

Overnight Visitation for Infants and Toddlers: Implications for Parenting Plans

One of the most contentious and controversial issues that arises in the context of the development of joint parenting plans is that of overnight visitation for infants and toddlers. Input to the court on this issue from custody evaluators, visitation coordinators, and guardians ad litem varies widely depending on their individual views of the available research as well as their personal views regarding child development. Some state that there should be no overnight visitation between the noncustodial or less-seen parent until the child is at least three years of age. Others believe that relatively frequent overnight visitation with the less-seen parent or even joint custody is perfectly appropriate and even beneficial for the child. Still others appear to “split the difference” and advocate for one or two overnights per week in this situation, trying to strike a balance between the other two positions.

This raises an important question: how is it that well-meaning and knowledgeable professionals, looking at much of the same data with a sincere wish to support the best interests of the child come to such different conclusions on the issue of overnight visits for infants and toddlers? This article will explore the history of this issue, provide an overview of the relevant literature, and provide some general recommendations for how to proceed in cases where infant and toddler overnight visitation is an issue before the court.

The History of the Issue

The issue of overnight visitation for infants and toddlers cannot be understood without placing the more general issue of child custody in historical context, since society's views of children and their place in families has evolved over time. Originally, children were considered the chattel property of their father, who could do with them as he pleased. The father could sell his children into slavery, force arranged marriages, and even kill them for disobedience.

This view of the prerogatives of fathers in relation to children is still seen today in certain areas of the Third World. Under these arrangements, mothers had no legal rights or recourse in relation to their children. A similar philosophy was seen in early English common law, where fathers also had a legal obligation to support and care for their children. In cases of divorce, mothers had little if any access to the family's children. However, at the beginning of the 19th century a partial shift occurred when jurists in America and Great Britain concluded that very young children needed the support of their mothers, who were considered to be better able to meet the needs of younger children than were fathers. One of the first to articulate this view, later referred to as the *tender years doctrine* was the British barrister Justice Thomas Noon Talfound. This doctrine as articulated by Talfound also directed that custody would revert to the father when they were seven years of age.¹ This idea that women are better able to parent small children has been very pervasive in Western culture from that time until the present, although not always in the same form.

American views on child-rearing and parental responsibilities were affected by the advent of the industrial revolution. The movement of large segments of the population from agrarian settings to cities with their opportunities for factory employment helped to shift the roles of fathers and mothers in family life. Fathers began to be absent from the family home for large portions of the day. Gould states that “this was the first time in history that family responsibilities were clearly divided into the role of ‘provider-wage earner’ for the father and ‘child caretaker-nurturer’ for the mother.”²

These developments contributed to a gradual erosion of the assumption of paternal custody. Additionally, psychoanalytic theories and early research on the importance of mother-infant attachment began to strengthen the preference of American courts for

placing children of divorce with their mothers. Drawing on psychoanalytic theory, Goldstein, Freud, and Solnit postulated that children have a “psychological parent” and that the relationship between the child and his parent is central to healthy development.³ Relationships with adults other than the psychological parent were deemed to be of minimal importance. These authors went so far as to state that for children under the age of two, a separation of as little as two days could cause permanent and irreversible psychological damage to the child. Because this relationship was so important, these authors urged the courts to give the psychological parent full legal and physical custody, including full control over any visitation with the other parent. These authors also argued that when a young child was placed with a surrogate parent for a year or more, the surrogate should automatically be considered the psychological parent of that child.

Despite the fact that this theory was not based on empirical research and it was ultimately shown that children form multiple attachments, the idea of the psychological parent has been extremely influential up to the present time. For example, in the case of *In re Marriage of Burgess*, the court was required to decide whether a mother was to be allowed to relocate and take her children with her, even though this would greatly reduce the father's access to the children.⁴ Judith Wallerstein, in an amica curiae brief, emphasized that the children's contact with their primary caretaker (in this case the mother) was far more important than their contact with their father. Additionally, Wallerstein argued that as long as there was some degree of contact between children and their father, the attenuation of the paternal relationship was not of great importance. Although her opinions were based on observational rather than empirical research with a self-referred sample, this approach to primary location was widely adopted and codified in many jurisdictions throughout

the United States.

In the 1970s, a countercurrent began to flow against the presumption of maternal custody of young children. With changing economic circumstances and the rise of feminism, increasing numbers of women began to move into the workforce. This had several effects. One of these was that the traditional father/provider-mother/nurturer roles began to blur and fathers began to take on more child-rearing duties. This led many jurisdictions to begin to consider the possibility of joint custody arrangements in which parents would split child care responsibilities and custodial time. At the same time, social scientists began to look at the role of the father and child development and discovered that increased father involvement with children post-divorce contributed to better outcomes for children across a wide range of psychosocial domains.⁵ In addition, father-absence emerged as a major correlate to a wide range of negative effects such as juvenile delinquency and academic underachievement.

As can be seen from the above review, decisions regarding overnight visitation for infants and toddlers now take place in the context of two diametrically opposed schools of thought. On the one hand, there is a long-term cultural assumption that young children belong with their mothers most of the time and that the disruption of this most important of relationships can have deleterious consequences for child development. On the other hand, most courts, mental health professionals, and guardians ad litem recognize that children develop multiple relationships and that high levels of father involvement in child-rearing help protect against many of the generally detrimental effects of divorce. Can these seemingly incompatible positions be reconciled, and what does this mean with regard to the feasibility or lack thereof of overnight visitation for toddlers and infants?

The Relevant Research: A Brief Review and Critique

There is an ongoing debate among social scientists who work in the area of child custody regarding the effects of overnight visitation for infants and toddlers. On one side of this debate are researchers and theorists who believe that overnight visitation with the less-seen parent should not be undertaken until the third year of a child's life.⁶ This

argument is rooted in attachment theory. An in-depth discussion of the tenets of attachment theory and the research on which it is based is beyond the scope of this article. Put briefly, attachment theory states that human infants have an innate instinct to seek proximity to an adult, particularly in times of stress or insecurity. If this relationship is consistent and the infant is well cared for, he or she will develop a pattern of interpersonal relations that reflect secure attachment. On the other hand, attachment theory states that if there are significant problems in this initial parent/infant relationship, the infant will develop one of a number of problematic interpersonal styles such as avoidant, disorganized, or ambivalent attachment. In severe cases of maltreatment or abuse, this can lead to a serious pattern of psychological/interpersonal problems which has been referred to as *reactive attachment disorder*.

Experts in child custody who support the avoidance of overnight visitation for infants and toddlers point to a number of studies that suggest higher levels of problematic attachment patterns and children who experience overnight visitation with the less-seen parent. These arguments are most notably put forward by Judith Solomon and Zeynep Biringen.⁷ They note that preliminary research on a group of 12-18 month-old children who spend overnights with their less-seen fathers demonstrated that they were more likely to show signs of disorganized or unclassifiable attachment than those who did not have overnight visitation. These authors also point out that while problematic patterns of attachment were observed more frequently in children experiencing overnight visitation, the presence or absence of such visits did not have any measurable effect on the children's attachment to their fathers. They acknowledge that there is little empirical evidence suggesting negative effects of overnight visitation but believe that it is premature for courts to adopt a presumption that such visitation should be the initial point of departure in parenting plans for young children.

There is another group of experts who look at the available research and come to very different conclusions. Some child custody experts strongly believe that the literature supports a presumption of joint physical custody when this is logistically feasible or, at a minimum, relatively frequent overnight visitation for infants and toddlers with the less-seen parent. Members of this school of

thought arrive at their conclusions for a number of reasons. First, they dispute interpretations of the available data that suggest that overnight visitation for infants has been shown to have a negative effect on attachment. For example, Warshak notes that "[t]he evidence shows that infants form multiple attachments and a child could have an insecure attachment to the mother but a secure one to another person. Although there may be hierarchies of relationships, most infants develop selective attachments simultaneously to a small number of people who provide regular contact and care."⁸ Warshak also accuses those supporting blanket restrictions on such visitation of subscribing to the abandoned notion of what has been referred to as "monotropy," which is the idea that infants naturally develop a special attachment to one person, in most circumstances the mother, and that this idea has been discredited.⁹

Other experts writing on the subject note that the available research indicates that children raised in joint physical custody have better outcomes across a wide range of measures and show better adjustment in emotional, interpersonal, and educational spheres in later life. In his meta-analytic study of thirty-three other studies examining the effects of joint physical custody versus sole custody arrangements, Bauserman noted that children in joint custody situations were rated as better adjusted than their sole custody counterparts, and that this better adjustment was observed by both parents, teachers, children, and therapists.¹⁰ Lamb, Sternberg, and Thompson write that

To maintain high-quality relationships with their children, parents need to have sufficiently extensive and regular interaction with them, but the amount of time involved is usually less important than the quality of the interaction that it fosters. Time distribution arrangements that ensure the involvement of both parents in important aspects of their children's everyday lives and routines—including bedtime and waking rituals, transitions to and from school, extracurricular and recreational activities—are likely to keep nonresidential parents playing psychologically important and central roles in the lives of their children.¹¹

The most recent empirical research on the issue of overnight visitation for

young children was performed by Pruett, Ebling, and Glendessa focused on direct measurement of the presence or absence of problem behaviors in these children.¹² Their results indicated that the presence or absence of overnights in and of themselves had little to do with outcomes for children, but that the context in which the overnights occurred (number of caretakers, consistent schedule) produced differential effects.

The positions of experts on both sides of this issue appear to be supported by data. Under these circumstances, how can judges and guardians ad litem decide whether to allow overnight visitation for infants and toddlers? How can decisions informed by science be made based on contradictory data?

Problems with Applying Pertinent Research

In order to understand why the research related to overnight visitation for infants and toddlers seems to support the positions of both those advocating and those opposing such practices, it is necessary to know a little bit about the nature of psychological research. Simply put, not all research is of equal value. Without going too deeply into methodological and statistical issues, there are ways of differentiating the importance and impact of particular studies.

One of the most important things to consider when regarding a particular piece of research is whether it actually is research or just someone's opinion. Empirical research utilizes a variety of techniques, such as matched comparison groups and double-blind designs, to minimize the inevitable bias effects to which human beings are prone. There is a great deal of what some have referred to as "clinical lore" published every year in journals. Such articles represent the theorizing, speculation, and opinions of experts but are not the product of empirical research. It should be understood that there is nothing wrong with publishing such articles, as all science begins with speculation and observation. "Clinical lore" only becomes problematic when it is presented as fact when in reality it is only the *ipse dixit* of the expert testifying before the court.

It is also useful to consider the overall state of the research supposedly supporting one position or another in child custody and other matters before the court. In the second edition of the *Handbook of Diagnostic and Structured*

Level of Certainty	Clinical Criteria
Unsupported	Nonsignificant or conflicting research findings
Speculative	Conclusions that are consistent with accepted theory supported by one or two studies of limited generalizability
Tentative	Research studies consistently established statistical significance in the expected direction, but have little or no practical value in classifying subjects
Probable	Research studies consistently established statistical significance in which cutting scores, measures of central tendency, or a similar statistic accurately differentiate between at least 75% of the criterion groups
Definite	Accurate classification of 90% or more of individual subjects based on extensive, cross validated research. Findings are congruent with accepted theory

Interviewing, Richard Rodgers lays out a schema for determining the degree of certainty of clinical findings that provides a framework for evaluating the state of the research in a particular area.¹³

Without going too deeply into statistics and methodology, several terms utilized above must be defined. Findings in research are considered to be "statistically significant" when they are deemed to be unlikely to have occurred by chance. Social scientists generally consider findings to be statistically significant when they are unlikely to happen by chance more than one out of twenty times. It should also be understood that a study can be statistically significant but have little practical utility. An example of this would be a finding that children with low levels of lead in their blood streams scored two points lower on standardized IQ tests than their unexposed peers. Such a finding might be statistically significant when looking at large groups of children but it would have little or no utility in predicting an individual's IQ based on their lead level. "Generalizability" refers to the extent to which the results of a study are specific to a particular situation or have broader implications. Finally, a "cutting score" is simply a score on a test that effectively differentiates between two groups or characteristics. For example, a high score on a hypothetical depression inventory could be effective in classifying those who suffer from depression from those who are not depressed with very few false positives or false negatives.

What do we find when we consider the research on overnight visitation and attachment for infants and toddlers using Rodgers's criteria? It appears that the

available empirical research (as opposed to clinical lore) falls in the *speculative* category. There are to date two empirical studies that show small differences in attachment in young children who have overnight visitation with their less-seen parent.¹⁴ There is also one study that addresses the effects of overnight visitation with young children but does not utilize attachment as the outcome measure.¹⁵ There are no other published studies that address these issues empirically. The state of the scientific literature in this area clearly comports with Rodgers's definition of speculative findings—conclusions that are consistent with accepted theory supported by one or two studies of limited generalizability. Despite this, there is no lack of child custody evaluators and visitation coordinators who assert to courts that the scientific literature supports the position of prohibiting or minimizing overnight visitation between children and their less-seen parent during the first three years of life on the basis of this "body of research."

While the miniscule size of the empirical literature on the subject of overnight visitation for infants and toddlers makes further analysis almost unnecessary, the problem of clinical utility should also be addressed. In the three empirical studies mentioned above, while differences were found in comparison groups, these differences were very small. One would not expect that any research would show 100 percent differences between comparison groups, but differences of a few percentage points on a criterion measure generally have no clinical significance. It is one thing to say that "young children who have overnight visitation with their less-seen parent are

more likely to have attachment problems later in childhood” and another to state that “Young children who have overnight visitation with their less-seen parent are 1.5 percent more likely than their overnighting peers to have attachment problems in later childhood.” Both could be literally true, but the latter statement is far more helpful to the fact finder in developing a parenting plan.

Finally, it should be understood that attachment has become something of a fad in the area of child custody assessment. There is a voluminous literature on attachment phenomena in developmental psychology but there is a gap in its application to clinical assessment. Although mental health professionals doing child custody assessments frequently reference the attachment literature, there is at present no commercially available instrument designed to measure attachment directly in a particular child. As a consequence, those working before the court as experts in child custody assessment and visitation coordination who present their findings as guided by the attachment literature are presenting speculation and opinion as science in a way that can be very misleading.

To summarize this brief review of the empirical scientific literature on overnight visitation, the following should be noted:

1. The empirical literature on the overnight visitation for infants and toddlers is extremely limited and speculative in nature, and is not robust enough to inform decisions about such visitation.
2. The literature does not point to any major positive or negative effects of overnight visitation for this population.
3. The context of the visitation is probably more important than the presence or absence of the visits themselves.

A Practical Approach to Overnight Visitation for Young Children

This would appear to leave child custody evaluators and the courts with little guidance about whether overnight visitation for infants and toddlers should be considered when developing a parenting plan. However, there are other sources of data that can be considered when approaching this issue.

The first of these is that, on a very pragmatic level, this issue has in

many ways been resolved. A national survey performed in 2005 by the U.S. Department of Education, National Center for Education Statistics found that 50.7 percent of children ages 0-2 spent time in non-parental care, and that the rate for children aged 3-6 who were not yet in kindergarten was 73.7 percent. Because of changing employment patterns for women, non-parental care for very young children has become the norm rather than the exception in American society. While the benefits or drawbacks of such arrangements can be debated, the fact that this change has occurred is indisputable. If there was a large, deleterious effect from children spending time with individuals other than their primary caretaker, it is very likely that the impact would be clearly evident by now, and such evidence does not exist.

A second, related factor to be considered follows from simple observation of normal childhood, whether from intact or divorced families. In his article entitled “Blanket Restrictions: Overnight Contact Between Parents and Young Children,” Warshak makes the following point:

No formal studies exist that assess the impact, on younger children, of sleeping in more than one setting. But most parents have enough experience with this arrangement to assuage concerns about its harm to children. Infants and toddlers often sleep away from their mothers and away from their cribs. They sleep in strollers, car seats, bassinets, and parents’ arms. They sleep in day care, in church, and in grandparents’ homes. Any married couple who takes a vacation in the first few years of their child’s life leaves the child in someone else’s care. Clinicians do not routinely advise parents against taking such vacations. If infants can tolerate sleeping away from both parents during nap time at day care centers, on what basis can we argue that sleeping away from one parent, in the familiar home of the other parent, would harm children?¹⁶

It is logical to ask why it matters where the child sleeps at night, if anything approaching reasonable daytime visitation is allowed between the less-seen parent and the infant/toddler. Clearly, if a parent has daytime visitation with an infant, an infant will be put down for a nap at some point. If the parent lives more than half-an-hour from the child’s

other parent, it is likely that he or she will sleep in a car seat during trips from one residence to another. In the absence of any scientific data suggesting that the practice of children sleeping away from the bed in which they usually sleep creates problems, what basis is there for suggesting a prohibition on overnight visitation for infants and toddlers? It does not appear that there is any rational or scientific basis for advocating such a prohibition.

Developing Appropriate Parenting Plans With or Without Overnight Visitation

It appears from a review of the available empirical literature that there is no scientific basis for either suggesting a blanket prohibition on overnight visitation for infants and toddlers, or creating a presumption that such visitation is always appropriate and necessary. Under these circumstances, how should courts and guardians ad litem approach this issue? As with most issues involving child custody, it involves a consideration of multiple factors and, to some extent, professional judgment. In an article critiquing the debate between the visitation and non-visitation camps, Gould and Stahl¹⁷ noted that it is important to consider a number of factors in developing appropriate joint parenting plan:

1. The history and extent of joint parenting prior to separation

These authors suggest that if both parents were substantially involved in the child’s care prior to separation and the child had no difficulty being cared for by both parents, it is likely prudent to continue this arrangement after the separation. If this was not the case, it may be better to consider an arrangement of gradually increasing visitation with the less involved parent over time to allow the child to adjust to the new arrangement.

2. Strengths and weaknesses of each parent

A careful examination of what each parent brings to the situation may be helpful to the court. It may be discovered that one parent was more skillful and comfortable in performing bedtime rituals, while the other was better at daytime recreation and care. It should be understood that most couples have skill sets in relation to parenting that complement each other. Once the

parents separate, these complementary abilities will now be applied in isolation. If these differences in parenting ability in different areas are marked, they should be considered in the development of the joint parenting plan.

3. The temperament of the child

Some children come into the world with easy temperaments that allow them to be comfortable in a variety of environments with very little modification. Others are born with much more sensitivity to environmental change. This should be considered when developing an initial parenting plan and also when attempting to modify such a plan with an eye towards greater involvement of both parents.

Summary and Conclusions

The issue of overnight visitation for infants and toddlers has been hotly debated in the professional literature. One camp, citing attachment theory, calls for a prohibition on such visitation with children under the age of three. Their position is based on concerns that such visitation will create insecure or disorganized attachment and that this will cause problems in adjustment in later life. The other camp calls for a presumption that such visitation will occur, citing the scientific literature that indicates that children raised in joint physical custody situations with high levels of contacts with both parents have better adjustment in later life across a wide range of measurements.

A careful review of the empirical literature on attachment and early overnight visitation reveals that there are only two studies that address this issue in the light of attachment and only one that examines outcomes using behavioral measures. It must be understood that while there are many more scholarly articles available on this subject, they are not empirical in nature and generally fall into the category of "clinical lore," consisting of derivative opinions and case studies. As matters presently stand, the research on the subject can only be described as speculative (one or two studies of questionable generalizability) and having little clinical utility.

As a consequence of the current state of the empirical literature on early childhood visitation, it should be understood that any expert testifying before the court that the available scientific evidence supports the

proposition that visitation should be avoided prior to the age of three should be considered to be overreaching. As with most aspects of child custody assessment and development of parenting plans, decisions whether or not to recommend overnight visitation and the extent of such visitation depend on a number of factors—including the prior co-parenting history, parents' strengths and weaknesses, and child characteristics—should be considered, and a certain degree of clinical judgment cannot be avoided in making such recommendations. Experts should be considered to have an affirmative obligation to provide the court with the specific facts on which their recommendations regarding overnight visitation are based (empirical research, observation, opinion), information about the reliability of their clinical findings (unsupported, speculative, tentative, probable, and definite), and the nexus between their data and their conclusions. Requiring such rigor will serve families best by helping courts make decisions bases on actual data as opposed to "clinical lore" masquerading as science.

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¹ JAMES C. BLACK & DONALD J. CANTOR, *CHILD CUSTODY* (1989).

² JONATHAN W. GOULD, *CONDUCTING SCIENTIFICALLY CRAFTED CHILD CUSTODY EVALUATIONS* 72 (2d ed. 2006).

³ JOSEPH GOLDSTEIN, ANNA FREUD & ALBERT J. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (1979).

⁴ *In re Marriage of Burgess*, 51 Cal.Rptr.2d 444, 913 P.2d 473 (1996).

⁵ Michael E. Lamb, Kathleen J. Sternberg, & Ross A. Thomson, *The Effects of Divorce and Custody Arrangements on Children's Behaviour, Development, and Adjustment*, 35 FAM. & CONCILIATION CT. REV. 365 (1997).

⁶ Judith Solomon & Zeynep Biringen, *Another Look at the Developmental Research: Commentary on Kelly and Lamb's 'Using Child Development Research to Make Appropriate Custody and Access Decisions for Young Children'*, 39 FAM. CT. REV. 355 (2001).

⁷ *Id.*

⁸ Richard A. Warshak, *Blanket Restrictions: Overnight Contact Between Parents and Young Children*, 34 FAM. & CONCILIATION CT. REV. 422, 438-439 (2000).

⁹ *Id.*

¹⁰ Robert Bauserman, *Child Adjustment in Joint-Custody Versus Sole Arrangements: A Meta-Analytic Review*, 16 J. FAM. PSYCH. 91 (2002).

¹¹ Lamb, Sternberg, & Thomson, *supra* note 5, at 400-401.

¹² Marsha Kline Pruett, Rachel Ebling, & Glendessa M. Insabella, *Critical Aspects of Parenting Plans for Young Children: Interjecting Data into the Debate About Overnights*, 42 FAM. CR. REV. 39 (2004).

¹³ Richard Rodgers, *Introduction*, in *CLINICAL ASSESSMENT OF MALINGERING AND DECEPTION* 1 (R. Rogers ed., 1988).

¹⁴ Judith Solomon & Carol C. George, *The Development of Attachment in Separated and Divorced Families: Effects of Overnight Visitation, Parent and Couple Variables*, 1 ATTACHMENT & HUMAN DEVELOPMENT 2 (1999); Judith Solomon & Carol C. George, *The Effects of Attachment of Overnight Visitation in Divorced and Separated Families: A Longitudinal Follow-Up*, in ATTACHMENT DISORGANIZATION 243 (Judith Solomon & Carol George eds., 1999).

¹⁵ Pruett, Ebling, & Insabella, *supra* note 12.

¹⁶ Warshak, *supra* note 9, at 433.

¹⁷ Jonathan W. Gould & Philip M. Stahl, *Never Paint by Numbers: A Response to Kelly and Lamb (2000), Solomon and Biringen (2001), and Lamb and Kelly (2001)*, 39 FAM. CT. REV. 372 (2001).

