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A RESPONSE TO A PARLIAMENTARY ENQUIRY INTO:

A LEGAL PRESUMPTION OF JOINT RESIDENCE WITHIN FAMILY LAW

This paper is concerned with the impact of the presumption of joint residence on the healthy emotional/psychological development of children, especially those who have witnessed or experienced domestic or family violence and the consequent personal, social and economic cost to our nation.

HEALTHY DEVELOPMENT OF CHILDREN

For healthy development, children need to be securely emotionally attached to nurturing adults, beginning in infancy with the primary caregiver (usually but not always the mother) and encompassing a gradually widening circle of other carers - father, grandparents, extended family, friends and community.

Levy and Orlans (1998:1) describe attachment as

> *"the deep and enduring connection established between a child and caregiver in the first several years of life. It profoundly influences every component of the human condition – mind, body, emotions, relationships and values."*

Secure attachment has many long-term positive outcomes for children. Osmond and Darlington (2001:3) cite Levy and Orlans reporting that

> *"children who are securely attached do well (over time) in the following areas:*
> *self esteem, independence and autonomy; resilience in the face of adversity; ability to manage impulses and feelings; long-term friendships, relationships with parents, caregivers and other authority figures; prosocial coping skills, trust, intimacy and affection...behavioural performance and academic success in school; and promote secure attachment in their own children when they become adults".*

In other words, secure attachment is vital for a child's well being, an important base for a healthy productive adulthood. Attachment to a nurturing primary caregiver provides a child with stability, security and a sense of belonging. Ideally, attachment to a widening circle of nurturing caregivers would enhance this wellbeing. In an ideal world joint residency of a child whose parents have separated could achieve this positive outcome.

IMPACT OF DV/ FAMILY VIOLENCE ON CHILD ATTACHMENT

However, as we are aware, we do not inhabit an ideal world. With child abuse, domestic and family violence at an unacceptably high community level we simply cannot make the assumption that all parents and caregivers will be nurturing or indeed non-violent. We know for a fact that between 1 in 3 and 1 in 10 homes experience domestic or family violence and that children are present in 88% of those homes. (Qld DV Task Force: 1988) It is therefore imperative to recognise the fact that many children are at risk of developing maladaptive attachment styles through living with violent parents (frequently but not always, fathers). A presumption of joint residency for this vulnerable and not unsubstantial population of children could prove disastrous.

Osmond and Darlington (2001:6) cite Davidson (1998) in relation to the impact on attachment of a child witnessing domestic violence.

> *"...one parental figure can be a source of fear, anxiety and terror to another significant carer which can result in the traumatised caregiver exhibiting conflicting caring messages (i.e. nurture and stress) to the infant.*
>
> *'This dynamic lays the foundation for the development of a trauma-attachment relationship to emerge' (Davidson 1998:74).*

In other words the bond between child and primary caregiver may be damaged, resulting in harm to child development.

The National Child Protection Clearinghouse AIFS (2002:6) suggests there is

> *"growing empirical evidence that early exposure to chronic violence, a lack of nurturing relationships and/or chaotic and cognitively 'toxic' environments (Garbarino 1995), may significantly alter a child's neural development and result in failure to learn, emotional and relationship difficulties and a predisposition to violent and/or impulsive behaviour (e.g. Pynoos, Steinberg & Wraith 1995; Shore1997; De Bellis et al. 1999)...*
>
> *Specifically, the child may develop a chronic fear response...(or)...become unresponsive and overly withdrawn. In either case, although this 'survival' reaction may be an important adaptation for life in a violent home environment, it can be maladaptive in other environments, such as school, when the child needs to concentrate and make friends with peers."*

Children who are unable to develop a secure attachment to their primary caregiver because of exposure to violence may be vulnerable to certain types of psycho - pathology described as Attachment Disorders. These include Reactive Attachment Disorder, Nonattached Attachment Disorder, Indiscriminate Attachment Disorder, Inhibited Attachment Disorder, Aggressive Attachment Disorder, Role-Reversed Attachment Disorder (Osmond & Darlington 2001:11).

Osmond and Darlington state that

> *"Links have also been made between insecure attachments* (such as the disorders listed above) *and other dysfunctions and disorders that may manifest in adolescence and adulthood" (2001:11).*

It is not only children's present but also their future mental health which is at risk here.

While there are numerous parental, child and environmental factors underlying the development of attachment disorders it is noteworthy that abuse, neglect, separation from or absence of the primary caregiver are all significant.

PRACTICAL REALITIES OF THE JOINT RESIDENCY PROPOSAL AND ITS IMPACT ON CHILD ATTACHMENT AND MENTAL WELL-BEING.

As a result of the media publicity relating to the proposal of joint residency, the Talera Centre (a Child and Family Therapy Unit) is already encountering increased levels of fear amongst mothers of children who have witnessed domestic and family violence. The maternal fear alone will impact on the children we see. If the proposal should be fully implemented, children who are already distressed/traumatized/vulnerable because of their exposure to violence and abuse will be additionally at risk. They will be exposed to a disjointed home-life in which there is no stability (duplication of home and possibly school, friends and environment) and no security from violence. They may experience only intermittent nurture, little sense of belonging and increased risk of the development of an attachment disorder with its subsequent risk of adult mental health problems.

In order to protect children from such maladaptive outcomes and to ensure their optimal future development it is essential that residency decisions on behalf of such children be made on a case by case basis. Careful consideration should be given to a child's primary attachment to a nurturing parent and protection provided from a violent, aggressive parent, who may themselves have experienced dysfunctional attachment in their own childhood.

FUTURE OUTCOMES

We need to address this problem of promoting children's secure attachment at a societal rather than a legislative level. Education is needed to help parents (especially aggressive fathers) learn to nurture their children. This will not only achieve secure attachment for the children but will also provide growing boys with a positive role model for our next generation of parents.

Until then, Family Law must give primary consideration to the attachment needs of children on a case by case basis in order to ensure positive outcomes for all children caught up in the separation of their parents. A universal assumption of joint residency denies the current reality for many children and would expose these children to an unacceptable risk. The resultant social and economic costs are significant. Family violence already costs the community in homelessness, policing, courts, medical/hospital, lost work time, as well as the personal and social cost to the

victims. This proposal, if applied to children who have experienced family violence, will add to the long term costs to the children and our community.

This paper has drawn on:

Osmond,J. & Darlington, Y. (2001). ***Using Knowledge in Practice. Attachment Theory and Child Protection Practice.*** *UKIP Information Sheet 2. University of Queensland*

Tomison, A.M. (2002) Preventing Child Abuse: Changes to family support in the 21st century
National Child Protection Clearinghouse.6.