

Wyoming Statutory Parent-Time Schedules and Parent Plans



minimizing the impact
of divorce on children

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Does a child from a divorced family in Wyoming deserve less than a child from a divorced family in Utah or Arizona? Does a child from a divorced family in Cheyenne deserve different treatment than a child from a divorced family in Evanston? Let's face it, divorce is difficult for a child and is probably never going to be completely fair to a child. However, statutory parenting time¹ schedules and guidelines for developing detailed parenting plans would minimize the impacts of divorce and would treat all children across Wyoming equally; would give district

courts and parents the resources to know the best developmentally appropriate parenting time arrangements and the ability to alter those arrangements if the needs of the family dictate otherwise; would allow experts in child development, rather than the legal professionals, to participate in determining developmentally appropriate schedules; and would allow every divorced parent the ability to have a detailed parenting time plan despite the attorney he or she can afford or the district court to which the case is assigned.

History of Custody Determinations

Up until the mid-nineteenth century, a father had the absolute right to custody of his children after a divorce based on the view that children were property of their father.² In the early 1900s, this paternal presumption was replaced by a maternal presumption supported by laws and judicial decisions that awarded custody of young children to their mothers under the "tender years" doctrine because the mother was usually the children's primary caretaker.³ Fol-

lowing the trend throughout the country, in 1977 Wyoming eliminated this maternal presumption to make the child's best interests paramount.⁴ These changes resulted in "custody decisions [that for the first time] were to be based on a consideration of the needs and interests of the child rather than on the gender or rights of the parent."⁵

Flexible Standard and Inconsistent Results

Under Wyoming's best interest standard, a district court determines what parent-time schedule is in the child's best interest after evaluating required statutory factors.⁶ A court has broad discretion as to how much weight each factor is given.⁷ While a court's broad discretion allows it to evaluate the family's needs, this discretion can lead to children in very similar situations being treated differently based on the court to which their case is assigned. The vague standard requires a court to use its limited resources to determine what custodial arrangement and parent-time schedule should be implemented, which may be based on antiquated beliefs of family roles and child development.⁸

Often, a court will grant one parent primary physical custody and the other parent "standard visitation." However, each court has a different version of "standard visitation." For example, Laramie County's "Standard Visitation Order" gives the non-custodial parent two months of time in the summer. In Uinta County, the court rarely awards two months of summer visitation if the parties live in the same community. Instead, the "standard schedule" has evolved over the years to include long alternating weekends and the option for a mid-week visit. The court routinely awards the non-custodial parent six weeks of time in the summer. The holiday schedule used in Laramie County also differs from the one used in Uinta County.

Wyoming's lack of a standardized parenting time schedule "is reminiscent of child support orders prior to the adoption of the child support guidelines."⁹ Just as equalizing child support to give a child the financial support needed, Wyoming should standardize parent-time schedules to ensure each child receives the emotional support and parent time the child deserves. As more divorced parents remarry, the lack of uniformity is magnified as a child and his or her step-siblings may be treated differently.¹⁰

Statutory Minimum Parent-Time Schedules

Wyoming should adopt statutory minimum parenting time schedules (hereinafter referred to as "statutory schedules") that would provide consistency throughout the state, rather than a different "standard visitation" order that varies from court to court. Developed in cooperation with psychologists and child development experts, statutory schedules, such as the one used in Utah, provide detailed scheduling that allow the noncustodial parent the minimum amount of parent time that research has shown is required to maintain healthy relationships at a child's particular age.¹¹

Courts generally use these statutory schedules as the minimum parent time a noncustodial parent will be given if the parents are unable to agree to their own schedule.¹² However, special situations may dictate that the court deviate from the statutory schedule, such as cases involving domestic violence, serious physical or mental illnesses, chronic neglect, chemical dependency or abuse.¹³ The court would retain discretion to deviate from the standard schedule when the circumstances dictated.

In addition to providing the court with a standardized schedule, statutory schedules help pro se litigants to know from the beginning what the statutory schedule is and promote settlement between all parties who

know what will be ordered if they fail to agree on a different schedule.

Detailed Parenting Plan Guides

Used in conjunction with statutory schedules, detailed parenting plans help minimize the impacts of divorce on children.¹⁴ Parents who create the parenting plan themselves are often more likely to adhere to the standards set forth in the plan.¹⁵ "Parents can discuss their child's particular needs and reach agreements reflecting those needs, parental desires, and family values, and they can do so without depleting their economic resources."¹⁶ Other states have created detailed guides for parents to use in creating their own parenting plan and encourage parents to discuss and determine the plan that meets their child's needs.¹⁷ By providing parents a solid example of a parenting plan, parents can create their own plan, reducing conflict and the expenses associated with divorce.¹⁸

Wyoming should develop a guide to help parents develop a detailed parenting plan. The ideal parenting plan will outline, in detail, important considerations such as transportation and the costs associated with transportation, schedule changes, relocation of a parent, travel and vacation with a child, communication between the parents and the parent and child, discipline, extracurricular activities, education, and resolution of disputes or modification of the parenting plan or parent-time schedule.¹⁹

Recognizing the benefits of standardized schedules and well-drafted parenting plans, different states have used different methods to create and implement detailed standardized schedules and parenting plans.²⁰ Despite the method used, these standardized schedules and plans can be used by both the parents and the court to create an effective plan for each family.

The states adopting these standardized schedules and plans have tried to minimize



the serious psychological and social problems children from divorced families face from ongoing conflict between parents.²¹ Standardized schedules and plans can minimize parental conflict by providing parents with a detailed plan that clearly defines how the parent's relationship will continue.²² The plans also address how to handle conflicts and encourage parents to focus on their child's needs.²³ In addition, some states have mandated mediation when parents cannot agree on a schedule and plan with the hope that mediation will eliminate conflict and reach an agreement without court intervention.²⁴

States adopting standardized schedules and plans have recognized that a child does best after a divorce when both parents are actively involved in that child's life.²⁵

Children describe the loss of contact with a parent as the worst consequence of divorce Unless special circumstances exist, preserving a healthy and ongoing relationship between children and both their parents after divorce . . . is of utmost importance. Positive involvement with both parents furthers the child's emotional and social development, academic achievement and overall adjustment.²⁶

To minimize the negative impact divorce has on a child, Wyoming should implement a statutory minimum parent-time schedule based on child development research to be used by courts when parents are unable to agree to a plan on their own and which would provide consistency throughout the state and predictability for those facing divorce. Additionally, Wyoming should create a guide that parents can use to create a detailed and effective parenting plan.⁶

ENDNOTES

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1. Throughout this article, the term "parent time" is used rather than the use of the term "custody" or "visitation" because, in the authors' opinion, "parent time" more accurately describes the importance of a child's time with his or her parent.
2. See Joan B. Kelly, *The Determination of Child Custody*, 4 *Children and Divorce* 121 (Spring 1994), available at <http://futureofchildren.org/publications/journals/article/index>.
3. Kelly, *supra* note 2, at 121-22.
4. See *Fanning v. Fanning*, 717 P.2d 346, 348-49 (Wyo. 1986).
5. Kelly, *supra* note 2, at 122; see, e.g., *Fanning*, 717 P.2d at 353.
6. See Wyo. Stat. Ann. § 20-2-201(d) (2013) ("The court shall order custody in well defined terms to promote understanding and compliance by the parties. Custody shall be crafted to promote the best interests of the children, and may include any combination of joint, shared or sole custody."); Wyo. Stat. Ann. § 20-2-201(a) (listing required factors the court must consider in its best interest analysis).
7. See *Blakely v. Blakely*, 2009 WY 127, ¶¶ 6, 10, 218 P.3d 253; *Fanning*, 717 P.2d at 349.
8. See Joan B. Kelly, *Developing Beneficial Parenting Plan Models for Children Following Separation and Divorce*, 19 *Parenting Following Separation and Divorce* 237, 237 (2005), available at <http://www.aaml.org/sites/default/files/developing%20beneficial%20parenting-article.pdf> (hereinafter referred to as "Kelly-Parenting Plan Models") ("Child development and divorce research of the past twenty-five years provides ample evidence that the traditional alternating weekend visiting pattern failed to meet the psychosocial and emotional needs of many separated children in both the short and longer-term."); see also Kelly, *supra* note 2, at 124 ("Despite changes in law and social custom over two decades, physical custody arrangements have remained

rather stable. In the 1970s, women had sole custody of the children 85% of the time, and men retained sole custody 10% of the time, with the remaining 5% a variety of other custody arrangements. . . . [S]tudies [from around 1994] based on census and survey data that reflect which parent has the child in residence more than half the time, indicate that father-custody figures may be closer to 15%.")

9. The Oklahoma Administrative Director of the Courts, *Advisory Guidelines -- Standard Visitation Schedule with Forms*, page 1 note 2 (September 2005), http://www.oscn.net/forms/aoc_form/adobe/Form.76.pdf.
10. See *id.*
11. See Utah Code Ann. §§ 30-3-35 to -35.5 (2013) (devising a different plan for the following ages: less than five months old, between five to nine months old, between nine to twelve months old, between twelve to eighteen months old, between eighteen months to three years old, between three to five years old, and five to eighteen years old).
12. See Utah Code Ann. § 30-3-35(2) ("If the parties do not agree to a parent-time schedule, the following schedule shall be considered the minimum parent-time to which the noncustodial parent and the child shall be entitled."); Utah Code Ann. § 30-3-35.5(3) (same).
13. See, e.g., Utah Code Ann. § 30-3-10.10 ("In any proceeding regarding a parenting plan, the court shall consider evidence of domestic violence, if presented."); See Indiana Rules of Court, *Indiana Parenting Time Guidelines*, at 3, (August 26, 2013), <http://www.in.gov/judiciary/rules/parenting/> (stating that their guidelines "are not applicable to situations involving family violence, substance abuse, risk of flight with a child, or any other circumstances the court reasonably believes endanger the child's physical health or safety, or significantly impair the child's emotional development").
14. See Utah Supreme Court, *Pointers for Parents and Parenting Plans*, at 1 (2010), http://www.utcourts.gov/how-to/family/parenting_plans/ (hereinafter "Utah's Guide").
15. See Arizona Supreme Court, *Planning*

for *Parenting Time, Arizona's Guide for Parents Living Apart*, at 6 (2009), <http://www.azcourts.gov/portals/31/parentingTime/PPWguidelines.pdf> (hereinafter referred to as "Arizona's Guide").

16. See Kelly, *supra* note 2, at 124.
17. See Indiana Rules of Court, *Indiana Parenting Time Guidelines*, at 1-2, (August 26, 2013), <http://www.in.gov/judiciary/rules/parenting/> (hereinafter referred to as "Indiana's Guidelines"); Arizona's Guide, *supra* note 15, at 4-8; Utah's Guide, *supra* note 14, at 5-15.
18. See Utah's Guide, *supra* note 14, at 1-2.
19. See Kelly-Parenting Plan Models, *supra* note 8, at 253-54 (describing what should be used to create successful parenting plan models); see, e.g., American Academy of Matrimonial Lawyers, *Model for a Parenting Plan*, (2005) available at http://www.familylawfla.org/pdfs/AAML_Parenting_Plan.pdf.
20. Utah has developed one of the most comprehensive plans that creates specific plans for the minimum parent time that is necessary for different aged children. See Utah Code Ann. §§ 30-3-35 to -35.5 (2013). Utah has incorporated its plan directly into its statutes and mandates that the court implement the plan if the parents do not agree to their own plan or if specific circumstances exist. See *id.* Additionally, Utah has provided a comprehensive guide to aid and encourage parents to develop a detailed plan on their own. See generally Utah's Guide, *supra* note 14. Indiana has also developed comprehensive guidelines and implemented court rules to require courts to apply the guidelines as the minimum amount of parent time if the parents cannot agree to their own plan. See Indiana's Guidelines, *supra* note 17, at 1-2 ("The Indiana Parenting Time Guidelines are designed to assist parents and courts in the development of their own parenting plans. In the event the parties cannot create their own parenting time agreement, these guidelines represent the minimum time a parent should have to maintain frequent, meaningful, and continuing contact with a child."). Florida has used court approved forms that parents can use to create parenting plans, which are less comprehensive

in that the form does not address the child's age. See Florida Supreme Court, Florida Supreme Court Approved Family Law Form 12.995(a), Parenting Plan (2011), http://www.flcourts.org/gen_public/family/forms_rules/995a.pdf. Arizona and Oregon allow parents to agree to either a general or detailed plan but absent such agreement require the court to use a detailed plan that can be developed under the guidelines given. See Ariz. Rev. Stat. Ann. § 25-403.02 (2013); Arizona's Guide, *supra* note 15; Or. Rev. Stat. § 107.102 (2013); Oregon Supreme Court, *Standard Parenting Plan*, <http://courts.Oregon.gov/OJD>.

21. See Kelly-Parenting Plan Models, *supra* note 8, at 238-39, 254.
22. See Arizona's Guide, *supra* note 15, at 5.
23. See Utah Guide, *supra* note 14, at 1 ("Children do best when their parents cooperate. The reverse is also true. Children who experience ongoing conflict between parents are at high risk for suffering serious long-term emotional problems."); 31st Judicial District of Kansas, Parenting Time Guidelines for the District Courts of the 31st Judicial District of Kansas, at 2, available at <http://31stjudicialdistrict.org/PARENTING%20TIME%20GUIDELINES%20FOR%20THE%20DISTRICT%20COURTS.pdf> (hereinafter referred to as "Kansas Parenting Time Guidelines") ("An unworkable marriage does not mean joint parenting will be unsuccessful. However, the adults must be able to focus on their role as parents, not as ex-spouses.").
24. See Utah Guide, *supra* note 14, at 2 ("If parents need assistance in working out the schedules, private and court sponsored mediation services are available in Utah. In Utah's Third District Court, whenever a parent files a motion with issues regarding their co-parenting relationship, the parents are referred to the Co-Parenting Mediation Program before obtaining a court hearing. The Co-Parenting Mediation Program is dedicated to helping co-parents resolve parenting issues, helping to create co-parenting plans, and to building bridges so children can transition between parents while maintaining healthy relationships. Mediation is less adver-

sarial than court, and parents are able to work collaboratively and constructively together to create parenting plans for their children.").

25. See Arizona's Guide, *supra* note 15, at 5; Kansas Parenting Time Guidelines, *supra* note 23, at 2; Indiana's Guidelines, *supra* note 17, at Preamble.
26. Utah's Guide, *supra* note 14, at 1.

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