



The
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James M. Jeffords Center's
Vermont Legislative Research Service



Complete Comments from Attorneys in Response to VLRS Survey (for discussion of the survey, see the full report by visiting

<http://www.uvm.edu/~vlrs/Other/question%20of%20gender%20bias%20in%20family%20law%20in%20vermont.pdf>):

1. The bias is more complicated than your questions allow. If a child is 0 - 6 years old, there is a bias in favor of mother, because the child is so young and the assumption is that a child still nursing or still clinging to their mother should not be removed from their mother without good cause. If the child is much older, the bias is much less pronounced. Once the child gets to be 14 - 17 years old, especially if it is a male child, even if the child refuses to follow a court order that they spend a majority of time with mom, the Court has a bias against forcing the child to spend time with mom, which appears to be a bias against women who want to keep their older children sheltered and in the home. There is also a bias against women when it comes to their being viewed as overly emotional, and a general bias against men assuming that they are less emotionally attached to spending significant time with their children, and that they should be working to support the family and not home with the kids. Thus, a much more complicated issue than a simple bias one way or the other. The bias generally follows the societal bias that mothers are more important when a child is young, and that children should be allowed to leave the nest (and fathers are more inclined to support that) as children get older, and that male children should spend more time with their fathers as they get older. All gender-biases that are fairly well-embedded in our culture, so not surprisingly reflected by the Courts in very subtle ways. The factors considered by the Courts serve to even these biases out by giving importance to a party's ability to foster a relationship with the other party, ability to care for the child's needs, etc., but the importance placed on the "primary care provider" in the statute and case law acts as a legal impediment to fathers attempting to get full custody of young children, because the mother was typically the primary care provider from age 0 - 2, so they more easily claim the benefit of that factor. Although there are cases stating that factor does not necessarily weigh against all other factors, in practice that factor is very important in determining custody of a young child, and causes fathers to very rarely get custody of a young child, unless mom is clearly unfit.

2. My answer to whether Vermont Family Courts are gender-biased is "it depends on the judge." It's impossible to ask whether "Vermont family courts" are biased, because practices vary widely from judge-to-judge. The real issue here is that judges have a tremendous amount of discretion (it's rare that the Vermont Supreme Court overturns or remands a child custody decision--hence the wide discretion is rarely checked) and therefore, there is little-to-no-consistency from judge-to-judge or from county-to-county. Some judges appear to presume 50/50 contact and work backwards (even with very young children who aren't ready for overnights and require short, but frequent visits with the non-custodial parent). Other judges presume an every-other-weekend schedule is best for the party who was not a primary parent when the child was young, which is probably an outdated way of thinking. If you want to see the variety first-hand, it plays out in two unpublished Supreme Court decisions that were argued back to back and decided at the same time: *franz v. franz* and *patnode v. urette*. In one case, the judge awarded 50/50 where the five year old hadn't spent more than two nights away from mom ever. In the other case, a different judge awarded every-other-weekend where the twelve year old lived a mile away from his very involved and capable father. The Supreme Court affirmed both judges. Also keep in mind that judges aren't really allowed to order joint custody independently, because in the instance the parties don't agree and go to trial (hence, the judge makes the decision) the statute requires that the judge pick or the other parent as the primary parent. Joint custody only comes into play if the parties agree to it. Obviously, parents who can't agree on a parenting plan aren't going to be able to agree on major life decisions in the future. The other issue to consider is the difference between cases involving middle and upper class families who can afford representation and those who cannot. There is tremendous variation in the quality of outcomes for these folks. Furthermore, some pro bono clients have perceived a bias against women who have been incarcerated for misdemeanor crimes. You can find these stories at Chittenden Regional Correctional Facility. Finally, there's a reason why the current statutes don't include very many mandates. Each and every case is unique. Judges do need flexibility if they are going to craft orders that will protect children's best interests. At the end of the day, it's not about parental rights, and it shouldn't be. It's about the rights of children to be safe and protected and to have healthy relationships with both parents. Legislators should tread lightly. It's essential that testimony is heard from a range (I emphasize, "a range") of child development experts, not just parent advocates.
3. I think the current judges - at least in the courts I've been in - are not biased. It may have been so in the past, but not now. I do, however, believe there is a perception of bias.
4. Relief from abuse cases, because of collateral consequences give power and potential opportunity to abuse that power to the plaintiff. There are major support groups for women and none for men. The women support groups are clearly anti-male and try to have imposed a one-size fits all scenario, and that scenario is anti-male.
5. The gender bias I have observed has often been among older judges with more traditional views regarding parental roles. Your survey fails to address gender bias regarding spousal support (alimony). There is such a bias among some judges--and

where it exists it is strongly in favor of women. Although spousal support should be gender neutral it is much harder for males to get it than females.

6. I am not sure it is actual bias, but more that there continue to exist social norms that are still recognized (e.g. young children more likely to be with mother) and that does play into decisions both by judges and attorneys.
7. All things are never equal. Typically the mother has been more active in providing for the care of the children. It is rare that this is not so. When a father has been equally or almost equally active, the court is able to order shared physical rights and responsibilities. The court cannot order shared legal rights and responsibilities over the objection of either party. I am more concerned about the practice of some judge who seem to hope that a parent (usually the father) who has been inappropriate in the past will straighten out based upon a slap on the wrist by the judge. In those cases, the judge gives an inappropriate parent too much parent-child contact.
8. One of the reasons for the gender bias seems to be an enormous bias against the working parent. Typically, if only one of the two parents work, it is the male parent who works. Although the male parent may be the better parent, since the female parent spends more time with the child, the burden is so heavy in her favor that it is almost impossible to gain custody for the working parent. It is extremely upsetting because then, often, the non-working parent remains unemployed, or underemployed, while the working parent has to pay high child support, based not on the child's needs, but based on the percentage of time with the child, and an income equalization of sorts. So, all kids come with a price tag attached...more time with the child means more money for the custodial parent. So, typically, men not only are not awarded custody, but they need to pay a great deal of child support. There would likely be many more joint custody arrangements if child support did not increase so dramatically depending upon time spent with the child.
9. The family courts are broken. They don't focus on the best interests of the children, which is clear from the lack of GALs available. The courts are quick to rule in favor of mothers, and are only open to ruling in favor of fathers if there is extremely compelling evidence that the father is the more fit parent, or if the father pays for a family evaluation (costing him thousands of dollars) that strongly finds in his favor. Additionally, the perception of the gender bias alone is enough to scare many fathers into entering into custody agreements that are better than they think they would get if they went to trial, but that actually are detrimental to the child/ren as they don't have enough time with their fathers.
10. The gender bias is apparent in the Courts, but it is partly based upon the fact that typically fathers are the higher wage earners, and have to put in more hours at work. Because of that, often the father doesn't spend as much time with the child, so the mother can successfully argue that she is the primary caregiver simply because she spends more time with the child. I see this most often when the children are very young. I am aware of attorneys advising female clients to continue nursing their babies as it means that they definitely can have sole custody for at least a temporary period. However, once the mother has temporary custody, because she is the primary caregiver, the court will not then transfer custody to the father without significant evidence

showing that the change in the current custodial arrangement is in the best interest of the child, and this is extremely difficult to prove. Also, the mother can work part time, or not at all, and receive child support, which requires the father to put in more hours so he has less time with the child. It is a vicious cycle. The child support system places a bias against joint custody as the mothers would get less money should the fathers have more time with the children. The child support paid in no way relates to the needs of the child, and just acts as another way to prevent fathers from being able to parent their children.

11. I think that these are great questions, and in my opinion, there should be *a presumption that 50/50 custody is in the best interest of the child(ren)*. Also, I do not think that working parents should be penalized as they now are.
12. There should be, like in other states, *a presumption toward joint legal and physical and the parties must rebut the presumption if they want sole*. This would avoid any bias. Mothers are generally favored because they often have been the primary caregivers yet the children are closely bonded with both parents.
13. As a family law attorney in Vermont who has worked in 11 of the 14 counties, most judges in Vermont are not gender biased. Judges usually take into consideration all the elements of the PR&R statute including domestic violence in the family.
14. I do not see it as a problem. In fact I would think that if you looked at (statistically sampled) outcomes of fully contested final parental rights orders, you would find that men often win with respect to older children. (The parent who spends more time at home with small children most commonly wins the dispute when the children are younger by virtue of being the "primary parent").
15. It is rare that "all things are equal," because both parents always have strengths and weaknesses that are not identical. In my experience, in a case where both parents are fine, judges do lean toward some sort of shared arrangement: shared time, split legal custody. I do believe when judges grant more time or decision-making to one parent, they do so for a reason in BIOC. However, I also believe there is a double standard. Women's behaviors are judged more severely than men's. A man's violence will be called "situational" and a woman's pathological. A man's failure to support will be overlooked, a woman's failure to provide care is a character flaw. A man's inability to cooperate and compromise is sometimes considered his right, a woman's reluctance to facilitate communication with a recalcitrant man is considered bitchy.
16. The fact that men typically are the greater wage earners puts them at a huge disadvantage when it comes to custody. Because of this role, they typically are not the one who "wins" the primary caregiver of the statute. Additionally because mothers typically get much greater parental leave than fathers, that alone can be enough with a small child to establish the mother as the primary care giver. As such, it is nearly impossible to obtain custody for a working father. Additionally, because of the way that child support is calculated, the individual who earns less money has a huge financial incentive to refuse 50/50 custody as they will get significantly less money in child support. I really think that an overhaul of the entire system is necessary. It would be great if there was a survey about child support or about how the statute itself promotes a gender bias. If the focus is actually on the children, then there would be money in the

budget for GALs to be appointed in ALL divorce cases, and family evaluations would be routinely done to actually determine who best to have full custody.

17. The statutes weigh too heavily in favor of the primary caregiver . It seems that the Judge's hands are tied because there is such a presumption in favor of the primary care givers, and based upon biology alone, the woman almost wins. If a woman has nursed her baby, or taken maternity leave, then if everything else is equal, she will "win" the title of being the primary care giver. So, she will get custody of the child. There should be something in place that analyzes the family unit and what is in the best interest of the children. There should always be guardian ad litem involved in cases, or attorneys appointed for the children. I have seen too often where the father is the better parent, but the mother gets custody. It is tragic. So many children lose their fathers because of the broken court system and the poorly contemplated statutes. We have been calling foul regarding the gender bias for many years to no avail. Good luck!
18. Depending on the case, I find myself advising my male divorce clients that they are going to get hit pretty hard when it comes to spousal maintenance and property division, such that reaching a settlement and keeping it out of the court's decision is the better way to go.
19. In Question 5, 'all things being equal' - I believe the age of the children is very important. Children under 5 years old will be placed with the primary caregiver who is assumed to be the mother, unless very clear evidence shows it was the father. Children over 5 years old will be placed with less bias. The bond to the primary caregiver is most important at younger ages. The older a child gets, the bond can shift to a different parent. Healthy Attachment is THE most important question for a child's development. Parent's "rights" should always be second to the best interest of the child. However, if a child has a disrupted or unhealthy attachment to a primary caregiver and the other parent can provide a healthy attachment, then the child should be with the other parent.
20. I think that the real issue is that the statute punishes those parents who work hard to support their families, but reward those who either remain unemployed, or who remain underemployed by assuming that the quantity of time home with a child is more important than more limited quality time with the child because of that parent working to support the family. A unemployed father on benefits is much more likely to have custody awarded to him than a father who works. But, which is actually better for the child?
21. In VT, the court cannot order joint custody unless both parents agree. Your 5th question assumes the opposite. Custody decisions are extremely fact-specific and can be very hard to predict. Judges make decisions based on each couple's unique circumstances. Courts recognize the role of the parent who has been the primary care provider, whether that parent is male or female. In our society it is most often the mother who arranges for doctor's appointments, shops for clothes, food, leaves work to care for children, etc. I believe judges do recognize those dads who are equally or more involved.
22. The expectations for mothers are greater than those for fathers, and this serves to penalize women.

23. This survey makes reference to "joint custody", (should be shared parental rights"), but the Courts have no authority to order shared parenting in Vermont unless the parties agree, so the survey is skewed.
24. This is a poorly constructed survey. It shows a lack of knowledge of Vermont Law. It also seems to trying to elicit biased, rather than objective, responses.
25. These questions assume an outcome. For example, "All things being equal between a mother and father who each want sole custody of their child(ren) after a divorce, how would you expect the judge to rule?" If everything is equal between a mother and father and they each want sole custody and will not agree to joint custody, a judge in Vermont cannot order joint custody. In such situations, primary caregiver will most likely have the greatest weight - and it should probably not come as a surprise to you that more mothers are primary caregivers than fathers.
The idea that men are discriminated against by the family court is ridiculous. Women are far more likely to lose custody or visitation because of perceived bad behavior than men. The courts will bend over backward for men who are violent and irresponsible parents, while holding women to a much higher standard. This survey is inherently flawed in the way the questions are asked and you should be concerned about the accuracy of your data.