

Custody of Children: Divorce

What We Know

- › When a separating couple cannot come to an agreement on with whom a child should live, on visitation arrangements, or on which parent should make legal decisions for the child, then the court determines custody⁽¹³⁾
 - *Legal custody* refers to the parents' decision-making responsibilities toward the child, such as educational decisions, financial decisions, and decisions regarding healthcare. *Physical custody* refers to the amount of time that a child lives with each parent⁽²¹⁾
 - Research has noted a shift in the courts over the past 15–20 years away from awarding mothers sole physical custody of children to granting fathers shared custody.⁽¹⁵⁾ Shared physical custody, also referred to as shared parenting, has increased significantly since 1990 in many countries, including the United States, Australia, Denmark, Sweden, the Netherlands, and Belgium.^(15,38) Literature suggests that one of the main reasons for this shift is increasing workforce participation by mothers (i.e., there are fewer nonworking mothers than there were 15–20 years ago). Families with higher incomes are more likely to have shared custody⁽⁵⁾
- › Studies have found that children whose divorced parents share custody do not have more psychosocial problems and complaints than children under sole parental care. These results are contrary to the belief put forth by opponents of shared custody that the shared custody arrangement results in confusion and emotional distress for the children involved⁽¹⁵⁾
 - Researchers conducting a systematic review examined over 40 studies on divorce and shared custody, which for the most part found that children experienced better outcomes with shared custody when compared to sole physical custody. Although ongoing parental conflict or a poor relationship between the child and the father were shown to decrease the benefit of shared parental custody, there was no evidence that children in these situations would have fared better in a sole custody arrangement.⁽¹⁵⁾ The quality of parent-child relationships has a greater influence on child well-being than the type of custodial arrangement and can mediate the impact of parental conflict on children⁽³⁵⁾
 - In a meta-analysis of data from 19 studies, investigators reported that children who spent roughly equal amounts of time with each parent had better behavioral and social adjustment than children in sole physical custody arrangements⁽²⁵⁾
 - Researchers in a Swedish study found that children in shared custody arrangements had lower rates of internalizing and externalizing symptoms than children in sole parental care⁽⁷⁾
 - In a study that explored the role of children's personality characteristics on their well-being in different custody arrangements, researchers found that children who are conscientious may have an improved ability to self-regulate behavior and be adaptive, which can improve their ability to cope with joint physical custody. The frequent transitions can have a negative impact, however, by interfering with the child's conscientious nature, which would typically include being organized⁽²⁰⁾
 - There has been little research into the impact of separations and overnight stays on infants and toddlers. Scholars advise that, optimally, young children be able to develop in an environment that supports their attachments with both parents. Readiness for

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- overnight visits depends in part on the child having a secure attachment with both parents, and whether or not there is conflict between the parents⁽³⁶⁾
- Although research has focused on the impacts of shared custody on children, investigators report that this arrangement can also benefit mothers in terms of reducing time pressures and stress⁽³⁸⁾
- › Courts increasingly are utilizing social workers in forensic roles in child-custody proceedings⁽³⁾
- Social workers may work as mediators, assisting families to come to custody agreements outside the court process⁽³⁾
 - Social workers may be hired by courts to conduct objective evaluations of child-custody arrangements. Social workers observe parent–child interactions and can provide the courts with information about the needs and strengths of the child; parenting skills and parenting style, including verbal and nonverbal parenting behaviors; parent–child bonding or lack thereof; and communication dynamics^(3,19)
 - Social workers may be hired by attorneys to act as expert witnesses or consultants to challenge the views of the court-appointed custody evaluator⁽³⁾
- › Although legal definitions vary by state, all courts and forensic mental health experts adhere to the “best interest of the child” standard when conducting custody evaluations⁽³⁾
- The U.S. Uniform Marriage and Divorce Act establishes that factors to be considered under this standard include the child’s relationship with his or her parents, the child’s ability to adjust to living and school arrangements, and the mental and physical health of both the child and the parents(s)⁽¹⁸⁾
 - Increasingly, courts are recognizing the need for children to be represented independently to ensure that their needs and interests remain at the forefront of custody hearings, as opposed to each parent’s attorney trying to win his or her side of the case. Research supports mandating judges to appoint guardians ad litem (GAL) in custody cases, especially those involving parental alienation syndrome (PAS; see below). GALs may be psychologists, attorneys, social workers, or specially trained volunteers whose sole purpose is to be the voice of the child in court and to provide independent representation for his or her “best interest”⁽¹⁴⁾
- › The majority of parents are able to come to an agreement regarding child custody outside of court, either on their own or through mediation⁽²⁾
- Mediation is a conflict-resolution approach that assists parents who are in disagreement regarding child custody, child support, property division, or other issues to come to a resolution⁽²⁾
 - Mediators are professionals trained in conflict resolution, counseling, and/or the law⁽²⁾
 - Mediation has been shown to decrease the use of litigation to solve disputes, lower the cost of divorce, and increase parents’ satisfaction with outcomes⁽²⁾
 - To avoid role confusion, mediators need to recognize that their role is to help the parents develop a visitation and parenting plan through a democratic process rather than taking on an authoritarian role. The mediator is not meant to act as an arbitrator or custody evaluator⁽⁸⁾
 - Child-inclusive mediation is a model that was developed in Australia and subsequently implemented in New Zealand and Canada. In child-inclusive mediation, a trained specialist consults with children 5 years of age and older, then shares their input with the parents and mediator in a “therapeutic dialogue” that focuses on how the children’s needs can inform the parenting plan being developed in mediation. This model is believed to support children’s emotional needs by recognizing their thoughts and feelings while protecting them from feeling that they are making a decision about custody⁽³³⁾
- › Approximately 10% of divorces are considered high-conflict and require litigation to resolve custody issues⁽¹³⁾
- Parental conflict is more predictive of child maladjustment following divorce than the type of custody or living arrangements for the child post-divorce⁽¹⁶⁾
 - Ongoing high levels of conflict between parents can negatively affect a child’s emotional well-being and security, behavior, social skills, and academic achievement⁽¹⁶⁾
 - High-conflict custody disputes often involve a dynamic referred to as parental alienation syndrome (PAS)^(13,16,22)
 - Though the existence of PAS is disputed, it is frequently invoked in custody disputes^(13,16,22)
 - Proponents of the existence of PAS believe that the syndrome arises when one parent denigrates the other parent in an attempt to draw the child into an alliance and encourages the child to take on the views of the accusing parent⁽²²⁾
 - A parent may use several different strategies to alienate the child from the other parent. In a study, investigators found that 80%–90% of parents in high-conflict divorces with a PAS dynamic had done one or more of the following: failed to

provide the parent with important information about the child, prevented the child from visiting the other parent, made decisions without consulting the other parent, interrogated the child after a visit with the other parent, hindered telephone contact with the other parent, or sought out new alliances to further alienate the other parent (e.g., new partner, extended family, friends). In many PAS cases, the parent makes false allegations of abuse (e.g., physical, sexual, emotional) in an attempt to prevent the child from visiting the other parent⁽¹²⁾

- A cluster of psychological responses to PAS is apparent in the child, including weak rationalizations for the denigration, a lack of ambivalence or guilt about behavior toward the alienated parent, unconditional support for the accusing parent, and belief that his or her views about the alienated parent are his or her own and did not originate with the accusing parent^(13,16,22)
- Social workers should be aware of the possibility that one parent is consciously or unconsciously influencing the opinions of the child and consider this when assessing child custody options^(13,16,22)
- In a systematic review of 11 studies, investigators found that parental conflict and poor co-parenting is associated with increased anxiety, depression, somatization, and behavioral problems in children⁽³¹⁾
- › Parenting coordination is a child-focused dispute resolution process that can be used with parents experiencing high conflict.⁽²⁶⁾ Parenting coordinators are lawyers and mental health professionals who are experienced in divorce and child custody cases, particularly high-conflict, repeat-litigation cases. Parenting coordinator programs are used in various jurisdictions in the United States, Canada, and Europe^(6,26,27)
 - When a judge becomes concerned that a couple is spending too much time in court and worries about the effect on the children, the judge may order parenting coordination⁽⁶⁾
 - The goal of parenting coordination is to ensure the safety and well-being of children by teaching the family how to resolve conflicts on its own using conflict-resolution skills^(6,27)
 - Parenting coordinators receive training to help families in chronic litigation resolve day-to-day disputes without expending the court's time and resources. Parenting coordinators implement parenting plans, which establish the time-sharing custody schedule. Parenting coordinators monitor those plans and resolve conflicts as they arise^(6,27)
 - Although such programs are fairly new, preliminary data report that they have been successful in assisting families in high-conflict divorces and relieving the strain that such cases place on the courts⁽²⁷⁾
- › Child-custody disputes that take place when intimate partner violence (IPV) is present raise particular challenges with regard to the safety of the victim of IPV and the child^(10,13)
 - IPV is a pattern of controlling behavior and physical, sexual, and/or emotional abuse by a current or former intimate partner⁽¹⁰⁾
 - The imbalance of power between the victim and the perpetrator in relationships involving IPV makes safe, fair negotiations regarding child custody unlikely⁽¹⁰⁾
 - Risk of IPV increases during divorce proceedings; IPV is present in 50% to 80% of divorcing families referred by courts to mediation programs⁽¹⁶⁾
 - Children often observe IPV between parents. Child abuse is present in 30% to 70% of families in which IPV occurs⁽¹³⁾
 - Women are at an increased risk of violence, including homicide, during and immediately following separation
 - Female victims of IPV who have children are likely to have ongoing contact with the perpetrator^(10,13)
 - Joint custody and cooperative parenting may be contraindicated because of safety concerns for the mother⁽¹⁰⁾
 - Mediation, parent education classes, and other interventions that emphasize parental cooperation may not be appropriate⁽¹⁰⁾
 - Researchers have found that IPV often is minimized or overlooked by custody evaluators⁽³⁰⁾
 - In the United States, all states mandate that IPV be taken into consideration when determining custody arrangements, although this mandate is given different weight from state to state^(40,41)
 - Many states specify that it is a “rebuttable presumption” that it is not in the best interest of a child for custody to be granted to a perpetrator of IPV (that is, if the perpetrator of violence is seeking custody of a child, he or she must present evidence that rebuts this presumption)
 - In the majority of the remaining states, IPV is a mandatory factor that must be considered in best-interest determinations
 - In the remaining states, state law specifies that IPV or the effects of IPV on the child be considered

- The majority of U.S. states have “friendly parent” laws pertaining to custody decisions. In these states, the parent more likely to support the child’s relationship with the other parent is more likely to be awarded custody. Only eight states with “friendly parent” laws also have legislation that includes an exemption for cases involving IPV. Investigators have found that in states with friendly-parent laws and no exemption for IPV, perpetrators of IPV are more likely to be awarded sole or joint custody, even when state law also includes the rebuttable presumption provision⁽⁴¹⁾
- The Family Law DOORS (Detection of Overall Risk Screen) is a recently developed framework specifically designed for screening for, evaluating, and responding to safety risks after separation, as well as assessing developmental risks to infants and children; initial validation and reliability data have been promising⁽³²⁾
- In cases involving IPV, child safety should be prioritized over parental rights in decisions regarding custody and visitation. The American Professional Society on the Abuse of Children (APSAC) published a position paper in 2016 regarding IPV and child maltreatment allegations in divorce proceedings that recommended:⁽²⁴⁾
 - Allegations of child maltreatment should be referred to mandated authorities for investigation (i.e., child protective services and/or law enforcement)
 - Comprehensive family evaluation by a qualified mental health professional incorporating multiple sources of information (e.g., interviews with family members and collaterals, document review, screening measures and psychological testing) may be warranted to determine the likelihood of interpersonal violence
 - When it is determined that interpersonal violence is likely, in most cases it is best practice for the non-violent parent to be granted custody; decisions regarding visitation should take into consideration the severity of violence and other risk factors
- For more information regarding IPV, please see the series of *Quick Lessons* on intimate partner violence
- › Research shows that the amount of time spent with a parent is less important to the child’s well-being than the quality of the time the child spends with the parent and the quality of the relationship between the parents^(16,21)
- › If regular contact decreases over time, children may lose their relationship with the noncustodial parent, usually the father⁽¹⁶⁾
 - Noncustodial fathers express feeling grief over the loss of contact with their children and demeaned and disenfranchised after separation, making it difficult for them to maintain ongoing relationships with their children⁽¹⁶⁾
 - Children in shared custody arrangements are less likely than children in sole parental care to experience loss of contact with a parent; international data indicate that loss of contact after separation decreased by 12–30% in countries in which shared custody has become more common⁽³⁹⁾
 - Research indicates that active involvement of nonresidential fathers post-divorce is linked to a more positive adjustment for school-aged children as well as better academic performance, social skills, and communication skills⁽¹⁾
- › Analysis of data from the American Community Survey showed that in 2013 there were approximately 690,000 same-sex households in the United States, 18% of which (122,000) had children living in the home⁽²⁹⁾
 - There is not enough research to indicate whether divorce in same-sex couples will result in special challenges for children. Children of same-sex couples may need specialized support groups as they navigate the difficulties of divorce between same-sex parents⁽⁹⁾
 - There is minimal evidence-based guidance about how social workers can work effectively with same-sex couples who are divorcing and their children. It is important for social workers to develop new ideas and interventions and share those that have been successful with the social work community through journal articles, workshops, and conference presentations⁽⁹⁾

What We Can Do

- › Develop an awareness of your own cultural values, beliefs, and biases and develop knowledge about the histories, traditions, and values of your clients. Adopt treatment methodologies that reflect the cultural needs of the client^(4,11,23)
- › Internationally, social workers should practice with awareness of and adherence to the social work principles of respect for human rights and human dignity, social justice, and professional conduct as described in the International Federation of Social Workers (IFSW) Statement of Ethical Principles, as well as the national code of ethics that applies in the country in which they practice. For example, in the United States, social workers should adhere to the National Association of Social Workers (NASW) Code of Ethics core values of service, social justice, dignity and worth of the person, importance of human relationships, integrity, and competence; and become knowledgeable about the NASW ethical standards as they apply to custody of children after divorce and practice accordingly^(11,34)
- › Learn about child custody in divorce proceedings so you can accurately assess your clients’ personal characteristics and health/mental health education needs; share this information with your colleagues

- Understand the role you are playing in the custody proceedings, clearly explain your role to your clients, and adhere to professional boundaries and ethical standards
 - Help parents acknowledge the importance of both parents in the child's life. Attempts by one parent to disrupt the relationship of the child with the other parent should be addressed⁽¹³⁾
 - When making custody recommendations, thoroughly evaluate both the effects of IPV on the child and potential ongoing safety concerns for the mother and the child⁽¹⁰⁾
 - Recognize and validate the role that noncustodial fathers play in their children's lives and support the maintenance of the father-child relationship⁽¹⁾
 - Many countries have mandatory reporting laws that require specified professionals to report suspicions of child abuse to a designated authority. In the United States, social workers are required to report suspicions of child maltreatment to their state's designated child protective services (CPS) agency. Understand the reporting laws in your area
 - Details of each state's statutes are available at the U.S. Department of Health and Human Services website, <https://www.childwelfare.gov/topics/systemwide/laws-policies/state/>
- › Learn about interventions that can be used to improve parent-child and co-parenting relationships and refer clients to appropriate services when indicated
- Parent education programs can be used to help divorced parents develop a better co-parenting relationship⁽²⁸⁾
 - Family-based treatment can be used to assist families in which a child refuses contact with one parent. Family-based treatment often incorporates cognitive-behavioral techniques that help parents to understand how thoughts influence behaviors, as well as coaching and modeling⁽³⁷⁾
 - Solution-focused and family narrative approaches can be implemented by parent coordinators and co-parenting coaches⁽²⁶⁾
- › Acknowledge that discrimination and bias exist for lesbian, gay, bisexual, and transgender (LGBT) parents when child custody is in dispute⁽¹⁷⁾
- Encourage LGBT couples to put their parenting agreements in writing, including the parenting rights that the nonbiological parent has. This establishes a written record of both parents' roles should a custody dispute arise at a later date⁽¹⁷⁾
 - Provide education for judges, attorneys, and other court officials based on current research indicating that a parent's sexual orientation by itself is not detrimental to the best interest of the child⁽¹⁸⁾

DSM 5 Codes

- › The DSM 5 chapter on *Other Conditions That May Be a Focus of Clinical Attention* includes V codes that may apply to children affected by parental divorce and custody:
- V61.20 Parent-Child Relational Problem
 - V61.29 Child Affected by Parental Relationship Distress

Coding Matrix

References are rated using the following codes, listed in order of strength:

M Published meta-analysis	RV Published review of the literature	PP Policies, procedures, protocols
SR Published systematic or integrative literature review	RU Published research utilization report	X Practice exemplars, stories, opinions
RCT Published research (randomized controlled trial)	QI Published quality improvement report	GI General or background information/texts/reports
R Published research (not randomized controlled trial)	L Legislation	U Unpublished research, reviews, poster presentations or other such materials
C Case histories, case studies	PGR Published government report	CP Conference proceedings, abstracts, presentation
G Published guidelines	PFR Published funded report	

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