
**California Family Court Services Snapshot Study
Report 5**

California Family Court Services Mediation 1991

**Visitation with Children:
A Followup of
Court Mediation Clients**

November 1994



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1993

**California Family Court Services
Statewide Followup Study**

1991 Snapshot Study

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Report 5

Visitation with Children: A Followup of Court Mediation Clients

Public policy concerning child custody and visitation has far-reaching consequences for current and future generations. Recent census projections are that half of America's children will not grow up in a two-parent household. This dramatic demographic trend alone compels a careful examination of family law practices and their outcomes. The experiences of families that use California's family court system are the focus of an ongoing series of statistical reports issued by the Statewide Office of Family Court Services. This report describes a longitudinal study of formal and informal child custody provisions and the factors that influence them up to two years after court-based child custody mediation.

Most parents work out a custody and visitation parenting plan¹ without court intervention. For those who cannot, mandatory mediation, established in 1981, is prerequisite to judicial determination. Over the years, mounting numbers of families have used this service so that California now has the largest court-based child custody mediation program in the nation, serving 73,250 families in 1993 alone.

For many couples, court-based mediation produces a parenting plan. When mediation is not successful in resolving all issues, the next step for the family varies by local court rule. It could involve a child custody recommendation, evaluation, settlement conference, or formal hearing. Research is just beginning to contrast results of mediation and other custody determination procedures.

The first statewide representative statistics about the prevailing experiences of parents in court-based mediation were gathered in snapshot studies conducted in 1991 and 1993 by California's Statewide Office of Family Court Services. This report follows up mediation clients, whether they ultimately formed parenting plans using mediation or some other procedure, and inquires about the factors affecting the way parents divide time with children after a legal determination for child custody and visitation.

Time 1 data come from the 1991 Statewide Snapshot Study (hereafter called the Snapshot Study), a representative sample of 1,388 California families that used court-based mediation in 1991. The study covered 82 percent of all sessions conducted in court-based mediation programs across the state during the study period. Time 2 data are based on 1,069 families included in the Snapshot Study (77 percent) who went on to participate in the California Followup Study (hereafter called the Followup Study) completed in 1993.² Statistics in this report are based on families who use court-based mediation, regardless of whether the families established parenting plans in mediation or through some subsequent procedure. They do not apply to the wider population of families who establish parenting plans without court intervention.

¹This report uses the term "parenting plan" to refer to all agreements that parents make about responsibilities for child rearing, including custody, visitation, and decision making. The term excludes financial arrangements, such as child support transfers, because court-based mediation in California does not cover these matters.

²Complete details about the Followup research methods can be found in California Statewide Followup Study: Data Collection Methods (September 1994). Statewide Office of Family Court Services, Administrative Office of the Courts, San Francisco, California.

De Facto Time Allocation at Followup

The first chart shows how parents allocate overnight visits on a de facto basis at Time 2, regardless of the formal legal arrangements they have made for child custody and visitation.³ Results reveal a wide range of arrangements. Although a sizable portion of families have time-sharing schedules, it is more common for children to spend most of their time in one parental household.

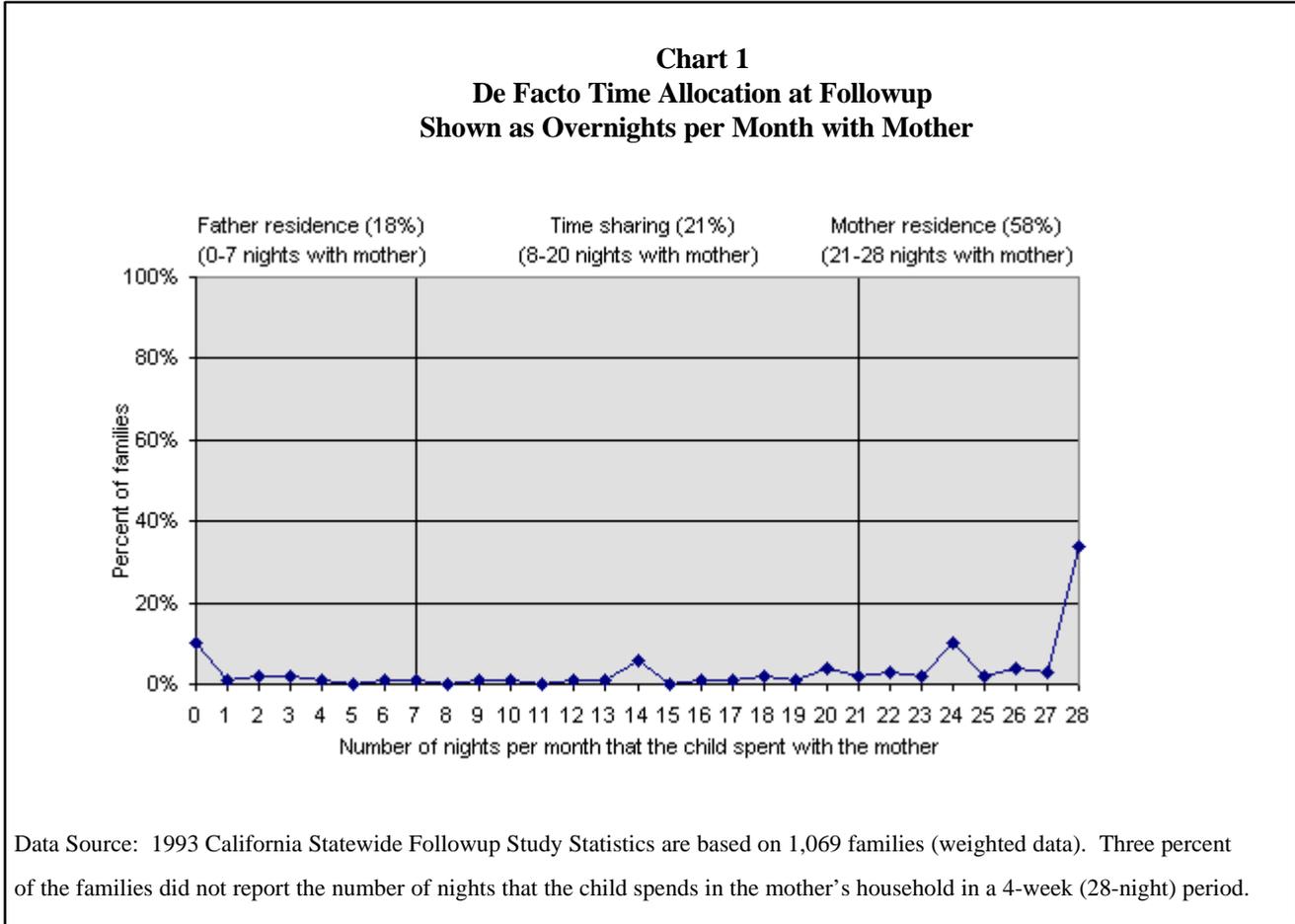


Chart 1 graphs the number of nights in the preceding month that children spent overnight in their mothers' households at Time 2.⁴ The 28 nights in the reporting period are displayed along the bottom of the chart; the graph shows the percentage of families that reported each number of overnights with the mother during the preceding four weeks. Following conventions established in previous research, the chart roughly divides the overnight visits into three

³Because findings can be biased when appropriate weight is not given to each family, statistics in this report correct for regional sampling and represent each family with one answer.

⁴For consistency with previous reports, the tables in this report follow the convention of showing the number of overnights that children sleep in their mothers' households. This reporting convention does not influence the statistical results. The number of overnights in the father's household can be derived by subtracting the number graphed from the 28 nights in the reporting period.

residential categories. Time divisions within the four-week period (28 nights) are classified as father residence (children spend 0-7 nights per month with their mothers), time sharing (8-20 nights with their mothers), and mother residence (21-28 nights with their mothers).

In about one family in five (21 percent), children have a substantial number of overnight visits in both parental homes (8-20 overnight visits with their mothers in the four-week period).

Fifty/fifty splits are, however, relatively rare, reported by only 4 percent of all Followup families at Time 2. Indeed, the flatness of the curve shows that the time-sharing category encompasses a wide range of schedules.

In three families in four (76 percent), children reside primarily with one parent. In more than half of the Followup families (58 percent), children spend most of their time with their mothers (21-28 nights per month); in nearly one family in five (18 percent), children reside primarily in their fathers' homes.

The peaks at each end of Chart 1 illustrate the high proportion of families in which children make no overnight visits. In one family in three (33 percent), children do not have overnight visits with their fathers. In one family in ten (11 percent), children have no overnight visits with their mothers.

Additional findings reveal considerable variation in parental responsibilities over time. Results not tabled show that more than half (57 percent) of the families make some informal modifications to the legal plan within the first year. By the two-year mark, 64 percent of the families do so. A smaller proportion of families return to court to petition for formal changes in visitation or custody. Within one year, 16 percent say that they have sought a formal modification. Up to two years later, 18 percent do so. Narrative responses to the Followup Study point out numerous factors that prompt modifications, ranging from changing family needs to failure of one or both parents to abide by the terms of the legal agreement.

To recap, examination of the way in which parents actually divide time following a legal custody determination reveals widespread variability in parenting plans over time. At Time 2, nearly two families in three (58 percent) follow what might be termed a "traditional" arrangement, with children spending most of their time with their mothers. The remaining third spends substantial, if not exclusive, time with their fathers. Are there distinctive features that distinguish families that move toward traditional arrangements from those that maintain or increase paternal contact with children? The remainder of this report tests some popular notions about the impact of family demographics, interpersonal relationships, and precursing arrangements.

Factors Associated with Mother Residence

Chart 2 gauges the impact of a list of factors that might be thought to affect the probability of mother residence. As shown in the bar at the top of the chart, 58 percent of all families in the Followup Study had a de facto mother residence arrangement. The remaining bars in the chart indicate whether the proportion increases or decreases under particular family circumstances. Each bar represents the proportion of mother residence within the subgroup of Followup families described in the text to its left. For example, the second bar shows the rate of mother residence for families with more than one child. By comparing the proportion of mother residence for all families (58 percent) with that for the subgroup, it is evident whether and how much de facto residence is affected by status on the variable that defines the subgroup. The size and direction of the difference is calculated in the column to the right of the graph. A "+" indicates that mother residence is more prevalent in the subgroup and a "-" indicates a lower rate for the subgroup.⁵

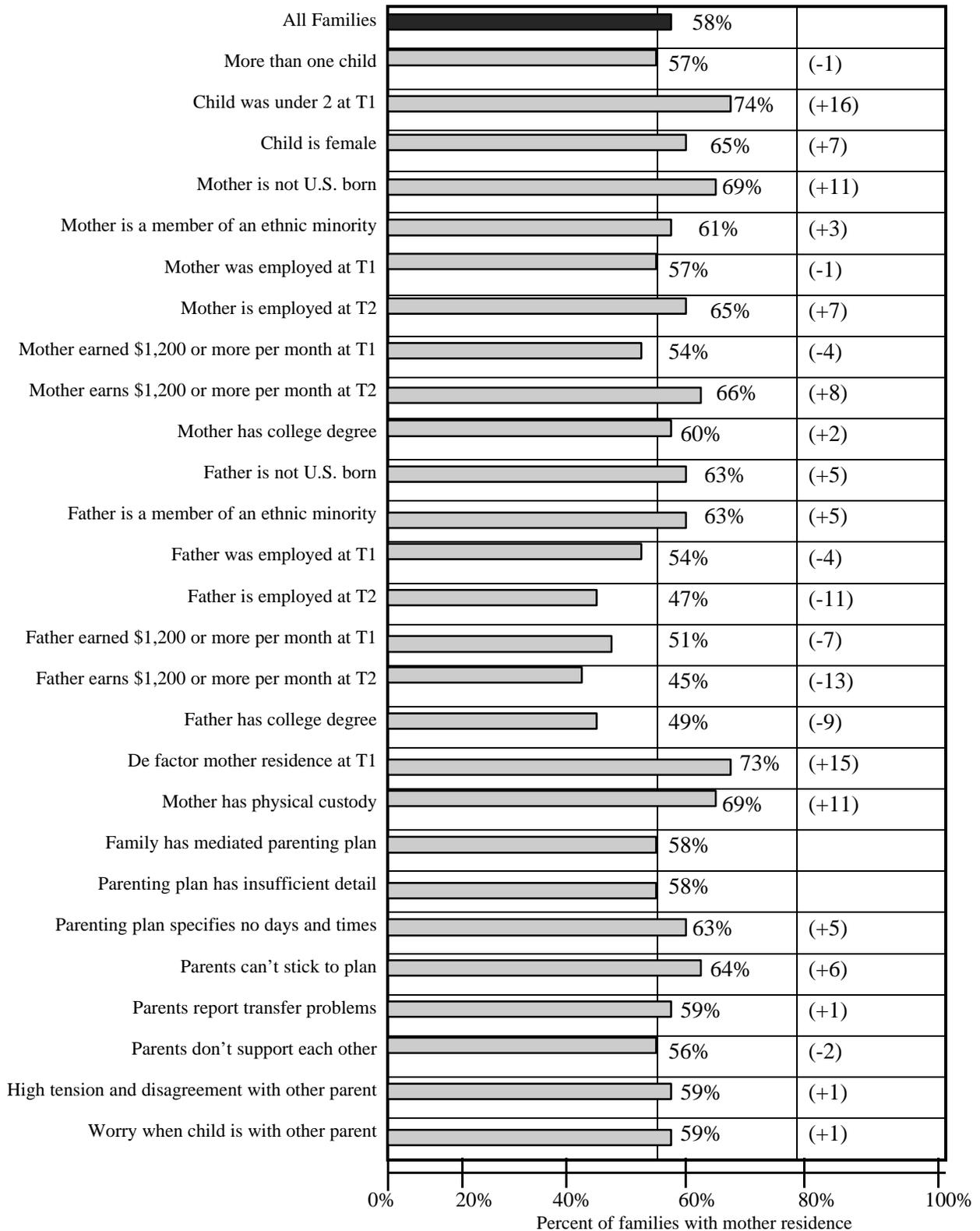
⁵The chart shows the impact of each factor taken individually. Although it is certainly possible that more than one of the factors may apply to any particular family, calculation of all possible joint probabilities is beyond the scope of this report.

Chart 2

Factors Affecting the Proportion of De Facto Mother Residence

(21-28 nights with Mother) at Followup

Difference from All Families



Data Source: 1993 California Statewide Followup Study Statistics are based on 1,069 families (weighted data).

For example, among families with more than one child, the rate of mother residence is 57 percent, one percentage point lower than that found for all families in the study. The similarity of the proportions in the subgroup and the full group supports the conclusion that family size does not have a major impact on de facto time allocation.

Characteristics of Children

Despite the negligible effect of family size, the findings show that children's age and sex do have some bearing on the number of overnights spent in each parental household. Mother residence at Followup is more common for children who were under two years of age at Time 1, when the formal terms of the parenting plans were established. Seventy-four percent of families that had children under two at Time 1 report mother residence at Time 2. Girls spend more overnights with their mothers than boys. The maternal residence rate for girls is 65 percent, as contrasted with 58 percent for the full sample.

Characteristics of Parents

Among the parental attributes measured in the study, the strongest determinants of mother residence are the cultural heritage of the mother and socioeconomic status of the father.

Characteristics of mothers

For mothers born outside the United States, the proportion of mother residence rises to 69 percent. If the mother belongs to an ethnic minority, the rate of mother residence is slightly higher than that for all families, at 61 percent.

Although the de facto time distribution at Followup is more strongly related to mothers' concurrent rather than antecedent socioeconomic status, none of these relationships reach the level of statistical significance. The proportion of mother residence is 57 percent among mothers working outside the home at Time 1 and 65 percent among those employed at Time 2. It is 54 percent among mothers earning \$1,200 or more per month at Time 1, and 66 percent at Time 2. Mother residence is 60 percent among mothers with a college education.

Characteristics of fathers.

The father's country of birth and ethnicity are related to de facto time distribution at Time 2, although the impact is not as strong as that found for mothers. For families with fathers born outside the United States, the rate of mother residence rate is 63 percent. For families in which the father is from an ethnic minority, the rate of mother residence is also 63 percent.

Employment and income status of fathers have increasing impact on the de facto allocation as time goes on. Mother residence at Time 2 is less common among families in which fathers are employed and earning incomes relatively higher than other family court clients. Mother residence is 54 percent among families with fathers employed at Time 1 and 47 percent among families with fathers employed at Time 2. Put another way, employment elevates the chances that fathers will spend considerable time with their children, particularly as time passes. In families in which fathers earn \$1,200 per month or more at Time 1, the rate of mother residence drops to 51 percent. If fathers earn more than \$1,200 per month at Time 2, the rate decreases further to 45 percent. Mother residence is also less common (49 percent) among families in which the father holds a college degree.

Previous De Facto Arrangements

How does visitation at Followup conform with previous arrangements of these families? The next bar in Chart 2 shows the proportion of families with mother residence at Time 2 among those who had a mother residence arrangement prior to their contact with mediation services in 1991. For the 1991 Snapshot Study, parents described their de facto time allocation—the number of overnights that children spent with each parent prior to formation of a formal visitation agreement. Pre-mediation de facto arrangements are among the strongest indicators of the de facto

arrangement at Time 2. Seventy-three percent of the families with de facto mother residence at Time 1 maintain a de facto mother residence arrangement at Time 2.⁶

Legal Terms in the Custody Agreement

Legal specifications in the court record formally establish the residence (officially termed physical custody) and decision-making responsibility (officially termed legal custody) for the child. There is a mounting body of evidence that the formal legal terms for custody often are not indicative of the way in which a family will ultimately allocate time with children on a de facto basis. Indeed, results from the Snapshot Study reveal considerable discrepancy at onset between the formal custody label and the formal agreement for time allocation.⁷ Even so, it is argued that the de jure custody label has substantial symbolic significance, particularly as it defines the intended role of the father in the life of the child; findings from this investigation support such an expressive role of the formal custody label.

The full breakdown of legal terms for custody arrangements is detailed in Chart 3. Parents in 91 percent of the Followup families reported their de jure agreements for physical and legal custody of their children. In nearly half of the families (49 percent), the legal terms of the agreement designate the mother as the custodial parent. In about one family in three (35 percent), the mother has physical and legal custody. In an additional 14 percent of the families, mother retains physical custody with joint legal custody. In 12 percent of the agreements, the father has physical custody. About one quarter of the families (24 percent) have joint physical and legal custody. Six percent of the families have some other combination of legal labels.⁸

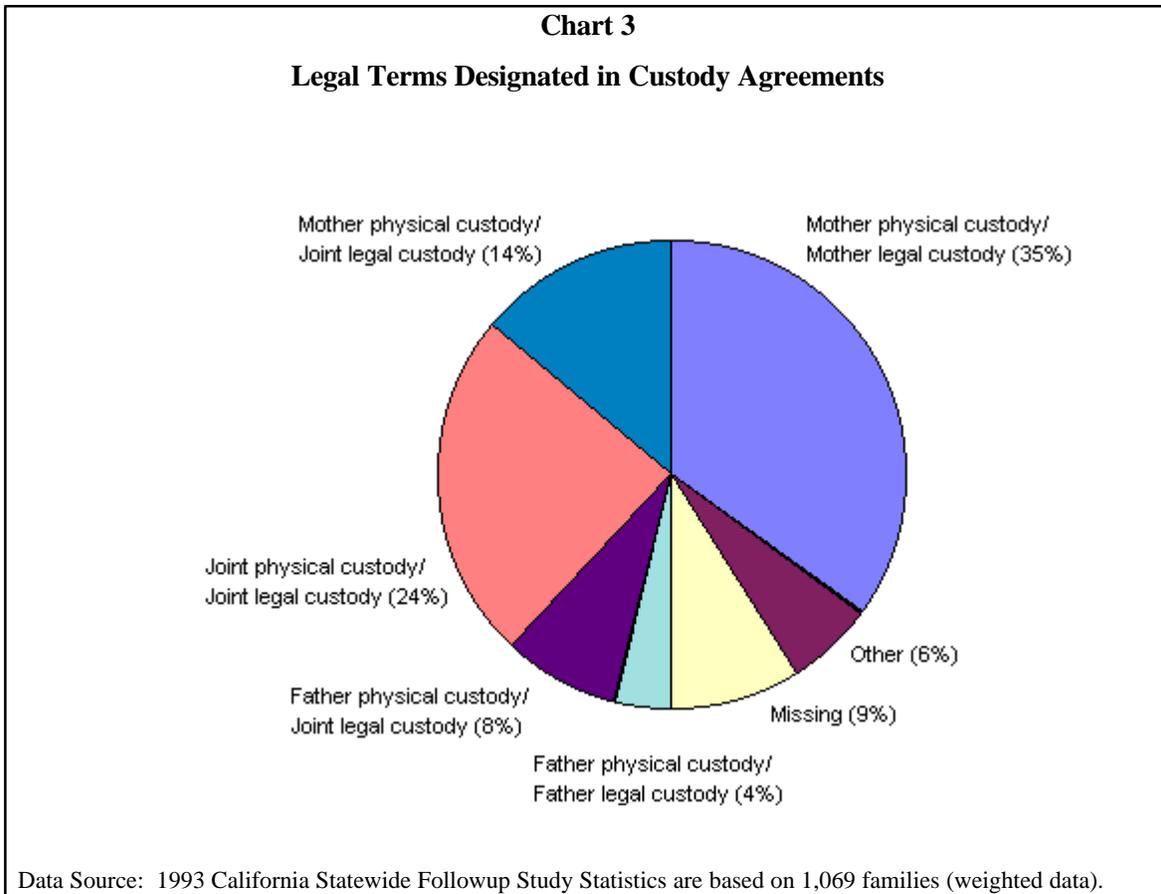
⁶Prior to mediation, children in 49 percent of the Followup families were spending most of their nights with their mothers, 17 percent were spending most nights with their fathers, and 20 percent were spending substantial time in each household. (Fourteen percent of the families did not provide information about overnight visits.)

The same breakdown for all families included in the 1991 Snapshot Study was 48 percent mother residence, 14 percent father residence, and 16 percent time sharing. Twenty-two percent of the families did not provide information about overnight visits.

⁷The gap is usually attributed to family changes over time or noncompliance with agreements. However, previous research on this sample shows that, at the onset of the legal agreement, families differ in their practical interpretations of legal terms. For example, only about half (49 percent) of the families who reached a mediated agreement with the legal label “joint physical custody” also agreed to substantial time sharing (defined as 8-20 nights per month in the mother’s household).

For more details on this line of research, the reader is referred to *Report 4: Mediated Agreements on Child Custody and Visitation* (May 1994). Statewide Office of Family Court Services, Administrative Office of the Courts, San Francisco, California.

⁸At the conclusion of the Snapshot Study, 55 percent of the sample had reached a custody agreement in mediation. The remaining 45 percent either did not yet have an agreement or had established an agreement prior to mediation and were using the service to work out a different component of their parenting plan. The 55 percent of families with mediated agreements broke down as follows: 5 percent of the sample assigned both physical and legal custody to the mother; in 27 percent of the families, the mother retained physical custody with joint legal custody; 4 percent of the arrangements, the father had physical custody. Fifteen percent of the families had joint physical and legal custody. Four percent of the arrangements were some other combination. These results are provisional, since some of the unresolved 45 percent reached agreement in further mediation and some of the mediated agreements reported in the Snapshot Study could have been revised prior to final judgment and/or formally modified after judgment.



Although physical custody is unlikely to be a precise indicator of time distribution in the family, it appears to have sufficient symbolic significance to influence de facto arrangements at Time 2. In families in which the legal terms of the agreement designate the mother as the custodial parent, 69 percent have a de facto division of time that would be labeled “mother residence” (21-28 overnights with the mother). Although the legal terms for physical custody do not perfectly predict later de facto circumstances, mother physical custody does increase the likelihood that children will spend most or all of their overnight time with mothers after the legal judgment is entered.

Formation of the Parenting Plan

A common stereotype links mediation with time-sharing arrangements. Results of this study find no evidence to support this assumption. De facto mother residence at Time 2 is equally likely in families with mediated parenting plans as it is among families that established their plans using other methods.

The findings do reveal some association between the specificity of the parenting plan and later de facto time allocation. It has been suggested that parents revert to sole residence if formal legal terms are so vague that the arrangements must continually be renegotiated. Results suggest that formal specification of a schedule may play a key role in maintaining time-sharing plans. Parents reported whether they found their parenting plans sufficiently detailed, but this subjective perception was not related to Time 2 de facto arrangements. Instead, mother residence at Time 2 increased when the plan did not set down precise days and times that the child would spend with each parent.

Implementation of the Parenting Plan

Do parents revert to traditional mother residence arrangements if they experience difficulties with the implementation of the parenting plan? The research shows that mother residence is no less problematic than other

arrangements. Instead, the data suggest that difficulties in the implementation of parenting plans are reported by many families, regardless of their time allocation. Forty-six percent of the Followup families reported that they encountered problems sticking to their visitation schedules. Mother residence is more common (64 percent) among those who do report problems. Over one family in three (37 percent) reported that picking up and dropping off the children did not work out smoothly; but transfer problems did not forecast mother residence at Time 2. The rate is 59 percent for those who experience them.

The Relationship Between Parents

De facto time allocation is not strongly influenced by the quality of the relationship between parents. In half of the families, mothers and fathers reported that the other parent did not support their relationship with the children. The rate of mother residence is not markedly different among those who feel unsupported (56 percent). Parents in six families in ten rated their level of tension or disagreement at 7 or higher on a 10-point scale. The level of conflict does not influence the way in which parents divide time with their children. Parents in over a quarter of the families (29 percent) said that they worried about their children when they were with the other parent; but such concerns did not increase the likelihood of a mother residence arrangement.



Conclusions

The purpose of this report was to describe formal and informal child custody provisions and the factors that influence them up to two years after families use court-based child custody mediation. Child custody standards remain controversial and are frequently challenged. The research reported here was designed to inform the debate with statewide statistics. The findings apply to families who use court-based mediation, regardless of whether they actually form parenting plans in mediation or some subsequent process. They do not apply to the broader spectrum of families who establish parenting plans without court intervention. No program of research should be considered definitive, but the statewide statistics in this report offer new insights and challenge old stereotypes.

Statewide results illustrate wide diversity in the allocation of parent time with children. Mother residence (defined as 21-28 overnights per month with mothers) is the most common de facto arrangement (58 percent of the Followup families), but unprecedented proportions of families (39 percent) allocate substantial time to fathers, with 21 percent in time-sharing arrangements (8-20 nights per month with mother) and 18 percent in father residence (0-7 overnights with mother).

The findings also underscore the fact that visitation and residence arrangements are not static. Many families undergo substantial informal change, even in the brief window of time covered by this research. Parents report difficulty sticking to visitation schedules; many make informal adjustments; some return to court for formal modifications.

Much remains to be learned about the determinants of family time allocation over time. This research identifies two likely catalysts for change: 1) family characteristics, and 2) trajectories set by previous formal and informal arrangements.

At Time 2, maternal residence is most likely when children are very young, when the father is unemployed or has relatively low financial resources, or when the mother was born outside the United States.

The impact of cultural heritage on family time allocation is especially noteworthy, given heightened attention to cultural diversity among family court clients. Unfortunately, the sample is not large enough for a more detailed breakdown of residential rates by ethnicity or country of origin. Further research should address the way in which cultural norms translate into allocation practices.

Preceding formal and informal arrangements influence, but do not perfectly predict, the de facto arrangement found at Time 2. Among families that had established a de facto mother residential pattern prior to the legal custody determination, mother residence is more common at Time 2 (73 percent). When the legal papers formally assign physical custody to the mother, de facto mother residence is more common at Time 2 (69 percent); but a sizable

proportion of families with mother physical custody allocate substantial time to the father on a de facto basis. This finding is consistent with a growing body of literature that illustrates substantial incongruity between formal and informal time allocation across the family life course.

The results of this research do not support the common stereotype that mediation induces time-sharing arrangements. Proportions of mother residence are equivalent when families with mediated agreements are compared with those who reached impasse in mediation and subsequently form parenting plans through other methods.

Another unfounded popular belief is that families revert to mother residence when they find other arrangements problematic. Logistical challenges (e.g., more children, problems picking up and dropping off children) do not move families toward mother residence. Instead, the data show that families with mother residence experience many of the same problems commonly attributed to less traditional arrangements.

According to statewide data, many families experience difficulties implementing the parenting plans that they originally establish, regardless of the way time is allocated in the plan. This illustrates the need for services designed to provide sufficient support for families to implement and maintain parenting plans that are formed in the best interests of their children.

Finally, the results indicate that the quality of the relationship between parents does not have much bearing on the way that they allocate time. The rate of mother residence is unaffected by whether parents support each other's relationship with the children; by whether there is a high level of tension or disagreement between parents; or whether mothers or fathers say that they worry about the children when they are with the other parent.

These findings prompt concerns about the potentially adverse effects of poor interparental relations on child adjustment and signal the need for services that support parents in establishing and maintaining good working relationships on behalf of their children. Public information and education are essential tools for attuning parent awareness to possible consequences for children and for bolstering parenting skills. The results also illustrate the need for more detailed information about links between parental relations and family outcomes. Forthcoming reports will focus specially on interpersonal conflict and family violence.

Taken together, the findings presented in this report underscore the unique concerns of each family that enters California's family court system. No one solution will fit such a wide range of circumstances. Particular attention needs to be paid to the needs, resources, and traditions of each family with awareness that initial formal and informal custody arrangements can establish powerful trajectories. Also evident from the results is the need for ongoing services to support parents through problematic parent-to-parent relations and difficulties in implementing agreements in their court orders.