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## Divorce in the Age of Corona, Part 1: Parenting Plans

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Parents who were in the midst of the divorce process when the pandemic began, or who have only recently decided to separate, recognize that the parenting arrangements they develop for today may not be in their children's best interests for the indeterminate tomorrow, once schools and offices have fully reopened.

Divorcing couples engaged in comprehensive settlement negotiations now may wish to consider both their "normal" parenting plan, to take effect in the future when typical schedules resume, as well as a temporary plan crafted for their current situation. Parents who are already divorced may wish to consider modifications to existing divorce agreements as the need may arise during the pandemic.

### Parenting Time

The top priority of any parenting plan is to serve the best interests of the child, and fostering a strong connection with both parents is of paramount concern. In an [open letter](#) dated March 24, 2020, Massachusetts Probate and Family Court Chief Justice John D. Casey wrote: "[I]t is important that children spend time with both of their parents and that each parent have the opportunity to engage in family activities...." Although parenting plans are officially unchanged, it is clear that the practical aspects of childrearing have been dramatically affected.

While many co-parenting families have been able to maintain their existing schedules, others have discovered the need for greater flexibility to accommodate the demands of remote schooling, working from home, loss of childcare, and the unique concerns of essential workers in high-risk professions. Parents should do their utmost to adapt—and even formally modify—schedules whenever the best interests of the children and the safety of all concerned require it.

To provide for parenting both during the pandemic and when society returns to "normal," parents may consider including the following introductory provision in their parenting plan:

The parties acknowledge that, as of the date of this Agreement, a state of emergency exists in Massachusetts due to the Covid-19 pandemic, and that various measures are in place to limit the spread of Covid-19, including but not limited to school closures, widespread work-from-home arrangements, and so-called "social distancing" restricting in-person contact with people outside one's household. In consideration of the parties' respective household environments and lifestyles, and the Children's emotional and developmental maturity, the parties agree that...

### Adapting the Usual Plan

The typical parenting plan for all but the youngest children is often crafted with regular school and camp schedules in mind—but the usual transition points and division of days failed some families when schools closed this spring or as summer camp plans changed. Households scrambled to secure equipment for online learning and to carve out adequate work spaces for both children and parents.

Parenting plans may need to adapt again as the school year begins and various schools implement remote or hybrid learning models for some or all students. Some school districts are planning split-week hybrid models, with one cohort of students in school buildings on Monday and Tuesday every week, a second cohort in school buildings on Thursday and Friday, and Wednesday serving either as a swing day alternating between cohorts, or a remote learning day for all students. Under many typical parenting plans where children have set days of the week in each household (e.g., the “5-2-2-5” schedule), this hybrid school plan could leave one parent with a disproportionate share of remote learning during their parenting time. There is an additional layer of complexity for parents who work as teachers or school administrators, or in blended families where children may be enrolled in different school districts.

Where co-parents live in close proximity to each other, they may even decide to have the children transition between households midday or several times per week. This arrangement gives children frequent opportunities for substantial time with each parent, and allows the adults a few hours each day to focus on work and other personal responsibilities.

Co-parents who have already have a “normal” plan in place may have implemented temporary changes when schools closed this spring or as camp plans changed this summer. Some co-parents are able to discuss their current and changing needs easily, and to make temporary changes to their parenting schedule by informal mutual agreement. In other situations, both parents and children would benefit from the structure of a detailed written plan, such as this:

1. Pursuant to their regularly weekly plan, Mother has the Children overnight on Monday and Tuesday every week, Father has the Children overnight on Wednesday and Thursday every week, and the parties alternate weekends, with all transitions taking place at the beginning or end of the school day as appropriate.
2. If the Children’s school establishes a split-week hybrid learning model due to Covid-19, and the Children participate in this hybrid model, then:
  - (a) The parties shall maintain a substantially equal division of parenting time, with commensurate proportions of in-school learning and remote learning during each parent’s time with the Children.
  - (b) The parties shall follow an alternating-week parenting plan of seven overnights with one parent followed by seven overnights with the other parent. The Children shall transition between households every Sunday at 7:00 p.m.
  - (c) The parent who does not have the Children overnight shall have parenting time on Tuesday and Thursday from 2:30 p.m. to 7:00 p.m., including dinner.
  - (d) Each Child shall have his or her own laptop computer, “Chromebook” or similar device, with an embedded webcam and physical keyboard, that is capable of accessing the internet and running all applications and software recommended by the Child’s school (hereinafter a “Device”), for that Child’s exclusive use for remote learning, homework, and related activities.
  - (e) The parties shall share equally the cost of each Device, as well as the costs of a second charger and two headsets with microphones. At the end of each party’s parenting time, that party shall ensure that each Child brings his/her Device to the other parent’s household. One charger and one headset per Device shall remain in each parent’s household.

## Significant Changes

While the goal for most co-parenting situations may be to preserve the overall division of parenting time, specific circumstances may dictate more drastic changes to the usual parenting plan. There are situations where it may

be advisable for a child to remain in only one household, with in-person visits suspended or subject to certain limitations. For example:

- Where one parent has a high risk of Covid exposure at work;
- To alleviate confusion or emotional distress for young children if masks and physical distancing restrictions would be in place in one household to protect an elderly or immunocompromised family member; or
- The usual parenting plan dictates that the children reside primarily with one parent and would otherwise have only occasional short visits with other parent, and the non-residential parent is unable to provide a safe environment for such visits when community infection rates are high.

In such situations, the residential parent must make an extra effort to ensure ample contact between the children and the other parent (such as by telephone, Zoom, Skype or FaceTime) and to foster the development of that relationship in creative ways. One option for suspended visits may look like this:

1. While the temporary parenting plan is in effect, the Child shall reside exclusively with Mother, and Father shall not have in-person parenting time with the Child.
2. Father shall have video calls with the Child (via FaceTime or similar) every evening at 6:15 p.m. and at additional times as the parties may agree in writing.
  - (a) Each such call shall be of no less than ten (10) minutes' duration, and may extend as long as desired without being unduly burdensome or disruptive.
  - (b) In the event that Mother will be unable to facilitate a call as scheduled, she shall provide Father with reasonable notice and the parties shall make a good faith effort to agree upon an alternative time for such call on the same day.
3. The parties shall make a good faith effort to promote and coordinate ample additional contact between Father and the Child, by telephone and video calls as well as through other age-appropriate means (for example, playing online video games together in a non-public forum).

### **Trigger Points: Cause...**

As Covid infection rates decreased in Massachusetts during the late spring and early summer, activity restrictions also decreased as the Commonwealth proceeded through stages of its reopening plan. However, with early indications of rising community infection rates, restrictions and closures may soon take effect again—or some parents may simply feel it is prudent to engage in more cautious behavior.

To minimize the chance of future conflict, it would be wise for parents to agree on clear, simple guidelines to determine whether the “normal” or “temporary pandemic” parenting schedule should be in effect. The closure or reopening of local schools is one good indicator. Changes may also take effect if a child or either parent is directed to quarantine due to suspected exposure to Covid, especially if in-person contact with someone outside the child’s primary household would reset the 14-day clock for such isolation. In such a situation, all parties must take care to avoid disrupting the child’s relationship with each parent, and to reevaluate in the case of actual illness.

Parents may choose to include the following provisions outlining when temporary changes should be in effect:

1. The following temporary changes to the parenting plan shall apply until the reopening of public elementary schools or municipal camp programs for elementary-school-aged children in \_\_\_\_\_ [Town/City], Massachusetts.

2. The following temporary changes to the parenting plan shall take effect/resume:
- (a) During any closure of public elementary schools and/or municipal camp programs for elementary-school-aged children in \_\_\_\_\_ [Town/City], Massachusetts, due to Covid-19;
  - (b) If the Child is directed to quarantine or be isolated from non-household members, due to known or suspected exposure to Covid-19, for the period of such quarantine or isolation; and
  - (c) As the parties may reasonably agree would be in the Child’s best interest, upon consideration of the contemporaneous public health situation, their respective individual circumstances and the Child’s emotional and developmental maturity.”


### ...And Effect


All of these changes to parenting plans are intended to be temporary, and it is vital that neither party exploit the situation in an attempt to alter the parenting plan permanently in the future. This is especially important for recently separated parents, or in situations where one party’s failure to abide by the terms of a parenting plan has been a factor in the past.

Clearly spelling out the effect of temporary changes—or, rather, that such changes should not have a long-term effect—may give both parents the peace of mind they need to make decisions in the best interests of each child for the present situation, without worrying about establishing precedent or sacrificing precious time with their children in the future. Consider language such as the following:

The parties acknowledge that the temporary alterations to their parenting plan due to the present exigent circumstances will result in less in-person parenting time for Mother/Father than provided by their intended parenting plan. The parties agree that these temporary alterations shall not be considered to set a precedent or establish a pattern of exercising (or failing to exercise) parenting time in connection with any future modification of the parenting plan.


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