

Family Law Education Reform Project

Child Development and Appropriate Parenting Plans

ABSTRACT

This guide discusses characteristics and needs of different age children, and ways children of varying ages respond to parental divorce; this information is offered as a backdrop to the developmental considerations and to be considered in the drafting of appropriate parenting plans.

ABOUT THE AUTHOR

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Dr. Marsha Kline Pruett has Master's degrees in education (University of Pennsylvania) and law (Yale School of Law), and a Ph.D. in Clinical/Community Psychology from the University of California, Berkeley. Her clinical expertise includes couples counseling and consultation, father involvement consultation, legal case development for attorneys, mediation, and collaborative divorce. She is also a researcher, program developer and trainer around various topics pertaining to family law and child and family adaptation to divorce.

Her scholarly works include professional articles, curricula, chapters, and a book co-authored with California Attorney/Mediator Diana Mercer; *Your Divorce Advisor: An Attorney and Psychologist Lead You Through the Legal and Emotional Landscape of Divorce* (2001 by Fireside, Simon and Schuster). This book is the subject of a Telly award-winning DVD produced by the Foundation for Better Living. She edited a special issue of the Family Court Review, *Separated and Unmarried Fathers and the Courts* (2003), and a collection of Family Court Review papers titled *Overnights and Young Children* (2005). In collaboration with colleagues, she has two new books in press: one on couples and family interventions and one on co-parenting young children in the context of marriage. Her research on a model continuum of effective and cost-efficient co-parenting services in the Connecticut courts, father involvement, and parenting plans for young children earned her the prestigious Association of Family and Conciliation Courts Stanley Cohen Award for Distinguished Research. She is a member of the American Psychological Association's Task Force on Child Custody and on the Task Force to develop guidelines for Parenting Coordination. She disseminates her work through speaking engagements and consultations to judges and attorneys.

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Marsha Kline Pruett, Ph.D., M.S.L.¹

Summary

Child development information provides an important background for interpreting child behavior during and after divorce, and for examining symptoms that emerge against knowledge about what is typical for certain ages and stage.

Tasks and Needs for Children of Divorce to achieve positive adjustment:

- Acknowledge the reality of the separation
- Disengage from parental conflict and distress and resume customary pursuits
- Resolve experience of loss(es)
- Resolve anger and blame
- Accept the permanence of divorce
- Achieve realistic hopes and expectations regarding future family relationships

Why this Topic is Important to Law Students

- Forty-three percent (43%) of first marriages end in separation or divorce within 15 years.¹
- It is estimated that about 63% of American **children** grow up with both biological **parents** -- the **lowest figure** in the Western world.²
- In 1998, 68% of children in divorced families lived with both parents; 23% lived with only their mother, & 4% lived with only their father. However, the number of single fathers grew 25% between 1995 and 1998; the number of single mothers remained constant.³
- Children of divorce have more aggressive behaviors, poorer self-esteem, lower academic achievement and a general risk of problems more than twice as great (25% vs. 10%) as children whose parents did not divorce.⁴
- Though most (75-80%) children do not show behavioral and psychological symptoms beyond the initial period of divorce (1-3 years), painful memories of the divorce process may last for years and painful longing for the absent parent is common among children of divorce.⁵
- After decades of research, there is consensus in the mental health community about the risk and protective factors that affect children's adjustment to divorce. Key factors include each parent's mental health, parenting quality, involvement of both parents (focus on the non-residential or

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less-seen parent when there is one), and types and levels of parental conflict prior to and after divorce.

- U.S. statistics suggest over half of children who experience divorce do so by age 6.⁶ Therefore, the focus in family law on young children's developmental needs, how to structure access to both parents, and how to meet their needs for both stability and flexibility provide fertile ground for collaboration and conflict among parents and professionals working with these families.
- Parenting plans are required in divorce in most states. There are no standard guidelines or rules for children of different ages or needs. As a result, development of the plans are often fraught with the parents' different desires, perceptions, and beliefs about the structure and access arrangements that would best serve their child's interests.

Relevant Issues

1. What are the developmental characteristics, needs, and risks faced by children at different ages?

Infancy, toddlerhood, and preschool

Primary and hierarchical caretakers:

- Attachment Definition - a psychological concept referring to whom the child feels trusting of to provide for the child's biological and emotional needs.
- All children learn to depend on the person(s) who feed, change diapers, and comfort them in a reliable and consistent way.
- We know from research that children can attach to one person, or more than one person simultaneously, beginning at about 6 months old.
- Children prefer one parent over another at varying times in normal developmental fluctuations as a result of child age, current developmental concerns (e.g., autonomy), temperament of child and parent, and availability and sensitivity of each parent.

Special Considerations:

- Consistency and comfort balanced with stimulation – children need both.
- Play is a very important part of toddlerhood and preschool life; typically (but not in every situation), fathers play more with their young children than do mothers, and children's attachment to fathers is linked to his ability to play and stimulate and surprise as well as his ability to be consistent and soothing.
- The child must emerge with a basic sense of trust in the world and her caretakers, excitement to explore, and a growing awareness of herself as a separate, competent person

who is cherished and protected. Self-soothing skills are important for child regulation of physiology and affect. Parental cooperation after divorce about feeding and sleeping routines helps the child develop such internal skills.

- **Salience of Child Temperament:** An easy child, one with a flexible temperament (about 40% of all children) can make transitions, sleep in more places, and have change imposed easier than children with shy or difficult temperaments.
- **Risk factors that inhibit secure attachment include:**
 - **Adult Characteristics:** mental illness, mental retardation, immaturity, substance abuse, narcissistic and borderline personality traits.
 - **Environmental Characteristics:** Poverty, poor social support, presence of domestic violence, lack of stable housing, neighborhood violence.
 - **Infant/Toddler/Child Characteristics:** Difficult temperament, prematurity, health problems, developmental disabilities.

School age years before and in middle school

- Children want to belong to peer groups, and have a strong drive toward competition.
- Children strive to master intellectual/cognitive, physical challenges, and social pursuits.
- Rules and fairness are highly valued.
- Same sex and opposite sex relationships develop and loyalty, along with experimentation, is emphasized.
- School and other adults become the measuring stick for the child's ability to view himself as successful; these are the vehicles through which he becomes drawn to others and learns to attract them to him.
- Development of morality is critical during this period: children learn right from wrong.

Special Considerations:

- The child must emerge with a sense of herself as: (a) able to do a lot of things (preferably well); (b) a competent problem-solver; and (c) someone capable of managing increasing social pressures.
- Self-control skills are crucial. These are developed as a result of feeling valued, receiving appropriate discipline, and being treated with respect.

Adolescence

A time of emerging identity:

- The youth is generally dying to belong, to be different, and to be accepted at the same time.
- Peers are the all important reference group for daily decisions/activities.
- The youth must master rapid changes in his body and emotions.
- Parents remain vital influences on behaviors such as academics, development of healthy or unhealthy peer influences, activities, and time usage, not to mention values.

Special Considerations:

- The youth must emerge from this stage with a strong sense of self, capable of sorting out conflicting and ambiguous feelings and experiences.

2. How does divorce function as a stressor?

There are developmental responses to stress and/or trauma in general:

- Number, intensity, nature and duration of stressful events contribute to children's overall outcome.
- The balance of stresses and social supports, especially from the family, is critical.

There are developmental reactions to family conflict and divorce:

- Themes of loss, separation, and abandonment are typical for infants/toddler.
- Anger, grief, and focus on reconciliation are typical for preschoolers.
- Loyalty conflicts, anger at the leaving parent, and the reality of events surrounding the divorce are the focus for school age children.
- Aggression, depression, anxiety, and concerns for own future dominate in adolescence.

Parental behaviors that help or hurt:

- Children need to be told: that parents are separating, that both will still love the child; and that parents will decide the child's living arrangements. Most children are not told about the separation, they are simply surprised by it, which makes it harder to understand and cope.
- Cooperation with and respect between parents, maintaining the co-parental alliance, is a powerful positive factor in child adjustment.

- Parental conflict, on the other hand, reinforces problematic dynamics in the family and is associated with poorer post-divorce adjustment. The level, intensity, duration, frequency, and extent to which the child is involved directly or indirectly in the conflict all affect how conflict negatively affects adjustment.
- Children need parents to continue to be available, nurturing, and to maintain discipline and reasonable expectations for age-appropriate behavior.
- Compared to married parents, divorced parents are more prone to depression, anxiety, alcoholism, drug abuse, and psychosomatic complaints.

It is especially difficult for children when parenting is compromised temporarily post-divorce:

- Wallerstein and Kelly were the first to describe a now commonly understood phenomenon in which parents experience a “diminished capacity to parent” after divorce.⁷ This can last up to a few years. It is a primary risk factor for child maladjustment after divorce.
- However, mothers are less warm, more rejecting, and use harsher discipline. Fathers are more likely to withdraw from nurturing and discipline, and to engage in more difficult interactions with their children.
- Parents are often preoccupied with their own life and the changes they must cope with after divorce.
- The divorced parent may over-rely on the child for support and companionship.
- The legal process exacerbates the non-residential parent’s withdrawal of authority and discipline.

It is especially helpful for children when both parents stay involved parents post-divorce:

- Ongoing involvement of both parents is highly desirable unless one parent is seriously compromised in terms of mental health, substance use, or presence of abuse or domestic violence in the family. The degree of positive involvement of the less-seen parent (typically the father) as a positive, loving presence in the child’s life supports the child’s adjustment. When one parent is less healthy, the other parent can serve as a buffer and support to the child.
- The loss/absence of one parent (usually the father) can present a risk factor for unhealthy adjustment. Children tend to have more developmental difficulties when the father is out of the picture (law enforcement, juvenile justice, sexual promiscuity, school dropout, etc.)
- Mothers as primary caretakers, without significant involvement from the other parent, have fewer financial resources, and live in greater poverty. This is a risk factor generally for more problematic child development, particularly after divorce.

3. What are some of the salient issues about parenting plans for children?

Joint Custody:

- It is beneficial for children and parents when freely chosen.
- Joint decision making and time sharing can occur under duress or by mutual decision.
- It can benefit the child when mandated if parents can keep the child separate from parental conflict; it is problematic when child-centered conflict continues unabated.
- It can be especially beneficial for children in adolescence.

Young children and overnights:

- This is one of the most fraught issues in parenting plan development, custody and access disputes. It often takes the form of fathers wanting more overnights than mothers want them to have, especially with infants and toddlers.
- There is no consensus in the field and insufficient research. What research there is suggests that there are no negative effects on overnights for young children that are familiar with their caretaker, but mothers may be anxious about overnights – especially weekday overnights - with younger children. Overnights may be easier on and more beneficial to girls than boys prior to age 3, and are good for both genders after that age.
- Non-custodial parent caretakers should be familiar with the child's routines and needs.
- Cooperation between parents makes overnights more likely to succeed.
- Having a consistent schedule is a very important aspect of the parenting plan; inconsistent schedules (that fluctuate week-to-week) make it harder for children, especially boys, to adjust.

School Age Children:

- Various schedules can work well at this age, and transitions can be handled when parents cooperate around children's needs or a detailed plan is put into place that minimizes disruptions in the child's activity and social schedule, and when the child is not placed in the middle of parental disputes.
- Children benefit from being with both parents adequate amounts of time. Schedules should be developed around child's activities (not parents' work schedules solely) so that the child finds it relatively easy to maintain social and physical activities without undue stress from tracking uniforms, equipment, musical instruments, etc.

Adolescence:

- Adolescents benefit from flexible plans built around their needs. Older children commonly spend longer periods in one parent's home and change their primary residence periodically. When such changes are allowed, they should be due to child's developmental needs (more authority, a parent who can drive, time with new siblings) and not due to the child's attempts to avoid parental discipline or monitoring.

Special Considerations:

- The consistency of the schedule and the child's ability to manage transitions appear to be more important than actual time distributions, though we do not know from research what the bright lines are in terms of desirable lengths or schedules of shared time.
 - While it is important to keep siblings together, they should also have time individually with each parent. Separating the children occasionally can allow both parents more time with children overall, and allows for the children to develop closer individual relationships with each parent.
 - Some children have special needs that require special attention in parenting plans. Nearly 30% of children suffer from a chronic health problem. Parenting plans should reflect both parents' ability to understand the disease/condition and comply with management of medications, therapy, or doctor's orders. Parents' ability to coordinate with the other parent is critical. ADD-H is not a reason not to have two households, but special rules and cooperative agreements must be put into place to forestall the possibility that the child's needs will evoke, or the child will come to be the recipient of, parental conflict that emerges from stresses and specific logistical difficulties when children have a medical/psychological condition.
 - When one parent does not comply, using a mental health professional or Parent Coordinator (in particular) can be beneficial before changing a parenting plan through court intervention. Parenting plans should specify alternative dispute means of conflict resolution in the event of a disagreement or ongoing problems in implementing the plan.
- 4. What are the considerations for domestic violence (DV) in the family and its effect on child development and parenting plans?**
- Many divorces are fraught with allegations of domestic violence and/or abuse. Parenting plans should be developed with great caution and designed with the assistance of a mental health professional, when DV or abuse is a potential issue. Understanding some basic facts about its effects on children can help the attorney ask relevant questions.
 - DV's Long term effects on children include increased psychological distress, lower self-esteem, and poorer intimate relationships through childhood and into adulthood.

- The question of DV and access for the non-custodial parent is another hot issue in the field at the present time. While there is no consensus about when and to forbid or greatly restrict access, it is important to note that while not all abusers of women abuse children, it is also true that:
 - Children who live in homes with violence between their parents are more likely to become victims of physical abuse themselves.
 - Approximate co-occurrence of spousal abuse and physical child abuse is 40%.

5. How lawyers and mental health professionals can make a difference vis-à-vis child and family development?

- Support family interventions as needed.
- Understand and utilize ADR methods such as mediation and parenting coordination.
- Work from an empirical knowledge base when one exists and utilize peer consultation and relationships with mental health professionals as needed.

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