

The Impact of a Presumption for Joint Legal Custody on Father Involvement

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ABSTRACT. Several states have laws that declare a presumption for joint legal custody for divorced families. Although some presumption laws have existed for over two decades, their effects remain unexamined. This study assessed the impact of a presumption law on father involvement by examining days and nights of contact between father and child per month, father attendance at children's activities, father participation in decision-making and payment of child support orders. The results indicate that a presumption law does not currently result in more father involvement; however, the author recommends the application of more well controlled studies before making recommendations to professionals in the field. *[Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2003 by The Haworth Press, Inc. All rights reserved.]*

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Since the early 1980s, there have been significant changes in laws pertaining to divorced families (Bruch, 1997; Glass, 1990; Green, 1976; Riley, 1991; Saunders, 1994; Woodhouse, 2000). Child support guidelines have been established in every state across the union to provide some measure of assurance that children are adequately financially supported. "Gender-neutral" laws state that gender cannot be a determining factor in awarding custodial arrangements. Statutorily clauses about family violence have been established to ensure that children are not placed in the care of abusive parents and many states have adopted public policy that declare it is in the best of interest of children to have frequent and continuing contact with both of their parents. One of the most controversial laws, however, are those that state a presumption for a particular kind of joint custodial arrangement (Barry, 1997; Brandes, 1997; Hardcastle, 1998; Henry, 1996).

"Presumption laws" declare that, unless one can prove otherwise, (such as in instances of family violence), a particular type of joint custodial arrangement is in the best of interest of all children and families of divorce who appear before the court. These laws have been sponsored and promoted by father advocacy groups who seek to allow and encourage more father involvement in the daily lives of the children. Moreover, there is a well established set of literature which documents that, in general, children have better rates of adjustment when they have regular and continuing contact with both parents (Bronstein, Frankel Stoll, Clauson, Abrams & Briones, 1994; Lee, 1997; Maccoby & Mnookin, 1992; Pagani-Kurtz & Derevensky, 1997; Spigelman, Spigelman & Engleson, 1994). Still, presumption laws have raised considerable concern among the public, professionals who work with divorcing families and women's advocates because (1) there is worry that one type of custodial arrangement cannot ever be appropriate for all divorced families and (2) there is concern that joint custodial arrangements of all types put victims of family violence at risk for further abuse (Barry, 1997; Woods, 1997).

Today, nine states (Florida, Iowa, Kansas, Minnesota, Missouri, Montana, New Hampshire, New Mexico and Texas) have a presumption for joint *legal* custody (pertaining to which parent holds the authority to make *decisions* about major events, such as medical care, education and religion, in the children's lives) (American Bar Association, 1999); Louisiana has a presumption for joint *physical* custody (pertaining to the *physical residence* of children) (Rigby & Spaht, 1993); and Washington, D.C. has a presumption for joint legal and physical custody (Henry, 1996). Despite the highly controversial nature of these laws, there has

been little, if any, attempt to evaluate the impact of these laws on the lives of divorced families.

In this study, I assessed one aspect of the effectiveness of laws that state a presumption for joint legal custody. The most effective way of measuring the outcomes of such a law would be to use a pre- and post-test design. However, a study of that nature would require several years of analysis as it takes families at least two years after divorce to settle into a regular child-contact schedule (Hetherington, Mavis, Cox & Cox, 1982) and it would take a considerable period of time for a state to fully implement such a policy. At the same time, there are many states with existing presumption laws that have been on the books for years and have gone unexamined, making them prime candidates for study. To use such states, one would have to examine similar comparison states that lack a presumption for joint legal custody. The obvious flaw in a comparison design is that states often have multiple formal and informal differences in their legal systems and in their procedures for handling divorced families. However, to analyze existing laws, despite problems in design, is an excellent and timely way to begin the study of this particular family policy in an attempt to offer much needed information to researchers, policy-makers and practitioners.

In this study I examined the effects of an existing presumption for joint legal custody by comparing the involvement of fathers in the state of New Hampshire, which has a presumption for joint legal custody with the involvement of fathers in the state of Maine, which has no presumption law. The New Hampshire presumption law, "*In the making of any order relative to such custody there shall be a presumption, affecting the burden of proof, that joint legal custody is in the best interest of minor children*" was passed (New Hampshire Domestic Relations, Title XLIII, Chapter 458§3, II(a)) in 1981 and is the watered down result of a bill that stated a presumption for joint physical and legal custody. To protect victims of family violence, the state has another presumption law that overrides the first by stating that joint legal custody will not be awarded in cases of family violence (New Hampshire Domestic Relations, Title XLIII, Chapter 458§3, II(c)).

In this study, I examined the following questions:

1. Is New Hampshire's presumption for joint legal custody fully implemented?

2. Do divorced fathers in New Hampshire spend more time (days and nights) with their children than fathers from the targeted neighboring state?
3. Do divorced fathers in New Hampshire attend more of their children's school events and extracurricular activities than fathers from the targeted neighboring state?
4. Do divorced fathers in New Hampshire participate in decision-making about their children's lives more than fathers from the targeted neighboring state?
5. Do divorced fathers in New Hampshire provide more financial support than fathers from the targeted neighboring state?

METHOD

I conducted this study through the use of a mail survey that was administered in October, 2000–January, 2001 to fathers who were divorced between 1996 and 1998. Participants were from matched counties within each of the states of New Hampshire (Strafford, Coos, and Sullivan Counties) and Maine (Knox, Sagadahoc, and Lincoln Counties).

Participants

The sample for this study was selected using court records in each of the six matched counties (counties were matched using demographics information: population size, race, education, level of poverty and household income). All fathers from the selected counties who were divorced between 1996 and 1998 were included in the study. The respondents of this study consisted of 316 divorced fathers who were from the states of New Hampshire ($n = 205$) and Maine ($n = 111$). All potential respondents had been divorced for two to four years and currently had minor children. There were no statistical differences between fathers from the two states with regard to race, education, income, age of father, age of child, sex of child, geographic distance between father and child, marital status of father, marital status of mother and legal custody arrangements. There were differences between the two groups of respondents with regard to physical custody arrangements ($p = .04$) and child support payments ($p = .01$). A high number of fathers with joint physical custody responded to the study; thus, physical custody of children was controlled for in all statistical analyses.

Materials

For this study I designed a mail survey in which fathers reported their various levels of involvement such as, days and nights of contact, attendance at children's events, participation in decision-making, child support payments, family functioning (levels of conflict, quality of relationships), custodial arrangements and demographic information. Table 1 illustrates some of the survey questions. Because involvement can vary from child to child, even within the same family, I asked fathers to report about their eldest child only, as father's who only have

TABLE 1. Survey Topic Areas and Sample Questions

Topic Area	Survey Question
Daily or nightly contact	Fathers were asked to check regular days and nights of contact on a four week calendar.
School activities	In the 1999-2000 school year, how many times did you attend or visit your target child's school for an event, such as a sporting event, school performance, volunteer activity, open house or parent-teacher conferences? (1 = None-5 = 10 or more)
Extra-curricular activities	How about non-school extracurricular activities such as music lessons/concerts, dance lessons/recitals, religious activities, scouting events, etc? How many of these events have you attended in the last 12 months? (1 = None-5 = 10 or more)
Decision-making about child	Sometimes when parents divorce one of the parents makes most of the decisions regarding the life of the child, such as education, medical attention, religious training and extracurricular activities. However, other times parents share these decisions. Which of the following statements best describes your situation? (1 = Mom makes all, 2 = Mom makes most, 3 = Share equally, 4 = Dad makes most, 5 = Dad makes all)
Father-child relationship	How would you rate your level of satisfaction with the quality of the relationship that you have with your target child? (1 = Very satisfied-4 = Not at all satisfied)
Father-mother relationship	How would you rate your level of satisfaction with the relationship you have with your ex-wife? (1 = Very satisfied-4 = Not at all satisfied)
Conflict	How much conflict do you have with the mother of your "target" child? (1 = Very high-5 = None)
Mother's support	How supportive do you think that your ex-wife is of the relationship that you have with your "target" child? (1 = Very supportive-5 = Not at all supportive)
Life as divorced father	How would you describe your adjustment to life as a divorced father? (1 = Excellent-5 = Poor)

one child would not be able to report on other children. This child was termed the *target child*. While self-reports can result in questionable data, I believe that it is no more questionable than asking for a report from one's ex-spouse, which would have been another possible method of data collection.

Procedure

Following the techniques of Dillman, (2000, 1978) between October, 2000 and January, 2001, I administered the mail survey, sending it with cover letters to non-respondents a total of three times, in addition to a reminder/thank you post card which was sent to everyone. Using this technique, I obtained a 39% response rate. This is somewhat lower than Dillman reports and lower than I have obtained in previous (unpublished) research. However, divorced fathers are a difficult population to contact; furthermore, I administered the survey during the November and December holidays, which Dillman does not recommend.

RESULTS

The results of this study were obtained through the use of ordinary least square regressions and ordered probit analyses, where an alpha level of .05 was used for all statistical tests. Once again, all analyses controlled for physical custody arrangements, in addition to income, education, participation in decision-making in children's lives, child support payments and legal custody arrangement. Other factors considered in some of the models include family relationships, distance between father and child and whether fathers had additional children after their divorce.

Implementation of the Law

The New Hampshire presumption for joint legal custody is fully implemented. Ninety-three percent of the sample reported having joint legal custody.

Levels of Contact

There is no statistical difference in how many days [$n = 250$, R^2 adjusted = .68, $F(11,238) = 48.86$, $p = .43$] or nights [$n = 261$, R^2 adjusted =

.70, $F(10,250) = 62.34$, $p = .88$] that New Hampshire fathers spend with their children compared with fathers in Maine.

Attendance at Children's Activities

There is no statistical difference in the rates of attendance at children's school events [$n = 244$, $\chi^2(13) = 113.31$, $p = .29$] or extracurricular activities [$n = 248$, $\chi^2(12) = 92.56$, $p = .47$] between New Hampshire fathers and Maine fathers.

Participation in Decision-Making

Divorced fathers in New Hampshire do not participate in decision-making any more than divorced fathers in Maine [$n = 246$, $\chi^2(14) = 271.7$, $p = .177$].

Child Support Payments

There is a trend indicating that divorced fathers in New Hampshire pay more child support than divorced fathers in Maine [$n = 283$, R^2 adjusted = .41, $F(19, 263) = 11.16$, $p = .059$].

DISCUSSION

In this study I examined the extent to which a law stating a presumption for joint legal custody is fully implemented, and to what degree, if any, the law affects father involvement in divorced families. The results indicate that although the law is fully implemented (93% of families in New Hampshire have this arrangement), there are no differences in father involvement that can be explained by the existence of a presumption law. There are several possible reasons for this finding.

First, the law does not currently offer families unique custodial arrangements. An award of joint legal custody has become a standard custodial arrangement across the country, regardless of state or laws (Kelly, 1997; Kuhn & Guidubaldi, 1997). The comprehensive, national study completed by Nord and Zill (1996) found (using 1990 data) that almost 80% of divorced families had an arrangement of joint legal custody. In fact, I speculate that it is the existence of laws stating a presumption for joint legal custody in one-fifth of the country that may have propelled this social change throughout the nation.

Second, the law does not provide for any changes within the social structures that support or affect divorced families. For example, the law does not require that schools or medical institutions comply with the law, provide records to, or reach out to nonresidential parents. Without such provisions, it may be difficult for divorced fathers to become more involved.

Third, public policy can affect little change in the relationships between family members. If parents are unwilling or unable to cooperate with one another, an arrangement of joint legal custody will not change this reality and will likely not influence the involvement of fathers. Moreover, family members must each take part in co-parenting. It is easy for custodial parents to act without consulting noncustodial parents, moreover, anecdotal evidence suggests that many divorced fathers do not initiate the level of involvement that might be expected from fathers with joint legal custody.

Finally, New Hampshire's statute for joint legal custody is not defined in state law. The terms *joint legal custody* and *joint physical custody* have been standing long enough for a sizable portion of the public to understand these terms. Nonetheless, without a definition, parents may not understand the essence of their roles and responsibilities toward one another and their children.

Fathers in New Hampshire pay more child support than fathers in Maine; however, these differences are not the result of the presumption law, but each state's respective support guidelines. In the state of New Hampshire, a certain percentage (based on the number of children in the family) of the parents' combined income is allotted as the child support award (New Hampshire Domestic Relations, Title XLIII, Chapter 458§17). The state of Maine derives child support awards using a combination of total parent income and a schedule that estimates the cost of raising a child in that state (Maine Domestic Relations Title 19-A, Chapter 63§2006). For example, consider a divorced family with two children and a combined parent income of \$53,000 (\$23,000 = mother income and \$30,000 = father income). In the state of New Hampshire, the father would pay \$851 a month, however, in the state of Maine, a father would pay only \$498. The difference in these guidelines is consistent with the results of this study.

There are several limitations of this study. First, the comparison state (Maine) has a high rate of joint legal custody (almost 90%). Although other scholars have stated that joint legal custody is a standard arrangement throughout the country, there may be regional pockets where this is untrue. It is possible that if father involvement in New Hampshire

were compared with more conservative regions, one might find that the law is more effective than I found in this study. Second, this study did not collect data from mothers, who might argue that the presumption law does affect father involvement. Third, this study did not utilize a pre- and post-study design that would be most effective in the study of this family policy; and, finally, I did not examine the adjustment of children, who should comprise the true target population of any presumption law. Future researchers may want to utilize another study design for examining the effectiveness of presumption laws, as well as collect data from mothers and children to gain a more comprehensive understanding of the outcomes of presumption laws.

While in this study I found no difference in the levels of involvement between fathers who live in a state with a presumption for joint legal custody and fathers who live in a state without a presumption for joint legal custody, I am reluctant to recommend the abolishment of such laws or to discourage policy-makers from proposing laws that would mandate such a presumption. More research, using well-controlled designs, are greatly needed before reliable recommendations can be made to other researchers, policy-makers and practitioners.

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