

---

# **MITIGATING THE EFFECTS OF DIVORCE ON CHILDREN THROUGH FAMILY-FOCUSED COURT REFORM**

---

By  
Anna L. Davis, Susan P. Leviton and Jana B. Singer

August, 1997

**Published by  
The Abell Foundation  
111 S. Calvert Street  
Suite 2300  
Baltimore, Maryland 21202**

This paper was prepared for the Abell Foundation pursuant to a grant to the Children's and Family Law Program at the University of Maryland School of Law. The authors are grateful to the Foundation for its generous support. We also wish to thank Tonya Allen, Jordan Frame, Tracy Jensen, Jacqueline Levasseur, Sara Moghadam, Christine Morse and Jennifer Nemeč for their valuable research assistance.

---

# Table of Contents

<b>EXECUTIVE SUMMARY</b> .....	i
<b>SECTION I: THE PROBLEM</b> .....	1
<b>SECTION II: THE EFFECTS OF DIVORCE ON CHILDREN</b> .....	3
A. Summary of Social Science Research .....	3
B. Variables Affecting Divorce Outcomes for Children ...	4
C. Conclusions .....	7
<b>SECTION III: INTERVENTIONS</b> .....	9
A. Parent Education Programs .....	9
B. Mediation .....	16
C. Support Groups for Children .....	21
D. Parenting Plans .....	28
<b>SECTION IV: INITIATIVES FOR A UNIFIED FAMILY COURT IN MARYLAND</b> .....	31
<b>SECTION V: CONCLUSIONS AND RECOMMENDATIONS</b> .....	33
<b>FOOTNOTES</b> .....	37



---

# Executive Summary

**A growing body of social science evidence suggests that divorce poses significant and long-lasting risks for children.**

**M**ore than 1.2 million American children experience the divorce or separation of their parents each year. Although divorce rates in the United States have declined slightly from their peak in the early 1980's, the divorce rate today is more than double what it was in 1960. A growing body of social science evidence suggests that divorce poses significant and long-lasting risks for children. These risks include emotional and behavioral problems, lower academic achievement, social difficulties, lower job status, lower marital satisfaction, and a heightened risk that their own marriages will end in divorce.

At the same time the social science evidence indicates that the detrimental effects of divorce on children are neither inevitable nor irreparable. Indeed, research is accumulating that indicates that a combination of responsible parenting, a sensitive and family-focused court system, and strong community- and school-based support programs can significantly help children and parents successfully cope with the difficulties and transitions that accompany divorce. While much additional research is needed, the social science evidence is beginning to point the way toward promising judicial and policy reforms.

This report examines and evaluates a number of court-connected initiatives that have been designed and implemented across the country to reduce the negative effects of divorce on children. The paper begins by summarizing the social science research regarding the effects of divorce on children. This summary highlights several aspects of divorce that social scientists have identified as particularly harmful to children. These include high levels of parental conflict, financial instability and economic hardship, deficits in parenting time and attention, and the loss of a relationship with the non-residential parent. This analysis suggests that strategies that seek to mitigate the harmful effects of divorce on children should focus on ameliorating these phenomena. The paper then examines four specific types of divorce-related interventions: parenting education programs, family mediation, support groups for children of divorce, and parenting plan legislation. We describe the goals and content of these interventions and discuss the evidence currently available to assess the effectiveness of each intervention. The final section of the paper discusses the pilot program recently launched by the Baltimore City Circuit Court to create a Family Division within its civil docket for domestic cases. The paper concludes by recommending comprehensive family-focused judicial and policy reforms for Maryland.



---

# Section I: The Problem

**Demographers estimate that, if current divorce rates hold steady, nearly half of all children born in the United States today will experience the divorce or separation of their parents.**

**This paper contributes to the reform effort by examining and evaluating a number of court-connected programs that have been designed and implemented across the country to reduce the negative effects of divorce on children**

**M**ore than 1.2 million American children experience the divorce or separation of their parents each year.<sup>1</sup> Although divorce rates in the United States have declined slightly from their peak in the early 1980's, the divorce rate today is more than double what it was in 1960.<sup>2</sup> Approximately half of all first marriages end in divorce and the dissolution rate for remarriages is even higher. Demographers estimate that, if current divorce rates hold steady, nearly half of all children born in the United States today will experience the divorce or separation of their parents.<sup>3</sup>

There is a growing consensus among social scientists that divorce poses significant and long-lasting risks for children. Research suggests that, on average, children who grow up in divorced families are more likely to experience emotional and behavioral problems than children who live in continuously intact marital families.<sup>4</sup> Children who experience their parents' divorce are also more likely to have children while teenagers, to cohabit, and to conceive and bear children outside of marriage than their counterparts from non-divorced families.<sup>5</sup> Moreover, although most children adjust successfully to their parents' separation and divorce, a minority experience prolonged sadness and depression.<sup>6</sup> Clinical studies also suggest that a significant number of these children have difficulty forming long-term relationships and attachments with members of the opposite sex.<sup>7</sup>

At the same time, the social science evidence suggests that the detrimental effects of divorce on children are neither inevitable nor irreparable. Indeed, research is accumulating that indicates that a combination of responsible parenting, a sensitive and family-focused court system, and strong community and school-based support programs can significantly help children and parents deal successfully with divorce-related transitions and problems. While additional research is needed, this social science evidence is beginning to point the way toward promising judicial and policy reforms. This paper contributes to the reform effort by examining and evaluating a number of court-connected programs that have been designed and implemented across the country to reduce the negative effects of divorce on children. The paper begins by summarizing the relevant social science evidence regarding the effects of divorce on children. The summary focuses not just on whether divorce affects children, but how and to what extent; we therefore highlight those aspects of divorce that social scientists have identified as most important in predicting – and in ameliorating – divorce outcomes for children. The paper then turns to divorce-related interventions. It examines the content and effectiveness of four specific types of interventions: parent education programs, court-connected divorce and custody mediation, school- and community-based support groups for children, and parenting plan requirements. This section of the paper also describes the comprehensive pilot program recently launched by the Family Division of the Baltimore City Circuit Court. The final section of the paper uses this analysis to suggest family-focused policy and court reforms for Maryland's judicial system.





---

# Section II: The Effects of Divorce on Children

## A. Summary of Social Science Research

A growing body of social science research supports the view that parental divorce in childhood has an overall negative impact on important aspects of a child's development. Children from divorced families, on average, experience more problems and have a lower level of well-being than do children in continuously intact two-parent families.<sup>8</sup> These problems include lower academic achievement, more behavioral problems, more negative self-concepts, more social difficulties, and more problematic relationships with both mothers and fathers.<sup>9</sup> Children from divorced families are also more likely to drop out of school and generally acquire less education than children raised by married parents.<sup>10</sup>

Social scientists also agree that the negative consequences of divorce often persist into adolescence and adulthood. A recent meta-analysis of 37 studies that examined adult children of divorce revealed that, compared to those raised in intact two-parent families, adults who had experienced a parental divorce had lower psychological well-being, more behavioral problems, less education, lower job status, a lower standard of living, lower marital satisfaction and a heightened risk of divorce.<sup>11</sup> Recent clinical studies confirm the long-term impact of divorce. The most recent findings by psychologist and researcher Judith Wallerstein indicate that children of divorce continue to experience the emotional effects of their parents' break-up even as they mature into their late twenties and early thirties.<sup>12</sup> Similarly, University of Virginia psychologist Robert Emery notes that "children frequently express disappointment, longing, and resentment about the divorce even years later, and their relationships with their parents are likely to be strained."<sup>13</sup> These findings contradict the rosy view previously held by some researchers (and divorcing parents) that children adapt readily to divorce and show no lingering negative consequences.<sup>14</sup> Rather, as Dr. Wallerstein notes: "Unlike the adult experience, the child's suffering does not reach its peak at the breakup and then level off. The effect of the parents' divorce is played and replayed throughout the first three decades of the children's lives."<sup>15</sup>

In interpreting this social science data, several cautions are in order. First, the average differences between children from divorced and non-divorced families are small, rather than large.<sup>16</sup> The more sophisticated the study and analysis, the weaker the effect of divorce.<sup>17</sup> This suggests "that divorce is not as severe a stressor for children as are other things that can go wrong during childhood."<sup>18</sup> Second, although children of divorce differ, on average, from children in continuously intact two parent families, there is a great deal of overlap between the two groups.<sup>19</sup> Indeed, Dr. Emery notes that while the "popular media frequently report sweeping, adverse effects of divorce on children's mental health. . . research consistently points to children's resilience."<sup>20</sup> According to Emery, "[s]tudies reveal only small differences in the psychological adjustment of children whose parents are married or divorced; children seem to cope with divorce despite substantial changes in their family life."<sup>21</sup> Similarly, noted divorce researcher Joan Kelly

**The effect of the parents' divorce is played and replayed throughout the first three decades of the children's lives.**

**...divorce is not as severe a stressor for children as are other things that can go wrong during childhood.**

---

emphasizes that "the majority of divorced children, when assessed in the years after divorce, are functioning within normal or average limits. They are not, as a group, 'disturbed,' although media reports leave the casual reader with that impression."<sup>22</sup>

In addition, recent reports from several large longitudinal studies suggest that many of the difficulties observed in children of divorce were present prior to parental separation and may be linked to parental conflict during marriage. A 1990 study by Wallerstein and her colleagues, for example, found that the pre-separation variables of marital conflict, child's history of psychological problems and child's relationship with mother were more important predictors of children's adjustment to divorce than were the post-separation variable of conflict, loss of parent and change.<sup>23</sup> Research also indicates that children's adjustment to divorce varies significantly by age and gender, and possibly by race and ethnicity as well.<sup>24</sup> Indeed, the dearth of research on how divorce affects non-white children has been identified as a serious shortcoming in the social science literature.<sup>25</sup>

The existing research on children's adjustment to divorce is also subject to significant methodological limitations. Critics of Judith Wallerstein, for example, argue that while her on going study of divorced families provides valuable clinical insights, the research is flawed scientifically because it does not include a comparison group of children from non-divorced families and because her sample consists solely of families who sought psychological counseling.<sup>26</sup> Larger, survey-based studies may be more methodologically rigorous than clinical studies in terms of sampling techniques, but they tend to rely heavily on retrospective reports from parents and do not generally examine children's development over time.<sup>27</sup> Finally, it may be significant that older studies tended to yield larger differences between children from divorced and non-divorced families than do studies carried out more recently.<sup>28</sup> This finding suggests that, as divorce has become more common and less stigmatized, and as support programs for children have been expanded, the detrimental effects of divorce on children may have become less severe.

## **B. Variables Affecting Divorce Outcomes for Children**

In addition to asking simply whether divorce harms children, researchers have begun to focus more specifically on how and why divorce has such a significant impact. Although this work is ongoing, researchers have identified a number of variables that seem particularly important in predicting divorce outcomes for children. We discuss those variables briefly below.

### **1. Parental Conflict**

Virtually all researchers agree that the conflict so often associated with divorce has a particularly detrimental effect on children. "Conflict between parents is a consistent predictor of increased psychological difficulties among children from divorced – and married – families. Numerous experimental and field studies point to the detrimental

**Research indicates that children's adjustment to divorce varies significantly by age and gender, and possibly by race and ethnicity as well.**

**Virtually all researchers agree that the conflict so often associated with divorce has a particularly detrimental effect on children.**

Several studies have shown that interparental conflict may also be responsible for higher levels of anxiousness and poor school performance among children of divorce.

role of parental conflict, particularly conflict that is extended, open, angry, unresolved, and involves the child."<sup>29</sup> Children who are exposed to physical aggression between parents are particularly at risk for behavioral and emotional difficulties.<sup>30</sup> These children are also more likely to adopt defensive behaviors, to be more aggressive, and to exhibit signs of clinical depression.<sup>31</sup>

Several studies have shown that interparental conflict may also be responsible for higher levels of anxiousness and poor school performance among children of divorce.<sup>32</sup> This is especially so in families in which the levels of conflict remain high after the divorce. By contrast, where parental conflict is low, researchers have found little difference between children from intact and divorced families.<sup>33</sup> Indeed, at least one study has found that children in low-conflict divorced families were better adjusted than children in high-conflict married families.<sup>34</sup> Studies also suggest that the detrimental effects of parental conflict can be ameliorated when parents avoid placing children "in the middle" of their disagreements, when parents avoid direct, aggressive expressions of their conflict in front of their children, and when parents use compromise styles of conflict resolution.<sup>35</sup>

Conflict between spouses also tends to erode a divorcing couple's capacity to cooperate in the care and guidance of their children. As a consequences of this inability to cooperate, combined with the parents' lack of respect for one another, parenting becomes problematic: expectations are inconsistent and discipline is more coercive, all of which are predictive of more negative and distant parent-child relationships and an increase in children's emotional and behavioral problems.<sup>36</sup> Continued high conflict after divorce may further interfere with parents' ability to nurture and be responsive to their children's needs, as well as to discipline their children effectively, which may exacerbate existing behavior problems or create new problems for children.<sup>37</sup>

## 2. Economic Hardship

A second important source of children's post-divorce difficulty is the economic hardship often experienced by children and their primary caretaker -- usually the mother -- after separation and divorce. Research shows that most families become financially worse off as a result of divorce, as the income that previously supported a single household unit now must be stretched between two. Custodial parents, generally mothers, are particularly hard hit.<sup>38</sup>

Divorce-related economic hardship affects many aspects of the children's well being. Financial hardship may make it difficult for a custodial parent to provide books, home computers and other resources that can facilitate children's academic attainment.<sup>39</sup> Moreover, economically pressed custodial parents are often forced to vacate the marital home and move to a lower income neighborhood, with concomitant drops in the quality of schools and child care. As a result of such a move, children may lose touch with friends and neighbors who might otherwise provide support and stability.<sup>40</sup> Economic hardship also negatively affects children through its impact on the children's primary caretaker.

Divorce-related economic hardship affects many aspects of the children's well being.

---

Income pressures often force a custodial parent to return to work after a significant absence, or to work longer hours than before, thus reducing the time and energy that parent has available to meet the children's enhanced needs. Moreover, the stress created by these financial worries often takes a psychological toll on the custodial parent, further interfering with her ability to parent effectively and responsively.<sup>41</sup>

Studies indicate that these economic factors are responsible for a significant portion of the negative impact of divorce on children. Indeed, one early study found that many of the differences between children from divorced and non-divorced families disappeared when family income was taken into account.<sup>42</sup> A more recent comprehensive comparison of children who grow up in single parent vs. two parent families concludes that income differentials account for at least half of the differences in achievement and well-being between these two groups.<sup>43</sup> Diminished academic performance, in particular, appears to be closely linked to post-divorce economic hardship.

### **3. Adjustment of the Custodial Parent**

The psychological adjustment and well-being of the custodial parent is emerging as a central factor in determining children's adjustment to divorce.<sup>44</sup> Some research suggests that, during the first year of separation, custodial parents tend to be less affectionate toward their children, supervise them less well, and to be less consistent in dispensing discipline.<sup>45</sup> These disruptions in effective parenting pose significant risks for children. By contrast, parents who maintain a positive and consistent relationship with their children are often able to ameliorate many of the negative effects of divorce.<sup>46</sup> Research also consistently shows that children do better after divorce when their custodial parent is in good mental health, displays good child rearing skills, and has access to ample social support.<sup>47</sup>

Studies have also found that the quality of the relationship between children and their custodial parent is among the strongest predictors of child well-being after divorce. Indeed, one well-known study found that the quality of the mother-child relationship was more important than any other factor examined, including both inter-parental conflict and paternal involvement in the child's life.<sup>48</sup> This study suggests that family relationship factors may be more important than external environmental changes in determining children's adjustment to divorce.

### **4. Relationship with Non-custodial Parent**

Some divorce researchers maintain that the loss of one parent through divorce is central to the decline in well-being experienced by many children. Divorce typically results in the departure of one parent -- usually the father -- from the child's household. For many families, the quality and quantity of contact between the child and the non-residential parent decreases markedly over time.<sup>49</sup> A number of studies have examined the significance of the children's relationship with the non-residential parent as a determinant of post-divorce well-being. The results of these studies are mixed.

**A more recent comprehensive comparison of children who grow up in single parent vs. two parent families concludes that income differentials account for at least half of the differences in achievement and well-being between these two groups.**

**family relationship factors may be more important than external environmental changes in determining children's adjustment to divorce.**

**Research also indicates that a majority of children describe the loss of contact with a parent as the primary negative aspect of divorce for them.**

According to one view, "divorce affects children negatively to the extent that it results in a loss of time, assistance and affection provided by the noncustodial parent."<sup>50</sup> Mothers and fathers are both considered important resources for children, and the departure of one of these resources is thought to deprive children of practical assistance, emotional support, guidance and supervision.<sup>51</sup> A number of early studies support this view; these studies found small, but significant correlations between predictable and frequent paternal contact and children's adjustment after divorce, unless the father himself was poorly adjusted or extremely immature.<sup>52</sup> The positive relationship between paternal contact and child well-being was strongest when the custodial mother approved of the father's continuing contact with the child and rated the relationship positively.<sup>53</sup> Research also indicates that a majority of children describe the loss of contact with a parent as the primary negative aspect of divorce for them.<sup>54</sup> Finally, proponents of this view point out that the degree of involvement of the non-residential parent is strongly related to the reliability of child support payments, thus implicating the child's economic well-being.<sup>55</sup>

Other research questions the importance of the relationship with the non-residential parent in predicting or enhancing children's post-divorce well-being.<sup>56</sup> This research indicates that the psychological adjustment of the residential parent, and the extent of conflict during the marriage and after divorce, are more profound influences on children's adjustment than the extent of contact with a non-residential parent.<sup>57</sup> Moreover, several studies indicate that where inter-parental conflict is high, continued contact with the non-residential parent may be contrary to children's well being, particularly where that contact exacerbates or exposes the child to continuing conflict between the parents.<sup>58</sup>

Overall, the research suggests that the impact of the child's relationship with the non-custodial parent is not unidimensional, nor is it always beneficial. Rather, the desirability of such contact "must be seen in relationship to the child's age and sex, the closeness of the father-child relationship prior to divorce, marital conflict, maternal and paternal adjustment and mother's hostility after separation."<sup>59</sup>

## **C. Conclusions**

The question remains: What conclusions can be drawn from this body of social science data? For us, several things stand out. First, for children, divorce is not a discrete legal event, but rather an ongoing psychological and emotional process that continues to impact children's lives long after the formal dissolution of their parents' marriage. Second, although children of divorce fare worse, on average, than children from non-divorced families on a variety of outcome measures, these average differences are small, and they may be getting smaller. Thus, contrary to the calamitous picture sometimes painted in the popular media, most children of divorce function successfully -- both as children and as adults -- although a minority do not.

Finally, the detrimental effects of divorce on children appear to be causally linked

**Contrary to the calamitous picture sometimes painted in the popular media, most children of divorce function successfully -- both as children and as adults -- although a minority do not.**

---

to specific aspects of our current divorce regime. These aspects include high levels of interparental conflict, a significant decline in the economic well-being of children and their primary caretakers, and deficits in post-divorce parenting skills and relationships. These correlations, in turn, suggest that the harmful effects of divorce can be ameliorated by judicial and policy reforms that seek to reduce conflict, enhance post-divorce economic security and improve the ability of mothers and fathers to parent effectively and cooperatively after divorce. It is to these interventions that we now turn.

**Correlations suggest that the harmful effects of divorce can be ameliorated by judicial and policy reforms that seek to reduce conflict, enhance post-divorce economic security and improve the ability of mothers and fathers to parent effectively and cooperatively after divorce.**

---

## Section III: Interventions

there is a growing recognition among some courts and child advocates that no amount of judicial intervention will protect children's well being after divorce unless the legal system itself becomes less adversarial and more conducive to promoting cooperative post-divorce parenting, both substantively and procedurally.

While divorce is a process, it is also a legal proceeding. Under the fault-based divorce system, the primary purpose of that proceeding was to assign blame for the breakdown of a marriage and to dispense justice accordingly. The adversarial structure that has traditionally characterized our legal system was relatively well suited for these tasks. With the advent of no-fault divorce, however, courts have become less concerned with assigning blame and more concerned with helping divorcing couples -- particularly parents -- resolve their disputes and restructure their financial and parenting relationship as equitably and efficiently as possible.<sup>60</sup> Consistent with this shift in focus, the traditional adversary model of justice has expanded in recent years to include social and educational programs, as well as alternative dispute resolution procedures, as supplements to -- or substitutes for -- a judicial remedy. Moreover, there is a growing recognition among some courts and child advocates that no amount of judicial intervention will protect children's well being after divorce unless the legal system itself becomes less adversarial and more conducive to promoting cooperative post-divorce parenting, both substantively and procedurally.

This recognition has led to the development of a variety of court-connected and community-based intervention programs designed to reduce the negative impact of parental divorce and separation on children. These interventions include parent education programs, divorce and custody mediation, interdisciplinary support groups for children, and parenting plan requirements. This section of the paper describes these four types of interventions and discusses their effectiveness, in light of the available studies and information.

### A. Parent Education Programs

Courts in more than 40 states have implemented parent education programs designed to help divorcing parents ease the trauma of separation and divorce for themselves and their children. According to a recent survey, over 500 such education programs currently exist in the United States.<sup>61</sup> Parent education programs typically have several goals: first, to provide parents with information about the effects of divorce and separation on children; second, to reduce divorce-related parental conflict by improving parents' ability to communicate with each other about their children; and third, to provide parents with skills and techniques that will enable them to parent more effectively and cooperatively after divorce or separation.<sup>62</sup> These programs encourage divorcing parents to focus on the needs and concerns of their children and to modify their behavior accordingly. Parent education programs also aim to minimize the long-term emotional, social, and academic problems experienced by children of divorce.<sup>63</sup>

The curriculum of most parent education programs includes information about children's needs and reactions to divorce at various states of development and post-divorce adjustment.<sup>64</sup> Due to the rapid proliferation of these classes, programming ideas are readily available from a variety of sources including family law journals, psycho-

---

logical journals, conference papers and workshops, courts, and private mental health agencies.<sup>65</sup> The format of the existing programs varies widely and runs the gamut from informal programs run out of a provider's home to highly formalized statewide initiatives.<sup>66</sup>

The question of whether parent education programs should be mandatory has engendered considerable debate. Proponents of mandatory programs argue that compelled attendance will significantly reduce the litigation and mental health care costs often associated with divorce.<sup>67</sup> Compelled attendance also ensures that both parents receive the same information and, in theory, are better able to identify shared parenting concerns.<sup>68</sup> These shared concerns may then lead to agreements between warring parents, thereby alleviating the need for expensive litigation.<sup>69</sup> Advocates of mandatory attendance also argue that divorcing parents may not have the initiative to seek out the education on their own.<sup>70</sup> Mandatory attendance also precludes former spouses from using participation in a class as a weapon against the other in a custody battle.<sup>71</sup> Finally, some commentators have suggested that mandating divorce-related parent education makes an important political and moral statement regarding the welfare of children impacted by divorce.<sup>72</sup>

Opponents of mandatory attendance counter that parents who are compelled to attend the programs are unlikely to be receptive to the information presented and are likely to resent the state's intrusion on their time.<sup>73</sup> Opponents also point to the difficulty of enforcing a mandatory attendance requirement and to the delays that such a mandate may engender -- delays which may themselves be contrary to children's interests.<sup>74</sup>

Whatever the merit of these arguments, the trend appears to favor mandatory programs.<sup>75</sup> As of September 1994, almost 400 jurisdictions from 35 states had some type of formal mandate.<sup>76</sup> In some jurisdictions, state wide legislation or local court rules require all divorcing parents to attend classes; in others, judges are permitted to mandate attendance in particular cases. In 1997, Maryland endorsed the latter approach. The Maryland parenting education statute permits -- but does not require -- judges to order divorcing parents to attend a parenting seminar. Specifically, the statute provides that "[p]rior to granting a decree of divorce, the court may require all parties to participate in an educational seminar that is designed to educate parents about the effects, and to minimize the disruption of a divorce on the lives of children."<sup>77</sup> The statute also directs the Court of Appeals to adopt rules governing the content of the seminar and to establish criteria for exemption from the seminar requirement. Interestingly, the statute provides that a court may not exempt the parties from attending the parenting seminar if there is any evidence of domestic violence or of child abuse or neglect, but it cautions that divorcing parties may not be compelled to attend the seminar together. The Court of Appeals is currently drafting rules designed to implement the statute, which will become effective on October 1, 1997.

Whether mandatory or voluntary, parent education programs, by themselves, are

**The format of the existing programs varies widely and runs the gamut from informal programs run out of a provider's home to highly formalized statewide initiatives.**

**The trend appears to favor mandatory programs.**



Research suggests that the earlier in the divorce process that parents understand the harm that a protracted custody battle will do to them and their children, the more likely it is that parents will minimize their conflict and resolve their disputes.

Participant reaction to the P.E.A.C.E. program has been overwhelmingly favorable.

not expected to cure all the ills associated with divorce. Nevertheless, legal and mental health professionals are hopeful that such programs will lead to a decrease in the hostility and conflict that accompany so many divorces. Moreover, research suggests that the earlier in the divorce process that parents understand the harm that a protracted custody battle will do to them and their children, the more likely it is that parents will minimize their conflict and resolve their disputes.<sup>78</sup>

### 1. Description of Existing Programs

**a. The P.E.A.C.E. Program.** One of the premier parent education programs in the country is the P.E.A.C.E. program based in New York. P.E.A.C.E. -- Parent Education and Custody Effectiveness -- is a joint project of the Hofstra University School of Law and the Hofstra University School of Education's Graduate Program in Marriage and Family Counseling.<sup>79</sup> The P.E.A.C.E. program operates in communities throughout the state of New York on a pilot program basis.<sup>80</sup> Each program is organized by volunteer judges, attorneys, and mental health professionals who adapt the program to meet the particular needs of their community.<sup>81</sup> In order to preserve some consistency, each program is furnished with uniform training and curriculum materials.<sup>82</sup> Parent participants are referred to P.E.A.C.E. by judges, lawyers, and mental health professionals and their participation is voluntary.<sup>83</sup>

P.E.A.C.E. is an interdisciplinary educational program whose premise is that "when parents understand the effects of divorce or separation on children, they are empowered to make responsible decisions for them."<sup>84</sup> Its curriculum consists of three topics, each of which is taught in a separate class session. The first session focuses on how the legal process resolves disputes over custody and child support when the parents are unable to reach agreement.<sup>85</sup> This session is led by a judge or lawyer and includes a description of the substantive standards that judges use to resolve contested custody disputes.<sup>86</sup> The second session is led by a mental health professional and focuses on the emotional aspects of divorce for parents.<sup>87</sup> The final session of P.E.A.C.E., also led by a mental health professional, focuses on the ways that children experience divorce.<sup>88</sup> It is designed to enhance parental understanding of their children's perspectives and to help parents guide their children through the transition of separation and divorce.

Participant reaction to the P.E.A.C.E. program has been overwhelmingly favorable.<sup>89</sup> An Interim Evaluation Report of the Erie County P.E.A.C.E. Program, prepared by independent consultants, verified that participants viewed the experience favorably.<sup>90</sup> Of the 93 participants who responded, 80% stated that their knowledge about families and divorce had increased as a result of the program and over 95% said they would use what they learned.<sup>91</sup> When asked whether participation in the program should be mandatory, 80% of the respondents (many of whom had to be strongly encouraged to attend) felt that parents entering divorce or separation should be required by law to attend P.E.A.C.E., and more than 90% stated that they would recommend P.E.A.C.E. to oth-

---

ers.<sup>92</sup> Respondents reported that information about shared custody, learning to focus on the child's best interest, learning to communicate, realizing the importance of cooperation, information on the child's experience of divorce, and guidelines for giving children a normal life were the most helpful.<sup>93</sup> Completing anonymous questionnaires, participants have reported such results as "[i]t is a sea of confusion, anger, and fear out there. And most of us don't know how to swim...For me, the P.E.A.C.E. Program was the missing link."<sup>94</sup>

**b. The Children of Separation and Divorce Center, Inc. Divorce Education Seminars for Parents.** The Children of Separation and Divorce Center, Inc. (COSD) pioneered divorce education in Maryland more than six years ago. Since then, COSD has conducted divorce education seminars for parents in Howard, Montgomery, and Prince George's Counties. COSD staff has also trained mental health professionals across the nation and in 13 counties in Maryland. Those trained by COSD teach a particular content and are licensed to use COSD materials, including written manuals and videotapes of children and parents.

COSD's parenting seminars are based on the Child and Family Focused Model of Decision-Making, developed by COSD staff. This model considers children's needs, at each stage of their development, in four specific areas: self-esteem, interpersonal functioning, intellectual functioning, and safety and security. The content of the parenting seminars is derived from this model. COSD has articulated the following goals for its Parenting Education Program:

- (1) to empower parents with skills and knowledge to help them retain their decision-making power and help their children;
- (2) to provide hope for the present and future that parents and children will experience a sense of family;
- (3) to teach skills to assist parents to help them go on with their lives and provide children with a healthy view of relationships;
- (4) to help parents explain separation and divorce to their children;
- (5) to reduce continuous litigation;
- (6) to inform parents about community resources that go beyond divorce and address problems such as substance abuse, spousal abuse and mental illness;
- (7) to explain child development, infancy through young adulthood, and the impact of divorce on each phase of development and what parents can do to help their children;

**This model considers children's needs, at each stage of their development, in four specific areas: self-esteem, interpersonal functioning, intellectual functioning, and safety and security.**

In contrast to a custody battle, with parents seeing themselves as winners or losers, the COSD model focuses on meeting children's multiple needs through responsible post-divorce parenting.

- (8) to present a non-adversarial process of divorce that will be beneficial to parents and children presently and over time; and
- (9) to prepare parents for active roles in the divorce process regardless of the method they choose.

COSD's six hour parenting seminars are taught by experienced mental health professionals and generally include presentations by both adults and children who have experienced divorce. Specific topics covered during the first session include the emotional impact of divorce on parents and children, divorce-related changes in parent-child relationships, how to explain divorce to children, and children's needs and reactions to divorce at various stages of child development. The second session focuses on building responsible parenting skills and relationships. Seminar leaders and participants discuss how to build positive co-parenting relationships and how to develop constructive post-divorce parenting arrangements.

The Child and Family Focused Model is an empowering one for parents and professionals. The model emphasizes that children have many needs and that both parents have many strengths to contribute toward meeting those needs. In contrast to a custody battle, with parents seeing themselves as winners or losers, the COSD model focuses on meeting children's multiple needs through responsible post-divorce parenting. The seminars are prescriptive for parents because parents need to know their children very well in significant areas of their development in order to determine what kind of parenting is essential. The model is also designed to provide a sense of hope by offering specific goals each parent can work towards to better meet their children's needs.

Parents who participate in the COSD seminars complete detailed questionnaires both before and after the six-hour program. Preliminary analysis of these questionnaires confirms that participation in the seminars enhances parental knowledge and skills in several important areas of functioning. In particular, parents who participate in the seminars significantly improve awareness and their ability to "keep the child out of the middle" of divorce-related conflicts and disputes. Parents also report enhanced ability to cope with divorce themselves and to help their children through divorce-related transitions.<sup>95</sup> Women, in particular, appear consistently to gain confidence in their ability to handle all aspects of the divorce, while men report an enhanced understanding of the impact and complexity of the divorce process.<sup>96</sup>

**c. The GRASP Program.** In Johnson County, Kansas, divorcing families must attend a two-hour program entitled "General Responsibilities as Separating Parents," or GRASP.<sup>97</sup> Offered weekly at the courthouse at a cost of \$10,<sup>98</sup> attendance at GRASP is required by local court rule and must be completed by every parent with a minor child seeking a divorce.<sup>99</sup> GRASP teaches parents that there are emotional consequences to their actions. It emphasizes that parents must protect their children from conflict.

---

GRASP also reinforces the notion that even though the marriage bonds are broken, the parental bond endures; the program emphasizes that the children will continue to have an ongoing relationship with both parents.<sup>100</sup>

GRASP proceeds from the premise that divorce is one of the most stressful events a person can experience.<sup>101</sup> Indeed, the program compares the process of coping with divorce with the model for experiencing grief, developed by Elizabeth Kubler-Ross.<sup>102</sup> In so doing, it teaches parents to shun manipulative behaviors and to strive to establish a business like parenting partnership with their ex-spouses. It also presents some alternative dispute resolution techniques and includes some general information about the legal process.<sup>103</sup>

**d. Helping Children Succeed After Divorce (HCS D).** Another mandatory parent education program is “Helping Children Succeed After Divorce” (HCS D) in Franklin County, Ohio (which includes Columbus).<sup>104</sup> Developed through a partnership between the Children’s Hospital Guidance Centers Divorce Services and the Franklin County Court of Domestic Relations,<sup>105</sup> the program consists of one intensive, 2½-hour seminar presented by two mental health professionals with expertise in divorce.<sup>106</sup> The seminar covers four topics: (1) the adult experience of divorce; (2) the emotional and psychological impact of divorce on children; (3) the post-divorce parental relationship; and (4) problem solving techniques.<sup>107</sup> The program assumes that parents will be more receptive to their children’s needs if their own emotional experience is understood and acknowledged.<sup>108</sup> Parents are taught that divorce is a process that unfolds over time and encompasses varying emotions.<sup>109</sup> The program analogizes the emotional, social, intimate, and financial impact of divorce to the losses that one experiences when a loved one dies.<sup>110</sup>

The HCS D seminar also emphasizes the need for divorcing parents to rebuild their relationship for the purpose of child rearing.<sup>111</sup> The psychological importance of both parents in the life of a child is stressed throughout the seminar.<sup>112</sup> Recognizing that a common effect of divorce on adults is the “diminished capacity to parent,”<sup>113</sup> HCS D emphasizes that the adults’ ability to resume their parental functioning is a key factor in their children’s adjustment to divorce.<sup>114</sup> Thus, a major theme of the seminar is the need for divorced parents to reduce their anger and conflict and to protect children from parental battles.<sup>115</sup> Parents are urged to adopt a “business-like co-parental” relationship with their former spouse in order to parent effectively after divorce.<sup>116</sup>

Participants in the HCS D program complete a questionnaire at the end of the seminar. The questionnaire includes both open-ended questions and statements to which parents are requested to rate their agreement or disagreement prior to receiving their certificate of attendance.<sup>117</sup> Over half (54%) of the participants reported that the seminar helped them better understand their own feelings about divorce.<sup>118</sup> A majority of parents also indicated a greater awareness of their children’s divorce experience. Most participants reported that attending the seminar may affect the way they interact with their children

**GRASP proceeds from the premise that divorce is one of the most stressful events a person can experience.**

**The HCS D seminar also emphasizes the need for divorcing parents to rebuild their relationship for the purpose of child rearing.**

**A 1997 study provides encouraging evidence of the success of one parent education program in enhancing parents.**

about divorce issues.<sup>119</sup> Similarly, two thirds reported that the seminar might make a difference in how they interact with their former spouse around the children.<sup>120</sup>

HCSD facilitators were concerned about whether parents would resent being required to attend and to what extent the resentment might interfere with their receptivity to the program. Surprisingly, while 23% of the parents said they resented being required by the court to attend, most indicated that they would recommend the seminar to others despite their initial resentment.<sup>121</sup>

## **2. Program Evaluations**

While the proliferation of parent education programs is viewed as encouraging, evaluations of the effectiveness of these programs lag behind their inception. Thus far, few methodologically rigorous studies have been performed to evaluate the content or the results of these programs. Most studies that have been done rely on surveys distributed to parents immediately or only a few months after the completion of the program. Even in mandatory programs, completion of these surveys is generally voluntary, so the responses received may represent only the most enthusiastic of the parent participants. The accuracy of the conclusions drawn from these surveys with regard to the program's ability to modify parental behavior is suspect because the subjects of the experiment are themselves attempting to assess its effectiveness. Moreover, the available literature encompasses programs that are so varied in terms of their content, method of instruction, and duration that it is difficult to determine the effectiveness of one particular program trait over another. Thus, even if two parenting classes taught the same skills, but varied in length and method of instruction, and one program was more effective at modifying parental behavior, it would be difficult to determine which aspect of the effective program was responsible for the behavioral modification. In short, more rigorous and objective forms of evaluation are necessary. These should focus on both parental and child well-being, and should compare the post-divorce experiences of families who have participated in parent education programs with the experiences of families who have not. In addition, longitudinal studies are necessary to determine the long term effects of these programs.

A 1997 study provides encouraging evidence of the success of one parent education program in enhancing parents' problem solving skills and, specifically, reducing relitigation rates. Two Ohio University professors evaluated *Children In The Middle*, a two-hour mandatory education program sponsored by the court in Athens County, Ohio.<sup>122</sup> The program focuses intensively on reducing the frequency with which parents involve children in loyalty conflicts. It emphasizes making parents aware of these practices and their effects through video scenes depicting the most common practices, followed by training in more appropriate behavior. Small group discussion allows parents to apply the material to themselves, and a workbook summarizing the class content is given to parents upon completion of the course.<sup>123</sup>

---

The study of *Children in the Middle* compared 48 parents who completed the two-hour program with a control group of 23 demographically matched parents who filed for divorce the year prior to institution of the mandatory program. Parents in the study group were interviewed by phone six months after participating in the class. Court records were reviewed between 24 and 27 months after each participant completed the class to ascertain whether any divorce or custody issues had been relitigated.<sup>124</sup>

Researchers found a clear and significant difference between the treatment and control groups in terms of the total relitigation rate. Over the 27 month study period, parents who took the class averaged 1.51 court filings, while parents in the control group averaged 3.74 filings.<sup>125</sup> Parents who attended the class were also assessed to determine mastery and maintenance of skills taught during the program. Results demonstrated a significant degree of skill mastery. Parents who attended the class scored much higher in communication and problem solving skills than did parents in the comparison group.<sup>126</sup> Moreover, maintenance of these skills was highly related to reduced relitigation; the better a parent's communication and problem solving skills, the less likely that parent was to relitigate.<sup>127</sup> Significantly, researchers found that skill mastery and behavioral change were not linked to parents' educational level. This is encouraging because it suggests that parents of varying educational backgrounds can benefit equally from attending divorce education classes.<sup>128</sup>

**Conclusion.** Even supporters of parent education agree that parental education is not a panacea.<sup>129</sup> It will not create cooperation from deeply embittered parents, nor will it cure the psychological problems that may lie at the heart of some parental disputes.<sup>130</sup> Parent education programs can, however, provide information on more intensive, structured interventions and encourage participation in them.<sup>131</sup> In addition, preliminary evidence suggests that parent education programs may be effective in teaching problem solving skills and in reducing relitigation rates.<sup>132</sup> Parent education may also be an effective vehicle for directing divorcing families to less adversarial forms of dispute resolution, diverting them from damaging custody battles.<sup>133</sup> Parent education programs thus represent an important step toward the development of a family law system that focuses on the needs of children.<sup>134</sup>

## B. Mediation

Another court-connected intervention designed, in part, to reduce the negative consequences of divorce for children is divorce and custody mediation. Mediation is a process in which a third party neutral (the mediator) encourages parties to reach a mutually agreeable settlement of their dispute.<sup>135</sup> The mediator assists the parties "by helping them to identify the issues, reduce misunderstandings, vent emotions, clarify priorities, find points of agreement, explore new areas of compromise and possible solutions."<sup>136</sup>

Mediation differs from arbitration in that the mediator is not empowered to resolve the dispute or impose an outcome on the parties.<sup>137</sup> It differs from lawyer-conducted ne-

Parent education programs can provide information on more intensive, structured interventions and encourage participation in them.<sup>131</sup> In addition, preliminary evidence suggests that parent education programs may be effective in teaching problem solving skills and in reducing relitigation rates.

Mediation thus encourages parents to "put their children first" during the often stressful process of divorce.

Private, non-court-connected mediation of divorce and custody disputes is also flourishing across the country.

gotiation primarily in that the parties themselves conduct the discussions and attempt to arrive at a satisfactory accord.<sup>138</sup> Mediation also differs from more traditional, adversarial processes in that it seeks to move the parties from established positions to underlying mutual interests, in order to generate value enhancing, or "win-win," solutions.<sup>139</sup>

Mediation emphasizes cooperative decision-making. As such, it seeks to "reorient the parties toward each other not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will direct their attention toward one another."<sup>140</sup> This cooperative orientation offers a number of potential benefits for divorcing families. First, it encourages parents to focus on their joint interest in promoting the well-being of their children. Mediation thus encourages parents to "put their children first" during the often stressful process of divorce.<sup>141</sup>

Mediation also gives parents the opportunity to develop communication and problem solving skills that can facilitate successful co-parenting after divorce.<sup>142</sup> Moreover, if mediation is successful, divorcing parents can avoid the bitterness and emotional trauma of a trial. Successful mediation also avoids the substantial litigation costs associated with contested court proceedings, thus leaving more marital assets available to meet the post-divorce needs of both the children and the former spouses.<sup>143</sup>

Supporters of divorce and custody mediation contend that the process will enhance the adjustment of children by promoting parental cooperation, reinforcing parent-child bonds and encouraging the continued involvement of both parents in the lives of their children after divorce.<sup>144</sup> Mediation may also reduce relitigation by producing custody agreements that parents view as fair and acceptable over time.<sup>145</sup> Moreover, unlike adversarial divorce procedures, mediation is designed to reduce conflict and to help disputing parents resume a working relationship with each other.<sup>146</sup>

## 1. Current Status of Divorce and Custody Mediation

Mediation has become a widely adopted method of resolving divorce and custody disputes. In 1981, California became the first state to mandate mediation of all custody and visitation disputes, prior to consideration of these issues by a court.<sup>147</sup> Other jurisdictions have followed suit.<sup>148</sup> A February, 1997 article in the *American Bar Association Journal* reported that, in more than half the states, courts are authorized by statute to provide some form of mediation in divorce and custody cases.<sup>149</sup> A database maintained by the National Center for State Courts lists more than 200 court-connected mediation programs in operation across the country, of which a substantial proportion either mandate mediation categorically or permit judges to order mediation in particular cases.<sup>150</sup> Private, non-court-connected mediation of divorce and custody disputes also flourishes across the country.

Court rules in Maryland authorize judges to require parties represented by counsel in custody or visitation disputes to attend up to four mediation sessions.<sup>151</sup> Mediation is limited to the issues of custody and visitation unless the parties and their counsel agree

---

otherwise.<sup>152</sup> If counsel for a party or a child represents to the court in good faith that there is a genuine issue of physical or sexual abuse of a party or child, and that mediation would therefore be inappropriate, the court may not order mediation. Parties who are not represented by counsel may participate voluntarily in mediation, but may not be ordered to mediate their disputes.

## **2. Research Effectiveness of Mediation**

A significant amount of social science research has examined the results and effectiveness of divorce mediation. That research has tended to substantiate some -- but not all -- of the claims made by mediation proponents. Significantly, the research "is consistent in reporting that neither parent nor child psychological adjustment is affected in a statistically meaningful manner by either a custody mediation or comprehensive divorce mediation process."<sup>153</sup>

Most research on divorce mediation has examined the outcomes of mediation, as opposed to the mediation process itself.<sup>154</sup> The vast majority of this outcome research has focused on child custody mediation, as opposed to more comprehensive divorce mediation, which encompasses financial as well as parenting issues.<sup>155</sup> Relatively few studies have compared mediation processes or outcomes with their counterparts in the adversarial system, particularly lawyer-conducted negotiation.<sup>156</sup> Other methodological weaknesses in the research include client self-selection rather than random assignment or comparison groups in most studies; a failure to assess clients' history of conflict and communication; considerable diversity in client groups, dispute settings and legal rules; variations in the number and length of mediation sessions; and different methods of data collection and analysis.<sup>157</sup> Despite these weaknesses, the studies' results appear to converge on a number of outcome issues.<sup>158</sup>

### **a. Conflict, Parental Cooperation, and Communication**

In general, research in the United States and Canada has demonstrated small but often short-lived increases in parental cooperation and improvement in communication following divorce and custody mediation.<sup>159</sup> In a study that randomly assigned disputing parents to custody mediation or custody litigation, parents who mediated reported less conflict one year after settlement compared to those who litigated.<sup>160</sup> Nine years later, the parents who mediated continued to communicate more about their children, and the noncustodial parents were more involved in current child-related decisions.<sup>161</sup> In another study, parents using comprehensive divorce mediation reported less conflict during the divorce process than did parents using litigation.<sup>162</sup> At the final divorce, mediation parents continued to report significantly less conflict, more cooperation, more child-focused communication and more noncustodial parent participation in decision-making about the children, compared with the adversarial sample.<sup>163</sup> These differences persisted one year after divorce, but were no longer apparent two years post-divorce,

**In a study that randomly assigned disputing parents to custody mediation or custody litigation, parents who mediated reported less conflict one year after settlement compared to those who litigated.**



Despite these apparent enhancements in post-divorce cooperation and communication between parents, research from the United States and England has found that mediation does not enhance the psychological adjustment of divorcing parents or their children in a statistically meaningful way.

with the exceptions that mediation parents still relied more on each other for child care and were more supportive of each other's parental roles than were parents who had used adversary procedures.<sup>164</sup>

The research also suggests that mediation may reduce relitigation rates. Most studies report higher rates of compliance with mediated agreements than with agreements reached in the adversarial process.<sup>165</sup> Relitigation rates are low in general among mediated samples and appear lower than in adversarial samples.<sup>166</sup> Part of the reason for the low relitigation rates may be that mediated agreements often contain a provision requiring the parties to attempt to mediate future disputes before resorting to judicial processes.

Despite these apparent enhancements in post-divorce cooperation and communication between parents, research from the United States and England has found that mediation does not enhance the psychological adjustment of divorcing parents or their children in a statistically meaningful way.<sup>167</sup> At least one mediation theorist has suggested that these results are not surprising, given the brevity of most mediation interventions.<sup>168</sup>

#### **b. Client Evaluation of Mediation**

Studies that measure satisfaction with the mediation process indicate high levels of client satisfaction with both the process and the outcomes of mediation.<sup>169</sup> While satisfaction with mediation was highest among those participants who reached agreement, several studies have found client satisfaction in the 40% to 60% range among those participants who were unable to reach agreement.<sup>170</sup>

In studies comparing mediation and litigation samples, mediation clients were significantly more satisfied than their adversarial counterparts.<sup>171</sup> Positive features of mediation from the clients' perspective focus on the ability to communicate to the other spouse in a contained setting, and include the opportunity for parents to express their viewpoint, talk about the children, have their concerns taken seriously, and hear helpful ideas from mediators about parenting issues and plans.<sup>172</sup> Clients generally gave mediators high rating for their impartiality, sensitivity and skill.<sup>173</sup>

Most studies have found no significant gender differences in satisfaction with mediation. This contrasts with adversarial procedures, with which men are significantly more dissatisfied than women.<sup>174</sup> In disputed custody cases, women in the mediation and litigation groups were equally likely to feel their rights were protected, whereas the men in the litigation group were significantly less likely than the men in mediation to believe the litigation process protected their rights.<sup>175</sup> Mediation parents were also more likely to report that they each had "won" some of what they wanted, while litigation parents more often described a "win-lose" outcome.<sup>176</sup>

#### **c. Settlement Rates**

Mediation research from the United States and elsewhere indicates that parties reach agreement in divorce mediation between 50% and 80% of the time; most of these

---

studies found agreement rates in the mid to upper end of this range.<sup>177</sup> This is true of both court-based and private mediation.<sup>178</sup> Somewhat higher rates of agreement have been reported in comprehensive divorce mediation, as compared to custody-only mediation.<sup>179</sup> This finding is consistent with the more general mediation data, which indicate that agreement is more difficult to reach in single-issue disputes than in multi-issue settings.<sup>180</sup> No clear relationship emerges from the studies between settlement rates and the number of hours or mediation sessions offered. However, prescreening to eliminate certain couples based on criteria such as history of violence or high conflict levels appears to increase the settlement rate.<sup>181</sup>

Several studies indicate that mediation may be less time consuming, and possibly less costly, than more traditional adversary processes. In one of the few mediation studies involving random assignment of custody disputes, parents assigned to mediation were able to resolve their disputes significantly more quickly than parents in the litigation group.<sup>182</sup> Even those mediation parents who failed to reach agreement during mediation were more likely to settle prior to trial than were parents initially assigned to the litigation group.<sup>183</sup> Several studies involving both custody and private comprehensive mediation have reported that mediation was significantly less expensive than similarly focused adversarial processes,<sup>184</sup> but data from England contradicts this finding.<sup>185</sup> Some evidence also suggests that mediation in the public sector may reduce government costs.<sup>186</sup> In California, which mandates mediation of custody and visitation disputes, the number of custody trials has been reduced to fewer than 2% of those parents initially disputing child-related issues.<sup>187</sup>

#### **d. The Content of Mediated Versus Litigated Agreement**

It is difficult to generalize about the content of mediated versus litigated agreements, since the content of both types of agreements varies, depending on the law of the jurisdiction in which the dispute is resolved. Moreover, the extent to which the background legal regime influences the content of mediated agreements may itself depend on the mediator's professional discipline, the extent to which the mediator relies on legal norms, and the degree to which the mediator actively intervenes in the mediation process.<sup>188</sup> Several studies indicate that some (but not all) mediators consider their responsibility to inform parties when the mediator views a proposed agreement as unfair or as contrary to a child's best interests.<sup>189</sup>

In general, mediation results in more joint custody agreements than do adversary divorce procedures. This should not be surprising, since many mediators and mediation theorists are also strong advocates of shared parenting after divorce.<sup>190</sup> Mediated agreements also tend to be more detailed and specific than either litigated outcomes or attorney-negotiated settlements.<sup>191</sup> The few studies that have examined financial outcomes have found no significant differences in child support amounts between mediated and litigated processes, although they suggest that fathers who mediate may pay for more "extras" for the children and are more likely to agree to provide for college

**Several studies indicate that mediation may be less time consuming, and possibly less costly, than more traditional adversary processes.**

**In general, mediation results in more joint custody agreements than do adversary divorce procedures.**

**One common type of intervention is a short term support group for children who are experiencing parental separation or divorce.**

expenses.<sup>192</sup> Property agreements reached in mediation also appear similar to those reached in lawyer-negotiated settlements.<sup>193</sup>

In sum, the social science literature suggests that mediation offers significant benefits for a substantial group of divorcing families. Whether mediation is appropriate for all divorcing parents, and whether mediation should be a mandatory prerequisite to a judicial hearing, are matters beyond the scope of this paper. The evidence suggests, however, that for those couples who are willing to work together to promote their children's well-being, mediation offers significant advantages over more adversary divorce and custody procedures.

### **C. Support Groups for Children**

Mediation and parent education programs are aimed primarily at adults. Another type of divorce-related intervention focuses directly on children. Intervention programs for children come in a variety of forms. One common type of intervention is a short term support group for children who are experiencing parental separation or divorce.<sup>194</sup>

Divorce-related support groups for children are both educational and therapeutic in nature. The goals of these programs typically include (1) clarifying divorce issues, (2) providing a supportive place for children to work through difficult emotional issues, (3) helping children develop skills for coping with their feelings, and (4) improving parent-child communication.<sup>195</sup> Children's support programs use a variety of formats to achieve these goals. Several programs have been developed in conjunction with academic research protocols. These programs are highly controlled and are generally school-based.<sup>196</sup> The results of these programs have been well-analyzed and have produced useful data regarding children's reactions to divorce. Other programs are court-connected and have been developed collaboratively by attorneys and mental health professionals. Information regarding the effectiveness of these programs is generally limited to anecdotal reports. Similarly, programs developed by community-based family counseling centers have generally been well received, but it is difficult to measure their effectiveness.

Children's support groups have several common features. Most use a time-limited, small group format that typically includes four to ten children. A group setting is preferred over an individual approach for a number of reasons. First, because resources for individual counseling are scarce, group programs are able to serve larger numbers of children with a limited professional staff. Second, children benefit from a group setting because discussing the divorce with peers who have also gone through a divorce normalizes the experience and provides a supportive network for them. Third, children may be more comfortable discussing difficult, sensitive issues with similarly situated peers than with an adult therapist in individual treatment.<sup>197</sup>

The programs use a variety of techniques to focus the children on issues of parental

---

separation and divorce. These include the use of age appropriate games and activities, role playing, audiovisual materials, storytelling, problem solving exercises, and drawing. For example, one program encourages the children to write a group letter about divorce issues, which is then read in an open session with their parents. Many programs also use co-facilitators to lead the group, usually consisting of a male/female team of mental health professionals.

### 1. School-Based Programs

**a. Children of Divorce Developmental Facilitation Group.** Social scientists have developed and evaluated a number of school-based programs for children of divorce. One of the first was the Children of Divorce Developmental Facilitation Group, developed in the early 1980s in Detroit.<sup>198</sup> The goals of the eight-session program may be summarized as follows: (1) to normalize the experience of divorce; (2) to clarify and work through the emotionally confusing and upsetting issues related to divorce; (3) to develop coping strategies for handling difficult feelings and family interactions; and (4) to improve parent-child communication.<sup>199</sup>

The primary technique used to elicit discussion was role-playing a variety of post-divorce themes or situation.<sup>200</sup> At the next to last session, the group members were asked to produce a divorce newspaper, including articles, interviews, and an advice column. The children took turns being reporters and interviewing each other about how they felt and thought about divorce. The purpose of the newspaper was to emphasize the common issues and themes that had emerged over the course of the program. This technique demonstrated the readiness of the children to disclose in vivid and poignant detail the feelings evoked by their parents' divorce and by post-divorce life events. Common issues were: (1) anxiety over parental battles; (2) conflicted loyalties and uncertainty over changes in custody; (3) sadness over loss of the original family unit; (4) conflicting emotions over custodial mother's dating; and (5) anger at being disciplined by the mother's boyfriend or new husband.<sup>201</sup>

Program evaluators studied 46 predominantly white elementary school children who participated in the Facilitation Group. The study revealed few significant differences between measurements of the children's adjustment before and after participation in the program.<sup>202</sup> Children, parents, and program leaders reported positive impressions of the program, but the usefulness of these impressions is limited by the lack of a control group. Nonetheless, the study revealed valuable information about children of divorce. The vivid self-disclosure by the children suggested that divorce-related issues are of concern to the children even years after the divorce.<sup>203</sup> Further, except for the issue of conflict between the parents, all other issues and themes that arose during the program centered on stresses associated with post-divorce life. This suggests that children's adjustment to divorce goes well beyond working through the confusion and pain of the initial marital disruption.<sup>204</sup> Finally, this study suggests that brief

**The vivid self-disclosure by the children suggested that divorce-related issues are of concern to the children even years after the divorce.**

Six months after the program the custodial parents of boys reported that their sons exhibited lower levels of aggression and problem behavior than they had before the program.

interventions, timed closely to the divorce, are but a partial answer to the question of how to minimize the negative impact of divorce on children.<sup>205</sup> While early intervention is helpful, the combination of post-divorce stresses and developmental changes suggest the need and opportunity to intervene beyond the point of the immediate disruption.<sup>206</sup>

This program was studied a second time in 1988.<sup>207</sup> The second evaluation involved 81 children and included a delayed-treatment control group.<sup>208</sup> Six months after the program the custodial parents of boys reported that their sons exhibited lower levels of aggression and problem behavior than they had before the program. In addition, both girls and boys reported a decrease in sad/insecure feelings on the Divorce Perception Test. Most other differences between groups were not significant.<sup>209</sup>

A similar school-based intervention program was developed and evaluated by researchers at the University of Michigan.<sup>210</sup> In that project, 53 fourth and fifth grade children were evaluated on their post-divorce adjustment immediately before and six months after participation in the eight-week program.<sup>211</sup> At follow-up, most showed positive change, with those at special risk for adjustment problems showing substantial gains. Results did not vary with sociodemographic or divorce circumstances.<sup>212</sup>

**b. Divorce Adjustment Project.** The Divorce Adjustment Project (DAP) was evaluated in 1985.<sup>213</sup> Similar to the Children of Divorce Developmental Facilitation Group, DAP focused on normalizing the divorce experience, understanding and working through divorce related feelings, developing coping strategies, and parent-child communication. The program consisted of 12 weekly sessions for children and their mothers. The evaluation involved 82 children ranging in age from 7 to 13 years old who had experienced parental separation or divorce between 9 and 33 months before participating in the program.<sup>214</sup>

The evaluators of the program examined four groups: families in which only the child participated in a group, families in which only the mother participated in a group, families in which both the child and the mother participated, and a no-treatment comparison group. The participants' adjustment was studied immediately after the conclusion of the program and again after the passage of five months. In general, the results indicated that participation in a support group was beneficial. Interestingly, the children in the child-only group showed greater improvement in self-esteem than either the mother/child group or the no-treatment group. These children also improved in their adaptive social skills to a greater extent than did children in the mother/child group.<sup>215</sup>

Although these results were somewhat surprising to the evaluators, they are explained partly as the result of important group differences that existed before the intervention.<sup>216</sup> Families were not randomly assigned to these groups. Children in the mother/child group had higher self-esteem prior to participation in the program and had experienced more positive and fewer negative life events than had children in the child-only group. Thus, the children in the mother/child group were better adjusted before the intervention and

---

might not be expected to improve as much as children who were poorly adjusted to begin with. Other factors affecting the outcome were that the groups differed in the length of time the parents had been separated and in the mother's occupation.

**c. Children of Divorce Intervention Project.** The Children of Divorce Intervention Project, CODIP, provides the most extensive evaluation of a school-based intervention.<sup>217</sup> CODIP is an adaptation of DAP and, as such, their goals largely coincide. In addition to these common goals, CODIP also seeks to enhance children's perception of themselves and their families. Two initial evaluation studies were conducted with white, middle-class fourth through sixth graders. One study compared the adjustment of 40 children whose parents had been divorced an average of two years with a demographically matched sample of 32 children in a delayed treatment control group. The other study compared 52 children whose parents had been divorced an average of four years with a demographically matched sample of children from intact families.<sup>218</sup> In each study, the children were assessed by teachers, parents, and group leaders, as well as through self-reporting. Assessments were completed two weeks after the group's last session.

These assessments demonstrated that the program had a positive effect on children's adjustment to divorce.<sup>219</sup> The study indicated that program children made a better adjustment than non-program children with regard to shy and anxious behaviors and to learning problems. These children also seemed to exhibit a greater increase in adaptive assertiveness and frustration tolerance than the comparison group.<sup>220</sup> These findings were consistent among the teachers, parents, and group leaders. Parents in particular rated children in the intervention groups as showing greater increases in overall adjustment.<sup>221</sup> The children's self-reports, however, showed fewer differences. In particular, while the program children reported lower levels of anxiety after the group, they did not differ from the control group on measures of perceived competence and self-esteem. Nor did the children's self-perceptions and attitudes about the divorce differ significantly across groups in either study.<sup>222</sup>

The CODIP program was also evaluated in a racially mixed urban population of second and third graders.<sup>223</sup> The program was modified in an attempt to better match the lifestyle and experiences of this population. Modifications included a greater acceptance of diverse family forms and an emphasis on the role of the extended family as a source of support. The results of the ethnically diverse intervention group coincided with the previously obtained results of the primarily white group. Specifically, teachers reported that the children who participated in the program displayed greater frustration tolerance, assertiveness, task orientation, and peer social skills but did not exhibit changes in acting out, shyness/anxiety, or learning problems.<sup>224</sup> The children taking part in the program reported more positive feelings about their parents, themselves, their families, and their ability to cope with problems.<sup>225</sup> The parents of program children also reported a significant increase in their children's overall adjustment.<sup>226</sup> These

**These assessments demonstrated that the program had a positive effect on children's adjustment to divorce.<sup>219</sup> The study indicated that program children made a better adjustment than non-program children with regard to shy and anxious behaviors and to learning problems.**

**These programs also aim to ameliorate children's post-divorce adjustment by providing social support and helping children develop effective strategies for coping with divorce related stressors.**

findings are significant because this urban population, by an objective measure, had more serious social problems and fewer resources than the more suburban children.<sup>227</sup>

## **2. Community-Based Programs**

Another type of intervention for children is the community-based program. These programs also aim to ameliorate children's post-divorce adjustment by providing social support and helping children develop effective strategies for coping with divorce related stressors. While group therapy has been a valuable tool in addressing the mental health concerns of adults for many years, groups designed specifically for children are a more recent phenomenon.<sup>228</sup> Moreover, when these groups have been offered they have often been limited to children who have evidenced significant mental health problems.<sup>229</sup> In response to the mounting social science evidence about the effects of divorce on children, and the successes of the school-based interventions, a number of community-based programs have been developed around the country.

**a. They're Still Our Children.** One community based program for children is They're Still Our Children.<sup>230</sup> Designed to educate children about the divorce and separation process, this program is a mandatory court-based program in Hawaii.<sup>231</sup> The 2nd Circuit Court of Hawaii mandates that within six weeks of filing a divorce complaint, all parents and their children six years of age and older must attend an educational 2<sup>1</sup>/<sub>2</sub>-hour program about divorce and separation. The goals of this program are straightforward -- it seeks to (1) demystify the court process; (2) assure children that divorce is not their fault; (3) assure them that feelings of loss, anger, and distrust are common; and (4) help them realize that the family is still a family, albeit in a different form.<sup>232</sup>

The first segment of the program takes place in a courtroom. Children watch a 20-minute video, *Divorce and Other Monsters*, with their parents. The groups are then separated. The segment run for children is led by a team of a judge, children's coordinator, and community volunteers. The children are introduced to the courtroom and urged to express their feelings about the divorce and their parents in the form of a group letter to their parents. The last segment reunites the children with their parents. The group letter is read to the parents to reinforce the information that the parents were given in their segment.<sup>233</sup>

**b. Kid's Turn.** Kid's Turn is another child-oriented educational program located in the San Francisco Bay area for families who are reorganizing after separation or divorce.<sup>234</sup> The program was founded by attorneys and is sponsored by the court, but divorcing parents are not required to attend.<sup>235</sup> The course is taught by qualified educational or mental health professionals. The six-week program consists of six 90-minute sessions that assist children in dealing with the changes in the family. Children are grouped by age and the curriculum is tailored to meet the developmental needs of each

---

age group. In general, the workshops teach children skills to help them understand and talk about the changes taking place within their families.<sup>236</sup> The workshops engage the children in group projects and games that reflect common and increasingly complex social interactions. The group is structured progressively so that each session builds on what was learned previously.

Participants in Kid's Turn report positive results from the program, but there have been no long-term outcome studies on the effect of the program.<sup>237</sup> At the end of each session, written evaluations are completed by all but the pre-school aged group. The responses received have been overwhelmingly positive. Parents and children alike say the most valuable aspects of the program are the support it provides them, an increased understanding of the emotional and psychological aspects of the divorce process, and an improvement in parent-child and parent-to-parent communication. One adult participant in the program noted that "Kid's Turn classes have made it so much easier for me to talk with my children about anything relating to life with two homes and separated parents."<sup>238</sup>

**c. Marriage Council of Philadelphia.** The Marriage Council of Philadelphia offers a support group for children based upon the group therapy model.<sup>239</sup> The impetus behind the development of that program was a growing concern among staff therapists that children of divorcing families were not receiving adequate emotional support.<sup>240</sup> Divorced parents reported to their therapists that although their communication with their children was generally good, most of the children had never initiated a conversation with their parents on the subject of divorce. Parents also reported that their children were unable to articulate feelings or respond to inquiries about their experiences.<sup>241</sup>

The Marriage Council model is unique in a number of aspects. Sessions cover a relatively long period of time -- up to four months. A child can attend more than one group series and can thus be followed for as long as a year. The group is run by a male/female team of experienced family and creative arts therapists. The "team permits individual, family and group psychodynamics to be treated in responsible, therapeutically effective ways that foster the cognitive and social development of children as they learn to adapt to the specific challenges of their altered life situation."<sup>242</sup> Each group series includes at least one parent and all the children in a family who are between 4 and 13 years of age. The parents participate in parent support meetings and individually attend at least one children's group session as a participant. If the family agrees, the group leader may also contact other mental health professionals, lawyers, teachers, clergy, etc., who may be helping the family. This holistic approach maximizes the mobilization of resources available to the family during the treatment process.<sup>243</sup>

Anecdotal reports suggest that participating parents view the program positively. Parents of children who have participated in the support groups report that open discussions between themselves and their children on divorce related topics occur more frequently than before they attended the group and that the children often initiate these

**Anecdotal reports suggest that participating parents view the program positively.**



Results of these questionnaires indicate that children who have participated in the program are “adjusting satisfactorily to the divorce.”

discussions.<sup>244</sup> They also report a decrease in the intensity and frequency of angry exchanges between themselves and their children over matters of household routine. Parents report that their children are more willing to discuss separation/divorce related events and feelings with peers and significant adults outside the home.<sup>245</sup> Noncustodial parents report increased comfort and greater candor from their children about past and present dissatisfactions and fears of abandonment.<sup>246</sup> The children most comfortable with the divorce over time were those who reported the least acrimonious parental interaction, and could clearly describe the outcome of the separation arrangement of the parents.<sup>247</sup>

**d. Families in Transition.** The Families in Transition (FIT) is a program for divorcing parents and children designed by the Family Court of Jefferson County, Kentucky in collaboration with a prominent children's agency and the University of Louisville Family Therapy Program.<sup>248</sup> A hybrid program, FIT requires both parents and children between the ages of 8 and 16 to attend three weekly concurrent but separate sessions. The noncustodial parent attends the program at a separate time during the week. Each 2 1/2-hour session is conducted by a trained facilitator in a community setting (e.g. church, family agency, or community center) that is easily accessible, but that also provides adequate protection to families. The curriculum emphasizes a supportive climate for exploring feelings, acquisition of problem solving skills for divorce-related problems, and ways for parents and children to develop better relationships with each other.<sup>249</sup>

The authors of the project developed the Divorce Adjustment Inventory (DAI) to assess the effects of the FIT program on parents and children.<sup>250</sup> The DAI provides separate ratings for parents and children of pre- and post-divorce adjustment at six months and one year after completion of the program. Parents and children rate their adjustment with respect to family functioning, coping skills, and social support systems. Results of these questionnaires indicate that children who have participated in the program are “adjusting satisfactorily to the divorce.” Parent participants also report high levels of satisfaction with the program. Eighty-nine percent of the parents indicated that they were “satisfied” or “very satisfied” with the program; 60% reported that they would attend follow-up sessions, if available.<sup>251</sup>

**Conclusion.** Preliminary evidence suggests that short term counseling and support groups may be a useful mechanism for helping children deal with the emotional issues raised by parental separation and divorce. Although most of the social science studies focus on school-based groups designed by university researchers, anecdotal evidence indicates that both children and parents also respond positively to court-connected and community-based programs. The effect of such child-focused interventions on longer term measure of child well-being is considerably less clear.

---

## D. Parenting Plans

Parenting plans are another vehicle designed to ameliorate the negative effects of divorce on children. Conceived as the "vehicle that can transport us to a more humanistic, family-based system of family law," parenting plans embody a significant change in traditional court-based custody determinations.<sup>252</sup>

A parenting plan, simply put, is a detailed articulation of post-divorce parenting responsibilities.<sup>253</sup> A properly drafted plan addresses the specific aspects of the parents' roles in the child's life and distributes responsibility for those functions accordingly.<sup>254</sup> Specifically, the plan outlines where the child will reside, when and how the child will spend time with the non-residential parent, what the transportation arrangements will be and how the parents will make specific medical, educational, and religious decisions for the child.<sup>255</sup>

The philosophical basis of the parenting plan is that post-divorce parenting should be a shared responsibility rather than a reward given to the parent who "wins" a custody battle. Although shared post-divorce parenting is not a new idea,<sup>256</sup> Washington was the first (and thus far the only) state to embrace the concept as a means of changing the way in which custody proceedings are handled. The Parenting Act of 1987 was designed to diminish the need for judicial decision-making by forcing parents to plan for the post-divorce needs of their children and to develop ways to resolve future parenting conflicts.<sup>257</sup> The Act requires all divorcing parents to file with the court, either jointly or individually, a proposed parenting plan.<sup>258</sup> The goals of the plan requirement are four fold: (1) to facilitate the individualization of the custody process; (2) to encourage the participation of both parents in the child-rearing process; (3) to educate parents concerning their parental responsibilities; and (4) to prevent future or continued conflicts within the family unit.<sup>259</sup>

In keeping with its commitment to shared parenting, the Act eliminates the commonly used legal terms of "custody" and "visitation".<sup>260</sup> Instead, plans must address parenting issues in terms of parental responsibility rather than parental rights and must describe child care arrangements in terms such as "residential care" and "decision-making" authority.<sup>261</sup> There are four basic components of Washington's parenting plan legislation. First, parents must designate in full detail where the children will reside after the parents have separated.<sup>262</sup> This schedule must include a plan for the school year, vacations, holidays, special occasions, and birthdays. Parents must also allocate responsibility for transportation. Second, parents must indicate who will make major decisions regarding education, health care, religious upbringing, and all other major issues. Such decisions may be made by one parent, both parents, or divided between them. Third, the parenting plan must provide some method of resolving future parenting disputes. Possible dispute resolution procedures include counseling, mediation, and arbitration. Parents who cannot agree on the procedure must resort to the court system to resolve their disputes.<sup>263</sup> Finally, in response to the concern that forced co-parenting

**A parenting plan is a detailed articulation of post-divorce parenting responsibilities.**

**Third, the parenting plan must provide some method of resolving future parenting disputes.**

A preliminary study, conducted during the first year of the plan requirement, suggested that, in comparison to pre-Act custody agreements, mandatory parenting plans increased shared parental decision making and residential time post-divorce.

may be detrimental to an abused spouse or to an abused or neglected child, Section 10 of the Act restricts the involvement of a parent who has engaged in abusive behavior.<sup>264</sup>

**Effectiveness of the Parenting Plan Mandate.** Only a few studies have attempted to assess the effects of Washington's Parenting Plan mandate. A preliminary study, conducted during the first year of the plan requirement, suggested that, in comparison to pre-Act custody agreements, mandatory parenting plans increased shared parental decision making and residential time post-divorce. However, the study found no direct evidence that the parenting plan mandate succeeded in refocusing parents from their own needs to those of their children, thereby minimizing the adverse impact of divorce.<sup>265</sup>

A more recent study casts further doubt on whether the parenting plan mandate is achieving its intended goals. This study was conducted by Dr. John Dunne, a research psychiatrist and a strong supporter of the Washington legislation. Dr. Dunne compared 50 families who divorced during the first year of the parenting plan mandate with 50 families who divorced the previous year, and therefore were not subject to the statutory requirement.<sup>266</sup> Dunne used a detailed questionnaire, completed by parents one and two years post-divorce, to assess parental and child well-being in a wide variety of areas, including the degree of intra-family conflict.

With respect to children, Dr. Dunne found that going through the parenting plan process made no difference in a child's adjustment to divorce or in the quality of the child's relationship with either parent. The only significant variable affecting child adjustment to divorce was the passage of time; adjustment improved over time for children in both the study and the control groups. With respect to parents, the study results were even less encouraging. Overall, parental adjustment to divorce improved only slightly over time, but this improvement was not statistically significant. More disappointing, the parents who were subject to the parenting plan mandate actually fared less well than the control group, in terms of both individual well-being and their relationship with their ex-spouses.

Dr. Dunne offers a number of possible explanations for these surprising results. First, he notes that during the first year of the parenting plan mandate, the Washington child support guidelines tied parental support obligations to the number of overnights the child spent with each parent, thereby increasing the financial incentive for parents to fight about residential arrangements.<sup>267</sup> Second, Dunne points out that the Washington statute actually requires divorcing parents to negotiate two separate parenting plans -- a Temporary Plan that is effective during the divorce process and a Permanent Parenting Plan that takes effect once a final divorce has been granted. In essence, according to Dunne, "the parties are forced to get divorced twice," with all of the attendant anger and hurt. On the basis of his study results, Dr. Dunne recommends that the Washington statute be amended to eliminate the temporary parenting plan requirement.

Dunne also acknowledges that his study has several important limitations. First, the sample size was small and was the product of a low response rate. Thus, the families who participated in the study may not be representative of divorcing parents in

---

Washington, either before or after the parenting plan mandate. Second, the study used a non-standard questionnaire. It also relied exclusively on responses from parents and did not include any direct contact with or feedback from the children. Finally, although Washington law currently requires divorcing parents to negotiate and file parenting plans, the court system does not mandate divorce-related parenting education, nor does it provide other support that might help parents negotiate fair and workable post-divorce parenting arrangements. Thus, the likelihood that any particular divorcing family will benefit from the parenting plan mandate may depend significantly on the family's access to -- and willingness to utilize -- non-court-connected resources.

**The likelihood that any particular divorcing family will benefit from the parenting plan mandate may depend significantly on the family's access to -- and willingness to utilize -- non-court-connected resources.**

---

## Section IV: Initiatives For a Unified Family Court In Maryland

**The concept of a unified Family Court is premised upon the notion that the traditional adversary system does not promote the effective and cooperative post-divorce parenting necessary to ensure the future welfare of children and their families.**

**The Family Division has several services designed to expedite cases through the system, including pro se litigation education, family mediation services, and a volunteer attorney settlement panel.**

**T**he Family Division of the Circuit Court for Baltimore City was established in September, 1996 pursuant to a legislative grant to the City of Baltimore. The majority of the litigants seeking assistance from the circuit court in family matters come from families who, in addition to their need for a forum to resolve legal disputes, require multiple community services to resolve the problems in their lives. Thus, in addition to the primary goal of efficient case management, the Family Division assists litigants in accessing the social service resources that will adequately address their nonlegal problems.

The concept of a unified Family Court is not new.<sup>268</sup> It is premised upon the notion that the traditional adversary system does not promote the effective and cooperative post-divorce parenting necessary to ensure the future welfare of children and their families. Courts that have pursued the family court initiative also recognize that traditional case management systems splinter family controversies among several different courts within the same jurisdiction. Such splintering reduces the effectiveness of judges and the quality of judicial decision-making in family law matters. Thus, most jurisdictions looking to create a family court do so with the following goals in mind: (1) to bring jurisdiction over family related matters within the domain of one court; (2) to provide a forum wherein family issues are decided with a family focus -- that is, in appropriate cases, decision-makers are afforded the opportunity to look not only at the individual but at the family circumstances and dynamics which surround the individual; and (3) to strengthen court and community ties.<sup>269</sup>

Baltimore City's Family Division has taken significant steps toward achieving these goals. Chosen as one of five jurisdictions in the nation to benefit from a Robert Wood Johnson Foundation Grant to the American Bar Association's Standing Committee on Substance Abuse,<sup>270</sup> Baltimore City has implemented a number of services and programs to improve its management of domestic cases. The most significant improvement is the manner in which cases involving children are handled from the moment they are filed. A Case Coordinator now reviews every domestic relations case in which minor children are involved to coordinate referrals to family counseling, mediation, or parenting classes. The coordinator also develops new projects, seeks grant funding to expand court services available to family litigants, and builds partnerships with community resources for substance abuse, domestic violence, and family counseling programs.

The Family Division has several services designed to expedite cases through the system, including pro se litigation education, family mediation services, and a volunteer attorney settlement panel. The Assisted Pro Se Office is staffed by students from the University of Maryland School of Law who assist pro se domestic litigants with the completion of form pleadings. The law students also refer the litigants to appropriate community and court-connected resources. The Family Division also mandates that all litigants with custody disputes who are represented by counsel attempt to mediate their disputes prior to being given a hearing. Mediation services are provided through the court by local alternative dispute resolution practitioners. Unrepresented litigants are

---

encouraged to participate in mediation, but by law cannot be ordered to do so.<sup>271</sup> All cases filed in the Family Division are also scheduled for pre-trial settlement conferences. Volunteer attorneys from the family practice bar offer their services to facilitate early settlement of cases.

The Family Division also provides a number of support services to divorcing or separating parents. All parents who share children in common are required to attend a five-hour parenting seminar conducted by the Sheppard Pratt Health Systems. The seminar focuses on the effects of separation and divorce on children and provides parents with skills and ideas designed to minimize the negative consequences of these changes in family structure. The Supervised Visitation Project provides opportunities for non custodial parents to visit with their children under the guidance of social workers. The goals of the Visitation Project are to support positive parenting skills and to prevent child abuse. The Project has recently expanded to include weekend and evening hours in order to accommodate working parents. Finally, the Office of Medical Services provides custody evaluations and substance abuse and mental illness evaluations for use in contested custody matters.

Judge Albert J. Matricciani, Jr. is the judge in charge of the domestic cases in the Family Division. His vision for the court is to develop additional support services for families, including the appointment of a Social Services Coordinator, a revised intake process for domestic cases, and the development of a community-based advocacy group with specific tasks and structure to provide on going support for the Family Division. The Social Services Coordinator, a licensed social worker, would review new Family Division cases and assess the needs of litigants and families for social services intervention. An important component of this assessment would be a determination of the need for substance abuse treatment. The revised intake procedures would include the adoption of an integrated case management team approach to processing and managing Family Division cases from case initiation through disposition.<sup>272</sup>

Judge Matricciani further envisions providing case monitors to assist litigants with service of process and dispositional issues, a fully integrated physical plant for the Family Division as a whole, longer rotations for Family Division judges, and the development of standards by which to measure objectively the success and effectiveness of the Family Division. If additional funding could be obtained, the Family Division would also add educational and therapeutic programs for children going through divorce and/or custody disputes and coordinate with the Baltimore Coalition against Substance Abuse in developing further Family Division services.

In sum, the judges and support staff of the Baltimore City Circuit Court Family Division are working hard to ensure that the unified family court model improves the lives of litigants within the system and minimizes the potentially destructive effects of separation and divorce on children and families. We believe that Baltimore City is in a unique position not only within Maryland, but in the nation, to accomplish true family-focused reform of its judicial system.

**All parents who share children in common are required to attend a five-hour parenting seminar conducted by the Sheppard Pratt Health Systems.**

**We believe that Baltimore City is in a unique position not only within Maryland, but in the nation, to accomplish true family-focused reform of its judicial system.**

---

# Section V: Conclusions and Recommendations

These risks, however, are not insurmountable. Rather, they can be ameliorated by divorce-related interventions that reduce parental conflict, ensure children's economic security, and promote effective and cooperative parenting after divorce.

Children who experience parental divorce or separation are at risk for negative outcomes in a variety of developmental areas. These risks, however, are not insurmountable. Rather, they can be ameliorated by divorce-related interventions that reduce parental conflict, ensure children's economic security, and promote effective and cooperative parenting after divorce. Because divorce requires a judicial decree, the court system can play an important role in developing, implementing, and coordinating these family-focused interventions. Based on the foregoing analysis of the effects of divorce and separation on children and the divorce related interventions we have examined, and in light of the initiatives undertaken by Baltimore City, we make the following recommendations for policy makers and funders interested in improving outcomes for children of divorce and promoting family-focused court reform in Maryland:

- 1. Because the Impact of Divorce is Multi-faceted, Interventions Must be Comprehensive and Coordinated to Serve the Entire Family.** No single intervention program is likely to be effective in isolation. Rather, courts and policy makers should take a comprehensive approach to divorce-related interventions. Programs should be coordinated to serve the entire family, even if particular interventions focus only on specific family members. Interventions should also be tailored to the specific needs and socio-economic characteristics of the population being served.
- 2. To Facilitate Comprehensive and Coordinated Divorce Reform, Advocates Should Support the Unified Family Court Initiative Underway in Baltimore City.** The unified family court initiative underway in Baltimore City signals an important shift towards a child- and family-focused orientation on the part of the legislature and the judiciary. Policy makers, advocates, and funders should seize this opportunity to ensure that reform is conducted in a comprehensive and coordinated manner. Baltimore City should be given the financial support it needs to expand its existing programs and to improve its coordination of family cases. Since domestic violence is a factor in a significant number of divorce and custody disputes, particular attention should be given to integrating programs and court procedures dealing with domestic violence into the evolving family division structure. Procedures should be developed and implemented to ensure that families affected by domestic violence have access to appropriate child-focused interventions and that such interventions address the particular dynamics of these families. Divorce and custody cases should also be coordinated with proceedings in juvenile court, particularly Child In Need of Assistance (CINA) proceedings, to ensure that all matters involving a particular family are considered in relation to each other.

---

**3. Courts and Policy Makers Should Expand the Use and Availability of Mediation in Order to Reduce Divorce-Related Parental Conflict.** Social science research confirms that divorce-related parental conflict is particularly damaging to children. Courts and policy makers should seek to reduce such conflict by supporting the development and use of less adversarial procedures -- particularly mediation -- to resolve disputes between divorcing parents. In particular, courts should explore the feasibility of offering low cost, voluntary mediation services to low- and middle-income domestic litigants who may not be represented by counsel. In addition, parenting plan requirements should be explored further to determine whether they would be more effective if used in combination with mediation, or other divorce-related interventions.

In particular, courts should explore the feasibility of offering low cost, voluntary mediation services to low- and middle-income domestic litigants who may not be represented by counsel.

**4. Divorcing Parents Should be Required to Participate in Parenting Education Programs.** Preliminary research suggests that divorce-related parenting education benefits both children and parents by emphasizing problem-solving skills and promoting effective and cooperative parenting after separation and divorce. The Maryland legislature has endorsed the idea of parenting education by authorizing judges across the state to require divorcing parents to attend parenting seminars as a condition of receiving a divorce. The Court of Appeals should promptly carry out its statutory mandate to implement this legislative directive by drafting rules that govern the content of these seminars, set sanctions for non-compliance, and establish criteria for exemption from the seminar requirement. Funders and policy makers should support the parenting education programs already in place in several jurisdictions in Maryland. Additional resources should be provided to develop and implement similar programs in jurisdictions where none currently exist. As outlined in this paper, parenting education programs currently take various forms. Resources should be made available to experiment with various program models to determine which components are most effective and offer the most efficient use of scarce resources. At the same time, a research team should conduct a methodologically rigorous and comprehensive study of the effectiveness of several specific programs, both in terms of the benefits they offer divorcing families and their impact on relitigation rates and use of judicial resources.

**5. Because Divorce-Related Financial Hardship Hurts Children, A Comprehensive Study Should Be Conducted to Determine the Adequacy and Enforcement of Maryland's Current Child Support Guidelines.** Social science evidence suggests that much of the negative impact of divorce on children can be traced to the economic hardship often experienced by children and their primary caretakers after separation and divorce. A comprehensive approach to mitigating the negative effects of divorce must therefore focus on improving the post-di-



---

orce economic circumstances of children and their primary caretakers. Ensuring that fair and adequate child support obligations are imposed and enforced is an important part of this effort. A comprehensive study should be done to determine whether Maryland's current child support guidelines are adequate, whether those guidelines are being applied consistently and appropriately around the state, and the extent to which divorce-related child support obligations are being enforced. This study should include an examination of the recent privatization of the child support enforcement system in Baltimore City.

**6. Support Groups for Children Must be Developed and Studied as Part of a Comprehensive Approach to Mitigating the Effects of Divorce and Separation on Children.** Research suggests that short term counseling and support groups are an important mechanism for helping children cope with the transitions and emotional upheaval that often accompany parental divorce. Successful models for these groups have been designed and implemented in a number of university and community settings across the country. Qualified local organizations and community groups should be encouraged to develop and implement support groups for children, in conjunction with the court system, as part of a comprehensive approach to mitigating the negative effects of divorce on children and families. These programs should include a rigorous evaluation component, carried out by independent researchers. This research component should compare programs of different lengths and content, offered at different points in the divorce process, in order to determine the most effective use of limited resources.



---

# Footnotes

- <sup>1</sup> Andrew Schepard et al., *Preventing Trauma for the Children of Divorce Through Education and Professional Responsibility*, 16 Nova L. Rev. 767, 768 (1992).
- <sup>2</sup> The National Center for Health Statistics reported approximately 9.5 divorces per 1000 married women or fewer than 400,000 divorces in the 1950's and early 1960's. By 1980, there was an all-time high of 1,189,000 divorces or 22.6 for every 1,000 married women. In 1990, 2.4 million weddings were performed; that same year 1.2 million divorce proceedings were filed. See Laura Gatland, *Putting the Blame on No-Fault*, A.B.A. J., April 1997 at 50, 51.
- <sup>3</sup> Judith Wallerstein, *Children of Divorce: An Overview*, 4 Behav. Sci. & L. 105, 107 (1986).
- <sup>4</sup> See Joan B. Kelly, *Current Research on Children's Postdivorce Adjustment: No Simple Answers*, 31 Fam. & Conciliation Cts. Rev. 29, 31 (1993). [Hereinafter referred to as Kelly, *Children's Postdivorce Adjustment*.]
- <sup>5</sup> See P. Lindsay Chase-Lansdale et al., *The Long-Term Effects of Parental Divorce on the Mental Health of Young Adults: A Developmental Perspective*, 66 Child Development 1614, 1615 (1995) (citations omitted).
- <sup>6</sup> See JUDITH S. WALLERSTEIN & JOAN B. KELLY, SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE 169-73, 232-33 (1980).
- <sup>7</sup> See Judith S. Wallerstein, *The Long-Term Effects of Divorce on Children: A Review*, 30 J. Am. Acad. Child Adolescent Psychiatry 349, 353-54 (1991).
- <sup>8</sup> See Paul R. Amato, *Life-Span Adjustment of Children To Their Parents' Divorce*, 4 The Future of Children: Children and Divorce 143, 145-46 (1994) (discussing a meta-analysis of 92 studies involving children of divorce); SARA McLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT: WHAT HELPS AND WHAT HURTS 1 (1994).
- <sup>9</sup> Amato, *supra* note 8, at 145.
- <sup>10</sup> Kelly, *Children's Postdivorce Adjustment*, *supra* note 4, at 30-31.
- <sup>11</sup> See Amato, *supra* note 8, at 145-46.
- <sup>12</sup> Barbara Vobejda, *Children of Divorce Heal Slowly, Study Finds*, THE WASHINGTON POST, June 3, 1997, at E1. Judith Wallerstein, a California psychologist, reports that half of the 131 young people in her ongoing study were involved in serious drug and alcohol abuse, many before the age of 14. Many of the girls also became sexually active as early adolescents. *Id.* One-third of the 26 young adults ended their education at the high school level, and only forty percent eventually graduated from college. *Id.* Most notable, however, was the finding that "all without exception were very afraid they would repeat the failure they saw around them when they got in relationships." *Id.*
- <sup>13</sup> ROBERT E. EMERY, RENEGOTIATING FAMILY RELATIONSHIPS: DIVORCE, CHILD CUSTODY AND MEDIATION 200 (1994).
- <sup>14</sup> Amato, *supra* note 8, at 146.
- <sup>15</sup> Vobejda, *supra* note 12. Dr. Wallerstein's conclusions, released in June 1997, are based on her continuing study of 131 middle-class children whose parents were divorced in the early 1970s. That research concluded that children's problems begin pre-divorce via their parents' failure to sustain love and commitment.

- 
- <sup>16</sup> Amato, *supra* note 8, at 146-47.
- <sup>17</sup> Kelly, *Children's Postdivorce Adjustment* *supra* note 4, at 31(citing P. Amato & B. Keith, *Parental Divorce and Adult Well Being: A Meta-analysis*, 53 J. Marriage and Fam. 43 (1991)).
- <sup>18</sup> Amato, *supra* note 8, at 146. Professor Amato notes, for example, that a recent analysis of studies dealing with childhood sexual abuse revealed average effect sizes three to four times larger than those based on studies of children of divorce. *Id.*
- <sup>19</sup> *Id.*
- <sup>20</sup> Emery, *supra* note 13, at 194. [emphasis in original]
- <sup>21</sup> *Id.*
- <sup>22</sup> Kelly, *Children's Postdivorce Adjustment*, *supra* note 4, at 31.
- <sup>23</sup> *Id.* at 32.
- <sup>24</sup> See Amato, *supra* note 8, at 147-149.
- <sup>25</sup> *Id.* at 148. Some research suggests that parental divorce may be less detrimental for African-Americans than for whites. *Id.*
- <sup>26</sup> Chase-Lansdale et al., *supra* note 5, at 1615.
- <sup>27</sup> *Id.*
- <sup>28</sup> See Amato, *supra* note 8, at 149.
- <sup>29</sup> Emery, *supra* note 13 at 205 (citations omitted); see also Janet R. Johnston, *High-Conflict Divorce*, 4 *The Future of Children: Children and Divorce* 165, 172-76 (1994).
- <sup>30</sup> Johnston, *supra* note 29, at 172.
- <sup>31</sup> *Id.* at 172-76.
- <sup>32</sup> John H. Grych & Frank D. Fincham, *Interventions for Children of Divorce: Toward Greater Integration of Research and Action*, 111 *Psychol. Bull.* 434, 441 (1992) (citation omitted).
- <sup>33</sup> *Id.*
- <sup>34</sup> Kelly, *Children's Postdivorce Adjustment*, *supra* note 4, at 34 (citing E.M. Hetherington, et al., *Effects of Divorce on Parents and Children*, in *NONTRADITIONAL FAMILIES* (M. Lamb ed., 1982)).
- <sup>35</sup> *Id.* at 35.
- <sup>36</sup> Johnston, *supra* note 29, at 172.
- <sup>37</sup> Kelly, *Children's Postdivorce Adjustment*, *supra* note 4, at 33.
- <sup>38</sup> See, e.g., Jay D. Teachman, & Kathleen M. Paasch, *Financial Impact of Divorce on Children and Their Families*, 4 *The Future of Children: Children and Divorce* 63 (1994) (noting that "mothers and children often experience a significant decline in income following a divorce."). The enforcement of child support orders is of crucial importance in maintaining the welfare of children, especially for custodial parents of modest income or limited ability to deal with a sophisticated legal system. While an analysis of the state and federal child support enforcement system is beyond the scope of this paper, social scientists agree that revisions to the system are needed in the areas of: (1) establishing paternity; (2) expediting the issuance of child support orders; (3) ensuring the timeliness of support payments; and (4) enforcing and collecting the payment of arrearages.

- 
- See generally, Paula G. Roberts, *Child Support Orders: Problems with Enforcement*, 4 *The Future of Children: Children and Divorce* 101 (1994).
- <sup>39</sup> Amato, *supra* note 8, at 151.
- <sup>40</sup> Grych & Fincham, *supra* note 32, at 444; *see also* Amato, *supra* note 8, at 151.
- <sup>41</sup> Grych & Fincham, *supra* note 32, at 444.
- <sup>42</sup> *Id.* (citing J. Guidubaldi et al., *The Legacy of Parental Divorce*, in *ADVANCES IN CLINICAL CHILD PSYCHOLOGY* 109 (B.B. Lahey & A.E. Kazdin eds., 1984)).
- <sup>43</sup> McLanahan & Sandefur, *supra* note 8, at 2 ("Low income -- and the sudden drop in income that often is associated with divorce -- is the most important factor in children's lower achievement in single-parent homes, accounting for about half of the disadvantage."). The single parent households in this study included both divorced and never-married families.
- <sup>44</sup> Kelly, *Children's Postdivorce Adjustment*, *supra* note 4, at 36-37.
- <sup>45</sup> Amato, *supra* note 8, at 150 (citing Hetherington et al., *supra* note 34).
- <sup>46</sup> *Id.*, *see generally* Emery, *supra* note 13.
- <sup>47</sup> Amato, *supra* note 8, at 150.
- <sup>48</sup> Janet R. Johnston, *High-Conflict Divorce*, 4 *The Future of Children: Children and Divorce* 165, 172 (1994).
- <sup>49</sup> Ross A. Thompson, *The Role of the Father After Divorce*, 4 *The Future of Children: Children and Divorce* 210, 222 (1994) ("Although a substantial minority of fathers maintain or enhance the frequency of visitation over time, for most men, contact with children may initially increase immediately after the divorce but then it typically declines, sometimes strikingly, during each successive year.").
- <sup>50</sup> Amato, *supra* note 8, at 150; *see* Thompson, *supra* note 49, at 210-11.
- <sup>51</sup> *See* McLanahan & Sandefur, *supra* note 8, at 3-7 (explaining how the decision of parents to live apart deprives children of valuable parental and community resources).
- <sup>52</sup> *See* Kelly, *Children's Postdivorce Adjustment*, *supra* note 4, at 38. This finding was more consistent for boys than for girls. *Id.*
- <sup>53</sup> *Id.*
- <sup>54</sup> *See id.* at 37-38.
- <sup>55</sup> Thompson, *supra* note 49, at 222.
- <sup>56</sup> *See* Kelly, *Children's Postdivorce Adjustment*, *supra* note 4, at 38-39.
- <sup>57</sup> Joan B. Kelly, *The Determination of Child Custody*, 4 *The Future of Children: Children and Divorce* 121, 132 (1994).
- <sup>58</sup> *See* Johnston, *supra* note 29, at 172-76.
- <sup>59</sup> Kelly, *Children's Postdivorce Adjustment*, *supra* note 4, at 38-39.
- <sup>60</sup> *See generally*, Barbara Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 *Indiana L. Rev.* 776 (1997); Jana B. Singer, *The Privatization of Family Law*, 1992 *Wisconsin L. Rev.* 1443.
- <sup>61</sup> Tamar Levin, *Divorcing Sensibly: Courts Are Requiring Classes So Marital Breakups Won't Tear Children Apart*, *CHICAGO TRIBUNE*, May 7, 1995, at S9. A

- 
- recent editorial suggested that within the last five years, over 600 counties have developed parent education programs. Ingrid E. Slezak, *Parent Education: It Makes a Difference*, 57 Or. St. Bar Bull. 70, 70 (1996).
- <sup>62</sup> Peter Salem, et al., *Parent Education as a Distinct Field of Practice: The Agenda for the Future*, 34 Fam. & Conciliation Cts. Rev. 9, 13 (1996) [hereinafter Salem, *Parent Education*].
- <sup>63</sup> Virginia Petersen & Susan B. Steinman, *Helping Children Succeed After Divorce: A Court-Mandated Educational Program for Divorcing Parents*, 32 Fam. & Conciliation Cts. Rev. 27, 29 (1994).
- <sup>64</sup> Peter Salem, *Education for Divorcing Parents: A New Direction for Family Courts*, 23 Hofstra L. Rev. 837, 837 (1995). [hereinafter Salem, *New Direction*].
- <sup>65</sup> *Id.* at 840-841.
- <sup>66</sup> *Id.*
- <sup>67</sup> See Petersen & Steinman, *supra* note 63, at 35.
- <sup>68</sup> Salem, *Parent Education*, *supra* note 62, at 19.
- <sup>69</sup> Petersen & Steinman, *supra* note 63, at 33.
- <sup>70</sup> Jack Arbuthnot, et al., *Court-Sponsored Education Programs for Divorcing Parents: Some Guiding Thoughts and Preliminary Data*, 45 Juv. & Fam. Ct. J. 77, 79 (1994) (favoring mandatory programs over voluntary programs).
- <sup>71</sup> Salem, *Parent Education*, *supra* note 62, at 19.
- <sup>72</sup> *Id.* at 18; *see also*, Salem, *New Direction*, *supra* note 64, at 841; Shepard, et al., *supra* note 1, at 775.
- <sup>73</sup> Petersen & Steinman, *supra* note 63, at 28.
- <sup>74</sup> See Mark A. Cohen, *Mandatory Divorce Class to "Sensitize" Parents: Some Lawyers Criticize Four-County Experiment*, MASS. LAWYERS WEEKLY, March 13, 1995, at 1.
- <sup>75</sup> See Larry Lehner, *Education for Parents Divorcing in California*, 32 Fam. & Conciliation Cts. Rev. 50, 50 (1994) (finding that "parent education and orientation programs in California courts have continued to evolve with a trend toward mandating orientation and/or education programs as an integral part of the mediation process."); *see also* Arbuthnot, *supra* note 70, at 79.
- <sup>76</sup> Karen R. Blaisure & Margie J. Geasler, *Results of a Survey of Court-Connected Parent Education Programs in U.S. Counties*, 34 Fam. & Conciliation Cts. Rev. 23, 26-27 (1996).
- <sup>77</sup> MD. FAM. LAW CODE ANN. §7-103.2 (1991 & Supp. 1997). Earlier versions of the legislation passed by the Senate would have required divorcing parents to attend the educational seminar in all cases in which issues of child support, custody, or visitation were raised. The legislation was amended in conference to give judges discretion whether or not to require attendance.
- <sup>78</sup> Shepard, et al., *supra* note 1, at 772.
- <sup>79</sup> *Id.* at 773.
- <sup>80</sup> Andrew Shepard, *Report and Model Statute on an Interdisciplinary Educational Program for Divorcing and Separating Parents*, 27 U. Mich. J.L. Reform 131, 153 (1993).

---

<sup>81</sup> *Id.* at 152-53.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 152. Judges considering referrals were advised that it would be desirable for parents to be referred early in their litigation and that any cases involving serious allegations of abuse or neglect or with a long history of custody motions should not be referred. *Id.* at 154.

<sup>84</sup> Hon. Sondra Miller et al., *Parent Education and Custody Effectiveness (P.E.A.C.E.): A Preliminary Report to the New York Legal Community*, N.Y. St. B.J., Feb. 1996 at 42, 42. P.E.A.C.E. is an entirely educational program and does not involve mediation, arbitration or therapy. Schepard, *supra* note 80, at 155.

<sup>85</sup> Schepard, *supra* note 80, at 155.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *See* Miller, *supra* note 84, at 42.

<sup>90</sup> *Id.* at 44.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 43. *See also*, Schepard, *supra* note 80, at 133.

<sup>95</sup> *See* written testimony of Dr. Howard Garon, presented to the Maryland General Assembly, 1997 Term, on file with the authors.

<sup>96</sup> *Id.*

<sup>97</sup> This program was originally developed as “Families in Transition - A Divorce Workshop for Parents and Children.” *See* Carol Roeder-Esser, *Families in Transition: A Divorce Workshop*, 32 Fam. & Conciliation Cts. Rev. 40, 40 (1994). Begun in Johnson County, Kansas in 1976, it was one of the first divorce education programs in the country. The program was an experiment at the time and was designated as an educational intervention. *Id.* The program’s goal was to help “problem” families, which were identified as those that repeatedly went to court to argue over divorce issues, to develop new skills in dealing with their conflict. Parents and children were court-ordered to attend the weekend workshop to learn about strategies to cope with the grief that accompanies divorce, to avoid the games that family members play, and to learn ways to communicate effectively with an ex-spouse. *Id.* at 41. Attendance at the program became mandatory by local court rule in 1986. Completion of the program is required before a final divorce decree is awarded. Since 1986, several other counties in Kansas have followed Johnson County’s lead in mandating attendance in the program. *Id.*

<sup>98</sup> *Id.* at 46.

<sup>99</sup> *Id.* at 41.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* (citing E. KUBLER-ROSS, ON DEATH AND DYING (1969)).

<sup>103</sup> *Id.* at 46.

- 
- <sup>104</sup> Petersen & Steinman, *supra* note 63, at 28.
- <sup>105</sup> *Id.* at 28-29.
- <sup>106</sup> *Id.* at 30. There is not an opportunity for questions or discussion; however, the leaders are available before and after the seminar to address individual issues and the handbook and resource directory handed out during registration provide additional information and resources. *Id.* at 30, 32.
- <sup>107</sup> *Id.* at 31-34.
- <sup>108</sup> *Id.* at 32.
- <sup>109</sup> *Id.*
- <sup>110</sup> *Id.*
- <sup>111</sup> *Id.*
- <sup>112</sup> *Id.*
- <sup>113</sup> *Id.* (quoting JUDITH S. WALLERSTEIN & JOAN B. KELLY, *SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE* (1980)).
- <sup>114</sup> *Id.*
- <sup>115</sup> *Id.* at 33.
- <sup>116</sup> *Id.* (quoting I. RICCI, *MOM'S HOUSE, DAD'S HOUSE: MAKING SHARED CUSTODY WORK* (1981)).
- <sup>117</sup> Petersen & Steinman, *supra* note 63, at 36.
- <sup>118</sup> *Id.* at 37.
- <sup>119</sup> *Id.* 73% indicated that the seminar made them more aware of the children's point of view.
- <sup>120</sup> *Id.*
- <sup>121</sup> *Id.* at 37.
- <sup>122</sup> Jack Arbuthnot, Kevin M. Kramer, & Donald A. Gordon, *Patterns of Relitigation Following Divorce Education*, 35 *Fam. & Conc. Cts. Rev.* 269 (1997).
- <sup>123</sup> *Id.* at 270.
- <sup>124</sup> *Id.* at 272-73.
- <sup>125</sup> *Id.* at 274.
- <sup>126</sup> *Id.* at 274-276.
- <sup>127</sup> *Id.* at 276.
- <sup>128</sup> *Id.* at 276-77.
- <sup>129</sup> Schepard, *supra* note 1, at 776.
- <sup>130</sup> *Id.*
- <sup>131</sup> *Id.*
- <sup>132</sup> See Arbuthnot, et al., *supra* note 122.
- <sup>133</sup> *Id.*
- <sup>134</sup> *Id.*
- <sup>135</sup> Jessica Pearson & Nancy Thoennes, *Mediating and Litigating Custody Disputes: A Longitudinal Evaluation*, 17 *Fam. L. Q.* 497, 499 (1984).
- <sup>136</sup> *Id.*
- <sup>137</sup> *Id.* at 499.
- <sup>138</sup> See Joan B. Kelly, *A Decade of Divorce Mediation Research: Some Answers and Questions*, 34 *Fam. & Conciliation Cts. Rev.* 373, 378 (1996). [Hereinafter Kelly, *Mediation Research*].



- 
- <sup>139</sup> *Id.* at 379.
- <sup>140</sup> Pearson & Thoennes, *supra* note 135, at 499.
- <sup>141</sup> See Nancy S. Palmer & William D. Palmer, *Family Mediation: Good for Clients, Good for Lawyers*, *The Compleat Lawyer* 32, 33 (Fall 1996).
- <sup>142</sup> *Id.*
- <sup>143</sup> *Id.*
- <sup>144</sup> Pearson & Thoennes, *supra* note 135, at 499.
- <sup>145</sup> *Id.*
- <sup>146</sup> *Id.*
- <sup>147</sup> Since mediation became mandatory in California, court-based education and orientation programs have been implemented to maximize the value of the mediation process. Pre-mediation orientation programs provide clients with information about the legal process, the impact of divorce on children, and the stages of divorce that a parent might anticipate, with the primary goal of making the mediation process more effective. See Lehner, *supra* note 75, at 51.
- <sup>148</sup> *Id.* at 375.
- <sup>149</sup> Rita Henley Jensen, *Divorce -- Mediation Style*, *A.B.A. J.*, Feb. 1997 at 55, 56.
- <sup>150</sup> Craig A. McEwen, Richard J. Maiman, and Lynn Mather, *Lawyers, Mediation, and the Management of Divorce Practice*, 28 *Law & Soc. Rev.* 149, 152-53 (1994).
- <sup>151</sup> Md. Rule 9-205 c.(1).
- <sup>152</sup> Md. Rule 9-205 c.(2).
- <sup>153</sup> Kelly, *Mediation Research*, *supra* note 138, at 380.
- <sup>154</sup> *Id.* at 373.
- <sup>155</sup> *Id.* at 374.
- <sup>156</sup> *Id.*
- <sup>157</sup> *Id.* at 375.
- <sup>158</sup> *Id.*
- <sup>159</sup> *Id.* at 379 (citing H. Irving & M. Benjamin, *An Evaluation of Process and Outcome in a Private Family Mediation Service*, 10 *Mediation Quarterly* 35 (1992); Jessica Pearson & Nancy Thoennes, *Reflections on a Decade of Research, in Mediation Research: The Process and Effectiveness of Third Party Intervention* (K. Kressel, D. Pruitt & Assoc. eds., 1989)).
- <sup>160</sup> Kelly, *Mediation Research*, *supra* note 138, at 379.
- <sup>161</sup> *Id.*
- <sup>162</sup> *Id.*
- <sup>163</sup> *Id.*
- <sup>164</sup> *Id.* (citing Joan Kelly, *Is Mediation Less Expensive? Comparison of Mediated and Adversarial Divorce Processes*, 8 *Mediation Quarterly* 15 (1991); Joan Kelly, *Developing and Implementing Post-Divorce Parenting Plans: Does the Forum Make a Difference?*, in *NON-RESIDENTIAL PARENTING: NEW VISTAS IN FAMILY LIVING* 136-155 (C.E. Depner & J.H. Brady eds., 1993)).
- <sup>165</sup> Kelly, *Mediation Research*, *supra* note 138, at 379.
- <sup>166</sup> *Id.* (citing Irving & Benjamin, *supra* note 159; Pearson & Thoennes, *supra* note 135).

- 
- <sup>167</sup> Kelly, *Mediation Research*, *supra* note 138, at 380.
- <sup>168</sup> *Id.*
- <sup>169</sup> *Id.* at 377.
- <sup>170</sup> *Id.* at 378.
- <sup>171</sup> See Kelly, *Mediation Research*, *supra* note 138, at 378 (discussing studies).
- <sup>172</sup> Kelly, *Mediation Research*, *supra* note 138, at 378.
- <sup>173</sup> *Id.* (citations omitted).
- <sup>174</sup> *Id.* (citing Emery, *supra* note 13; Joan B. Kelly, *Mediated and Adversarial Divorce: Respondent's Perceptions of Their Processes and Outcomes*, 24 *Mediation Quarterly* 71 (1989)).
- <sup>175</sup> *Id.* at 378-79.
- <sup>176</sup> *Id.* at 379.
- <sup>177</sup> *Id.* at 375.
- <sup>178</sup> Kelly, *Divorce Mediation*, *supra* note 138, at 379.
- <sup>179</sup> *Id.* at 376 (citing J. Walker, et al., *MEDIATION: THE MAKING AND REMAKING OF COOPERATIVE RELATIONSHIPS* (1994)).
- <sup>180</sup> *Id.*
- <sup>181</sup> *Id.*
- <sup>182</sup> *Id.* at 376.
- <sup>183</sup> *Id.*
- <sup>184</sup> *Id.* (citing Joan B. Kelly, *Parent Interaction After Divorce: Comparison of Mediated and Adversarial Divorce Processes*, 9 *Behav. Sci. & L.* 387 (1991); Pearson & Thoennes, *supra* note 159).
- <sup>185</sup> *Id.* (citing Walker et al., *supra* note 179).
- <sup>186</sup> Kelly, *Divorce Mediation*, *supra* note 138, at 376.
- <sup>187</sup> *Id.*
- <sup>188</sup> *Id.*
- <sup>189</sup> *Id.*
- <sup>190</sup> See generally, Singer, *supra* note 60, at 1543-44. Whether joint custody serves children's interests is a matter of debate, in both the academic literature and the popular press.
- <sup>191</sup> Kelly, *Divorce Mediation*, *supra* note 138, at 377. (citing Pearson & Thoennes, *supra* note 159).
- <sup>192</sup> *Id.* (citing Joan B. Kelly, *Mediated and Adversarial Divorce Resolution Processes: An Analysis of Post-Divorce Outcomes*, 1990 Report for the Fund for Research in Dispute Resolution, Corte Madera, Ca. (1990); Pearson & Thoennes, *supra* note 159).
- <sup>193</sup> *Id.* (citing Kelly, *supra* note 192; Jessica Pearson, *The Equity of Mediated Divorce Agreements*, 7 *Mediation Quarterly* 347 (1991)).
- <sup>194</sup> Such child-focused intervention programs are widespread. One school-based model, for example, has been used in over 2,000 school districts and 100 mental health centers. Grych & Fincham, *supra* note 32, at 438. This program was designed by Neil Kalter and his associates. *Id.*
- <sup>195</sup> *Id.*

- 
- <sup>196</sup> It is thought that locating these programs in schools maximizes the number of children who can participate in them and thus makes help available to many children, especially those from low-income families, who might otherwise not receive it. The school environment is also a familiar one for children, with teachers and classmates providing a natural support network for them.
- <sup>197</sup> Grych & Fincham, *supra* note 32, at 448.
- <sup>198</sup> Neil Kalter, et al., *School Based Developmental Facilitation Groups for Children of Divorce: A Preventative Intervention*, 54 *Am. J. Orthopsychiatry* 613, 614 (1984).
- <sup>199</sup> *Id.*
- <sup>200</sup> *Id.* at 616.
- <sup>201</sup> *Id.*
- <sup>202</sup> *Id.* at 621.
- <sup>203</sup> *Id.*
- <sup>204</sup> *Id.*
- <sup>205</sup> *Id.* at 622.
- <sup>206</sup> *Id.*
- <sup>207</sup> Grych & Fincham, *supra* note 32, at 438.
- <sup>208</sup> *Id.* (citing Neil Kalter et al., *School-Based Support Groups for Children of Divorce*, in *MARTIALING SOCIAL SUPPORT: FORMATS, PROCESSES AND EFFECTS* (B.H. Gottlieb ed., 1988)).
- <sup>209</sup> *Id.*
- <sup>210</sup> Vicki Garvin et al., *Children of Divorce: Predictors of Change Following Preventive Intervention*, 61 *Am. J. Orthopsychiatry* 438, 439 (1991).
- <sup>211</sup> *Id.*
- <sup>212</sup> *Id.*
- <sup>213</sup> Grych & Fincham, *supra* note 32, at 438 (citing A.L. Stolberg & K.M. Garrison, *Evaluating a Primary Program for Children of Divorce: The Divorce Adjustment Project*, 13 *Am. J. Community Psychology* 11 (1985)).
- <sup>214</sup> *Id.*
- <sup>215</sup> *Id.*
- <sup>216</sup> *Id.*
- <sup>217</sup> See JoAnne L. Pedro-Carroll & Emory L. Cowen, *The Children of Divorce Intervention Program: An Investigation of the Efficacy of a School-Based Prevention Program*, 53 *J. Counseling and Clinical Psych.* 603 (1985).
- <sup>218</sup> *Id.* at 605.
- <sup>219</sup> *Id.* at 608.
- <sup>220</sup> *Id.*
- <sup>221</sup> *Id.*
- <sup>222</sup> *Id.*
- <sup>223</sup> Linda J. Alpert-Gillis et al., *The Children of Divorce Intervention Program: Development, Implementation and Evaluation of a Program for Young Urban Children*, 57 *J. of Consulting & Clinical Psychology* 583, 584 (1984).
- <sup>224</sup> *Id.* at 586-87.

---

<sup>225</sup> *Id.* at 586.  
<sup>226</sup> *Id.* at 587.  
<sup>227</sup> *Id.* at 588.  
<sup>228</sup> Kalter et al., *supra* note 198, at 613.  
<sup>229</sup> *Id.*  
<sup>230</sup> Trecia DiBias, *Some Programs for Children*, 34 Fam. & Conciliation Cts. Rev. 112, 114 (1996).  
<sup>231</sup> *Id.*  
<sup>232</sup> *Id.*  
<sup>233</sup> *Id.* at 115.  
<sup>234</sup> Rosemarie Bolen, *Kids' Turn: Helping Kids Cope With Divorce*, 31 Fam. & Conciliation Cts. Rev. 248, 250 (1993).  
<sup>235</sup> *Id.*  
<sup>236</sup> *Id.* at 250-52.  
<sup>237</sup> *Id.* at 253.  
<sup>238</sup> DiBias, *supra* note 230, at 121.  
<sup>239</sup> Sherry Farmer & Diana Galaris, *Support Groups for Children of Divorce*, 21 Am. J. Fam. Therapy, 40, 41 (1993).  
<sup>240</sup> *Id.*  
<sup>241</sup> *Id.*  
<sup>242</sup> *Id.* at 42.  
<sup>243</sup> *Id.*  
<sup>244</sup> *Id.* at 48.  
<sup>245</sup> *Id.*  
<sup>246</sup> *Id.*  
<sup>247</sup> *Id.*  
<sup>248</sup> Joe H. Brown, et al., *Families in Transition: A Court-Mandated Divorce Adjustment Program for Parents and Children*, 45 Juv. & Fam. Ct. J. 27, 28 (1994).  
<sup>249</sup> *Id.* at 29.  
<sup>250</sup> *Id.* at 31.  
<sup>251</sup> *Id.*  
<sup>252</sup> Robert Tompkins, *Parenting Plans: A Concept Whose Time Has Come*, 33 Fam. & Conciliation Cts. Review 286, 292 (1995).  
<sup>253</sup> *Id.*  
<sup>254</sup> *Id.*  
<sup>255</sup> *Id.* at 294.  
<sup>256</sup> Florida enacted the Shared Parental Responsibility Act in 1982. FL. STAT. §61.21. Shortly thereafter, Maine enacted similar legislation. 19 ME. REV. STAT. ANN. §752. These statutes changed the legal terminology of custody proceedings, but did little else to change the manner in which custody cases were handled. Other states also enacted laws encouraging or requiring parenting plans. For example, Colorado allows both parties in joint custody proceedings to submit a plan to the court for approval. The plan must address the parties' arrangements regarding such factors as the child's emotional health and well being. The statute also

---

requires the court to formulate a plan if no plan is submitted or if the court does not approve a submitted plan. COLO. REV. STAT. §14-10-123.5(3) (1987). Illinois also requires parents in a joint custody case to submit a Joint Parenting Agreement to the court detailing the parents' responsibilities toward the child and specifying the procedure for future disputes or changes in the agreement. ILL. REV. STAT. Ch.40, §602.1 (1989). Massachusetts requires parents to submit a written plan to the court setting forth details of their shared legal custody. MASS. GEN. L. CH. 208, §31(1988). *See generally*, Jane W. Ellis, *Plans, Protections, and Professional Intervention: Innovations in Divorce Custody Reform and the Role of Legal Professionals*, 24 U. Mich. J. Law Reform 65, 70, n.10 (1990).

<sup>257</sup> Tompkins, *supra* note 252, at 292-93.

<sup>258</sup> *Id.* at 293.

<sup>259</sup> Tompkins, *supra* note 252, at 292-93.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*

<sup>262</sup> *Id.* at 294.

<sup>263</sup> *Id.*

<sup>264</sup> *See*, Ellis, *supra* note 256, at 94. These restrictions affect the spouse who has (1) abandoned or neglected the child; (2) physically, sexually, or emotionally abused the child; (3) committed serious acts of domestic violence against his/her spouse; or (4) is living with someone who has engaged in this type of conduct. *Id.* at 92-93 and 108. *See also*, OFFICE OF THE ADMIN. FOR THE COURTS, WASH. ST. JUDICIARY, DISSOLUTION WITH CHILDREN: HOW TO COMPLETE THE PARENTING PLAN, II.

<sup>265</sup> Ellis, *supra* note 256, at 168.

<sup>266</sup> The results of this study have not yet been published. However, Dr. Dunne discussed his results by telephone with Professor Jana Singer on July 2, 1997. *See also* John Dunne, Wren Hudgins, and Julia Babcock, *The Parenting Act After Seven Years: What Are the Results?* (unpublished conference paper, on file with the authors).

<sup>267</sup> This aspect of the Washington child support guidelines has since been changed.

<sup>268</sup> Family courts have existed in Connecticut, Delaware, Hawaii, New York, Rhode Island, and South Carolina for a number of years. New Jersey established the Family Division of the Chancery Division of the Superior Court of New Jersey by constitutional amendment in 1983; Kansas published a recommendation for implementation of a family court system in 1993. In 1992, the Advisory Council on Family Legal Needs of Low Income Persons issued a report recommending the creation of a unified family court in Maryland. In 1993, the General Assembly approved legislation authorizing the Chief Judge to examine the Circuit Courts and to recommend the establishment of a Family Division in appropriate jurisdictions.

<sup>269</sup> *See e.g.* *Family Division White Paper*, Administrative Office of the Courts, New Jersey Supreme Court.

<sup>270</sup> The grant money is being used to provide technical assistance to these five jurisdictions to aid in their development of a Unified Family Court.

---

<sup>271</sup> Md. Rule 9-205 b.

<sup>272</sup> This concept is based on the model that the New Jersey Family Division has adopted, which consists of five basic components: Division Managers Office, Chambers and Court Room Support, Integrated Case Management Teams, Case Reception, and Other Centralized Functions. "Other centralized functions" include child placement review, juvenile conference committees, matrimonial early settlement panels, supervised visitation, juvenile-family crisis intervention units, and other special programs which are better managed on a centralized basis. *See Family Division White Paper, supra* note 269, at 39.