

Senator West SB 849 - Child Custody Parenting Time

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Position: FAV

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Vice Chair, Baltimore County
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March 10, 2022
Senate Judicial Proceedings Committee
The Honorable William C. Smith Jr.
2 East Miller Senate Building
Annapolis, MD, 21401

Re: SB 849 - Child Custody – Legal Decision-Making and Parenting Time

Dear Chairman Smith and members of the Committee,

Under Maryland law, the courts resolve child custody disputes based on a determination of what is in the child's best interests. The courts determine best interest by a series of factors from parent fitness and reputation, child preference and health, as well as separation length and opportunity of visitation.

Traditionally, when one parent was granted custody of a minor child, the other parent would generally be awarded visitation rights. In 1984, the Court of Appeals first recognized and applied the concept of "joint custody" in *Taylor v. Taylor*. The ruling explained that, within the meaning of "custody" are the concepts of "legal" and "physical" custody. "Legal custody" is defined as the right and obligation to make long-range decisions involving the education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare. "Physical custody" means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is with the parent having such custody.

Senate Bill 849 alters provisions of law relating to child custody and visitation proceedings and establishes numerous factors for courts to consider in cases involving legal decision making and parenting time. "Legal decision making" and "parenting time" are analogous of "legal custody" and "physical custody" respectively. The Bill also establishes that a court may award legal decision making or parenting time to one parent or jointly to the parents. No parent is presumed to have any right to legal decision making or parenting time that is superior to the right of another parent. The bill also specifies that a parent is a biological parent, an adoptive parent, or an individual a court has deemed to be a de facto parent.

Furthermore, Senate Bill 849 establishes a new subtitle specifying numerous factors for judicial consideration in cases involving legal decision making and parental responsibility. The purpose of the provisions includes (1) promoting stability and long-term health and welfare for children by specified methods; (2) providing children with physical and emotional security and protection from exposure to conflict and violence; and (3) providing for an expeditious, thoughtful, and consistent process for decision making by courts to protect the best interests of children.

This Bill is a comprehensive addition to child custody decisions which will further ensure the safety and prosperity of young Marylanders with separated parents.

I appreciate the Committee's consideration of Senate Bill 849 and will be happy to answer any follow-up questions the Committee may have.

SB 849 FAV House of Ruth.pdf

Uploaded by: Dorothy Lennig

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TESTIMONY IN SUPPORT OF SENATE BILL 849

March 10, 2022

DOROTHY J. LENNIG, LEGAL CLINIC DIRECTOR

House of Ruth is a non-profit organization providing shelter, counseling, and legal services to victims of domestic violence throughout the State of Maryland. The House of Ruth Domestic Violence Legal Clinic has offices in Baltimore City, Baltimore County, Prince George's County, and Montgomery County. Senate Bill 849 requires the court, in determining the appropriate allocation of legal decision making or parenting time between the parties, to consider certain factors. **We urge the Senate Judicial Proceedings Committee to favorably report on Senate Bill 849.**

SB 849 codifies the factors that courts must consider when making decisions about how to allocate "parenting time" and "legal decision making" authority. These terms would replace "custody" and "visitation" in an effort to better describe the rights and responsibilities of parents vis-à-vis their children. Currently, determinations regarding children are made based on factors set forth in several Maryland appellate cases. While attorneys are able to read these appellate decisions and determine how the factors apply to the facts of a particular case, most unrepresented litigants would have difficulty finding the right cases and analyzing them appropriately. Thus, unrepresented litigants are disadvantaged in their ability to present the testimony and evidence a court needs to render a decision. Codifying the factors in a single statute makes this information accessible to everyone. With passage of this bill, Maryland would join the majority of states that statutorily clarify how courts are to make determinations regarding children.

SB 849 rests on the premise that neither parent is presumed to have any right to legal decision making or parenting time that is superior to the right of the other parent, and emphasizes that judges are to focus on the needs of an individual child and the parents' respective abilities to meet those needs. SB 849 ensures that child access cases are not determined in cookie-cutter fashion, but rather that each child and family's situation is judged on its own merits based on the needs of the children and the resources of the family.

The House of Ruth urges the Senate Judicial Proceedings Committee to report favorably on Senate Bill 849.

SB 849- FAV - Women's Law Center of MD.pdf

Uploaded by: Laure Ruth

Position: FAV

BILL NO.: Senate Bill 849
TITLE: Family Law – Legal Decision Making and Parenting Time
COMMITTEE: Judicial Proceedings
DATE: March 10, 2022
POSITION: **SUPPORT**

Senate Bill 849 would provide a much needed overhaul and update to our custody laws in Maryland. The Women’s Law Center supports Senate Bill 849 because it codifies existing Maryland case law regarding custody determinations using the best interests of the child standard. It would also make language changes to better identify and support the relationships between parents and children. SB 849 is the revised product of a more than one year Child Custody Decision-Making Commission that by a majority agreed the “best interests of the child” standard remains the best way for courts to make custody decisions. The language of this bill is modified from prior years’ efforts, to reflect language used in the now mandatory parenting plans.

Currently, there is no statute that sets out the factors a court must consider in making a custody determination. Codifying case law, especially for self-represented litigants, would be of great benefit to our litigants and courts. No current statute clearly articulates all factors to be considered. Judges, lawyers and litigants must interpret case law and do not have the benefit of a legislative description of the factors to be considered. This is particularly problematic for self-represented litigants who are hampered in their ability to appropriately present their case for custody and/or visitation without clear and accessible law. In some jurisdictions, as many as 80% of custody cases have one or both parties unrepresented by an attorney. Senate Bill 849 incorporates standards developed by Maryland courts in case law into statutory provisions and carefully outlines the mandatory and non-mandatory factors that a court considers, as well as factors a court may not consider. It also updates our laws to reflect society today. *At the very least*, changing the language of child access determinations would benefit families in Maryland and perhaps change the dialogue and attitudes. Terms such as “visitation” support outdated thoughts about parenting, and do not help parents to move forward in a healthy manner.

Senate Bill 849 would not preclude a court from ordering joint legal and/or shared physical “custody.” Instead, by focusing always on the impact of child access arrangements on the children involved in a case, SB 849 recognizes, as does current case law, that custody decisions should be child focused, and that each case is unique and requires an individualized evaluation of what is in the best interests of the child. The Women’s Law Center recognizes and deeply respects the benefits of having both parents actively involved in a child’s life. However, it is appropriate only when the parents are able to work together in the best interests of the child, but can be damaging and dangerous in inappropriate situations, such as where there is domestic violence.

For these reasons, the Women’s Law Center urges a favorable report on Senate Bill 849.

The Women’s Law Center of Maryland is a private, non-profit, membership organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change.

SB 849_FJLSC_fav.pdf

Uploaded by: Lindsay Parvis

Position: FAV

To: Members of The Senate Judicial Proceedings Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: March 10, 2022

Subject: Senate Bill 849:
Child Custody – Legal Decision-Making and Parenting Time

Position: FAVORABLE

The Maryland State Bar Association (MSBA) FJLSC **supports Senate Bill 849 – Child Custody – Legal Decision-Making and Parenting Time**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

In 2013 the General Assembly convened the Commission on Child Custody Decision Making. The Commission was charged with studying child custody decision-making and offering recommendations to improve and bring statewide uniformity to the process of custody determinations by courts. Dozens of experts met over 90 occasions to examine current procedures, psychological research, process in other jurisdictions and best practices. SB 849 is an outcome of the efforts of the Commission.

In the Final Report issued December 1, 2014, the Commission set forth ten “guiding principles” that were approved by the Commission. The first of these principals was:

The need for a Maryland Custody Decision-Making Statute providing a clear, consistent, predictable, gender-neutral process guiding custody determinations for litigants, lawyers, and judges, focusing on factors that affect a child’s long-term adjustment, including

significant regular contact with each parent, parenting quality, a child's developmental needs, the quality (conflict or not) of the relationship between the parents or parent figures, the parents' psychological adjustment, and a child's need to maintain significant relationships. (Commission on Child Custody Decision Making, Final Report, p.8)

Currently, determinations regarding child custody are made based on factors set forth in several Maryland appellate cases. In order to know what testimony and evidence to present to a court in support one's claim for custody, a litigant has to identify the correct t appellate decisions and be able to distill the legal holding of the case and correctly apply it to the facts of their own case. While this may be fairly straightforward for experienced family law attorneys, most unrepresented non-lawyer parents would find this to be a herculean task. Further, the appellate decisions at issues are decades old and not necessarily reflective of today's families and the modern demands of parenting. SB 849 which seeks to codify the factors that a court must consider when deciding custody and parenting time issues, makes this information available and accessible to all litigants and reflects the best practices regarding such decisions.

SB 849 rests on the premise that neither parent is presumed to have any right to custody or parenting time that is superior to the right of the other parent. SB 849 sets forth a uniform method for courts to analyze the circumstances of each individual child and family and make decisions that are in the best interest of those individual children. This is the approach that will best protect the health, safety and welfare of Maryland children.

SB 849 also codifies the use of the term "parenting time" instead of physical custody, access or visitation with one's own child as well as "legal decision-making" instead of legal custody. These terms are already widely in use as the laws have already been changed over the past several years to require submissions to the court of proposed parenting plans using this terminology by litigants throughout Maryland. Thus, SB 849 also serves the important function of codifying those terms so our family law code will be consistent and less confusing.

SB 849 represents thousands of hours of analysis by leading experts in a variety of disciplines related to children and the legal processes used to determine custody issues. SB 849 is an important evolution in the way Maryland courts make decisions regarding children.

For the reason(s) stated above, the MSBA FJLSC **supports Senate Bill 849 and urges a favorable committee report.**

Should you have any questions, please contact Michelle Smith at 410-280-1700 or msmith@lawannaplois.com or Lindsay Parvis at 240-399-7900 or lparvis@jgllaw.com.

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Testimony Supporting Senate Bill 849
Lisae C. Jordan, Executive Director & Counsel
March 10, 2022

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes the Sexual Assault Legal Institute (SALI), a statewide legal services provider for survivors of sexual assault. MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence in the State of Maryland. We urge the Judicial Proceedings Committee to report favorably on Senate Bill 849.

Senate Bill 849 – Child Custody – Legal Decision Making and Parenting Time

This bill codifies and updates Maryland's law regarding custody. It continues to include important protections for survivors of child sexual and physical abuse, child neglect, and domestic violence.

SB849 maintains and recodifies the current §9-101 and §9-101.1 which require that judges consider prior abuse against a child or parent of a child, respectively. Under the new §9-104 (formerly §9-101), if a court has reasonable grounds to believe that a child has been abused or neglected, the court must determine whether the abuse or neglect is likely to occur again. Unless the court specifically finds that there is no likelihood of further abuse or neglect, then the court is required to deny legal decision making or parenting time except for a supervised parenting time arrangement that assures the safety and physiological, psychological, and emotional well-being of the child.

The new §9-105 (formerly §9-101.1) imposes similar requirements when one party has abused the other parent of the party's child, the party's spouse, or a child residing within the household. Under this provision, courts are also required to make legal decision making or parenting time arrangements that best protect the child who is the subject of the proceeding and the victim of abuse.

Importantly, SB849 does not create a presumption for sole or joint custody, but maintains a best interests of the child standard as the touchstone for decision-making. Judges should have the discretion – and the duty – to consider all factors related to the best interests of a child. This child-centered focus should not be changed with a presumption.

We also note that SB41 would enact additional clarification to 9-101 and provide clear focus on the needs of survivors of child sexual abuse, intimate partner rape, and other family violence. MCASA appreciates and supports these policy goals and views the bills as complimentary.

**The Maryland Coalition Against Sexual Assault urges the
Judicial Proceedings Committee to report favorably on Senate Bill 849**

SB 849_MNADV_FAV.pdf

Uploaded by: Melanie Shapiro

Position: FAV



BILL NO: Senate Bill 849
TITLE: Child Custody - Legal Decision Making and Parenting Time
COMMITTEE: Judicial Proceedings
HEARING DATE: March 10, 2022
POSITION: **SUPPORT**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue a favorable report on SB 849.**

Senate Bill 849 codifies existing Maryland case law regarding custody determinations using the best interests of the child standard. There is no current statute that encompasses or delineates the factors a court must consider for custody determinations. Codifying factors will be especially beneficial to pro se litigants who would have the benefit of clear statutory language outlining the factors a court will and will not consider since they may not have access to or understanding of appellate case law.

Senate Bill 849 recognizes, as does current case law, that custody decisions should be child focused. There is no custody presumption in SB 849. Neither parent is presumed to have any right to legal decision making or parenting time that is superior to the right of the other parent. MNADV supports the premise that the court should be focused on each family and child's unique circumstances and needs when making custody determinations. Custody decisions should be made absent any presumptions and by carefully weighing all the factors. In families where there is domestic violence it may or may not be in a child's best interest to have both parents actively involved in a child's life, a court can only reach that decision after careful evaluation of the factors in SB 849.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges a favorable report on SB 849.**

Equal shared parenting research.pdf

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Position: FWA

Social Science and Parenting Plans for Young Children: A Consensus Report

Richard A. Warshak

University of Texas Southwestern Medical Center, with the endorsement of the researchers and practitioners listed in the Appendix

Two central issues addressed in this article are the extent to which young children's time should be spent predominantly in the care of the same parent or divided more evenly between both parents, and whether children under the age of 4 should sleep in the same home every night or spend overnights in both parents' homes. A broad consensus of accomplished researchers and practitioners agree that, in normal circumstances, the evidence supports shared residential arrangements for children under 4 years of age whose parents live apart from each other. Because of the well-documented vulnerability of father-child relationships among never-married and divorced parents, the studies that identify overnights as a protective factor associated with increased father commitment to child rearing and reduced incidence of father drop-out, and the absence of studies that demonstrate any net risk of overnights, policymakers and decision makers should recognize that depriving young children of overnights with their fathers could compromise the quality of developing father-child relationships. Sufficient evidence does not exist to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers. The theoretical and practical considerations favoring overnights for most young children are more compelling than concerns that overnights might jeopardize children's development.

Keywords: child custody, children's best interests, joint custody, overnights, shared parenting

One hundred and ten researchers and practitioners have read, provided comments, and offered revisions to this article. They endorse this article's conclusions and recommendations, although they may not agree with every detail of the literature review. Their names and affiliations are listed in the [Appendix](#).

Social science provides a growing and sophisticated fund of knowledge about the needs of young children, the circumstances that best promote their optimal development, and the individual differences among children regarding their adaptability to different circumstances, stress, and change. Consequently, research focused on children whose parents never married, or whose parents separated or divorced, should inform guidelines to advance the welfare and define the best interests of those children; indeed, policymakers and practitioners in family law look to that research for such information. But the road from laboratories to legislatures and family law courtrooms is hazardous—fraught with potential for misunderstandings, skewed interpretations, logical errors, even outright misrepresentations. The hazards can be traced, in large measure, to differences between science and advocacy.

Scientific approaches to a literature review aim for a balanced, accurate account of established knowledge and of unresolved issues that require further investigation. When there are discrepan-

cies among findings, scientists strive to understand the reason for the discrepancies, and to assess the strength of the research designs and methods. By nature, scientific knowledge is incomplete; thus, not all findings and conclusions are equally trustworthy. Hence the need for balanced, accurate reviews. Advocacy approaches are recognizable by certain core features: Advocates select literature for the purpose of promoting a particular agenda, and ignore or minimize findings that fail to support the desired conclusions; they distort findings toward the advocate's position; and they use a variety of polemics, loose logic, and emotional appeals to build a persuasive case. With respect to critical thinking about research, [Meltzoff \(1998\)](#) writes the following:

“Research shows” is one of the favorite expressions of psychologists who are called on by the media to express their professional opinions on a wide range of topics, who are asked to consult with or testify before lawmakers about social issues that affect public welfare, or who are relied on to give expert counsel to other health service providers or to educators. Research psychologists carry a heavy burden of responsibility for assuring the accuracy of their claims about their results. In turn, psychologists who cite or apply the research findings of others share their responsibility. They have an obligation to use their critical reading and evaluation skills in reviewing a study before they cite it as evidence that supports a point of view and before they apply the findings in their clinical work. (p. 9)

The purposes for this document are to provide the family court system—including lawmakers, mediators, decision-makers, parents, guardians ad litem, child custody evaluators, and therapists—with an overview of the research on parenting plans for children under the age of four years whose parents live apart, and to provide empirically supported guidelines that reflect a consensus among

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I appreciate the valuable feedback to a draft provided by William V. Fabricius.

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leading researchers and practitioners about the implications of that research for policy and practice. It is not possible in the limited space here to offer a comprehensive review and analysis of that literature, although many published research articles and scholarly literature reviews are discussed.

Richard A. Warshak prepared the draft of this consensus document. The endorsers reviewed the draft and offered suggestions that were incorporated into the final manuscript. It is important to acknowledge that every endorser may not agree with every detail of the literature review. The endorsers are an international group of highly accomplished researchers and practitioners. This interdisciplinary group includes prominent representatives from the fields of early child development, clinical and forensic psychology, psychiatry, sociology, social work, and counseling. Many head their university departments, edit professional journals, and have served in leadership positions in professional associations.

Certain events raised awareness of the need for this consensus statement on parenting plans for young children. Advocates are promoting a report issued by an Australian government agency (McIntosh, Smyth, & Kelaher, 2010) as a basis for decisions regarding parenting plans for children of preschool age and younger. Accounts of the report appearing in the media, in professional seminars, in legislative briefs, and in court directly contradict the actual data, overlook results that support opposite conclusions, and mislead their audience.

A “background paper” describing the Australian report, posted on the Internet (McIntosh & the Australian Association for Infant Mental Health, 2011), illustrates all three characteristics. We give brief examples here followed by a more complete review below. An example of contradicting the actual data is seen in the following quote, into which we have inserted the actual statistical means from McIntosh et al. (2010, p. 133, Figures 4–5) to show how the description contradicts the findings. “Babies under two years who lived one or more overnights a week with both parents [$M = 2.5$] were. . . more irritable. . . than babies who had less [$M = 2.2$] or no [$M = 2.6$] overnight time away from their primary caregiver” (p. 2). (Note that the irritability score for babies with no overnights, that is, with daytime only contacts, is slightly higher than the score for babies who spent one or more nights per week with their other parent.) An example of selective reporting of other findings occurs in the following statement: “the only other study of young infants in overnight care [was] conducted by Solomon and George” (McIntosh & the Australian Association for Infant Mental Health, 2011, p. 2). We discuss below the other studies of young infants in overnight care that were available in 2011.

Advocates’ efforts against overnight parenting time for preschool children have generated confusion and uncertainty about where the scientific community stands on these issues. This document, begun in January 2012, is an attempt to stem the tide of this misinformation before this advocacy becomes enshrined in professional practice and family law.

Discussions of parenting plans for young children in normal situations concern three main issues. First, should young children’s time be concentrated predominantly under the care and supervision of one parent, or should their time be more evenly divided between parents? The professional literature and the law variously label as shared or joint, physical or residential custody, (as distinguished from sole physical custody) divisions of a child’s time between homes that have no greater disparity than 65%–35%. Second,

should young children spend nights in each parent’s home, or should they sleep in the same home every night? Nearly all shared physical custody schedules include overnights, but not all children who spend overnights in both homes spend at least 35% time in each home. Third, if a parent is designated with the status of a young child’s *primary parent*, are the benefits to the child of involvement with the other parent diminished or erased if the parents disagree about the parenting plan, or if one or both parents feel great discomfort or hostility toward the other? Different answers to these three questions reflect different assumptions about the roots of parent–child relationships, and about the nature of contact necessary to secure healthy parent–child relationships.

At the outset we want to underscore that our recommendations apply in normal circumstances. They do not extend to parents with major deficits in how they care for their children, such as parents who neglect or abuse their children, and those from whom children would need protection and distance even in intact families. Also, our recommendations apply to children who have relationships with both parents. If a child has a relationship with one parent and no prior relationship with the other parent, or a peripheral, at best, relationship, different plans will serve the goal of building the relationship versus strengthening and maintaining an existing relationship.

Primary Parent Versus Equal Status Parents

Opposition to shared and overnight parenting for preschool children rests on *monotropy*, a concept proposed but later abandoned by John Bowlby (1969). Monotropy is the idea that infants form attachment relationships (defined as enduring affectional ties between one person and another across time and space) with a single caregiver before all other important relationships and that this first relationship serves as a foundation and template for all subsequent attachment bonds. This view posits that infants’ early relationships are hierarchically arranged with one primary relationship ranked above, and qualitatively different from, the others. The concept of monotropy was predominant in 20th century child custody case law (Warshak, 2011). Monotropy is the basis for the propositions that infants have one psychological parent and that the task of custody decision makers is to identify this parent who then receives sole decision-making authority, including the authority to determine when and if the children see the other parent (Goldstein, Freud, & Solnit, 1973/1979).

A careful survey of the social science literature fails to support the hypothesis of monotropy. In the context of typical conditions of infant care, infants commonly developed attachment relationships with more than one caregiver (Brown, Mangelsdorf, & Neff, 2012; Brumariu & Kerns, 2010; Cassidy, 2008; Cohen & Campos, 1974; Lamb 1977a, 1977b; Ludolph & Dale, 2012; Sagi et al., 1995; Spelke, Zelazo, Kagan, & Kotelchuck, 1973). Multiple attachment relationships have been found cross-culturally, including in Germany, Israel, Japan, The Netherlands, the United Kingdom, and the United States (Van IJzendoorn & Sagi-Schwartz, 2008). Further, the quality of these relationships was independent so that, for instance, neither the relationship with the mother nor with the father was a template for the other (Kerns, Tomich, Aspelmeier, & Contreras, 2000; Main & Weston, 1981; Thompson, 1998; Verschueren & Marcoen, 1999). Each relationship makes some unique and some overlapping contributions to chil-

dren's development (Lamb, 2010a, 2010b). These relationship differences are not ranked in a hierarchy of importance or salience. Rather, they affect different aspects of children's psychological development (Sagi-Schwartz & Aviezer, 2005). In a recent interview on the issue of overnight parenting time for infants, prominent attachment researcher Everett Waters clarified as follows:

The idea that there should be one figure only was not Bowlby's view in the end. It is also difficult when you use a term like "hierarchy" which is a very specific claim about superordinate-subordinate relationships; this one is more important than that one, that one is more important than that one; it implies a rank ordering. Rather than saying that there is a hierarchy, I think a better perspective is this: it is possible for infants and children and for adults to use a multiplicity of figures for secure-base support. Multiplicity does not imply any particular relationship among them. You are not more or less, you are just another (Waters & McIntosh, 2011, p. 480).

Closely related to the idea that infants initially form one primary attachment relationship, is the notion that this relationship in most cases will be with the mother. This notion has not received support in the research literature. As Sir Michael Rutter (1979) wrote decades ago when reviewing the science relevant to the concept of monotropy, "Bowlby's argument is that the child's relationship with mother differs from other relationships specifically with respect to its attachment qualities, and the evidence indicates that this is not so" (p. 287).

MacArthur scholar Professor Grazyna Kochanska and her colleagues reported the most recent and methodologically rigorous study on this topic (Kochanska & Kim, 2013). Using the Strange Situation procedure, which most attachment theorists hold in high regard, the researchers assessed infants' attachment security with each parent at 15 months. Then they measured behavior problems at age 8 using ratings from mothers, fathers, teachers, and the children themselves. As expected, children with insecure relationships with both parents had the most behavior problems. Children were no more likely to be securely attached to mothers than fathers, and having a secure attachment with at least one parent had a powerful, beneficial, and protective effect that offset mental health risks. Most significant for parenting plan decisions, the benefits of a secure relationship with the father versus the mother were equivalent. Neither parent emerged as primary.

In sum, based on child development research, policymakers and decision-makers cannot support a priori assumptions that parents of infants and toddlers can be rank ordered as primary or secondary in their importance to the children, and that mothers are more likely to be the "psychologically primary" parents. Further, the research indicates that because infants develop attachment relationships with both of their parents, there is a danger of disturbing one of those relationships by designating one parent as primary and limiting the infant's time with the other parent. Policies and parenting plans should encourage and maximize the chances that infants will be raised by two adequate and involved parents. It stands to reason that if a secure attachment with at least one adequate parent is a *sine qua non* of optimal development, having relationships with two parents gives infants two chances to develop a secure attachment and thus increases the odds of accomplishing this important developmental milestone. Fathers increas-

ingly want to take on more nurturing roles with their children and it is to their children's advantage for society to encourage fathers to develop, engage in, and maintain rich multifaceted relationships with their children.

Face-to-Face Contact and the Development of Healthy Parent-Child Relationships

Children's relationships with parental figures normally grow from frequent child-parent interactions in a wide variety of contexts, such as holding, stroking, talking, singing, playing, feeding, changing diapers, soothing, placing and removing from the crib, and so forth (Cassidy, 1994; De Wolff & van IJzendoorn, 1997; Kochanska, 1997; Lucassen et al., 2011). Such interactions help parents better understand the children's needs, and give parents the knowledge to develop and hone parenting skills and behavior to meet their children's needs. Although some child development theories place more emphasis on genetics, neurobiology, or on environmental factors other than the behavior of parents (such as peers), most professionals agree that a good deal of parenting skill develops from experience and being on the job.

But how much does a parent need to be on the job, involved in child care, for the child to develop a relationship with the parent that is unique in significance compared with the child's relationship with others in the child's current and future life? We have no basis for asserting a specific threshold of contact necessary or sufficient for a child to develop the type of relationship with a caregiver that distinguishes itself as a parent-child relationship as opposed to the child's relationship with other caregivers and persons in the environment. Similarly, we have no basis for determining a threshold of interaction necessary for the average parent to gain the experience that helps the parent become attuned to, and respond skillfully to, the child's needs. Two sources of data, though, provide some parameters that are directly relevant to parenting time decisions for young children: the amount of parenting time the average child receives, and the impact of daycare on the development of parent-child relationships.

Parenting time in intact families. Measuring parenting time is complicated. Such measurement depends, in part, on which aspects of parenting are included, whether direct interaction is measured versus the time in which the child is under the parent's care, whether one or both parents are present, and whether one or more children are in the parents' care (Lamb, 2007; Pleck, 2010). No one time-use study is definitive. This paper finds useful the American Time Use Survey (ATUS), conducted by the U.S. Census Bureau for the Bureau of Labor Statistics (U.S. Department of Labor Bureau of Labor Statistics, 2013). The ATUS divides parenting time into primary and secondary childcare time. *Primary childcare time* is the quantity of time that parents spend primarily doing activities that involve care for their children. *Secondary childcare time* is when the children are in the parent's care while the parent is engaged in activities other than primary childcare, such as cooking dinner. *Total childcare time* is the sum of primary and secondary childcare time. Time during which the children are sleeping is excluded from the measure. From the parent's point of view, *total childcare time* reflects the time the parent is caring for the children. From the children's point of view, *primary childcare*

time reflects the time that the children are directly aware of, and interacting with, the parent.

In a typical week, in two-parent homes in which the youngest child is under the age of one, mothers spent 79 hours and fathers spent 44 hours in total childcare. In other words, fathers spent 56% (44/79) of the amount of time that mothers spent in childcare, or 36% (44/(79 + 44)) of total parenting time. If we divide a full week by these proportions, fathers provided the equivalent of 2.5 days of childcare to the mother's 4.5 days. The figures for primary childcare in a typical week (the quantity of time that parents spent primarily doing activities that involve care for their child) were 26.5 hours for mothers and 11.5 hours for fathers.

We can consider these data from two perspectives. From the parents' point of view, the children were in the father's care 44 waking hours per week to the mother's 79 hours. This is the amount of time that each parent was accustomed to spending with the children, and presumably a sufficient amount of time for each parent to feel a parent-like bond to the children. From the children's point of view, the children typically received, at most, 11.5 hours of direct care weekly from the father compared with 26.5 hours from the mother. (This is an overestimate because the data do not differentiate how much of the parenting time was directed specifically at the infant vs. divided among all the children in the home.) Presumably this is a sufficient amount of time for children to develop what our society regards as normal relationships with parents. From either perspective, these data should quell anxieties that young children whose time is divided relatively evenly between two homes will have insufficient time with either parent to develop healthy relationships that, according to attachment theory, contribute to subsequent optimal development.

Children in daycare. The second data source relevant to the issue of whether young children whose parents live apart need to live predominantly with one parent, and thus spend significantly less time with the other parent, is the literature on the impact of daycare on parent-child relationships. A corollary of the proposition that children have only one psychological parent is that young children will suffer harm if separated from the parent and cared for by others. Goldstein, Freud, and Solnit (1973/1979) stated:

In infancy, from birth to approximately 18 months, any change in routine leads to food refusals, digestive upsets, sleeping difficulties, and crying. Such reactions occur even if the infant's care is divided merely between mother and baby-sitter. They are all the more massive where the infant's day is divided between home and day care center. . . . Every step of this kind inevitably brings with it changes in the ways the infant is handled, fed, put to bed, and comforted. Such moves from the familiar to the unfamiliar cause discomfort, distress, and delays in the infant's orientation and adaptation within his surroundings (p. 32).

In 1999, 9.8 million American children under the age of five years spent 40 or more hours a week in daycare away from parents (Committee on Family & Work Policies, 2003), many beginning in the first year of life, and the majority experiencing some nonmaternal care by 6 months of age (U.S. Bureau of the Census, 1999). On the one hand, if these children suffer impairments in the quality of their relationships with their parents that are traced directly to lengthy separations from their parents while in daycare, rather than to the quality of care, this would need to be taken into account in

formulating child custody policy and decisions. On the other hand, if daily separations from parents do not harm the quality of parent-child relationships, this would alleviate concerns about parenting schedules that keep children apart from one parent while being cared for by the other parent.

The proposition that infants suffer ill effects from spending time in daycare centers has been investigated for more than 25 years. The Study of Early Child Care and Youth Development (SECCYD), a national research consortium sponsored by the National Institute of Child Health & Human Development (NICHD), has produced 249 scientific publications, most appearing in prestigious peer-review journals. These studies included care given by fathers and other relatives as daycare. Thus the findings most relevant to the issue of how parenting plans should divide a child's time between homes are those that address children who are in the care of their fathers.

When the SECCYD children were 12 years old, the study reported some long-term benefits and drawbacks of early childcare. On the whole what is most important is the quality of the childcare setting and the quality of the relationships between caregivers and children both at home and in childcare. But a key finding has particular relevance to the issue of young children being separated from mothers and in the care of their fathers: all of the negative effects associated with early child care were a function of time cared for by nonrelatives and not by time spent in care provided by fathers and grandparents (Belsky et al., 2007; van IJzendoorn et al., 2003, March; van IJzendoorn et al., 2004, July; for a review, see Aviezer & Sagi-Schwartz, 2008). This replicated an earlier finding when the children were 4 and one half years old (van IJzendoorn et al., 2004). Furthermore, the researchers believed that subsequent problem behavior linked to time in early child care, which did not rise to clinical levels (i.e., the behaviors did not require special attention; National Institute of Child Health and Human Development Early Child Care Research Network, 2003), was not a function of mother-child attachment or parenting, but was more likely a result of interactions with peers (Belsky et al., 2007; McCartney et al., 2010).

Children in the NICHD study spent an average of 27 hours each week in child care, with more than one third spending 30 hours or more per week between the ages of 3 months and 1 and one half years. Interestingly although care by mothers, grandparents, and hired help in the home decreased over time, care by fathers remained stable over time with about 13% of children in this type of care regardless of children's age (up to 4 and one half years; National Institute of Child Health and Human Development Early Child Care Research Network, 2004).

Given the findings that infants and toddlers who spent considerable amounts of time away from their mothers and in the care of fathers and grandparents showed no negative effects in development, including in their relationship with their mothers, this early child care research provides no support for denying young children whose parents live apart from each other extensive time with their fathers (Bernet & Ash, 2007). Given the mixed findings of the effect of center-based care on children (e.g., linked to more ear infections and upper respiratory and stomach illnesses), if care by fathers allows less time in large group care, this may bring added benefits.

Summary on Developing Healthy Parent–Child Relationships

The research discussed above helps us better understand the nutrients of a healthy foundation for parent–child relationships regardless of family structure. Based on this body of research we conclude the following:

- Parents' consistent, predictable, frequent, affectionate, and sensitive behavior toward their infants is key to forming meaningful, secure, and healthy parent–child relationships.
- Having a secure attachment with at least one parent provides children with enduring benefits and protections that offset mental health risks of stress and adversity.
- Having a relationship with two parents increases children's odds of developing at least one secure attachment.
- The deterioration of father–child relationships after divorce is a pressing concern (Zill, Morrison, & Coiro, 1993).
- The majority of children from preschool through college are dissatisfied, some even distressed, with the amount of contact they have with their fathers after divorce and with the intervals between contacts (Kelly, 2012; Hetherington & Kelly, 2002; Warshak & Santrock, 1983).
- Policies and parenting plans should encourage and maximize the chances that children will enjoy the benefits of being raised by two adequate and involved parents.
- We have no basis for rank ordering parents as primary or secondary in their importance to child development.
- Normal parent–child relationships emerge from less than full-time care and less than round-the-clock presence of parents.
- Full-time maternal care is not necessary for children to develop normally. Children's healthy development can and usually does sustain many hours of separation between mother and child. This is especially true when fathers or grandparents care for children in place of their mothers.
- These findings support the desirability of parenting plans that are most likely to result in both parents developing and maintaining the motivation and commitment to remain involved with their children, and that give young children more time with their fathers than traditional schedules allow (generally daytime visits every other weekend with perhaps one brief midweek contact).
- These findings do not necessarily translate into a preference for parenting plans that divide young children's time exactly evenly between homes.

Research on Young Children Whose Parents Live Apart From Each Other

From the general research on child development and parent–child relationships discussed above, we turn next to studies that focus specifically on young children whose parents live apart from each other. This includes parents who divorced, those who were never married but lived together for a period of time, and those who never lived together. At the outset we stress that the body of work comparing children under 4 years of age being raised with different parenting plans is not as extensive, and with few exceptions not as methodologically rigorous, as the wider body of research on early child development and daycare or on older children raised in families in which the parents live apart from

each other. Nevertheless these studies do provide important perspectives for custody policy and decisions.

Sixteen studies were identified that provided relevant data on families with infants, toddlers, and preschool age children whose parents live apart from each other. These studies offered observations about parenting plans that either 1) designated one parent (usually, but not always, the mother) as a primary parent who is responsible for the child's care more than 65% of the time, or 2) divided the child's time between homes with no greater division of time than 65%-35%. We use the term shared parenting time to designate divisions of time in which each parent is responsible for the child's care at least 35% of the time.

Few studies follow children from birth, through their parents' separation and beyond. One such longitudinal study involved a group of 1,265 New Zealand children (Woodward, Fergusson, & Belsky, 2000). At ages 15 and 16 the investigators assessed the children's views of their relationships with their parents and of their mothers' and fathers' parenting attitudes and behavior toward them during childhood. In this study of attachment, children who experienced their parents' separation before the age of 5 saw themselves as less closely emotionally tied to their parents than did children who grew up in intact families, and they viewed their parents as having been less caring and more restrictive toward them during childhood. As with most findings in the divorce literature, the size of the significant effect was small to moderate, and this study needs replication with additional samples. This study provided no comparisons of children in different living arrangements, but it does suggest reason for concern about the foundation of young children's relationship with each parent when their parents live apart from each other.

Three early exploratory studies in California relied on impressions derived from interviews (Wallerstein & Kelly, 1975, 1980; McKinnon & Wallerstein, 1987; Brotsky, Steinman, & Zimmelman, 1991). Notwithstanding the limits of such data (Amato, 2003; Kelly & Emery, 2003), the results are relevant to parenting plans for young children. In the first study (Wallerstein & Kelly, 1975, 1980), children between the ages of 2 and one half and 3 and one fourth years whose mothers worked full time outside the home did well with other caretakers including the father, when the caretaker was a consistent and loving presence in the child's life. The location of caretaking did not affect the children's psychological health. This study noted children's dissatisfaction with infrequent contacts with their fathers, and long intervals between contacts. The second study (McKinnon & Wallerstein, 1987) found that equal time residential arrangements were associated with positive outcomes when parents provided loving and sensitive care, and were associated with negative outcomes when parents were neglectful, violent, mentally ill, or directly involved children in interparental conflicts. Children below the age of 3 handled transitions between homes better than did the older preschool children. The third study (Brotsky, Steinman, & Zimmelman, 1991) found that children under the age of 5, whose parents shared parenting time almost equally, adapted to the parenting plan better on average than did older children. Only 5 of the 26 younger children developed serious psychological difficulties. The lack of direct comparisons of children living in different residential arrangements did not allow conclusions about whether the children would have done better or worse in sole custody arrangements. But the results failed to support generalizations that shared parenting and

overnights are incompatible with healthy adjustment in young children.

One study reported on telephone interviews with 30 parents of children under the age of 5 whose average parenting plan fell just short of shared parenting time (the children spent on average 10 days and nights per month with their father, but approximately one fourth of the sample did have shared parenting time with children spending more time with fathers than with mothers) (Altenhofen, Biringen, & Mergler, 2008). Three-quarters of the sample had children enrolled in part-time or full-time child care. The findings revealed a moderate correlation between interparental hostility and parental alienating behaviors. The number of overnights with fathers increased over time; this could be attributed either to the children's age or the length of time since the parents separated. The more overnight stays, the greater the father's satisfaction with the parenting plan. Fathers with fewer overnights reported more hostile relationships with the mother. The meaning of this association is ambiguous. Two plausible explanations are that when hostility was high, mothers were less likely to offer overnights to fathers, or interparental hostility stemmed from the father's belief that the division of overnights was inequitable.

Another study examined mother-child attachment in 24 children 1–6 years old who spent an average of eight nights per month with their fathers (Altenhofen, Sutherland, & Biringen, 2010). Unfortunately, the statistical procedures did not suit the sample size. Also, the attachment measure was completed by the mothers rather than by trained raters. This procedure leaves some doubt about what exactly is being measured (van Ijzendoorn, Vereijken, Kranenburg, & Riksen-Walraven, 2004; Waters, 2013). The study examined the link between attachment security and the age of onset of overnights, interparental communication and conflict, and the mother's emotional availability. In this sample, 54% of the children were rated as insecurely attached. The only factor that correlated with attachment security was the mother's emotional availability. Factors that were unrelated to attachment security include the child's age when overnights began, the level of conflict between the parents, and whether the child was in child care (about half were). Because of the lack of a comparison group, the study allowed no conclusions about how these children compared with those with fewer, or more overnights, or with children whose parents were married to each other. In sum, as with the five studies discussed earlier, this study provided no support for any particular parenting plan. Some commentators hypothesize that shared care is especially challenging for young children compared with older children (McIntosh, Smyth, Kelaher, Wells, & Long, 2011). This hypothesis lacks support from the studies discussed above.

The studies we discuss below provided direct comparisons of families with different types of parenting plans. Nielsen (2013c) made a detailed review and analysis of this literature. In her work, for each study Nielsen attended to the sample's representativeness, validity and reliability of the measurements, statistical significance of the results, consistency of findings from multiple methods, control for various factors that might account for the results, and whether the study passed peer review and appeared in a refereed journal. Rather than duplicate Nielsen's analysis and describe in detail each study, we discuss a few of the studies that merit greater attention. Some of the studies we mention employed superior methodology. Others are mentioned because their methodological problems often go unrecognized or under recognized in accounts

provided by professionals, expert witnesses, advocacy groups, and the media. With effective marketing and press releases, some studies impact the public forum and child custody litigation disproportionate to their quality.

The Stanford Custody Project followed a random sample of 1,386 families over a 3-year period (Maccoby & Mnookin, 1992). The sample included 289 children two and younger, and 424 children between three and five years old. This project studied how custody arrangements are reached and how they change over time. The findings revealed the familiar problem of mother-resident children losing contact with their father over time. What is most relevant to parenting plans for young children, though, is that the loss of contact was far greater for the group of children whose contacts were restricted to the daytime compared with those who spent overnights with their fathers (56% father dropout vs. 1.6% for children under three and 49% vs. 7.7% for children who were 3–5 years old at the time of their parents' separation).

The strong association between continued father involvement and shared parenting was replicated in a Wisconsin random sample of 1,100 families in which mothers and fathers were interviewed an average of three years after divorce (Berger, Brown, Joung, Melli, Wimer, 2008; Melli & Brown, 2008). The sample split evenly between sole mother custody and shared parenting, and in 40% of each custody group the youngest child in the family was under five years old at the time of divorce with 16% two or younger. Children with shared parenting plans spent as much or more time in their fathers' care 3 years after divorce as they did at the outset, whereas children in sole mother custody were much more likely to experience a dropoff in contact with their fathers. Both fathers and mothers with shared parenting plans were far more likely to report that fathers were very involved with the children and most mothers were satisfied with the father's involvement or wanted even more. Shared time mothers (98%) reported that their children's physical health was good or excellent and 90% thought the same about their children's emotional health. Because this study conducted analyses for the sample as a whole without differentiating results based on the children's age, we cannot be sure of the extent to which these positive findings for shared parenting apply more, less, or equally to the infants and preschoolers. But since they made up such a large proportion of the sample, and in the context of the entire literature on shared parenting with young children (with the exception of two outlier reports to be discussed below), it is likely that the positive findings for parenting plans with greater father involvement apply to the young children.

It is important to note that about 85% of the fathers and mothers in shared parenting arrangements and about 80% of those with sole mother custody reported that their relationship was "friendly" or "neutral/businesslike." This is consistent with other data on coparenting (e.g., Ahrons, 1994; Maccoby & Mnookin, 1992). Policy-makers should recognize that parents in protracted custody and access disputes do not represent most divorced couples and should not drive legislative statutes that apply to the general population of mothers and fathers who raise their children while living apart from each other.

A Yale University project examined the relationship between overnights and psychological and behavior problems in 132 children between the ages of 2 and 6 years (Pruett, Ebling, & Insabella, 2004). The study merits significant weight in part because it used a fairly representative sample of lower middle class couples with

a midrange of conflict, relied on standard measures, and reported data from both mothers and fathers. On the study's measures, 15 to 18 months after the parents filed for divorce, overnights had neither positive nor negative impact on children ages 2–3 years (considering aggression, anxiety, depression, social withdrawal, and sleep problems), and benefited 4- to 6-year-olds. Some gender differences were noted. Overnights were linked, among girls but not boys, to fewer social problems. Inconsistent, erratic parenting schedules were more likely to be linked with negative outcomes for boys than for girls. Poorer parent–child relationships and conflict between parents had stronger links to children's outcomes than did overnights. Data from fathers showed a direct link between children's adjustment and overnights and consistent schedules. Data from mothers showed that their support for fathers' involvement moderated the positive outcomes seen for overnights (Pruett & Barker, 2009). About one third of the children had three or more caregivers during the day. The 2- to 3-year-olds showed no differences related to multiple caretakers, but 4- to 6-year-olds with multiple caretakers had better outcomes.

The Australian Institute of Family Studies analyzed longitudinal data on 7,718 children, nearly four thousand under the age of 5 years (Kaspiew et al., 2009). The number of children whose parents shared parenting time, defined as 35–65% of overnights spent with each parent, was 201 under age 3 (8% of children in this age group) and 266 age 3–4 years (20%). Data from both mothers and fathers, 1–2 years after the parents separated, were reported for the entire sample.

Parents who shared parenting were more likely than parents in sole custody arrangements to believe that their parenting plan was working well for the child; more than 90% of the parents whose children were under 3 years and were spending 35–47% overnights with their fathers believed that their parenting plan was working well. Data on children's outcomes (such as the children's physical health) supported the parents' beliefs. The results indicated that children in shared parenting arrangements were doing as well as, or marginally better than, children who spent fewer than 35% overnights with their fathers. Consistent with the Stanford study, overnights were linked to higher levels of continued father involvement; one of five children with daytime only contact saw the father only once a month or less. According to mothers, fathers with shared care time had been more involved parents prior to separation, so this study cannot attribute a causal relationship between overnights and continued father involvement. But in their review of the literature, Fabricius, Sokol, Diaz, and Braver (2012) concluded that the evidence to date is consistent with the hypothesis that more parenting time has a causal effect on the quality of the father-child relationship security. Also consistent with previous studies, Kaspiew et al. (2009) reported that conflict and violence between parents showed negative associations with children's outcomes. This impact was no greater for children with shared parenting time than those in other arrangements according to fathers', but not mothers', reports.

In sum, according to this large-scale study, in general no negative, and some marginally positive consequences were associated with parenting plans in which children ages 0–4 years spent at least 35% of the time with their fathers. Also, overnights were associated with protecting regular father involvement. These results parallel the overall conclusions from most studies that shared parenting and overnights with fathers introduce no detriments to

children, and may bring benefits, especially promoting and maintaining the father–child relationship that is vulnerable to deterioration with other parenting plans.

In contrast to the pool of studies that reported generally positive or neutral findings for shared parenting and overnights with fathers, two studies reported negative findings and a third is sometimes inaccurately cited as having reported negative effects of infant overnights. The two outlier studies that reported negative effects of overnights for young children have received more widespread media coverage than the studies discussed above and are cited by expert witnesses and advocacy groups to oppose shared parenting legislation and parenting plans which allow fathers to care for preschoolers overnight.

The study that is mistakenly cited to support blanket restrictions against overnights relied on the 20-min Strange Situation laboratory procedure to assess the attachment classifications of infants 12 to 20 months old, 44 who had some overnights with their fathers, 49 who had no overnights, and 52 who lived with their married parents (Solomon and George, 1999a). No significant differences were found between the overnight group and the no overnight group in the distribution of secure and insecure attachments, nor was frequency or history of overnights related to attachment classifications. What confuses some commentators is that the overnight group compared unfavorably with the children in intact families. Naturally this comparison is irrelevant to parenting plans because any differences found may be attributable to divorce and not to overnights.

One year later 85% of the sample were observed interacting with their mothers in two laboratory activities (Solomon & George, 1999b). Again no statistically significant differences were noted between children with and without overnights. Overnighting infants compared unfavorably with a *combined* group of infants from intact families and those with no overnights with a father who lived apart from the mother, but the authors pointed out that the results of their brief laboratory procedure might be unrelated to infant behavior in shared parenting families.

A difference that did not reach statistical significance was the presence in the overnight group of more disorganized mother–child attachments, which theorists generally associate with neglect or abuse and poorer long-term psychological development. But the rate of unfavorable attachments in all three study groups was abnormally high. The authors noted the nonrepresentativeness of their sample; a high percent of parents were under restraining orders (86% of fathers with overnights, 100% of fathers without overnights, and 33% of mothers with overnights—compared with 9% of mothers in the no overnight group). Also, the parents in the overnight group differed in important ways from those in the no overnight group: the overnights' parents had higher levels of conflict, hostility, and abuse, were more likely to be unmarried, and were more likely to have children from more than one relationship. Because of the differences between the groups, the study cannot attribute outcomes to the presence or absence of overnight contacts. Instead, attachment classifications were related to the coparenting relationships and to the mother's parenting skills, with less secure attachments in all groups found when mothers were less responsive to their children's needs.

Other authors have highlighted additional significant limitations of the study (Cashmore & Parkinson, 2011; Lamb & Kelly, 2001; Nielsen, 2013c; Nielsen, 2013d; Pruett, Cowan, Cowan, & Dia-

mond, 2012; Warshak, 2002). There was no evidence that the infants had formed attachments to their fathers before the onset of overnights; infants in the overnight group were less likely than those in the no overnight group to have at least weekly contact with their fathers and only 20% of overnighting infants saw their fathers on a regular and consistent schedule; some of the infants were separated from their fathers repeatedly and for long periods of time effectively making the fathers strangers to their children; the data about father–child contact, conflict, communication, and mother’s responsiveness to the child came solely from mothers; the follow-up analyses did not differentiate between children whose overnights began recently versus those who had overnights at the outset of the study and at follow-up. The study’s first author agrees that the results cannot be generalized to divorced parents because a large portion of the sample had never married or lived together, most had separated before the infant was 4 months old, and the parents’ level of hostility and conflict are unrepresentative of the general population of parents facing decisions about parenting plans for young children (Solomon, 2013). Solomon (2013; Solomon, 2013, April) also believes that the current states of research and of theory are insufficient to inform decision makers about the best age to begin overnights and about whether to encourage shared parenting time with infants and toddlers.

The first outlier study is a report issued by the Attorney General’s department in Australia and copyrighted by a clinic founded by the study’s first author (McIntosh et al., 2010). This report, which has generated much publicity, is important because the first author promotes the results of this study as a basis for child custody decision-making and policy.

Analyzing data from a national random sample, this study examined the link between overnights and children’s health and behavior. The study compared children in three age groups: under 2 years, 2–3 years, and 4–5 years. The sample is not representative of parents who are divorced because most of the parents were never married to each other (90% for the sample of infants and 60% for toddlers), and 30% never even lived together. Thus potentially the study is more relevant to parenting plans for never-married parents, and less relevant to divorced parents, particularly those with infants.

The study is unique in that it divided the children with overnights into two groups: occasional overnights (labeled *primary care* in this study: 1–3 nights monthly for infants and 5–9 nights for the 2- to 3- and 4- to 5-year-olds) and frequent overnights (labeled *shared care* in this study: 4–15 nights monthly for infants, an overly broad range by conventional definitions of shared parenting, and 10–15 nights for the older children). Dividing the groups in this manner brings one drawback and one benefit. The drawback is that it reduces the size of the groups. In some cases this produced unacceptably small samples: the smallest were the group of infants with occasional overnights, ranging from 14–20 depending on the variable analyzed (e.g., 14 for the measure of irritability), and 2- to 3-year-olds with frequent overnights, ranging from 5–25 depending on the variable analyzed (e.g., 5 subjects for a rating made by teachers and daycare attendants of conflict with the child; 25 subjects for the mother’s evaluation of the child’s emotional status). An analysis based on five respondents is unlikely to provide meaningful data.

The benefit of differentiating the two overnight groups is that it allows a test of the hypothesis generated by those attachment

theorists who raise concerns that overnight separations from their primary parent (almost always the mother) harm young children. Solomon and George (1999a) articulated a hypothesis of linear effects whereby any harmful effects of overnights “should be more pronounced the longer and/or the more frequent the overnight separations are and the earlier such arrangements are put into place” (p. 5). Basically, if overnights are bad for young children because they separate them from a parent designated as a primary caregiver, we would expect that the longer and more frequent the separations, the worse the effects.

We present the results of this study here. A subsequent section discusses concerns about the manner in which these results have been interpreted and promoted. For infants, two of six outcomes were interpreted as more negative for frequent overnighters compared with occasional overnighters, but not compared with infants with no overnights (irritability and “visual monitoring of the primary caregiver”—infants with no overnights had the most negative irritability score). Four of six outcomes showed no difference: physical health, wheezing, mothers’ concerns about the infant’s development, and negative responses to strangers. More wheezing was reported for infants with frequent overnights compared with occasional overnighters, but not compared with infants with no overnights. This difference approached but did not reach statistical significance. For the 2- to 3-year-olds, two of seven outcomes were interpreted as negative for frequent overnighters compared with the other two groups (persistence and behavior problems with mother). Four showed no difference for frequent overnighters compared with the other two groups: physical health, conflict with caregivers, mother’s evaluation of the child’s emotional functioning, and response to strangers. A trend that fell just short of statistical significance was better global health for children with overnights, whether frequent or occasional, when compared with children with no overnights. The one positive outcome for frequent overnighters compared with the other two groups was less wheezing. No analyses were reported for the toddler group that compared occasional overnighters with no overnighters, so no claims can be made about the desirability of allowing versus depriving toddlers of occasional overnights.

Only 1 of 13 analyses (none for infants under 2 and one for 2- to 3-year-olds regarding persistence) supports the linear effects hypothesis that the more overnights the worse the outcome. Infants with occasional overnights (which in this study means as much as three nights per month) were less irritable and tended to wheeze less than did infants with no overnights or frequent overnights. Toddlers, age 2–3 years, with frequent overnights wheezed less than those with occasional or no overnights. These positive links with overnights challenge the assumptions of those who, like the study’s first author, discourage parenting plans that allow infants to spend overnights with both parents.

The second outlier study, with the assistance of a widely distributed press release, similarly has garnered a lot of publicity (Tornello et al., 2013). The more impact a particular study has on child custody decisions, the greater scrutiny it merits. Similar to the McIntosh et al. (2010) report, the sample was composed predominantly (85%) of children whose parents had never been married to each other, but with a larger sample of overnighting children. The data were drawn from the Fragile Families and Child Well-Being Study of children born to inner-city low-income (62% below the poverty level), racial/ethnic minority families (85%), a

majority of which had a parent incarcerated some time before their children reached the age of five years (50% fathers, 10% mothers) and whose parents had nonmarital births from more than one partner in their teenage or young adult years (65%).

Reliable data from such a sample is relevant to families in similar circumstances and offers an opportunity to test the hypothesis that overnights leave children vulnerable to other family stressors. The Fragile Families sample is not representative of impoverished families in general, of those above the poverty line, and those who were married and subsequently divorced. Naturally, results based on this sample are largely irrelevant to parents who can afford custody litigation. But the results may assist those who advise parents in fragile families or formulate policy for such families.

Based on mothers' reports, the researchers categorized 1-year-olds according to the number of overnights they spent with their fathers each year: *day contact only, some overnights* (from 1 to 51), and *frequent overnights* (52 to 256, or 1 to 5 nights weekly). Note that the frequent overnight group included residential plans ranging from traditional mother custody arrangements, to equal physical custody, to shared custody in which children spent 2/3 of their time in the father's care. About 42% of the 1-year-olds had overnights. Four groups were created for the analysis of 3-year-olds, again based on the number of overnights they spent with their father each year: *day contact, rare overnights* (1–12), *some overnights* (13–127), and *frequent overnights* (128–256). The latter group meets conventional definitions of joint physical custody or dual residence, with the high end representing arrangements where the children spent 2/3 of their time in the father's care.

Based on clinical experience, the theory of monotropy, and only three studies (the authors overlook the additional studies discussed above), the authors hypothesized that very young children who frequently spend the night at their fathers' home would have more insecure attachments with their mothers. The outcome measures were the mothers' responses to an abridged and modified version of an established measure of attachment, completed when the children were 3 years old, and the mothers' responses to a standard checklist of children's behaviors. One strength of the study is that it took into account the mother's report of depressive symptoms, of her relationship with the father, and of her rating of the quality of the father's parenting.

The only significant finding with respect to a link between overnight status and attachment to the mother was that children who at age 1 had *frequent* overnights (1 to 5 overnights per week) were more likely than those with *some* overnights to be insecurely attached to their mothers at age 3. The relationship was nonlinear in that the children with frequent overnights and those with some overnights were not more likely to be insecurely attached than those with day contact only. (The percent of insecure attachments was lower among those who had some overnights compared with those who had day only contact, but this difference was not statistically significant.) Also, there were no significant links between overnights at age 3 and attachment.

As with McIntosh et al. (2010), the authors gave no explanation for findings that failed to support the linear effects hypothesis. If overnights with fathers are hypothesized to stress children's attachment to their mothers, how are we to understand the finding that children who slept every night in their mothers' homes showed no more favorable attachment outcomes than those who

occasionally or frequently slept apart from their mother? Two concerns are important to keep in mind when considering these data on children's attachment to their mothers.

First, interpreting the higher rate of insecure attachments to mothers in the frequent versus some overnights is confounded by an unfortunate design problem. More than half of the infants in the frequent overnight group actually lived predominantly with their fathers (26 of the 51 frequent overnighting infants for whom attachment was measured, some spending as much as 70% of overnights with their fathers). (For the 3-year-olds, 45 of the 60 for whom attachment was measured lived predominantly with their fathers.) When the outcome of interest is the infant's attachment to the parent who provides the majority of care, this group of atypical families should be eliminated from an analysis of infant-mother attachment. Particularly in a sample drawn from a population whose mothers had higher rates of substance abuse, depression, and incarceration (McLanahan, 2013), without knowing why these babies were living with their fathers, we cannot assume that overnights in their fathers' home caused children's insecure attachment to their mothers any more than we assume that the presence of umbrellas causes rain.

The second concern is that the Toddler Attachment Q-sort (TAQ) used to measure attachment security was abbreviated and modified from an established measure (the Attachment Q-sort [AQS]), but there is no evidence of the validity of the reduced-version TAQ. Also, in place of trained raters using the TAQ to classify mother-child attachment based on hours of observed interactions, in order to save money the Fragile Families study had the mothers rate the behaviors that make up the attachment classification. There is some question about what is being measured when mothers complete the AQS in place of trained raters (van IJzendoorn, Vereijken, Kranenburg, & Riksen-Walraven, 2004; Waters, 2013).

Even if the measure of attachment was valid and interpretable, when relying on these results to advocate for or against overnights, it is important to go beyond statistically significant differences to ask if the differences raise meaningful concerns about development. Recall how the daycare researchers clarified that the higher level of problem behavior linked to time in childcare centers still remained within the norm of behavior that required no special attention. And the irritability score for frequent overnighters in the Australian study (albeit derived from a measure of questionable reliability), although higher than the occasional overnighters was nonetheless identical to the sample of children in intact families and was in the normal range for the larger data set of Australian children. Similarly, in a population of families in which mothers are below the poverty line or have not completed high school, the rate of insecure attachment scores on the TAQ is 49%. All the groups in the Tornello et al. (2013) study, regardless of frequency of overnights, had lower percents of insecure attachment than what we would expect for children living in poverty with poorly educated mothers.

In contrast to the attachment measure that was modified from the original instrument and lacks evidence for its validity, children's behavior was assessed with a standard instrument administered in a standard manner. Behavior as rated by their mothers created seven variables each for children age 3 and 5. Of the 14 analyses, none showed statistically significant differences with one

exception. Frequent overnights at age 3 predicted more positive behavior at age 5 than day contact only and rare overnights.

Advocacy in Place of Critical Thinking and Science

The manner in which the studies by McIntosh et al. (2010) and Tornello et al. (2013) are being interpreted and promoted by advocates and applied by those who make policy and custody decisions have raised concerns among social scientists (Lamb, 2012a, 2012b; Ludolph & Dale, 2012; Millar & Kruk, 2014; Nielsen, 2013b; Cashmore & Parkinson, 2011; Pruett et al., 2012; Warshak, 2012). In discussing the results of McIntosh et al. (2010), it is important to go beyond synopses of the results presented in the report itself, and subsequently by the first author, which express concern about overnights for children under four. A very different picture emerges when analyzing the report's data. The discrepancies are important because the 169-page report is far longer than a typical article in a scientific journal and many readers—particularly legislators, the media, and others not versed in research psychology—may read the synopses only and take these as an accurate and complete overview of the study's results.

Multiple problems exist in the design, procedures, data analysis, data reporting, and interpretation of results of the McIntosh et al. (2010) study (Cashmore & Parkinson, 2011; Lamb, 2012b; Ludolph, 2012; Nielsen, 2013c, 2013d; Parkinson & Cashmore, 2011). These are the type of problems that can affect the admissibility and weight of the study when proffered as evidence in custody litigation. They include observations such as the following:

- The report's synopsis (McIntosh et al., 2010, p. 9) selectively presented what the authors interpreted as negative outcomes attributed to overnights, but ignored the more numerous findings that showed no statistically significant differences attributed to overnights or that showed benefits of overnights (for a discussion of this *cherry picking* strategy, see Johnston, 2007). McIntosh has been criticized for ignoring opposing viewpoints when she selected theorists to interview who support the concept of an attachment hierarchy, for a journal issue that she edited, and excluded those whose views challenge this position (Lamb, 2012b; Ludolph, 2012). She then gave a skewed summary of viewpoints that selectively excluded conflicting information and created a false impression of consensus.

- The authors drew unwarranted conclusions about their data. Consider this sentence from the synopsis: "Infants under two years of age living with a nonresident parent for only one or more nights a week were more irritable, and were more watchful and wary of separation from their primary caregiver than those primarily in the care of one parent" (p. 9). The first author subsequently described these negative outcomes as "a cluster of stress regulation problems" (McIntosh, 2011, p. 3). This inference reveals an analytic gap between the data and the interpretation of data (for discussions of the legal implications of such a gap for the admissibility and weight accorded to social science evidence, see Zervopoulos, 2008 and Zervopoulos, 2013). Because attachment theorists note that when infants are anxious they look at their mothers and try to get her attention, the authors assume that the more infants looked at and sought their mothers' attention, the more anxious they were about her availability. This commits the logical error known as *affirming the consequent*. The authors interpreted the mothers'

responses to three questions as an index of the infants' insecurity and anxiety about separation from their mothers.¹ The questions were extracted from the Communication and Symbolic Behavior Scales (CSBS), a measure of an infant's readiness to learn to talk versus being at risk for communication delays (Wetherby & Prizant, 2001). Paradoxically, the study interpreted scores that indicate healthier cognitive development (greater readiness to learn to talk) as a negative outcome (anxiety), although none of the three questions reference anxiety. Moreover, the 3-question "visual monitoring scale" was composed solely for the purposes of this study and has no known validity or reliability. Without such indices of the measure's scientific value, the results are uninterpretable. In legal parlance, the measure is unreliable in the sense that it is untrustworthy as an index of what it purports to measure (Daubert v. Merrell Dow Pharmaceuticals, 1993).

- The study drew negative conclusions about overnights based on scores that were within the normal range. The mean irritability score for the frequent overnights and the infants in intact families was identical, and the mean score for all groups studied was within the normal range (Sanson & Mission, 2005). Thus if the irritability scores generate concern about "stress regulation" among overnights infants, the authors should express equal concerns about infants being raised in intact, two-parent Australian homes. Similarly, the frequent overnights' mean score on behavior problems with mother was well within the normal range and close to that of children from intact families (Smart, 2010). The synopsis referred to specific problem behaviors such as refusing to eat, hanging on to the parent, and often being very upset (although the report gives no scores for these individual behaviors). The larger database from which this study's data was extracted supports common sense: Based on 4400 mothers' reports, nearly 50% of toddlers sometimes refused to eat and sometimes hung on their mother when she tried to leave, and nearly 40% often got upset with their mother (Smart, 2010). It is a mistake to draw negative conclusions about a parenting plan based on children's behavior that falls within a normal range.

- Data are only as good as the validity and reliability of the measurements. In the case of the outcomes in the Australian study, *none of the four significant negative outcomes, nor the one that approached but did not reach statistical significance, were based on measures that have demonstrated acceptable validity or reliability* (Nielsen, 2013d). In addition to the problems with the visual monitoring scale, the reliability of the irritability scale falls in the "questionable" range (George & Mallery, 2003); the interpretation of the wheezing measure, based on only one question, was faulty; the persistence measure lacked any reported validity, reliability, or norms; and the scale of behavior problems with the mother, abridged from a standard measure, had no measure of reliability or validity for the new instrument. Also, the study reported data only from one parent, not both. Previous studies have found that reports of mothers and fathers about their children's wellbeing can vary significantly.

¹ When this child plays with toys, does he/she look at you to see if you are watching?; When you are not paying attention to this child, does he/she try to get your attention?; Does this child try to get you to notice interesting objects – just to get you to look at the objects, not to get you to do anything with them?

- The study used an unconventional definition of shared care for infants so that the group was predominantly composed of infants who spent only one or two nights per week with their fathers. Only 11 infants saw their fathers on a schedule that would fit standard definitions of shared parenting. Even if the study had correctly labeled this group as shared care and had compared them with the other infants in the study (which it did not), a sample of 11 infants hardly constitutes a basis for the policy recommendations proffered by the study's first author. Given the absence of any comparisons of infants who actually were in a shared parenting/joint residential custody arrangement, the study has no grounds for drawing conclusions about shared parenting for infants.

- The first author buttressed her recommendations against overnights with the claim that this study's "findings are consistent with the only other study of infants in overnight care, conducted by Solomon and George, who found a greater propensity for anxious, unsettled behavior in infants when reunited with the primary caregiver, and greater propensity for development of insecure and disorganized attachment with the primary caregiver" (McIntosh, 2011, p. 3). This not only perpetuates misunderstanding of the Solomon and George (1999a, 1999b) study in the manner described earlier, but also denies the existence of all the other studies discussed above.

- An article posted on the Internet (McIntosh & the Australian Association for Infant Mental Health, 2011) illustrates how representations about this study contradict the actual data, overlook results that support opposite conclusions, and potentially mislead the audience. In the Introduction we showed how this background paper misrepresents the actual data on babies' irritability and overnights, and how it disregards all studies other than Solomon and George (1999a, 1999b). The Internet paper also perpetuates the misleading interpretation of the three-item measure of the infant's readiness to learn to talk by stating that infants with overnights "were significantly stressed. . .and worked much harder to monitor the presence and to stay close to their primary parent than babies who had less or no overnight time away their primary caregiver" (McIntosh & the Australian Association for Infant Mental Health, 2011, pp. 2). In addition to the fact that the infants with occasional overnights were not compared with those with no overnights, this scale does not measure stress or anxiety about the presence of the caregiver.

Given the numerous problems in the design, data analysis, and presentation of results, the wide gap between the actual data and the interpretation of the data, the selective focus on results that appear to support the authors' theories, the de-emphasis of results that clearly support alternative viewpoints, and the failure to acknowledge or appreciate the extent to which the measures lack validity and reliability, we must agree with other scholars (Cashmore & Parkinson, 2011; Lamb, 2012b; Ludolph & Dale, 2012; Nielsen, 2013b, 2013c, 2013d; Parkinson & Cashmore, 2011; Warshak, 2012) that this study provides no reliable basis to support custody policy, recommendations, or decisions. We are aware that the first author and the media have relied on this study to issue dramatic, alarming, and repeated warnings about shared care of young children (see Nielsen, 2013d, for numerous examples). Nevertheless such statements, however well intentioned, fail to offset this study's considerable limitations. Experts who rely on the study incur a professional obligation to discuss its limitations and the extent to which its conclusions and recommendations

depart from the mainstream of scientific literature. Courts and legislators should be aware of the significant limitations of the McIntosh et al. (2010) report before accepting testimony about the study as relevant and reliable evidence for restricting young children's contact with their father.

Similar concerns limit the extent to which we can rely on Tornello et al. (2013) for guidance in policy and custody decisions. The authors acknowledged limitations of their attachment measure, stating that the measure "can be called into question" (p. 883). It would be accurate to state that we have no evidence of the measure's validity and that it is unclear what its results mean. Other researchers using the Fragile Families dataset are forthright in stating that the instrument lacks objectivity (Pudasainee-Kapri & Razza, 2013). Especially when research is promoted as a basis for evidence in court, as in a quote attributed to Tornello in her university's press release (Samarrai, 2013), lack of objectivity is an important factor in determining the admissibility and weight of the evidence.

In Tornello et al. (2013), the measure of attachment without established validity showed an ambiguous relationship between overnights and attachment security, and the valid measure of behavior showed one benefit linked to overnights, no drawbacks, and no relationship for 13 outcomes. As with McIntosh's (2011) attempt to buttress her recommendations by claiming consistency between her study's findings and those of Solomon & George (1999a, 1999b), which McIntosh did not represent accurately, Tornello et al. (2013) similarly claimed that their study joined the previous two in finding evidence of increased insecurity among very young children with frequent overnights. Our earlier discussion shows why such a claim is misleading. In a press release issued by the University of Virginia (Samarrai, 2013), the results are cited to support a policy that discourages overnights for infants. Contrary to the press release's claim of "dramatic" findings, infants who spent at least one night per week away from their mothers did *not* have more insecure attachments than babies who saw their fathers only during the day. The release's misstatement underscores the pull to selectively cite and sometimes misrepresent data in the service of advocating for or against a particular parenting plan. Decision makers are urged to distinguish between scientists' reports and advocates' hyperbole.

To understand the receptivity on the part of the media and some of our colleagues to the dramatic warnings attributed to the outlier studies, we cannot rule out the fact that the studies' conclusions and the authors' recommendations reinforce long-held gender stereotypes about parental roles. McIntosh interviewed neuroscientist Schore (Schore & McIntosh, 2011) who advanced the idea that women, but not men, are biologically wired to care for their babies, by virtue of having generally larger orbitofrontal cortexes and enhanced capacities for nonverbal communication and empathy—a 21st century spin on the "motherhood mystique" and the tender years presumption (Warshak, 1992; Warshak, 2011).

Conflict and Parenting Plans

A common response to research that portrays positive outcomes for children and parents in shared physical custody arrangements is to challenge the relevance of such research for parents who litigate custody or display high levels of conflict when interacting with each other (Martindale, 2011). The two are sometimes equated by

psychologists who argue that if a couple take their dispute to court, by definition they are a “high conflict couple” and this should automatically exclude the option of the court imposing joint residential custody when one or both parents seek sole custody (Buchanan, 2001; Emery, 2004). These psychologists dismiss the positive outcomes found in studies of shared parenting as relevant only to those couples who voluntarily agree to share custody. The hypothesis is that couples who settle out of court for shared physical custody begin with lower levels of conflict and that the same factors that play a role in their agreeing to share custody may also contribute to the positive outcomes in these families.

This hypothesis lacks empirical support. The Stanford study (Maccoby & Mnookin, 1992) found that children in joint residential arrangements compared with other children were most satisfied with the custody plan and showed the best long-term adjustments, even after controlling for factors that might predispose parents to select joint physical custody (such as education, income, and initial levels of parental hostility) (Maccoby, Buchanan, Mnookin, & Dornbusch, 1993). In fact in 80% of the joint residential families one or both parents initially did not want and agree to the arrangement (Fabricius et al., 2012). Other studies found that parents with shared time arrangements had no less conflict than those with sole custody parenting plans (Melli & Brown, 2008; for a review, see Nielsen, 2013a).

A meta-analysis of 33 studies reported better emotional, behavioral, and academic functioning for children in joint physical custody compared with children in sole custody, regardless of the level of conflict between parents (Bauserman, 2002). Studies that measured amount of parenting time as opposed to frequency of transitions between homes found that more parenting time is not associated with poorer child outcomes in high-conflict families where there is no violence or abuse (Fabricius et al., 2012). With the exception of reports by mothers who had concerns about children’s safety in the care of the father, 1 to 2 years after separation, conflict was neither more nor less damaging for children in shared care-time arrangements than for children in other arrangements (Kaspiew et al., 2009). Rather than magnify harmful effects of parental conflict, shared parenting may protect children from some of its negative consequences (Braver & O’Connell, 1998; Fabricius, Braver, Diaz, & Velez, 2010; Fabricius et al., 2012; Gunnoe & Braver, 2001; Sandler, Miles, Cookston, & Braver, 2008; Sandler, Wheeler, & Braver, 2013).

One way in which shared parenting time can reduce children’s exposure to tension-filled communications between parents is that longer periods of time with each parent reduces the number of transfers between parents. For instance, a 2-hr contact means the child makes two transitions a day between parents. Simply changing the 2-hr contact to an overnight reduces the transitions between homes to one per day. Also, not all parents who litigate custody are in high conflict. Some parents disagree about which parenting plan is in the child’s best interests and take their dispute to court, but otherwise treat each other with civility.

A policy of automatically denying joint physical custody when a couple is labeled as “high conflict” brings additional drawbacks in addition to denying children the protective buffer of a nurturing relationship. It sends the message that generating or sustaining conflict can be an effective strategy to override shared custody (Kelly, 2012; Warshak, 2011). This discourages civil communication and cooperation, and may reduce children’s time with the

parent who is less angry, particularly if the other parent fails to recognize and support the children’s need for positive relationships with two parents (Garber, 2012). Such a policy also overlooks the heterogeneity of the dynamics of interparental conflict (Kelly, 2003; Kelly, 2012). The label *high conflict couple* implies that both parents actively engage in conflict. Although this is true in some cases, in other cases the label is a misnomer because one parent may be a victim of the other parent’s vindictive rage or attempts to marginalize the parent’s involvement in raising the child (Friedman, 2004; Kelly, 2003; Kelly, 2012).

Because of the consistency of findings regarding the harmful impact of parental conflict to which children are exposed, we recommend the following:

- When feasible parents should be encouraged to create parenting plans through a collaborative, nonadversarial process that increases the likelihood that both parents will be satisfied with the plan and can give it relatively unambivalent support.
- Interventions such as mediation and parenting coordination can help parents better manage conflict and reduce its negative impact on children.
- When considering the implications of conflict for custody dispositions, courts, operating under the best-interest standard, can hear evidence that goes beyond identifying the presence of conflict and sheds light on the dynamics of the conflict, the contributions of each party to it, and the quality of parenting.
- When tension and conflict accompany transfers of children from one home to the other, rather than reduce children’s time with one parent as a response to concerns about parental conflict, consideration should be given to conducting transfers at neutral sites where both parents are not present at the same time (Main, Hesse, & Hesse, 2011). For instance, the children can be dropped off at daycare by one parent and picked up by the other. This protects children from exposure to parental conflict.
- To the extent that conflict is generated by a father who opposes the mother’s efforts to marginalize his participation in raising the young child, efforts should be made to educate the mother about the benefits to children of parenting plans that give more opportunities for the development and strengthening of father–child relationships and that keep fathers more involved.
- Both parents should be encouraged to understand the emotional difficulty that can attend being apart from a young child for extended time periods, difficulty that is multiplied when a parent’s employment keeps him or her away from the child for most of the weekdays. Parents should be encouraged to provide regular feedback to each other about the young child’s routines, behavior, and health, and to the extent possible assuage each other’s concerns about the child’s development when in the care of the other parent.

Stability of Shared Physical Custody Arrangements

Some commentators express concern that shared physical custody arrangements are not stable and tend to “drift” into de facto physical custody with the mother (with a concomitant concern that child support payments fail to adjust accordingly). The data regarding the stability of shared physical custody are mixed (Nielsen, 2013b). Earlier studies identified this phenomenon (Maccoby & Mnookin, 1992; Buchanan & Maccoby, 1996), as did a more recent Australian study (Smyth, Weston, Moloney, Richardson, & Temple, 2008). But another recent and methodologically

rigorous large-scale study in Wisconsin found no such drift (Berger et al., 2008). Three years after divorce, the shared physical custody arrangements were as durable as sole mother custody arrangements, with 90% of the dual residence children remaining in this arrangement. Although the basic custody arrangement did not change, children in sole mother custody were much more likely to experience a dropoff—and thus instability—in contact with their father. Kaspiew et al. (2009) found mother-custody arrangements the most stable, but also reported high stability for equal (48–52% division of time) parenting.

Regardless of the level of stability of sole, shared, and equal custody, or the reasons for the discrepant findings among the studies, it would be a mistake to assume that changing parenting plans as children mature necessarily means that the custody arrangement failed. Parents who change the children's residential schedule may be responding to changes in the family and changes in their children's needs and preferences. Such flexibility may further rather than impede children's optimal development and satisfaction with the parenting plan.

Special Circumstances

Some circumstances depart significantly from the norm and do not lend themselves to the same general recommendations that apply to the majority of parenting plan decisions. These circumstances include a history of intimate partner violence, a history or credible risk of neglect, physical abuse, sexual abuse, or psychological abuse toward a child, manifestations of restrictive gate-keeping such as persistent and unwarranted interference with parenting time (Austin, Fieldstone, & Pruett, 2013; Pruett, Arthur, & Ebling, 2007; Pruett et al., 2012; Warshak et al., 2003), a history of child abduction, a child's special needs (e.g., cystic fibrosis or autism), and a significant geographical separation between the parents. With the exception of relocation, each of these circumstances requires special safeguards to protect children.

The relocation of a parent with the child away from the other parent alters the range of feasible parenting plans and magnifies a parent's ability to effectively exclude and erase the nonmoving parent from the child's life, particularly if the relocation is to a foreign destination (Warshak, 2013). Recommendations derived from attachment theory and research encourage parents to delay a move until the child is at least three years old (Austin, 2010; Kelly & Lamb, 2003). As mentioned earlier, children require frequent interaction with and caring from each parent to lay the building blocks of a solid parent-child relationship. Younger children have more limited ability to tolerate separations and to sustain a meaningful relationship over a prolonged absence. They change more rapidly and the parent needs regular contact to remain in sync with the child.

Braver, Ellman, and Fabricius (2003) found negative effects associated with a child's relocation far away from one parent. Nevertheless no empirical research exists regarding the long-term impact of a very young child's lengthy separations from one parent, while living with the other parent. Concerns and guidelines offered by evaluators and therapists arise from their clinical experience with children whose problems apparently reflect stress aroused by a residential schedule that is insensitive to their developmental needs. We need to exercise caution about making generalizations based on these anecdotal observations. The children

seen by therapists are those who are not doing well. We do not know how many children might benefit from, or be unaffected by, a plan we might reject as theoretically unwise.

Conclusions and Recommendations

Two central issues addressed in this article are the extent to which young children's time should be spent predominantly in the care of the same parent or divided more evenly between both parents, and whether children under the age of 4 should sleep in the same home every night or spend overnights in both parents' homes. Differences of opinion regarding shared parenting for young children focus on the issue of whether giving children more time with their fathers, aimed at strengthening father-child relationships, risks harming the mother-child relationships. The concern is that spending too much time away from the mother, or having overnights away from her, rather than ensure that a child has a high quality relationship with both parents, will result in the child having poor relationships with both parents. Research allays such concerns for older children in shared custody (Fabricius et al., 2012). More frequent contact with fathers brings benefits but does not come at the expense of the quality of the mother-child relationships. The research reviewed earlier on parenting time in intact families shows that the average infant in the United States spends less than half time in the care of the mother and even less time receiving direct care from her. Combined with the daycare studies, this research should put to rest the idea that children are inevitably harmed by extended separations from their mothers.

The results of the 16 studies relevant to parenting plans generally support rather than oppose shared parenting and overnights for young children. But predominantly the studies show little direct impact of overnights in the short run. The three studies that often are cited as evidence for the harmful effects of greater father involvement with young children actually found mixed or ambiguous results perhaps because the measures used were inadequate by scientific standards. Nevertheless the lack of long-term studies directly comparing different residential schedules for children who are raised from a young age in two homes perpetuates debate among professionals and opens the door for opinions and recommendations that reflect hypotheses, speculations, and biases rather than scientifically established facts.

Until we have more studies on the long-term outcome of parenting plans that originated in early childhood, we must rely on extrapolations from what is known about how much time and what type of care infants and toddlers need for their wellbeing. The research on children being raised by parents who live apart from each other, in the larger context of scientific knowledge about the factors that foster optimal child development and the formation and maintenance of healthy parent-child relationships, offers guidelines that should inform decision makers and those who assist them, such as parents, mediators, child custody experts, lawyers, and judges. When compared with the wider body of child development and daycare research relevant to parenting plans, the number and quality of studies that focus specifically on young children whose parents live apart from each other is limited.

This document is not the first consensus report on the implications of research for parenting plans. A multidisciplinary group of experts, sponsored by the U.S. National Institute of Child Health and Human Development, met in 1994 to evaluate the empirical

evidence regarding the ways in which children are affected by divorce and the impact of various custody arrangements. This group issued a report (Lamb, Sternberg, & Thompson, 1997) with the following conclusion relevant to parenting plans for young children:

To maintain high-quality relationships with their children, parents need to have sufficiently extensive and regular interaction with them, but the amount of time involved is usually less important than the quality of the interaction that it fosters. Time distribution arrangements that ensure the involvement of both parents in important aspects of their children's everyday lives and routines—including bedtime and waking rituals, transitions to and from school, extracurricular and recreational activities—are likely to keep nonresidential parents playing psychologically important and central roles in the lives of their children. How this is accomplished must be flexibly tailored to the developmental needs, temperament, and changing individual circumstances of the children concerned (p. 400).

Between 1999 and 2001, a well-cited exchange of articles challenged the wisdom of guidelines that restricted young children from sleeping in their fathers' home. One group of authors supported flexible, individualized parenting plans, rather than absolute rules favoring or prohibiting overnights (Kelly & Lamb, 2000; Lamb & Kelly, 2001; Warshak, 2000; Warshak, 2002). They recommended that decision makers consider the option of overnights with fathers for its potential benefits to the children's developing relationships with both parents. Those opposing this view conceded the need for some relaxation of restrictions but continued to emphasize concerns about potential harm rather than potential benefits of overnights (Solomon & Biringen, 2001; Biringen et al., 2002). They proposed that overnights should be viewed with caution rather than prohibited or contraindicated on an a priori basis, thus accepting that in some cases overnights with their fathers might be in young children's best interests.

In the aftermath of the 1997 consensus report, the subsequent articles on parenting plans for young children, and a growing body of research relevant to shared parenting, the importance of providing sufficient opportunities to ensure that children develop and maintain high quality relationships with both parents was increasingly recognized (Finley & Schwartz, 2010; Schwartz & Finley, 2010). The decade between 2001 and 2011 saw increasing acceptance of overnights among mental health professionals, courts, and parents of infants and toddlers. Despite some backlash from those who advocate designating one parent as a primary caregiver, discouraging shared parenting for young children, and resurrecting 20th century blanket restrictions unless overnights are deemed to be helpful to the parent designated as the primary caregiver (e.g., McIntosh, 2011), for reasons discussed above we think this is misguided and inconsistent with an evidence-based approach to parenting plans. The research published since the 1997 consensus reinforces that consensus' conclusions (Adamsons & Johnson, 2013; Nielsen, 2013a, 2013b; Sarkadi, Kristiansson, Oberklaid, & Bremberg, 2007).

Nevertheless we acknowledge that both the quantity and quality of research leave much unknown and call for modesty in formulating conclusions to guide custody decisions. With this caveat in mind, the endorsers of this document agree that the current state of the scientific literature supports the following conclusions and recommendations. We recognize that many factors such as cultural

norms and political considerations affect the type of custody policy that society deems as desirable. To the extent that policy and custody decisions seek to express scientific knowledge about child development, the analyses in this article should receive significant weight by legislators and decision makers.

1. Just as we encourage parents in intact families to share care of their children, we believe that the social science evidence on the development of healthy parent-child relationships, and the long-term benefits of healthy parent-child relationships, supports the view that shared parenting should be the norm for parenting plans for children of all ages, including very young children. We recognize that some parents and situations are unsuitable for shared parenting, such as those mentioned in point #7 below.
2. Young children's interests benefit when two adequate parents follow a parenting plan that provides their children with balanced and meaningful contact with each parent while avoiding a template that calls for a specific division of time imposed on all families.
3. In general the results of the studies reviewed in this document are favorable to parenting plans that more evenly balance young children's time between two homes. Child developmental theory and data show that babies normally form attachments to both parents and that a parent's absence for long periods of time jeopardizes the security of these attachments. Evidence regarding the amount of parenting time in intact families and regarding the impact of daycare demonstrates that spending half time with infants and toddlers is more than sufficient to support children's needs. Thus, to maximize children's chances of having a good and secure relationship with each parent, we encourage both parents to maximize the time they spend with their children. Parents have no reason to worry if they share parenting time up to 50/50 when this is compatible with the logistics of each parent's schedule.
4. Research on children's overnights with fathers favors allowing children under four to be cared for at night by each parent rather than spending every night in the same home. We find the theoretical and practical considerations favoring overnights for most young children to be more compelling than concerns that overnights might jeopardize children's development. Practical considerations are relevant to consider when tailoring a parenting plan for young children to the circumstances of the parents. Such considerations may not be evident in the laboratory, or measured by existing studies, but they are readily apparent to parents and consultants who must attend to the feasibility of parenting plan options (Ludolph, 2012). Overnights create potential benefits related to the logistics of sharing parenting time.

Parents of young children are more likely than parents of older children to be at an early stage in their career or employment at which they have less flexibility and con-

trol over their work schedules. Parenting schedules that offer the father and child 2-hr blocks of time together, two or three times per week, can unduly stress their contacts. Consider the logistics of loading a baby and necessary paraphernalia in a car, driving to the father's residence, unloading the car, feeding the child, and helping the child become accustomed to the surroundings. If the child has to be returned within 2 hours of being picked up by the father, this leaves little time for relaxed interaction. Overnights help to reduce the tension associated with rushing to return the child, and thus potentially improve the quality and satisfaction of the contact both for the parent and child. Overnights allow the child to settle in to the father's home, which would be more familiar to the child who regularly spends the night in the home compared with one who has only 1-hr segments in the home (allowing for transportation and preparation for the return trip). The physical spaces in which father-child interactions take place influence the nature and types of interaction, and affect the father's identity as a parent (Marsiglio, Roy, & Fox, 2005). Spending the night allows the father to participate in a wider range of bonding activities, such as engaging in bedtime rituals and comforting the child in the event of nighttime awakenings. An additional advantage of overnights is that in the morning the father can return the child to the daycare; this avoids exposing the child to tensions associated with the parents' direct contact with each other.

Nonetheless, because of the relatively few studies currently available, the limitations of these studies, and the predominance of results that indicate no direct benefit or drawback for overnights per se outside the context of other factors, we stop short of concluding that the current state of evidence supports a blanket policy or legal presumption regarding overnights. Because of the well-documented vulnerability of father-child relationships among never-married and divorced parents, and the studies that identify overnights as a protective factor associated with increased father commitment to child rearing and reduced incidence of father drop-out, and because no study demonstrates any net risk of overnights, decision makers should recognize that depriving young children of overnights with their fathers could compromise the quality of their developing relationship.

5. Parenting plans that provide children with contact no more than six days per month with a parent, and require the children to wait more than a week between contacts, tax the parent-child relationships. This type of limited access schedule risks compromising the foundation of the parent-child bond. It deprives children of the type of relationship and contact that most children want with both parents. The research supports the growing trend of statutory law and case law that encourages maximizing children's time with both parents. This may be even more important for young children in order to lay a strong foundation for their relationships with their fathers and to foster security in those relationships. Rather than place

obstacles in the path of fathers' involvement with their children, society should encourage fathers to be more productively and directly engaged in their children's lives. Broadly speaking, diverse stakeholders must collaboratively develop a range of social initiatives—including public policy and psychoeducational programs—that help set the stage for fathers and young children to forge healthy bonds (Cowan, Cowan, Pruett, Pruett, & Wong, 2009; Marsiglio & Roy, 2012).

6. There is no evidence to support postponing the introduction of regular and frequent involvement, including overnights, of both parents with their babies and toddlers. Maintaining children's attachment relationships with each parent is an important consideration when developing parenting plans. The likelihood of maintaining these relationships is maximized by reducing the lengths of separations between children and each parent and by providing adequate parenting time for each parent. Such arrangements allow each parent to learn about the child's individual needs and to hone parenting skills most appropriate for each developmental period. The optimal frequency and duration of children's time with each parent will differ among children, depending on several factors such as their age and their parents' circumstances, motivations, and abilities to care for the children. Other important considerations include children's unique relationship histories with each parent and their experience of each parent's care and involvement. In each case where it is desirable to foster the parent-child relationship, the parenting plan needs to be sensitive to the child's needs, titrating the frequency, duration, and structure of contact.
7. Our recommendations apply in normal circumstances, for most children with most parents. The existence of parents with major deficits in how they care for their children, such as parents who neglect or abuse their children, and those from whom children would need protection and distance even in intact families, should not dictate policy for the majority of children being raised by parents who live apart from each other. Also, our recommendations apply to children who have relationships with both parents. If a child has a relationship with one parent and no prior relationship with the other parent, or a peripheral, at best, relationship, different plans will serve the goal of building the relationship versus strengthening and maintaining an existing relationship.

The endorers of this document, all highly accomplished in their fields, nonetheless do not represent the views of all child development and divorce specialists. We hope the stature of the signatories garners respect and attention from decision makers. But we do not ask others to accept our opinions based solely on our reputations as experts. Rather it is our conviction that our analyses meet the test of scientific validity and reliability, and thus are trustworthy in the legal sphere. We anticipate and invite responses from colleagues who favor different positions. But we encourage policymakers and decision makers to carefully distinguish between balanced, accurate presentations versus biased accounts of re-

search and to avoid over relying on outlier studies with questionable methods and results.

Meltzoff (1998) warns: "Uncritical acceptance of invalid research can impede the development of the field and jeopardize human welfare" (p. 9). We believe that uncritical acceptance of invalid research on shared parenting plans for young children has jeopardized the welfare of many parent-child relationships. This document is our attempt to correct misrepresentations of the state of science and the harm such misrepresentations threaten.

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Appendix

Endorsements From Researchers and Practitioners

The 110 researchers and practitioners who have read, commented, and offered revisions to this article are listed below. They endorse this article's conclusions and recommendations, although they may not agree with every detail of the literature review.

1. Kari Adamsons, Ph.D., Assistant Professor, Department of Human Development and Family Studies, University of Connecticut
2. Francesca Adler-Baeder, Ph.D., Professor, Human Development and Family Studies, Auburn University
3. Karen E. Adolph, Ph.D., Professor of Psychology and Neural Science, New York University
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6. Jack Arbuthnot, Ph.D., Emeritus Professor of Psychology, Ohio University
7. William G. Austin, Ph.D., Independent Practice, Lakewood, Colorado and Raleigh, North Carolina
8. Jennifer L. Bellamy, Ph.D., Assistant Professor, School of Social Service Administration, University of Chicago
9. Jay Belsky, Ph.D., Robert M. and Natalie Reid Dorn Professor, Department of Human Ecology, Human Development and Family Studies Program, University of California, Davis
10. Anna Beth Benningfield, Ph.D., former President of the American Association for Marriage and Family Therapy; Independent Practice, Dallas, Texas
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12. William Bernet, M.D., DLFAPA, Professor Emeritus, Department of Psychiatry, Vanderbilt University School of Medicine
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14. James H. Bray, Ph.D., former American Psychological Association President; Associate Professor, Department of Family and Community Medicine, Baylor College of Medicine
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18. Judith Cashmore, Ph.D., Associate Professor, University of Sydney Law School, Australia
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22. Marilyn Coleman, Ed.D., Curators' Professor Emerita, Human Development and Family Studies, University of Missouri
23. Scott Coltrane, Ph.D., Interim Senior Vice President and Provost, University of Oregon
24. Mary Connell, Ed.D., ABPP, Independent Practice in Clinical and Forensic Psychology, Fort Worth, Texas
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31. Don Edgar, Ph.D., Foundation Director of the Australian Institute of Family Studies
32. Mark A. Fine, Ph.D., Professor and Chair, Department of Human Development and Family Studies, University of North Carolina at Greensboro
33. Gordon Finley, Ph.D., Professor Emeritus, Department of Psychology, Florida International University
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36. Frank F. Furstenberg, Jr., Ph.D., Emeritus Zellerbach Family Professor of Sociology, University of Pennsylvania
37. Lawrence Ganong, Ph.D., Professor and Co-Chair, Department of Human Development and Family Studies, University of Missouri
38. Donald A. Gordon, Ph.D., Professor of Psychology, Emeritus, Ohio University
39. Michael C. Gottlieb, Ph.D., ABPP, Independent Practice, Dallas, Texas
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41. Neil S. Grossman, Ph.D., ABPP, President, Division of Forensic Psychology, New York State Psychological Association; Independent Practice, Dix Hills, New York
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45. John Harvey, Ph.D., Professor, Department of Psychology, University of Iowa
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59. Jeffrey Larson, Ph.D., Alumni Professor of Marriage and Family Therapy, School of Family Life, Brigham Young University
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SB849 FWA
Yaakov Aichenbaum, PAS-Intervention MD Chapter

To the Honorable members of the JPR:

While SB 849 contains some welcome changes, there are a few problematic clauses that are of concern. First, the bill reads:

*9–103. 8 (B) NO PARENT IS PRESUMED TO HAVE ANY RIGHT TO LEGAL 9 DECISION–
MAKING OR PARENTING TIME THAT IS SUPERIOR TO THE RIGHT OF 10 ANOTHER
PARENT.*

In theory, it would seem that this is positive since it does not favor any parent. However, it ignores the solid scientific research that children generally do better when they have substantial access to both parents (see attachments). If there are not any significant reasons against it, equal shared custody should be the default starting position since it **is in the best interest of the child's development and well-being**. It is logical to start a custody decision based on what is known to be best and then modify it if the facts warrant a change from the norm. Practically speaking, the current wording of the bill and the tendency to favor mothers in custody will make it difficult for fathers to achieve joint custody even though it is in the best interest of the children.

Another problem with this bill is that it stresses the ability of the parents to communicate. We certainly do not want to have children caught in the crossfire of feuding parents. However, this becomes problematic in parental alienation cases in which the alienating parent refuses to cooperate with communication and to facilitate a relationship with the other parent. The alienated parent (who is actually the more emotionally healthy of the parents) often is willing and capable of communicating, but there is nobody to communicate with. The current wording of this bill creates the very real possibility that the healthy alienated parent will not get custody because of the belligerence of the other parent who refuses to communicate. This will thereby endorse and empower the alienation which is detrimental to the child.

Finally, the bill does not stress that a factor in determining custody is the willingness of a parent to encourage and facilitate a relationship with the other parent. The clause "*(III) MAINTAIN THE CHILD'S RELATIONSHIP WITH THE PARENTS, 28 SIBLINGS, OTHER RELATIVES, OR OTHER INDIVIDUALS WHO HAVE OR LIKELY MAY 29 HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD*" does not specifically state this. This again can foster parental alienation.

If these issues can be addressed, then I am favorable to this bill. If they are not corrected, I request that this bill receive an unfavorable report. Thank you for addressing these important issues.

Yaakov Aichenbaum
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SB849 FWA

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March 9, 2022

ISSUE: Against Senate Bill 0849 cross-filed with House 1168

**The Maryland General Assembly
Legislative Services Building
90 State Circle
Annapolis, Maryland 21401**

Greetings Senator West:

We, Winning Strategies: Fatherhood, The Courts & Custody, do not support the bill you are sponsoring Senate Bill 0849 cross-filed with 1168. This bill has been used as “device” for personal agendas since 2018 by members of the House of Delegates.

The fathers that we serve asked what the difference with Senate Bill 0849 is and the cross-file House Bill 1168 and the House Bills from the past, (House Bill 1032 2018/ House Bill 1328 2020/ House Bill 0505 2021). The bills are using the same verbiage so what makes this bill a good bill now than in the past -nothing\). When Dumais & McComas was sponsoring it was withdrawn (first time) – for what reason. As the years progressed nothing changed except the sponsors who made other damaging bills from the House Bill Legal Decision-Making Parenting Time, we urge your support in withdrawing your sponsorship for SB 0849, fathers in Baltimore County need a bill with substance and promise. From the sponsors of this bill which have spawned other bills which were damaging to fathers please do not allow this bill to be used to do the same, this year we were against Delegate’s Atterbeary bill that spawned from HB1168 predecessors. As a fatherhood advocacy organization, we cannot give support to a bill, and we urge you Senator West to do the same!

Senate Bill 0849 et al DOES NOTHING for fathers so why does it keep getting introduced? This bill needs to die on the house floor.

Sincerely,

The Winning Strategies Team

