

Sixteen Arguments in Support of Co-Parenting By: Dr. Edward Kruk

What the Latest Research is Saying about the Best Interests of Children

I have long maintained that a more child-focused approach to resolving parenting disputes after separation and divorce is needed to reduce harm to children and ensure their well-being. Usually, when parents cannot agree on parenting matters, they take their case to a judge for a resolution. The court then applies a "best interests of the child" standard in its decision-making in regard to kids' future living arrangements. The problem is, however, that this standard is extremely vague and indeterminate, based on projective speculation about which parent might in future be the "better" parent, and thus subject to judicial bias and error. Judges not trained in child development and family dynamics are given unfettered discretion, and this results in unpredictable outcomes based on idiosyncratic biases and subjective value judgments.

Our current system of resolving child custody disputes rarely considers either children's needs from children's own perspective, or current research on child custody outcomes. What is needed is a new standard, a "best interests of the child from the perspective of the child" standard, and an approach to child custody determination that is built on a strong foundation of empirical research.

My recent article in the American Journal of Family Therapy, "Arguments for an Equal Parental Responsibility Presumption in Contested Child Custody," outlines sixteen distinct arguments in support of a shared parental responsibility presumption in contested child custody, which are presented from a child-focused perspective, with clinical and empirical evidence in support of each argument contrasted to the conflicting evidence. The shared parental responsibility alternative addresses the problems associated with judicial bias and error. The sixteen arguments are as follows:

1. Shared parenting preserves children's relationships with both parents
2. Shared parenting preserves parents' relationships with their children
3. Shared parenting decreases parental conflict and prevents family violence
4. Shared parenting reflects children's preferences and views about their needs and best interests
5. Shared parenting reflects parents' preferences and views about their children's needs and best interests
6. Shared parenting reflects child caregiving arrangements before divorce

7. Shared parenting enhances the quality of parent-child relationships
8. Shared parenting decreases parental focus on “mathematizing time” and reduces litigation
9. Shared parenting provides an incentive for inter-parental negotiation, mediation and the development of parenting plans
10. Shared parenting provides a clear and consistent guideline for judicial decision-making
11. Shared parenting reduces the risk and incidence of parental alienation
12. Shared parenting enables enforcement of parenting orders, as parents are more likely to abide by an equal parental responsibility order
13. Shared parenting addresses social justice imperatives regarding protection of children’s rights
14. Shared parenting addresses social justice imperatives regarding parental authority, autonomy, equality, rights and responsibilities
15. The discretionary best interests of the child / sole custody model is not empirically supported
16. A rebuttable legal presumption of shared parenting responsibility is empirically supported

Many of these findings run counter to now-outdated research and prevailing practicewisdom in the field of divorce. However, there is an emergent consensus within the divorce research community that in the great majority of contested cases of child custody, where family violence is not a factor, children's needs and interests are best served by preserving meaningful relationships with both of their parents. Children need and want both parents in their lives, beyond the constraints of "visitation" relationships and "primary caregiver" arrangements. Shared parenting is a viable and desirable alternative in this regard, and “in the best interests of the child from the perspective of the child.”