

## One dad, one mom, two homes

### Changes in attitudes and the law boost the growth of joint custody

By Glenna Whitley  
*Staff Writer of the News*

Steven and Kevin Stogner each have two beds, two bicycles, two wardrobes, two sets of toys and two homes.

Though the parents of the Dallas boys are divorced, they have joint custody of their sons — an increasingly popular arrangement being chosen by one of every 20 divorcing couples in the United States.

Proponents of joint custody, sometimes called co-parenting, point to its advantages: Relatively equal access to both parents makes a child feel content. The rate of delinquent child support payments goes down. The burden of being a single parent is decreased.

But joint custody also is gaining its share of critics. Divorced parents with equal rights in child-rearing can create anxiety and confusion, say a number of family

Many family counselors say joint custody may be motivated out of revenge against a spouse rather than an honest concern for the child.

And a few groups, including advocates of women's rights, contend that joint custody may not be beneficial for mother and child. They say joint custody can lead to continued abuse of the mother or child, inequitable child-support payments to the mother, and unreasonable demands by a parent who was minimally involved in child-rearing before the divorce.

In the past decade, joint custody has grown in popularity for three major reasons:

- An increasing number of marriages are ending in divorce.
- More fathers are seeking custody of their children.
- And states, including Texas, are passing laws to encourage the arrangement.

As recently as 10 years ago, joint custody  
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# Legal, social changes boost

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was almost unheard of in the United States. But as of 1983, 5 percent of divorcing parents opted for the arrangement, says Suzanne Prescod, editor of the *Marriage and Divorce Today*, a New York-based newsletter for family counselors. Fathers have sole custody in another 5 percent of divorce cases. In 90 percent of divorce cases, women end up with sole custody.

The joint-custody option has opened up in recent years because of new state laws. In 1977, Iowa and Oregon became the first states to pass legislation recognizing joint custody as a legal alternative; since then, 26 more states have passed similar laws.

"TRADITIONALLY, the custody has gone to the woman, regardless of the man's capability of raising his children," says Larry Stogner, vice president of Texas Fathers for Equal Rights and who has joint custody of 7-year-old Steven and 4-year-old Kevin. "The problem with sole custody is that one parent ends up with no powers. They have no say in their child's upbringing. This way, both have an opportunity to have input."

In Texas, joint custody (called "joint managing conservatorship") became a legal option in 1979; before that, a handful of Texas parents made informal joint custody arrangements.

In some states, such as California, judges are required to presume that joint custody is the best option unless some reason can be presented otherwise. That is not the case in Texas; both divorcing parents must agree to the arrangement. Stogner's group and other joint-custody advocates have campaigned, unsuccessfully, for a Texas law similar to California's.

The terms of joint custody differ from case to case. In a number of arrangements, children move from parent to parent every week, month, school semester or year. To ease the move, many parents purchase houses on the same street or in the same neighborhood.

PERHAPS THE most extraordinary example of joint custody is the case of an Interlochen, Mich. family. Last January, a judge ruled that the three children continue to live in the family home. The mother and father were ordered to move in and out on a monthly basis.

However, some joint custody agreements don't vary significantly from traditional visitation arrangements, in which the children live with the mother on weekdays and with the father on weekends.

While joint custody does not necessarily mean that both parents split the children's physical custody down the middle, it does mean that each parent has an equal legal

say in the upbringing of the child.

And that, say attorneys, can result in problems. If there's disagreement, who decides where a child attends school or church? Who decides if a child should have a motorcycle — or even surgery?

"Joint custody requires a great deal of cooperation, communication and understanding after the divorce," says John Withers, a Dallas family law attorney. "They can't have their feelings easily hurt. I'm pretty negative when it's brought up. I sincerely believe that if they can't communicate enough to stay married, they can't make joint custody work. However, I do believe it (joint custody) is best for the child."

Withers says that of 50 divorce clients he sees each year, one couple may opt for joint custody.

"IN THOSE precious few occasions where you have all the ingredients to make it work, it runs like a clock," Withers says. Some factors in successful co-parenting, he says, include geographical proximity, communication, similar child-rearing values and discipline techniques.

"It works well where the husband lives in a desirable school district and the woman doesn't," Withers says. "She'll agree to joint custody so the kids can go to that school."

Richard Evarts, executive director of Dispute Mediation Service, says joint custody can work if parents consider the child's best interest instead of their own anger and hurt feelings.

"Children become symbols during divorce and parents will wrestle with one another using the children," Evarts says. "They need to realize that right and wrong is not an issue, but that the emotional well-being of their former spouse and their child depends on their dealing with the issue on a mature level rather than a combative one."

EVARTS' FIRM mediates divorce arrangements and about 10 percent of the couples decide on joint custody, estimates staff mediator Dr. Sharon Leviton.

"This is one of the reasons mediation is becoming more popular," Evarts says. "The court really doesn't have the time to determine who is the better parent. That's posing the wrong question. The better parent is two parents."

However, joint custody sometimes is used as a "cop-out," says Melvyn Berke, a Dallas psychologist and syndicated columnist.

"It makes it easy for a judge to not work hard to discover which is the better parent," Berke says. "It makes it easier on the parent who doesn't want to face up to the fact that he or she may not be the best parent. They say, 'We'll just have joint custody.'"

AND NOT all joint custody agreements are motivated by love, Berke says. Revenge could motivate some parents, who may see controlling the children as a way of getting back at their former spouses. Other parents believe the arrangement will give them more freedom and they look on the former spouse as a convenient baby sitter.

PARENTS ALSO may accept joint custody out of fear they will lose a custody trial, Berke says. In some states — but not Texas — divorce law includes a "friendly parent" provision, which requires that the parent most likely to provide free access to the other parent be given custody. If one opposes joint custody, both parents could be thrown into a vicious battle for sole custody.

Dallas County Family Court Judge Theo Bedard says that, of the custody cases in her court, two kinds of parents usually work out joint custody agreements. One group is truly interested in their children's relationship with the other parent. The other group fears losing contact with the children.

Dr. Richard Warshak, clinical psychologist and psychotherapist on the staffs of the University of Texas Southwestern Medical School and the University of Texas at Dallas, says preliminary research indicates a child is better off in a joint custody arrangement.

"BUT EVEN though we know it's good for children to have contact with both parents, we haven't studied what happens when parents are

# growth of joint custody

forced into joint custody," Warshak says. "When parents are hostile to each other, joint custody could make it more likely that the child would be drawn into the conflict."

On a positive note, Berke says, "It does provide children with parental models more in keeping with today's culture in which both parents share homemaking and economic obligations. There's a free flow of involvement with both parents. It's a more natural lifestyle. And it reduces the probability of the dad being viewed as the gift-giver and the mom as the disciplinarian. If you have people who can follow rules, it's workable."

But a change in circumstances — such as a remarriage, a move out of the area or constant disagreement — could send both parties back to court to renegotiate custody.

As fathers' rights groups and family counselors push to make joint custody the primary option

for divorcing couples, co-parenting could come under increasing attack.

"We feel, in large part, it (joint custody) has been a backlash against women who are seeking child support or a more equitable share of marital property," says Carol Lefcourt, an attorney and consultant to the National Center on Women and Family Law, a non-profit legal services corporation based in New York.

"IT VERY often has little to do with what's good for the children," Ms. Lefcourt says. "It's being used by the spouse who is not the pri-

mary caretaker of the children but who will suddenly become real interested in the children when he's forced to make payment for their support. By no means are we against fathers taking responsibility for their children, but this trend has gone overboard."

Ms. Lefcourt also has concerns that joint custody could even be dangerous in some situations. "Joint custody, even liberal visitation, can continue to provide access to the wife by the husband, so that the battering, abuse and domination can continue," she says. "If the husband batters the wife — even if he doesn't batter the children — the courts will go ahead and grant joint custody, as though the wife being beaten doesn't harm the children. Legislation is not reflecting that concern."

Ms. Lefcourt says legislatures that pass laws requiring joint custody also ignore the fact that mothers still are the primary caretakers

of young children.

"Shared parenting is ideal for parents who want it to work," she says. "But women still earn so much less than men. They are still the primary caretakers. Joint custody sidetracks these issues."

"WHAT WE'RE hearing from women (with joint custody) is that they are receiving less (child) support, but not having the financial burdens lifted. They're still paying for the clothes, the dentist's bills, the cost of the primary resident. They're just calling it joint custody."

Jim Cook, president of the Joint

Custody Association, a nationwide group based in California, says joint custody actually encourages spouses to pay child support.

"We find that the child-support delinquency rate is only 6 or 7 percent for joint custody," Cook says. "The delinquency rate for sole custody is 60 to 76 percent."

Author Isolina Ricci, executive director of the New Family Center in Palo Alto, Calif., says that much of the criticism of joint custody may be justified, but she maintains it can work in up to 60 percent of custody cases.

To help erase inequities in child-support payments, the California county in which Ms. Ricci resides has established schedules that adjust awards according to parents' salaries.

"Eighty percent of the women in our area don't make as much money as their husbands," says Ms. Ricci, who also has written *Mom's House, Dad's House*, a book on joint

custody. "There has been a gross injustice to women who make one-half or one-fourth of what the father makes in joint-custody cases. Here in Santa Clara County, we have turned that around. We have developed schedules to adjust child-support awards proportional to income."

Warshak says that while joint custody isn't for every family split by divorce, children could benefit if it becomes the rule instead of the exception.

"That might," he says, "take the whole issue of child custody out of the realm of battle."

# Joint custody: three families that tried it

*Does joint custody work? The answer depends on the divorcing parents who enter into the arrangement. In the following, staff writer Glenna Whitley tells the stories of three families that chose joint custody.*

Though Marie Abercrombie and Owen Arnold had enough differences to cause their divorce, they still agree on one thing: the love they have for their 13-year-old daughter, Marcy.

Marcy was 6 when her parents separated in 1976 and Texas courts did not offer joint custody at the time. So, the couple informally agreed on the joint arrangement, even though Mrs. Abercrombie officially has sole custody.

"Marcy has a really nice, nice father," says Mrs. Abercrombie, an interior designer. "It didn't seem very fair to take a child from her father, just because he and I had differences."

"I spend about one-third of my life with my father," says Marcy. "I think it's fair, but then, I never planned on them getting divorced."

The Plano teen-ager has two rooms, two stereos, two toothbrushes. "But most of my clothes stay at Mom's house. It's aggravating when something's over there when you need it."

In the seven years since the divorce, Marcy's parents have evolved a flexible timetable that allows Marcy to see her dad on weekends, in the summer, and during the week.

"In the last year, she's spent more time there than here because I work so much," Mrs. Abercrombie says.

Arnold, an accountant, has turned down

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# Joint custody: Three families

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four job offers in other cities to stay in Dallas near his daughter. And he recently bought a house in the Plano school district to make it easier for her to spend weeknights with him.

"It's making the best out of a situation that could cause a child some problems," Arnold says.

Both parents have remarried, which took some adjustment, Marcy says. But in general, the arrangement works out well, say all three.

**MRS. ABERCROMBIE** handles direct contact with Marcy's school. The two parents frequently talk on the phone about grades, Marcy's

friends and other interests. The families exchange Christmas presents and both parents and step-parents attend Marcy's school events, such as gymnastics meets.

"Her father and I are very united on discipline," says Mrs. Abercrombie. "If she's grounded from the telephone or TV here, she's grounded there." Marcy says her mother is a more strict disciplinarian than her father, but that each parent sticks by the other's decisions.

Mrs. Abercrombie says one aspect that makes the arrangement work is an agreement that Marcy cannot use one house or the other to escape disagreements.

"SHE CAN'T GET UPSET with one or the other and then threaten to go live with the other family," Mrs. Abercrombie says.

Arnold pays child support to Mrs. Abercrombie, except when Marcy is spending long periods of time with him. Then, although Mrs. Abercrombie does not pay him support, she buys Marcy's clothes and other major items.

"We do use each other for convenience," says Mrs. Abercrombie, pointing out that Marcy will be spending half of an upcoming week with her father when her mother goes out of town on business.

One reason the joint arrangement works so well, Arnold says, is that the divorce, which Mrs. Abercrombie initiated, was not bitter.

"THERE WASN'T a lot of anger," he says. "It was more hurt than anything else. We talked about (Marcy) logically. I didn't feel at the time there would be any physical separation from my daughter."

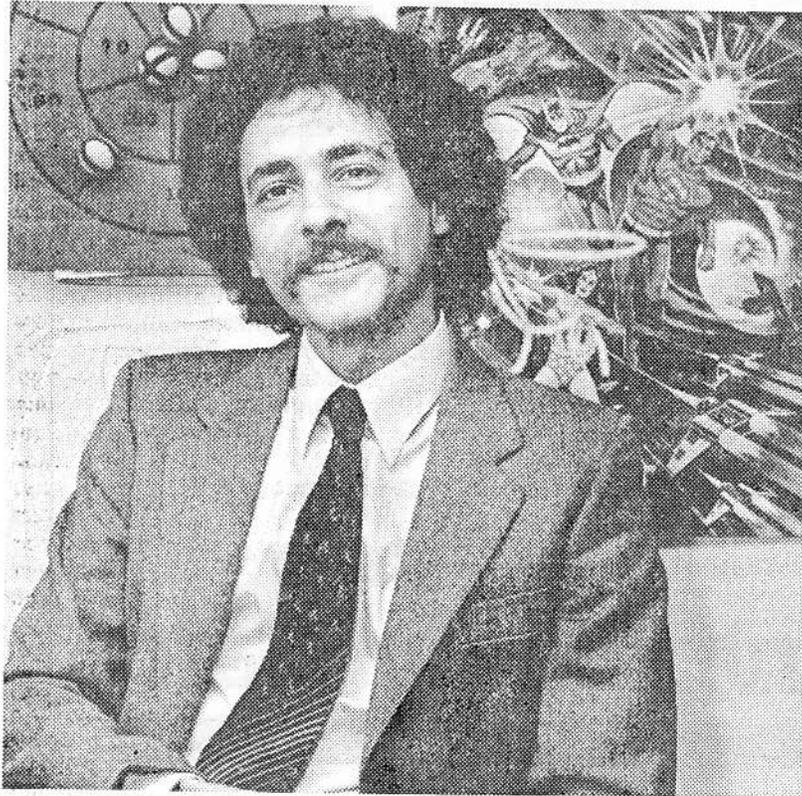
The two parents say it would be nice if the joint custody was officially legal, but they probably won't go to the expense of changing the arrangement.

"There's never been any need to," Arnold says.

A joint custody arrangement doesn't guarantee harmony. Charles Cooper asked his wife, Betty, for a divorce in 1980. Though she was against joint custody, the two hammered out an agreement for their son Jimmy, now 13.

Cooper agreed to talk about their arrangement, but his former wife declined, saying the topic was still too painful to discuss. (All of their names have been changed for publication.)

"She had two sons from a previous marriage," says Cooper, a novelist. "So I can talk from a certain amount of experience on custody



The Dallas Morning News: Jan Sonnenmair

**Psychologist Richard Warshak says preliminary research indicates joint custody may be best for the child of divorce.**

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# tell how it works for them

— seeing firsthand what it did to her ex-husband. He didn't spend very much time with his kids."

**COOPER SAYS** he spent a lot of time doing the nitty-gritty of parenting while his son was young — washing clothes, fixing breakfast, giving baths, helping with homework.

"That was on a practical level, but there was also an emotional level," Cooper says. "I was also close to my kid and I didn't want to lose that. If I was going to divorce, I wanted to make it as untraumatic as possible. And I didn't want to put myself in the position of the outsider, a 'goody-goody' dad."

Jimmy now spends one school semester with his mother, who lives in a Dallas suburb, and the next with his father, who lives nearby. On alternate weekends, the boy visits whichever parent he isn't living with at the time. Summers are split, and holidays alternated.

**WHILE COOPERATION** may be desirable, Cooper says, it's not necessary to make joint custody work.

"My wife did not want joint custody. It was forced on her. She was ultimately convinced that sole custody (with her) was the best thing for our son. But the father brings certain bargaining chips going into a divorce, unless he's just been a heinous person. And I was prepared to go to court for sole custody."

Attorneys' fees and the emotional trauma of going through a court fight finally persuaded Betty to agree to joint custody.

**COOPER PAYS** child support, as well as alimony, to his former wife. The alimony, which is legal in Texas only when both parties agree to it, was more financially feasible for Cooper than a lump settlement.

"In a sense, that was a bargain-

ing chip," he says, "but in this case, it was just a fair way of working out a settlement because I'm self-employed."

After a tough first year, Jimmy seems to be adjusting to the situation, Cooper says. The parents only rarely communicate, he says. "It's finally gotten to where she'll step inside my door when she brings him over."

**ONE OF THE** continuing sore points is religion, he says. During their marriage, Betty became a member of a fundamentalist church; Cooper describes himself as a "humanist." Though he would rather his child weren't raised in the beliefs of his wife's church, he believes Jimmy will make up his own mind someday about religion.

Joint custody isn't for all parents, Cooper says. "But most men aren't really aware that it is an option. Probably a lot of men aren't ready to give up whatever it takes to be a housewife, because that's what you end up being."

Jo Ann doesn't remember much about the process of her divorce from Larry Stogner in 1980. "I didn't want a divorce," says Jo Ann, who has since remarried and asked that her last name not be published. "All I remember is I was so hurt, I would have agreed to anything if it meant we may be able to work things out."

She and her former husband agreed to a joint custody arrangement for their sons Steven and Kevin, now 7 and 4 respectively.

Stogner, an electrical engineer, is wholeheartedly in favor of the situation, so much so that he has gotten involved in Texas Fathers for Equal Rights, which lobbies the Legislature for laws more favorable to joint custody. Jo Ann, a secretary, is less enthusiastic.

**"IF I HAD KNOWN** what it was going to be like, I would have said no," she says. "I feel like the less they are toted around, the better. But I like that they see their father a lot. And they enjoy seeing their father a lot, too. When we were married, he didn't have much to do with them. But now, he spends more time with them."

The two boys spend weeks with their mother in her Plano home; one night a week, on weekends and five weeks during the summer, they go to their dad's Richardson house.

**"IT'S HAD ITS UPS** and downs," says Stogner. "It's a case of trust. If two people can accept the fact that they don't like each other personally but these two children belong to both of them, then everything can work out. We've had our disagreements. That's not unusual, but for one parent or the other to be left out of the child's upbringing is a disservice to the child."

Some of the most basic problems resulted from the remarriage of both parents. "There is always a fear of the new spouse assuming your role with your children," Stogner says. "For example, my youngest boy started right away calling my new wife 'Momma.' He called his mother 'Mommy.' There was severe resentment over that."

**BUT DISCIPLINE** is one issue on which Stogner says he and his former wife have reached a solid agreement. "That's hard to do," he says, "because children will pick up on what they can get away with at each house."

Jo Ann recognizes that joint custody isn't a solution for all divorcing parents, and she says anyone considering the arrangement should attempt it on a trial basis. "We had a lot of problems at first," she says, "but we're working it out."