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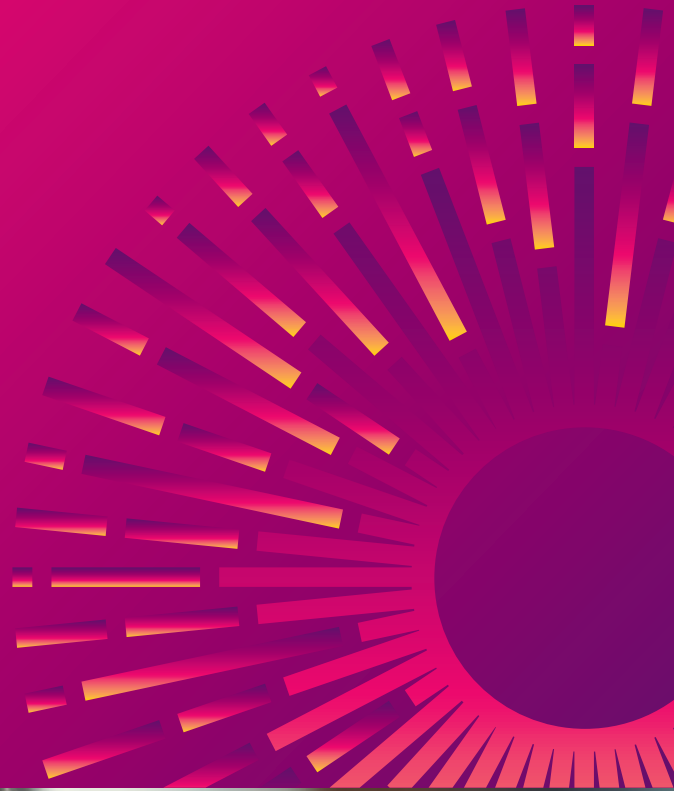
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Discovering what
works for families

Parenting arrangements after separation

EVIDENCE SUMMARY

Australian Institute of Family Studies

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Key messages

- About 3% of separated parents use courts as their main pathway to making parenting arrangements (based on a sample of about 6000 separated parents about 18 months after separation). These are predominantly families affected by family violence, child safety concerns and other complex issues.
- Most (97%) separated parents do not go to court to decide their parenting arrangements, although 16% use family dispute resolution services or lawyers.
- A study based on court files shows that in both court and non-court ordered arrangements, it is most common for children to spend the majority of their time with their mother and to see their father regularly.
- In the small proportion of cases determined by a judge, 45% of court orders provide for sole parental responsibility by the mother, and 11% for sole parental responsibility by the father.
- Orders for no contact with one parent are rare: 3% of all court orders.

There are two significant ways in which court orders and arrangements in the general separated population differ:

- Court ordered arrangements are less likely to involve no contact between children and their father: only 3% of court orders, compared to 9% of the general separated population.
- Arrangements where children spend most of their time with their father are more common in orders made where litigation occurs (10–19%) than in the separated population generally (2%).



If you require assistance or if you would like to talk to a trained professional about the issues described in this research summary, please call [Kids Helpline](tel:1800551800) on 1800 55 1800 or the [Family Relationship Advice Line](tel:1800050321) on 1800 050 321.

Overview

Over the past 10 years, the Australian Institute of Family Studies (AIFS) has conducted multiple large-scale studies of post-separation parenting outcomes, including surveys involving nationally representative samples of separated parents.

Two multi-method studies (Kaspiew et al., 2009, 2015b) evaluated:

- the situation before and after the 2006 amendments to the *Family Law Act 1975*
- the situation before and after the 2012 amendments to the *Family Law Act 1975*.

The evaluation of the 2012 amendments included an analysis of court outcomes (Kaspiew et al., 2015c) that involved 997 court files of matters initiated after the amendments and finalised by 30 November 2014.¹ The evaluation also included a Survey of Separated Parents (Kaspiew et al., 2015a), which analysed survey data from a sample of about 6,000 separated parents who had been separated for 18 months on average.

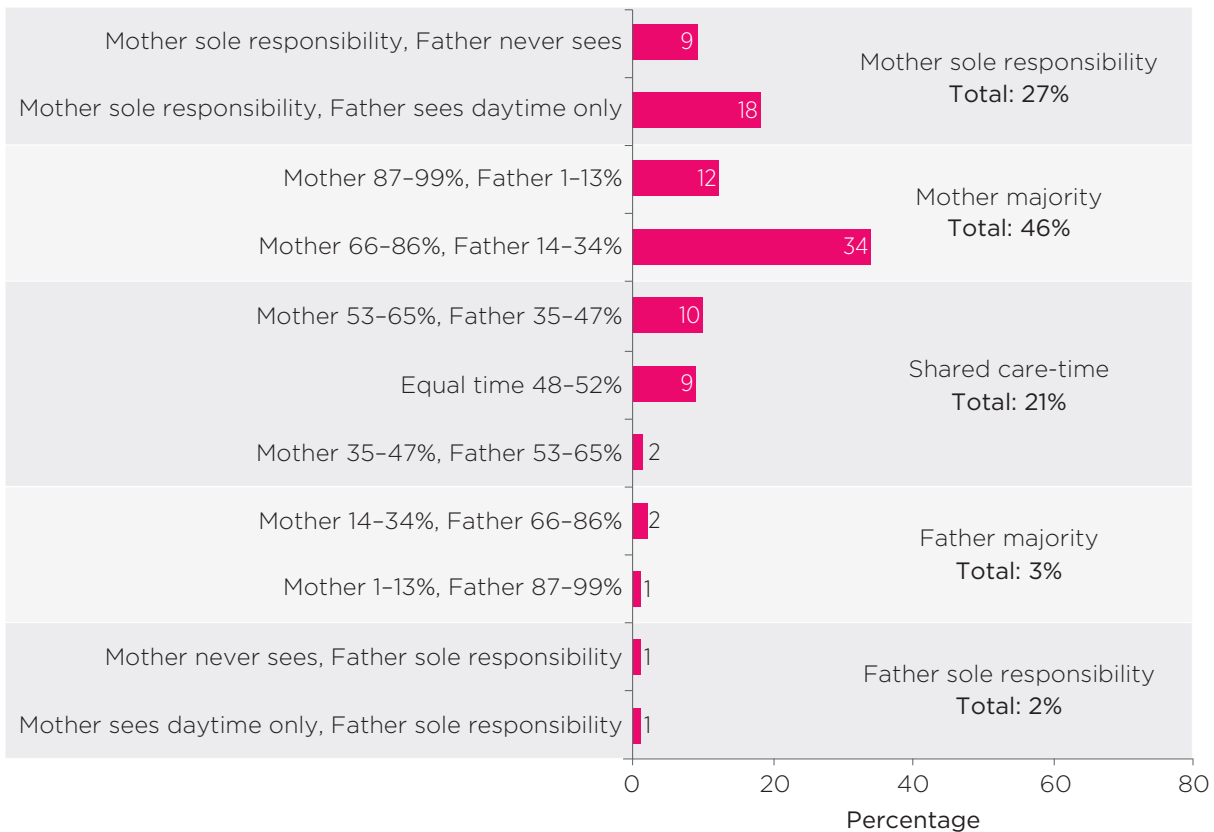
The findings from these analyses are given below.

¹ These files were from the Family Court of Australia, the Federal Circuit Court and the Family Court of Western Australia.

What are the most common parenting arrangements after separation?

AIFS' research shows that there is considerable variation in the ways that families arrange their children's care after separation (see Figure 1). Issues such as the children's age and the parents' working patterns play a significant role in decision making.

Figure 1: Child's care-time arrangements post-separation, 2014



Notes: Survey of Separated Parents 2014. Data have been weighted. No. of observations: $n = 5,305$. In cases where both parents of a focus child participated ($n = 523$), data from one parent were randomly selected for inclusion. Percentages may not total 100.0% due to rounding.

Source: Kaspiew et al., 2015a

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The Survey of Separated Parents 2014 (Kaspiew et al., 2015a) found that the most common arrangement about 18 months after separation is for children to live with their mother most nights (at least 66% of nights in a year).

The next most common arrangement (18% of cases) is for children to spend all of their nights with their mother and see their father in the daytime only. Earlier research shows this is particularly common for children under two years of age (Kaspiew et al., 2009).

In 21% of cases, care time was substantially shared between parents (i.e. the child spending between 35% and 65% of nights in a year with the mother/father). Most shared-time arrangements involved more time with the mother. Arrangements for equal time occurred in less than 10% of cases.

It is fairly uncommon (9% of cases) for children to have no contact with their father.

What the law says

Under the *Family Law Act 1975* (Cth), courts can make orders about two broad aspects of parenting: one is parental responsibility and the other is care time (Kaspiew et al., 2015b).

The court has to put the best interests of the child first when making these orders (s 60CA).

Courts need to consider a range of factors, including the child's right to a meaningful relationship with both parents and their need to be protected from harm from exposure to family violence and child abuse (s 60CC(2) and 2A). Other factors include the child's views and the nature of their relationship with each parent (s 60CC(3)).

The Act requires the court to apply a presumption of equal shared parental responsibility (s 61DA), unless a parent can show it should not be applied because of family violence or child safety concerns, or should be rebutted for other reasons.

Where orders for equal shared parental responsibility are made, the court also has to consider whether orders for the child to spend equal or 'substantial and significant' time with each parent are practical and in the child's best interests (s 65DAA).

Where orders for equal shared responsibility are not made by applying the presumption, the court decides what time arrangements are in a child's best interests; it might still consider equal or substantial and significant time.

Even where the presumption is not applied, courts can and often do make orders for shared parental responsibility, if they decide this in the child's best interests.

Where the evidence shows a child needs to be protected from harm from exposure to family violence or child abuse, the court needs to put this ahead of the child's right to a meaningful relationship with both parents (s 60CC2A). In rare cases (3%), this might mean that a court makes an order for the child not to see a parent and in other cases (4%), it can try to make it safe for the child to keep seeing a parent by ordering supervised contact (Kaspiew et al., 2015c).



Is it common for parents to go to court for orders about parenting?

Most parents (97%) don't go to court: they make arrangements between themselves (Table 1).

Around 10% of parents use family dispute resolution as the main way to sort out parenting arrangements; 6% of parents use lawyers only.

Table 1: Main pathway used by parents who had sorted out their parenting arrangements, by parent gender, 2014

Pathway	Total	(%)	
		Fathers	Mothers
Counselling/mediation/FDR services	9.9	9.9	9.9
A lawyer	5.7	6.2	5.3
The courts	2.9	3.0	2.9
Discussions with other parent	68.9	71.5	66.5 ***
Nothing specific, just happened	10.4	7.6	13.0 ***
Something else	2.1	1.8	2.4
No. of observations	4,108	1,869	2,239

Notes: Survey of Separated Parents 2014. Data have been weighted. The 'don't know' and 'refused' responses were excluded from this analysis (less than 1%). Percentages may not total 100.0% due to rounding. Statistically significant differences between fathers and mothers within a given population are noted: * $p < .05$; ** $p < .01$; *** $p < .001$.

Source: Kaspiew et al., 2015a

Among the 3% of parents who went to court for parenting arrangements, most reported in the Survey of Separated Parents that they experienced family violence (physical violence 54%, emotional abuse 85%). Nearly 50% reported concerns for safety (their own, their children's or both; Kaspiew et al., 2015b).

Other problems reported by parents who used the courts included mental health issues (59%) and substance misuse (42%).



When parents do go to court, what are the outcomes?

There are three ways that court orders are made:

- **Adjudicated matters** - This is where a judge hears the evidence and makes a decision. These are the least common cases (ALRC 2019), and the ones that are most likely to have complex facts and evidence.
- **Consent after litigation** - This occurs when a case starts but the parents make an agreement before a full trial. These are also likely to have complex facts.
- **Pure consent** - The third and most common route to a court order (ALRC 2019) is when the parents make an agreement between themselves through a family dispute resolution practitioner or through lawyers, and then formalise the agreement by applying for consent orders. These cases are less likely to have problems such as family violence and safety concerns than the other two.

The following outcomes (Kaspiew et al., 2015c) are organised by type of court order.

Orders for parental responsibility

Adjudicated matters

Orders for both parents to share parental responsibility are least likely to be made when a matter is decided by a judge: 40% of these cases had these orders. Orders for mothers to have sole parental responsibility were made for 45% of children; fathers were given sole responsibility for 11% of children.

Consent after litigation

In cases that start a litigation pathway but resolve before judgment, orders for shared parental responsibility are much more common, applying to 94% of children. Orders for sole parental responsibility are much less common: for mothers for 4% of children and for fathers for 2% of children.

Pure consent

Shared parental responsibility outcomes are the most common outcome when the parents reach agreement themselves. In the pure consent sample, these orders applied to 92% of children. Orders for sole parental responsibility were made for mothers for 4% of children and for fathers for 3% of children.

Table 2: Parental responsibility outcomes, by type of court order

Order	Judicial determination	Consent after proceedings	Consent without litigation
Shared parental responsibility	39.8	93.7	91.7
Sole parental responsibility to mother	45.1	3.7	3.9
Sole parental responsibility to father	11.2	1.8	2.5
Other	3.9	0.8	1.9
Total	100.0	100.0	100.0
Number of children	545	650	443

Note: Court Outcomes Project. Percentages were based on weighted data.

Source: Kaspiew et al., 2015c

Care-time arrangements

Adjudicated matters

Most children (64%) subject to orders were living mainly with their mother and spending less than 35% of nights with their father. Orders for shared care time were made for 17% of children.

In the adjudicated sample, 19% of children were to live with their father and spend less than 35% of nights with their mother. It is notable that these sort of arrangements are more likely to occur when there is a court intervention than when parents sort things out themselves.

Consent after litigation

Where parents had agreed without their matters actually being determined by the judge, but after litigation commenced, 75% of children had orders that the child live with their mother and spend less than 35% of nights with their father.

A further 15% of children had shared care-time arrangements and 10% had arrangements where they lived with their father and spent less than 35% of nights with their mother.

Pure consent

In cases where parents agreed without litigation, orders for children to spend most of their time with their mother applied to 64% of children. Orders for shared care time were more common in this group than in the other two, applying to 33% of children. Orders for children to live mainly with their father and spend less than 35% of their nights with their mother applied to 4% of children.

Is it common for a court to order that a child have no contact with one of their parents?

It is very uncommon for orders of no contact to be made. In all the cases of court orders in the three categories, only 3% of children had orders where they had no contact with their father and 0.2% had orders where they had no contact with their mother (Kaspiew et al., 2015c).

Table 3: Children with orders for no face-to-face parenting time with father/mother, 2014

Court order	(%)
No face-to-face time with father	3.0
No face-to-face time with mother	0.2
No. of children	1,255

Note: Court Outcomes Project. Percentages were based on weighted data.

Source: Kaspiew et al., 2015c

Where courts are concerned about child safety, they can make orders for contact to be supervised, either by a relative or friend or at a centre run by an organisation that provides this service. Supervised time arrangements applied to 4% of children (Kaspiew et al., 2015c).

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