

**Parents Forever – “Joint Parental Responsibility” Seminar**  
7<sup>th</sup> March 2012

HKCSS  
Working Group on Parental Responsibility

Convenor  
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**Statistics**

	<b>1991</b>	<b>2010</b>
Divorce Rate	> 6,000 cases	> 18,000 cases
	<b>10 Years Ago</b>	<b>Recent Years</b>
Children of Single Parent	1 out of 18 (~ 5.6%)	1 out of 11 (~9.1%)
	<b>1996</b>	<b>Recent Year</b>
Mainland-HK Marriages	> 2,000	> 10,000 (30% of total HK's marriages)
	<b>1999</b>	<b>2006</b>
Reported Domestic Violence Cases per 100,000 households	53.73	211.87

**Existing Family Law**

**2005 LRC Report on Child Custody & Access**

**(A) Definition of Parent-Child Relationship**

Parental Rights	Parental Responsibilities
Upon divorce: *Right of daily <b>care and control power</b> *Right of <b>important decision making</b> 1) Sole custody order 2) Join custody order 3) Split order  Recent Case Law developments 1) More joint custody order(s) 2) For sole custody order, court thinks access parent be consulted on important decisions though custody parent retains final veto	<b>Joint Parental Responsibility (JPR) Model</b>  Even after divorce ● <b>Continuing parental responsibility</b> to participate in important <b>decision-making</b> until <b>children reach adulthood</b>  ● Merits of JPR ↑ <b>child well-being</b> (child-focused) ↓ <b>parental hostility</b> ↑ <b>continued involvement of both parents</b>

**Existing Family Law**

**2005 LRC Report on Child Custody & Access**

**(B) Major Recommended Changes**

<b>Custody Order (管養令)</b> <b>Access Order (探視令)</b>	→ <b>Residence Order (同住令)</b> → <b>Contact Order (聯繫令)</b>  *Non-resident parent retains parental responsibilities in making important decisions → <b>Statutory list</b> of major decisions requiring both parents' <b>expressed consent (明確表示同意)</b> e.g. surname change; child adoption; leaving HK for over one month or for good → <b>Statutory list</b> of decisions requiring <b>only notification</b> to the other parent ( <b>只需通知</b> ) Upon parental disagreements: → <b>Specific Issues Order (指定事項令)</b> e.g. which school to attend → <b>Prohibited Steps Order (禁止行動令)</b> e.g. take a child away from HK
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Existing Family Law	2005 LRC Report on Child Custody & Access
<b>(C) Complementary Recommended Changes</b>	
	<ul style="list-style-type: none"> <li>→ Statutory list of factors to be considered in custody proceedings</li> <li>→ Preventive measures for victims of domestic violence under JPR model</li> </ul>

## Joint Parental Responsibilities Model (JPR)

**Overall Aims**

- (1) Definition of Parent-Child Relationship** -> cultural, philosophical and language shift from “parental rights” to “parental responsibility” to promote children’s welfare
- (2) Management of Parental Separation** -> “away from litigation and towards co-operative parenting” to reduce parental hostility and lawsuits

## Co-operating Types for Divorced Families (Baum, 2004)

- 1. Cooperative Co-parenting (協作式)**
- 2. Parallel Co-parenting (各自修行式)**
- 3. Conflictual Co-parenting (衝突式)**

Different types entails **different Parenting Plans & Post-Separation Services**

Reference:  
Baum, N. (2004). Typology of post-divorce parental relationships and behaviors [Electronic version]. *Journal of Divorce & Remarriage*, 41, 53-79.

## Observations & Concerns towards 2011 Consultation Paper

- (1) Lack of consensual understanding of concepts of Joint Parental Responsibility (JPR) and co-parenting** ---- lack of implementation details of how to promote to joint parenting / co-parenting to different types of divorced parents
- (2) Grave concern on application of JPR model for DV victims** --- presumption in favor of JPR may worsen the welfare of children in families with history of DV, mental health or drug abuse, if protective measures not properly ensured
- (3) Prediction of manipulation by trouble-making or hostile non-resident parent** alleging breaches of contact orders to **harass the other parent** --- abusing the legal proceedings and causing more lawsuits
- (4) Doubt on effective change of parents’ mentality** --- predication of **greater arguments or manipulation over the extent of financial maintenance (alimony) and joint parenting**
- (5) Lack of any effective “child-inclusive” mechanisms to promote children’s involvement** in the consultation and legal processes

## Our Recommendations

Mere use of legislative means to implement JPR may backfire, creating additional complications to divorced families with DV & high conflict. A comprehensive package of measures and services at different levels is recommended.

### (A) Government Administration:

- Appointment of a **government officer of Directorate grade for overall coordination of whole reform changes** (legislative changes; related government policies; supportive measures; post-separation services), **implementation plans, subsequent effectiveness studies & monitoring**
- **Injection of new resources and adequate finance** to ensure full implementation
- Commitment to carry out, say, **3-year effectiveness study after implementation of reform changes**, if opted
- **Comprehensive Training Plans** for professionals **on management of parental separation / parenting plans** especially for those with DV and high conflict

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## Our Recommendations

### (B) Community-based Services:

- **Divorce Hotline Service** to provide information and brief consultation on legal, social and community services
- **Divorce Website Service** to provide information on services and education on parenting plans
- **Community & Public Education** to promote JPC model, co-parenting and 'child-inclusive' perspectives through different means and media

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## Our Recommendations

### (C) Specialized Professional Services:

- Establishment of **'Family Service Centre for Divorced Families'** as 'one-stop centre' to provide a comprehensive range of services: family relationship education, community education, legal consultation, counseling & groupwork for parents & children, mediation service, etc
- Introduction of **compulsory Divorce Mediation Service** & development of **'Child-inclusive Mediation'** practice
- Provision of **Specialized services for DV or conflictual parents**: supervised access, compulsory counseling and treatment programs for batterers
- Introduction of **Visitation Centre** to facilitate supervised access / parenting arrangements
- Introduction of **'Child Consultant'** (offered by well-trained helping professionals) to properly involve and facilitate children to share views in legal proceedings

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## Our Recommendations

### (D) Judicial Service:

- Offering **Divorce Mediation** and **Divorce Counseling coordination service at family courts** to facilitate timely referrals
- Considering orders of **compulsory attendance to Divorce Education information session for all parents**, and **compulsory counseling / treatment programs for abusive parents**
- Working out **legislative procedures to curb abusive manipulation of legal proceedings** by hostile parents
- Requiring **judges, lawyers and court personnel to undergo training on JPR model and management of parenting plans for different family types**

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## Our Recommendations

### (E) Academia Involvement:

- Developing **Practice Guides / Service Protocols** to advise on **implementation wisdom of JPR model**
- Contributing to **empirical research or evaluative studies** of custody cases to check for effectiveness of specific services / measures
- Drawing up **training courses** on management of parenting plans
- Participating in, say, **3-year effectiveness study after the implementation of reform changes**, if opted.

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## Conclusions

- **in support of rationales underlying the JPR model**
- in the meantime, without full consideration and provision of the above-mentioned services and measures, **not support the mere use of legislative means as proposed by LRC to promote JPR model** as it may backfire creating more complications to those vulnerable divorced families
- call for **timely study of comprehensive service packages and legislative measures** to assist different types of divorced parents (even those with DV, mental health and drug abuse) to work out effective parenting plans to promote wellbeing of the children
- demand for **injection of new finance and resources** to actualize the **service implementation** with **evaluative studies**

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## Recommendations to LWB on Consultation Process

- Based on the collected views submitted in this round, prepare for **next-round consultation** in a more thorough and comprehensive manner
- Meanwhile, LWB can join hands with legal and other helping professionals to examine a **comprehensive service packages and legislative measures**, proceed **feasibility studies** and **draw up an implementation schedule**
- Establish **effective communication channels** to collect views of children with regard to the JPR mode

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## Special Concerns Towards DV Families

- Enough **sensitivity and competence** in **violence detection and risk management**
- DV in form of **coercive control** instead of physical violence easily overlooked and difficult to be substantiated
- **How available, speedy and effective** are the **court actions** to address parental disagreement and protection needs
- **Child's welfare** and **adult victim's welfare** are linked and can be **in conflict** in some cases

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**Differential Parenting Plans  
to suit different types of Divorced Families  
with high conflict and violence** (Jaffe et al., 2008)

Types of divorced families according to the **PPP screening (Potency, Pattern & Primary Perpetrator)**

<p><b>(1) Co-parenting</b> - joint legal and physical custody</p>	<ul style="list-style-type: none"> <li>● <b>Shared decision-making</b></li> <li>● <b>Time-shared</b> schedule allowing flexibility</li> <li>● <b>Ongoing communication</b> and problem-solving</li> <li>● Practising common child-care, routine and disciplines</li> </ul>
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<p><b>(2) Parallel Parenting</b> - joint or sole legal custody and joint or sole physical custody</p>	<ul style="list-style-type: none"> <li>● <b>Divided decision-making</b> responsibilities with different issues allotted to each parent</li> <li>● <b>Time-shared</b> schedule <b>explicitly fixed</b> by court order</li> <li>● <b>Clear boundaries</b> requiring <b>minimal communication</b> or direct contacts</li> <li>● Practising safe child-care within separate homes</li> </ul>
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**Differential Parenting Plans  
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<p><b>(3) Supervised Exchange</b> - sole legal custody and physical custody</p>	<ul style="list-style-type: none"> <li>● Decision-making and parenting time solely to non-violent parent</li> <li>● <b>Monitored exchange</b> between parents to <b>avoid direct contacts</b></li> <li>● <b>Transfer of child by 3<sup>rd</sup> party</b> by informal supervisor, e.g. a relative or through formal supervised access at <b>neutral site</b> during access</li> </ul>
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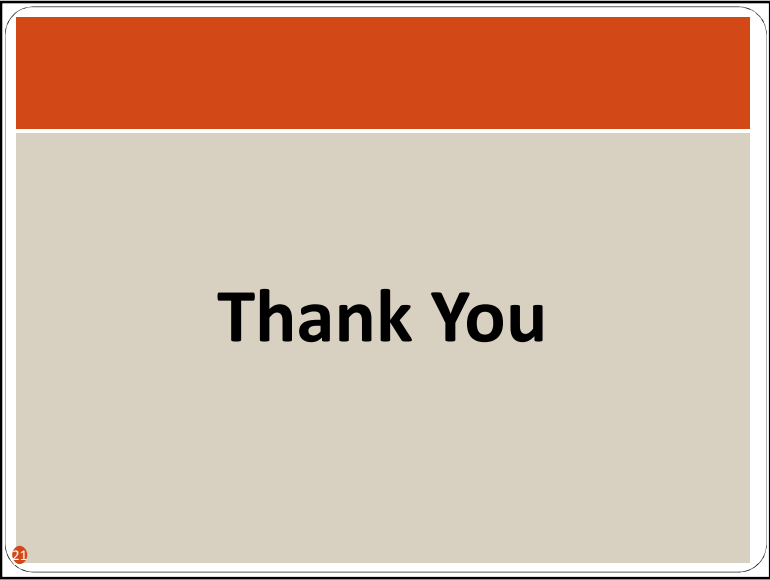
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**Differential Parenting Plans  
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<p><b>(4) Supervised Access</b> - sole legal custody and physical custody</p>	<ul style="list-style-type: none"> <li>● Decision-making and parenting time solely to non-violent parent</li> <li>● <b>Supervised visits</b> with explicit supervision and access orders in a <b>safe place</b> by a <b>formal supervisor</b></li> <li>● Court-ordered treatment / rehab for violent parent</li> </ul>
<p><b>(5) Suspended Contact</b> - sole legal and physical custody</p>	<ul style="list-style-type: none"> <li>● Decision-making and parenting time solely to non-violent parent</li> <li>● <b>No access</b> as indicated by specific court order</li> </ul>

Reference:  
Jaffe, P.G., Johnston, J.R., Crooks, C.V. and Bala, N. (2008). Custody disputes involving allegations of domestic violence: The need for differentiated approaches to parenting plans. *Family Court Review*, 46(3), 500-522.

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**Thank You**