THE IMPACT OF THE CUSTODY PLAN ON THE FAMILY: A FIVE-YEAR FOLLOW-UP

EXECUTIVE SUMMARY

Submitted to:
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MAY 1991

The preparation of these materials was financially assisted through a grant from the Judicial Council of California. The opinions, findings, and conclusions in the report are those of the author and not necessarily those of the Judicial Council.
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INTRODUCTION

Divorce has become an increasingly common experience among American families. The increase in the number of children experiencing divorce has resulted in a proliferation of research concerning divorce and its impact on children. An examination of this research suggests two somewhat contradictory trends.

On the one hand, analyses of legislative trends suggest a movement away from the sole maternal custody philosophy characterizing the 20th century and movement toward joint custody models,[11]where both parents are awarded custody. This trend may be associated with changes in post-divorce behavior, judging from research on selective samples of divorced families which suggests that awards of joint custody result in an increased involvement of both parents in the lives of their children after the divorce.[2]

On the other hand, available data on the incidence of various types of court custody orders suggest that joint custody orders are a rarity,[3] and research with more representative samples of divorced families suggests that divorce results in a loss of contact with one parent, typically the father.[4] (However, the lack of information in these studies on the original custody order makes it impossible to know whether families with joint custody behave differently than sole custody families.) Further, studies of families who came to joint custody through litigation, rather than amicably agreeing to it, suggest that highly conflicted families may be unable to overcome their animosities sufficiently to make joint custody a viable option for them.[5]

Thus, data on the current incidence of joint custody orders and on the post-divorce behavior of families with court-determined joint and sole custody are needed to shed light on the contradictory profile of joint custody currently available. Drawing on court file and interview data from a sample of families who came to the Los Angeles Conciliation Court in 1983 with a custody dispute, this research study provides information on the initial custody orders filed at the time of the divorce, the custody behavior within the families six years after the dissolution was filed, and the relationship between the order and the behavior.

Methods

The setting for this research is Los Angeles County three years after the enactment of legislation that specifically cited joint custody as an option to be considered in awarding custody. The sampling frame consists of families who came to the Los Angeles County Conciliation Court in 1983 to resolve a custody

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[1]See Clingempeel and Reppucci (1982) and Jacob (1988).
[2]See Bowman and Ahrons (1985), Greif (1979), and Luepnitz (1982)
[3]See Weitzman (1985).
[4]See Furstenberg and Nord (1985) and Seltzer and Bianchi (1988).
[5]See Steinman, Zemmelman, and Knoblauch (1985).

dispute during the initial divorce process. (In California, families who notify the court that they have a dispute over custody must attend at least one mediation session in the Conciliation Court.) This sampling frame excludes the vast majority of families who divorce without disputing custody. However, this sampling frame does include the most litigious group of divorcing families requiring the greatest degree of court time and involvement in their dispute. This is also the group that has been most underrepresented in the literature on join custody. An alternate case sample of families was selected, resulting in 1,343 families who were scheduled to attend Conciliation Court in 1983.

Families were included in the sample whether an agreement was reached in mediation or the custody order was obtained through further litigation. However, the sample was limited to families who filed one of three types of custody orders: sole maternal legal and physical, joint legal and primary maternal physical, or joint legal and physical. A final sample of 424 cases that fit the sampling criteria was selected.[26]

In this study, data were collected through court files and interviews with both parents in as many families as possible of the 424 sampled. The court files provided basic demographic information and the structure of the initial custody order.

Interviews were conducted in 1989, six years after the dissolution was filed. Contact was made with at least one parent in 224 families (53% of the families eligible for interviews). Both parents were interviewed in 117 families; only mothers were interviewed in 66 families; only fathers were interviewed in 41 families. Once contact was made with a parent, almost all agreed to participate, with only two parents refusing.

An analysis of the information available from court files on nonparticipants shows that, overall, the results of this study are not seriously marred by a nonresponse bias. However, the interviewed sample is more likely to contain responses from both parents in families with initial custody orders awarding joint legal and physical custody than other custody types, and less likely to contain interviews with either parent in families with initial custody orders awarding sole maternal custody. Additionally, those interviewed were slightly (less than one year mean education) better educated than those not interviewed. (A separate document by Ronald K. Watts, submitted with this report, provides a detailed analysis of the

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[6]Of those cases that did not fit the sampling criteria, many consisted of families seeking mediation post-dissolution, parents not divorced by the time the sample was selected (many of whom were never married), families who came to the Conciliation Court for matters other than a custody dispute, and families who failed to attend the appointment. Missing or incomplete files resulted in the elimination of 164 cases. An additional 88 cases were discarded because the father was awarded custody (which was outside the focus of this study), and 42 were eliminated because the children were over 18 at the time of the interview, which would have included families who could provide only retrospective reports of their custody behavior.

available nonparticipant data.) Finally, given that nonparticipants (with the exception of two parents) were persons who could not be located, it is likely that they are characterized by more mobility than the interviewed sample. To the extent that mobility has influenced their custody behavior, the interviewed sample would underrepresent this pattern of custody behavior.

Initial Court Action

The court file information provides information on the initial custody order in terms of both legal and physical custody.[7] Among the families filing for divorce in 1983, who involved the Los Angeles County Court in resolving their custody dispute, legal custody was typically awarded jointly with joint legal custody having been a more common outcome than sole legal custody. This was not the case for physical custody. Joint physical custody was an infrequent outcome, with less than one family in six filing this order. Furthermore, examining the actual amount of time awarded to each parent shows that a fifty-fifty time split was awarded to only one family in ten. The single most common custody order among this sample was joint legal custody in conjunction with sole maternal physical custody.

Thus, three years after the passage of California's joint custody legislation, joint custody was a common occurrence in terms of legal custody. Joint custody was not a common occurrence in terms of physical custody, especially if the term is restricted to families who divide the children's time equally between the homes of both parents.

Description of Current Custody Behavior

Turning to the self-reported custody behavior of the families interviewed, most of the families reported that the children reside with their mothers, and about a quarter reported little or no contact with their nonresidential parent, usually the father. However, 44% of the families said that the children have at least one overnight with each parent each month.

Thus, two very different types of post-divorce custody patterns of behavior can be seen in this sample. For some families, the divorce resulted in the children being raised almost exclusively by one biological parent. For others, both parents are meaningfully involved in their children's lives. It is inaccurate to assume that coparenting is typical of all post-divorce families, but it is also inaccurate to assume that it is normative for children to lose contact with one parent following

[7]For the following analysis of the distribution of custody awards, all families otherwise fitting the sampling frame were included regardless of the type of custody award, age of the children, or interview status.

the divorce. In this sample, both post-divorce custody behavior patterns were fairly common.[8]

Most nonresidential parents and joint custody parents stated they wanted to spend more time with their children. The only group of parents in which the majority were satisfied with the amount of time they have with the children were those who reported having primary physical custody of the children, suggesting parents view anything less than primary physical custody as insufficient time with their children. Thus, inmost divorced families, whether the custody arrangement is primary residence with one parent or shared physical custody, at least one parent is dissatisfied with the amount of time he or she has with the children. In joint custody families, both are often dissatisfied.

In terms of legal custody, high levels of joint decision making are associated with high levels of contact between the children and both parents. At least partially as a function of this relationship, parents who reported the children reside with both of them reported higher levels of joint decision making than those who reported that the children live primarily in one of their homes. In terms of satisfaction, residential parents where more likely to report being satisfied with their role in decision making than parents who reported that the children reside with the other parent.

As with satisfaction with the amount of time spent with the children, a small percentage of joint physical custody parents were dissatisfied with their role in decision making than among nonresidential parents, but also a smaller percentage were satisfied than among parents with primary custody. This suggests that joint physical custody may lead to a more equal level of satisfaction with the situation between the parents, even if neither is entirely satisfied with the arrangement.

It is notable that fathers rate higher on the conjoint decision-making scale than do mothers. Across every category, the group means for fathers are higher than those for mothers. This finding has implications for researchers relying solely on reports from one parent. It also has implications for practitioners working with divorced families in that mothers and fathers may have different expectations for their role in making decisions about their children.

Comparison of the Initial Custody Order and Current Custody Behavior

Initial physical custody orders awarding the mother primary custody demonstrate a great deal of stability over time. The overwhelming majority of

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[8]Mothers and fathers showed a similar pattern of contact with the children when they were the nonresidential parent. No evidence was found in this survey to suggest that nonresidential mothers and fathers behave differently. However, the sampling design (i.e., excluding families with initial order of primary custody to the father) limits the potential of this research project to assess gender differences in post-divorce custody behavior.

these families reported that the children still reside with the mother at the time of the interview. Joint physical custody plans show more fluidity; only 36% of those with an initial custody order of joint physical custody reported in 1989 that the children still reside with both parents.

Those families awarded joint physical custody at the time of the divorce and who reported sharing physical custody in 1989 are characterized by the following: initial custody plans that gave the children equal time with each parent, less conflict at the time of the divorce, mothers who are not remarried, fathers with higher incomes, and parents who live in close geographic proximity.[9] As has been found in other studies of divorced families,[10] these survey data suggest that fathers awarded joint physical custody at the time of the divorce continue to have more contact with their children over time than nonresidential fathers. However, in the absence of information about the family dynamics at the time of the divorce, it is impossible to know if the initial custody plan itself has an impact on later custody behavior or if the initial custody order is simply an indicator of other dynamics in the family that are crucial in determining the father's level of contact with the children following the divorce.

Relationships within the Post-Divorce Family

An analysis of data describing the relationships in the post-divorce family reveals a number of interesting differences between the perspectives of parents, depending on the structure of the custody plan. Generally, parents reported lower conflict in families where the children spend significant amounts of time with both parents than in families in which the father has more limited contact. Also, both mothers and father view *de facto* joint physical custody fathers as more involved in a range of activities with the children than *de facto* nonresidential fathers.

Similarly, fathers with *de facto* joint custody are more likely to be satisfied with the job they are doing as a parent than *de facto* nonresidential fathers. However, mothers are more satisfied when they have primary custody than when they have joint custody.

These findings suggest that, in *de facto* joint physical custody families, the level of each parent's perceive involvement with the children and satisfaction with parenting may be more equal than in primary physical custody families. (Although, neither parent may be as satisfied as they would be with primary physical custody.) The perceived degree of equity between joint physical custody

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[9]Given what is known about the effects of parental conflict on children, especially when the parents are in frequent contact (e.g., Hetherington, 1979), it may be beneficial to the children that those joint physical custody parents in high conflict migrated to primary residence plans over time, or in fact, were less likely to have had equal time-sharing plans to begin with.

[10]See Bowman and Ahrons (1985) and Greif (1979)

parents merits further research, specifically in relation to how perceptions of equity may be related to the lower level of conflict reported between joint physical custody parents.

The families in this sample reported a general improvement in the custody situation since the first year following the divorce, However, parents viewed the custody schedule as more problem-free to the extent they have the children living with them.

Again, these differences between the viewpoints of residential and nonresidential parents point out the inherent danger in asking only one parent to assess the custody situation. Parents' views of how well their custody plan works are shaped, in part, by how much time the children are with them. It is clear that when one is soliciting perceptions of the post-divorce custody situation, the custody status of the respondent will alter the responses obtained.

Summary and Conclusions

This sample does not provide information on the types of custody orders filed by the vast majority of families who do not litigate custody. (In order to obtain estimates of the incidence of joint custody among these families, a sample of all divorce filings would be required.) These data do provide information, however, on the families with the greatest contact with the Los Angeles County Court system and the greatest conflict over custody.

In terms of evaluating the impact of joint custody, these data present a mixed picture. Focusing on legal custody, these data suggest that *de jure* joint custody is the norm for the families in this sample. However, it is not clear that such orders are necessarily associated with *de facto* joint legal custody over time. It may be that the amount of time the children spend in a parent's home is more important in determining that parent's involvement in and satisfaction with the decision-making process than a court order specifying joint legal custody.

Turning to physical custody, it is clear that joint custody, particularly if defined as splitting the children's time equally between two homes, is not a typical order and is less common than one might surmise from the emphasis placed on it. Maintaining such a plan over times appears to require particular family resources (e.g., high incomes and the ability of the parents to remain in close geographic proximity). How this discrepancy between the emphasis on joint physical custody and the infrequency of its occurrence has affected the expectations of divorcing families and their satisfaction with their custody arrangements (which are unlikely to be joint physical custody arrangements) remains unanswered.

The relatively few fathers who sustained a joint physical custody arrangement over the six years between the divorce and the interview are more likely than

nonresidential fathers to report that they share in making decisions about their children, are involved in a range of activities with their children, and are satisfied with both the legal and physical custody arrangement. This finding is consistent with previous research. What has not been noted in previous research is that the mothers in these families are less likely to report being satisfied with the legal and physical custody arrangement than mothers who have sole physical custody. Thus, in terms of parental satisfaction, any increase in the incidence of joint custody may have a mixed outcome.

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