

**CUSTODY AND FINANCIAL DISTRIBUTION IN MARYLAND**

**AN EMPIRICAL STUDY OF CUSTODY AND DIVORCE CASES  
FILED IN MARYLAND DURING FISCAL YEAR 1999**

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## EXECUTIVE SUMMARY - Custody and Financial Distribution

*Custody and Financial Distribution*, a report by The Women's Law Center of Maryland, is the first large-scale statistical study of custody and the financial outcomes of divorce in the state of Maryland. The Women's Law Center embarked on this intensive research project after receiving input from practitioners and litigants, including callers to its family law hotlines, about perceived inequities and inconsistencies in the custody and divorce process in Maryland. Despite the frequency of these comments, never before has anyone attempted to capture and quantify these experiences on a statewide level.

*Custody and Financial Distribution* builds on previous reports that have explored inequitable property distribution in divorce, gender bias in the courts and other critical family law issues. With respect to the inadequacy of financial distribution to women in divorce as reported in those studies, little has changed since the 1980s. In other areas, such as the prevalence of certain types of custody outcomes, or the availability of dispute resolution services for litigants, this study provides a baseline for assessing the degree of change in the future.

### Here are a few highlights from the study:

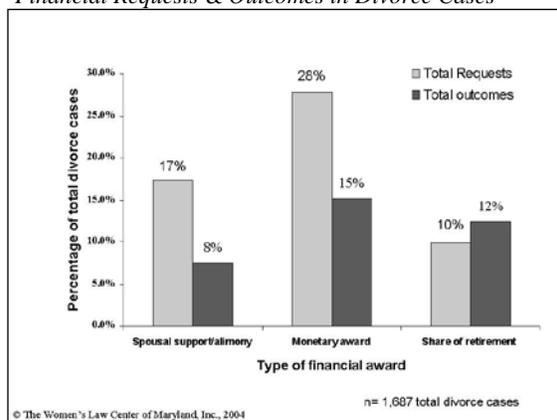
**Extensive sample:** The study analyzed an extensive dataset made up of a random ten percent sampling of all divorce and custody cases filed in Maryland during fiscal year 1999. Data were collected from cases filed in all 24 Maryland jurisdictions for a total of 1867 cases in the sample.

**Profile:** The study considered financial distribution in Maryland families at the time of divorce. Several important characteristics of these families emerged:

- Women were plaintiffs in 61% of all cases analyzed;
- Half of the marriages in the sample were long term marriages, ending after ten or more years of marriage;
- 55% of divorcing couples in the study had minor children; and
- 53% of divorces were granted as voluntary separation.

**Financial distribution:** The data show that few people are seeking or receiving financial accommodations (excluding child support) in a divorce.

*Financial Requests & Outcomes in Divorce Cases*



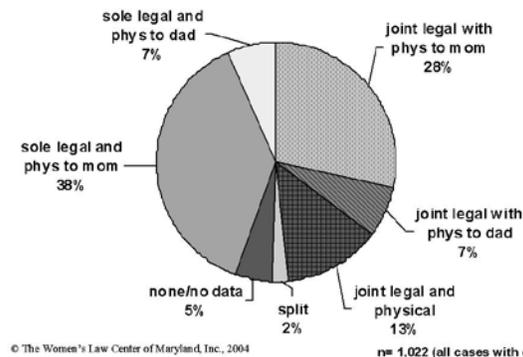
The striking observation about each of these categories is how few *requests* for each type of financial award were actually made. Of the total divorce cases, only 17% of litigants requested alimony, 27% requested monetary awards and 10% requested a share of pension/retirement. In addition, the data show that very few *awards* are made relative to the number of divorce

cases. Only 8% of the divorce cases had alimony awards. Likewise, only 12% of the divorce cases included monetary awards and only 12% included awards of share of pension/retirement. In 65% of all divorce cases, there was no financial award at all.

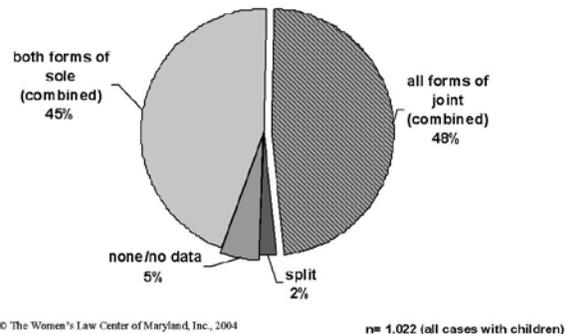
**Predictability of Alimony:** A sophisticated “regression” analysis of many of the statutory factors that are considered for alimony awards revealed that there is little predictability in alimony awards. The regression analysis indicated that alimony awards tend to be predictable only for cases with the longest marriages and the highest incomes. Several factors, including an award of sole custody to the mother, made it less likely that an alimony award would occur. In a state where 50% of marriages end in divorce, lack of predictability at the time of divorce prevents families from planning their financial futures. In addition, with 55% of these divorcing families including children, the impact of the financial outcome on children is undeniable.

**Custody:** The study also shows that women request and receive sole custody more often than do men. (See pie chart, below left). However, when the custody outcomes are grouped by type of decision-making involved (sole or joint), as illustrated in the pie chart, below right, the data indicate that parents are sharing some form of decision-making in Maryland in nearly half of the cases involving children.

*Distribution of Custody Awards by Type*



*Distribution of Custody Awards (combined)*



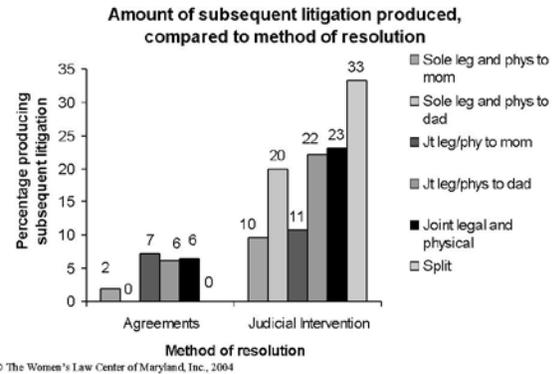
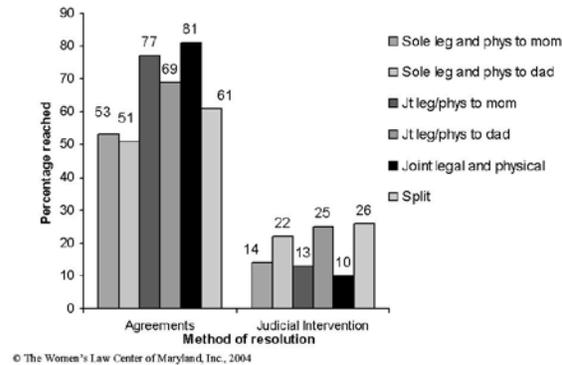
**Decision-making:** The data show that custody outcomes are more frequently resolved through agreements of the parties than through judicial intervention (see chart below left). This indicates that parties in Maryland are working together to resolve custody issues more frequently than they are seeking the court’s assistance in doing so.

One way of assessing the durability of a particular resolution process is to explore whether any subsequent litigation was filed. As shown in the chart below right, the data reveal that when the custody issue is resolved through judicial intervention, parties go back to court at least twice as often as when they agree on the outcome. In particular, where joint legal and physical custody is resolved by the court, the parties return for modification more than three times as often. In recent years, there has been a tremendous emphasis on mediation and other forms of alternative dispute resolution as a method of

reducing emotional and financial costs of litigation in Maryland. The data support the benefit of such programs.

*Who is Making Custody Decisions?*

*How well do Custody Decisions Stand?*



Based on the findings outlined in *Custody and Financial Distribution*, the Women's Law Center proposes the following substantive policy recommendations. A brief restatement of the key findings follows each recommendation:

**Recommendation 1: Expand purpose of spousal support**

**Expand the purpose and implementation of spousal support/alimony awards to promote equitable allocation of financial resources and to compensate for losses so that the economic burden of divorce does not fall disproportionately on women and children.**

Spousal support/alimony was only requested in 17 percent of divorce cases and awarded in 8 percent of the cases. Half of the marriages in the sample were long term marriages, lasting 10 years or longer. For marriages of every duration, men made almost double the women's income at the time of divorce.

**Recommendation 2: Develop spousal support formulas**

**Increase the predictability and consistency of spousal support/alimony awards through the development and implementation of spousal support formulas.**

Spousal support/alimony awards are predictable only in marriages of 20 years or longer, with the highest income, and where income disparity approaches 100 percent. Marriages over 10 years and those where income disparity is less than 100 percent do not have predictable spousal support/alimony awards. Women are receiving fewer financial awards when they receive sole custody.

**Recommendation 3: Oppose joint custody presumption**

**Utilize empirical data to educate legislators, judges, masters and the public about the status and consequences of joint custody in Maryland and oppose legislation mandating a presumption of joint custody.**

Maryland parents are sharing some form of joint decision-making (joint legal custody) in nearly 50 percent of the sample. Joint custody as an agreed outcome results in less (3 times less) subsequent litigation, than the same outcome resolved by judicial intervention. All custody outcomes resolved by agreement result in less subsequent litigation.

**Recommendation 4: Increase alternative dispute resolution**

**Advocate for increased use and support of alternative dispute resolution methods in appropriate cases.**

Outcomes reached by parties prior to litigation result in less subsequent litigation than those resulting from judicial intervention.

**To promote the implementation of the foregoing recommendations, the Women's Law Center proposes the formation of a broad based coalition of attorneys, judges, masters and academics to promote policy and practice changes that will improve custody and financial distribution outcomes for Maryland families utilizing empirical research generated by this study.**

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## **I. Introduction and Background**

For three decades, the Women’s Law Center of Maryland, Inc., has been advocating for a legal system that provides justice and fairness to women. Within the Women’s Law Center of Maryland, Inc. (referred to in this report as the “Women’s Law Center”), the Kaufman Family Law Center focuses exclusively on family law issues affecting women and their families. The Family Law Committee of the Women’s Law Center, comprised of family law practitioners in private practice and legal services organizations, sought funding for this research study because it is interested in learning how women fare in divorce and custody proceedings with respect to custody of the children, property and financial support.

This report describes the first large-scale statistical study of custody and the financial outcomes of divorce in the state of Maryland. While other studies have looked at these issues, none has compiled as much data describing so many cases over such a long period of time. *Custody and Financial Distribution in Maryland* offers an historical overview of Maryland divorce and custody law, a description of the origins of this project and its funding and our research methodology. It also offers a profile of the sample, detailed analyses of the findings, and substantive policy recommendations based on the findings.

The study analyzed an extensive dataset, which consists of a random sampling of all divorce and custody cases filed in Maryland during fiscal year 1999 (July 1, 1998 through June 30, 1999). This report covers the findings of the Women’s Law Center’s research questions.

### **A. Divorce and Financial Distribution: An Historical Overview**

#### *Divorce Statistics*

Just as society has undergone numerous changes in the past half-century, so too has the area of family law. The United States experienced remarkable stability following the end of World War II. The typical family of the fifties consisted of a working husband, a homemaker wife and 2.5 children.<sup>1</sup> Divorce was a rare event (occurring at a rate of 2.6 per 1,000 in 1950; see Table 1 below), but when it occurred, it left a woman and her children stigmatized. The prevailing societal view was that it was the woman’s job to maintain the home and raise the children while her husband worked.<sup>2</sup> Divorces were granted if one spouse failed to live up to his or her commitment, and this failure was considered to be the fault of that spouse.<sup>3</sup>

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<sup>1</sup> Although this was conventional wisdom at time, others argue that a picture of family life in the 1950’s was not in line with this myth. See Coontz, Stephanie, *The Way We Never Were* (New York, N.Y.: Basic Books, 1992).

<sup>2</sup> Lunardine, Christine, *What Every American Woman Should Know About Women’s History: 200 Events That Shaped Our Destiny* (Holbrook, MA: Bob Adams, Inc. 1994) page 348.

<sup>3</sup> Lunardine at p. 349.

In the 1960s some states began liberalizing divorce laws to reflect changing public attitudes about divorce. In 1969, California became the first “no fault”<sup>4</sup> divorce state and that concept was quickly adopted by numerous other states. The sexual revolution occurred during the late 1960s and 1970s, and women were eager to explore career possibilities in addition to the traditional roles of wife and mother.

By the early 1980s, the divorce rate had hit an all-time high of 5.2 divorces per 1,000 couples (*see* Table 1 below). Public attitudes toward divorce were changing, leading to a further liberalization of divorce laws. The rate of divorce at the national level in 2000 stood at 4.2 per 1,000 (Table 1).<sup>5</sup>

*Table 1: National Marriage and Divorce Rates, 1950-2000*

Year	Rate per 1,000 population	
	Marriage	Divorce
1950	11.1	2.6
1960	8.5	2.2
1970	10.6	3.5
1980	10.6	5.2
1990	9.8	4.7
2000	8.5	4.2

*Note: Data above are excerpted from 2002 Statistical Abstract of the United States and based on “No. 66 Live Births, Deaths, Marriages and Divorces: 1950-2001.”*

### *Maryland Governor’s Commission on Domestic Relations Laws*

Maryland did not completely follow the national trend liberalizing divorce laws. While it had “no fault” grounds for divorce — a five-year separation ground added in 1937 (which is now a two-year separation) — Maryland remains a “fault” state, having multiple fault grounds for divorce.<sup>6</sup> In 1976, then-Governor Hughes established the Governor’s Commission on Domestic Relations Laws (commonly referred to as the Groner Commission for the chairperson, Beverly Groner). The purpose of this commission was to “undertake a complete study of the constitutional, statutory and common law concerning domestic relations.”<sup>7</sup> Two years later, the Groner Commission recommended a formalized system for identifying and valuing marital property in the context of

<sup>4</sup> A “no-fault” state is one in which divorce can be granted without presenting a ground (reason) for the separation, i.e. adultery, desertion, or insanity.

<sup>5</sup> Maryland Statistical Abstract 2003 reports that in 2000 there were 38,659 marriages and 17,514 divorces for Maryland’s total population of 5,296,486. See Maryland Statistical Abstract 2003, Table 1:2 Population and Table 2:6 and 2:7 Absolute Divorces and Annulments, pages 40-41.

<sup>6</sup> The grounds upon which divorce may be granted (in fiscal year 1999) included: adultery, desertion, voluntary separation, conviction of a felony or misdemeanor, 2-year separation, insanity, cruelty of treatment, excessively vicious conduct. Md. Code Ann., Fam. Law §7-103 (1999).

<sup>7</sup> The Governor’s Commission on Domestic Relations Law, Report to the Governor of Maryland 1 (1976)

divorce. This recommendation became the Property Distribution Act, enacted by the legislature in 1978. The stated purpose of the Property Distribution Act was to provide for equitable distribution of property acquired during a marriage and therefore to compensate for the monetary and non-monetary contributions made by the spouses before the dissolution of the marriage. The Property Distribution Act was codified as various portions of Section 8 of the Family Law article. Under that statute, judges are required to consider the following factors when presiding over divorce cases:

- Both monetary and non-monetary contributions of each party to the well-being of the family,
- The value of all of the property interests of each party;
- The economic circumstances of each party at the time of the divorce;
- The circumstances that contributed to the estrangement of the parties;
- The duration of the marriage;
- The age of each party;
- The physical and mental condition of each party;
- How and when an interest in the property was acquired;
- Alimony and “use and possession” awards made; and
- Any other factors that the court deems appropriate and just under the circumstances.<sup>8</sup>

Having already explored property distribution in divorce, the Governor’s Commission on Domestic Relations issued a second report in 1980, this time on alimony. Based on testimony presented to the Commission, it found that alimony was in a state of flux and that the law of judicial decisions relating to alimony was “not readily predictable” and therefore needed codification.<sup>9</sup> The Commission’s report stated that “the purpose of alimony is to provide an economic means for both parties to deal with their new unmarried life on their own. Put another way, the purpose is to provide an opportunity for the recipient party to become self-supporting when possible.”<sup>10</sup>

The 1980 report “attempted to establish some consistency in the fashioning of awards, while allowing judicial flexibility on a case by case basis.”<sup>11</sup> Legislators responded to the report by amending the statute to provide judges with factors to consider when awarding alimony.<sup>12</sup> As a result, the current Maryland alimony statute, Md. Code Ann., Fam.Law §11-106, lists the following factors (many of which are the same as those articulated in the Property Distribution Act):

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<sup>8</sup> Md. Code Ann., Fam. Law §8-205.

<sup>9</sup> The Governor’s Commission on Domestic Relations Law, Report to the Governor of Maryland 2 (1980)

<sup>10</sup> *Id.*, at 2.

<sup>11</sup> Elgin, Susan C., “Alimony? It All Depends,” Maryland Bar Journal, Volume XXXV, Number 3, May/June 2002, page 30.

<sup>12</sup> Md. Code Ann., Fam. Law §11-106 (1999).

- The ability of the party seeking alimony to be wholly or partly self-supporting;
- The circumstances that contributed to the estrangement of the parties;
- The time necessary for the party seeking alimony to gain sufficient education or training to find suitable employment;
- The standard of living established by the parties during the marriage;
- The duration of the marriage;
- Both the monetary and non-monetary contributions made by each party to the wellbeing of the family; and
- The physical and mental condition of each party.

To rebut the presumption that alimony should be rehabilitative and thus to award indefinite<sup>13</sup> alimony, the court must find:

- That due to age, illness, infirmity, or disability, the party seeking alimony cannot reasonably be expected to make substantial progress toward becoming self-supporting; or
- Even after the party seeking alimony has made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably disparate.

The underlying assumption of these (and other spousal support/alimony<sup>14</sup>) reforms around the country was that, given a reasonable time to re-enter the work force or improve her employment, a spouse who was not the economic equal of her partner at the time of the divorce could achieve equality afterward. This assumption included the idea that foregone career opportunities (i.e. time “off” for raising children) could be overcome quickly and that women and men would receive equal pay for equal work. However, the assumptions are misplaced — women make up two-thirds of the part-time workforce in this country and take on average 11.5 years off from working, which significantly reduces their ability to accumulate retirement benefits. Studies have shown that women with children experience a “family gap” in their wages in addition to the existing gender gap between men’s and women’s wages.<sup>15</sup>

The principles articulated in the Property Distribution Act (equality) stand in contrast to those articulated by the Groner Commission in regards to alimony (self-sufficiency). Under the Property Distribution Act, property is to be divided equitably to reflect non-

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<sup>13</sup> There are two types of alimony awards under Maryland law: “rehabilitative” and “indefinite.”

<sup>14</sup> Except when citing a statute or a work which uses the term alimony, this report will use the term “spousal support/alimony” in reference to periodic payments from one spouse to another after divorce.

<sup>15</sup> Maryland statistics for 1999-2001 reveal that women earn 83 cents for every dollar earned by men. National Committee on Pay Equity “Long and Winding Road to Equal Pay – National Summary table” and Ferber, Marianne A. and Jane Waldfogel, “The Long-term consequences of non-traditional employment,” Monthly Labor Review, May 1998, and Waldfogel, Jane, “The Family Gap for Young Women in the United States and Britain: Can Maternity Leave Make a Difference?” Journal of Labor Economics, vol. 16. no. 3, 1998.

monetary contributions such as child-rearing and support of a working spouse (enabling that spouse to advance in an income-generating career). In contrast, the purpose of spousal support/alimony is not equality, but self-sufficiency. The Groner Commission addressed the difficulty of determining an individual's self-sufficiency and concluded that their proposal "does not require the Court to make the two standards (equality or discrepancy) the same. It does empower the Court, however, in cases where the standard of living of the recipient party would be unconscionably disparate from that of the paying party, to provide for an extended or indefinite period of payment."<sup>16</sup>

### *Other Maryland Studies and Law*

In addition to the reports from the Groner Commission, other groups have attempted to explore divorce and custody issues in Maryland. Judge Rosalyn B. Bell conducted a survey of a small number (86 out of 2,122, or 4 percent) of divorce cases in Montgomery County in 1986.<sup>17</sup> Her study found that spousal support was typically awarded only to a small group of older women who had ended marriages of a long duration. The husbands of these women usually earned high incomes and were at some level of "fault" for the breakup of the marriage.<sup>18</sup>

In 1989, the Maryland Special Joint Committee on Gender Bias in the Courts released a study addressing concerns about the inequitable application of laws regarding divorce, custody and distribution of financial resources between men and women.<sup>19</sup> This Committee collected information four ways: a survey to the bench and the bar, a survey to judges and masters using hypothetical examples, witness testimony at public hearings, and written complaints to the committee.

The Committee on Gender Bias made a variety of findings and conclusions:

- Spousal support awards were too low and usually inconsistent, resulting in unpredictable and unfair results;
- In most cases, the award of attorney's fees and/or litigation expenses were too low, and as such, the awards did not allow an economically dependent spouse or custodial parent to adequately litigate a case;

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<sup>16</sup> Report 2, supra note 9, page 5.

<sup>17</sup> Information for this study was gathered in four ways: 1) The case files in the contested cases in Montgomery County in 1986 were reviewed (86 out of 2122); 2) A questionnaire was sent to 26 attorneys who had represented plaintiffs during this period. An additional 354 cases were reviewed.; 3) Domestic relations masters of the Circuit Court for Montgomery County kept records from 1988 of all uncontested divorces granted by them recording whether alimony was agreed to, this sampling including 218 cases.; 4) appeals and settlement were reviewed to see whether modifications had occurred.

<sup>18</sup> Bell, Rosalyn B., "Alimony and the Financially Dependent Spouse in Montgomery County, Maryland," *Family Law Quarterly*, Volume XXII, Number 3, Fall 1988, pages 276-299.

<sup>19</sup> Caplan, Hilary, et. al., *Special Joint Committee on Gender Bias in the Court*, "Gender Bias in the Courts," (Annapolis, MD: 1989)

- Major delays in having child support hearings and/or alimony *pendente lite* (pending litigation) hearings put a heavy burden on economically dependent spouses and custodial parents; and
- Child support awards did not reflect a fair assessment of the child's needs.

In 1992, the University of Maryland School of Social Work conducted a study of Maryland's Divorce System for the Governor's Task Force on Family Law.<sup>20</sup> Questionnaires were mailed to every divorce litigant in Maryland during a two-month period (with certain exceptions) to elicit their experiences and their recommendations for change to the divorce process.

The study examined this question: "Are the economic and social consequences of divorce different for men and women?" and compared information for women and men in the following areas:

1. Pre-separation and post-divorce standard of living;
2. Perceptions of how the divorce process affected the post-divorce standard of living.
3. Perceptions of the divorce process.
4. Effect of legal costs on outcome.<sup>21</sup>

The results of the University of Maryland study were based on the 53 percent response rate to the questionnaire. The study found that "when the consequences of divorce for men and women are compared, they are significantly different and the pattern of that difference is that women experience greater loss/less gain relative to men."<sup>22</sup> This finding was consistent with other national studies that found that financially women fared worse after divorce than men.<sup>23</sup>

Even despite the changes in Maryland's divorce statutes in the 1980s, there is little predictability when it comes to alimony/spousal support. The reported appellate cases in Maryland reveal inconsistent applications of the laws relating to alimony.<sup>24</sup> Some observers have noted that "practitioners anticipating clear direction from the courts

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<sup>20</sup> Mitchell, Dr. Gust W. and Dr. Malinda B. Orlin, "Maryland's Divorce System: A Study of the Economic and Social Consequences of Divorce for Maryland Families." University of Maryland School of Social Work, 1992.

<sup>21</sup> *Id.*, at 1.

<sup>22</sup> *Id.*, at 25.

<sup>23</sup> Generally speaking the average decline for women's standard of living after divorce is somewhat steeper than 30 percent, while a man's standard of living tends to increase a little more than 10 percent. Petersen, Richard R., "A Re-Evaluation of the Economic Consequences of Divorce," 6 *American Sociological Review*, June 1996, 528-536. Quoted in Lorraine Dusky, *Still Unequal* (New York, NY: Crown Publishers, Inc., 1996), 431.

<sup>24</sup> Jacobs, Richard B. and Laurie R. Hazman, "Until Death, Remarriage or Rehabilitation Do Us Part," *Maryland Bar Journal*, Nov/Dec 1992, Volume XXV, No. 6, pages 7-9.

regarding alimony will have to continue to sort through a number of clouded and inconsistent opinions rendered by the Appellate Courts.”<sup>25</sup>

As a part of this project and in an effort to put Maryland in context with other states, the Women’s Law Center conducted a review and analysis of the spousal support/alimony practices and procedures across the country. This analysis revealed that, like Maryland, no states have mandatory formulas for the award of spousal support/alimony. However, unlike Maryland, several states have suggested or voluntary “guidelines” to assist practitioners and judges in determining: 1) whether an award of spousal support/alimony should be made; and 2) if so, what the amount of the award should be.

## **B. Exploring custody in Maryland**

### *The Custody Standard*

As with spousal support/alimony laws, child custody laws have evolved in response to the shift in families over the last half-century. Prior to 1974, Maryland case law provided for a maternal preference in custody cases (also sometimes called the “tender years rule”). In other words, unless evidence to the contrary was presented, a court presumed that when parents separated, the best placement for a young child was with his or her mother.<sup>26</sup> The passage of the Maryland Equal Rights Amendment in 1972 precipitated a change in this approach to custody determinations. The maternal preference was modified by the Court of Special Appeals in 1974,<sup>27</sup> and later that year it was expressly abolished by the Maryland Legislature, as it amended the statutes to reflect the passage of the ERA. In the 1977 case, *Montgomery County Department of Social Services v. Sanders*,<sup>28</sup> the Maryland Court of Special Appeals provided guidance about the best interest of the child, stating that a “totality of the circumstances” assessment should accompany custody determinations, with no preference for either parent. The court set forth factors to be considered, making it clear that these factors were not exclusive and that no one factor was to be given more weight than the others:

- Fitness of the parents;
- Character and reputation of the parties;
- Desire of the natural parents and agreements between the parties;
- Potentiality of maintaining natural family relations;
- Preference of the child;
- Material opportunities affecting the future life of the child;
- Age, health and sex of the child;

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<sup>25</sup> Hapfer, Cheryl and Sherry Ginsburg, “Alimony Update,” Maryland Bar Journal, March/April 1996, Volume XXVII, No. 2, page 28.

<sup>26</sup> See *Hild v. Hild*, 221 Md. 349 (1960); *Kirstukas v. Kirstukas*, 14 Md. App. 190 (1972).

<sup>27</sup> *Cooke v. Cooke*, 21 Md. App 376 (1974)

<sup>28</sup> 38 Md.App. 406, 1977

- Residences of parents and opportunity for visitation;
- Length of separation from the natural parents; and
- Prior voluntary abandonment or surrender.<sup>29</sup>

In the 1986 case, *Taylor v. Taylor*,<sup>30</sup> the Maryland Court of Appeals awarded joint legal and physical custody, and the Court articulated a series of factors that were to be considered in *all* custody cases when trying to determine the respective roles and obligations of separating parents, including these selected factors:

- willingness of each parent to share custody;
- strength of each parent’s relationship to the child;
- demands of parental employment;
- “fitness” of each parent; and
- sincerity of parents’ requests.

Despite repeated efforts by Maryland courts and the legislature to articulate factors supporting the assessment of a child’s “best interest,” the implementation of this standard nonetheless demands a subjective and individualized consideration. Perhaps that is as it should be; each child is unique, and therefore each case should be determined on an individual basis. Still, complaints are made by both women and men that custody decisions are not fair or representative of the “best interest of the child.”

In the past few years, perhaps in response to these types of complaints, there has been legislation proposed in Maryland to create a presumption for joint custody. This legal presumption would replace the “best interest” standard in favor of a presumed outcome of shared custody, unless one party is able to offer evidence (rebut) showing that shared custody would not be appropriate.<sup>31</sup>

There is no Maryland data to indicate the incidence of custody awarded to mothers prior to the abolition of the maternal preference presumption. However, during the 1980s, sole legal and physical custody was awarded to women on a national basis at around 90 percent. The pendulum began to swing back toward fathers in the early 1990s.<sup>32</sup> In 1990, a national survey of nineteen states found that sole custody was being awarded to women 75 percent of the time, while men were receiving custody in 10 percent of cases.<sup>33</sup> Now, fathers are requesting and receiving sole and joint custody more often.

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<sup>29</sup> *Id.*, at 420.

<sup>30</sup> *See Taylor v. Taylor*, 306 Md. 290 (1986) for a complete list of the factors articulated by the Court.

<sup>31</sup> The most recent proposed legislation relating to joint custody was House Bill 1217 (2004).

<sup>32</sup> Dusky, p.337.

<sup>33</sup> *See* Table 18. Number and percent distribution of children under 18 years of age for whom custody was reported, by person(s) awarded custody, according to age of husband and wife at time of decree: Total of 15 reporting states in 1989 and total of 19 reporting States in 1990. National Center for Health Statistics, Monthly Vital Statistics Report, Vol. 43, No. 9(s), March 22, 1995, pages 25-26.

According to one author, when fathers contest custody, they have a very good chance of getting joint custody or even full custody.<sup>34</sup>

### **C. The Research Study Takes Shape**

For years, the Women's Law Center has heard anecdotal accounts of custody matters from women and men across the state. The Women's Law Center, in conjunction with the Legal Aid Bureau, staffs a statewide Family Law Hotline, and the Women's Law Center also operates a "Legal Forms Helpline." Both Hotline and Helpline attorneys answer questions about family law matters, court procedures and other general concerns. These attorneys hear a regular stream of stories (often laced with frustration) about custody outcomes, representation (or the lack thereof) and the legal process and court services. In addition, the issue of joint custody — who gets it, who should get it and how often — is a regular issue in Maryland's state legislature. Little research has been done to study the practice of awarding joint custody in Maryland.

In addition to anecdotal stories from both women and men of custody situations being resolved unsatisfactorily, family law practitioners and hotline attorneys have heard similar complaints about divorce and property distribution during divorce. The empirical research on these issues in Maryland was limited. For example, in the other studies cited above, the only review of Maryland family law case files took place in Montgomery County, and the sample size was small. The Gender Bias Study was based on impressions of judges and lawyers and self-selected litigants. The 1992 University of Maryland School of Social Work study hand-selected the cases rather than using a random sample and it focused on a very short time period (two months).

The Women's Law Center's research project sought to address some of the limitations of earlier studies by conducting a statewide, objective and methodologically sound empirical study exploring custody and financial distribution in divorce in Maryland. Through this study, an attempt was made to explore the legislative changes made more than thirty years ago and to understand the way the courts address the non-monetary contributions of spouses to the family, to answer some of the other questions left unanswered by previous research, to continue the work of the Commission for Domestic Relations and the Select Gender Bias Committee, and to produce data to inform policy initiatives relating to these important aspects of family law.

Empirical data was collected with the goal of disseminating the results and educating key audiences about the issues raised. In December 2000, the Women's Law Center first embarked on a research study to explore only custody in Maryland – a project designed to collect empirical data and find out how it related to the stories shared with family law

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<sup>34</sup> Dusky, p. 337-338.

practitioners across the state. This study was initially designed to collect data in five Maryland jurisdictions<sup>35</sup> and to answer the following questions:

- What are the most prevalent custody outcomes?
- How do those outcomes compare to the requests from litigants?
- How are custody decisions being made? By whom?
- How well do custody decisions hold up?

About one year later, with additional funding, the Women's Law Center designed another research initiative to look at the decisions made during a divorce that affect the financial status of the women involved. Specifically, this project sought to answer the following questions:

- How are financial assets being distributed in divorce?
- What factors impact the distribution?
- What is the interplay between various financial awards (alimony, monetary award, share of pension or retirement)?
- What is the status of spousal support/alimony in divorce cases?

The research populations for the above two initiatives were obviously very similar, and the subject matter overlapped. Consequently, The Women's Law Center combined the two projects and embarked on a quest to explore the relationship, if any, between custody outcomes and financial distribution.

## **II. Research**

### **A. Methodology**

#### *Study Population*

In order to make the study representative of Maryland statewide, the Women's Law Center systematically collected a sample from each of the 24 jurisdictions (23 counties plus Baltimore City) in the state. To determine what the parameters of such a sample would be project directors contacted the Administrative Office of the Courts (AOC) in Annapolis to inquire about the number of divorce and custody cases filed during FY99, and to determine the appropriate manner in which to collect cases statewide.<sup>36</sup>

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<sup>35</sup> The initial proposal to conduct the custody research in only five jurisdictions was amended when the project was joined with the Financial Distribution in Divorce research project and the sample for both projects became statewide.

<sup>36</sup> Project Directors worked with the AOC's Department of Family Administration which is responsible for assisting Maryland's courts in developing a comprehensive family law system. The Family Administration has overseen the creation of family divisions in Anne Arundel County, Baltimore City, Baltimore County, Montgomery County and Prince George's County, and family services programs in the remaining 19 counties. It works with judges, masters, court administrators and family support services coordinators to develop family law policy and to identify and promote best practices in the handling of domestic and juvenile cases.

Fiscal year 1999 was selected as the research focus because it was the most recent complete year for which case files were available at the inception of the first research project in December 2000.

The AOC provided the Women's Law Center with figures of divorce and custody cases broken down by county. This information indicated that there were approximately 27,000 divorce and custody cases initiated during the selected fiscal year. The Women's Law Center sought to capture a random ten percent sample of the cases filed during FY99, which would result in the review of approximately 2,700 court files.

### *Case Selection and Randomization Process*

The Women's Law Center requested from each jurisdiction a case list of all domestic filings (divorce and custody) for FY 99. After obtaining this case listing,<sup>37</sup> the Women's Law Center used a standard randomization process to select 10 percent of the total cases for field review.

### *Research Instrument*

A questionnaire-style research instrument was created at the beginning of the Custody Research Project in 2000. When this project was combined with the study of financial distribution in September 2001, the Project Directors revised the research instrument to capture data relevant to both studies. In addition, an "absent/dismissed case form" was developed to capture and track cases for which a complete research instrument could not be completed.<sup>38</sup>

### *Data Collection and Review*

#### Recruitment and Training

Researchers were recruited by newspaper and internet announcements. All but two hired researchers were recent law school graduates.<sup>39</sup> Each researcher participated in a training session using materials developed by the Women's Law Center. All training

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<sup>37</sup> In some jurisdictions, neither the Family Support Services Coordinator (FSSC) nor the clerk's office could generate a computerized list for the entire fiscal year because the transition to the computerized system (UCS) did not take place until sometime within that year. For example, in Caroline County, the UCS system was not in place until October 1998. Therefore, the FSSC in that county was only able to provide the project with a computerized listing of cases filed from October 1, 1998, through June 30, 1999. The list for the first three months of the fiscal year had to be generated manually by reviewing the docket books maintained in the courthouse. In one county, the case list for the entire fiscal year had to be generated manually.

<sup>38</sup> See discussion of absent/dismissed case forms below.

<sup>39</sup> The exceptions were two university students. The Project Directors also conducted field research.

sessions were conducted by the Women’s Law Center’s Project Directors for the research study.

At the training sessions, researchers were given an overview of case management, divorce and custody law and court procedures. As part of the hands-on training, an actual court file was reviewed by the researchers and trainers together. Researchers then independently completed a file review and research instrument on their own. The group analyzed the mock data collection by evaluating the research instrument and discussing issues and questions. These instruments were then checked by the trainers. On the first day of field research, each researcher was accompanied by one of the Project Directors or another experienced researcher.

### Case Review in the Field

As the Women’s Law Center prepared to conduct field research in each jurisdiction, one of the Project Directors contacted the Family Support Services Coordinator (FSSC) or clerk’s office in advance to discuss schedule and logistics of the field research. The Women’s Law Center provided each jurisdiction with the master list of cases selected for review in that county prior to traveling to the courthouse.

For each case on a jurisdiction’s master list, one of two forms was completed: a research instrument or an absent/dismissed case form. An absent/dismissed case form was completed for cases that could not be found, cases that were dismissed prior to judgment, cases for which there were no final orders in the file, cases that had been consolidated or transferred or cases that were considered “out of scope.”<sup>40</sup> While reviewing a case (with either form), the researcher marked the date of review and his/her name on the master list. Completed master lists were maintained with other confidential project documents.

### Data Review and Entry

Each research instrument was reviewed by one of the Project Directors. Research protocol included development of a secure database for the maintenance of identifying information from each case file,<sup>41</sup> and a research database for the collection of other data from the case files.<sup>42</sup> Following an internal review of the research instruments and the absent/dismissed case forms, identifying information for each case was entered into the

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<sup>40</sup> “Out of scope” cases were those cases that appeared on the source lists from each jurisdiction as having been initiated during FY99; however, upon examination of the case file, it was determined that, in fact, the legal action during FY99 was a continuation of some issue in the case, such as a modification of custody. Therefore these cases were not considered to have been initiated during that fiscal year.

<sup>41</sup> Although court files are public record, the project developers and consultants decided to protect all personal identifying information contained within the reviewed files. This information includes case numbers, party names and phone numbers. Cases are identified in the study using only a unique number identifier.

<sup>42</sup> The research database captured data from the research instruments separately from the data captured by the absent/dismissed case forms.

secure database, and each case was given a unique number identifier for use in all future references to that case. Thereafter, all data from the field were entered into the research database. The data were then converted to a statistical database for analysis.

### Data Checks

In addition to review before entry, a variety of data checks were performed on the dataset to verify its accuracy. A computerized random number generator was used to select 10 percent of the sample for a systematic “data entry check.” In addition, the Women’s Law Center conducted “back to the field” research to clarify missing or inconsistent data in selected cases and on selected topics, including spousal support/alimony, number of children and date of judgment. A cross check of the data was also conducted to eliminate or address inconsistent responses.

### *Data Analysis*

The Women’s Law Center developed a set of research questions designed to elicit information that would address the substantive research goals and objectives. Both the Advisory Committee of the Financial Distribution in Divorce Project and members of the Family Law Committee of the Women’s Law Center provided feedback and insight into the development of the research questions. Working with the Project Directors, the research questions were coded by the Research Consultant and analyzed using a statistical database.

## **III. Profile of the Sample**

### **A. Number of Cases Reviewed**

As stated in Section II, The Women’s Law Center attempted to capture a ten percent sampling of the divorce and custody cases filed during FY99. Despite the estimate from the Administrative Office of the Courts of approximately 27,000 such cases filed, the actual number of cases on the source lists from each jurisdiction added up to a total of 23,520 cases.<sup>43</sup> This is the figure from which the 10 percent research sample was selected.

Once in the field, the total number of cases for which a research instrument could be completed was 1,847. Researchers encountered 726 cases from which significant data could not be collected. (Each of these cases fell into one of six categories, the largest of which was “dismissed prior to completion.” For these 726 cases, an absent/dismissed case form was completed and entered into the databases.) A total of 2,573 cases were therefore captured in the study.

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<sup>43</sup> The difference between this number that the estimate provided by AOC is due to variances in the methods by which each county codes and tracks cases.

## *Distribution of Cases*

### By County

Data were collected from cases filed in all 24 Maryland jurisdictions. The largest number of cases were collected from Baltimore County (299 or 16.2 percent of the total sample), Montgomery County (262 or 14.2 percent of the total sample), Baltimore City (243 or 13.2 percent of the total sample), and Anne Arundel County (235 or 12.7 percent of the total sample). Cases from these jurisdictions represented over half (56 percent) of the total cases collected.

Cases from Metropolitan Baltimore (Anne Arundel County, Baltimore City, Baltimore County, Carroll County, Harford County, and Howard County) represented 53.2 percent of the research sample. Cases from Metropolitan Washington (Montgomery County and Prince George's County) represented 21.3 percent of the sample. The rural regions supplied smaller samples: cases from Western Maryland (Allegany County, Frederick County, Garrett County, Washington County) 11.4 percent; Southern Maryland (Calvert County, Charles County, St. Mary's County) 6.3 percent; and the Eastern Shore (Caroline County, Cecil County, Dorchester County, Kent County, Queen Anne's County, Somerset County, Talbot County, Wicomico County, Worcester County) 7.8 percent.

### By Case Type

In most jurisdictions, cases were categorized in the jurisdiction at the time of filing by the title of the action as indicated on the initial pleading (usually the complaint). The majority of the initial case filings were for absolute divorce (1,528 or 82.7 percent of the total sample). Cases that were filed as limited divorce but were converted to an absolute divorce accounted for 141 (7.6 percent) of the total cases. Less than one percent (18 cases) were filed and resolved as a limited divorce. There were two annulment cases, which were later re-classified as absolute divorce cases for the purposes of analysis. In total, there were 1,687 divorce cases. A small number of cases were filed as custody only (160 or 8.7 percent) because the parties were unmarried.

## **B. Demographic Information**

The research instrument was designed to capture the following demographic information from our sample: race, sex, age, highest grade completed, employment status, income, special needs, and county of residence. The parties' race, sex, age, and highest grade completed are listed on the Report of Absolute Divorce, or "blue form," which is required to be completed in every Maryland divorce case.<sup>44</sup> The blue forms were not accessible to the field researchers because, with the exception of St. Mary's county, they are sent by the clerk's office to the *Division of Vital Records Department of Health & Mental*

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<sup>44</sup> Authority for this form is Md. Code Ann., Health-General § 4-206.

*Hygiene*, and copies are not retained in the case file.<sup>45</sup> Additionally, the forms are not accessible by the public once they are retained at *Vital Records* because the information is considered confidential.

In some cases, researchers found select demographic information from other documents in the case file, but since demographic information is not routinely maintained and is not generally part of the substance of the pleadings within a case, demographic information in the sample is limited.

Gender information was available in larger numbers than was race, employment or education. In the cases reviewed, the plaintiff was female in 61.0 percent of the cases and male in 39.0 percent. The plaintiff's race was unknown in 93 percent of the cases and defendant's race was unknown in 89.2 percent of the cases. Although data about race were not available in the majority of cases, data for 2000 indicate that the statewide population was 64 percent white and 36 percent all other races.<sup>46</sup>

The employment status of the parties was also difficult to discern from the court file. In 468 cases (25.3 percent), the court file indicated that the plaintiff was employed, and in 62 cases (3.4 percent), the file indicated that the plaintiff was unemployed. Defendants' employment status was known in 488 cases (26.4 percent). The defendant was employed in 448 cases (24.3 percent) and unemployed in 40 cases (2.2 percent).

The highest level of education could be discerned in 179 cases (9.7 percent) for plaintiffs and 183 cases (9.9 percent) for defendants.

#### **IV. Data Analysis**

Our findings have been organized into four sections: Financial Distribution, Custody Analysis, Interplay between Custody and Financial Distribution and Family Services. The data generated recommendations for future action and those recommendations are found in Section V, along with highlighted findings and discussion.

##### **A. Financial Distribution**

The end of a marriage is akin to the dissolution of a business: assets need to be divided between the parties. In divorce law, this process is referred to as property distribution. Property has a broad meaning in the context of divorce — not only is real property (family home, rental/vacation properties, land) at issue, but there are also investments, pensions or retirement accounts, and cash. Md. Code Ann., Fam.Law §§8-201- 8 -213 governs property distribution in divorce and set forth the factors to be considered by a court when dividing assets. In divorce, a monetary award may adjust for the equities and

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<sup>45</sup> In St. Mary's County, the Clerk's office makes a copy of the "blue form" before sending it to Vital Records and affixes it to the case file.

<sup>46</sup> Table 1:7 Population by Race, Maryland 1990 and 2000, Maryland Statistical Abstract, RESI, Towson University, 2003.

rights of the parties and alimony may be awarded to assist the economically dependent party in becoming self-supporting.

Our study considered financial distribution in Maryland families at the time of divorce and explored a variety of factors and processes employed in resolving financial matters. Several important characteristics of Maryland families included in this analysis emerged:

- Women were plaintiffs in 61.0 percent of all cases analyzed;
- Half of the marriages in our sample were long term marriages, ending after ten or more years of marriage;<sup>47</sup>
- 55 percent of divorcing couples in the study had minor children; and
- The most common ground for which divorce was granted was voluntary separation (53 percent).

### *Types of Awards*

For purposes of this study, we reviewed three categories of property: monetary awards, share of pension/retirement, and spousal support/alimony. A brief description of each category follows.

#### Monetary Awards

A party may receive a monetary award (either by agreement or as granted by the court) as an adjustment of the equities and rights of the parties concerning marital property. For example, if investment accounts or a business are listed in spouse A's name only, the court may grant a monetary award to spouse B to adjust the equities. Monetary awards in divorce are governed by Md. Code Ann., Fam.Law §8-205. This section sets out factors for the court to consider in determining the amount and method of payment of a monetary award.<sup>48</sup> Maryland law does not allow courts to transfer the ownership or title of real or personal property from one spouse to the other. However, parties may agree upon a monetary award to compensate for the loss of an asset such as a home.

#### Share of Pension or Retirement

If one or both parties have worked consistently throughout the marriage, then they may have pension or retirement plans. Under the general guise of "monetary award" governed by Md. Code Ann., Fam.Law §8-205, a court may transfer full or partial ownership in one spouse's pension or retirement plan to the other spouse to equalize economic inequities between them, or to compensate a spouse who has been unemployed or underemployed during the marriage.

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<sup>47</sup> See Appendix, Table App-1.

<sup>48</sup> See discussion of factors below.

## Spousal Support/Alimony

Spousal support, also called alimony, is an award of periodic payments from one spouse to another to assist the economically dependent spouse in becoming self-supporting.<sup>49</sup>

### *Requests and Outcomes*

This study examined each of these three types of financial awards to see how frequently they were requested and how frequently they were distributed.

Figure A and Table 2 below show, for all divorce cases, the number and percentage of requests and awards for men and women, including spousal support, monetary awards and pensions. All percentages are of the total number of divorce cases in the sample (1,687). Request bars are shown first (in light gray) and outcomes second (in dark gray) for each type of award and are listed as a percentage of the total divorce cases. The number of awards in each category is listed in the total column of Table 2. For example, 252 women requested spousal support, which represents 14.9 percent of all divorce cases; 42 men requested spousal support, representing 2.5 percent. Therefore, as shown in Figure A, a total of 17.4 percent of the divorce cases in our sample included requests for spousal support.<sup>50</sup>

The striking observation about each of these categories is how few requests for each type of financial award were actually made. Of the total divorce cases, only 17.4 percent of litigants requested spousal support, 27.8 percent requested monetary awards and 9.9 percent requested a share of pension/retirement.

In addition, the data show that very few *awards* are made relative to the number of divorce cases. Only 8 percent of the divorce cases had spousal support/alimony awards. Likewise, only 12 percent of the divorce cases included monetary awards and only 12 percent included awards of share of pension/retirement.

Note that the frequency of awards of the share of pension/retirement shown below in Table 2 and Figure A (209 awards, 12.4 percent) is higher than the frequency of requests in the sample (167 requests, 9.9 percent). This could be explained by the fact that although a litigant may not initially request a share of the pension/retirement in the original complaint, it may be requested in a subsequent pleading or offered for settlement purposes during the negotiation of the case.

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<sup>49</sup> Md. Code Ann., Fam. Law §11-106 and see Historical Overview, *supra*.

<sup>50</sup> Numbers in Figures are rounded to the nearest whole number.

Figure A: Financial Requests and Outcomes in Divorce Cases

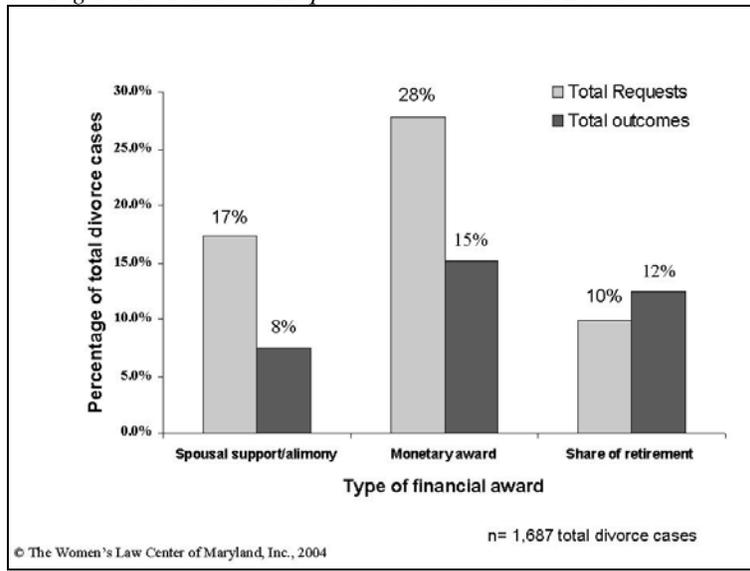


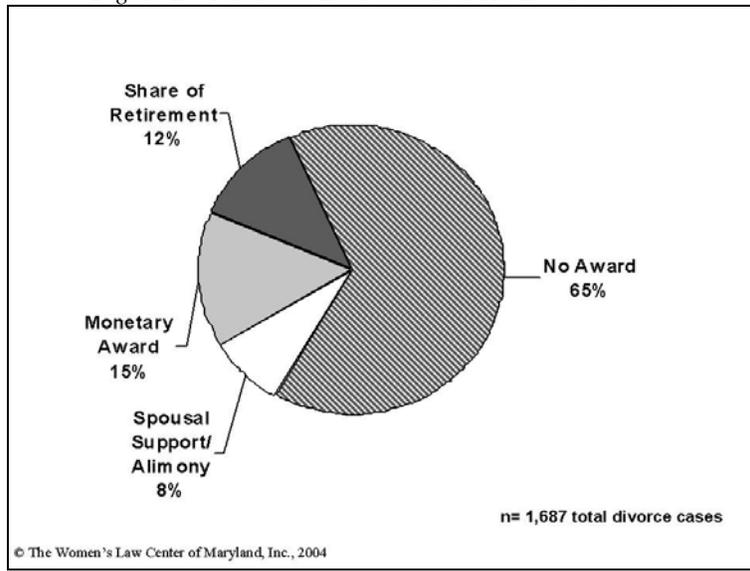
Table 2: Requests and outcomes by gender for spousal support/alimony, monetary awards and pensions, of divorce cases

Request and outcome	Male		Female		Total	
	n	%	n	%	n	%
Spousal support/alimony requested	42	2.5	252	14.9	294	17.4
Spousal support/alimony awarded	2	0.1	125	7.4	127	7.5
Monetary award requested	170	10.1	299	17.7	469	27.8
Monetary award granted	38	2.3	218	12.9	256	15.2
Share of pension/retirement requested	43	2.5	124	7.4	167	9.9
Share of pension/retirement awarded	17	1.0	192	11.4	209	12.4

Note: Percentages in Table 2 are the number within each category as a percentage of the total number of divorce cases (n=1,687).

An overview of the financial outcomes for divorcing families is shown in Figure B. The data illustrate that in almost two-thirds of divorce cases no financial award is made at all.

Figure B: Financial Distribution in All Divorce Cases

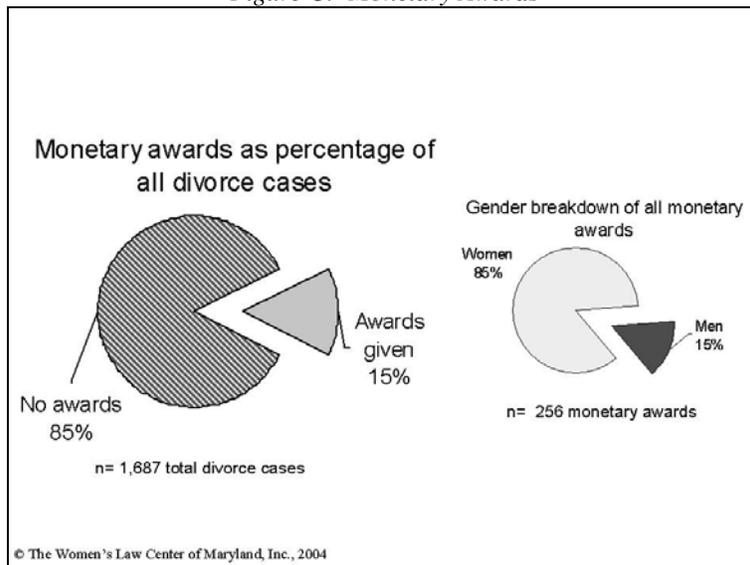


### Financial Awards by Gender

For further analysis of financial awards, each category is considered separately and by gender. Table 2, discussed above, contains all of the data for Figures C – E, below.

Figure C shows that in the majority of divorce cases, 85 percent, no monetary awards are made. Examining by gender the 15 percent of awards that are made, 85 percent (218) are made to women, while only 15 percent (38) are made to men.

Figure C: Monetary Awards



A share of the pension/retirement is awarded in only 12 percent of all divorce cases. Figure D below illustrates that 92 percent (192) of those awards go to women and 8 percent (17) go to men.

Figure D: Pension/Retirement Awards

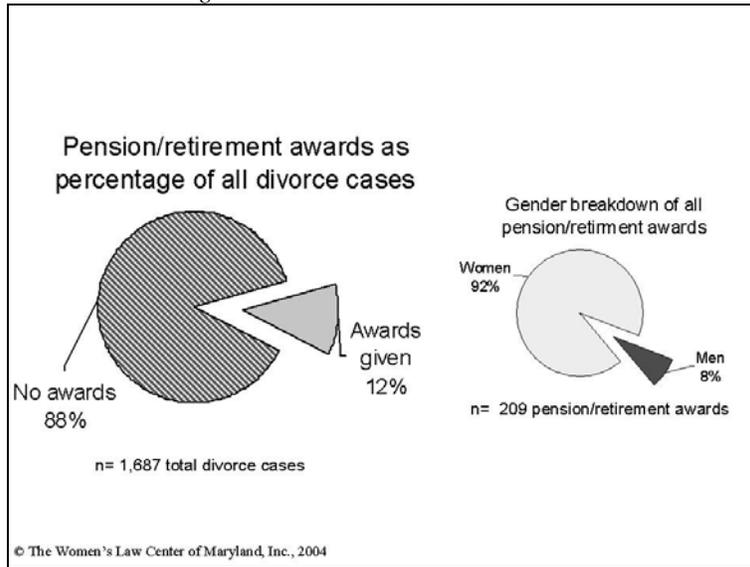
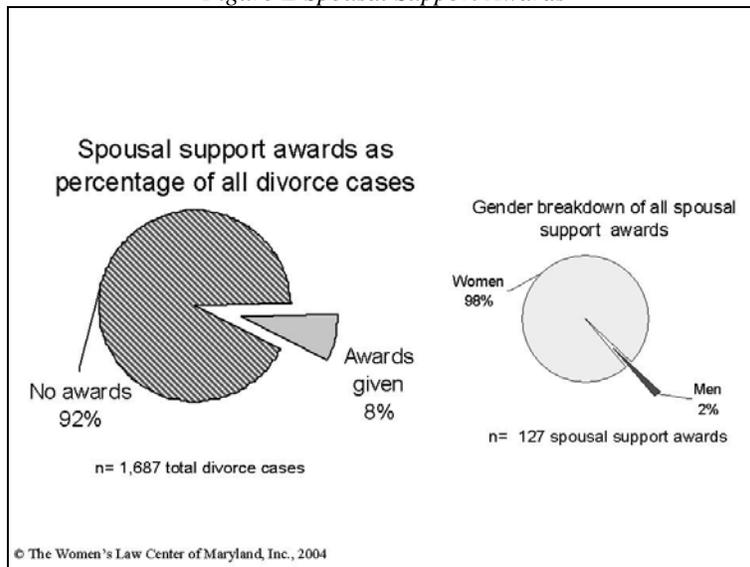


Figure E shows that out of a total of 1,687 divorce cases, spousal support awards were made in only 8 percent (127) of the cases. By gender, 98 percent (125) of the awards went to women while only 2 percent (2) went to men.

Figure E Spousal Support Awards



### Factors

Awards made in these three categories must be considered in relation to each other. Md. Code Ann., Fam.Law §8-205(10) states that "any award of alimony and any award or other provision that the court has made with respect to any family use personal property or the family home" must be taken into account when determining whether or not to make a monetary award.

Md. Code Ann., Fam.Law §8-205(b) sets out other factors to be considered in deciding whether to make a monetary award. Those factors are:

- contributions (monetary and non-monetary) of each party to the family;
- value of property interests of the parties;
- economic circumstances of each party;
- circumstances that contributed to the estrangement of the parties;
- length of marriage;
- age of parties;
- physical and mental condition of the parties; and
- any award of alimony, family use personal property or the family home.

Pursuant to Md. Code Ann., Fam.Law §11-106(b), five additional factors are considered in determining whether an award of spousal support/alimony should be made:

- ability of the party seeking alimony to become self supporting;
- time needed to become self supporting;
- ability of party from whom alimony sought to pay;
- standard of living during marriage; and
- financial needs and resources of each party.

And, also outlined in Md. Code Ann., Fam.Law §11-106(c), two final factors are considered when a request for indefinite alimony is made:

- whether it is impossible due to age, illness or infirmity for the party seeking alimony to become self supporting; or
- if the party becomes self supporting the standards of living of the parties will still be unconscionably disparate.

Many of these factors were analyzed to see if there was a relation to the financial distribution outcome. However, not all factors could be analyzed because information about those factors was not available in the case files. For example, the case files do not indicate or quantify the parties' "standard of living during the marriage."

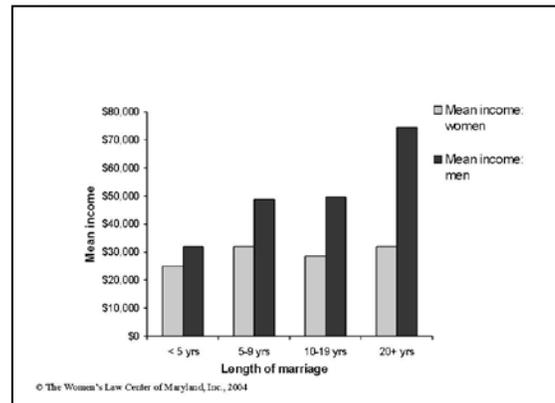
#### *Factor 1: Financial Resources of the Parties*

Figure F, below, and corresponding Table 3 show the mean income of men and women broken down by length of marriage. As illustrated, for each length of marriage interval, men's mean income is greater than women's mean income. In addition, the gap between men's and women's mean incomes increases as the length of marriage increases and is greatest at 20+ years of marriage. For 10-19 years of marriage, women's mean income is lower than for 5-9 years of marriage.

Table 3: Mean incomes, by gender and marriage length,

Marriage length	Mean Income	
	Men	Women
Less than 5 years	\$31,946	\$24,875
5-9 years	\$48,772	\$32,149
10-19 years	\$49,583	\$28,459
20 yrs or greater	\$74,321	\$31,951

Figure F: Factor: Income by Marriage Length



### Factor 2: Income Disparity

When assessing a proper division of the marital assets, a Maryland court is required to evaluate the economic situations of each party. This study explored the relative financial positions of the parties and the award of financial assets within two economic categories, as shown below in Table 4: income disparity greater than 100 percent (including those cases where one party was a homemaker),<sup>51</sup> and income disparity less than 100 percent.

Out of the 127 cases where spousal support/alimony was awarded, 45.7 percent of those cases had an income disparity between the parties that was greater than 100 percent and 54.3 percent of those cases had an income disparity of less than 100 percent. The differences in award outcomes by income disparity are, however, much more pronounced for monetary awards and awards of a share of pension or retirement. Both types of awards were much more prevalent in cases in which income disparity was less than 100 percent (81.8 percent and 76.1 percent for monetary award and share of pension, respectively) compared to cases in which income disparity between the parties was greater (18.2 percent and 23.9 percent). It appears that monetary awards are given *less* frequently where the parties have a *greater* disparity in income.

Table 4: Income Disparity and Financial Distribution, in Divorce Cases

Income level disparity	Alimony awarded		Monetary award granted		Share of pension/retirement awarded	
	n	%	n	%	n	%
Income disparity >100% or homemaker	58	45.7	49	18.2	50	23.9
Income disparity <100% and not homemaker	69	54.3	220	81.8	159	76.1
Total	127	100.0	269	100.0	209	100.0

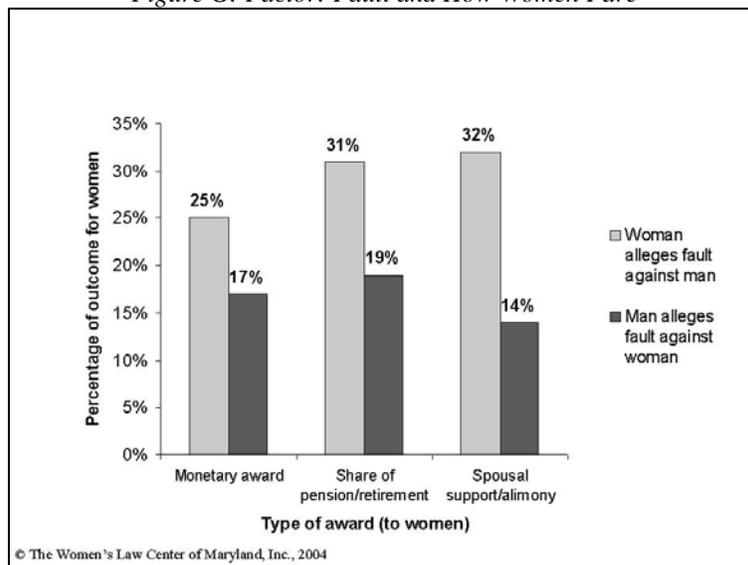
<sup>51</sup> For example, one party earns \$10,000 and the other earns \$20,000 or more.

### Factor 3: Fault

Another factor in determining whether to make a financial award is whether either party contributed to the break-up of the marriage, otherwise known as marital fault or “the circumstances that contributed to the estrangement of the parties.”<sup>52</sup>

Figure G below shows that when women allege fault, they are granted spousal support/alimony in 32 percent of the cases, a monetary award in 25 percent of the cases and a share of pension/retirement in 31 percent of cases. However, when men allege fault, financial distribution outcomes to women are less frequent: 14 percent spousal support award, 17 percent monetary award, and 18 percent share of pension/retirement awards, at least a 9 percent reduction in the number of awards for pension/retirement, and up to 18 percent reduction in the number of spousal support/alimony awards.

Figure G: Factor: Fault and How Women Fare



Note: See Appendix Table App-2 for data supporting this chart.

It was not possible to conduct a corresponding analysis for men and allegations of fault due to the small number of financial awards received by men.

### Factor 4: Length of Marriage

By looking at requests for financial awards for each length of marriage interval, the data analysis tracked whether requests increased as both marriage length and, presumably, accumulation of marital property increased.

<sup>52</sup> Md. Code Ann., Fam. Law §8-205(b)(4), and Fam. Law §11-106(b)(6).

The data in Figure H show that requests for spousal support/alimony, monetary awards and share of retirement/pension increase in number as the length of marriage increases. For every marriage length interval, monetary awards are the most frequently requested; conversely, pension/retirement share is the least often requested in every interval. In marriages of less than five years, spousal support/alimony is requested in 7.2 percent of cases, as compared to marriages of twenty years or more, where spousal support is requested in 26.6 percent of cases.

It appears that very few litigants are requesting financial distribution at the time of divorce. This is so even in marriages over 10 years' duration and in spite of the finding that income disparity between men and women increases as the length of marriage increases, as shown in Table 3.

Figure H: Factor: Financial Requests by Length of Marriage

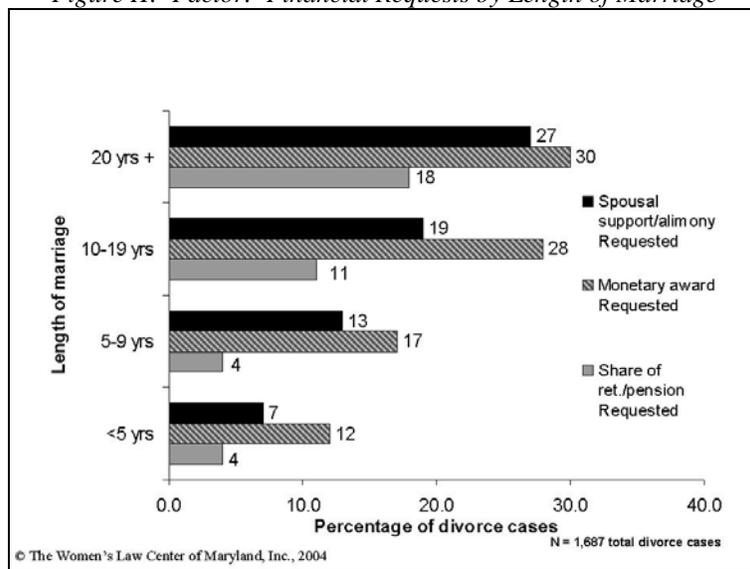
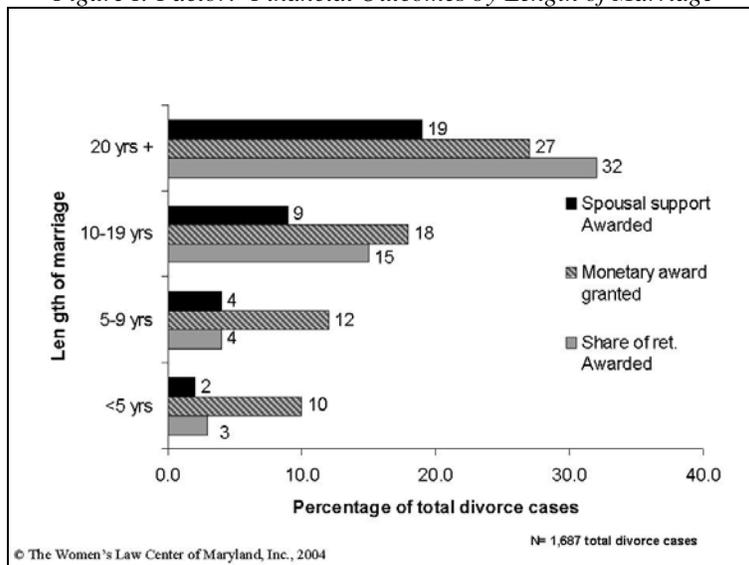


Figure I presents outcomes of the three categories analyzed above. The number of awards of share of pension/retirement increase by 17 percent as the marriage moves from 10-19 years to 20 years or greater (also see Appendix Table App-5). In addition, monetary awards are still given most often regardless of length of marriage, except for marriages of twenty years or greater, where share of pension/retirement is awarded most often.

Figure I: Factor: Financial Outcomes by Length of Marriage



Note: See Appendix Tables App-3 - App-5 for data supporting Figures H and I.

### Comparison of Case Characteristics: Regression Analyses

In an attempt to gain greater understanding of the role of spousal support/alimony within a divorce case in Maryland, a regression analysis of the factors at play in making such awards was conducted. A regression analysis explores the relation between one factor and a particular outcome, and the relation between several factors and the outcome. The first analysis (Table 5 below) explores which factors, if any, influence *whether* an award of spousal support is made and the second (Table 6 below) explores which factors, if any, influence the *amount* of spousal support.

#### Whether Spousal Support/Alimony Awarded (Table 5)

The first regression analysis explored which factors influence spousal support/alimony awards. Each of the following characteristics of divorce cases was examined separately to determine whether it was a factor that predicted spousal support/alimony:

- Length of marriage
- Gender of the plaintiff
- Gender of the defendant
- Income of the wife
- Income of the husband
- Combined income of parties
- Size of combined incomes (less or greater than \$120,000)
- Disparity of incomes (less or greater than 100 percent)
- Whether a monetary award was granted
- Whether a share of the pension was granted
- The number of children
- Custody outcomes

- Legal representation of the plaintiff
- Legal representation of the defendant
- Whether husband alleged fault
- Whether wife alleged fault

In each analysis unadjusted odds ratios (OR) were generated; these reflect the change in odds for receiving a spousal support/alimony award when the characteristic changes from the base level to the specified level. Table 5 presents the results of these analyses. For example, for the first characteristic (length of marriage in four categories) when the length of marriage changes from fewer than 5 years to 20 years or greater, the odds ratio is 13. This means that the alimony award is 13 times more likely to be given in a marriage of 20 years or greater than in marriage of less than 5 years. When the length of marriage was divided into two categories (“fewer than 20 years” and “at least 20 years”), odds of the spousal support/alimony award occurring were 6.3 times higher in the longer marriages.

The next column (“95% CI”) relates to a confidence interval for the odds ratio in the bivariate (one-to-one) analysis. Where the 95 percent confidence interval for the odds ratio contains 1.0, the results might indicate no change and hence are considered non-significant. Where the confidence interval contains values strictly greater than one, it implies that the odds become significantly higher for that characteristic, referred to as positively significant. On the other hand, where the confidence interval contains values strictly less than one, results are referred to as negatively significant, because a factor less than one shows a reduction in odds of the occurrence of the spousal support/alimony award. Characteristics found to be significantly associated, either positively or negatively, with a spousal support/alimony award in this bivariate analysis are asterisked (\*).

As shown by the single asterisks, several factors were found to be significantly and positively associated with spousal support/alimony award in the bivariate analyses as discussed below:

- Marriage length of 20 years or greater;
- Husband’s income, relative to cases in the lowest income category of the husband, increases the chance of a spousal support/alimony award for each income level over \$40,000;
- Income disparity of over 100 percent (or cases where one spouse is a homemaker), monetary award, and award of pension or share of retirement also positively impact the granting of a spousal support/alimony award;
- Full legal representation for the plaintiff and full legal representation for the defendant also produced a significant odds ratio.

In addition, a combined income of over \$120,000 approached (but did not achieve) significance. Conversely, factors negatively associated with the award of spousal support were:

- Award of sole custody to the mother. Compared to cases without children, sole custody awarded to the mother yielded an odds ratio of .4. This means that odds for spousal support award were 60 percent less likely (that is, only four-tenths of the odds when there are no children).
- Allegation of fault by the wife. If the wife, whether plaintiff or defendant, alleged a fault ground for divorce against the husband, a significant odds ratio of .3 resulted (meaning the odds when a fault ground was alleged would be three-tenths of the odds when there was no fault ground).
- Allegation of fault by the husband. If the husband alleged fault the results also approached negative significance.

Next, those factors found to be significantly associated with a spousal support/alimony award in one-on-one analysis, identified by a single asterisk, were included in a multivariate model to identify whether they are independently associated with alimony award, holding the other factors constant. Results of the multivariate analysis are shown in the final two columns of Table 5. The final multivariate model included length of marriage, husband's income, income disparity of greater than 100 percent, custody outcome, whether plaintiff and defendant were fully represented, and whether wife alleged fault.

Factors found to be statistically significant in multivariate analysis are noted with a double asterisk (\*\*) in the last column of Table 5. As shown, the factors significantly, positively associated with an award of spousal support/alimony were:

- Marriage length of over twenty years;
- Husband's annual income if over \$80,000; and
- Income disparity of greater than 100 percent.

The adjusted odds of a spousal support award were some twenty-four times higher in marriages of twenty years or longer (relative to shorter marriages.) A spousal support/alimony award was over twice as likely in cases where the husband's income was greater than \$80,000, relative to cases in which husband's income was less than \$20,000. A spousal support/alimony award was some thirteen times more likely in cases in which income disparity was greater than 100 percent between the parties. No other factors significantly predicted spousal support award in multivariate analysis and no factors were significantly, negatively associated with the award.

Table 5: Bivariate and logistic regression analyses of characteristics associated with whether spousal support/alimony awarded, among divorce cases

Case characteristic	<i>n</i> <i>denied</i>	<i>n</i> <i>awarded</i>	<i>Unadjusted</i> <i>OR</i>	<i>95% CI</i>		<i>Adjusted</i> <i>OR</i>	<i>95% CI</i>	
<b>Length of marriage</b>								
Less than 5 yrs	8	5						
5-9 yrs	14	16	1.8	0.5	6.9			
10-19 yrs	30	46	2.5	0.7	8.2			
20 yrs or greater	7	57	13.0	3.3	51.0 *			
<b>Length of marriage, dichotomous</b>								
Less than 20 years	52	67						
20 years or greater	7	57	6.3	2.7	15.0 *	23.7	1.0	541.0**
<b>Plaintiff requested ss/alimony</b>								
Wife/mother requested	23	64						
Husband/father requested	2	4	0.7	0.1	4.2			
<b>Defendant requested ss/alimony</b>								
Wife/mother requested	5	19						
Husband/father requested	5	7	0.4	0.1	1.7			
<b>Who requested ss/alimony, gender</b>								
Wife/Mother requested	25	74						
Husband/father requested	7	11	0.5	0.2	1.5			
<b>Wife's income (mean=\$28,620)</b>								
<\$20,000	11	33						
\$20,000-39,999	12	18	0.5	0.2	1.4			
\$40,000-59,999	2	2	0.3	0.0	2.7			
\$60,000-79,999	1	1	0.3	0.0	5.8			
\$80,000+	1	3	1.0	0.1	10.6			
<b>Husband's income(mean=\$49,253)</b>								
<\$20,000	4	2						
\$20,000-39,999	6	8	2.7	0.4	19.7	1.09	0.1	872.6
\$40,000-59,999	3	13	8.7	1.0	71.6 *	1.58	0.4	3519.4
\$60,000-79,999	5	19	7.6	1.1	54.1 *	1.69	0.6	2400.1
\$80,000+	2	28	28.0	3.0	258.4 *	2.14	1.5	14963.7**
<b>Combined income &gt; \$120,000</b>								
Combined income < \$120,000	58	110	4.2	0.9	19.0			
<b>Income disparity &gt; 100%</b>								
Income disparity <100%	11	57	3.7	1.8	7.7 *	12.9	1.5	110.2**
<b>Monetary award also granted</b>								
Not granted	4	55	10.3	3.5	30.3 *			
<b>Share of pension also awarded</b>								
Not granted	9	64	7.1	2.5	20.1 *			
<b>Number of children</b>								
0	20	54						
1	15	27	0.7	0.3	1.5			
2	18	34	0.7	0.3	1.5			
3	6	7	0.4	0.1	1.4			
4+	1	4	1.5	0.2	14.1			

Table 5 continued on next page...

Table 5 continued:

	<i>n</i> <i>denied</i>	<i>n</i> <i>awarded</i>	<i>Unadjusted</i> <i>OR</i>	<i>95% CI</i>			<i>Adjusted</i> <i>OR</i>	<i>95% CI</i>	
<b>Custody outcome</b>									
None (also no data/not clear)	23	57							
Sole custody to mother	19	18	0.4	0.2	0.9	*	0.5	0.0	6.0
Sole custody to father	2	0							
Joint legal/ phys custody to mother	10	28	1.1	0.5	2.7		11.8	0.4	330.5
Joint legal/ phys custody to father	0	6							
Joint legal/physical custody	3	13	1.7	0.5	6.7		0.6	0.0	9.4
Split custody	3	4	0.5	0.1	2.6		0.5	0.0	65.1
<b>Plaintiff fully represented</b>									
Not represented	21	10	7.2	3.1	16.8	*	2.0	0.0	141.9
<b>Defendant fully represented</b>									
Not represented	30	36	2.9	1.5	5.7	*	0.5	0.0	7.2
<b>Husband alleged fault</b>									
Husband did not allege fault	16	19	0.5	0.2	1.0				
<b>Wife alleged fault</b>									
Wife did not allege fault	25	85	0.3	0.2	0.6	*	0.2	0.0	2.2

Note: Table 5 shows data only for divorce cases (n=1,687)

\* Statistically significant at  $p < .05$  in bivariate analysis

\*\* Statistically significant at  $p < .05$  in multivariate analysis

### Amount of Spousal Support/Alimony Award (Table 6)

A regression analysis was also conducted to explore the relationship between many of these factors and the *amount* of spousal support awarded. Table 6 provides the results of this analysis. As discussed below, this analysis looks at whether any of the characteristics outlined above are associated with the amount of a spousal support award. As with the previous table, the case characteristics included in this analysis are listed in Table 6.

Table 6 shows the mean amount of spousal support/alimony awarded on a monthly basis, by the characteristics of the case. The median monthly award amount and range are also shown for each characteristic. Only cases where spousal support/alimony was awarded were analyzed (127 cases out of a total of 1,687 divorce cases reviewed). Where “—” is shown in the table, the number of observations was too small to generate accurate estimates for the purpose of this table (i.e., 2 or fewer cases). Since the outcome being analyzed is the amount of the award, not the likelihood of receiving an award, Table 6 does not include an “odds ratio” column, unlike Table 5. However, like Table 5, where there is an asterisk (\*) in the “unadjusted p” column in Table 6, the factor was significantly associated with the amount of spousal support/alimony awarded, in a one-on-one (bivariate) analysis.

As shown in Table 6, the following factors were associated with higher spousal support/alimony awards:

- Marriage of twenty years or longer (relative to less than twenty years);
- “Indefinite” awards
- Wife’s higher income (only the highest two categories, relative to the lowest);
- A combined income of greater than \$120,000;
- Granting of a monetary award.

Basic statistics (e.g. mean, median and range) show a higher mean spousal support/alimony award in cases in which the defendant was fully represented, relative to those not represented. This finding is influenced by a small number of unusual cases with very high award amounts. However, the bivariate analysis showed that cases in which the defendant was fully represented had a significantly lower award amount than cases in which the defendant was not represented.

As discussed relative to Table 5, the factors shown to be significant in the bivariate analysis were used to conduct a multivariate linear regression to identify the factors independently associated with the amount of spousal support/alimony awarded, holding other factors constant. Where there is a double asterisk in the “adjusted *p* column”, there is an independent association between the factor and the amount of spousal support/alimony awarded, even when one accounts for other factors that might influence the spousal support award amount. The multivariate “\*\*\*”, then, is a higher standard of evaluation of the consistency of the award amount. For example, the analysis includes whether a marriage length of over 20 years was independently, significantly associated with a higher spousal support/alimony award if all other factors that might influence the amount of the award were held constant. The factors analyzed in this multivariate model were: type of spousal support/alimony, marriage length, combined income of over \$120K, whether monetary award was also granted, and whether the defendant was fully represented by an attorney.<sup>53</sup>

As shown, the following factors were each significantly associated with a higher spousal support/alimony award amount holding the other factors constant (and within 95 percent confidence intervals):

- Indefinite spousal support (vs. rehabilitative);
- Marriage length of 20 or more (relative to those of less than 20 years);
- Combined income of \$120K or greater (vs. less than that amount); and
- Granting of a monetary award.

The bivariate finding that cases in which the defendant was fully represented had a lower spousal support/alimony award was not repeated in multivariate analysis: although the

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<sup>53</sup> Because of small numbers involved in the category of higher wife’s income (n=4 over \$60,000), this factor found significant in bivariate analysis was not included in the multivariate model.

mean award amount was lower among defendants fully represented the finding was not statistically significant.

Table 6: Analyses of factors associated with the amount of spousal support/alimony awarded in divorce cases

Case characteristic	n*	\$ Amount awarded monthly			Unadjusted p = <0.05	Adjusted p = <0.05†
		Mean	Median	Range		
<b>Type of ss/alimony</b>						
Rehabilitative	77	884	500	100-5500		
Indefinite	34	1,904	1,503	250-6,000	*	**
<b>Length of marriage</b>						
Less than 5 yrs	5	1,256	1,100	228-3,450		
5-9 yrs	16	787	650	300-2,500		
10-19 yrs	47	885	500	100-5,500		
20 yrs or greater	56	1,812	1138	100-14,000		
<b>Length of marriage, dichotomous</b>						
Less than 20 years	68	889	600	100-5,500		
20 years or greater	56	1,812	1,138	100-14,000	*	**
<b>Plaintiff requested ss/alimony</b>						
Wife/mother requested	65	1,370	700	100-14,000		
Husband/father requested	4	519	450	100-1,075		
<b>Defendant requested ss/alimony</b>						
Wife/mother requested	18	1,012	625	100-3,500		
Husband/father requested	7	1,267	1,450	500-2,000		
<b>Who requested ss/alimony, gender</b>						
Wife/Mother requested	74	1,326	675	100-14,000		
Husband/father requested	11	995	900	100-2,000		
<b>How awarded</b>						
Court	21	1,231	722	100-5,000		
Agreement	99	1,284	750	100-14,000		
<b>Wife's income (mean=\$28,620)</b>						
<\$20,000	33	1,035	700	100-4,777		
\$20,000-39,999	18	1,022	734	184-3,400		
\$40,000-59,999	2	--	--	--		
\$60,000-79,999	1	--	--	--	*	
\$80,000+	3	2,533	2,500	100-5,000	*	
<b>Husband's income (mean=\$49,253)</b>						
<\$20,000	2	--	--			
\$20,000-39,999	8	436	350	100-1,000		
\$40,000-59,999	13	528	400	100-1,600		
\$60,000-79,999	19	992	750	100-4,777		
\$80,000+	28	2,449	1,780	150-14,000		
<b>Combined income &gt; \$120,000</b>	17	3,157	2,500	300-14,000	*	**
Combined income < \$120,000	108	1,005	660	100-6,000		
<b>Monetary award also granted</b>						
Not granted	67	828	600	100-3,450		
<b>Share of pension also awarded</b>	65	1,387	780	100-6,000		
Not granted	12	804	625	232-2,500		

Table 6 continued on next page...

Table 6 continued:

Case characteristic	n*	\$ Amount awarded monthly			Unadjusted p = <0.05	Adjusted p = <0.05†
		Mean	Median	Range		
<b>Number of children</b>						
0	52	1,297	913	200-6,000		
1	28	1,434	743	100-14,000		
2	34	1,412	775	100-5,500		
3	7	479	300	100-1,500		
4+	4	819	825	300-1,325		
<b>Custody outcome</b>						
None (also no data/not clear)	55	1,537	1,000	200-14,000		
Sole custody to mother	18	743	550	100-1,505		
Sole custody to father	0	--	--	--		
Joint legal/ phys custody to mother	29	1,221	750	100-4,777		
Joint legal/ phys custody to father	6	425	350	150-1,000		
Joint legal/physical custody	13	1,561	1,000	300-5,500		
Split custody	4	1,525	500	100-5,000		
<b>Plaintiff fully represented</b>						
Not represented	112	1,320	750	100-14,000		
Not represented	10	1,115	661	100-4,777		
<b>Defendant fully represented</b>						
Not represented	82	1,573	1,000	100-14,000	*	
Not represented	37	828	542	100-4,777		

† n = frequencies of cases within each category. Note that this table shows data only for cases of absolute divorce in the sample (n=1,687) in which data show that alimony was awarded, and data on the amount of award was available. Data are missing for some characteristics of a small number of cases; missing data are not shown.

\* Statistically significant in bivariate analysis at p<.05

\*\* Statistically significant in multivariate analysis at p<.05

In sum, as discussed in reference to Table 5, there were several characteristics that appear to positively influence whether spousal support/alimony was awarded, for example, marriage of greater than 20 years, representation of both parties throughout the case, as well as other case characteristics that suggest a family with relatively higher assets. In contrast, an award of sole custody to the mother or an allegation of fault appears to lessen the likelihood of an award. Interestingly, lengthy marriages -- longer than 10 years, but not as long as 20 years -- did not influence whether an award was made.

Likewise, as discussed in reference to Table 6, several factors appear to be associated with higher spousal support/alimony awards, including, lengthy marriages greater than 20 years, “indefinite” awards, incomes greater than \$120,000 and monetary awards. Surprisingly, neither income disparity nor award of a share of the retirement/pension were associated with higher award amounts, even though they are “factors” to be considered by a court when setting the award amount.

This means that when a man or woman initiates the divorce process or meets with his or her attorney to discuss the process, there is no way to assess the likelihood of that individual getting or having to pay spousal support/alimony. The ability to better predict such outcomes would benefit litigants as they plan their futures.

## B. Custody

Another issue arousing considerable emotion when families separate is figuring out how to allocate responsibilities for raising the children. The parents may agree on how to share these responsibilities and obligations, but when a court is involved, it uses a standard known as “the best interest of the child” to determine the custody outcome.

This section of the research report focuses on families with children, and includes both divorcing families with children as well as unmarried couples with a child in common.<sup>54</sup> In particular, this section explores:

- the types of custody men and women are asking for,
- the types of custody they are receiving;
- whether parents are agreeing to certain types of custody arrangements or whether those arrangements being determined by a judge;
- the most prevalent custody arrangement and how is it reached; and
- whether those arrangements worked for the family, or whether one or both parties sought to modify the custody outcome.

### *Custody Outcomes*

The first evaluation is how the custody awards, also known as outcomes, are distributed in the study. Of the 1,847 cases in the sample, there were 1,022 cases with children. The remaining 825 cases were divorcing couples without minor children. As reflected in Figure J and Table 7 below, sole legal and physical custody to the mother is the most frequently occurring outcome, in 38 percent of cases. The next most frequently occurring outcome is joint legal custody with physical custody to mother, in 28 percent of cases. The remaining outcomes, grouped in descending order of frequency, are joint legal and physical custody (13 percent), sole legal and physical custody to father (7 percent), joint legal custody with physical custody to father (7 percent) and split custody (some child(ren) reside with one parent, the other child(ren) with the other parent), 2 percent. The remaining 5 percent represent cases where it was not clear from the case file what the outcome was or there was no outcome identified in the file (no data). Mothers received primary physical custody in 66 percent of the cases (sole custody plus joint legal with physical to mother) and fathers received primary physical custody in 14 percent of the cases (sole custody plus joint legal with physical to father.)

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<sup>54</sup> Of the total cases in the sample, 1,687 were divorce cases, and of those, 862 had children. In addition, there were 160 custody where the parents were unmarried or a third-party (mostly grandparent) was seeking custody. Because of the unique issues involved in those cases, the 39 third party custody cases are not included in these discussions about custody.

Figure J: Distribution of Custody Awards

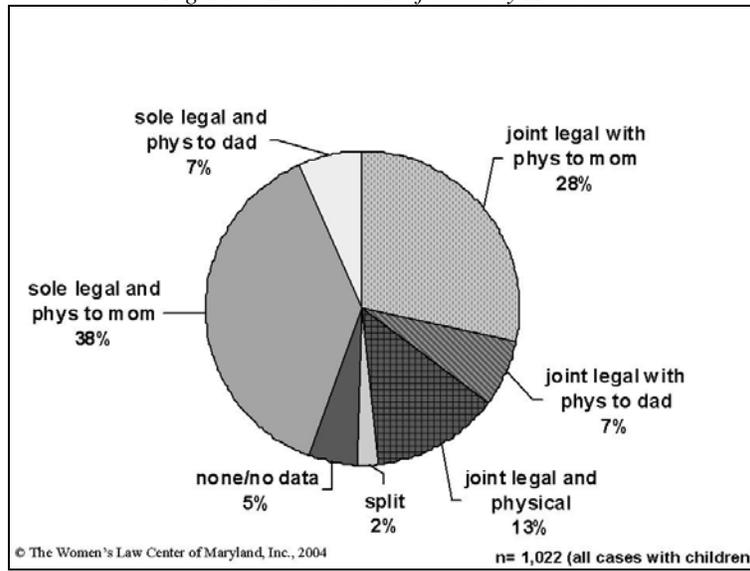


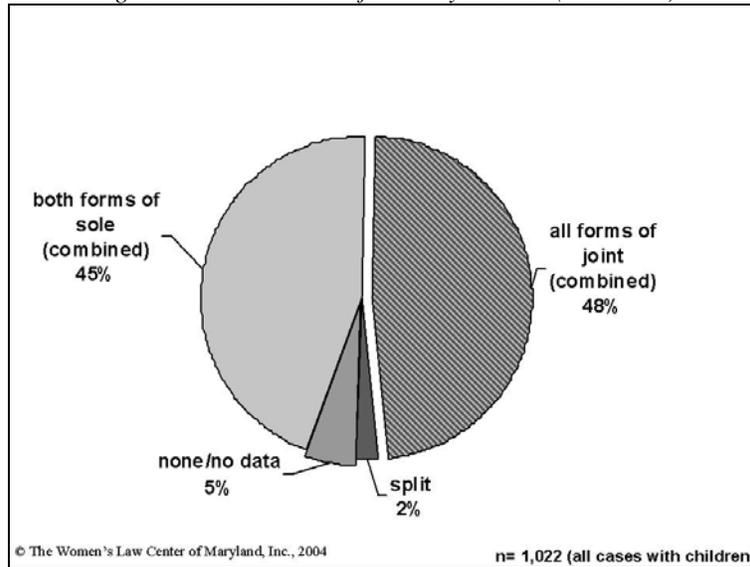
Table 7: Custody outcomes as a percentage of all cases with children

<i>Custody outcome</i>	<i>All cases with children</i>	
	Freq.	Percent
Sole custody to mother	386	37.8
Sole custody to father	69	6.8
Joint legal/phys to mother	289	28.3
Joint legal/phys to father	71	6.9
Joint legal/physical custody	135	13.2
Split custody	23	2.3
No data or unclear	49	4.8
<b>Total</b>	<b>1022</b>	<b>100.1<sup>55</sup></b>

A comparison of these outcomes by category, as illustrated in Figure K below, provides insight into whether or not, on a more general level, parents in a custody case share decision-making responsibility. Combining the three forms of “joint custody” (joint legal with physical to mother, joint legal with physical to father, and joint legal and physical) reveals that some form of joint custody is the outcome in nearly half of the cases (48 percent). Combining the two forms of sole custody (sole legal and physical to mother and sole legal and physical to father) reveals that some form of sole custody is the outcome in 45 percent of cases.

<sup>55</sup> Percentages may appear to sum to greater than 100 percent because individual estimates are rounded to the tenth percentage place for presentation in the table; however the full numbers do sum to 100.00%."

Figure K: Distribution of Custody Awards (combined)



The data shown above indicate that parents are sharing some form of decision-making in Maryland in nearly half of the cases involving children.

### *Putting the Outcomes in Context*

The custody determination in any particular case is intended to be a result of an assessment of “the best interest of the child.”<sup>56</sup> Under Maryland law, what constitutes a child’s best interest is dependent upon a variety of factors, considered as a whole, or in “totality.”<sup>57</sup> In 1977, Maryland’s Chief Judge Gilbert articulated numerous factors that a court should consider, including: 1) fitness of the parents; 2) character of the parents; 3) desire of parents and agreements between the parties; 4) the potential for maintaining natural family relations; 5) preference of the child; 6) material opportunities for the child; 7) age, health and sex of the child; 8) residences of the parents and opportunities for visitation; 9) length of separation from the natural parents; and 10) the effect of any voluntary abandonment or surrender of custody.<sup>58</sup> Like spousal support/alimony, judges have broad discretion when evaluating the factors and there is little predictability in custody outcomes as a result.

### Child’s Residence

The distribution of custody outcomes in this study is best understood in context of the many factors that make up the determination of the child’s best interest. As discussed above, under Maryland law, one of the factors to be considered is the length of separation

<sup>56</sup> *Montgomery County Dept. of Social Services v. Sanders*, 38 Md. App. 406, 419 (1977).

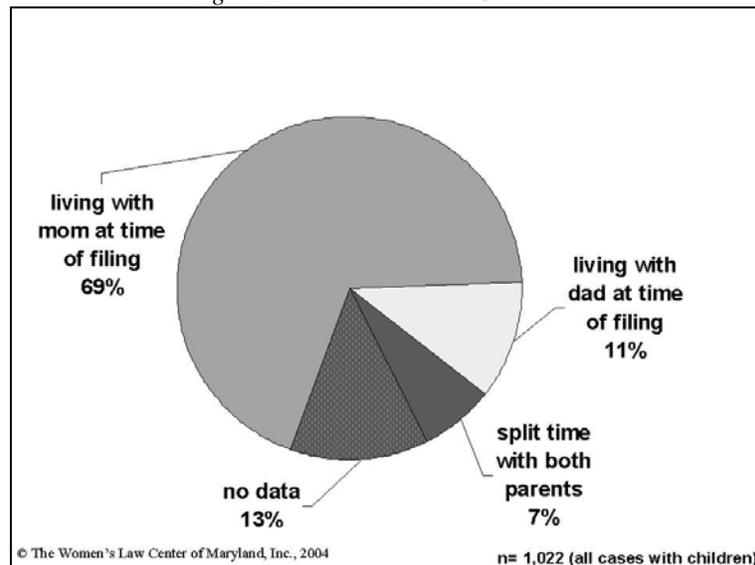
<sup>57</sup> *Sanders*, 38 Md. App. at 420.

<sup>58</sup> *Id.*

of the child(ren) from the parent seeking custody. A child's residence at the time the custody or divorce case is filed may also give the court some insight (although it will not provide the whole picture). The research instrument was designed to capture information about where the children were living at the time the litigation was filed.

In this study, the data reflected in Figure L below, show that at the time the complaint was filed, the children lived with the mother in 69 percent (702) of the cases, lived with the father in 11 percent (116) of the cases and split their time between both parents in 7 percent (72) of the cases. Data were not available, or the living situation was unclear, in 13 percent (132) of the cases reviewed.

Figure L: Where Were the Children?



Note: See Appendix, Table App-6 for data supporting this figure.

This distribution is generally consistent with the distribution of custody outcomes, discussed above, where the mother received primary physical custody in 66 percent of the cases and fathers received primary physical custody in 14 percent of the cases.

### Custody Requests

An examination of what the litigants are asking for is also a helpful context in which to understand custody outcomes. Presented in Table 8 below is the frequency of requests by women and by men for various types of custody. The data reflect requests made only in the initial pleading from either party — that is, in the complaint, or in the answer/counter-complaint — and do not reflect requests that may have been made later in the case.

The data below show that mothers requested sole legal and physical custody 542 times in the sample, while fathers requested sole legal and physical custody only 194 times.<sup>59</sup>

<sup>59</sup> These numbers represent requests, not cases, since some of these requests may have been made in the same case.

Mothers and fathers requested joint legal custody with primary physical custody to themselves in nearly the same frequency. Fathers requested joint legal and physical custody 129 times in the sample, while mothers requested that type of custody only 61 times.

*Table 8: Frequency of custody requests for all cases with children, by type of outcome*

<b>Custody Outcome</b>	<b>Mothers</b>		<b>Fathers</b>	
	Number requests	Number requests granted	Number requests	Number requests granted
Sole custody to mother	542	319	68	64
Sole custody to father	16	16	194	60
Joint legal/phys to mother	117	99	113	88
Joint legal/phys to father	15	13	36	21
Joint legal and physical	61	42	129	58
Split custody	10	6	7	4

In short, mothers seek sole legal and physical custody more often than fathers do, while fathers seek joint legal and physical custody more often than mothers do.

*Requests vs. Outcomes*

What the parties ask for at the initial stage of the case is only part of the picture. How do those requests compare to the case outcomes? How are litigants faring? These issues are analyzed by looking at the custody outcomes by category, and then asking: Of those outcomes, how often was that what the litigant asked for? How often did he or she ask for some other outcome?

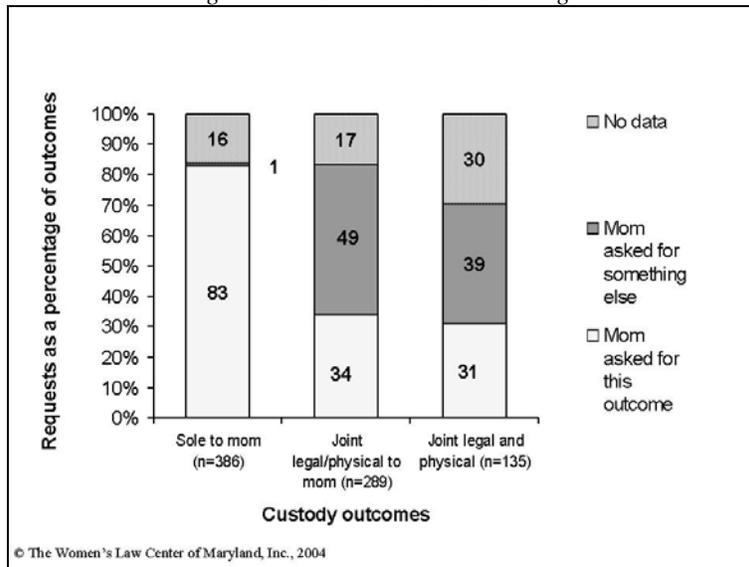
Figures M and N below (and supporting Table App-7 in the Appendix) show selected custody outcomes and the relationship between those outcomes and the litigants’ original requests. Figure M shows how women fared in the study with respect to custody results. For example, as shown in the first bar in Figure M, in 83 percent of the cases where a mother received sole legal and physical custody, that is what she asked for at the initial stage of the case. In only one percent of the cases where she received sole custody, she asked for some other custody outcome and in 16 percent of the cases where the mother received sole custody, data about what she initially requested were not available.

The next bar in Figure M shows that when the case outcome was joint legal custody with primary physical to mother, that was the outcome she requested only 34 percent of the time, while 49 percent of the time she requested a different custody arrangement. Interestingly, as seen in Table App-7 by reading across the custody outcome row, that 49 percent includes 46 percent sole custody to mother, 0.3 percent joint legal with physical to father, 1.7 percent joint legal and physical and 1.0 split custody. The last bar in Figure M shows that when the case outcome was joint legal and physical custody, mothers requested that outcome only 31 percent of the time, while 39 percent of the time, they requested a different custody arrangement. Like the 49 percent of “requested something different” in the previous bar, the 39 percent “different request” in this final category

includes 31.1 percent sole custody to mother, 7.4 percent joint legal with physical to mother and 0.7 percent joint legal with physical to father.

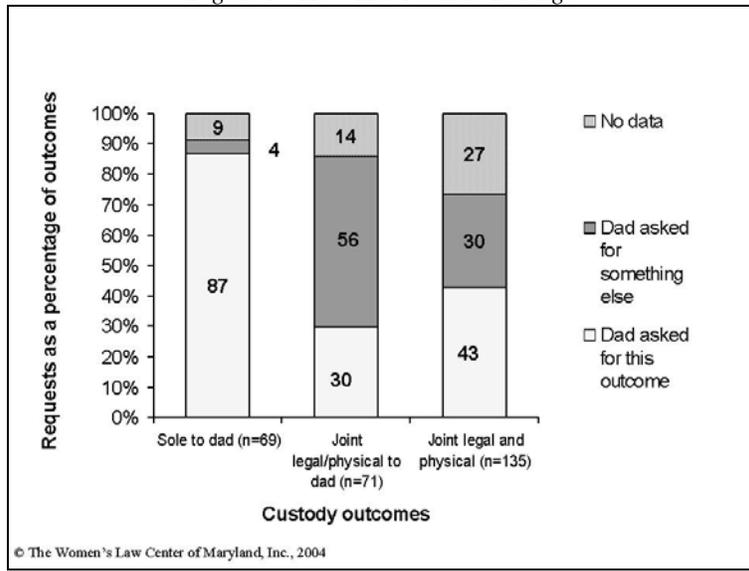
Figure N, explores how men fared with respect to custody results. As shown in the first bar in Figure N, in 87 percent of the cases where a father received sole legal and physical custody that is what he requested initially. In 4 percent of the cases where a father received sole custody, he actually requested something else, and in 9 percent of the cases where the father received sole custody, data were not available about what he initially requested. The next bar in Figure N shows that when the case outcome was joint legal custody with primary physical to father, that was the outcome he requested only 30 percent of the time, and in more than half of the cases (56 percent) he asked for a different outcome, the requests were: 40.8 percent sole custody to father, 1.4 percent joint legal with physical to father, 4.2 joint legal with physical to mother, 7.0 percent joint legal and physical and 2.8 split custody. Finally, the last bar in this figure shows that when the case outcome was joint legal and physical custody, that was the outcome fathers requested 43 percent of the time (compared to 31 percent for women), while he requested a different custody arrangement only 30 percent of the time, (compared to 39 percent for women). What were fathers requesting that they didn't get? When the outcome was joint legal physical custody, fathers requested: 25.2 percent sole custody, 0.7 percent joint legal with physical to mother and 4.4 joint legal with physical to father. (See Table App-7).

Figure M: How Are Mothers Faring?



Note: See Appendix, Table App-7 for data supporting this figure.

Figure N: How Are Fathers Faring?



Note: See Appendix, Table App-7 for data supporting this figure.

The data indicate that children are living with their mothers at the time of filing a custody case more frequently than they live with their fathers, and that mothers are requesting sole legal and physical custody more frequently than fathers (542 times for women and 194 times for men). Data on custody outcomes show that women are also receiving sole legal and physical custody more than men (386 cases or 38 percent for women and 69 cases or 7 percent for men).

### Resolution Process and Subsequent Litigation

As with other types of litigation, there are many points in a custody case where issues may be resolved. This study tracked where in the process the custody outcome was resolved. The analysis examines whether that issue was resolved through an agreement of the parties or whether it was resolved through a judicial decision. Then the amount of subsequent custody litigation filed for each outcome was compared to assess the longevity of each type of resolution.

Table 9 below presents each type of custody outcome and indicates whether that outcome was reached through an agreement of the parties or whether it was resolved through judicial intervention. The “agreement” category includes pre-complaint settlement agreements, agreements in the answer, mediated consents and pre-trial hearing and property or marital settlement agreements. The category called “judicial intervention” includes those cases where the custody issue was contested and a judge made the final determination and those cases where an “agreement” was reached during the trial. For the purposes of this analysis, a deliberate assumption was made that agreements reached at trial should not be considered an agreement based on the theory that agreements reached during litigation do not possess the voluntary nature of an agreement reached prior to litigation. Table 9 shows child custody outcomes by how these outcomes were decided where the custody outcome was known *and* where data on the method of

resolution of the custody issue were available (973 cases out of 1,022 cases with children in the sample).<sup>60</sup> The number of cases that occurred for each type of custody outcome is listed next to the type of custody (e.g. Sole to mother (n=386)). The “no data” column represents the number of cases with that particular custody outcome for which the method of resolution could not be determined.

As illustrated in Table 9, each type of custody outcome was more frequently resolved through an agreement of the parties than through judicial intervention. This indicates that parties in Maryland are working together to resolve the custody issue more frequently than they are seeking the court’s assistance in doing so.

Table 9: Custody outcomes by method outcome was reached

Custody outcome <i>(for cases where custody outcome was known (n=973))</i>	Agreements								Judicial resolution				Other		Total	
	Pre-complaint settlement		Agreement in answer		Other agreement		Mediated consent		Agreement during trial		Contested, judicial resolution		No data on resolution		n	%
	n	%	n	%	n	%	n	%	n	%	n	%	n	%		
Sole to mother (n=386)	71	18.4	73	18.9	63	16.3	11	2.8	6	1.6	46	11.9	116	30.1	<b>386</b>	<b>100</b>
Sole to father (n=69)	14	20.3	16	23.2	7	10.1	0	0	1	1.4	14	20.3	17	24.6	<b>69</b>	<b>100</b>
J leg/ phys to mother (n=289)	101	34.9	36	12.5	86	29.8	26	9	12	4.2	26	9	2	0.6	<b>289</b>	<b>100</b>
J leg/ phys to father (n=71)	24	33.8	2	2.8	23	32.4	6	8.5	3	4.2	15	21.1	0	0	<b>73*</b>	<b>100</b>
Joint leg/ physical (n=135)	57	42.2	18	13.3	36	26.7	14	10.4	4	3	9	6.7	0	0	<b>138*</b>	<b>100</b>
Split custody (n=23)	4	17.4	0	0	10	43.5	3	13	0	0	6	26.1	0	0	<b>23</b>	<b>100</b>

Note: Percentages are row percentages of the method of resolution as a percentage of the total number of cases with the identified custody outcome. Table 9 represents all cases with children where the custody outcome was known (n=973).

\* - The slight difference in these totals compared to the number of cases with these custody outcomes is the result of multiple or inconsistent responses on the research instrument.

One way of assessing the durability of a particular decision is to explore whether any subsequent litigation was filed on that particular issue. After a final judgment is entered in a case, the parties may return to court to seek judicial intervention if the arrangements are not working out, if a party fails to comply with the order or for modification of the issues if they are not satisfied. The research instrument tracked whether the case file indicated that subsequent litigation was filed, on what issue it was filed and by whom. With that information in hand, the “durability” of custody decisions resolved through agreements was compared with those resolved through judicial intervention by exploring the amount of subsequent litigation generated by each method. Table 10 below presents data relating the six types of custody outcomes to the method of resolution and amount of litigation about that custody outcome. Figures O and P below present a side-by-side comparison of the method of resolution and amount of subsequent litigation.

Figures O and P show, perhaps not surprisingly, that where the custody matter was resolved through a judicial decision, the amount of subsequent litigation produced — for each type of custody outcome — is at least twice that produced when the matter is

<sup>60</sup> As shown in Table 7, there were 49 cases (5% of all cases with children) where the custody outcome could not be determined from the case file. These cases are not represented in Table 9.

resolved through an agreement of the parties. Interestingly, split custody generates the most litigation of all the outcomes when it is resolved by judicial intervention and none at all when resolved through agreement. Also, sole custody to father generates no litigation at all when it is resolved by the parties, but 20 percent of the cases with that outcome that are resolved through judicial intervention produced litigation. Also, joint legal and physical custody, when resolved by judicial intervention, generates more than three times the amount of subsequent litigation than it does when that outcome is resolved by an agreement of the parties.

In short, the data reveal that when the custody issue is resolved through judicial intervention, parties go back to court at least twice as often as when they agree on the outcome. Where joint legal and physical custody is resolved by the court, the parties return for modification more than three times as often.

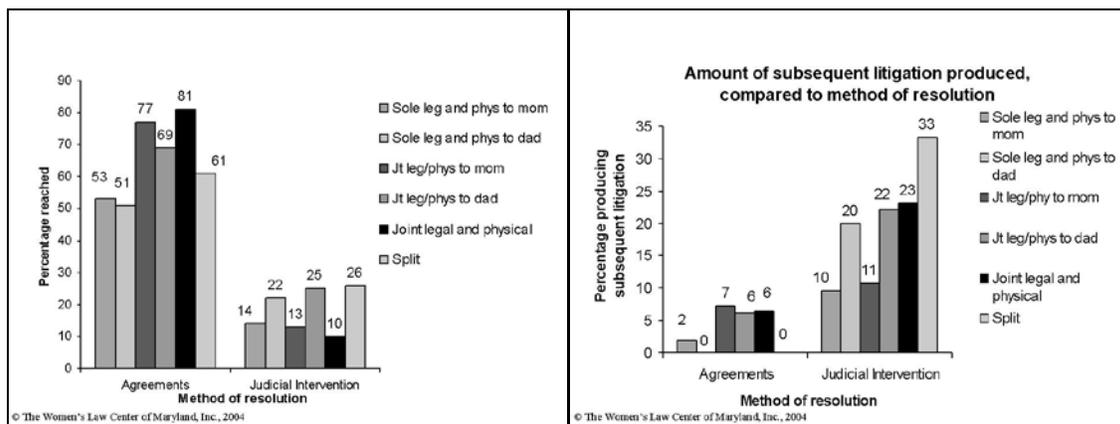
Table 10: Types of custody outcomes by method of resolution and subsequent litigation

Custody outcome	Outcome reached through agreement		Of these, n produced subsequent litigation		Outcome reached through judicial resolution		Of these, n produced subsequent litigation		As % of outcomes reached through judicial resolution	
	n	%	n	%	n	%	n	%	n	%
Sole to mother	204	52.8%	4	2.0%	52	13.5%	5	9.6%		
Sole to father	35	50.7%	0	0.0%	15	21.7%	3	20.0%		
J leg/ phys to mother	222	76.8%	16	7.2%	37	12.8%	4	10.8%		
J leg/ phys to father	49	69.0%	3	6.1%	18	25.4%	4	22.2%		
Joint legal/ phys	109	80.7%	7	6.4%	13	9.6%	3	23.1%		
Split custody	14	60.9%	0	0.0%	6	26.1%	2	33.3%		

Note: the percentages in “outcome reached through agreement” and “outcomes reached through judicial intervention” are of the total number of cases in the study with that outcome, but the frequencies listed in these columns are calculated from a created variable, not from the sum of the resolution types in Table 9, because in some cases, a type of resolution was selected more than once.

Figure O: Who is Making Custody Decisions?

Figure P: How Well Do Custody Decisions Stand?



Since the advent of the Family Divisions in 1998, there has been a tremendous emphasis on mediation<sup>61</sup> and other forms of alternative dispute resolution as a method of reducing the emotional and financial costs of litigation. The data, as shown above, support the benefit of such programs.

### *Visitation*

An important aspect of custody cases is the type of access or visitation permitted to the “non-custodial” parent after a custody arrangement has been made. As with types of custody, there are many types of visitation arrangements, ranging from the liberal “reasonable” visitation, in which the parties themselves work out the specifics of time and place, to “restricted or supervised,” in which the court or other entity or individual provides oversight of the child and activities during the visitation period.

Data were collected about whether subsequent litigation was filed on the issue of visitation, including whether the parties were alleging a “failure to comply with visitation” or were seeking a “modification of visitation.”

Table 11 below shows the breakdown of visitation awards for all cases with children. Clearly, an arrangement of “reasonable” visitation occurred most frequently, at 45.7 percent. The next most frequently occurring outcome was “alternating weekends + some holidays and vacation time” at 15.2 percent. In 14.7 percent of cases with children, there was no information about how the visitation issue was resolved, if at all, or the outcome was not clear from the case file.

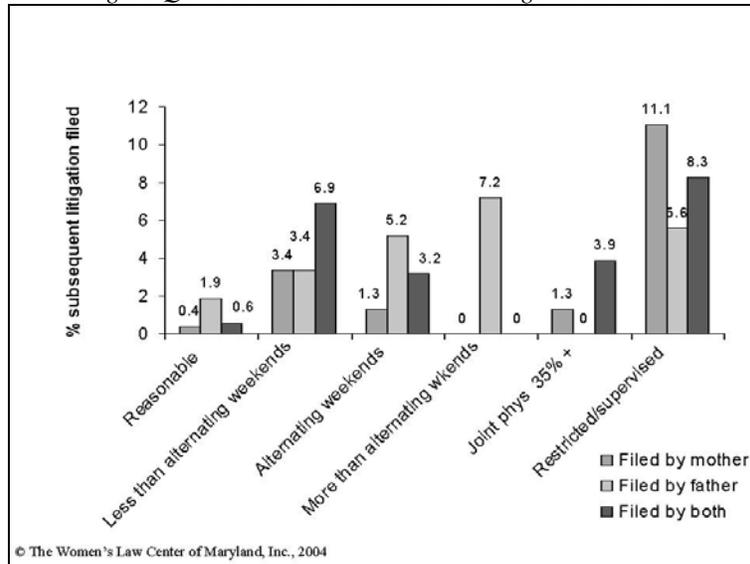
*Table 11: Distribution of visitation outcomes, in cases with children*

<i>Visitation arrangement</i>	<i>All cases with children</i>	
	<i>Freq.</i>	<i>Percent</i>
Reasonable	467	45.7
Less than alternative weekends +	29	2.8
Alternating weekends + some holidays and vacation time	155	15.2
More than alternating weekends +	83	8.1
Joint physical custody (35% or more)	76	7.4
Restricted or supervised visitation	36	3.5
Other	26	2.5
Not clear	150	14.7
<b>Total</b>	<b>1022</b>	<b>100.0</b>

<sup>61</sup> Maryland Rule 9-205(c)(2) requires mediation if custody or visitation is genuinely in dispute and the court concludes that mediation is appropriate and feasible. This rule permits an exception for cases with allegations of domestic violence. The rule in effect in 1999, referred to as Rule S73A, provided the same exception from the mediation requirement.

As with custody outcomes, the various types of visitation arrangements were tracked against the amount of subsequent litigation produced on that issue. As shown in Figure Q below, of all of the types of visitation arrangements, women filed the most subsequent litigation when the visitation arrangement was “restricted or supervised” (11 percent), men filed the most subsequent litigation when the arrangement was “more than alternating weekends” (7.2 percent) and both parties filed subsequent litigation most often when the visitation arrangement was, again, “restricted or supervised,” at 8.3 percent.

Figure Q: How Well Do Visitation Arrangements Work?



Note: See Appendix, Table App – 8 for supporting data

### C. Interplay: Exploring the Relationship between Money and Children

This study analyzed the “money” aspect of divorce extensively. But since 55 percent of the divorcing families in the study are couples with minor children, the children are obviously and meaningfully impacted by the division of assets and other property. The study compiled data on child support awards (amount, schedule of payment, method of resolution, etc.) However, child support awards were not included in the financial distribution analysis since child support is federally mandated and almost exclusively determined by application of statutory guidelines. In addition, child support is intended for the care and support of children only; it is not a means of adjusting the inequities at the time of divorce or as financial support for a spouse to compensate for loss or to promote self-sufficiency.<sup>62</sup>

<sup>62</sup> For these reasons, child support data is reported only generally as follows: Awards: Child support awarded to mother in 60 percent of cases with children; awarded to father in 7 percent of cases with children. The amount of child support was reached by consent to guidelines in 38 percent of cases with children, set by judge at guidelines in 14 percent of cases and resolved through other methods in 58 percent (e.g. reserved, not applicable).

The overarching research questions that span both the custody aspect of the research study and the financial distribution aspect of the study — indeed, the questions that unite the two studies in the most essential way are — “Is there any relationship between custody and financial distribution?” and “If so, how are custody and financial distribution related?”

Table 12 below examines custody outcomes and requests as well as the occasions of financial distribution for divorce cases with children. At the end of each row is the total number of divorce cases with children in which that custody outcome occurred, whether requested or not. For each custody outcome, the table shows, by gender, how often (and in what percent of cases with that outcome) the custody outcome matched each party’s initial request. The table also shows, again by gender, the frequency and percentage of cases with that custody outcome in which the specific financial award (spousal support, monetary award, and share of pension or retirement) was made to the party. For example, there were 120 divorce cases with children in which the custody outcome was “joint legal and physical.” Of those 120 cases, 28% of the time, mothers requested that outcome. In addition, mothers received spousal support in 11% of those cases, monetary awards in 24% of those cases and shares of pension in 21% of those cases. Similarly, of those 120 cases where the custody outcome was “joint legal and physical,” fathers requested that outcome 20% of the time, and fathers received no spousal support awards, monetary awards in 2% of those cases and pension awards in 2% of those cases.

*Table 12: Custody outcomes by requests and financial distribution outcome types of divorce cases with children*

Custody outcome	Custody type requested by				Spousal support/alimony awarded to				Monetary award given to				Share of pension to				Total n
	Mother		Father		Mother		Father		Mother		Father		Mother		Father		
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	
Sole custody to mother	260	80.7%	18	5.6%	18	5.6%	na		18	5.6%	3	0.9%	26	8.1%	3	0.9%	<b>322</b>
Sole custody to father	8	20.0%	32	80.0%	0	0.0%	na		2	5.0%	0	0.0%	1	2.5%	0	0.0%	<b>40</b>
Joint legal with physical to mother	105	41.5%	28	11.1%	29	11.5%	na		33	13.0%	9	3.6%	38	15.0%	6	2.4%	<b>253</b>
Joint legal with physical to father	16	28.1%	18	31.6%	6	10.5%	na		14	24.6%	0	0.0%	12	21.1%	3	5.3%	<b>57</b>
Joint legal and physical custody	34	28.3%	24	20.0%	13	10.8%	na		29	24.2%	2	1.7%	25	20.8%	2	1.7%	<b>120</b>
Split custody	11	47.8%	9	39.1%	4	17.4%	na		7	30.4%	1	4.3%	9	39.1%	0	0.0%	<b>23</b>
No data/unclear																<b>47</b>	

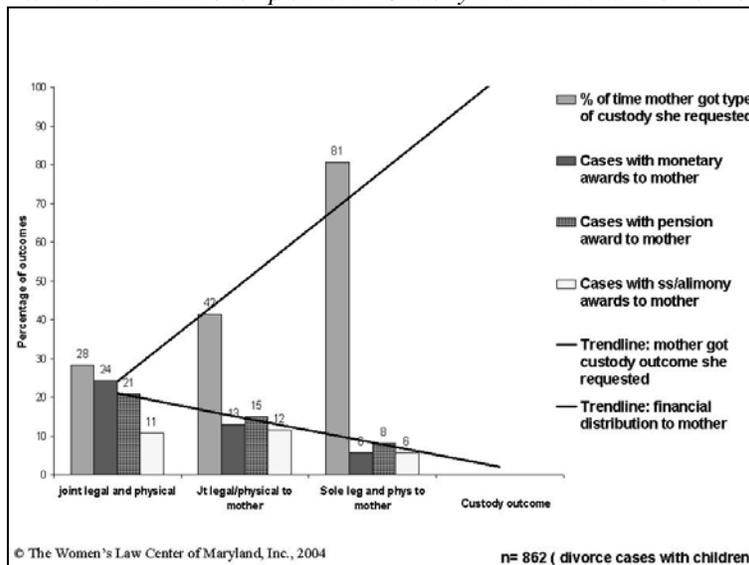
*Note: Table 12 shows custody outcomes by requests and financial distribution for divorce cases with children (n=862). Percentages are row percentages of the number of divorce cases with children that resulted in the identified custody outcome.*

### *Outcomes for Women*

As shown in Figure R below, the data have been analyzed separately for each gender, looking first at outcomes for women. In order to visualize what is happening, plotted along the x-axis are three select custody outcomes: joint legal and physical custody, joint legal with primary physical to the mother and sole legal and physical to mother. These three outcomes represent, in the order stated, increasing maternal responsibility. Then,

the first bar (light gray) indicates the portion of requests from the mother for each of these types of custody outcomes at the beginning of the case. Finally, for each of the custody outcomes, the number of cases that included the various types of financial awards – monetary award (dark gray), share of pension or retirement (gray checks) and spousal support (white) – are plotted. For example, for all of the cases where joint legal and physical custody was the outcome, that was the custody outcome the mother requested in 28 percent of cases. There were 24 percent of cases with that custody outcome where a monetary award was made, 21 percent where a share of the retirement/pension was awarded and 11 percent of cases with that custody outcome where spousal support/alimony was awarded.

Figure R: What is the Relationship between Custody and Financial Distribution (women)



The trend lines show that, for each of the three types of financial awards (monetary, share of pension/retirement and spousal support/alimony), as the custody involvement of the mother increases, the percent of cases in which money was awarded decreases. Put another way, the custody outcome that allows for the most custodial responsibility by the mother (sole custody) results in the fewest percent of cases in which a financial award is made. The data show that for women, the “more custody” they get, the less frequently they receive a financial award. For women, at least, it appears that there is an inverse relationship between the extent of custody involvement and incidence of financial award. Maryland law does not demand such a relationship.

### Outcomes for Men

The interplay of custody and financial distribution for men was measured by performing the same analysis.

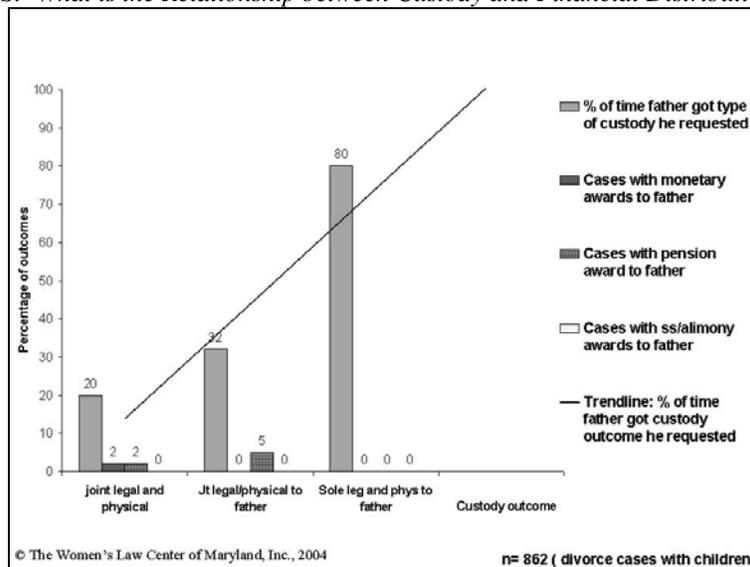
Again, as show in Figure S below, plotted along the x-axis are three select custody outcomes: joint legal and physical custody, joint legal with primary physical to the father and sole legal and physical to father. These three outcomes represent, in the order stated,

increasing paternal responsibility. The first bar (light gray) indicates the portion of requests from the father for each of these types of custody outcomes. Finally, for each of the custody outcomes, the number of cases that included the various type of financial award – monetary award (dark gray), and share of pension or retirement (gray checks) and spousal support/alimony (white) are plotted. For example, for all of the cases where joint legal and physical custody was the outcome, the father had requested that outcome in 20 percent of cases, and there were 2 percent of those cases where a monetary award was made, 2 percent where a share of the retirement/pension was awarded and no cases with that custody outcome where spousal support/alimony was awarded.

It is notable that no spousal support awards are indicated on the Figure S. There were only two spousal support awards to men in the study, and those cases did not involve custody.<sup>63</sup> A trend line along the custody outcomes has been added but no trend line could be indicated along the financial distribution outcomes for men because no trends were indicated by the data.

The data shown in Figure S below illustrate a different experience for men when custody and finances are at play than the experience illustrated for women. For women, there appears to be an inverse relationship between custodial status and financial distribution in divorce. However, for men, there is no discernable relationship between these two issues.

Figure S: What is the Relationship between Custody and Financial Distribution (Men)



<sup>63</sup> In the two cases where men received spousal support/alimony awards, there were no minor children in the families at the time of divorce; wives were the plaintiffs in both cases and no other financial awards were made.

## **D. Family Services**

In 1998 the Maryland General Assembly established family divisions in the five largest judicial circuits in Maryland: Anne Arundel, Baltimore, Montgomery and Prince George's counties and Baltimore City. The mission of Maryland's Family Divisions is to provide a fair and efficient forum to resolve family legal matters in a problem-solving manner, with the goal of improving the lives of families and children who appear before the court. To accomplish this mission, the following services were developed:

1. Alternative Dispute Resolution (including mediation)
2. Evaluative Services
3. Educational and Therapeutic Services
4. Safety and Protection Services
5. Legal Services

### *Findings*

This research study began collecting data on cases that were filed in the second half of the year in which the Family Divisions were established. Some areas of our findings that are relevant to the Family Division are: Mediation (Alternative Dispute Resolution); Use of Evaluators (Evaluative Services); Domestic Violence Allegations (Safety and Protection Services) and Legal Representation (Legal Services). As a result of conducting this study in the first year of the Family Divisions, the findings provide a baseline from which to assess the utilization of these important services in the coming years.

From the study, the following findings relating to the Family Divisions are noted:

### *Mediation*

- Only 125 cases were mediated out of a total of 1,687 divorce cases reviewed (6.8 percent). Out of all cases with children (1,022) the issue of custody was mediated in only 66 cases (6.3 percent).
- As discussed earlier, the data relating to methods of resolution and subsequent litigation indicate that cases resolved by an agreement of the parties (including through mediation) are less likely to return to court than those resolved by court intervention.
- The conventional wisdom that outcomes devised by the parties are more successful than those resulting from contested hearings is supported by the data, which argues for employing greater numbers of pre-trial intervention services and alternative dispute resolution methods, i.e., mediation in family law cases.

### *Use of Evaluators*

- Investigators/Evaluators (performing custody evaluations, home studies, mental health and substance abuse assessments) were only used in 41 out of 1,847 cases (.02 percent).

### *Domestic Violence Allegations*

- Domestic violence (including child abuse) was alleged by at least one party in 240 cases out of 1,847 (13.0 percent). Of these, 169 allegations were made by women and 36 by men.
- In cases where there was an allegation of domestic violence, 38 (15.8 percent) were referred to mediation, despite the statutory prohibition against sending cases with domestic violence allegations to mediation (Rule 9-205).
- In 11 divorce cases, the divorce was granted on domestic violence grounds.<sup>64</sup>

### *Legal Representation*

- Plaintiffs were represented through their entire case in 1,184 (64 percent) of cases, and defendants were represented through their entire cases in 564 (30.5 percent) of cases. An additional 50 (2.7 percent) plaintiffs had partial representation, as did an additional 53 (2.8 percent) defendants. Plaintiffs had no representation in 594 cases (32.2 percent) and defendants had no representation in 1,142 cases (61.8 percent). As discussed earlier, the plaintiff was female in 61 percent of the cases and male in 39.0 percent.
- Children were only represented in 32 of the cases reviewed (.03 percent of the 1022 cases with children). The types of representation children received included *Nagle v. Hooks* - 11 cases; Advocate - 5 cases; GAL - 2 cases; unclear - 4 cases

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<sup>64</sup> Effective October 1, 1998 (in the middle of fiscal year 1999), an absolute divorce could be granted by proving “cruelty of treatment.” Md. Code Ann. Fam. Law §7-103(a)(7) (1999).

## V. Recommendations

### **Recommendation 1: Expand purpose of spousal support**

Expand purpose and implementation of spousal support/alimony awards to promote equitable allocation of financial resources and to compensate for losses so that the economic burden of divorce does not fall disproportionately on women and children.

#### **Discussion:**

The current Maryland spousal support/alimony statute is based on the purpose, articulated in 1980, that seeks to make individuals self-supporting following divorce. The statute sets out a comprehensive list of factors to be considered when awarding alimony that address the economically dependent spouse's need for support and allowing for broad judicial discretion. The data show that spousal support/alimony was requested in 17 percent of divorce cases and awarded in only 8 percent of the cases. This finding exists in spite of the fact that most marriages in the sample ended after 10 or more years, and that for marriages of every duration, men's income at the time of divorce was almost double women's income at that time. Of the relatively few alimony awards the overwhelming majority were rehabilitative awards (61 percent). Monetary awards (which require consideration of some, but not all, of the same factors) are requested and awarded much more often than alimony/spousal support indicating that they have become the method of choice for distributing finances as a means of adjusting for inequities.

Even though women's numbers in the workforce have increased, women take an average of 11.5 years out of the work force, and more than two-thirds of part-time workers are women. This "wage-gap" between men and women results in lower earning rates and little or no ability to build up retirement funds. The Women's Law Center proposes a new method of compensating a spouse, to reflect current family dynamics. In many cases, a spouse (usually a woman) has a reduced economic status as a result of care taking during marriage. A method that compensates for this economic loss will avoid penalizing that spouse for choices which generally benefit the family as a whole.

### **Recommendation 2: Develop spousal support formulas**

Increase the predictability and consistency of spousal support/alimony awards through the development and implementation of spousal support formulas.

#### **Discussion:**

Spousal support awards are predictable only in marriage of the greatest length (20 years or greater), with the highest income levels (husband's income over \$80,000), and where income disparity approaches 100 percent. There is no predictability in lengthy marriages (over 10 years) and those where income disparity exists. These are often marriages with children. In fact, data demonstrate that an award of sole custody to mother is negatively associated with an award of spousal support/alimony (Figure R). This finding suggests that compensation designed strictly for support of a spouse is less likely to be requested and consequently awarded when the mother desires to gain sole custody. By developing

determinative standards for the award of spousal support/alimony that are not influenced by custody outcomes, this “bargaining” practice could be reduced.

The previous adoption of statutory guidelines for child support has significantly reduced the amount of discretion in this area and subsequently made this form of financial support predictable and consistent. Such may be the case for spousal support/alimony.

**Recommendation 3: Oppose joint custody presumption**

Utilize empirical data to educate legislators, judges, masters and the public about the status and consequences of joint custody in Maryland and oppose legislation mandating a presumption of joint custody.

**Discussion:**

Maryland parents are sharing some form of joint decision-making (legal custody is shared) in nearly 50 percent of cases. When joint custody is agreed to by the parents the case is three times less likely to return to court for a modification of that outcome, than a joint custody outcome resolved by judicial intervention. The disruption in family life of unresolved custody outcomes and subsequent litigation is not in the best interest of children. Maryland parents appear to be resolving custody by agreements which stand the test of time and result in greater stability for children.

**Recommendation 4: Increase alternative dispute resolution**

Advocate for increased use and support of alternative dispute resolution methods in appropriate cases.

**Discussion:**

Outcomes reached by the parties prior to litigation are more successful (result in less subsequent litigation) than those resulting from judicial intervention. Decisions reached by agreement, either by pre-complaint settlement, mediation or pre-trial, return to court less frequently than those resolved by judicial intervention (contested hearing or agreements on the day of trial).

**To promote the implementation of the these recommendations, the Women’s Law Center proposes the formation of a broad based coalition of judges, masters, attorneys and academics to promote policy and practice changes that will improve custody and financial distribution outcomes for Maryland families utilizing the empirical research generated by the study.**

**VI. Conclusion**

The Women’s Law Center of Maryland is pleased to present the data from this statewide research study. This report outlines the first empirical study of issues affecting families seeking the court’s assistance in dissolving marriages or determining custody of children. We hope that this study will shed light on the condition of family law in Maryland and be used to launch additional research initiatives and advance legal protections for families.

# APPENDIX

## APPENDIX - LIST OF TABLES

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*Table App-1: Distribution of divorce cases by length of marriage*

Marriage length	Total divorce cases	
	n	%
< 5 yrs	347	20.6
5-9 yrs	450	26.7
10-19 yrs	543	32.2
20 yrs+	301	17.8
Missing dates	46	2.7
<b>Total</b>	<b>1687</b>	<b>100</b>

*Table App-2: Percentage distribution of financial distribution awards to women, by whether fault alleged*

Women's financial distribution outcome	Woman alleged fault		Man alleged fault		No allegations		Total cases
	n	%	n	%	n	%	n
Alimony awarded to woman	40	32.0	18	14.4	67	53.6	125
Monetary award granted to woman	55	25.2	36	16.5	127	58.3	218
Share of pension/retirement awarded to woman	60	31.3	36	18.8	96	50.0	192

*Table App-3: Alimony requests and awards by marriage length*

Marriage length	Alimony requested		Alimony awarded		Total divorce cases	
	n	%	n	%	n	%
< 5 yrs	25	7.2	5	1.5	347	100
5-9 yrs	58	12.9	16	3.6	450	100
10-19 yrs	105	19.3	47	8.7	543	100
20 yrs+	80	26.6	57	18.9	301	100
Missing dates	7	15.2	2	4.4	46	100
<b>Total</b>	<b>275</b>	<b>16.3</b>	<b>127</b>	<b>7.5</b>	<b>1687</b>	

*Note: Tables App-3 through App-5 show row percentages of financial distribution requests and awards, given as a percentage of the total number of divorce cases within each marriage length category. The percentages of requests and awards in the Total columns are percentages of the total number of divorce cases.*

*Table App-4: Monetary award requests and awards by marriage length*

Marriage length	Monetary award requested		Monetary award granted		Total divorce cases	
	n	%	n	%	n	%
< 5 yrs	42	12.1	35	10.1	347	100
5-9 yrs	76	16.9	54	12.0	450	100
10-19 yrs	152	28.0	97	17.9	543	100
20 yrs+	90	29.9	80	26.6	301	100
Missing dates	7	15.2	3	6.5	46	100
<b>Total</b>	<b>367</b>	<b>21.8</b>	<b>269</b>	<b>16.0</b>	<b>1687</b>	<b>100</b>

*Note: Tables App-3 through App-5 show row percentages of financial distribution requests and awards, given as a percentage of the total number of divorce cases within each marriage length category. The percentages of requests and awards in the Total columns are percentages of the total number of divorce cases.*

*Table App-5: Share of pension/retirement requests and awards by marriage length*

Marriage length	Share of pension/ retirement requested		Share of pension/ retirement granted		Total divorce cases	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
< 5 yrs	14	4.0	9	2.6	347	100.0
5-9 yrs	19	4.2	20	4.4	450	100.0
10-19 yrs	60	11.1	82	15.1	543	100.0
20 yrs+	54	17.9	97	32.2	301	100.0
Missing dates	2	4.4	1	2.2	46	100.0
<b>Total</b>	<b>149</b>	<b>8.8</b>	<b>209</b>	<b>12.4</b>	<b>1687</b>	<b>100.0</b>

*Note: Tables App-3 through App-5 show row percentages of financial distribution requests and awards, given as a percentage of the total number of divorce cases within each marriage length category. The percentages of requests and awards in the Total columns are percentages of the total number of divorce cases.*

*Table App-6: Residence of the child at time of filing as a percentage of all cases with children*

Child's residence at time of filing	All cases with children	
	Freq.	Percent
With mother	702	68.7
With father	116	11.4
With both	72	7.0
Unclear	132	12.9
<b>Total</b>	<b>1022</b>	<b>100.0</b>

Table App-7: Custody outcomes by custody request and gender

Custody outcome	<b>Outcome requested by mothers (total plaintiff and defendant)</b>										<b>Outcome totals</b>		
	Sole		Sole		Joint leg-phys cust		Joint leg-phys cust		Joint leg/phys			Split	
	cust mom	%	cust dad	%	to mom	%	to dad	%	custody	%		custody	%
Sole custody to mother	319	<b>82.6%</b>	0	0.0%	3	0.8%	0	0.0%	0	0.0%	0	0.0%	386
Sole custody to father	13	18.8%	16	<b>23.2%</b>	0	0.0%	0	0.0%	2	2.9%	0	0.0%	69
Joint legal/phys to mother	133	46.0%	0	0.0%	99	<b>34.3%</b>	1	0.3%	5	1.7%	3	1.0%	289
Joint legal/phys to father	24	33.8%	0	0.0%	4	5.6%	13	<b>18.3%</b>	10	14.1%	1	1.4%	71
Joint legal/physical custody	42	31.1%	0	0.0%	10	7.4%	1	0.7%	42	<b>31.1%</b>	0	0.0%	135
Split custody	11	47.8%	0	0.0%	1	4.3%	0	0.0%	2	8.7%	6	<b>26.1%</b>	23
<b>Total</b>	<b>542</b>	<b>55.7%</b>	<b>16</b>	<b>1.6%</b>	<b>117</b>	<b>12.0%</b>	<b>15</b>	<b>1.5%</b>	<b>61</b>	<b>6.3%</b>	<b>10</b>	<b>1.0%</b>	<b>973</b>
	<b>Outcome requested by fathers (total plaintiff and defendant)</b>												
Sole custody to mother	64	<b>16.6%</b>	24	6.2%	18	4.7%	3	0.8%	17	4.4%	0	0.0%	386
Sole custody to father	1	1.4%	60	<b>87.0%</b>	0	0.0%	0	0.0%	2	2.9%	0	0.0%	69
Joint legal/phys to mother	1	0.3%	38	13.1%	88	<b>30.4%</b>	6	2.1%	45	15.6%	1	0.3%	289
Joint legal/phys to father	1	1.4%	29	40.8%	3	4.2%	21	<b>29.6%</b>	5	7.0%	2	2.8%	71
Joint legal/physical custody	0	0.0%	34	25.2%	1	0.7%	6	4.4%	58	<b>43.0%</b>	0	0.0%	135
Split custody	1	4.3%	9	39.1%	3	13.0%	0	0.0%	2	8.7%	4	<b>17.4%</b>	23
<b>Total</b>	<b>68</b>	<b>7.0%</b>	<b>194</b>	<b>19.9%</b>	<b>113</b>	<b>11.6%</b>	<b>36</b>	<b>3.7%</b>	<b>129</b>	<b>13.3%</b>	<b>7</b>	<b>0.7%</b>	<b>973</b>

Note: Table App-6 shows the number of requests within each outcome category; percentages are row percentages, showing number of requests within each custody award category, as a percentage of the total within each outcome category. N is all cases with children.





*Table App-8: Visitation outcomes by subsequent litigation filed*

<i>Visitation arrangement</i>	<i>Sub. litigation filed by mother</i>		<i>Sub. litigation filed by father</i>		<i>Sub. litigation filed by both</i>		<i>Total Cases n</i>
	<i>n</i>	<i>%</i>	<i>n</i>	<i>%</i>	<i>n</i>	<i>%</i>	
reasonable	2	0.4%	9	1.9%	3	0.6%	467
< alternating wkds +	1	3.4%	1	3.4%	2	6.9%	29
alternating wkds + hol/vaca	2	1.3%	8	5.2%	5	3.2%	155
> alternating wkds +	0	0.0%	6	7.2%	0	0.0%	83
joint phys - 35% or more	1	1.3%	0	0.0%	3	3.9%	76
restricted or supervised	4	11.1%	2	5.6%	3	8.3%	36
other	1	3.8%	4	15.4%	0	0.0%	26
No data	0	0.0%	3	2.0%	1	0.7%	150
<b>Total</b>	<b>11</b>	<b>1.1%</b>	<b>33</b>	<b>3.2%</b>	<b>17</b>	<b>1.7%</b>	<b>1022</b>

*Note: Table App-8 denotes subsequent litigation for either "failure to comply with visitation" or modification of visitation*