

**SUBMISSION TO THE STANDING COMMITTEE ON FAMILY AND
COMMUNITY AFFAIRS**

**INQUIRY INTO CHILD CUSTODY ARRANGEMENTS IN THE EVENT
OF FAMILY SEPARATION**

8 August 2003

House of Representatives Standing Committee on Family and Community Affairs	
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Terms of Reference

This submission addresses point (a) under the Terms of Reference, which is:

(a) Given that the best interests of the child are the paramount consideration:

- (i) What other factors should be taken into account in deciding the respective time each parent should spend with their children post separation, in particular whether there should be a presumption that children will spend equal time with each parent and, if so, in what circumstances such a presumption could be rebutted?; and

The reality is, behind every statistic relating to parental separation or divorce that involves children, there are countless stories of human tragedy involving intense emotional pain, confusion, anger, abuse, poverty and grief. All wish it had never occurred, and many believe that with the appropriate intervention and counselling it could have been prevented.

As adults and children seek to recover from this very difficult situation, a number of policies have been proposed to help separated mothers and fathers do the best they can to provide appropriate care and opportunities for their children. Shared parenting or joint custody, meaning equal time to be spent by children with each parent, is just one of these proposals.

We understand that there are many reasons why this proposal may be put forward. Perhaps the strongest reason behind this approach is the sense of injustice that the non-residential parent (predominantly the father) often feels. Add to this the fact that many children wish they were able to spend more time with their non-residential parent, and that even residential mothers want to see fathers spend more time with their children.

On its face, shared parenting or joint residential custody seems like a good idea in that it involves both the mother and the father in the life of the child. However, Focus on the Family Australia has serious concerns about this proposal because of the way it works itself out in the real life of children.

This concern is centred in two important family qualities critical to healthy child development:

1. The significance of the parents' relationship in the life of the child, and
2. The child's need for routine and stability

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The loss of these two things is what makes the family separation process far more harmful to children than most child psychologists ever imagined. In some cases, shared parenting/joint custody situations do little to help the child overcome these problems and can even exacerbate them. Therefore, these two issues must be taken into consideration when considering the concept of a “rebuttable presumption” that children will spend equal time with each parent post-separation.

1. The significance of the parents’ relationship in the life of the child

While there continues to be considerable attention given to the amount and frequency of contact between non-residential parents and their children subsequent to separation, it has been well established that what is more important, is the quality of the parent-child relationship and the level of their involvement. Based on more than thirty years of research and experience with children of divorce, Dr. Judith Wallerstein explains that:

Comparing children in joint physical custody with those raised in sole custody homes shows that the amount of time a child spends with each parent is unrelated to how well that child copes with life in the family, at school, or any other measure of social and psychological adjustment.¹

Therefore, the key issue is not whether or not both parents should be able to spend equal amounts of time with their child, but what the starting points should be in determining who should be the primary caregiver, and how much time the child should spend with each parent irrespective of which parent they are living with. Already under the law, parents have joint parental responsibility. To suggest that there should be a default rule that includes the presumption that children will spend equal time with each parent is not supported by current research.

The primary emphasis of any judgement or ruling given in relation to where a child resides and how much time is spent with both parents must revolve around the best interests of the child, not around the fears and concerns of any one parent.

Focus on the Family Australia argues that the courts should continue to encourage shared parenting arrangements without being prescriptive. Whilst it is acknowledged that parents sometimes find it difficult to agree on a particular issue – e.g. the child’s education – it can be dealt with by making a specific order in relation to that issue. Focus on the Family Australia also recommends that the shared parenting arrangements be reviewed and ruled upon every 12-24 months due to the changing needs of the child as it grows older, and the changing dynamics of the child’s relationship with both parents.

2. The child’s need for routine and stability

Parental separation in most cases destroys the child’s sense of routine, order and normalcy, and shared parenting situations don’t recover this. Shuttling between two homes in a shared parenting situation is usually not conducive to their order and stability. For children, life can often become increasingly complicated as they grow, and they crave a secure and stable situation at home that will serve as a safe haven during their formative years.

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Typical orders for residence and contact in Australia - for example that the non-resident parent should have the child to stay for two nights every other weekend and half the school holidays - would normally be characterised in the United States as a joint custody order.

Wallerstein finds that children who thrive in joint custody are those who have some very specific criteria:

- Both parents get along very well and cooperate nicely
- The two households are in the same neighbourhood where the child can keep the same school, the same routines, friends and they can ride their bikes back and forth between homes, not needing to rely on parents for the residential transfer

While this might be the ideal or preferred outcome, we understand that this rarely happens. Wallerstein has also found that joint custody is burdensome for other children. They feel disorganised and scattered with their toys, clothes and things spread between two households.

Wallerstein speaks of some young children, who after returning from dad's house go around mum's house touching all the familiar objects – their bed, the dresser, their toys – just to make sure they are real. They feared their home would have disappeared while they were gone. She says teachers can often tell when older children have made the residential shift because they have a hard time settling down, requiring a day or two to settle into a new routine and be able to concentrate. This results in the dangers of lost homework and falling behind the other students.

Focus on the Family Australia believes that these characteristics would only be exacerbated if children must spend equal time with both parents. For parents to facilitate and maintain equal contact with each parent requires a lot of cooperation and communication. To have any expectation for a couple to maintain this relationship is unrealistic, particularly in the light of the very issues that led to parental separation. Another factor that would seem to make this arrangement unrealistic is the understanding that a child's needs, interests and activities are constantly changing, and the logistics of accommodating these are not easy to manage equally.

CONCLUSION

Focus on the Family Australia believes that the concept of a "rebuttable presumption" that children will spend equal time with each parent after family separation is not realistic. Rather, it maintains that parents should be required to draw up a parenting plan about how the child will be cared for after separation, where the child will primarily reside, the level of involvement by both parents, and that this be reviewed every 12-24 months to take into account the child's changing needs and relationship with both parents. Children should have a say in the development of the parenting plan, and it should include a 'minimum amount of time' (and blocks of time) each parent has with the child. The requirement of parents to draw up a parenting plan is based on the evidence that it is not the amount of time that non-resident parents spend with their children but how they interact with their children that is important.

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Consideration should also be given to the development of a national standard that includes the appointment of a counsellor or mediator to settle disputes quickly if the parenting plan is not working as intended.

Shared parenting or 'equal-time' proposals can tend to turn parents into time accountants, more concerned about what is fair for them, rather than what is best for the child. Focus on the Family Australia resists legislation or proposals favouring equal-time parenting because the requirements for them to work well for children – peaceful, cooperative parents who live near one another – are difficult to achieve. Most divorces are created over the fact that parents cannot cooperate and work peaceably together.

What is more, if parents can be so cooperative to make shared parenting work, it doesn't seem these parents would need the courts or legislation to direct them in this way. They could simply work it out themselves if it was their desire to do so. If it is not their desire, it is not likely to work well for the child. As a result, legislation favouring shared parenting would most likely force children into tumultuous situations with uncooperative, conflicted parents. We know this can be deeply harmful to children.

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¹ Judith Wallerstein and Sandra Blakelee, *What About the Kids? Raising Your Children Before, During and After Divorce*. (New York: Hyperion, 2003)