

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

Dear Senate Committee Members,

Re: Submission to the Inquiry into the provisions of the Family Law Amendment (Shared Parental Responsibility) Bill 2005

A member of the Joint Parenting Association juggled his shifts so he could pick his pre-school daughter up from daycare every day at 2:00 p.m., while her mother was still at work. He would tuck her in for her nap, make her dinner, play with her after dinner and read stories to her at bedtime. She giggled when he croaked like Kermit the frog and shrieked with delight when he held her in his arms and twirled in circles.

After he and his wife divorced, he was allowed to see his daughter every other weekend and she was in daycare 10 hours per day.

Can there be any doubt that this child was wounded, and that she mourns the loss of her father? Almost everyone knows a child who has suffered this.

Recently in the American state of Massachusetts voters had a chance to help thousands of children such as this little girl. On a state Election Day 85 % voted in favour of a non-binding ballot question that urged legislators to pass presumptive joint physical custody legislation. Family court judges seem to be caught in an "old-think" rut, and they need to be encouraged to abandon old ways of doing things that hurt kids, namely, sole parenting of children to one parent. In most cases, there is no compelling reason why children have to be cut off from one parent after a divorce as well as entire extended families on that parent's side.

Not only did the Massachusetts result show massive community support for presumptive joint physical custody it overwhelmingly endorsed equal parenting time.

The referendum asked whether voters want their state representatives to *"create a strong presumption in child custody cases in favor of joint physical and legal custody, so that the court will order that children have equal access to both parents as much as possible, except where*

*there is clear and convincing evidence that one parent is unfit, or that joint custody is not possible due to the fault of one of the parents."*

Of course, there are some cases where shared care is not best for children, such as where there is family violence, or where there are practical obstacles such as parents living far apart.

The most mean-spirited opposition to equal time parenting is the claim that it should be barred or restricted for the population at large because of the risk of family violence among some families. These opponents argue from a presumption of pathology and urge a rule that would assume that the worst behavior of the most extreme individual is the norm.

Policy cannot be made by anecdote, and the law should not be based upon this presumption of pathology. The law should serve the vast bulk of the fit and loving parents who simply want to be with their children. Where domestic violence occurs, it is properly handled as a deviation from the norm.

The federal government's 2005 Shared Parental Responsibility legislation specifically recognizes that family violence, like all forms of abhorrent behavior is relevant and must be considered by the judge in fashioning the parenting decree.

This is why our children deserve the Senate support for a family law preference that children spend equal time with each parent. False alarms about the dangers in a minority of cases should not stand in the way of what's best for most children. We can help the great majority and also protect the few who need protection.

Scholarly studies by Sanford Braver and others estimate that between 67 and 75 percent of divorces are instigated by the mother. Divorce attorneys report that the number is closer to 90 percent. Few of these divorces involve grounds like desertion, adultery, or violence. *"Growing apart"* or *"not feeling loved or appreciated"* are the usual explanations. One study concluded, *"who gets the children is by far the most important component in deciding who files for divorce"* (Brinig and Allen 2000, 126-27, 129, 158). The importance of this finding cannot be overestimated.

Several studies have showed a significant correlation between joint physical custody and reduced divorce (Kuhn and Guidubaldi 1997; Brinig & Buckley 1998; Brinig & Allen 1998). In the U.S. for example, Kuhn and Guidubaldi (1997) compared divorce rate trends in states that encourage joint physical custody by legislative preference or judicial approach with those in states that favour

sole custody. States with high levels of joint physical custody (over 30%) in 1989 and 1990 have shown significantly greater declines in divorce rates in following years through 1995, compared with other states.

Divorce rates declined nearly four times faster in high joint physical custody jurisdictions compared with states where joint physical custody is rare. As a result, the states with high levels of joint physical custody now have significantly lower divorce rates on average than other states. States that favoured sole custody also had more divorces involving children. These findings indicate that public policies promoting sole custody may be contributing to the high divorce rate. Both social and economic factors are considered to explain these results. Kuhn and Guidubaldi conclude that a parent who expects to receive sole custody is more likely to file for divorce than one who may be awarded joint physical custody. This is because sole custody allows one parent to hurt the other by taking away the children.

Shared care after divorce is best for children. Research over the past twenty years proves this more and more conclusively. That's why, for instance, Dr. Michael Lamb, Head of the Section of Social and Emotional Development at the National Institutes of Health in the US has written, "...Parenting plans that allow children to see their fathers every Wednesday evening and every other weekend clearly fail to recognize the adverse consequences of weeklong separations from non-custodial parents...Instead of promoting parenting plans that marginalize one of the parents, custody evaluators should promote continued involvement by both parents..."

Children want equal time parenting. Distinguished US researcher Robert Emery in Virginia surveyed young adults whose parents had divorced. They expressed persistent feelings of sadness, emptiness, and of having missed out on a better life because of the limited time they had with their fathers.

Another researcher, William Fabricius, asked such young adults what is the best arrangement for children of divorce; 75 percent responded, "Equal time with both parents."

A recent local study by Patrick Parkinson and colleagues (2003) adds weight to the view that children are better off spending equal time with both parents after divorce. The study is one of the first in Australia to look at how children feel about spending time with their parents. When they were asked how parents should care for children after divorce; the most common answer was *equal or half and half*. Half also said they wanted more time with their non-resident parents

Shared care is the only measure that reliably increases child support compliance. US Census researcher George Lester found that when joint physical custody was awarded, child support zoomed up to 90 percent compliance.

Sole parenting creates conflict and shared care alleviates it (Bauserman 2002). Many divorcing couples engage in bitter family court battles. These are totally unnecessary and could be prevented by assuring both parents that neither will lose the loving relationship with their child.

Ultimately, the rationale for an equal time presumption is a humane one. Many thousands of children would benefit if this were to become the ethos that guides their parents during and after divorce. Common sense supports this.

In Australia the standard model of parenting after divorce is sole residence (Its closest analogue is what was once known as sole custody). While the Family Law Act 2975 makes some provision for joint residence (i.e. the pre 1995 joint physical custody), it is still very rare as a court ordered outcome. The attached Joint Parenting Association monograph examines the debate between supporters of the sole residence and joint residence models. Opposition to joint residence is examined in terms of judicial conservatism, social work practice and feminist thinking. Research is reviewed and the family violence and the safety of children issues are examined. The report argues that it is time for the sole residence model to be discarded and advocates a rebuttable presumption in favour of joint residence and an equal time preference.

Yours Sincerely

Yuri Joakimidis

National Director

Joint Parenting Association

[www.jointparenting.org.au](http://www.jointparenting.org.au)