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 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. I present new data from family court judges in Arizona indicating that the support for equal parenting time has permeated the courts in at least one state 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.
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Introduction

At the risk of invoking platitudes that these are the best of times and the worst of times, and that they are changing, I offer new data indicating that we are on the verge of a cultural shift to a new standard in child custody policy, and that it is a good thing and none too soon. The divorce literature has been plagued by deficiencies in measuring parenting time, which has resulted in a dearth of needed data that might have helped initiate the shift sooner, and by limited metaphors for understanding how minimal parenting time and parent conflict harm children. Too often professionals, policy-makers and researchers have relied on metaphors of imitation and contagion to understand how parent conflict harms children, and too often the metaphor of “bouncing between homes” has prevented them from understanding the benefits to children of spending substantial amounts of time at both parents’ homes. New findings in the health literature provide us with an integrated way of understanding how both parent conflict and limited parenting time harm children, and also provide us with sobering confirmation of how powerful these things can be.

The bad news: What the divorce literature tells us about father-child relationships in the long-term.

Amato (2003) 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 concluded that the
The strongest negative effect of divorce was on father-child relationships. 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). He reported analyses of the 1997 wave, when the median age of the children was 27 years. Of the 671 children, 147 (21%) had divorced parents. 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. .. to 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) explored some factors that moderated these effects of divorce, but found only two such factors in this data set. Both involved the effects of divorce on children’s overall psychological well-being. He found that the effects of divorce on well-being depended on the level of pre-divorce parent conflict (more pre-divorce parent conflict meant less negative effects of divorce, and vice versa), and on the number of post-divorce re-marriages and divorces on the part of either mothers or fathers (more such transitions meant more negative effects of divorce).

Importantly for our purposes here, Amato did not find any factors that moderated the effect of divorce on father-child relationships, the strongest effect in the MIOLC data. An obvious possible moderating factor is the amount of parenting time the father had with the child. I suspect that one reason that there is apparently no correlation between parenting time and
quality of father-child relationship in this data set might be that there was restricted 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. 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 et al. (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.

The father-child relationship improved in a linear, dose-response fashion, with each increment of parenting time from 0% time with father to equal parenting time (50% time with each parent) \( (r = .51, N = 871, p < .001) \). 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% \( (r = .15, N = 152) \). This shows that the effect of divorce on the father-child relationship 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 of parenting time with their fathers when they were growing up, and had damaged relationships with their fathers as young adults. These new data are consistent with Amato’s (2003) analyses of the impact of divorce on the father-child relationship, and show that the impact 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 relationships in young adulthood.

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. 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.

Rena Repetti, Shelley E. Taylor, and Teresa E. Seeman 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 large, longitudinal physical health studies which began decades ago, and fortunately often included a few questions about family relationships in addition to questions about diet, alcohol, exercise, smoking, etc. Findings consistently point to adverse health consequences to children of families characterized not only by high parent conflict, but also by cold, unsupportive parent-child relationships, the so-called risky families. 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 et al. (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 et al., 2004; 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 et al., 1988; Dunn & Brown, 1994; Dunn, Brown, Slomkowski, Tesla, & Youngblade, 1991).

Psychological processes of emotional insecurity accompany this physiological dysregulation. Modern attachment theory (Bowlby, 1969) 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 safety and protection that the helpless human infant and young child’s system is attuned to detect are parent absence, parent unresponsiveness, and parent conflict. 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.

When we consider that almost 40% of the students had had minimal parenting time with their fathers, and on average as young adults had damaged relationships with their fathers, and when we link that with the lifetime health outcomes of young adults who had reported similarly distant relationships with their parents, we can see that the bad news looks worse than we thought it was.

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 the child. 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 similar custody laws as in the US) 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%

n=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, but different language appeared in the rest of the state, and the vote was very similar for the two wordings

Fabricius et al. (2010) presented the identical MA language 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. They questioned whether the popular support prior studies seemed to show for equal parenting time would persist when lay respondents were given case details. Consequently, these researchers 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 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 greater amounts of parenting time with fathers, especially equal parenting time. In our data 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?” In all the hypothetical cases, citizens thought the court would award equal parenting substantially less often than they said they themselves would. For example 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 27% thought courts would order equal parenting time, and when the father had performed the majority, the figure was 24%. 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 ultimately 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. Some evidence exists (Stamps, 2002) that judges in four Southern states may have a maternal bias. But the better news is that it might not be necessarily so everywhere.

During an AZ Family Law Judicial Conference in 2008 at which I was a presenter, I anonymously polled the 30 family court judges and commissioners attending on two of the hypothetical cases involving child custody we had previously used with the public (Braver, et al., 2011). This was part of the presentation, and the compiled responses were publically displayed at the end of the presentation for discussion. The cases I used were the fourth (low-conflict) and fifth (high, mutual-conflict) cases described above. I modified these cases somewhat in consultation with the one of the organizers of the conference in order to make them realistic for family court judges, who see these types of cases every day and who are used to having more information when making final decisions. We hit on the idea to describe the cases as “temporary orders hearings,” at which time judges typically have much less information available than at final hearings. The exact wording of all the questions and instructions presented to the participants is given 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 presentation of the compiled responses at the end of the presentation, we learned that the judges and commissioners almost universally answered that they would order equal parenting time arrangements in both cases (Family A and Family B, see Appendix). The participants applauded each other upon seeing their data. The organizers decided that the presentation was important enough for the remaining judges and commissioners to see to invite me to repeat it at a Southern Arizona Regional Judicial Family Law Conference in April, 2010, for which I received Institutional Review Board human subjects approval to formally collect the data from the participants. Approximately new 30 Arizona Family Court Judges and Commissioners attended, and between the two presentations, approximately 70% of all the judges and commissioners in the state attended.

Figures 1 and 2 show the distribution of responses from Pima County Family Court judges to the questions about what parenting time arrangement they would order. For comparison I include the responses from members of the Pima County (Tucson, Arizona) jury panel to the same questions about what they would order, and what arrangement they thought courts today would order (Braver, et al., in press). Whereas about two-thirds of the public said that if they were the judge they would order equal parenting time in each case, only one-third thought today’s courts would order equal parenting time in the low-conflict, and less than one-third thought they would do so in the high, mutual-conflict case. However, about 90% of the judges and commissioners said they would grant equal parenting time each 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 skepticism about the court’s willingness to award 
shared 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 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). 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 et al., 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 several concerns relating to how to accommodate diversity of family circumstances and individual differences. For one, “equal parenting time” represents a fairly narrow category that admits of a limited number of practical, feasible weekly or monthly routines, the practicality and feasibility of which may depend not only on family circumstances but also on children’s developmental levels. For another, there are legitimate concerns about the credentials of some parents for equal parenting time – parents who may be, for example, disinterested, narcissistically absorbed individuals who ignore the children unless it fits with their needs, parents who lack adequate parenting skills, who are angry, harsh, rigid, or who suffer from mental illness or depression.

We can see our way clear how custody policy reform to legitimize equal parenting time would not imply that a court should not consider these other important things. To illustrate one approach, I will refer to several relevant draft sections from the new custody statute that we are in the process of crafting in AZ (http://www.azcourts.gov/cscommittees/AdHocCustodyWorkgroup.aspx). The revised statute begins with a new state public policy that identifies children’s best interests with substantial, frequent, meaningful, and continuing parenting time, “absent evidence to the contrary.” This is meant to legitimize equal parenting time arrangements when appropriate without mandating them for all.
§ 25-420. Public Policy

Absent evidence to the contrary, it serves a child’s best interests for both legal parents to:

A. Share parental decision-making concerning their child;

B. Have substantial, frequent, meaningful and continuing parenting time with their child;

C. Develop a mutually agreeable parental decision-making and parenting time plan.

The courts are first directed to consider whether any special circumstances apply to the family, which, if present, would constitute “evidence to the contrary:”

§ 25-423. Mandatory Preliminary Inquiry: Special Circumstances

Before evaluating the best interests of the child and deciding parental decision-making and parenting time, the court shall first determine whether special circumstances exist under §§ 25-440 through 25-443 (Intimate Partner Violence & Child Abuse), § 25-444 (Substance Abuse), § 25-445 (Dangerous Crimes Against Children) or § 25-446 (Violent & Serial Felons).

If there are no special circumstances, then the court is directed to order the submitted parenting plan that maximizes parenting time, “consistent with the child’s physical and emotional well-being.”

§ 25-430. Parenting Plans

A. Consistent with the child’s physical and emotional well-being, the court shall adopt a parenting plan that provides for both parents to share parental decision-making concerning their child and maximizes their respective parenting time. The court shall not prefer one parent over the other due to gender.

B. If a child’s parents cannot agree to a plan for parental decision-making or parenting time, each shall submit to the court a detailed, proposed parenting plan.
The factors that identify “physical and emotional well-being” are substantially the same ones that have been in custody statutes since the adoption of the Child’s Best Interests Standard. They are less serious factors than the special circumstances (i.e., intimate partner violence, child abuse, substance abuse, dangerous crimes against children, and violent and serial felons). They range from whether the child has even had a prior relationship with the parent (as in the case of newly-established paternity) and the mental and physical health of all individuals involved, to the feasibility of the proposed parenting time arrangements in terms of distance between parents’ homes, work schedules, etc. These physical and emotional well-being factors now also serve a proscriptive function in the revised statute by alerting parents to important considerations when they are contemplating, planning, and making accommodations to give their children maximum parenting time with each of them.

§ 25-432. Parenting Time

A. The court shall determine parenting time in accordance with the best interests of the child, and consider all factors relevant to the child’s physical and emotional welfare, including:

1. The historical, current and potential relationship between the parent and the child.
2. The mental and physical health of all individuals involved.
3. The child’s adjustment to home, school and community.
4. The interaction and relationship between the child and the child's siblings and any other person who may significantly affect the child's best interest.
5. The child’s own viewpoint and wishes, if possessed of suitable age and maturity, along with the basis of those wishes.
6. Whether one parent is more likely to support and encourage the child’s relationship and 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 or suffering an act of intimate partner violence or child abuse.

7. The feasibility of each plan taking into account the distance between the parents’ homes, the parents’ and/or child’s work, school, daycare or other schedules, and the child’s age.
References


allegations of domestic violence: Toward a differentiated approach to parenting plans. 


Figure 1. Distribution of responses from Pima County Family Court judges to the question about what parenting time arrangement they would order in the low-conflict case, and from members of the Pima County (Tucson, Arizona) jury panel to the same question about what they would order if they were the judge, and what arrangement they thought courts today would order.
Figure 2. Distribution of responses from Pima County Family Court judges to the question about what parenting time arrangement they would order in the high, mutual-conflict case, and from members of the Pima County (Tucson, Arizona) jury panel to the same question about what they would order if they were the judge, and what arrangement they thought courts today would order.
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

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

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
For Families C and D, this is the final hearing. We ask you to use the same simplified, qualitative response scale as you used above.

Families C and D 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. 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.

FAMILY C  This is what is different about Family C:

4. THE DE FACTO LIVING ARRANGEMENT SINCE THE TIME OF THE SEPARATION HAS BEEN THAT THE CHILDREN HAVE SPENT ROUGHLY EQUAL AMOUNTS OF TIME IN THE CARE OF EACH PARENT. This de facto arrangement “just happened” as a result of circumstances during the separation period, but mom never really agreed to it, was never satisfied with it, and now contests it. She contends that it is not working well for the children, and genuinely feels the children would be better off mostly in her care and not so much in the care of the father. He contends that it is working well for the children, and genuinely feels the children would be better off with equal amounts of time in the care of each parent. No additional information is available to you that clearly and unambiguously supports one side over the other (e.g., teachers’ testimony suggests some adjustment difficulties in school, but it is not clear if that’s due to the living arrangements versus the divorce itself; the parents were not able to afford a custody evaluation). Each parent 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.
Question 3:
I would most likely order that the children in Family C:

- 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 D   This is what is different about Family D:

4. THE DE FACTO LIVING ARRANGEMENT SINCE THE TIME OF THE
SEPARATION HAS BEEN THAT THE CHILDREN HAVE SPENT ROUGHLY TWO-
THIRDS OF THEIR TIME IN THE CARE OF THEIR MOTHER, AND ONE-THIRD OF
THEIR TIME IN THE CARE OF THEIR FATHER. This de facto arrangement “just
happened” as a result of circumstances during the separation period, but dad never really
agreed to it, was never satisfied with it, and now contests it. He contends that it is not
working well for the children, and genuinely feels the children would be better off with equal
amounts of time in the care of each parent. She contends that it is working well for the
children, and genuinely feels the children would be better off mostly in her care and not so
much in the care of the father. No additional information is available to you that clearly and
unambiguously supports one side over the other (e.g., teachers’ testimony suggests some
adjustment difficulties in school, but it is not clear if that’s due to the living arrangements
versus the divorce itself; the parents were not able to afford a custody evaluation). Each
parent 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.

Question 4:
I would most likely order that the children in Family D:

- 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
Questions 5 – 14:

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<thead>
<tr>
<th>Strongly agree</th>
<th>Strongly disagree</th>
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_Fathers, by nature, make better parents than mothers._

_A father who has performed most of the child’s nurturing and maintenance activities would be favored in custody decisions._

_Mothers are the preferred custodians when children are under the age of six._

_Mothers, by nature, make better parents than fathers._

_Children of all ages show better adjustment when living with the mother._

_Mothers are better parents than fathers due to more experience raising children._

_Fathers are the preferred custodians when children are under the age of six._

_A mother who has performed most of the child’s nurturing and maintenance activities would be favored in custody decisions._

_Fathers are better parents than mothers due to more experience raising children._

_Children of all ages show better adjustment when living with the father._

Question 15:

We have one final question about how much importance, during final hearings, you generally place on the de facto residential custody arrangements that have been in place between the time of the parents’ separation and the final hearing. We know that it may be difficult to generalize because each case is unique, and if you feel you can’t generalize then you can select that response option below. But if you can give us a rough idea, it would be very helpful. So, the question is,

_“Which best describes the weight you generally give, during final hearings, to de facto residential custody arrangements that have been in place between the time of the parents’ separation and the final hearing? In answering, please consider only those cases in which no evidence is presented at the hearing that the de facto arrangements are harmful to the child.”_

1. I don’t feel that I can generalize about how important de facto arrangements are in my decision-making.
2. These arrangements are essentially irrelevant to my final decision. In determining the residential custody that will be in the child’s best interests, I only consider the evidence presented at the hearing, regardless of what temporary arrangements may have been in place until now.
3. These arrangements are only one factor in my decision, and generally are no more or less important than each of the other relevant factors.
4. These arrangements are an important factor in my decision and in certain circumstances can outweigh another factor.
5. These arrangements are one of the most important factors in my decision, and often outweigh other factors.
6. These arrangements are the most important factor in my decision.