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ABSTRACT
The concept of parental gatekeeping and the forensic evaluation model for child custody disputes is described and applied to the context of considering overnight care by fathers for infants and toddlers. The forensic model is briefly described: facilitative, restrictive, and protective gatekeeping. The gatekeeping continuum is described, ranging from extreme restrictive to very facilitative and inclusive. Gatekeeping is isomorphic with a common best interest statutory factor on support for the other parent–child relationships. The limited research on overnights and child outcomes is briefly reviewed and discussed in the context of attachment theory. The concept of social capital is introduced as an explanatory concept for research that shows the benefit of joint parental involvement and shared parenting, including overnight care by fathers. Attachment and social capital are presented as complementary, explanatory concepts for understanding the gatekeeping and overnights issues. The conservative school of thought on overnight care by fathers is discussed in terms of a justification analysis as part of the gatekeeping model. Mothers opposing overnights need to show with behavioral specificity how overnights would be harmful to the child and then how the father can still be afforded substantial involvement in the present and future.

This article is one of a series that applies the parental gatekeeping forensic evaluation model to complex issues in child custody and parenting time disputes (Austin, 2011; Austin, Fieldstone, & Pruett, 2013; Austin, Pruett, Kirkpatrick, Flens, & Gould, 2013). The model is being applied to specific and different forensic contexts and complex issues, such as child custody and relocation disputes (Austin & Rappaport, in press). This article applies the gatekeeping model to the issue of shared parenting arrangements in child custody disputes and evaluations generally, and specifically to the issue of overnight care by fathers for young and very young children (e.g., infants and toddlers). This issue once again has become a point of professional dialogue.
and controversy apparently with two schools of thought following the publication of articles by prominent scholars in the fields of family law and child custody who have proposed a very cautious approach to overnight care by father for children under the age of 4 years (McIntosh, Pruett, & Kelly, 2014; Pruett, McIntosh, & Kelly, 2014).

The concept of parental gatekeeping seems to have become a central part of the lexicon in the fields of child custody evaluation and family law based on many workshops presented at national and state organizations and the seminal articles in peer-reviewed journals (Austin, 2011; Austin, Fieldstone, et al., 2013; Austin, Pruett, et al., 2013); research on gatekeeping in the context of separation and divorce (Fagan & Barnett, 2003; Pruett, Arthur, & Ebling, 2007); and reviews of the gatekeeping research for applying a gatekeeping analysis to this context of separation and divorce (Austin, 2012; Austin, Fieldstone, et al., 2013; Austin, Pruett, et al., 2013; Ganong, Coleman, & Chapman, 2016; Ganong, Coleman, & McCalle, 2012; Saini, Drozd, & Olesen, 2017).

The gatekeeping concept is research-based from the fields of family studies and divorce and conflict, and provides a useful way to examine coparenting dynamics and parental conflict in the context of parenting time and access disputes (Allen & Hawkins, 1999). There is a large research literature on gatekeeping attitudes and behaviors in the context of coparenting in intact families (Allen & Hawkins, 1999; Ganong et al., 2016) that generally shows how parental gatekeeping can affect the quality of the other parent–child relationship and the coparenting relationship. Research on maternal gatekeeping shows how it affects fathers’ satisfaction with parenting and their degree of involvement with parenting (Ganong et al., 2016).

Gatekeeping overlaps with other complementary concepts: coparenting, conflict, and parental alienation. For example, there is an overlapping and reciprocal association between restrictive gatekeeping (RG) and parental conflict: RG begets parental conflict and vice versa. Parental gatekeeping refers to the “attitudes and actions of parents that can affect the involvement and quality of the other parent–child relationships, either positively or negatively” (Austin, Fieldstone, et al., 2013, p. 2). It is assumed that RG between and by both parents will be more frequent following separation and divorce (Fagan & Barnett, 2003; Ganong et al., 2016). Limited research exists on gatekeeping attitudes and behaviors among divorced families (Pruett, Williams, Insabella, & Little, 2003; Trinder, 2008), but research reviews have been presented for the purpose of extrapolating the gatekeeping concept and research to this population (Austin, Fieldstone, et al., 2013; Austin, Pruett, et al., 2013; Ganong et al., 2016; Pruett, Arthur, & Ebling, 2007; Saini et al., 2017).

We examine the problem of overnight care for infants, toddlers, and preschoolers within the context of theoretical constructs and research concerning social capital, gatekeeping, and attachment theory. Practical
considerations are also commonly prominent when separating and divorcing parents are trying to work out a parenting plan for young children. For example, if there is a very young child with a younger father who works full time, how is he going to forge a meaningful relationship with the child without having overnights?

We argue that the problem of overnight care for young children presents a conundrum of sorts—to some extent—that has preoccupied many in the professional fields of family law and child custody for many years, and this issue has become more pronounced with the publication of recent, prominent articles that recommend a very conservative approach to allocating overnight parenting time for father for children under 4 years of age (McIntosh et al., 2014; Pruett et al., 2014). These publications appear to represent unofficial guidelines for allocating overnight parenting time for fathers. These de facto guidelines lack empirical support, as there is no research that clearly shows that overnight care by fathers will be expected to be harmful to infants or toddlers. It could be that for practical considerations, overnights by fathers should be delayed, so long as the father who is motivated to be an involved parent can have the opportunity for substantial involvement. In this way, the expected healthy development of the child to father attachment relationship can develop.

We suggest that a gatekeeping analysis can be helpful to resolve this conundrum on how to proceed to address the overnights issue for fathers, as it represents one application to a context that involves “protective gatekeeping” (PG), where a parent is expressing concerns, or making explicit assertions of potential harm to the child associated with spending extended time with the other parent. The parental gatekeeping model has been presented in other publications, but it is still evolving. It has not been presented for the readership in this journal, one of the prominent journals that is a valuable resource for child custody and family law practitioners.

**Purpose**

I have a number of purposes or topics of interest for this article. First, I juxtapose the importance of gatekeeping and the benefits of joint parental involvement for children of divorce, as supported by extensive research. Second, I present a brief description of the parental gatekeeping forensic evaluation model. The model has been described in other journal articles, but this will be a new introduction for the readership of this journal, which is an important resource for practitioners in the fields of child custody and family law. Third, social capital is presented as an explanatory concept for why joint parental involvement and shared parenting, including overnight care by fathers, is expected to generally be more beneficial than sole custody arrangements. The concept explains why positive, facilitative
gatekeeping (FG) will be beneficial for children of divorce. Fourth, the limited research on overnight care by fathers is briefly reviewed, and discussed in the context of attachment theory. Social capital and attachment theory are contrasted as alternative theoretical perspectives for considering pros and cons of overnight care by fathers. They represent different levels of analysis; that is, the social capital perspective is more of a social psychological one. The child’s secure attachment relationship with both parents can be viewed as part of the social and parental capital available to the child. Fifth, the justification analysis in the parental gatekeeping model is applied to the issue of a mother who is opposing overnight care by the father as PG. The generic forensic protocol for PG (Austin, in press) is adapted to the forensic custody dispute context involving the issue of overnight care by fathers with infants and toddlers. The model and the custody evaluator’s forensic task is to determine if the RG position of the parent who is opposing overnight care can be justified based on the facts, case context, circumstances, and the professional literature.

**Legal context**

When parents oppose overnight care for the other parent (usually it is the mother) as part of a court-ordered parenting plan, then it needs to be justified as not in the child’s best interests or as potentially harmful to the child. This analysis is part of the justification analysis found in the gatekeeping forensic model (Austin, Pruett, et al., 2013). A conservative position on overnights also needs to be juxtaposed with a common social policy and legislative declaration found in virtually every U.S. state and other Western countries that calls for encouraging “frequent and continuing contact” by both parents and the child following separation and divorce. For example, in Florida the legislative declaration states:

> It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage the parents to share the rights and responsibilities, and joys, of childrearing. (Florida Statute, 61.13(2)(c)(1))

Second, the common statutory best interest factor (e.g., the gatekeeping factor) requires the court and custody evaluators to consider the quality of coparenting and gatekeeping behaviors. The gatekeeping factor in Florida states:

> The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent–child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required. (Florida Statute, 6.13(3)(a))
Even in those states where there is not a list of best interest factors (e.g., California, New York, North Carolina) it is expected that courts will want to know about this process of mutual support (or lack thereof) between the parents. Litigated custody disputes by definition are high-conflict cases, so mutual RG is commonplace. Courts will want to know how this negative process can be contained and the children shielded from conflict, and how the quality of coparenting can potentially be improved.

**Parental gatekeeping model**

The forensic model identifies types of gatekeeping, or gatekeeping behavioral patterns. FG “occurs when a parent acts to support continuing involvement and maintenance of a meaningful relationship with the child [by the other parent]. Facilitating behaviors are proactive, inclusive, and demonstrate for the child that the parent values the other parent’s contributions” (Austin, Fieldstone, et al., 2013, p. 5). RG “refers to actions by a parent that are intended [or expected] to interfere with the other parent’s involvement with the child and would predictably negatively affect the quality of their relationship” (Austin, Fieldstone, et al., 2013, p. 5).

It is important for evaluators to keep in mind that coparenting and gatekeeping behaviors are part of the quality of parenting practices. There are secondary effects due to gatekeeping in that the quality of gatekeeping attitudes and behaviors are expected to have an impact on children’s adjustment and sense of well-being (Whiteside, 1998) just as the level of parental conflict has such predictable effects (Davies & Cummings, 1994). In fact, Amato (2010) found that the quality of the coparenting affects parents’ and children’s physical and mental health. Research has found that the quality of parenting is more important for children’s adjustment, but the quality of coparenting also affects child adjustment (Russell, Beckmeyer, Coleman, & Ganong, 2016).

**Gatekeeping as a continuous variable and communication to the court**

Gatekeeping is best (and most scientifically) conceptualized as a continuous variable and occurring within different behavioral domains. A custody evaluator can strive to identify the quality and specifics of gatekeeping within each domain. The degree of gatekeeping quality can be communicated to the court (e.g., low, medium, high in terms of FG and RG) as to the relevance for the recommended parenting plan.

Examples of behavioral domains include information sharing about the child, parents’ willingness to communicate with each other, compliance with the parenting time schedule and spirit of the parenting plan (which can include supporting parental involvement in extracurricular activities).
including being flexible as needed, not being critical of the other parent to the children or others (i.e., public criticism), and showing to the child an appreciation of value in the contributions of the other parent.

The quality of a person’s gatekeeping can be rated within each domain, but the gatekeeping statutory factor requires the evaluator to give an overall or general rating of each parent’s quality of gatekeeping. Case law often states that the court must explicitly consider and address each factor, or in its “factorial analysis” and often emphasizes the gatekeeping factor (In re Marriage of Collingbourne, 2003).

**Protective gatekeeping**

“Protective gatekeeping (PG)\(^1\) is a form of RG that arises when a parent acts to limit the other parent’s involvement or is critical of the other parent’s parenting skills because of possible harm to the child. PG is defined in terms of the reasons a parent wants to limit access of involvement by the other parent” (Austin, Fieldstone, et al., 2013, p. 5). An elaborated definition of PG is attitudes, actions, or legal position of a parent that are designed to limit the other parent’s access, contact, or involvement with the child based on stated reasons that parenting time and involvement places the child at risk for harm, emotional distress, behavioral problems, adjustment difficulties, or negative developmental impact. Frequently asserted reasons for PG include allegations of the presence of a major mental illness, past or current substance abuse or alcohol issues, past pattern of intimate partner violence, harsh parenting practices or child abuse, and child sexual abuse. The generic justification analysis for PG, as discussed later, then needs to be adapted to each of these contexts with the prominent issue and allegations.

**Gate-Opening and gate-Closing behaviors**

The gatekeeping model encourages evaluators to measure gatekeeping behaviors with behavioral specificity (Austin, Fieldstone, et al., 2013) so as to try to eliminate the danger of doing the analysis by labeling. The model (Austin, Fieldstone, et al., 2013; Trinder, 2008) discusses specific gate-opening behaviors with FG and specific gate-closing behaviors with RG.

**Justification analysis**

When a parent is not supportive of the other parent or wants to restrict parenting time, then the gatekeeping model directs the evaluator to conduct a justification analysis to see if the nonsupportive and restrictive parent’s gate-closing behaviors can be justified based on the facts, context, circumstances, and possibly the professional literature. In cases involving PG, the specific
sources of potential harm to the child need to be identified and if justified, then protective measures need to be taken so the risk can be managed. A generic justification protocol for PG has been developed (Austin, in press) that can be adapted to different legal contexts, or types of PG. For example, it was adapted to the context of disputes over relocation of a child (Austin & Rappaport, in press). This article adapts the PG protocol to the context of overnight care by fathers.

When the evaluator’s assessment and investigation does not find sufficient data and context to justify the restrictive parent’s lack of support and restrictiveness, then it is referred to as unjustified restrictive gatekeeping (URG). Sometimes when the evaluator concludes it is a case of URG, it could be that the restrictive parent’s concerns are at least “understandable.” Conversely, when the parent’s restrictiveness is found to be justified, then it is case of justified restrictive gatekeeping (JRG). PG can be justified or unjustified, as it just refers to the reasons for the parent’s concern about a risk of harm to the child.

In the context of a parent opposing overnight care, there could be a variety of concerns the restricting parent (usually the mother) holds about the other parent having overnights, or the number of overnights as part of a parenting time schedule. These concerns might involve the age of the child, history of a primary caregiver parent, the level of the father’s involvement in hands-on care or child-rearing, perceived level of competence in parenting a very young child, and beliefs about gender norms. Other concerns about potential harm could be part of opposition to overnights such as harsh parenting, past interpersonal violence, or substance abuse.

The restrictive parent on the overnights issue has done an implicit personal risk assessment and concluded that overnight time (or substantial overnight time) would be detrimental to the child. From the gatekeeping model, the custody evaluator should be seeking data from the restrictive parent to show with behavioral specificity that the risk of potential harm from overnights is substantial and sufficient to deny (or minimize) overnight care.

If the restrictive parent is starting from a very conservative, restrictive position on the overnights in the context of custody litigation, then (assuming a competent, committed, loving father) the evaluator needs to inquire about the mother’s plan to “step up” the father involvement and parenting time (Pruett, Deutsch, & Drozd, 2016). This reasoning is based on the extensive research on the benefits from joint parental involvement and shared parenting as discussed later.

An alternative PG analysis is that taking steps in a parenting plan to include substantial joint parental involvement also serves a protective function by enhancing the child’s relationships with both parents (Warshak, 2014).
A brief history of the debate on overnight care

Attachment theory has its roots in Bowlby’s seminal proposal that infants thrive if closely bonded to a parent (Bowlby, 1973). When Bowlby began to write in the middle of the 20th century, that parent was universally presumed to be the mother. Fathers were little mentioned in the original theory, and divorce was contemplated even less. In the next years, Lamb and others published numerous research studies supportive of the importance of fathers to young children, including research that described attachments to fathers that paralleled maternal attachments in strength and importance (see Lamb, 1997, for a review). These articles became part of a large literature that showed the benefits of joint parental involvement for the long-term adjustment of children of divorce (Amato & Sobolewski, 2010; Hetherington & Kelly, 2002) and the importance of fathers for child development following divorce (Amato & Sobolewski, 2010; Pleck, 2010). Overall, attachment was confirmed as an important factor in early development, although empirical research also led to the conclusion that many other factors were as determinative or more determinative of subsequent adjustment (Thompson, 2008).

Not surprisingly, parental divorce has been shown to be a significant factor in later maladjustment, often more significant than early attachment status. Solomon and George (1999a, 1999b), two attachment scholars, were the first to take on an empirical investigation of the effects of overnight care by fathers in divorce. Relying only on interviews of mothers, they found no differences between overnighting and nonovernighting groups of children on attachment measures, although these results have been widely misrepresented. Many of the methods used were fundamentally flawed, and the consequently flawed findings were misinterpreted to oppose overnights for very young children, as discussed by Lamb and Kelly (2001) and Warshak (2000).

Kelly and Lamb (2000) applied a sophisticated review of the theory and research on attachment theory and child development studies to fathers’ involvement to the context of child custody and developing parenting time plans involving very young children. They suggested that young children would profit from a schedule that provided for substantial time for each parent and relatively frequent movement between the households so as not to burden young children with separations from either parent of more than 3 or 4 days. Scholars weighed in, some of them opposed to overnight care (Solomon & Biringen, 2001), and many of them recommending a more open-minded approach to overnight care by fathers (Lamb & Kelly, 2001; Warshak, 2000, 2002). Further analysis by scholar-practitioners moved the research closer to a child custody context, emphasizing practical considerations and the case-specific nature of necessary psychological and legal analysis (Gould & Stahl, 2001).
Pruett and her colleagues conducted a second study of overnighting children (Pruett, Ebling, & Insabella, 2004). They were relying on the reports of both mothers and fathers. This study was carefully done and methodologically sound. The authors found few differences between overnighting and nonovernighting toddlers and preschoolers, with the authors concluding that concern about overnights was “misplaced.” More recently, Tornello and her colleagues (Tornello et al., 2013) addressed the question of overnights using a large, but unusual sample of inner-city residents in the United States, whose level of poverty and associated factors precludes ready generalizability. The measure of attachment used to assess outcomes was also nonstandard. These and other methodological problems in this study have been noted, as well as issues about data interpretation.

An Australian study has without question received the most attention (McIntosh, Smyth, Wells, & Long, 2010). This study used a large national database involving thousands of children, although cells were very small for infants and preschoolers whose parents lived apart (Nielsen, 2014). There was no established reliability or validity for four of the five measures used to assess attachment status and behavior. More than the others, this study has been widely criticized (Nielsen, 2014; Warshak, 2014), partly because McIntosh et al. (2014) elected to broadly suggest that parents and courts take a cautious approach to overnights and shared parenting with young children.

Warshak (2014) provided compelling rationales for overnight care of infants and young children, citing the well-documented vulnerability of father–child relationships in families in which the parents do not live together. Warshak noted that overnights are a protective factor associated with increased father commitment to child-rearing. He commented on the dearth of studies that show substantial risk to young children in overnights and recommended that policymakers and the courts recognize the dangers to developing father–child relationships inherent in depriving young children of overnights. Warshak’s paper was endorsed by 110 researchers and practitioners with significant knowledge of child custody, the development of young children, and related areas. It stands as a remarkable testament to professional support for shared care. Since then, empirical studies have further supported the long-term benefits to children of divorce provided by a robust relationship to both parents (Fabricius & Suh, 2017). Also, one would expect there would be greater compliance with fathers paying their required child support being involved, divorced fathers who would enjoy overnight time and full-service parenting of the child.

No single parenting plan will be right for all young children of divorced or separated parents, in part because the research is insufficient to begin to answer such a question, and in part because it is virtually impossible that one plan would work for all children and all families. It is clear that there is a
likelihood of enormous detriment when shared care is implemented with a parent who is abusive or who the children do not know or trust. There is often as much detriment, however, when a child is deprived of the opportunity to develop a full-bodied relationship with a loving parent, or to not have access to the father’s social capital, as discussed later. I offer a construction of this problem using a gatekeeping model, to help judges, evaluators, and parents consider the benefits and liabilities of overnight care. At this time, individual family circumstances, such as those imposed by restrictive gatekeepers, are much more likely to be determinative of parenting time than ideas that come from scientific theory or research.

The overnights debate sometimes hears proponents of a cautionary approach favoring residential stability for very young children (e.g., the child should sleep in his or her same bed or crib every night) as opposed to relationship stability between the child and the nonresidential parent. Just as there is not research or empirical support for opposing overnight care by fathers, or demonstrating detriment to children of divorce, as a generalization, so there is a lack of support for the hypothesis of the necessity for the stability of one residence to host overnight parenting time (Kelly & Lamb, 2000). In practical terms, separated and divorced parents with young children are well advised to seek stability in the routines of parenting timeshares and predictability on exchanges.

**Gatekeeping and social capital**

The gatekeeping model, with the related concept of social capital, can usefully organize the discussion concerning overnights for the particular case. The model provides a theoretical structure to understand and justify the advantages and disadvantages associated with joint parental involvement, including overnight residential care by fathers in the evaluation and adjudication of a parenting time dispute. The professional debate on the advantages versus disadvantages to children associated with overnights is properly viewed as part of considering the benefits to children from joint parental involvement and shared parenting (Nielsen, 2017).

In a child custody context, *social capital* refers to the benefits a child derives from the social and psychological resources available to him or her in a particular living environment, community, or family. Social capital is derived from parents, siblings, extended family, peers, teachers, coaches, and so on. It takes the form of positive role models who model trust, values, commitment, self-discipline, and friendship. Some living environments will be richer in the depth and breadth of available social capital. Concerns about social capital alert evaluators not just to focus on the parents, or “parent capital,” but also to assist the court in comparing the two alternative family units and associated relationships that will be available to the child. This
involves an ecological comparison in the vein of the theoretical work by noted developmental psychologists (Hage, 1972).

Social capital is a general concept (Hage, 1972) with widespread application in the social sciences literature to explain adult and child outcomes and functioning (Field, 2003; Lin, 2001). This concept has been used by divorce researchers to explain children’s adjustment to divorce (Amato & Sobolewski, 2010; Hetherington, 1999b; McLanahan & Sandefur, 1994). For instance, research on social capital has shown that children benefit in the long term by quality relationships with both parents (Amato & Sobolewski, 2001) and fathers (Amato & Sobolewski, 2010; Flouri, 2005; Nielsen, 2013). In addition, an extensive review of the literature shows the benefits of shared parenting (Nielsen, 2017).

Social capital serves to explain the benefit derived from shared parenting arrangements (see Nielsen, 2017) and why children of divorce show the best long-term adjustment and well-being when they enjoy quality relationships with both parents (Amato & Sobolewski, 2001). It has been used to explain the contributions of fathers (Hetherington, 1999b). Shared parenting is defined in the research literature as a minimum of a 35% timeshare for fathers. Thus, the social capital effect for the benefit of children is obtained when there is only a minimum of 5 out of 14 overnights in a 2-week parenting time schedule. Shared parenting should not be equated with an equal parenting time arrangement.

The social capital approach to the overnights conundrum is a different level of analysis than a traditional approach that emphasizes attachment theory and child-to-parent attachment security (Kelly & Lamb, 2000; Ludolph & Dale, 2012; McIntosh et al., 2014; Solomon & Biringen, 2001). It is more of a social psychological analysis of interpersonal relationships. The value to the child from the parent attachment relationship can be viewed as part of the social capital available to the child. The social capital approach leads custody evaluators to identify advantages and disadvantages associated with alternative parenting time options, including the issue of overnight care by fathers. The conservative, cautious school of thought on overnights prioritizes the residential parent’s social capital (i.e., mothers) over that of the nonresidential parent (i.e., fathers). When a mother is opposing (or minimizing) overnights, then she might be undervaluing the father’s social capital, or even viewing overnights as involving negative social capital (Hetherington, 1999b).

Part of the social capital by both parents will be their ability to support the other parent–child relationship, or their FG. Research shows that child outcomes are more dependent on the quality of the child’s relationships with both parents rather than the degree of cooperative coparenting (Beckmeyer, Coleman, & Ganong, 2014). However, high quality in gatekeeping behaviors and coparenting will enhance the parent–child relationships due to the
opportunity for parental involvement and providing psychosocial resources to the child. Lamb (2014) pointed out that parents who collaborate in child-rearing tend to have better adjusted children.

Research shows that children benefit from shared parenting arrangements and overnights with fathers, even when there is significant conflict between the parents, if the fathers show an effective parenting style that includes warmth (Sandler, Miles, Cookston, & Braver, 2008). An Australian study (Cashmore, Parkinson, & Taylor, 2008) found that even with high conflict, if the children spent more than 30 overnights per year with their father, they reported feeling closer to the father. It was as if overnight care provides a buffer due to the ability of the children to enjoy more relaxed and meaningful time with their father. In a large sample study, Amato, Kane, and James (2011) studied the degree of conflict between parents and the type of coparenting relationship. They found no significant differences in children’s outcomes as a function of the degree of conflict and type of coparenting. The findings were interpreted as showing that a “good divorce” with low conflict is not necessary to produce good overall outcomes following divorce. This is not to say that cooperative coparenting or FG is not likely to produce better outcomes, but it might not be necessary. It appears good outcomes are more likely if there is sufficient paternal involvement to produce a meaningful relationship.

This research literature should not be interpreted to mean that quality of coparenting and gatekeeping is not important for children. In another large-sample study, King and Heard (1999) found that the group of children with the poorest outcomes were most dissatisfied with their father’s level of involvement (e.g., RG) and the quality of the coparenting relationship. The level of conflict did not seem to be critical to child outcomes. Sobolewski and King (2005), in studying the same sample 4 years later, found that cooperative coparenting was much more strongly linked than the level of conflict to the quality of the father–child relationship and to “responsive fathering.”

Mothers might assert (as does the new conservative school of thought on overnight care by fathers as discussed later) that the presence of significant parental conflict should be a key determinant if overnights are appropriate for a young child. There is an older research literature (and limited in the number of studies) that concluded that in situations of high conflict, shared physical custody was likely to be harmful to children, as the children were more likely to be caught in the middle of conflict and might be the focus of the conflict. Nielsen (2017) recently reviewed and critically analyzed this literature and concluded that the bottom-line conclusion was to not be supported by the data (see Nielsen, 2017, for a review of the older studies; e.g., Maccoby & Mnookin, 1992). In some of the older studies, shared physical custody meant equal parenting time. Nielsen’s review of 76 studies on shared parenting found that overall there is very little support for this
common assumption that significant parental conflict meant there should be a very cautious approach to creating a shared parenting time plan. It appears support for this old, “trusty” hypothesis simply lacks empirical support. It should be kept in mind that older, quality research (Hetherington, 1999a) found that when children could be shielded from ongoing conflict, then the children’s adjustment looked like the group of very low-conflict families. Based on a clearer understanding of the research, mothers (or experts) who recommend shared parenting arrangements when there is substantial conflict, based on the professional literature, and are engaging in URG. However, every case depends on the facts, context, and circumstances of the case, as well as the professional literature.

New research affirms the new position and conclusions about the research offered by Nielsen (Elam, Sandler, Wolchik, & Tein, 2016; Fabricius, Diaz, & Braver, 2012; Modecki, Hagan, Sandler, & Wolchik, 2015) that substantial involvement by nonresidential fathers is important, even if there is ongoing conflict. The degree of father involvement was the key in all of these studies. This does not mean that an overall goal in custody disputes and child custody evaluation should be to minimize the exposure of children to conflict.

The research is fairly interpreted that evaluations should generally should be recommending shared parenting in every case, even if there has been substantial parental conflict, keeping in mind that this could be only 5 out of 14 overnights. However, the research does not examine what type of allocation of decision-making authority will be best for the child. My forensic experience suggests that some of the most intense custody disputes concern whether there should be a joint or sole decision-making arrangement, although usually they involve both disagreements about the parenting time-share and decision making.

**Guiding principles**

I propose several principles derived from gatekeeping theory to guide evaluators and courts in their crafting of parenting plans concerning overnight parenting time for young children. These principles are supported by sound theory and empirical generalizations from the established research literature.

First, children of divorce, including young children, will likely benefit from and show better adjustment when they experience frequent and continuing contact with both parents. Research supports the common legislative declaration on this issue. Second, when there is a risk of harm to the child, there might be justification in limiting or restricting a parent’s timeshare, including supervising or suspending parenting time. Issues of concern might include lack of parental involvement by a parent and undeveloped parenting skills, past incidents of harsh parenting, corroborated allegations of intimate partner violence by one or both parents, substance abuse, and a major mental
illness in a parent. Third, if risk of harm to a child has been demonstrated by
an evaluator, it should be explored how to best to manage the risk, bearing in
mind the very much increased risk of serious physical and psychological
harm when a very young child is subject to abuse. Fourth, if a parent (usually
the mother) is proposing that the other parent have very limited or no
overnight parenting time, then the limiting parent should describe with
behavioral specificity the nature of the risk of harm (Lamb, 2016). Fifth,
and especially with infants and toddlers, if the parent is proposing to deny or
severely limit overnights, how is that parent proposing to have the other
parent be substantially involved? Extensive parenting time during the day or
on weekends will usually be indicated. Sixth, age alone should not be a bar to
overnight care. Seventh, there will be an inverse relationship between the age
of the child and the degree of cogency in the mother’s argument against
overnight care by the father, but the analysis always needs to be case-specific
and dependent on the fact pattern. There will be instances where the father
will be the most viable candidate to be the custodial parent and where
overnight care might not be advisable for the mother.

Examples of parental assertions regarding overnights-related harms might
be very young age, the need for routine and stability, the lack of parenting
experience by the noncustodial parent, or “symptoms” of distress exhibited
by the child associated with overnight time and transitions (McIntosh et al.,
2014).

Overnights conundrum and restrictive gatekeeping

Overnights are identified in the gatekeeping model as one example of PG
(Austin, Fieldstone, et al., 2013). A mother who opposes or wishes to severely
limit the father’s overnights is asserting that overnights are harmful and will
not be in the child’s best interests. She will maintain that she is being
protective of the child. The father who is in dispute over the issue will assert
the mother is being overprotective and unnecessarily restrictive. Restrictive
mothers on the overnights issue with young and very young children might
assert the father is not sufficiently competent to handle the myriad of
parental responsibilities and child-rearing duties.

The conservative school of thought on overnight care by fathers and a
mother’s legal position that opposes or wants to severely limit overnight
care by the father in an individual custody dispute by definition represents
RG. The first generation of advocates against overnight care by fathers
until ages 2½ or 3 years of age (Baris & Garrity, 1988; Hodges, 1991), or
even until the child entered kindergarten (Awad & Parry, 1980) explained
(or justified) their positions based on an assumption of a primary attach-
ment to the mother, overlooking research on child to father attachment
that was available at the time (Lamb, 1975). The new generation of
advocates for the conservative view on overnights, as discussed earlier, does not make clear their justification analysis (McIntosh et al., 2014; Pruett et al., 2014). They were careful not to specifically point to attachment theory or their interpretation of the research. McIntosh et al. (2014) provided a list of possible harms to the child associated with overnight care by fathers, but without citing research, or addressing the base rate problem on the list of behaviors of concern (e.g., the behavior of “frequent crying” is very common with very young children).

**Gender role attitudes versus perceived competency**

Early maternal gatekeeping models rest partly on the assumption that gender role attitudes affect gate-closing and gate-opening behaviors (Allen & Hawkins, 1999; Fagan & Barnett, 2003; Rane & McBride, 2000). However, most studies in the maternal gatekeeping research literature have been limited to measuring attitudes, not actual gatekeeping behaviors (Schoppe-Sullivan, Altenburger, Lee, Bower, & Kamp Dush, 2015). One study failed to find a significant correlation between either fathers’ or mothers’ gender role attitudes and mothers’ gatekeeping behaviors with newborns (Schoppe-Sullivan, Brown, Cannon, & Mangelsdorf, 2008). This finding was replicated with a study with solid methodology and relatively large sample with dual-earner families (Schoppe-Sullivan et al., 2015).

This issue could well be different in the context of divorced families with stay-at-home mothers, or with never-married mothers, so that the traditional gender role position on parenting time might be asserted. It would seem that to assert fathers should not have overnights because of gender would seem inconsistent with family law in all states. Such a position has the ring of a tender years presumption (Mason, 1994).

An issue in contested parenting time cases with very young children is the perception of fathers as inexperienced and possessing questionable competence in being able to care adequately for infants and toddlers. It often will be the case that fathers will be on a “learning curve” when there has been a traditional arrangement regarding the exercise of parental duties and responsibilities. It also will be the case that fathers have been active and equally involved parents with infants and toddlers. Schoppe-Sullivan et al. (2015) found that mothers’ expectations regarding the level of acceptability in parenting skills and also mothers’ level of psychological functioning were significant predictors of their gate-closing behaviors.

Another factor that seems important in predicting mothers’ gatekeeping and propensity to share the child is parental self-efficacy, or the parents’ confidence in their parenting ability. It is expected that with younger children fathers will have lower levels of parenting self-efficacy (Hudson, Elek, & Fleck, 2001), but there should be wide variation with fathers on this issue.
Parenting self-efficacy is expected to be associated with better parenting and child development (Prinz & Jones, 2005). Schoppe-Sullivan et al. (2015) posited that mothers with more confidence in their parenting might be more willing to involve fathers, or to open the gate wider, but they found the reverse to be the case, with more RG.

One cannot analyze the advisability of overnight care for fathers without considering the related issue of the importance of father involvement in child development (Lamb, 2010) and how to facilitate father involvement in care of infants and young children. Mothers are generally much more involved in parenting the very young compared to fathers (Schoppe-Sullivan et al., 2008). Early father involvement (e.g., in infant care) has been found to predict the level of involvement with older children (Doherty, Erickson, & LaRoss, 2006), or that it tends to persist (Shannon, Tamis-LeMonda, & Cabrera, 2006). With the separating and divorcing population, if the mother is putting forth a conservative position on overnights, then based on the breadth of the research literature, she needs to juxtapose a proposal for how to facilitate the father’s substantial involvement with the child.

**Justification analysis**

With a gatekeeping analysis in the context of a custody dispute, parents who are not supportive of the other parent and want to restrict parenting time or access need to be asked to explain, or justify, their position on the parenting plan. Custody evaluators and courts likewise need to conduct a justification analysis in light of the facts, context, circumstances, professional literature, and practical considerations.

If an evaluator determines there is URG, then this has implications for parenting time recommendations. It would be factored into the evaluator’s opinions on the overnights issue and the overall structure of the parenting plan. A conclusion about a pattern of URG on the overnights issue, and parenting time generally, might result in an evaluator recommending a larger share of parenting time for the father.

Austin (in press) presented a suggested generic forensic protocol for conducting a “justification analysis” for PG that could then be adapted to specific forensic contexts with varying salient issues in a custody dispute. The protocol was presented as sufficient for an analysis, but all of the elements were not necessary. A preliminary protocol for a justification analysis for RG on young children and overnight care is proposed:

1. **Describe the case context, circumstances, and key facts.**
2. **Assess all of the identified factors in statutory and case law, as they might be relevant to the overnights issue; be aware that it likely will be**
problematic to emphasize gender as a basis for recommending a residential parent.

(3) The restrictive parent (usually the mother) should identify with behavioral specificity her reasons for a stance of PG, including her concerns associated with increased care and overnight care by the father, and a detailed risk assessment for the child’s welfare. The recommendation is a “show me the harm” with overnights provision.

(4) Explore ways to structure access and parenting time by the father that adequately address the mother’s concerns and effectively manage the perceived risk (e.g., psychotherapy, parenting education, or parenting coach for one or both parents).

(5) Consider how to phase in increased parenting time for the father, or a “step-up” component to a recommended parenting plan for young children, if appropriate, based on the justification analysis (Pruett et al., 2016).

(6) Examine the restrictive parent’s concerns about harm and supporting data relative to the relevant professional literature; note there are two schools of thought in the literature on the overnights issue; note there is a lack of research to support the position of a blanket restriction on father overnight care for very young children (Warshak, 2000, 2014).

(7) Conduct a risk assessment associated with overnights. Factors to be considered include the following:

- Specific risk and protective factors from literature and context of the case.
- The age of the child and developmental concerns.
- Both parents’ past patterns of involvement in child care and child-rearing with the child and any siblings.
- Both parents’ level of parenting skills and quality of parenting.
- Both parents’ psychological functioning, particularly as related to gatekeeping behaviors (Schoppe-Sullivan et al., 2008, 2015).
- The knowledge about parenting and coparenting for each parent.
- The employment status of the parents and availability: Are these two working parents or do they anticipate that one will be a traditional stay-at-home parent?
- The level of parental conflict and available means to shield the child from the conflict.3
- Presence of any “key variables” associated with risk of harm with overnights (past interpersonal violence, substance or alcohol abuse, major mental disorder, harsh parenting).

(8) Evaluate the father’s response to the mother’s legitimate concerns.
(9) Evaluate the mother’s response to the father’s legitimate concerns about her PG.

(10) Consider interventions that are available to address either of the parent’s legitimate concerns: parenting classes, parenting coach, time-limited supervised parenting time, extended family support and assistance, and mental health treatment.

(11) If the investigative data, context, and circumstances call for a conservative approach to the overnights issue, then what is the mother’s proposed plan for the father to be substantially involved with the child (Lamb, 2012)?

**Recommendations**

I strongly recommend that the framework, or guidelines, being recommended by McIntosh et al. (2014) not be used by custody evaluators or judges in considering custody and parenting time plans for young and very young children for a number of cogent and practical reasons. First, the guidelines lack empirical research support to show that overnight care by fathers is harmful to children, including infants. Second, the guidelines lack a cogent, research-based theoretical rationale, as they appear to be based on a primary attachment parent assumption. The guidelines also place the child to father attachment relationship at risk for harm. Third, they are inconsistent with theory and research that establish the importance of the involvement by both parents for the child’s long- and short-term adjustment. Fourth, they are not practical, as they assume that a very conservative schedule on parenting time and overnights would be reexamined at a future time so litigation would be required to modify either a temporary or permanent court order. If the very conservative plan is implemented in a temporary order, then it would seem it makes litigation for the creation of a permanent order and parenting time much more likely. The new guidelines by Pruett et al. (2014), if adopted by jurisdictions or practitioners, would appear to have a built-in litigation-engendering function. Fifth, the guidelines are gender-biased in favor of mothers, thus making them inconsistent with state domestic relations laws. Sixth, they are inconsistent with the common legislative declaration that encourages the “frequent and continuing involvement by both parents.” They actually create a hindrance to father involvement. Seventh, they potentially create an incentive for mothers to fuel conflict as a way to prevent father overnight care, as the guidelines call for limiting father overnight care if there is significant parental conflict. As noted earlier, the research literature shows that children of divorce will generally benefit from joint parental involvement and shared parenting, even if there is ongoing parental conflict. Finally, the guidelines represent RG (by guidelines)
that usually will not be justified based on the facts, context, circumstance, and professional literature.

**Notes**

1. The term *protective gatekeeping* was originally proposed by Drozd in considering gatekeeping in the context of allegations of intimate partner violence in child custody disputes (Austin & Drozd, 2006).
2. For other reviews of the research on the effects of overnight care by fathers on child outcomes, see Nielsen (2014) and Fabricius and Suh (2017).
3. The reader is referred to recent research and research reviews that show the benefit to children of divorce from joint parental involvement and shared parenting, even with the existence of substantial parental conflict (Fabricius & Suh, 2017; Nielsen, 2017; Sandler, Miles, Cookston, & Braver, 2008).

**References**


In re Marriage of Collingbourne, 204 Ill.2d 498, 791 N.E.2d 532 (IL 2003).


