

HB

307

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 307

Revision Date: _____
Title: "An Act relating to custody of and visitation rights concerning children..."
Sponsor: Representative Green
Requestor: H (HES)

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ()	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ 0

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 3/18/98

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FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 307

1998 LEGISLATIVE SESSION

ANALYSIS (continued)

Section 1 of this bill would make it a class C felony for a lawful custodian to remove a child from the state for the purpose of preventing another person from exercising custodial or visitation rights. This bill would have a significant fiscal impact on the Public Defender Agency (PDA). The exact fiscal impact cannot be determined because PDA does not know how many prosecutions that can be expected. However, PDA believes that the number of divorced or separated people leaving the state is significant enough so that even if a small percentage are prosecuted, there would be a number of additional felonies added to PDA's caseload.

Additionally, criminal cases brought under the bill as currently drafted may present difficulties in interpretation that will require extensive motion practice for PDA attorneys. The first problem is that the proposed AS 11.41.320(a)(2) does not explicitly include a mental state. (The mental state of AS 11.41.330 is set out in some detail and is incorporated in the current AS 11.41.320(a). Defendants have to know what they are doing is illegal and intend to hold the child for a protracted period.) Assuming that the mental state is "intentionally," the main problem presented by the current drafting of the bill is a person with mixed motives who has a good reason for moving out of state can be prosecuted if the motivation is, in any part, directed at preventing exercise of visitation rights. See AS 11.81.900(a)(1)(defining "intentionally")

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 307

Revision Date: _____
 Title: Custody, visitation and liability for support of children
 Sponsor: Representative Green
 Requestor: House (HES)

Dept. Affected: Health and Social Services
 BRU: Public Assistance
 Component: ATAP
 COMPONENT SERIAL NO. 220
 See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY99	FY00	FY01	FY02	FY03	FY04
1002 Federal Receipts						
1003 GF Match	300.0	300.0	300.0	300.0	300.0	300.0
1004 GF						
1005 GF/Program Receipts	(300.0)	(300.0)	(300.0)	(300.0)	(300.0)	(300.0)
1037 GF/Mental Health						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

POSITIONS	FY99	FY00	FY01	FY02	FY03	FY04
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost: 0.0

ANALYSIS:

(Attach a separate page if necessary)

All Temporary Assistance applicants assign to the state the right to child support collected on behalf of their children when they apply for assistance. Approximately fifty percent of the child support collected on behalf of families receiving Temporary Assistance is transferred to the ATAP component as GF/Program Receipts. These funds replace ATAP GF Match funds. This legislation has no net impact on Temporary Assistance expenditures, however, the funding for Temporary Assistance payments for the children of obligor's excused from public assistance liability is shifted from General Fund/Program Receipts (child support collections) to General Fund Match.

The Child Support Enforcement Division predicts that they will be unable to locate and serve notice on every case within the 30 day time limit required by this legislation. CSED estimates that DPA will lose approximately \$300,000 in GF/program receipts as a result of CSED's inability to enforce child support obligations and recoup ATAP payments made for the obligor's dependent children. These lost funds must be replaced by GF match funds.

Prepared by: Jim Nordlund
 Division: Director
 Approved by Commissioner: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Phone: 465-2680
 Date: 01/29/98
 Date: 2/2/98

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ANALYSIS (cont.):

DPA believes that provisions exempting obligors from liability do not conform with the child support provisions stipulated by federal welfare reform law (PL104-193). The State of Alaska is liable for an audit penalty of up to 5% of the TANF block grant for non-compliance of child support provisions of the federal law (approximately \$3.2 million for maximum penalty). PL104-193 also stipulates that in the fiscal year following a reduction in the TANF grant due to a penalty, states must increase their state spending by an amount equal to the penalty (approximately \$3.2 million).

In addition, to be eligible for the TANF block grant the state must be operating a child support program that conforms to federal law. If the state is not in compliance with child support provisions of the federal law when the TANF state plan is re-submitted in 2000, the state's continued receipt of the entire TANF block (\$63 million in federal revenues) will be jeopardized.

Assumptions:

It is assumed that lost GF Program Receipts must be recovered dollar for dollar by an increase in ATAP GF Match funds. Calculations are based on DOR/CSED projection of 200 cases that would not receive timely notification.

Calculations:

CSED projects that \$300,000 in program receipts will be lost as a result of this legislation.

Revision Date: _____ Dept. Affected: Revenue
 Title: Child Custody and Support BRU: Child Support Enforcement
 Component: Child Support Enforcement
 Sponsor: Rep. Green
 Requestor: (H) HES COMPONENT SERIAL NO. 111

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	829.7	829.7	829.7	829.7	829.7	829.7
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	412.9	412.9	412.9	412.9	412.9	412.9
SUPPLIES	17.1	17.1	17.1	17.1	17.1	17.1
EQUIPMENT	179.3	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1,439.0	1,259.7	1,259.7	1,259.7	1,259.7	1,259.7

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	(77.4)	(77.4)	(77.4)	(77.4)	(77.4)	(77.4)
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	949.7	831.4	831.4	831.4	831.4	831.4
1003 GF Match	489.3	428.3	428.3	428.3	428.3	428.3
1004 GF						
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	1,439.0	1,259.7	1,259.7	1,259.7	1,259.7	1,259.7

Estimate of any current year cost \$ 0.0

POSITIONS:

FULL-TIME	19	19	19	19	19	19
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The requirement to locate and serve notice on the non-custodial parent within thirty days for recoupment of ATAP is impossible to meet in every case. The operating expenditure in this fiscal note would allow the Child Support Enforcement Division (CSED) to meet these requirements in the majority of cases. However, in approximately 200 cases per year the Division would still not be able to locate and serve prompt notice to the obligor, which would prevent the Division from recouping the ATAP money expended. This would represent a loss of federal incentives revenue of \$77,400 (using the current federal incentive calculation method) to CSED. In addition, the Department of Public Assistance (DPA) would lose approximately \$300,000 from this inability to recoup child support in ATAP cases. The federal government would also lose \$300,000.

If the legislation is passed and the fiscal note is not funded, CSED would be unable to locate the non-custodial parent in approximately 1,000 cases. DPA ATAP revenue losses from reduced collections in these cases would approximate \$1,500,000 and the federal government would lose the same. Lost CSED incentive revenues on these collections would total \$387,000.

Prepared by: Barbara Miklos, Director
 Division: Child Support Enforcement Division
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 269-6800
 Date: January 27, 1998
 Date: January 27, 1998

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Lauterbach
3/18/98

CS FOR HOUSE BILL NO. 307()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GREEN, Dyson, Austerman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to custody of and visitation rights concerning children; relating
2 to the crime of custodial interference; and relating to an obligor's liability to the
3 state for public money paid to support the obligor's children."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 * Section 1. AS 11.41.320(a) is amended to read:

6 (a) A person commits the crime of custodial interference in the first degree if
7 the person violates AS 11.41.330(a)(1) [AS 11.41.330] and causes the child or
8 incompetent person [VICTIM] to be removed from the state or violates
9 AS 11.41.330(a)(1) or (2) and causes the child or incompetent person to be kept
10 outside the state.

11 * Sec. 2. AS 11.41.330(a) is amended to read:

12 (a) A person commits the crime of custodial interference in the second degree
13 if
14 (1) [.] being a relative of a child under 18 years of age or a relative of

1 an incompetent person and knowing that the person has no legal right to do so, the
2 person takes, entices, or keeps that child or incompetent person from a lawful
3 custodian with intent to hold the child or incompetent person for a protracted period;
4 or

5 (2) the person is a lawful custodian of a child under 18 years of age
6 and causes the child to be removed from the state for the purpose of preventing
7 another person from exercising custodial or visitation rights with the child.

8 * Sec. 3. AS 25.20.060(c) is amended to read:

9 (c) The court shall [MAY] award shared physical custody to both parents
10 unless, based on clear and convincing evidence, [IF] shared physical custody is
11 determined by the court to be detrimental to [IN] the best interests of the child. An
12 award of shared physical custody shall ensure [ASSURE] that the child has frequent
13 and continuing contact with each parent to the maximum extent possible.

14 * Sec. 4. AS 25.20.110(c) is amended to read:

15 (c) In a proceeding involving the modification of an award for custody of a
16 child or visitation with a child, the following constitute a change in circumstances
17 for purposes of (a) of this section:

18 (1) a finding that a crime involving domestic violence has occurred
19 since the last custody or visitation determination;

20 (2) [IS] a finding that a parent with primary physical custody of a
21 child has moved with the child to reside outside of the state; notwithstanding
22 AS 25.20.090 and AS 25.24.150(c), in a modification proceeding based on a [OF]
23 change of circumstances under this paragraph, the court may not consider the
24 desirability of maintaining continuity with the parent who moved away with the
25 child as a factor in determining the best interests of the child;

26 (3) a finding that a parent with primary or joint physical custody
27 of a child has moved with the child to reside at a location unknown to another
28 person who has visitation or custody rights with respect to the child; in a
29 modification proceeding based on a change of circumstances under this
30 paragraph, the court shall award primary physical custody to the person to whom
31 the new residence was not disclosed if that person petitions for primary custody

1 unless the parent who moved with the child to the unknown location shows that
2 the action was reasonably necessary for the safety of the child or that the child
3 would be physically endangered by the change of custody [(a) OF THIS
4 SECTION].

5 * Sec. 5. AS 25.20.140(b) is amended to read:

6 (b) The amount of damages recoverable under this section is ~~\$500~~ [S200] for
7 each failure of the custodian, wilfully and without just excuse, to permit visitation with
8 the child for substantially the length of time and substantially in the same manner as
9 specified in the court order. This amount may not be increased or decreased once
10 liability has been established. The custodian is not liable for more than one failure in
11 respect to what is, under the court order, a single continuous period of visitation that
12 is seven days or less in duration. For a denial of visitation with respect to what
13 is, under the court order, a single continuous period of visitation that is more
14 than seven days in duration, the custodian is liable for one failure to permit
15 visitation for each seven-day period in which visitation is denied wilfully and
16 without just excuse. The prevailing party in an action commenced under this section
17 is entitled to recover a reasonable attorney fee. The court may require a custodian
18 who is ordered to pay damages under this section to post a bond in an amount
19 determined by the court to be sufficient to promote future compliance with the
20 visitation schedule specified in the court order.

21 * Sec. 6. AS 25.27.120(c) is amended to read:

22 (c) Within 30 days after the agency knows the identity [AND ADDRESS] of
23 an obligor [WHO RESIDES IN THE STATE AND] who is liable to the state under
24 this section, the agency shall make a good faith, diligent effort to determine the
25 location of the obligor and send written notification by certified mail to the obligor
26 and the obligee of the obligor's accruing liability and that the obligor shall make child
27 support payments to the agency. The notice required under this subsection must be
28 in clear, concise, and easily readable language. The notice may accompany other
29 communications by the agency.

30 * Sec. 7. APPLICABILITY. AS 11.41.320(a) and 11.41.330(a), as amended by secs. 1 and
31 2 of this Act, and AS 25.20.110(c), as amended by sec. 4 of this Act, apply to movements of

- 1 children or retentions of children out of state that occur on or after the effective date of this
2 Act.
- 3 * Sec. 8. Notwithstanding sec. 148, ch. 87, SLA 1997, the amendment made to
4 AS 25.27.120(c) by sec. 6 of this Act shall be retained when, under operation of sec. 148, ch.
5 87, SLA 1997, AS 25.27.120(c) is repealed and reenacted on July 1, 1999.

Alaska State Legislature

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Representative Joe Green
District 10

Sponsor Statement

HB 307 - Alaska Fatherhood Act

Nearly four out of ten children in America -- about 24 million kids -- are being raised in homes without their fathers. The societal problems we face today are complex, but I believe that many of these problems share some common elements. One such element attracting more and more attention is children without fathers.

I have introduced HB 307 as an attempt to lower some of the institutional hurdles placed between fathers and children. We in the Alaska Legislature do not have the tools to solve all of the problems associated with absent fathers. However, I believe that if we can make it easier for non-custodial parents -- usually fathers -- to be a part of their children's lives, we can help.

Specifically, HB 307: clarifies the act of custodial kidnapping and custodial interference, improves visitation and joint custody opportunities, increases the fines for failure to permit visitation, and requires CSED to take action to find a father once they know the identity.

My hope is that through efforts like HB 307 we can bring fathers and children together.

Sponsor Statement

The Fact of Father Absence And Why It Is Important

The most disturbing social trend of our time is the dramatic increase in father-absent families. In 1960, the total number of children in the United States living in father-absent families was less than 8 million. Today, that number stands at 23 million.

Nearly four out of ten children in America do not live in the same home as their father. By some estimates, this figure is likely to rise to 60 percent of children born in the 1990s. For the first time in our history, the average child can expect to live a significant portion of his or her life in a home without a father.

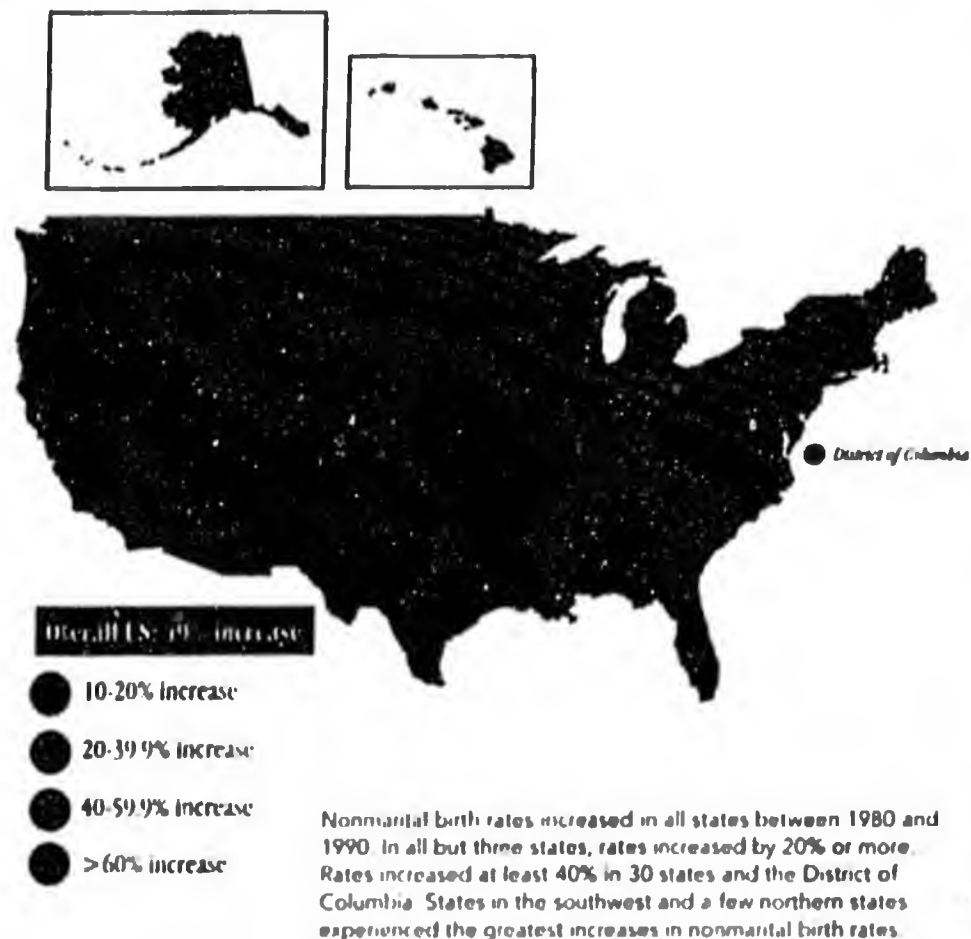
For nearly one million children each year, the pathway to a fatherless family is divorce. The divorce rate nearly tripled from 1960 to 1980, before leveling off and declining slightly in the 1980s. Today, 40 out of every 100 first marriages now end in divorce, compared to 16 out of every 100 first marriages in 1960. While this trend is consistent with most industrialized countries, no other country has a higher divorce rate.

Perhaps even more disturbing than the extraordinarily high divorce rate is the increasing trend of "father flight," men abandoning their children even before they are born. In 1960, about 5 percent of all births were out-of-wedlock. That number increased to 10 percent in 1970, 18 percent in 1980, and 28 percent in 1990. In the United States today, the number of children fathered out-of-wedlock each year surpasses the number of children whose parents divorce.

African-Americans are disproportionately affected by the problem of father absence. Sixty-two percent of African-American children live in father-absent homes. But this is by no means a "black problem." The absolute number of father-absent families is larger—and the rate of father absence is growing fastest—in the white community. Currently, over 13 million white children reside in father-absent homes, compared to approximately 6.5 million African-American children.

Trends and Differentials in Nonmarital Births

Percent change in birth rates for unmarried women from 1980 to 1990 by state



Source: Table 36, and Table 37, Birth and Fertility Rates for States, United States, 1980-1990, *Statistical Abstract for Health Statistics*; Vital and Health Statistics, Series 21, Vol. 1, 1994; Table 34, Birth and Fertility Rates for States, United States, 1980-1990, *Statistical Abstract for Health Statistics*; Vital and Health Statistics, Series 21, Vol. 2, 1994.

Unfortunately, no state has been immune to the growing problem of father absence. As shown in the accompanying chart on page 8, between 1980 and 1990, non-marital birth rates increased in every state.¹⁰ During this time period, ten states saw the rate of nonmarital births increase by over 60 percent. Furthermore, births to unmarried teenagers, the group most likely to become long-term welfare dependents, increased by 44 percent between 1985 and 1992.¹¹ Overall, the percent of families with children headed by a single parent currently stands at 25.3 percent, the vast majority of which are father-absent households.¹²

The increasing rate of physical absence of fathers from their children's homes would not be so disturbing if physically-absent fathers continued to stay involved in the lives of their children. Unfortunately, research shows that physically-absent fathers tend (over time) to also become psychologically absent. Forty percent of children in father-absent homes have not seen their fathers at all during the previous year. Only one in six sees their fathers an average of once or more per week.¹³ More than half of all children who do not live with their fathers have never been in their fathers' homes.¹⁴ Statistics on unwed fathers are also disturbing. Whereas 57 percent of unwed fathers consistently visit their children during the first two years of life, by the time their children reach 2-1/2 years of age, that percentage drops to less than 25 percent.¹⁵

In addition to the physical absence of fathers from the home, it is also apparent that many physically-present fathers are nonetheless psychologically absent from the lives of their children. Overall, parents today spend roughly 40 percent less time with their children than did parents a generation ago.¹⁶ One study found that almost 20 percent of 6th-through 12th graders had not had a good conversation lasting for at least 10 minutes with at least one of their parents in more than a month.¹⁷ In regard to fathers, a 1992 Gallup poll found that 50 percent of all adults agreed that "fathers today spend less time with their children than their fathers did with them."¹⁸

One reason men may be psychologically absent from their children's lives is that they lack the skills necessary to be good and involved fathers. Some fathers may have grown up in fatherless homes themselves and never experienced positive male role models. Others may have had inadequate or abusive father-role models. There is also a dearth of skill-build-

ing material directed toward men, at least as compared to the myriad of books and other informational materials directed toward improving the skills of mothers. For example, although there are literally hundreds of skill-building books for mothers of newborns, there are very few which address the experience of new fathers. The result of this combination of poor or absent role models for many men, and minimal informational materials written by and directed toward fathers, is that many men lack the knowledge and skills to be engaged fathers.

The absence of fathers, whether physical or psychological, has profound consequences for children. Almost 75 percent of American children living in single-parent families will experience poverty before they turn eleven-years old, compared to only 20 percent of children in two-parent families.¹⁹ Children who grow up without their fathers are also more likely to fail at school or to drop out,²⁰ experience behavioral or emotional problems requiring psychiatric treatment,²¹ engage in early sexual activity²² and develop drug and alcohol problems.²³

Children growing up with absent fathers are especially likely to experience violence. Violent criminals are overwhelmingly males who grew up without fathers, which includes 60 percent of America's rapists,²⁴ 72 percent of adolescent murderers,²⁵ and 70 percent of juveniles in state reform institutions.²⁶ Children who grow up without fathers are also three times more likely to commit suicide as adolescents²⁷ and to be victims of child abuse or neglect.²⁸

In light of these data, noted developmental psychologist Urie Bronfenbrenner recently concluded:

"Controlling for factors such as low income, children growing up in [father-absent] households are at a greater risk for experiencing a variety of behavioral and educational problems, including extremes of hyperactivity and withdrawal; lack of attentiveness in the classroom; difficulty in deferring gratification; impaired academic achievement; school misbehavior; absenteeism; dropping out; involvement in socially alienated peer groups, and the so-called 'teenage syndrome' of behaviors that tend to hang together—smoking, drinking, early and frequent sexual experience, and in the more extreme cases, drugs, suicide, vandalism, violence, and criminal acts."²⁹

Clearly, fatherlessness is not the sole cause of each of these social ills—but it certainly makes each one worse. If we are ever to improve the well-being of children in America, we will have to first reconnect men to the ideal of good and responsible fatherhood and, in so doing, reverse this three decade long slide toward a fatherless America.

Creating a culture of committed and responsible fathers will not be easy. But if we want men to act like responsible fathers, we should value and support responsible fatherhood. Every civic, religious, and governmental organization can make fatherhood a priority by offering fathers support and, where needed, training through workshops and mentoring programs. Father-friendly work places in which employers encourage, and do not discourage, their father employees to take time off to participate in school activities or take their children to the doctor should be promoted.

Government clearly has a role to play in a reinstatement of fatherhood as a national priority. Public policy is, after all, both a reflection and shaper of our culture. A father-friendly public policy would be guided by the following two goals: first, public policy must work to reverse the erosion of support for fatherhood in the popular culture, and, secondly, government must eliminate de facto punishments for responsible fatherhood in current law.

The typical way that government responds to societal problems involves a series of measurable programs, often with a negative reward system. In the area of fatherhood, government action has thus far been largely restricted to programs aimed at establishing paternity and enforcing child support orders. Stricter penalties for failure to comply with paternity establishment or child support orders, while aimed at achieving a worthy public policy, indirectly contribute to many of the problems associated with the reduced role of fathers. The unfortunate message such programs reinforce is that the most important thing fathers do is provide economically for their children. While helping to ensure the economic viability of one's family is certainly important, good fathers also are engaged in their children's lives as nurturers, disciplinarians, teachers, and moral instructors. If we want men to take on these important tasks of responsible fathering, we must give them a more compelling message about fatherhood than the image of getting tough on "deadbeat dads."



The Fatherhood Movement: Making Room for Daddy

The President's Desk, by Wade F. Horn, Ph.D.
President, National Fatherhood Initiative

Five years ago, Vice President Dan Quayle was

widely ridiculed for asserting that fathers are important in the lives of children. Today, fatherlessness is increasingly cited as the most disturbing and consequential social trend of our time. In five short years, we have gone from a nation in denial concerning the consequences of fatherlessness, to one in which nearly everyone agrees that fathers count — and for a lot more than most people had previously realized.

Whether reflected in football stadiums filled with Promise Keepers, bus loads of African-American men arriving in the Nation's Capital for the Million Man March, or omnipresent news stories highlighting the connection between absent fathers and such social ills as crime, educational failure and welfare dependency, fatherhood is in the air. Indeed, to many social observers, we are witnessing the birth of a new social movement: a fatherhood movement.

Central to this fatherhood movement is the establishment of a more compelling cultural message about the importance of fathers to the well-being of children and communities. Rather than focusing solely on paternity establishment or the economic contributions of fathers, the emerging fatherhood movement also emphasizes the important non-economic contributions that fathers make to the well-being of their children. In fact, one of the primary goals of the fatherhood movement is to remind us that the most important thing that fathers invest in their children is not their money, but their time.

There are signs that the fatherhood movement is starting to have an impact. Surveys indicate that increasing numbers of Americans are getting the fatherhood message. A 1996 Gallup Poll found that 79 percent of Americans believe "the most significant family or social problem facing America is the physical absence of the father from the home," up from 69 percent in 1992. Another recent survey found that 84 percent of men in their 30s

and 40s agree that the definition of success is being a good father.

There is even evidence that this shift in attitudes is beginning to translate into behavioral change. Since the mid-1980s, the divorce rate has been decreasing. And last year, for the first time in two decades, the percentage of children born out of wedlock actually declined by half a percentage point.

Perhaps most optimistic of all, there seems to be a genuine yearning within the baby bust generation, those children born between 1962 and 1980, for greater attachments to family and commitment to others. According to the annual *Monitoring the Future Survey*, between 1976 and 1992, the percentage of high school seniors who believe that "having a good marriage and family life" is "extremely important" has gone up for both males and females, as has the percent who say they would prefer to have a mate most of their lives. Other surveys show that the younger a person is, the more likely he or she is to agree with the statement "divorce should be more, not less, difficult to obtain."

But challenges remain. Tonight, nearly 40 percent of all children in America will still go to bed in a home without their father. That's 24 million children whose father is not there to read them a bedtime story, bring them a glass of water or give them a goodnight kiss. And, of course, there are many others who live with disconnected, neglectful, and sometimes even abusive fathers.

In addition, while it is becoming increasingly popular to speak of the importance of fathers to the well-being of children, it is still out of fashion to speak of the importance of marriage to the well-being of fatherhood. Research has consistently found that non-resident fathers tend over time to become disconnected, both financially and psychologically, from their children. About 40 percent of children in father-absent homes have not seen their father in at least a year. Of the remaining 60 percent, only one in five sleeps even one night per month in the father's home. Overall, only one in

six sees their father an average of once or more per week. More than half of all children who don't live with their fathers have never even been in their father's home. Unwed fathers are particularly unlikely to stay connected to their children over time. Whereas 57 percent of unwed fathers are visiting their child at least once per week during the first two years of their child's life, by the time their child reaches 7-12 years-of-age, that percentage drops to less than 25 percent. Approximately 75 percent of men who are not living with their children at the time of their birth never subsequently live with them.

Even when unwed fathers are cohabitating with the mother at the time of their child's birth, they are very unlikely to stay involved in their child's life over the long term. Although a quarter of non-marital births occur to cohabitating couples, six out of ten cohabitating couples never go on to marry, and those that do are more likely eventually to divorce than those couples who bear children within the context of marriage. A father's remarriage after divorce or an unwed father's marriage to someone other than the child's mother makes it especially unlikely that a non-custodial father will remain in contact with his children.

Of course, divorced and unwed fathers can be — and many are — good fathers. But it is harder and more difficult to be an involved father when not living with one's children. Promoting fatherhood, then, also ought to mean promoting marriage. We simply can not persist in our cultural illusion that marriage and involved fatherhood have little to do with each other.

So let us rejoice in the re-awakening of the idea of fatherhood. But let us remember that there is still much work to be done. Before every child in America, before going to sleep, has a dad available to read them a bedtime story, fetch them a glass of water, and turn out their bedroom lights. Let us get in with that work.

While it is becoming increasingly popular to speak of the importance of fathers to the well-being of children, it is still out of fashion to speak of the importance of marriage to the well-being of fatherhood.

One of the primary goals of the fatherhood movement is to remind us that the most important thing that fathers invest in their children is not their money, but their time.

**THE FOLLOWING PAGES MAY
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F A C T S

2
Revised Edition

Wade F. Horn, Ph.D.
The National Fatherhood Initiative

I. Trends in Fatherlessness

"The single biggest social problem in our society may be the growing absence of fathers from their children's homes because it contributes to so many other social problems... Without a father to help guide, without a father to care, without a father to teach boys to be men, and to teach girls to expect respect from men, it's harder."

Bill Clinton, President of the United States, 1995

"Why is the American family falling apart? That may be the biggest issue of the new year. As that issue is probed, we will discover, I predict, that the biggest problem with the family is the problem with the father."

John McLaughlin, political commentator and host of *The McLaughlin Group* and *One on One*, December 22, 1995

"The percentage of black households headed by a husband and wife remained essentially unchanged — around 80 percent — in every census from 1890 to 1960. For 1970, however, it was down to 64 percent, and now has plummeted to less than 40 percent."

William Raspberry, columnist, *The Washington Post*, November 11, 1993

According to a 1996 Gallup Poll, 79.1 percent of Americans feel "the most significant family or social problem facing America is the physical absence of the father from the home." This number is up from 69.9 percent in 1992.

Source: Gallup Poll, 1996, National Center for Fathering, as printed in "Father Figures," *Today's Father* 4, no. 1, 1996, 8

In 1990, 7.2 percent of America's children live in neighborhoods where more than half of all families with children are female-headed. In these neighborhoods the majority of working-age men are unemployed for most of the year.

Source: U.S. Bureau of the Census, *Statistical Abstract of the United States 1990*, U.S. Government Printing Office, Washington, DC, 1990, 459

"88 percent of children who are living with only one parent are living with their mother."

Source: Ariene F. Saluter, *Marital Status and Living Arrangements, March 1994*, U.S. Bureau of the Census, Current Population Reports, Series P20-484, U.S. Government Printing Office, Washington, DC, 1996

Percentage of Married Couples and Single-Parent Families: 1970 to 1994

	1970	1980	1990	1994
All				
All married-couple family groups	87.1	78.5	71.9	69.2
All single-parent family groups*	12.8	21.5	28.1	30.8
Whites				
Married-couple family groups	99.9	82.9	77.4	75.3
Single-parent family groups	10.1	17.1	22.6	24.7
Blacks				
Married-couple family groups	64.3	48.1	39.4	35.2
Single-parent family groups	35.6	51.9	60.5	64.8
Hispanic**				
Married-couple family groups	NA	74.1	66.8	63.8
Single-parent family groups	NA	25.9	33.3	36.2

* Includes people who are divorced, never-married, married but not living with spouse and widowed.

** Includes other races.

NA=Not Available.

Source: Steve W. Rawlings and Arlene F. Saluter, *Household and Family Characteristics: March 1994*, U.S. Bureau of the Census, Current Population Reports, P20-483, U.S. Government Printing Office, Washington, DC, 1995.

"Nearly one-fourth (24%) of America's children live in mother-only families."

Source: Arlene F. Saluter, *Marital Status and Living Arrangements: March 1994*, U.S. Bureau of the Census, Current Population Reports, Series P20-484, U.S. Government Printing Office, Washington, DC, 1996.

According to the Census Bureau, in "1994 the number of children living in families with no father present stood at almost 19.5 million."

Source: U.S. Bureau of the Census, *Child Support for Custodial Mothers and Fathers: 1991*, Current Population Reports, Series P60-187, U.S. Government Printing Office, Washington, DC, 1995.

According to a 1996 Gallup Poll, 90.9 percent of Americans feel "it is important for children to live in a home with both their mother and father."

Source: Gallup Poll, 1996, National Center for Fathering, as printed in "Father Figures," *Today's Father* 4, no. 1 (1996): 8.

As of June 1994, there were an estimated 778,761 dads with children under the age of 18 in prison.

Source: U.S. Bureau of Justice Statistics, *Correctional Populations in the United States, 1994*, U.S. Government Printing Office, Washington, DC, 1995.

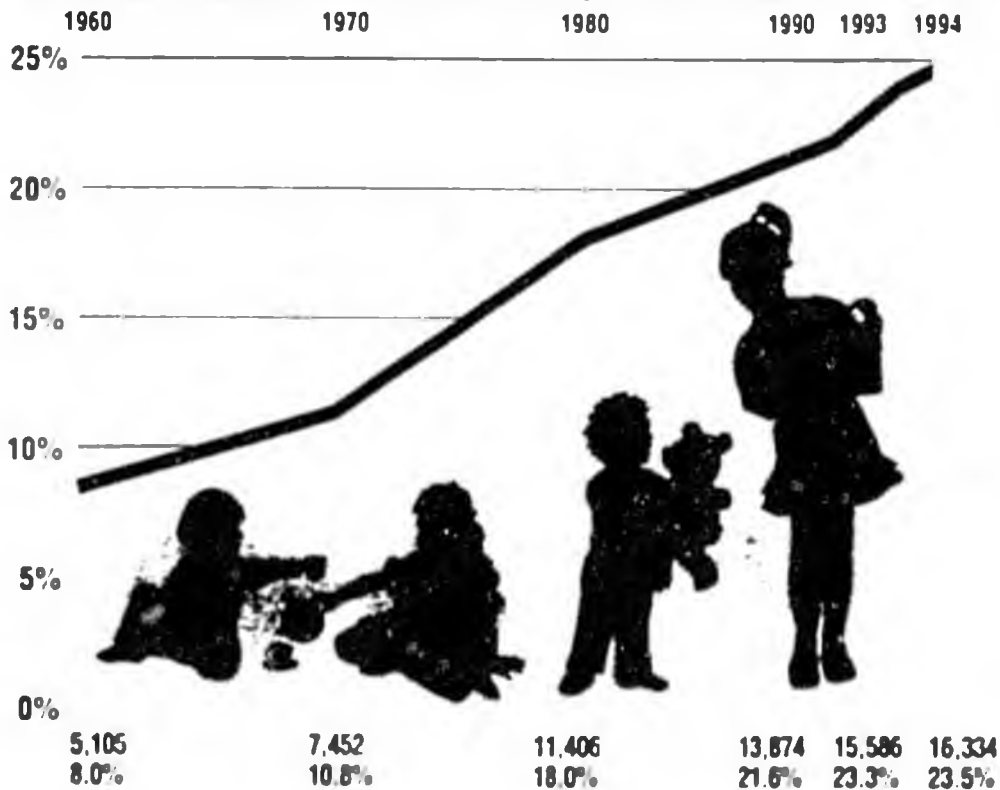
Living Arrangements of Children Under 18 years: 1960 to 1994*

	1960	1970	1980	1990	1991	1993	1994
Total Number of Children	63 727 100%	69 160 100%	62 427 100%	64 137 100%	65 293 100%	66 393 100%	69 508 100%
Living with Two parents	55 577 87.7%	62 939 91.2%	49 504 79.3%	46 177 72.0%	44 444 68.1%	41 141 61.8%	39 184 56.4%
Living with One parent	5 829 9.1%	8 199 11.9%	12 466 19.7%	15 867 24.7%	16 624 25.5%	17 872 26.7%	18 591 26.8%
Living with Mother Only	5 105 8.0%	7 452 10.8%	11 406 18.0%	13 874 21.6%	14 608 22.4%	15 586 23.3%	16 334 23.5%
Living with Father Only	724 1.1%	748 1.1%	1 060 1.7%	1 993 3.1%	2 016 3.1%	2 286 3.4%	2 257 3.3%
Living with Other Relatives or Nonrelatives only	2 021 3.2%	2 024 2.9%	2 337 3.7%	1 768 2.8%	1 811 2.8%	1 841 2.8%	2 806 4.0%

*Numbers in thousands (percent distribution beneath).

Source: U.S. Congress, Committee on Ways and Means, *The Green Book*, U.S. Government Printing Office, Washington, DC, 1993; Ariene F. Saluter, *Marital Status and Living Arrangements: March 1994*, U.S. Bureau of the Census, Current Population Reports, Series P20-484, U.S. Government Printing Office, Washington, DC, 1996.

Percent of Children Living with Mother Only: 1960 to 1994 Numbers in thousands



With the increasing number of premarital births and a continuing high divorce rate, the proportion of children living with just one parent rose from 9 percent in 1960 to 27 percent in 1994.

Source: Arlene F. Saluter, *Marital Status and Living Arrangements: March 1994*. U.S. Bureau of the Census, Current Population Reports, Series P20-484. U.S. Government Printing Office, Washington, DC, 1996.

The number of children living only with their mothers grew from 5.1 million in 1960 to 16.3 million in 1994.

Source: Arlene F. Saluter, *Marital Status and Living Arrangements: March 1994*. U.S. Bureau of the Census, Current Population Reports, Series P20-484. U.S. Government Printing Office, Washington, DC, 1996.

Half of all U.S. children born today will spend half their childhood in a family headed by a woman.

Source: Irwin Garfinkel and Sara S. McLanahan, *Single Mothers and Their Children: A New American Dilemma*. Washington, DC, Urban Institute, 1989.

Children who were part of the "post-war generation" could expect to grow up with two biological parents who were married to each other. Eighty percent did. Today, only about 50 percent of children will spend their entire childhood in an intact family.

Source: David Popenoe, "American Family Decline, 1960-1990: A Review and Appraisal," *Journal of Marriage and the Family* 55 (August 1993); see also Larry Bumpass, "What's Happening to the Family? Interactions Between Demographic and Institutional Change," *Demography* 27, no. 4 (1990): 483-498.

The United States is now the world's leader in fatherless families. In the early 1970s, Sweden reported the highest percentage of single-parent families — 15 percent of all families with children. By 1986, the United States took over first place, when 24 percent of America's families were headed by a single parent, compared to less than 20 percent for Sweden. Today, nearly 27 percent of families in the United States are headed by a single parent.

Source: Ailsa Burns, "Mother Headed Families: An International Perspective and the Case of Australia," *Social Policy Report* 6 (Spring 1992); see also Arlene F. Saluter, *Marital Status and Living Arrangements: March 1994*. U.S. Bureau of the Census, Current Population Reports, Series P20-484. U.S. Government Printing Office, Washington, DC, 1996.

Two-parent families have higher levels of involvement in the lives of their children than single-parent families and stepparent families.

Source: Nicholas Zill and Christine Winquist Nord, *Running in Place: How American Families are Faring in a Changing Economy and An Individualistic Society*. Child Trends, Inc., Washington, DC, 1994.

Living Arrangements of White Children Under 18 Years: 1960 to 1994

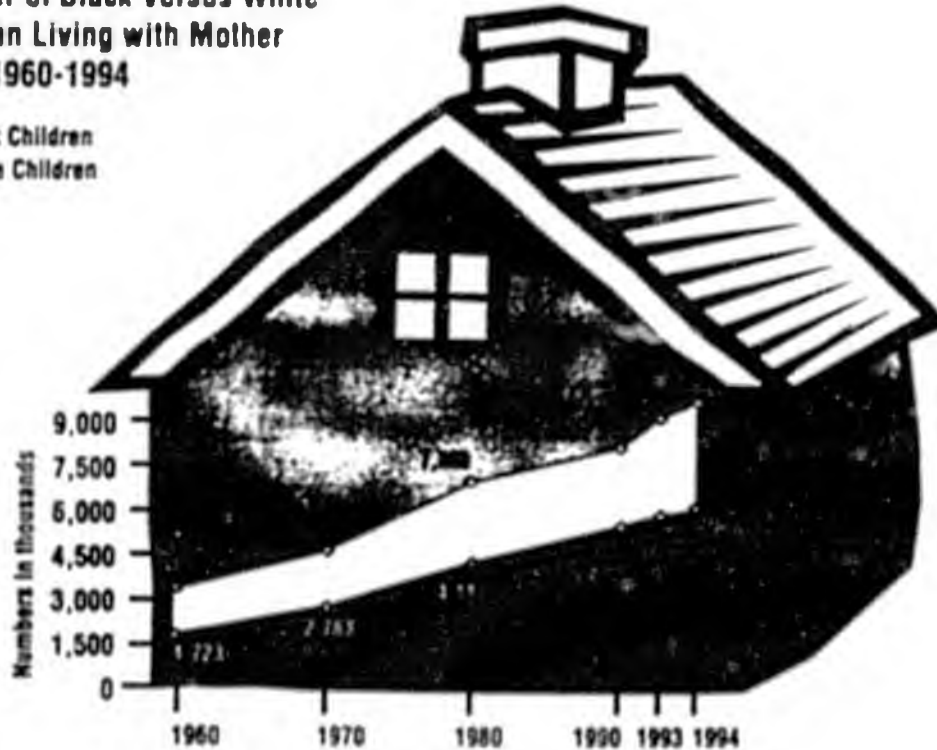
	1960	1970	1980	1990	1991	1993	1994
Total Number of Children	55 077 100%	58 790 100%	52 242 100%	51 390 100%	51 918 100%	53 075 100%	54 795 100%
Living with Two Parents	50 082 90.9%	52 674 89.5%	43 200 82.7%	40 593 79.0%	40 733 78.5%	40 996 77.2%	41 766 76.2%
Living with One Parent	3 932 7.1%	5 109 8.7%	7 901 15.1%	9 571 19.2%	10 142 19.5%	11 110 20.9%	11 434 20.9%
Living with Mother Only	3 381 6.1%	4 581 7.8%	7 059 13.5%	8 321 16.2%	8 585 16.5%	9 256 17.4%	9 724 17.7%
Living with Father Only	551 1.0%	528 0.9%	842 1.6%	1 549 3.0%	1 557 3.0%	1 854 3.5%	1 710 3.1%
Living with Other Relatives or Nonrelatives Only	1 062 1.9%	1 058 1.8%	1 141 2.2%	928 1.8%	1 043 2.0%	969 1.9%	1 574 2.9%

*Numbers in thousands (percent distribution beneath).

Source: U.S. Congress, Committee on Ways and Means, *The Green Book*, U.S. Government Printing Office, Washington, DC, 1993; Arlene F. Saluter, *Marital Status and Living Arrangements: March 1994*, U.S. Bureau of the Census, Current Population Reports, Series P20-484, U.S. Government Printing Office, Washington, DC, 1996.

Number of Black Versus White Children Living with Mother Only: 1960-1994

■ Black Children
□ White Children



Living Arrangements of Hispanic Children Under 18 Years: 1970 to 1994

	1970	1980	1990	1994
Total Number of Children	4 006 100%	5 459 100%	7 174 100%	9 496 100%
Living with Two Parents	3 111 77.7%	4 116 75.4%	4 789 66.8%	6 022 63.4%
Living with One Parent	NA NA	1 152 21.1%	2 154 30%	3 019 31.8%
Living with Mother Only	NA NA	1 069 19.6%	1 943 27.1%	2 646 27.9%
Living with Father Only	NA NA	83 1.5%	211 2.9%	373 3.9%
Living with Other Relatives or Nonrelatives Only	NA NA	191 3.5%	231 3.3%	455 4.7%

*Numbers in thousands (percent distribution beneath)

Excludes persons under 18 years old who were maintaining households or family groups and spouses.

Persons of Hispanic origin may be of any race.

NA=Not available

Source: U.S. Congress, Committee on Ways and Means, *The Green Book*, U.S. Government Printing Office, Washington, DC, 1993; Arlene F. Saluter, *Marital Status and Living Arrangements: March 1994*, U.S. Bureau of the Census, Current Population Reports, Series P20-484, U.S. Government Printing Office, Washington, DC, 1996

On average, single mothers spend roughly one-third less time each week than married mothers in primary child care activities such as dressing, feeding, chauffeuring, talking, playing or helping with homework.

Source: John P. Robinson, *How Americans Use Time: A Social-Psychological Analysis of Everyday Behavior* (New York: Praeger, 1977) 70; see also John P. Robinson, "Caring for Kids," *American Demographics* (July 1989)

Fifty percent of all white children and 75 percent of all black children born in the last two decades are likely to live for some portion of their childhood with only their mothers.

Source: U.S. Bureau of the Census, *Divorce, Child Custody, and Child Support*, Current Population Reports, Series P23-84, U.S. Government Printing Office, Washington, DC, 1979; and L.L. Bumpass and J.A. Sweet, "Children's Experience in Single-Parent Families: Implications of Cohabitation and Marital Transitions," *Family Planning Perspectives* 21 (1989): 256-260

Almost 27 percent of all children are living in single-parent homes. 57.7 percent of all black, 31.8 percent of all hispanic and 20.9 percent of all white children are living in single-parent homes.

Source: Arlene F. Saluter, *Marital Status and Living Arrangements: March 1994*, U.S. Bureau of the Census, Current Population Reports, Series P20-484, U.S. Government Printing Office, Washington, DC, 1996

Based on a review of four national surveys and a decade of research, Sara McLanahan and Gary Sandfeur conclude that some of the advantages often associated with being white are found to be really a function of family structure.

Source: Sara McLanahan and Gary Sandfeur, *Growing Up With a Single Parent: What Hurts, What Helps* (Cambridge: Harvard University Press, 1994).

Divorce Trends

Estimates of the chances of a first marriage ending in divorce range from 50 percent to 67 percent. The chance that a second marriage will end in divorce is about 10 percent higher than for first marriages.

Source: John Gottman, *The Dissolution of the American Family*, in: William J. O'Neill, Jr., (ed.), *Family: The First Imperative*, Cleveland, OH: The William J. and Dorothy K. O'Neill Foundation, 1995, 103

Data on 8,177 ever-married individuals found that premarital cohabitation is associated with a greater risk of divorce. These results take into consideration the presence of step-children, marital status of first spouse, parental divorce, and age.

Source: David R. Hall and John Z. Zhao, "Cohabitation and Divorce in Canada: Testing the Selectivity Hypothesis," *Journal of Marriage and the Family* 57, no. 2 (May 1995): 421-427

The proportion of people answering "no" to the question, "should a couple stay together for the sake of the children?" jumped from 51 percent to 82 percent from 1962 to 1985.

Source: Arland Thornton, "Changing Attitudes Toward Family Issues in the United States," *Journal of Marriage and the Family* 51 (1989): 873-893

Currently, about three out of five divorcing couples have at least one child.

Source: Larry L. Bumpass, "What's Happening to the Family: Interactions Between Demographics and Institutional Change," *Demography* 27, no. 4 (1990): 483-498

In America today, one out of every eleven adults is divorced, three times the proportion in 1970.

Source: Arlene F. Saluter, *Marital Status and Living Arrangements: March 1994*, U.S. Bureau of the Census, Current Population Reports, Series P20-484, U.S. Government Printing Office, Washington, DC, 1996

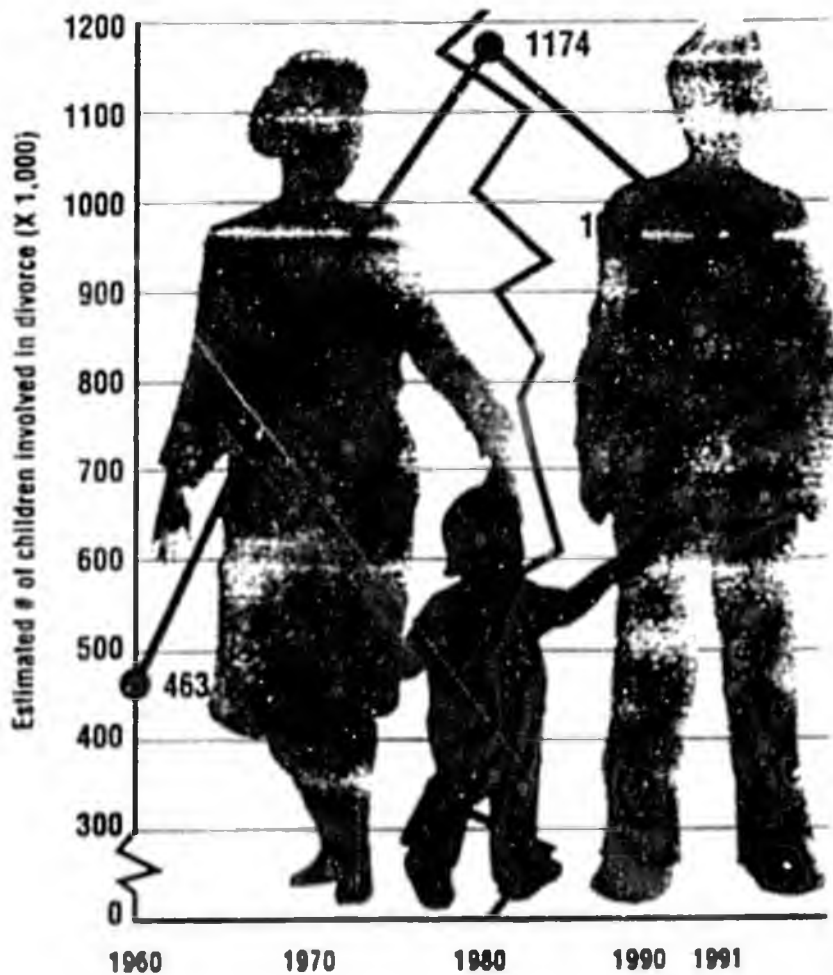
Children Involved in Divorce: 1960 to 1991

	1960	1970	1975	1980	1981	1982	1984	1986	1988	1990	1991
Estimated # of children involved in divorce (X 1,000)	463	870	1123	1174	1190	1108	1081	1064	1044	1005	985
Average # of children per decree	1.18	1.22	1.08	0.98	0.97	0.94	0.92	0.90	0.89	NA	NA
Rate per 1,000 children under 18 years of age	7.2	12.5	16.7	17.3	18.7	17.6	17.2	16.8	16.4	15.7	15.1

NA= Not available

Source: U.S. Bureau of the Census, *Statistical Abstract of the United States 1993*, U.S. Government Printing Office, Washington, DC, 1993.

Children Involved in Divorce: 1960 to 1991



Married-couple families accounted for 55 percent of all households in 1994, well below their 71 percent share in 1970.

Source: Steve W. Rawlings and Arlene F. Saluter. *Household and Family Characteristics: March 1994*. U.S. Bureau of the Census. Current Population Reports. P20-483. U.S. Government Printing Office, Washington, DC, 1995.

"For the average American, the probability that a marriage taking place today will end in divorce or permanent separation is calculated to be an overwhelming 60 percent."

Source: Larry L. Bumpass. "What's Happening to the Family? Interactions Between Demographics and Institutional Change," *Demography* 27, no. 4 (1990): 483-498. see also: T. C. Martin and Larry L. Bumpass. "Recent Trends in Marital Disruption," *Demography* 26 (1989): 37-51.

Using data from the National Center for Health Statistics, researchers determined "no-fault divorce laws had a significant positive effect on the divorce rate across the 50 states."

Source: Paul A. Nakonezny, Robert D. Shull and Joseph Lee Rodgers. "The Effects of No-Fault Divorce Law on the Divorce Rate Across the 50 States and Its Relation to Income, Education, and Religiosity," *Journal of Marriage and the Family* 57 (1995): 477-488.

Roughly 66 percent of the increase in single parenthood among whites since 1960 has been the result of divorce.

Source: Irwin Garfinkel and Sara S. McLanahan. *Single Mothers and Their Children: A New American Dilemma*. Washington, DC: Urban Institute, 1989. 52-54. see also Arlene F. Saluter, *Marital Status and Living Arrangements: March 1994*. U.S. Bureau of the Census. Current Population Reports. Series P20-484. U.S. Government Printing Office, Washington, DC, 1996.

A child living in a one-parent situation was just slightly more likely to be living with a divorced parent in 1994 than with a never-married parent. A decade ago, a child living with one parent was almost twice as likely to be living with a divorced parent as with a never married parent.

Source: Arlene Saluter. *Gap Narrows Between Children Living with a Divorced or Single Parent, Census Bureau Finds*. U.S. Bureau of the Census. U.S. Government Printing Office, Washington, DC, July 20, 1994.

The Consequences of Divorce

On average, marital separation leads to a 37 percent drop in the family income of mothers who remain with the children.

Source: Nicholas Zill and Christine Winquist Nord. *Running in Place: How American Families are Faring in a Changing Economy and An Individualistic Society*. Child Trends, Inc., Washington, DC. (1994): 14.

"Children who experience parental divorce, compared with children in continuously intact two-parent families, exhibit more conduct problems, more symptoms of psychological maladjustment, lower academic achievement, more social difficulties, and poorer self-concepts. Adults who experienced parental divorce as children, compared with adults raised in continuously intact two-parent families, score lower on a variety of indicators of psychological, interpersonal, and socioeconomic well-being."

Source: Paul R. Amato. "Life-span Adjustment of Children to Their Parents' Divorce." *The Future of Children* 14, no. 1, Spring 1994: 142-154.

After evaluating a sample of 12,547 young people, researchers concluded that "parental divorce increases the likelihood that young men and women will have a child out-of-wedlock."

Source: Andrew J. Cherlin, Kathleen E. Kiernan and P. Lindsay Chase-Lansdale. "Parental Divorce in Childhood and Demographic Outcomes in Young Adulthood." *Demography* 32 (1995): 299-316.

"Using a 12-year longitudinal study of adults growing up in conflict-ridden, two-parent families, it was found that children have higher levels of well-being if their parents stay together than if they divorce."

Source: Paul R. Amato, Laura S. Loomis and Alan Booth. "Parental Divorce, Marital Conflict, and Offspring Well-Being During Early Adulthood." *Social Forces* 73, no. 3 (March 1995): 995-915.

The breakup of his parents' marriage during the first five years of his life places a boy at high risk of becoming a juvenile delinquent.

Source: Pat Fagan. "The Real Root Cause of Violent Crime: The Breakdown of Marriage, Family, and Community." *The Heritage Foundation Backgrounders* 1026 (March 17, 1995): 2.

"[Elementary school] children of divorced parents suffer from lower levels of self-efficiency, self-esteem and social support, and [from] less effective coping styles."

Source: Linda Kurtz. "Psychosocial Coping Resources in Elementary Schoolage Children of Divorce." *American Journal of Orthopsychiatry* 64 (1994): 554-562.

After controlling for demographics and socioeconomic differences, a study of adult children (18-22 years old) from divorced families revealed that they were twice as likely to exhibit [emotional and psychological] problems compared with children from intact families.

Source: Nicholas Zill, Donna Morrison and Mary Jo Cobb. "Long-Term Effects of Parental Divorce on Parent-Child Relationships, Adjustment, and Achievement in Young Adults." *Journal of Family Psychology* 7, no. 1 (1993): 91-103.

Compared to children in intact families, children whose parents have divorced are much more likely to drop out of school, to engage in premarital sex, and to become pregnant themselves outside of marriage. These effects are found even after taking into account parental and marital characteristics before the divorce.

Source: Frank F. Furstenberg, Jr. and Julien D. Tetter. "Reconsidering the Effects of Marital Disruption: What Happens to Children of Divorce in Early Adulthood?" *Journal of Family Issues* 15 (1994): 173-190.

Between 1971 and 1981, Judith S. Wallerstein conducted a study of 60 families who experienced divorce. Included in the study were 131 children and 60 adolescents. Interviews were conducted periodically between 1971 and 1981. Wallerstein reached the following conclusions:

- 10 years after the divorce, children of divorce felt "less protected, less cared for, less comforted... these children [had] vivid, gut-wrenching memories of their parents' separation."
- Many five- to eight-year-old boys showed "an intense longing for their fathers" after the divorce that seemed physically painful.
- Many fathers who moved out of the house found it difficult to sustain a close and loving relationship with their children, especially if one or both parents remarried. Yet, children tenaciously held onto an internal image, sometimes a fantasy image, of their absent or even visiting father.
- Not only did the children's need for their father continue, it also tended to rise with new intensity at adolescence, especially when it was time for the children to leave home.
- The nature of the father-child relationship, and not the frequency of visiting is what most influenced the child's psychological development.

Source: Judith S. Wallerstein and Sandra Blakeslee. *Second Chances: Men, Women, and Children a Decade After Divorce* (New York: Ticknor and Fields, 1989).

The advantages of growing up with educated parents evaporates when those parents separate.

Source: Sara McLanahan and Gary Sandefur. *Growing Up With a Single Parent: What Hurts, What Helps* (Cambridge: Harvard University Press, 1994).

Child Support / Child Custody

Only half of divorced mothers value the absent father's continued contact with his children. One-fifth saw no value in continued contact whatsoever, and "...actively tried to sabotage the meetings by sending the children away just before the father's arrival, by insisting that the child was ill or had pressing homework to do, by making a scene, or by leaving the children with the husband and disappearing."

Source: Judith S. Wallerstein and Joan Berlin Kelly. *Surviving the Breakup: How Children and Parents Cope with Divorce* (New York: Basic Books, 1990), 125.

In 1992, there were about 11.5 million custodial parents, 9.9 million of whom were custodial mothers and 1.6 million of whom were custodial fathers. These families comprised approximately one-third of all families with never-married children under 21 years of age.

Source: U.S. Bureau of the Census. *Child Support for Custodial Mothers and Fathers: 1991*. Current Population Reports. Series P60-187. U.S. Government Printing Office, Washington, DC, 1995.

According to a recent study of young, non-custodial fathers who are behind on child support payments, less than half of these men were living with their own father at age 14.

Source: Manpower Research Corporation. "Matching Opportunities to Obligations: Lessons for Child Support Reform from the Parents Fair Share Pilot Phase" (1994).

Over 90 percent of fathers who have joint custody of their children pay child support. However, in a situation where fathers have no visitation the payment to child support stands at 43 percent.

Source: U.S. Bureau of the Census. *Child Support for Custodial Mothers and Fathers: 1991*. Current Population Reports. Series P60-187. U.S. Government Printing Office, Washington, DC, 1995.

"More contact and a better relationship between nonresidential parents and children during early remarriage is associated with better behavioral adjustment for boys and girls, but lower self-esteem for boys."

Source: James H. Bray. "Successful Steplamilies." In: William J. O'Neill, Jr. (Ed.). *Family: The First Imperative*. Cleveland, OH: The William J. and Dorothy K. O'Neill Foundation. (1995) 57.

According to Census Bureau data, fathers with joint custody of their children pay more of their child support — 90 percent — compared with 79 percent for fathers with visitation rights and 44.5 percent for fathers with neither arrangement.

Source: Nicholas Zill. *Analysis of Census Bureau Data*, paper presented at the Children's Rights Council National Conference, Bethesda, MD (April 1993).



Alaska State Legislature

Please enter into the record my testimony to the HHES
committee name

committee on HB 307, dated 3-30-98
bill # / subject

54 PGS ATTACHED

Signed: LARRY ERICKSON — 262-9393

Testifier

Representing (Optional)

Address

Phone number

Lawrence C. Erickson
PO Box 4045
Soldotna, AK 99669
Phone 907/262-9393
Fax 907/260-4610

Reference: HB 307

TO: THE STATE OF ALASKA TWENTIETH LEGISLATURE - SECOND SESSION
Health, Education and Social Services, Judiciary

Cc: Senator John Torgerson
Senator Jerry Ward
Representative Gary Davis
Representative Mark Hodgins

I was divorced in 1994 but separated 3 years prior to the divorce memorandum. I was forced to leave my home with only my clothes and had to set up home for my three children and myself with what I had left after giving my wife \$1650 child support and \$498 house payment every month. At the time of the divorce the payments were dropped to just child support at \$1650 per month. One year later I was sued for child support in the amount of \$2000 per month.

From the time of separation until to day I have my children every other week (I work on the slope week-on-week-off schedule) Wednesdays from after school until 9:30pm, Thursdays, and Mondays from after school until 6:00pm and from Friday after school until Sunday at 9:00pm. At the time of separation my children's ages were 7 years, 9 years and 11 years old. When I would take the children to their mothers house after school on Friday to get their things for the weekend it would take as much as 45 minutes to collect what they needed. All the time their mother would sit and watch and do nothing to help them find their clothes or toys etc. I thought and still think the children should be with me the whole week that I am off work. As you can see by the times stated above I spend most of my time with them chauffeuring them to their after school activity's, sports etc., doing home work and preparing meals for them and then they go to their mothers for nice relaxing evening.

A custody investigation was conducted 2 years after the separation and one year before the divorce. The investigator stated the children's preference was the same as stated above. I asked for a follow up investigation but the children's mother refused and my lawyer advised me that it would be very expensive to fight for it and that the court would more then likely award the mother custody. After 7 years of a confrontational relationship with the children's mother it is clear to me that she is very capable of getting them to say what she wants them to. My children have stated that there is not enough privacy in an apartment to have friends spend a lot of time. There is not enough room and there is always the concern of disturbing the neighbors. With paying \$2000 dollars a month child support, caring and feeding my children about half the time and not being able to claim any dependants for income tax purposes does not leave enough money to buy a house.

I do not believe there is any reason why joint custody should not have been granted. I think the change that HR 307 has in it that states "The court shall (MAY) award shared physical custody to both parents unless, based on clear and convincing evidence, (IF) shared physical custody is determined by the court to be detrimental to (IN) the best interests of the child" supports the latest studies that show joint custody to be the best situation for children's self-esteem, attitudes and social adjustment.

There are already 14 states that have presumption joint custody laws (ABA Journal February 1997):

California	Mississippi
Florida	Missouri
Idaho	Montana
Iowa	Nevada
Kansas	New Mexico
Louisiana	Oklahoma
Minnesota	Texas

Thank you for your time.

Sincerely,



Lawrence C. Erickson

ATTACHED:

1. **CHILD CUSTODY: REFORM, RESEARCH, AND COMMON SENSE**
Prepared Statement of Testimony
U.S. Commission on Child and Family Welfare
Public Hearing on Custody and Visitation
April 19, 1995
Richard A. Warshak, Ph.D.
Clinical Professor
University of Texas Southwestern Medical Center
2. **The Primary Parent Presumption: Primarily Meaningless**
Richard A. Warshak, Ph.D.
CLINICAL PSYCHOLOGY ASSOCIATES
16970 Dallas Parkway, Suite 202
Dallas, TX 75248
3. **THE CUSTODY REVOLUTION**
Beyond Father's Rights and Mother's Rights
CLINICAL PSYCHOLOGY ASSOCIATES
16970 Dallas Parkway, Suite 202
Dallas, TX 75248

CHILD CUSTODY: REFORM, RESEARCH, AND COMMON SENSE

Prepared Statement of Testimony

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Public Hearing on Custody and Visitation

April 19, 1995

Richard A. Warshak, Ph.D.

Clinical Professor

University of Texas Southwestern Medical Center

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CHILD CUSTODY: REFORM, RESEARCH, AND COMMON SENSE.

Prepared Statement of Testimony

U.S. Commission on Child and Family Welfare

Public Hearing on Custody and Visitation

April 19, 1995

Richard A. Warshak, Ph.D.

Good afternoon Honorable Judge Robles and Commissioners. I am a Professor in the Department of Psychiatry at the University of Texas Southwestern Medical Center in Dallas, Director of the Texas Custody Research Project, and author of *The Custody Revolution*.

For the past eighteen years I have been studying the effects of divorce on parents and children. The results of my research have been published in numerous professional peer-reviewed journals and books and have earned me a grant from the National Institute of Mental Health and an invitation to the White House to discuss custody reform.

Today I would like to bring to your attention systematic research in my field which I hope will aid you in your mission to contribute to the well-being of our nation's children. As a scientist who has never been personally involved in any custody matter, my opinions have been shaped over the years by hard data. In fact, if these hearings took place years ago, before the accumulation of the latest research, my testimony might well have been very different.

Existing research supports two main conclusions:

(1) Conventional approaches to custody result in an unacceptable number of casualties among parents and children in divorced families.

(2) We can reduce the number and severity of such casualties by helping divorced parents create a demilitarized zone for their children and maintain children's meaningful involvement with both parents.

Three reforms will assist us in reaching these goals:

- Educational programs for divorcing parents
- Mandatory mediation of custody and access disputes
- Replacement of the vague "best interests of the child" standard with a rebuttable presumption of joint physical custody.

Time constraints allow only a discussion of research *results*. This is unfortunate, because different scholars, looking at the same data base, reach vastly different conclusions and recommendations. The best way to resolve such discrepancies is by reference to the scientific merits — the strengths and limitations — of the studies cited in support of the positions being advocated. Therefore, I would be pleased to provide further information if requested.

CONVENTIONAL CUSTODY CREATES CASUALTIES

Numerous well-controlled studies of families where children reside primarily with their mothers after divorce — the status quo — have shown us that this situation creates problems for the entire family. (For comprehensive reviews and analysis of this literature see 1, 2, 3, 4. For individual studies see 5, 6, 7.)

Every major study has concluded that divorced mothers feel overburdened with the responsibilities that accompany sole physical custody. They assume the job of two parents at a time when their own emotional capacity is likely to be weakened due to the stress of divorce and when their children's emotional demands and behavior problems are usually multiplied.

In the early weeks and months following their parents' separation and their father's departure from home, most children show some negative reactions. Not every child reacts in the same manner, but certain symptoms of stress do occur most frequently, including anger, confusion, and worry.

Children begin demanding more attention from their parents and teachers, and cry more frequently and with less provocation.

Older children may complain of physical ailments, such as headaches and stomachaches, for which no medical basis can be found. Often these (very real) pains disguise underlying anger or hunger for more loving attention. One of my patients was so distraught by his father's departure that he developed swelling, stiffening, and severe pain in his muscle joints that lasted for six weeks. His pain was so incapacitating that his mother had to carry him to bed.

Young children often undergo what psychologists call a *regression* in response to the stress of separation and divorce. This means that their behavior becomes less mature as the children struggle to come to terms with the upheaval in the family. For example, bed-wetting or thumb-sucking may reappear. It is as though the youngsters wish to return to an earlier time in their lives when they felt more secure.

Indeed a majority of children — two out of three in our Texas studies — think their lives were better before the divorce. Even more children, five out of six, long for their parents to reunite, and most yearn for more contact with their fathers (8, 9, 10). It is tempting to dismiss these negative attitudes as merely temporary reactions, fresh psychic wounds destined to heal over time. Unfortunately this is not the case. These children were interviewed more than three years after their parents' separation.

Experts advise divorcing parents to reassure their children that divorce is a grown-up thing between Mommy and Daddy, that the children are not getting divorced and they are still loved. Excellent advice. But when the separation occurs, reality sets in. The children discover that they must wait twelve days before seeing their father and undergo the ordeal of such lengthy separations twice a month for the duration of their childhood. (These are the lucky ones whose fathers stick around; about forty percent are virtually abandoned.) Unless their father's work has kept him on the

road away from home for twenty-six days each month, the children suffer a dramatic decline in the quality of their contact with their father.

The practice of restricting children's contact with their divorced fathers to every other weekend uproots their relationship from the fertile soil of natural, daily interaction and transplants it to the artificial turf of weekends crowded with entertainment and gifts. Because their time together is so limited, the father tries to maximize the "good times" and becomes, in essence, a recreational director coordinating a tight schedule of activities. Homework, chores, and routine errands are no longer his concern.

Despite the initial pleasure, this "Disneyland Daddy" relationship eventually wears thin. The father-child relationship is no longer as meaningful as before the divorce (2, 6, 9, 11, 12). And it is no longer as gratifying for the children. It is just not possible to pack two weeks worth of living into two days.

So when children are told that Dad is moving out, but he is not divorcing the children, it is a lot like the lover who tries to ease the pain of breaking up by saying, "We can still be friends."

The erosion of their relationships with their fathers is not the only problem suffered by children in mother-custody homes. When compared to children in two-parent nondivorced families, children raised in mother-custody homes, on average, have more emotional and behavior problems, poorer academic performance, and poorer relationships with their mothers and peers. Boys suffer more than girls (5, 7)

LONG TERM EFFECTS

Though some psychological problems diminish after two years, others last much longer. Indeed, one of the most important questions to ask about divorce is, how does it affect children in the long run? To answer this question, a highly respected research project interviewed a nationally

representative sample of over 1100 young adults (between the ages of 18 and 22) an average of fourteen years after their parents' divorce and compared them to peers whose parents did not divorce (6). Those who grew up in divorced homes were twice as likely to suffer a range of negative outcomes, such as dropping out of high school. Only one problem, though, characterized a majority of the divorced group: Two out of three children from divorced homes suffered chronically poor relationships with their fathers that did not improve with time (see Appendix A).

This figure is alarming. In addition to the divorce research I have been discussing, three decades of studies demonstrate that a good father-child relationship contributes in a major way to children's moral, intellectual, and social development (for reviews of this extensive literature, see 3, 13, 14, 15).

A Yale University study begun in the early 1950s recently found that the one factor most predictive of empathy in adults is growing up with a father in the home (16). Empathy, the capacity to feel another's pain, is the one psychological trait that is lacking in most violent criminals. So it makes sense that our prisons are overcrowded with men raised in father-absent homes (17, 18). And, indeed, studies that have looked at poor families in ghettos have found that it is not poverty that is the major cause of crime, but the father's absence from the home (19).

One of the most comprehensive and best-known research projects in psychology, a study of over 1,500 bright children which began over seventy years ago, just two months ago reported a startling and troubling finding. "Children of divorced parents faced a one third greater mortality risk than people whose parents remained married at least until they reached the age 21" (20, p. 71). The parents' divorce took an average four years off a child's life expectancy. And throughout the life span, "Parental divorce was the key early social predictor of premature mortality" (p. 71). Now it must be said that the magnitude of such results is probably not directly comparable for today's children; attitudes and circumstances toward divorce are clearly different and some research has

concluded that studies of earlier populations reveal larger differences between children from divorced and intact families than more recent studies (4). Still, with all the other evidence of divorce's damage, we cannot afford to dismiss such a finding.

FATHER CUSTODY HOMES

Thus far we have been discussing divorced homes in which the mother has sole custody. Despite the toll this arrangement takes on mothers, fathers, and children, the cultural preference for maternal custody remains intact, reflecting fundamental beliefs that women, by nature, make better parents than men, and that children need their mothers more than they need their fathers. Fathers who seek custody face an uphill battle and mothers who agree to share or relinquish custody face social stigmatization.

Growing awareness of the problems with the status quo, combined with a relaxing of traditional gender role stereotypes, has led some families and courts to explore other avenues that allow for more father participation. Though it is too early to report on the very long-term effects of father custody, we have learned a good deal about how mothers, fathers, and children adjust in this situation.

For mothers the outcome is mixed. (For a review of the literature on noncustodial mothers, see 3, chapter 5.) Though half the women who choose this arrangement are relatively comfortable with their decision, the other half come to regret it. It is as difficult for a mother to live apart from her children as it is for a father.

Fathers who have sole custody complain of being overburdened just as do mothers with custody. But, contrary to gender stereotypes, the evidence overwhelmingly demonstrates that divorced men can rear and nurture their children competently and are equally capable of managing the responsibilities of custody, with the exception that they are more effective than mothers in setting

and enforcing limits with their children, particularly boys (for a review of these studies, see 3: chapter 4, and 21).

Of course, the bottom line in any assessment of father custody is how well the children are coping and how they compare with children in mother-custody homes. The results of our studies in Texas, and ten independent studies conducted throughout the country, indicate that *we cannot predict anything about how well a child will function merely by knowing the gender of the custodial parent* (3, 8, 21-29). (Appendix B summarizes this finding.)

This consensus suggests a needed reform in custody policy: We must end discrimination against fathers who seek custody and against mothers who share or relinquish custody. Indeed parents who have the courage to violate social norms, when they deem this to be in their children's best interests, deserve our respect and support.

MAXIMIZING CHILD WELL-BEING: FACTORS ASSOCIATED WITH BETTER OUTCOMES

We must temper the sobering portrait of divorce casualties with the observation that comparisons between groups of children from divorced and intact families tell us only about average differences which, in some cases, are relatively minor. The two groups overlap considerably. (Similar points are made in 2, 3, 4, 30, 31.) Common sense suggests that some children cope more successfully than others with their parents' divorce. Though estimates vary, about fifty percent of children whose parents divorce do not experience long-term damage. Divorce researchers have identified several factors that promote such well-being.

Children are more likely to avoid lingering harmful effects of divorce when their parents shield them from hostilities, continue to function as a parental team, relate to their children in a competent manner, provide liberal access to both parents, enjoy good support systems (e.g., relatives

spending time with the children), and minimize the extent of life changes (e.g., remaining in the same neighborhood) (1, 2, 3, 7, 9, 22, 27, 30-34).

Some commentators argue that psychological problems of mother-custody children result from a decline in financial status. This would not explain why boys do worse than girls in this situation. The most in-depth study of mother-custody families found that economic factors were not linked to child adjustment (7). The Texas Custody Research Project replicated this finding: Predivorce socioeconomic status and postdivorce income did not relate to child outcomes in mother-custody or father-custody families (35). Furthermore, not one of the children in these studies complained about material deprivation, even when asked directly to discuss the bad things about the divorce. Many, though, complained about not spending enough time with either parent (10). When it comes to children's feelings, money is not where the action is. Children want two actively involved parents who keep them out of adult conflicts.

The results of our Texas studies support the well-established observation that boys suffer more severe and enduring problems than girls in mother-custody homes. But we made a crucial discovery: In general, boys living with their fathers after divorce do not have the problems so characteristic of boys living with their mothers. On the other hand, girls living with their fathers after divorce face more problems than do girls living with their mothers. (For a review see 3, chapter 7; 21. For individual studies see 10, 33, 35, 36.)

This pattern of sex-linked adjustment has now been corroborated by five independent investigations in other parts of the country (22, 23, 24, 28, 29). No study has ever concluded that boys adjust better in mother-custody homes and, with one exception, no study has found that girls adjust better in father-custody homes. The exception is a survey study (37) of eighth graders living with one parent which failed to discriminate the type of family (e.g., never-married, widowed) and whether the absence of the parent occurred recently or in the distant past. This study relied on

measures that were not sensitive enough to replicate well-established findings (e.g., the only measure of behavior problems outside of school was the child's report about the number of cigarettes smoked).

An extensive analysis of the evidence of sex differences in divorce adjustment (38), conducted by the National Academy of Sciences and the National Institute of Child Health and Human Development, reached the following conclusion: "Boys do indeed respond more negatively to parental divorce both immediately and over a period of years, *if they are living with an unremarried mother, whereas in . . . father custody, girls fare worse.* The major conclusion of this review is that both research and practice with children of divorce must consider gender differences in divorce reactions in relation to postdivorce family forms" (p. 136).

Such evidence justifies giving weight to the child's sex in custody decisions, but it is only one among many factors to consider. The importance of the child's relationship with the same-sex parent should not be used to discount the importance of the other parent. For example, despite the earlier advantage that girls seem to have in mother-custody homes, seven studies have found that these girls begin showing more problems as they enter adolescence and young adulthood particularly in their relationship with their mothers and with male peers (6, 39-44). A girl who has not had a rewarding relationship with her father is apt to feel insecure around males and distrustful towards them



To recap some of the conclusions in the literature

- Conventional custody creates casualties
- Parents find it difficult to live apart from their children
- Children do best with two parents actively involved in their lives
- Single fathers do a competent job raising their children
- Children benefit from a harmonious relationship between their divorced parents.

These findings have led many of my colleagues to look at joint custody to see if it could reduce parental conflict and allow children to maintain good relationships with both parents.

IS JOINT PHYSICAL CUSTODY FEASIBLE?

The first question usually asked about joint physical custody is, is it feasible? How can we expect two people, who couldn't make a marriage work, to cooperate and communicate well enough to share custody?

The most extensive study to address this question was conducted at the Center for Policy Research in Denver (32). Drs. Jessica Pearson and Nancy Thoennes analyzed data from nine hundred parents who had different types of custody. The results showed that conflict between divorced parents "did not appear to worsen as a result of the increased demand for interparental cooperation and communication in joint residential custody arrangements. To the contrary, *parents with sole maternal custody reported the greatest deterioration in the relationships over time*" (p. 242). Parents with joint physical custody reported the most cooperation.

These parents' ability to maintain a collaborative parenting relationship does prove, according to the best scientific evidence currently available, that joint custody is feasible. But, this brings us to our second question.

IS JOINT PHYSICAL CUSTODY GOOD FOR FAMILIES?

Is joint physical custody good for parents, and most important, is it good for their children?

Joint custody does enable fathers to avoid the superficial relationship that typifies "visits" between children and noncustodial fathers. And it allows mothers to step off the treadmill of full-time parenting. Joint custody mothers are less overwhelmed by the amount of time and energy their children require.

Dr. Eleanor Maccoby at Stanford University has found that mothers with shared residential custody are more satisfied with the living arrangements than those with sole physical custody whose children see their fathers for periodic visits (27). Studies in Arizona, California, and Pennsylvania have found that children in joint physical custody are definitely more satisfied with their living arrangements (45, 27, 26). Such findings should allay critics' concerns that this situation creates more stress for children.

Some studies have found *better* adjustment among children in joint physical custody, such as higher self-esteem, fewer behavioral problems, more positive attitudes about the divorce (26, 27, 45, 46); other studies have found *no difference* on gross measures of behavior problems (47, 48); but *no* study has found that joint physical custody is a disadvantage to children.

In interviews, joint custody children and adolescents report a strong sense of being loved and supported by both parents and of being "lucky" compared to their peers in sole custody, but to date these indications of emotional well-being have not been assessed with more objective measures (30). Nevertheless the satisfaction with joint physical custody expressed by parents and children deserves serious attention. As with all forms of custody, children are adversely affected by high conflict between parents when the parents express this conflict by putting the children in the middle (27, 47).

JOINT CUSTODY LEADS TO HIGHER CHILD SUPPORT COMPLIANCE

One of the strongest and potentially the most politically significant benefits of joint physical custody is that it is associated with much higher levels of compliance with child support payments.

In 1992 the Census Bureau reported that 90% of parents with joint custody paid their child support, compared with 79% of noncustodial parents with access to their children, and only 44% of parents with neither joint custody nor access to their children. Such a link has been known for quite

some time (49), but until recently it has not been clear whether men who were the sort to stay more involved with their children were also the type to pay child support, or whether one caused the other.

A recent study at Arizona State University has helped to answer this question (50). In a representative sample of over 600 parents studied, the investigators identified three factors that result in fathers remaining emotionally involved with their children and meeting their obligations to provide financial support: 1) full employment, 2) short distances between parents' homes, and 3) giving divorced fathers a greater feeling of control over their children's destiny than they traditionally enjoy after divorce.

RECOMMENDATIONS

Based on a review of the literature, the following recommendations are offered to maximize child well-being after divorce.

Educational Programs for Divorcing Parents

Parents need to know about the effects of their conflict and divorce on their children and about the full range of custody and access options. Some investigators have suggested that children should be spared exposure to high levels of parental conflict by being deprived of access to the noncustodial parent. A more reasonable approach would be to educate such parents about how to create a demilitarized zone for their children. This might include assistance with structuring the children's transfer between parents in such a way as to minimize the opportunity for overt expressions of conflict.

Mandatory Mediation of Custody and Access Disputes

Before resorting to costly litigation, parents should be required to submit their disputes about custody and access to mediation. In addition to the financial savings to the family and the public, mediation helps parents reach agreements with less animosity, more flexibility, and more commitment, and may reduce relitigation.

Judicial Reform

Judges should receive enough education in child development and the needs of children from divorced homes to enable them to make decisions regarding custody and visitation that truly serve the best interests of children. Panels of mental health professionals with expertise in custody and visitation matters should be available to judges to assist in defining children's needs in difficult cases.

Establish Joint Physical Custody As a Rebuttable Presumption

The weight of the evidence supports the contention that most divorcing families would profit with a legal presumption favoring joint physical custody, contingent on the absence of evidence that this would jeopardize the welfare of the children. Such a presumption would institutionalize the expectation that both parents will continue to maintain responsibility for their children and remove social stigma from mothers who share custody.

Cultural expectations such as this exert enormous influence on our attitudes and behavior. A generation ago, expectant fathers paced the hospital waiting room while their children were being born. All it took was a change in social norms to bring fathers into the delivery room, what was once virtually unheard of is now routine.

Most divorcing couples now assume that their children will have to forgo their closeness to their fathers and that this a natural and normal consequence of divorce, not an artifact of social

convention. A presumption of joint custody would change our view of what is "normal" after divorce. It presents a higher standard as a beacon showing parents that the drama of divorce can be performed in a civilized manner, on a stage illuminated by wisdom and compassion for our children.

It holds the *possibility* of removing the issue of custody from parental warfare. Parents may be less eager to sue for custody if they know that the court will probably declare neither parent the "winner" and instead expect the parents to cooperate enough to share custody. This will spare families the trauma of custody litigation and spare the state considerable expense.

Even when an attenuation of conflict does not occur, joint custody will still prove its worth by enabling children to maintain a relationship with each parent. At a time in life when children's trust in the permanence of love and commitment is undermined, joint physical custody creates a family structure that assures children that they have not been divorced — a structure that safeguards their birthright to two parents.

When it comes to the small group of parents locked in caustic battle, research data is insufficient to determine whether the children would do better in sole or joint custody. However, such families represent a small minority and should not serve as the basis for social policy. A rebuttable presumption means that courts may decline an order of joint custody when it could pose a danger to the physical or psychological welfare of the children.

Though not for everyone, and certainly not a panacea, joint custody is the proper arrangement for the vast majority of divorced parents.

It has sometimes been suggested that joint physical custody should never be awarded over the objections of one parent. Though joint custody is associated with more cooperation and less conflict between divorced spouses, critics argue that in cases where one parent does not favor this arrangement the children will be subjected to more of their parents' hostilities. Therefore the unilateral objections of one parent should be sufficient to require the court to award sole physical

children have to witness their parents' arguments.

Encourage More Flexibility in Custody Arrangements

Most parents expect that the custody decision made at the time of the divorce will be fixed. But children's needs change. What works well when a child is two-years-

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Flexibility and tailoring of custody to fit the circumstances and needs of each family is also enhanced through joint physical custody and mediation. Joint physical custody does not require that

_____ does not require _____

a child's time be divided 50/50 between homes. It does imply that the child's time with each parent is divided more evenly than in the typical sole custody arrangement, usually with no greater disparity than a two-thirds—one-third split. However, the manner in which parents share child-rearing responsibilities is as varied in joint custody families as in nondivorced families. Indeed, a significant advantage of joint custody is that it allows for more variation and flexibility to accommodate the changing needs of children and the changing circumstances of the parents.

One of the greatest barriers to flexible custody arrangements is the necessity of returning to court when parents are in dispute about a proposed change. Mediation can facilitate needed adjustments in a child's living arrangements without the expense and time of protracted litigation.

Encourage Parents to Minimize Environmental Changes for Children

Given the findings about the stressful effects of additional changes for children of divorce, parents should be encouraged to minimize such changes whenever possible. Caution should be exercised before requiring a child to move to another geographical area which would necessitate giving up regular access to the other parent and losing friends.

REJECT a Primary Caretaker Standard for Custody Disputes

To remedy the problems inherent in the vague "best interests of the child" standard, some experts propose that custody always be awarded to whoever is designated the "primary" parent — usually defined as the parent who spends the most time with the child or performs most of the daily repetitive maintenance tasks such as chauffeuring, preparing meals, and bathing. This proposal would strengthen the status quo of sole mother custody. The concept has several flaws.

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custody. This approach, however, could result in more conflict between parents since it serves as an incentive to the parent desiring sole custody to keep conflict alive in order to strengthen his or her case in court. With a presumption of joint custody, such a payoff for conflict is eliminated.

A parent's initial objection to sharing custody can reflect temporary fear and anger that will predictably abate in a few years. The evidence from two major studies indicates that conflict diminishes for the majority of divorced parents in the first several years after separation. Therefore, it would be a mistake to deprive children of the benefits, throughout their childhood, of joint physical custody merely because their parents are experiencing a temporarily high level of conflict.

If parents continue to involve their children in their grievances with their former spouses, the children will suffer regardless of which custody arrangement is in force. Allowing the children to remain for longer periods of time with their father (e.g., one week instead of two days) will not increase the conflict to which children are exposed. Indeed, children are most apt to witness their parents' hostilities during transfers between homes when the parents are in direct contact with each other. With many joint physical custody schedules, the number of transfers between homes is fewer than with traditional visitation schedules, thereby reducing the number of occurrences in which the

custody. This approach, however, could result in *more* conflict between parents since it serves as an incentive to the parent desiring sole custody to keep conflict alive in order to strengthen his or her case in court. With a presumption of joint custody, such a payoff for conflict is eliminated.

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If parents continue to involve their children in their grievances with their former spouses, the children will suffer regardless of which custody arrangement is in force. Allowing the children to remain for longer periods of time with their father (e.g., one week instead of two days) will not increase the conflict to which children are exposed. Indeed, children are most apt to witness their parents' hostilities during transfers between homes when the parents are in direct contact with each other. With many joint physical custody schedules, the number of transfers between homes is fewer than with traditional visitation schedules, thereby reducing the number of occurrences in which the children have to witness their parents' arguments.

Encourage More Flexibility in Custody Arrangements

Most parents expect that the custody decision made at the time of the divorce will be fixed for the life of their children. But children's needs change. What works well when a child is two years-old may not be so appropriate when she is eight or fifteen. This should be formally recognized by establishing the changing developmental needs of the child as one change of circumstance qualifying for a petition of custody modification.

Research has established that, beyond a certain minimum, the amount of time a parent spends with a child is a poor index of that parent's importance to the child, of the quality of their relationship, or of the parent's competence in child-rearing. The primary caretaker standard ignores the most important contributions parents make to their children's development such as love, moral guidance, promotion of academic accomplishment, encouragement of autonomy, etc.

The custody research discussed earlier has demonstrated that despite women's greater experience in the daily care of their children, men who do not perform as many maintenance tasks with children during the marriage are as capable as divorced women in managing the responsibilities of custody. And, most important, father-custody children fare as well as mother-custody children. Competence in caretaking is not gender-specific.

If extent of contact is not the basis for distinguishing primary from secondary parents, what is? Is the primary caretaker the one who does the most to foster the child's sense of security, the person to whom the child turns in times of stress — the role we most often associate with mothers? Or is it the parent who does the most to promote the child's ability to meet the demands of the world outside the family — the role we most often associate with fathers? There really is no basis for preferring one contribution over the other. Both are necessary for healthy psychological functioning.

We can say that both parents contribute distinctively to their child's welfare. And during different developmental stages a child may relate better to one parent than the other, or rely on one parent more than the other. But over the course of a lifetime both parents are important, and we have absolutely no grounds for rank ordering their importance. To do so would only discourage fathers from assuming more parenting responsibilities and reinforce gender role stereotypes.

APPENDIX A

LONG-TERM EFFECTS OF PARENTAL DIVORCE
NATIONAL SURVEY OF CHILDREN

*Proportion of Children from Divorced and Nondivorced Homes Exhibiting Problems
in Young Adulthood (Ages 18-22 Years) Number of Subjects = 1,147*

Problem Area	Parents Divorced	Parents Not Divorced
Poor Relationship With Father	65%	29%
Poor Relationship With Mother	30%	16%
High Behavior Problems Score	19%	8%
Ever Received Psychological Help	41%	22%
High School Drop-Out	27%	13%

a) All differences between two groups significant at the $p \leq .001$ level ($p \leq .01$ with correction for multiple comparisons)

b) An average of 14 years had elapsed since the divorce.

Data Source: Zill, N., Morrison, D.R., and Couro, M.J. (1993) Long-term effects of parental divorce on parent-child relationships, adjustment, and achievement in young adulthood. *Journal of Family Psychology*, 7 (1), 91-103. Adapted by Richard A. Warshak, Ph.D.

Note: "Despite the higher incidence of problems among the grown children of divorce, most of them were in the normal range on the majority of the well-being indicators used in this analysis. The only indicator on which a majority of the divorced group received negative readings was the one that measured the quality of their relationship with their fathers."

APPENDIX B

**FATHER CUSTODY VS. MOTHER CUSTODY:
CHILDREN'S PSYCHOLOGICAL DEVELOPMENT**

Following is a list of reactions, attitudes, traits, and behavior that psychologists have studied in children from divorced homes. On none of these factors were there overall differences that favored father-custody or mother-custody homes.

1. Sadness
2. Distress
3. Longing for the intact family
4. Strong wishes for parental reconciliation
5. Self-esteem
6. Maturity
7. Independence
8. Anxiety
9. Depression
10. Academic grades
11. School effort
12. Behavior problems
13. Psychosomatic complaints
14. Custodial parent-child relationships
15. Teacher-child relationships
16. Peer relationships

Source: Revised from Richard A. Warshak, Ph.D., *The Custody Revolution* (New York: Simon & Schuster, 1992), p. 134.

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Summary

- Research clearly indicates that sole physical custody - the status quo - creates problems for the entire family, including ruptured parent-child relationships. Two-thirds of children growing up in mother-custody families suffer chronically poor relationships with their fathers, which impairs their moral, intellectual, and social development.
- Parents with sole custody complain of being overburdened with the job of raising children alone while noncustodial parents find it difficult to live apart from their children.
- Research demonstrates that divorced men are equally capable of managing the responsibilities of custody and boys, in particular, may benefit from more access to their fathers. Therefore, custody policy should not discriminate against fathers who seek custody or against mothers who share or relinquish custody.
- Children are more likely to avoid lingering harmful effects of divorce when their parents shield them from hostilities, continue to function as a parental team, relate to their children in a competent manner, provide liberal access to both parents, maximize the time children spend with the same-sex parent, enjoy good support systems, and minimize the extent of life changes.
- Parents with joint physical custody have less conflict and cooperate more than do parents with traditional custody arrangements.
- Mother, fathers, and children are more satisfied with joint physical custody than with sole custody. No study has demonstrated a disadvantage to children of shared custody, some studies have shown clear benefits.
- Fathers are more apt to pay child support as a result of being awarded joint physical custody.

Recommendations

- Offer education programs to help divorcing parents create a demilitarized zone for their children.
- Require mediation of custody and access disputes prior to litigation.
- Bring child development expertise into custody decisions through judicial reform.
- Establish joint physical custody as a rebuttable presumption; it enables children to maintain meaningful relationships with both parents and may remove the issue of custody from parental warfare, thus sparing families the trauma of litigation and sparing the state considerable expense.
- Encourage more flexibility in custody arrangements to allow for changes in family circumstances. Changing developmental needs of children should be formally recognized as qualifying grounds for petitions of custody modification.
- Encourage parents to minimize environmental changes for children.
- Reject a primary caretaker standard; it would discourage fathers from meaningful involvement with their children and maintain a destructive status quo.

*The Primary Parent Presumption:
Primarily Meaningless*

Richard A. Warshak, Ph.D.

THE YEAR 1993 marked the thirtieth anniversary of the publication of *The Feminine Mystique*, the book that spearheaded the drive to unlace the cultural straitjacket of rigid sex-role prescriptions. As we expanded the conventional image of women to include roles beyond those of wife, housekeeper, and mother, we encouraged men to think of themselves as more than just husbands and breadwinners. We invited them to become active partners in the delivery room, and they accepted. We required their participation in Indian Guides, and they complied. We extolled the importance of father-child bonding, trumpeted statistics linking a father's absence to juvenile delinquency, and they listened.

The problem for some divorcing women is that their husbands listened too well and took seriously the call to parenthood. They became emotionally attached to their offspring and when the marriage ended, they were unwilling to be demoted to the second string; they were unwilling to sit on the sidelines of their children's lives. Although lacking in hard data to prove the point, we have at least the perception that more men are seeking and gaining custody of their children after divorce.

Why is this a problem? Because women do not enjoy living apart from their children any more than men do. Also, most women do not want to relinquish the power that goes with custody. This has led to the ironic situation in which some of the same feminists who, in the early 1970s, denounced motherhood as "enslavement" now lead a campaign to protect motherhood from divorced fathers who want more involvement with their children. But they face a crucial dilemma. They need to resurrect the belief that women are uniquely suited to rear children and therefore the natural choice for sole custody without appearing to endorse the notions that biology is destiny and that the sexes merit unequal treatment before the law.

The solution to this dilemma is the linguistic sleight of hand known as the "primary parent presumption." This guideline would give preference to the parent who is designated "primary" in the child's life, variously defined

as the parent who spends the most time with the child, is more responsible for the child's day-to-day care, or performs more of the daily repetitive maintenance tasks such as chauffeuring, shopping for clothes, preparing meals, and bathing. Although touted as a gender-neutral standard, everyone agrees that the primary parent presumption would give mothers the same advantage that they enjoyed with the tender years presumption. In fact, law professor Mary Becker advocates dropping the pretense of gender-neutrality and renaming the primary parent presumption the "maternal deference standard."

Briefly, the argument is that because women are more involved in primary caretaking, they deserve custody. Fathers'-rights advocates respond that it is unfair to penalize men for reduced involvement with their children, for they are only fulfilling society's notions of the man's role as the family's breadwinner.

Neither side's argument is compelling. Both are blinded by the pre-19th-century premise that children are property to be "awarded" to the rightful owner. Both sides miss the point that a custody decision should be guided by the needs of the child, not the parents' sense of entitlement.

Some of my colleagues offer arguments in support of the primary parent presumption. They point out that a woman who has been most involved in her children's daily care already possesses the requisite skills. She has less to learn than the father and, by virtue of her experience, probably is more competent to assume the duties of sole custody. Also, because the primary parent standard appears less ambiguous than the best interests standard, parents would be less likely to litigate over custody—a distinct advantage to the family. But that may be its only advantage. Under critical appraisal, this proposal suffers many serious drawbacks.

Unless we regard custody as a reward for past deeds, the decision about the children's living arrangements should reflect a judgment about what situation will best meet their needs now and in the future. Differences in past performance are relevant only if they predict future parental competence and child adjustment. They do not.

The primary parent presumption overlooks the fact that being a single parent is a very different challenge than being one of two parents in the same home. A consensus of research reveals a predictable deterioration in the single mother's relationship with her children. After divorce, the average mother has less time and energy for her children and more problems managing their behavior. Research has also demonstrated that *despite* a mother's greater experience in daily child care, fathers who would not be considered primary caretakers during the marriage are as capable as divorced mothers in managing the responsibilities of custody. And, most important, their children fare as well as children in the custody of their mother.

A more basic problem with the proposed standard is how we determine who is the primary parent? *Before* divorce, parents think of themselves as partners in rearing their children. Whether or not they spend equal time with the children, both parents are important and mountains of psycho-

THE PRIMARY PARENT PRESUMPTION: PRIMARILY MEANINGLESS

logical research support this. Before divorce, we do not rank order parents. Only in the heat of a custody battle do Mom and Dad begin vying for the designation "primary parent."

On what basis do we award this coveted title? We simply cannot measure the amount of time each parent spends with the child. Research has established that beyond a certain minimum the amount of time a parent spends with a child is a poor index of that parent's importance to the child, of the quality of their relationship, or of the parent's competence in child-rearing. In fact, we all know of parents who are too involved with their children, so-called "smothering" parents who squelch any signs of independence.

If more extensive contact does not make a primary parent, what does? Most definitions provide a list of responsibilities. The primary parent shops for food and clothes, prepares meals, changes diapers, bathes and dresses the child, takes the child to the doctor, and drives the child to school and recreational activities. Such criteria, though, ignore the overriding importance of the quality of parent-child relationships.

Furthermore, critics have argued that this list reflects gender bias. Shopping for food and clothes is included, but not earning the money that funds the shopping trips. Also conspicuously absent are responsibilities typically shared by fathers and in which fathers often predominate, activities such as playing, discipline, moral guidance, encouragement and assistance with school work, gender socialization, coaching team sports, and—something whose significance to children is often overlooked—providing a sense of physical protection and security.

Is the primary caretaker the one who does the most to foster the child's sense of emotional security, the person to whom the child turns in times of stress—the role we most often associate with mothers? Or is it the parent who does the most to promote the child's ability to meet the demands of the world outside the family—the role we most often associate with fathers? There really is no basis for preferring one contribution over the other. Both are necessary for healthy psychological functioning.

We can say that both parents contribute distinctively to their child's welfare. And during different development stages a child may relate better to one parent than the other, or rely on one parent more than the other. But most children form strong attachments to both parents in the first year of life and maintain important ties to both parents throughout their lives. By rank ordering the importance of parents, we dismiss children's own experiences of their parents' value, reinforce gender stereotypes, and perhaps discourage fathers from assuming more parental responsibilities.

In sum, the primary parent presumption is misinformed, misguided, misleading, and primarily meaningless.

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THE CUSTODY REVOLUTION

**Beyond Fathers' Rights
and Mothers' Rights**

by

RICHARD A. WARSHAK, PH.D.

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*The Custody Revolution:
Beyond Fathers' Rights and Mothers' Rights*
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THE CUSTODY REVOLUTION: BEYOND FATHERS' RIGHTS AND MOTHERS' RIGHTS

By Richard A. Warshak, Ph.D.

IT IS A RARE TREAT TO BE PREACHING TO THE CHOIR, SO TO speak. It allows me the luxury of engaging in a more personal discussion, appropriate, I think, to this lunch hour format. For those who have not read my book I do want to briefly recap the case for fundamental change in the way custody decisions are made and my proposals for the direction such change should take.

But I also want to address this conference's theme, which, as I understand it, is how to get from here to there, how to go beyond criticisms and repeated calls for change to achieve a true transformation of the status quo. In other words, how to implement a custody revolution.

On the path toward this goal we are going to meet a major detour which is now on the horizon. It is not a new proposal, but it is one that is gaining increasing support and threatens to set back progress toward enlightened custody policy, and delay its arrival by several generations. I want to bring this proposal to your attention, if you are not already aware of it, and tell you why I think the proposal is misguided.

Finally, some time before we are finished, I would like to discuss the link between the Children's Rights Council and the folk legend superhero, Batman. Two weeks ago I presented a paper on Batman to a group of psychoanalytic psychologists, and the Caped Crusader is still on my mind.

So, now that I have your interest, let me proceed.

THE TEXAS CUSTODY RESEARCH PROJECT

My studies in child custody began in the late 1970s, around the time when two classic divorce research projects — one by E. Mavis Hetherington, Martha Cox, and Roger Cox (1985), the other by Judith

Wallerstein and Joan Kelly (1980) — were publishing their initial results. Those two studies pretty much dovetailed in their central conclusions: Divorce created some psychological problems for children which generally abated after two years. The problems were more severe and enduring for boys, and the more conflict the parents exposed their children to, the greater likelihood of problems in the children. On the other hand, children were more likely to recover from the harmful effects of divorce when their parents shielded them from the post-divorce hostilities, continued to function as a parental team, related to their children in a competent manner, and made sure the children had liberal access to their fathers.

A key problem with this research is that too often people misinterpreted it as research on the effects of divorce in general rather than what, in fact, it was: research on families in which the mother retained sole custody of the children — what I call "conventional custody."

John Santrock and I wondered whether the living arrangements of the children would affect the outcomes of divorce. We also wondered whether fathers were as inept in managing the responsibilities of custody as our culture assumes. Were mothers uniquely suited to raise children, a notion I came to call "the motherhood mystique?"

Previous studies had addressed these issues, but the design of the studies left much to be desired. They relied on the reports of custodial fathers whose impressions, naturally, were liable to be biased. To satisfy our curiosity Santrock and I launched the Texas Custody Research Project, the first study to supplement custodial fathers' reports about their children with first-hand observations of children and their parents in father-custody families and then to compare them with mother-custody families (for detailed results see Warshak, 1992b).

What we found in the *mother-custody* homes paralleled the results of the two classic divorce projects. This was important for two reasons. First, it confirmed earlier findings, and scientists always welcome such confirmation. We call it "replication" and we like it because it means that earlier findings do not have to stand alone; each time a new study replicates a previous one we have more confidence that the earlier study was on the right track. But we also have more confidence that the *new* study is on the right track, since its procedures were sensitive enough to replicate previously established results.

In mother-custody homes we found that the divorce took a heavy toll in the short run, and that, an average of three and a third years after the breakup, girls were functioning much better than boys. The majority of children regarded the divorce as an unwelcome intrusion in their lives: Two out of three thought life had been better before the divorce. Even more children, five out of six, longed for their parents to reunite, and most expressed strong desires to see more of the noncustodial parent. *Contrary to popular assumption, custodial mothers did no better than custodial fathers in easing the stress of divorce for their children.*

Not every child we interviewed expressed intense suffering over the divorce. But the majority revealed a lingering and touching sadness, a sadness that respected no adult convention about the presumed importance of mothers versus fathers. Fathers were missed as much as mothers, and the intact family, once taken for granted, had become a cherished memory.

It was not just children's attitudes about the divorce that were unaffected by the custody arrangements. We couldn't predict anything about how well a child was functioning merely by knowing the gender of the custodial parent. And there are now nine independent studies conducted around the country that have reached the same conclusion. Regardless of what trait was measured, and how or by whom it was measured (there were male and female investigators), in every study the psychological health of the average child in a father-custody home was comparable to the average child in a mother-custody home. As a group, father-custody children have neither more nor fewer problems than mother-custody children.

Now, this discovery is revolutionary. If children are as well off in father-custody homes as in mother-custody homes, we have no grounds for discriminating against fathers in custody matters or against mothers who choose to share or relinquish custody. This knowledge has the potential of releasing judges, attorneys, and divorced families from the grip of the motherhood mystique.

THE GENDER CONNECTION

Nevertheless, we have been discussing "average" children, and this runs the risk of oversimplifying what is truly a complicated psychological picture. Averages do not tell the whole story. Common sense tells us

REACTIONS TO THE CUSTODY REVOLUTION

The results of our custody studies were published in a series of papers that appeared as articles in academic journals and chapters in professional books. Although the first of these papers was presented in 1979, my book has had a long gestation period.

One of my biggest worries, as the book neared completion, is that my criticism of conventional custody would be dismissed as "beating a dead horse." I could see myself being paid a visit in the night by members of the S.P.C.D.H. — the Society for the Prevention of Cruelty to Dead Horses.

After all, Roman and Haddad (1978) had already published their book pleading the case for joint custody, and Miriam Galper Cohen (1991) had written an excellent guide to help parents share custody which I think is now in its third edition. California was acting as though joint custody was the rule. And Wallerstein & Kelly's research, documenting the harmful effects of sole mother-custody, seemed to provide the research foundation for joint custody.

Well, I didn't have to worry about this. As you may or may not know, joint custody, once considered a promising alternative, is in danger of being grounded shortly after takeoff. But there were other criticisms of my book that I did not anticipate.

Because of the similarity between the sound of my last name and that of the creator of those famous ink blots, people sometimes ask if we are related. Well, I've always answered that there was no relation; but I have to say that since the publication of *The Custody Revolution* nine months ago, I have learned that the book actually functions like the Rorschach Inkblot Test!

When it was published I called a respected colleague to get her impressions of the book. This colleague had always expressed much admiration for my work. Her reaction was incredible. She thought that the book could be seen as advocating kidnapping of children.

Let me read to you the passage from the book on this topic and let you decide for yourselves:

Kidnapping (or "child snatching," as it is sometimes called) is never a viable solution to a custody dispute; it is misguided at best, brutal at worst, and always tragic. It compounds the trauma to the child, leaving a legacy of terror and pervasive insecurity

that some children cope more successfully than others with their parents' divorce. To determine how well any *individual* child coped with divorce, we found that we had to look at other factors such as how the custodial parent related to the child, how much access the child had to the noncustodial parent, and whether the child was a boy or a girl.

As long as we reported that boys had more problems than girls in mother-custody homes, we were moored securely to the dock of conventional wisdom. But we left the shores of political correctness when we reported our crucial discovery that boys in father-custody homes were doing much better; that it wasn't some innate greater difficulty boys had coping with family stresses, but the fact that children in the custody of the same-sex parent, in general, are better adjusted than children in the custody of the opposite-sex parent. Just as the average boy had a harder time in a mother-custody home, so we found that the average girl was handicapped in a father-custody home.

Another way to put this is that, all other things being equal, it is easier for a single parent to raise a child of the same sex.

As you might imagine, this result stirred a lot of controversy. One very well-known psychologist was convinced that we must have made an error in our publication. She speculated that the reason the father-custody boys looked healthier was that father-custody girls were doing so poorly that they made the boys look good by comparison. After all, surely, single mothers were better at raising their sons than single fathers. We provided the data she requested to allow an independent statistical analysis, and we never heard from her again on this issue.

If you are interested in the details of this finding and how we measured children's adjustment, I refer you to the chapter called "The Gender Connection" in my book (Warshak, 1992a). In that chapter I discuss four additional studies that have confirmed the identical pattern of sex-linked adjustment. In fact, no study has ever concluded that boys adjust better in mother-custody homes or that girls adjust better in father-custody homes.

Because of this consensus of findings, I have proposed that the child's sex is one factor that should carry significant weight in custody decisions. Although at first psychologists were reluctant to apply these results to custody decisions, as the evidence has mounted, some of my most distinguished colleagues have given up their reservations.

Child development specialist Dr. Ross Thompson (1986) captures the prevailing attitude among our colleagues:

Historically, there has been much judicial abuse of (sex guidelines) concerning custody disputes, partly because they can be so indiscriminately applied. For this reason one is hesitant to recommend the child's gender as an important factor in custody decision making . . . Even so, the weight of the evidence, drawn from studies of fathers in traditional as well as nontraditional families, must certainly be taken seriously in judicial considerations. (p. 88)

Before our work, the establishment view was that divorce, in general, was harder on boys than on girls. Following our reports, the prestigious National Academy of Sciences and the National Institute of Child Health and Human Development (Zaslow, 1989) commissioned a study to evaluate all the evidence that bore on the question of sex differences in divorce adjustment. This study's outcome can be taken as a scientific "seal of approval" for my proposal to assign more weight to the child's sex in custody decisions.

"Boys do indeed respond more negatively to parental divorce," the 1989 report reads, "both immediately and over a period of years, if they are living with an unremarried mother, whereas in . . . father custody, girls fare worse. The major conclusion of this review is that both research and practice with children of divorce must consider gender differences in divorce reactions in relation to postdivorce family forms" (p. 136).

Now I want to spell out very clearly the limits of these results.

- They do not mean that all boys living with a single mother and all girls living with a single father are doomed to suffer serious psychological problems.
- They do not mean that all fathers should have custody of their sons and all mothers have custody of their daughters.
- They do not mean that we should routinely split up brothers and sisters.
- They do not mean that fathers who currently lack custody of their sons and mothers who lack custody of their daughters should instantly petition the court to change the custody arrangements.
- Most important, these results do not mean that boys need their fathers more than they need their mothers, or that girls need their mothers more than they need their fathers. The importance of your child's relationship with the same-sex parent should never be used to

discount the importance of the other parent in your child's life. Children need mothers *and* fathers. Children who lose a parent as a result of divorce deserve out sympathy . . . and so do their parents.

THE GOALS OF THE CUSTODY REVOLUTION

When I put together the casualties created by conventional custody, the pain suffered by parents who live apart from their children, the importance to children of having two parents actively involved in their lives, the fact that single fathers could do a competent job raising their children, and the benefits to children of a more harmonious relationship between their divorced parents — when I put all of this together, like many of my colleagues, I began to see in joint custody the potential for a reduction of parental conflict and the opportunity for children to maintain good relationships with both parents.

In 1979 I met Joan Kelly, we appeared on a few panels together, and I think this is how I first learned of divorce mediation. Looking back at a review of John Haynes' book that I wrote for the *Journal of Marital and Family Therapy* (Warshak, 1984), I can tell that by 1983 I was already a strong advocate of mediation. And I still am. If a couple can't agree on the living arrangements for their children, mediation is clearly the more civilized approach to resolving their dispute. I am a strong critic of custody litigation.

Simply put, placing two parents in the ring, actually two agents in the ring — the parents must sit on the sidelines, barred from speaking unless on the stand — placing the two *sides* in the ring and letting them slug it out verbally with the custody of the children going to the victor is nothing less than barbaric. Perhaps we don't recognize it as such because it has been this way for so long. Psychologists would say that as a society we are desensitized to it. But since for most families going through custody litigation, it is their first or maybe second experience, they have not had time to become desensitized.

And they are outraged, both the losers and the winners. Perhaps some of that rage seeks an adaptive outlet in organizations such as this [Children's Rights Council].

from which most children never fully recover. That so many distraught parents even seriously entertain the thought of snatching their own children gives further evidence of the poverty of our current system and the desperate need for a custody revolution. (p. 218)


One reviewer expressed the concern that the book would result in more custody disputes. This despite the exceptionally strong case for mediation and the following statement regarding custody battles: "I cannot think of a worse way to decide custody. In fact, the most important advice I can offer parents reading this book — and I cannot stress this enough — is to *avoid custody litigation at all costs!*" (p. 208)

Is this unclear writing? Does this leave any doubt in your mind about where I stand with respect to custody litigation? I am pleased to say that in all the feedback I have received from readers of the book, no one has indicated that as a result of reading the book they initiated a battle for custody. To the contrary, I have heard from many parents who say that the book encouraged them to drop their plans for a custody battle and conduct their divorce and custody negotiations in a more civilized manner. Also, I am pleased to report a very positive response from most of my colleagues who regard the book as evenly balanced and enormously helpful.

STRATEGIES FOR PROMOTING CHANGE

But the lesson is clear. It's not what we write or say that's most important, it's what people read, comprehend, retain, and discard that's important. Every once in a while, an approach can seep past a person's built-in filters and challenge the reader to revise his or her own biases. This is what psychotherapy is, in a large measure, about. And it is what any writer of a book with "Revolution" in the title hopes to accomplish.

It was why I took such pains to show that the motherhood mystique was not a historical imperative engraved in stone for all time. And it was why I so carefully documented the work over the past twenty-five years that proves, beyond any reasonable person's doubt, that father's play key roles in the psyches of their offspring. And it was why I chose to create a vivid portrait of the problems that conventional custody presents to many families.

 But to go beyond rhetoric, one needs to find an effective strategy for promoting ideas.

Defending Joint Custody

As I said earlier, the joint custody movement is harked up on the ropes, fighting for its life. Who would have thought — after all we know about the pitfalls of sole custody — that professionals in the field would still seriously question whether joint custody is even *feasible*. But, and I am not making this up, two weeks from today I will be participating on a panel at the Association of Family and Conciliation Courts in New Orleans — a symposium whose title is: "Co-parenting: Realistic or Pie in the Sky?"

What will I tell them in New Orleans?

I will tell them to open their eyes and see the thousands of families who are successfully sharing custody.

I will tell them to read the descriptions in Cohen's book of some of those families.

I will tell them to consult Pearson and Thoeness' (1990) extensive analysis of research, which leaves no doubt that joint custody *is* feasible.

And, most important, I will implore them to talk to the children in these families.

Then, if I have any time left, I'll invite the group to explore the real issue about joint custody's feasibility: How can we succeed in making coparenting a realistic possibility for more families? Because if we're not successful in pleading the case for joint custody, then it may very well become "pie-in-the-sky." And parents who want it will get no support. And society will look back on joint custody as a brief social experiment . . . that failed.

I don't have the answers to the difficult question about how to shepherd a custody revolution to a successful outcome. But one area that begs for more attention is the study of why people resist ideas that seem so reasonable to us. For example, when you have presented compelling research and specific cases of children who thrive under joint custody, your audience comes back with the tired old argument that "bouncing" a child back and forth between environments undermines their emotional security.

Now, very often, the same person making this argument has no qualms whatsoever about sending his or her child to a daycare center that has a rapid staff turnover. Or sending the child to stay with grandparents for a week.

What is going on here?

I'm not sure, but I do know that we should try to better understand the resistance to joint custody.

Psychological Theories Inappropriately Applied

Also, we need to be aware of how *good* psychological theories are distorted to defend *bad* custody policies. An example? Margaret Mahler's theory of separation-individuation is often invoked to deprive a young child of overnight visits with her father. In fact, the theory dictates no such policy — and, even if it did, the theory itself is currently undergoing significant revision.

Social Science Research: Abuses and Uses

Another thing to be vigilant about: media accounts of social science research.

Have you seen the front page accounts of a sociology study that allegedly concludes that losing a parent doesn't hurt children — and, if they're black girls, they will *benefit* by not having a father living at home?!

How did the racist implications of this go unnoticed? Black fathers, but not white fathers, are a liability to their offspring? As a researcher, I am offended that this study was accepted so uncritically by educated journalists.

But we should not throw out the baby with the bathwater. We *do* need more research. At the same time, we need to be open-minded about the discoveries of such research. Perhaps we will learn that when the average child in joint custody becomes a teenager, he or she decides that life is easier living under one roof, with one telephone number to give to friends. We will probably learn how to identify which children will benefit most and which least from shared custody.

I'd like to see some research on couples who gradually phase in a joint custody plan. This allows parents a chance to experience joint custody first-hand, before making a final commitment. And it gives parents a chance to get used to it. I have seen this solution help couples where one or both parents feared the results of joint custody. But we need research on this.

Beyond Fathers' Rights and Mothers' Rights

One problem I have seen among some who advocate change in custody policy, is the tendency to present the issue in terms of fathers' rights versus mothers' rights. Not only does this deflect from the central issue, it has the potential of alienating an entire segment of the population whose support we should be courting — namely feminists — those who believe in lifting traditional restrictions on what is considered appropriate behavior for men and women. We need feminists as allies in the battle. More than any group, feminists know the perniciousness of false gender stereotypes.

Perhaps this is a good time to fulfill my promise to discuss a detour on the path to implementing equal custody policy.

THE PRIMARY PARENT PRESUMPTION

Nineteen ninety-three marks the thirtieth anniversary of the publication of *The Feminine Mystique* (Friedan, 1963), the book that spearheaded the drive to unlace the cultural straitjacket of rigid sex-role prescriptions. As we expanded the conventional image of women to include roles beyond those of wife, housekeeper, and mother, we encouraged men to think of themselves as more than just husbands and bread-winners. We invited them to become active partners in the delivery room . . . and they accepted. We required their participation in Indian Guides and Indian Princesses . . . and they complied. We extolled the importance of father-child bonding, trumpeted statistics linking a father's absence to juvenile delinquency . . . and they listened.

The problem, for some divorcing women, is that their husbands listened too well. These men took seriously the call to parenthood. They

became emotionally attached to their offspring, and when the marriage ended they were unwilling to be demoted to the second string; they were unwilling to sit on the sidelines of their children's lives. Although lacking in hard data to prove the point, we have at least the perception that more men are seeking and gaining custody of their children after divorce.

Why is this a problem? Because women don't find it any easier to live apart from their children than do men. Also, most women do not want to relinquish the power that goes with custody. One feminist scholar (Snitow, 1991) wrote in *Ms. magazine* about such reluctance and about women's attempt to "reinstitutionalize motherhood for themselves" in order to exclude men from the privileges that accompany the traditional role of mother:

Do feminists want men to . . . have primary child care responsibilities? . . . Women ask, for example, "Can men really nurture?" And behind that doubt, or that insult, hides our knowledge of what psychological power mothers have. Why give that up, we may well ask? . . . We give up something, a special privilege wound up in the culture-laden word "mother." . . . Giving up the exclusivity of motherhood is bound to feel to many like a loss. Only a fool gives up something present for something intangible and speculative.

Such attitudes have led to the ironic situation in which some of the same feminists who, in the early 70s, denounced motherhood as "enslavement" now find themselves leading a campaign to protect motherhood from divorced fathers who want more involvement with their children. But they face a crucial dilemma: They need to resurrect the beliefs that women are uniquely suited to rear children and therefore the natural choice for sole custody — what I call "the motherhood mystique" — without appearing to endorse the notions that biology is destiny and that the sexes merit unequal treatment before the law.

The solution to this dilemma is the verbal sleight of hand known as the "primary parent presumption." This proposed guideline would give preference to the parent who is designated "primary" in the child's life, usually defined as the parent who has provided more of the daily care of the children. Although touted as a gender-neutral standard, everyone agrees that, except in the rare cases in which a husband has remained

at home with the children while his wife worked full-time outside the home, the primary parent presumption would give mothers the same advantage that they enjoyed with the tender years presumption. In fact Law Professor Mary Becker ("Choosing the Mother," 1992) advocates dropping the pretense of gender-neutrality and renaming the primary parent presumption the "maternal deference standard."

So to those who think my arguments against the motherhood mystique are beating a dead horse, I borrow from Arthur Koestler who said, "There has never been a dead horse with such a vicious kick." And, I will add, one that threatens to win the race.

Briefly, the argument goes that since women are more involved in primary caretaking, they deserve custody. Some fathers'-rights advocates respond that it is not fair to penalize men for their reduced involvement with their children, since they are only fulfilling society's notions of the man's role as the family's breadwinner. Therefore, men deserve joint custody.

Neither side's arguments are compelling because both overlook the most relevant consideration. Both are blinded by the premise that children are property to be "awarded" to the rightful owner, an idea reminiscent of pre-19th century thinking about children. Both sides miss the point that the only proper basis for a custody decision is the needs of the child. Loving parents do not place their sense of entitlement above their wish to achieve the best possible circumstances for their children.

Some of my colleagues in the mental health field (eg., Gardner, 1991; Maccoby et al, 1992) have jumped on the primary parent presumption bandwagon, bringing to the cause arguments that deserve our serious attention. They point out that a woman who has been most involved in her children's daily care already possesses the requisite skills. She has less to learn than the father and, by virtue of her experience, is probably more competent to assume the duties of sole custody. Also, because the primary parent standard is less ambiguous than the best interests standard, parents would be less likely to litigate over custody. Everyone agrees that this would ultimately benefit most children.

But these arguments do not stand up to critical appraisal. The primary parent presumption fails to take into account the predictable deterioration in the single mother's relationship with her children. After divorce, the average mother has less time and energy for her children and more problems managing their behavior, particularly that of her

sons. Research has demonstrated beyond question that, despite women's greater experience in the daily care of their children, men who were not primary caretakers during the marriage are as capable as divorced women in managing the responsibilities of custody. And, most important, their children fare as well as children do in mother-custody homes (Warshak, 1992a, 1992b).

There is a more basic problem with the proposed standard. How do we determine who is the primary parent? Is it the parent who is with the child the most? Not according to research which demonstrates that the amount of time a parent spends with a child is a poor index of that parent's importance to the child, of the quality of their relationship, or of the parent's competence in child-rearing (see Lamb, 1976 for an overview of this research). In fact, we all know of parents who are *too* involved with their child, so-called "smothering" parents who squelch any signs of their child's independence.

If extent of contact is not the basis for distinguishing primary from secondary parents, what is? Is the primary caretaker the parent who does the most to foster the child's sense of security, the person to whom the child turns in time of stress — the role we most often associate with mothers? Or is it the parent who does the most to promote the child's ability to meet the demands of the world outside the family — the role we most often associate with fathers? We really have no basis for preferring one contribution over the other. Both are necessary for healthy psychological functioning.

We can say that both parents contribute *distinctively* to their child's welfare. And during different developmental stages a child may relate better to one parent than the other, or rely on one parent more than the other. But over the course of a lifetime both parents are important, and we have absolutely no grounds for labeling one parent "primary" and the other parent "secondary."

In sum, the primary parent presumption is misinformed, misguided, misleading, and primarily meaningless.

BATMAN AND THE ABSENT FATHER

Before I finish, I know I promised to discuss the link between Batman and the Children's Rights Council.

Batman is the only comic book superhero to remain continuously in print since the Golden Age of comic books, fifty-four years now, outlasting even his most famous colleague, Superman, who you may have heard, bit the dust last year at the hands of Doomsday. Batman has become a 20th century myth.

To reach this status, Batman must have struck a deep chord in the public unconscious, particularly among children. For years comic book superheroes have helped youngsters leap life's hurdles. They serve as efficacious and moral role models, offer a temporary retreat from internal fears and worries, provide a vicarious outlet for aggression, and allow children to feel a sense of power and goodness in compensation for reality's inevitable blows to self-esteem.

Batman, though, is no ordinary superhero. True he fights on the side of good versus evil. But he is no shining knight on a white horse; he is a Dark Knight who prowls Gotham City's terror-torn streets in a black armored forbidding charger. Back home in his bat-infested dark cave, Batman bears an uncomfortable resemblance to Dracula (who, not incidentally, is acknowledged by Batman creator Bob Kane as one inspiration for the Caped Crusader's dark look).

Except for a period darkened by the spectre of censorship in comics (in the late 50's and 60's), Batman has not been the hero we'd like our children to emulate. He is a somber, driven, tortured soul, incapable of normal rewarding interpersonal relationships. He lives in an urban nightmare, and this may provide a clue to the widespread appeal of the movies among contemporary urban dwellers, who see the despair and futility of our big cities reflected in Gotham City. When Gotham's mayor attempts to tranquilize the masses with false reassurances in the face of unpredictable chaos, adults in the audience hear echoes of our own politicians' empty rhetoric.

Certain children, though, have a special affinity for Batman. For these children, the drama of *Batman Returns* plays on a different internal stage — one that has been darkened by the trauma of parental abandonment. Twenty-five million children in our country live apart from at least one of their parents. The parent most often absent is the father; nearly ten million children have not seen their fathers during the past five years.

These are the children the Children's Rights Council has set out to help. It's what this conference's theme ["Beyond Rhetoric: Assuring a Child's Right to Two Parents"] is all about. These children are victims

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of the myth that fathers are second-class parents, a myth that finds expression in the prevailing practice of restricting a divorced father's contact with his children to every other weekend; four days per month is what our society considers sufficient for a divorced father to take his rightful place in the life of his children.

Cast in the peripheral role of a visitor, it is no wonder that some men fail to appreciate their importance to their children, and gradually drift out of their lives. Fathers may rationalize their withdrawal by pointing to society's devaluation of their role, as in the case of the judge who ruled that a father could not see his children on Christmas "because children belong with their families at Christmas." We may prefer to assume that children can easily survive paternal deprivation, that they don't really need their fathers that much. But study after study tells us we are wrong.

Regardless of the reason for a father's absence, his children will be quick to identify with fictional characters who are, themselves, attempting to come to terms with parental abandonment. And *Batman Returns* serves up a double dose of these. Batman, we know, is the orphan Bruce Wayne raised by a loyal butler. He is driven by an unremitting desire to avenge his parents' murder. The Penguin, deliberately rejected by his parents, spends the movie struggling for his rightful place in society. You can bet that the theme of abandonment is not lost on those children who have suffered a similar fate.

Perhaps, when you return home, you will rent the video of *Batman Returns*. And you can sit back, relax, and enjoy the adventures of the Dark Knight. And as you watch the Penguin deal with his abandonment by terrorizing Gotham City, and Batman cope with his by terrorizing the terrorists, you can wonder — along with ten million children — where have all the fathers gone and what can we do about it?

And you can be thankful that organizations exist whose purpose is to rectify this very problem.

And it's a good thing they do, because our sons and daughters do not have Bruce Wayne's faithful butler to help them.

But they do have the Children's Rights Council.

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For the past seventeen years, as Director of the Texas Custody Research Project and Co-Principal Investigator of the National Institute of Mental Health Stepfamily Project, Dr. Warshak has studied the impact of divorce and remarriage. His methodologically sophisticated studies, published in numerous professional books and journals, are considered landmark work in child custody research. They are cited often in the professional literature and in legislatures and courtrooms across the country, including the U.S. Congress, and earned Dr. Warshak an invitation to the White House to discuss custody and welfare reform.

In his practice Dr. Warshak consults with attorneys, mental health professionals, and parents throughout the U.S., Canada, and Australia on matters relating to child custody, childhood trauma, and personal injury. Also he evaluates and treats children, adults, and families, and mediates custody disputes.

Dr. Warshak's custody investigations culminated in the publication of his book *The Custody Revolution: The Father Factor and the Motherhood Mystique* (1992, Poseidon Press / Simon & Schuster). The book advocates fundamental reform of our custody policies and offers practical advice to parents and professionals dealing with custody decisions.

In addition to his custody work, Dr. Warshak developed the *Inventory for Child and Adolescent Assessment* which is used by mental health professionals to understand better the psychological problems of the children they treat. It has also become a valuable addition to social studies, custody evaluations, consultations, and mediations.