REPORT OF THE
VIRGINIA COMMISSION ON YOUTH

STUDY OF JOINT CUSTODY AND VISITATION

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 24

COMMONWEALTH OF VIRGINIA
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COMMONWEALTH of VIRGINIA

Commission on Youth

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TO: The Honorable James S. Gilmore, III, Governor of Virginia

and

Members of the Virginia General Assembly

The 1998 General Assembly carried over Senate Bills 506, 507, 669, 670, and 671 and House Bills 1151, 1235, 1238, and 1239 and requested that the Virginia Commission on Youth conduct a study of the advisability of creating a presumption of joint custody, amendments to the best interest factors, penalties for denied visitation, development of parenting plans, and requirement of parents to attend parent education classes.

Enclosed for your review and consideration is the report which has been prepared in response to this request. The Commission received assistance from all affected agencies and gratefully acknowledge their input into this report.

Respectfully submitted,

Thomas M. Jackson, Jr.
Chairman

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I. Authority for Study

Section 9-292 of the *Code of Virginia* established the Commission on Youth and directs it to "...study and provide recommendations addressing the needs of and services to the Commonwealth's youth and their families." Section 9-294 provides that the Commission has the power to "undertake studies and gather information and data in order to accomplish its purposes...and to formulate and present its recommendations to the Governor and members of the General Assembly."

The 1998 General Assembly carried over nine pieces of legislation relating to child custody and visitation and requested the Commission on Youth to examine the issues identified in the legislation. The Commission on Youth, in fulfilling its legislative mandate, undertook the study.

II. Members Appointed to Serve

During the course of the study, the full Commission on Youth received four briefings from the workgroup and other presenters. The members of the Commission are:

Del. Thomas M. Jackson, Jr. (Hillsville), Chair
Sen. Yvonne B. Miller (Norfolk), Vice Chair
Del. Eric I. Cantor (Henrico)
Del. L. Karen Darner (Arlington)
Del. Phillip Hamilton (Newport News)
Del. Jerrauld C. Jones (Norfolk)
Del. Robert F. McDonnell (Virginia Beach)
Sen. J. Randy Forbes (Chesapeake)
Sen. R. Edward Houck (Spotsylvania)
Mr. Gary C. Close (Culpeper)
Ms. Michelle Harris (Norfolk)
Mr. Douglas Jones (Alexandria)

To conduct a study on the carryover legislation, the Commission formed a workgroup to examine and make recommendations regarding the issues raised in each bill. The workgroup consisted of a diverse group of professionals representing areas related to child custody and visitation issues. Members included representatives of the legal and therapeutic communities, Circuit and Juvenile and Domestic Relations District Court Judges, mediators, child advocacy and parent rights groups. These workgroup members were selected for their professional expertise, as well as their ability to represent specific constituency groups. For a listing of the workgroup membership, please refer to Appendix B.

III. Executive Summary

During the 1998 General Assembly Session, nine bills were introduced in both the House and Senate which sought to alter the legal processes and parameters within which child custody and visitation decisions are made in Virginia. These legislative proposals addressed the issues of 1) mandatory parent education classes for divorcing parents, 2) the development and submission of parenting plans, 3) establishment of a presumption of joint custody, 4) substitution of the terms used for custody, visitation and the child's best interests, 5) written custody findings, 6) sanctions for denied visitation and 7) change in the threshold of the State's compelling interests in custody/visitation cases. The proposed legislation was carried over in 1998 based on the need to review the processes and options afforded to litigants who come before the court for resolution of child custody and visitation issues. The increase in the number of divorces involving children, the changing demographics of the family, and the increased use of alternative dispute resolution in family matters – all supported the need for review of Virginia's statutes regarding child custody and visitation.

Based on a review of the issues, the following recommendations are offered:

A. PARENT EDUCATION

Parents need to be fully informed of the impact of the separation or divorce on their children and be provided support to appropriately handle this change in their lives. Parent educational seminars provide parents with information which helps decrease destructive conflict and empowers the family to move on with their lives. Ordering attendance to parent education seminars is currently a discretionary option for the Judge.

Recommendation 1

When custody and/or visitation is disputed or contested, attendance to parent education classes should be ordered for parents at the initial court appearance. Either party may seek an exemption for good cause shown.

Recommendation 2

Provide funding to localities to offset the costs of participation in parent education classes by low income and indigent parents. ($308,000)

Recommendation 3

Request the Office of the Executive Secretary of the State Supreme Court to convene a group of experts to develop a model parent education curriculum.

B. PARENTING PLANS

Two states currently require parents to submit plans to the court prior to custody determinations. Routinely, the content of parenting plans address the articulation of the parents' proposal for the child's residential schedule, care arrangements, and how disputes between the parents are to be handled. Jointly submitted parenting plans are not dissimilar to mediated settlements. Rather than create a separate process, amendments to existing Code provisions are suggested to help parents take responsibility in determining custody and visitation arrangements for their child.

Recommendation 4
Amend Section 20-124.3(5) the best interest of the child factors to add the articulation of a parent's desires by specifying their plan for the child's residential schedule, care arrangements, and how disputes will be handled in the future.

Recommendation 5
Amend Section 20.124.2 to include that, when parties are referred to mediation in disputed custody/visitation cases, if appropriate, the mediation sessions should address the residential schedule of the child, care arrangements, and how disputes are to be handled in the future.

Recommendation 6
Request the Office of the Executive Secretary of the Supreme Court to develop a checklist which identifies the areas which should be addressed in a parenting plan.

C. WRITTEN FINDINGS

The majority of custody decisions are made in the Juvenile and Domestic Relations Court, which is not a court of record. There is variation across the state with respect to how Judges communicate the basis of their decisions to litigants. Not knowing why or how Judges reach their decisions can be an impediment to parents reaching closure in custody and visitation disputes and may result in relitigation.

Recommendation 7
Amend Section 20-124.3 to require that Judges communicate to the parties either orally or in writing the basis of their decision.

D. PRESUMPTION OF JOINT CUSTODY

Alterations to the Code to create a presumption of joint custody are premised on the view that the current system has a bias towards awarding custody to one parent. Unfortunately, no Virginia data currently exists to substantiate the existence of a bias or if presumptive whether joint custody is the appropriate response to the issue.

Recommendation 8
The State should fund a research project which examines the factors which influence custody decisions in Virginia. ($100,000)

E. TERMINOLOGY CHANGES

The term "best interest of the child" is used throughout the Code as a standard for child welfare, juvenile justice, and educational issues. Changing the term would create tremendous statutory and case law problems. The terms "custody" and "visitation" may be viewed as pejorative by those involved in disputed cases. "Custody" appears in 597 places in the Code and is often used in the context of issues other than the dissolution of a family relationship, making replacement of the term problematic. The term "visitation" is used 190 times in the Code and applies to a broader group than parents. As parents should not be referred to as visitors in their children's lives, a less derogatory term should be used.

Recommendation 9
The Division of Legislative Services should conduct an analysis of the term "visitation" in the *Code* and develop suggestions for the adoption of a less pejorative term after examining the experiences of other states and the potential impact of new terminology on case law.

F. DENIED VISITATION

When visitation is denied to the non-custodial parent, the parent is currently able to petition the court for remedy. The court currently has the power to change custody based on the denial of visitation.

Recommendation 10
The court response to denied visitation requires discretion on a case by case review. Do not amend the *Code* to create a standardized response to the denial of visitation.

Recommendation 11
Request the Executive Secretary of the State Supreme Court to disseminate information to Juvenile and Domestic Relations Court Judges and Circuit Court Judges on: 1) impact of divorce on children, 2) use of mediation in disputed custody and visitation cases, 3) importance of predictable visitation, and 4) parent education classes.

G. STATE'S COMPELLING INTEREST

It is important to empower parents to resolve their own issues without State interference; however, requiring a "compelling State interest" has far-reaching implications and would place many vulnerable children in jeopardy and is therefore not recommended.

Recommendation 12
Do not amend the *Code* to require a compelling State interest to warrant court intervention in custody and visitation disputes.

IV. Study Goals and Objectives

In developing goals and objectives for the study of custody and visitation issues, Commission staff reviewed the statutory intent of each piece of legislation and identified the salient issues. The resulting goals and objectives were presented to and approved by the Commission in April 1998:

I. Assess the advisability of creating a presumption for joint custody;

II. Determine if courts should mandate attendance to parent education classes in disputed custody and visitation cases;

III. Assess the feasibility of requiring the development of unified or separate parenting plan in disputed custody and visitation cases;

IV. Examine existing penalties and processes for handling denied visitation.

V. Assess implications of changing terminology with respect to the terms best interest of the child, custody, and visitation as they are used in Title 20.

VI. Explore the need for and impact of requiring written findings in custody and visitation cases.

To achieve these goals, the following objectives were undertaken:

- Convene a workgroup of representative of divergent views on child custody and visitation issues;
- Identify each representative group's goals for statutory revisions;
- Identify the current process and procedure for handling disputed custody and visitation cases in Virginia;
- Conduct national Code searches on statutory responses from other states to issues raised in carryover legislation;
- Survey Virginia parent education classes on referral, program, and budget issues;
- Conduct secondary data analysis on national parent education study regarding mandated programs, program content, and budget issues;
- Conduct statewide Juvenile and Domestic Relations Court Judges survey on their opinions regarding issues raised in carryover legislation;
- Review recent clinical and legal research on issues raised in the carryover legislation; and
- Assess capacity of statewide data system to respond to the policy issues raised in the carryover legislation.

V. Methodology

The findings of the 1998 Commission on Youth study of custody and visitation issues are based on several different methodologies. The primary focus of the study was the children who are the subject of disputed custody and visitation cases. This focus guided the four methodological approaches which are discussed briefly in the following pages.

A. WORKGROUP MEETINGS

The workgroup met eight times between May and December of 1998. The initial meetings were devoted to an exploration of the differing opinions held by the members regarding the issues under examination. The workgroup identified both the goals of the seven concepts incorporated in the carryover legislation and the types of information they needed to better inform their deliberations. Each of the seven issues (parent education, parenting plans, presumption of joint custody, written findings, sanctions for denied visitation, changing terminology and compelling State interest to intervene in custody and visitation cases) was discussed and analyzed separately. Where possible, the workgroup based their decisions on consensus and, when consensus was not reached, the workgroup made recommendations based on majority rule.

Both clinical and legal research on matters relating to custody, visitation and court processes were presented. Discussion focused on ways in which the goals of legislation could be met through statutory revision versus thorough training or agency policy. Workgroup members invited professionals to discuss mediation, written findings, and domestic violence issues as necessary. Workgroup members presented to the Commission on Youth the clinical issues and concerns related to the impact of divorce on children and the current capacity of the State's data system to analyze factors influencing Judicial custody and visitation decisions. Lastly, the workgroup participated in the design of a survey instrument, which was distributed to all Virginia Juvenile and Domestic Relations Court Judges.

B. LITERATURE REVIEW

Two forms of literature review were conducted for the study: the first focused on clinical studies assessing the impact of various custody arrangements on children and the other focused on other states' revisions to the court process and/or statutes in the area of custody and visitation. A review of the studies was undertaken to examine the existence of a gender bias in court decisions generally and specifically with respect to custody and visitation issues.

C. STATUTORY ANALYSIS

Contact with the National Council of State Legislatures provided a starting point for analysis of State Codes addressing custody, visitation, parent education, parenting plans, and terminology used in custody concerns. A separate Code search was conducted to identify common themes across the states in responding to custody and visitation issues. However, comparisons among states' statutory frameworks have been kept to a minimum in deference to the states' different court system structures and procedures, child welfare and domestic violence laws. As most states make custody determinations in the context of their family law structure and child/family protective services systems, cross-state comparisons were of limited value.

D. DATA COLLECTION

There were four data collection activities conducted to further the study effort. Data for the last three years from the *Virginia State of the Judiciary* was reviewed and analyzed to develop a trend in the number of custody and visitation cases heard at the District and Circuit Court levels in Virginia. Unfortunately, the statewide aggregate data reported provides neither a count of specific custody cases nor the final disposition of these cases. Court case information on custody and visitation is at the District Court level only. The second data approach involved the development and dissemination of surveys to programs in Virginia providing parent education classes to separating/ divorcing parents. Twelve programs were identified and contacted. (See Appendix E.) The third approach involved secondary data analysis of research conducted by the University of Western Michigan, which had conducted a national analysis of parent

education classes. Commission staff contacted the University to request specific data runs to ascertain the impact of statutory attendance requirements on program costs, personnel, program content, and evaluations. The final data collection activity involved the Commission's conducting a written survey to solicit the opinions of Juvenile and Domestic Relations District Court Judges on matters relating to child custody and visitation. (See Appendix D for a copy of the Custody/ Visitation survey component.)

VI. Background

The workgroup examined and shared various information, expertise and knowledge about the current legal process with respect to child custody issues. To aid in its analysis, the workgroup examined the current legal provisions and supportive services made available to litigants. This research was augmented by a review of the clinical literature regarding the impact of divorce on children, gender bias in case decisions, and model custody statutes.

A. VIRGINIA'S LEGAL PROCEDURES AND PROCESSES

The involvement of Virginia's legal system regarding issues of visitation and custody matters is initiated by an action for child custody by one of the parents or other party having a legitimate interest through 1) the filing of a petition with the Juvenile and Domestic Relations District Court or 2) the filing of a Bill of Complaint with the Circuit Court as incident to a divorce action.

Judges have the option of referring the parties for mediation services in an attempt to bypass the adversarial nature of a trial. However, referral to mediation is not uniform across the state due to resource constraints and differing opinions on the part of Judges and attorneys regarding the utility of mediation. If a mediated agreement is reached by the parties, the Judge will review the agreement using the criteria of the best interests of the child, and may enter the agreement as an order of the Court.

If no agreement is reached during mediation or if, after review of the terms of the mediated agreement, the Judge feels it is not in the best interests of the child to abide by the terms of the agreement, the matter will be set on the Court's trial docket. Before holding a trial on a contested custody case, the Judge has discretion to order various services, including, but not limited to, homestudies, custody evaluations, substance abuse evaluations, parenting education classes and psychological evaluations. Pending the hearing of the contested custody case, the Court may also order temporary relief such as temporary custody and temporary rights of visitation to one or both parents.

Once all Court-ordered services have been rendered and the case is docketed for trial, the Court will hold a hearing on the contested custody issue. This hearing may take a few minutes or it may take several days, depending upon the nature and complexity of the issues involved. During trial, the Judge is to consider various factors

relating to each of the parties and the best interests of the child. These child-related factors are enumerated in Section 20-124.3 of the *Code of Virginia*.

At the conclusion of all testimony and evidence from each of the litigants, the Court will render a decision. In doing so, the Judge must be cognizant of the requirement in Section 20-124.2, as amended, stipulating that,

> *[I]n determining custody, the court shall give primary consideration to the best interests of the child. 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. As between the parents, there shall be no presumption or inference of law in favor of either. The court shall give due regard to the primacy of the parent-child relationship...The court may award joint custody or sole custody.*

The Judge is not required to recite or submit the reasons or rationale for the decision rendered. Moreover, the Judge is not required to state which of the factors most affected the decision.

Once the decision has been rendered, if the matter is in the Juvenile and Domestic Relations District Court, the parties have ten (10) days from the date of the decision to file an appeal to the Circuit Court. Once appealed, the case is to be reheard in the Circuit Court on a trial *de novo* basis. A *de novo* hearing requires the Circuit Court Judge to treat the case as if the earlier hearing before the Juvenile and Domestic Relations Court had never occurred and the decision is to be based upon testimony and evidence submitted at the Circuit Court level.

If an appeal is made from the Circuit Court, then the case goes to the Virginia Court of Appeals, which does not involve a rehearing of the testimony and evidence. Instead, it involves a review of the testimony and evidence submitted to the Circuit Court, possibly oral argument by counsel or the parties as to errors alleged to have been committed by the Circuit Court Judge. The standard for this review is whether the Circuit Court Judge abused his discretion under the law in arriving at the decision rendered.

Once the custody decision has been rendered, the Court (either at the District or Circuit level) will also review the issues in light of the rights of visitation by each of the parties. Sometimes the parties can resolve visitation by agreement between them and sometimes the Judge must set out an extensive and very detailed schedule for visitation. Regardless of how the visitation schedule is determined, the Judge will order the parties to adhere to the schedule as part of the order.

If a party fails to obey the visitation order for any reason, the aggrieved party may file a Motion for Show Cause against the breaching party requiring that person appear before the Court and give the reason(s) why there was a breach of the order.

Because violation of a court order may subject the breaching party to incarceration, the breaching party is entitled to be represented by legal counsel and, if indigency requirements are met, the Court is required to appoint legal counsel for the alleged offender.

The Court will first hear evidence of whether there was a breach of the order and then hear evidence of the reasons and results of any breach. If the Court determines that there was a breach of the order and the reasons given do not constitute good cause, then the offender may be found guilty of violating the Court's order and be subjected to various corrective and punitive alternatives. The Court's options include, but are not limited to: 1) a change in the visitation schedule to include more or less time as the circumstances may require, 2) community service, 3) suspended periods of incarceration, 4) a period of incarceration up to twelve months, 5) fines, 6) taking the matter under advisement. Either party may file with the District or Circuit Court for alterations in the custody or visitation order based on a change in either party's circumstances. In these situations the Judge will rule, based on both a change in circumstances between the parties and the best interest of the child.

B. LEGAL RESEARCH

Statutory review of all 50 states and the District of Columbia revealed that every jurisdiction specifically authorizes joint or shared custody arrangements. With respect to a presumption of joint custody, ten states and the District of Columbia declare a general presumption in favor of joint custody. An additional ten states declare a presumption in favor of joint custody if both parents agree. Two states require the consent of both parents before joint custody can be ordered. The remaining 24 states make joint custody an explicit opinion without any presumptions for or against joint custody. While an examination of the statutory provisions from other states was helpful, there are many variations in how the different states handle custody and visitation matters, making comparisons to Virginia's statutes somewhat limited. There has been no longitudinal cross-state analysis on the impact of joint custody on children.

The workgroup reviewed 20 domestic relations law articles addressing the issue of joint custody and determinants of child custody decisions. A complete listing of these articles, along with a summary of each, is provided in Appendix C. From the articles reviewed, it is apparent that there was a wide variety of conclusions and recommendations, as well as a strong need for more accurate data. The more notable areas of research are summarized below:

- M. A. Mason, A. Quirk, "Are Mothers Losing Custody? Read My Lips: Trends in Judicial Decision Making in Custody Disputes–1920, 1960, 1990 and 1995," *Family Law Quarterly*, Volume 215 (Summer 1997)—compared appellate court cases from 1920, 1960, 1990 and 1995 and concluded that mothers and fathers in 1920, 1960, 1990, and 1995 are each still favored close to half the time in custody decisions.
- J. A. Twaite and A. K. Luchow, "Custodial Arrangements and Parental Conflict Following Divorce: The Impact on Children's Adjustment," *The Journal of Psychiatry & Law*, Volume 53 (Spring 1996)—recommends that custodial decisions should be made on an individual

basis, with no presumption that custody should be awarded to either the mother or the father. Parents should be educated regarding the importance of avoiding overt hostility and establishing a workable co-parenting relationship.

- K. Carpenter, "Why Are Mothers Still Losing: An Analysis of Gender Bias in Child Custody Determinations," *Det. C. Law Review*, Volume 33 (1996)—concludes that the discretion of Judges under the "best interests" standard has resulted in Judges basing their decisions on their own outdated and often gender-biased beliefs. Those beliefs concern the role of women as mothers and result in women being deprived of custody due to choices and lifestyles that are held acceptable for men, such as frequent sexual activity and ambitious career goals. The author's recommendation was to find a gender-neutral standard such as the "primary caretaker presumption" so that a child is placed with the parent with whom the child has developed the strongest emotional bond.
- J. R. Dudley, "Noncustodial Fathers Speak About Their Parental Role," *Family and Conciliation Courts Review*, Volume 410, No. 34 (July 1996) and A. Kidde, "Noncustodial Fathers: Why So Many Drop Out and What Can Be Done About It," *Washington State Bar News*, Volume 25, (December 1996)—concludes that divorce mediation, except in cases involving domestic violence, appears to be a preferred approach to assisting families in making decisions in the children's best interests and preparing parents for successful post-divorce parenting. Educational programs were also found to be important in preventing unnecessary stress and distress.
- L. S. Jacobson, A. G. Dvoskin, "Is Joint Custody in the Child's Best Interests?," *Maryland Bar Journal*, Volume 11, No. 25, (1992)—found that, at divorce, the child needs whatever consistency can be salvaged, accompanied by a reduction in conflict and model of behavior indicating that the conflict can be resolved peacefully. Joint custody should be reserved for the rare couple who can put aside the differences that ended their relationship as husband and wife and still exercise the discretion of loving parents to make decisions in the child's best interests.

The review of the articles provided conflicting guidance on statutory reform.

VII. Findings and Recommendations

A. PARENT EDUCATION (HB 1151 and HB 1235)

1. National Overview

According to the First International Congress of Parent Education Classes held in Chicago in 1994, overall divorce is projected to occur in one-half to one-third of couples who married in the 1980s and 1990s.[1] Of these divorcing couples, an estimated 65% have minor children. Cumulative evidence from research shows that children's adjustment seems less affected by the actual separation and divorce than by the parents' interpersonal and coping skills. Five factors – inter-parental conflict, poor parenting skills of custodial parents, non-involvement of the non-custodial parent, economic hardship and stressful life changes – are cited as most likely to negatively

[1] Caldwel, R.A. & B.L. Bloom. "Social Support: Its Structure and Impact on Marital Disruption," *American Journal of Community Psychology*, Vol. 10, Spring 1982, p. 27.

influence the child's adjustment to divorce.[2] Most professionals agree that decisions which improve the well-being of children after divorce and separation are made by parents who are able to communicate with one another. In response to the need for raised parental awareness of the impact of divorce and parent communication on children, many courts have referred divorcing parent to classes addressing the effects of divorce on children. The majority of these programs were started between 1992 and 1994.

Parent education classes have been well-received in jurisdictions in which they have been implemented. Numerous newspaper, mass-market magazine and legal journal articles support the concept and goals of parent education. Most print media reports point to the experience of Cobb County, Georgia, which implemented a mandatory program (through local court order) of classes for divorcing parents in 1991. Coverage of the Cobb County program cites the success of the "Children Cope With Divorce" (CCWD) educational package and includes testimonials from Judges and mental health professionals as to the relative drop in caseload and less intense atmosphere in divorce cases involving litigants who had been through the program.[3]

In 1998, Blaisure and Geasler of the University of Western Michigan (UWM)[4] conducted a national survey of 3,073 counties regarding court-connected parent education programs for separating/divorcing parents. Of the 2,274 counties which responded (74%), programs were identified in 541 counties. Contact persons in these counties were requested to provide program materials to the researchers and analysis identified 37 distinct programs in use in 310 counties. For the purposes of the UWM study, parent education is defined as an organized group meeting that has an educational rather than counseling or mediation purpose, and focuses on the transition of divorce for families. Two types of programs were described in the study: generative programs, i.e., those used in multiple locations/counties that serve as a source of programming for other localities; and singular programs, i.e., those used in only one location. Of the 541 counties offering parent education, 53.4% use one of 16 generative programs. Almost half of all counties with parent education use one of the following six top proprietary programs:

- Children Cope With Divorce
- Children First
- SMILE
- Children in the Middle
- High Plains
- Children of Divorce Workshop

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[2] Amato, P.R. "Children's Adjustment To Divorce: Theories, Hypothesis And Empirical Support," *Journal of Marriage and the Family*, Vol. 55. 1993, p. 42.

[3] Lawson, C. "Requiring Divorce Classes for the Sake of the Child," *New York Times*, January 23, 1993.

[4] Geasler, M.J. & K.R. Blaisure. "A Review of Divorce Education Program Materials." *Family Relations*, Vol. 47, No. 2, 1998, p. 3.

The remaining ten programs are used in 7.6% of the counties. Only 3.9% of counties offering parent education use singular programs.

Attendance by divorcing couples may be mandated by statute or through local court order, ordered by a Judge on a case-by-case basis, or on a voluntary basis. While only three states (Connecticut, Utah and New Hampshire) mandate attendance by state policy, they are over-represented by 44% (N=221) in the UWM study. Other jurisdictions may mandate attendance by local court order or have informal attendance policies determined on a case-by-case basis. Mandatory attendance policies established by a local court rule were found in 19% (N=98) of the responding localities and 35% (N=173) had discretionary attendance. Some localities order attendance to classes only when parents are unable to agree about custody and/or visitation matters.

Sanctions for non-attendance appeared to be consistent between statutorily mandated and court-ordered programs, with contempt citations issued more frequently in Judge-ordered attendance. Analysis was conducted for the mandatory attendance programs established either by statute or local court order and displayed in Table 1.

Table 1

Consequences for Non-attendance to Parent Education Classes

Consequence	Statutorily Mandated	Required by Local Court Order
Contempt of Court	26%	36%
Decree Delayed	26%	26%
Decree Not Granted	30%	36%
Hearing Not Granted	18%	18%
Cannot File Motion	8%	8%
Subsequent Action Disallowed	8%	8%
Other	47%	35%

Source: Virginia Commission on Youth Graphic, Analysis of University of Western Michigan Data, 1998

Contractor agencies, including public and private mental health and social services agencies, colleges and universities, court service units, and combinations of these entities typically administer these programs. Court workers had primary responsibility for the program in one-third of the counties which reported programs. Approximately 82% of respondents had parent education provided by community-based programs and 18% relied on court-operated programs. This provider profile remained stable for both states with mandatory attendance statute and those without. Parent education classes were contracted with private non-profits in 50% of the cases.

A variety of program materials are used across the country. Program content was measured by the amount of time allocated to child, parent, and court issues and varied by program and venue. Program materials which were child-focused addressed

the developmental stages of children, identifying the impact and typical reactions of children to divorce, responding to children's distress and helping children to adjust. Parental content focused on personal adjustment, including grief/loss, divorce process, handling change, new relationships, co-parenting, self-help and referral. Content which focused on the legal issues included mediation, representation and court procedure, parental responsibility, custody, visitation, parenting plans and child support.

Program standards varied widely, with under 50% of the programs operating under any form of written standards. However, states having statutory requirements for program attendance are more likely to have standards than states without such a requirement. Program goals for statutorily-mandated programs are slightly different from those with informal attendance policies, with the latter having more of a focus on participants' understanding the court process than on increasing participants' knowledge of the effects of divorce on children.

The teaching process was measured as presentation of facts versus skills development. Research suggests that skills training is more effective with parents, especially in conflict reduction communications skills necessary for successful co-parenting. Teaching strategies varied by program and were categorized by level of participant involvement (which were defined as passive, limited, and active). Passive strategies involved lectures, videotapes and handouts. Limited strategies included group discussions, self-assessment tools and workbooks. Active strategies used role-play skills practice and self-awareness activities. According to Blaisure and Geasler, the most common teaching format (75%) is a single, two to four hour session involving videotapes, lecture and group discussion.

Few programs have conducted formal evaluations, with only 22% of the programs (N=111) reporting such activity. The majority of these evaluations were conducted by agency staff and focused on participant satisfaction. Evaluation methods consist largely of exit questionnaires. Program effectiveness seems to vary with the level of spousal conflict, the timing of the training with relation to the divorce, and the content and teaching strategies employed. Studies of the effects of parent education on relitigation rates indicate that the parents with the highest conflict levels and lowest adaptive parenting skills seem to benefit most and relitigate less other. Only 22 programs, or 5% of all programs, have tracked litigation rates before and after implementing the program. Studies in this area have been confounded by differences in litigation policies among jurisdictions. The UWM study concluded that parent education classes are not yet well-established enough to yield summary data. The authors cite the reluctance of courts to mandate parents to non-treatment control groups as a barrier to scientific program evaluation, but state that some commercial programs do controlled outcome studies within their own client bases.

Participant fees were used by 91% (N= 458) of the programs as their primary source of funding. The fees range between $20 and $45, with the most frequent fee cited as $30. A fixed fee is charged by 70% of the counties, although 58% of the

respondents reported having procedures to waive payment in cases of financial hardship. Sliding scale fees are used by 27% of the programs. Programs with formal attendance policies (both statutory and by local court order) reported fewer problems securing funding and space than did those with informal attendance policies. Funding, however, was reported as still a concern for over half the programs as displayed in Table 2.

Table 2

Funding Concern as a Function of Attendance Policy

Funding Concerns	Formal Attendance Policies*		Informal Attendance Policies		Total**	
	N	%	N	%	N	%
No Problem	109	49	34	28	143	42
Small Problem	63	29	30	24	93	27
Big Problem	48	22	59	28	107	31
Total	220	100	123	100	343	100

Source: Virginia Commission on Youth Graphic, Analysis of University of Western Michigan Data, 1998

2. Virginia Programs

In Virginia, twelve programs providing parent education were identified and were sent surveys. (See Appendix E.) The survey had an 80% response rate. Two programs reported that all Juvenile and Domestic Relations Judges in their jurisdictions mandate attendance. One program reported that their Circuit Court Judge mandates attendance. Of the Virginia parent education programs identified, 60% held four to six sessions annually and 40% held over ten classes a year. Communities with mandated attendance policies held the greatest number of sessions per year and 60% of the programs required parents to attend separate classes. All programs cover co-parenting, listening skills, and custody decisions in their seminars. Only one program files a report with the Court. All programs require participants to pay to attend class, with 80% of the programs charging participants between $24 and $40. State or local funds were used by 40% of the programs to help offset their costs. Program evaluation was conducted by agency staff in 60% of the programs and mainly addressed participant satisfaction. Most (80%) localities indicated that there should be standards if parent education is to be mandated.

A statewide survey was conducted for all Juvenile and Domestic Relations Court Judges to solicit their opinions on the issue raised in the carryover legislation. Seventy-one or 74% of the Judges responded. Fifty-two percent of these Judges reported that they often or always order parents to parent education classes. One-third reported they seldom make this referral. Six Judges (9%) reported that the resource was not available. The majority of the Judges (62%) favor making attendance to parent education classes mandatory for all divorcing/separating parents, assuming resources are available. The primary reason cited for favoring mandatory parent education is it

promotes better co-parenting. An additional factor Judges cited for favoring mandatory parent education was its potential to limit re-litigation. Judges who did not favor mandating parent education (37%) cited their fear of limiting the Court's discretion as the primary basis for their views.

In formulating recommendations for mandated attendance to parent education classes, the workgroup tried to balance their unanimous support for the program with their caution about over-restricting the discretion of the court in custody cases. It was decided that the long-term benefits of attendance—reduced parental conflict, increased focus on their children's needs, and exploration of alternate means to resolve conflicts—outweighed the concerns of limiting Judicial discretion. Parenting education was strongly supported as a means to promote positive parenting despite of the dissolution of the marriage or relationship. An additional benefit of parenting education was seen as the support of parents' taking an active role in deciding their own custody and visitation arrangements.

However, in light of national and state practice, it was recognized that, in mandating attendance to parent education classes, the State has a fiscal obligation to localities. In Virginia, the average cost of a parent education program is $35 and 20% of the participants are unable to pay the total participant fee. Extrapolating a percentage of the number of custody cases heard in Juvenile Court which represent parents who are parties to a custody proceeding arising out of divorce or separation and, assuming the State should pay for 25% of the total costs, the total funding needed for statewide application is $308,025. A breakdown by each Judicial unit is provided in Appendix F.

Recommendation 1

When custody and/or visitation is disputed or contested, attendance to parent education classes should be ordered for all parents at the initial court appearance. Either party may seek an exemption from attendancefor good cause shown.

Recommendation 2

Provide funding to localities to offset the costs of participation in parent education classes by low income and indigent parents. ($308,000)

Recommendation 3

Request the Office of the Executive Secretary of the State Supreme Court to convene a group of experts to develop a model parent education curriculum.

B. PARENTING PLANS (HB 1151 and HB 1235)

Parenting plans have been used in custody and visitation cases by a variety of states through statutory mandate or local court requirement. The goal of the parenting

plan is to locate responsibility for the child's welfare with the parents, as opposed to the court. Parenting plans are used as legal documents or in the preparation of court orders outlining custodial and visitation determinations. Routinely, parenting plans are viewed as potential drafts of a court order and may be filed singularly or jointly. While there are variations across the nation regarding the requirement of a plan as part of the custody proceedings, all of the plans require concrete outlines of the child(ren)'s residential schedule, deviations from the schedule, and the means by which parents handle disputes arising out of the schedule. In many ways, parenting plans are similar to a mediated settlement in addressing custody and visitation arrangements developed by the parties and, as such, they routinely employ a screening process to identify cases of domestic violence to divert from the process.

Washington was the first state to require parenting plans in all disputed custody and visitation cases. Montana is currently the only other state to have a similar requirement. Some states (Alabama, Arizona, Illinois, Massachusetts, Missouri, Ohio, and Oklahoma) require parents to submit a plan prior to awarding joint custody and two states (Texas and Colorado) encourage the submission of a plan prior to a joint custody award. The District of Columbia, Nevada, New Jersey and Pennsylvania give courts the discretion to require a parenting plan, regardless of how parental responsibility is to be allocated. The issues which are normally required to be addressed have to do with the child(ren)'s residence, each parent's rights and responsibilities, and procedures to resolve conflict.[5] In most cases the Judge reviews and approves the plan unless he finds that the plan was not developed voluntarily or that the agreement would be detrimental to the child(ren). In these situations, the Court provides the parents another opportunity to negotiate an agreement. Setting provisions for evidentiary hearings to object to a parenting plan is routinely at the Court's discretion. When spousal or child abuse is suspected, an evidentiary hearing is mandatory. The standard used to review a plan by the Court is whether the plan is detrimental to the child, which is a lower standard than best interest of the child, the one normally used in family law.

The only research conducted on the impact of parenting plans was conducted by Jane Ellis in 1996 in Washington. Her study of 300 cases in King County found a 42% increase in the awarding of joint custody after the enactment of the parenting plan legislation. Joint residential arrangements increased from 3 to 20% of the cases, sole maternal custody decreased from 79 to 70%, and sole paternal custody awards declined from 18 to 10%. Interviews with litigants, attorneys, and Judges found evenly divided opinions as to whether parenting plans decreased hostility levels between the parents.[6]

Concern with statutorily requiring parenting plans as a part of custody proceedings has centered around administrative burdens and the issues of fairness between the parties. The fairness issue is related to the varying abilities of litigants to

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[5] The American Law Institute, *Principles of the Law of Family Dissolution, Tentative Draft Part 3*, March 1998, p. 281.

[6] American Law Institute, p. 308.

advocate for their own needs and their children's needs. Concern about domestic violence victims having to assert their wishes and negotiate an agreement with their batterers has necessitated the development of screening and information transfer processes in courts to identify these clients. That many *pro se* litigants feel handicapped in developing a parenting plan without the assistance of an attorney has had a chilling effect on states' statutorily requiring these plans. Language barriers and different literacy rates among litigants have resulted in the need for court assistance in completing the parenting plans. The attendant costs to provide such assistance has created an additional disincentive for states to codify the use of parenting plans.

The Judges who responded to the survey are evenly divided on requiring both parents to submit either a unified or separate parenting plan. The breakdown of the Judicial response is provided below in Table 3.

Table 3

Requiring Parents to Submit Plan Prior to Hearing	
Favor	34 of 71 (48%)
Do not favor	35 of 71 (49%)
Missing	2 of 71 (3%)

Source: Virginia Commission on Youth analysis of Joint Custody and Visitation Surveys, 1998

Ninety-two percent of the Judges indicated that the administrative side of the Court would need to provide assistance to litigants in developing parenting plans. In the majority of the state, over half of the litigants would need assistance in completing a parenting plan. The map on the following page displays the Judicial perception of the percentage of litigants needing assistance. In lieu of the *Code's* requiring a parenting plan be submitted, 70% of the Judges favored the development of a checklist to be used by litigants as a guide for the development of a unified or separate parenting plan.

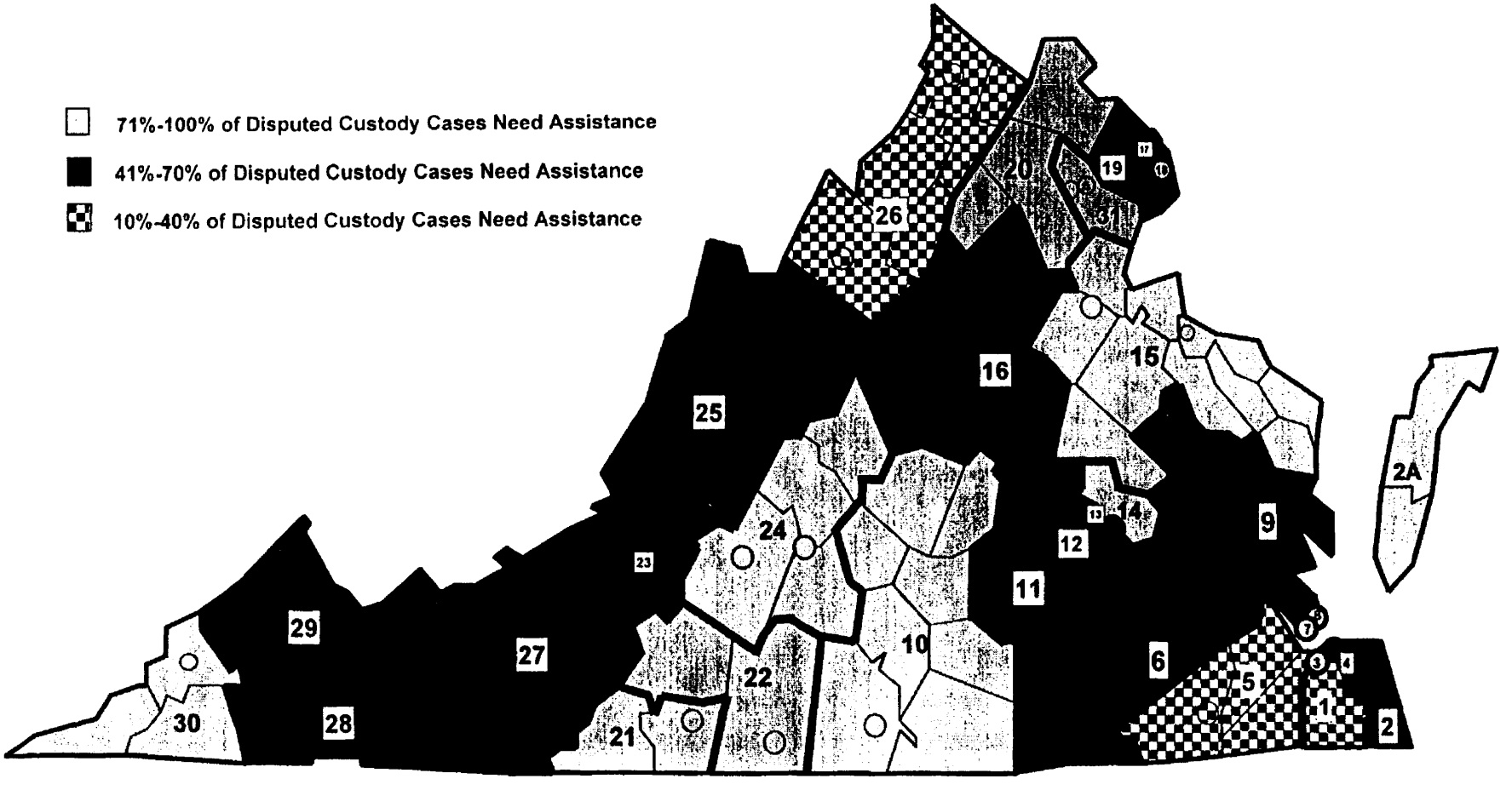
The workgroup identified six goals to be accomplished through the use of parenting plans:

1. To assist the parents in remaining focused on the child;
2. To provide parents with more control in making decisions relating to their children;
3. To aid in reducing conflict between the parents;
4. To provide Judges with a tool to help guide their decisions about custody and visitation issues;
5. To assist the parents in clarifying their desires; and
6. To assist parents in identifying areas of agreement and disagreement.

After a review of the national literature and the surveys on parenting plans, the workgroup identified three barriers to the establishment of a new legal process which

Percentage of Cases Needing Parenting Plans

Judges representing 42% of the Juvenile Court districts reported high percentages of disputed custody cases which need the assistance of the court in developing parenting plans.



Source: Virginia Commission on Youth graphic/analysis of Virginia Juvenile and Domestic Relations District Court Judges Survey, Fall 1998

would be required with the establishment of parenting plans. These barriers were: 1) different understandings of parenting plan content; 2) complexities of establishing a screening process for the mandatory development plans of parenting plans; and 3) the legal standing of a parenting plan. It was the consensus of the workgroup that, rather than creating a new process and legal criteria as a means to reach the goals listed above, other approaches should be examined.

Four approaches were identified and endorsed by the workgroup as a means to meet the goals of parenting plans. The first approach is to add the articulation of a parent's desires for custody to the best interest factor Section 20-124.3(5). The *Code* lists one of the factors for Judicial consideration of the child's best interest to be, "the role which each parent has played and will play in the future in the upbringing and care of the child." By amending the phrase "and will play in the future" to include "taking into consideration each parent's proposal for the child's residential schedule, other care arrangements and how disputes between the parents will be addressed in the future," parents are given the opportunity to provide more specificity to their desires and Judges are afforded additional guidance.

By amending this section of the *Code*, parents would have to specify what they want and to identify areas of agreement and disagreement between themselves and the other parent. With this approach, the Judge is given more information, but a separate process to develop a plan is not required. While amending this section of the *Code* does not lessen the level of conflict between the parents as the information is still presented in an adversarial process, it does empower the parents to clearly articulate their plans for their child(ren).

Recommendation 4

Amend Section 20-124.3(5) the best interest of the child factors to add the articulation of a parent's desires by specifying their plan for the child's residential schedule, care arrangements, and how disputes are to be handled in the future.

The second approach is to strengthen referral for mediation in disputed custody and visitation cases. The *Code* in Section 20-124.2 states, "mediation shall be used as an alternative to litigation where appropriate." An assessment of the parties' appropriateness for mediation is made by the Judge and occurs prior to the initial evaluation session. Some workgroup members felt that the additional screening by the Judge (in addition to the mediator) has resulted in custody cases not being uniformly referred to mediation and the criteria of what is appropriate becoming too exclusive. In addition, the mediation cites do not specially address its application to custody and visitation cases. Making specific mention of the goals of parenting plans in the reference to the use of mediation in Section 20-124.2 would heighten the visibility of mediation as a means of resolving custody disputes.

Recommendation 5

Amend Section 20.124.2 to include that, when parties are referred to mediation in disputed custody/visitation cases, if appropriate, the mediation sessions should address the residential schedule of the child, care arrangements, and how disputes are to be handled in the future.

The third approach involves the development of a checklist which identifies the areas addressed in a parenting plan. This list would have no binding power, but would be used as a tool to help litigants and others to work through custody and visitation issues. By providing a checklist to litigants, additional guidance to level the playing field for all parents to advocate for their desires would be provided. A checklist would create standardization across the state and hopefully limit the use of onerous parenting plans some local courts are currently using. Clerks, intake workers, mediators, and instructors of parent education would be provided a checklist developed by the Supreme Court, which would identify the areas a parenting plan should cover.

Recommendation 6

Request the Office of the Executive Secretary of the Supreme Court to develop a checklist which identifies the areas which should be addressed in a parenting plan.

Since the development of alternative dispute resolution legislation, there has been limited training for Judges and attorneys on the uses and applicability of mediation. The final recommendation is to provide Judicial and attorney training to promote the use of mediation in custody and visitation disputes. Providing resources has increased the availability of mediators across the state; training on the use of mediation would result in more referrals to the mediation process.

C. WRITTEN FINDINGS (SB 506 & 670, HB 1238)

Many custody decisions are rendered in Juvenile and Domestic Relations Court which is not a court of record. Given the demands of the Judiciary at the District Court level, there is variation in the uniform communication to the litigants about the basis of custody and visitation awards. The absence of communication of the basis of the finding leaves the litigants unable to reach closure on the dispute. However, 79% of the Judges did not favor requiring written findings. Fear of creating delays and the absence of relevancy upon appeal were the reasons most frequently cited for not favoring written findings.

During the course of the discussions of proposed legislation, the workgroup members became acutely aware that some Judges across the state may not be clearly or adequately articulating the reasons and/or basis upon which their decisions about to child custody issues are made. The workgroup determined that the purposes of this legislation were to 1) enable litigants to better understand the basis for a Judge's decision, 2) to assist litigants to better understand the legal criteria upon which a decision must be based, 3) to promote a better relationship between the litigants, and

4) to ensure that Judges adhere to the factors set out in the *Code* as the basis for child custody determinations.

After careful review of the pertinent *Code* sections relating to child custody issues, the workgroup agreed that an articulation or explanation of the basis for such rulings would be conducive to providing the parents with an understanding of the law, the legal process and could aid in fostering a better relationship between litigants thereby reducing the stress suffered by the children involved. It was determined by the workgroup members that there should be a requirement for Judges to communicate the basis of their findings and that this requirement should be clearly set forth in the *Code*.

Recommendation 7
Amend Section 20-124.3 to require that Judges communicate to the parties either orally or in writing the basis of their decision.

D. PRESUMPTION OF JOINT CUSTODY (SB 506 & 670, HB 1238)

Other than a ban on infanticide by Emperor Constantine, the first major change in child custody came with the passage in 1839 of Lord Talfourd's Act, which allowed equity courts in England to award the custody of children of "tender years" to the mother. The tender years doctrine was first cited in the United States in 1830 in Maryland and assumed that maternal care was qualitatively different from and more essential to normal development of the child than was paternal care. This doctrine served as the primary criterion for awarding custody of children of approximately ten years old and younger and prevailed until the late 1960s. The tender years and maternal preference doctrines were supported during the twentieth century by two widely accepted psychological theories—Freudian psychodynamics and Bowlby's attachment theory. By emphasizing the primacy of the mother-infant relationship and minimizing the influence of the father, these theories appeared to lend scientific credibility to the legal standard of maternal preference and the tender years doctrine. As these theories changed and were replaced by new research, inconsistent application of the new theories of child attachment within the legal system became evident.

The current legal standard in the majority of states for determining child custody is "best interest of the child." The law in nearly every state now mandates that no custody preference should be given to either parent on the basis of gender. Advocates representing various constituencies argue that the definition of "best interest" in most statutory language leads to an assumption by the courts that the mother is the primary caregiver and is therefore the primary or psychological parent. Professional custody evaluators emphasize the lack of training of Judges in clinical assessment of families and children and favor the Judicial interview as a decision-making technique. Proponents of presumption of joint custody base their arguments on two assumptions: 1) child development is improved when the child has predictable, frequent and continuing contact with both parents; 2) there is a bias in awarding mothers sole custody when both parents are fit and willing to assume custody. The empirical

research on both these issues, i.e., child development and gender bias, will be briefly discussed in the pages that follow.

Gender Bias in Custody Awards

Studies have attempted to assess the impact of gender bias by the courts in the award of custody and visitation. Results point to a trend towards more equitable decision-making in custody cases and a large residual bias in the Judiciary in favor of maternal custody.

In Colorado, 17 Judges from three counties were interviewed as part of a large study on decision-making in contested custody cases.[7] The Judges were found to dislike domestic cases in general and custody cases in particular. In the study, one Judge claimed he would rather send someone to life in the penitentiary than decide a disputed custody case, citing the potential to do damage and the fact that he is "playing God."[8]

Three factors were identified with custody award patterns: the system of Judicial assignment of the counties sampled, the level of urbanization of the counties, and the age of the Judges. Paternal custody was awarded more often in the urban areas (Denver county) than in the suburban and rural areas studied. The method by which Judges were assigned to Domestic Relations Court was found to predict more traditional award patterns, with Judges who were rotated through Domestic Relations awarding to fathers more often than Judges who were permanently assigned to that court. These differences, while statistically significant, accounted for only a small portion of the differences in award patterns.[9]

The greatest predictor of custody award was found to be the age of the Judge presiding over a custody case. Mothers were found to be the preferred custodial parent in the majority of cases, but younger Judges did not rely on the tender years doctrine and "could not conceive of a generally prevailing set of facts that would make mothers more eligible" for custody. Older Judges felt it was more important to place children with the same sex parent when the child is under six and after the onset of puberty. Morality was a factor for younger Judges only when it affected child-rearing. Older Judges in the sample were ambivalent about moral issues such as cohabitation. Neither younger nor older Judges were willing to award custody to substance-abusing parents.

Younger Judges tended to place more value on prior or temporary custody arrangements, giving greater weight to stability and to the assumption of the primary psychological parent. Older Judges were more likely to use temporary custody as a test to determine which parent to award final custody. Both older and younger Judges assessed the motives of the disputing parents in decision-making. Younger Judges

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[7] Pearson., J. & M.A. Luchesi Ring, "Judicial Decision-Making In Contested Custody Cases." *Journal of Family Law*, Volume 21, 1982-83, pp. 703-724.

[8] Pearson, p. 711.

[9] Pearson, p. 716.

were more likely to cite law and statute in their decisions, while older Judges discussed experiences on the bench "over the years." Sole maternal custody was favored by all older Judges and references to mother-child bonds, strong maternal commitment to child rearing were cited as major factors in awards. Sole paternal custody was viewed with great suspicion by older Judges, who saw the father as wanting to avoid child support or to ensnare the ex-spouse in an abusive relationship. Older Judges hearing cases in which the father was seeking sole custody more often required the father to prove their fitness to parent than they did when the mother sought sole custody. Younger Judges tended to evaluate the statements and demeanor of both parents more evenly.[10]

The Tennessee Bar Association's Commission of Fairness evaluated reported appellate court decisions pertaining to gender bias in custody awards.[11] Of six rulings identified, three resulted in reversals of award of custody to fathers, two related to reversals of financial aspects of decisions favorable to fathers, and one case involving an appeal by a father was upheld in favor of the mother. These results could be interpreted that bias against mothers in the lower court was corrected on appeal; however, it is more likely that the limited sample available to the researchers skewed the outcome. One of the major problems with research in this area is the limited court records kept in most Domestic Relations Courts. In many states, including Virginia, contested custody cases are referred to higher courts as *trial de novo*, so records of original litigation are extremely limited and make retrospective data collection difficult.

Fox and Kelly (1995) found that, while nearly 80% of a sample of requests for child custody in Michigan (n=509) were uncontested, mothers were more likely to convert their preferences into legal action.[12] Odds that the father would be given sole custody were higher when the children were older, when the oldest child was male, when the father was the plaintiff, and when a court investigation was conducted during divorce proceedings. The awarding of paternal custody was less frequent when the educational level of the mother was higher, the income of the father was higher than that of the mother, or the father was unemployed or had support arrearages prior to the request.

Brema, et. al (1995) surveyed Court Appointed Special Advocates, attorneys, guardians ad litem and therapists for ratings of traits of mothers and fathers in scenarios where one parent was described as incompetent.[13] The researchers concluded that no double standard was detected, that custody and visitation decisions were not affected by any sex-role stereotypes held by the sample, and that biases

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[10] Pearson, p. 720.

[11] Tennessee Bar Association, *Report of the Commission on Gender Fairness*, http://www.tba.org/GenderFairness/Report?cgf-summary2.html 9 Sept 98

[12] Fox, L. and R.F. Kelly. "Determinants of Child Custody Arrangements at Divorce," *Journal of Marriage and the Family*, Vol. 57, August 1995, p. 693.

[13] Brema, C., K.L. Carssow, C. Shook, and S. Sturgill. "Assessment of Fairness in Child Custody Decisions," *Child Abuse and Neglect*, Vol. 19, No. 3, March 1995, pp. 345-353.

regarding gender and sex-role preferences are disappearing. Kunin, et. al (1992) found that a counselor or custody evaluator's recommendation was a predictor of Judicial decision-making in a majority of disputed custody cases sampled.[14]

Bahr, et. al (1994) measured the effects of the removal of maternal preference in child custody cases by observing the changes in the outcomes of eight criteria from 1970 to 1993.[15] Using a sample of over 1,000 custody cases, the researchers found that the removal of maternal preferences had no effect on custody requests by fathers, the incidence of custody disputes, granted custody modifications or the percentage of custody awards to fathers. During the period studied, joint custody awards increased from 1% in 1970 to 21% of custody cases in 1993. A five-fold increase in the percentage of custody cases with specific visitation orders was noted. Approximately 50% of divorces in the sample between 1990 and 1993 included a visitation order. Additionally, it was noted that the percentage of mothers required to pay child support increased to 20% of cases in which the father was awarded sole custody.

According to these studies, despite the fact that a presumption towards awarding maternal custody on the basis of the tender years doctrine has largely been struck down, there does appear to be residual Judicial bias in child custody awards to continue to favor the mother-child relationship. Very little empirical material on the prevalence and types of bias is available. The jurisdictionally-specific data which is available supports the supposition that Judicial attitudes generally parallel societal attitudes and that change can be accelerated through awareness and education within the Judicial system.

Since 1983, when New Jersey conducted the first inquiry into gender bias in state Judicial systems,[16] 39 states, the District of Columbia and 9 of the 13 federal circuits had established task forces on gender bias in the Judiciary. These task force conclusions have been consistent with respect to finding that significant gender bias exists in all areas of jurisprudence, and generally mirrors the perceptions, biases and values of the larger society. Examples include stereotypical thinking about the perception of relative worth of men's and women's roles, myths and misconceptions about the social and economic realities of women's and men's lives, and the unequal burdening of one sex with roles and tasks that are not placed on the other. In the context of Judicial gender bias, these findings fall into two categories: 1) gender bias in the courtroom and under the law, and 2) gender bias in court administration and the legal profession.

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[14] Kunin, C., E.B. Ebbeson, V. Konecni. "An Archival Study of Decision-Making in Child Custody Disputes," *Journal of Clinical Psychology*, Vol. 48, No. 4, July 1992, pp. 564-573.

[15] Bahr, S., J. Howe, M. Mann, and M. Bahr. "Trends in Child Custody Awards: Has Removal of Maternal Preference Made a Difference?" *Family Law Quarterly*, Vol. 28, No. 2, Summer 1994, pp. 247-267

[16] Kearney, C., and H. Sellers, "Sex on the Docket: Reports of State Taskforces on Gender Bias," *Public Administration Review*, Vol. 56, No. 6, Nov/Dec 1996.

The subject of gender bias in child custody cases stemming from divorce and legal separation is a highly contentious one, with polemic positions taken by women's rights, fathers' rights and children's rights activists. The debate is generally lacking substantiation by objective data on the rates of occurrence of Judicial bias. The majority of the literature on gender bias is sourced from advocacy groups. Irony was noted in a study attempted by the Tennessee Bar Association Commission on Gender Fairness, in that testimony received from both mothers' and fathers' groups "...is both consistent (i.e., claims of gender discrimination) and inconsistent (i.e., each group claiming to be the victim of such discrimination)."[17] The authors concluded that, while dissatisfaction with either the Judge in that particular case or "the system" was tied to whether the respondent in the study won or lost contested litigation, the perception of gender bias in the (Tennessee) Judicial system exists. "That perception, whether or not based in reality, cannot be ignored."[18]

Male critics of the Judiciary suggest that by maintaining the status-quo, with the custodial parent nearly always being the mother, it is easy for Judges hearing contested custody cases to be biased in favor of maternal custody. In most cases where the father is petitioning for sole custody, the father carries the burden of proving he is the principle nurturing parent despite the societal perceptions that the mother is assumed to fulfill that role. The father believes that the State and his ex-spouse conspire to deprive him of his parental rights and, as a result, fathers are automatically being regarded less fit to parent than mothers.

Women's groups, however, claim that a bias exists against mothers working outside the home. Unfairly weighted as a negative factor by Judges, this is seen as a tactic by a male-dominated society to limit the earning power of women and makes it more difficult for women to leave potentially dangerous, abusive relationships.

Children's rights groups are divided along the lines of "best parents are both parents" (presumptive joint custody) and custodial parent right to autonomy. In the latter case, joint custody is held to be destructive to the development of the child. The custodial parent in sole custody arrangements has complete authority over the child and the non-custodial parent has little or no say-so in visitation and parental decision-making. Both of these viewpoints make contradictory cases for Judicial bias.

To a large degree, the lingering gender bias that may exist in child custody proceedings parallels the development of social thought in the 19th and 20th centuries. Beginning with Roman law and persisting well into the 19th century, children were considered the chattel, or property, of the father who held custody and had authority over them. This "pater familias" rule was so absolute that custody disputes were settled in court only in the event of serious and provable harm to the child. English Common Law released a father who was denied custody for his children from parental financial responsibility; therefore, courts were reluctant to award custody to the mother.

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[17] *Report of the Commission on Gender Fairness*, p. 10.
[18] *Gender Fairness*, p. 3.

In his address to the Virginia Supreme Court Task Force on Gender Bias in the Courts, Chief Justice Harry Carrico noted that the key to eliminating gender bias in the courts is in the attitudes of those working in the legal system. "The point is not to blame particular individuals, but to explore practices that are perceived to reflect gender bias, to hold those practices up to the light for examination and discussion, and to improve awareness and sensitivity to gender equality."[19]

Research to substantiate the existence of gender bias in Virginia has not been undertaken. Barriers to such research efforts are:

- the absence of written findings on custody cases heard in Juvenile and Domestic Relations Court;
- the absence of an aggregate database capturing original petitions through case disposition; and
- the subjective nature of the best interest factors.

Since the enactment of Section 20-124.3, 74% of the Judges reported they seldom or never award sole physical custody over the objection of one of the parents. When asked if they would favor the establishment of a rebuttal presumption for joint legal custody, 68% or 48 of the Judges were opposed.

Table 4

Creating Rebuttal Presumption of Joint Legal Custody	
Favor	22 of 71 (31%)
Do not favor	48 of 71 (68%)
Missing	1 of 71 (1%)

Source: Virginia Commission on Youth analysis of Joint Custody and Visitation Surveys, 1998

Of the Judges who supported such a change (31%), their reasons for doing so were based on the view that children benefit from both parents' active involvement in child-related decisions and their view that joint legal custody reflects their current practice in custody awards.

The percentage of Judges opposing a rebuttal presumption of joint legal custody was even higher, with 92% of the Judges opposed.[20] The reasons for opposing a presumption of joint physical custody were based on concerns about restricting Judicial discretion and/or child adjustment considerations, as indicated in Table 5.

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[19] *Gender Fairness*, p. 27.

[20] For both presumption of joint legal and physical custody, it was clearly stated in the survey question that there was no history or evidence of domestic violence or child abuse.

Table 5

Reasons for Not Supporting Change	
Unduly restricts Court's Discretion	41 of 65 (63%)
Parents who litigate are less able to successfully manage joint physical custody	31 of 65 (48%)
Younger children do better with one primary caretaker	28 of 65 (43%)
Other	31 of 65 (48%)

Source: Virginia Commission on Youth analysis of Joint Custody and Visitation Surveys, 1998

Legislation establishing the presumption of joint custody is offered as means to respond to the perception of gender bias. It is not evident such a bias exists and, if the bias is present in Virginia, that joint custody is the proper remedy. Therefore, prior to amending the *Code of Virginia,* the Commission offers the following recommendation.

Recommendation 8

The State should fund a research project which examines the factors which influence custody decisions in Virginia. ($100,000)

E. TERMINOLOGY (SB 506 & 670, HB 1238)

The carryover legislation encompassed three terminology changes to the *Code*, with respect to custody and visitation. The current terms and suggested changes was replacing a "child's best interest" with "the needs of the child," "custody" with "parenting," and "visitation" with "parenting arrangements." The proponents of these changes believe new terminology would reduce stigma (with custody and visitation) and lessens the subjective nature of custody decisions.

The term "best interest of the child" is used throughout the *Code* as a standard to justify legal decisions affecting minors. Removal from the home into foster care, placement in alternative living arrangement, treatment determinations, and other forms of child welfare interventions are based on this standard. The term when used in the context of custody and visitation, is purposely vague to allow the trier of fact to assess a variety of factors with the specific individual child in mind. Criticism of the term is usually based on its vagueness and openness to interpretation. Those who suspect Judicial bias point to the best interest standard as the means by which biases can go undetected or be justified. Despite its lack of specificity, best interest of the child is used to determine disputed custody cases in 46 states.

As part of the Judicial survey, Juvenile and Domestic Relations Court Judges were asked if they favored replacing the term "best interest of the child" with "the needs of the child." The term "needs of the child" was suggested as it was thought that the term more readily lent itself to quantification and therefore objective decision-making. Ninety-six percent of the Judges were not in favor of replacing the term "a child's best interest." The primary reasons for their objections are summarized in Table 6.

Table 6

Replacing Term "best interest of the child"	
"Needs" limits focus to quantitative issues	20 of 68 (29%)
Would remove legal precedent	26 of 68 (38%)
"Best Interest" is more comprehensive	57 of 68 (84%)
Other	14 of 68 (21%)

Source: Virginia Commission on Youth analysis of Joint Custody and Visitation Surveys, 1998

Both the term "custodial parent" and "visitation" are reportedly experienced as pejorative terms by those for whom the term apply. They argue that parenting involves more than custodial care and the use of the term "non-custodial care parent" reflects an unwarranted second-class status. The term custody is used throughout the *Code* and appears 591 times. "Custody" is used in the context of law enforcement arrests, Department of Social Services' caregiving arrangements for abused and neglected children, and the commitment of delinquent children into state care. While the same term "custody" is used, the term and legal implications vary depending on the context in which it is used. Much of domestic relations law is dependent on case law and legal precedent which relies on strict interpretation of language and phraseology. This is important because even if the statutory challenges could be overcome to carefully identify when the term "custody" is used solely in terms of separation and divorce, there would be loss of case law for appellate review. This issue was reviewed by the Commission in 1994, pursuant to SJR 243. The following note from the report published as a result of that study effort, applies to the 1998 study as well:

> *It was felt that new language would begin to take on the stigma of the current language once it had been in place for a few years. The group reasoned it was the condition of not living with the child which is scarring to adults so named. In the creation of a new terminology, the same stigmatization would undoubtedly occur simply because it describes the same reality, and no new naming of the reality lessens the frustration or sadness on the part of the parent it describes.*[21]

The term "visitation" is used 190 times in the *Code* and applies to a broader group of people than parents. While it is acknowledged that language has the power to hurt, changes to the *Code* to replace the term should be made after thorough examination of the implications and impact on case law. Changing the term "visitation" has been suggested by the U. S. Commission on Child and Family Welfare and has occurred in other states, but an analysis of the impact in Virginia of such a wide-ranging statutory revision is beyond the scope of this study.

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[21] Virginia Commission on Youth, *Senate Document 46 Study of Model Child Custody and Visitation*, 1994.

Recommendation 9

The Division of Legislative Services should conduct an analysis of the term "visitation" in the *Code* and develop suggestions for the adoption of a less pejorative term after examining the experiences of other states and the potential impact of new terminology on case law.

F. DENIED VISITATION (SB 506 & 670, HB 1238)

After review of this proposed legislation the workgroup determined that the purpose of same was to 1) assure that parents actually receive the time provided for by court order and 2) enhance penalties to ensure compliance with court orders.

The workgroup began its deliberations by reviewing the current legal process or enforcement of a court's visitation orders. Currently when a visitation order is violated, the aggrieved party may file a Motion for Show Cause in the appropriate court clerk's office. The matter will be placed upon the court's docket, an arraignment will be held for the alleged violating party, and a hearing held to determine the defendant's guilt or innocence with respect the alleged violations. If found guilty of a violation of the court order, the remedies currently available, including but not limited to incarceration, fines, and modification of the court's order, were determined to be adequate to satisfy the purposes of the proposed legislation.

However, the workgroup remained concerned that violations of visitation orders may not be receiving due consideration and that the sanctions currently available to the courts may not be used effectively. The workgroup determined that the best method for addressing this concern would be to include the issue of importance of visitation to the child into the Judicial training curriculum.

Recommendation 10

The court response to denied visitation requires discretion on a case by case review. Do not amend the *Code* to create a standardized response to the denial of visitation.

Recommendation 11

Request the Executive Secretary of the State Supreme Court to disseminate information to Juvenile and Domestic Relations Court Judges and Circuit Court Judges on: 1) impact of divorce on children, 2) use of mediation in disputed custody and visitation cases, 3) importance of predictable visitation, and 4) parent education classes.

G. STATE'S COMPELLING INTEREST (SB 669)

While the goal of supporting parents to resolve their own family issues without the undue interference of the State is worthwhile, raising the threshold is problematic. Many vulnerable children and the elderly depend on the involvement of the public

sector for protection. Requiring a compelling State interest would place these vulnerable citizens in potential jeopardy.

Recommendation 12

Do not amend the *Code* to require a compelling State interest to warrant court intervention in custody and visitation disputes.

VIII. Acknowledgments

The Virginia Commission on Youth extends its appreciation to the following agencies and individuals for their assistance and cooperation on this study:

Families First, Atlanta, Georgia
Mr. Patrick McCormick

Mr. Charles Hoffheimer
Attorney at Law, Virginia Beach

United States Attorney General's Office, Alexandria
Mr. Robert Chestnut

Virginia Commission on Family Violence Prevention
Ms. Harriet Russell
Ms. Kristy Wright

Virginia Division of Legislative Services
Ms. Jessica D. French

Virginia Juvenile and Domestic Relations Court Judges

Virginia State Supreme Court, Office of the Executive Secretary
Ms. Lelia Hopper
Mr. Don Lucido
Mr. Cyril Miller

Western Michigan University
Margorie Geasler, Ph.D.

989437726

SENATE BILL NO. 506

Offered January 26, 1998

A BILL to amend the Code of Virginia by adding a section numbered 20-124.2:1, relating to minor children; court-ordered visitation.

Patron—Quayle (By Request)

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 20-124.2:1 as follows:

§ 20-124.2:1. Compensatory time for lost visitation.

Any parent who is denied court-ordered visitation shall be given equal compensatory time within thirty days from the time lost, upon the first denial. Upon the second denial within a twelve-month period, the parent denied shall be given double make-up time. Upon the third denial, without just cause shown, within a twelve-month period, the person with primary physical custody, if responsible for the denials, shall forfeit custody and child support to the parent so denied.

Official Use By Clerks

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with amendment	☐	with amendment	☐
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Clerk of the Senate Clerk of the House of Delegates

989438726

SENATE BILL NO. 507

Offered January 26, 1998

A BILL to amend and reenact §§ 20-124.1, 20-124.2 and 20-124.3 of the Code of Virginia, relating to minor children: custody and visitation.

Patron—Quayle (By Request)

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-124.1, 20-124.2 and 20-124.3 of the Code of Virginia are amended and reenacted as follows:

§ 20-124.1. Definitions.

As used in this chapter:

~~"Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.~~

"Person with a legitimate interest" shall be broadly construed and includes, but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, or any other person whose interest in the child derives from or through such person whose parental rights have been so terminated, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted except where a final order of adoption is entered pursuant to § 63.1-231 or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation.

"Shared parenting" means that both parents retain responsibility for the care and control of the child, authority to make decisions concerning the child, and physical and custodial care of the child for significant periods of time.

"Sole ~~custody~~ *parenting* " means that one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

§ 20-124.2. Court-ordered parenting arrangements.

A. In any case in which ~~custody or visitation~~ *the parenting arrangement* of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of ~~custody and visitation~~ *the parenting* arrangements, including support and maintenance for the children, prior to other considerations arising in the matter. The court may enter an order pending the suit as provided in § 20-103. The procedures for determining ~~custody and visitation~~ *the parenting* arrangements shall insofar as practical, and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation shall be used as an alternative to litigation where appropriate.

B. In determining ~~custody~~ *parenting arrangements*, the court shall give primary consideration to the ~~best interests~~ *needs* of the child. The court shall assure minor children of frequent and continuing contact with both parents~~, when appropriate, and encourage~~ *and shall presume that both* parents ~~to~~ *shall* share in the responsibilities of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of either. The court shall give due regard to the *fundamental right to* primacy of the parent-child relationship but may, upon a showing by clear and convincing evidence ~~that the best interest~~ of *imminent harm to the child's health or welfare and to assure that the needs of* the child would be served ~~thereby~~, award ~~custody or visitation~~ *primary care and control* to any other person with a legitimate interest. ~~The court may award joint custody or sole custody.~~

C. The court may order that support be paid for any child of the parties. The court shall also order

that support will continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting and (iii) living in the home of the party seeking or receiving child support until such child reaches the age of nineteen or graduates from high school, whichever first occurs. The court may also order the continuation of support for any child over the age of eighteen who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support. In addition, the court may confirm a stipulation or agreement of the parties which extends a support obligation beyond when it would otherwise terminate as provided by law. The court shall have no authority to decree support of children payable by the estate of a deceased party. The court may make such further decree as it shall deem expedient concerning support of the minor children, including an order that any party provide health care coverage.

The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the authority to punish as contempt of court any willful failure of a party to comply with the provisions of the order.

§ 20-124.3. Needs of the child.

In determining ~~best interests~~ *the needs* of a child for purposes of determining ~~custody or visitation~~ *parenting* arrangements including any pendente lite orders pursuant to § 20-103, the court shall consider the following:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;

2. The age and physical and mental condition of each parent;

3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;

4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;

5. The role which each parent has played and will play in the future, in the upbringing and care of the child;

6. The propensity of each parent to actively support the child's contact and relationship with the other parent, the relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in matters affecting the child;

7. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;

8. Any history of family abuse as that term is defined in § 16.1-228; and

9. Such other factors as the court deems necessary and proper to the determination.

The court shall make written detailed findings as to each factor in this section and explain how such factors led to its determination of the parenting arrangements. The written findings shall be incorporated in the order.

Official Use By Clerks

Passed By The Senate		**Passed By The House of Delegates**	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
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Clerk of the Senate Clerk of the House of Delegates

981169693

SENATE BILL NO. 669

Offered January 26, 1998

A BILL to amend and reenact § 16.1-227 of the Code of Virginia, relating to purpose and intent of juvenile and domestic relations district court law.

Patrons—Lambert and Quayle; Delegates: Albo, Hargrove, Katzen and Reid

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-227 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-227. Purpose and intent.

The provisions set forth in this chapter shall assure the fundamental rights and liberty interests to autonomy in child rearing by each parent, and that state interference with those rights and interests must be justified by clear and convincing evidence of imminent harm to the child's health or welfare.

This law shall be construed liberally and as remedial in character, and the powers hereby conferred are intended to be general to effect the beneficial purposes herein set forth. It is the intention of this law that in all proceedings the welfare of the child and the family, the safety of the community and the protection of the rights of victims are the paramount concerns of the Commonwealth and to the end that these purposes may be attained, the judge shall possess all necessary and incidental powers and authority, whether legal or equitable in their nature.

This law shall be interpreted and construed so as to effectuate the following purposes:

1. To divert from or within the juvenile justice system, to the extent possible, consistent with the protection of the public safety, those children who can be cared for or treated through alterna programs;

2. To provide judicial procedures through which the provisions of this law are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other rights are recognized and enforced;

3. To separate a child from such child's parents, guardian, legal custodian or other person standing in loco parentis only when the child's welfare is endangered or it is in the interest of public safety and then only after consideration of alternatives to out-of-home placement which afford effective protection to the child, his family, and the community; and

4. To protect the community against those acts of its citizens, both juveniles and adults, which are harmful to others and to reduce the incidence of delinquent behavior and to hold offenders accountable for their behavior.

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SB669

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Official Use By Clerks

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family. *In custody and visitation cases where the parties are parents of minor children and the parties are married to each other or were formerly married to each other, the court shall order the parties to attend educational seminars and other like programs conducted by a qualified person or organization approved by the court, on the effects of separation or divorce on minor children, parenting responsibilities, options for conflict resolution, and financial responsibilities; however, no fee in excess of fifty dollars may be charged for participation in such program. As part of this program, the parties shall submit a unified parenting plan, which shall outline the rights and duties of each parent, along with a residential schedule for each child. If the parties cannot agree on a unified plan, each party shall submit a separate plan. No statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding.* If support is ordered for a child, the order shall also provide that support will continue to be paid for a child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until the child reaches the age of nineteen or graduates from high school, whichever occurs first. The court may also order the continuation of support for any child over the age of eighteen who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support.

B. In any case involving the custody or visitation of a child, the court may award custody upon petition to any party with a legitimate interest therein, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" shall be broadly construed to accommodate the best interest of the child. The authority of the family court to consider a petition involving the custody of a child shall not be proscribed or limited where the custody of the child has previously been awarded to a local board of social services.

C. In any determination of support obligation under this section, the support obligation as it becomes due and unpaid creates a judgment by operation of law. Such judgment becomes a lien against real estate only when docketed in the county or city where such real estate is located. Nothing herein shall be construed to alter or amend the process of attachment of any lien on personal property.

D. In cases involving charges for desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ 20-61 et seq.) of Title 20.

E. In cases involving a spouse who seeks spousal support after having separated from his spouse, the court may enter any appropriate order to protect the welfare of the spouse seeking support.

F. In any case or proceeding involving the custody or visitation of a child, the court shall consider the best interest of the child, including the considerations for determining custody and visitation set forth in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.

Official Use By Clerks

Passed By The House of Delegates		**Passed By The Senate**	
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986364424

HOUSE BILL NO. 1235

Offered January 26, 1998

A BILL to amend and reenact § 20-103 of the Code of Virginia, relating to court orders pending suit for divorce, custody or visitation.

Patrons—Reid, Albo, Hargrove, Howell, Katzen, Kilgore, Marshall and McDonnell; Senators: Edwards, Hawkins, Potts, Quayle and Trumbo

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Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 20-103 of the Code of Virginia is amended and reenacted as follows:

§ 20-103. Court may make orders pending suit for divorce, custody or visitation, etc.

A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or L of § 16.1-241, the court having jurisdiction of the matter may, at any time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the petitioning spouse, including an order that the other spouse provide health care coverage for the petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties, including an order that either party provide health care coverage for the children, (v) to provide support for any child of the parties to whom a duty of support is owed and to continue to support any child over the age of eighteen who meets the requirements set forth in subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any decree which may be made in the suit, or (viii) to compel either spouse to give security to abide such decree. In addition to the authority hereinabove, the court ~~may~~ *shall* order parties with a minor child or children to attend educational seminars and other like programs conducted by a qualified person or organization approved by the court, on the effects of the separation or divorce on minor children, parenting responsibilities, options for conflict resolution, and financial responsibilities, provided that no fee in excess of fifty dollars may be charged for participation in any such program. *As part of the program, the parties shall submit a unified parenting plan to the court, which shall outline the rights and duties of each parent, along with a residential schedule for each child. If the parties cannot agree on a unified plan, each party shall submit a separate plan.* No statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding.

B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable apprehension of physical harm to that party by such party's family or household member as that term is defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter an order excluding that party's family or household member from the jointly owned or jointly rented family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte hearing, the order shall not exclude a family or household member from the family dwelling for a period in excess of fifteen days from the date the order is served, in person, upon the person so excluded. The order may provide for an extension of time beyond the fifteen days, to become effective automatically. The person served may at any time file a written motion in the clerk's office requesting a hearing to dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from extending an order entered under this subsection for such longer period of time as is deemed appropriate, after a hearing on notice to the parties.

C. In cases other than those for divorce in which a custody or visitation arrangement for a minor child is sought, the court may enter an order providing for custody, visitation or maintenance pendi the suit as provided in subsection A. The order shall be directed to either parent or any person wit legitimate interest who is a party to the suit.

D. Orders entered pursuant to this section which provide for custody or visitation arrangements pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et

seq.) of Title 20. Orders entered pursuant to subsection B shall be certified by the clerk and forwarded as soon as possible to the local police department or sheriff's office which shall, on the date of receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia crime information network system established and maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the order is later dissolved or modified, a copy of the dissolution or modification shall also be certified, forwarded and entered in the system as described above.

E. An order entered pursuant to this section shall have no presumptive effect and shall not be determinative when adjudicating the underlying cause.

Official Use By Clerks

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989041146

HOUSE BILL NO. 1238

Offered January 26, 1998

A BILL to amend the Code of Virginia by adding a section numbered 20-124.2:1, relating to minor children; court-ordered visitation.

Patrons—Cantor, Hargrove, Katzen, Kilgore, Marshall and Reid; Senators: Lambert, Potts and Quayle

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Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 20-124.2:1 as follows:

§ 20-124.2:1. Compensatory time for lost visitation.

Any parent who is denied court-ordered visitation shall be given equal compensatory time within thirty days from the time lost, upon the first denial. Upon the second denial within a twelve-month period, the parent denied shall be given double make-up time. Upon the third denial, without just cause shown, within a twelve-month period, the person with primary physical custody, if responsible for the denials, shall forfeit custody and child support to the parent so denied.

Official Use By Clerks

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without amendment	☐	without amendment	☐
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989055146

HOUSE BILL NO. 1239

Offered January 26, 1998

A BILL to amend and reenact §§ 20-124.1, 20-124.2 and 20-124.3 of the Code of Virginia, relating to minor children; custody and visitation.

Patrons—Cantor, Hargrove, Howell, Katzen, Kilgore, Marshall, McDonnell and Reid; Senators: Lambert, Potts and Quayle

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Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-124.1, 20-124.2 and 20-124.3 of the Code of Virginia are amended and reenacted as follows:

§ 20-124.1. Definitions.

As used in this chapter:

~~"Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.~~

"Person with a legitimate interest" shall be broadly construed and includes, but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, or any other person whose interest in the child derives from or through such person whose parental rights have been so terminated, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted except where a final order of adoption is entered pursuant to § 63.1-231 or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation.

"Shared parenting" means that both parents retain responsibility for the care and control of the child, authority to make decisions concerning the child, and physical and custodial care of the child for significant periods of time.

"Sole ~~custody~~ *parenting* " means that one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

§ 20-124.2. Court-ordered parenting arrangements.

A. In any case in which ~~custody or visitation~~ *the parenting arrangement* of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of ~~custody and visitation~~ *the parenting* arrangements, including support and maintenance for the children, prior to other considerations arising in the matter. The court may enter an order pending the suit as provided in § 20-103. The procedures for determining ~~custody and visitation~~ *the parenting* arrangements shall insofar as practical, and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation shall be used as an alternative to litigation where appropriate.

B. In determining ~~custody~~ *parenting arrangements*, the court shall give primary consideration to the ~~best interests~~ *needs* of the child. The court shall assure minor children of frequent and continuing contact with both parents~~, when appropriate, and encourage~~ *and shall presume that both* parents ~~to~~ *shall* share in the responsibilities of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of either. The court shall give due regard to the *fundamental right to* primacy of the parent-child relationship but may, upon a showing by clear and convincing evidence ~~that the best interest~~ of *imminent harm to the child's health or welfare and to assure that the needs of* the child would be served ~~thereby~~, award ~~custody or visitation~~ *primary care and control* to any other person with a legitimate interest. ~~The court may award joint custody or sole custody.~~

C. The court may order that support be paid for any child of the parties. The court shall also order that support will continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting and (iii) living in the home of the party seeking or receiving child support until such child reaches the age of nineteen or graduates from high school, whichever first occurs. The court may also order the continuation of support for any child over the age of eighteen who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support. In addition, the court may confirm a stipulation or agreement of the parties which extends a support obligation beyond when it would otherwise terminate as provided by law. The court shall have no authority to decree support of children payable by the estate of a deceased party. The court may make such further decree as it shall deem expedient concerning support of the minor children, including an order that any party provide health care coverage.

The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the authority to punish as contempt of court any willful failure of a party to comply with the provisions of the order.

§ 20-124.3. Needs of the child.

In determining ~~best interests~~ *the needs* of a child for purposes of determining ~~custody or visitation~~ *parenting* arrangements including any pendente lite orders pursuant to § 20-103, the court shall consider the following:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;

2. The age and physical and mental condition of each parent;

3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;

4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;

5. The role which each parent has played and will play in the future, in the upbringing and care of the child;

6. The propensity of each parent to actively support the child's contact and relationship with the other parent, the relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in matters affecting the child;

7. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;

8. Any history of family abuse as that term is defined in § 16.1-228; and

9. Such other factors as the court deems necessary and proper to the determination.

The court shall make written detailed findings as to each factor in this section and explain how such factors led to its determination of the parenting arrangements. The written findings shall be incorporated in the order.

Official Use By Clerks

Passed By The House of Delegates		**Passed By The Senate**	
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Survey of Articles on Subjects Referred to the Custody and Visitation Workgroup of the Virginia Commission on Youth

P.C. Davis,

The Good Mother: A New Look at Psychological Parent Theory, 22 Law & Social Change 347 (1996).

Topics discussed: child welfare, child separation issues, child custody, divorce, and adoption.

Nature of article: Examination by the author of the effects of the psychological parent theory on children's ability to handle separation from their primary caregiver.

Issues identified: Attachment theorists believed that children, who experienced separation for various durations and circumstances, identified that separation with mothers. Little consideration was given to the effect of separation from fathers. This focus was justified as the child's natural monotropism - a tendency to select and be possessive of a principal attachment figure who was usually the mother. Psychological parent theorists traced developmental harms of separation from infancy, and concluded that separation causes lasting psychological harm to children. These theorists believed that at each growth phase, the separations the child experienced impaired the child's development. It removed the "context of security and uninterrupted support out of which the child might comfortably take developmental initiatives." The omnipresent mother is a key focus when talking about the harms of separation from the model of ideal parenting. Psychological theorists believe that when there is a family disruption, it is in the best interest of the child not to restore the leg of the triad, but rather to give "legal recognition and permanence to a dyad consisting of the child and the adult, who in the immediately preceding period, was most responsible for the child's day to day care and supervision." A recent development shows an emergence of a consensus that a child's security comes from a familiar milieu and network of attachments, and not just from a single individual.

Attachments are considered "insecure if the child reacts too much or too little to an everyday separation and secure if the child's reaction is moderate..."

Research on the father bond has shown that children may be bonded to both of their parents which can be important to their emotional well being. Both parents have been found to be equally competent to care for the child at the time of the child's birth. Studies have shown no difference between custodial fathers and mothers on "measures of nurturance and involvement." Children of divorced families experience distress at the time of dissolution and almost all have reunification fantasies. Evidence supports the idea that children of divorced parents fare better if they are able to maintain positive contact with both parents. Children in joint custody arrangements also tend to have greater satisfaction and seem to fare as well as children in sole custody arrangements.

There is also evidence that children's reactions to separation vary according to "whether they have been acculturated to expect multiple caregivers."

Conclusion: Evidence has shown that multiple bonds are beneficial to children. Permanent actual presence of the primary caregiver is virtually impossible in a family. Therefore, children's relationships should be made up of stable

relationships with several different caregivers who all act as attachment figures. This helps them cope with separation anxiety and stress. The psychological parent theory fails to acknowledge cultural differences in the reaction of children to separation. They also minimize the importance to the child of the different bonds that can form with multiple caregivers. In contrast, child welfare practitioners influenced by the milieu approach, aspire to expand the bonds in an effort to conquer feelings of betrayal and loss. Researchers of post-divorce custody have found that when parents are able to cooperate in childrearing after the divorce and maintain an active and supportive role, their children fare better in the long run.

Recommendations of authors include: Parents should encourage children to confront rather than deny their feelings about separation from their caregivers. In the foster care context, there should also be support for recognition of multiple caregivers, as well as a policy of access between children and families of origin. This will ultimately help the children, instead of terminating parental rights.

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R. Chisholm, Children's Participation in Family Court Proceedings, a paper presented to the College of Law, 14 Feb. 1998 (Australia).

Topics discussed: Role of children in Family Court proceedings.

Nature of article: Judge's Paper outlining pros and cons of children's involvement in various aspects of litigation. An Appendix contains Guidelines for Court Counsellors Regarding the Involvement of Children in Conciliation Counseling.

Issues identified: Role of children in primary dispute resolution and in parenting plans. Summarizes pros and cons.

Conclusion: Child's involvement should be assessed on a case-by-case basis. However, the scope for involving children constructively in primary dispute resolution might well be greater than in litigation. Specifically, children can: learn what is going on; express preferences about what should happen; contribute to the consideration of outcomes; state observations about matters of fact.

Recommendations of authors include: Appropriate training should be provided.

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L.E. Teitelbaum,

The Last Decade(s) of American Family Law, Journal of Legal Education 546, Volume 46, Number 4 (December 1996).

Topics discussed: child support, divorce, custody, alimony, and marriage.

Nature of article: The author is tracing the changes in the American family.

Issues identified: Traditionally, the family was viewed as a unit with clear role assignments and it was independent of social systems such as the state and its courts. The recent trend is to view the family as a contract where the parties define their relationships. In the 1950s, society required spouses to remain together unless there was serious physical or mental injury. The idea was to maintain the family "as an institution." Now states allow no fault divorces as long as one spouse believes the "marital relationship is irretrievably ended." The author then traces the changes in custody. Custody started out with a maternal preference unless the mother was adjudged unfit and joint custody was routinely rejected. Now the presumption of custody is in favor of the parent who has served as the "primary caretaker" of the child. In addition, there is now a preference for joint custody to encourage both parents to retain a relationship with the child. Until about twenty-five years ago, a wife could expect alimony if the marriage was of substantial length, there was no marital wrong, and if her husband could afford it. However, with the rise of no fault divorces, the spousal support system changed. Since fault was not a part of the divorce, it was also not a part of the support award. Spousal support was also affected by women working. The current legal notion for spousal support is that it should only be awarded when the wife cannot support herself. There has also been a move to expand the traditional notion of marriage. There is a case in Hawaii, Baehr v. Lewin, which may allow same sex marriages. The challenge was that the current law was gender based discrimination, and thus, a violation of the Equal Rights Amendment.

Conclusion: The changes traced show a transition from the family as a unit to the family as a "collection of individual relationships established by the will of the parties." The changes in the family makeup can be attributed largely to the increased divorce rate. The result is a large number of "'blended families.' These are families that include at least one parent who has been previously married, his or her new spouse, and children from either or both of their earlier marriages." There is also an increase of single parent families which can be attributed to the increase of illegitimate births. These unmarried parents suffer from unemployment or underemployment. In regards to same sex marriages, if Hawaii does allow them, there will be tremendous implications for the other states. While there is no formal law obliging states to recognize marriages celebrated elsewhere, most states will accept the validity of marriages valid in the jurisdiction where they are contracted as long as it does not violate some strong public policy. States would then be forced to decide if recognizing these marriages violates their own public policy.

Recommendations of author include: It would be helpful to view the family as a system. It would also help to view the choices and acts within the context of the system and then evaluate them on that basis.

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K.L. Mercer,

The Ethics of Judicial Decision-Making Regarding Custody of Minor Children: Looking at the "Best Interests of the Child" and the "Primary Caretaker" Standards as Utility Rules, 33 Idaho Law Review 389 (1997).

Topics discussed: Child custody.

Nature of article: Report of the author's study of how child custody is determined using the best interest standard and the difficulties judges have enforcing this standard without allowing their own biases affect their decisions.

Issues identified: The author begins by discussing how fathers used to receive automatic custody of their children after a divorce (rule deontology). Then there was a shift to awarding custody to mothers (utilitarian ranking). This was subsequently replaced by the "best interests of the child" standard (act utilitarianism), which was considered to be gender neutral. This standard allowed judges to consider the child's wishes, the child's attachment to their environment, the past care taking practices of each parent, the significance of the child's interaction with each parent, and the physical and mental health of all persons involved in the custody arrangement. The author notes that this standard was designed to protect a child's welfare, but it really often ends up ignoring the child. This was because of the discretion inherent in the standard which allowed a judge to apply their own ethical standard while reiterating the "best interests" test. The author traces three Nebraska cases to demonstrate how the best interest standard can be used to support "widely different judicial decision-making and, consequently, different results." Raymond v. Cotner uses rule deontology to justify a father's absolute right to custody over her grandparents. The court ignored the fact that the father had had no contact with the child for nine years and had lived with her grandparents for ten years. The court found that the father had a "natural and superior" custody right to the child. The dissent argued that "parental rights in child custody proceedings are preferential, not absolute." The dissent instead suggested a utilitarian balancing of the child's best interests on a case-by-case basis. In the second case, Osterholt v. Osterholt, the author states that there are two competing utility rules: 1) "that 'the court will always consider the best interests of the children and will make such order for their custody as will be for their welfare without reference to the wishes of the parties'" and 2) "that 'the court may not deprive parents of such custody unless they are shown to be unfit to perform the duties to be imposed by that relationship, or they have forfeited their rights.'" In this case, the natural parents sought to reclaim custody of their children who resided with the paternal grandparents for more than two years. The mother had only visited them three times and each time, brought a different man with her. Using the first rule, the court found that taking the children from a stable environment to try an experiment elsewhere did not seem to be in the best interests of the children. Using the second rule, the court found that the mother's indifference and her moral dereliction sustained a finding of unfitness. The court awarded custody to the grandparents. The last case the author analyzed was Haynes v. Haynes, where the court takes "the most discretionary stance of judicial decision-making by using the best interests

standard on a case-by-case basis." In Haynes, a father sought custody of his children three months after his ex-wife died, despite the fact that they had resided with the mother and the maternal grandparents since the parents' divorce. The court "consulted the wishes of the children, looked at the comparable home environments offered by the parties, and concluded that the grandparents should get custody rather than the father."

In the next part of the article, the author discusses three criticisms of the best interests standard: 1) that there should be limited judicial discretion; 2) that children should have a voice in the custody proceeding; and 3) that the tender years doctrine must be rejected because of the social and political climate which demands the neutralization of the gender distinction.

Another standard to be considered is the primary caretaker standard which is a rule utilitarian standard. This standard presumes that the "greatest good for the child will be secured if the child is placed in the custody of the parent who has provided continuous care." Once the primary caretaker is identified, the court must then consider whether the parent is fit before a custody award is made. The primary caretaker standard, however, only applies as an irrefutable presumption to children of tender years (children under six years old).

Conclusion: Variability in custody decisions would be eliminated if the court returned to rule utilitarianism rather than act utilitarianism. This would allow for predictability in the results and would guide the court's decisions. The primary caretaker standard is not as simple as it seems. There is difficulty determining "who the primary caretaker is when parents have shifted their roles during different periods of the child's life." To avoid unlimited discretion, judges and society favor rules. Rules outweigh discretion by helping courts decide cases according to stare decisis.

Recommendations of author include: Family law has been debated and changed over the years. It features a contest between rule and discretion, but the contest is not resolved.

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G. Litton Fox, R.F. Kelly, Determinants of Child Custody Arrangements at Divorce, 57 Journal of Marriage and the Family 693 (August 1995).

Topics discussed: see title

Nature of article: study of 509 cases from a census of one large Michigan county's divorces involving minor children filed in the early 1980s. The authors caution that the study comes from a time period before cultural changes took place recognizing father involvement; also, they lack information about what custodial arrangements the parents sought and the degree to which each accepted or resisted such claims. The authors also refer to 3 earlier studies in Wisconsin, California and elsewhere. In particular, they refer to Maccoby and Mnookin (1992), who found that parents did not make conflicting requests for child custody in 80% of the cases, that mothers were more likely than fathers to convert their custody preferences into legal requests, and that mothers were more likely than fathers to obtain a positive ruling on their requests.

Issues identified: age and gender composition of the children; effects of socioeconomic and legal process variables on custody outcomes

Conclusion: The odds of father custody were enhanced when children were older, especially when the oldest child was a male, when the father was the plaintiff, and when a court investigation occurred during divorce proceedings. The odds of father custody were reduced by higher educational level for mothers, higher income for fathers, paternal unemployment, and support arrearages prior to final divorce judgments.

Recommendations of authors include: Legal process variables need to be developed and collected more systematically.

Topics discussed: Child custody decision-making

The Summer 1997 issue of the American Bar Association's Family Law Quarterly includes an article on trends in judicial decision-making in custody disputes. The article compares appellate court cases from 1920, 1960, 1990 and 1995 and concludes that although the rhetoric of judicial decisionmaking has been completely transformed since the 1920s and there has been a "flood of experts" in the 1990s, "mothers and fathers in 1920, 1960, and 1990-95 are each still favored close to half the time."

Mason, M.A. and A. Quirk. Are Mothers Losing Custody? Read My Lips: Trends in Judicial Decision Making in Custody Disputes - 1920, 1960, 1990, and 1995, 31 Family Law Quarterly 215 (Summer 1997).

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S. Altman, Should Custody Rules Be Fair?, 35 Journal of Family Law 325 (1996-97).

Topics discussed: Theory underlying child custody laws

Nature of article: Theoretical, philosophical 26-page law review article

Issues identified: To what extent do the children's interests and fairness to adults coincide? When do they conflict so as to harm the children?

Conclusion: The concerns of adults, while legitimate, are not all weighty. In particular, arguments based on merit (and what people deserve), even in their strongest form, do not rise to the level of fundamental rights. Children are vulnerable, while adults have modest claims to fair treatment. Therefore, we should ignore some adult interests. However, sometimes child welfare is not the paramount concern, as where we have insufficient information to know which of two decisions will best serve the child's interests (e.g., in relocation cases).

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J.A. Twaite and A.K. Luchow, Custodial Arrangements and Parental Conflict Following Divorce: The Impact on Children's Adjustment 53 The Journal of Psychiatry and Law (Spring 1996).

Topics discussed: See title

Nature of article: Review by 2 Ph.D.s of at least 15 studies in the literature. Finds support in the literature for nearly every possible position.

Conclusion: Existing empirical research tends to be methodologically weak and the reported results have been inconsistent. The level of interparental conflict in the family before and after divorce appears to be a powerful mediating variable that affects children's adaptation to different custodial situations. "The literature suggests that parental conflict is a more important predictor of children's post-divorce adjustment than is the type of custodial arrangement. However, further research is clearly required to determine the interactions that may exist between these factors. As joint custody arrangements become more routine, it may be that such arrangements are increasingly made between parents who are still involved in frequent and significant conflict. ... it might make sense to require divorcing couples to demonstrate prior to establishing joint custody that they can be civil and cooperative."

Recommendations of authors include: Custodial decisions should be made on an individual basis, with no presumption that custody should be awarded to either the mother or the father. Parents should be educated regarding the importance of avoiding overt hostility and establishing a workable co-parenting relationship.

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J.R. Dudley, Noncustodial Fathers Speak About Their Parental Role, 34 Family and Conciliation Courts Review 410 (July 1996).

Topics discussed: see title

Nature of article: Reviews findings of 5 recent qualitative studies on noncustodial fathers' views. Cautions that the studies explore only the views of the fathers.

Issues identified: emotional adjustment to the divorce; problems with custody, visitation arrangement and with child support; perceived unfairness of divorce proceedings.

Conclusion: Fathers experienced considerable emotional distress after separation and divorce (e.g., grief and loss, including loss of control, emotional suffering leading to alcohol and drug use, rationalizations). Many fathers were dissatisfied with their status as noncustodial fathers, in part resulting from court decisions. In one study, some fathers admitted seeking custody as a tactic to counter the mothers' interference with visitation; a few fathers won a legal change of custody but subsequently returned the children to the mothers. The men viewed the divorce courts as unfair to fathers generally and to them in particular. Some fathers felt "emasculated" by the courts. Much discontent was directed at their attorneys; some attorneys were criticized for not being aggressive enough as advocates for the fathers, and others were criticized for being so forceful as to polarize the parents' relationship. The fathers reported ongoing difficulty in getting along with their former spouses; the conflict often surfaced in relation to visitation.

Recommendations of authors include: Earlier intervention to help fathers address their obstacles to their parenting role (personal and external) and encourage them to continue their parental responsibilities after divorce. Family and friends should help fathers deal with grief related to divorce. Fathers' anger should not be overlooked; fathers should be moved to resolve conflicts through counseling, family therapy, and advocacy services. Divorce proceedings need to provide an opportunity for both parents to express and meet their own needs and understand and respond to the other parents' needs. Divorce mediation, except in cases of domestic violence, appears to be a preferred approach to assisting families in making decisions in the children's best interests and preparing parents for successful postdivorce parenting. Educational programs are also important to prevent unnecessary stress and distress. Recommends more qualitative studies of both divorced fathers and mothers, custodial and noncustodial, to explore the potential common ground between divorcing parents.

Similarly: A. Kidde, Noncustodial Fathers: Why so many drop out--and what can be done about it., Washington State Bar News 25 (December 1996).

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J.S. Wallerstein, T.J. Tanke, To Move or Not to Move: Psychological and Legal Considerations in the Relocation of Children Following Divorce, 30 Family Law Quarterly 305 (Summer 1996).

Topics Discussed: Relocation after divorce- including consideration of child's feelings following divorce.

Nature of article: Perspective on how results of psychological research should be applied to relocation decisions in California.

Issues identified: The authors' focus is on the child's sense of safety after divorce. Issues relevant to our Workgroup: factors associated with good outcomes in children of post-divorce families; effects of frequent and continuing contact with the NCP.

Factors associated with good outcomes: "(1) a close, sensitive relationship with a psychologically intact, conscientious custodial parent; (2) the diminution of conflict and reasonable cooperation between the parents; and (3) whether or not the child comes to the divorce with pre-existing psychological difficulties."

The authors state that "the cumulative body of social science research *does not* support [a presumption that frequent and continuing access to both parents lies at the core of the child's best interests]." There is no evidence in any study that "frequency of visiting or amount of time spent" with the NCP is significantly related to good outcome in the child or adolescent. The child's perception of the father in the father's various domains of life, and the child's own relationship with the father, are of lasting importance in the creation of a child's self image, capacity to relate to others, and conscience formation. But "it is the substance and character of the parent-child relationship, and not the particular form, that is critical." The authors also refer to research (J.R. Johnston; M. Kline) showing "psychological deterioration among both boys and girls when frequent contact is ordered over the objection of one or both parents in these intensely conflicted families."

Conclusion: The best interests of the child in relocation cases should take into account the practical and psychological realities of children living in post-divorce families. The guiding principle should be not to destabilize the child's family unit where the child is reasonably content and developmentally on course.

Recommendations of authors include: Custody should not be revisited when relocation is proposed, except in extraordinary circumstances when necessary to protect the child. Courts should be sensitive to the actual roles assumed by parents in providing stable and continuous care to the child on a day-to-day basis, and should not reason from generalizations based on which parent the child spends the most time with. The child's needs and (sometimes) preferences should be "amplified above the din of competing parents."

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B. Hovenden, Helping Children Grow Through a Divorce, 5 American Journal Family Law 307 (Winter 1991).

Topics: Stages of childhood development

Nature of article: Brief article by Licensed Clinical Social Worker in Denver for "professionals in the divorce field"

Issues identified: Psychological effects of divorce on children; how to help clients interpret their children's behavior accurately and objectively, and take appropriate measures to minimize their children's stress.

Conclusions: Infants 0-2 years need a safe and comfortable environment; child should have a primary home environment where he/she sleeps at night. The adults should work together to keep routines such as naps, feedings and bedtime structured.

3-5 year olds want to be in control of their environment and are convinced they caused the parents to separate; they can be talked to about their guilt if the conversation appears to be about someone else.

6-8 year olds need security; many will direct their anger at their mothers, and some will become preoccupied with trying to reunite their parents; they need to be listened to, have emotional outlets, and be communicated with through "displacement communication" (see 3-5-year-olds, above).

8-12 year olds may experience anger and confusion and may show an abrupt change in behavior. Adolescents should not take on parental role; they can be helped by providing them with accurate information without pressure to share their feelings; parents should not relax the rules and expectations in the house because they feel guilty about the divorce.

Recommendations: The parent should take care of his or her own emotional needs in order to be a role model for the child and have the energy and neutrality to hear what the child has to say. Decreasing conflict between the parents is important, especially when the child is present. Consistency in the child's daily activities and with visitations is very helpful. And the parent must take time to let the child know he/she is loved.

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K. Carpenter, Why Are Mothers Still Losing: An Analysis of Gender Bias in Child Custody Determinations, DET. C. 33 Law Review (1996).

Topics discussed: Historical perspective of the criteria used in child custody determinations, from pater familias to tender years to best interests of the child; emergence of the primary caretaker standard (West Va. and Minn. models)

Nature of article: (emphasis on Michigan)

Conclusion: The discretion granted to judges under the "best interests" standard has resulted in judges basing their decisions on their own outdated and often gender-biased beliefs. Those beliefs concern the ideal role women have as mothers, so that women are often deprived of custody due to choices and lifestyles that are held acceptable for men, such as frequent sexual activity and ambitious career goals.

Recommendation: Find a gender-neutral standard that is truly able to operate in a gender-neutral way and thus truly able to serve the interests of the child. The author recommends "the primary caretaker presumption" so that a child is placed with the parent with whom the child has established the strongest emotional bond. Continuity of the relationship can be critical to the child's welfare, say mental health professionals and other child care experts cited by the author.

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J.R. Johnston, (Research Update) Children's Adjustment to Sole Custody Compared to Joint Custody Families and Principles for Custody Decision Making, 33 Family and Conciliation Courts Review 415 (October 1995).

Topics discussed: joint physical custody

Nature of article: update on 6 research studies (1 by author, 5 by other authors)

Issues identified: Is the effect of joint physical custody on children a result of: joint custody; the pre-divorce characteristics of the families (e.g., better cooperation, less conflict, and psychologically healthier parents); or demographics (education and income)? Do children of different ages, boys and girls, manage and benefit from these arrangements? Should mental health professionals encourage and the courts mandate joint physical custody where parents are reluctant?

Conclusion: (a) From the research that currently exists, there is no convincing evidence that joint custody is either more detrimental or more beneficial for the majority of children of divorce compared to mother or father sole custody arrangements.

Differences in adjustment did not seem to depend on the nature of the custody arrangement but on self-selection that suited the individual family: about one third of the children changed their own custody arrangements over a 2- to 4-year period, many drifting from living part time with each parent to primary care with their mothers. Children in joint custody had parents who were likely to be better educated and have higher incomes. There was a tendency for troubled children to be deposited into the primary care of their fathers, especially during adolescence; these children's adjustment, unsurprisingly, was somewhat worse. Girls in father custody were doing more poorly than boys.

(b) More substantial amounts of access/visitation, in itself, was associated with neither better nor worse outcomes in the children. Important predictors of good adjustment for children were, foremost, the parents' psychological functioning and the quality of the parent-child relationships. During and after divorce, children benefit substantially from regular, predictable access arrangements and from a stable support system that includes school, social activities and contact with peers and extended kin.

(c) About 10% of all divorcing parents remain in ongoing high conflict, including intractable legal disputes, ongoing disagreements over day-to-day parenting practices, expressed hostility, verbal abuse, physical threats, and intermittent violence. High-conflict divorced parents have a relatively poor prognosis for developing cooperative coparenting arrangements without a great deal of therapeutic and legal intervention. Unresolved, ongoing conflict hurt children, especially boys. In these families, frequent visitation

arrangements and joint custody schedules resulted in increased aggression compared with sole custody families; and frequent transitions and more shared access were associated with more emotional and behavioral disturbance among children, especially girls. Where custody arrangements were made after careful psychological evaluation of the best match between parent and child, the children fared equally well whether in sole mother custody or sole father custody.

Recommendations of authors include: (a) More research is needed on: children of different ages, cultural differences, different kinds of time-sharing, confirmation of whether joint custody results in fathers' provision of long-term financial as well as emotional support for children (studies tend to support this idea but do not confirm it as yet), longer-term studies. (b) The nature of the parent-child relationship should carry the most weight in determining the child's residential arrangement, whether joint, sole mother, or sole father custody. (c) Children are better off in the care of parents who are relatively free of psychological disturbance or substance abuse. (d) Children need custody and access arrangements that will minimize the potential for ongoing parental conflict, and especially need to be protected from exposure to violence. (e) In high-conflict families, parents should develop separate parenting relationships with their children, governed by an explicit legal contract (a parenting plan) that determines the access schedule. A clearly specified, regular visitation plan is crucial, and the need for shared decision making and direct communication should be kept to a minimum. There should be exceptions for preschoolers and children with certain special needs, in which cases a coparenting counselor or arbitrator may be needed. (f) Where there is concern about both parents' capacities to protect the child from conflict and their own disturbed attitudes and behavior, consider giving weight to giving the child continued access to supportive others and a stable place. In these cases, custody and access can be made contingent on either or both parents obtaining appropriate counseling (e.g., for parenting skills, domestic violence, substance abuse). The court orders should include provisions for monitoring compliance and reviewing progress. If neither parent can protect the child, the child can be given direct, ongoing access to their own counselor or advocate. (g) Special provisions should be incorporated into the custody and time-sharing plan if there is an indication of domestic violence. For ongoing abuse, the nonviolent parent should have sole custody and access should be supervised until the threat of abuse ceases and the abusive parent obtains treatment.

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L.S. Jacobson, A.G. Dvoskin, Is Joint Custody in the Child's Best Interest?, 25 Maryland Bar Journal 11 (1992).

Topics discussed: joint legal and physical custody

Nature of article: brief article by judge and psychologist on joint custody in Maryland (caselaw, law review article and anecdotal experience) following 1986 Md. Supreme Court decision held the judge had the authority to grant either or both joint legal and physical custody.

Issues identified: limited circumstances under which joint custody works; demands for joint custody used as bargaining leverage in monetary issues between the divorcing parties; children's confusion and anxiety about their roles, their possessions and their instability, regardless of whether joint custody is voluntary or imposed; conflicts between children's schedules and parents' schedules. Citing law review analysis of empirical studies: "the authors ... disparage the egalitarian marriage in which both parents spend equal time caring for their children, which, they argue, does not reflect the reality of most marriages, whether modern or traditional." Also citing that law review: "the authors conclude that joint custody is expensive and does not necessarily increase the amount of child support." Joint custody between conflicting parents heightens the level of distress and increases the frequency of the child's opportunity to observe the parental conflict; enforces the child's tendency to blame himself for the conflict and try to reduce the level of animosity. Joint legal custody does not eliminate the power struggle or keep the child out of the parents' struggles. The parents' disputes can result in delayed or withheld medical or dental care, educational and psychotherapeutic needs.

Conclusion: "What was meant to be a new technique in addressing the best interests of the children has, instead, created a confusing lifestyle for the now single parents and, sadly, for their children as well."

Recommendations of authors include: At divorce, the child needs whatever consistency can be salvaged, accompanied by a reduction in conflict and a model of behavior indicating that the conflict can be resolved peacefully. Joint custody should be reserved for the rare couple who can put aside the differences that ended their relationship as H&W and still exercise the discretion of loving parents to make decisions in the child's best interests.

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M. R. Dion, S. L. Braver, S.A. Wolchik, I. N. Sandler, Alcohol Abuse and Psychopathic Deviance in Noncustodial Parents as Predictors of Child-Support Payment and Visitation, 67 American Journal of Orthopsychiatry 70 (January 1997).

Topics discussed: child support; visitation. Also mentioned: parenting education.

Nature of article: Report of the authors' three-stage study of approximately 300 randomly selected "separating families" in Phoenix, AZ.

Issues identified: What factors predict child-support payments and visitation following divorce? The article lists several factors identified by other studies-- the NCP's employment status, income, sex, legal custody status, psychological rewards less psychological costs of maintaining a relationship, and NCP's perceived control over the divorce settlement and the child's upbringing. This study sought to assess the relation between visitation and child support on the one hand and the NCP's level of alcohol abuse and psychopathic deviance on the other hand. Alcohol abuse was reported by NCPs. Psychopathic deviance was assessed using an abbreviated form of the MMPI.

Conclusion: "The findings showed that NCPS who have high psychopathic deviance scores or who abuse alcohol are less likely to provide financial support for their children." Visitation frequency was not significantly related to these factors. (The authors state that in this study, as in "most prior investigations," visitation and child support are only "moderately related.")

Recommendations of authors include: Child-support compliance might be enhanced if parent-education programs "can highlight the abstract benefits of providing child support and counter the effects of alcohol abuse by teaching alternative means of stress reduction and problem solving." However, some NCPs "may require referral for more intensive clinical interventions."

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M.M. Barry, The District of Columbia's Joint Custody Presumption: Misplaced Blame and Simplistic Solutions, 46 Catholic University Law Review 767 (1997).

Topics: See title

Nature of article: 67-page law review article by Assistant Professor at Columbus School of Law.

Nature of article: brief overview of child custody trends in the U.S., examines terms "joint custody" and "rebuttable presumption that joint custody is in the best interest of the child"; discusses D.C.'s new joint custody law; discusses the "incongruities between the concept of joint custody as advocated and the realities of a predominantly black community in which poverty defines the lives of a significant segment of the population"; section that "expands on why a joint custody presumption is in conflict with the best interest of the child standard".

Conclusion: The District's new law is of particular concern given the demographics of the jurisdiction. Many factors indicate what may be in the child's best interests, including anger, lack of trust, fear and/or irrelevance. "The new law cannot be viewed as a shortcut to custody decision-making since it raises far more questions than it answers."

Recommendation: Custody analysis should not be based on white, middle-class precepts of gender rights and privileges regarding the raising of children.

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H.J. Gitlin, Joint Custody in Illinois: From Panacea to Placebo, 83 Illinois Bar Journal 178 (April 1995).

Topics discussed: joint custody in Illinois

Nature of article: short article by practicing lawyer, frequent lecturer and writer on family law topics

Conclusion: eliminating concepts of "legal custody" and "physical custody" was a mistake. Decision-making joint custody is useful for avoiding contests in initial custody determinations; otherwise, its benefits are minimal; it does not place the NCP in an advantageous position when proposing a transfer of custody or resisting the removal of the CP and the child to another state. Therefore, joint custody in its present form seems little more than a placebo.

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J. Pearson & J. Anhalt, Enforcing Visitation Rights, The Judges' Journal 3 (Spring 1994).

Topics: Visitation interference

Nature of article: Brief article based on paper on a study initiated in 1990 by the Center for Policy Research in Denver, CO, to examine responses to visitation enforcement in 5 selected programs in 5 states (Wayne Co., MI; Maricopa Co., AZ; Lee Co., FL; Wyandotte Co., KS; LA; and CA).

Issues identified: Most of the cases handled in visitation enforcement programs involved traditional custody and conventional levels of ordered visitation.

Most of the traditional custody cases involved child support arrearages.

Most cases had long histories of previous litigation over visitation and child support matters. Noncustodial parents emphasized denial of visitation, while custodial parents emphasized safety concerns and NCPs' failure to exercise visitation rights or that they did not show up as planned or cancelled without notice.

Between 40-62% of cases at every site had serious allegations of substance abuse, spousal violence, and child abuse (involving NCP fathers and NCP mothers).

Program treatments varied by site with different emphasis placed on mail notification, phone contacts, in-person conferences, court hearings, and various forms of case follow-up. Punitive remedies were rarely invoked at any of the sites, although state laws permitted it.

Most cases of physical custody switches appeared to be made by the parents on their own. Cases with allegations of parental misconduct received special treatment, such as supervised visitation, evaluations, court reviews, and referrals for domestic violence counseling or drug treatment.

A common outcome of program interventions was to have a court order more specified visitation.

* *

I.D. Turkat, Management of Visitation Interference, The Judges' Journal 17 (Spring 1997).
Topics discussed: see title
Nature of article: short article by clinical psychologist citing his own prior writings and those of others
Issues identified: chronic visitation interference
Recommendations of authors include: recommends court order directing the parents and others to engage in specific behaviors. Recommends the order contain: 1. specific dates and times for visitation; 2. precisely defined neutral location for visitation transfers; 3. appointment of an individual to monitor and supervise all visitation transfers; 4. precisely worded authorization to all law enforcement officers to execute the transfer of children as specified in the court order; 5. precise authorization to school personnel to provide whatever rightful access is due the noncustodial parent; 6. precise authorization to all personnel involved in any activity involving the child to provide whatever rightful access is due the noncustodial parent; 7. precise authorization to any individual involved in any activity with the child to not engage in any behavior that would interfere with the relationship between the child and the NCP, including visitation rights; 8. a clearly specified hierarchy of penalties for the CP based on the nature of the offenses committed; 9. a clear specification of penalties for any individual who violates the court order; 10. a clause to reserve the right of the court to modify the contents of he court order at any time and the right to enforce it in any manner deemed necessary. Suggests the court consider having the violating parent apologize to the children and victimized parent in the courtroom and promise to not interfere again.

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M. Davis, J. Meyer Yazici, Best Interest of the Child: The Case for Joint Custody Even in Contested Divorce, 84 Illinois Bar Journal 348 (July 1996)
Topics discussed: joint custody in Illinois
Nature of article: short article by practicing attorneys, including family law author
Issues identified: appellate reversal of joint custody decisions
Conclusion: courts are observing the parents during their divorce when the conflict between the parties is intense and may be working from the assumption that joint custody is not possible when there is parental conflict in the middle of divorce litigation.
Recommendations of authors include: an amendment to the custody statutes to obtain widespread acceptance of joint custody, to provide a conclusive presumption in favor of joint custody except where that arrangement places the child in serious danger.

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J. W. Ellis, Review Essay: Caught in the Middle: Protecting the Children of High-Conflict Divorce

Nature of article: Book review by law professor (authors of book: C.B. Garrity & M.A. Baris, two child psychologists).

Issues identified: avoiding conflict; parenting plans

Conclusion: Although the book's subject matter merits attention, the book relies on poorly documented factual assertions and presents a proposal for dealing with cases of severe conflict that ignores crucial realities (such as economic limitations and the limited availability of first-rate clinicians). The book makes a dangerously superficial distinction between the legitimately concerned parent and the alienating parent, and makes impractical recommendations for a comprehensive intervention model for parental alienation, such as a highly trained and skilled parenting coordinator who will be responsible for all decisions regarding the visitation schedule and can call in an expert to assess the situation. The book lacks even a clear definition of the types and degrees of conflict that constitute "high conflict." The book fails to deal with 2 essential questions: Is the harm of discontinuing contact with one parent as great or greater than the well-documented harm of ongoing conflict? If so, how does one determine the point at which the conflict presents a graver danger than the loss of parent-child contact?

Recommendations of authors include: Reviewer supports book authors' practical suggestions for minimizing a child's exposure to conflict, such as using neutral drop-off spots for pick-up and delivery of the child as well as minimizing, where possible, the amount of clothes and personal items that a child must carry on each transition between households.

Reviewer also states book authors do a good job of emphasizing the dangers of frequent transitions between highly antagonistic parents, but states that reliance on parenting plans may be overly optimistic. Reviewer states that in Washington State although the law requires all parents to create detailed plans for visitation schedules at the time of divorce, there are no empirical studies on whether a parenting plan helps contain or diminish post-divorce conflict between parents. Reviewer cites anecdotal evidence that the plan requirement has not lessened the number or intensity of post-divorce visitation disputes that come to court; it may even sometimes exacerbate it.

The reviewer recommends the following research:

J. R. Johnston, High Conflict Divorce, 4 THE FUTURE OF CHILDREN: CHILDREN AND DIVORCE 165 (1994); R. E. Emery, MARRIAGE, DIVORCE AND CHILDREN'S ADJUSTMENT (1988); E.M. Cummings & P. Davies, CHILDREN AND MARITAL CONFLICT: THE IMPACT OF FAMILY DISPUTE AND RESOLUTION (1994).

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P. Salem, A. Schepard, S.W. Schlissel, Parent Education as a Distinct Field of Practice: The Agenda for the Future, 34 Family and Conciliation Courts Review 9 (January 1996).

Topics discussed: education for separated and divorcing parents; evolution into a distinct field of practice; questions of professional responsibility and accountability

Nature of article: Analysis

Issues identified: Need for guidelines; identification of mission and quality. Summarizes Michigan study finding that programs report different goals: parent-focused (e.g., reduce parental conflict), child-focused (e.g., educate parents about effect of parental conflict on their children), and court-focused (reduce complaints to the court). Summarizes content of parent education programs (e.g., many do not have a legal component). Mentions a study that contends that short programs (single session, 2-3 hours in length) can sensitize parents to important issues and provide motivation for future learning; a more intensive experience is needed for behavior change and skill development. Discusses why courts should promote parent education; and whether attendance should be voluntary or mandatory.

Conclusion: The agenda for future development of parent education is large and complex.

Recommendations of authors include: Programs should not promise more than they can deliver (e.g., long-term behavior change). All programs should include provisions for victims of domestic violence. Assess program content and goals in light of the anticipated audience, program resources, and the community's needs and interests. Facilitators should be effective communicators, and this is more important than credentials. Provide training to all potential presenters. More research and evaluation are needed; "it is every difficult to isolate the influence of an education program on the complex process of family reorganization following separation and divorce. There are many intervening variables." Suggests focus on limited but important measures of effectiveness, such as, what impact do programs have on parents' expectations of the divorce process?

The authors favor parent education early in the separation process. The authors differ as to whether referrals should be mandatory, and quote an advisory committee's position that the program should not be mandated in all cases, but that if there is no voluntary attendance the judge should be encouraged to make referrals when there are custody or visitation problems, or the judge perceives the parents are not acting in their child's best interests; referrals should be made by a formal "Referral Notice" but not by court order, which could generated unwanted effects such as motions for contempt or sanctions, thereby adding to the acrimony of the process.

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VIRGINIA COMMISSION ON YOUTH

JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT JUDGES' SURVEY

The 1998 Session of the Virginia General Assembly enacted several resolutions directing the Virginia Commission on Youth to study a number of issues related to youth and their families in the Commonwealth. As part of these studies, the Commission is surveying all Juvenile and Domestic Relations District Court Judges to collect opinions and information on issues related to (1) status offenders, **(2) custody and visitation,** and (3) juvenile competency to stand trial. A list of definitions are enclosed to assist you in your responses.

SECTION 2: CUSTODY AND VISITATION

33. Do you order parents to attend a parent education class pursuant to § 20-103(A) as part of your custody order? *(Please check only one.)*

☐ Always ☐ Often ☐ Seldom ☐ Never

☐ Not applicable; resource not available

34. Assuming resources were available and accessible, would you favor the *Code* being amended to mandate all divorcing / separating parents attend such classes? *(Please check one.)*

☐ Yes *(If YES, please go to questions 34a.)*

☐ No *(If NO, please go to question 34b.)*

34a. If YES, why would you want parent education to be mandated? *(Please check all which apply.)*

☐ Promotes better co-parenting ☐ Cuts down on re-litigation

☐ Other _____

34b. If NO, why would you not want it to be mandated? *(Please check all which apply.)*

☐ Limits the court's discretion ☐ Not a priority given limited resources

☐ Other_____

35. Since the enactment of §20-124.3 how often, have you awarded joint physical custody over the objection of the one of the parties? *(Please check one.)*

☐ Always ☐ Often ☐ Seldom ☐ Never

36. Would you be in favor of creating a rebuttal presumption of joint legal custody for all parents for whom there is no history of domestic violence and/or child abuse? *(Please check one.)*

☐ Yes *(If YES, please go to question 36a.)*

☐ No *(If NO, please go to question 36b.)*

36a. If YES, why would you support such a change? *(Please check all that apply.)*

- ☐ Children benefit from both parents being actively involved in child-related decisions
- ☐ Would reduce litigation
- ☐ Reflects current practice
- ☐ Other_____

36b. If NO, why would you not support such a change? *(Please check all that apply.)*

- ☐ Unduly restricts Court's discretion
- ☐ Would increase re-litigation
- ☐ Parents who litigate are less able to successfully manage joint legal custody
- ☐ Other_____

37. Would you be in favor in creating a rebuttal presumption of joint physical custody for all parents for whom there is no history of domestic violence and/or child abuse? *(Please check one.)*

- ☐ Yes *(If YES, please go to question 36a.)*
- ☐ No *(If NO, please go to question 36b.)*

37a. If YES, why would you support such a change? *(Please check all that apply.)*

- ☐ Affords the child equal access to both parents
- ☐ Would reduce litigation
- ☐ Promotes settlements
- ☐ Other_____

37b. If NO, why would you not support such a change? *(Please check all that apply.)*

- ☐ Unduly restricts Court's discretion
- ☐ Parents who litigate are less able to successfully manage joint physical custody
- ☐ Younger children do better with one primary caretaker
- ☐ Other_____

Some states have begun to use parenting plans submitted either jointly or separately by the parties as a tool to make custody determinations. Please see attached glossary for a description of a parenting plan prior to answering the following questions.

38. Would you favor both parents being required to submit either a unified or separate parenting plan prior to a custody/visitation hearing? *(Please check one.)*

☐ Yes ☐ No

39. What percentage of disputed custody cases, heard in your court, do you believe would need the assistance of the court in developing a parenting plan? *(Please check one.)*

___ ___ ___%

40. If parenting plans were required in all disputed custody / visitation cases, what do you believe the most appropriate role of the Judge to be? *(Please check one.)*

- ☐ Review every plan prior to entering an order
- ☐ Review only separately filed plans
- ☐ Authority to amend any plan
- ☐ Authority to amend only separately filed plans

41. At what point in the legal process should parenting plans be filed? *(Please check one.)*

☐ Prior to the filing of the custody/visitation petition

☐ Prior to the permanent custody/visitation hearing

42. In lieu of the *Code* requiring that a parenting plan be submitted, would you favor the development of a tool that could be used by litigants as a guide for the development of a unified or separate parenting plan? *(Please check one.)*

☐ Yes ☐ No

43. Which of the following do you think best describes the current system with respect to providing adequate and timely redress for non-custodial parents who have been denied visitation? *(Please check all that apply.)*

☐ Current legal provisions and case processes are adequate.

☐ *Code* lacks specified sanctions for denied visitation.

☐ Court docket is too crowded, too much time passes prior to the case being heard.

44. Do you believe that the habitual denial of visitation without good cause should be sufficient grounds for the forfeiture of custody and child support to the non-custodial parent?

☐ Yes ☐ No

45. It has been suggested that replacing the term "best interest of the child" in the context of §20-124.3 with the term the "needs of the child" would better focus the attention of the court on the child. Would you favor the term "best interest of the child" being replaced with "the needs of the child" in this limited context? *(Please check one.)*

☐ Yes *(If YES, please go to question 45a.)*

☐ No *(If NO, please go to question 45b.)*

45a. If YES, why would you support such a change? *(Please check all that apply.)*

☐ Focus is more on measurable issues

☐ "Best interest" is too vague

☐ Creates new legal standard

☐ Other_____

45b. If NO, why would you not support such a change? *(Please check all that apply.)*

☐ "Needs" limits focus to quantitative issues

☐ Would remove legal precedent

☐ "Best interest" is more comprehensive

☐ Other_____

46. Do you think the term custody as used in §20-124.3 is a pejorative term? *(Please check one.)*

☐ Yes *(If YES, please go to questions 46a and 46b.)*

☐ No *(If NO, please go to question 47.)*

46a. Should the term "custody" as used in §20-124.3 be changed? *(Please check one.)*

☐ Yes ☐ No

46b Should the term "custody" be replaced with "parenting"? *(Please check one.)*

☐ Yes ☐ No

47. Do you think the term visitation as used in §20-124.3 is a pejorative term? *(Please check one.)*

☐ Yes *(If YES, please go to questions 47a and 47b.)*

☐ No *(If NO, please go to question 48.)*

47a. If YES, should the term "visitation" as used in §20-124.3 be changed? *(Please check one.)*

☐ Yes ☐ No

47b. Should the term "visitation" be replaced with "parenting arrangements"? *(Please check one.)*

☐ Yes ☐ No

48. Are you satisfied with the level of guidance provided in §20-124.3 of the *Code* to determine child custody cases? *(Please check one.)*

☐ Yes *(If YES, please go to question 49.)*

☐ No *(If NO, please go to question 48a.)*

48a. If NO, why are you not satisfied? *(Please check all that apply.)*

☐ Factors too narrow

☐ Factors too broad

☐ Other factors that should be included *(Name specific missing factors.)*

_____

_____

☐ Other factors should be deleted/modified *(Name specific factors to be modified/deleted.)*

_____

_____

49. Would you favor requiring written findings in all disputed custody/visitation cases in accordance with § 20-124.3? *(Please check one.)*

☐ Yes *(If YES, please go to question 49a.)*

☐ No *(If NO, please go to question 49b.)*

49a. If YES, why would you favor written findings? *(Please check all that apply.)*

☐ Provides litigants with helpful information ☐ Would reduce appeals

☐ Assists in determining future modifications ☐ Other

_____

49b. If NO, why would you not support written findings? *(Please check all that apply.)*

☐ Too time consuming ☐ No bearing on appeal

☐ Would create delays ☐ Other _____

50. Are there other issues related to parent education, parenting plans, terminology related to custody and visitation and best interest that you would like to address? *(Please attach additional paper if necessary.)*

PLEASE RETURN THE COMPLETED SURVEY BY SEPTEMBER 25, 1998 TO:

Virginia Commission on Youth
Suite 517B, General Assembly Building
910 Capitol Street
Richmond, Virginia 23219-0406

Appendix E

VIRGINIA COMMISSION ON YOUTH

VIRGINIA PROGRAM SURVEY ON DIVORCE EDUCATION CLASSES

The 1998 Session of the Virginia General Assembly carried over House Bills 1151 and 1235, which mandate the Court to order attendance in divorce education classes, to the Virginia Commission on Youth for further study. As part of this study, the Commission is surveying all identified Virginia and national programs providing divorce education classes to separating and/or divorcing parents of minor children.

SECTION 1: Divorce Education Program Structure

1. Does your agency provide divorce education classes to parents?

   ☐ Yes ☐ No

2. Please check your primary referral sources for the classes.

Juvenile & Domestic Relations Court Intake	☐	Juvenile & Domestic Relations Court Judge	☐
Domestic Relations Attorneys	☐	Community Service Board	☐
Private Therapists	☐	Mediators	☐
Other Public Sector Counseling Programs	☐	Family Service Agencies	☐

3. Is attendance in divorce education classes mandated by your local Juvenile and Domestic Relations Court?

   ☐ Yes *(If Yes, please go to 3A & 3B.)* ☐ No *(If No, go to 4.)*

   3A. Do all the Judges in your Court order attendance to a divorce education class?

   ☐ Yes ☐ No

   3B. How many Judges mandate attendance? _____ Number of Judges

4. Is attendance in divorce education classes mandated by your Circuit Court?

   ☐ Yes *(If Yes, go to 4A & 4B.)* ☐ No *(If No, go to 5.)*

   4A. Do all the Judges in your court order attendance to a divorce education class?

   ☐ Yes ☐ No

   4B. How many Judges mandate attendance? _____ Number of Judges

5. Do you think divorce education classes should be made mandatory for all parents who are in the process of separating and or divorcing?

☐ Yes ☐ No

6. Which of the following situations do you believe should be exempted from required attendance in a divorce education class? *(Please check all that apply.)*

☐ Alleged Domestic Violence ☐ Alleged Child Abuse

☐ Alleged Substance Abuse/Alcoholism on the Part of One or Both Parents

☐ Families in Counseling ☐ Couples in Counseling

☐ Other (Please explain.)

_____

7. How long are your education classes? *(Please check one.)*

☐ 1-3 Sessions ☐ 4-6 Sessions

☐ 7-10 Sessions ☐ Over 10 Sessions

8. How many classes does your agency provide in a twelve month period? *(Please check one.)*

☐ 1-3 Classes ☐ 4-6 Classes

☐ 7-10 Classes ☐ Over 10 Classes

9. Do separating/divorcing couples attend the same classes? ☐ Yes ☐ No

10. Which topics are covered in your classes? *(Please check all that apply.)*

☐ Impact of Divorce on Children ☐ Co-parenting after Marriage

☐ Deciding Custody Issues ☐ Deciding Visitation Issues

☐ Listening Skills ☐ Finding Support Groups

☐ Other (Please list.)

_____

11. Does your program have to file a report with the Court after completion of the classes?

☐ Yes *(If Yes, go to 11A.)* ☐ No *(If No, go to 12.)*

11A. Which topics are covered in your report? *(Please check all that apply.)*

☐ Participants' Capacity to Co-Parent ☐ Recommended Custody Plans

☐ Recommended Visitation Plans ☐ Recommended Support Levels

☐ Other *(Please explain)*_____

SECTION 2: Program Costs and Personnel

12. Are your classes taught by an individual or a team?

☐ Individual ☐ Team ☐ Both

13. Characterize the training level of the individuals who provide the divorce education classes. *(Please check all that apply.)*

☐ Clinical Social Worker
☐ Clinical Psychologist
☐ Court Probation Staff
☐ Trainer
☐ Community Lay person
☐ Graduate Student
☐ Bachelor Level Counselor
☐ Other _____

14. Does every participant in the class pay to attend?

☐ Yes *(If Yes, go to 14A.)* ☐ No *(If No, go to 15.)*

14A. How are costs assessed? *(Please check all that apply.)*

☐ Sliding Scale Fee Assessed by Program
☐ Flat Rate
☐ Sliding Scale Fees Assessed By the Court
☐ Insurance Co-payment

14B. What percentage of the class participants pay a fee?

_____%

15. What is the cost of the classes?

☐ $25 -$40
☐ $41 -$75
☐ $76 -$100
☐ $100+

16. Are there other sources of funds for the classes which are not covered by participant fees?

☐ Yes *(If Yes, go to 16A & 16B.)* ☐ No *(If No, go to 17.)*

16A. What other sources of funds contribute to class costs?

☐ Community Grants
☐ United Way
☐ State Funds
☐ Other (Please explain.)_____

16B. What percentage of the total divorce education classes budget do these other sources of funds cover?

Community Grants ____% United Way ____%

State Funds _____% Other ____%

17. Please provide the total annual operational budget for the divorce education classes.

$_ _ . _ _ _.00

SECTION 3: Program Evaluation

18. Has your divorce education program been formally evaluated?

☐ Yes *(If YES go to 18A & 18B.)* ☐ No *(If No, go to 19.)*

18A. Who conducted the evaluation?

☐ Local College /University ☐ United Way

☐ Agency Staff ☐ Other (Please explain.)_____

18B. What outcome measures were addressed in the evaluation?

☐ Client satisfaction ☐ Impact on Custody Litigation

☐ Impact on Visitation Litigation ☐ Impact on Support Litigation

☐ Cessation of Family Stress ☐ Other (Please explain.)_____

19. Do you think there should be program standards for divorce education classes?

☐ Yes *(If Yes, go to 19A.)* ☐ No *(If No, go to 19B.)*

19A. If Yes, why should there be standards?

19B. If No, why should there not be standards?

20. Do you have other comments or concerns you would like to share? *(Please attach additional pages if necessary.)*

PLEASE RETURN THE COMPLETED SURVEY BY JULY 3, 1998 TO:

Nancy Ross
Virginia Commission on Youth
Suite 517B, General Assembly Building
910 Capitol Street
Richmond, Virginia 23219-0406
Phone: 804-371-2481
FAX: 804-371-0574

Appendix F

SUMMARY OF STATEWIDE COSTS FOR MANDATORY PARENT EDUCATION

Percentage of Custody Petitions Involving Parents	Percentage of State Share	Total State Costs
75	30	$2,018,740.50
66	25	1,480,409.70
50	20	897,218
40	25	373,364
33	25	308,025.80

Assumes average participant cost of $35
Captures only Juvenile and Domestic Relations Court petitions

Estimate of Statewide Costs for Mandatory Parent Education Five Scenarios

Scenario 1

- *75% of all custody petitions involve disputes between parents.*
- *State share covers 30% of total costs.*

J&DR Court District	Number of New Custody/Visitation Cases	Number of Parents	Total Parent Education Costs	State Share
1	3,447	5170.5	$ 180,967.50	$ 54,290.25
2	10,540	15810.0	$ 553,350.00	$ 166,005.00
3	3,189	4783.5	$ 167,422.50	$ 50,226.75
4	7,085	10627.5	$ 371,962.50	$ 111,588.75
5	2,223	3334.5	$ 116,707.50	$ 35,012.25
6	2,242	3363.0	$ 117,705.00	$ 35,311.50
7	3,447	5170.5	$ 180,967.50	$ 54,290.25
8	2,919	4378.5	$ 153,247.50	$ 45,974.25
9	4,649	6973.5	$ 244,072.50	$ 73,221.75
10	2,793	4189.5	$ 146,632.50	$ 43,989.75
11	2,322	3483.0	$ 121,905.00	$ 36,571.50
12	5,342	8013.0	$ 280,455.00	$ 84,136.50
13	5,374	8061.0	$ 282,135.00	$ 84,640.50
14	3,983	5974.5	$ 209,107.50	$ 62,732.25
15	8,969	13453.5	$ 470,872.50	$ 141,261.75
16	5,355	8032.5	$ 281,137.50	$ 84,341.25
17	1,012	1518.0	$ 53,130.00	$ 15,939.00
18	1,852	2778.0	$ 97,230.00	$ 29,169.00
19	4,227	6340.5	$ 221,917.50	$ 66,575.25
20	1,889	2833.5	$ 99,172.50	$ 29,751.75
21	3,436	5154.0	$ 180,390.00	$ 54,117.00
22	3,683	5524.5	$ 193,357.50	$ 58,007.25
23	4,367	6550.5	$ 229,267.50	$ 68,780.25
24	5,766	8649.0	$ 302,715.00	$ 90,814.50
25	4,691	7036.5	$ 246,277.50	$ 73,883.25
26	6,376	9564.0	$ 334,740.00	$ 100,422.00
27	4,162	6243	$ 218,505.00	$ 65,551.50
28	2,493	3739.5	$ 130,882.50	$ 39,264.75
29	2,954	4431.0	$ 155,085.00	$ 46,525.50
30	2,455	3682.5	$ 128,887.50	$ 38,666.25
31	4,932	7398.0	$ 258,930.00	$ 77,679.00
TOTAL	**128,174**	**192,261**	**$ 6,729,135.00**	**$ 2,018,740.50**

Scenario 2

- *66% of all custody petitions involve disputes between parents.*
- *State share covers 25% of total costs.*

J&DR Court District	Number of New Custody/Visitation Cases	Number of Parents	Total Parent Education Costs	State Share
1	3,447	4550.04	$ 159,251.40	$ 39,812.85
2	10,540	13912.80	$ 486,948.00	$ 121,737.00
3	3,189	4209.48	$ 147,331.80	$ 36,832.95
4	7,085	9352.20	$ 327,327.00	$ 81,831.75
5	2,223	2934.36	$ 102,702.60	$ 25,675.65
6	2,242	2959.44	$ 103,580.40	$ 25,895.10
7	3,447	4550.04	$ 159,251.40	$ 39,812.85
8	2,919	3853.08	$ 134,857.80	$ 33,714.45
9	4,649	6136.68	$ 214,783.80	$ 53,695.95
10	2,793	3686.76	$ 129,036.60	$ 32,259.15
11	2,322	3065.04	$ 107,276.40	$ 26,819.10
12	5,342	7051.44	$ 246,800.40	$ 61,700.10
13	5,374	7093.68	$ 248,278.80	$ 62,069.70
14	3,983	5257.56	$ 184,014.60	$ 46,003.65
15	8,969	11839.08	$ 414,367.80	$ 103,591.95
16	5,355	7068.60	$ 247,401.00	$ 61,850.25
17	1,012	1335.84	$ 46,754.40	$ 11,688.60
18	1,852	2444.64	$ 85,562.40	$ 21,390.60
19	4,227	5579.64	$ 195,287.40	$ 48,821.85
20	1,889	2493.48	$ 87,271.80	$ 21,817.95
21	3,436	4535.52	$ 158,743.20	$ 39,685.80
22	3,683	4861.56	$ 170,154.60	$ 42,538.65
23	4,367	5764.44	$ 201,755.40	$ 50,438.85
24	5,766	7611.12	$ 266,389.20	$ 66,597.30
25	4,691	6192.12	$ 216,724.20	$ 54,181.05
26	6,376	8416.32	$ 294,571.20	$ 73,642.80
27	4,162	5493.84	$ 192,284.40	$ 48,071.10
28	2,493	3290.76	$ 115,176.60	$ 28,794.15
29	2,954	3899.28	$ 136,474.80	$ 34,118.70
30	2,455	3240.60	$ 113,421.00	$ 28,355.25
31	4,932	6510.24	$ 227,858.40	$ 56,964.60
TOTAL	**128,174**	**169,190**	**$ 5,921,638.80**	**$1,480,409.70**

Scenario 3

- *50% of all custody petitions involve disputes between parents.*
- *State share covers 20% of total costs.*

J&DR Court District	Number of New Custody/Visitation Cases	Number of Parents	Total Parent Education Costs	State Share
1	3,447	3447	$ 120,645.00	$ 24,129.00
2	10,540	10540	$ 368,900.00	$ 73,780.00
3	3,189	3189	$ 111,615.00	$ 22,323.00
4	7,085	7085	$ 247,975.00	$ 49,595.00
5	2,223	2223	$ 77,805.00	$ 15,561.00
6	2,242	2242	$ 78,470.00	$ 15,694.00
7	3,447	3447	$ 120,645.00	$ 24,129.00
8	2,919	2919	$ 102,165.00	$ 20,433.00
9	4,649	4649	$ 162,715.00	$ 32,543.00
10	2,793	2793	$ 97,755.00	$ 19,551.00
11	2,322	2322	$ 81,270.00	$ 16,254.00
12	5,342	5342	$ 186,970.00	$ 37,394.00
13	5,374	5374	$ 188,090.00	$ 37,618.00
14	3,983	3983	$ 139,405.00	$ 27,881.00
15	8,969	8969	$ 313,915.00	$ 62,783.00
16	5,355	5355	$ 187,425.00	$ 37,485.00
17	1,012	1012	$ 35,420.00	$ 7,084.00
18	1,852	1852	$ 64,820.00	$ 12,964.00
19	4,227	4227	$ 147,945.00	$ 29,589.00
20	1,889	1889	$ 66,115.00	$ 13,223.00
21	3,436	3436	$ 120,260.00	$ 24,052.00
22	3,683	3683	$ 128,905.00	$ 25,781.00
23	4,367	4367	$ 152,845.00	$ 30,569.00
24	5,766	5766	$ 201,810.00	$ 40,362.00
25	4,691	4691	$ 164,185.00	$ 32,837.00
26	6,376	6376	$ 223,160.00	$ 44,632.00
27	4,162	4162	$ 145,670.00	$ 29,134.00
28	2,493	2493	$ 87,255.00	$ 17,451.00
29	2,954	2954	$ 103,390.00	$ 20,678.00
30	2,455	2455	$ 85,925.00	$ 17,185.00
31	4,932	4932	$ 172,620.00	$ 34,524.00
TOTAL	**128,174**	**128,174**	**$ 4,486,090.00**	**$ 897,218.00**

Scenario 4

- *40% of all custody petitions involve disputes between parents.*
- *State share covers 25% of total costs.*

J&DR Court District	Number of New Custody/Visitation Cases	Number of Parents	Total Parent Education Costs	State Share
1	3,447	2757.6	$ 96,516.00	$ 24,129.00
2	10,540	8432.0	$118,048.00	$ 29,512.00
3	3,189	2551.2	$ 35,716.80	$ 8,929.20
4	7,085	5668.0	$ 79,352.00	$ 19,838.00
5	2,223	1778.4	$ 24,897.60	$ 6,224.40
6	2,242	1793.6	$ 25,110.40	$ 6,277.60
7	3,447	2757.6	$ 38,606.40	$ 9,651.60
8	2,919	2335.2	$ 32,692.80	$ 8,173.20
9	4,649	3719.2	$ 52,068.80	$ 13,017.20
10	2,793	2234.4	$ 31,281.60	$ 7,820.40
11	2,322	1857.6	$ 26,006.40	$ 6,501.60
12	5,342	4273.6	$ 59,830.40	$ 14,957.60
13	5,374	4299.2	$ 60,188.80	$ 5,047.20
14	3,983	3186.4	$ 44,609.60	$ 1,152.40
15	8,969	7175.2	$100,452.80	$ 25,113.20
16	5,355	4284.0	$ 59,976.00	$ 14,994.00
17	1,012	809.6	$ 11,334.40	$ 2,833.60
18	1,852	1481.6	$ 20,742.40	$ 5,185.60
19	4,227	3381.6	$ 47,342.40	$ 11,835.60
20	1,889	1511.2	$ 21,156.80	$ 5,289.20
21	3,436	2748.8	$ 38,483.20	$ 9,620.80
22	3,683	2946.4	$ 41,249.60	$ 10,312.40
23	4,367	3493.6	$ 48,910.40	$ 12,227.60
24	5,766	4612.8	$ 64,579.20	$ 16,144.80
25	4,691	3752.8	$ 52,539.20	$ 13,134.80
26	6,376	5100.8	$ 71,411.20	$ 17,852.80
27	4,162	3329.6	$ 46,614.40	$ 11,653.60
28	2,493	1994.4	$ 27,921.60	$ 6,980.40
29	2,954	2363.2	$ 33,084.80	$ 8,271.20
30	2,455	1964.0	$ 27,496.00	$ 6,874.00
31	4,932	3945.6	$ 55,238.40	$ 13,809.60
TOTAL	**128,174**	**102,539.2**	**$1,493,458.00**	**$ 373,364.60**

Scenario 5

- *33% of all custody petitions involve disputes between parents.*
- *State share covers 25% of total costs.*

J&DR Court District	Number of New Custody/Visitation Cases	Number of Parents	Total Parent Education Costs	State Share
1	3,447	2275.02	$ 79,625.70	$ 19,906.43
2	10,540	6956.40	$ 97,389.60	$ 24,347.40
3	3,189	2104.74	$ 29,466.36	$ 7,366.59
4	7,085	4676.10	$ 65,465.40	$ 16,366.35
5	2,223	1467.18	$ 20,540.52	$ 5,135.13
6	2,242	1479.72	$ 20,716.08	$ 5,179.02
7	3,447	2275.02	$ 31,850.28	$ 7,962.57
8	2,919	1926.54	$ 26,971.56	$ 6,742.89
9	4,649	3068.34	$ 42,956.76	$ 10,739.19
10	2,793	1843.38	$ 25,807.32	$ 6,451.83
11	2,322	1532.52	$ 21,455.28	$ 5,363.82
12	5,342	3525.72	$ 49,360.08	$ 12,340.02
13	5,374	3546.84	$ 49,655.76	$ 12,413.94
14	3,983	2628.78	$ 36,802.92	$ 9,200.73
15	8,969	5919.54	$ 82,873.56	$ 20,718.39
16	5,355	3534.30	$ 49,480.20	$ 12,370.05
17	1,012	667.92	$ 9,350.88	$ 2,337.72
18	1,852	1222.32	$ 17,112.48	$ 4,278.12
19	4,227	2789.82	$ 39,057.48	$ 9,764.37
20	1,889	1246.74	$ 17,454.36	$ 4,363.59
21	3,436	2267.76	$ 31,748.64	$ 7,937.16
22	3,683	2430.78	$ 34,030.92	$ 8,507.73
23	4,367	2882.22	$ 40,351.08	$ 10,087.77
24	5,766	3805.56	$ 53,277.84	$ 13,319.46
25	4,691	3096.06	$ 43,344.84	$ 10,836.21
26	6,376	4208.16	$ 58,914.24	$ 14,728.56
27	4,162	2746.92	$ 38,456.88	$ 9,614.22
28	2,493	1645.38	$ 23,035.32	$ 5,758.83
29	2,954	1949.64	$ 27,294.96	$ 6,823.74
30	2,455	1620.30	$ 22,684.20	$ 5,671.05
31	4,932	3255.12	$ 45,571.68	$ 11,392.92
TOTAL	**128,174**	**84,594.84**	**$1,232,103.00**	**$ 308,025.80**

Bibliography

American Law institute, *Principles of the Law of Family Dissolution: Analysis and Recommendation*, Tentative Draft Part 3, Philadelphia, March 1998.

Amato, P.R. "Children's Adjustment To Divorce: Theories, Hypothesis And Empirical Support," *Journal of Marriage and the Family*, Vol. 55, 1993.

Bahr, S., J. Howe, M. Mann, and M. Bahr. "Trends in Child Custody Awards: Has Removal of Maternal Preference Made a Difference?" *Family Law Quarterly*, Vol. 28, No. 2, Summer 1994.

Blaisure, Karen A. & Margie J. Geasler. "A Review of Divorce Education Program Materials," *Family Relations*, Vol. 47, No. 2, 1998.

Blaisure, Karen A. & Margie J. Geasler. "Results of a Survey of Court Connected Parent Education Programs in the U.S. Counties," *Family and Conciliation Courts Review*, Vol. 34, No. 1, January 1996.

Bohmer, Carol & Marilyn L. Ray, "Effects of Different Dispute Resolution Methods on Women and Children after Divorce," *Family Law Quarterly,* Vol. 28, Summer 1994.

Brema, C., K.L. Carssow, C. Shook, and S. Sturgill. "Assessment of Fairness in Child Custody Decisions," *Child Abuse and Neglect*, Vol. 19, No. 3, March 1995.

Caldwel, R.A. & B.L. Bloom. "Social Support: Its Structure and Impact on Marital Disruption," *American Journal of Community Psychology*, Vol. 10, Spring 1992.

"Custody Education Committee Takes on Mammoth Task," *Virginia State Bar Family Law News*, Vol. 14, No. 2, Summer 1994.

Ellis, Jane W. "Plans, Protections and Professional Intervention Innovations in Divorce Custody Reform and the Role of Legal Professionals," *University of Michigan Journal of Law,* Vol. 24, 1990.

"Families First: Compulsory Education in Post-Divorce Parenting," *Virginia Family Law Journal*, Fall 1993.

Fox, L. and R.F. Kelly. "Determinants of Child Custody Arrangements at Divorce," *Journal of Marriage and the Family*, Vol. 57, August 1995.

Goldstein, J., A.J. Solnit, S. Goldstein, and A. Freud. *The Best Interest of the Child: The Least Detrimental Alternative,* The Free Press, N.Y., 1996.

Gould, J.W. *Conducting Scientifically Crafted Child Custody Evaluations*, SAGE Publications, Thousand Oaks, Ca., 1998.

"I Was Using My Children to Hurt My Husband," *Good Housekeeping,* August 1992.

Kearney, C., and H. Sellers. "Sex on the Docket: Reports of State Taskforces on Gender Bias," *Public Administration Review*, Vol. 56, No. 6, Nov/Dec 1996.

Kunin, C., E.B. Ebbeson, V. Konecni. "An Archival Study of Decision-Making in Child Custody Disputes," *Journal of Clinical Psychology*, Vol. 48, No. 4, July 1992.

Maccoby, E. E. & R. H. Mnookin. *Dividing the Child; Social and Legal Dilemmas of Custody*, Harvard University Press, Cambridge, Mass., 1992.

Mental Health Association of the New River Valley, *Children of Divorce Seminar Program (Proposal)*, August 22, 1995.

Miller, B. "Divorce's Hard Lessons," *Washington Post*, November 21, 1994.

Pearson, J. & M.A. Luchesi Ring, "Judicial Decision-Making In Contested Custody Cases," *Journal of Family Law*, Vol. 21, 1992-93.

Powell, C. "Children Cope With Divorce as a Mandatory Court Program in Virginia," *Virginia State Bar Family Law News*, Vol. 14, No. 2, Summer 1994.

"Program Aids Children of Divorce," *Richmond (Va.) Times-Dispatch*, December 26, 1993.

"Requiring Divorce Classes for the Sake of the Child," *New York Times,* January 23, 1992.

Rucker, A. "Judge Steps Down to Devote Time to Children," *The Fairfax (Va.) Journal.* May 23, 1994.

Ryan, L.T. "Divorcing Parents Learn to Put Kids First," *St. Lucie (Fl.) Tribune*, December 20,1992.

Scott, Elizabeth. "Pluralism, Parental Preference and Child Custody," *California Law Review*, 1992.

Tennessee Bar Association, *Report of the Commission on Gender Fairness*, http://www.tba.org/ GenderFairness/Report?cgf-summary2.html, September 9, 1998.

Thomas, D.K. "When d-i-v-o-r-c-e Becomes Final." *Rome (Ga.) News-Tribune,* February 24, 1992.

"To Ease Broken Hearts," *PARADE,* December 6, 1992.

Tolliver, T. "Divorcing Parents Get Lessons in Keeping Children Out of Middle" *Herald-Leader*, Lexington (Ky.), February 23, 1997.

Trafford, A. "Cranberry Wars," Second Opinion Column, *Washington Post*, November 24, 1992.

Twaite, J. A., D. Silitsky, & A.K. Luchow. *Children of Divorce*, Aronson, Northvale, N.J.,1998.

Virginia Commission on Youth, "Senate Document 46 Study of Model Child Custody and Visitation," 1994.

Virginia Department of Social Services, "A Study of Prevention of Divorce Programs and Parenting Skills for Separating Couples Programs," *House Document No. 43, Report to the Governor and General Assembly of Virginia,* Richmond, 1995.

Wasowicz, J.A. "Alexandria Project Makes Divorcing Parents Think About the Kids,"*It's the Law* (Column), *The Fairfax (Va.) Journal*, October 18, 1994.