

MANDATORY DIVORCE EDUCATION CLASSES: WHAT DO THE PARENTS SAY?

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I. INTRODUCTION

Between 1994 and 1998, the number of states offering parent education classes for divorcing couples quadrupled.¹ The State of Minnesota participated in this trend with the passage of Minnesota Statutes Section 518.157 requiring that each judicial district implement a parent education program.² Parent education at the time of divorce seems to constitute sound public policy. However, no final conclusions can be drawn without asking the question, “What do the parents think about mandatory divorce education?”

Part II of this article will examine the societal and legal context of divorce education for parents and the response of the court system. Part III will compare and contrast divorce education strategies among the states. Part IV will outline and discuss the legal framework for divorce education in Minnesota. Part V will present the preliminary findings of a research study concerning participants’ perceptions of a mandatory parent education program conducted in a single Minnesota county.

II. THE SOCIETAL AND LEGAL CONTEXT

A combination of factors and societal pressures has resulted in the recent proliferation of divorce education programs for parents. First, social scientists have documented and publicized the effects of divorce on children. Second, in recognition of the crucial role the court system plays in family restructuring, a significant effort has been made to make the legal process more responsive to the real needs of families in transition.

1. Debra A. Clement, *1998 Nationwide Survey of the Legal Status of Parent Education*, 37 FAM. & CONCILIATION CTS. REV. 219, 219 (1999).

2. MINN. STAT. § 518.157 subd. 1 (2000).

A. *The Effects of Divorce on Children*

Although the divorce rate is constantly fluctuating, statistics indicate that approximately half of all recent marriages will end in divorce.³ Moreover, researchers estimate that 40% of children born in the late 1970s and early 1980s have or will experience parental divorce during their lifetimes.⁴

The effects of divorce on children have been linked to negative outcomes in areas such as self-esteem,⁵ anxiety,⁶ school productivity,⁷ sense of overall well-being,⁸ rates of depression,⁹ conduct,¹⁰ psychological adjustment,¹¹ academic achievement,¹² parent-child relationships,¹³ and general trauma.¹⁴ Researchers believe that these negative effects stem from the fact that, for children, divorce entails a number of stressful transitions including geographic moves, economic hardship, and diminished parental effectiveness.¹⁵ A frequently cited study concludes that children's

3. U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, June 2001, at *5-7, at <http://www.census.gov/prod/2001pubs/p20-537.pdf> (last visited Oct. 19, 2001) [hereinafter CENSUS BUREAU REPORT].

4. *Id.* at *4.

5. John Beer, *Relationship of Divorce to Self-concept, Self-esteem, and Grade Point Average of Fifth and Sixth Grade School Children*, 65 PSYCHOL. REP. 1379, 1383 (1989); Nicholas Zill et al., *Long-term Effects of Parental Divorce on Parent-child Relationships, Adjustment, and Achievement in Young Adulthood*, 7 J. FAM. PSYCHOL. 91, 103 (1993).

6. Liliana J. Lengua et al., *Understanding Children's Divorce Adjustment From an Ecological Perspective*, 22 J. DIVORCE & REMARRIAGE 25, 53 (1995).

7. Varghese I. Cherian, *Academic Achievement of Children of Divorced Parents*, 64 PSYCHOL. REP. 355, 355 (1989).

8. Sharon K. Houseknecht & Jaya Sastry, *Family "Decline" and Child Well-being: A Comparative Assessment*, 58 J. MARRIAGE & FAM. 726, 739 (1996); Donna Ruane Morrison & Andrew J. Cherlin, *The Divorce Process and Young Children's Well-being: A Prospective Analysis*, 57 J. OF MARRIAGE & FAM. 800, 812 (1995).

9. Lengua et al., *supra* note 6, at 25.

10. Paul R. Amato & Bruce Keith, *Parental Divorce and Adult Well-being: A Meta-analysis*, 53 J. MARRIAGE & FAM. 26, 43-58 (1991).

11. Patrick T. Davies & E. Mark Cummings, *Marital Conflict and Child Adjustment: An Emotional Security Hypothesis*, 116 PSYCHOL. BULL. 387, 387 (1994).

12. Nan Marie Astone & Sara McLanahan, *Family Structure, Parental Practices and High School Completion*, 56 AM. SOC. REV. 309, 309 (1991); Beer, *supra* note 5, at 1383; Cherian, *supra* note 7, at 355; E. Milling Kinard & Helen Reinherz, *Effects of Marital Disruption on Children's School Aptitude and Achievement*, 48 J. MARRIAGE & FAM. 285, 285 (1986); Birgitte R. Mednick et al., *Long-term Effects of Divorce on Adolescent Academic Achievement*, 13 J. DIVORCE 69, 69 (1990).

13. Alice M. Hines, *Divorce-related Transitions, Adolescent Development, and the Role of the Parent-child Relationship: A Review of the Literature*, 59 J. MARRIAGE & FAM. 375, 375 (1997).

14. Hines, *supra* note 13, at 375.

15. Paul R. Amato, *Children's Adjustment to Divorce: Theories, Hypotheses, and*

adjustment to divorce is linked to five central concepts: 1) the absence of the non-custodial parent, 2) the adjustment of the custodial parent, 3) conflict between parents, 4) economic hardship, and 5) stressful life changes.¹⁶ It is generally accepted that children's adjustment to divorce is directly related to how their parents respond to the divorce conflict.¹⁷

Divorce is also an extremely stressful event for parents and may involve feelings of depression, loneliness, regret, anger and helplessness.¹⁸ While one of the strongest predictors of children's adjustment to divorce is the overall well-being of the residential parent, that parent may be so preoccupied with emotional and financial pressures that he or she is unable to simultaneously meet the needs of the children.¹⁹

Furthermore, the quality of the relationship between a father and his former spouse is a strong predictor of whether that father will remain involved with his children.²⁰ Not surprisingly, fathers who are better able to cope with the stresses and changes that accompany divorce are also more likely to remain involved in lives of their children.²¹

Both parents undergo a divorce adjustment process during which they need to learn how to function as a single parent, explore ways to balance their own needs with those of their children, and develop methods of coping without adult companionship or support.²²

Another important area of research shows that children's

Empirical Support, 55 J. MARRIAGE & FAM. 23, 23 (1993); Paul R. Amato & Alan Booth, *A Prospective Study of Divorce and Parent-Child Relationships*, 58 J. MARRIAGE & FAM. 356, 356 (1996); Hines, *supra* note 13, at 375; Mednick et al., *supra* note 12, at 69; Morrison & Cherlin, *supra* note 8, at 812.

16. See Amato, *supra* note 15, at 23.

17. Amato & Keith, *supra* note 10, at 43-58. See generally, Robert E. Emery, *Divorce Mediation: Negotiating Agreements and Renegotiating Relationships*, 49 FAM. RELATIONS 377 (1995).

18. Eleanor E. Maccoby et al., *Coparenting in the Second Year after Divorce*, 52 J. MARRIAGE & FAM. 141, 150 (1992).

19. Joan B. Kelly, *Current Research on Children's Postdivorce Adjustment: No Simple Answers*, 31 FAM. & CONCILIATION CTS. REV. 29, 29-33 (1993); Judith A. Seltzer & Suzanne M. Bianchi, *Children's Contact With Absent Parents*, 50 J. MARRIAGE & FAM. 663, 663 (1988).

20. P. LINDSAY CHASE-LANSDALE & E. MAVIS HETHERINGTON, 10 LIFE-SPAN DEV. & BEHAVIOR 105 (1990); Valarie King, *Nonresident Father Involvement and Child Well-being: Can Dads Make a Difference?*, 15 J. FAM. ISSUES 78, 78 (1994).

21. See CHASE-LANSDALE & HETHERINGTON, *supra* note 20, at 105.

22. Jeanne M. Tschann et al., *Family Process and Children's Functioning During Divorce*, 51 J. MARRIAGE & FAM. 431, 431 (1989).

adjustment to divorce is directly related to the level of conflict between the parents both during and after the divorce.²³ Children whose parents exhibit a high degree of conflict after divorce experience more difficulty adjusting than do children whose parents have a better relationship.²⁴ This may result from less effective parenting by a parent involved in high conflict.²⁵ Nevertheless, children fare much better when their parents employ specific strategies to resolve conflict and avoid placing the children in the middle.²⁶

All of the above research points to the importance of teaching divorcing parents how to interact cooperatively, both during and after their divorce, for the sake of their children's well being. The main question is: how can parents learn to resolve conflict more effectively and interact more cooperatively in front of their children? Given the potential for long lasting harm to children and the sheer number of families affected, attention has turned to an examination of the divorce process itself. Specifically, families are being empowered through the use of mediation and divorce education programs.

B. *The Response of the Court System*

The role of the family court has varied over time. Prior to the 1970's divorce could only be obtained through a highly adversary proceeding establishing the fault of one of the parties.²⁷ During the 1970s, a family law revolution occurred wherein states established no fault divorce and became concerned with gender discrimination in custody and alimony awards.²⁸ Even then, the procedure remained adversary in nature.²⁹

However, joint custody laws passed during the 1970's planted

23. James L. Peterson & Nicholas Zill, *Marital Disruption, Parent-child Relationships, and Behavior Problems in Children*, 48 J. MARRIAGE & FAM. 295, 295 (1986).

24. Kelly, *supra* note 19, at 29-33.

25. Tschann et al., *supra* note 22, at 431.

26. Kelly, *supra* note 19, at 29-33. See generally K.A. Camera & G. Resnick, *Interparental Conflict and Cooperation: Factors Moderating Children's Post-Divorce Adjustment*, in IMPACT OF DIVORCE, SINGLE PARENTING, AND STEPPARENTING ON CHILDREN 169-95 (E. Mavis Hetherington & Josephine D. Arasteh, eds. 1988).

27. Andrew Shepard, *The Evolving Judicial Role in Child Custody Disputes: From Fault Finder to Conflict Manager to Differential Case Management*, 22 U. ARK. LITTLE ROCK L. REV. 395, 395-402 (2000).

28. *Id.* at 401-02.

29. *Id.* at 401.

the seeds for the current family law revolution, one focused on meeting the needs of children through a more cooperative style of conflict resolution.³⁰ The adversarial, win-lose system of litigation has increasingly been viewed as a system that fuels conflict and harms families.³¹ Consequently, states have increasingly turned to mediation as a way to empower parents to make joint agreements and to teach the cooperative techniques needed to carry them out.³²

By 1995, thirty-three states mandated mediation in child custody cases.³³ In Minnesota, divorcing couples receive a summons encouraging them to attempt alternative dispute resolution.³⁴ Similarly, under Rule 114.03(b) attorneys are required to provide clients with ADR information.³⁵

Because the mediation process involves the education and empowerment of parents, it is not surprising that the national growth of parent education programs has been linked to the increased use of mediation in custody proceedings.³⁶ In fact, mediators are frequent advocates of divorce education programs.³⁷

Court-connected parent education programs have attributes that make them especially desirable.

Courts are in a unique position to serve as a gateway through which divorcing and relitigating parents must pass. Furthermore, the courts, unlike most other community agencies, have the authority to mandate that parents acquire specific divorce-related parenting skills. If courts do not provide the mechanism for divorcing parents to learn the skills they need in order to protect and help their children during the divorce process, it is unlikely that vast majority of these families will have access to such training in any other fashion. In addition, if the

30. *Id.* at 405.

31. STEPHEN ERICKSON & MARILYN MCKNIGHT, *THE PRACTICIONER'S GUIDE TO MEDIATION* 8 (2001); Kathryn E. Maxwell, *Preventive Lawyering Strategies to Mitigate the Detrimental Effects of Clients' Divorce on Their Children*, 67 *REV. JUR. U.P.R.* 137, 137-149 (1998).

32. *See* ERICKSON & MCKNIGHT, *supra* note 31, at 408.

33. *See* Schepard, *supra* note 27, at 408.

34. MINN. STAT. § 518.091 (2000).

35. MINN. GEN. R. PR. 114.03(b) (2001).

36. Peter Salem, *Education for Divorcing Parents: A New Direction for Family Courts*, 23 *HOFSTRA L. REV.* 837, 839 (1995).

37. Jack Arbuthnot & Kevin Kramer, *Effects of Divorce Education on Mediation Process and Outcome*, *MEDIATION Q.*, Spring 1998, at 209, 209.

courts do not provide such services, it is a certainty that a large number of the children of divorcing families will continue to require community resources in various forms, including mental and physical health services, police and court time, property damages due to delinquency, and added burdens for the schools systems. It is an ounce-of-prevention-or-pound-of-cure phenomenon.³⁸

In January of 1997, the Minnesota Supreme Court Advisory Task Force on Visitation and Child Support Enforcement recommended that the legislature implement parent education programs in each judicial district.³⁹ The Task Force delineated that the purpose of a parent education program shall be “to serve as an early intervention mechanism to encourage cooperation between parents before adversarial behavior and conflict has a chance to develop”⁴⁰ Among other goals, the parent education program should educate parents about: positive communication techniques; the impact that divorce, the restructuring of family, and judicial procedure have upon children and family; methods for preventing visitation conflicts and dispute resolution options; and the importance of always placing the best interest of the children above what they may perceive as their own “rights.”⁴¹

The recommendations of the Task Force were, in large part, adopted by the Minnesota Legislature in Minnesota Statutes Section 518.157.

III. DIVORCE EDUCATION STRATEGIES: VARIATIONS ON A THEME

By 2001, twenty-eight states had enacted legislation or statewide court rules mandating or establishing divorce education programs.⁴² Of the remaining twenty-two states, at least seven have

38. Jack Arbuthnot et al., *Court-Sponsored Education Programs for Divorcing Parents: Some Guiding Thoughts and Preliminary Data*, JUV. & FAM. CT. J., Spring 1994, at 79, 79.

39. MINN. SUP. CT. ADVISORY TASK FORCE ON VISITATION AND CHILD SUPPORT ENFORCEMENT, FINAL REPORT 7-10 (January 27, 1997) [hereinafter TASK FORCE].

40. *Id.* at 45.

41. *Id.*

42. ARIZ. REV. STAT. §§ 25-351, 25-352, 25-353, 25-355 (2000); ARK. CODE ANN. § 9-12-322 (2001); COLO. REV. STAT. §14-10-123.7 (2000); CONN. GEN. STAT. §§ 46B-69B (2001); DEL. CODE ANN. tit. 13, § 1507(H) (2000); FLA. STAT. ch. 61.21 (2000); GA. SUPER. CT. RULE 24.8; 750 ILL. COMP. STAT. 5/404.1 (2000); IOWA CODE § 598.19A (2001); KAN. STAT. ANN. § 60-1626(4)(B) (2000); LA. REV. STAT. ANN. § 9:306 (2001); MD. CODE ANN., FAM. LAW, § 7-103.2 (2000); MINN. STAT. § 518.157

local court rules in effect for divorce education programs.⁴³ There are several components of divorce education programs that vary from state to state, and the variations each have resulting benefits and drawbacks.⁴⁴ These benefits and drawbacks accrue to the three parties with the most at stake during an action for divorce: the parents, their children, and the courts.⁴⁵

A. Attendance

Statewide legislation may require attendance, provide for court discretion in ordering attendance, or allow attendance at the parents' option.

Fifteen states mandate attendance.⁴⁶ These states include Arizona, Connecticut, Delaware, Florida, Iowa, Minnesota,

(2000); MO. REV. STAT. § 452.600 (2000); MONT. CODE ANN. § 40-4-226 (2000); NEB. REV. STAT. §§ 42-349.01, 43-2917.01 (2000); N.H. REV. STAT. ANN. § 458-D:1-9 (2000); N.J. STAT. ANN. § 2A:34-12.1 - 12.8 (2001); N.D. R. CT. 8.3 (2001); OHIO REV. CODE ANN. § 3109-053 (2001); OKLA. STAT. tit. 43, § 107.2 (2000); OR. REV. STAT. § 3.434 (1999); TENN. CODE ANN. § 36-6-408 (2001); TEX. FAM. CODE ANN. § 105.009 (2000); UTAH CODE ANN. § 30-3-11.3 (2001); VA. CODE ANN. § 16.1-278.15 (2001); W. VA. CODE § 48-11-104 (2000); WIS. STAT. § 767.115 (2001).

43. CAL. R. TUOLUMNE SUPER. CT. 4.05; ILL. R. 13 CIR. R. 8.12; KY. R. JEFFERSON FAM. CT. 508; MASS. R. PROB. AND FAM. CT., ORDER 1-99; NEV. R. PRAC. 8 DIST. 5.07; N.M. R. CT. 6 DIST. LR6-302; PA. L.R.C.P. BEAVER CTY. 1915.28; PA. R. CT. BLAIR CTY. 1915.21; PA. L.R.C.P. BRADFORD CTY. 1919; PA. L.R.C.P. CARBON CTY. L1915.4; PA. R. CT. CLEARFIELD CTY. 1920.3; PA. L.R.C.P. COLUMBIA-MONTOUR CTY. 5.12(B); PA. R. CT. CRAWFORD CTY. L1930; PA. R. CT. DAUPHIN CTY. 1930; PA. R. CT. ERIE CTY. 1915.3; PA. R. CT. FRANKLIN-FULTON CTY. 39-1920.3; PA. L.R.C.P. L1914; PA. R. CT. MONROE CTY 1930; PA. L.R.C.P. SULLIVAN-WYOMING CTY. 1920.12; PA. L.R.C.P. WARREN-FOREST CTY. L1930; WASH. L.C.R. CLALLAM CTY. 95; WASH. L.R. FERRY, PEND OREILLE, STEVENS CTY. 95.04; WASH. R. SUPER. CT. LEWIS CTY. LMPSR 1.1; WASH. L.C.R. PACIFIC AND WAHIAKUM CTY. 9; WASH. L.C.R. PIERCE CTY. 94.05; WASH. L.C.R. SPOKANE CTY. LSPR 94.03; WASH. L.C.R. WALLA WALLA CTY. WWCSCLR 19; *see also* Margie J. Geasler & Karen R. Blaisure, *1998 Nationwide Survey of Court-Connected Divorce Education Programs*, 37 FAM. & CONCILIATION CTS. REV. 36, 41 (1998) (reporting results of a nationwide county-level survey of court-supported and court-mandated divorce education programs).

44. Clement, *supra* note 1, at 220-21 (noting that authority to institute divorce education comes from legislatures authorizing specific programs, from legislatures giving broad permission to courts to adopt programs as they see fit, or from courts' "inherent power" to enact rules requiring participation in divorce education prior to granting dissolutions).

45. *See* Peter Salem et al., *Parent Education as a Distinct Field of Practice*, 34 FAM. & CONCILIATION CTS. REV. 9, 9-13 (1996).

46. A state was classified as mandating attendance if the statutory language included "shall attend" or "shall order." Most mandatory statutes also provide for waiver of attendance in the case of domestic violence or other good cause shown. *E.g.*, VA. CODE ANN. § 16.1-278.15 (2001).

Missouri, New Hampshire, New Jersey, Ohio, Oklahoma, Tennessee, Utah, Virginia and West Virginia. Benefits of mandatory attendance may include reaching parents who might otherwise never attend a divorce education program⁴⁷ and the resulting benefits to their children of reduced conflict, better communication, and a faster adjustment to post-divorce life.⁴⁸ Benefits may also include reduced relitigation of divorce and custody matters.⁴⁹ Drawbacks of mandatory attendance may include participant hostility toward the education program, although by the end of such programs, studies have shown that even hostile participants are not unhappy that they attended.⁵⁰

Eight states allow the court to exercise its discretion when determining which parents must attend divorce education.⁵¹ These states are Georgia, Illinois, Louisiana, Maryland, Montana, Nebraska, Texas and Wisconsin. Factors that inform the court's discretion include the facts and circumstances of the case,⁵² the best interest of the child,⁵³ and the possibility that the parents may have already received therapy or alternate education.⁵⁴ Benefits of discretionary attendance may include reaching those parents who in the court's opinion are most in need of the divorce education program, and the resulting focused deployment of court and community resources and parents' time. Drawbacks may include not reaching parents who would in fact benefit from the program, but who were able to convince the court to waive attendance.

Finally, five states—Arkansas, Colorado, Kansas, North Dakota and Oregon—allow optional attendance.⁵⁵ Benefits of optional

47. Cathleen Gray et al., *Making It Work: An Evaluation of Court-Mandated Parenting Workshops for Divorcing Families*, 35 FAM. & CONCILIATION CTS. REV. 280, 280-82 (1997).

48. *Id.* at 288.

49. Jack Arbuthnot et al., *Patterns of Relitigation Following Divorce Education*, 35 FAM CONCILIATION CTS. REV. 269, 269-276 (1997).

50. Gray et al., *supra* note 47, at 283.

51. A state was classified as allowing court discretion if the statutory language included language such as "in the best interest of the child" or "at the court's discretion."

52. LA. REV. STAT. ANN. § 9:306 (2001).

53. MONT. CODE ANN. § 40-4-226 (2000); TEX. FAM. CODE ANN. § 105.009 (2000); WIS. STAT. § 767.115 (2001).

54. GA. SUPER. CT. R. 24.8 (2000).

55. A state was classified as allowing optional attendance if the statutory language did not require judges to order attendance, or if the statute only authorized the establishment of divorce education programs. Actual practices at the county and local level may vary.

attendance may include allowing judges, lawyers and the public to become accustomed to these programs in their community.⁵⁶ Drawbacks of optional attendance may include the concern that the “parents who attend voluntarily probably need the programs the least and . . . those most in need will not attend unless ordered to do so.”⁵⁷

B. *Timeframe*

Statewide legislation may provide a specific timeframe for attendance, require attendance sometime before the final judgment is issued, or have no specific requirement for attendance.

Two states set specific timeframes for attendance. Both Iowa and New Hampshire require that the parties attend divorce education within forty-five days of service of the original complaint. Eight states require attendance sometime before the final judgment is entered in the action. These states include Arizona (“Each party shall complete the educational program within the time ordered by the judge”), Florida, Minnesota, Nebraska, New Jersey, Ohio, Utah and Wisconsin. The remaining states do not set forth a specific timeframe. However, local practice likely dictates that attendance must occur before the matter is complete.⁵⁸

The benefits of early attendance include reduced relitigation of child support, custody and visitation.⁵⁹ Drawbacks of loose attendance policies may include the need to impose sanctions for non-attendance.

C. *Sanctions*

Finally, while some divorce education legislation does not mention sanctions, some states provide for explicit sanctions for non-attendance or sanctions at the court’s discretion. First, eight states provide for specific sanctions for nonattendance. Arizona

56. Eileen D. Biondi, *Legal Implementation of Parent Education Programs for Divorcing and Separating Parents*, 34 FAM. & CONCILIATION CTS. REV. 82, 82-83 (1996).

57. Salem et al., *supra* note 45, at 18.

58. Geasler & Blaisure, *supra* note 43, at 48.

59. Arbuthnot et al., *supra* note 49, at 271. The article notes, however, that “the issue of delay in attending at divorce education class remains viable and warrants exploration in greater detail relative to other outcome variables. This work is in progress.” *Id.* at 276 (emphasis added).

allows the court to “deny relief in favor of [the offending] party, hold that party in contempt of court, or impose any other sanctions reasonable in the circumstances.”⁶⁰ Florida holds non-attendees in contempt of court, or may deny “shared parental responsibility or visitation,” or otherwise sanction them as the court deems appropriate.⁶¹ Georgia allows the judge to withhold the final divorce decree, to find the non-attendee in contempt of court, and to order the non-attendee to pay attorneys’ fees and costs.⁶² Nebraska allows the judge to delay entry of a final judgment for six months at the most, but does not allow the non-attendee to be incarcerated.⁶³ New Hampshire allows the judge to find the non-attendee in contempt of court.⁶⁴ New Jersey requires the court to consider the fact of non-attendance as a “factor . . . in making custody and visitation determinations.”⁶⁵ Texas allows sanctions including contempt of court and striking pleadings.⁶⁶ Finally, Wisconsin may hold the non-attendee in contempt of court.⁶⁷ Benefits of enumerated statutory sanctions may include increased adherence to the court’s order to participate in divorce education.

Maryland, Minnesota, and West Virginia allow for sanctions but leave the actual sanction to the court’s discretion. The remaining states do not mention sanctions in the language of their statutes. Tennessee is alone in limiting the kinds of sanctions that the court may impose: “No court shall deny the granting of a divorce . . . for failure of a party or both parties to attend the educational session.”⁶⁸ One drawback of non-specific sanctions, or no enumerated sanctions, may be increased litigation over sanctions that are in fact imposed.⁶⁹

60. ARIZ. REV. STAT. § 25-353 (2000).

61. FLA. STAT. ch. 61.21(9) (2000).

62. GA. SUPER. CT. R. 24.8(E) (2000).

63. NEB. REV. STAT. § 42-349.01 (2000).

64. N.H. REV. STAT. ANN. § 458-D:5 (2000).

65. N.J. STAT. ANN. § 2A:34-12.5C (2001).

66. TEX. FAM. CODE ANN. § 105.009(G) (2000).

67. WIS. STAT. § 767.115(3) (2001).

68. TENN. CODE ANN. § 36-6-408(c) (2001).

69. *Nelson v. Nelson*, 954 P.2d 1219, 1222 (Okla. 1998) (finding trial court abused its discretion by entering default judgment of divorce denying father visitation rights when order requiring father to attend divorce education class did not put him on notice that nonattendance would jeopardize his visitation rights).

IV. THE LEGAL FRAMEWORK FOR DIVORCE EDUCATION IN MINNESOTA

A. *Legislative Authorization and Purpose*

In Minnesota, the chief judge of each judicial district is required to implement a parent education program.⁷⁰ The Minnesota conference of chief judges is required to review the programs to assure that they meet minimum standards.⁷¹

The purpose of the parent education program is threefold. The first purpose is to educate parents concerning “the impact that divorce, the restructuring of families, and judicial proceedings have upon children and families.”⁷² The second purpose is to educate parents with respect to “methods for preventing parenting time conflicts.”⁷³ The third purpose is to educate parents about dispute resolution options.⁷⁴

B. *Mandatory Attendance*

In Minnesota, parents of minor children “shall attend” an approved program in cases where custody or parenting time is contested.⁷⁵ In contrast, parents involved in uncontested litigation involving custody, support, or parenting time “may” be ordered to attend a divorce education program at the discretion of the court.⁷⁶ Similarly, children “may” be required to attend a separate program designed for them.⁷⁷

Mandatory programs are the most controversial. Specifically, opponents of mandatory programs have argued that required attendance constitutes an unconstitutional impediment to obtaining a divorce.⁷⁸ Another view is that because there is no constitutional right to a divorce, the state is free to place conditions upon the granting of dissolutions.⁷⁹ In this light, divorce is more

70. MINN. STAT. § 518.157, subd. 1 (2000).

71. *Id.* § 518.157, subd. 2 (2000).

72. *Id.* § 518.157, subd. 1.

73. *Id.*

74. *Id.*

75. *Id.* § 518.157, subd. 3 (2000).

76. *Id.*

77. *Id.* § 518.157, subd. 1.

78. See Biondi, *supra* note 56, at 82; Clement, *supra* note 1, at 221.

79. Zablocki v. Redhail, 434 U.S. 374, 387 (1978); Sosna v. Iowa, 419 U.S. 393, 405 (1975).

accurately viewed as a privilege than an absolute right.⁸⁰ In addition, a Minnesota court can excuse a party from attending a divorce education program upon a showing of good cause.⁸¹

A successful legal challenge was brought concerning a mandatory Illinois parent education program.⁸² In *Schulp*, a mandatory program was instituted pursuant to court rule despite the fact that the relevant Illinois statute authorized only a discretionary program.⁸³ No similar issue of overreaching exists in Minnesota because the legislature has clearly authorized a mandatory program.⁸⁴

Given the broad educational purpose of these programs, mandatory attendance makes sense because parents may not attend voluntarily.⁸⁵ Even though parents may initially object to attending a mandatory program, most respond favorably after doing so.⁸⁶

C. Fees

In Minnesota, participants in parent education courses are required to pay a fee to defray costs.⁸⁷ The Minnesota statute avoids due process and access to the court challenges⁸⁸ by providing for waiver of fees and requiring a sliding fee scale.⁸⁹

D. Sanctions

Minnesota courts may impose sanctions if either of the parents does not comply with the court order requiring attendance at a divorce education program.⁹⁰ However, parties may be excused from attendance for good cause. Where domestic violence has been alleged, special precautions can be ordered including

80. See Biondi, *supra* note 56, at 88-89.

81. MINN. STAT. § 518.157, subd. 3.

82. *Schulp v. Mackoff*, No. 94 CH 3853, 1994 WL 525526 (Ill. Cir. Aug. 12, 1994).

83. *Id.* at *3-4.

84. § 518.157, subd. 3.

85. See TASK FORCE, *supra* note 39, at 54; Jack Arbuthnot et al., *supra* note 38, at 77, 79.

86. Arbuthnot, *supra* note 38, at 79.

87. MINN. STAT. § 518.157, subd. 6 (2000).

88. *Boddie v. Connecticut*, 401 U.S. 371, 376 (1971); see Clement, *supra* note 1, at 225.

89. MINN. STAT. § 518.157, subd. 6.

90. *Id.* § 518.157, subd. 4 (2000).

attendance at separate sessions.⁹¹

E. Confidentiality

Any statements made by participants in divorce education programs are not admissible in court and course instructors cannot be subpoenaed.⁹²

F. Timing

The Minnesota statute requires “timely and reasonable access to education sessions.”⁹³ Participation “must occur as early as possible.”⁹⁴ However, no more specific time frame is established under the statute.

Early participation allows parents to gain valuable insights about the divorce process and the effects on children before becoming enmeshed in unnecessary disputes. It makes sense to teach conflict resolution skills at the beginning of the process.⁹⁵ Indeed, there is evidence that parents who attend classes later are more likely to relitigate.⁹⁶ Some social scientists suggest that parents most optimally attend classes within three weeks of filing for divorce,⁹⁷ and some states require attendance within 45 days of service of process.⁹⁸

As a result of procedure allowing pocket filing and the lack of specific statutory time frame, Minnesota parents may not be enrolled in divorce education classes until later in the process. Minnesota parents would undoubtedly benefit from more timely participation.

G. Sponsorship and Faculty

Outside agencies may contract to provide parent education programs. A Kentucky program was challenged because parents were required to participate in a divorce education program

91. *Id.* § 518.157, subd. 3.

92. *Id.* § 518.157, subd. 5 (2000).

93. *Id.* § 518.157, subd. 1.

94. *Id.* § 518.157, subd. 3.

95. See TASK FORCE, *supra* note 39, at 53-54.

96. Arbuthnot et al., *supra* note 49, at 276.

97. Arbuthnot & Kramer, *supra* note 37, at 211-12.

98. *Id.* at 224.

sponsored by the Catholic Church.⁹⁹ The program survived an Establishment Clause challenge because it had a secular legislative purpose, it provided a non-ideological benefit, and another program could be substituted upon request.¹⁰⁰

Though not incorporated into the Minnesota statute, the Supreme Court Advisory Task Force on Visitation and Child Support suggested that male and female instructors be paired and that instructors be trained in family dynamics, psychology, domestic relations, and related fields.¹⁰¹

V. PRELIMINARY FINDINGS FROM THE DAKOTA COUNTY STUDY

A. *The Dakota County Program*

A divorce education program has existed in Dakota County Minnesota since 1993.¹⁰² The program is administered by an outside agency in collaboration with the county.¹⁰³ Couples with minor children are ordered to participate in three divorce education classes (each three hours long) and to attend a one-hour joint mediation consultation that is informational in nature. Couples without minor children attend two hours of class. Spouses are required to register for the classes within ten days of receiving the court order and must attend classes within thirty days. Time extensions are frequently granted.

The first class provides information about the emotional

99. *Kagin v. Kopowski*, 10 F. Supp. 2d 756 (E.D. Ky. 1998).

100. *Id.*; see Clement, *supra* note 1, at 224.

101. See TASK FORCE, *supra* note 39, at 56-57.

102. The study population consisted of all those who filed for divorce, were court-ordered to attend the program, and then actually did attend the program in Dakota County during 1999. The county itself is 570 square miles located south of St. Paul, Minnesota and contains several large suburbs such as Burnsville, Eagan, Hastings, Inver Grove Heights and Lakeville. Minnesota Health Profiles, *Dakota County: Demographics & Vital Statistics 2000* at <http://www.mnplan.state.mn.us/datanetweb/health.html> (last visited Oct. 18, 2001). Dakota County has approximately 246,973 residents aged eighteen and older, comprising 126,748 households. The racial makeup is approximately as follows: 94.9% white, 2.8% Asian/Pacific Islander and 1.9% black. *Id.* The median household income in 1993 was \$57,802; the number of people receiving public assistance (WIC) was approximately 7,310. *Id.* Approximately 1,500 divorces are granted per year. Telephone Interview with Sue Lawrence, Chief Deputy Family Division, Dakota County District Court (Oct. 22, 2001).

103. The Dakota County Divorce Education Program is administered by Erickson Mediation Institute, a full service mediation firm that has operated in the Minneapolis/St. Paul area since 1977.

divorce process, the court system, and mediation. One of the instructors is always a licensed attorney. The second class raises parental awareness about how children of different ages respond to divorce, the effects of domestic violence on children, guidelines for seeking professional help, separate parenting, step-parenting, and changing relationships. Class three focuses on communication between parents, stress reduction techniques, listening skills, communication patterns, and strategies for effective communication. One of the instructors for classes two and three is always a licensed psychologist or licensed social worker.

B. Evaluation of the Class Regarding Parenting and Divorce

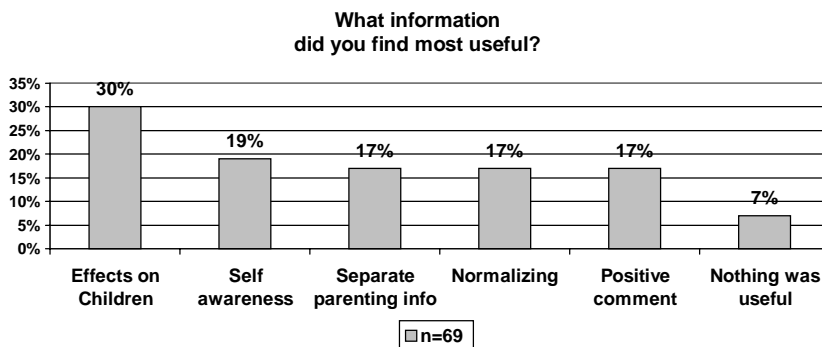
The study focuses on parents' reactions to class two because that class deals primarily with children's issues. Surveys collected at the conclusion of each session contained the following questions: 1) What information did you find most useful? 2) Are there questions you still have? 3) How could the class be improved? 4) Would you recommend the class to others? Participants completed and submitted the surveys anonymously. The response rate was seventy-three percent.¹⁰⁴ A sample of seventy surveys was randomly selected from the total of 305 surveys returned during 1999. The researcher performed content analysis of the surveys.

C. The Preliminary Findings

1. What information did you find most useful?

Of the seventy surveys, sixty-nine surveys were analyzed for the question regarding what was most useful (n=69). Six themes were identified from the responses to this question.

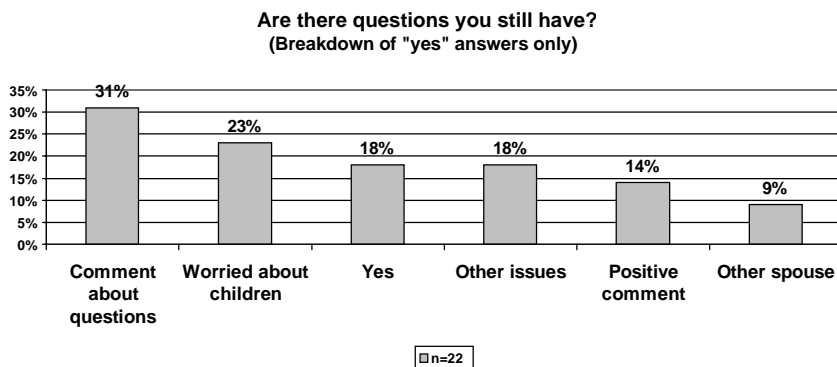
104. A sample of seventy surveys for class two was randomly selected from the total of 305 surveys returned during 1999. The 305 surveys were first grouped in order according to the date of the class and then numbered. Using the table of random numbers the sample was drawn, skipping those surveys where more than one answer was left blank. The sample size was determined in part due to the fact that many respondents did not answer all of the questions. A total of fourteen surveys were skipped due to more than one question not being answered, two of which were skipped twice. Of those selected, the most common question not answered was number three.



Twenty-one respondents (30%) stated that the program had made them aware of the effects of divorce on children. Many responses referred to the handout that discusses in detail children's reactions to divorce at different developmental stages. Thirteen respondents (19%) said the class had improved their awareness of their own behavior. Twelve respondents (17%) disclosed that the separate parenting information was the most useful, for example "how to talk to your children" and "encouraged me to find more resources for separate parenting." Another twelve respondents (17%) revealed that hearing other participants' stories was the most helpful. Twelve respondents (17%) conveyed other positive comments like "most of it" or "all of it" was helpful or useful. Lastly, five respondents (6%) stated that "nothing" was helpful.

2. Are there questions you still have?

Sixty-six participants answered this question. Of the sixty-six, forty-eight respondents (73%) fell into the category "no." The remainder of the responses contained either "yes" followed by a question or comment, or simply "yes" (n=22).



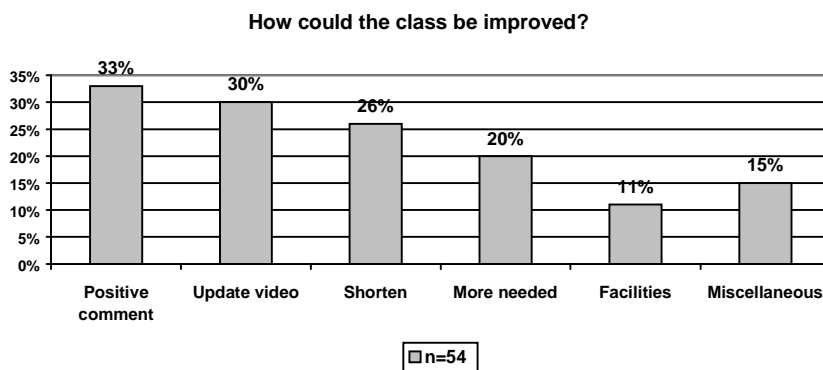
Seven of the “yes” respondents (31%) stated that they had questions and then commented on that fact. For example, one respondent wrote, “Some—I will work with my own counselor,” and another stated, “Your questions will never all be answered. The more you talk the more questions you have.” Five respondents (23%) expressed worry about their children. Examples include, “How do you help [the children] recover from damage that’s already done?” and “The ‘how-to’s’ when you are frustrated so you don’t explode and play a pain game.¹⁰⁵ How do you not let yourself get sucked into an argument?”

Four respondents (18%) wrote “yes,” and nothing else. Another four respondents (18%) responded positively and questioned other issues. Three responses (14%) included a positive comment such as “This class has helped me to know we’re doing the right things.” Finally, two of the “yes” responses (9%) contained concerns or questions about the other spouse. For example, “How to get ex to take this info to heart. He’s told me ‘I’ll attend the classes but no one will tell me how to act around my son—I’ll do what I want.’”

3. How could the class be improved?

Fifty-four participants responded to the question, “How the class can be improved?” (n=54).

105. Videotape: Pain Games (Menninger Foundation 1993) (on file with author Solveig Erickson). Pain Games, which contains a series of ten vignettes showing ways that parents play “pain games” by putting their children in the middle of their conflict, is shown in class.



Of those who answered, eighteen (33%) wrote a general positive comment about the class or indicated that no improvement was needed. Sixteen (30%) stated that the video needs to be updated. Fourteen of the respondents (26%) stated that the class needed to be shortened or needed to stay on track. Examples in this category include, “Go more quickly through the material,” “more concise and directed,” “Shorten the class time,” and “condense the class to the most important topics.” Eleven respondents (20%) identified that they needed or wanted something more from the class. Generally, the responses stated that more class participation, more discussion, or more information was needed. Examples in this category for areas of improvement include “additional time on step-parenting if needed for those after class,” “perhaps small groups to better address different stages of divorce we are in or ages of our children,” and “more discussion about real experiences.” Six responses (11%) contained comments about the facilities. Specifically, they commented about the chairs, the room temperature, that there were not enough breaks, that child care is needed, and two respondents simply wrote “coffee” and “doughnuts” respectively.

Finally, another eight responses (15%) were categorized as miscellaneous. These included comments relating to peoples’ personal opinions like, “Eliminate the idea and attitude that there is no hope for reconciliation” and “[Divorce education classes should] [b]e mandatory with the marriage license.”

4. *Would you recommend the class to others?*

Of the seventy surveys in the sample, only two left the space provided for question four blank. Overwhelmingly, class participants responded that they would recommend the class to others. Sixty-four respondents (94%) checked the “yes” box. However, two of the “yes” responses conditioned their responses, writing in “yes, for someone in the *beginning* stage of divorce” and “Yes, if they don’t have the knowledge.” Another of the “yes” responses noted that they would recommend “this one” only and not class one, stating they “felt resentful for having to attend [class one].” Only one response checked “no.” Three responses (4%)—checks between the boxes and a “maybe”—were categorized as “unsure.”

D. Discussion

Overall, parents’ responses indicate satisfaction with their experiences in the parent education program. Specifically, the second class succeeded in sensitizing parents to their children’s needs, helped parents focus more on the needs of their children, and assisted them in gaining perspective.

Participants perceived class quality as being high. They appreciated receiving information to help them evaluate how their own children were doing. They became more aware of their own behaviors and were able to connect their actions to their children’s reactions. Parents were particularly interested in information regarding separate parenting. The class encouraged sharing of similar experiences among parents, thus “normalizing” participants’ experiences.

The majority of the respondents had no remaining questions, and while specific suggestions for change were made, the overwhelming majority of participants responded that they would recommend the class to others.

VI. CONCLUSION

Divorce education seeks to educate parents about the impact of divorce on families, reduce parental conflict and enhance parents’ understanding of the needs of their children. Given the large number of children involved in divorce and the potential for long-lasting harm, divorce education is an inexpensive yet effective way to assist families in making this transition.

The Minnesota statute provides an adequate legal framework in most respects. However, it falls short of the mark in failing to require a specific time frame for class attendance. This oversight is exacerbated by the practice of pocket filing. Many Minnesota families are not attending or even learning about divorce education programs until very late in the process.¹⁰⁶ By then, children may have suffered needlessly and conflict may have become habitual. Divorce education courses are most effective when the participants attend them early in the process. Consequently, Minnesota law should be amended to end the practice of pocket filing in family cases, and Minnesota Statutes Section 518.157 should require attendance at a divorce education program within three weeks of filing for divorce.

The positive Dakota County findings are consistent with other research concerning the effectiveness of divorce education programs. Another study made similar findings:

In sum, we believe that the results of this long-term outcome study of parental responses to a mandatory divorce education program allow us to conclude that (a) parents value the program, (b) parents learn useful parenting and communication skills, and (c) there are encouraging findings that the program results in lowered exposure of children to parental conflict and greater tolerance for the parenting role of the other parent, with attendant positive changes in children's well-being.¹⁰⁷

Thus, parents locally and nationally are saying "yes" to mandatory divorce education. Both parents and their children will reap the benefits for many years to come.

106. Informal reviews of surveys from class one often indicate that participants wish they had known about mediation and other alternatives to the court system before they hired their attorneys.

107. Jack Arbuthnot & Donald Gordon, *Does Mandatory Divorce Education for Parents Work?*, 34 FAM. & CONCILIATION CTS. REV. 60, 79 (1996); see TASK FORCE, note 39, at 41.