

## What is Best for the Child? Custody Standards and Social Science Research

**By Joanna Bunker Rohrbaugh, Ph.D.**

*Harvard Medical School &  
Rohrbaugh Associates, Cambridge*

*Divorce Center Briefs*, November 2007

Divorce professionals and parents all want what is best for the child. But what, exactly, is best? To answer this question we need to consider the factors involved in current custody standards, research about children's responses to divorce, and recent research about specific aspects of parenting plans.

### **Custody Standards**

Most states have adopted the definition of "Best Interest of the Child" contained in the Uniform Marriage and Divorce Act of 1979 (UMDA), which includes five factors:

1. Parent or guardian's wishes re. custody
2. Child's wishes re. custody
3. Child's relationship with his/her parent(s), siblings, and other significant people
4. Child's adjustment to home, school, and community
5. Mental and physical health of all family members

The UMDA standard remains vague because it does not specify what other relevant factors to include, how to weigh the various factors, and whether to focus on the past, present, or future of the child. Legal scholars and courts have responded to this ambiguity by developing additional concepts and standards:

- **Psychological or de facto parent**, who fulfills the functions of a parent and has a parental emotional relationship with the child.
- **Primary caretaker**, who has been primarily responsible for the major caretaking tasks pre-divorce.
- **Approximation standard**, which proposes that physical custody be based on each parent's proportion of caretaking time pre-divorce.
- **Friendly parent rule**, which specifies that if joint custody is not appropriate, sole custody should be awarded to the parent who is more likely to facilitate the non-custodial parent's relationship with the child.

In actual practice, the professional organizations and courts working with divorcing families use an expanded version of the best interests model that

incorporates all of the factors proposed by the Best Interests, Psychological Parent, Primary Caretaker, and Approximation Standards. This means that divorce professionals must consider *all* of these factors in thinking about what would be best for the children in each family.

### **Social Science Research on Children's Responses to Divorce**

- **Infants and toddlers** often develop disturbed eating and sleeping patterns post-divorce due to anxiety and fear of separation from both parents. They tend to be resistant to parent exchanges and are extremely sensitive to tension, anger, and violence between their parents. These children do best when they spend time with each parent at least 3-4 times per week with a predictable schedule that gives each parent a chance to do basic caretaking tasks such as feeding, bathing, playing, soothing, holding, and napping.
- **Preschool children (age 3-5)** often feel responsible for the divorce, fear that one or both parents will abandon them, and try to say what they think each parent wants to hear. Preschoolers may be fearful and anxious when not with regular caretakers, become upset during transitions from one parent to another, and occasionally show regressive behavior. At this age children still do best with daily contact with both parents and continue to need a lot of consistency and predictability in their schedule, but they can usually tolerate being away from either parent for 2 or 3 days at a time and find it reassuring to talk with the absent parent on the telephone. Structured time with age-peers, without the parents, is also beneficial to preschool children.
- **Children in elementary school (age 6-9)** adapt easily to multiple separations from their parents, different parenting styles, and two residences. They are also apt to feel torn between the parents, however, and to experience intense longing and worry about whichever parent is not currently with them. Although it is still important for the child to see both parents frequently, early school children can sustain longer periods of separation that will minimize the number of transitions between parents each week.
- **Middle school / Pre-teen children (age 10-12)** have a better grasp of time and planning than do early school children, and can better understand and tolerate different parental rules and values. Pre-teens are still very rule-bound and apt to see people as all good or all bad, however, and hence tend to perceive the divorce in terms of the good vs. the bad parent. A variety of parenting plans work well with this age group as long as the child has frequent contact with both parents and both parents respect the child's preferences and support the child's increasing independence.
- **Adolescents (age 13-18)** begin to see others in terms of complex, abstract,

stable characteristics, and also begin to experiment with and to understand feelings and sexuality in relationships. One of the main challenges for this age group is to develop self-regulation in the face of pressure from their peers, school, and society. At this age, parenting plans need to support the child's growing independence while still maintaining basic structure and close contact with both parents. Parents should begin to negotiate time directly with the child and continue inter-parental communication, especially about curfews, driving, dating, and overnights away from both homes.

### **Social Science Research on Parenting Plans**

Three of the most important issues are (1) inter-parental conflict, (2) joint custody, and (3) overnights.

- **Inter-parental conflict** is a complicated phenomenon; to assess it one must consider:
  - **Type of conflict:** legal, attitudinal, or interpersonal
  - **Areas** where conflict is focused
  - **Level** or severity of conflict
  - **Timing** of conflict
  - **Function** of conflict in family – who initiates and why
  - **Understanding of conflict** displayed by each party.

In general, the more severe, chronic, and widespread the conflict has been the less contact there should be between the parents, and the less flexible the parenting plan can be.

- **Joint custody** is preferred by many courts, but the initial research indicates that taken alone, neither joint legal nor joint physical custody has a significant effect on child adjustment. The two crucial findings are:
  - ◇ Extensive parenting time with the father (or non-residential parent) is beneficial to the child.
  - ◇ Low parental conflict is essential to the success of both legal and physical joint custody.
- **Overnights** for children under 6 continue to be controversial, despite research findings that overnights increase father involvement, which in turn is associated with better child adjustment.

### **Summary**

Without considering the custody standards alongside the social science research on children of divorce, we cannot know what custody arrangement would be best for each child or family. In order to arrive at a gender-neutral parenting plan that

will be most beneficial in each case, it is important to examine the factors outlined above along with any other relevant issues such as diversity in family structure, relocation, alienation/estrangement, parental abduction, substance abuse, domestic violence, and child abuse and neglect. Cooperation among divorce professionals specializing in legal and mental health issues is also essential to the development and implementation of a custody and parenting plan that is best for each child and each family.

For more detailed information about this topic, see Dr. Rohrbaugh's forthcoming book, *A Comprehensive Guide to Child Custody Evaluations: Mental Health and Legal Perspectives*. NY: Springer, 2008.

© 2007, Joanna Bunker Rohrbaugh, Ph.D.