidential fathers restricted to seeing their fathers only four out of each twenty-eight days, because of the default use of the guidelines, the same amount of time as for children with a self-absorbed, disinterested, or emotionally abusive father.

Children accustomed to interacting with a parent on a daily basis were suddenly required, as a result of the parents' separation, to wait twelve days before seeing that parent for forty-eight hours, and then wait, yet again, another twelve days for the next forty-eight hour contact. This protracted separation from a loved parent caused great anguish and confusion for many children, particularly for the youngest children, with poor memory and sense of time, limited or no language skills, and no cognitive capacity to understand why this abrupt decrease in their contact with the object of their affection occurred."

Joan Kelly wrote that for the AAML in 2005. Here we are, 16 years later, writing this summary in an effort to illustrate to the legal world of Virginia that Kelly's observations (based on the empirical data she reviewed at that time) were valid then, and remain valid today - supported by the ongoing investigation right up to 2021 of a wide variety of social scientists.

In reviewing the literature, we note a repetitive theme woven into the voices of the researchers in this field. The theme is the earnestness of these investigators as they set out to try to determine what will best protect children whose parents divorce and then live in two homes. These are social scientists who have devoted entire careers to exploring that question. Many of the authors of the studies we will reference have been publishing research results since the 1990's. Some of them have followed the same families for 25 years in an effort to draw valid and trustworthy conclusions.

We have also noted a repetitive tone expressed in the review articles that have surveyed many studies to examine results across populations, over years, and by many different investigators. That tone sometimes leans toward the frustrated. The frustration

surfaces because the findings are not hard to decipher when you are looking at the research from 30,000 feet up with a panoramic view. Linda Nielsen eloquently captures the feeling in 2012:

"Despite the research demonstrating the benefits associated with shared parenting and demonstrating that shared parenting couples are not an exceptional, rare group among divorced parents, misconceptions continue to circulate in academic publications and in general discussions of custody reform. In many ways, myths about shared parenting emanating from partial reviews of research or misinterpretations of existing data are like vampires: They appear to be dead and buried, but are resurrected again and again because the wrong weapons were used against them." (L. Nielsen 2012)

In 2014, Richard Warshak published a review of the literature on overnighting by children under 4 years of age, saying that he was attempting to "right a ship that was listing from a tide of misinformation". In order to right that ship, Warshak sought the endorsement of the world's experts in the field - clearly realizing that he needed the ballast of their review and input.

"Then I vetted my analyses by incorporating feedback from an international group of experts in the fields of attachment, early child development, parent-child relations, and divorce. The results appeared in Social Science and Parenting Plans for Young Children: A Consensus Report (Warshak Consensus Report) published in the American Psychological Association's journal, Psychology, Public Policy, and Law, that is edited by Cambridge University Professor Michael Lamb, a prominent child development scholar. The report was published with the endorsement of 110 of the world's leading researchers and practitioners, several who had conducted the seminal studies cited in the report." (Warshak, 2017).

In an article published in 2017 that restated those findings, and attempted once again to convince the doubters of the benefits of shared parenting for even very young children, Warshak republished his efforts in order to point out that four years after his Consensus Report was published, its conclusions and recommendations continue to be supported by science.

"[W]e believe that the social science evidence on the development of healthy parent–child relationships, and the long term benefits of healthy parent–child relationships, supports the view that shared parenting should be the norm for parenting plans for children of all ages, including very young children. . . . In general the results of the studies reviewed in this document are favorable to parenting plans that more evenly balance young children's time between two homes. Child developmental theory and

data show that babies normally form attachments to both parents and that a parent's absence for long periods of time jeopardizes the security of these attachments. Evidence regarding the amount of parenting time in intact families and regarding the impact of daycare demonstrates that spending half time with infants and toddlers is more than sufficient to support children's needs. Thus, to maximize children's chances of having a good and secure relationship with each parent, we encourage both parents to maximize the time they spend with their children. . . . Research on children's overnights with fathers favors allowing children under four to be cared for at night by each parent rather than spending every night in the same home." (p. 59) And, "The research supports the growing trend of statutory law and case law that encourages maximizing children's time with both parents. This may be even more important for young children in order to lay a strong foundation for their relationships with their fathers and to foster security in those relationships . . . .There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers. . . . Rather it is our conviction that our analyses meet the test of scientific validity and reliability, and thus are trustworthy in the legal sphere. (Warshak, 2017).

Then in 2018, Nielsen published a preface to a special issue of the Journal of Divorce and Remarriage in which she, once again, feels the need to counteract "misinformation on the subject of JPC". She notes:

"*20 or more states are revising custody statutes in favor of Joint Physical Custody (JPC). It has been a hot button issue globally for many years with debate around what is best and what the research says…*

The main catalyst for this special issue has been widespread misinformation on the subject of JPC spreading from the media to the internet and into the decision processes of legislators, MHPs, family law practitioners and parents with potentially harmful outcomes to children's wellbeing. The aim is to compile a comprehensive summary of the most recent accurate empirical research."

Nielsen wrote a review article in which she examined 60 studies and found that on study after study, children were found to have equal or better outcomes when reared in JPC households.

Clearly, policy in many states has not kept up with science. This summary is an attempt to present much of the relevant research (though of course, this is not an exhaustive list) that speaks to the essential question of what sort of custodial arrangements best protect children's physical and emotional well-being as they develop into young adults. We propose that science has been working hard to examine this question, and the good

news is that there is a great deal of data to decipher. The data strongly supports our conclusion that children fare best - in areas including academic functioning, physical health, self-reported life satisfaction, quality of parent-child relationships, and emotional well-being - when both parents are allowed to function fully as involved parents, and neither parent is moved into the role of a visitor to a part-time child.

SOME CONTEXT ON THIS FIELD OF RESEARCH

1) There is a large body of research to explore when studying this issue. Social scientists have been examining the effects of divorce on children for decades – studies were being done in the 1970's by giants in the field like Joan Kelly and Judith Wallerstein. Research continues unabated and a significant subsection of studies have focused on father involvement, and a comparison of JPC to SPC and the impacts on children of all ages.

2) Studies have been completed in many countries throughout the world. This review focuses only on studies published in English. Data we are presenting represent work in the USA, Sweden, Belgium and Holland.

3) Research over the decades has encompassed children of all ages, though the majority of studies have focused on children in elementary school, high school and college.

4) Studies are correlational in design by necessity; In other words there is no way to design a study asking parents to follow a specific custody arrangement in order to then examine the impact of different access schedules on the development and functioning of the children as they grow up. Correlational results cannot prove causation. However, when a body of research repeatedly finds significant correlations between variables, there are some reliable conclusions to be drawn.

5) In order to address the limitation of correlational designs, some researchers have done prospective studies as well as retrospective studies - - tracking the impact of access schedules that were set when children were a given age on their development over the next 5-7 years. Those studies checked in with the subject population at specific time points – for example one study by William Fabricius surveyed children at 7^{th} and 10^{th} grades to see how those children were faring in various custody arrangements over time.

6) A number of review articles have been written that attempt to draw conclusions by examining many different studies and comparing the results. There are also a few studies that have used national data from thousands of families. We summarize a few of these articles below.

7) Important to note as we review the research are certain common limitations of many of these studies:

a) Many studies only surveyed one parent, and in most of those studies, only the mother was surveyed. Consequently, most studies are not able to present the perspectives and memories of both fathers and mothers. This is problematic because several studies have found that mothers tend to underestimate the importance of father involvement, overestimate how much time fathers are spending with the children and overestimate the level of satisfaction in their children about the access schedule.

b) When comparing results from various studies, there is usually the challenge of comparing "apples to oranges". Different studies employ subjects of varying ages. Studies focusing on the same questions may employ very different methods (e.g. some use questionnaires, some live interviews; some rely on subjects' memories of the past, other studies follow families into the future). The dependent variables are not always the same - when researchers are examining the impact of different custody arrangements on the well-being of children, the definition of "well-being" or "adjustment" can include a wide variety of factors, including physical well-being, emotional well-being, academic functioning, behavioral problems, and/or the quality of relationships with parents or peers.

Drawing overarching conclusions about all of the data must acknowledge these challenges. On the other hand, when the results are overwhelmingly consistent across various studies, over the course of decades, and from country to country, the reliability of the conclusions becomes stronger and more convincing.

REPEATED PATTERNS OF RESULTS

I. Children in JPC arrangements report fewer problems, greater sense of well-being, and better physical health than children in SPC arrangements. (Steinbach and Augustijn, 2021; Bergström et al., 2015; Nielsen, 2018)

II. More specifically, a number of studies have found that better academic and cognitive functioning, less depression and anxiety, better physical health as measured by such phenomena as sleep, and better father-child relationships all have been more highly correlated with JPC than with SPC. (Braver and Votruba, 2018: Nielsen, 2018)

III. Children in JPC arrangements tend to report more positive relationships with *both* 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, relationships with children deteriorated from 7th to 10th grade. When parents shared time 50-50, the relationships were maintained with fathers during that time, and there was no deterioration in children's closeness to mothers. (Fabricius 2012; Bastaits and Pasteels, 2019)

IV. Children in JPC arrangements report no weaker attachment to Mothers than do children in SPC arrangements. (Kelly, 2012; Fabricius 2012; Sokol, 2014; Warshak 2016)

V. Children in JPC arrangements report more satisfaction with the amount of time they see their fathers than do children in SPC arrangements. (Pruett et al., 2012)

VI. 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. (Bergström, 2017; Fransson et al., 2016)

VII. There is some evidence that the results described above hold true even for families in which the parents have experienced significant conflict (Nielsen, 2018).

VIII. When fathers are involved in their children's lives with greater parenting access, they remain involved as the children become adults. With less access, fathers tend to have less contact with children over time, leading to negative outcomes for those children. (Pruett et al., 2012)

IX. There are some studies (but these are fewer in number) that have examined JPC and SPC for children 0-5 years of age and have found that even for very young children, JPC shows more positive impact on children's development than SPC. (Bergström et al. 2017)

X. When young adults are surveyed or interviewed about their own perspectives on the custody arrangements their parents had created for them, a significant majority report they did not see their fathers enough, and felt - as college students - that an equal division of time between their parents would have been their top preference. Most subjects in these studies perceived that their mothers were satisfied with the status quo while their fathers wished for more custodial time. Children as young as 3

years old have reported in some studies that they want more time with their fathers. (Kelly, 2012; Warshak, 2016)

XI. There is some evidence that suggests that the best outcomes in JPC are for low-conflict families, and researchers have noted that in almost all studies, families with a history of domestic violence have been excluded. No one in this field of study is suggesting that JPC would be beneficial to children when a family does have a history of DV. Important to note is that in each study that shows the best outcomes for children in JPC are in families where parenting conflict is low, the only reporters were mothers. *No study that has found conflict to be a significant variable modulating outcome for JPC arrangements has included the perspectives of both parents and the children.* (Fabricius et al., 2018; Berman and Daneback, 2020; Pruett et al., 2012; Steinbach and Augustijn, 2021)

XII. A recent review of 53 studies assessing the life satisfaction of adolescents (subjects were 11, 13 and 15 years old) in 37 North American and European countries (2021) concluded that overall life satisfaction is higher for adolescents in symmetrical custody arrangements (i.e., 50-50 custody) than in non-symmetrical arrangements. *However,* family affluence and the quality of communication between children and parents were powerful variables as well, and when those variables were controlled, the differences were not significant. This review also consisted only of studies that surveyed or interviewed the children themselves - no reports were based on parental reports. Still - the results are thought provoking given that *only 50-50 arrangements* were considered, results were pulled from research in 37 countries and *no results emerged that indicated JPC was less desirable for teenagers than SPC.* (Steinback et al., 2021)

ARTICLES OF PARTICULAR NOTE WE WISH TO HIGHLIGHT:

Fabricius, W. V., Aaron, M., Akins, F. R., Assini, J. J., & McElroy, T. (2018). What Happens When There is Presumptive 50/50 Parenting Time? An Evaluation of Arizona's New Child Custody Statute. *Journal of Divorce & Remarriage*, *59*(5), 414–428.

Fabricius et. al, (2018) focused on a change in the Arizona law that created the presumption of 50-50 parenting time and the reactions to that change held by a group of court staff, judges, mental health professionals and attorneys surveyed in that state four years after the law was enacted (Fabricius, et. al. 2018). Attorneys and MHPS were

neutral overall on the benefits or problems associated with the change in the law, while judges ranged from neutral to positive in their reactions, and court staff were strongly positive. According to all four groups, the change in the law did not impact the level of conflict between parents but there was a perception that the presumption of equal time did lead to a slight increase in *allegations* of abuse, domestic violence and substance abuse. There was no direct assessment of children in these families, which clearly is a limitation of the study. (13)

Nielsen, L. (2018). Preface to the special issue: Shared physical custody: Recent research, advances, and applications. *Journal of Divorce & Remarriage*, *59*(4), 237–246.

Nielson (2018) reviewed the state of recent research on shared physical custody and examined the misconceptions expressed by opponents of JPC. Nielson noted (in 2018) that twenty states were revising their statutes to include a presumption of joint physical custody (which she defined as providing each parent with at least 35% of parenting time).

Misconception #1: JPC advocates are fathers' rights activists.
Nielsen notes that because mothers still possess, and are provided by Courts the majority of parenting time, this issue is intrinsically connected to gender. The focus by social scientists on father involvement did not grow out of an activist movement but rather from evidence accumulating over time from many examinations indicating that children are negatively impacted when their fathers have limited parenting involvement, and benefit in a variety of ways when fathers have the full range of parenting opportunities that mothers have.

Misconception #2: JPC advocates believe 50-50 parenting arrangements should be the norm regardless of contextual factors.
Nielsen points out that scholars who support JPC universally acknowledged that symmetrical arrangements are not always best for families, and that JPC is not necessarily a 50-50 division of time. Researchers generally define JPC as providing each parent with a minimum of 35% of parenting time. Nielsen points out that joint legal custody was once considered radical and is now seen as standard in most states.

Misconception #3: Scholars studying JPC are seen as "pseudo-academic" professionals.
In fact, studies of JPC and SPC receive careful scrutiny by all journals considering their inclusion and these scholars are considered to be leaders in their field.

Misconception #4: JPC is a “grand experiment” being conducted without our knowing the impact on children and without the support of a full body of research.
In fact, Sole Physical Custody has been shown to have strong correlations to emotional and behavioral problems in children of all ages in many countries and yet has been codified in most states. There is a large body of research indicating repeatedly that families in which there are absent fathers, or minimally involved fathers produce children with the worst outcomes of adjustment. There is, in fact, a paucity of data in favor of Sole Physical Custody. There is a plethora of data in favor of Joint Physical custody.

Petren, R. E., Ferraro, A. J., Zimmermann, M. K. L., Anthony, M. V., & Pasley, K. (2020). A cross-lagged panel model of coparental interaction and father involvement shortly after divorce. *Family Relations*, *70*(3), 808–822.

Petren et. al. looked at parent interactions for the first six months after divorce. The early period after divorce is important for child adjustment and can predict how parents will cooperate over time, which in turn has been correlated with child adjustment. This study looked at covert and overt conflict between parents. This study is unique in that researchers pulled data from both parents about their perceptions of the conflict between them.

One important finding suggests that co-parent relationships are more cooperative over time when fathers are more engaged with their children and coparent from early on. This suggests that father engagement positively contributes to positive parent cooperation and counters the argument that only parents who are cooperative from the get-go ultimately find ways to keep both parents involved. This study also found that covert conflict in the early months after a divorce predicts later overt conflict. The authors suggest that when there are custodial arrangements that enable fathers to remain centrally involved in children’s lives, conflict over time may be mitigated.

Braver, S. L., & Votruba, A. M. (2018). Does Joint Physical Custody “Cause” Children’s Better Outcomes? *Journal of Divorce & Remarriage*, *59*(5), 452–468.

Braver et. al. (2018) reviewed the overall research designs of many of the studies we have discussed in this paper. They examined many of the strengths and weaknesses of the research designs used in this field of study and drew some conclusions about our current state of knowledge in this arena.

One of the common criticisms of research that concludes that JPC has benefits over SPC to child adjustment and well- being is that there is a self-selection effect occurring by which families who ultimately rely on joint custody arrangements are intrinsically healthier and more cooperative than families who ultimately follow sole custody arrangements. Braver concludes 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.* Braver et. al. 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.

PANELS OF EXPERTS

Nielsen cites a number of panels that have published their support of JPC:
1997: Eighteen experts in social science chosen by the National Institute of Children's Health and Human Development recommended distributing parenting time equally to ensure that both parents would remain involved in all aspects of their children's lives.

2016: Warshak obtained the signatures of an international group of 110 social scientists and mental health professionals who focused on the field of divorce who agreed that JPC should be the norm for all ages of children, including the very young. His review article (2016), Stemming the Tide of Misinformation: International Consensus on Shared Parenting and Overnighting analyzed four decades of research on this topic, and concluded that JPC - even for very young children - should be presumed.

2014: The Association of Family and Conciliation Courts (AFCC) published a panel's conclusion that there had been enough research to conclude that JPC would be best for children when conflict between parents was low to moderate and both parents were fit to make developmentally appropriate decisions about parenting.

2017: The International Conference on Shared Parenting published a finding that Joint Physical Custody of at least 35% of parenting time for each parent should be the presumption.

CONCLUSION

Sanford Braver, in his 2018 review article, "Does Joint Physical Custody "Cause" Children's Better Outcomes?" reports that there is a preponderance of evidence that Joint Physical Custody generally benefits children. He goes on to say that social scientists can now provisionally recommend a rebuttably presumptive JPC to policy makers.

"20 years ago, the first author wrote, "There is simply not enough evidence available at present to substantiate routinely imposing joint residential custody . . . there are too few cases adopting [it] to perform statistical analyses" (Braver & O'Connell, 1998, p. 223). That was before. A large number of those studies have since been performed, and the state of the newer evidence is almost completely supportive. On this basis, we contend the burden of persuasion has shifted to those who oppose a presumption of JPC."

Experts studying the landscape of divorced families routinely acknowledge that the unique circumstances and context of each individual family and child must be attended to and accounted for when we draw conclusions about what arrangements are in the best interest of children in general. However, also essential to attend to is the ever growing body of research revealing the benefits to children of having two fully involved parents - not just involved because they attend soccer games and piano recitals, and take the children on pleasant vacations. But involved because they have the full range of opportunities every week to parent their children in a hands-on, intimate manner.

A full range of opportunities is best provided by a shared custody model in which each parent has a minimum of 35% of the custodial time. That is the definition of Joint Physical Custody that investigators have relied on over and over again, and that arrangement has been shown to protect children emotionally, physically and relationally more effectively than an arrangement in which one parent is primary, and the other is rendered less essential, and more akin to an engaged visitor in the child's life. We assert that it is incumbent upon family law attorneys, mental health professionals working with divorcing families, judges and GALS to familiarize themselves with this body of research, and draw conclusions based not on history or personal bias or assumption, but on the empirical data that now exists for all of us to consider.

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