

DOMESTIC VIOLENCE AND INCEST RESOURCE CENTRE NO TO VIOLENCE MALE FAMILY VIOLENCE PREVENTION ASSOCIATION

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT 2600
Australia

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Dear Secretariat,

Thank you for the opportunity to respond to the Inquiry into the Family Law Amendment (Shared Parental Responsibility) Bill 2005. The Domestic Violence and Incest Resource Centre (DVIRC) Inc. and No To Violence Male Family Violence Prevention Association (NTV) Inc. are the lead training and resource centres in Victoria in the field of family violence.

General Comments.

We endorse reforms to the Family Law Act which promote children's opportunities to have meaningful relationships with both parents, where there is no risk of harm. We support responses that facilitate co-operative parenting where it reflects the best interests of children. At this stage however, we do not believe the Family Law Amendments adequately address developing safe parenting arrangements for children affected by family violence. The idea that families affected by violence will not be required to mediate, or to develop plans that include shared parental responsibility is erroneous. These amendments are already transforming the expectations of separating parents and professionals. Children who have experienced violence are already required to spend time with abusive parents, and this problem will be exacerbated when these amendments become law.

Further, there is a significant bias in enforcing responsibilities of resident parents, while not addressing the burden many resident parents experience in part because of the lack of responsibility non-resident parents may choose to exercise.

Finally, we believe Family Relationship Centres will provide an important gateway to separating parents accessing appropriate information and referrals. We hope that these centres be appropriately equipped to resource and support the many families hurt by violence. We note that there is a great deal more work to come in developing appropriate screening tools, minimum training standards and support for staff. DVIRC and NTV have welcomed the opportunity to contribute to these projects.

Determining the Best Interests of the Child

DVIRC and NTV believe that the best interests of the child should continue to be the starting point in determining post-separation parenting arrangements. As it stands, the amendments do not assure this. Equal shared parental responsibility and/or equal shared parenting time should depend on the abilities and capacity of individual families. We attach for your information the key findings of a 1999 American report that reviews all significant scholarly research on post-divorce parenting and child well-being¹. This report found that major

¹ Lye, D. (1999) *Washington State Parenting Plan Study*, Report to the Washington State Gender and Justice Commission and Domestic Relations Commission, June.
<http://www.courts.wa.gov/committee/pdf/parentingplanstudy.pdf>

research has not found significant advantages to children of joint physical custody, and that research indicates that “joint physical custody and frequent child-nonresidential parent contact have adverse consequences for children in high-conflict situations”. We have attached key findings from this report at the end of our submission. High conflict, and domestic/family violence are common for separating families, and we are concerned that children will be affected by trying to survive shared parenting which parents cannot manage effectively.

It is not the sharing of parental responsibilities, let alone dividing up children's time, that leads to positive well being for children; it is the opportunity to live without on-going conflict. Requiring families experiencing conflict to work co-operatively has been shown to be the most damaging for children. In families where there is a history of abuse and control, the harmful effects are multiplied. In cases of domestic/family violence, US and Canadian research is very clear: shared parental responsibility, including time, should not occur and is harmful to children.

DIVRC questions the adoption of this as a primary determinant for parenting arrangements when international research, that has the benefit of evaluation post legislative reform that endorses shared parenting, demonstrates that joint parenting does not lead to better outcomes for children, and in cases where there is high conflict and/or domestic/family violence, it is associated with negative results.

While we support sharing of parental responsibilities where conflict is minimal, DVIRC and NTV strongly urge the Senate to reconsider a presumption of equal shared parental responsibility as the primary determinant of post separation parenting arrangements. As it stands this presumption will force all families to negotiate within a framework that does not suit most families, is detrimental to children where conflict is high, and dangerous in families where there is violence.

Conflict of primary considerations.

Given the significant incidence of violence and abuse in separating families, DVIRC and NTV are concerned that any reform to family law prioritise children's safety, above all other considerations. Current proposals position safety and the right to know both parents as equally important. This will establish a dilemma when determining parenting arrangements: in cases where children are at risk of abuse it is impossible to also consider shared parental responsibility. Australian and overseas research demonstrates repeatedly that shared parental responsibility in families where there is violence increase the risk to children and mothers by providing parents who use violence with continued opportunities for abuse and control. Safety must take precedence over a child's right to know both his/her parents.

DVIRC and NTV recommend that where violence or abuse is present, there is a presumption of no contact with an abusive parent until they can demonstrate a capacity to parent safely and positively.

All court staff will need to be trained in understanding the gendered nature of domestic/family violence, to work with the new criteria for determining the best interests of the child where there has been violence.

Changes to the definition of Family Violence.

We are concerned that proposed reforms to introduce an objective measure into establishing the present of violence will place further pressure on women who have experienced violence to avoid disclosure for fear of penalties. We know already that many women who have experienced violence are unable to meet legal evidentiary requirements because men who have used violence often use inventive and multiple tactics to isolate women who have experienced violence and prevent them from accessing adequate medical and other supports.

Fear of violence, and the women who have experienced violence own assessment of risk to herself and her children, has been shown to be one of the strongest predictors of risk, including subsequent murder. No other person, least of all without extensive training and experience in working with survivors of violence, should be able to privilege their interpretation of a woman who has experienced violence own assessment of risk.

To simultaneously raise the evidentiary bar for women who have experienced violence to show 'reasonable' fear, and increase penalties for 'false accusations' will be disastrous for mothers protecting their children from further abuse. Women who have experienced violence will be required to maintain shared parenting when it is not in the best interests of their children, because of punitive legislative provisions that privilege co-operation between parents above children's safety. Extensive research in Canada, America, New Zealand and England shows that children experience significant harm through exposure to abusive fathers when parents are forced to share parental responsibility.

DVIRC and NTV are also concerned that the reforms are preoccupied with 'false allegations' in the face of significant research that shows these are minimal, but do not adequately consider the endemic problem of 'false denials' used by men who have used violence to continue access to adults and children who have experienced violence. We urge the Senate to establish legal sanctions to discourage men who have used violence from denying and minimising abuse.

Family Relationship Centres.

DVIRC and NTV recommend comprehensive, competency based training on family violence, on going professional development and extensive supervision for all staff at the proposed Family Relationship Centres. Screening will not exclude all families affected by violence, particularly when women who have experienced violence will be reluctant to disclose for fear of a more punitive legal test. It is imperative that all practitioners are highly skilled in working with family violence.

DVIRC and Relationships Australia (Vic) has recently undertaken research into experiences of mediation for women who have experienced violence. Building on the Keys Young (1996) research, findings overwhelmingly indicate that mediators do not adequately assess non-physical forms of abuse and control. Consequently, parenting agreements that were developed through mediation did not hold up. Women who have experienced violence felt coerced by their ex-partners to make agreements, and frequently found that the man who used violence was non-compliant with plans that were drawn up.

Over the last year DVIRC and NTV have developed and delivered training in family violence to PDR practitioners, magistrates and other court staff. It is very clear that effective screening requires extensive skills, experience and support. As a result, we will be developing new accredited competencies to support this specialised work, and welcome further discussions about what this might include. What is currently clear is that most practitioners that will be involved with implementing the new family law amendments require more training by specialist services that provide registered training in family violence competencies.

DVIRC and NTV urge the Government to recognise the high number of families affected by violence and abuse and to take this opportunity to protect children by ensuring parenting arrangements maintain the best interests of the child.

NTV also urges the Government to ensure all men who have used violence towards family members be actively and formally referred to a Men's Behaviour Change Program accredited by No To Violence and which adheres to NTV's standards of practice, Men's Behaviour Change Group Work: A Manual for Quality Practice (NTV, 2005).

Other Submissions Endorsed.

DVIRC and NTV endorse the following submissions, and consider them to supplement this brief response:

- National Council for Single Mothers and Their Children (NCSMC)
- National Abuse Free Contact Campaign (NAFCC)
- Women's Legal Services Australia (WLSA)

We welcome further opportunity to discuss the amendments with the Senate Committee.

Yours sincerely,



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CHAPTER 4

WHAT THE EXPERTS SAY: SCHOLARLY RESEARCH ON POST-DIVORCE PARENTING AND CHILD WELL- BEING

**Report to the Washington State
Gender and Justice Commission
and
Domestic Relations Commission**

**Diane N. Lye, Ph.D.
June 1999**

SUMMARY

In late spring 1998, the Washington State Supreme Court Gender and Justice Commission and the Domestic Relations Commission began a study of the Washington State Parenting Act. This report presents information from one of four parts of that study, namely a review of scholarly research concerning post-divorce parenting and child well-being.

The review provides a general summary of the scholarly research literature. It is not intended to establish a single standard for post-divorce parenting in Washington State.

Methodology

A search of major bibliographic databases identified research articles for inclusion in the review. The review was limited to peer-reviewed research published in or after 1985. All research utilized direct measures of actual parenting behavior and child well-being. Studies were evaluated based on sample quality, study design, and use of controls and statistical techniques. Studies using probability samples, prospective, longitudinal designs, with necessary control variables and appropriate statistical techniques were judged more compelling.

Findings

The evidence reviewed here does not reveal any particular post-divorce residential schedule to be most beneficial for children. There are no significant advantages to children of joint physical custody, but also no significant disadvantages to children of joint physical custody or of any other post-divorce residential schedule.

The weight of evidence does not support the view that higher levels of child-nonresidential father contact are automatically or always beneficial to children. However, the weight of evidence also does not suggest that, absent parental conflict, high levels of child-nonresidential parent contact are harmful to children.

Parental conflict is a major source of reduced well-being among children of divorce. Research indicates that joint physical custody and frequent child-nonresidential parent contact have adverse consequences for children in high-conflict situations. Joint physical custody and frequent child-nonresidential parent contact do not promote parental cooperation.

Increased nonresidential parents' involvement in their children's lives may enhance child well-being by improving the economic support of children. This conclusion only holds if child support decisions are made independent of residential time decisions, and continuing nonresidential parent involvement does not expose children to continuing parental conflict.

4. IMPLICATIONS FOR WASHINGTON STATE AND THE PARENTING ACT

a. No Specific Pattern of Post-divorce Parenting Arrangements Has Been Clearly Demonstrated to Confer Greater Benefits to Children

The lack of clear and compelling evidence from currently available scholarly research to support any particular scheme of post-divorce parenting arrangements suggests the following policy considerations:

- i. "One size fits all" approaches, such as legal presumptions in favor of certain specified arrangements, are likely to be harmful to some families. Many researchers explicitly warn against this type of approach (see 5. below).

- ii. The current Washington State Parenting Act is generally consistent with currently available research because, at least in theory, it provides parents with considerable flexibility in tailoring their post-divorce parenting arrangements to suit their children's needs.
- iii. Given the lack of evidence concerning either advantages or disadvantages to children of every-other-weekend residential schedules, the predominance of plans with these schedules is troubling. Similarly, the heavy reliance by some counties on guidelines urging every-other-weekend schedules is also troubling. Although there is no evidence that this schedule is harmful to children, there is also no evidence that it is beneficial. The predominance of every-other-weekend schedules suggests that the greatest potential benefit of the Parenting Act—individual tailoring—is not being fully exploited. The Gender and Justice Commission should explore ways to further support individualization of families' parenting plans.

b. Exposure to Parental Conflict is a Major Cause of Harm to Children of Divorce

There is unanimity among researchers (see 5. below) that parental conflict is a major source of reduced well-being among children of divorce. Recent research indicates that joint physical custody and frequent child-nonresidential parent contact have adverse consequences for children in high-conflict situations, and that joint physical custody and frequent child-nonresidential parent contact do not promote parental cooperation. Taken together these findings suggest the following policy considerations:

- i. Current restrictions limiting shared parenting arrangements to low conflict, high cooperation families are appropriate and should be adhered to.
- ii. Strategies that aim to reduce parental conflict, or at least to inform parents about the devastating consequences of conflict, should be promoted. This includes classes for divorcing parents.
- iii. Although domestic/family violence and abuse are often characterized as the most extreme forms of parental conflict, they are best understood as entirely separate phenomena, with their own etiology that extends far beyond conflict between parents. For the most part, domestic/family violence and abuse have not been addressed by the studies included in this review, which for methodological reasons were unable to collect reliable domestic/family violence data. Widely used strategies intended to reduce parental conflict, such as parenting classes and mediation, may not be generally appropriate for families with a history of violence and abuse and may even have the opposite effect, namely, to increase the risk that the woman who has experienced violence will be revictimized. Thus, policies and programs intending to reduce parental conflict must pay special attention to the needs of domestic/family violence and abuse victims, and must recognize that they may not be able to adequately serve these populations. Conflict reduction may not be an achievable or appropriate goal for violent and abusive families.

c. Inadequate Income is a Major Cause of Harm to Children of Divorce

Researchers agree that household income is the most important influence on child well-being post-divorce. There is also widespread agreement among researchers that nonresidential parents are more likely to comply with child support awards when they continue to be regularly and actively involved in their children's lives. However, additional research also suggests that parents may "trade-off" between residential time and money when negotiating a divorce settlement. These findings suggest the following policy considerations:

- i. Vigorous child support enforcement is the most important thing Washington State can do to promote the well-being of children of divorce.
- ii. Promoting nonresidential parents' involvement in their children's lives may enhance child well-being by improving the economic support of children. This conclusion only holds if child support decisions are made independent of residential time decisions, and if continuing nonresidential parent involvement does not expose children to continuing parental conflict.