

Parenting Time & Shared Residential Custody: Ten Common Myths

by Dr. Linda Nielsen

What is the best parenting plan for most children of divorce? Should infants and toddlers spend overnight time with their nonresidential parent? If not, why not? If so, how much time? Is shared residential custody better for children than living with one parent and varying amounts of time living with their other parent – mainly on weekends? Isn't shared residential custody only successful for a small group of well educated, higher income parents who have very cooperative, conflict free relationships – and who mutually agree to share without mediation, litigation or lawyers' negotiations? Since most married mothers do 80% of the childcare, after a divorce shouldn't the children live that same proportion of time with her?

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Dr. Linda Nielsen has been a Professor of Adolescent & Educational Psychology at Wake Forest University in Winston Salem, NC for 36 years. She is the author of five books and dozens of peer reviewed journal articles. Her areas of expertise are shared residential parenting for children of divorce and father-daughter relationships. Her reviews of 30

years of research on shared residential custody have been presented at the Association of Conciliation and Family Courts national conference and the Midwestern Family Law Conference, and published in the American Journal of Family Law and the Journal of Divorce and Remarriage. She is frequently called upon to provide summaries of this research to legislators in America and abroad.

Questions such as these generate a great deal of debate among the judiciary, policy makers and mental health professionals. Unfortunately they also generate myths and misconceptions that are frequently presented as “the research” at conferences and seminars, on the web, or in non-academic articles. At best, these myths far over-reach and exaggerate the findings from only a few of the existing studies. At worst, they have virtually no grounding whatsoever in current research. Either way, misconceptions that are not grounded on a broad spectrum of recent, methodologically sound, statistically significant empirical data have an impact on custody decisions and custody laws. By empirical data I mean research studies where quantitative data has been statistically analyzed and published in peer reviewed academic journals – in contrast to articles where opinions or theories are being presented, often without benefit of peer review. Regrettably we social scientists have done a poor job sharing the empirical research with other professionals or with divorcing parents. As a result, a handful of studies – often outdated or seriously flawed methodologically – are widely disseminated as “the research”. In that spirit, this abbreviated overview presents recent research that refutes ten of the most common beliefs related to child custody.

It is better for the children if parenting time is allocated according to the amount of time each parent spent in childcare during the marriage. Since most married mothers do at least 80% of the childcare, the parenting time should be allocated accordingly. This perspective, referred to as the approximation rule, is not based on empirical research. This is a debatable opinion - a controversial point of view that has been widely discussed in peer reviewed journals. A full discussion of this debate is provided in Richard Warshak's article in the Baltimore Law Review ¹. Several facts must be kept in regard



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to the approximation proposal. First, most married couples are more equally sharing the parenting time. Employed fathers spend roughly 60 minutes on weekdays with the children while employed moms spend 90 minutes. This would be the equivalent of 120 overnights with a father after divorce.² Fathers under the age of 30 do only 45 minutes less childcare on workdays than mothers do. In two national surveys with 2000 parents, dads spent 33 hours a week with the children and mothers spent 50. Children under the age of 6 require 3 times as much parenting time as older children. And whichever parent gets home from work first or works the fewest hours generally does more of the childcare. The more time the mother works outside the home, the more time the father spends with the children. But the mothers who are most likely to stay home full time with preschoolers are the most poorly educated women who could not earn enough, if working, to pay for child care. Second, married parents' arrangements for their young children are *temporary* – they are not intended, as are custody orders, to remain in place until the children turn 18. Third, childcare hours are not synonymous with parenting. The fact that one parent spends more time with the children does not mean that the other parent is doing less parenting or that his or her daily presence is any less beneficial and essential.

Infants and toddlers have one primary “attachment figure” to whom they bond more strongly and at an earlier age than they do with their other parent. Given this, they should not be separated from their primary parent for long periods of time – especially not to spend overnight time with their father, except on rare occasion for short periods of time.

The prevailing view among most contemporary attachment researchers and child development experts is that there is not one “primary” attachment figure. Instead, infants form strong attachments to both parents and at roughly the same time. Whatever initial preferences infants might have for one parent disappears by 18 months of age. This is not to say that all researchers agree on this point. Nevertheless, recent empirical research is undermining the traditional beliefs about primary and secondary parents – the belief that an infant's relationship with the mother is more vital than with the fathers.^{3, 4}

Most infants and toddlers become more irritable or show other signs of maladjustment when they spend overnight time with their fathers. Given this, there should be little or no overnighting for infants and toddlers. There are only seven studies that have assessed overnighting and non-overnighting infants and preschoolers. None of them found *statistically significant* differences in irritability or other measures of maladjustment related to overnighting per se. Given the confusion and debate on this issue, it is worth providing more details of these studies.

Four studies were conducted 15 to 21 years ago. The first assessed 25 one to five year olds who lived half time with

each parent. At the end of one year, those children whose behavior and developmental progress had gotten worse were the ones who had violent, alcoholic, inattentive, or otherwise very dysfunctional parents. The researchers also noted: “The most surprising find was that children below the age of three were able to handle the many transitions in their overnight joint custody arrangements.”⁵ The second study included 25 children under the age of two and 120 ages two to five when their parents separated. Four years later, those who had lived 30% time with their fathers were better off on all measures of emotional, psychological and behavioral well-being. Moreover 40% of those who had not spent overnight time before the age of three with their fathers no longer had any contact with him – a loss that occurred for only 1.5% of the overnighting children.⁶ The third study compared infants 12 to 20 months old: those who spent any overnight time with their fathers, those who spent none, and those who lived with married parents. The infants were classified as having a secure, avoidant, ambivalent or disorganized attachment to their mother. A year later 85% of them were assessed again. Regardless of family type, the less securely attached infants had mothers who were unresponsive to their needs. And there were no significant differences in attachment classifications between those who overnighted and those who did not.⁷ The fourth study included 18 three to five year olds. At the end of two years, those who had lived with their fathers ten days a month were more well adjusted emotionally and no different on social or behavioral adjustment. Moreover, the number living this often with their fathers increased from 25% to 38% over the two years.⁸

Two studies have been conducted more recently. Interestingly, the one that was not peer reviewed or published in an academic journal before being released by the Australian government has generated considerable attention among mental health practitioners, the legal profession and policy makers. Indeed, it is widely cited as evidence that overnighting is bad for young children.⁹ The limitations of this report have been enumerated by a number of internationally renowned researchers.¹⁰ For example, the sample sizes in several groups were very small and the vast majority of parents had never been married to each other. Leaving aside its limitations, for children from infancy to age five, there were very few differences between those who never overnighted and those who overnighted. The mean scores were similar on measures of irritability, global health, monitoring their mother, negative response to strangers, developmental concerns, behavioral problems, emotional functioning and persistence. The four to five years olds who overnighted more than nine nights a month had more attention deficit disorders according to their mothers. But this may very well be linked more to gender than to overnighting. That is, boys were more likely than girls to be overnighting frequently – and boys in the general population are more likely than girls to have attention deficit disorders.¹¹

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The most methodologically sound study at Yale University is part of an ongoing project. This study assessed 132 children ages two to six whose divorced and never married parents had separated. Of these, 31% spent one overnight a week with their fathers, 44% more than one and 25% none. For the two to four years olds, the overnights were no different from non-overnights in respect to sleep problems, anxiety, aggression or social withdrawal. They were, however, less persistent in completing tasks. According to their fathers, but not their mothers, the overnights were more irritable. Overall then, the differences were small. For the four to six year olds, however, the overnights had fewer problems than the other children – especially the girls. As the researchers conclude “Overnights did not benefit or cause distress to the toddlers and benefited the 4 to 6 year olds” (p. 135).¹²

The final study assessed 24 children ages one to six who overnights an average of eight nights a month. Almost 55% were classified as having an insecure attachment to their mother, which is higher than the average of 33% in the general population. Age when the overnights began and parent conflict were not related to the classifications, but mothers’ attentiveness or inattentiveness were.¹³ Taken together, these seven studies do not support the assertion that overnighting has a negative impact on infants or preschoolers.

Most children want to live with only one parent and to have only one home. Shared residential parenting is not worth the hassle, according to most children. The vast majority of children who lived with their mothers after their parents’ divorce disliked having so little time with their fathers.¹⁴ In contrast, the vast majority who have lived in shared residential parenting families say the inconvenience of living in two homes was worth it – primarily because they were able to maintain strong relationships with both parents.¹⁵

When there is high verbal conflict between the parents, children do better when their time with their father is limited. Because more time with their father increases parents’ conflicts, children in shared residential custody are more often caught in the middle of conflicts. With the exception of an ongoing pattern of physical conflict or violence, the vast majority of studies do not support these beliefs.¹⁶⁻¹⁸ In married and in divorced families, parent conflict is generally related to worse outcomes for the children. However, in regard to custody and conflict, three findings stand out. First, conflict generally remains higher in sole than in shared custody families – especially if the residential parenting time is not shared. Second, most children are not exposed to more conflict or put in the middle more often in shared parenting families. Third, most children in shared residential custody and those who see their fathers frequently are better off on measures of well-being even when their parents have ongoing conflict. In other words, maintaining strong relationships with both parents helps


diminish the negative impact of the parents’ conflicts.

The amount of conflict should be a primary factor when deciding how to allocate the parenting time. Unless there is a history of physical abuse or violence, for the reasons just presented, high verbal conflict should not be used as a reason to limit parenting time. Not only can much of this conflict be reduced through parenting programs, but the conflict generally declines by the end of the first year or so after separation. Especially during custody negotiations, conflict is not a reliable predictor of future conflict. Moreover, verbal conflict is associated with fewer negative outcomes for children than having too little fathering time.^{19, 20}

Both parents have to mutually agree to share the residential parenting, otherwise these families will fail. Shared parenting agreements fail if they result from mediation, litigation or legal negotiations. It only succeeds for a small, self-selected group who are very cooperative and have little or no conflict. In the studies that have examined how parents arrived at their shared residential parenting plan, from 20% - 85% of the parents had not initially wanted to share. For many families where the children were successfully living in two homes, the shared parenting plan was a compromise brought about through mediation, litigation, or lawyers’ negotiations.²¹

Most shared residential families fail. The children end up living with one parent anyway. Measured anywhere from 2 to 4 years after divorce, 65%-90% of these families were still sharing the residential custody.²²

The quality of children’s relationships with their fathers is not related to how much time they spend together after the divorce. Fathering time, especially time that is not limited mainly to weekends or to other small parcels of time, is closely associated with the quality and the endurance of the father-child relationship. This kind of fathering time is highly correlated with positive outcomes for children of divorce.^{23, 24}

In considering the large body of recent empirical research that refutes these ten myths, it is worth remembering that people can always find some study that will support each of these beliefs. Some may be based on very old data. Others are methodologically unsound. Sometimes differences that are not statistically significant are reported as “a trend”, or “a difference” or “suggestive of”. To be sure, all studies have certain limitations, including those cited in this review. But by using the social science search engines at university libraries to find the recent peer reviewed articles in academic journals, we maximize our chances of finding the general consensus among the most respected researchers. By sharing more of this research with legislators, mental health workers, judges and lawyers, children and their divorced parents will be better served. 

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* This article is based on 64 articles published in peer reviewed journals. Given the constraints of space, fewer than a third of these references are listed in this article. Please email me for the complete list of references. Linda Nielsen, Wake Forest University, nielsen@wfu.edu, www.wfu.edu/~nielsen

Endnotes

- ¹ Warshak, R. (2011) Parenting by the clock: The best interest of the child standard and the approximation rule. *Baltimore Law Review* 41, 85-163.
- ² Bianchi, S., Robinson, J., and Milkie, M. *Changing rhythms of the American family* (2006) Sage, New York.
- ³ Special issue on attachment and divorce (July, 2012). *Family Court Review*.
- ⁴ Newland, L., Freeman, H., and Coyle, D. *Emerging Topics on Father Attachment* (2011) Routledge, New York.
- ⁵ McKinnon, R., and Wallerstein, J. (1987) Joint custody and the preschool child. *Conciliation Courts Review* 25, 39-47.
- ⁶ Maccoby, E., and Mnookin, R. *Dividing the child* (1992) Harvard University Press, Cambridge, Mass.
- ⁷ Solomon, J., and George, L. (1999) The effects on attachment of overnight visitation on divorced and separated families: A longitudinal follow up. In *Attachment Disorganization in Atypical Populations* (Solomon, J. G. L., Ed.) pp 243-264, Guilford, New York.
- ⁸ Kline, M., Tschann, J., Johnston, J., and Wallerstein, J. (1989) Children's adjustment in joint and sole physical custody families. *Developmental Psychology* 25, 430-438.
- ⁹ McIntosh, J., Smyth, B., Kelaher, M., and Wells, Y. L. C. (2010) Post separation parenting arrangements: outcomes for infants and children. Australian Government, Sydney, Australia.
- ¹⁰ Parkinson, P., and Cashmore, J. (2011) Parenting arrangements for young children: Messages for research. *Australian Journal of Family Law* 25, 236-257.
- ¹¹ Kerns, S., and Prinz, R. (2012) Coparenting children with attention deficit disorders and disruptive behavior disorders. In *Parenting plan evaluations: applied research for the family court* (Kuehnle, K., and Drozd, L., Eds.) pp 330-369.
- ¹² Pruett, M., Ebling, R., and Insabella, G. (2004) Critical aspects of parenting plans for young children. *Family Court Review* 42, 39-59.
- ¹³ Altenhofen, S., Sutherland, K., and Biringen, Z. (2010) Families experiencing divorce: Age at onset of overnight stays as predictors of child attachment. *Journal of Divorce and Remarriage* 51, 141-156.
- ¹⁴ Kelly, J. (2012) Risk and protective factors for children of divorce. In *Parenting plan evaluations: Applied research for the family court* (Kuehnle, K., and Drozd, L., Eds.) pp 145-173, Oxford University Press, New York.
- ¹⁵ Nielsen, L. (2013) Shared Residential Custody: A recent research review. *American Journal of Family Law* (forthcoming issue).
- ¹⁶ Lamb, M., and Kelly, J. (2009) Improving the quality of parent child contact in separating families with infants and young children. In *The scientific basis of child custody decisions* (Levy, R., kraus, L., and Levy, J., Eds.) pp 187-214, John Wiley & Sons, Hoboken, NJ.
- ¹⁷ Deutsch, R., and Pruett, M. (2009) Child adjustment and high conflict divorce. In *The scientific basis of child custody decisions* (Levy, R., kraus, L., and Levy, J., Eds.) pp 353-375, Wiley, New York.
- ¹⁸ Johnston, J., Roseby, V., and Kuehnle, K. *In the name of the child: Understanding and helping children of conflicted and violent divorce* (2009) Springer, New York.
- ¹⁹ Lamb, M. (2012) Critical analysis of research on parenting plans and children's well-being. In *Parenting plan evaluations: Applied research for the family court* (Kuehnle, K., and Drozd, L., Eds.) pp 214-246, Oxford University Press, New York.
- ²⁰ Birnbaum, R., and Bala, N. (2010) Toward the differentiation of high conflict families: An analysis of social science research and Canadian case law. *Family Court Review* 48, 403-416.
- ²¹ Nielsen, L. (2011) Shared parenting after divorce: A review of shared residential parenting research. *Journal of Divorce and Remarriage* 52, 586-609.
- ²² Melli, M., and Brown, P. (2008) Exploring a new family form-the shared time family. *International Journal of Law, Policy and Family* 22, 231-269.
- ²³ Amato, P., and Dorius, C. (2012) Fathers, children and divorce. In *The Role of the Father in Child Development* (Lamb, M., Ed.) pp 177-201, John Wiley & Sons, New York.
- ²⁴ Aquilino, W. (2010) Noncustodial father child relationship from adolescence into young adulthood. *Journal of Marriage and Family* 68, 929-945.



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