

THE WOMEN'S LAW CENTER OF MARYLAND, INC.

FAMILIES IN TRANSITION

A FOLLOW-UP STUDY EXPLORING FAMILY
LAW ISSUES IN MARYLAND

DECEMBER 2006

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EXECUTIVE SUMMARY

Families in Transition is the second installment in a series of initiatives undertaken by the Women's Law Center of Maryland, Inc. The first initiative, *Custody and Financial Distribution in Maryland*, released in April 2004, analyzed an extensive dataset consisting of domestic cases filed in Maryland during Fiscal Year 1999. That report offered an historical overview of Maryland divorce and custody law, setting the stage for the data and illuminating the trends in the state. That first study was born from a collective desire to explore whether or to what extent anecdotal stories about the experience of litigants in the family law arena rang true.

This newest initiative, *Families in Transition*, examining family law cases from Fiscal Year 2003, explores how the family law landscape has changed in the past several years, and continues the process of informing and educating advocates, policy-makers and litigants themselves about the process by which very personal issues are resolved. Here are a few highlights and quick reference points from *Families in Transition*.

Number of jurisdictions in Maryland: 24
Number of jurisdictions included in the sample: 24

Number of custody and divorce cases filed in Maryland in FY03: 30, 119
Number of cases reviewed for study: 3,366

Percentage of cases in the study initiated by women: 61
Percentage initiated by men: 39

Percentage of litigants who requested alimony: 16
Percentage who received alimony: 6

Percentage of litigants who requested a monetary award: 20
Percentage who received a monetary award: 16

Percentage of cases with no financial outcome at all: 63
Percentage of marriages in the study lasting 10 years or more: 50

Percentage of Maryland parents sharing decision-making about their children: 55
Percentage who did so four years ago: 48

Percentage of women who requested sole custody to themselves: 70
Percentage of fathers who requested sole custody to themselves: 33

Percentage of custody cases resulting in sole custody to the mother: 32
Percentage of custody cases resulting in sole custody to the father: 6

Percentage of custody cases that were contested: 30
Percentage that were not: 70

Percentage of cases where the parties resolved custody by agreement: 62
Percentage where the court resolved the custody issue: 14

Percentage of cases where parties filed for modification after agreement: 5
Percentage of modification file after the court decided the issue: 10



Based on the findings outlined in *Families in Transition*, the Women’s Law Center proposes the following substantive policy recommendations to the Maryland Judiciary and Administrative Office of the Courts. A brief discussion of the key findings follows each recommendation:

Recommendation 1: Develop “Best Practices” standards designed to increase the predictability and consistency of alimony awards and outcomes.

The data from this study, as in the earlier study, show that whether or not a litigant can expect to pay or receive alimony from his or her ex-spouse is still an unpredictable aspect of the family law case. As discussed in this report, the factors that “predicted” the likelihood of an alimony award as between the two studies conducted by the Women’s Law Center of Maryland are quite distinct. Indeed, the factors in the FY03 study suggest that more middle-range marriages may be generating alimony awards - but there does not seem to be a trend that litigants, attorneys and the courts can rely on.

Recommendation 2: Increase access to attorneys for litigants seeking custody determinations, especially when the other party has attorney.

When one party in a contested custody case is represented by an attorney and the other is not, chances are good that the outcome will be sole custody to the party with an attorney. The data show that in just over 30 percent of the cases involving children, one parent did not have representation by an attorney while the other did. The data show that attorney representation seems to have an effect on the type of custody outcome granted, especially for contested cases. The data reported here also suggest that when parties resolve their custody dispute by agreement – which they may do with the help of attorneys – the rate of subsequent litigation on that issue (the frequency with which they return to court to modify the custody arrangement) is much less than when the court intervenes to resolve the issue. The court system would do well to “level the playing field” for litigants and by extension reduce the court’s own involvement.

Recommendation 3: Develop a protocol for tracking the provision of services to family law litigants in the case files.

In most jurisdictions, there is no check list or worksheet that indicates a referral has been made or a service provided. Therefore a review of the case file itself may not be enough to determine the scope of services available or provided to the litigants in a particular case. The Women’s Law Center recommends that the Judiciary standardize the use of services checklists by family divisions and family services programs.

Recommendation 4: Monitor and implement the existing statewide protocols and tools for screening domestic cases for family violence issues.

The data show that in divorce or custody cases where there are allegations of domestic violence, some of those cases are referred for mediation, in contravention of the rule (Maryland Rules, Rule 9-205). As the governing body for setting statewide standards within Maryland’s family courts, the Administrative Office of the Courts has developed and disseminated protocols and tools to guide courts in screening domestic cases for the presence of family violence issues. We recommend that the Court make adequate resources available to the family divisions and family services programs so that the protocol can be consistently implemented across the state.

**For information about additional policy implications of this data
or related advocacy initiatives,
please contact the Women’s Law Center of Maryland, Inc.**

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KEY TERMS

This section provides key terms or phrases used in the report whose meanings may not be readily apparent to the reader.

Absolute divorce: the final legal ending of a marriage by a court, after which both parties are legally free to remarry.

Agreement: a process by which the parties to an action themselves determine in writing or enter orally on a court record the outcome, or with the assistance of attorney(s). Agreements may occur at various stages prior to or during the litigation, but for purposes of this report do not include “agreements” made on the day of trial.

Alimony (also called Spousal Support): periodic payments from one spouse to another to assist for a definite period of time the economically dependent spouse in becoming self-supporting, or for an indefinite period of time to remedy a disparity (inequality).

Average: the sum of two or more quantities divided by the total number of quantities in the set.

Award: the decision or determination that a particular issue (such as child support) will be given or assigned to one of the litigants. In this report, award refers to the outcome, not the decision-maker. For example a statement that 98% of the alimony awards in the sample were to women does not indicate whether those awards were the result of a judge’s decision or an agreement of the parties.

Custody: a reference to the legal arrangements regarding with whom a child will live and how decisions about the child will be made. Custody has two parts: legal and physical. Legal custody refers to the decision-making authority. If a parent is awarded sole legal custody, it means that they alone can make major decisions for the child including, for example, medical/dental and educational decisions. Physical custody refers to where the child lives on a regular basis. If they choose to settle the case, parents can make any custodial arrangement that is in the best interest of the children. If the court must decide custody, the judge will have to determine what is in the best interest of the children.

Custody case: a reference to a legal action where one or both of the parties is seeking to establish custody for a child. This reference does not include efforts to modify or otherwise amend existing custody orders, nor does it include actions to establish paternity.

Default: a party's failure to answer a complaint, motion, or petition.

Financial information: a reference to data in the case file relating to income, assets, liabilities employment. Such data may be found on financial statements, child support worksheets, separation agreements or other documents.

Financial outcome: a distribution of any of the three types of financial “awards” discussed in this report – alimony, monetary (lump sum) payment, or a portion of a pension or retirement account. Such outcomes may be reached either by agreement of the parties or by an order from the court.

Financial statement: a form required when one or both parties are seeking alimony or child support (DomRel 30 or 31).

Granted: a reference to a decision by a judge to confer or assign a particular outcome.

Income disparity: the difference between a husband's income and a wife's income.

Joint custody: when used in this report, this term identifies a child custody arrangement in which both parents share legal and share physical custody, that is they share equally all decision-making for the child and the child's physical residence is shared.

Judicial intervention: a method of resolving an issue in the case which involves either having a judge actually determine the outcome, or the parties themselves actually determining the outcome with judicial assistance (i.e. on the day of trial).

Legal custody: identifies which parent has decision-making (education, religion, medical) responsibility for the child.

Limited divorce: establishes certain legal responsibilities while the parties are separated but does not end the marriage.

Long term marriage: a marriage lasting 10 or more years.

Marital property: includes all property acquired during the marriage, even if not titled in both names, with some exceptions. See Annotated Code of Maryland, Family Law Article, Section 8-201(e) for definition and Sections 8-203 through 8-205 for how the court treats marital property.

Mean: the simple mathematical average of two or more numbers.

Median: the value that divides a distribution into two equal parts; half of the cases (or data sets) fall below this value and half exceed it.

Monetary Award: an adjustment of the equities and rights of the parties concerning marital property. A party may receive a monetary award either by agreement or as granted by the court. 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.

Outcome: the result or resolution of a particular issue.

Pendente lite hearing: (Latin for "pending the lawsuit") a court proceeding in which temporary arrangements for custody, child support, child visitation, alimony, use and possession of the family home are established until a final hearing.

Physical Custody: identifies the parent who is responsible for the day-to-day decisions concerning the child, and identifies the child's primary residence.

Pro Se: not having an attorney, representing yourself (also referred to as self-represented litigant).

Pro Se Clinic: court-based self-help information center or program designed to assist people who do not have an attorney; each circuit courthouse in Maryland has such a clinic.

Regression: a type of analysis that explores the relation between one factor and a particular outcome, and the relation between several significant factors and the outcome.

Representation: having an attorney.

Request: the process through which a litigant seeks a particular outcome. Requests can be made in a complaint, in a counter-complaint, during mediation, at a settlement conference or at other points during the litigation. This report tracks requests made at the outset of the case.

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.

Split custody: a reference to a child custody arrangement where siblings are separated and each parent has custody of one (or more); this is a different arrangement from joint legal and physical custody.

Unconscionable disparity: a reference to gross overall one-sidedness in difference between a husband’s and wife’s incomes after divorce.

Use and Possession: the right of the parent who has custody of a minor child of the marriage to remain in the family home for up to three years from the date of divorce, under certain circumstances.

Visitation: the right of a separated or divorced parent to visit a child, sometimes referred to as “access.”

I. INTRODUCTION AND BACKGROUND

In April 2004, the Women’s Law Center of Maryland released *Custody and Financial Distribution in Maryland*, which reported the findings from the first large-scale statistical study of custody and the financial outcomes of divorce in the state of Maryland. While other studies looked at these complex family law and social issues, none had compiled as much data describing so many cases over such a long period of time. The study was born from a collective desire to explore whether or to what extent anecdotal stories about the experience of litigants in the family law arena rang true.

Custody and Financial Distribution in Maryland analyzed an extensive dataset consisting of cases filed in Maryland during Fiscal Year 1999 (July 1, 1998 through June 30, 1999). The report offered an historical overview¹ of Maryland divorce and custody law, setting the stage for the data and illuminating the trends in the state.²

The findings from the study were not earth shattering; indeed, practitioners and members of the judiciary have commented repeatedly that the data confirmed what they see everyday in their practices. But for the first time, practitioners, legislators and advocates had some solid numbers. As one practitioner said: “It won’t just be my word trying to convince my client about some aspect of the case – I have numbers to back me up.” Policy-makers, too, were aided by the study; statistics from the study were instrumental in the debates surrounding several legislative initiatives, including a presumption of joint custody bill and a bill relating to the transfer of marital property.

In addition to confirming the state of reality for litigants, *Custody and Financial Distribution in Maryland* created a baseline for assessing the trends in Maryland family law. For example, the data showed that in 38% of the cases, women obtained sole custody of the child or children in the case. But at the time of the study, there was no similar statistic, short of anecdotal evidence, to which that number could be compared-- there was no way to determine whether that 38% was higher, lower or about the same as ten or even five years earlier. The same is true for statistics relating to the use and impact of “family division” services. In 1998, the Administrative Office of the Courts began creating specialized divisions within each Circuit Court to assist family law litigants: mediation, case coordinators, evaluators, etc. Because the study examined cases from fiscal year 1999, it provided the Administrative Office of the Courts with a perspective on family law litigants that may help it evaluate the impact of those critical services.

The data analysis resulted in significant findings in the following areas:

- frequency of custody requests and outcomes, including joint custody;

¹ Please refer to this study for this historical and legal context and more of a discussion about Maryland law.

² *Custody and Financial Distribution in Maryland* can be obtained by requesting a copy from the Women’s Law Center directly by calling (410) 321-8761 or by downloading a copy from the Women’s Law Center’s website at <http://www.wlcmd.org/pdf/CustodyFinancialDistributionInMD.pdf>

- points at which custody decisions were being made;
- whether custody decisions were being made by the parties or by a judge;
- which custody outcomes generated the most subsequent litigation;
- which method of decision making generated the most subsequent litigation;
- usage of family services, such as mediation;
- rates of representation for litigants;
- rates of requests for financial distribution and rates of awards;
- factors that predict financial awards; and
- relationship between financial outcomes and custody outcomes.

Finally, *Custody and Financial Distribution in Maryland* did not provide simply an analysis of data; based on the analysis, the Women’s Law Center proposed four policy-related recommendations. These recommendations capture the heart of the data and their purpose was to address many of the issues raised by the trends noted in the narrative. The recommendations included:

- Expand the purpose of spousal support;
- Develop spousal support formulas;
- Oppose joint custody presumption; and
- Increase alternative dispute resolution.

Developed by the Advisory Committee of the Women’s Law Center, several of the recommendations now form the basis for a separate initiative at the Women’s Law Center called *Justice in Divorce*. For more information about how the Women’s Law Center is building on and implementing these policy recommendations, visit the Women’s Law Center’s website at www.wlcmd.org.

Custody and Financial Distribution in Maryland was a starting point. Indeed, a baseline is most meaningful when it is used as a measurement. In the winter of 2005, the Women’s Law Center embarked on a new research project, this time examining family law cases from Fiscal Year 2003 – four years after the first study. In the pages that follow, we examine the experience of family law litigants in Maryland in FY03. How many plaintiffs are men? Is anyone asking for alimony anymore? What, if anything has changed in the interim? Are litigants more easily able to negotiate the court system? Do more of them resolve their issues before getting to trial? Are there policy implications that flow from these data, as there were from the initial study?

Most of the research questions performed with the original study were replicated, and where they were, this final report includes comparisons to the baseline data. Of particular interest is the identification of trends in the usage of services provided through the family divisions. FY99 was the first year family divisions were funded in Maryland. Specifically, changes in the usage of mediation, the use of evaluators, frequency of allegations of domestic violence and appointments for child representation will provide valuable information about the implementation and impact of the family divisions. Other trends that will help inform policy and practice decisions include rates of joint custody awards, how and at what point custody decisions are being made and which decisions produce the most subsequent litigation. In addition, effective October 1, 1998, “cruelty of treatment” was added as a ground for an

absolute divorce. This replication study reveals the frequency with which that ground is utilized.

In all, this newest initiative explores how the family law landscape has changed in the past several years, and continues the process of informing and educating advocates, policy-makers and litigants themselves about the process by which very personal issues are resolved.

II. RESEARCH METHODOLOGY

In order to be in a position to perform comparisons of the data from the original study and this study, the Women's Law Center set out to replicate the original FY99 research methodology as much as practicable and as much as possible. In some areas, such as case list collection, the passage of even just four years proved significant. In other areas, the processes were essentially the same.

A. STUDY POPULATION

The goal was to conduct a study that explored a representative sampling of the divorce and custody cases filed in Maryland in FY03. To that end, the Administrative Office of the Courts provided the Women's Law Center with electronic spreadsheets detailing all custody³, absolute divorce and limited divorce⁴ case filings for each county (except Montgomery and Prince George's Counties, from whom the case lists were obtained separately)⁵ for FY03. Fiscal Year 2003 was selected for review in order to allow the cases filed during that year to progress through the court system and reach a resolution. Although fiscal year 2004 would have provided the Women's Law Center with a five year reporting time frame from the first study, the cases filed during that year would have had only about 13 months to work through the system and many of them may not have been resolved.⁶ Hence, FY03 was chosen as the sample year.

There were slightly more than 30,000 custody and divorce cases initiated in FY03, according to the Administrative Office of the Courts. The Women's Law Center sought to capture a random ten percent sampling of the cases filed during FY03, which would result in the review of approximately 3,000 cases.

³ The term "custody" in relation to case type refers to a case where one or both of the parties is seeking to establish custody for a child. This case type does not include efforts to modify or otherwise amend existing custody orders, nor does it include actions to establish paternity. Also see the discussion about Third Party Custody cases, at Section III.C, and Key terms section for more definitions.

⁴ In many cases where a plaintiff initially requests a limited divorce, the complaint is amended to reflect a request for absolute divorce. See Key Terms section for definitions.

⁵ Montgomery County and Prince George's counties currently manage and operate their own information systems, independently of the UCS system used by the rest of the Judiciary.

⁶ Field research began on February 15, 2005.

B. CASE SELECTION

The county by county spreadsheets obtained from the Administrative Office of the Courts included disposition codes for each case. There was great variation from county to county in the selection of codes⁷, but any case whose disposition code reflected a failure to reach the final judgment stage (for whatever reason – dismissed by the plaintiff, transferred, consolidated, inactive and dismissed by the court, or still active and open) was extracted from the main list for that jurisdiction. The research consultants then utilized a randomization macro through Excel to select 10 percent of the cases in each jurisdiction. This 10 percent list is referred to as the “primary sample” and the number of cases on that list became the “target” number for that jurisdiction. The research consultants also applied the randomization macro again to the remainder of the jurisdiction list to generate what we referred to as the “reserve sample.” As discussed more fully below, the reserve sample was used to select cases when the number of cases on the primary sample list that were completed with an instrument was less than the target number. Cases were selected and reviewed from the reserve sample until the number of completed instruments in the jurisdiction reached the target.

The final numbers of cases reviewed and categorized (according to the instrument used for the review) are summarized below, and explained in greater detail in the sections that follow.

C. RESEARCH INSTRUMENT

The instrument used to collect data in the field was a 15 page questionnaire-style document, based on the research instrument used in the FY99 study. Several questions (data points) were added to the FY03 instrument to capture information that the Women’s Law Center would have liked to obtain from the FY99 study. (For example the FY99 study did not specify which family division services the litigants availed themselves of; in the FY03 study, these services are enumerated.) However, for data points on which the Women’s Law Center intended to conduct a comparison analysis, the questions retained the same format.

As in the FY99 study, a “short form” was utilized to capture brief data from case files which did not reach a final judgment, for example, because the case was still active, because the court or the plaintiff had dismissed the case or because the case file could not be found. Where available, researchers collected information about whether any family division services were utilized and whether either party filed for a waiver of fees. These short forms, which total 608, are not included in this overall analysis, although a subsequent section of this report provides descriptive data about this category of cases. (See section III.D.)

⁷ In at least one county, the disposition codes used by the clerk were essentially meaningless because, for example, all of the cases that were not still active were assigned the disposition code “dis” meaning “disposed.” Obviously, that code does not provide any insight about what actually happened to that case, and in fact, the case may actually have been resolved (with a final judgment) and then closed by the clerk, thereby earning the code “disposed.” In that jurisdiction, the case selection process simply allowed for a greater percentage of cases to be selected.

D. DATA COLLECTION AND REVIEW

RECRUITMENT AND TRAINING

Researchers were recruited using newspaper and internet announcements. Each researcher participated in a training session using material developed by the Women's Law Center. Most of the researchers were law students or lawyers.

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, actual court files were 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 completed research instrument and discussing issues and questions. These instruments were then checked by the trainer. Researchers were accompanied in the field by an experienced researcher for additional training and feedback.

Unlike the initial study where researchers mostly completed a jurisdiction before starting a new one, during this study, researchers were hired to conduct the research in different geographical areas. As a result, field research was ongoing in several jurisdictions simultaneously.

CASE REVIEW IN THE FIELD

For every case on a jurisdiction's primary sample list, one of two forms was completed: a research instrument or a short form. If a final judgment appeared in the file, a research instrument was completed for that case. If there was no final order, the short form was used to track the status of the case and to capture brief information about the parties and services provided by the family division, where possible.

While reviewing a case (with either form), the researcher marked the date of review and his or her name on the jurisdictional list beside the case number. Completed jurisdictional lists are maintained with other confidential project documents.

DATA REVIEW AND ENTRY

Each research instrument was reviewed by the Research Director. As before, the research protocol included development of a secure database for the maintenance of identifying information from each case file,⁸ and a research database for the collection of other data from the case files. Following an internal review of the research instruments and the short forms, identifying information for each case was entered into the secure database, and each case was given a unique number identifier for use in all future references to that case. Thereafter, all data

⁸ Although court files are public record, the Women's Law Center again 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.

from the field were entered into the research database. After data checks were conducted, the data were converted to a statistical database for analysis.

DATA CHECKS

As in the original study, 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 alimony, number of children and date of judgment. A cross check of the data also was conducted to eliminate or address inconsistent responses.

E. DATA ANALYSIS

The Women’s Law Center developed a set of research questions designed to elicit information that would address both the substantive research goals and objectives and also permit a comparison with the FY99 data in as many respects as possible.

Both the Advisory Committee and members of the Family Law Committee of the Women’s Law Center provided feedback and insight into the development of the research questions. Particular attention was paid to addressing issues in the process or the legal landscape that have changed over time, such as the increased involvement of the family divisions in family law cases, and to clarifying areas, such as requests by the parties, which were difficult to capture in the original study.

Working with the Research Director, the research questions were coded by the Research Consultant and analyzed using statistical software.

III. PROFILE OF THE SAMPLE

A. NUMBER OF CASES REVIEWED

The Women’s Law Center attempted to capture a 10 percent sampling of the divorce and custody cases initiated during FY03. The Administrative Office of the Courts reported a total of 30,000 divorce and custody cases initiated during that time statewide. Researchers were sent to each jurisdiction with a randomized list of 10 percent of the cases initiated in that jurisdiction during that fiscal year. (See Methodology section for more details on this process.)

Table 1 shows the number of completed instruments from each jurisdiction and the percentage of the total sample represented by that number. The jurisdictions with the greatest percentage of the state’s population rightfully represent the jurisdictions with the greatest percentage of case filings, and therefore greatest percentage of the total sample: Baltimore, Montgomery and Prince George’s Counties and Baltimore City.

Table 1: Distribution of cases in sample, by jurisdiction, FY03

Jurisdiction	# of cases	% of total
Baltimore	349	14
Montgomery	346	14
Prince George	338	13
Baltimore City	337	13
Anne Arundel	288	11
Harford	121	5
Frederick	100	4
Howard	88	3
Washington	76	3
Charles	72	3
Carroll	64	3
Wicomico	55	2
Cecil	47	2
St. Mary	43	2
Allegany	36	1
Calvert	36	1
Talbot	24	1
Caroline	23	1
Worcester	19	1
Garrett	18	1
Dorchester	16	1
Queen Anne	15	1
Kent	12	0
Somerset	10	0
Total	2533	100

As shown in Table 2, a total of 3366 cases were reviewed. The researchers collected a total of 2533 completed instruments. Despite the efforts to cull from the sample before selection the cases without resolution, nonetheless, researchers encountered 608 cases for which a short form was completed. An additional 125 cases constituted “third-party custody cases” which are analyzed descriptively and separately from the primary data. (See Section III.C., .)

Table 2: Overview of cases reviewed, FY03

Approximate number of custody and divorce cases filed in Maryland, FY03	30,119
Number of cases reviewed:	3,366
<i>Full instruments</i>	2,533
<i>Third party custody cases</i>	125
<i>Short forms</i>	608

DISTRIBUTION OF CASES BY CASE TYPE

Case type designations appeared on the master case lists for each jurisdiction obtained from the Administrative Office of the Courts. Three case types were requested by the Women’s Law Center: Absolute Divorce (DA), Limited Divorce (DL) and Custody (CT or CU).

The majority of cases in the sample were filed as Absolute Divorce cases - 2078 or 82.04 percent. A total of 168 cases (6.63 percent) in the sample were filed as limited divorce cases,

and just fewer than seven percent (287 cases) were filed as custody cases, usually because the parties were not married.⁹ Four cases were not designated with a case type or the case type was missing from the research instrument.

B. DEMOGRAPHIC INFORMATION

The research instrument for this study was essentially the same as the one used for the original study, and was designed to capture demographic information about the parties where available from the case files: race, sex, age, highest level of education, employment status, income, special needs and county of residence. As family law practitioners know, much of this demographic information is captured on a “Report of Absolute Divorce,” or “blue form” which is required to be completed in every Maryland divorce case.¹⁰ However, blue forms were not accessible to the field researchers because they are sent by the clerk’s offices to the Division of Vital Records Department of Health & Mental Hygiene and copies are not generally retained in the case file. Therefore, although researchers found select demographic information from other documents in the case files, demographic information about 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 percent of the cases and male in 39 percent, with corresponding percentages for defendants (39 percent were female, 61 percent male). The plaintiff’s race was unknown in 89 percent of the cases and defendant’s race was unknown in 86 percent of the cases. Although data about race were not available in the majority of cases, data for 2003 indicate that the total statewide population was 5,512,310 as of July 1, 2003. Of that, 65 percent was white alone, 29 percent was black or African-American alone, 5 percent was Asian alone, and 2 percent reported being two or more races.¹¹

The employment status of the parties also was difficult to discern from the court file. In 796 cases (31 percent), the court file indicated the plaintiff was employed, and in 126 cases (5 percent), the file indicated the plaintiff was unemployed. In the remaining 64 percent of cases, plaintiff’s employment status was not known. Researchers were able to determine the defendant was employed in 708 cases (28 percent) and unemployed in 59 cases (2 percent). In the remaining 70 percent of cases, defendant’s employment status was not known.

The highest level of education could be discerned in 97 cases (4 percent) for plaintiffs and 75 cases (3 percent) for defendants. Whether a litigant suffered from physical or mental disabilities also was difficult to discern: in 98 percent of plaintiffs and the same percentage of defendants researchers checked “unknown” in this category.

The table below shows a comparison between available demographic data for the samples from FY03 and FY99:

⁹ In the original study, the distribution of cases by cases type was comparable: absolute divorce – 82.7 percent, limited divorce – 8.6 percent, custody – 8.7 percent.

¹⁰ Authority for this form is Md. Code Ann., Health-General s. 4-206.

¹¹ “Total Population by Race for Maryland’s Jurisdictions, July 1, 2003”, as prepared by the Maryland Department of Planning, Planning Data Services, from the Population Division, U.S. Census Bureau, August 2005.

Table 3: Availability of demographic information, in percents, FY03 and FY99

		FY03		FY99	
		<i>Known</i>	<i>Unknown</i>	<i>Known</i>	<i>Unknown</i>
Plaintiff	Race	11.03	88.97	6.98	93.02
	Sex	100	0	100	0
	Education level	3.83	96.17	9.69	90.31
	Employment status	36.44	63.56	28.69	71.31
	Mental/ Physical disability	1.94	98.06	NA	NA
Defendant	Race	13.98	86.02	14.78	85.22
	Sex	100	0	100	0
	Education level	2.96	97.04	26.42	73.58
	Employment status	30.29	69.71	29.07	70.93
	Mental/ Physical disability	2.02	97.98	NA	NA

C. “THIRD PARTY” CUSTODY CASES

There were 125 cases in which a person or persons other than a biological parent of the child(ren) sought custody. These cases are classified as “third party custody cases.” Due to their unique nature and to the inability to fit their data into standardized format of the research instrument, these cases were analyzed separately from the primary sample. In addition, because these cases were not considered appropriate for inclusion in the primary sample, “replacement sampling”¹² was implemented for each such case that was reviewed.

In the majority of cases, the third parties - the grandparents, aunts and uncles or siblings - initiated the cases and were the plaintiffs, seeking custody of the child(ren). In addition, in 84 percent of the third party cases, an overwhelming majority, there was only one child at issue.

Other notable points from these cases include:

- 75 percent (94 cases) of the cases were resolved in one year or less from the date of filing;
- 69 percent of the plaintiffs were not represented at all by an attorney;
- 88 percent of the defendants were not represented at all by an attorney; and
- 95 percent of the children were not represented at all by an attorney (only 5 percent of children had an attorney in a third party custody case).

¹² Replacement sampling is a substitution process whereby the next occurring case from the “reserve sample” is selected for review because the “third party” case was not included in the primary analysis. See the Methodology section at Section II.B. for a more complete description.

D. CASES WITHOUT FINAL ORDERS (THE “SHORT FORM” CASES)

There were 608 cases in the study for which researchers completed a “short form” rather than a full data collection instrument. As stated earlier, a “short form” was utilized to capture brief data from case files which did not reach a final judgment for one of the following reasons:

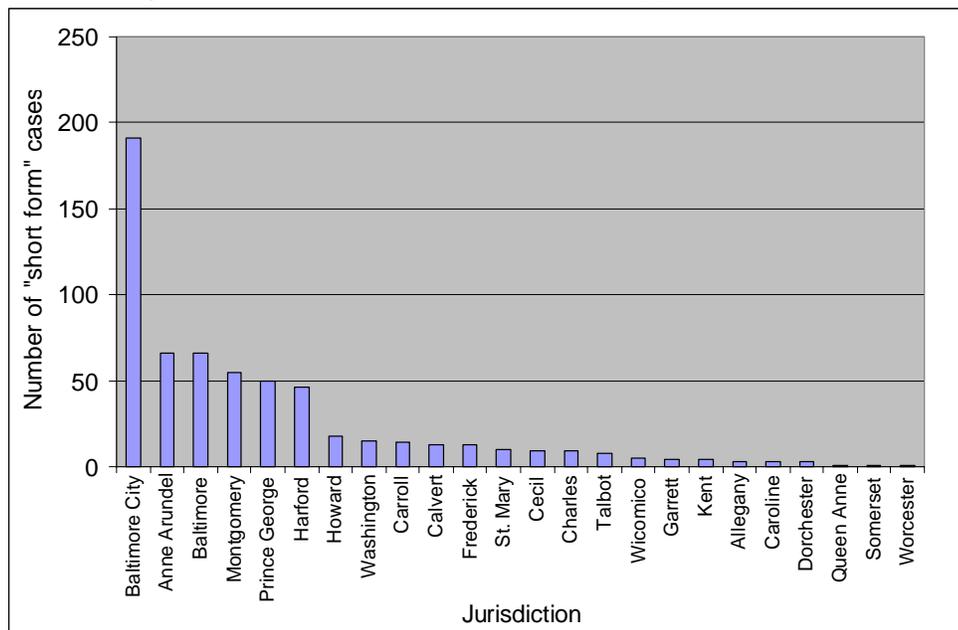
- the case was still active;
- the case had no final order;
- the court or the plaintiff had dismissed the case;
- a dismissal was pending;
- the case had been transferred or consolidated; or
- the case file could not be found.

Where available, researchers collected information about whether any family division services were utilized and whether either party filed for a waiver of fees. These short form cases are not included in this overall analysis, although brief data is reported below.

The number of short forms collected from each jurisdiction varied greatly by county (in terms of a percentage of the total cases reviewed). However, far and away, the largest number of short forms was collected from Baltimore City.¹³ Otherwise, the largest number of short form cases was collected from the largest populated jurisdictions – Anne Arundel County, Baltimore County, Montgomery County and Prince George’s County.

¹³ This large number is likely the result of the inability to extract cases from the overall case list prior to the random selection of 10 percent. In Baltimore City, the cases appeared with a code called “Disposed” – but that code did not provide any further explanation of the disposition, such as whether the case had been voluntarily dismissed, dismissed by the court, etc.

Figure A: Distribution of “short form” cases by jurisdiction, FY03



Most of the short forms were completed for Custody cases (45 percent). The rest of the short forms are broken down as follows: Absolute Divorce- 39 percent; Limited Divorce – 15 percent and Case Type unknown – 1 percent.

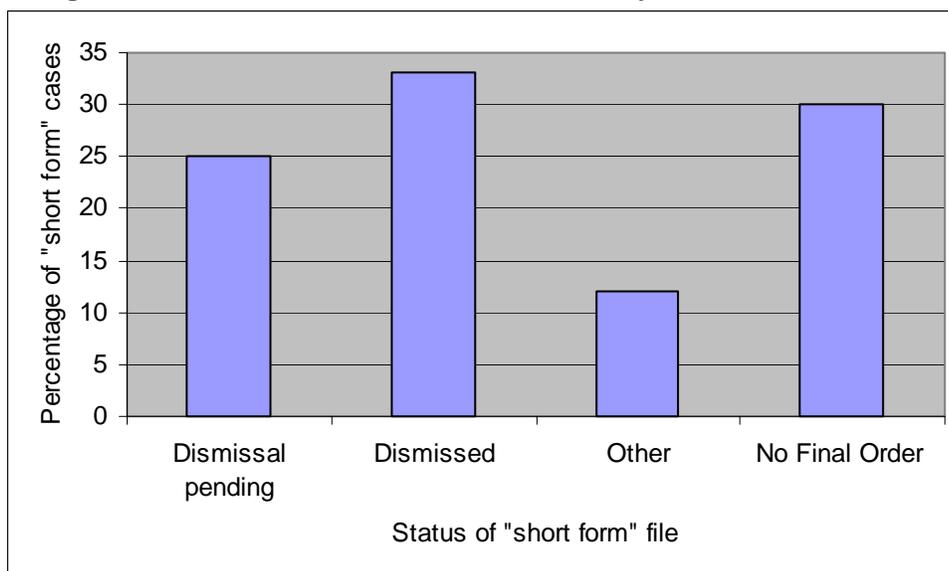
In the FY99 study, the Women’s Law Center did not track the disposition of “short form” cases (which were called “absent/dismissed” cases). Intrigued by the high number of such cases in the FY99 study (726 cases), the Administrative Office of the Courts requested the Women’s Law Center to capture data on the status of such cases, to the extent possible. Thus, researchers recorded the following “status” categories by reviewing docket entries and documents in the file:

- Dismissal pending -- documents in the file indicate that the case would be dismissed in a matter of time (usually 30 days) due to lack of prosecution (inaction on the case for some specified time period), a request from the plaintiff or for some other reason (such as failure to serve the defendant or other reason);
- Case dismissed -- a Notice of Dismissal appears in the file because of action by the court, a request from the plaintiff or some other reason;
- File not found – the file was not available to the researcher for several consecutive dates in the courthouse;
- No final order – no final judgment appeared in the file for any number of reasons, including the fact that the case was still active or the paperwork to dismiss the case had not made it to the file yet;
- Consolidated – the case has been combined with another pending case, not on the research list;
- Transferred – the case file has been transferred for some reason, either to another Maryland jurisdiction or out of state;

- Out of scope – the case itself (i.e. petition for custody) was not initiated during FY99 (the action in FY99 may have been a modification of a previous custody order).

Figure B shows the status of the short form cases grouped into four categories: dismissal pending (25 percent), dismissed (33 percent), other (including consolidated, transferred, out of scope – 12 percent), and no final order (30 percent). Perhaps predictably, the largest category is cases that have been dismissed, notwithstanding the disposition code provided to the Administrative Office of the Courts by the clerks in each jurisdiction. It is important to keep in mind that these percentages reflect a total of only 608 cases out of 3,366 reviewed.

Figure B: Percent distribution of short form cases, by status of case file, FY03



In addition, for all of the short form cases, researchers attempted to collect data about whether the parties were represented by counsel during the case (at the beginning of the case, at the end of the case, not at all, defendant never served). Obviously, in some instances, no data could be collected about this issue if the case file was missing or had been consolidated, or if there was no “end of the case.” The table and figures below present the data with respect to representation of the parties in short form cases.

As shown in Table 4 and Figures C and D, of these short form cases, 61 percent of plaintiffs and 53 percent of defendants were “pro se” during the case (that portion of the case documented in the file), while 29 percent of plaintiffs and 18 percent of defendants were represented throughout the case. For the majority of cases (with respect to either party), there was no information about representation.

Table 4: Representation data from short form cases, FY03

Short form representation data	Plaintiff		Defendant	
	n	%	n	%
No information	30	5	22	4
Fully represented	176	29	107	18
Partially represented - beginning	12	2	14	2
Partially represented - end	18	2	19	3
Pro Se (not represented)	372	61	324	53
Not served	NA	NA	122	20
Total	608	100	608	100

Figure C: Plaintiffs' representation status among short form cases, FY03

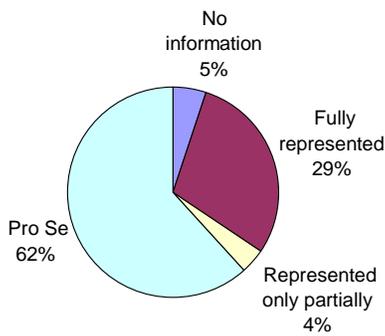
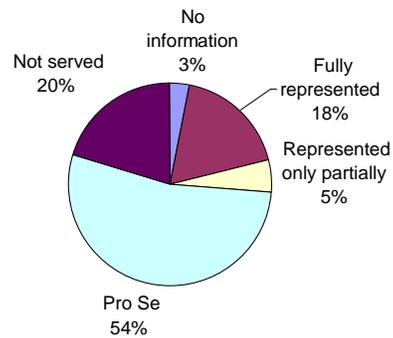
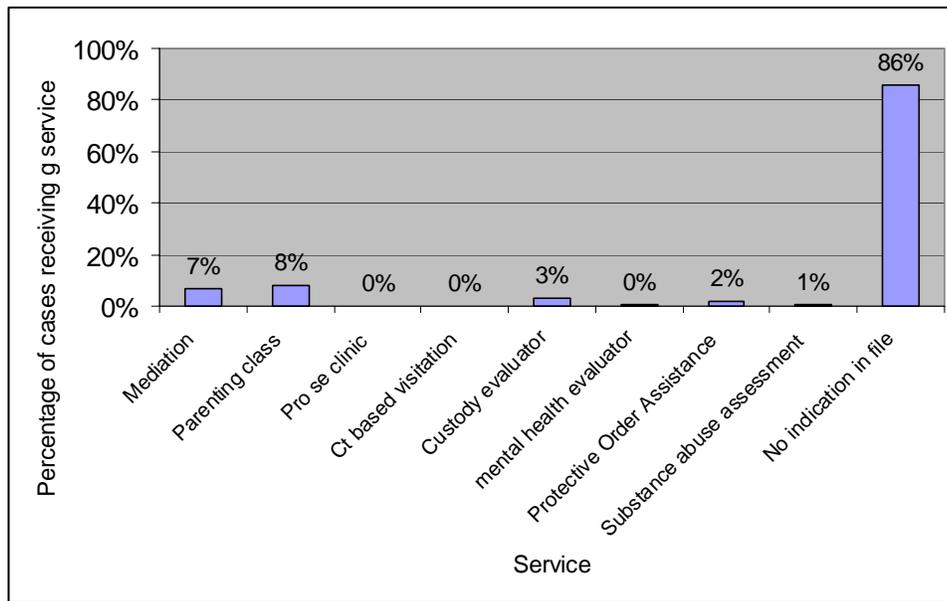


Figure D: Defendants' representation status among short form cases, FY03



The provision of family division services or services from the family court coordinator was also tracked as much as possible in this category of cases. However, in 520 of the 608 cases (86 percent) there were no referrals (or other indications of such services being provided) for these cases in the case files. The following details the distribution of family division services (or services for families) as recorded on the short forms (more than one service could be recorded for each case):

Figure E: Percent distribution of family services as indicated in short form cases, FY03



Data about these short form cases only provide a glimpse into the life of these cases; revealing, again, that a case file can only indicate activity in a particular matter not motivation or causation. Reviewing this data seems to raise more questions than it answers – such as why are so many cases missing final orders – are they still active, or do they reflect a delay in the system between inactivity and dismissal? Are pro se litigants simply overwhelmed? Are they getting the assistance they need? Due to limited resources, these types of questions could not be addressed in this study.

IV. DATA ANALYSIS

The findings from this FY03 study have been organized into several sections: Financial Distribution, Custody Analysis, Determinants of Custody Outcomes, Representation and Family Services. Where appropriate and feasible, data from the FY99 study has been included as a point of comparison. 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 FY03 study, like the FY99 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. The number of cases in these discussions about financial distribution is 2,246 – the total number of divorce cases in our sample. This number includes divorcing couples with children and those without. Several important characteristics of Maryland divorce cases (based on a sample of 2,246) during FY03 emerged:

- Women initiated the litigation -- that is, they were the plaintiffs -- in 61 percent of all cases analyzed; men initiated the litigation in 39 percent of the cases;
- Half of the marriages in our sample lasted 10 years or longer (what we define as “long term” marriages);¹⁴ and
- 44 percent of divorcing couples in the study had minor children.

For purposes of this study, we reviewed three categories of “property” to be distributed in the cases: alimony, monetary awards and share of pension/retirement. A brief description of each category is included in the Key Terms section of this report.

REQUESTS AND OUTCOMES GENERALLY

Relatively few litigants actually requested financial awards in divorce cases, and even fewer litigants received awards of that type. The figures below illustrate how financial outcomes in the two study populations were distributed where the outcomes are limited to alimony, monetary award or share of pension. When defined that way, 76.4 percent of divorce cases resulted in no financial award at all, while some combination of two or more of these three types were awarded in 7.3 percent of the cases. In terms of the specific financial outcomes, 4.1 percent of the cases had only a share of the pension outcome, 10.2 percent had a monetary award only and 2 percent had an alimony outcome only. In FY99, the percentage of cases where there was no financial award at all was 74.4 percent – close to but still less than the FY03 figure.¹⁵

Figure F: Distribution of Financial Outcomes in divorce cases, FY03

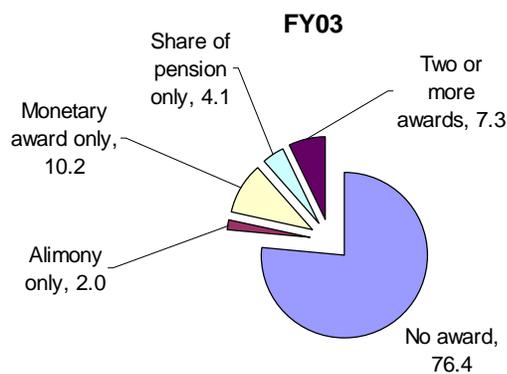
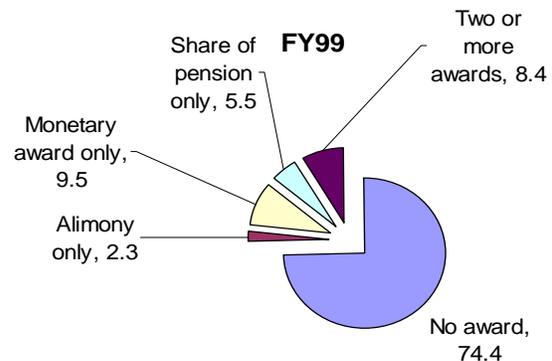


Figure G: Distribution of Financial Outcomes in divorce cases, FY99



See Appendix Table A-1 for supporting data

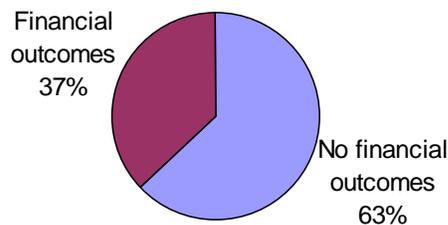
¹⁴ See Appendix, Table A-4. Similarly, half of the marriages in the FY99 sample were considered “long-term.” The length of marriage was calculated using the date of marriage provided in the complaint and the date of the final judgment, without accounting for the obvious fact that in most cases, the parties were living apart from one another for a period of time before and during the course of litigation.

¹⁵ In the FY99 report, the value for percentage of cases with no award at all was incorrectly displayed; the proper percentage for that figure is 74.4 percent (as shown above) not 65 percent.

As stated previously, the analysis of “financial outcomes” above explored the three major types of distribution. However, divorcing couples often have real property issues to resolve as well. This study tracked “who got the house” or other real property even though, during the pendency of these cases, the court did not have the authority to transfer title to the marital home from one spouse to another.¹⁶ However, since parties were (and of course still are) free to reach agreements that do transfer title, and because the marital home may be a significant marital asset, the figure below shows the “financial” distribution after including “house or real property” as a category of case outcome.¹⁷

As shown in Figure H, 30 percent of divorce cases included this type of outcome (house or real property), making a total of 37 percent of cases that were awarded any or combinations of the four types of financial outcomes. By including this factor, the percentage of cases in the sample without any financial awards decreased from 76 percent to 63 percent.

Figure H: Distribution of financial outcomes, including transfer of real property by agreement, among divorce cases, FY03



See Appendix Table A-2 for supporting data

One notable finding from the FY99 study was the fact that overall, financial outcomes were not requested by or awarded to litigants with any significant frequency. Of the total divorce cases in that study, only 17 percent of litigants requested alimony, 28 percent requested monetary awards, and 10 percent requested a share of pension/retirement. In addition, the data showed that very few *awards* were made relative to the number of divorce cases. Only 8 percent of the divorce cases in FY99 had alimony awards. Likewise, only 12 percent of the

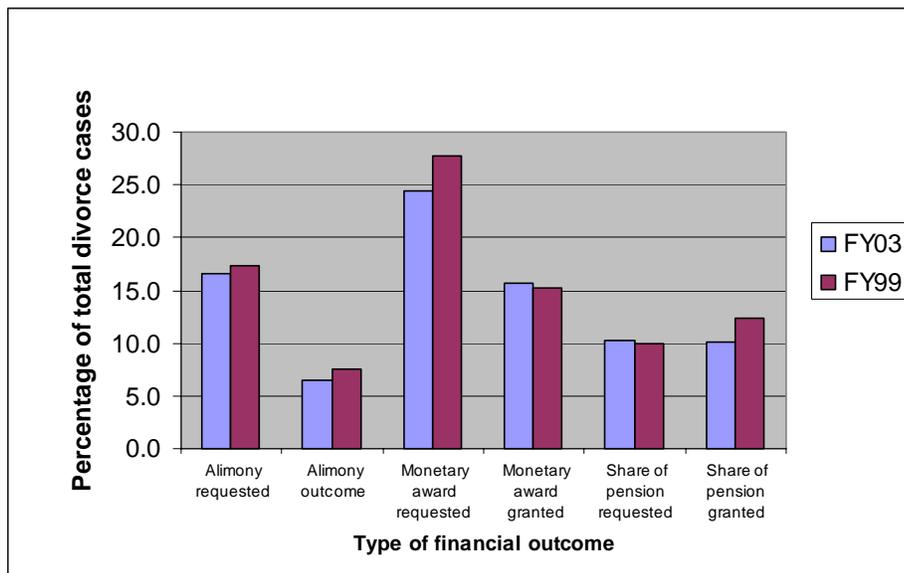
¹⁶ During the 2006 legislative session, the Maryland General Assembly enacted a bill that permits, in summary, a court, during divorce or annulment proceedings, to transfer ownership of an interest in real property jointly owned by the parties and used as the principal residence of the parties by 1) ordering the transfer of ownership to one party, 2) authorizing one party to purchase the interest of the other party, or 3) both. (Maryland Family Law Code Annotated Section 8-205)

¹⁷ This analysis includes instances where either parent got “use and possession” of the house or where the parties agreed to transfer title to one of the parties.

divorce cases included monetary awards and only 12 percent included awards of share of pension/retirement.

The frequencies of requests and outcomes have not changed much since the first study. As in the earlier study, again it is striking to note how few requests for each type of financial award were actually made. Among divorce cases in the FY03 study, less than one-fifth requested each type of financial award, and even less were awarded the financial outcome. Sixteen percent of divorce cases requested alimony and 6 percent were awarded; 20 percent requested monetary award and 16 percent were awarded; and 9 percent requested share of the retirement or pension but 10 percent received the award.

Figure I: Financial requests and outcomes, among divorce cases, FY03 and FY99



See Appendix Table A-3 for supporting data

In sum, in the majority of divorce cases in the FY03 data -- 76 percent -- there was no financial outcome (not including the discussion of the real property, above). It is possible that there were no assets to be divided in most of those cases, but the number is nonetheless remarkable, and it has changed only slightly from the FY99 study, where there was no financial outcome at all in 74 percent of the FY99 divorce cases.

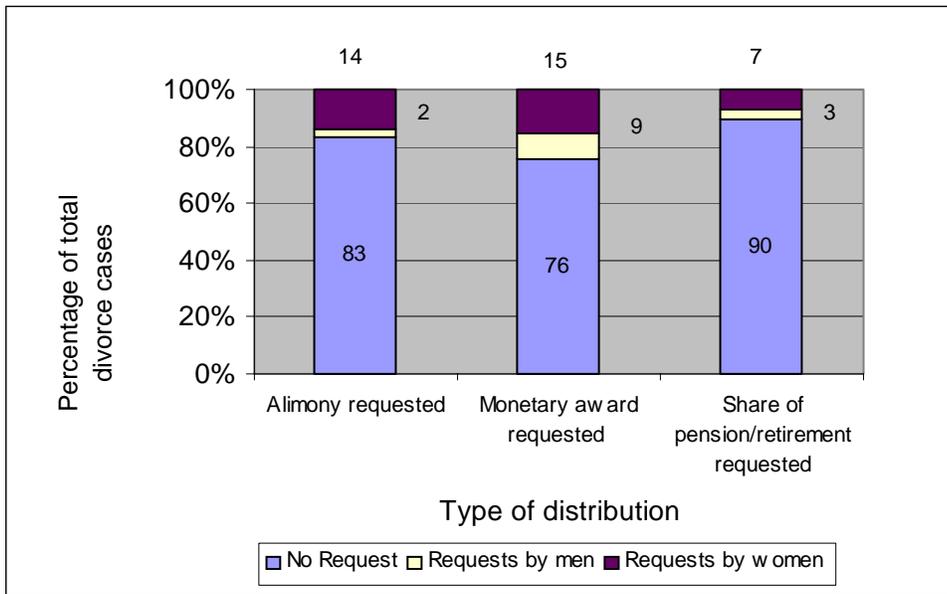
CONTEXTUAL SETTING FOR FINANCIAL AWARDS

Gender

In comparing male and female, financial requests and awards were made much more frequently by and for women. As before, when financial awards were made, women were the primary recipients. Of the 144 cases in which alimony was awarded, women received 99 percent of the awards (143 cases), where only 1 case reported an alimony award to a man. Of the 352 cases where a monetary award was made, women received 79 percent of those awards (277 cases), and men received 21 percent (75 cases). Of the 247 instances (228 cases) where a

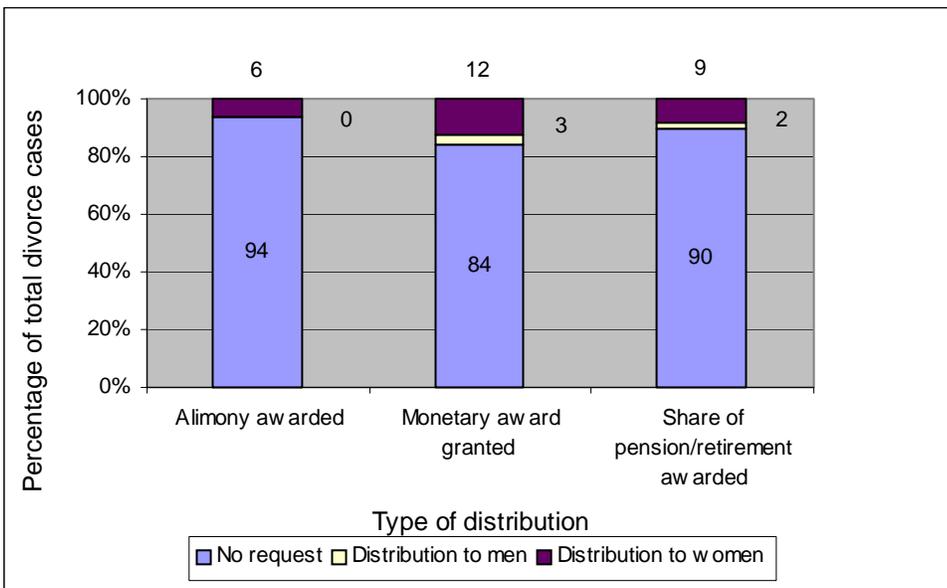
share of a retirement or pension was awarded, women received 85 percent of those awards (211 women) while men received those awards in 15 percent of the cases (36 men).¹⁸

Figure J: Requests for financial distribution, by gender, among divorce cases, FY03



See Appendix Table A-3 for supporting data

Figure K: Distribution of financial outcomes, by gender, among divorce cases, FY03



See Appendix Table A-3 for supporting data.

Additionally, the data show that financial awards were sometimes made even when not requested. Table 5 shows the frequency with which awards were made by whether the requests

¹⁸ In 19 divorce cases, both men and women were awarded share of the pension(s).

were made or not. For women, financial awards were made 30 to 50 percent of the time when requested and two to eight percent of the time when not requested. For men, financial awards were made two to 15 percent of the time when requested and zero to two percent of the time when not requested.

Clearly, for women and for men, requesting a particular outcome seems to have an impact on whether that outcome is awarded. Put another way, requesting makes a difference.

Table 5: Number and percent awarded financial outcome by gender and whether the award is requested or not, FY03

Financial award	<i>Female</i>				<i>Male</i>			
	Awarded when requested		Awarded when not requested		Awarded when requested		Awarded when not requested	
	n	% of requests	n	% of non-requests	n	% of requests	N	% of non-requests
Alimony	103	32.0	40	2.1	1	2.0	0	0.0
Monetary award	134	38.6	143	7.5	30	14.9	45	2.2
Share of pension/retirement*	78	47.3	133	6.4	9	13.8	27	1.2

* There were 19 cases in which share of pension was awarded to both husband and wife.

Factors Considered

When judges make determinations about whether to make a certain type of financial outcome in a divorce case, or when family law attorneys advise their clients about their “chances” of “getting” a certain outcome (or of avoiding one), a variety of factors are considered and evaluated. These factors are set forth in the Maryland Family Law Code, sections 8-205 and 11-106, as described below:

- 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 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.

Several of these factors were analyzed individually and in relation to the ultimate financial outcome to determine what, if any, relation there might be to that outcome. The factors analyzed here include: financial resources of the parties (income), length of marriage and circumstances contributing to the break-up (fault). Not all of the statutory factors could be analyzed because the case files did not contain that information (such as “standard of living during the marriage”) or because the factors do not lend themselves to this type of analysis.

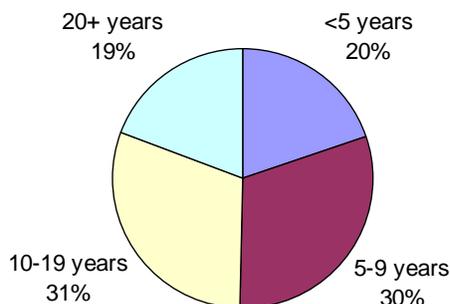
Factor 1: Length of marriage

Divorce cases in the study were divided into four categories relating to the length of the marriage in a particular case. Marriage lengths were calculated using the date of marriage provided in the complaint and the date of the final order granting the divorce in the case file. In most cases, obviously, the parties lived apart for some period of time prior to and during the litigation. However, for purposes of this analysis, couples are considered married until the divorce is finalized.

As shown in Figure L, 20 percent of the marriages in the FY03 study lasted less than five years. Thirty percent of the marriages in the study lasted from five to nine years, and 31 percent of the marriages lasted from 10 to 19 years. Nineteen percent of the marriages lasted 20 years or longer. A “long-term” marriage for purposes of this analysis is a marriage of 10 years or more.¹⁹ Half of the marriages in this study can be considered to be long-term marriages, the same as the 50 percent of the FY99 marriages that can be considered “long term.”

¹⁹ According to a U.S. Census report, first marriages that end in divorce lasted about 8 years, on average. Rose M. Kreider, *Number, Timing and Duration of Marriages and Divorces: 2001* Current Population Reports, P70-97, U.S. Census Bureau: Washington, DC, 2005.

Figure L: Length of marriages among divorce cases, FY03



See Appendix Table A-4 for supporting data

Our analysis of the data explored the hypothesis that financial requests might increase as both marriage length and, presumably, accumulation of marital property increased. The data in Figure M show that requests for alimony, monetary awards and share of retirement/pension generally increase in number as the length of marriage increases. In each category, monetary awards are the most frequently requested type of financial award, and pension or retirement awards are the least frequently requested. This pattern is identical to that shown in the FY99 data. Alimony is requested with a greater frequency as the length of the marriage increases. For example, in marriages lasting less than 5 years, alimony was requested in only 9 percent of the cases, whereas alimony was requested in 25 percent of the cases where marriages lasted twenty years or more. This pattern of increasing frequency mirrors the pattern from the FY99 data.

Figure N presents outcomes of the three categories analyzed above. Monetary awards are granted most often for all marriages less than 20 years; in marriages lasting 20 years or more, share of the retirement or pension is awarded most frequently. As with the pattern for requests, the pattern for outcomes of these three types of financial awards is similar to the pattern created by the FY99 data. In short, the hypothesis stated above does seem to ring true: the longer the marriage, the greater the requests and the more frequent the financial outcomes.

Figure M: Financial requests by length of marriage, of divorce cases, FY03

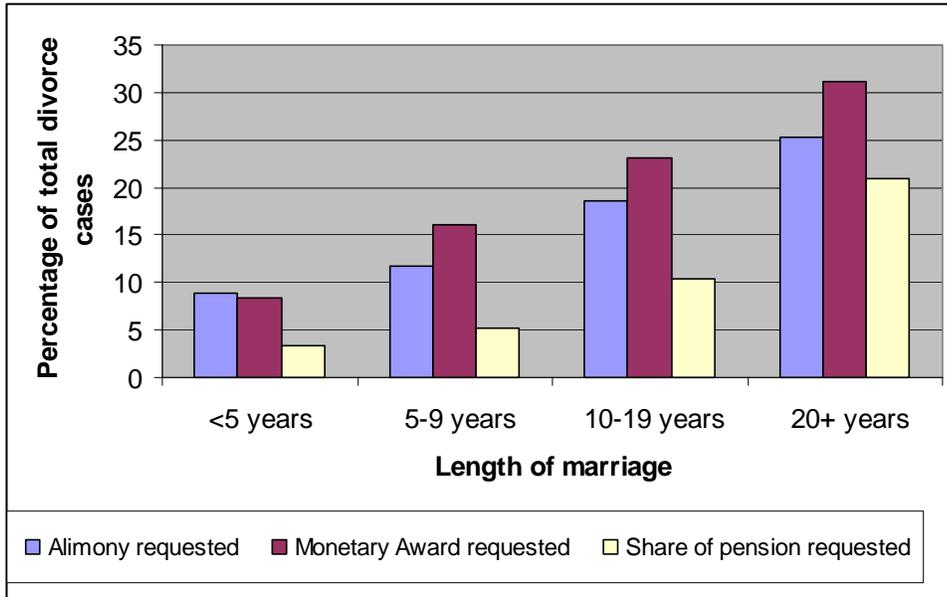
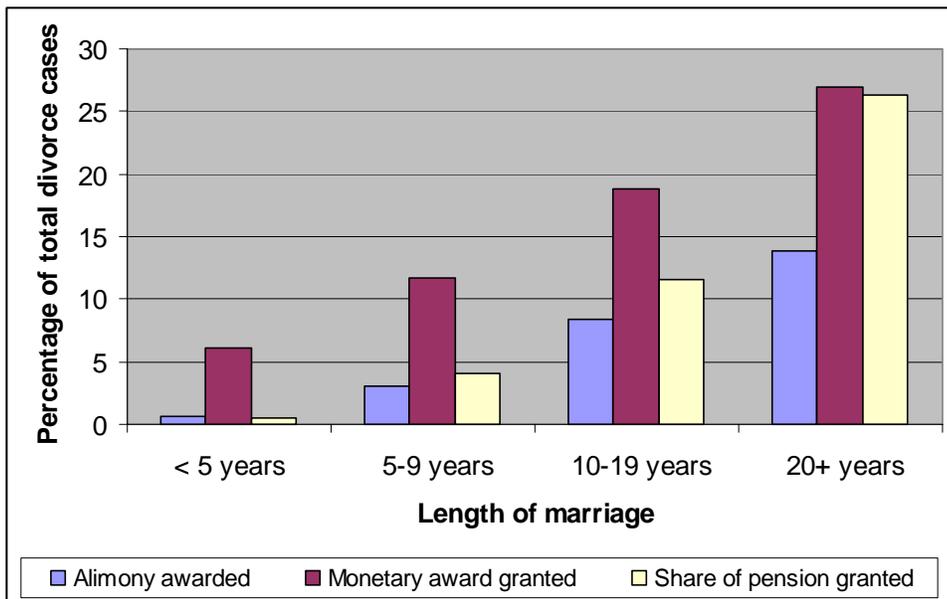


Figure N: Financial outcomes by length of marriage, of divorce cases, FY03



See Appendix Table A-5 for supporting data for both figures.

Factor 2: Financial resources of the parties

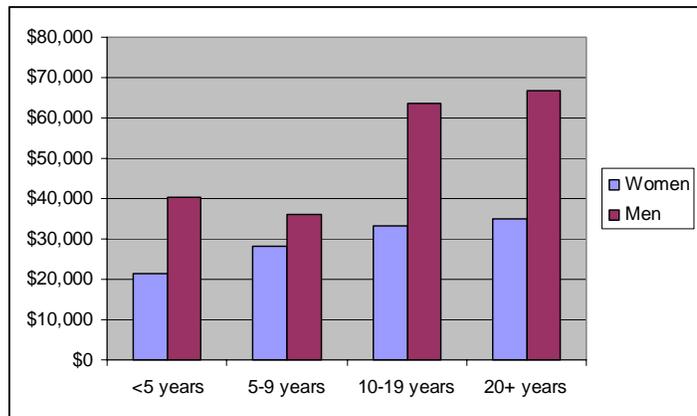
Another factor considered by a court in the determination of appropriate division of marital assets is the financial resources of each of the parties. One concrete measure of that, of course,

is income.²⁰ It is difficult to discuss incomes of men and women without addressing the relativity of one income to the other, also known as disparity, and both income and income disparity are statutory factors to be considered by the court. What this means in practical terms is that a judge will consider the individual income and other assets of each party, and will also consider the relative difference between the two. In the context of analyzing this data, the question has been raised: when both parties have an income, is there a threshold amount beyond which consideration of various financial distributions are not considered? This question, while intriguing, is not appropriately addressed here and should be perhaps the subject of a different study.

Figure O and Table 6 show the average (also known as the “mean”) income of men and women, broken down by length of marriage. As shown in Table 6, the average income for men (\$54,886) is much higher than for women (\$30,544). In general, for both men and women, the average income increases with marriage length, but the increase is less significant for women than for men. As illustrated in Figure O, for each category of marriage, men’s average income is greater than women’s average income. In addition, the gap between men’s and women’s average incomes increases as the length of marriage increases and is greatest at 20+ years of marriage. This pattern is similar to the mean income data for men and women in the FY99 study. The fact that women requested and were awarded financial outcomes more often than men is probably due to income difference by gender.

Table 6 and Figure O: Average incomes, by gender and marriage length, among divorce cases, FY03

Marriage length	Women's income	Men's income
Unknown	\$14,359	\$84,409
<5 years	\$21,387	\$40,189
5-9 years	\$28,328	\$36,233
10-19 years	\$33,040	\$63,589
20+ years	\$35,159	\$66,855
Total	\$30,544	\$54,886



Factor 3: Income Disparity

As stated above, in addition to financial resources of the parties, a court is required to evaluate the relative economic situations of the parties. Financial awards are much more likely to be awarded with the increase in marriage length and when the income disparity between the divorcing parties is great, as shown in the two tables below. The award of alimony (as opposed to other types of financial awards) seems particularly dependent on income disparity in that

²⁰ All of the discussion here about income is prefaced by the recognition that income data were not available in the majority of cases in the sample. For example, in Tables 6 and 7 - Income disparity there were fewer than 500 cases in which income was ascertainable.

alimony was awarded in 29 percent of cases where income disparity is 100 percent or more but only in 1 percent of cases when the income disparity was less than 100 percent. This outcome suggests that the “unconscionably disparate” standard for post-divorce lifestyle is a serious consideration.

Table 7: Income disparity - Number and percent of divorce cases awarded alimony, monetary award, and share of pension by income disparity, FY03

Income level disparity	Total divorce cases	Alimony awarded		Monetary award granted		Share of pension granted	
		n	%	n	%	n	%
Income disparity below 100%	248	3	1.2	45	18.1	31	12.5
Income disparity of 100% or more	246	70	28.5	81	32.9	71	28.9
Unknown	1,752	71	4.1	226	12.9	126	7.2
Total	2,246	144	6.4	352	15.7	228	10.2

Factor 4: Allegation of fault

One or both parties in a divorce may allege that the other is “at fault” for the breakup by asserting one or more so-called “fault grounds” for divorce. “Fault” grounds for divorce in Maryland include adultery, actual or constructive desertion and cruel treatment.²¹

Allegations of fault are, themselves, not indicators of which party is actually at fault, nor are they independent factors that are considered by judges when evaluating a case with respect to potential financial outcomes. Nonetheless, in their discretion as provided by statute, judges may engage in a consideration of the factors that contributed to the dissolution of the marriage, or “the circumstances that contributed to the estrangement of the parties.”²² As part of this consideration, judges may, when evaluating the potential outcomes in the case, consider circumstances relating to the allegation of fault. However, this kind of evaluation is, and should be, more nuanced than simply saying that one party is at fault for the breakup.

Therefore in this section of the analysis we simply attempted to explore how an allegation of fault (in the articulated grounds for divorce) correlated to the outcome of financial awards.

Women alleged fault against men (n=486) more frequently than men did against women (n=251). The rate at which women were receiving financial outcomes varied clearly by which party alleged fault. For example, when women allege that men are at “fault” for the divorce, financial distribution outcomes to women were: 14 percent alimony award, 17 percent monetary award, and 13 percent share of pension/retirement awards. However, when men allege that women are at “fault” for the divorce, financial distribution outcomes to women were less frequent: 5 percent alimony award, 12 percent monetary award, and 10 percent share of pension/retirement awards. (See Appendix Table A-6 for supporting data.) When a case included allegations of fault by both men and women, the financial outcomes were made to

²¹ All of the grounds for divorce are enumerated in Md. Code Ann., Fam. Law §7-103(a).

²² Md. Code Ann., Fam. Law § 8-205(b)(4), and Fam. Law § 11-106(b)(6).

women at the highest rate but when the case contained no allegation of fault by either party, women were awarded at the lowest rate.

Fault allegations may be indicators of cases that are more contentious, if not even contested, than cases without such allegations. As stated above, in order to fully appreciate an allegation of fault as a factor in the complex computation of a case, it is perhaps more telling to explore it in context of other case characteristics. The next section of this report does just that.

Comparison of case characteristics: Regression

As in the original study, we attempted to gain a greater understanding of the role of alimony within a divorce case in Maryland by conducting a regression analysis of the factors at play in determining that outcome. A regression analysis explores the relation between one factor and a particular outcome, and the relation between several significant factors and the outcome. Table 8 explores which factors, if any, influence whether an award of alimony is made.

Each of the following characteristics of divorce cases was examined separately to determine whether it was a factor that predicted an alimony outcome:

- Length of marriage (in terms of number of years, and grouped greater than or less than 10 years);
- Who requested alimony;
- Individual incomes of the parties;
- Combined incomes of the parties;
- Income disparity;
- Whether a monetary award or share of pension was granted;
- Number of children;
- Custody outcome;
- Whether parties attended mediation;
- Whether the parties had a disability;
- Whether the parties were represented by an attorney; and
- Whether there was an allegation of fault in the case.

In each analysis, unadjusted odds ratios (OR) were generated; these reflect the change in odds for receiving an alimony award when the characteristic changes from the base level to the specified level. That is, for each characteristic examined in the regression, the first listed category served as the reference group. For example, under "Length of marriage" (2nd listing), one would interpret the divorce cases with 10+ years of marriage were 4.6 times more likely to be awarded alimony than not awarded when compared to the cases with less than 10 years of marriage. Similarly, for the first characteristic (length of marriage in four categories) when the length of marriage changes from fewer than five years to 20 years or greater, the odds ratio is 23.5. This means an alimony award is 23.5 times more likely to be given in a marriage of 20 years or greater than in marriage of less than five years.

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 alimony award. Characteristics found to be significantly associated, either positively or negatively, with a alimony award in this bivariate analysis are asterisked (*).

As shown by the single asterisks and values greater than 1.0, several factors were found to be significantly and positively associated with alimony award in the bivariate analyses as follows:

- An increased length of marriage (odds go up as the marriage gets longer);
- A request for alimony, especially by women;
- Husband's annual income of \$60,000 or more;
- A combined income of \$120,000 or more for the parties;
- An income disparity of 100 percent or more;
- Also being awarded a monetary award and/or share of the pension;
- Having 2 or more children;
- Wife having physical custody of the children, with legal custody shared with father;
- Father having sole custody;
- Attending mediation;
- Wife has a disability;
- Representation by attorney; and
- Allegations of fault against husband.

Conversely, only one factor-- women's income of \$20,000 or more, in comparison to income of less than \$20,000 – was significantly associated in the bivariate analysis with not being awarded alimony.

Next, those factors found to be significantly associated with an alimony outcome in the bivariate (one-on-one) analysis, identified by a single asterisk, were included in a multivariate model to identify whether they are independently associated with an alimony outcome. For this multivariate regression, all the characteristics of interest²³ were entered in as independent variables and statistically significant variables were selected via stepwise selection method. Results of the multivariate analysis are shown in the final two columns of Table 8. 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.

²³ All characteristics in the table were entered except for wife's and husband's income levels because the income information was missing in more than half the cases. In multivariate regression, all cases with missing data on any of the variables are eliminated limiting a reliable analysis. However, since income is an important determinant, combined income and income disparity variables were coded in such a way that the cases with missing data were coded as an 'unknown' group. In this way, adjusted odds ratios (OR) were computed for these 'unknown' groups rather than eliminating them out from the regression.

Factors found to be statistically significant in multivariate analysis are noted with a double asterisk (**) in the last column of Table 8. As shown, the factors significantly, positively associated with an award of alimony were:

- marriage length of 10 years or longer (OR=2.2);
- wife requesting alimony (OR=10.9) and husband requesting alimony (OR=5.7);
- income disparity of 100 percent or more (OR=26.7) and unknown income disparity (OR=25.8);
- being granted share of pension (OR=4.0);
- wife who is disabled (OR=3.9); and
- attorney representation for husband (OR=2.6).

Two factors -- 'Unknown' combined income and allegation of fault against wife by husband -- were significantly associated with not being awarded alimony, OR=0.3 and OR=0.4 respectively in this multivariate regression.

In sum, there were several characteristics that appear to positively influence whether alimony is awarded, for example marriages of greater than 10 years, a request for alimony, a significant income disparity between the parties as well as other case characteristics that suggest a family with relatively higher assets. In contrast, an allegation of fault by the husband is significantly associated with not getting alimony.

Table 8: Logistic regression results, FY03

Logistic regression results on characteristics associated with alimony awarded vs. not awarded among all divorce cases (n=2,246)

Case characteristic Total	n not awarded 2102	n awarded 144	Bivariate regression		Multivariate regression	
			Unadjusted OR	95% CI	Adjusted OR	95% CI
Length of marriage						
<5 years	438	3				
5-9 years	657	21	4.7	1.4 - 15.7*		
10-19 years	627	57	13.3	4.1 - 42.7*		
20+ years	367	59	23.5	7.3 - 75.5*		
Length of marriage						
Less than 10 years	1095	24				
10+ years	994	116	4.6	3.0 - 7.0*	2.2	1.3 - 3.7**
Who requested alimony						
Neither requested	1856	32				
Wife requested	23	103	21.4	14.5 - 31.8*	10.9	6.8 - 17.3**
Husband requested	7	15	6.3	2.9 - 14.0*	5.7	2.5 - 13.1**
Wife's income						
Less than \$20,000	191	47				
\$20,000 - 39,999	179	21	0.4	0.3 - 0.8*		
\$40,000 - 59,999	83	2	0.1	0.0 - 0.4*		
\$60,000 or more	68	4	0.2	0.1 - 0.7*		

(table continued)

Case characteristic	<i>n</i> not awarded 2102	<i>n</i> awarded 144	Bivariate regression		Multivariate regression	
			Unadjusted OR	95% CI	Adjusted OR	95% CI
Husband's income						
Less than \$20,000	92	6				
\$20,000 - 39,999	159	6	0.6	0.2 - 1.8		
\$40,000 - 59,999	108	8	1.1	0.4 - 3.4		
\$60,000 - 79,999	54	17	4.8	1.8 - 13.0*		
\$80,000 or more	56	39	10.7	4.2 - 26.8*		
Combined income						
Less than \$120,000	335	33				
\$120,000 or more	86	42	5.0	3.0 - 8.3*		
Unknown	1681	69	0.4	0.3 - 0.6*	0.3	0.1 - 0.8**
Income disparity						
Less than 100%	245	3				
100% or more	176	70	32.5	10.1 - 104.8*	26.7	7.6 - 94.3**
Unknown	1681	71	3.4	1.1 - 11.0*	25.8	5.7 - 117.2**
Monetary award						
not granted	1808	86				
granted	294	58	4.1	2.9 - 5.9*		
Share of pension award						
not granted	1946	72				
granted	156	72	12.5	8.7 - 18.0*	4.0	2.5 - 6.4**
Number of children						
0	1194	69				
1	473	23	0.8	0.5 - 1.4		
2	315	40	2.2	1.5 - 3.3*		
3 or more	118	12	1.8	0.9 - 3.3		
Custody outcome						
None	1262	73				
Sole custody to mother	286	9	0.5	0.3 - 1.1		
Sole custody to father	40	6	2.6	1.1 - 6.3*		
Joint legal/phys to mother	294	44	2.6	1.7 - 3.8*		
Joint legal/phys to father	58	4	1.2	0.4 - 3.4		
Joint legal and physical or split custody	162	8	0.9	0.4 - 1.8		
Mediation						
no mediation	1985	117				
attended	117	27	3.9	2.5 - 6.2*		
Disability status						
Neither disabled	2061	133				
Wife disabled	20	9	6.8	3.0 - 15.3*	3.9	1.3 - 11.8**
Husband disabled	21	3	1.9	0.6 - 6.7		

(table continued)

Case characteristic	<i>n</i> not awarded 2102	<i>n</i> awarded 144	Bivariate regression		Multivariate regression	
			Unadjusted OR	95% CI	Adjusted OR	95% CI
Attorney representation						
for neither party	851	13				
for wife	950	120	3.8	2.4 - 6.0*		
for husband	802	121	6.0	3.8 - 9.6*	2.6	1.5 - 4.5**
Allegation of fault						
by neither party	1564	68				
by wife	416	70	3.7	2.6 - 5.3*		
by husband	225	26	1.2	0.7 - 1.9	0.4	0.2 - 0.7**

NOTE: Multivariate regression was run with stepwise selection of statistically significant variables.

* Statistically significant at p<0.05

In the previous study, there were several different characteristics that appeared to positively influence whether alimony was awarded, for example, marriage of greater than 20 years (as compared to 10 or more in the FY03 study), representation of both parties throughout the case (as compared to representation for the husband in the FY03 study), as well as other case characteristics that suggest a family with relatively higher assets. In addition, in the earlier study, an award of sole custody to the mother or an allegation of fault appeared to lessen the likelihood of an award, while in the FY03 study, that factor did not appear significantly related. As noted in the earlier study, lengthy marriages -- longer than 10 years, but not as long as 20 years -- did not influence whether an alimony award was made, but in the FY03 study, they did.

A side-by-side comparison of the two regression analyses is presented below simply for descriptive purposes only and should be read with that in mind, along with the following disclaimers: 1) The FY99 regression results are limited by a very small sample size (the bivariate results are based on 183 cases and the multivariate results are based on even fewer cases) and 2) combined income and income disparity variables (in the FY99 study) classified “unknown” income levels as zero. Therefore, any conclusions as between FY99 and FY03 regression data should be descriptive only, not statistical.

**Table 9: Description of multivariate analyses in FY03 and FY99 Regression
(whether alimony is awarded)**

	FY03	FY99
Positively associated with alimony outcome +	<ul style="list-style-type: none"> ■ marriage length of 10 years or longer; ■ wife requesting alimony and husband requesting alimony; ■ income disparity of 100 % or more; ■ being granted share of pension; ■ wife who is disabled; and ■ husband represented by attorney. 	<ul style="list-style-type: none"> ■ marriage length of 20 years or longer; ■ income disparity of 100 % or more; and ■ husband's annual income of greater than \$80,000 <i>(Did not include request for alimony as a factor in FY99 regression analysis)</i>
Negatively associated with alimony outcome -	<ul style="list-style-type: none"> ■ allegation of fault against wife by husband 	<ul style="list-style-type: none"> ■ none

In sum, the factors that “predicted” the likelihood of an alimony award as between the two studies are quite distinct. In the FY99 study, only those marriages at the extremes – that is the longest marriages with the most assets – lent themselves to a prediction of alimony, leaving many litigants in the so-called middle range marriages without an ability to accurately determine the alimony outcome. In the FY03 study, the factors that are positively associated with an alimony award are, in the first instance, different from the factors in the earlier study, and in the second instance, not consistent with the notion (gleaned from the earlier study) that only the longest and wealthiest marriages justify an alimony award. Indeed, the factors in the FY03 study suggest that more middle-range marriages may be generating alimony awards - but there does not seem to be a trend that litigants, attorneys and the courts can rely on.

A look at process for financial outcomes

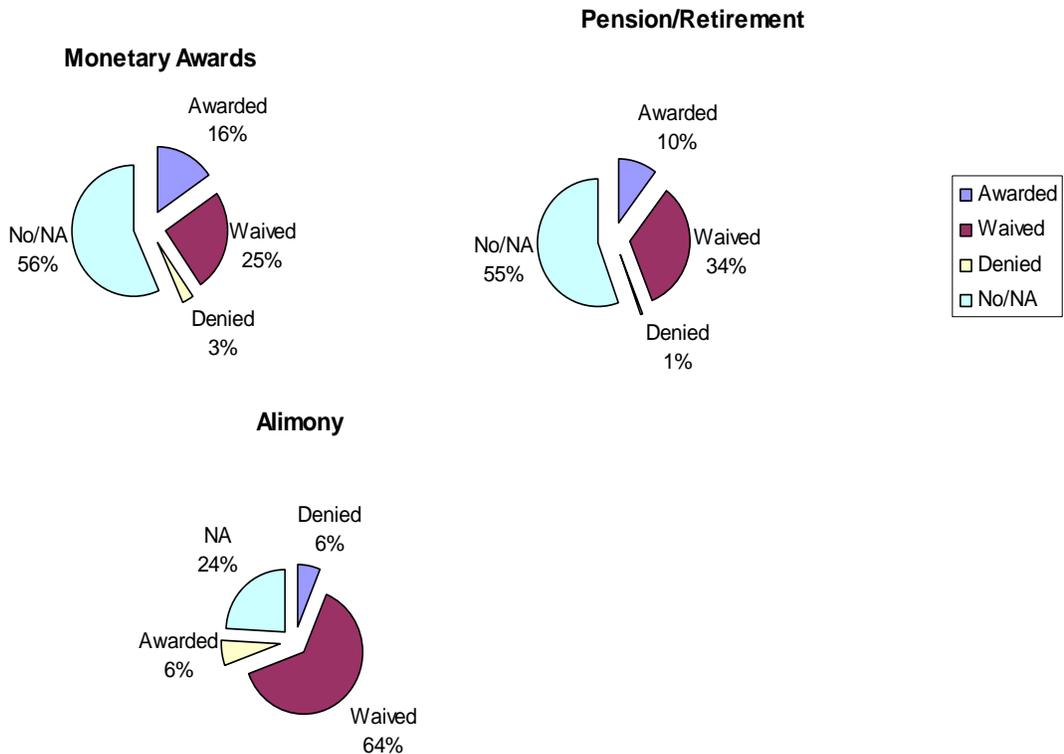
As shown below, out of 2246 total divorce cases, a total of 6 percent of cases contained an alimony award, either by the Court or through an agreement of the parties. In 6 percent of the divorce cases, alimony was denied, although this does not necessarily mean it was requested.²⁴ In a total of 63 percent of the cases, the right to alimony was waived by the litigants, either in an agreement or while they were in court. In 24 percent of cases, the issue of alimony was not applicable or not addressed.

Monetary awards were allocated in the sample as follows: of all divorce cases, monetary awards were made in 16 percent of the cases, they were waived in 25 percent of cases and were denied in 3 percent of cases. In 56 percent of divorce cases, there were no monetary awards. The allocation of pension/retirement awards is very similar to that of monetary awards: of all

²⁴ In some jurisdictions, a judge may deny alimony as a matter of course, even if not requested; in other jurisdictions, a judge may ask the party(ies) to waive any right to alimony, even if there has been no request for it. This assures that the litigants will not return to court to seek alimony at a later date.

divorce cases, shares of pension/retirement were awarded in 10 percent of the cases, they were waived in 34 percent of cases, and were denied in 1 percent of cases. In 55 percent of divorce cases, there was no such award.

Figure P: Allocation of financial outcomes, by type of outcome, among divorce cases, FY03



See Appendix Table A-7 for supporting data.

Access to financial records in the files

In the FY99 research study, the Women’s Law Center attempted to collect asset and income information for the parties but the availability of such information was not consistent and often was not available at all. Although the research instrument used for that study did have a mechanism for tracking the availability of financial statements in the files, it did not have one for recording the source of the financial information which was successfully collected.²⁵

For the FY03 study, the research instrument was designed to capture information about the availability of the key financial document (a financial statement) in the files for both parties. That section of the instrument is shown below:

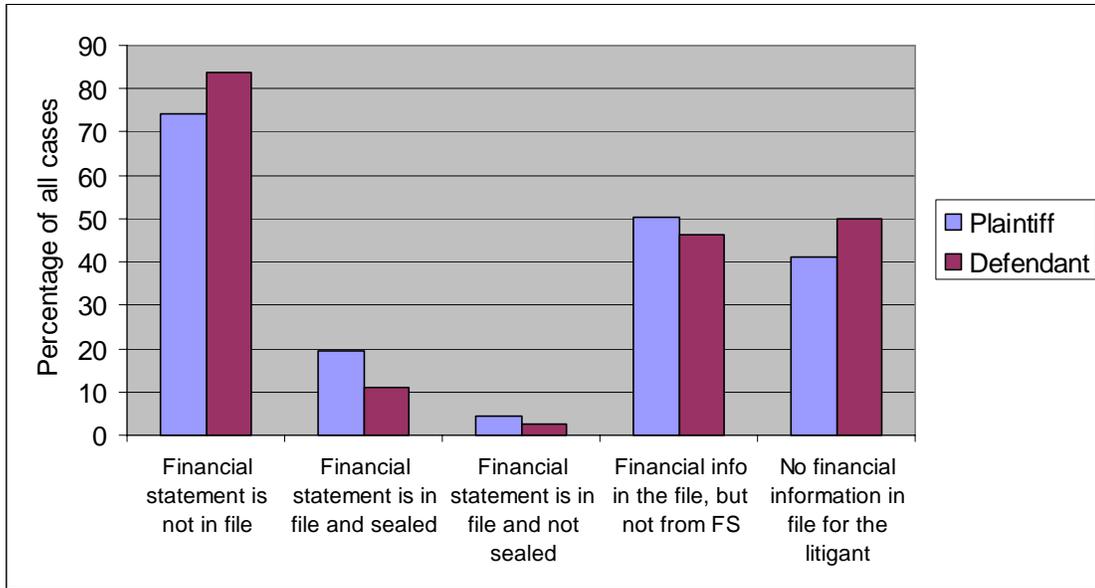
²⁵ That study did collect information about the value of the assets, where available.

- 106. Plaintiff's Financial Statement is NOT in file
- 107. Plaintiff's Financial Statement IS IN file and IS sealed
- 108. Plaintiff's Financial Statement is in file and is NOT sealed
- 109. The financial information listed below is from a source OTHER THAN Financial Statement 109a. (*Specify the source of financial information:* _____)
- 110. There is no financial information at all in the file for Plaintiff

Normally, a financial statement is filed with the complaint in a divorce case, but is required only when alimony or child support is at issue. However, if the parties reach an agreement before initiating the case, a financial statement may not be filed with the pleadings.

As shown below, in the 2533 cases in the study, the data reveal that in well over the majority of cases, and for either party, the financial statement was not in the file (74 percent of plaintiffs and 84 percent of defendants). Likewise, there was no financial information at all in the file for half of defendants (50 percent) and 41 percent of plaintiffs. There were nearly 20 percent of cases for plaintiffs and 11 percent of cases for defendants whose financial statements were sealed²⁶ and therefore inaccessible. By contrast, there were only 4 percent and 3 percent of cases in which the financial statement was in the file and not sealed (accessible) of plaintiffs' and defendants' cases, respectively. There were, however, in nearly half of all cases (for both plaintiffs and defendants) other sources of financial information in the files. This is consistent with the availability of other sources of financial information in the files from the FY99 study.

Figure Q: Access to financial records in the case files, FY03



See Appendix Table A-8 for supporting data

²⁶ By law, financial records may be sealed by the court. (State Govt. Article, §10-617(f)). However, some jurisdictions routinely sealed financial records, some did not. Even within a jurisdiction sometimes there was a sealed financial statement in the file and then a copy of the same statement in the file that was not sealed

B. ANALYSIS OF CHILD-RELATED ISSUES IN FAMILY LAW CASES

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 report focuses on families with children, and includes both divorcing families with children as well as unmarried couples with a child in common.²⁷ 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 in the year or so after the decision, or whether one or both parties sought to modify the custody outcome.

Although virtually every aspect of a divorcing family’s life affects the children, the specific custody-related aspects – custody, visitation and child support – have a daily and significant impact. In this section we examine those custody-related outcomes for all cases with children.

TYPES OF CUSTODY ARRANGEMENTS

There are two types of custody at issue – physical custody and legal custody.²⁸ Physical custody refers to the child’s primary residence, that is, which parent or other individual will have responsibility for the child’s residence. Physical custody can be held by one parent alone (called sole physical custody) or may be shared with the other parent (called shared or joint physical custody). Legal custody refers to which parent will have decision-making authority for the major decisions in a child’s life, such as medical, health, education, religion. Legal custody may also be held by only one parent (sole legal custody) or shared by both (shared legal custody). When a child lives with one parent only and that parent has full decision-making authority, that parent is said to have “sole physical and legal custody,” sometimes simply referred to as “sole custody.” Similarly, when the child alternates time living with each parent and when both parents share in the decision-making, that custody arrangement is often referred to as “joint custody,” although to be precise, it should be referred to as “joint legal and physical custody.” To understand the custody arrangement, at least on general terms, one should specify both physical and legal custody – i.e. “sole custody to the mother, with joint legal

²⁷ Of the 2533 total cases in the sample, 2246 were divorce cases, and of those, 982 were cases with children. In addition, there were 286 custody cases where the parents were unmarried and 125 where a third-party (mostly grandparent) was seeking custody. Because of the unique issues involved in those cases, the third party custody cases are not included in these discussions about custody but are described separately in section III.C.

²⁸ Also see listing of “Key Terms” at page xi of this report.

custody.” A reference to “split custody” in this report refers to an arrangement where one child lives with the mother and another child lives with the father. In this report, every effort is made to specify both the physical custody arrangement as well as the legal one.

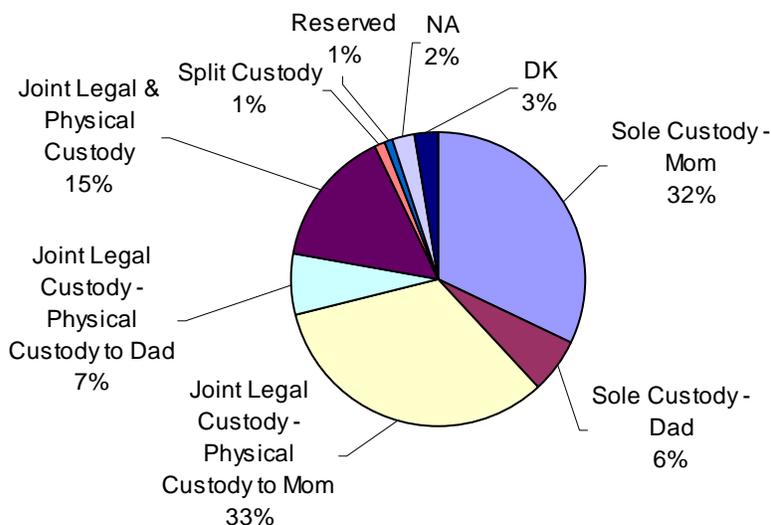
PUTTING CUSTODY IN CONTEXT

How are the custody outcomes distributed in this study? There were 286 non-divorce custody cases and 982 divorce cases that involve children, totaling 1,268 cases that involved minor children. Among custody-only cases, “sole custody to mother” was the most frequent outcome (40.6 percent) while among divorce cases with children, “joint legal but physical custody to mother” was the outcome granted most frequently (34.4 percent). For all custody cases, these two were the most frequent outcomes, at 32.3 percent and 33.1 percent, respectively.

The remaining outcomes for FY03 for all cases with children, grouped in descending order of frequency, are joint legal and physical custody (15 percent, up slightly from 13 percent in FY1999); joint legal custody with physical custody to father (7 percent – same as before); sole legal and physical custody to father (6 percent), and split custody (siblings are separated and live with different parents), 1 percent. The remaining 6 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 (i.e. no data, possibly because the children were emancipated by the time the case was concluded).

Another way to look at the same data is to say that mothers received primary physical custody in 65 percent of the cases (sole custody plus joint legal with physical to mother) and fathers received primary physical custody in 13 percent of the cases (sole custody plus joint legal with physical to father.)

Figure R: Distribution of custody outcomes among all cases with children, FY03

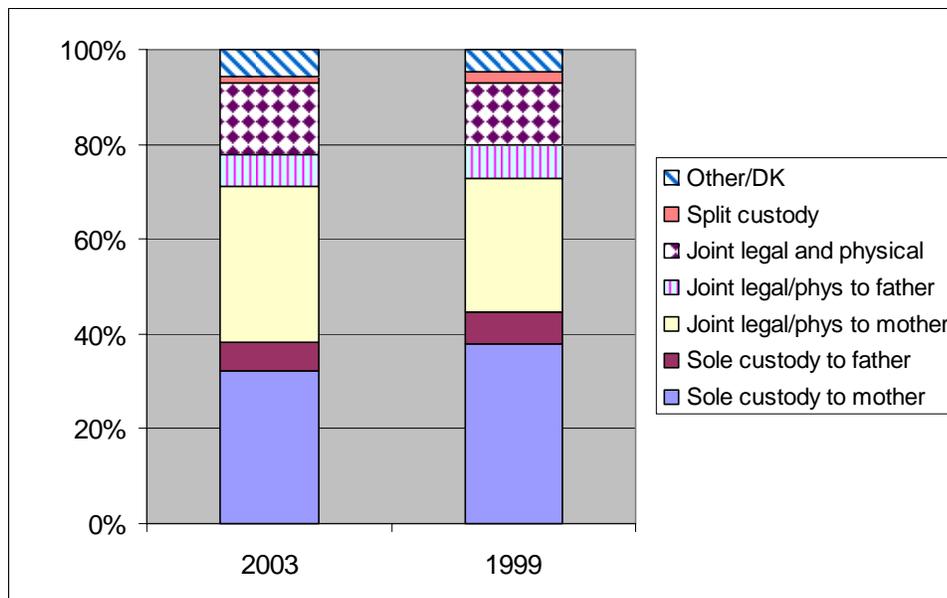


See Appendix Table A-9 for supporting data

Comparison with FY99

Figure S compares the distribution of all custody cases on custody outcome between fiscal years 2003 and 1999. Little has changed except that “sole custody to mother” was granted less (32 percent down from 38 percent) but “joint legal but physical custody to mother” was granted more (33 percent up from 28 percent) in 2003 than in 1999. The distribution of outcomes for the various types of custody in the FY03 sample is similar to that in the FY99 sample, with one interesting difference: the percentage of cases resulting in the mother having sole custody was by far the most frequent of the FY99 outcomes, with joint legal and physical custody to mother being the distinct second more frequently occurring outcome. In the FY03 study, by contrast, the percentages for these two types of custody arrangements are nearly equal, with the joint legal with physical custody to mother edging out the sole custody outcome slightly.

Figure S: Distribution of custody outcome among all cases with children, FY03 and FY99



See Appendix Table A-9 for supporting data

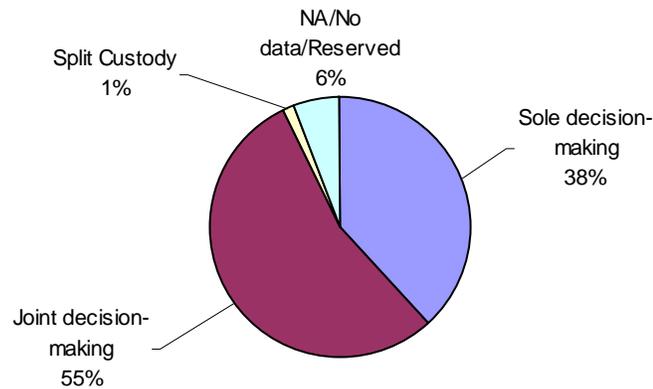
Category

A comparison of custody outcomes by category, as illustrated in Figure T, 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 more than half of the cases (55 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 38 percent of cases.

In the FY99 study, decision-making was shared by Maryland parents in 48 percent of cases, and sole custody was the outcome in 45 percent of cases. The data shown below indicate that

Maryland parents are sharing decision-making in more than half the cases – 55 percent -- and with greater frequency than four years ago.²⁹

Figure T: Distribution of Custody Outcomes (combined), of all cases with children, FY03



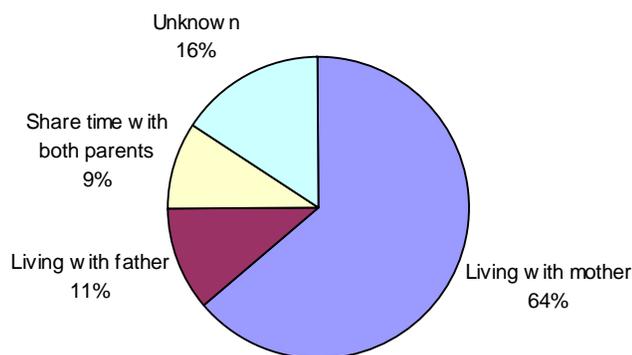
See Appendix Table A-9 for supporting data

Child's residence

At the time of filing for custody or divorce, children were living with mothers in 64 percent of cases, while 11 percent lived with fathers, and nine percent split time with both parents. This distribution corresponds with the custody outcome awarded in that physical custody was granted to mothers in 66 percent, to fathers in 12 percent, and the remaining were split custody or some other undefined custody arrangements.

²⁹ The six percent of cases in the 'no data' or 'not applicable' categories may be the result of parenting plans which (are not included in the file) or the fact that, by the time the case concluded, the children had reached the age of majority and therefore, no custody determination was necessary.

Figure U: Child’s living arrangement at the time of initiation of case, FY03



See Appendix Table A-10 for supporting data

REQUESTS AND OUTCOMES GENERALLY

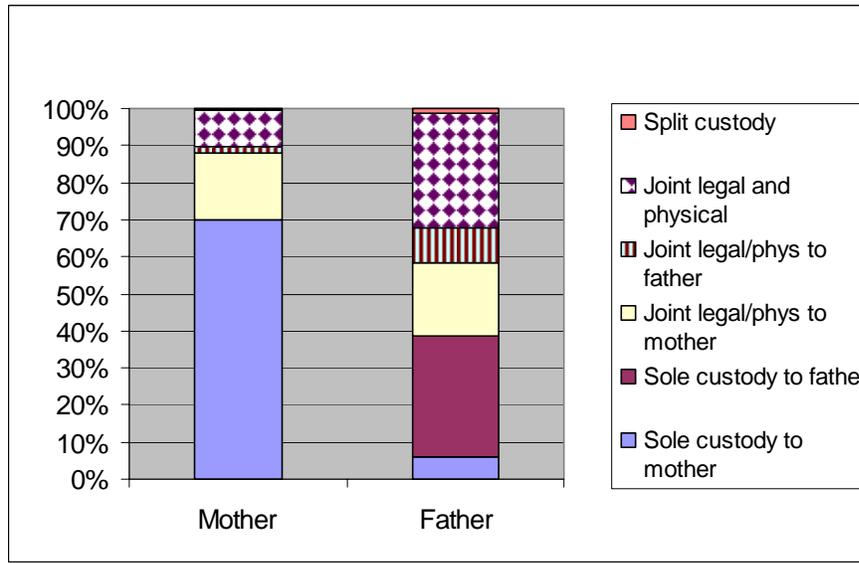
When custody of the children is at issue in a case, what arrangements do men and women really want? Presented in Figure V is the frequency of requests by women and by men for various types of custody arrangements. The data reflect requests made only in the initial pleading from either party — that is, 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 show that among 953 women who made a specific custody request, an overwhelming majority of women (70 percent) requested sole custody of child(ren) to herself while another 18 percent wanted joint legal but physical custody of the child(ren) to herself. On the other hand, among 684 men who made a specific custody request, one third wanted sole custody of child(ren) to himself and another one third wanted joint legal and physical custody of the child(ren).

Descriptively, it appears that women seek sole legal and physical custody more often than fathers do, while fathers seek joint legal and physical custody more often than mothers do. Of course, there is no telling from this data whether a litigant’s initial custody-related request actually represents the outcome he or she really desires.³⁰

³⁰ Anecdotally, some practitioners report that some clients strategically ask for sole custody when they really want joint.

Figure V: Percent distribution of custody requests, FY03



See Appendix Table A-11 for supporting data.

Are litigants getting the custody arrangements they ask for? Put another way, how “well” do women and men fare in terms of “getting what they ask for?” Table 10 provides data about what percentage of requests by men and women are granted. For example, when women requested sole custody for themselves, they got it 52 percent of the time; when men requested sole custody for themselves, they got it 22 percent of the time. Similarly, when men requested joint legal and physical custody, they got that outcome 36 percent of the time, whereas when women requested that same outcome, they got it 62 percent of the time. (The shaded area of the table represents the percentage of requests granted for that outcome.)

Table 10: Custody requests and outcome by gender, FY03

Type of custody	Women			Men		
	Requests	Requests granted		Requests	Requests granted	
	N	n	%	n	n	%
Sole custody to mother	668	346	51.8%	42	30	71.4%
Sole custody to father	2	2	100.0%	228	51	22.4%
Joint legal/phys to mother	168	128	76.2%	134	108	80.6%
Joint legal/phys to father	16	11	68.8%	60	33	55.0%
Joint legal and physical	98	61	62.2%	219	78	35.6%
Split custody	4	3	75.0%	8	3	37.5%

Another analysis of the “requests granted” category explores the position of the other party with respect to whether they agree with each other’s requests. The data show that in 891 cases (70 percent) involving child custody, parents agreed on or defaulted on the issue of custody at the outset of the case; in 123 cases (10 percent), each party requested sole custody of child(ren) to himself or herself; and the remaining 254 cases (20 percent) had other types of conflicting custody requests (that is, when the parents sought different custody arrangements). When there

was an agreement or a default by a party, mother was awarded the sole custody of child(ren) most frequently (37 percent), followed by joint legal but physical custody (28 percent). When mother and father each requested sole custody, joint legal but physical custody to mother was the most prevalent outcome (42 percent) followed by joint legal and physical custody (24 percent). For other conflicting requests by the parents, joint legal with physical custody to mother was again the most prevalent outcome (48 percent) followed by sole custody to mother (22 percent).

Table 11: Custody outcomes by parent agreement on custody requests, among cases with children, FY03

Custody outcome award	Custody requests by parents					
	Both parents agree or default		Each parent requests sole custody		Other conflicting requests	
	N	%	N	%	N	%
Sole custody to mother	332	37.3	22	17.9	56	22.0
Sole custody to father	52	5.8	8	6.5	13	5.1
Joint legal/phys to mother	248	27.8	51	41.5	121	47.6
Joint legal/phys to father	58	6.5	6	4.9	20	7.9
Joint legal and physical	128	14.4	30	24.4	33	13.0
Other	73	8.2	6	4.8	11	4.4
All	891	100	123	100	254	100

A LOOK AT PROCESS - WHO IS MAKING CUSTODY DECISIONS?

As with other types of litigation, there are many points in a custody case where issues may be resolved. This study tracked the point in the process where 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 judicial involvement.

Figure W 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 agreements reached before trial. 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. This analysis recognizes that different dynamics are at play when the parties “reach agreement” on the day of trial and that therefore, those situations are not considered to embody the same voluntary nature as other agreements.

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

Figure W: Who is making custody decisions?

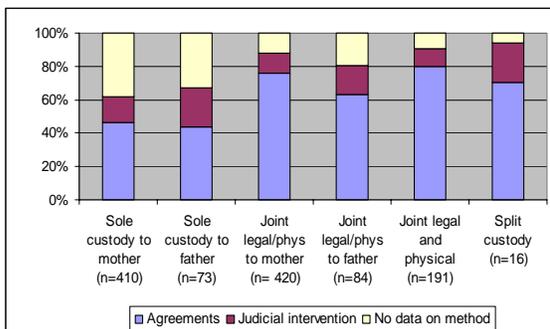
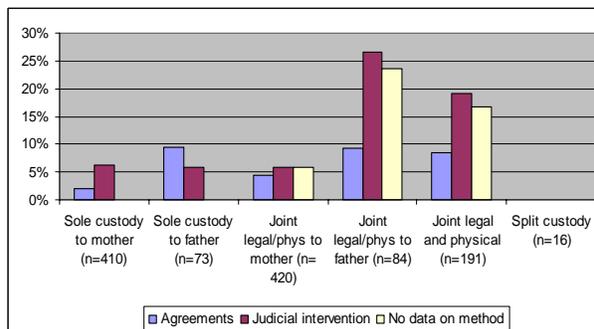


Figure X: How well do custody decisions stand?



See Appendix Tables A-12 and A-13 for supporting data

One way of assessing the durability of a particular outcome 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 modification or other judicial intervention if the arrangements are not working out, if a party fails to comply with the order or if they are not satisfied. As in the earlier study, this 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. Figure X above presents data relating the six types of custody outcomes to the method of resolution and amount of subsequent litigation relating to that custody outcome. Figures W and X above present a side-by-side comparison of the method of resolution and amount of subsequent litigation.

The patterns shown in Figures W and X nearly mimic those of the earlier study: when custody arrangements were resolved through judicial intervention, the rate of subsequent litigation are twice as high as the rate when custody arrangements were resolved by agreement (with the exception of cases whose custody outcome was sole custody to the father, where agreements of the parties resulted in more frequent returns to court than judicial resolution). Particularly, “joint legal with physical custody to father” and “joint legal and physical custody” outcomes had the highest rates of subsequent litigation – 27 percent and 19 percent, respectively – when resolved through judicial intervention.

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 arrangements, 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.

Table 12 shows the breakdown of visitation awards for all cases with children. The arrangement of “reasonable” visitation occurred most frequently, at 43 percent. This outcome presumes the parties are able to work out the logistics of visitation between themselves.³¹ The next most frequently occurring visitation outcome was “more than alternating weekends” at 12 percent. In 15 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 12: Distribution of visitation outcomes, in cases with children, FY03

Visitation arrangement	All cases with children	
	Freq. n	Percent %
Reasonable	545	43
Less than Alternating Weekends	32	3
Alternating Weekends + some holiday and vacation time	114	9
More than Alternating Weekends	153	12
Joint Physical Custody (35% or more)	102	8
Restricted or Supervised Visitation	34	3
Other/Reserved	99	8
Not applicable ³²	111	9
Do not know	78	6
Total	1268	10

As with custody outcomes, the various types of visitation arrangements were tracked against the amount of subsequent litigation produced on that issue. 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.”

Of all of the types of visitation arrangements, subsequent litigation was filed the most often when the visitation arrangement was set by the court as “restricted or supervised” (18 percent). Men filed the most subsequent litigation with this arrangement (nine percent). Both parties filed subsequent litigation most often when the visitation arrangement was “alternating weekends and holidays, etc.” (six percent).

³¹ Although the largest percentage of cases included a “reasonable” visitation outcome, 40 percent of those cases were a default, meaning one party did not answer the complaint.

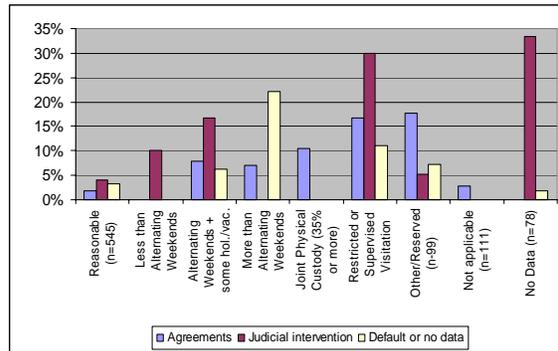
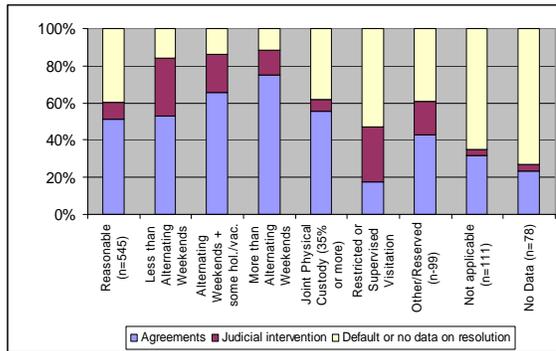
³² The “not applicable” category catches those cases where the custody issue is determined in a separate proceeding, or where there is simply no reference to a visitation outcome (which sometime occurs when the children have reached the age of majority by the time the case reaches final judgment).

Table 13: Visitation outcome and subsequent litigation

Visitation outcome	Total outcome	Subsequent litigation		Filed by		
	N	n	%	mother	father	both
Reasonable	545	14	3%	5	7	2
Less than Alternating Weekends	32	1	3%	0	1	0
Alternating Weekends + some hol./vac. time	114	11	10%	2	2	7
More than Alternating Weekends	153	12	8%	5	2	5
Joint Physical Custody (35% or more)	102	6	6%	2	3	1
Restricted or Supervised Visitation	34	6	18%	1	3	2
Other/Reserved	99	11	11%	2	4	5
Total	1268	64	5%	18	22	24

Figure Y : Who is Making Visitation Decisions?

Figure Z: How Well Do Visitation Decisions Stand?



See Appendix Tables A-14 and A-15 for supporting data

CHILD SUPPORT

Financial assistance from one spouse to the other spouse for the purpose of providing for the children is obviously an important part of the total picture of the child’s best interests. The study captured as much data about child support as was available in the case files. As reported in the previous study, often a case file contained information about a child support award (such as how much it was on a monthly or weekly basis) but there was often no child support “worksheet” enclosed in the file by which to assess whether the agreed-upon or court-ordered “award” fell within the established statutory child support guidelines.

There was some type of child support award in 64 percent of the cases with children. (See Appendix Table A-16.) In many of the cases where there was no such award, there was an indication in the file that the issue of child support was addressed in a separate proceeding through the Office of Child Support Enforcement.³³

³³ Researchers collected this information anecdotally and therefore we do not have specific data revealing the number of cases handled in this manner.

In at least one jurisdiction, the parties were sometimes charged “generally” with an obligation to support their child. In those jurisdictions, a child support “award” was recorded as \$1.00 in cases where, according to the clerks, both parties are deemed responsible for child support but the amount of support was to be worked out between the parties. If either party wanted a more specific award, they remained free to petition the court for a modification.³⁴

C. DETERMINANTS OF CUSTODY OUTCOME: REGRESSION RESULTS

To examine what factors contribute to the award of individual custody outcomes, a set of regressions was conducted. Multivariate regression was performed on each custody outcome separately but the same set of variables was included in the model each time. The factors used here were: a request for physical custody to mom or dad, child's living arrangement at the time of complaint, income levels of mom and dad, attorney representation, and whether the couple agreed or not on how custody should be resolved. A regression analysis evaluates several factors in relation to a specified outcome.³⁵

Using this analysis, the following were revealed:

- Requests -- Requesting physical custody of the child significantly raised the odds of having that physical custody, either by mom or dad, as requested. This is not surprising in light of the earlier discussion in this report about the data that indicate that requesting matters, despite how obvious it seems to say so.
- Residence -- A child living with its mother resulted in a higher likelihood of the award of sole custody to mother, while child living with its father resulted in a higher likelihood of the award of sole custody to father or of joint legal but physical custody to father. That is a long way of saying that a child usually stays where he or she is living already.
- Income -- Income levels seemed to be correlated only with the joint legal and physical custody but not with any other custody outcome. That is, when both the mother and the father have significant incomes (in the \$50,000 to \$60,000 range), the chances of the custody arrangement being joint legal and physical are greater than when the incomes are less than that range.
- Representation - with respect to a sole custody outcome, having an attorney results in an increased likelihood of a sole custody award to the party who had representation, but representation does not correlate one way or the other with other types of custody arrangements.
- Joint custody -- The award of joint legal and physical custody appears to be unique in the direction and magnitude of the association with these various

³⁴ Summary of conversation with Paulette Young, Baltimore City Circuit Court Clerk's office.

³⁵ For more information about how to read and understand the regression table, please see the regression analysis in Section IV.A. at page 25.

factors. That is, a joint legal and physical custody outcome was most strongly associated with the fact that it was a contested custody case. Again, as stated above, attorney representation did not have any impact on the outcome.

It is important to keep in mind that most -- that is, 70 percent -- of cases with children (a total of 1268) were uncontested. This means that the parties reached an agreement at some point in the process about the major issues in the case, including custody.

Table 14: Multivariate logistic regression results, FY03

Multivariate logistic regression results on characteristics associated with each custody outcome among all cases with children (n=1,268)

Case characteristic	Sole custody to mom	Sole custody to dad	Joint legal but physical custody to mom	Joint legal but physical custody to dad	Joint legal and physical custody
	410 vs. 858	73 vs. 1,195	420 vs. 848	84 vs. 1,184	191 vs. 1,077
Total n**					
Custody request by mom or dad					
None or other					
Physical custody to mom	4.7*	0.5	3.5*	0.3*	0.1*
Physical custody to dad	0.8	6.4*	0.5*	4.4*	0.8
Child's living arrangement					
Unknown or other					
Live with mom	2.6*	0.2*	0.9	0.4*	0.5*
Live with dad	0.3*	2.2	0.1*	2.7*	0.4*
Live with both	0.1*	0.5	0.3*	1.2	3.9*
Wife's income					
Less than \$20,000					
\$20,000 - 39,999	0.7	0.5	1.3	0.6	2.2*
\$40,000 - 59,999	0.7	0.5	1.5	0.3	1.5
\$60,000 or more	0.9	0.2	0.9	0.6	3.3*
Unknown	1.2	1.3	1.0	1.6	0.9

(table continued)

Case characteristic	Sole custody to mom	Sole custody to dad	Joint legal but physical custody to mom	Joint legal but physical custody to dad	Joint legal and physical custody
Total n**	410 vs. 858	73 vs. 1,195	420 vs. 848	84 vs. 1,184	191 vs. 1,077
Husband's income					
Less than \$20,000					
\$20,000 - 39,999	0.7	0.5	1.0	2.7	2.0
\$40,000 - 59,999	0.9	0.5	0.9	3.1	1.6
\$60,000 - 79,999	0.5	-	0.9	0.9	4.7*
\$80,000 or more	0.3	2.1	1.7	0.3	2.0
Unknown	1.3	0.7	0.5*	0.7	2.3
Attorney representation					
for neither party					
for mother	1.7*	0.3*	0.8	0.9	1.2
for father	0.3*	2.0*	2.2*	1.7	1.1
Custody request contested					
No (agree or default)					
Yes (differing request)	0.4*	1.2	1.7*	1.0	4.8*

** Number of cases for each specific custody outcome awarded vs. not awarded

* Statistically significant at $p < 0.05$

D. REPRESENTATION

The Administrative Office of the Courts is committed to ensuring equal access to the justice system and therefore supports programs, such as the Pro Se Clinics in many jurisdictions, that provide legal services to those of limited means. Other types of programs, such as the Family Law Hotline, the Legal Forms Helpline and the People's Law Library (www.peoples-law.org), provide legal information and reference for a variety of individuals, some of limited means, others not.

This study collected data about whether the parties to these family law cases were represented by attorneys. The data tracked whether women and men were represented for the entire case, for only part of the case or whether they represented themselves (pro se). In addition, the study collected data relating to whether and how frequently children in these cases were represented by attorneys. In this section we explore the frequency of representation for the parties involved in divorce and custody cases, and we also explore the connection between outcomes and representation.

FREQUENCY OF REPRESENTATION FOR FAMILY LAW LITIGANTS

In 27 percent (611 out of 2246) of divorce cases, both men and women were represented by an attorney, and in 38 percent (864 cases) neither party was represented. In the remaining cases where only one party was represented, women were represented more often (20 percent) than

men (14 percent). About 93 percent of the representation was for the full case, meaning from filing through judgment.

Conversely, in 36 percent (454 of 1209) of child custody cases, both parties were represented by an attorney. Similar to the numbers for divorce cases, women in custody cases were represented in 20 percent (250 cases) while men alone were represented in 11 percent (142 cases). In the remaining 33 percent of the custody cases, neither party was represented.

In contested custody cases, attorneys may be appointed for the child(ren) by the court.³⁶ The attorney's role can be specified by the court to address or assess particular issues, such as waiver of a privilege, best interest of the child or determining the child's preference. In our sample, the frequency of appointed representation for the children is extremely low – only 3 percent of the cases with children indicate an attorney was appointed for the children. The frequency is as follows:

- Nagle v. Hooks 19
- Advocate 4
- Best Interest 27
- Not clear 1

Total = 51 (38 cases, some of which have more than 1 type of representation)

REPRESENTATION AND OUTCOMES

With the data in hand about frequency of representation, we sought to explore whether the outcomes in divorce and custody cases are impacted by a litigant having an attorney. The inherent problem in that inquiry, of course, is that a review of the case file reveals neither causation nor motivation. In this section, therefore, we simply present certain types of outcomes in the cases (financial distribution and custody), and then correlate those outcomes to whether women or men who received those particular outcomes (either through an agreement or through judicial intervention) had the assistance of an attorney, and for how much of the process they were assisted. This should be interpreted as a descriptive, not a statistical, relationship.

³⁶ A court may appoint an attorney to represent the child for a variety of specific purposes. The “type” of representations are generally referred to using a shorthand reference, as follows: “Nagle v. Hooks” – a reference to 1983 Maryland custody case, this attorney is appointed to decide whether to assert or waive, on behalf of a minor child in a custody action, a statutory privilege; this representation is also referred to as “privilege attorney;” “Advocate” – this type of attorney serves as the child's voice in court, and advocates for the child's stated wishes; such an attorney is often appointed in relocation cases where the child's judgment is mature and may be distinct from the parents'; “Best Interest” – this type of representation is also known as a “guardian ad litem,” and refers to an attorney who is appointed to make an independent assessment of what is in the child's best interest and advocates for that in court. This attorney is not bound by the child's directions or objectives. These explanations are summarized from a report entitled “Maryland Standards of Practice for Court Appointed Lawyers Representing Children in Custody Cases,” written by the Maryland Judicial Conference Committee on Family Law, Custody Subcommittee, as adopted by the Maryland Conference of Circuit Court Judges, September 2005. This report can be found at the Maryland Judiciary website as follows: http://www.courts.state.md.us/family/pdf/md_stds_rep_children.pdf

With respect to the three types of financial outcomes, when both parties had representation in divorce cases, both women and men received financial outcomes at the highest frequency for their gender: 18, 28, and 25 percents, respectively for alimony, monetary award, and share of pension for women, and 0, 7 and 4 percents for men. On the other hand, when men were represented and women were not, men were not granted financial awards – 1 percent or less of these men were awarded each type of financial outcome. When neither party was represented, 3 percent or less of women were awarded and 1 percent or less of men were awarded any of the financial distribution outcome; put another way, when neither party is represented, both parties “do the worst” in terms of financial outcomes.

Table 15: Number and percent of women and men who were awarded financial outcomes according to representation, among divorce cases, FY03

Attorney representation	Total	Alimony awarded to				Monetary award given to				Share of pension awarded to			
		Women		Men		Women		Men		Women		Men	
		n	%	n	%	n	%	n	%	n	%	n	%
Both parties represented	611	109	18%	1	0%	174	28%	43	7%	151	25%	23	4%
Representation for woman only	459	10	2%	0	0%	50	11%	20	4%	27	6%	8	2%
Representation for man only	312	11	4%	0	0%	27	9%	3	1%	18	6%	2	1%
Neither is represented/ Don't know	864	13	2%	0	0%	26	3%	9	1%	15	2%	3	0%
Total	2246	143	6%	1	0%	277	12%	75	3%	211	9%	36	2%

Percentages are row percentages of the number of divorce cases having a specific representation type.

With respect to custody cases, as shown in Table 16, in 36 percent (454 cases) of those cases, both parties were represented by an attorney; mother alone was represented in 20 percent (250 cases); father alone in 11 percent (142 cases); and neither party was represented in the remaining 33 percent (422 cases).

Custody outcome distribution differed by these categories of representation. When both parties had representation, joint legal but physical custody to mother was the most prevalent outcome (45 percent) followed by joint legal and physical custody outcome (21 percent). When mother alone was represented, sole custody to mother was awarded in 55 percent, which is higher when compared to the proportions in other representation or no representation cases. When father alone was represented, sole custody to father was awarded in 16 percent, but again this percentage is higher than the percents awarded “sole custody to father” in any other representation types.

Table 16: Number and percent distribution of cases by custody outcome and representation, FY03

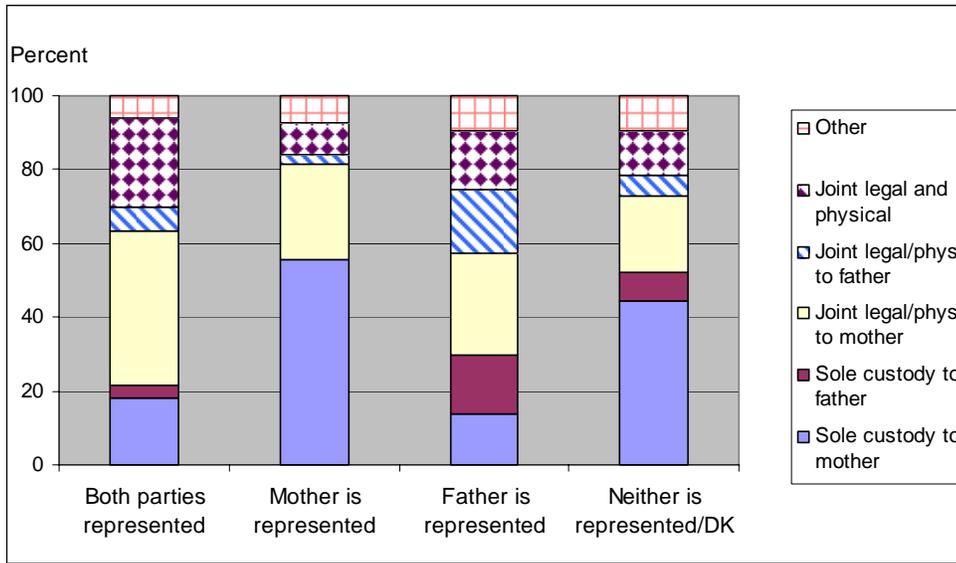
Custody outcome	Attorney representation							
	Both parties represented		Mother is represented		Father is represented		Neither is represented/DK	
	N	%	N	%	N	%	N	%
Sole custody to mother	81	17.8	137	54.8	19	13.4	173	41.0
Sole custody to father	20	4.4	0	0	23	16.2	30	7.1
Joint legal/phys to mother	203	44.7	67	26.8	42	29.6	108	25.6
Joint legal/phys to father	33	7.3	5	2.0	22	15.5	24	5.7
Joint legal and physical	94	20.7	25	10.0	23	16.2	49	11.6
Other	23	5.1	16	6.4	13	9.1	38	9
All	454	100	250	100	142	100	422	100

With respect to representation, Table 16 and the custody regression results demonstrate that representation is favorable for sole custody outcome for the party with representation.

One way of evaluating the impact of having representation on a custody matter is to differentiate between those cases where the parties cannot reach an agreement on the issue and therefore seek the court's intervention (contested), and those where the parties are able to reach an agreement (uncontested).

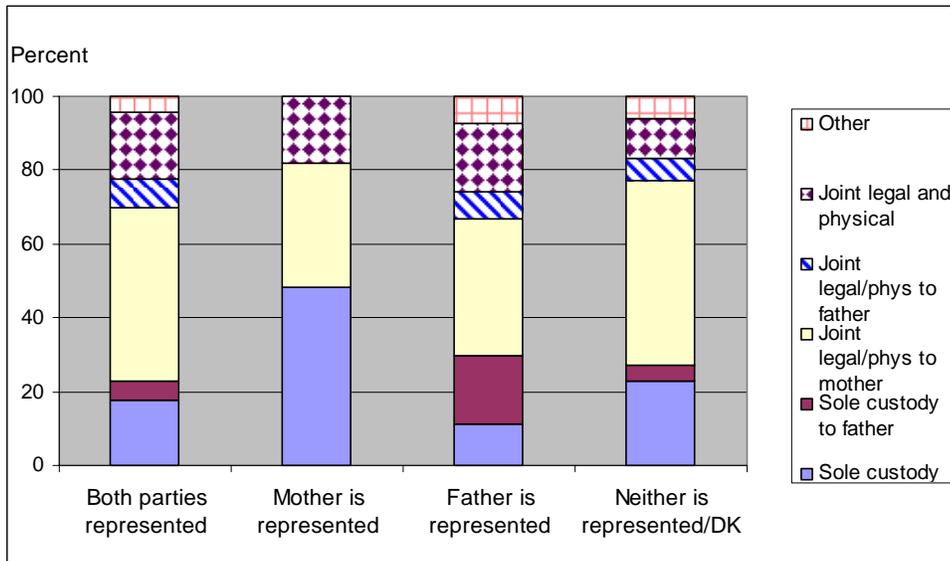
As shown in the figures below, custody outcome by representation was compared between those cases where custody outcome was uncontested and those where it was contested. The data show that attorney representation seems to have an effect on the type of custody outcome granted, especially for contested cases. For example, in both contested and uncontested cases, when mother alone was represented, she got sole custody in the greatest percentage of cases. Also – and again for contested and uncontested cases - fathers were awarded sole custody more often when they alone were represented than they were in cases with any other configuration of representation. One notable observation distinguishing the contested and uncontested cases is that “joint legal but physical custody to mother” was a favored outcome among contested cases and sole custody was awarded more frequently among contested cases than the uncontested cases.

Figure AA: Distribution of custody outcome by representation among uncontested cases, FY03



See Appendix Table A-17 for supporting data

Figure BB: Distribution of custody outcome by representation among contested cases



See Appendix Table A-18 for supporting data

E. FAMILY SERVICES FOR LITIGANTS

The Department of Family Administration of the Administrative Office of the Courts in Maryland 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. They work 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.³⁷

The mission of Maryland's Family Divisions and family service programs 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 and programs were developed and are now implemented as routine matters for family cases:

- Alternative Dispute Resolution (including mediation) – services that encourage parties to settle their disputes in a manner other than going to trial;
- Evaluative Services – programs that provide the court with information it needs to make a decision that is in a child's best interest or that is best for the family;
- Educational and Therapeutic Services - programs that educate the parties and their children to help parents remain child-focused and to ease the family's transition;
- Safety and Protection Services – resources that are designed to ensure the safety of adults and children;
- Legal Services – programs that ensure access to the justice system for those of limited means, and those at risk.³⁸

The Women's Law Center's original research study began collecting data on cases that were filed in the later part of 1998, the year in which the Family Divisions were established. Some areas of our findings that shed light on the various services offered by the Family Divisions and Family Services programs are: Mediation (Alternative Dispute Resolution); Use of Evaluators (Evaluative Services); Domestic Violence Allegations (Safety and Protection Services); and, Legal Representation (Legal Services). Using the first Women's Law Center study as a baseline, we can now explore and assess the utilization of these important services in the subsequent years.

One of the difficult things about tracking the types of services provided to litigants by the family divisions or family service programs -- based on a review of the case files alone -- is the fact that in most jurisdictions there is no check list or worksheet that indicates a referral has been made or a service provided. Many referrals are made at the time of the scheduling conference. Some are made as a result of pre-screening by the family services coordinator or another court staff person. Many of the family service coordinators keep records of services provided and utilized, and, for example, some case files contain "certificates" indicating that a party has completed a parenting class. But a review of the case file itself may not be enough to determine the scope of services available or provided to the litigants in a particular case.

³⁷ The Family Divisions were established in 1998 by the Maryland General Assembly. Since that time, family service programs have been established in the remaining jurisdictions.

³⁸ Maryland Administrative Office of the Courts, Dept. of Family Administration, Annual Report – Family Divisions & Family Services Programs Fiscal Year 2003, p 4.

Nonetheless, the following sections report on the findings relating to the Family Divisions and family services programs across the state.

MEDIATION

In Maryland, contested family law cases involving children are referred for mediation. Contested divorce cases also are regularly referred for mediation. According to the Maryland Administrative Office of the Courts, Department of Family Administration, “Courts promote parents as primary decision-makers by providing them the opportunity to resolve cases without litigation. Mediation permits parents the chance to recognize and place their child’s needs first,” according to the Administrative Office of the Courts.

- Referrals – Thirteen percent of the cases in the total sample contained some evidence of a referral for mediation – although presumably mediation is only used in contested cases, that is, cases where the parties cannot reach an agreement. In our study there were cases that did not appear to be contested but nonetheless had indications of a referral for mediation. Eight percent of the cases in the sample indicate that the parties attended mediation sessions.
- Attendance - Well over half -- 58 percent -- of the referred parties in divorce cases attended mediation. As we discussed earlier in this report, parties are ultimately reaching agreements on most of their disputes, rather than relying on judicial intervention, and those agreements tend to generate less frequent returns to court – all of which supports the continued encouragement from the court system for litigants to participate in alternative dispute resolution programs, like mediation.
- Custody -- The issues most frequently resolved in the course of mediation were child custody and visitation. This is consistent with the fact that, according to the Administrative Office of the Courts, it is the contested custody cases that are usually referred for mediation services. However, as the table below illustrates, it appears that custody cases, whether contested or not, are being referred for mediation services in nearly similar proportions (27 and 28 percent, respectively). This surprising data may result from the fact, as stated earlier, that in most jurisdictions, there are no checklists in the files indicating to which services the litigants have been referred, and therefore it is difficult to determine that information without accessing the court’s UCS system.³⁹

³⁹ UCS is the electronic Universal Court System software which the Administrative Office of the Courts utilizes to manage cases.

Table 17: Percent cases having mediation services among uncontested and contested custody cases

	Uncontested cases (n=780)		Contested cases (n=179)	
	N	%	n	%
Referred for mediation	218	28.0	48	26.8
Attended mediation	146	18.7	31	17.3
<i>Issues resolved</i>				
Custody	117	15.0	6	3.4
Child support	41	5.3	1	0.6
Visitation	99	12.7	5	2.8

USE OF EVALUATORS

In this study, the use of evaluators was tracked as part of the record of family division services provided to the litigants, including custody evaluator, substance abuse assessment and mental health evaluator. These types of evaluations are part of the court’s “mechanism for providing home studies or custody evaluations, and again, like mediation, this service is utilized in contested cases. In some instances the court maintains social workers on staff to provide this service. In some jurisdictions the service is provided for a fee by the local department of social services, or another private provider.”⁴⁰

Cases with children constitute the bulk of the referrals for evaluative services from the family divisions and family services programs. Put another way, none of the divorce cases without children were referred to the specific services listed in Table 15 – only 4 additional divorce cases were referred to “other” evaluative services. The data show that in 75 percent of the cases involving child custody, there were no evaluative services provided by the family division or family services programs. However, as stated earlier, many referrals are made at the time of the scheduling conference and some are made as a result of pre-screening by the family services coordinator or another court staff person and may not be reflected in the case file.

**Table 18: Record of evaluative services provided, FY03
of cases with children (n=1268)**

Evaluative Services Family Division	FY03	
	n	%
Custody evaluator	64	5.0
Substance abuse assessment	17	1.3
Mental health evaluator	19	1.5

DOMESTIC VIOLENCE

Through its Special Projects Grants, the Department of Family Administration continues to enhance access to Maryland’s family justice system. “A large percentage of these grants are

⁴⁰Annual Report at 9.

given to organizations providing safety planning and legal representation to victims of domestic violence.”⁴¹

Of the total number of cases in the sample, there were 216 which contained allegations of domestic violence. Of those, 25 percent (53 cases) were referred for mediation, despite the statutory prohibition against sending cases with domestic violence allegations to mediation.⁴²

Of the total number of divorce cases, there were 167 which contained allegations of domestic violence. Of those 24 percent (40 cases) were referred for mediation. Of those, the divorce was granted on the grounds of cruel treatment in eight cases (20 percent).⁴³

Table 19: Cases where domestic violence is alleged, referred for mediation and divorce granted

	n	Domestic violence is alleged	Referred for mediation	Divorce granted on grounds of cruel treatment
All cases	2533	216	53	
Divorce cases	2246	167	40	8

The Administrative Office of the Courts has developed and implemented a series of screening protocols and tools for Maryland Circuit Courts to “guide courts in screening domestic cases, including divorce, custody and visitation cases, for the presence of family violence issues, in order that the courts might more effectively determine which cases are appropriate for mediation.”⁴⁴ In addition to developing the screening tools, the Administrative Office of the Courts has also conducted regional trainings across the state with court professionals, self-help providers and mediators to address the issue. Although it does not appear that the numbers here are significant, effective use of such screening tools may help eliminate any inappropriate referrals that could jeopardize or endanger the parties or their children.

⁴¹ Annual Report, p. 14. Examples of organizations receiving these Special Project Grants include House of Ruth – Maryland, The Women’s Law Center, Maryland Volunteer Lawyer’s Service, YWCA of Annapolis and Anne Arundel County and others.

⁴² Maryland Rules, Rule 9-205.

⁴³ Effective October 1, 1998, an absolute divorce could be granted by proving “cruelty of treatment.” Md. Code Ann. Fam. Law s 7-103(a)(7)(1999). It should be noted that most divorce judgments do not articulate a particular ground upon which the divorce is granted, so the fact that the percentage for “cruel treatment” is so low is not significant.

⁴⁴ “Screening Cases for Family Violence Issues to Determine Suitability for Mediation and Other Forms of ADR,” by Maryland Judicial Conference, Committee on Family Law - Domestic Violence and Mediation Workgroup, March 16, 2005. The report may be accessed at the Maryland Judiciary website: www.courts.state.md.us/family/pdf/screening.pdf

V. CONCLUSION

The Women's Law Center is again pleased to present the data from this statewide research study. It is our hope that this study, on its own, and combined with the data from the earlier study, will prove to be informative for legislators, litigants, court personnel, advocates and those who seek to better the experience of Maryland families as they struggle with difficult legal and emotional issues.

VI. RECOMMENDATIONS

Based on the findings outlined in *Families in Transition*, the Women’s Law Center proposes the following substantive policy recommendations to the Maryland Judiciary and Administrative Office of the Courts. A brief discussion of the key findings follows each recommendation:

Recommendation 1: Develop “Best Practices” Standards designed to increase the predictability and consistency of alimony awards and outcomes.

The data from this study, as in the earlier study, show that whether or not a litigant can expect to pay or receive alimony from his or her ex-spouse is still an unpredictable aspect of the family law case. As discussed in this report, the factors that “predicted” the likelihood of an alimony outcome as between the two studies conducted by the Women’s Law Center of Maryland are quite distinct. In the FY99 study, only those marriages at the extremes – that is the longest marriages with the most assets – lent themselves to a prediction of alimony, leaving many litigants in the so-called middle range marriages without an ability to accurately determine the alimony outcome. In the FY03 study, the factors that are positively associated with an alimony award are, in the first instance, different from the factors in the earlier study, and in the second instance, not consistent with the notion (gleaned from the earlier study) that only the longest and wealthiest marriages justify an alimony award. Indeed, the factors in the FY03 study suggest that more middle-range marriages may be generating alimony awards - but there does not seem to be a trend that litigants, attorneys and the courts can rely on.

Recommendation 2: Increase access to attorneys for litigants seeking custody determinations, especially when one party has attorney.

When one party in a contested custody case is represented by an attorney and the other is not, chances are good that the outcome will be sole custody to the party with an attorney. The data show that in just over 30 percent of the cases involving children, one parent did not have representation by an attorney while the other did. The data show that attorney representation may have an effect on the type of custody outcome granted, especially for contested cases. For example in contested and in uncontested cases, when mother alone was represented, she got sole custody in the greatest percentage of cases. Also – and again for contested and uncontested cases - fathers were awarded sole custody more often when they alone were represented than they were in cases with any other configuration of representation.

But the data reported here also suggest that when parties resolve their custody dispute by agreement – which they may do with the help of attorneys – the rate of subsequent litigation on that issue (the frequency with which they return to court to modify the custody arrangement) is much less than when the court intervenes to resolve the issue. The court system would do well to “level the playing field” for litigants and by extension reduce the court’s own involvement.

Recommendation 3: Develop a protocol for tracking the provision of services to family law litigants in the case files.

Standardize the use of services checklists by family divisions and family services programs. A review of the case files alone is not sufficient to measure or assess the provision of these services to litigants. Indeed, in most jurisdictions, there is no checklist or worksheet that indicates a referral has been made or a service provided. Many referrals are made at the time of the scheduling conference. Some are made as a result of pre-screening by the family services coordinator or another court staff person. Many of the family service coordinators keep records of services provided and utilized, and, for example, some case files contain “certificates” indicating that a party has completed a parenting class. But a review of the case file itself may not be enough to determine the scope of services available or provided to the litigants in a particular case. The Women’s Law Center recommends that the Judiciary standardize the use of services checklists by family divisions and family services programs.

Recommendation 4: Monitor and implement the existing statewide protocols and tools for screening domestic cases for family violence issues.

The data show that in divorce or custody cases where there are allegations of domestic violence, some of those cases are referred for mediation in contravention of the rule (Maryland Rules, Rule 9-205). As the governing body for setting statewide standards within Maryland’s family courts, the Administrative Office of the Courts has developed and disseminated protocols and tools to guide courts in screening domestic cases for the presence of family violence issues. We recommend that the Court make adequate resources available to the family divisions and family services programs so that the protocols can be consistently implemented across the state.

**For information about additional policy implications of this data
or related advocacy initiatives,
please contact the Women’s Law Center of Maryland, Inc.**

Families in Transition: A Follow-up Study Exploring Family Law Issues in Maryland was made possible by the generous support of the Administrative Office of the Courts. The Women’s Law Center of Maryland, Inc. is a private, non-profit advocacy organization committed to the advancement of women’s rights. For more information, contact The Women’s Law Center of Maryland at 410-321-8761 or www.wlcmd.org

APPENDIX

Table A-1: Distribution of Financial Outcomes, among divorce cases, FY03 and FY99

Type of financial award	FY03		FY99	
	n	%	n	%
No award	1716	76.4	1255	74.4
Alimony only	45	2.0	38	2.3
Monetary award only	230	10.2	161	9.5
Share of pension only	92	4.1	92	5.5
Two or more awards	163	7.3	141	8.4
Alimony & monetary award	27	1.2	24	1.4
Alimony & share of pension	41	1.8	33	2.0
Monetary award & share of pension	64	2.9	52	3.1
All three granted	31	1.4	32	1.9
Total	2246	100.0	1687	100.0

Table A-2: Distribution of financial outcomes, including transfer of real property by agreement among divorce cases, FY03

Type of financial outcome	FY03	
	n	%
No financial outcome	1409	62.7
Financial outcomes	837	37.3
Alimony	144	6.4*
Monetary award	352	15.6*
Share of pension/retirement	228	10.2*
House or other property (not cars)	665	30.0*
Total	2246	100.0

These cases add up to more than 837 cases (37.3%) because multiple awards can be made to a case

Table A-3: Requests and outcomes by gender for alimony, monetary awards and pensions, among divorce cases, FY03 and FY99

Request and outcome	FY03			FY99
	None	Male	Female	All
	%	%	%	%
Alimony requested	83.4	2.3	14.3	17.4
Alimony awarded	93.6	0.0	6.4	7.5
Monetary award requested	75.6	9.0	15.4	27.8
Monetary award granted	84.3	3.3	12.3	15.2
Share of pension/retirement requested	89.8	2.9	7.3	9.9
Share of pension/retirement awarded	89.9	1.6	8.5	12.4

Note: Percentages shown are percent of total divorce cases (2,246 in FY03, 1,686 in FY99)

Table A-4: Length of marriage among divorce cases FY03

Marriage length, in years	Total divorce cases	
	n	%
< 5	441	19.8%
5-9	678	30.4%
10-19	684	30.7%
20 +	426	19.1%
Total	2229	100.0%

Note: there are 17 divorce cases where marriage length is unknown

Table A-5: Financial requests and outcomes by length of marriage

Marriage length, in years	Total divorce cases	Alimony requested (original)		Alimony awarded		Monetary award requested (original)		Monetary award granted		Share of pension/retirement requested (original)		Share of pension/retirement granted	
		n	%	n	%	n	%	n	%	n	%	n	%
< 5	441	39	8.8	3	0.7	37	8.4	27	6.1	15	3.4	2	0.5
5-9	678	79	11.7	21	3.1	109	16.1	79	11.7	35	5.2	28	4.1
10-19	684	127	18.6	57	8.3	158	23.1	129	18.9	71	10.4	79	11.5
20 +	426	108	25.4	59	13.8	133	31.2	115	27.0	89	20.9	112	26.3
Total	2229	353	15.8	140	6.3	437	19.6	350	15.7	210	9.4	221	9.9

Table A-6: Percentage of financial distribution outcomes to women, by whether fault alleged, FY03

Allegation of fault	Total	Alimony awarded to				Monetary award given to				Share of pension awarded to			
		Women		Men		Women		Men		Women		Men	
		n	%	n	%	n	%	n	%	n	%	n	%
Both parties alleged fault	123	20	16%	0	0%	36	29%	6	5%	27	22%	6	5%
Woman alleged against man	363	50	14%	0	0%	63	17%	17	5%	47	13%	6	2%
Man alleged against woman	128	6	5%	0	0%	15	12%	7	5%	13	10%	4	3%
No allegation by either party	1632	67	4%	1	0%	163	10%	45	3%	124	8%	20	1%
Total	2246	143	6%	1	0%	277	12%	75	3%	40	2%	10	0%

Note: Percentages are row percentages of the number of divorce cases having a specific allegation category.

Table A-7: Number and percent distribution of methods by which financial awards are made for divorce cases, FY03

Alimony award outcome	Total		Agree with pre-complaint settlement		Agree without pre-complaint settlement		Between the Answer and trial		Mediation		During trial		Contested and resolved by court		No data on resolution	
	n	%	n	%	n	%	N	%	n	%	n	%	n	%	n	%
Denied	138	100	3	2.2	2	1.4	2	1.4	0	0.0	2	1.4	19	13.8	110	79.7
Waived in court	440	100	5	1.1	6	1.4	11	2.5	0	0.0	8	1.8	17	3.9	393	89.3
Waived by Agreement	980	100	355	36.2	64	6.5	165	16.8	20	2.0	16	1.6	5	0.5	359	36.6
Awarded by Court	28	100	1	3.6	0	0	7	25.0	1	3.6	3	10.7	14	50.0	3	10.7
Awarded by Agreement	116	100	46	39.7	2	1.7	46	39.7	9	7.8	6	5.2	2	1.7	7	6.0
No/NA	544	100	5	0.9	2	0.4	1	0.2	0	0.0	1	0.2	3	0.6	532	97.8
All	2246	100	415	18.5	76	3.4	232	10.3	30	1.3	36	1.6	60	2.7	1404	62.5
Monetary award outcome	Total		Agree with pre-complaint settlement		Agree without pre-complaint settlement		Between the Answer and trial		Mediation		During trial		Contested and resolved by court		No data on resolution	
	n	%	n	%	n	%	N	%	n	%	n	%	n	%	n	%
Awarded	352	100	131	37.2	0	0	98	27.8	14	4.0	14	4	24	6.8	75	21.3
Waived	560	100	129	23	6	1.1	61	10.9	2	0.4	8	1.4	3	0.5	352	62.9
Denied	60	100	0	0	0	0	2	3.3	0	0.0	1	1.7	7	11.7	50	83.3
No/NA	1274	100	16	1.3	0	0	19	1.5	2	0.2	2	0.2	7	0.5	1228	96.4
All	2246	100	276	12.3	6	0.3	180	8.0	18	0.8	25	1.1	41	1.8	1705	75.9
Share of pension outcome	Total		Agree with pre-complaint settlement		Agree without pre-complaint settlement		Between the Answer and trial		During trial		Contested and resolved by court		No data on resolution			
	n	%	n	%	n	%	N	%	n	%	n	%	n	%		
Awarded	228	100	78	34.2	2	0.9	75	32.9	14	6.1	14	6.1	46	20.2		
Waived	756	100	264	34.9	8	1.1	101	13.4	8	1.1	3	0.4	374	49.5		
Denied	15	100	0	0	0	0	3	20.0	1	6.7	4	26.7	7	46.7		
No/NA	1247	100	10	0.8	0	0	9	0.7	1	0.1	8	0.6	1219	97.8		
All	2246	100	352	15.7	10	0.4	188	8.4	24	1.1	29	1.3	1646	73.3		

Note: Sums of cases for various methods add up to more than 'Total' because in a few cases, more than one method was used. For the share of pension resolution, mediation was not used

Table A-8: Access to financial information in the case files, FY03

	Plaintiff		Defendant	
	n	%	n	%
Financial statement is not in file	1876	74.06	2117	83.58
Financial statement is in file and sealed	493	19.46	276	10.90
Financial statement is in file and not sealed	114	4.50	61	2.41
There is financial info in the file, but not from FS	1276	50.38	1168	46.11
There is no financial information in file for the litigant	1043	41.18	1262	49.82

These cases add up to more than the total cases in the sample (2533) because multiple categories could be recorded by the researcher.

Table A-9: Distribution of custody outcomes among cases with children, FY03 and FY99

Custody Outcome	Child custody cases, FY03		Divorce cases with children, FY03		All cases with children FY03		All cases with children FY99	
	n	%	n	%	n	%	n	%
Sole Custody – Mom	116	40.6	294	29.9	410	32.3	386	37.8
Sole Custody – Dad	26	9.1	47	4.8	73	5.8	69	6.8
Joint Legal Custody - Physical Custody to Mom	82	28.7	338	34.4	420	33.1	289	28.3
Joint Legal Custody - Physical Custody to Dad	22	7.7	62	6.3	84	6.6	71	6.9
Joint Legal & Physical Custody	35	12.2	156	15.9	191	15.1	135	13.2
Split Custody	2	0.7	14	1.4	16	1.3	23	2.3
Reserved	1	0.3	9	0.9	10	0.8	0	0
NA	0	0.0	31	3.2	31	2.4	49	4.8
DK	2	0.7	31	3.2	33	2.6	0	0
Total	286	100	982	100	1268	100	1022	100

Table A-10: Number and percent distribution of child's living arrangement at the time of filing, among cases with children, FY03

Living arrangement	All cases with children FY03	
	n	%
Living with mother	806	63.6
Living with father	142	11.2
Split time with both parents	118	9.3
Unknown	202	15.9
Total	1268	100.0

Table A-11: Number and percent distribution of custody requests, percent of spouses who agreed to the request, and percent of requests that were awarded, by gender, FY03

Custody outcome request	Request made by mother						Request made by father					
	Number of requests	% distribution	Agreed by father	% agree	Requests granted	% of requests	Number of requests	% distribution	Agreed by mother	% agree	Requests granted	% of requests
Sole custody to mother	666	69.9%	359	53.9%	346	52.0%	42	6.1%	40	95.2%	30	71.4%
Sole custody to father	2	0.2%	2	100.0%	2	100.0%	223	32.6%	69	30.9%	51	22.9%
Joint legal/phys to mother	170	17.8%	116	68.2%	128	75.3%	134	19.6%	75	56.0%	108	80.6%
Joint legal/phys to father	16	1.7%	13	81.3%	11	68.8%	65	9.5%	30	46.2%	33	50.8%
Joint legal and physical	96	10.1%	83	86.5%	61	63.5%	212	31.0%	89	42.0%	78	36.8%
Split custody	3	0.3%	3	100.0%	3	100.0%	8	1.2%	4	50.0%	3	37.5%
Total	953	100.0%	576	60.4%	551	57.8%	684	100.0%	307	44.9%	303	44.3%

Table A-12: Percent distribution of methods by which custody outcome was reached, FY03

Custody Outcome	Total		Outcome reached through agreement				Outcome reached through judicial resolution		Default or no data on resolution
			With pre-complaint settlement	Without pre-complaint settlement	Between Answer and trial	Mediated consent	During trial	Contested and resolved by court	
	n	%							
Sole Custody - Mom	410	100	11.0	17.8	14.6	3.9	2.7	12.9	38.3
Sole Custody - Dad	73	100	6.8	16.4	19.2	1.4	5.5	17.8	32.9
Joint Legal, Physical to Mom	420	100	26.0	8.6	28.6	16.0	5.2	6.9	12.1
Joint Legal, Physical to Dad	84	100	20.2	17.9	20.2	7.1	7.1	10.7	20.2
Joint Legal & Physical	191	100	33.5	12.0	23.6	12.0	5.2	5.8	9.4
Split Custody	16	100	18.8	0.0	43.8	12.5	6.3	18.8	6.3
None/Unknown	74	100	5.4	8.1	6.8	2.7	0.0	9.5	70.3
All	1268	100	19.5	13.0	21.1	9.2	4.3	9.9	25.2

Appendix Table A-12 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). 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.

Table A-13: Custody outcome by method of resolution and subsequent litigation, FY03

Custody Outcome	Total	Outcome reached through agreement				Outcome reached through judicial resolution				No data on resolution			
		N	% of Total	Subsequent litigation		N	% of Total	Subsequent litigation		N	% of Total	Subsequent litigation	
				n	% of N			n	% of N			n	% of N
Sole custody to mother	410	193	47%	4	2%	64	16%	4	6%	157	38%	0	0%
Sole custody to father	73	32	44%	3	9%	17	23%	1	6%	24	33%	0	0%
Joint legal/phys to mother	420	321	76%	14	4%	51	12%	3	6%	51	12%	3	6%
Joint legal/phys to father	84	54	64%	5	9%	15	18%	4	27%	17	20%	4	24%
Joint legal and physical	191	152	80%	13	9%	21	11%	4	19%	18	9%	3	17%
Split custody	16	12	75%	0	0%	4	25%	0	0%	1	6%	0	0%
All	1268	780	62%	41	5%	179	14%	18	10%	320	25%	10	3%

Note: Subsequent litigation includes litigations for modification of custody.

Table A-14: Percent distribution of methods by which visitation outcome was reached, FY03

Visitation Outcome	Total		Outcome reached through agreement				Outcome reached through judicial resolution		Default or no data on resolution
			With pre-complaint settlement	Without pre-complaint settlement	Between Answer and trial	Mediated consent	During trial	Contested and resolved by court	
	n	%	%	%	%	%	%	%	
Reasonable	545	100	19.4	11.0	17.2	4.6	2.8	6.4	39.6
Less than Alternating Weekends	32	100	12.5	3.1	31.3	6.3	15.6	15.6	15.6
Alternating Weekends + some hol./vac. time	114	100	18.4	5.3	33.3	13.2	7.0	14.0	14.0
More than Alternating Weekends	153	100	24.2	1.3	27.5	26.8	4.6	8.5	11.8
Joint Physical Custody (35% or more)	102	100	23.5	2.0	18.6	11.8	2.9	3.9	38.2
Restricted or Supervised Visitation	34	100	2.9	2.9	5.9	5.9	0.0	29.4	52.9
Other/Reserved	99	100	10.1	3.0	30.3	3.0	9.1	10.1	41.4
NA	111	100	13.5	2.7	14.4	0.9	2.7	0.9	64.9
DK	78	100	3.8	7.7	7.7	3.8	0.0	3.8	73.1
All	1268	100	17.4	6.6	20.3	8.2	3.9	7.6	38.0

Table A-15: Visitation outcome by method of resolution and subsequent litigation, FY03

Visitation Outcome	Total	Outcome reached through agreement				Outcome reached through judicial resolution				Default or no data on resolution			
		N	% of Total	Subsequent litigation		N	% of Total	Subsequent litigation		N	% of Total	Subsequent litigation	
				n	% of N			n	% of N			n	% of N
Reasonable	545	281	52%	5	2%	50	9%	2	4%	216	40%	7	3%
Less than Alternating Weekends	32	17	53%	0	0%	10	31%	1	10%	5	16%	0	0%
Alternating Weekends +some hol. time	114	77	68%	6	8%	24	21%	4	17%	16	14%	1	6%
More than Alternating Weekends	153	115	75%	8	7%	20	13%	0	0%	18	12%	4	22%
Joint Physical Custody (35% or more)	102	57	56%	6	11%	7	7%	0	0%	39	38%	0	0%
Restricted or Supervised Visitation	34	6	18%	1	17%	10	29%	3	30%	18	53%	2	11%
Other/Reserved	99	45	45%	8	18%	19	19%	1	5%	41	41%	3	7%
All	1268	651	51%	35	5%	147	12%	12	8%	482	38%	18	4%

Subsequent litigation includes litigations for modification of visitation or for failure to comply with visitation.

Table A-16: Child support outcomes among cases with children, FY03

Child support outcome	All cases with children	
	n	%
No child support	433	34.26
Child support awarded	807	63.84
To mother	678	84.01
To father	76	9.42
DK	53	6.57

Table A-17: Number and percent distribution of cases by custody outcome according to attorney representation, among cases where the parties do not contest the custody issue, FY03

Custody outcome	Attorney representation								All cases that agree on custody	
	Both parties represented		Mother is represented		Father is represented		Neither is represented/DK			
	N	%	N	%	N	%	N	%	N	%
Sole custody to mother	52	14.9	56	43.8	11	13.3	74	33.5	193	24.7
Sole custody to father	9	2.6			10	12	13	5.9	32	4.1
Joint legal/phys to mother	173	49.7	49	38.3	29	34.9	70	31.7	321	41.2
Joint legal/phys to father	26	7.5	1	0.8	11	13.3	16	7.2	54	6.9
Joint legal and physical	79	22.7	18	14.1	18	21.7	37	16.7	152	19.5
Split custody	5	1.4	2	1.6	1	1.2	4	1.8	12	1.5
Reserved/DK	2	0.6							2	0.3
Other	2	0.6	2	1.6	3	3.6	7	3.2	14	1.8
All	348	100	128	100	83	100	221	100	780	100

Table A-18: Number and percent distribution of cases by custody outcome according to attorney representation, among cases where parties contest the custody issue, FY03

Custody outcome	Attorney representation								All cases that do not agree on custody	
	Both parties represented		Mother is represented		Father is represented		Neither is represented/DK			
	N	%	N	%	N	%	N	%	N	%
Sole custody to mother	23	27.1	19	73.1	1	7.7	21	38.2	64	35.8
Sole custody to father	11	12.9			3	23.1	3	5.5	17	9.5
Joint legal/phys to mother	26	30.6	4	15.4	4	30.8	17	30.9	51	28.5
Joint legal/phys to father	6	7.1			3	23.1	6	10.9	15	8.4
Joint legal and physical	13	15.3	2	7.7	1	7.7	5	9.1	21	11.7
Split custody	2	2.4	1	3.8			1	1.8	4	2.2
Reserved/DK	2	2.4					2	3.6	4	2.2
Other	2	2.4			1	7.7			3	1.7
All	85	100	26	100	13	100	55	100	179	100