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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-

Richard A. Warshak, Ph.D.  
Testimony on Custody and Visitation  
April 19, 1995  
Page 18

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

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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.

Richard A. Warshak, Ph.D.  
Testimony on Custody and Visitation  
April 19, 1995  
Page 17

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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

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#### **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.*

**T**HE 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**

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*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.

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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 our 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

18

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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## ABOUT THE AUTHOR

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Richard A. Warshak, Ph.D. is a clinical and research psychologist in private practice in Dallas, Texas, Clinical Professor of Psychology at the University of Texas Southwestern Medical Center, and past president of the Dallas Society for Psychoanalytic Psychology. He earned his B.S. from Cornell University and his Ph.D. from the University of Texas Health Science Center in 1978. Dr. Warshak has served as an Editorial Reviewer for the *Journal of Family Psychology* and a Consulting Reviewer for the journal *Child Development*.

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.

**HB**

**323**

(7)  
Date Referred to Committee: April 24, 1998

FURTHER REFERRALS:

Date of Committee Action: 4/30/98

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered: HB 323

HOUSE BILL NO. 323 PERS CREDIT FOR NONCERTIFICATED EMPLOYEES

"An Act relating to the calculation of credited service in the public employees' retirement system for noncertificated employees of school districts, regional educational attendance areas, and state boarding schools; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 323 (HES)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) Admin  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Frank [unclear]</i>			<input checked="" type="checkbox"/>	
<i>[unclear]</i>				<input checked="" type="checkbox"/>
<i>Con Bunde</i>	<input checked="" type="checkbox"/>			
<i>[unclear]</i>	<input checked="" type="checkbox"/>			
<i>[unclear]</i>	<input checked="" type="checkbox"/>			
<i>[unclear]</i>				

CHAIR'S SIGNATURE Con Bunde

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSHB323 (L&C)

Revision Date: 4/28/98  
 Title: "An Act relating to credited service in the public employees retirement system."  
 Sponsor: Representative Brice  
 Requestor: (H) HES

Department Affected: Administration  
 BRU: Centralized Administrative Services  
 Component: Retirement and Benefits  
 COMPONENT SERIAL NO. 2271

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	116.5	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>116.5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
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**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1037 GF/Mental Health	0	0	0	0	0	0
OTHER - <del>#</del> 1029 PERS	116.5	0	0	0	0	0
<b>TOTAL</b>	<b>116.5</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

**ANALYSIS: (Attach a separate page if necessary.)**

The \$116.5 is needed to hire contractors to update the division's computer systems to accommodate the proposed changes. In addition to contractor time, division staff will dedicate time to make system changes and the impacted school districts may also need to update their systems.

This change would affect approximately 6,660 current PERS members.

Prepared by: Guy Bell  
 Division: Retirement and Benefits

Phone: 465-4470  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 4/28/98

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# HOUSE COMMITTEE REPORT

(7)  
Date Referred to Committee: January 15, 1998

FURTHER REFERRALS:

HES

Date of Committee Action: 4/22/98

The LABOR AND COMMERCE Committee considered:

HB 323

HOUSE BILL NO. 323

PERS CREDIT FOR NONCERTIFICATED EMPLOYEES

"An Act relating to the calculation of credited service in the public employees' retirement system for noncertificated employees of school districts, regional educational attendance areas, and state boarding schools; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 323(LHC)  the same title  a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) DOA

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>John C. ...</i>	<input checked="" type="checkbox"/>			
<i>Mark ...</i>	<input checked="" type="checkbox"/>			
<i>Joe ...</i>	<input checked="" type="checkbox"/>			
<i>Lane ...</i>	<input checked="" type="checkbox"/>			
<i>Bill ...</i>	<input checked="" type="checkbox"/>			
<i>Jim ...</i>	<input checked="" type="checkbox"/>			

CHAIR'S SIGNATURE *Jim ...*  
HOUSE LABOR AND COMMERCE COMMITTEE REPORT

0-LS1350F

Cramer

4/29/98

## CS FOR HOUSE BILL NO. 323( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES BRICE, Kubias

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the calculation of employee contributions and credited service  
2 in the public employees' retirement system for noncertificated employees of school  
3 districts, regional educational attendance areas, and state boarding schools; and  
4 providing for an effective date."

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

6 • Section 1. AS 39.35.160 is amended by adding a new subsection to read:

7 (c) An employee who has made an irrevocable election under AS 39.35.300(c)  
8 or 39.35.310(c) to have the employee's years of service as a noncertificated employee  
9 of a state boarding school or of a school district or regional educational attendance  
10 area determined by reference to AS 14.25.220 shall pay a contribution surcharge for  
11 that service. The amount of the surcharge is the difference between the amount the  
12 employer would have had to contribute under AS 39.35.250 - 39.35.290 for the  
13 employee when treating the employee's credited service as service earned under  
14 AS 39.35.300(c) or 39.35.310(c) less the amount the employer would have had to

1 contribute under AS 39.35.250 - 39.35.290 without treating the employee's credited  
2 service as service earned under AS 39.35.300(c) or 39.35.310(c).

3 • Sec. 2. AS 39.35.300 is amended by adding a new subsection to read:

4 (c) A noncertificated employee of a state boarding school who first becomes  
5 a member of the system on or after the effective date of this Act may, within 90 days  
6 after the employee first joins the system, make an irrevocable election under this  
7 subsection to have the years of service that the employee earns in that employment  
8 determined using the table for service on or after July 1, 1969, that is set out in the  
9 definition of "year of service" in AS 14.25.220. A noncertificated employee of a state  
10 boarding school who is an active member of the system on the effective date of this  
11 Act may, within 180 days after the effective date of this Act, make the irrevocable  
12 election. A member of the system who is an inactive member on the effective date  
13 of this Act and who is later employed as a noncertificated employee of a state  
14 boarding school may, within 90 days after beginning the subsequent employment,  
15 make the irrevocable election. An election under this subsection shall be made in  
16 writing on a form provided by the administrator. The election applies to the  
17 employee's service earned on or after the date that the administrator accepts it. An  
18 employee who makes an election under this subsection shall pay the contribution  
19 surcharge as set out in AS 39.35.160(c).

20 • Sec. 3. AS 39.35.310 is amended by adding a new subsection to read:

21 (c) A noncertificated employee of a school district or regional educational  
22 attendance area who first becomes a member of the system on or after the effective  
23 date of this Act may, within 90 days after the employee first joins the system, make  
24 an irrevocable election under this subsection to have the years of service that the  
25 employee earns in that employment determined using the table for service on or after  
26 July 1, 1969, that is set out in the definition of "year of service" in AS 14.25.220. A  
27 noncertificated employee of a school district or regional educational attendance area  
28 who is an active member of the system on the effective date of this Act may, within  
29 180 days after the effective date of this Act, make the irrevocable election. A member  
30 of the system who is an inactive member on the effective date of this Act and who  
31 later is employed as a noncertificated employee of a school district or regional

1 educational attendance area may, within 90 days after beginning the subsequent  
2 employment, make the irrevocable election. An election under this subsection shall  
3 be made in writing on a form provided by the administrator. The election applies to  
4 the employee's service earned on or after the date that the administrator accepts it. An  
5 employee who makes an election under this subsection shall pay the contribution  
6 surcharge as set out in AS 39.35.160(c).

7 \* Sec. 4. This Act takes effect July 1, 1998.

# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293  
*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

### REPRESENTATIVE TOM BRICE SPONSOR STATEMENT for CSHB 323 (L&C)

Alaska has many noncertificated employees in our schools who work nine, ten or eleven months out of the year along with thier certificated counterparts. These noncertificated employees however are not allowed to receive the full year toward retirement as their counterparts.

This bill addresses the inequity in State law and PERS system by placing noncertificated school district employees who work a comparable amount of days in the same category of certificated employees. This bill will allow those noncertificated school district employees to receive the same amount of credit toward retirement as those certificated employees who work the same amount of time and receive a full year of credit toward retirement.

The change in the PERS system, under this bill, will be supported by the employees, rather than increasing the burden to school district's.

Thank you for your consideration.





# JUNEAU SCHOOL DISTRICT

CITY AND BOROUGH OF JUNEAU

10014 CRAZY HORSE DRIVE • JUNEAU, ALASKA 99801-8529 • (907) 463-1700

March 2, 1998

To: Rep. Tom Brice  
Rep. Gene Kubina

From: The non-certificated staff  
at Juneau Douglas High School

Re: House Bill 323 & 322

We, the undersigned wholeheartedly  
support this bill

We thank you for finally  
addressing this disparity under  
which we work.

Patricia Whiting  
Linda Johnson  
Stephen Callaghan  
D.P. Stalaheer

John Massey  
Virginia M. Spivey  
Mary L. Bellamy  
W. Snyder  
Tara Cloutros

THE CITY AND BOROUGH OF JUNEAU SCHOOL DISTRICT IS AN AA/EO EMPLOYER AND EDUCATIONAL INSTITUTION



# JUNEAU SCHOOL DISTRICT

CITY AND BOROUGH OF JUNEAU

10014 CRAZY HORSE DRIVE • JUNEAU, ALASKA 99801-8529 • (907) 463-1700

John Spind  
Felix Suorak  
Jim Schlegel  
Chad Derard

Melinda C. Curtain  
Barbara Linart  
Benjamin Jackson  
Junie M. Paris

Ta Lisa

Donna Woodrow  
Judy K. Hansen  
Ode Blum

Myron Welby

Carol Allan

Quinn Lee

Linda Craig

Abby Perkins

Carl Gunn

Judy T. Gibson

Marybeth Kille

Debra R. Hayes

Marty RaganP. O. Box 7592

Dillingham, Alaska 99535

February 10, 1998

House Labor & Commerce Committee  
Juneau, AlaskaRE: H. B. #323  
"Year for School Year Retirement Credit"

Dear Legislator:

I ask for your support on the passage of H.B. #323.

I have been a secretary for the Kenai Peninsula Borough School District for the past fourteen (14) years.

During this time I have witnessed the dedication and selflessness displayed by the secretaries in the school district. Overtime is a thing of the past - but the work load keeps increasing. Many secretaries are putting in endless hours of overtime just to keep things flowing and on an even keel - while still having time to deal with students, parents, and various community and intervention agencies. There have been many times that I've put in 10-12 hour days. Some times to complete scheduling, or do grades for Parent/Teacher Conferences so the report cards will be ready for them. But mostly, it is just to keep up with the day-to-day work. (Approximately 50 hours/week - sometimes even more.)

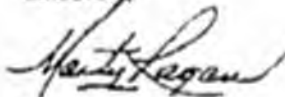
I contacted the Public Employees Retirement System recently. After deducting for the supplemental health care & indebtedness for the RIP, I would receive approximately \$270 per month. (Under PERS my credited service is 11 years towards retirement.)

A little known fact is that while we may elect to have our salaries distributed to us over twelve months instead of nine, (contrary to popular belief) we are not paid for the summer months, nor are we eligible to draw unemployment.

It is time that these dedicated professionals be given credit for their service and contribution to our students, schools, and communities by giving them a full years retirement credit for each school year served.

I would like to thank Rep. Tom Brice for sponsoring this bill and the rest of the committee for giving me a chance to voice my support for H.B. #323.

Sincerely,



Marty Ragan  
Counseling Secretary  
Nikiski High School  
Nikiski, Alaska  
(907) 776-9435

NEWBORN SCHOOL  
INSTRUCTIONAL AIDE

~~Murphy & Peterson~~

I SUPPORT HOUSE BILL 323

2/11/98

02-11-99P02:57 RCVD

I Support House Bill 323

02-11-98 11:02 REC'D

Parolee Ballot  
Custodian  
Moore School

02-11-98P02:58 RCYS

February 11, 1998

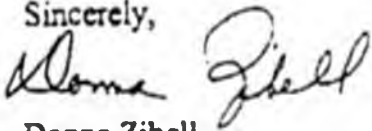
Re: House Bill 323

I would like to express my support of House Bill 323 regarding calculating credit for noncertificated employees.

Having been employed in the school system since August 1974, I favor any recognition and benefits that can be afforded noncertificated employees since they are a vital support system in our schools.

Thank you for your consideration in this matter.

Sincerely,

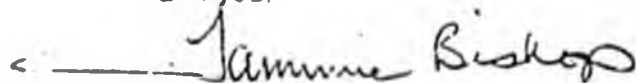


Donna Zibell  
Secretary  
Noorvik Schools

Please submit this comment to the House Labor and Commerce Committee.  
Norm Rokeberg Chair  
John Cowdry  
Bill Hudson  
Joe Ryan  
Jerry Sanders  
Tom Brice  
Bene Kubina

I urge you to support HB 323 recalculating the retirement credits for the educational support staff to receive a **FULL** year of credit for one year of work. The support staff at the schools are full time employees. We are not eligible to apply for unemployment while we are off during the summer. Teachers, administrators and School Board Members receive a **FULL** year of credit to their retirement account for each school year ~~that~~ that they work. I feel that is in only fair and equitable for the support staff in public service to receive a **FULL** year of credit in PERS. I thank you for your consideration to this bill and for passing HB 323.

Thank you.



Tammie Bishop  
PO Box 453  
Homer, AK 99603  
235-1520

wk - 235-7186

Please submit this comment to the House Labor and Commerce Committee.  
Norm Rokeberg Chair  
John Cowdry  
Bill Hudson  
Joe Ryan  
Jerry Sanders  
Tom Brice  
Bene Kubina

I strongly urge you to support HB 323 recalculating the retirement credits for the educational support staff to receive a full year of credit for one year of work. The support staff at the schools are full time employees. We are not eligible to apply for unemployment while we are off during the summer. School Board Members receive a full year of credit to their retirement account for each school year. I feel this is grossly unfair. I thank you for your consideration to this bill and for passing HB 323.

Thank you.

Emma Borok (Morris)  
PO Box 1410  
Homer, Alaska 99603  
235-8024

*Emma Borok*

*wk 235-8986*

Please submit this comment to the House Labor and Commerce Committee  
Norm Rokeberg Chair  
John Cowdry  
Bill Hudson  
Joe Ryan  
Jerry Sanders  
Tom Brice  
Bene Kubina

Please support HB 323 to recalculate retirement credits for educational support staff to receive one years credit for one years work. School support staff are full time employees that are not eligible for unemployment while not working in the summer. All other school staff receive a full years credit to their retirement for each school year worked. Also School Board members receive this credit for each school year. For each year in public service, we would like a full years credit in PERS. Thank you for passing HB 323 from your committee.

Thank you. Cindy Farrens  
PO Box 3821  
Homer, AK 99603  
235-2166

*Cindy Farrens*

The following comment is in regards to HB 323. Please submit to the house Labor and Commerce Committee:

Norm Rokeberg, Chair

John Cowdry

Bill Hudson

Joe Ryan

Jerry Sanders

Tom Brice

Bene Kubina

I urge you to support HB 323 which would allow school district employees who are under PERS to get one year's credit for each school year worked. All other PERS employees get a full year's credit for each school year worked. Also, other seasonal school district employees can apply for unemployment when they are not working. That is not an option for school support staff.

We would like a full year's credit in PERS for each year in public service. Thank you for passing HB 323 from your committee.

Daryl Farrans

PO Box 3821

Homer, AK 99603

235-2166

tel. 235-6090

Karson D. Dorvall  
Leobof A. Dorvall  
PO Box 5022  
Nikolaevsk, AK 99556-5022  
February 10, 1998

House Labor & Commerce Committee  
Representative Norman Rokeberg - Chairman  
Juneau, AK

Mr. Chairman & Committee

I write to you today to voice my support for HB323. I feel it is past time that this unfairness in the Public Employees Retirement System (PERS) is made right. I call it unfair for a number of reasons:

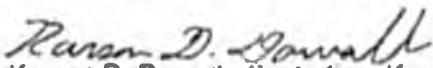
- Myself, a support employee of the Kenai Peninsula Borough School District (KPBSD), I must work 24 school years to earn a 20 year retirement. Many of my coworkers must work longer (26 - 28 years) to earn a 20 year retirement. Those employees who work less than 8hrs a day, (6 -7) even longer. I say 8 hour employees, but ask any of them and they'll tell you they put in a lot more than that, in which they receive no compensation at all.
- Being a 9 - 10 month employee it is difficult if not impossible to find work during the summer break. Conflicts with starting dates, and dates we must report back for work, make us an unlikely candidate for hire. (not all school employees run charter boats or are commercial fishers)
- Being a school district employee, we cannot collect unemployment compensation during this down time, even though we have it deducted from our checks. This period is in actuality a forced layoff, and should qualify.

The school district employees have suffered for years with minimal wage increases, while the cost of living has eroded their purchasing power. Myself, my wife and I both work, over half of my wife's paycheck goes to pay for child care, I have to work another part time job to make ends meet. Depriving my children of the quality time they deserve with their parents.

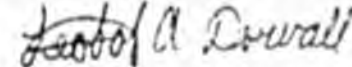
HB 323 will not solve all the problems of public employees, but it will go a long way in setting this right.

I ask that you support this Bill.

Respectfully



Karson D. Dorvall - Custodian, Kenai Peninsula Borough School District



Leobof A. Dorvall - Bilingual Instructor, Kenai Peninsula Borough School District

Author: danluba@xyz.net (Karson Dorvall) at CC2MHS1

Date: 4/28/98 6:56 PM

Priority: Normal

TO: Representative Gail Phillips at LAA\_CAP

Subject: CSHB 323

Dear Representative Gail Phillips,

Its been a while since we've been in contact with each other, Hope some time you can get away from your busy schedule and come out to Nikolaevsk for a visit. In the meantime I'd like to submit the following as written testimony on CSHB 323 which goes before the House HESS Committee tomorrow (Wednesday) at 3 pm.

Dear Committee Members,

CSHB 323 if passed will require Educational Support Employees (ESP's) employed less than 12 months to purchase retirement service credit equal to a year. The employee pays for all the costs associated with the purchase of the additional time.

This bill is not fair to the ESP's. We are the only state employee group that I know of that does not get a years credit on their retirement for a calendars year worked. A 10 month 8 hour a day employee must work 24 years to earn a 20 year retirement under the current rules in PER's.

Now its being offered (year for year) and we'll be the only group that has to pay for it. The average teacher works approximately 9 months and gets credit for a full year on their retirement, and they don't have to pay for the additional time. Why should we? It could be said that teachers have a high degree of education, so they deserve better. I mean no disrespect to the certified educational profession, But I submit that a great many ESP's have college degrees, and/or work experience that is equal to or surpasses the qualifications of the educational professionals.

The schools could not function as well as they do without the tireless efforts of Educational Support Employees, many of which put in many hours after their workday is done, receiving no compensation for it. We, by state law, can't even collect unemployment during the summer down time, even though its taken from our paychecks. Ever try to find a job when the employer knows you'll have to leave in a few weeks or months to return to your regular job? Any job that pays well enough doesn't seem interested in hiring. Construction employees collect unemployment benefits when between jobs, even if their on call. Is this fair? I say NO!

ESP's always seem to be on the bottom of the ladder in every sector of employee benefits. It is good that the state is looking to improve the situation of ESP's in their retirement program, but to charge them for it when others already get the benefit at no cost to them is unfair, and wrong.

Thank you for your time,

Sincerely,

Karson D. Dorvall

PO Box 5022

Nikolaevsk, AK 99556-5022

**HB**

**332**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 20, 1998

FURTHER REFERRALS:

Date of Committee Action: 4/30/98

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 332

HOUSE BILL NO. 332

ADOPTION PREFERENCE FOR RELATIVES

"An Act relating to adoptive placements by the Department of Health and Social Services."

recommends it be replaced with the following committee substitute \_\_\_\_\_ [ ] the same title  
 [ ] a new title

[ ] additional referral to \_\_\_\_\_ Committee

[ ] attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

[ ] fiscal note(s) \_\_\_\_\_

[ ] fiscal note(s) \_\_\_\_\_

[X] zero fiscal note(s) H+SS

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Paul D...</i>	✓			
<i>Car B...</i>	✓			
<i>Car B...</i>	✓			
<i>...</i>	✓			
<i>...</i>	✓			

CHAIR'S SIGNATURE Car B...

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. HB332

Revision Date: \_\_\_\_\_  
Title: Relating to adoptive placements  
Sponsor: James  
Requestor: House (HES)

Dept. Affected: Health and Social Services  
BRU: Family and Youth Services  
Component: DFYS Central Office  
COMPONENT SERIAL NO. 259  
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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost 10.0

**ANALYSIS:** (Attach a separate page if necessary)

This Bill has no impact on the Division of Family and Youth Services.

*5/27/98*  
Prepared by \_\_\_\_\_  
Division \_\_\_\_\_

Russ E. Webb, Deputy Commissioner  
Family & Youth Services

Phone 465-3030  
Date 04/27/98

Approved by Commissioner \_\_\_\_\_  
Agency \_\_\_\_\_

*[Signature]*  
Karen Payne, Commissioner  
Department of Health & Social Services

Date 4/27/98

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# Alaska State Legislature



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Juneau, Alaska  
99801-1182  
(907) 465-3743  
FAX (907) 465-2381

## House Of Representatives

House District 34

### *Sponsor Statement*

#### **HB 332, Adoption Preference for Relatives**

Adoption has come a long way. Only a few decades ago veiled in secrecy, adoption has matured into an acceptable, respected and very much needed component of today's society. With acceptance and education, the process of adoption is evolving from its hush-hush beginnings to the front stage of social science allowing for a more open and healthy process for both the biological parents and the children.

The State of Alaska has over 400 children waiting in the system for a permanent home who have spent, on average, 1000 days- almost 3 years – waiting to be placed. Presently, there is a preference for placement with blood relatives when foster care, rather than adoption, is at issue.

The question is why?

HB 332, Adoption Placement for Relatives, corrects this incongruity and brings Alaska up to speed with the rest of the nation with respect to open adoptions by amending AS 47.14.100(a) to read:

Absent good cause to the contrary, the Department shall place a child released for adoptive purposes with a blood relative of the child if the blood relative has requested adoptive placement of the child.

Anything we can do to help these kids is in everyone's best interest.

**HB**

**335**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 20, 1998

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2/5/98

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 335

HOUSE BILL NO. 335

UNIFORM INTERSTATE CHILD CUSTODY ACT

"An Act replacing the Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act; and amending Rules 4 and 62, Alaska Rules of Civil Procedure, and Rule 205, Alaska Rules of Appellate Procedure."

recommends it be replaced with the following committee substitute \_\_\_\_\_  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) Law

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>		✓		
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE *[Signature]* 2-5-98

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. HB 335 | \_\_\_\_\_

Revision Date (Note if correction) _____	Dept. Affected <u>Law</u>	
Title <u>"...replacing the Uniform Child Custody Jurisdiction</u>	BRU	Civil Division
Act with the Uniform Child Custody Jurisdiction and Enforcement _____	Component	Human Services
Sponsor <u>House HESS Committee</u>		
Requester <u>House HESS Committee</u>	Component Serial No.	<u>2208</u>

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

HB 335 replaces the current Uniform Child Custody Jurisdiction Act with the Uniform Child Custody Jurisdiction and Enforcement Act. This bill primarily concerns custody disputes between private parties, and will not impact the Department of Law.

Prepared by Joan M. Kasson *[Signature]*  
 Division Attorney General's Office  
 Approved by Commissioner Bruce M. Botelho, Attorney General  
 Agency Department of Law

Phone 465-5370  
 Date 1/28/98  
 Date 1/28/98

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## WHY STATES SHOULD ADOPT THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

The Uniform Child Custody Jurisdiction Act (UCCJA), approved by the Uniform Law Commissioners (ULC) in 1968 and the law in every state, has been revised. The new act, the Uniform Child Custody Jurisdiction and Enforcement Act, goes much further than simply updating the UCCJA. It also contains provisions on the enforcement of custody orders, an issue the original UCCJA did not address, and it eliminates differences between the uniform act and the federal Parental Kidnapping Prevention Act.

There are a number of reasons why every state should adopt the Uniform Child Custody Jurisdiction and Enforcement Act.

### ENHANCED RULES FOR CUSTODY DETERMINATIONS

- *Updated Home State Provisions.* The new act gives prioritization to the home state as a ground for taking jurisdiction.
- *Continuing Exclusive Jurisdiction.* A new provision has been added which provides that a state which makes the initial custody determination has continuing exclusive jurisdiction so long as a party to the original custody determination remains in that state. A state with continuing exclusive jurisdiction is the only state which can modify a custody order. If it determines that another state has a more significant connection to the child, it may relinquish its authority.
- *Emergency Jurisdiction.* The new act clarifies the provisions regarding emergency jurisdiction, allowing a court to take jurisdiction even though it is not the home state, if the child is present in the state and has been abandoned, or is subjected to or threatened with mistreatment or abuse. An order issued by a court with emergency jurisdiction is temporary.

### NEW ENFORCEMENT PROVISIONS

- *Expedited Enforcement Hearings.* At an enforcement hearing, a petitioner only needs to show a certified copy of the custody determination to be enforced, evidence of a violation by the respondent, and show the remedy sought. The court will then decide whether the remedy sought should be granted.
- *Enhanced Court Remedies.* If the enforcing court is concerned that the parent, who has physical custody of the child, will flee or harm the child, a warrant to take physical possession of the child is available.

*Duty to Enforce.* The new act provides that a court has the duty to enforce a custody determination of another state. However, a child custody order of another state is not subject to modification.

## UNIFORMITY

This act will provide uniformity of law, necessary in a time when the mobility of the American public makes it imperative to have laws regarding child custody determinations uniform from state to state.

Lack of uniformity muddies the child custody waters in many ways: it increases the costs of the enforcement action; it decreases the lack of certainty of outcome; and it often turns enforcement of a child custody or visitation order into a long and drawn out process. Every state should act quickly to adopt the Uniform Child Custody Jurisdiction and Enforcement Act.

**Sectional Summary of  
HB 335  
(Replace Uniform Child Custody  
Jurisdiction Act (UCCJA) with the  
Uniform Child Custody Jurisdiction  
and Enforcement Act (UCCJEA))**

**Section 1.** Makes technical amendments to replace existing UCCJA section numbers with the new UCCJEA section numbers.

**Section 2.** Enacts the Uniform Child Custody Jurisdiction Act.

**Article 1. Jurisdiction.**

**Proposed AS 25.30.300.** Sets mandatory standards for initial child custody jurisdiction of the Alaska court. Places a priority for "home state" of a child to assume jurisdiction over the child custody case. Existing UCCJA provides for independent and concurrent bases of jurisdiction.

**Proposed AS 25.30.310.** Sets standards for exclusive, continuing jurisdiction to make a child custody determination.

**Proposed AS 25.30.320.** Sets standards for the Alaska court's jurisdiction to modify a child custody determination.

**Proposed AS 25.30.330.** Sets standards for the Alaska court to exercise temporary emergency jurisdiction in extraordinary circumstances. Requires communication with the other state to resolve the emergency, protect the safety of the parties, and determine a period for the temporary order.

**Proposed AS 25.30.340.** Provides standards for notice and opportunity to be heard to parents and other specified persons in a child-custody proceeding. Alaska law governs who is entitled to notice. Recognizes that Alaska law governs obligations to join persons as parties and rights of persons to intervene as a party.

**Proposed AS 25.30.350.** Concerns procedures for simultaneous proceedings in courts of different states.

**Proposed AS 25.30.360.** Establishes procedures for an Alaska court to decline jurisdiction if the Alaska court determines that it is an inconvenient forum for the child custody determination and that a court of another state is in a better position to make the custody determination, taking into consideration the relative circumstances of the parties

**Proposed AS 25.30.370.** Sets standards for an Alaska court to decline jurisdiction because of wrongful conduct, such as kidnapping a child

**Proposed AS 25.30.380.** Specifies the information for parties to a child custody proceeding to submit to the Alaska court. Information includes child's address for the last five years and other proceedings that could affect the current proceeding. Each party has a responsibility to keep the information current with Alaska court. The section allows the court to protect the information against disclosure to protect the health, safety, or liberty of a party or child.

**Proposed AS 25.30.390.** Concerns the requirements of appearance of the parties and child in child-custody proceedings. This represents no major change to existing UCCJA

## **Article 2. Enforcement.**

**Proposed AS 25.30.400.** Allows an Alaska court to enforce an order made under the Hague Convention as if the order was a child custody determination.

**Proposed AS 25.30.410.** Requires an Alaska court to enforce an out-of-state order if the order was issued in substantial conformity with this chapter.

**Proposed AS 25.30.420.** Allows an Alaska court to issue a temporary visitation order to enforce a visitation schedule in an out-of-state order or to make provisions under the original order that did not have a specific visitation schedule (i.e., reasonable visitation). This order may include make-up or substitute visitation.

**Proposed AS 25.30.430.** Sets simple procedures for requesting registration of out-of-state child custody determinations. Allows a person seeking to contest the validity of a registered order to request a hearing on specified grounds.

**Proposed AS 25.30.440.** Allows Alaska court to grant relief for a registered out-of-state child custody determination that is available in Alaska court. A registered out-of-state order is not modifiable by Alaska court unless an Alaska court would have jurisdiction to modify it under this chapter.

**Proposed AS 25.30.450.** Requires Alaska court enforcing an out-of-state order to communicate to another state court if the Alaska court determines that a proceeding to modify the out-of-state order is pending.

**Proposed AS 25.30.460.** Sets out procedure and requires an Alaska court to give expedited enforcement of an out-of-state child custody determination. Provides procedures for a hearing and limited defenses to enforcement of the out-of-state order.

**Proposed AS 25.30.470.** Establishes that Alaska law sets procedures for service of petition for enforcement and order under the chapter.

**Proposed AS 25.30.480.** Establishes the scope of inquiry of Alaska court in enforcing an out-of-state child custody determination order. If a child would be endangered by enforcement of the order, the Alaska court could assume emergency jurisdiction under other provisions of the chapter.

**Proposed AS 25.30.490.** Establishes an exceptional remedy in emergency situations to allow the Alaska court to issue a warrant to take physical custody of the child, if the child is immediately likely to suffer serious physical harm or be removed from Alaska.

**Proposed AS 25.30.500.** Allows the Alaska court to award prevailing party costs, fees, and expenses to the extent authorized by court rules, unless the other party establishes that the award would be clearly inappropriate.

**Proposed AS 25.30.510.** Requires Alaska courts to enforce and not modify enforcement orders issued by other states.

**Proposed AS 25.30.520.** Authorizes court calendar priority for appeals of enforcement orders to the extent allowed for other civil appellate cases. Precludes the Alaska enforcing court from staying an enforcement order pending appeal, unless the Alaska court enters a temporary emergency order because of risk of serious mistreatment or abuse of the child.

**Proposed AS 25.30.590.** Provides definitions for petitioner and respondent.

### **Article 3. Miscellaneous Provisions.**

**Proposed AS 25.30.800.** Lists proceedings governed by other law than UCCJEA, such as adoptions.

**Proposed AS 25.30.810.** Provides procedures for international applications of this chapter to child custody determinations and foreign countries if the child custody law of the foreign country does not violate fundamental principles of human rights.

**Proposed AS 25.30.820.** Defines the binding effect of a child custody determination under this chapter made by an Alaska court.

**Proposed AS 25.30.830.** Establishes a priority for expedited court consideration of a jurisdiction issue in a child custody proceeding.

**Proposed AS 25.30.840.** Provides standards for notice to persons outside of Alaska for Alaska court to have jurisdiction over the child custody proceeding.

**Proposed AS 25.30.850.** Establishes participation in a custody proceeding does not, by itself, give the Alaska court jurisdiction over any issue for which personal jurisdiction is required. Establishes limited immunity for certain individuals while present in Alaska to participate in the proceeding.

**Proposed AS 25.30.860.** Establishes standards for communication between courts concerning a proceeding arising under this chapter.

**Proposed AS 25.30.870.** Establishes standards for taking testimony in another state for the child custody proceeding. Recognizes electronic means as an appropriate method for taking the testimony in another state.

**Proposed AS 25.30.880.** Establishes standards for cooperation between courts on child custody proceedings covered by this chapter and preservation of court records.

#### **Article 4. General Provisions.**

**Proposed AS 25.30.901.** Allows the court to give consideration to promote uniformity of the law in applying and construing the chapter.

**Proposed AS 25.30.903.** Provides a severability clause to allow remainder of chapter to remain effective, if a provision is found invalid.

**Proposed AS 25.30.909.** Provides definitions for key terms

**Section 3.** Amends the statutory short title to reflect the Uniform Child Custody Jurisdiction and Enforcement Act.

**Section 4.** Repeals provisions of Uniform Child Custody Jurisdiction Act.

**Section 5.** Provides notice of provisions to amend Rule 4 Alaska Rules of Civil Procedure regarding service in certain court actions

**Section 6.** Provides notice of provisions to amend Rule 62, Alaska Rules of Civil Procedures and Rule 205, Alaska Rules of Appellate Procedures, by prohibiting a stay, pending appeal, under certain circumstances

**Section 7.** Provide an applicability section for the chapter to address new motions in child custody proceedings.

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## UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

- A Summary -

### INTRODUCTION

In 1968, the Uniform Law Commissioners promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state had adopted this Uniform Act. This Act was designed to defeat kidnapping of children by non-custodial parents, who took their children from state to state in the hope of finding a court that would issue a favorable custodial order modifying or contradicting the court order that made them non-custodial parents. This practice was perceived as wide-spread in the decades before the promulgation of this important Uniform Act. The UCCJA operates upon novel principles that 1) establish jurisdiction over a child custody case in one state; and, 2) protect the order of that state from modification in any other state, so long as the original state retains jurisdiction over the case. If a non-custodial parent cannot take a child to another state and petition the court of that state for a favorable modification of an existing custody order, the incentive to run with the child is greatly diminished.

In 1981, Congress adopted the Parental Kidnapping Prevention Act (PKPA) for much the same purpose. The peculiarities of prior law, allowing easy modification of custody orders, were largely peculiarities in the interpretation of the Full Faith and Credit Clause of the Constitution of the United States. The Parental Kidnapping Prevention Act was an effort, largely, to put the weight of full faith and credit behind the principles of the Uniform Child Custody Jurisdiction Act. But there are some differences between the two acts, rooted in disagreements over application of jurisdictional principles. There are two main differences. The UCCJA does not give first priority to the "home state" of the child in determining which state may exercise jurisdiction over a child custody dispute. The PKPA does. The PKPA also provides that once a state has exercised jurisdiction, that jurisdiction remains the continuing, exclusive jurisdiction until every party to the dispute has exited that state. The UCCJA simply states that a legitimate exercise of jurisdiction must be honored by any other state until the basis for that exercise of jurisdiction no longer exists. In practice, there is much congruity between the two acts, but enough differences to confuse the adjudication and settlement of child custody disputes in certain cases.

Neither the UCCJA nor the PKPA address another important issue, interstate enforcement of child custody orders (including visitation provisions). Although resolution of jurisdictional problems has greatly diminished the problem of parental kidnapping, this destructive practice has by no means ceased to exist. States initiated criminal penalties for parental kidnapping, but such drastic measures have failed to eliminate the practice. Criminal penalties are, perhaps, too draconian and therefore little used. So the salutary steps taken in 1968 and 1981 need to be further augmented.