

The Bad News about Divorce and Children Is Worse than We Thought, but the Good News Is Better than We Thought

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Abstract. I discuss new findings on the association between parenting time with father and father-child relationships in young adulthood, and on the association between father-child relationships in young adulthood and serious physical health problems in later adulthood. I also discuss new findings on public opinion showing strong support for equal parenting time, but also strong belief that family courts are biased toward awarding parenting to mothers. However, indications are that support for equal parenting time has permeated the courts in at least one state (Arizona) in the US, suggesting that the public belief that family courts are biased toward mothers may be unwarranted elsewhere also. I conclude with an illustration of how custody policy can be reformed to legitimize equal parenting time without sacrificing necessary oversight and individualization.

At the risk of invoking platitudes about changing times, I offer new data indicating that we are on the verge of a shift in child custody policy toward more equal parenting time arrangements, and that it is a good thing and none too soon. The shift might have happened sooner had divorce research not been plagued for years by deficiencies in measures of parenting time, and by limited understanding of how parenting time affects children. The measures are deficient because they are actually measures of frequency of contact rather than amount of parenting time. This has allowed the conclusion to persist that “quality is more important than quantity” of parenting time. Limited understanding of how parenting time affects children perpetuated a near-exclusive focus in the past on protecting children from exposure to parent conflict. This allowed the weakly-supported recommendation to persist that parenting time should be limited in high conflict families. New measures of parenting time establish its importance in fostering strong father-child relationships. New findings in the health literature provide us with an integrated understanding of how both parent conflict and limited parenting time harm children, and provide us with sobering confirmation of how powerful these things can be.

The Bad News: What the Divorce Literature Tells Us About the Long-Term Effects on Father-Child Relationships

In seeking to adjudicate the debate over whether the negative effects of divorce on children are large and pervasive (e.g., Wallerstein, Lewis, & Blakeslee, 2000) or relatively minimal (e.g., Hetherington & Kelly, 2002), Paul Amato (2003) of Pennsylvania State University used a sophisticated technique to match divorced and non-divorced families on a range of background variables. He then examined the effects of

divorce on three aspects of young adults' adjustment: their overall psychological well-being, the marital discord they experienced in their own marriages, and the quality of their relationships with their fathers. He used data from the Marital Instability Over the Life Course (MIOLC) study, a longitudinal study began in 1980 of a random, national sample of married individuals (Amato & Booth, 1997). In the 1997 wave, when the median age of the children was 27 years, there were 671 children, 147 (21%) of whom had divorced parents. Amato found that the strongest negative effect of divorce was on father-child relationships. Quality of children's relationships with fathers was assessed by responses to 6 items dealing with trust, understanding, respect, fairness, affection, and the overall closeness of the relationship. Items included, "How well do you feel that your father understands you?" and "How much do you trust your father?" Compared to children from the non-divorced families, 35% more children from divorced families reached adulthood with poor relationships with their fathers. Amato (2003, p. 337) concluded, "For this outcome, the estimated effect of marital disruption is pervasive and strong. ...[T]o the extent that close father-child relationships represent potentially valuable resources for children across the life course, the findings on father-child relationships are troubling."

Amato (2003) did not find any factors that moderated the effect of divorce on father-child relationships. An obvious possible moderating factor is the amount of parenting time the father had with the child. One would suspect that the greater the parenting time the child had with the father, the less the negative effect of divorce on the father-child relationship, but there was apparently no correlation between parenting time and quality of father-child relationship in this data set. One reason might be that there was little variation in parenting time among the families who divorced many years ago.

A second reason might have to do with how parenting time was measured. Fabricius, Braver Diaz, and Velez (2010) and Fabricius, Sokol, Diaz, and Braver (2012) have discussed why the typical scales used to measure father-child contact in the past (and even often currently) do a poor job of measuring amount of parenting time. They are measures of *frequency of contact*, not *amount of parenting time*. In these older scales, respondents are asked how frequently father-child contact has occurred, and the response categories include "once a year," "one to three times a month," "once a week," etc. For example, two divorced families might have a parenting time schedule of every other weekend at the father's home, but it might be a 2-day weekend for one family and a 3-day weekend for the other. Nevertheless, both families would be constrained to choose the response category, "one to three times a month." Argys, Peters, Cook, Garasky, Nepomnyaschy and Sorensen, (2007) compared several surveys that used measures of *frequency of contact* and concluded, "What is most striking about the reports of father-child contact ... and perhaps most alarming to researchers, is the magnitude of the differences in the reported prevalence of father-child contact across the different surveys" (p. 383).

We (Fabricius & Luecken, 2007) have constructed a more direct measure of *amount of parenting time*. It involves asking young adults four retrospective questions about the typical number of days and nights they spent with their fathers during the school year and vacations. The yearly amount of parenting time can be calculated from these questions. An advantage of this retrospective approach is that respondents can focus

on the time period after the divorce that was most typical or representative. Fabricius, Sokol, Diaz, and Braver (2012) reported results from a survey which incorporated this parenting time measure given during the 2005–2006 academic year to 1,030 students who reported their parents had divorced before they were 16 years old. On average their parents had divorced about 10 years earlier. The survey also included a large number of questions about their past and current family relationships and situations which allowed us to capture several aspects of the emotional security of their relationships with their parents with a single score for each relationship. Because these scores represent how the students viewed their relationships at the time of the survey, when they were generally 18 to 20 years of age, they allow us to assess long-term associations between parenting time and the father-child relationship.

Figure 1 (from Fabricius, Sokol, Diaz, and Braver, 2012) shows that the father-child relationship improved in a linear, dose-response fashion with each increment of parenting time from 0% time with father to equal (50%) parenting time represented by the vertical line in the center of the figure ($r = .51$, $N = 871$, $p < .001$). At 50% parenting time with father, the father-child relationship reached its peak and then leveled off and did not show statistically significant change from 50% to 100% parenting time with father ($r = .15$, $N = 152$). This shows that the effect of divorce on the father-child relationship, established by Amato (2003), depends heavily on the amount of parenting time the child has with the father. At equal parenting time, the quality of the relationship was at its highest; at the lowest levels of parenting time with father (0% to 15%) the quality of the relationship was at its worst. The bad news is that a large percentage – almost 40% -- of the students had these minimal levels (5% to 15%) of parenting time with their fathers when they were growing up. These new data complement Amato's (2003) findings by showing that the impact of divorce on the father-child relationship is felt most at the lower levels of parenting time.

Worse News: What the Health Literature tells us About the Long-Term Consequences of Damaged Parent-Child Relationships

The recent physical health literature that focuses on *risky families* indicates profound effects on children's long-term, stress-related physical health attributable to disrupted parent-child relationships and parent conflict – the same factors that so often accompany divorce. Several of these studies began in the 1950s and 1960s when mothers were almost exclusive caregivers, and they show that a poor relationship with either the mother *or* the father had similar effects; thus, the findings are not limited to just the primary caregiver. The physical health findings have yet to be featured in the divorce literature, and are as yet unknown to courts and policy makers.

Repetti, Taylor, and Seeman (2002) of the University of California, Los Angeles, published the first review of the large physical health literature as it relates to family relationships in 2002 in the prestigious journal, *Psychological Bulletin*. They concluded that dysfunctional family relationships “lead to consequent accumulating risk for *mental health disorders, major chronic diseases, and early mortality*” (p. 330, emphasis added). They reviewed 15 physical health studies, which included several large, longitudinal studies begun decades ago, and which fortunately often included a few questions about

family relationships in addition to questions about diet, alcohol, exercise, smoking, etc. Findings consistently pointed to adverse health consequences to children of so-called “risky families;” i.e., families characterized not only by high parent conflict, but also by cold, unsupportive parent-child relationships. The findings suggested that conflict between the parents and poor parent-child relationships exert similar effects.

For instance, Russek and Schwartz (1997) examined data from Harvard undergraduate men in the early 1950s who were asked to describe their relationship with each parent. Their descriptions were coded as positive (“very close” “warm and friendly”) or negative (“tolerant” “strained and cold”). Twelve percent of relationships with mothers and 20% with fathers were coded negative. Thirty-five years later the researchers obtained health status based on in-person interviews and review of available medical records. Of the men who described a negative relationship with either their mother or their father, 85–91% had developed cardiovascular disease, duodenal ulcer, and/or alcoholism compared to only 45–50% of those who had described positive relationships.

When assessments of parent–child relationships and parent conflict were made in the same study, researchers see similar effects associated with each. For example, Shaffer, Duszynski, & Thomas (1982) examined data from white male physicians who graduated from medical school between 1948 and 1964 and described their family members’ attitudes toward each other as either positive (warm, close, understanding, confiding) or negative (detached, dislike, hurt, high tension). Men who described more negative and less positive family relationships were at increased risk of future cancer, even after controlling for health risk factors such as age, alcohol use, cigarette smoking, being overweight, and serum cholesterol levels.

Repetti, et al. (2002) found evidence that risky families affect children’s physical health via cumulative disturbances established during infancy and early childhood in physiologic and neuroendocrine system regulation (i.e., disruptions in sympathetic-adrenomedullary (SAM) reactivity, hypothalamic–pituitary–adrenocortical (HPA) reactivity, and serotonergic functioning). Such disruptions can have effects on organs, including the brain, and on systems, including the immune system. The emerging consensus (Repetti, Taylor, and Seeman, 2002; Troxel & Matthews, 2004) is that the social processes of parent conflict and poor parent-child relationships cause constant stress in the home which chronically activates and thereby dysregulates children’s biological stress responses, leading to deterioration of cardiovascular system functioning and hypertension (e.g., Ewart, 1991) and coronary heart disease (e.g., Woodall & Matthews, 1989), and possibly hindering children’s acquisition of emotional competence and self-regulatory skills (e.g., Camras, Ribordy, Hill, Martino, Spaccarelli, & Stefani, 1988; Dunn & Brown, 1994; Dunn, Brown, Slomkowski, Tesla, & Youngblade, 1991).

Psychological processes of emotional insecurity accompany this physiological dysregulation. Modern attachment theory (Bowlby, 1969; Karen, 1998) explains how poor parent-child relationships lead to feelings of insecurity, anger, distrust in continued parental support, and low self-worth, which can by themselves chronically activate and dysregulate children’s biological stress responses. In Davies and Cummings’ (1994) attachment-based theory of parent conflict, parent conflict similarly leads to emotional insecurity because the child fears abandonment by one or both fighting parents. It is easy

to appreciate how quickly emotional insecurity can trigger the biological stress response system (or as it is commonly known, the “fight-or-flight” response system). Simply imagine someone pulling a gun on you, or hearing footsteps behind you late at night in an empty parking structure, and you may notice subtle changes in your breathing, a slight tension in your chest, etc. Simply imagining our security threatened in such acute ways can automatically trigger stress responses.

One of the greatest advances in modern psychology has been to understand how this system functions during the child’s normal development in the family. The primary threats to the infant and young child’s safety and protection are parent absence, parent unresponsiveness, and parent conflict. The child’s system is attuned to detect these things. In acute form, they elicit in children the same shortness of breath, increased blood pressure and heart rate, fear, etc. that we all experience when threatened because they are caused by the instantaneous release of the same powerful hormones. Children in families characterized by dysfunctional parent conflict and unsupportive parent-child relationships experience these threats repeatedly and learn to anticipate them when they are absent. This exposes these children to chronic, low-level doses of these hormones, which is what causes the long-term health problems.

We can now see how the bad news about the effects of divorce on children looks worse than we thought. Both Amato (2003) and Fabricius et al. (2012) found that in their 20’s, many children of divorce had damaged relationships with their fathers. Amato compared the rate to intact families; Fabricius related it to parenting time. Together their findings indicate that “parental divorce results in poorer father-child relationships [than in intact families] for about one-third of children [of divorce]” (Amato, 2003, p. 336), and similarly that the 40% of children who had minimal parenting time with their fathers had the most damaged relationships with them as young adults. Both of these findings link up with the lifetime health outcomes of young adults who had reported similarly distant relationships with their parents. Repetti et al. (2002, p. 356) point to the effects of parenting on children’s underlying biology, whereby repeatedly adapting to threats and stresses contributes to “the premature physiological aging of the organism that enhances vulnerability to chronic disease and to early mortality in adulthood (McEwen & Stellar, 1993; Seeman et al., 1997).” *Minimal parenting time with fathers thus constitutes a major public health issue.* The data in Figure 1 show that with each increase in parenting time up to and including equal (50%) parenting time, the father-child relationship shows improvement. This suggests that there is no “cut-off” point of a lesser amount of parenting time at which the risk to children’s relationships with their fathers ceases. Rather, it suggests that some father-child relationships which might be especially susceptible to risk can benefit from increases (e.g., from 40% to 50% parenting time) which might make little difference in less-risky relationships.

The Good News: What the Public Believes About Equal Parenting Time

There is now a strong consensus among the general public that equal parenting time is best for children. Large majorities favor it in all the locales and among all the demographic groups in the United States and Canada in which this question has been asked, and across several variations in question format. For example, a recent poll in

Canada (which has a custody law similar to most US states) conducted by Nanos Research and commissioned by its Parliament asked, “*Do you strongly support, somewhat support, somewhat oppose or oppose federal and provincial legislation to create a presumption of equal parenting in child custody cases?*” The combined “strongly support” and “somewhat support” vote was 78% (http://www.familylawwebguide.com.au/forum/pg/topicview/misc/4171/index.php&keep_session=2049584127).

In Massachusetts, 85% of voters voted “yes” on a nonbinding proposition that appeared on the 2004 ballot asking whether there should be a “*presumption in child custody cases in favor of joint physical and legal custody, so that the court will order that the children have equal access to both parents as much as possible, except where there is clear and convincing evidence that one parent is unfit, or that joint custody is not possible because of the fault of one of the parents.*” (This was the wording in 5 precincts; different language appeared in the rest of the state, but the vote was very similar for the two wordings http://www.boston.com/news/special/politics/2004_results/general_election/questions_all_by_town.htm)

Fabricius et al. (2010) presented the identical MA language above to adults waiting to be called for jury duty in Tucson, AZ, which constituted a representative sample of the county population, asking them to indicate their agreement on a 7-point Likert scale. Fifty-seven percent chose the strongest level of agreement (“7” on the scale), with another 30% just below that (6 on the scale). There were no significant differences by gender, age, education, income, whether the respondents themselves were currently married, had ever divorced, had children, had paid or received child support, or by their political outlook.

Braver, Ellman, Vortuba, and Fabricius (2011) conducted the most sophisticated public opinion study to date. We questioned whether the popular support that prior studies seemed to show for equal parenting time would persist when lay respondents were given case details. Consequently, we presented lay people with the kinds of facts that raise difficulties and concerns for many judges and custody evaluators. The facts were embedded in hypothetical case summaries, like those a custody evaluator might prepare for a judge, albeit in a relatively simplified form that would be accessible to lay respondents in a reasonable time frame (much as in a long line of studies in psychology and law; see Brewer & Williams, 2005, for examples).

The respondents were from the Pima County (Tucson, Arizona) jury panel. Those summoned to serve on a jury panel are citizens chosen from the voter and driver’s license records. Using a computer generated random selection process, the jury panel is chosen so as to represent a representative cross-section of the adult citizens in the county. Of those who are summoned by the county jury commissioner, over 90% eventually appear (Ellman, Braver & MacCoun, 2009). Because exemptions from jury service are only rarely granted and because of stringent enforcement and penalties, Pima County jury pools show less self-selection and bias than jury pools in some other jurisdictions. Of the 817 jurors offered the survey, 252 chose not to take a survey form and the remaining 565 surveys were accepted. Of these 565, 367 were completed and 171 were not completed, most often because the respondent was called for jury service.

Past studies (Ellman, Braver & MacCoun, 2009) using this identical method and jury pool and obtaining approximately this response rate found that the sample responding to the survey matched Census data for the national population in age distribution, level of education achieved, and household income.

Because judges (not jurors) make custodial decisions, we asked participants to imagine they were a judge deciding these hypothetical cases. It is important to note that all cases specified that neither parent wanted equal custody, but were instead each requesting “*as much living time with the children*” as possible because “*each now genuinely feels the children would be better off mostly in their care and not so much in the care of the other parent. They disagree strongly about this.*” In each case there were no issues with parental fitness, or ability to care for the children, or domestic violence. In one hypothetical case the couple was described as having divided the pre-divorce child care exactly equally, in a another the mother had provided 75% of the couple’s pre-divorce child care-giving duties, and in the third the father had provided 75% of the couple’s pre-divorce child care-giving duties. In all three of these cases, the parents were described as having low conflict:

“Since the separation, there has been relatively little conflict between the mother and the father. Both try especially hard never to argue in front of the children. Evidence shows that neither says bad things about the other to the children. Also neither tries to gain the loyalty of the children for themselves nor to undermine the other’s authority or relationship with the children. They are both trying to make the best of the current situation.”

The fourth and fifth hypothetical cases were vague about the split of child care duties, but varied in the amount of parent conflict they portrayed. The parents were described as “*reasonably good parents who are involved in their children’s lives about like average families in which both parents work full-time (both M-F, 9-to-5).*” In one case the parents were described as having low conflict (as above). The other case depicted high, mutual conflict:

“Both parents have become and remain extremely angry at each other. So, at the present time, there is a great deal of conflict between the parents. Evidence shows that the father and the mother initiate this conflict equally often by starting arguments with the other, mostly regarding the children. They pick these fights in front of the children, and end up saying bad things about the other in front of the children. Neither parent really tries to suppress these arguments. It is clear that each also “bad mouths” the other to the children when the other isn’t around. Each parent tries to gain the loyalty of the children while trying to undermine the other parent’s authority and relationship with the children.”

The final two cases portrayed either the mother or the father as solely responsible for instigating and perpetuating the conflict, whereas

“evidence shows that the [other parent] clearly feels it is best not to fight in front of the children and so tries to suppress [instigating parent’s] attempts at arguing. In addition he [she] is sure to not say bad things about the [instigating parent] to the children or to undermine her [him]. He [she] is trying hard to make the best of the current situation.”

The possible responses formed a nine-point scale. The amount of time allocated to the father increased as one moved from choice 1 to choice 9, while time allocated to the mother decreased equivalently over the same progression. The midpoint, (5), was labeled “Live equal amounts of time with each parent.” Points 1 through 4 specified that the children should “live with the mother,” with the father’s share of the time described as: (1) minimally or not at all; (2) some; (3) a moderate amount; (4) a lot. Points 6 through 9 called for the children to “live with the father” with an equivalent descriptions of the time allocated to the mother that decreased as one moved from choice 6 to choice 9. Our respondents thus told us the amount of time they thought the children should spend with each parent, given the information presented in the case. The response choices were the same as those used in previous studies of living arrangements (Fabricius & Hall, 2000; Fabricius et al., 2010).

In the first three cases that varied amount of pre-divorce child care, 69% of participants awarded equal parenting time when the parents had shared child care equally during the marriage, and the plurality (47% and 46%, respectively) also awarded equal parenting time when the mother or the father had provided most of the pre-divorce child care. In the next two cases which varied parent conflict, and in which pre-divorce child care was only specified as about like average when both parents work full time, 66% of participants awarded equal parenting time when the parents had low conflict, and 64% awarded equal parenting time when the parents had high conflict. Only when one parent was solely responsible for instigating the conflict between the parents and bad-mouthing the other parent to the child did participants most commonly award more time to the other parent. When the mother instigated the conflict, only 21% of participants awarded her equal parenting time while the plurality (36%) awarded her “moderate time.” When the father instigated the conflict, only 4% of participants awarded him equal parenting time while the plurality (41%) awarded him “moderate time. Importantly, in no cases did men and women differ in their likelihood of awarding equal parenting time, nor was there evidence of differences due to nine other demographic variables, including age, education, household income, political outlook, and marriage and divorce history.

This public consensus about equal parenting time revealed in all these surveys is probably best characterized as a cultural value rather than mere opinion, given both its connection to the long-term historical trend toward gender equality, and the evidence for its universality and robustness. Regarding norms of practice, there appears to be a slow trend toward equal parenting time (PT). In our data (Fabricius et al., 2012) collected in 2005-06 in which the students’ parents had divorced on average 10 years earlier, about 9% of students reported equal PT (50%). In Wisconsin the percentage of divorced parents with equal PT increased from 15% in 1996-99 to 24% in 2003-04 (Brown & Cancian, 2007). In Washington, the percentage of divorced parents with equal PT was approximately 20% in 2008-09 (George, 2009). In Arizona the percentage of case files specifying equal PT tripled from 5% in 2002 (Venohr & Griffith, 2003) to 15% in 2007 (Venohr & Kaunelis, 2008). The Arizona case files included both divorced and never married parents, which might account for the somewhat lower rate.

The above makes it clear that the practice of equal parenting time lags the consensus about its value. Braver et al. (2011) and Fabricius et al. (2010) discuss the possible complex reasons for the lag. One possibility is a self-fulfilling prophesy

stemming from belief that family courts are biased toward mothers. Belief that the courts have a maternal bias could dissuade fathers from pressing for shared parenting or entice mothers to resist. Fabricius et al. (2010) asked respondents from the Pima County (Tucson, Arizona) jury panel about “the slant of the Arizona legal system regarding divorced parents.” Response categories included “very slanted in favor of mothers,” “somewhat slanted in favor of mothers,” “slanted toward neither mothers nor fathers,” “somewhat slanted in favor of fathers,” and “very slanted in favor of fathers.” Only 16% of citizens thought the family court in AZ was “slanted toward neither mothers nor fathers,” while 55% thought it was “somewhat slanted in favor of mothers.” Almost no one thought it was slanted to any degree in favor of fathers.

In the Braver, et al. (2011) study discussed above, we asked the jury pool participants not only “What would you decide if you were judge?” but also “*What do you think will happen if the description above was a real family in today’s courts and legal environment?*” Citizens thought courts would award equal parenting substantially less often than they themselves would. Regarding the first three cases described above, when the couple was described as having divided the pre-divorce child care equally, only 28% of citizens thought today’s courts would order equal parenting time. When the mother was portrayed as having performed the majority of child care, only 21% thought courts would order equal parenting time, and when the father had performed the majority, the figure was 27%. To recall, the respective rates of citizens saying they themselves would order equal parenting time were 69%, 47%, and 46%.

Evidence also exists that divorce attorneys in Maryland, Missouri, Texas, and Washington (Dotterweich & McKinney, 2000) and Arizona (Braver, Cookston, & Cohen, 2002) believe the courts in their areas are biased toward mothers in awarding parenting time. Thus the reason that the practice of equal parenting time lags the consensus about its value, despite much evidence that fathers desire more parenting time (see Fabricius et al., 2010), appears to be that fathers do not bargain harder because of the guidance they receive from attorneys, and their own widespread belief, that the system has a maternal bias.

Better News: What the Public Believes About the Family Courts’ Likelihood of Ordering Equal Parenting Time Just Might be Wrong

If the belief that the courts have a maternal bias regarding parenting time contributes indirectly to damaged father-child relationships in young adulthood, with their attendant negative health consequences, then it is important for the public to know whether the bias is real. Stamps (2002) found evidence that judges in four Southern states may have a maternal bias. But other evidence exists that this may not always be the case.

Evidence has been available though not widely known for a long time that if divorced fathers persisted in bringing their cases to court they received more parenting time than if they settled early in the process. Maccoby and Mnookin (1992) gathered data from court records in the early 1980’s in northern California about when in the legal process parents’ cases were finalized. The early waves of their Stanford Child Custody Study are publically available (www.socio.com/srch/summary/afda/fam25-27.htm). I retrieved the legal process data in relation to the four major types of residential custody

parents obtained (sole mother, sole father, joint, and split between siblings) Table 1 shows that among the 471 parents whose court records showed that the agreement was uncontested by either parent, only 79 (17%) obtained joint physical custody. The rate was essentially unchanged (18.2%) when the parents initially contested the agreement but settled without using any court services. However, the rate rose to 25% for those who used mediation, and peaked at 43% among those who obtained a child custody evaluation. The rate remained high (37%) for those who either went to trial but settled, or for whom the judge decided.

Maccoby and Mnookin (1992) also gathered data during individual pre-decree interviews with parents about the residential custody each one wanted (“what he or she would personally like in terms of residential custody, regardless of what in fact had been or would be requested in the legal proceedings,” p. 99). I selected only those contested cases where the mother wanted sole residential custody but the father wanted joint residential custody. Table 2 shows those cases divided into those in which the mother got what she wanted (sole maternal residential custody) versus the father got what he wanted (joint residential custody). Similar to the overall findings above, the rate of joint residential custody among this type of contested case was 27% when the parents initially contested the agreement but settled without using any court services and 20% when they used mediation, but rose to 47% among those who obtained a child custody evaluation and 50% for those who either went to trial but settled, or for whom the judge decided.

These findings suggest that it was a mistake in the past for fathers who wanted joint residential custody not to pursue their cases into the later stages of the legal process. Very few fathers did so; for example, Table 1 shows that only 35 out of 933 cases (4%) went to trial. Recent data that I have obtained directly from judges in Arizona suggests that it might be even more of a mistake now for fathers who want equal parenting time not to pursue their cases to trial if necessary. During a Southern Arizona Regional Judicial Family Law Conference in 2010 at which I was a presenter, I polled the family court judges and commissioners in attendance for their anonymous responses to two of the hypothetical cases above that my colleagues and I had previously used with the public (Braver, et al., 2011). I had obtained human subjects Institutional Review Board approval and consent from participants to do this for research purposes. Approximately 90% of the judges hearing child custody cases in Arizona’s second largest county (Pima County, which includes Tucson) were in attendance, in addition to judges and commissioners from eight other AZ counties. The cases I used were the fourth (low-conflict) and fifth (high, mutual-conflict) cases described above. In consultation with one of the organizers of the conference I modified these cases slightly by describing them as “temporary orders hearings,” in order to make these short, hypothetical cases realistic for family court judges, who are used to having more information when making final decisions. The exact wording of the questions and instructions are in the Appendix.

The participants read the instructions and answered the questions privately before the presentation began. I asked for feedback about the hypothetical cases, and the participants indicated that they felt they were realistic enough to elicit valid responses. Upon public presentation of the compiled responses at the end of the presentation, we learned that about 90% of the judges and commissioners said they would grant equal parenting time in each case (Family A and Family B, see Appendix). The participants

applauded each other upon seeing the results. The difference between what the judges and commissioners said they would award and what the public (i.e., members of the Pima County jury panel) thought the courts would award in the identical cases was striking. Only one-third of the public thought courts would order equal parenting time in the low-conflict case (Family A), and less than one-third thought they would do so in the high, mutual-conflict case (Family B; not reported in Braver, et al., 2011). As noted above, 66% of the public said they would award equal parenting time in the low conflict case, and 64% said they would in the high conflict case. This question format using hypothetical cases representing judges' daily professional experience produced more responses from judges that reflected the cultural value placed on equal parenting time than from members of the lay public. This suggests that public skepticism about courts' willingness to award equal parenting, in Arizona at least, may be unwarranted.

In passing, it might seem surprising that these judges would order equal parenting time in cases of high, mutual-conflict. But when dealing with the question of whether parenting time should be limited in high-conflict families, courts should consider the potential risk of damaging parent-child relationships by reducing parenting time. There is evidence that even in divorced families with frequent and severe parent conflict more parenting time with the father is associated with improvements in the father-child relationship (Fabricius & Luecken, 2007; Fabricius et al., 2012), or at least is not harmful (Buchanan, Maccoby & Dornbush, 1996), and there is evidence that children with equal parenting time in very high-conflict families referred to court services for custody disputes did not have worse adjustment than those in sole custody (Johnston, Kline & Tschann, 1989). Although it is seldom if ever acknowledged, the evidence is weak and contradictory that more parenting time is harmful in high-conflict families (reviewed in Fabricius et al, 2010; Fabricius et al., 2012). Limiting parenting time when there is parent conflict limits the amount of interaction children can have with that parent, which risks undermining the parent-child relationship and risks making those children doubly vulnerable (due to the reduced parenting time and the presence of parent conflict) to long-term damage to their physical health. Courts have better options to deal with children's exposure to parent conflict than reducing parenting time, such as schedules with fewer transitions, or transitions that do not require face-to-face parent interactions. The evidence suggests that parent conflict alone should not be the basis for limiting parenting time; rather, the data indicate that courts should weigh the option of increasing parenting time in high-conflict families. Direct evidence that improved parent-child relationships can counteract some harmful effects of parent conflict is available (Fainsilber-Katz & Gottman, 1997; Sandler, Miles, Cookston, & Braver, 2008; Vandewater & Lansford, 1998).

Conclusions: Translating Cultural Change into Policy

Translating the newly-evolved cultural values and norms regarding equal parenting time into public policy raises concerns among mental health professionals and the legal community about how to accommodate diversity of family circumstances and individual differences. One concern is that "equal parenting time" allows a limited number of weekly or monthly routines, the practicality and feasibility of which may

depend not only on family circumstances but also on children's developmental levels. Another concern involves the credentials of some parents for equal parenting time – parents who, for example, are disinterested, narcissistically absorbed individuals who ignore the children unless it fits with their needs, or who lack adequate parenting skills, are angry, harsh, and rigid, or who suffer from mental illness or depression or alcoholism.

Custody policy reform could both encourage equal parenting time and still direct a court to consider these other important things. To illustrate one approach, I will refer to several relevant sections of the newly-revised custody statute in Arizona. Arizona Senate Bill 1127 effective January 1, 2013 (AZ Revised Statutes Title 25-401 to 415 <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=25>) is among the strongest in favor of a rebuttable presumption for shared parenting in the U.S. The Governor's signing statement underscored that the intent of the law "is to limit one-sided custody decisions and to encourage as much shared parent-child time as possible for the positive development of the child." (May 9, 2012). There was wide public announcement of the new law, a necessary condition for an impact on parents who make minimal use of legal and court services and "bargain in the shadow of the law." In cooperation with the Maricopa County (Phoenix) Bar Association, we polled all member family law attorneys who said that before the law change they advised clients that the prospects were 50% that "good fathers" could obtaining equal parenting time, but now most say the prospects are 80% or 90%.

First, the statute begins with a new state public policy, adopted in 2010, that identifies children's best interests with substantial, frequent, meaningful, and continuing parenting time, "absent evidence to the contrary." The current policy reads:

§ 25-103. Purposes of title; application of title

B. It also is the declared public policy of this state and the general purpose of this title that absent evidence to the contrary, it is in a child's best interest:

1. To have substantial, frequent, meaningful and continuing parenting time with both parents.

2. To have both parents participate in decision-making about the child.

Second, the heart of the 2013 reform is the following section that directs parents who are in dispute to each submit a proposed parenting plan, and directs the court, after considering any evidence to the contrary, to adopt a parenting plan that provides for shared legal decision-making and maximized parenting time with each parent:

25-403.02 Parenting plans

A. If the child's parents cannot agree on a plan for legal decision-making or parenting time, each parent shall submit a proposed parenting plan.

B. Consistent with the child's best interests in section 25-403 and sections 25-403.03 [domestic violence], 25-403.04 [drug offensives]and 25-403.05 [sexual

offenses], the court shall adopt a parenting plan that provides for both parents to share legal decision-making regarding their child and that maximizes their respective parenting time. The court shall not prefer a parent's proposed plan because of the parent's or child's sex.

This section (25-403.02) also includes instructions about what the proposed parenting plans are to include. Section 25-403 includes the best interests factors which are substantially the same ones that have been in custody statutes since the adoption of the Child's Best Interests Standard. They are no longer used, however, to determine which parent will be "the custodial parent," but rather to alert the court to reasons for not maximizing the child's parenting time with each parent.

25-403. Legal decision-making; parenting time; best interests of child

A. The court shall determine legal decision-making and parenting time, either originally or on petition for modification, in accordance with the best interests of the child. The court shall consider all factors relevant to the child's physical and emotional well-being, including:

- 1. The past, present and potential future relationship between the parent and the child.***
- 2. The interaction and interrelationship of the child with the child's parent or parents, the child's siblings and any other person who may significantly affect the child's best interests.***
- 3. The child's adjustment to home, school and community.***
- 4. If the child is of suitable age and maturity, the wishes of the child as to legal decision-making and parenting time.***
- 5. The mental and physical health of all individuals involved.***
- 6. Which parent is more likely to allow the child substantial, frequent, meaningful and continuing contact with the other parent. This paragraph does not apply if the court determines that a parent is acting in good faith to protect the child from witnessing an act of domestic violence or being a victim of domestic violence or child abuse.***
- 7. Whether one parent intentionally misled the court to cause an unnecessary delay, to increase the cost of litigation or to persuade the court to give a legal decision-making or a parenting time preference to that parent.***
- 8. Whether there has been domestic violence or child abuse pursuant to section 25-403.03.***
- 9. The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding legal decision-making or parenting time.***
- 10. Whether a parent has complied with chapter 3, article 5 of this title.***
- 11. Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.***

Additional factors specific to legal decision-making are specified in the following section (25-403.01):

25-403.01. Sole and joint legal decision-making and parenting time

A. In awarding legal decision-making, the court may order sole legal decision-making or joint legal decision-making.

B. In determining the level of decision-making that is in the child's best interests, the court shall consider the factors prescribed in section 25-403.01, subsection a and all of the following:

1. The agreement or lack of an agreement by the parents regarding joint legal decision-making.

2. Whether a parent's lack of an agreement is unreasonable or is influenced by an issue not related to the best interests of the child.

3. The past, present and future abilities of the parents to cooperate in decision-making about the child to the extent required by the order of joint legal decision-making.

4. Whether the joint legal decision-making arrangement is logistically possible.

C. An order for sole legal decision-making does not allow the parent designated as sole legal decision-maker to alter unilaterally a court-ordered parenting time plan.

D. A parent who is not granted sole or joint legal decision-making is entitled to reasonable parenting time to ensure that the minor child has substantial, frequent, meaningful and continuing contact with the parent unless the court finds, after a hearing, that parenting time would seriously endanger the child's physical, mental, moral or emotional health.

To summarize, courts are given direction to consider substantial, frequent, meaningful, and continuing parenting time with both parents to be in children's best interests, absent evidence to the contrary. Such evidence includes exposure to violence and abuse as well as the typical best interests factors that might affect the child's physical and emotional well-being. In the absence of such evidence, courts are directed to maximize the child's parenting time with both parents. For example, the court would consider reduced parenting time for a parent who has had no prior relationship with the child, or has significant health issues, or if maximized parenting time would interfere with the child's school activities, or if it would expose the child to adverse interactions with others, or if the child has reason to not want it, or if that parent is likely to try to undermine the other parent, or if the parent has moved too far away. Safeguards such as these types of procedures should allow communities to reform child custody statutes in order to bring them more in line with the new cultural consensus and the new scientific evidence on equal parenting time, while remaining assured that courts still have discretion in cases where it might not be appropriate. The benefits to children and society of the success of these efforts will be substantial.

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Table 1

Number and Percentage of Families at each Level in the Legal Process before Settling Who Were Awarded each Final Residential Custody Arrangement in the Stanford Child Custody Study

<i>Final Residential Custody</i>					
<i>.Level in the Legal Process before Settling</i>	<i>Mother</i>	<i>Father</i>	<i>Joint</i>	<i>Split</i>	<i>Total</i>
<i>Uncontested</i>	332 70%	45 10%	79 17%	15 3%	471 50%
<i>Contested but settled</i>	193 71%	20 7%	50 18%	11 4%	274 29%
<i>Mediation needed</i>	66 63%	6 6%	26 25%	6 6%	104 11%
<i>Evaluation needed</i>	22 45%	4 8%	21 43%	2 4%	49 5%
<i>Trial needed or Judge decided</i>	15 43%	5 14%	13 37%	2 6%	35 4%
<i>Total</i>	628 67%	80 9%	189 20%	36 4%	933 100%

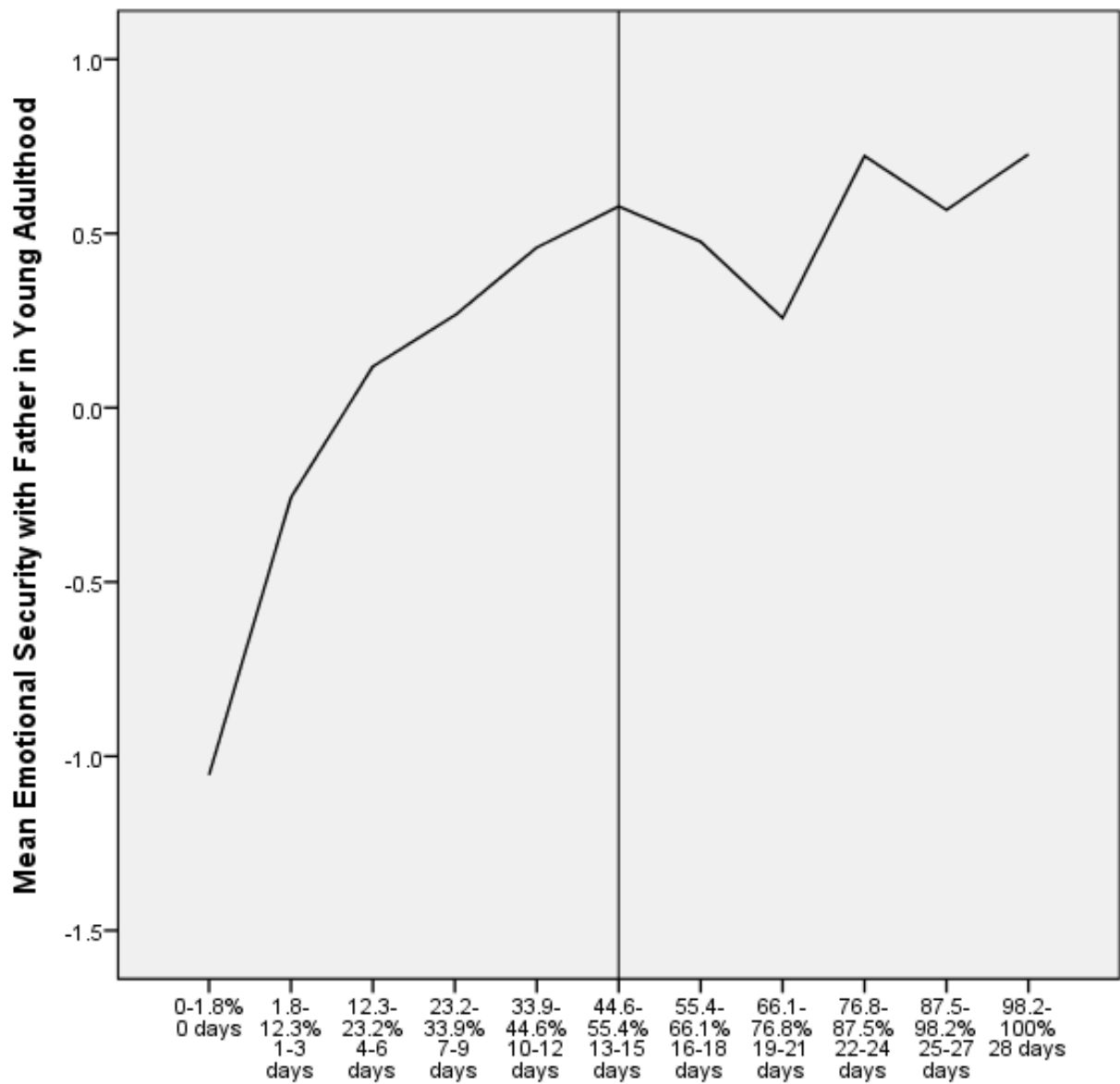
Table 2

For Those Contested Cases in Which the Mother Wanted Sole Residential Custody and the Father Wanted Joint Residential Custody, the Number and Percentage of Families at each Level in the Legal Process before Settling Who Were Awarded each Final Residential Custody Arrangement in the Stanford Child Custody Study

<i>Final Residential Custody</i>			
<i>.Level in Legal Process before Settling</i>	<i>Sole to mother</i>	<i>Joint</i>	<i>Total</i>
<i>Contested but settled</i>	54 73%	20 27%	74 60%
<i>Mediation needed</i>	20 80%	5 20%	25 20%
<i>Evaluation needed</i>	8 53%	7 47%	15 12%
<i>Trial needed or Judge decided</i>	5 50%	5 50%	10 8%
<i>Total</i>	87 70%	37 30%	124 100%

Figure Captions

Figure 1. The Relation between the Amounts of Parenting Time per Month (4 Weeks) Students Had with Their Fathers and the Emotional Security of Their Relationships with Their Fathers in Young Adulthood (Reprinted with permission from Oxford University Press from Fabricius, W. V., Sokol, K. R., Diaz, P., & Braver, S. L. (2012). Parenting time, parent conflict, parent-child relationships, and children's physical health. In Kuehnle, K. & Drozd, L. (Eds.) *Parenting Plan Evaluations: Applied Research for the Family Court*. Oxford University Press.)



Parenting Time with Father (percent and number of days per 28)

Appendix

We ask you to put yourself into the role of the judge in the following hypothetical divorce cases in which the two parents don't agree about what the living arrangements should be for their two school-aged children. Please read the following cases and indicate what you would most likely decide about the children's living arrangements.

For Families A and B, this is a hearing for temporary orders for parenting time. The hearing has lasted 1 hour and this is all the information that you have available to you at this time. We realize that at the final hearing, you would have a lot more information, and would have to make a detailed ruling (in terms of vacation splits, times of arrival/departure, specific days, etc). For these 2 temporary orders scenarios, we are giving you a simplified, qualitative response scale.

Families A and B have characteristics #1 - #3 in common:

1. In each family, the evidence presented to you shows that in many respects, this appears to be a pretty average, normal family. For example, there are no indications about emotional or mental problems, drug or alcohol problems, domestic violence or physical or sexual abuse on the part of either parent. There is nothing suggesting that either one lacks "fitness" as a parent. Most of the marriage was without unusual conflict and the family life was quite average. The two children both appear to be normally adjusted, doing neither particularly well nor particularly poorly in school and otherwise. Additional evidence shows that both parents deeply love the two kids and are both reasonably good parents who are involved in their children's lives about like average families in which both parents work full-time (both M-F, 9-to-5).
2. In each family, the marriage became lost when both parents began to feel that the other was not living up to expectations as a husband or wife. They decided to seek marriage counseling, but it did not help or change either person's mind about giving up on the marriage. So the divorce is proceeding.
3. Each parent genuinely feels the children would be better off mostly in their care and not so much in the care of the other parent. They really disagree about this, and as a result are asking you, the judge, to decide for them, understanding that each parent now wants as much living time with the children as you see fit to grant. Each one would be able and willing to make whatever adjustments to their work and living situation are necessary to accommodate whatever level of living time with the children you, as judge, see fit to order.

FAMILY A – LOW CONFLICT

This is what is different about Family A:

4. The parents have recently separated. THERE HAS BEEN RELATIVELY LITTLE CONFLICT BETWEEN THE MOTHER AND THE FATHER. Both try especially hard never to argue in front of the children. Evidence shows that neither says bad things about the other to the children. Also neither tries to gain the loyalty of the children for themselves nor to undermine the other's authority or relationship with the children. They are both trying to make the best of the current situation.

Question 1:

I would most likely order that the children in Family A:

- Live with mother, see father minimally or not at all*
- Live with mother, see father some*
- Live with mother, see father a moderate amount*
- Live with mother, see father a lot*
- Live equal amounts of time with each parent.*
- Live with father, see mother a lot*
- Live with father, see mother a moderate amount*
- Live with father, see mother some*
- Live with father, see mother minimally or not at all*

FAMILY B – HIGH MUTUAL CONFLICT

This is what is different about Family B:

4. The parents have recently separated. BOTH PARENTS HAVE BECOME AND REMAIN EXTREMELY ANGRY AT EACH OTHER. So, at the present time, there is a great deal of conflict between the parents. Evidence shows that both parents typically initiate this conflict equally, by frequently starting arguments with the each other, mostly regarding the children. They both pick these fights in front of the children, and end up saying bad things about each other in front of the children. It is clear that EACH ONE also "bad mouths" the other to the children when the other parent isn't around. EACH ONE tries to gain the loyalty of the children while trying to undermine the other's authority and relationship with the children.

Question 2:

I would most likely order that the children in Family B:

- Live with mother, see father minimally or not at all*
- Live with mother, see father some*
- Live with mother, see father a moderate amount*
- Live with mother, see father a lot*
- Live equal amounts of time with each parent.*
- Live with father, see mother a lot*
- Live with father, see mother a moderate amount*
- Live with father, see mother some*
- Live with father, see mother minimally or not at all*