

FLORIDA’S NEW SHARED PARENTING STATUTE:
WHAT PROFESSIONALS NEED TO KNOW

BENCH BOOK SUPPLEMENT

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This document was developed as a supplement to the Florida Chapter of the Association of Family & Conciliation Courts (FLAFCC) Parenting Plan Task Force monograph entitled “Florida’s New Shared Parenting Statute: What Professionals Need to Know.” This monograph incorporates the most current research to assist professionals in developing empirically-based parenting plans that take into consideration the best interests of children. The Parenting Plan Task Force developed an education curriculum and presentation materials to accompany the monograph and Bench Book. For additional information, please contact FLAFCC at www.flafcc.org. The FLAFCC Parenting Plan Task Force members include:

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INTRODUCTION

Education enhances the knowledge and skills of the judiciary and, therefore contributes to the administration of justice.¹ To further assist in the administration of justice, the Florida Chapter of the Association of Family & Conciliation Courts (FLAFCC) has developed a benchbook that addresses the issues involved with developing parenting plans. This Parenting Plan Benchbook was developed to assist both new and experience judges in Florida who are assigned family cases.

The Benchbook features:

- Charts
- Checklists
- Reasons and rationale: Florida Statute Chapter 61
- Articles and research to assist in constructing parenting plans
- Matters beyond those legally mandated
- Resources

Although the information encompassed in the book is extensive, it is not intended to be exhaustive. Therefore, all users are encouraged to continue learning and provide the highest level of information and efficiency due every party concerned.

BACKGROUND

The major child-rearing decisions that must be made at the time of dissolution of marriage have commonly been framed in terms of “custody” and “visitation.” These terms have often been criticized as unnecessarily negative and outdated. “Custody” implies a contest where one parent “wins” the children over the other. According to a revised Florida Statute Chapter 61, these words and others have now been replaced by those that do not discriminate or imply a presumption that one parent is favored over the other. Changes to Chapter 61 arose from the school of thought that each parent had rights and responsibilities. While addressing fairness to parent, the changes are also predicated on research that shows that children’s ability to maintain a meaningful relationship with each parent contributes to their successful development.

The Florida Chapter of the Association of Family & Conciliation Courts (FLAFCC) have made an effort to incorporate the most current research to assist professionals in the process of developing parenting plans that consider the most unique circumstance of each family. It is important to recognize that parents of children may have been married, cohabitated, or never lived together as a couple or family unit; thus, not all parents who create parenting plans do so in response to a divorce process. This document confines its information to parents who have divorced only when it is specifically limited to such in a particular study presented. While this document refers to “parents and their children,” it is meant to reference both parents and other guardians who are in the process of creating parenting plans.

It is also important to emphasize that there is no one-size-fits-all approach to parenting plan development, and it is up to both parents and their assisting professionals to appreciate each family’s unique needs and requirements. The plan must further take into consideration numerous other ethnic, cultural and religious differences, although not explored here, are crucial nevertheless.

¹ In 2003 the Office of Court Improvement developed a Dependency Benchbook, which began its introduction with the same sentence.

QUICK COMPARISON

OLD LAW	NEW LAW
Shared parental responsibility is the usual standard.	Shared parental responsibility is the usual standard.
Sole custody only when shared parental responsibility is detrimental to the children	Sole custody only when shared parental responsibility is detrimental to the children
The best interest of the children is most important.	The best interest of the children is most important.
A primary (residential) and secondary (nonresidential) parent is usually designated.	No parental designation.
The parent where the children lived most of the time is referred to as the “primary” parent and the other parent is referred to as the “secondary” parent.	Parents are referred to as “mother” and “father”
The primary parent had “custody” of the children	The term “custody” is no longer used.
The secondary parent “visited” with the children.	The term “visitation” is no longer used and the term is now “time-sharing.”
General visitation agreements are okay. (Example: reasonable and liberal visitation)	General visitation agreements are not okay and a specific time-sharing plan is required.
When determining a custody plan the court considered the following factors:	When determining a parenting plan the court considers the following factors:
The parent who is more likely to allow the children frequent and continuing contact with the nonresidential parent.	The demonstrated capacity and disposition of each parent to facilitate and encourage close and continuing parent-children relationships, to honor the time-sharing schedule and to be reasonable when changes are required.
The love, affection, and other emotional ties existing between the parents and children.	The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be designated third parties.
The capacity and disposition of the parents to provide the children with food, clothing, medical care or other remedial care and other material needs.	The demonstrated capacity and disposition of each parent to determine consider and act upon the needs of the children as opposed to the needs or desires of the parent.
The length of time the children have lived in a stable, satisfactory environment and the desirability of maintaining continuity.	The length of time the children have lived in a stable, satisfactory environment and the desirability of maintaining continuity.
The permanence, as a family unit, of the existing or proposed custodial home.	The geographic viability of the parenting plan, w/special attention paid to the needs of school-aged children and the amount of time being spent traveling to effectuate the parenting plan. This factor does not create a presumption for or against relocation of either parent with the

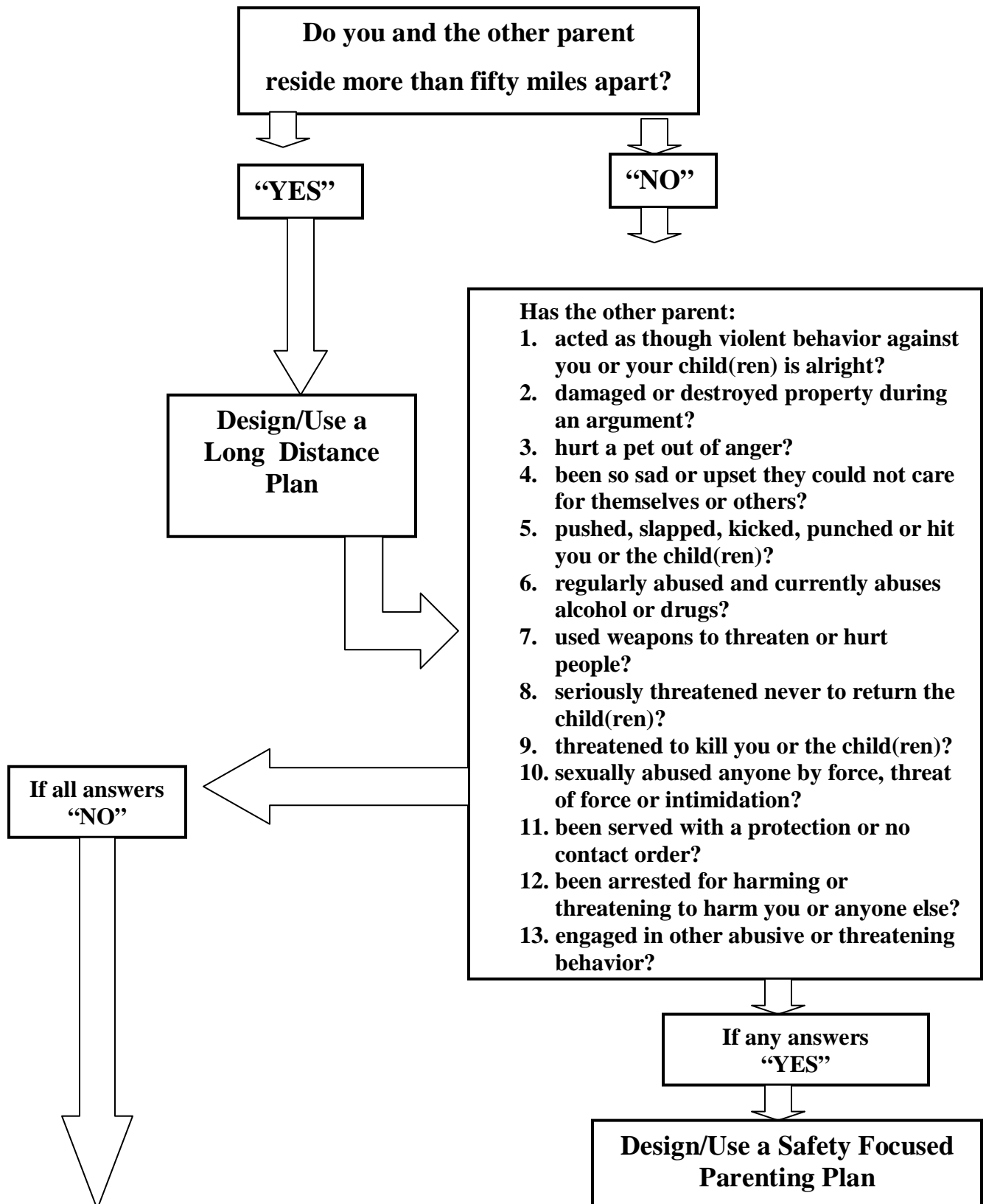
	children.
The moral fitness of the parents.	The moral fitness of the parents.
The mental and physical health of the parents.	The mental and physical health of the parents.
The home, school, and community record of the children.	The home, school, and community record of the children.
The reasonable preference of the children, if the court finds the children to be of sufficient intelligence, understanding, and experience to express a preference.	The reasonable preference of the children if the court deems the children to be of sufficient intelligence, understanding, and experience to express a preference.
The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the children and the other parent.	The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor children, including, but not limited to, the children’s friends, teachers, medical care providers, daily activities, and favorite things.
Evidence that any party has knowingly provided false information to the court regarding a domestic violence proceeding pursuant to s. 741.30.	The demonstrated capacity and disposition of each parent to provide a consistent routine for the children, such as discipline, and daily schedules for homework, meals, and bedtime.
Evidence of domestic violence or child abuse.	The demonstrated capacity of each parent to communicate with and keep the other parent informed of issues and activities regarding the minor children, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
Any other factor considered by the court to be relevant.	Evidence of domestic or sexual violence, child abuse, child abandonment or neglect, regardless of whether a prior or pending action relating to those issues has been brought. Evidence that either parent has knowingly provided the court with false information regarding any prior or pending action regarding domestic or sexual violence, or child abuse, neglect, or abandonment.
	The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during the pending litigation, including how much of these responsibilities were undertaken by third parties.
	The demonstrated capacity and disposition of each parent to participate and be involved in the child’s school and extracurricular activities.
	The demonstrated capacity and disposition of each parent to maintain an environment for the child that is free from substance abuse.

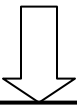
The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media with related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

The developmental stages and needs of the child & the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

QUICK VIEW FLOW CHART: WHAT TYPE OF PARENTING PLAN IS RIGHT?





1. **I only communicate with my child(ren)'s other parent by: using email; certified U.S. mail; a third party (lawyer, relative, faith based professional etc.); our child(ren).** (Please don't answer yes if this is caused solely by living far apart).
2. **I do not believe my child(ren)'s other parent is a good parent.**
3. **I do not trust my child(ren)'s other parent to consistently use good judgment and make good decisions regarding our child.**
4. **I keep written and/or recorded records of all contact between myself and my child(ren)'s other parent.**
5. **I feel it is okay to make all major decisions about my child(ren) without consulting the other parent, because I have our child(ren)'s best interest at heart.**
6. **My child(ren)'s other parent and I can only exchange our child(ren): in a public setting; with an adult third party present; with the police present; and/or, by maintaining a safe physical distance.**
7. **Because of my child(ren)'s other parent's actions, I have serious concerns regarding our child(ren)'s emotional and psychological functioning; peer or social relations; mother/child(ren) relationship; father/child(ren) relationship; school performance; behavior; and/or physical health.**

**If all answers
"NO"**

**Design/Use a Basic Parenting
Plan.**

**If any answers
"YES"**

**Design/Use a Highly Structure
Parenting Plan**

QUICK NOTES: EMPIRICAL RESEARCH

Understanding what social science does and does not yet know about the impact of sharing arrangements best serves children's long-term interests and most responsibly supports parents as they endeavor to make parenting decisions on behalf of their children. By appreciating their own greater expertise in crafting sharing plans, vis-à-vis the state of the art in our scientific understanding about the impact of them, parents might be more sufficiently motivated to work in tandem. Empirically based research in this area at present is limited, helpful but incomplete. Our understanding remains a "best guess" that primarily is driven by worst case outcomes.

- There is no one-size-fits-all parenting plan.
- We must remain cognizant of these research limitations.
- Each child's temperament and capacities must be carefully considered when developing sharing plans.
- It is not the amount of time children spend with a parent, but the quality of interactions accompanying longer contacts that strengthen the relationship.
- Pros and cons should be weighed, with attachment behaviors representing only one potent variable.
- The quality of family relationships - especially negative changes in parent-child relationships, as well as conflict between parents - represent strong predictors of diverse problem behaviors in children.
- The problems that exist within the parent-child relationship are powerful predictors of children's adjustment.
- Young children experiencing overnights with both parents evidenced fewer social problems as reported by both mothers and fathers, as well as fewer attentional and thought problems according to their mothers.
- Children with inconsistent schedules have more problems.

QUICK NOTES: EMPIRICALLY BASED PARENTING PLANS

Parents typically are the best “experts” to create time-sharing plans for their children. Concepts that will help support children of divorce when developing parenting plans include:

- Reduce conflict between parents.
- Increase reliable, positive means of communication between parents.
- Enhance the relationships between the children and both parents.
- Base time-sharing plans on concepts supported by research.
- Consider the developmental needs and temperamental sensitivities of the children.
- Identify parental strengths and how each parent can best participate in each child’s life.
- In general, from birth to age 3, contact should be established in a predictable routine; gaps of separation from either parent should be limited to no more than 2-3 days, if at all possible.
- From age 3 to five, children can tolerate expanded periods of separation from each parent, but thrive with continued, regular positive contact with both parents.
- Once starting school, children prosper if parents maintain high-quality involvement that mirrors that of peers who live with both parents; diverse time-sharing plans are appropriate.
- If parents are unable to reestablish direct and constructive communication with each other, children can continue to do well as long as interparental conflict remains negligible. Additionally, the time-sharing routine that is adopted and reliably followed should support meaningful contact between the children and each parent.

QUICK NOTES: PARENTING PLANS AND ADOLESCENTS

Adolescents (13-18 years old) do not exhibit typical reactions to divorce that younger children experience due to what is going on developmentally. During adolescence many changes are occurring at once -changes in their bodies, changes in their concepts of themselves and their future, and changes in their relationships with their parents. Other developmental milestones to be met are emotional and moral development. Although teenagers are determined to become independent of their parents at this stage, they are still very much aware of how much they need their parents for support.

Adolescents' feelings towards the divorce may include:

- Anxiety about the financial situation of the family and how this will affect them and their future plans
- They may feel that the parent that moved away does not love them
- They may feel rejected or neglected by one or both parents
- They may feel confused and burdened by the parents' neediness
- They may resent one or both parents for messing up their lives
- They may feel embarrassed or ashamed about the divorce
- They may feel sad, depressed, and angry

Adolescents do not exhibit typical reactions to divorce that younger children experience due to what is going on developmentally. Some adverse reactions to divorce include:

- Withdrawal from social activities
- Poor academic performance, behavioral problems at school, truancy
- Increased aggression
- Delinquent behavior-run ins with the police
- Increased sexual behavior
- Negative attitude towards parents
- Negative view towards romantic relationships and the concept of marriage
- Substance abuse
- Leaving home earlier than planned

Factors to consider regarding time-sharing with adolescents:

- Cooperative parenting is essential for this age group and putting the children's needs above the parents' needs helps maintain a close parent-child relationship. The more conflict between the parents, the more social dysfunction that adolescents may experience.
- Adolescents have their own activities and social lives and therefore need flexible schedules for sharing time with their parents. It is important for adolescents to have a balance that allows them to have plenty of time to do the things that matter to them, but to also share quality time with each parent.

QUICK NOTES: RELOCATION & PARENTING PLANS

The risks for children whose parents are separated or divorced when one parent relocates are greater than for children who move to new locations together with both parents. According to risk factors identified by the Relocation Risk Assessment (Austin, William. Relocation, Research, and Forensic Evaluation: Part II: Research in Support of the Relocation Risk Assessment Model, Family Court Review, Vol. 46 No. 2, April 2008 347-365) and others, parenting plans should take into account:

Geographical distance and travel time

- Provide for transfer method (car, bus, train, plane) and financial responsibility for such.
- Consider parents meeting halfway for exchanges.
- Include names of others permitted to travel with the children to ease the burden of the parents.
- If transportation is by plane, include arrangements regarding unaccompanied minors.
- Provide for ease of the transfers to encourage the continued availability of the distanced parent.

Psychological stability of the relocating parent and parenting effectiveness of both parents

- Provide resources for counseling of parents directly in the parenting plan.
- Provide resources for parenting classes to both parents.
- Incorporate provisions for children's supervision when parents are not available such as: day care, after school care and other activities, and transportation to and from these activities.

Child's unique needs/Differences in the children's temperaments/Special developmental needs

- Ensure familiarity of space, objects and activities in new location.
- Provide time for children to keep in touch with and visit old friends and family members.
- Ensure substantial time for siblings, if separated, as well as for children with distanced parent.
- Be aware that siblings do not have the same needs and temperaments, and plan accordingly.
- Build in availability of social resources: ways for children to meet others in the new area.
- Include a provision for continuity of care, for physical, psychological, and academic purposes.
- Provide for children with special needs, and require specific adjustment strategies which are recommended by their pediatricians, therapists, and other treating professionals.
- Counseling for parent moving and children in new location may be indicated.
- Exchange of information from the new professionals is crucial.

Involvement by parent left behind/Parental communication process

- Improve visibility between distanced parents and children (i.e. Web cam, photos).
- Ensure that both parents have adequate information from school, including school records as well as contact with teachers, coaches, etc.
- Include the mechanism for information exchange (i.e. self addressed stamped envelopes to teachers; inclusion by conference call/speaker phone in teacher's meetings, id number to obtain school information regarding the children if posted on the internet).
- Take into account ongoing ways for the distanced parent to participate with the children and in children's activities in order to secure greater involvement of the parent left behind.

- Include ways for distanced parents to be involved by exchanging information regarding the children's social activities, friends and neighbors.
- Update parents regarding milestones, academics and activities of children.
- Provide for parent calls at established times to exchange and review information.
- Provide for parental communication process: email/ourfamilywizard.com exchanges of information between calls; text messages, if information arises of timely nature and requires an immediate response or decision.
- Send photos of children's environment, etc.
- Keep distanced parent involved in school and medical situations as children's advocate.
- Include a list of acceptable babysitters: relative/non-relative, how old/experienced, who can transport, emergency situations, at what age sibling sitting is acceptable and when each child can care for self.

Gatekeeping and support for the other parent-child relationship

- Include ways to foster the relationship between the children and the distanced parent.
- Have photos of the children with distanced parent visibly accessible to children.
- Setting of daily private (or un-interfered with, depending on age of child) calls between the children and the distanced parent.
- Provide for ongoing contact with relatives and friends left behind.
- Plan for electronic contact (email, web cam) between children.
- Include that neither parent will refer to anyone else as children's mother or father.

Safety considerations/Interparental conflict and domestic violence

- Put the issue of domestic violence, partner intimidation and abuse in context: if the violence is historical only, without residual pathological behaviors, and there has been a stable parenting plan in place for a long time, then its relevance to the relocation issue may be limited. With history, relocation might be considered as protective gatekeeping or to have a rational basis which is part of the safety plan (Austin & Drozd, 2006).
- If domestic violence or abuse is a concern, shield information regarding children's actual new location, or keep information from the distanced parent which might identify children's new location, such as school/day care.
- Provide for transfers at neutral locations that do not allow for parents to have any visible or audible contact, and include acceptable transfer agents and liaisons to assist in the transfer of information so that the children are not put in the middle.
- Above all, the parenting plan must ensure that both parents adhere to Injunctions for Protection or Stay Away Orders.

Recentness of the separation/divorce

- Include provisions for changes according to the developmental needs of the children, taking into account the recentness of the parents' separation or divorce.
- Allow flexibility to modify time-sharing arrangements that preclude important activities, participation in team sports, etc.

- Include ways to resolve these issues less adversarily, such as counseling, mediation, or parenting coordination, before resorting to court as an option.

QUICK NOTES: EMPIRICALLY BASED HIGHLY STRUCTURED PARENTING PLANS

Amato and Keith's (1991a) analysis of 31 studies challenged the argument that parental divorce presents few problems for children's long-term development, and concluded that children are often negatively affected by parental divorce in the following areas:

- Psychological well-being (depression, low life satisfaction)
- Family well-being (low-marital quality and divorce as adults)
- Socio-economic well-being (low educational attainment, income and occupational prestige)
- Physical health

In a second meta-analysis of 92 studies, Amato and Keith (1991b) concluded that parental divorce appears to be detrimental to the well-being of children in the following areas:

- Academic achievement
- Social conduct
- Psychological adjustment
- Self-concept
- Social adjustment
- Mother-child relations
- Father-child relations

In another meta-analysis of divorce studies, Amato (1994) concludes that children from divorced families exhibit:

- More behavioral difficulties
- More symptoms of psychological maladjustment
- Lower academic achievement
- More social difficulties
- Poorer self-concepts

QUICK NOTES: EMPIRICALLY BASED SAFETY FOCUSED PARENTING PLAN FACTORS

There are special considerations when developing and implementing parenting plans for families who have a history of domestic violence. The most important consideration is safety. The most dangerous time for victims of domestic violence and their children is at the time of separation, and violence often escalates following a divorce. Therefore, it is critical to understand the potential safety issues and, if necessary, develop a safety-focused parenting plan.

Researchers recommend that safety-focused parenting plans, in the context of domestic violence, address five guiding principles as prioritized below:

1. **Protect children directly from violent, abusive, and neglectful environments**
2. **Provide for the safety and support the well-being of parents who are victims of abuse (with the assumption that they will then be better able to protect their children)**
3. **Respect and empower victim parents to make their own decisions and direct their own lives (thereby recognizing the state's limitations in the role of loco parentis)**
4. **Hold perpetrators accountable for their past and future actions (i.e., in the context of family proceedings, have them acknowledge the problem and take measures to correct abusive behavior)**
5. **Allow and promote the least restrictive plan for parent-child access that benefits the children, along with parents' reciprocal rights.**

Peter G. Jaffe, Janet R. Johnston, Claire V. Crooks, and Nicholas Bala, Custody Disputes Involving allegations of Domestic Violence: Toward a Differentiated Approach to Parenting Plans, Family Court Review, July 2008.

Based on these guiding principles, safety-focused parenting plans where there is domestic violence should include, at a minimum, provisions that address the need for:

Restrictions on parenting time for the perpetrator

- No parenting time for the perpetrator
- Supervised parenting time, either at a supervised visitation center or with a supervisor designated by the court or the parties
- Unsupervised parenting time but no overnights
- Limitations on a parent's travel with the children during time-sharing, including out of state and foreign travel
- Limitations on the time and manner of communication between the perpetrator and the children

Safety precautions to protect the victim and the children

- Supervised exchange for time-sharing

- No firearms in the home, car or in the presence of the children
- Restrictions on the use of alcohol or drugs (legal or illegal) prior to time-sharing
- Restrictions on a parent's participation in school or extra-curricular activities
- No physical discipline of the children
- Designation of certain persons who may not be present during a parent's time-sharing
- Restrictions on access to certain records of the children

Structured decision making and communication between the parents

- Provide for parallel parenting, rather than cooperative parenting
- Restrictions on communications between the parents, ranging from no communication to communication via particular means only, such as telephone, email and/or through a designated third party
- Designations of the parent who shall accompany the children to medical or other appointments
- Designations of the parent who shall make key decisions relating to the children, such as education, religion and health
- Time-sharing schedules for birthdays, holidays, and summer break