

PART II PARENTING PLANS

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Parenting plans, whether created by the parties, or the court, determine what kind of access children of separated parents will have. They must have the flexibility to be workable, and precise enough to be enforceable. A review of court recommended parenting plans throughout the country provides a general consensus as to what they should contain. This article address both the common assumption and also address unique provisions that some states have adopted.

Over thirty states, or subdivisions of states,¹ require the submission of parenting plans when custody of children are involved in a dissolution of marriage action. States differ widely in the type of parenting plan form, ranging from a bare bones outline, such as in Connecticut, to a detailed checklist together with accompanying information describing child development theories and recommendations on how to make the best choices for one's children.

Some state have mandatory guidelines² to be used when the parents disagree, model parenting plans³ that spell out traditional visitation arrangements. Some have informational checklists used as an aide to the establishment of comprehensive parenting plans.⁴ Other states provide information⁵ to assist in the formation of bare bone plans.⁶ Some have detailed forms, together with comprehensive information on the changing needs of children and how to fashion a plan that is age appropriate. Many have easy to use comprehensive forms without providing any guidance or recommendations.⁷

¹ Some states, use a county system, and therefore California, Arkansas, Pennsylvania, Virginia and Ohio, to name a few, have guidelines on a county basis. Others do it on a Circuit Court basis, such as Alabama and Florida.

² e.g. Tex.Fam.Code Ann. 154.008 et seq., Indiana Ct Rule, Utah Code §30-3-35

³ e.g. Arizona www.Supreme.state.az.us

⁴ Connecticut requires the submission of a parenting plan 46b-56(d) CGS when required by court rules – usually the Case Management date PB 25-30(c)

⁵ e.g. New York <http://www.courts.state.ny.us/forms/matrimonial/ParentingPlanForm.pdf>

⁶ Minnesota www.courts.state.mn.us, Massachusetts <http://www.mass.gov/courts/courtsandjudges/courts/probateandfamilycourt/afccsharedparenting.pdf>

⁷ e.g. New Hampshire, <http://www.courts.state.nh.us>

Connecticut requirements - CGS §46b-56a

The Connecticut Judicial Department's Proposed Parental Responsibility Plan, JD-FM-199 contains 5 subject matter areas to be addressed:

"1) Physical residence according to the following schedule..., 2) Decision-making regarding the child(ren)'s health, education and religious upbringing will be allocated to the parents(s) as follows....3) Future disputes to be resolved in the following manner... 4) Failure of either parent to honor his or her responsibilities ...will be dealt with in the following manner..., and 5) The changing needs of the child(ren) as the child(ren) grow and mature will be dealt with in the following manner...." ⁸

The form suggests that everything parents need to address in a parenting plan can be recorded on one 8 ½ by 11 piece of paper.

The first clause indicates that the parties should have a schedule of physical residence, but offers no clue as to what might be an appropriate schedule. Every other week sounds fair, but is it? Is a week's absence from either parent good for a child? Or the parent? The form offers no suggestions as to what might be appropriate nor is any child development literature presented to assist parents in fashioning these plans.

The form suggests an allocation of "decision-making" which is often referred to as custody. It suggests health, education and religious upbringing without any discussion of what decision making means or how it will be addressed. A model or standard parenting plan would assist in the identification and allocation of decision making.

The form presumes that each party will have the necessary knowledge to deal with dispute resolution, methods of enforcement of orders, or the changing needs of children and how to predict future best interests.⁹ The goal has little chance of being met without comprehensive guidance showing possible arrangements for parenting access, areas of responsibility, and the developmental needs of children.

⁸ Required by CGS §46b-56a

⁹ *Emerick v Emerick*, 5 Conn. App. 649.502 A2d 933 (1985) "A child's best interests, however, cannot be prospectively determined." *Guss v. Guss*, supra, 360-61. The judicial hands of a future court cannot be bound by an earlier court's determination that the best interests of a child as to custody remain constant. A transfer of custody cannot be automatically accomplished upon the happening of a future event, in this case, removal of the child from Connecticut."

Parenting Plan Forms – Who Authors Them?

For the most part, parenting plans, and the detailed instructions that are provided with the parenting plan are ultimately approved and published by the state's judicial department, but not always.

Standard or model parenting plans have been developed by the legislature,¹⁰ by a judge,¹¹ by a task force on self representation,¹² a Legal Aid Society,¹³ a court appointed Custody Guideline Committee,¹⁴ the American Law Institute (ALI)¹⁵ or by the judicial department.¹⁶ The Academy of Matrimonial Lawyers has published and sells a well drafted comprehensive Model Parenting Plan.¹⁷ Other states require parenting plans, but fail to provide forms of model plans, or information concerning the needs of child. As a result, the demand for assistance has been met commercially by internet web sites that sell parenting plan software to assist in the development of appropriate parenting plans. Some parenting plans have accompanying instructions that quote extensively from social study literature. There is no reason why, if a standard or model parenting plan would be beneficial, it could not be produced independently by any organization interested in creating a comprehensive, fair and efficient document that recognizes the needs of the children.

Parental Access Schedule - Mandatory or Advisory

Consistent with the requirement of frequent and continuing contact some states have created mandatory guidelines. The parents may agree to deviate from them, but without more, the access schedule is considered the default position. Assuming that there should be no preference based on gender, and recognizing that children need active involvement of both parents, the legislature or the judicial department have decided what the minimum amount of time the children should spend with the visiting parent.

¹⁰ Texas

¹¹ Alaska

¹²See Montana's Supreme Court Commission on Self-represented Litigation and Montana Legal Services Association

¹³ Illinois,

¹⁴ Orange County, California

¹⁵ Principles of the Law of Family Dissolution: Analysis and Recommendations, ALI Sec. 2.05 pp.143,144 (2002)

¹⁶ Arizona

¹⁷ <http://www.aaml.org/go/library/publications/>

Parental Access Guidelines vary from state to state. All states recognize that they should be inapplicable in situations in which the parents agree on something else. All states with mandatory guidelines also indicate that they shall not be applicable if the child is placed in danger. Some indicate that they are inapplicable if there has been any domestic violence.

Indiana, although requiring that the Guidelines shall be applicable to all child custody situations, specifically excludes situations “involving family violence, substance abuse, risk of flight with a child, or any other circumstances the court reasonably believes endanger the child’s physical health or safety, or significantly impair the child’s emotional development.”¹⁸

Mandatory

Some states have Mandatory access schedules, to which one is referred to Part 1 of this article.

Advisory – an Aid to Assist Parents

Many states consider the guidelines as an aide to parents, mediators, mental health professionals and judges in the formation of a parenting plan. Arizona has the most detailed – 67 pages of instruction discussing the needs of children at various ages in detail, the possible arrangements of a parenting plan and various options that may be used.¹⁹ *A Model Parenting Plan and Guidelines*, published and sold by the American Academy of Matrimonial Lawyers is 32 pages in length.

DECISION MAKING

The required Connecticut parenting plan requires an allocation of decision making on issues such as health, education and religion. This is often addressed by terms of custody. The award of sole custody, as well as joint custody with “ultimate decision making authority” to one parent resolves some decision making authority – up to a point

Joint – Shared – Sole Custody – Parental Responsibilities

The difference between a sole custodian and a joint legal custodian is that the sole custodian has the ultimate authority to make all decisions regarding a child's welfare, such as education, religious instruction and medical care whereas a joint legal

¹⁸ www.in.gov/judiciary/rules/parenting/

¹⁹ <http://www.supreme.state.az.us/nav2/divorce.htm>; Alaska 24 pages; Massachusetts 23; Michigan 38, Utah 5, Oregon 20

custodian shares the responsibility for those decisions²⁰ It is not uncommon for a judge to enter joint legal custody with final decision making authority to one party.

“Shared parenting” has made its way into the lexicon of trial court judicial orders which means that there is a more equal division of the child’s time with each parent.²¹ As such, under the Child Support Guidelines, there is a basis for the deviation of child support. Joint physical custody, meaning a sharing of continuing contact with both parents, must be part of a joint custody order.²²

Connecticut provides:

“For the purposes of this section, "joint custody" means an order awarding legal custody of the minor child to both parents, providing for joint decision-making by the parents and providing that physical custody shall be shared by the parents in such a way as to assure the child of continuing contact with both parents. The court may award joint legal custody without awarding joint physical custody where the parents have agreed to merely joint legal custody. “ (CGS ...§46b-56a)

Rather than using imprecise, ambiguous and unworkable words such as “sole” or “joint” custody, the better practice would be to adopt a specific parenting plan that clearly allocates decision making authority between the four possibilities – sole mother, sole father, either mother or father, or both mother and father.

Joint decision-making – What does it mean?

The usual subject matters for designation of parental decision making are education, non emergency medical, and religious upbringing. Connecticut is unique in that it does not use the traditional modifier, the word “major” medical or “major” education decisions but just “decisions.” The failure to provide some limitation would suggest that a parent could not even, during periods of access, give his or her child an aspirin because that would be a medical decision. It would mean that a parent could not take his or her child to a pediatrician for an ear ache or insect bites because those are medical decisions. Other states, such as Texas, specifically mandate that the non custodian parent has the duty to provide medical attention. Connecticut seems to believe that one parent (even if not present) has superior judgment and should therefore be empowered with sole authority to make medical decisions.

²⁰ Footnote 9 *Emerick v. Emerick* , 5 Conn. App. 649 , 502 A.2d 933 (1985) See also *Daddio v. O'Bara* 97 Conn. App. 286, 904 A.2d 259 (2006)

²¹ See definition (4) Shared physical custody, p. xiii in Child Support and Arrearage Guidelines, effective August 1, 2005.

²² *Emerick (I) supra* at 656, 657.

But even those states that call for the allocation of “major” decisions invites uncertainty as to the limit of decision making.

Missouri defines “Major Decisions” to include religious instruction, training or education, part or full time employment, selection of child care providers, extent of any travel away from home, purchase or operation of a motor vehicle, contraception and sex education, actual or potential litigation on behalf of the children”²³ as well as many others.²⁴

In Alabama, according to a website since removed, and incapable of verification, the parties are free to allocate decision making by subject matter. Absent election, it classifies parental decision making into six categories²⁵ and recommends roles for each parent: academic - wife, religious - wife, medical/dental – wife, civic – husband, cultural - husband, athletic - husband.²⁶

Some states do not require an allocation of decision making on the premise that the person who has the children when the decision has to be made, is the person to make decisions. After all, most parental decisions, are a function of time, geographic location (made by the board of education), economic (private school) made when the children are with the person making the decision (after school activities) or decisions based upon the recommendations of the child’s physician, or emergency room doctor.²⁷

Those decisions that create arguments will survive the designation of joint custody or sole custody, e.g. what the “visitor” will do on visitation, such as getting a child a haircut.

Decision Making and Sole – Joint Custody

Joint custody has been described as a game that has no rules and the other parent breaks all of them.²⁸ Although courts and legislatures have attempted to define

²³ But see "parents lack the necessary professional and emotional judgment to further the best interests of their children. Neither parent could be relied on to communicate to the court the children's interests where those interests differed from his or her own. . . . A parent's judgment is or may be clouded with emotion and prejudice due to the estrangement of husband and wife." (Internal quotation marks omitted.) *Carrubba v. Moskowitz*, 81 Conn. App. 81 Conn. App. 382,402-403 , 840 A.2d 557 (2004).

²⁴ Mo. Rev. Stat. § Sec 452.375 (subd 9)

²⁵ Apparently based on stereotyped gender roles.

²⁶ <http://www.woodfamilylaw.com/PracticeAreas/Child-Custody-Visitation.asp>

²⁷ New Mexico requires, unless mutual agreement or court order, that the children continue in the school district, education programs, continue with medical service providers, and continue with religious instruction (or lack thereof) post judgment. N.M. 40-4-9.1

²⁸ Attributed to Nora Ephron

the words, the definitions are often incapable of application to the actual parenting of children

Recognizing the imprecise use of the words “custody”, and “visitation” as well as the more specific labels of “sole,” “joint” and “shared” custody, the American Law Institute, (ALI) Model uses the phrase ‘custodial responsibility.’ “This substitute is intended to avoid the win-lose conceptualization suggested by the more conventional terminology of “custody” and “visitation” and to reinforce the reality that not only primary responsibility for the child but all other forms of physical responsibility are also important, and custodial in nature.”²⁹ This terminology reflects the underlying assumption that there are many ways in which parents are involved in their children’s lives in ways not captured by traditional terms.”

Although “sole” custody and “joint” custody are popular terms, found in most custody statutes, some states have recognized that they provide little guidance of post divorce parenting.

New Hampshire’s parenting plan suggested form contains neither the words “custodial,” nor “residential” but merely allocates various times and responsibilities to a named parent.

Not unexpectedly Florida refers to timeshare custody, as does Colorado.³⁰

Those states that use “joint” custody end up with poorly defined allocation of parental decision making decisions because the word “joint” has two different commonly and incompatibly accepted meanings..

There is neither clear statutory definition nor clear case law on the meaning of “joint.” In many contexts “joint” means “either.” In some contexts it means “both.” In some cases rights under a custody order are overridden by statute, case law, or policies of third parties.

After all, if you have a joint checking account, it is considered “either.” While it is nice to be able to communicate – if for no other reason to avoid overdraft charges– it is not essential. Either party may overdraw the account after you or the other party has failed to enter a check into the check register or has subtracted a balance incorrectly. Either has ultimate decision making authority to issue a bad check.

²⁹ American Law Institute §2.03, p.136 (2002)

³⁰ “Custody” like “Property” refers to a collection of rights and responsibility.

Filing a joint tax return reports incomes of both individuals and requires both signatures.

“Joint” means “both” when attempting to navigate through airline protocol on an overseas trip as a parent, whether married, or divorced. Sometimes, especially if the child carries a name other than the accompanying parent³¹ the airline will require the other parent’s written permission.

Joint means both when applying for a passport in a child’s name who is under 16,³² but that is a requirement of Federal Law – not the label granted by a domestic court order.

Many parents believe “joint” in custody law or decision making requires both parents to agree and to affirmatively consent to all ventures undertaken for the child.

In some context, joint custody it means nothing, other than a belief that one continues to be a full and equal parent. Yet often a court will deny joint custody “because the parents can’t agree.”^{33,34}

Those parents who have joint custody are often chagrined when one parent warns his or her child that possession of a driver’s license or ownership of a car is conditioned upon good grades, good behavior, or both, only to find that the child’s other parent has granted the child permission to own and drive a car notwithstanding failure to meet either condition. In that situation “joint” means “either.” CGS §14-36(c)(1) permits either parent to consent to a learner’s motor vehicle driver’s license.

Indeed, Connecticut General Statute 46b-56 is less than clear: “... the court may assign parental responsibility for raising the child to the parents jointly....”

Some states clearly define joint as meaning an agreement of both parents on certain issues. Most of the model forms provide for a subject matter and then provide room to check a box: mother - father – joint. The authors of the parental access form should permit the parents to check mother, father, either, or both. The authors of the

³¹ *Stroller, Diapers, Paperwork* Michelle Higgins, N.Y Times, TR 3, January 17, 2010

³² *Id.*

³³ While the use of the “history” of parental noncooperation might justify a finding by the court that joint decision making is not in the children’s best interest, ALI pointed out: “Oversensitivity to this factor should be avoided, however, or else it might provide an incentive for a parent to be uncooperative. *Supra* p. 268 (2008)

³⁴ e.g. *Daddio v. O’Bara*, 97 Conn. App. 286, 904 A.2d 259 (2006) See also *Hamilton v Harris*, 09-CBAR-1834 FA030634209S June 29, 2009.

parenting plans thinking, (or lack of it) limits clarity on the form, and the form limits clarity of available options.

Orange County California requires both parents consent to a child obtaining a passport, a driver's license, entering into an underage marriage or enlisting in the military. It also requires the consent of both parents to psychological/psychiatric testing or evaluation, and any extended course of medical, dental, orthodontic, psychiatric, or psychological treatment/counseling.³⁵

Missouri, defines "major decisions" as including ownership and operation of a motor vehicle, choice of school, religious instruction, major dental work and orthodontia, psychological or psychiatric treatment, choice of camps, full or part time employment, contraception and sex education and actual or potential litigation on behalf of the children. It requires "joint" decision making and use of dispute resolution if it cannot be made.³⁶ Joint means both.

Orange County, California also specifically prohibits a parent from enrolling a child in activities that require a commitment from the other parent or interfere with a previously agreed upon or court ordered schedule without mutual approval. *Id.*

Montana specifically offers as an option on its parenting plan form that both parents consent to a child getting a tattoo, body pierced, underage marriage, or joining the military.³⁷

California attempts to resolve the ambiguity of the meaning of joint custody by:

"In making an order of joint legal custody, the court shall specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone may exercise legal control of the child." Cal. Fam. Code § 3083

To disabuse a sole or joint custodian of a belief that they have exclusive decision making authority Colorado³⁸ provides

"The parties understand that day-to-day decisions such as minor training or correction, minor medical and dental care, curfew, chores, allowance, clothing, hygiene, etc. will be made by the party who has the child(ren) at the time such decisions are necessary."

³⁵ www.occourts.org/media/pdf/parenting-plan-guidelines.pdf

³⁶ <http://www.selfrepresent.mo.gov/file.jsp?id=31147>

³⁷ http://courts.mt.gov/content/library/forms/end_marriage/dis_wc/parenting_plan.pdf

³⁸ Section A, Colorado Parenting Plan form

Designation of Custodian

The award of sole custody or joint custody presumably creates certain rights of the custodial parent. However, not all states feel that the general designation of custodian is essential except for a few limited purposes.

Two states specifically avoid a designation of custody or decision making authority except for possible requirements of federal or state law.

Montana: “For the purpose of all other state and federal statutes which require a designation or determination of custody, the [] Mother [] Father shall be designated the custodian. However, this designation shall not affect either parent’s rights and responsibilities under this parenting plan.”³⁹

Wisconsin, in requiring a designation of sole or joint custody, continues: “This designation is solely for enforcement of the final judgment and decree where this designation is required for that enforcement and has no effect under the laws of this state, any other state, or another country that do not require this designation. “ Wis.. § 767.41. It also states:

(c) In making an order of joint legal custody and periods of physical placement, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purpose of determining eligibility for aid under s. 49.19 or benefits under ss. 49.141 to 49.161 or for any other purpose the court considers appropriate. Wisc. Stat § 767.41

Residence of child

Although the parenting plan requirement of Connecticut does not require the designation of primary residence, such a designation is important, if for no other reason than to establish a base for school purposes and possible relocation.

Many States use “primary residence” to identify residence. Others merely identify with whom the child will reside for school,⁴⁰ or census purposes without specifically

³⁹ Parenting Plan, p. 12§

⁴⁰ North Dakota provides legal residence for school attendance only. N.D. Cent. Code 14-09-30

allocating custody. Missouri permits an election in the parenting plan that provides that residence for mailing and education purposes only shall be with a named parent.⁴¹

Others will identify who has custody for tax exemption status. Tennessee specifically provides:

“Solely for the purpose of all other state and federal statutes and any applicable policies of insurance which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of time....provided that this designation shall not affect either parent’s rights and responsibilities under the parenting plan.” Tenn. Code Ann. § 36-4-410

California provides: “In making an order of joint physical custody or joint legal custody, the court may specify one parent as the primary caretaker of the child and one home as the primary home of the child, for the purposes of determining eligibility for public assistance.” Cal. Fam . Code § 3086

Oregon⁴² as does Orange County, California, refers to Parent A and Parent B without designating mother or father. A is considered the person with equal or more time with the children; B is with equal or less time.⁴³

New Hampshire⁴⁴ provides for a residential designation for school purposes only.

Medical decision making

The requirements of the Connecticut Parenting Plan rule is to allocate responsibility for medical decisions. A properly drafted parenting plan should designate what medical decisions are intended to be exclusive, non exclusive or joint.

Even when “major” medical decisions are allocated, either by agreement or as defined in other states, how is major defined? Does it mean elective? Does it mean non

⁴¹ [WWW.selfrepresent.mo.gov](http://www.selfrepresent.mo.gov), Parenting Plan Part A, p.4.

⁴² <http://www.ojd.state>

⁴³ Being gender neutral as the modern family becomes more common, this language I avoids the use of “father” and “mother.”

⁴⁴N.H. § 461-A:4. II(c) Parenting Plans; Contents

emergency? Is it defined by the length of stay in a medical facility or by the long term effects of the procedure? The young woman who wants to have her breasts enlarged or reduced – is that decision one made by the person with ultimate decision making authority, must it be made by both parents, or can either joint parent consent?

Long range medical decisions are often based on economic factors rather than simple decision making, excepting those situations where one parent, for religious beliefs eschews traditional medical treatment.⁴⁵

One frequent long range medical treatment issue is orthodontic which often is objected to on a cost benefit analysis. In other words, if the child's teeth "aren't that bad" but the "cost is more than we can afford," there will be an honest disagreement. And that issue is one that will occur whether the parties have a history of "cooperative" parenting or not. It may occur no matter who has ultimate decision making authority. If the parent who wants the teeth straightened were to add, "and it won't cost you a cent," the other parent would be expected to happily agree. One would expect the same result if the issue were an expensive private school.

One would think that the ability to be informed of the desire of a minor child to have an abortion, and to consent to an abortion would be one of the major decisions that should be decided by one or both parents. Is this a major medical decision? Depending on the state in which the minor child resides, state law will dictate whether notification to one or both parents is required at all, and, if so, to whom, whether any parental consent is required and if so by whom – one parent or both parents?⁴⁶

Educational Decision Making

The Connecticut parenting plan requirement demands an allocation of educational decision making. What does educational decision making mean? Can either party hire a tutor or provide private music lessons? Can either party enroll the child in private or parochial school? A well formulated parenting plan should address the responsibilities of each parent.

⁴⁵ One state requires that the parties continue with the medical and dental providers used before the dissolution stated, unless there is an agreement to change providers.

⁴⁶ see *Planned Parenthood of Central Missouri v. Danforth* 428 U.S. 52 (1979). See also <http://www.positive.org/Resources/consent.html>

The Appellate court has been less than clear on education decision making when it opined:

“...to the extent the defendant has a joint custodial right to decide whether his child shall attend public or parochial school, he freely relinquished that right when he requested the court to settle the parties’ dispute by “selecting the school that the minor child shall attend.” *Sweeney vs. Sweeney*, 75 Conn. App 279, 288, 815 A.2d 287 (2003)

The interpretation of that language suggests that joint means both when making an education decision, unless of course, one asks the court to decide the issue.

New Mexico prohibits the changing of school system or religious tradition without permission of the other joint custodial parent:

“ (b) the religious denomination and religious activities, or lack thereof, which were being practiced during the marriage should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection;

(c) both parents shall have access to school records, teachers and activities. The type of education, public or private, which was in place during the marriage should continue, whenever possible, and school districts should not be changed unless the parties agree or it has been otherwise resolved as provided in this subsection; “ NM 40-4-9.1(J)

Religious decision making

Many standard parenting agreement forms, including Connecticut, invite the allocation of decision making concerning religious upbringing to one or both parents.

Even the classification of subject matter exclusive delegation of religious decision authority may involve misunderstanding. For example, if a parent is given the decision making authority on religious activities, does that require the other parent (a) to attend the same church or synagogue with the child even if not a member or (b) prevent the other parent from taking a child to a different church? Must the other person provide a religiously equivalent home and observe similar religious traditions? Does religious education trump designated parenting time?

According to the ALI, “In allocating decision making responsibility with respect to religious matters, a court must take care to ensure that it does not prefer one religion

over another, or constrain a parent from engaging in religious teaching or practices with the child.⁴⁷ ALI points out that :

“In addition, enforcement of agreements relating to the religious upbringing of the child raises important First Amendment limitations....These limitations, which affect a court’s ability to choose between religions or to constrain a parent from engaging in religious practices with the child must be respected by the court.”⁴⁸

ALI opines that such an order granting exclusive religious making decision to one person would be unenforceable.

PARENTING TIME

Connecticut Parenting Plan requires a designation of time that the child or children will be with each parent. “Physical residence of the child shall be allocated as follows...”

Residential Parenting Schedule Tennessee⁴⁹ and Colorado⁵⁰ provide that the parenting plan allocate the number of days to Mother, the number of days to Father. The form then goes on to specify which days are allocated to each. Since there is a deviation criteria in Child Support Guidelines, based upon the percentage of time the child spends with each parent, the percentages are easily determined by the parenting plan itself.⁵¹ It may also be useful in determining who should have the child’s exemption for tax purposes.

No matter how the time is divided it is essential that it be allocated with specificity.

Wisconsin provides:

(e) In an order of physical placement, the court shall specify the right of each party to the physical control of the child in sufficient detail to enable a party deprived of that control to implement any law providing relief for interference with custody or parental rights. Wis. Stat. §767.41(6)(e)

Different recommendations based on age and distance.

⁴⁷ Principles of the Law, (supra) Sec. 2.09, p 268 (2002)

⁴⁸ *Id.*

⁴⁹ Tenn. Code Ann. § 36-6-402(3)

⁵⁰ http://www.courts.state.co.us/Forms/Forms_List.cfm/Form_Type_ID/73 Parenting Plan,

Sec.B(4)

⁵¹ See for example Vermont in which 25% of parenting time has a consequence, 30% has a different consequence. 15 VSA §657, Wyoming 40%, Wyo. Stat. §.20-2-304, Ct Child Support Guidelines permit deviation for shared physical custody “*substantially in excess of a normal visitation schedule.*” Page xiii.

Some plans are specific as to age. The same plans have difference access schemes depending upon the distance the secondary residential parent resides from the children. Based upon the different approaches as to what amount of time and frequency best serves infants it appears that child development experts have not given sufficient attention to an infant's capacity to be raised in two homes or if they have, there is little consensus.

Age of child or children

Many states do not make any distinctions as to age. Texas has mandatory guidelines for children over age three but may make prospective orders effective at a time when the child turns three. Montana has two categories based on age: pre-school and school.

Those states, and counties that micromanage the recommended parental access schedule do so by age. Arizona, Pima County, provides different recommended access scheme for children from birth to 4 months; 4 to 9 months, 9 months to 12 months, 12 months to 18 months, 18 months to 24 months, 24 months to 36 months, 3 years to 5 years, 5 years to 11 years, 11 years to 14 years, 14 years to 15 years and 16 to 18 years.

In Pima County, Arizona the recommended access time for a child under 4 months is three times per week of two hours in length.

Indiana suggests that for birth to 9 months, there should be three non-consecutive days per week of 2 hours in length; 2 hours on all scheduled holidays, and if "the non-custodial parent has had regular care responsibilities, the parent should have one 24 hour overnight per week." It also points out that "...a parent who has regularly cared for the child prior to separation should be encouraged to exercise overnight parenting time."

South Dakota has frequent but limited access time for infants, (children under 18 months) except where "...the parents equally share[d] caretaking responsibilities for the child and the child is equally attached to both parents." It opines that in families where a child has been in day care before the parental separation the child may be able to tolerate flexible visits earlier because the child is more accustomed to separations from both parents."⁵²

⁵² www.sdjudicial.com (Parenting guidelines)

Minnesota opines from birth to 2 ½ years “It is important for parents of infants and toddlers to establish one nighttime caregiver.”⁵³

Colorado offers: “We now know that children form multiple and simultaneous attachments between six and nine months of age. In situations where both parents have been regularly involved with all aspects of care giving – and the child has formed an attachment to both parents – the previous restrictions on overnights should be reconsidered.”

Delaware, for infants to 18 months provides– every other weekend beginning 6:00 p.m. Friday through 6:00 p.m. Sunday⁵⁴

In view of the wide range of proposals for infants, it appears that there are significant disagreements as to the needs of infants by the child development experts.

Distance of Parents

Those that have standard or model parenting plans, assume that both parents live within a certain distance of the children. If the distance is exceeded, then the every other weekend, and mid week visitations are not available but more emphasis is placed on three day holidays, winter and spring breaks and summer.

Florida’s 10th Judicial District has the distance cut off of 100 miles, Texas 100 miles, Michigan 180 miles, South Dakota 200 miles. Oregon has three categories including medium distance 60-180 miles and long distance of over 180 miles. Alaska merely refers to the “same community.”

Every Other Weekend

Every model parenting plan calls for, at the least, every other weekend. Texas calls for all for visitation on the first, third and fifth⁵⁵ ⁵⁶weekend of every month. The advantage of designating the first, third and fifth weekend is that it is capable of determination months in advance and avoids quarrelling about the history of whose weekend it is, especially when interrupted by vacations, school breaks, and holidays. Occasionally one parent will call the police complaining that the child has not been returned as the court order requires. The police look at the court order. If it says the first, third and fifth weekend, the officer can quickly determine whether the complaint is justified. If he or she can’t tell by looking within the four corners of the document, the

⁵³ A Parental Guide to Making Child-Focused Parenting Time Decisions, p.9.
<http://www.mncourts.gov/default.aspx?page=513&category=42>

⁵⁴ <http://courts.delaware.gov/How%20To/Visitation/?visitation.htm> p.2

⁵⁵ Two months at most would have five weekends. If this becomes a bone of contention, the agreement could provide every other fifth weekend.

⁵⁶ Alabama suggests 1st and 3rd weekend of every month.

officer may decide that it is a civil matter and won't get involved. If the officer can tell by the document, he or she may threaten one parent with arrest if the children are not produced for parental access. Clarity in drafting the order should avoid this unpleasantness.

When does the weekend start?

Most plans start a 6 p.m. on Friday. Texas indicates that the weekend starts – “at the election of the visiting parent” at the end of school or 6 p.m. The election is a one time election to avoid putting the custodial parent in a position of not knowing who is responsible for the after school period.⁵⁷ Arkansas and Oklahoma defines the weekend starting Friday after school.⁵⁸ Utah, at the election of the noncustodial parent, starts the weekend from when the child is regularly dismissed from school on Friday.⁵⁹

When does the weekend end?

Almost all of the parenting plans end on Sunday between 6 and 8 p.m. Two exceptions exist: Oklahoma defines the weekend as ending on Monday morning at school or day care. Texas permits the non custodial parent to make a one time election return the children to school on Monday morning.

Midweek: All detailed parenting plans provide for at least one mid week visitation, usually every Wednesday from 5 to 7 or 8 p.m.

Monday holidays

Most states provide for a 24 extension if the visiting parent's weekend is followed by a Federal Monday holiday. Hawaii, with 20 listed holidays, will extend the weekend to include the preceding Friday as well.

Other states specify the Monday holiday as a single day which is allocated in the parenting plan. Another state provides that if the Monday holiday has been allocated to either parent, that parent will be entitled to the weekend that precedes the holiday even if not otherwise that parent's weekend.

School break between Christmas and New Year's, Winter break, and Spring break

Almost all parenting plans call for either alternating each break or dividing the time between the parents.

⁵⁷ Texas Fam §153.312(F)(a)(1)

⁵⁸ Oklahoma <http://www.oscn.net/applications/oscn/start.asp>

⁵⁹ http://le.utah.gov/~code/TITLE30/htm/30_03_003500.htm

Thanksgiving: Some states limit it to just the day; others couple it with the immediately following weekend – every other year. e.g. Alabama.

Christmas Eve and Christmas Day

A few states provide Christmas eve (day) from 10 a.m. to 10 p.m. Most states define Christmas eve as being an overnight until 10 a.m. Christmas morning. Either way, these holidays are alternated.

Other Non Monday Holidays: Most states provide either a sharing or alternate parenting time on July 4, Halloween, Veterans' day, Mother's birthday, Father's birthday, Child's birthday. Father's day and Mother's day is always assigned by relationship.

Some states suggest an allocation of the following holidays: Kwanza (District of Columbia); Passover, (Tennessee, D.C.), Passover, Hanukkah, and Yom Kippur and the eight days of Roshashanah (Alaska, Arizona), Prince Kuhio Day, King Kamehameha Day and Statehood Day (Hawaii), Native American Ceremonies Days (So. Dakota)

Summer visitation

A review of the states regarding summer visitation when parents live close to each other, suggests a wide variation in the recommended summer arrangement . Many states surveyed have the noncustodial parent enjoying four to six weeks of summer access. Connecticut appears niggardly with its customary 2 weeks.⁶⁰

Kansas although it deals with weekends, holiday, etc. has no provision for summers.

Hawaii provides for 6 weeks summer access to each parent, with counter weekend visitation and the opportunity for both parents to have a 10 day vacation without the burden of providing counter visitation. Polk County Florida – 6 weeks,; 4th Jud Dist Florida ½ summer vacation if under school age; all but 3 weeks if of school age; Delaware children over 5, alternate week from first Friday in June and concluding last Friday in August, Orange County each parent 4 consecutive weeks; Arizona, (Maricopa County) 14 to 16 years 4 weeks; ages 16 to 18 two weeks but must consider the child's wishes, employment and summer activities.

⁶⁰ Although unscientific, the members of the Connecticut family bar who were contacted believe two weeks in the summer is the norm.

Other Provisions

Jurisdiction The Model Act of the Academy of Matrimonial Lawyers⁶¹ (AAML) contains a important clause not found in any of the model acts. It creates statements of jurisdiction for purposes of the UCCJA,⁶² the UCCJEA⁶³, and the "habitual residence" of the children for purposes of the Hague Convention.⁶⁴ The advantage of having both parties and the court agreeing to jurisdiction may be helpful at a future time, should one party attempt to use a foreign state or country to obtain custody. If the parties cannot agree on the jurisdictional basis, the court should be alerted to the possible jurisdictional issue at the first opportunity.

Transportation

Most plans provide that the transportation burden falls entirely on the "visiting" parent, but Delaware provides for a sharing of the transportation burden. Delaware also provides: "[Parents] may use another adult well-known to their children for picking up or dropping off the children when necessary. Any person transporting the children shall not be under the influence of alcohol or drugs, and must be a licensed, insured driver. All child restraint and seat belt laws must be observed by the driver."

Most plans permit an allocation of transportation duties.

Alaska, recognizing the need for commercial air travel, and the costs during peak times, specifically includes an option that reads:

"When we live in different communities where transportation will be by airplane, we agree that our child(ren) may miss school [] half-day [] 1 day [] 2 days, if they are otherwise doing well in school, in order to accommodate travel arrangements and be with the other parent."⁶⁵

Authority of Out of Country Travel

In today's world of airport security, the airline may demand proof of custody and if a parent does not have sole custody, that he or she needs proof that he or she has the consent of the other parent to travel overseas. Therefore, to avoid the hassle, one should put in the parenting plan, if appropriate, the necessary authorization for out of country travel and conditions of possession of the child's passport⁶⁶ and birth certificate. A parent may need a certified copy of the divorce judgment to establish the right to

⁶¹ See also The AAML Model for a Parenting Plan, Mary Kay Kisthardt, *Journal of the Academy of Matrimonial Lawyers*, Vol.19, pg 223 et seq. (2005)

⁶² Uniform Child Custody Jurisdiction Act

⁶³ Uniform Child Custody Jurisdiction and Enforcement Act

⁶⁴ Hague Convention on the Civil Aspects of International Child Abduction

⁶⁵ Alaska Parenting Agreement p.16

⁶⁶ <http://www.lawdepot.com/contracts/child-travel-consent/>

travel with his or her child. If, because of remarriage, the use of a professional name, a child does not carry the same surname, this potential problem should be addressed in the parenting plan.

CONCLUSION

Parenting plans are too important not to be well drafted. With the increasing number of self represented parents, it is too much to expect that they could anticipate all the factors that go into parenting post separation. For this reason the author suggests a Model Parenting Plan⁶⁷ which provides the parents with options commonly used to determine parenting rights and responsibilities.

⁶⁷ One such parenting plan is attached to Part1 of this article.