

# NCSMC

National Council of Single Mothers and their Children Inc.

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Committee Secretary  
Senate Legal and Constitutional Committee  
Department of the Senate  
Parliament House  
Canberra ACT 2600  
Australia

[legcon.sen@aph.gov.au](mailto:legcon.sen@aph.gov.au)

24 February 2006

Dear Secretary

Please find attached the submission of the National Council of Single Mothers and their Children to the Committee's inquiry into the Family Law Amendment (Shared Parental Responsibility) Bill 2005.

NCSMC notes that the Bill amends the Family Law Act 1975. The changes proposed by the Bill include:

- the introduction of a presumption of equal shared parental responsibility;
- the requirement for parents to attend dispute resolution and develop parenting plans before taking a parenting matter to court;
- increased penalties to enforce parenting orders;
- increased requirements for children spending time with grandparents and other relatives.

NCSMC would be pleased to support this submission with oral evidence.

Yours faithfully



**Dr Elspeth McInnes AM**  
Convenor NCSMC

## **About NCSMC**

The National Council of Single Mothers and their Children Incorporated was formed in 1973 to advocate for the rights and interests of single mothers and their children to the benefit of all sole parent families, including single father families.

NCSMC formed to focus on single mothers' interests at a time when women who were pregnant outside marriage were expected to give up their children for adoption by couple families and there was no income support for parents raising children alone. Today most single mothers are women who have separated from a partner. Issues of income support, child support, paid work, housing, parenting, child-care, family law, violence and abuse continue as concerns to the present day.

NCSMC has member organisations in states and territories around Australia, many of which also provide services and support to families after parental separation.

NCSMC aims to:

- Ensure that all children have a fair start in life;
- Recognise single mother families as a viable and positive family unit;
- Promote understanding of single mothers and their children in the community that they may live free from prejudice;
- To work for improvements in the social, economic and legal status of single mothers and their children.

NCSMC has made submissions to the inquiry process in previous Parliamentary Committee inquiries and this submission focuses on the substance of amendments arising from the recommendations of the House of Representatives Legal and Constitutional Affairs Committee. NCSMC's submission to that inquiry is attached at Appendix 1.

NCSMC endorses the objective that parents be supported to reach safe sustainable workable agreements about post-separation parenting arrangements, however, the provisions to support ex-partners to make decisions or have right of veto over the other partner's life decisions are likely to promote escalated conflict as aggrieved parents take the opportunity to intervene in the life of the ex-partner.

NCSMC is further concerned that the Bill removes children's opportunity to have entitlement to a home. The requirement that consideration be given to whether it is in the child's best interests to spend equal time with each parent promotes a model whereby:

- (a) children's interests will be served by being allocated and distributed between their parents like a divisible commodity;
- (b) children no longer have access to a stable place of residence but will be expected to carry their lives around in a schedule of parental attendance.

Another key concern about the Bill is the potential for conflict between the principle of children's rights to know both parents and their right to be safe, particularly because:

- (a) Violence and abuse in relationships are key drivers of relationship breakdown, particularly when there are young children. State child protection authorities can require mothers to end an abusive relationship or lose care of their children, but when the mother leaves, the family court system often requires the children to have continuing contact with the violent or abusive parent.

- (b) The family court has no inquisitorial powers to investigate issues of abuse and relies on evidence presented by private litigants. Litigants in person and those with limited funds have great difficulty accessing police, health and child protection records held by state governments for federal law processes. Child representatives have no consistent history of practice of ensuring that all relevant police, health, education and child protection records are before the court despite being required to do so.
- (c) Reports to child protection frequently fail to be investigated and are therefore classified as 'unsubstantiated' when in fact there has been no active inquiry. The Magellan Project has not significantly changed this.
- (d) Evidence of family violence attested by domestic violence orders and child protection agencies' reports is frequently disregarded by the family court judiciary on the basis that the accused has not always had the formal opportunity to refute allegations. Even where a history of violence is established, children are ordinarily required to spend time in the care of the violent person.
- (e) The Bill promotes the concept of 'false allegations of domestic violence' as a presumptive response to allegations of violence. This is despite a vast weight of research evidence that violence is much more likely to be under-reported than falsely reported.<sup>1</sup> The imposition of penalties on litigants who have been unable to 'prove' violence, especially when the court disregards evidence of violence, will inhibit targets of violence from ever speaking about their experience and consequently targets will continue to be exposed to violence.
- (f) The Bill further raises the threshold of determining violence to take account of whether the judiciary think the target's fear is 'reasonable' despite their lack of knowledge of domestic violence and incapacity to objectively determine 'reasonable fear'. Inevitably members of the judiciary will draw on their own subjective experiences and prejudices and continue to discount, trivialise or deny violence and women and children will continue to be exposed to situations of fear, injury and sometimes, death.
- (g) The Bill includes a secondary consideration of parents' willingness to promote a positive relationship with the other parent which will impact adversely on families experiencing violence and abuse. Mothers with abusive or violent ex-partners will have to choose between naming their experiences and risking penalties and being named as an unfriendly parent and treated adversely in court orders, or somehow 'prove' violence in a context where evidence of violence and abuse is routinely discounted or disregarded.

A key question which remains unresolved is how a court determines whether a child's best interests are served when the child's relationship with a parent exposes the child to continuing violence or abuse. US Child Trauma specialist and neurologist Dr Bruce Perry has demonstrated through neurological research (See Appendix 3) that children's long-term health can be seriously compromised by exposure to violence and abuse.

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<sup>1</sup> See Appendix 2 for unpublished data on 2005 survey of separated resident mothers on responses to domestic violence and child protection.

In the wider community hitting children is an accepted practice for many parents and the boundaries between 'reasonable' physical discipline and violence are poorly delineated at a legislative level except in New South Wales. The question of whether the child is best served by being with a parent who hits or otherwise abuses them, or not having a relationship with that parent, is not clearly defined. How many occasions of abuse would need to occur for a judge to decide that the child is best served by not seeing the abusing parent? How severe would that abuse have to be for the loss of relationship to be better for the child than an abusive relationship? How does a judge objectively determine when a child's best interests are being served – they are not qualified to make determinations of child abuse or child well-being and neither are children's lawyers.

Emotional abuse, neglect and child sexual assault are largely invisible forms of abuse, and, in the case of small children in particular, commonly emerge through the child's direct disclosures to the non-offending parent. Yet parents are disqualified in Family Court as a credible source of evidence about children's disclosures of abuse or their own observations of children's injuries or behaviour. Parents alleging abuse will effectively go on trial and face penalties ranging from court costs, to fines to loss of care of the children.

Australian Institute of Criminology Homicide Data is described as follows *'Excluding cases with no apparent motive, female victims of homicide are overwhelmingly most likely to have been killed as a result of a domestic argument and/or the breakdown of a relationship.'* (AIC 2005) The Homicide Monitoring data shows that an average of 76 women and 23 children are killed every year in Australia by ex-partners and fathers in a post-separation context, yet the Bill expands penalties for victims of violence who cannot prove to the court's satisfaction that they are living in fear.

The Bill's provisions with regard to violence represent a victory for unsubstantiated anecdotal complaints by men and further reduce access to safety for women and children fleeing violence. The data on domestic violence demonstrates its enormous burden to women and children (and cost to the community) yet the Bill sets out new penalties for victims of violence or abuse who dare to speak about it.

The changes to Division 11 do not increase safety for targets and may make it harder for victims to gain and keep the protection of family violence orders. Already many Magistrates make domestic violence orders which apply 'except for the provisions of Family Court orders,' again reflecting the profound lack of priority for keeping mothers and children safe and alive.

Forced mediation has a history of working against targets of violence and this is likely to continue, particularly where counselling sessions are directed towards reconciliation or agreements. Neither course of action is appropriate in violent relationships. The level of training of staff should require an appropriate tertiary degree and specific training in child development, child protection and family violence, whilst protocols should emphasise routine screening for violence and abuse.

There is an alarming disregard for the evidence of injury and death arising from domestic violence and child abuse in favour of false beliefs that (a) mothers make up violence, and (b) mothers withhold contact out of revenge. These myths are frequently re-stated by fathers' groups and their fellow travellers but the research

evidence consistently contradicts their claims (See Rhoades, 2002 at Appendix 6, attached as PDF file).

The Bill presents as an expression of fathers' rights groups' agendas driven by the anecdotes of angry men who have consistently expressed misogynist false claims that are not supported by any independent evidence base. It will be damaging to adults and children seeking safety from family violence and abuse as it increases opportunities for perpetrators to maintain contact with and control over their targets.

The proposed changes ignore the research evidence that withholding of contact is linked to protective concerns for the child (Rhoades, 2002). Research into Family Court cases identifies that filing contravention applications is a method of legal harassment of an ex-partner. Persons filing such applications should have to establish that contact was not provided and face penalties for frivolous or non-meritorious applications. The capacity to withhold contact to protect the child needs to be available to parents.

**NCSMC recommends that there should be no presumption of equal shared parental responsibility and consideration of parental responsibility should rest on each child's unique circumstances.**

**NCSMC recommends that there should be no assumption that children should spend equal or substantial time with each parent and that the circumstances of each child should be taken into account in determining her/his best interests.**

**NCSMC recommends that the content of the 'best interests of the child' be detailed as having a threshold benchmark of safety from abuse and violence or exposure to abuse or violence against a person in the child's family.**

**NCSMC recommends that in cases where a history of violence or abuse has been established, decision making around contact should prioritise the child's safety and that of family members ahead of any other consideration.**

**NCSMC recommends that where family law orders or agreements result in exposure to violence or abuse, victims should receive compensation, or in cases of murder or manslaughter, the immediate relatives of the victims should receive compensation from the Commonwealth.**

**NCSMC recommends that the Federal Attorney General commissions a federal family law homicide standing investigative body which works with relevant state and territory police and justice departments to investigate family killings where family relationship centres or the federal courts have been involved in making agreements or orders affecting the victims. The aim of such a body would be to identify what agencies would need to do differently so the risk of future killings can be reduced.**

**NCSMC recommends that all Family Relationship Centre staff and court officials presiding in family law cases have mandatory regular accredited training in child development, child protection and family violence.**

**NCSMC recommends that changes to the definition of family violence be rejected.**

**NCSMC recommends that penalties for alleging family violence be rejected.**

**NCSMC recommends that the “friendly parent provision” be removed, and that the capacity of parents to withhold contact to protect their children from exposure to violence or abuse be supported.**

**NCSMC recommends that children’s right to continuity of residence be given equal consideration in the process of determining a parental schedule of attendance that will be imposed on the child.**

**NCSMC recommends that all children whose parents have a dispute about parenting matters have opportunity to express their views and have those views taken into account by Advisers and the Court in developing a parenting plan or making an order. Where children are pre-verbal, child development evidence should be used to inform outcomes supporting children’s healthy emotional and social development. The Bill places children’s view as a secondary criterion and this is vastly inadequate.**

**NCSMC recommends that any orders or agreements in the allocation of parenting time have regard to, and be consistent with, expert, independent, contemporary child development research-based knowledge of a child’s best interests. In particular, a preclusion of breast-feeding infants being required to spend more than 2 hours away from their mother must be included (see Purvis, 2002 at Appendix 5).**

**NCSMC recommends that a sworn statement by a party that violence or abuse has occurred should be sufficient to establish ‘reasonable grounds’ to believe that violence or abuse has occurred or may occur.**

**NCSMC recommends that interim and ex-parte family violence orders must be considered in determining a child’s best interests.**

**NCSMC recommends that the New Zealand Guardianship Act (1968) be considered for adoption, specifically s16B which requires a court to determine “as soon as practicable” whether an allegation of violence is proven. Where it is the court must not order residence or unsupervised contact to the violent parent unless satisfied that the child will be safe. An evaluation has demonstrated that this legislation has improved the safety of children (Chetwin, et al., 1999).**

**NCSMC recommends that, in recognition of the popularity of contravention applications being used by ex-partners to legally harass resident parents, all applications for contravention proceedings should place the burden of proof on the party bringing the application. Further penalties should be available to the court when applications are found to be without substance and the party bringing the application is exploiting the family law system as a form of harassment and control.**

**NCSMC recommends the implementation, as a matter of urgency, of the Family Law Council recommendations on child protection and family violence.**

## Additional Comments

There is significant research to show that domestic violence and child abuse are very real issues for many women and children, and that separation from an abusive partner can be the most dangerous time for women and children. The proposed reforms not only do not address how the family law system will be improved to protect women and children from ongoing violence and abuse following separation, but in fact create further barriers to women and children achieving safety. The proposed changes take a punitive approach towards women in their attempts to escape domestic violence and child abuse.

- The Australian Institute of Family Studies research (Wolcott & Hughes, 1999) shows that communication breakdown, followed by violence and abuse issues are the main reasons for divorce.
- The Australian Bureau of Statistics (1996) Women's Safety Survey indicate that single, previously partnered women experienced the highest incidence of violence, with 42% reporting experiencing violence, mainly from former partners.
- The Family Law Pathways report identified that 2 out of 3 separations involving children feature issues of violence and abuse.
- One in four children experience violence and abuse through witnessing violence against their mother or step-mother by their father or step-father (Indemaur, 2001).
- Brown et al (2001) in their study of family court cases found that 50% of cases at the mid-point of proceedings in the family court contained multiple and serious forms of family violence.
- Women and children are at greatest risk of increased violence, including murder immediately following separation (Jaffe et al, 2003). At the time of separation children are at risk of violence, abduction, sexual assault and coercion (Kaye et al, 2003).

There is also ample evidence to show that the current family law system is failing to provide protection for women and children from abuse and violence.

**NCSMC strongly recommends that Committee members become informed of the existing evidence-based research that clearly demonstrates that (a) false allegations are rare, and (b) the court's existing processes leave women and children in danger (see list of references listed in Appendix 6).**

### Appendices:

1. NCSMC's submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs Inquiry into the provisions of the Family Law Amendment Bill 2005;
2. Unpublished data on 2005 survey of separated resident mothers on responses to domestic violence and child protection;
3. Perry, B. D. (2000) "The Neuroarcheology of Childhood Maltreatment: The Neurodevelopmental Costs of Adverse Childhood Events" in Geffner, B (ed) *The Cost of Child Maltreatment: Who Pays? We All Do*, Hawthorn Press.
4. Purvis, R (2002) "Early Childhood Health In Separating Families", Paper delivered to "FROZEN FUTURES", A Conference Exploring the Effects of Early Stress on Later Outcomes, University of Sydney 14 - 16 November 2002
5. List of references of evidence based research.
6. Rhoades, H. (2002) 'The 'No Contact' Mother': reconstructions of Motherhood in the era of the 'New Father', *International Journal of Law, Policy and the Family*, 16 (1): 71-94. – **attached as PDF file**

## APPENDIX 1

# NCSMC

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14 July 2005

The Secretariat  
House of Representatives Standing Committee  
on Legal and Constitutional Affairs  
Parliament House Canberra ACT 2006  
e-mail: [laca.reps@aph.gov.au](mailto:laca.reps@aph.gov.au)

Dear Secretariat

Please find attached the submission of the National Council of Single Mothers and their Children Inc to the inquiry into the provisions of the Family Law Amendment Bill 2005.

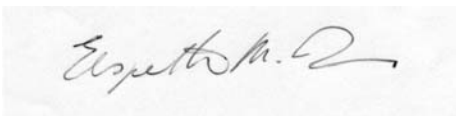
We note that an extension of one week from 8 July to 15 July 2005 was granted to submit comment.

Our submissions addressed the Terms of Reference of the Committee, as taken from the *Every Picture Tells a Story* Report, namely to:

- a. encourage and assist parents to reach agreement on parenting arrangements after separation outside of the court system where appropriate
- b. promote the benefit to the child of both parents having a meaningful role in their lives
- c. recognise the need to protect children from family violence and abuse, and
- d. ensure that the court process is easier to navigate and less traumatic for the parties and children

NCSMC would like the opportunity to support this submission with oral evidence. Please do not hesitate to contact our Executive Officer, Jac Taylor, for any further assistance.

Yours faithfully



**Dr Elspeth McInnes,  
NCSMC Convenor**



## About NCSMC

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NCSMC formed to focus on single mothers' interests at a time when women who were pregnant outside marriage were expected to give up their children for adoption by couple families and there was no income support for parents raising children alone. Today most single mothers are women who have separated from a partner. Issues of income support, child support, paid work, housing, parenting, child-care, family law, violence and abuse continue as concerns to the present day.

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- Promote understanding of single mothers and their children in the community that they may live free from prejudice;
- To work for improvements in the social economic and legal status of single mothers and their children.

## Background of the Bill

On 24 June 2005 The Attorney General's Department released the Government's response to *Every Picture Tells A Story*, an exposure draft of proposed legislation and explanatory statement. In addition to the introduction of the FRC's and the more prominent use of Family dispute resolution in Family Law matters; the proposed changes to the Family Law Act could be the most significant changes to the family law system since 1975.

The exposure draft has been referred to the House of Representatives Legal and Constitutional Affairs Committee for consideration. Any comments are **due to be submitted to the Committee by 8 July 2005**. The Committee is due to report by 11 August 2005.

This submission makes recommendations on various sections of the Bill taking into account all four criteria of achievement listed below.

- a) encourage and assist parents to reach agreement on parenting arrangements after separation outside of the court system where appropriate
- b) promote the benefit to the child of both parents having a meaningful role in their lives
- c) recognise the need to protect children from family violence and abuse, and
- d) ensure that the court process is easier to navigate and less traumatic for the parties and children.

*NCSMC considers that two of the terms of reference are flawed:*

***The b) reference ignores the reality that, when parents are hostile, abusive or violent, 'meaningful involvement' of both parents is ordinarily harmful.***

***The c) reference should also recognise the need to protect the child's family members from family violence and abuse.***

## **Schedule 1 – Shared Parental Responsibility**

### **Content**

**Item 2** of the Schedule amends the objects provision of Part VII of the Act to provide that, subject to safety issues, children have the right to know and be cared for by both parents.

### **Comment**

*NCSMC notes that this provision supports the good intentions of separating parents who are able to co-operate and agree to provide safe care for their child/ren.*

*The provision also supports risks of increased and prolonged entrenched conflict and distress between parties to the detriment of children's well-being.*

*The primacy of safety has not been sufficiently emphasised.*

### **Recommendations:**

- 1. Give expression to the primacy of human rights to safety in the definition of the child's rights.**
- 2. Give expression to children's right to live free from continuing parental conflict.**

## **Family Dispute Resolution (FDR)**

### **Content**

Item 9 provides that people applying for a parenting order will be required to first attempt to resolve their dispute using family dispute resolution services. A court cannot hear an application for a parenting order unless the applicant provides a certificate of attendance at family dispute resolution or that failure to do so has been caused by the other party's refusal or non-attendance.

Exceptions to attendance are

1. Where the parties have agreed to consent orders.
2. Once substantive court proceedings have commenced.
3. Where there is or has been family violence or abuse, subject to the party satisfying the court that there are 'reasonable grounds' to believe that abuse or violence has occurred or may occur.
4. Where there is an existing order relating to an issue in a current contravention application and the person has shown 'serious disregard' of the order.
5. In cases of urgency such as relating to location and recovery of a child including cases of child abduction.
6. Where a party is 'unable' to participate effectively in family dispute resolution due to incapacity (significantly intellectually impaired or substance addicted) or physical remoteness without access to a telephone.

Even where a person meets a ground of exemption, the court may still order them to attend family dispute resolution.

Where a party does not attend family dispute resolution due to the existence or risk of family violence or child abuse, parties must obtain information about the issue/s in dispute from a family counsellor or family dispute resolution practitioner before the application is considered by the court.

All applications made after July 1 2008 will need to be fully compliant with these provisions.

## **Comment**

*NCSMC notes that there is no detail about how the Court will determine what are 'reasonable grounds' to believe that abuse or violence has occurred or may occur.*

*Circumstances of violence or abuse often occur in private, are under-reported and often minimised or denied by parties.*

*The possible increased requirements to document or prove violence or abuse creates risks that women will be discouraged from disclosing violence and/or abuse and that matters will be inappropriately forced into FDR processes.*

*Services that provide FDR will also play a role in screening for violence in families. There is evidence from research and past experience that screening is not successful/effective. Keys Young (1996) research into mediation services found that almost two-thirds of cases attending mediation involved family violence and less than one third were identified as such. Even with highly sensitive screening tools and skilled staff, not all cases of domestic violence will be identified.*

*A further problem is that the court's current processes routinely expose adults and children to continuing risks of violence and abuse. The Family Law Council has highlighted this in its reports on Family Law and Child Protection (2002) and Letter of Advice on Family Violence (2004). There is an annual corpse count of mothers and children killed by men who used the opportunity of child contact to kill their child/ren and sometimes mothers and other family members.*

*It is a grave and glaringly apparent abuse of power to ignore expert advice that mothers and children are being failed by existing safety provisions. The failure to act to make the Family Law system responsive to the safety needs of children and adults underpins the inadequate uselessness of referring matters involving abuse and violence to the court. The court's practices have a history of manifest and abject failure in sustaining the safety of targets of post-separation violence. People in the court system are being killed by ex-partners now. What is being done to make it safer? Nothing.*

*There is no capacity of individuals to protect themselves from death or injury arising from federal court orders requiring them to see or live with a person who was established on 'reasonable grounds' as violent or abusive. Therefore, there should be a statutory compensation scheme established for surviving dependents of murdered parents or children, and living adults and children who suffer serious physical or psychological harm from another party as a result of court orders.*

## **Recommendation 3**

***A sworn statement by a party that violence or abuse has occurred should be sufficient to establish 'reasonable grounds' to believe that violence or abuse has occurred or may occur.***

***A further range of indicators of violence or abuse in families should be provided to the court to support 'reasonable grounds'. These should include but not be limited to:***

- Allegations of abuse or violence by a party***
- Children's disclosures of abuse or violence***
- Any police records, reports, prosecutions, convictions pertaining to violent conduct of a party***
- Any mandated child protection notifications against a party***
- Any child protection records pertaining to a child of a party***
- Any audio or video recording of abusive or violent conduct by a party including threats to harm or kill***
- The existence of a previous or current Restraining Order against a party***
- Any witness statements attesting to violent or abusive conduct by a party***

#### **Recommendation 4**

***An additional presumption of human rights to safety should be expressed, providing that the court specifically has responsibility to ensure that its orders do not expose parties or children to actual or threatened harm.***

#### **Recommendation 5**

***The legislation should further provide for a statutory compensation system for parties and children who are killed or suffer serious physical or psychological harm from parties who the court orders them to have contact with or reside with.***

#### **Recommendation 6**

***As a matter of urgency the family law system capacity to identify and respond effectively to violence and abuse to support adult and child safety should be addressed. The recommendations of the Family Law Council in its Family Law and Child Protection Report (2002) and Letter of Advice: Violence - Division 11 of the Family Law Act 1975 (2004) should be implemented forthwith.***

## **Presumption of Joint Parental Responsibility**

### **Content**

Item 11 provides a new presumption for the court to consider in making an order, that parents have joint parental responsibility for the child except where there are reasonable grounds for the court to believe that a parent of a child or a person who lives with a parent of a child, has engaged in child abuse or family violence. The presumption will also be rebutted where the court considers that joint parental responsibility would not be in the best interests of children.

### **Comment**

*There should be no presumption of joint parental responsibility, and consideration of parental responsibility should rest on each child's unique circumstances. NCSMC is pleased to note the provision recognising that joint parental responsibility will not always be in a child's best interests. NCSMC is concerned that some such circumstances should be indicated and include provisions which limit parent's capacity to intermittently exercise parental responsibility. For example, if the parent goes overseas for a number of years and has no contact with the child, it is not reasonable to support a capacity to re-appear and exercise significant control over the child's life.*

*A requirement to consult/communicate provides abusive ex-partners with ongoing opportunities to intimidate, harass and abuse their former partner. This requirement may endanger children.*

*Although there is the presumption against joint parental responsibility in cases involving violence/abuse, NCSMC is concerned about the burden of proof. There is no provision as to how to ensure that such evidence is presented to court, or where it fits into the process of the new family law system.*

*Further this is placing the burden of proof onto the victim. Despite research available that demonstrates how the system routinely fails to protect women and children, there is no consideration being given to the Government's responsibility to protect its citizens from violence/abuse.*

#### **Recommendation 7**

***Determination of parental responsibility should be determined on the unique circumstances of each child. Indicators of the circumstances in which joint parental responsibility would not be in a child's best interests should be developed with reference to research evidence and include, in addition to circumstances of violence or abuse, circumstances of ; for example***

- **Substance abuse**
- **Significant intellectual impairment arising from disability or illness**
- **Continuing high conflict**
- **Absence for a significant period from exercising parental responsibility**

## **Substantial Time with each Parent**

### **Content**

Item 14 provides that Advisers (as defined in the Bill and including legal practitioners, FDR practitioners, family counsellors) assisting in the making of a parenting plan are required to inform their client/s of the possibility of the child spending substantial time with each of the parties if it is practicable and in the best interests of the child.

Item 23 provides that the court must consider making an order that a child spend substantial time with each parent, if a parenting order provides parents with joint parental responsibility for the child. The court must consider whether both parents wish to spend substantial time with the child and whether it is reasonably practicable for the child to spend this time with each parent and whether it is in the child's best interests.

### **Comment**

*There should be no assumption that children should spend substantial time with each parent and the circumstances of each child should be taken into account in determining her/his best interests. There is no apparent consideration of the child's right to any continuity of living circumstances. NCSMC is concerned that the focus in these items is on parcelling the child out to parties and further does not include opportunities for the child to express her/his views on the way her/his time is spent and with whom in line with the provisions of the United National Convention on the Rights of the Child. Neither is there guidance as to 'practicability'.*

*In relation to situations of violence/abuse, research clearly demonstrates that perpetrators often seek greater access to their children, as a mechanism to maintain control (Kaye, et al., 2003; Judicial Council of California, 2002; Jaffe, et al., 2003; Rhoades, 2002). Research also documents that the "right to contact" principle has taken precedence over children's rights to safety (Rhoades, 2002; Kaye, et al., 2003).*

### **Recommendation 8**

***There should be no assumption that children should spend substantial time with each parent and the circumstances of each child should be taken into account in determining her/his best interests.***

### **Recommendation 9**

***All children whose parents have a dispute about parenting matters have opportunity to express their views and have those views taken into account by Advisers or the Court in developing a parenting plan or making an order. Where children are pre-verbal, child development research evidence should be used to inform outcomes supporting children's healthy emotional and social development.***

### **Recommendation 10**

***Children should have a right to reasonable continuity of living circumstances. That a range of indicators of 'practicability' need to be developed and considered in terms of the child's experience of the plan/order. Children should be protected from plans/orders which:***

- ***Impose a regime of long travel times on the child***
- ***Disregard the need for secure 'attachment' for healthy infant development***
- ***Prevent/inhibit breastfeeding the child***

- **Impose medical risks to the child (such as when the child has a serious illness or disability which requires attentive and continuing expert care)**
- **Impose unreasonably high financial burdens on either parent**
- **Prevent/inhibit children from participating in regular sport/recreation activities such as weekend sport**
- **Interrupt/change children's place of education**
- **Prevent/inhibit children from spending time and participating in family events with other family members**
- **Require children to attend prison to spend time with a parent**
- **Expose children to continuing emotional distress**

## **Parenting Plans**

### **Content**

Parenting plans/orders provide for the time a child spends with particular people, the allocation of parental responsibility, 'other communications' a child is to be made to have, child maintenance and the form of consultation about parental decisions and processes for changing plans by agreement.

A parenting plan will override a prior court order to the extent of any inconsistency. Parenting plans will also be able to deal with other relatives of the child including step-parents, siblings, grandparents, uncles and aunts, nephews, nieces and cousins

### **Comment**

*NCSMC endorses supporting parents to agree to processes for consultation and for changing plans where this is possible. It is again concerning that there is no systematic attempt to include children in the determination of their lives through either parenting plans or orders.*

*There is also a heightened risk of instability in children's lives if they are subjected to a constantly changing sequence of plans/orders about their lives. The approach of continual change of plans may in practice inhibit children's capacity to pursue educational and vocational opportunities which rely on continuous participation.*

*There is also a need for children to be able to actively indicate if they experience significant distress arising from the plan/order. Where the terms of the plan/order provide for specific purposes of outcome for the child, there should be a review mechanism to check if the anticipated outcomes have actually been met and if there are any undesirable unintended consequences arising from the plan/order. For example if a child is ordered to spend time with a parent who has sexually assaulted her in order for her to lose her fear of her rapist, the practice outcomes of the order should be reviewed to examine its impact on the child. Currently, when orders are made that children spend time with parents who have been violent or abusive to them or other family members, there is no way to assess whether the order is helping or harming the child.*

**See Recommendation 9**

### **Recommendation 11**

***There should be provision for Courts, Advisers and parents to consider whether the child's life will be subject to significant fragmentation and disruption by either the terms of the plan/order or changes which are being sought to the plan/order. Children should have a right to reasonable continuity of living circumstances.***

### **Recommendation 12**

***There should be provision for the review of a plan/order with respect to how it is working***

***for the child. Where children experience significant emotional, behavioural or physical distress arising from the terms of the plan/order, there should be opportunity for systematic review and changes which assist the child's well-being.***

## **Best Interests of the Child**

### **Content**

Items 26 to 36 provide for determining the best interests of the child and include a first tier of two factors – the benefit to the child of having a meaningful relationship with both of her/his parents and the need to protect the child from violence or psychological harm. The second tier lists factors already existing in subsection 68F(2) of the Act. There is a new factor to consider the willingness and ability of each of the child's parents to facilitate and encourage a close and continuing relationship with the other parent. There is also an amendment providing explicit direction that uncontested or interim family violence orders are not an independent factor in considering a child's best interests.

### **Comment**

*Despite the statement about the need to protect the child, the amendments collectively undermine the existing inadequate protections for children and adults from violence and harm in the family law system. The need to protect the child from violence is represented as subordinate to the child's 'benefit' from a meaningful relationship with both parents. These should be reversed. When a child is murdered by a parent there is no opportunity for a meaningful relationship with anyone. Safety should come first.*

*Further the 'friendly parent' provision has been a manifest boon, where it has been implemented, to parents who use violence or abuse. Parents who use violence and abuse welcome the opportunity to threaten and harm their targets whilst protective parents seeking to avoid threats and injury have every reason to avoid the violent parent.*

*As noted earlier, the family law system has been identified, most recently by the Government's own statutory advisory body, as failing miserably in its protections against violence. Apart from the advice of the government's own legal experts, there is also the evidence of an annual corpse count of mothers and children attesting to the fact that the safety protections are abysmally inadequate. It is not clear why the emphasis in the provisions is on downplaying the evidentiary significance of restraining orders in matters of violence and abuse when mothers and children with restraining orders are still being attacked and killed. The government would appear to be ignoring the recent Australian research findings of Access Economics, The World Health Organisation and VicHealth identifying that domestic violence is an \$8billion problem in the Australian economy, that most gendered violence occurs in intimate partnerships and that men's violence against women is the single biggest contributor to the public health burden for women aged 15-44. The government would appear to prefer the unsubstantiated anecdotes of men that women falsely claim violence to gain advantage to national quantitative research. The flaw in the men's argument is that reporting violence and abuse does not do anything to protect mothers and children in the family law system. In fact persistent attempts to protect themselves and their children is likely to result in loss of residence to the abuser and supervised contact. The government's approach to this issue also seems to endorse the men's movement view that women routinely invent claims of violence and even the bodies of battered mothers and children do not seem to affect the apparent belief that women are liars.*

### **Recommendation 13**

***The safety of the child and the child's family should be the first threshold condition of meeting a child's best interests. All considerations of a child's best interests by Advisers and the courts should work systematically through the indicators in this section of the Act.***

**Recommendation 14**

*The 'friendly parent' provision should be scrapped or at least enable protective parents to seek to protect the child without such actions being used as an argument to remove the child from their care.*

**Recommendation 15**

*Interim and ex-parte family violence orders must be considered in determining a child's best interests.*

**Recommendation 16**

*The New Zealand Guardianship Act (1968) be considered for adoption, specifically s16B which requires a court to determine "as soon as practicable" whether an allegation of violence is proven. Where it is the court must not order residence or unsupervised contact to the violent parent unless satisfied that the child will be safe. An evaluation has demonstrated that this legislation has improved the safety of children (Chetwin, et al., 1999).*

**Recommendation 17**

*Where there is found to be 'reasonable grounds' of past or current context of violence and abuse the decision-making process should focus on preventing, reducing and managing risks of harm. Courts should be required to make risk assessment the central feature of parenting disputes where domestic violence and/or child abuse has been present. They include the nature and seriousness of the violence; how recently and frequently such violence has occurred; the likelihood of further violence; the physical or emotional harm caused to the child by the violence; the opinions of the other party and the child as to safety; and any steps the violent party has taken to prevent further violence occurring. The occurrence of such violence should be the central issue of the court's initial inquiry and the assessment of the risk of further violence occurring should determine the shape of the parenting order.*

**Changes to the Family law Act**

Proposed changes to S60B: Objects of Part and principles underlying it

- (1) The objects of this Part are:
  - (a) to ensure that children receive adequate and proper parenting to help them achieve their full potential; and
  - (b) to ensure that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children; and
  - (c) to ensure that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child.

**Comment**

*The Objects and Principles should include ensuring the right to safety of the child and her/his family.*

**Recommendation 18**

*The Objects and Principles should include ensuring the right to safety of the child and her/his family.*



## Schedule 2 – Compliance Regime

### Content

The Bill proposes amendments reflecting the changes to the object in s60B - that children have a meaningful relationship with both of their parents to the greatest extent possible. Make up contact can be ordered and the Bill provides directions about when the court must consider making a costs order and/or ordering compensation for costs incurred in relation to contact that did not take place because of the breach. The court is also given broader powers to impose bonds. The Bill clarifies that there is a low standard of proof for compliance matters at the 1<sup>st</sup> and 2<sup>nd</sup> stages on the basis that the sanctions are not criminal. If the matter is a stage 3 contravention matter - there is a presumption that the court will order costs against the party in breach unless it is not in the child's best interests.

### Comment

*The proposed changes ignore the research evidence that withholding of contact is linked to protective concerns for the child (Rhoades, 2002). Increased punitive measures further increase the risk of taking protective action on the child's behalf. If a contact parent drove to the contact handover intoxicated with alcohol, the resident parent would have to consider her/his capacity to successfully withstand contravention proceedings or knowingly let the child enter a car with a drunk driver. If the driver were to subsequently have a major crash the mother could be held to be criminally negligent in allowing her child to enter a car with a drunk driver. If she did not allow the child to go, the driver could pursue a contravention application against her. The mother would not have access to any legally recognisable capacity to obtain proof of the driver's intoxication. This example illustrates the difficulty protective parents face in supporting their child's safety, particularly when the Bill explicitly notes that a lower standard of proof is acceptable. Research into Family Court cases identifies that filing contravention applications is a method of legal harassment of an ex-partner. Persons filing such applications should have to establish that contact was not provided and face penalties for frivolous or non-meritorious applications. The capacity to withhold contact to protect the child needs to be available to parents.*

### **Recommendation 19**

***In recognition of the popularity of contravention applications being used by ex-partners to legally harass resident parents, all applications for contravention proceedings should place the burden of proof on the party bringing the application. Further penalties should be available to the court when applications are found to be without substance and the party bringing the application is exploiting the family law system as a form of harassment and control.***

### **Recommendation 20**

***The capacity of parents to withhold contact to protect their children from exposure to violence or abuse needs to be supported.***

## Schedule 3 – The Conduct of Child Related Matters

### Content

The Bill provides for changes in the way child related matters are conducted. These changes are based on the Children Cases program that has been piloted by the Family Court in NSW. They allow for the Court to act in a more inquisitorial manner. Principles are set out in the Bill to guide the Court in a less adversarial approach. These Principles include:-

- Ensure the proceedings are focused on the child
- The Judicial Officer must control the conduct of the hearing
- Ensure that the proceedings are conducted in such a way to encourage the parents to focus on the children and on their ongoing relationship as parents

- The proceedings should be conducted as expeditiously and with as little formality as possible

The proposed new s60KE provides a number of general duties that the Court must carry out to give effect to the principles. This includes considering whether the likely benefits in taking a step in the proceedings justify the costs of taking it.

Significant changes are proposed in relation to the rules of evidence. Even where the rules of evidence in relation to hearsay evidence are applied a representation made by a child about a matter that is relevant to the welfare of that or another child is admissible.

**Comment**

*The focus on the child is a welcome change in direction however the capacity for the court to inform itself of the child's circumstances and risks to the child's safety has still to be improved. The recommendations of the Family Law Council's report on Child Protection and Letter of Advice on Family Violence are critical to the court's capacity to know what has happened to the child.*

**Recommendation 21**

***Implement as a matter of urgency the Family Law Council recommendations on child protection and family violence and elevate the right to safety as the first condition of meeting a child's best interests.***

**Additional Comments**

There is significant research to show that domestic violence and child abuse are very real issues for many women and children, and that separation from an abusive partner can be the most dangerous time for women and children. The proposed reforms not only do not address how the family law system will be improved to protect women and children from ongoing violence and abuse following separation, but in fact create further barriers to women and children achieving safety. The proposed changes take a punitive approach towards women in their attempts to escape domestic violence and child abuse.

- The Australian Institute of Family Studies research (Walcott & Hughes, 1999) shows that communication breakdown, followed by violence and abuse issues are the main reasons for divorce.
- The Australian Bureau of Statistics (1996) Women's Safety Survey indicate that single, previously partnered women experienced the highest incidence of violence, with 42% reporting experiencing violence, mainly from former partners.
- The Family Law Pathways report identified that 2 out of 3 separations involving children feature issues of violence and abuse.
- One in four children experience violence and abuse through witnessing violence against their mother or step-mother by their father or step-father (Indemaur, 2001).
- Brown et al (2001) in their study of family court cases found that 50% of cases at the mid-point of proceedings in the family court contained multiple and serious forms of family violence.
- Women and children are at greatest risk of increased violence, including murder immediately following separation (Jaffe et al, 2003). At the time of separation children are at risk of violence, abduction, sexual assault and coercion (Kaye et al, 2003).

There is also ample evidence to show that the current family law system is failing to provide protection for women and children from abuse and violence.

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## APPENDIX 2

Unpublished data from a 2005 survey of 100 separated resident mothers from around Australia showed the following.

Abuse of mothers was the single most commonly nominated reason for ending the relationship, with 52 respondents citing this reason.

### **Fear of Ex-Partner**

Respondents were asked whether they were afraid of their ex-partner at the time of separation and those who were afraid were asked to detail the reasons they were afraid.

Respondents were also asked if they were afraid of their ex-partner at the time of the survey and those who said 'yes' were again asked to detail the reasons for their fear.

56 women said they were afraid of their ex-partner at the time of separation. Respondents were able to detail as many behaviours as they wished in their responses.

The most commonly nominated behaviours causing fear involved a range of actions aimed at attempting to punish or control the mother. All of the respondents who experienced fear had been subjected to at least one of the following actions – threats, verbal abuse, controlling behaviour, stalking, financial abuse, property damage and litigation abuse.

Physical and or sexual abuse affected nearly two-thirds of the women who reported being afraid at separation, while mental illness, drug abuse and child abuse were issues for at least a fifth of those who experienced fear at separation.

### **Ex-Partner Behaviours Causing Fear at Separation**

<b>Behaviours Causing Fear</b>	<b>Frequency</b>	<b>% of Total</b>	<b>% of Cases</b>
Threats, Verbal abuse, Stalking, Controlling Behaviour, Property Damage, Financial abuse, Litigation Abuse	60	50	107.1
Physical / Sexual Abuse	36	30	64.3
Mental Illness/Drug Abuse	12	10	21.4
Child Abuse/Abduction	12	10	21.4
Total	120	100	214.3

Fear at separation was a statistically significant factor ( $p=.002$ ) affecting the way separation occurred. Of the 38 cases where the mother left with the children, 29 respondents indicated they were afraid at the time of separation. In the next largest group of 33 cases where the father left and the children stayed in the mother's care, 15 of the mothers indicated they were afraid of their ex-partner.

Fear at separation was also linked to a statistically significant increased likelihood of court proceedings ( $p = .000$ ). Just over two thirds of those who experienced fear at separation (67.2%) had used the court system, compared to 18.9% of women who said they did not experience fear.

At the time of the survey just over one-third of the sample ( $n=35$ ) indicated that they were currently afraid of their ex-partner.

#### **Ex-Partner Behaviours Causing Fear at Time of Survey**

<b>Behaviours Causing Fear</b>	<b>Frequency</b>	<b>% of Total</b>	<b>% of Cases</b>
Threats, Verbal abuse, Stalking, Controlling Behaviour, Property Damage, Financial abuse, Litigation Abuse	35	67.3	100
Physical / Sexual Abuse	3	5.8	8.6
Mental Illness/Drug Abuse	4	7.7	11.4
Child Abuse/Abduction	10	19.2	28.6
<b>Total</b>	<b>52</b>	<b>100</b>	<b>148.6</b>

#### **Access to Restraining Orders and Police Responses**

Respondents were asked whether they had ever sought domestic violence orders against their ex-partner. Those who indicated they had were further asked whether they succeeded in getting an order; whether it had ever been breached; if so had police attended, had they prosecuted; and if so whether the offender was found guilty, and was he imprisoned.

Thirty three of the 100 survey respondents had applied for domestic violence orders, comprising **just under half** of the respondents who reported experiencing fear at separation or later. Of those who applied for an order, 24 were successful in obtaining one. Of the 24 respondents with domestic violence orders, 17 respondents said the orders had been breached at least once, but only 13 respondents said police had attended the breach of the order. The 13 breaches gave rise to only 7 prosecutions, with guilty verdicts in all 7 cases brought before the court. Only one offender was ever actually imprisoned.

The data indicates that many mothers experiencing violence or abuse do not seek domestic violence orders. Those who do apply may not succeed in their application and even when they have an order it may be breached. Police do not always attend breaches of domestic violence orders, and even when they do, the breach often does not result in a prosecution. When police do elect to prosecute they have a very high conviction rate, but offenders are rarely imprisoned.

#### **Child Protection Concerns**

Fifty-one of the 100 respondents had child protection concerns. As can be seen from the following Table, a wide range of concerning behaviours was cited by respondents. Respondents were able to indicate more than one behaviour, so totals exceed the number of cases.

**Behaviours Leading to Child Protection Concerns**

Behaviour	N	% Responses	% Cases
Threats/verbal/emotional abuse/controlling behaviour/child abduction	30	42.3	75
Neglect	22	31.0	55
Physical/ sexual abuse	11	15.5	27.5
Exposure to violence/pornography/substance abuse	8	11.3	20
Total	71	100.00	177.5

**Only 19 of the 51 concerned mothers had actually made a report to child protection authorities.** Only 9 of those 19 reports were investigated, and of these, only 3 were substantiated. The data again highlights that, like abuse of mothers, there is a very high attrition rate between the experience of abuse, reporting, and system responses resulting in actual consequences for offenders.

## APPENDIX 3

The Neuroarcheology of Childhood Maltreatment

*The Neurodevelopmental Costs of Adverse Childhood Events*

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For:  
"The Cost of Child Maltreatment: Who Pays? We All Do"  
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### ***Introduction***

Childhood maltreatment has profound impact on the emotional, behavioral, cognitive, social and physical functioning of children. Developmental experiences determine the organizational and functional status of the mature brain and, therefore, adverse events can have a tremendous negative impact on the development of the brain. In turn, these neurodevelopmental effects may result in significant cost to the individual, their family, community and, ultimately, society. In essence, childhood maltreatment alters the potential of a child and, thereby, robs us all.

The present chapter will review some of those costs from a neurodevelopmental perspective. The premise is that when the core principles of neurodevelopment are understood, the costs of adverse childhood events and maltreatment become obvious. Following a brief presentation of the key concepts of neurodevelopment, two primary forms of maltreatment will be considered: (1) neglect and (2) traumatic stress. Maltreatment of children often involves both neglect and trauma; a more complete understanding of the complex neurodevelopmental impact of the combination, however, is best understood after presenting the potential effects of each separately. This chapter presents the current articulation of a neurodevelopmental perspective of childhood maltreatment originally outlined in 1994 (Perry. 1994) and further elaborated over the last five years (Perry, Pollard, Blakley, Baker, & Vigilante. 1995) (Perry & Pollard. 1998)

This most recent articulation outlines the issue of maltreatment through the lens of developmental neurobiology and coins a descriptive phrase, "neuroarcheology," to

capture the impact of adverse events on the developing brain, with the implicit suggestion that experiences leave a 'record' within the matrix of the brain. The nature and location of this record will depend upon the nature of the experience and the time in development when the event took place – much as with the archeological record of the earth. While this phrase may be simplistic to some, it conveys important conceptual principles about the nature of childhood experience which have been lacking all too often in clinical and research formulations regarding maltreatment. Not a single psychometric instrument measuring traumatic or adverse events, for example, uses time of trauma as a meaningful variable despite the fact that it may be the most important determinant of functional outcome following maltreatment.

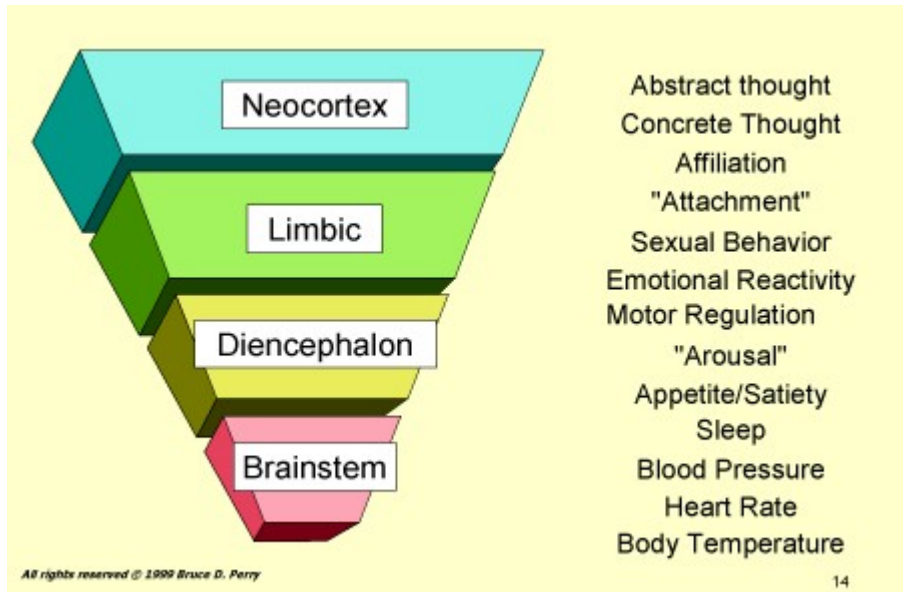
*The neuroarcheological perspective on childhood experience, therefore, simply posits that the impact of a childhood event (adverse or positive) will be a reflection of (1) the nature, intensity, pattern and duration of the event and (2) that the resulting strengths (e.g., language) or deficits (e.g., neuropsychiatric symptoms) will be in those functions mediated by the neural systems that are most rapidly organizing (i.e., in the developmental "hot zone") at the time of the experience.*

### **Brain Organization and Function**

The human brain is the remarkable organ that allows us to sense, process, perceive, store and act on information from outside and inside the body to carry out the three prime directives required for the survival of our species: (1) survive, (2) affiliate and mate and then, (3) protect and nurture dependents. In order to carry out these core and overarching responsibilities, thousands of inter-related functions have evolved. In the human brain, structure and function have co-evolved. As we have a hierarchy of increasingly complex functions related to our optimal functioning, our brain has evolved a hierarchical structural organization (see Table 1). This hierarchy starts with the lower, simpler brainstem areas and increases in complexity up through the neocortex (Figure 1). In each of these many areas of the brain are neural systems that mediate our many brain-related functions (Figure1; Table1). The 'lower' parts of the brain (brainstem and midbrain) mediate simpler regulatory functions (e.g., regulation of respiration, heart rate, blood pressure, body temperature) while more complex functions (e.g., language and abstract thinking) are mediated by the more complex neocortical structures of the human brain.

This hierarchical structure is the heart of a neuroarcheological understanding of adverse childhood events. This structure becomes the multi-layered soil within which the fossilized evidence of maltreatment can be found – each layer organizing at a different time and each layer reflecting the experiences –good and bad - of that era in the individual's life. Key insights to understanding human functioning, then, will come from understanding neurodevelopment.





***Figure 1: Hierarchical Organization of the Human Brain:*** The brain can be divided into four interconnected areas: brainstem, diencephalons, limbic and neocortex. The complexity of structure, cellular organization and function increases from the lower, simpler areas such as the brainstem to the most complex, the neocortex.

### ***Neurodevelopment***

Our brain's complex structure is comprised of 100 billion neurons and ten times as many glial cells – all interconnected by trillions of synaptic connections – and communicating in a non-stop, ever-changing dynamic of neurochemical activity. The brain doesn't just pop into existence. This most complex of all biological systems in the known universe is a product of neurodevelopment – a long process orchestrating billions upon billions of complex chemical transactions. It is through these chemical actions that a human being is created.

The developing child is a remarkable phenomenon of nature. In a few short years, one single cell – the fertilized egg – becomes a walking, talking, learning, loving, and thinking being. This physical transformation is equivalent to a 6-foot tall, 200 pound man growing to the size of Connecticut in three years. In each of the billions and billions of cells in the body, a single set of genes has been expressed in millions of different combinations with precise timing. Development is a breathtaking orchestration of precision micro-construction that allows the healthy development of a human being. And the most remarkable and complex of all the organs in the human body is the human brain. In order to create the brain, a small set of precursor cells must divide, move, specialize, connect and create specialized neural networks that form functional units. The key processes in neurodevelopment are summarized below.

### **Core Processes of Neurodevelopment**

*1. Neurogenesis:* The brain starts as a few cells present early in the first weeks of life. From a few specialized cells in the unformed brain, come billions of nerve cells and trillions of glia. This, of course, requires that cells be "born." Neurogenesis is the birth of new neurons. The vast majority of neurogenesis takes place in utero during the second and third trimester. At birth, the vast majority of neurons, literally more than 100 billion, used for the remainder of life are present. Few neurons are born after birth, although researchers have demonstrated recently that neurogenesis can and does take place in the mature brain (Gould, Reeves, Graziano, & Gross. 1999). This is a very significant observation and may be one of the important physiological mechanisms responsible for the brain's plasticity (i.e., capacity to restore function) following injury.

Despite being present at birth, these neurons have yet to organize into completely functional systems. Many neurons need to mature themselves and undergo a set of processes that create the functional neural networks of the mature brain (Table 2).

*2. Migration:* Developing neurons move. Often guided by glial cells and a variety of chemical markers (e.g., cellular adhesion molecules, nerve growth factor: NGF), neurons cluster, sort, move and settle into a location in the brain that will be their final "resting" place. It is the fate of some neurons to settle in the brainstem, others in the cortex, for example. More than one half of all neurons are in the cortex. The processes of cortical cell migration and fate mapping are some of the most studied in all of developmental neuroscience (Rakic. 1981) (Rakic. 1996). It is clear that both genetic and environmental factors play important roles in determining a neuron's final location. Migration takes place primarily during the intrauterine and immediate perinatal period but continues throughout childhood and, possibly, to some degree into adult life. A host of intrauterine and perinatal insults – including infection, lack of oxygen, alcohol and various psychotropic drugs can alter migration of neurons and have profound impact on functioning (Perry. 1988).

**Table 1. A Neuroarcheological Chart of Development: Functional Organization**

Functional Division	Constituent Parts	Developmental Division	Age of Functional Maturity	Functions
Neocortex	Cerebral cortex Frontal Lobes Temporal Lobes Parietal Lobes Occipital Lobes Corpus Callosum	Telencephalon	Puberty	Abstraction Self-image Socialization
	Limbic Cingulate Cortex Amygdala Hippocampus Septum		Childhood	Affiliation Attachment Mood regulation
Early childhood		Fine motor Large motor Complex state regulation (e.g., sleep, appetite)		
Diencephalon		Infancy		
Brainstem	Thalamus Hypothalamus	Diencephalon		
	Midbrain Superior Colliculus Inferior Colliculus	Mesencephalon	Six months	Primary state regulation
	Cerebellum Pons	Metencephalon	Third trimester	Core physiological reflexes and regulatory functions
	Medulla Oblongata	Myelencephalon		
Spinal Cord	Spinal Cord		Third trimester	

**3. Differentiation:** Neurons mature. Each of the 100 billion neurons in the brain has the same set of genes, yet each neuron is expressing a unique combination of those genes to create a unique identity. Some neurons are large, with long axons; others short. Neurons can mature to use any of a hundred different neurotransmitters such as norepinephrine, dopamine, serotonin, CRF or substance P. Neurons can have dense dendritic fields receiving input from hundreds of other neurons, while other neurons can have a single linear input from one other neuron. Each of these thousands of differentiating "choices" come as a result of the pattern, intensity and timing of various microenvironmental cues which tell the neuron to turn on some genes and turn off others. Each neuron undergoes a series of "decisions" to determine their final location and specialization. These decisions, again, are a combination of genetic and microenvironmental cues. The further along in development, the more differentiated the neuron, the more sensitive it becomes to the environmental signals. From the intrauterine period through early childhood (and to some degree beyond) neurons are very sensitive to experience-based signals, many of which are mediated by patterned neuronal activity in the neural network in which they reside. Neurons are literally designed to change in response to chemical signals. Therefore, any experience or event that alters these neurochemical or microenvironmental signals during development can change the ways in which certain neurons differentiate, thereby altering the functional capacity of the neural networks in which these neurons reside.

**4. Apoptosis:** Some developing neurons die. In many areas of the brain, there are

more neurons born than are needed for any given function. Many of these neurons are redundant and when unable to adequately "connect" into an active neural network will die (Kuan, Roth, Flavell, & Rakic. 2000). Research in this area suggests that these neurons may play a role in the remarkable flexibility present in the human brain at birth. Depending upon the challenges of the environment and the potential needs of the individual, some neurons will survive while others will not. Again, this process appears to have genetic and environmental determinants. Neurons that make synaptic connections with others and have an adequate level of activation will survive; those cells that have little activity resorb. This is one example of a general principle of activity-dependence ("use it or lose it") that appears to be important in many neural processes related to learning, memory and development.

5. Arborization: As neurons differentiate, they send out tiny fiber-like extensions from their cell body. These dendrites become the receptive area where other neurons connect. It is in this receptive field that dozens to hundreds of other neurons are able to send neurochemical signals to the neuron. The density of these dendritic branches appears to be related to the frequency and intensity of incoming signals. When there is high activity, the dendritic network extends, essentially branching out in the same fashion as a bush may create new branches. This arborization allows the neuron to receive, process and integrate complex patterns of activity that will, in turn, determine its activity. Again, the arborization process appears to be to some degree activity-dependent. The density of the dendritic arborization appears to be related to the complexity and activity of incoming neural activity. In turn, these neural signals are often dependent upon the complexity and activity of the environment of the animal (Diamond, Law, Rhodes, et al. 1966; Greenough, Volkmar, & Juraska. 1973).

6. Synaptogenesis: Developing neurons make connections with each other. The major mechanism for neuron-to-neuron communication is 'receptor-mediated' neurotransmission that takes place at specialized connections between neurons called synapses. At the synapse, the distance between two neurons is very short. A chemical (classified as a neurotransmitter, neuromodulator or neurohormone) is released from the 'presynaptic' neuron and into the extra-cellular space (called the synaptic cleft) and binds to a specialized receptor protein in the membrane of the 'postsynaptic' neuron. By occupying the binding site, the neurotransmitter helps change the shape of this receptor which then catalyzes a secondary set of chemical interactions inside the postsynaptic neuron that create second messengers. The second messengers such as cyclic AMP, inositol phosphate and calcium will then shift the intracellular chemical milieu which may even influence the activity of specific genes. This cascade of intracellular chemical responses allows communication from one neuron to another.

A continuous dynamic of synaptic neurotransmission regulates the activity and functional properties of the chains of neurons that allow the brain to do all of its remarkable activities. These neural connections are not random. They are guided by important genetic and environmental cues. In order for our brain to function properly, neurons, during development, need to find and connect with the "right" neurons. During the differentiation process, neurons send fiber-like projections (growth cones) out to make physical contact with other neurons. This process appears to be regulated and guided by certain growth factors and cellular adhesion molecules that attract or repel a specific growth cone to appropriate target neurons. Depending upon a given neuron's specialization, these growth cones will

grow (becoming axons) and connect to the dendrites of other cells and create a synapse. During the first eight months of life there is an eight-fold increase in synaptic density while the developing neurons in the brain are "seeking" their appropriate connections (Huttenlocher. 1979) (Huttenlocher. 1994). This explosion of synaptogenesis allows the brain to have the flexibility to organize and function in with a wide range of potential. It is over the next few years, in response to patterned repetitive experiences that these neural connections will be refined and sculpted.

*7. Synaptic sculpting:* The synapse is a dynamic structure. With ongoing episodic release of neurotransmitter, occupation of receptors, release of growth factors, shifts of ions in and out of cells, laying down of new microtubules and other structural molecules, the synapse is continually changing. A key determinant of change in the synapse appears to be the level of presynaptic activity. When there is a consistent active process of neurotransmitter release, synaptic connections will be strengthened with actual physical changes that make the pre- and postsynaptic neurons come closer and the process of neurotransmission more efficient. When there is little activity, the synaptic connection will literally dissolve. The specific axonal branch to a given neuron will go away. Again, this powerful activity-dependent process appears to be very important for understanding learning, memory and the development. At any given moment – all throughout life – we are making and breaking synaptic connections. For the majority of life we are at equilibrium; the rate of creating new synaptic connections is equal to the rate of resorbing older, unused connections. While somewhat simplistic, it appears that the synaptic sculpting is a "use it or lose it" process. During the first eight months following birth the rate of creating new synapses far outstrips the rate of resorbing unused connections. By age one, however, and from then through early childhood, the rate of resorbing new connections is faster than the rate of creating new synapses. By adolescence, in most cortical areas at least, this process again reaches equilibrium.

*8. Myelination:* Specialized glial cells wrap around axons and, thereby, create more efficient electrochemical transduction down the neuron. This allows a neural network to function more rapidly and efficiently, thereby allowing more complex functioning (e.g., walking depends upon the myelination of neurons in the spinal cord for efficient, smooth regulation of neuromotor functioning.) The process of myelination begins in the first year of life but continues in many key areas throughout childhood with a final burst of myelination in key cortical areas taking place in adolescence.

## **Table 2: Key Processes in Neurodevelopment**

Key Processes	Age beginning*	Greatest period of activity**	Age of equilibrium**	Other
<i>Neurogenesis</i>	First trimester	<i>In utero</i>	99 % of 100 billion neurons born by birth	Evidence of hippocampal cell birth in adult life
<i>Migration</i>	First trimester	<i>In utero</i> through first year	Regional specific: majority of migration complete by age three	Some suggestion of migration following brain injury
<i>Differentiation</i>	First-second trimester	Third trimester through year one	Region specific: primary differentiation complete by age three	Continues in some fashion throughout life
<i>Apoptosis</i>	Third trimester	First year	Age one	Majority of programmed death complete by age three
<i>Arborization</i>	Third trimester	First year	Primary dendritic arborization present by age three	Very experience dependent - continued sensitivity throughout life
<i>Synaptogenesis</i>	Third trimester	8 months	Region specific: with most cortical areas by age 10, other areas earlier	Continuous activity-dependent process through life
<i>Synaptic sculpting</i>	Birth	First four years	Region specific: cortical areas by age six	Second phase of activity during puberty
<i>Myelination</i>	Birth	First four years	Region specific: majority complete by 10	Continuing important myelination through adolescence

\* This refers to the age at which approximately 10% of this specific function is taking place. In most cases, there is evidence that some of these processes have started to some degree. Almost all of these processes continue in some form throughout life, the table is designed to illustrate the relative importance of childhood for the majority of activity in each of these processes.

\*\*These are crude estimates based upon data from multiple sources. The major point is to demonstrate that shifting activity from neurogenesis to myelination.

All of the neurodevelopmental processes described above are dependent upon both genetic and environmentally determined microenvironmental cues (e.g., neurotransmitters, neuromodulators, neurohormones, ions, growth factors, cellular adhesion molecules and other morphogens). Disruption of the pattern, timing or intensity of these cues can lead to abnormal neurodevelopment and profound dysfunction. The neuroarcheological perspective suggests that the *specific* dysfunction will depend upon the timing of the insult (e.g., was the insult *in utero* during the development of the brainstem or at age two during the active development of the cortex), the nature of the insult (e.g., is there a lack of sensory stimulation from neglect or an abnormal persisting activation of the stress response from trauma?), the pattern of the insult (i.e., is this a discreet single event, a chronic experience with a chaotic pattern or an episodic event with a regular pattern?).

While we are only beginning to understand the complexity of neurodevelopment, there are several key principles that emerge from the thousands of studies and years of focused research on these neurodevelopmental processes. These principles, as outlined below, suggest that while the structural organization and functional capabilities of the mature brain can change throughout life, the majority of the key stages of neurodevelopment take place in childhood. The core principles of neurodevelopment that support a neuroarcheological perspective of childhood adverse events are summarized below.

### **Core Principles of Neurodevelopment**

*1. Nature and nurture:* For too many years, any conceptual approach to human behavior has been tainted by the nature versus nurture debate. Do genes cause human behavior or is human behavior a product of learning, education and experience? Ultimately, this debate polarizes and distracts from more complex understandings of human functioning. Genes are designed to work in an environment. Genes are expressed by microenvironmental cues, which, in turn, are influenced by the experiences of the individual. How an individual functions within an environment, then, is dependent upon the expression of a unique combination of genes available to the human species. We don't have the genes to make wings. **And** what we become depends upon how experiences shape the expression – or not - of specific genes we do have. We do have the genes to make forty sounds – and we can have the experiences that turn this genetically determined capacity into a powerful, transforming tool – language. Yet, there are many sad examples of cruel experiments of humanity, where a young child was raised in an environment deprived of language. This child, despite the genetic potential to speak and think and feel in complex humane ways, did not express that potential fully. Genetic potential without appropriately timed experiences can remain unexpressed. Nature and nurture – we are nothing without both; we require both and we are products of both.

The influence of gene-driven processes, however, shifts during development. In the just fertilized ovum, all of the chemical processes that are driving development are very dependent upon a genetically determined sequence of molecular events. By birth, however, the brain has developed to the point where environmental cues mediated by the senses play a major role in determining how neurons will differentiate, sprout dendrites, form and maintain synaptic connections and create the final neural networks that convey functionality. By adolescence, the majority of the changes that are taking place in the brain of that child are determined by experience, not genetics. The languages, beliefs, cultural practices, and complex cognitive and emotional functioning (e.g., self esteem) by this age are primarily experience-based.

*2. Sequential Developmental:* The brain develops in a sequential and hierarchical fashion; organizing itself from least (brainstem) to most complex (limbic, cortical areas). These different areas develop, organize and become fully functional at different times during childhood. At birth, for example, the brainstem areas responsible for regulating cardiovascular and respiratory function must be intact for the infant to survive, and any malfunction is immediately observable. In contrast, the cortical areas responsible for abstract cognition have years before they will be 'needed' or fully functional.

This means that each brain area will have its own timetable for development. The

neurodevelopmental processes described above will be most active in different brain areas at different times and will, therefore, either require (critical periods) or be sensitive to (sensitive periods) organizing experiences (and the neurotrophic cues related to these experiences). The neurons for the brainstem have to migrate, differentiate and connect, for example, before the neurons for the cortex.

The implications of this for a neuroarcheological formulation are profound. Disruptions of experience-dependent neurochemical signals during these periods may lead to major abnormalities or deficits in neurodevelopment. Disruption of critical neurodevelopmental cues can result from 1) lack of sensory experience during sensitive periods (e.g., neglect) or 2) atypical or abnormal patterns of necessary cues due to extremes of experience (e.g., traumatic stress, see below). Insults during the intrauterine period, for example, will more likely influence the rapidly organizing brainstem systems as opposed to the more slowly organizing cortical areas. The symptoms from the intrauterine disruption will alter functions mediated by the brainstem and could include sensory integration problems, hyper-reactivity, poor state regulation (e.g., sleep, feeding, self-soothing), tactile defensiveness and altered regulation of core neurophysiological functions such as respiration, cardiovascular and temperature regulation.

This does not mean that neocortical systems are unaffected by disrupting the development of the brainstem. Indeed, one of the most important aspects of the sequential development is that important organizing signals for any given brain area or system (e.g., patterns of neural activity, neurotransmitters acting as morphogens) come from previously organized brain areas or systems. Due to the sequential development of the brain, disruptions of normal developmental processes early in life (e.g., during the perinatal period) that alter development of the brainstem or diencephalon will necessarily alter the development of limbic and cortical areas. This is so because many of the organizing cues for normal limbic and neocortical organization originate in the lower brain areas. Any developmental insult can have a cascade effect on the development of all "downstream" brain areas (and functions) that will receive input from the effected neural system.

3. Activity-dependent neurodevelopment: The brain organizes in a use-dependent fashion. As described above, many of the key processes in neurodevelopment are activity dependent. In the developing brain, undifferentiated neural systems are critically dependent upon sets of environmental and micro-environmental cues (e.g., neurotransmitters, cellular adhesion molecules, neurohormones, amino acids, ions) in order for them to appropriately organize from their undifferentiated, immature forms (Lauder. 1988; Perry. 1994) (Perry & Pollard. 1998). Lack, or disruption, of these critical cues can alter the neurodevelopmental processes of neurogenesis, migration, differentiation, synaptogenesis - all of which can contribute to malorganization and diminished functional capabilities in the specific neural system where development has been disrupted. This is the core of a neuroarcheological perspective on dysfunction related adverse childhood events (Perry. 1994) (Perry & Pollard. 1998; Perry. 1998). These molecular cues that guide development are dependent upon the experiences of the developing child. The quantity, pattern of activity and nature of these neurochemical and neurotrophic factors depends upon the presence and the nature of the total sensory experience of the child. When the child has adverse experiences – loss, threat, neglect, and injury – there can be disruptions of neurodevelopment that will result in neural organization that can lead to compromised functioning throughout life (see Neglect section, below).



A neuroarcheological perspective would predict that the dysfunction resulting from a specific adverse event is related to the disrupted (or altered) development of the neural system that is, during the adverse event, most rapidly developing. The degree of disruption is related to the rate of change in the respective neural system. The already organized and functioning neural system is less vulnerable to a developmental insult than the rapidly changing, energy-hungry and microenvironmental cue-sensitive developing system. This is so because of a principle called biological relativity. In any dynamic system, the impact of an event or experience (disruptive or positive) is greatest on the most actively changing or dynamic parts of that system. The power of any experience, therefore, is greatest during the most rapid phases of development. Events taking place during a neural system's most active phase of organization will have more impact than events after the system has organized.

4. Windows of Opportunity/Windows of Vulnerability. The sequential development of the brain and the activity-dependence of many key aspects of neurodevelopment suggest that there must be times during development when a given developing neural system is more sensitive to experience than others (Table 3). In healthy development, that sensitivity allows the brain to rapidly and efficiently organize in response to the unique demands of a given environment to express from its broad genetic potential those characteristics which best fit that child's world. If the child speaks Japanese as opposed to English, for example, or if this child will live in the plains of Africa or the tundra of the Yukon, different genes can be expressed, different neural networks can be organized from that child's potential to best fit that family, culture and environment. We all are aware of how rapidly young children can learn language, develop new behaviors and master new tasks. The very same neurodevelopmental sensitivity that allows amazing developmental advances in response to predictable, nurturing, repetitive and enriching experiences make the developing child vulnerable to adverse experiences.

Sensitive periods are different for each brain area and neural system, and therefore, for different functions. The sequential development of the brain and the sequential unfolding of the genetic map for development mean that the sensitive periods for neural system (and the functions they mediate) will be when that system is in the developmental 'hot zone' – when that area is most actively organizing. The brainstem must organize key systems by birth; therefore, the sensitive period for those brainstem-mediated functions is during the prenatal period. The neocortex, in contrast, has systems and functions organizing throughout childhood and into adult life. The sensitive periods for these cortically mediated functions are likely to be very long.

With an understanding of the shifting vulnerability of the developing brain to experience, a neuroarcheological perspective becomes apparent. If there are disrupting adverse events during development, they will be mirrored by a matched dysfunctional development in the neural systems whose functioning the adverse experience most altered during the event. If the disruption were the absence of light during the first year of life – the systems most altered would be related to vision. If the disruption activates the stress response, the disruption will be in the neural systems mediating the stress response. The severity and chronicity of the specific dysfunction will be related to the vulnerability of the system affected. Adverse experiences influence the mature brain but in the developing brain, adverse experiences literally play a role in organizing neural systems. It is much easier to influence the functioning of a developing system than to reorganize and

alter the functioning of a developed system. Adverse childhood events, therefore, can alter the organization of developing neural systems in ways that create a lifetime of vulnerability.

**Table 3: Shifting Developmental Activity across Brain Regions**

<b>Brain Region</b>	<b>Age of greatest developmental activity</b>	<b>Age of functional maturity**</b>	<b>Key functions</b>
<b><i>Neocortex</i></b>	Childhood	Adult	Reasoning, problem solving, abstraction, secondary sensory integration
<b><i>Limbic</i></b>	Early childhood	Puberty	Memory, emotional regulation, attachment, affect regulation, primary sensory integration
<b><i>Diencephalon</i></b>	Infancy	Childhood	Motor control, secondary sensory processing
<b><i>Brainstem</i></b>	In utero	Infancy	Core physiological state regulation, primary sensory processing

The simple and unavoidable conclusion of these neurodevelopmental principles is that the organizing, sensitive brain of an infant or young children is more malleable to experience than a mature brain. While experience may alter the behavior of an adult, experience literally provides the organizing framework for an infant and child. Because the brain is most plastic (receptive to environmental input) in early childhood, the child is most vulnerable to variance of experience during this time. In the second half of this chapter two primary forms of extreme childhood adverse experience will be discussed in context of the neuroarcheological perspective of adverse childhood events.

***The Neurodevelopmental Impact of Neglect in Childhood***

Neglect is the absence of critical organizing experiences at key times during development. Despite its obvious importance in understanding child maltreatment, neglect has been understudied. Indeed, deprivation of critical experiences during development may be the most destructive yet the least understood area of child maltreatment. There are several reasons for this. The most obvious is that neglect is difficult to "see." Unlike a broken bone, maldevelopment of neural systems mediating empathy, for example, resulting from emotional neglect during infancy, is not readily observable. Another important, yet poorly appreciated, aspect of neglect is the issue of timing. The needs of the child shift during development; therefore, what may be neglectful at one age is not at another. The very same experience that is essential for life at one stage of life may be of little significance or even inappropriate at another age. We would all question the mother who held, rocked and breastfed her pubescent child. Touch, for example, is essential during infancy. The untouched newborn may literally die; in Spitz' landmark studies, the mortality rates in the institutionalized infants was near thirty percent (Spitz. 1945; Spitz. 1946). If one doesn't touch an adolescent for weeks, however, no significant adverse effects will result. Creating standardized protocols, procedures and "measures" of neglect, therefore, are significantly confounded by the shifting

developmental needs and demands of childhood. Finally, neglect is understudied because it is very difficult to find large populations of humans where specific and controlled neglectful experiences have been well documented. In some cases, these cruel experiments of humanity have provided unique and promising insights (see below). In general, however, there will never be – and there never should be – the opportunity to study neglect in humans with the rigor that can be applied in animal models.

With these limitations, however, what we do know about neglect during early childhood supports a neuroarcheological view of adverse childhood experience. The earlier and more pervasive the neglect is, the more devastating the developmental problems for the child. Indeed, a chaotic, inattentive and ignorant caregiver can produce pervasive developmental delay (PDD; (Anonymous. 1994)) in a young child (Rutter, Andersen-Wood, Beckett, et al. 1999). Yet the very same inattention for the same duration if the child is ten will have very different and less severe impact than inattention during the first years of life.

There are two main sources of insight to childhood neglect. The first is the indirect but more rigorous animal studies and the second is a growing number of descriptive reports with severely neglected children.

### **Environmental Manipulation and Neurodevelopment: Animal Studies**

Some of the most important studies in developmental neurosciences in the last century have been focusing on various aspects of experience and extreme sensory experience models. Indeed, the Nobel Prize was awarded to Hubel and Wiesel for their landmark studies on development of the visual system using sensory deprivation techniques (Hubel & Wiesel. 1963). In hundreds of other studies, extremes of sensory deprivation (Hubel & Wiesel. 1970; Greenough, Volkmar, & Juraska. 1973) or sensory enrichment (Greenough & Volkmar. 1973; Diamond, Krech, & Rosenzweig. 1964; Diamond, Law, Rhodes, et al. 1966) have been studied. These include disruptions of visual stimuli (Coleman & Riesen. 1968), environmental enrichment (Altman & Das. 1964; Cummins & Livesey. 1979), touch (Ebinger. 1974; Rutledge, Wright, & Duncan. 1974), and other factors that alter the typical experiences of development (Uno, Tarara, Else, & et.al. 1989; Plotsky & Meaney. 1993; Meaney, Aitken, van Berkal, Bhatnagar, & Sapolsky. 1988). These findings generally demonstrate that the brains of animals reared in enriched environments are larger, more complex and functional more flexible than those raised under deprivation conditions. Diamond's work, for example, examining the relationships between experience and brain cytoarchitecture have demonstrated a relationship between density of dendritic branching and the complexity of an environment (for a good review of this and related data see (Diamond & Hopson. 1998)). Others have shown that rats raised in environmentally enriched environments have higher density of various neuronal and glial microstructures, including a 30% higher synaptic density in cortex compared to rats raised in an environmentally deprived setting (Bennett, Diamond, Krech, & Rosenzweig. 1964; Altman & Das. 1964). Animals raised in the wild have from 15 to 30% larger brain mass than their offspring who are domestically reared (Darwin. 1868; Rohrs. 1955; Rohrs & Ebinger. 1978; Rehkamper, Haase, & Frahm. 1988).

Animal studies suggest that critical periods exist during which specific sensory experience was required for optimal organization and development of the part of

the brain mediating a specific function (e.g., visual input during the development of the visual cortex). While these phenomena have been examined in great detail for the primary sensory modalities in animals, few studies have examined the issues of critical or sensitive periods in humans. What evidence there is would suggest that humans tend to have longer periods of sensitivity and that the concept of critical period may not be useful in humans. It is plausible, however, that abnormal micro-environmental cues and atypical patterns of neural activity during sensitive periods in humans could result in malorganization and compromised function in a host of brain-mediated functions. Indeed, altered emotional, behavioral, cognitive, social and physical functioning has been demonstrated in humans following specific types of neglect. The majority of this information comes from the clinical rather than the experimental disciplines.

### **The Impact of Neglect in Early Childhood: Clinical Findings**

Over the last sixty years, many case reports, case series and descriptive studies have been conducted with children neglected in early childhood. The majority of these studies have focused on institutionalized children. As early as 1833, with the famous Kaspar Hauser, feral children had been described (Heidenreich. 1834). Hauser was abandoned as a young child and raised from early childhood (likely around age two) until seventeen in a dungeon, experiencing relative sensory, emotional and cognitive neglect. His emotional, behavioral and cognitive functioning was, as one might expect, very primitive and delayed. At autopsy, Hauser's brain was noted to have a small cerebrum (cortex) with few and non-distinct cortical gyri. These findings are consistent with cortical atrophy (or underdevelopment), a condition we have reported in children following severe total global neglect in childhood (Perry & Pollard. 1997).

In the early forties, Spitz described the impact of neglectful caregiving on children in foundling homes (orphanages). Most significant, he was able to demonstrate that children raised in fostered placements with more attentive and nurturing caregiving had superior physical, emotional and cognitive outcomes (Spitz. 1945; Spitz. 1946). Some of the most powerful clinical examples of this phenomenon are related to profound neglect experiences early in life.

In a landmark report of children raised in a Lebanese orphanage, the Creche, Dennis (1973) described a series of findings supporting a neuroarcheological model of maltreatment. These children were raised in an institutional environment devoid of individual attention, cognitive stimulation, emotional affection or other enrichment. Prior to 1956 all of these children remained at the orphanage until age six, at which time they were transferred to another institution. Evaluation of these children at age 16 demonstrated a mean IQ of approximately 50. When adoption became common, children adopted prior to age 2 had a mean IQ of 100 by adolescence while children adopted between ages 2 and 6 had IQ values of approximately 80 (Dennis. 1973). This graded recovery reflected the neuroarcheological impact of neglect. A number of similar studies of children adopted from neglectful settings demonstrate this general principle. The older a child was at time of adoption, (i.e., the longer the child spent in the neglectful environment) the more pervasive and resistant to recovery were the deficits.

Money and Anecillo (1976) reported the impact of change in placement on children with psychosocial dwarfism (failure to thrive). In this preliminary study, 12

of 16 children removed from neglectful homes recorded remarkable increases in IQ and other aspects of emotional and behavioral functioning. Furthermore, they reported that the longer the child was out of the abusive home the higher the increase in IQ. In some cases IQ increased by 55 points (Money & Anecillo. 1976).

A more recent report on a group of 111 Romanian orphans (Rutter & English and Romanian Adoptees study team. 1998; Rutter, Andersen-Wood, Beckett, et al. 1999) adopted prior to age two from very emotionally and physically depriving institutional settings demonstrate similar findings. Approximately one half of the children were adopted prior to age six months and the other half between six months and 2 years old. At the time of adoption, these children had significant delays. Four years after being placed in stable and enriching environments, these children were re-evaluated. While both groups improved, the group adopted at a younger age had a significantly greater improvement in all domains.

These observations are consistent with the experiences of our clinic research group working with maltreated children. Over the last ten-year we have worked with more than 1000 children neglected in some fashion. We have recorded increases in IQ of over 40 points in more than 60 children following removal from neglectful environments and placed in **consistent, predictable, nurturing, safe and enriching placements** (Perry et al., in preparation). In addition, in a study of more than 200 children under the age of 6 removed from parental care following abuse and neglect we demonstrated significant developmental delays in more than 85% of the children. **The severity of these developmental problems increased with age, suggesting, again, that the longer the child was in the adverse environment - the earlier and more pervasive the neglect - the more indelible and pervasive the deficits.**

The impact of deprivation can be approximated by sensory chaos. Indeed, sensory deprivation is much less clinically significant than sensory chaos. The vast majority of children suffering from neglect do so because their experiences are chaotic, dysynchronous, inconsistent and episodic rather than consistent, predictable and continuous. The organizing brain requires patterns of sensory experience to create patterns of neural activity that, in turn, play a role in guiding the various neurodevelopmental processes involved in healthy development. When experience is chaotic or sensory patterns are not consistent and predictable, the organizing systems in the brain reflect this chaos and, typically, organize in ways that result in dysregulation and dysynchronous. Imagine trying to learn a language if you only heard random words without the context, grammar and syntax of the language (i.e., the patterns of use). Even if you heard and perceived all words, you could not develop language. *Random exposure to words absent an organizing pattern leads to abnormal development of speech and language.* Our clinical group has evaluated many children capable of parroting advertising phrases from television but incapable of simple verbal communication.

This requirement for consistent, repetitive and patterned stimuli holds for all experience – cognitive, emotional, social and physical. Repetitive, patterned, consistent experience allows the brain to create an internal representation of the external world. A child growing up in the midst of chaos and unpredictability will develop neural systems and functional capabilities that reflect this disorganization.

## **The Impact of Neglect in Early Childhood: Neurobiological Findings**

All of these reported developmental problems – language, fine and large motor delays, impulsivity, disorganized attachment, dysphoria, attention and hyperactivity, and a host of others described in these neglected children – are caused by abnormalities in the brain. Despite this obvious statement, very few studies have examined directly any aspect of neurobiology in neglected children. The reasons include a lack of capacity, until the recent past, to examine the brain in any non-invasive fashion.

Our group has examined various aspects of neurodevelopment in neglected children (Perry & Pollard. 1997). Neglect was considered global neglect when a history of relative sensory deprivation in more than one domain was obtained (e.g., minimal exposure to language, touch and social interactions). Chaotic neglect is far more common and was considered present if history was obtained that was consistent with physical, emotional, social or cognitive neglect. When possible history was obtained from multiple sources (e.g., investigating CPS workers, family, police). The neglected children (n= 122) were divided into four groups: Global Neglect (GN; n=40); Global Neglect with Prenatal Drug Exposure (GN+PND; n=18); Chaotic Neglect (CN; n=36); Chaotic Neglect with Prenatal Drug Exposure (CN+PND; n=28). Measures of growth were compared across group and compared to standard norms developed and used in all major pediatric settings.

Dramatic differences from the norm were observed in FOC (the frontal-occipital circumference, a measure of head size and in young children a reasonable measure of brain size). In the globally neglected children the lower FOC values suggested abnormal brain growth. For these globally neglected children the group mean was below the 8th percentile. In contrast, the chaotically neglected children did not demonstrate this marked group difference in FOC. Furthermore in cases where MRI or CT scans were available, neuroradiologists interpreted 11 of 17 scans as abnormal from the children with global neglect (64.7 %) and only 3 of 26 scans abnormal from the children with chaotic neglect (11.5 %). The majority of the readings were "enlarged ventricles" or "cortical atrophy." While the actual size of the brain in chaotically neglected children did not appear to be different from norms, it is reasonable to hypothesize that organizational abnormalities exist and that with function MRI studies these abnormalities will be more readily detected.

These findings strongly suggest that when early life neglect is characterized by decreased sensory input (e.g., relative poverty of words, touch and social interactions) there will be a similar effect on human brain growth as in other mammalian species. The human cortex grows in size, develops complexity, makes synaptic connections and modifies as a function of the quality and quantity of sensory experience. Lack of type and quantity of sensory-motor and cognitive experiences lead to underdevelopment of the cortex – in rats, non-human primates and humans.

Studies from other groups are beginning to report similar altered neurodevelopment in neglected children. In the study of Romanian orphans described above, the 38 % had FOC values below the third percentile (greater than 2 SD from the norm) at the time of adoption. In the group adopted after six months, fewer than 3 % and the group adopted after six months 13 % had persistently low FOCs four years later (Rutter & English and Romanian Adoptees study team. 1998; O'Connor, Rutter, & English and Romanian Adoptees study

team. 2000). Strathearn (Strathearn et al., submitted) has followed extremely low birth weight infants and shown that when these infants end up in neglectful homes they have a significantly smaller head circumference at 2 and 4 years, but not at birth. This is despite having no significant difference in other growth parameters. Finally in a related population, maltreated children and adolescents with post-traumatic stress disorder (PTSD), De Bellis and colleagues found that subject children have significantly smaller intracranial and cerebral volumes than matched controls on MRI scan. Brain volume in these children correlated "robustly and positively" with the age of onset of PTSD trauma, and negatively with the duration of abuse, suggesting that traumatic childhood experiences may adversely affect brain development. Specific brain areas were affected differentially, in reflection of their importance in the stress response, further support of a neuroarcheological formulation of adverse childhood experience (De Bellis, Keshavan, Clark, et al. 1999).

While deprivations and lack of specific sensory experiences are common in the maltreated child, the traumatized child experiences developmental insults related to discrete patterns of over-activation of neurochemical cues. Rather than a deprivation of sensory stimuli, the traumatized child experiences over-activation of important neural systems during sensitive periods of development.

### ***The Neurodevelopmental Impact of Traumatic Stress in Childhood***

Each year in United States more than five million children are exposed to some form of extreme traumatic stressor. These traumatic events include natural disasters (e.g., tornadoes, floods, hurricanes), motor vehicle accidents, life threatening illness and associated painful medical procedures (e.g., severe burns, cancer), physical abuse, sexual assault, witnessing domestic or community violence, kidnapping and sudden death of a parent, among others (Pfefferbaum. 1997; Anonymous. 1998). These events, posing an actual or perceived threat to the individual, activate a stress response. During the traumatic event, the child's brain mediates the adaptive response. Brainstem and diencephalic stress-mediating neural systems are activated. These systems include the hypothalamic-pituitary-adrenal (HPA) axis, central nervous system (CNS) noradrenergic (NA), dopaminergic (DA) systems and associated CNS and peripheral systems that provide the adaptive emotional, behavioral, cognitive and physiological changes necessary for survival (Perry. 1994; Perry & Pollard. 1998).

Individual neurobiological responses during traumatic stress are heterogeneous (Perry, Pollard, Blakley, Baker, & Vigilante. 1995). The specific nature of a child's responses to a given traumatic event may vary with the nature, duration and the pattern of traumatic stressor and the child's constitutional characteristics (e.g., genetic predisposition, age, gender, history of previous stress exposure, presence of attenuating factors such as supportive caregivers). Whatever the individual response, however, the extreme nature of the external threat is matched by an extreme and persisting internal activation of the neurophysiological systems mediating the stress response and their associated functions (Perry, Pollard, Blakley, Baker, & Vigilante. 1995; Perry & Pollard. 1998).

As described above, neural systems respond to prolonged, repetitive activation by altering their neurochemical and sometimes, microarchitectural (e.g., synaptic sculpting) organization and functioning. This is no different for the neural systems

mediating the stress response. Following any traumatic event children will likely experience some persisting emotional, behavioral, cognitive and physiological signs and symptoms related to the, sometimes temporary, shifts in the activity of these neural systems originating in the brainstem and diencephalon. In general, the longer the activation of the stress-response systems (i.e., the more intense and prolonged the traumatic event), the more likely there will be a 'use-dependent' change in these neural systems (for review see (Perry & Pollard. 1998)). In some cases, then, the stress-response systems do not return to the pre-event homeostasis. In these cases, the signs and symptoms become so severe, persisting and disruptive that they reach the level of a clinical disorder (Perry. 1998). In a new context and in the absence of any true external threat, the abnormal persistence of a once adaptive response becomes maladaptive.

### **Post traumatic stress-related clinical syndromes**

Post traumatic stress disorder (PTSD) is a clinical syndrome that may develop following extreme traumatic stress (DSM IV) (Anonymous. 1994). Like all other DSM IV diagnoses, it is likely that heterogeneous pathophysiologies underlie the cluster of diagnostic signs and symptoms labeled PTSD. There are six diagnostic criteria for PTSD: 1) extreme traumatic stress accompanied by intense fear, horror or disorganized behavior; 2) persistent re-experiencing of the traumatic event such as repetitive play or recurring intrusive thoughts; 3) avoidance of cues associated with the trauma or emotional numbing; 4) persistent physiological hyper-reactivity or arousal; 5) signs and symptoms present for more than one month following the traumatic event and 6) clinically significant disturbance in functioning.

Posttraumatic stress disorder has been studied primarily in adult populations, most commonly combat veterans and victims of sexual assault. Despite high numbers of traumatized children, the clinical phenomenology, treatment and neurophysiological correlates of childhood PTSD remain under studied. The clinical phenomenology of trauma-related neuropsychiatric sequelae is poorly characterized (Terr. 1991; Mulder, Fergusson, Beautrais, & Joyce. 1998). Most of the studies of PTSD have been following single discreet trauma (e.g., a shooting). The least characterized populations are very young children and children with multiple or chronic traumatic events.

### **Clinical presentations**

If during development, this stress response apparatus are required to be persistently active, the stress response apparatus in the central nervous system will develop in response to constant threat. These stress-response neural systems (and all functions they mediate – including sympathetic-parasympathetic tone, level of vigilance, regulation of mood, attention and sleep) will be poorly regulated, often overactive and hypersensitive. **It is highly adaptive for a child growing up in a violent, chaotic environment to be hypersensitive to external stimuli, to be hypervigilant, and to be in a persistent stress-response state. It is important to realize that children exposed to traumatic stress during development literally organize their neural systems to adapt to this kind of environment.** In contrast, an adult with no previous traumatic stress can develop PTSD. The cardiovascular reactivity and physiological hypersensitivity that the adult develops, however, is cue specific. This means that they will demonstrate increased heart rate, startle response and other neurophysiological symptoms when exposed



to a cue from the original trauma (e.g., the Vietnam vet hearing a helicopter). In contrast, young children will develop a generalized physiological hyper-reactivity and hypersensitivity to all cues that activate the stress response apparatus. This generalized change results when the traumatic stress literally provides the organizing cues for their developing stress response neurobiology (Perry. 1999).

Clinically, this is very easily seen in children who are exposed to chronic neurodevelopmental trauma. These children are frequently diagnosed as having attention deficit disorder (ADD-H) with hyperactivity (Haddad & Garralda. 1992). This is somewhat misleading, however. These children are hypervigilant; they do not have a core abnormality of their capacity to attend to a given task. These children have behavioral impulsivity, and cognitive distortions all of which result from a use-dependent organization of the brain (Perry, Pollard, Blakley, Baker, & Vigilante. 1995). During development, these children spent so much time in a low-level state of fear (mediated by brainstem and diencephalic areas) that they consistently were focusing on non-verbal but not verbal cues. In our clinical population, children raised in chronically traumatic environments demonstrate a prominent V-P split on IQ testing (n = 108; WISC Verbal = 8.2; WISC Performance = 10.4, Perry et al., in preparation). Often these children are labeled as learning disabled. We have seen these V-P splits in children in the juvenile justice system, child protective system and in the specialized clinical populations referred to our ChildTrauma clinic.

These children are also characterized by persisting physiological hyperarousal and hyperactivity (Perry, Pollard, Baker, Sturges, Vigilante, & Blakley. 1995; Perry. 1994; Perry. 2000). These children are observed to have increased muscle tone, frequently a low grade increase in temperature, an increased startle response, profound sleep disturbances, affect regulation problems and anxiety (Kaufman. 1991; Ornitz & Pynoos. 1989; Perry. 2000). In addition, our studies indicate that a significant portion of these children have abnormalities in cardiovascular regulation (Perry, Pollard, Baker, Sturges, Vigilante, & Blakley. 1995; Perry. 2000). All of these symptoms are the result of a use-dependent organization of the brain stem nuclei involved in the stress response apparatus.

Children with PTSD may present with a combination of problems including impulsivity, distractibility and attention problems (due to hypervigilance), dysphoria, emotional numbing, social avoidance, dissociation, sleep problems, aggressive (often re-enactment) play, school failure and regressed or delayed development. In most studies examining the development of PTSD following a given traumatic experience, twice as many children suffer from significant post-traumatic signs or symptoms (PTSS) but lack all of the criteria necessary for the diagnosis of PTSD (Friedrich. 1998). In these cases, the clinician may identify the trauma-related symptom as being part of another neuropsychiatric syndrome.

The clinician is often unaware of ongoing traumatic stressors (e.g., domestic or community violence) or the family makes no association between the present symptoms and past events (e.g., car accident, death of a relative, exposure to violence) and may provide no relevant history to aid the clinician in the differential. As a result, PTSD is frequently misdiagnosed and PTSS are under recognized. Children with PTSD as a primary diagnosis are often labeled with Attention Deficit Disorder with Hyperactivity (ADHD), major depression, oppositional-defiant disorder, conduct disorder, separation anxiety or specific phobia. **Ackerman and colleagues examined the prevalence of PTSD and other neuropsychiatric disorders in 204 abused children (ages 7 to 13) (Ackerman, Newton,**

**McPherson, Jones, & Dykman. 1998). Thirty four percent of these children met criteria for PTSD. Over fifty percent of the children in this study suffering both physical and sexual abuse had PTSD.** Using structured diagnostic interview, the majority of these children met diagnostic criteria for three or more Axis I diagnoses in addition to PTSD. Indeed, only 6 of 204 children met criteria for only PTSD. The broad co-morbidity reported in this study echoes previous studies.

### **Incidence and prevalence**

Children exposed to various traumatic events have much higher incidence (from 15 to 90+ %) and prevalence rates than the general population (Pfefferbaum. 1997). Furthermore, the younger a child is the more vulnerable they appear to be for the development of trauma-related symptoms. The percentage of children developing PTSD following a traumatic event is significantly higher than the percentage of adults developing PTSD following a similar traumatic stress. Several studies published in 1998 confirm previous reports of high prevalence rates for PTSD in child and adolescent populations. Thirty five percent of a sample of adolescents diagnosed with cancer met criteria for lifetime PTSD (Pelcovitz, Kaplan, Goldenberg, Mandel, Lehane, & Guarrera. 1994); 15 % of children surviving cancer had moderate to severe PTSS (Stuber, Kazak, Meeske, et al. 1997); **93 % of a sample of children witnessing domestic violence had PTSD (Kilpatrick & Williams. 1998)**; over 80 % of the Kuwaiti children exposed to the violence of the Gulf Crisis had PTSS (Hadi & Llabre. 1998); 73 % of juvenile male rape victims develop PTSD (Ruchkin, Eisemann, & Hagglof. 1998); 34 % of a sample of children experiencing sexual or physical abuse and 58 % of children experiencing both physical and sexual abuse all met criteria for PTSD (Ackerman, Newton, McPherson, Jones, & Dykman. 1998). In all of these studies, clinically significant symptoms, though not full PTSD, were observed in essentially all of the children or adolescents following the traumatic experiences.

### **Vulnerability and resilience**

Not all children exposed to traumatic events develop PTSD. A major research focus has been identifying factors (mediating factors) that are associated with increased (vulnerability) or decreased (resilience) risk for developing PTSD following exposure to traumatic stress (Kilpatrick & Williams. 1998). Factors previously demonstrated to be related to risk can be summarized in these broad categories: 1) characteristics of the child (e.g., subjective perception of threat to life or limb, history of previous traumatic exposures, coping style, general level of anxiety, gender, age); 2) characteristics of the event (e.g., nature of the event, direct physical harm, proximity to threat, pattern and duration); 3) characteristics of family/social system (e.g., supportive, calm, nurturing vs. chaotic, distant, absent, anxious) (Briggs & Joyce. 1997; Stuber, Kazak, Meeske, et al. 1997; Winje & Ulvik. 1998). Each of these mediating factors can be related to the degree to which they either prolong or attenuate the child's stress-response activation resulting from the traumatic experience. Factors that increase stress-related reactivity (e.g., family chaos) will make children more vulnerable while factors that provide structure, predictability, nurturing and sense of safety will decrease vulnerability. Persistently activated stress-response neurophysiology in the dependent, fearful child will predispose to a 'use-dependent' changes in the neural systems mediated the stress response, thereby resulting in post-traumatic stress symptoms (see Table 4).

**Table 4. Post-traumatic Stress Disorder: Risk and Attenuating Factors**

	<b>Event</b>	<b>Individual</b>	<b>Family and Social</b>
<b>Increase Risk</b> <i>(Prolong the intensity or duration of the acute stress response)</i>	5. Multiple or repeated event (e.g., domestic violence or physical abuse) 6. Physical injury to child 7. Involves physical injury or death to loved one, particularly mother 8. Dismembered or disfigured bodies seen 9. Destroys home, school or community 10. Disrupts community infrastructure (e.g., earthquake) 11. Perpetrator is family member 12. Long duration (e.g., flood)	13. Female 14. Age (Younger more vulnerable) 15. Subjective perception of physical harm 16. History of previous exposure to trauma 17. No cultural or religious anchors 18. No shared experience with peers (experiential isolation) 19. Low IQ 20. Pre-existing neuropsychiatric disorder (especially anxiety related)	21. Trauma directly impacts caregivers 22. Anxiety in primary caregivers 23. Continuing threat and disruption to family 24. Chaotic, overwhelmed family 25. Physical isolation 26. Distant caregiving 27. Absent caregivers
<b>Decrease Risk</b> <i>(Decrease intensity or duration of the acute stress response)</i>	28. Single event 29. Perpetrator is stranger 30. No disruption of family or community structure 31. Short duration (e.g., tornado)	32. Cognitively capable of understanding abstract concepts 33. Healthy coping skills 34. Educated about normative post-traumatic responses 35. Immediate post-traumatic interventions 36. Strong ties to cultural or religious belief system	37. Intact, nurturing family supports 38. Non-traumatized caregivers 39. Caregivers educated about normative post-traumatic responses 40. Strong family beliefs 41. Mature and attuned parenting skills

**Long-term costs of childhood trauma**

PTSD is a chronic disorder. Untreated, PTSS and PTSD remit at a very low rate. Indeed the residual emotional, behavioral, cognitive and social sequelae of childhood trauma persist and appear to contribute to a host of neuropsychiatric problems throughout life (Fergusson & Horwood. 1998) including attachment problems (Bell & Belicki. 1998; Alexander, Anderson, Brand, Schaeffer, Grelling, & Kretz. 1998), eating disorders (Rorty & Yager. 1996), depression (Winje & Ulvik. 1998; Fergusson & Horwood. 1998), suicidal behavior (Molnar, Shade, Kral, Booth, & Watters. 1998), anxiety (Fergusson & Horwood. 1998), alcoholism (Fergusson & Horwood. 1998; Epstein, Saunders, Kilpatrick, & Resnick. 1998), violent behavior (O'Keefe. 1995), mood disorders (Kaufman. 1991) and, of course, PTSD (Ford & Kidd. 1998; Schaaf & McCanne. 1998).

**Childhood trauma impacts other aspects of physical health throughout life, as well (Hertzman & Wiens. 1996; Orr, Lasko, Metzger, Berry, Ahern, & Pitman. 1998; Felitti, Anda, Nordenberg, et al. 1998). Adults victimized by sexual abuse in childhood are more likely to have difficulty in childbirth, a variety of gastrointestinal and gynecological disorders and other somatic problems such as chronic pain, headaches and fatigue (Rhodes & Hutchinson. 1994). The Adverse Childhood Experiences study (Felitti, Anda, Nordenberg, et al. 1998) examined exposure to seven categories of adverse events during childhood (e.g., sexual abuse, physical abuse, witnessing domestic violence: events associated with increase risk for PTSD). This study found a graded relationship between the number of adverse events in childhood and the adult health and disease outcomes examined (e.g., heart disease, cancer, chronic lung disease, and various risk behaviors). With four or more adverse childhood events, the risk for various medical conditions increased 4- to 12-fold. Clearly studies of this sort will help clarify the true costs of childhood maltreatment.**

### ***Summary and Future Directions***

The remarkable property of the human brain, unlike any other animal species, is that it has the capacity to take the accumulated experience of thousands of previous generations and absorb it within one lifetime. This capability is endowed by the design of our neural systems. Neurons and neural systems are designed to change in response to microenvironmental events. In turn, our experiences influence the pattern and nature of these microenvironmental signals, allowing neural systems to create a biological record of our lives. The brain, then, becomes an historical organ. In its organization and functioning are memorialized our accumulated, synthesized and transformed experiences. And there is no greater period of sensitivity to experience than when the brain is developing. Indeed, as described above, the neuroarcheological record of maltreatment has pervasive and chronic impact on the child. An event that lasts a few months in infancy can rob a child's potential for a lifetime. The true costs of childhood maltreatment will never be appreciated, and can never be avoided, until clinicians, researchers and policy makers become aware of the core concepts of neurodevelopment and the neuroarcheology of child maltreatment.

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## **APPENDIX 4**

### **“FROZEN FUTURES”**

**A Conference Exploring the Effects of Early Stress on Later Outcomes  
University of Sydney 14 - 16 November 2002**

Session Paper

**TITLE: “EARLY CHILDHOOD HEALTH IN SEPARATING FAMILIES”**

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Almost fifty percent of our children are impacted on by separation and divorce. Parameters for decisions are determined by adult demands in an adversarial process increasingly influenced by adult lobby groups. In this process the attachment and bonding needs of babies and young children are not understood and are discounted. This paper would discuss the forces that shape the current thinking in making determinations around care arrangements for children in the family law arena, the developing patterns of early childhood care and contact arrangements, and how Family Court determinations set a standard in the community and influence parental thinking about early childhood care in separation. The trend is increasingly for shared arrangements for children of all ages including infants and very young children. This paper will address the disruption to bonding and attachment and implications for children’s coping and adjustment. Suggestions for informed, child-focussed input in legal proceedings and community education will be discussed.

## **INTRODUCTION**

This paper discusses the lack of focus on child need and developmental considerations when parents, and the Family Court make decisions about child arrangements in separating families.

The trends in decisions made in relation to infants and young children are disturbing. The trends are shaped not by informed thinking on the developmental needs of children, but by individual parental demand (frequently the least child centered parent) supported by misguided thinking in the community, determined by increasingly powerful lobby groups, and exacerbated by the adversarial process.

The paper looks at how the Family Court, the legal process and society can be unwitting contributors to the 'frozen futures' of many of our children. In my opinion it is an extensive problem impacting on a significant proportion of children.

## **SOCIAL CHANGE**

### **Competing Interests**

We live in a society where in the many competing interests, children's needs are increasingly lost. The care of children, has become a gender issue. Working mothers, debate about how the needs of babies and young children can be met in fulltime childcare, greater paternal involvement, the roles played by mothers and fathers in the healthy development of children, are all factors causing confusion. Add the process of separation and legal dispute and the child can become invisible.

### **Factors Impacting on Thinking around Separation**

Women working and the placing of young children for extensive periods in childcare has contributed significantly to the devaluation or refocusing away from the importance of the mother/child relationship. Realistically, it is hard to argue against long separations from the primary parent in divorce disputes, when the child may spend many hours in childcare. The mother's primary parenting role can diminished in legal argument if the child is placed in childcare two or three days per week.

Greater participation of fathers in parenting has resulted in men making increasing demands in terms of time with their children on separation with the result that there is an alarming trend to share the children.

Children increasingly are required to navigate the separation, rather than the parents supporting each other in child-focussed arrangements. Orders have

been made in Brisbane where parents have month about with the children and are required to leave the marital home every other month.

Research outcomes finding that children growing up without fathers are more prone to problematic behaviour in adolescence and adulthood can result in simplistic responses. Commonly it is interpreted that fathers should have more time with their children when families separate, without taking into consideration factors such as the capacity for co-operation in the parental relationship, the quality of the parent-child relationship, age and developmental considerations.

Orders made by the Court, including agreements parents are encouraged to make, do not reflect the parenting and childcare pre-separation. It is interesting to note that research findings throughout the western world suggest that for all the greater visibility and participation of fathers in family life, there has not been a significant redistribution of parental and homemaking responsibilities in families.

Of the separating population, which in Australia is now almost 40%, 70-80% of separating couples manage their separation without making applications to the Court. Characteristic of the 20-30% who constitute the Court clientele are higher incidences of violence, child abuse, substance abuse and mental illness. Violence is a factor in 60-70% of cases presenting with children's issues. These statistics correlate with patterns in the United States.

## **WHAT HAPPENS TO THE BABIES IN SEPARATION**

Babies are dependent on the health, awareness, capacity for containment and empathy of the adults caring for them. They are the most vulnerable group in our society in every way, yet the least able to advocate for themselves. They have no ego protection, they cannot directly communicate their stress, they have not developed the capacities to process and understand what is happening in their world. They absorb everything that is going on around them and what they absorb become internalised scripts for a lifetime.

The children of the Family Court clientele are less likely to have healthy, empathetic parental care. They are more likely to be exposed to parental dysfunction including intense parental conflict, intense parental grief, domestic violence, physical and sexual abuse, have at least one parent who is mentally ill or personality disordered and/or abusing substances.

It is in these infant and early childhood years that our sense of self and identity are formed, patterns and capacity to form constructive relationships in the future are shaped. These are, as the title of this conference suggests, the most crucial developmental years. Yet they are the least acknowledged and least attended to.

I would in fact suggest that as a society we are numbed to the experience of infants. Why is that. We see them as cute and lovable, but in my experience we are shut down to the infant experience. We do not see them as 'real' until they are walking, talking, socialising. Is it their total vulnerability that is so threatening to us, their defencelessness in a society where we all must seem to be in control, 'on top' of things, or is it their total dependency that is so unnerving.

The issue of bonding, appropriate attachment and separation/individuation from the primary carer, is crucial to healthy 'self' and personality development, social competency and coping. Although bonding and attachment in psychotherapeutic study and thinking has been understood to be the cornerstone of personality development and identity, we are just now in society seriously considering the implications of the attachment process.

The ignorance demonstrated by society is reflected in parental lack of awareness and advice given by professionals at separation, with the result that the denial of the needs of young children in the family law arena is a significant problem.

## **PARENTS ROLES**

The Family Law Act proscribes equal rights of parents to their children under the law. This does not however, reflect infant experience or need, nor does it reflect child rearing practice.

### **The role of the primary carer**

Freud described 'The mother-infant relationship as 'unique without parallel established unalterably for a whole lifetime as the prototype of all love relations'.

It is interesting and disturbing how much this relationship, born of the fact that women are the vehicle through which the child achieves life, an undeniable reality determined by forces greater than human intent, is disputed in the legal process.

We know that not all mothers are 'adequate' mothers. Sometimes the primary parent is the father or grandmother or other, and sometimes both parents share primary caretaking responsibilities. However generally in our society, mothers continue in their primary caring role on the birth of their babies.

We also know at an instinctive level, as well as in psychological theory, that a healthy mother-child relationship, well supported by the father and society, is essential for healthy function throughout life.

### **The father's function**

Father's have many unique and important functions and paternal involvement in infancy is important. Father's play a fundamental socialising role in the

development of their children and early father-child interactions form the basis of children being able to form healthy self-concepts as females and males in later life. Father's however should not be competing for primary attachment when the mother is available and adequate.

It is of concern that in the family law arena, one can be considered biased or anti-male, to assert the importance of the mother-child relationship at this age. When parents separate this issue of primary care becomes central to the legal dispute. It is not uncommon for men who have been working fulltime, even though the mother has been at home, to claim that they have been the primary carer. Usually this is a reflection of the grief and fear of loss being experienced by the father at this time. However once claimed the issue needs to be tested in evidence and can distract from focus on the real needs of the child.

Combine the interactional and intrapsychic processes of parents in separation with legal premises that both parents have equal rights to parent their child under the law, and the increasing sense of entitlement engendered by men's lobby groups, which seems to have considerable support in society, the needs of the child can have little visibility indeed.

It is my thesis that the starting point in any forum, whether it be parental discussion, counselling, mediation or litigation, must be child need. At this stage adult focus, adult rights and adult pain, shape the decision around children and these are powerful forces as I will attempt to explain.

## **THE CHILDREN**

### **The First 3 Years**

The primary developmental task of infancy is to form strong attachment to enable the development of trust in oneself and the world. In the first three years of life the most fundamental developmental achievement is to establish an authentic sense of self as a person physically and psychologically separate from the mother or primary parent. (Johnston & Roseby 1997)

Healthy separation from the mother or mother figure must occur at a pace that is supportive of the child's developmental tasks in the context of safety and security, preferably supported by both parents.

### **The Importance of the Attachment Relationship**

Broadly attachments are seen as secure or insecure. Insecure attachment may serve as a significant risk factor in the development of psychopathology. Secure attachment in contrast, appears to support emotional resilience and greater resilience in brain chemistry. (Newman 2002)

Dyer (1995) reports that there is an enormous amount of evidence to demonstrate that the loss of a central parent figure produces substantial

psychological harm. The harm is found in several areas of functioning, primarily in the subsequent capacity to regulate mood and anxiety, to serve adequately in the role of parent for the next generation, to form new attachments and to feel empathy. There is greater likelihood of delinquent behaviour and personality disorders manifesting.

Attachment relationships serve a vital function in providing the infant with protection from dangers of many kinds. The internal experience of an activated attachment system is often associated with the sensation of anxiety or fear and can be initiated by frightening experiences as well as the threat of separation from the attachment figure.

### **Infant development and Trauma**

'Psychic trauma occurs when a sudden intense external experience overwhelms the individual's coping and defensive operations, creating the feeling of utter helplessness' (Lenore Terr 1987)

Much of the infant and toddler experience among this clientele could be categorised as traumatic. Inappropriate separation of the infant from the primary parent, as is characterised by excessive contact regimes, is a traumatic experience. Being separated from the mother or mother figure is an overwhelming emotional and sensory event, which leaves the child with overwhelming feelings of helplessness, abandonment and loss.

Many of these children of the Court's population are also victims of physical, sexual and emotional abuse, emotional abuse through prolonged intense conflict, are secondary recipients of domestic violence (in utero or as a babe in arms), are victims of abduction and separation from the primary parent sometimes for months at a time, or loss of a parent through contact refusal caused by unresolved parental conflict.

The types of orders made by the Court include shared residence of breast feeding babies, arrangements where a toddler will spend every weekend from Friday morning to Monday morning with a parent who has had minimal involvement with them and who frequently has no prior parenting experience. Often this occurs in a context of violence, threat and intimidation. In fact the younger the child the longer and more frequent the separations from the primary parent. For this age group, the lawyers would seem to have picked up on the words 'frequent contact', but have left out the essential proviso 'for short periods'.

### **THE TASKS OF SEPARATION**

Parental coping is the key determining factor in child adjustment. However separation for parents is a shattering, dramatic and emotional time and it takes time to progress through it.

Separation is akin to bereavement and the 'Grief Model' is a helpful structure to provide parents with some understanding of what they are processing. The depth of feeling and reaction can be intense. Rage, jealousy, loss, abandonment, hopelessness and despair are usual and people can be 'stuck' in these emotional states for years. It is unrealistic to believe or expect that parents can maintain a healthy, child sensitive focus if they are locked in the extremes of such emotional reaction.

In their study of divorce, Johnston and Campbell (1998) identified external, interactional and intrapsychic factors, which create impasse for separating couples.

Their description of intrapsychic factors explain well the primitive and powerful vulnerabilities which distort parental focus and allow many to justify the most appalling behaviour and demands in relation to their children.

For some, maintaining the fight defends against the insult of narcissistic injury. They need to prove that they are the successful parent to defend against feelings of failure and rejection or restore battered and vulnerable self-esteem by demonstrating that other person is bad or wrong.

To defend against 'Loss' parents will continue the fight, will not agree with anything in relation to children, child support, property, as a way of hanging onto the relationship, or they may continue to hold unrealistic hopes of reconciliation and agree to arrangements that are not in their own or their children's best interests.

The need to ward off a sense of helplessness, to have a sense of power or control in a situation where they feel or fear they have none, to be the one to lay down the rules as a means of controlling the other parent results in petty disputes on the one hand, or violent intimidating behaviour and using litigation as a way of controlling the other parent. Many of these young and vulnerable parents have no resources, poor capacity for self advocacy, little comprehension of the legal process, have been victimised in their relationships and are re-victimised by the system.

Projecting unreasonableness and pathologising the other parent, to defend against guilt and to justify leaving, is a self-serving dynamic that can be very destructive in the legal process.

Separation loss is inevitably compounded by earlier traumatic loss in childhood. Other significant losses which heighten the intensity of the bereavement include miscarriage, abortion, death of a child, death of a parent.

### **Parenting Children in Separation**

Children are at psychological and emotional risk at the height of separation angst, which can continue for months and years. The capacity of both parents for



responsible, informed co-operative parenting, is the exception rather than the norm in this population.

Assessment of parental capacity is essential in making determinations about children. Parents need to demonstrate maturity in a range of areas, to psychologically separate child needs from their adult needs, to provide financial support and greater emotional support to offset anxiety suffered by the child. Not all parents can or should try to be co-parents nor should all parents be encouraged to remain close to their children. In the real world some parents are detrimental to their children and contact may not be in the child's best interests. In other instances, occasional contact may prevent a child from idealising an inadequate parent. These are complicated matters and need to be assessed case by case.

## **FAMILY BREAKDOWN AND THE LAW**

Family breakdown is a social issue not a legal issue. The adversarial process represents adult legal rights, yet the Court's mandate is to find 'in the best interests of the child'. In my experience one cannot advocate for individual legal rights of the adult client and at the same time seek the truth of the situation in terms of the needs of the child. Seeking the truth of the matter is lost in the need to discredit witnesses or 'disallow' evidence in order to get the best outcome for the client.

The precept on which our legal system was developed, 'innocent until found guilty' does not allow for conservative child protective decisions before evidence is tested. For instance in a case involving a two year old whose mother was murdered. The baby was asleep in the house at the time of the assault. Initially she was placed, and spent some months with the maternal grandparents who had extensive support from the child's aunts and their families. The father was a suspect in the murder and was eventually charged. During this period he was successful in an application for residence and had the two year old returned to his care interstate.

The legal thinking was that his legal rights would be prejudiced, if the Court found against him on the basis of the untested charges. A year later he was tried and found guilty of the murder of his wife. The child had spent a year, at a crucial time in her development, in an unsupported environment with the man who had murdered her mother. A child protective decision would have left her with her maternal grandparents until after the murder trial.

In the practice of Family Law boundaries have become blurred. The Family Court and family law legal practitioners have developed a hybrid practice of law and social science, with the result there is some confusion about who are the experts. In this arena we do not need lawyers to be social scientists we need lawyers to

use their legal knowledge to advocate in those cases that need legal adjudication.

Legal and judicial thinking is frequently informed by the trend of the moment, however, lawyers are essentially arbiters of the law. They are paid to advocate for their client's legal rights, although advocating for client rights is all too often done in the 'name of the child'. The process is at least confused, certainly misleading and frequently dishonest.

As mirrored in society, there is systemic denial of realities of human interaction and family life. The adversarial process in fact would seem to act as an agent of suppression and denial. Recent studies of convictions for rape in the United Kingdom found that despite greater acknowledgement of the problem, higher rates of notification, improved police investigation techniques such as DNA, there are fewer convictions.

In the family law arena, the mythology would seem to carry more weight than empirical research. For instance sexual abuse allegations are almost universally treated as malicious and vindictive despite studies in Australia and the USA, which have found no difference in the substantiation of cases in the family law clientele compared to the broader community.

The legal process is vulnerable to manipulation. Many abusive parents use the legal process as a mechanism for control and intimidation. Desensitisation, denial, lack of understanding of abuse dynamics result in victims being re-victimised by the system.

Opportunistic interpretation of developmental considerations to win the case is usual, though damaging for the children involved and set precedents in law, and in community thinking about child arrangements in separation.

Responsible decision-making around children in separation is a child development issue, not a gender issue.

## **CONCLUSION**

Discussion and thinking in the community would suggest dissociative attachment to fairy tale concepts about family life. We cannot as a society continue in our delusional comfort and subscribe to the 'happy families' mythology as a way of avoiding the harsh realities, with attendant responsibilities, of the lives of many children.

The challenge is how do we meet the needs of children in separating families on terms that are realistic and child responsive in an arena where adult battles are being fought. The facts are that when parents separate, in reality one parent

loses their day to day involvement with the child, they are in effect relegated to visitor status. It is a source of profound loss and hard to mitigate against. This occurs at a point of greatest vulnerability, frequently not by choice, as usually one person initiates the separation, and in 70% of cases it is the woman.

The trend to use children to mitigate against adult parents' pain is unacceptable. A sound knowledge base on developmental considerations is prerequisite in making decisions about residence and contact. Confusion caused by competing interests of adult rights, lobby groups and the adversarial process need to be seen for their self-serving interests, if the Court and society not to be unwitting parties to child abusive practice.

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## **CASESTUDY**

I would like you to think about a couple with a three month old baby. The mother is a fulltime parent and has parented a 9 year old daughter and 6 year old son who live with her and her husband. The husband has no previous parenting experience. At their first year anniversary celebration she consumes alcohol, which in conjunction with her anti-depressant drugs, results in flirtatious and uncontained behaviour. The husband leaves in a jealous rage and abducts the baby. He will not allow the mother contact with the infant.

The mother applies to the Family Court to have the child returned to her care. It takes six weeks before the case is heard. The argument comes down to who is the most suitable parent. The father's case is that the mother is unstable and has a history of depression. The mother's case is that the father abducted the child.

The legal argument has drawn attention away from the most critical factor for this child, which is that her bonding to her primary carer has been traumatically interrupted.

The Court decided to leave the child in her father's custody. The mother has contact four days per week from 9.00 – 5.00.

The question this raises for me is why would the Court decide to indirectly support the abduction, remove a child from its primary carer on the basis of allegations by a man who has no previous parenting history. The Court did not require from that father evidence of his ability to care for a child and no determination of the degree of bonding with the child.

It is of note on subsequent assessment, that the father has a history of depression, self-harming, alcohol abuse and relationship dysfunction.

The trauma for this child was such that 10 weeks post-abduction, when I did the assessment, she was just 6 months, she was emotionally non-responsive, she was significantly overweight, did not smile, spontaneously made no sounds, was minimally responsive to noise or people in her environment.

The mother reported bowel dysfunction, excessive nappy rash, excessive weight gain. On reconnection with her the child could not sit, could not roll over, was physically and emotionally unresponsive. She compared her to her other children who at age 5/6 months were starting to crawl.

The father reported no developmental, physiological or emotional problems.

## CHILDREN'S REACTIONS TO SEPARATION

### **Birth - 2 years**

Children who experience separation from the time of their birth until two years of age are very sensitive to the feelings of their custodial parent. If he or she is anxious or depressed the infant often responds by becoming fretful - demanding more attention, rocking, handling. The fretful baby increases the parent's anxiety and depression, which in turn results in increasing fretfulness in the infant. So a vicious circle is established.

Some babies however respond to the parent's distress by withdrawing and becoming quiet. The parent may believe that the infant is unaware of the separation, rather than realising that "being good" is the way the baby is responding to the situation.

Children of this age have a poor sense of time so separation from their primary caretaker for just a few hours may seem to them like a very lengthy period. This should be taken into account when access arrangements are made.

Infants respond with uncomplicated pleasure to access visits unless either parent becomes anxious, angry or depressed at the visits.

### **3 - 5 years**

Children who are three to five years of age at the time of separation are conscious of changes in their lives. Unable to distinguish between their own wishes and reality they often blame themselves for the separation. The reason is simply this: at some earlier period they may have wished the now non-custodial parent would go away so that they could enjoy the whole attention of the other parent. When the parent does leave they believe it was their earlier wish which caused their parent's departure.

Following separation, children of this age group experience fears of being abandoned or left hungry. They may have nightmares in which they are chased by wild animals or left alone without food.

They fantasise that Mum and Dad are still together and this is often observable in their play.

They may react to the separation by becoming very good and quiet, or by becoming very aggressive. They may also behave in a manner more appropriate for younger children.

They recover quickly following the separation if there is no real conflict between the parents.

They enjoy contact visits and may use them to effect a reconciliation. Believing their wishes caused the separation they feel their wishes can achieve a reconciliation.

## IMPACT OF PARENTAL CONFLICT

### *Pre-School Age Children*

- 2 - 3 year olds**
- anxious separating from 1 parent
  - upset, excited, hyperactive, difficult to control
  - nightmares
  - asthma and stomach pains'
  - child behaves differently with either parent
  - worst reaction often in front of both parents
- 2 - 4 year olds**
- react with crying, clinging, being frozen
  - become aggressive
  - able to adapt after changeover
  - blame themselves for parents distress
- 4 - 5 year olds**
- worry what is and what is not true
  - worry about parents
  - worry about being abandoned
  - blame themselves for dispute
  - if one parent criticise the other - then child degrades part of themselves as bad

## Coping styles

1. Child is immature, easily distracted - difficulty in handling own feelings.
2. Child shows they are good - becomes anxious - doesn't show own feelings.
3. Child anxious and worried about both parents.

- Risks**
- **Relationships**
  - **Self-esteem**
  - **Own identity**

## **CONTACT GUIDELINES**

### ***INFANCY : 0 - 2 YEARS***

- **COMMONLY KNOWN AS THE DEPENDENT STAGE.** Child is dependent upon main caregiver - strong physical and emotional bond.
- **SEPARATION FROM MAIN CAREGIVER CAN BE VERY DISTRESSING.** Similarly a child can fret when denied frequent contact with the absent parent.
- **TIME CONCEPT.** A few hours seem much longer.
- **CONTACT NEEDS TO BE FREQUENT BUT SHORT.**
- **A HIGH LEVEL OF CONFLICT BETWEEN PARENTS CAN MAKE ACCESS EXTREMELY STRESSFUL FOR A CHILD OF THIS AGE.**

# CONTACT GUIDELINES

## PRE-SCHOOL: 2 1/2 - 5 YEARS

- **CHILD A LITTLE MORE INDEPENDENT OF PARENTS.** Known as the formative years in a child's development.
- **SEPARATION CAN BE A MAJOR CRISIS FOR SOME CHILDREN.** May react with shock or depression - changes in sleep pattern, behaviour, toilet habits, deterioration in language skills, clinging behaviour.
- **TIME CONCEPT CONTINUES TO DIFFER FROM ADULTS.** Children have little concept of time.
- **CHILDREN OF THIS AGE SEE THE WORLD THROUGH DIFFERENT EYES.** Children have very different thought processes, some fantasise what they don't understand and make things up from bits of their own experience.
- **IF CONFLICT IS HIGH BETWEEN PARENTS THE CHILDREN ARE UNLIKELY TO COPE EASILY WITH OVERNIGHT CONTACT PERIODS FROM MAIN CAREGIVER.**



## **SUCCESSFUL CONTACT PLAN**

1. MINIMISE CONFLICT
  
2. MAXIMISE QUALITY OF TIME CHILDREN SPEND WITH BOTH PARENTS

(Studies – frequency of contact is not as important as the quality of the relationship between parent and child)

- a: Where parents know and love children
  - b: Where parents are safe guardians
  - c: Where parents are willing to parent
- 
3. CHILDREN'S DEVELOPMENTAL NEEDS ARE TAKEN INTO ACCOUNT

## **WHO TURNS OUT WELL**

- TEMPERAMENT
- AGE
- GENDER
- ENVIRONMENTAL STABILITY
- PSYCHOLOGICAL FUNCTIONING OF THE RESIDENTIAL PARENT
- CONTACT WITH BOTH PARENTS
- INTENSITY OF CONFLICT BETWEEN PARENTS

## APPENDIX 5

### REFERENCES OF EVIDENCE BASED RESEARCH

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## **APPENDIX 6**

See attached PDF file:

Rhodes, H. (2002) 'The 'No Contact' Mother': reconstructions of Motherhood in the era of the 'New Father', *International Journal of Law, Policy and the Family*, 16 (1): 71-94.