Dear Senate Inquiry - Shared Parental Responsibility Bill 2005

This is a my submission to the Senate Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005

To: Senate Inquiry
From: Gordon E. Finley, Ph.D. (Harvard University), Professor of Psychology, Florida International University, Miami, FL 33199, USA
Date: 2/19/06
Re: Shared Parental Responsibility Bill 2005

Hi. I have published extensively in this area both in the media and in scientific journals. I am attaching a few of these publications and if you wish to read more or review my qualifications, I would be happy to send my CV.

Gordon E. Finley, Ph.D.

Thank you for reading my submission

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Finley, G. E. (2006). Joint custody. In N. Salkind (Ed.) Encyclopedia of Human Development, Volume 2, pp. 745 - 747. Thousand Oaks, CA: Sage Publications.

Joint Custody

Child custody issues can arise for a number of reasons including parental death, unmarried motherhood, and the severance of parental rights by the state because of abuse or neglect. Today, however, child custody issues arise primarily as a result of divorce.

When parents divorce, decisions must be made regarding who has the present and future legal decision making responsibility for the child's well-being, where the children will reside physically and, most importantly, what post-divorce relationships their parents will or will not be permitted to have with their children. Custody determinations set the framework that structures post-divorce life for parents and children as well as child support.

From a life-span developmental perspective, the major shortcoming of custody determinations is that they are static. They fail to acknowledge that all members of the family triad – fathers, mothers, and children – will have different post-divorce developmental trajectories that cannot be known at the time of divorce, are guaranteed to occur, and will require future modification for the best interests of all parties. Family law must come to recognize that change is inherent to development at all stages of the life cycle and make custody modifications both readily available and affordable for families at all income levels.

DEFINITION

Joint custody arrangements typically refer to two quite different types of custody. Joint Physical Custody focuses on which parent the child is with, where they are with each parent, and the amounts of time they spend with each parent. Joint Legal Custody focuses on which parent has what legal rights to make what kinds of decisions concerning which aspects of the children's life and well-being.

It is difficult to ascertain accurately who gets what kinds of custody because each state has different laws, different terminology, different court practices, and different reporting procedures. Thus, our focus will be on the advantages and disadvantages of two custody arrangements for each family member. Each family member will be considered because a core reality of divorce -- unless a parent is willing to abandon their children -- is the focus on *changed* relationships between former spouses rather than a "clean break."

WHO GETS CUSTODY

The most powerful determinants of who gets custody are the *presumptions* embedded in state divorce law and the ideologies of individual judges because they determine the starting point for divorce deliberations and often the end point as well. Historically, if one goes back far enough, the presumption embedded in oppressive patriarchy was that

the children belonged to the father. Later, the family law pendulum swung 180 degrees to an oppressive matriarchy presumption favoring mothers, which was embedded in either the "tender years" or "primary caregiver" doctrines. The tender-years doctrine *presumed* that children belonged with their mothers whereas the primary parent doctrine *presumed* that the parent who engaged in the most care giving activities during the marriage would make the best post-divorce parent. Under these *presumptions*, family court judges virtually always gave sole physical and legal custody to mothers.

More recently, these doctrines have been replaced by the "best interest of the child" standard that, unfortunately, represents nothing more than "the eye of the beholder". Tragically for children, this standard gives family court judges unbridled latitude to reach any determination they wish as long as they proclaim that it is in the best interest of the child.

At this writing, the pendulum has swung back to dead center with the *presumption* of Joint Custody in, of all places, Iowa. Effective July 1, 2004: If joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the request of either parent. In signing this legislation, Iowa Governor Tom Vilack emphasized the importance of having two parents following divorce based on his own experience as a child of divorce and his reading of the divorce literature From a developmental perspective, this presumption offers the advantage of beginning divorce deliberations from a position of equality for all parties and deviating from this position only based on the individual difference characteristics, capacities, and situations of individual mothers, fathers, and children.

WHAT ARE THE ADVANTAGES AND DISADVANTAGES OF SOLE AND JOINT CUSTODY ARRANGEMENTS?

The advantages and disadvantages of sole versus joint custody arrangements are fairly straightforward. The advantages of sole maternal custody with paternal visitation are as follows. For the child, there is a sense of residential, neighborhood, and school stability perhaps paid for by a sense of paternal abandonment and a loss of the father as a parent. For the mother, there is virtually total control over the child and their socialization along with an exclusive and emotionally intense relationship with her child. The maternal disadvantage is potential burnout as she works the "second shift" of both paid employment and full-time 24/7 on-call child care. This burnout may be exacerbated if the child develops behavior problems as a consequence of the reduced involvement or absence of the father. For the father, there is a sense of loss and a loss of meaningful contact with his children. To become a visitor in his child's life, after having been an involved father with meaningful father-child relationships, has many negative outcomes for the father, including substantially higher rates of suicide, depression, alcohol abuse, drug abuse, poor heath, work problems, relationship problems, and social isolation. The core argument is that post-divorce father-child relationships are of critical importance not only for the well-being of children but also for the well-being of fathers.

In joint physical custody, for the child there may be residential, neighborhood, school, and friendship network instability with transfers from one home to the other. This instability may or may not be compensated for by the gain of meaningful, everyday relationships with both the mother and the father and the avoidance of a sense of abandonment and loss of either parent. For the mother, there is the loss of an exclusive relationship with and total control over her child, which may or may not be compensated by a loss of maternal role burnout, the gain of likely enhanced mental health of her child, and a greater opportunity to move on with her own life as an adult woman. For the father, there is an opportunity to maintain a meaningful and nurturant relationship with his child and enhance his own emotional balance.

WHAT CAN RESEARCH TELL US ABOUT CUSTODY DETERMINATIION?

There is an inherent and confounding fatal flaw to all custody outcomes research -- self-selection. Neither parents nor children ethically can be randomly assigned to different custody arrangements to do a true experiment. Thus, it is not possible to ascertain the independent contributions of the "before" individual differences of mothers, fathers and children that led them to choose joint custody and the "after" consequences or outcomes of having experienced joint custody.

Within this limitation however, there are two lines of research that suggests that Iowa may be on the right track. First, studies undertaken in Arizona and Florida report that young adult children of divorce wanted to have spent more time with their fathers (more custody time) and more emotional quality time (companionship, sharing activities, leisure, fun, play) than young adult children from intact families. Second, literature reviews uniformly conclude that gender similarities are far greater than gender differences in parenting capacity. Mothers and fathers, in short, make equally competent parents. What makes these findings striking is the fact that this empirical research has rendered wrong and overruled decades of false legal presumptions.

SUMMARY

Today, both joint custody and child support are highly controversial social and legal issues. Both are in flux, both will change, and both have clear sides. Generally speaking, children and fathers of divorce perceive their best interests to be best served by joint legal and physical custody. Some mothers also see it this way but other mothers see their best interests as best served by sole legal and physical custody. Custody battles are not likely to disappear, but their costs to all parties involved appear to be best mitigated with the equal opportunity principles embedded in joint legal and joint physical custody presumptions.

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Further Readings and References

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Joint Custody from the child's point-of-view: http://www.gocrc.com; INTERNET.

Joint Custody from the father's point-of-view: http://www.deltabravo.net; INTERNET.

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The Washington Times, Op-Ed Commentary, July 19, 2005.

Fatal flaws: VAWA 2005

By Gordon E. Finley
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For the past decade, the Violence Against Women Act (VAWA), which comes before the Senate Judiciary Committee for a reauthorization hearing today, has been a nearly $ 1 billion-dollar-a-year tax-supported industry based upon fatal flaws in three areas: (A) conception, (B) discrimination, and (C) administration.

(A) Conceptually, Domestic Violence (DV) programs are predicated on the false presumption men always are the predatory perpetrators and women always the innocent victims. By contrast, the strongest and most consistent finding in decades of worldwide empirical DV research is that both men and women initiate DV at about equal rates and men are at least one-third of the physically harmed victims. A second conceptual fatal flaw is that the only solution to DV is to break up the family and isolate men rather than provide social and counseling services to reunite families that can be rehabilitated.

(B) VAWA operates at such a high level of blatant sex discrimination it could not pass muster under Title IX of the Education Amendments of 1972, which prohibits sex discrimination in educational programs. VAWA application forms explicitly state programs providing services for men need not apply. Nor are there requirements that women (who initiate one-half of the disputes) take anger management classes to work out their differences equitably with men.

(C) Tragically, the VAWA administration also seems to have fallen under the control of gender superiority ideologues who misuse tax dollars to destroy families. These tax dollars also are used to institute "must arrest" policies where a parent (almost always the father) must be arrested during a domestic dispute even when there is no physical contact and even over the objection of the other parent. These tax dollars would be better spent providing counseling for both parents.

So, what to do?

There is a wide range of views among members of Congress who soon must vote on the reauthorization of VAWA -- as well as the general public. For those with concerns about VAWA, there are but two choices: sunset or rewrite. My view is VAWA is so harmful to children and fathers it should be sunsetted.

Interestingly, while many members of Congress are fearful of a women's backlash if they vote for sunset, they appear oblivious to a growing men's backlash vote. Republicans, in

particular, seem to forget they owe their political ascension to overwhelming support from males and their spouses.

Further, there is some evidence the women's block vote is less unified than it once was. The first comes from the small turnout to elect Gloria Steinem as president of NOW. The second is more elusive but surfaces as multiple fissures on multiple issues in heterosexual women who appear to be at a crossroads on women's issues. For VAWA, the critical question will be whether heterosexual women want to support a program that may destroy the lives of men in their family of origin (grandfathers, uncles, fathers, brothers, cousins) as well as current relationships (husband, boyfriend, friends, coworkers).

On the other hand, rewriting VAWA to correct fatal flaws will be a daunting task with a very short time line. Below are a few examples of required changes.

• First, and most critically, allegations of DV should be tried in criminal court with the protection of due process. If the allegations are unsubstantiated, the focus should be on family preservation and counseling services. If the allegations are substantiated, rehabilitation services should be considered.

• Second, following Title IX, sex discrimination must be eliminated throughout and the focus should be on victim need.

• Third, everyone should "follow the money." Administratively, it seems past VAWA funds have flowed to groups espousing a gendered political agenda. Two groups conspicuously absent from funding are men's programs and religious institutions. Religious institutions, along with the family, traditionally have been considered as bedrock social institutions. In my view, religious institutions should expand their ministries to meet two currently underserved but dramatically evident family needs: DV and divorce.

While men's shelters and religious organizations lack a track record because of past discrimination, they should be considered on an equal footing with existing providers. Indeed, if reauthorized, a new mechanism must be established for fair distribution of VAWA monies on the basis of victim need.

• Finally, for a comprehensive understanding of VAWA, two Web sites provide fine-grained analyses and excellent critiques: (www.mediaradar.org) and (www.VAWA4ALL.org). Both should be required reading for members of Congress as well as the interested public.

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