

**THE KIDS ARE ALRIGHT**

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## **Child Developmental Considerations and the Impact of Divorce**

Individuals achieve very specific tasks of emotional, cognitive, and social development from infancy into adulthood. Each stage holds important milestones that impact the long-term success a person achieves in their lifetime. Understanding these stages and milestones also assists parents and professionals with decision-making and best-interest determinations when trauma and disruptions, such as divorce, occur in a child's life.

Pregnancy is considered when discussing infant health. It is unfortunate, but sometimes pregnancy and divorce go hand in hand, and expecting mothers may find themselves splitting from their partners because, like many other major life events, pregnancy can add tension to even the strongest relationships. Whether expecting parents are concerned about finances, the child's paternity is in question, or the new baby merely adds more tension on top of a pressure cooker of emotions, divorce may occur. Prenatal care, nutrition, and a low-stress environment set the stage for the infant's entrance into the world. The mental health of the mother is intertwined with the care the infant receives and ultimately, on the attachments and developmental tasks they accomplish from birth to adulthood. If a gap, lag, or delay is identified, corrective action is necessary to optimize the child's well-being.

The importance of infant attachment cannot be overstated. Attachment is the cornerstone of healthy childhood development and creates the foundation for their later relationships, understanding of intimacy, emotional regulation, and their ability to care and nurture their own children in a healthy fashion. John Bowlby introduced attachment theory in the 1950s.

Researchers have expanded upon the concepts over the years, including how attachment is impacted by divorce and parent-child separations. To begin, attachment is defined as the enduring emotional bond characterized by a tendency to seek and maintain closeness to a specific parental figure, particularly during stressful times. This love relationship has a profound long-lasting effect on the child. Closeness to the attachment figure provides protection and a psychological sense of security. A caregiver needs to be reliable, available, and responsive to the baby's needs. Mary Ainsworth described three major categories of attachment: secure, anxious/avoidant and anxious/ambivalent. After years of additional research, Mary Main and Judith Solomon identified a fourth pattern: anxious/disorganized/disoriented.

*Secure:* Babies use their attachment figure as an effective base from which to explore the world. Most babies are securely attached (approximately 65%) and responsiveness and protection do not represent areas of concern for them.

*Avoidant:* Babies with avoidant patterns are anxious about the responsiveness of the parental attachment figure. They develop defensive strategies to manage their anxiety. They show patterns of detachment. This is the second most common pattern of attachment, representing about 35% of infants. Most do not develop significant problems unless they fall into other high-risk categories.

*Ambivalent:* In babies with anxious/ambivalent attachments, both anxiety and mixed feelings about their attachment figures are readily observable. At reunions after brief

separations in an unfamiliar environment, they demonstrate angry behavior with their attachment figure. About 10% of infants fall into this category and they are often less persistent, less motivated, and less compliant. Preschoolers with ambivalent attachments do less well in preschool than their peers. They are unable to provide consistent peer responsiveness or meet expectations about relationships.

*Disorganized/disoriented:* Babies classified in this group appear to have no consistent strategy for managing separation from and reunion with the attachment figure. Some may appear depressed, some are avoidant, and others show odd and disturbing behaviors. These infants come from all family classifications. This category is less recognized due to the relatively recent identification and research. What is known is that this category is more likely to have hostile and aggressive behavior problems by the age of 5.

The patterns of attachment for fathers are less well-known and less researched than those of mothers. Historically, fathers have interacted less often with babies than their mothers have. Fathers tend to be playmates, often stepping back to let mothers take over when a baby has a need. Currently, evidence does not support patterns of child gender difference in parent-child attachment behavior. Most babies form secure attachments when attachment figures return to work. Another attachment hierarchy also includes grandmothers and third parent caregivers.

**Tasks of development for infants:** Infancy is identified from birth through babies' first year. Rapid changes in their physical growth, their parental interactions, and their

environmental awareness dominate this year. Their reflexes develop, and parents begin to see their infant's gross and fine motor skills developing. The primary goals parents have with infants is to create a secure attachment and facilitate basic trust between themselves and their infant. The infant relies on their parents to meet their basic needs and more. If those basic needs fail to be met, disruption to the attachment process occurs.

**Attachment in this phase.** Infants are most vulnerable to changes in their environment because of the challenges presented in developing attachments. Parent-infant attachment is key not only to their survival, but also to their social and emotional outcome. When infants build strong attachments with a primary parent, they may experience distress when separation occurs. Infants and toddlers do best with routine, familiarity, and continuity. All infants develop attachments, even infants in a neglectful home environment. Attachment is key to future emotional and behavioral growth or the lack of that growth. Most important at this phase is that the infant can predict the reactions of their caregiver. Translated into parental exchange, attachment means that the parents hold the key to whether smooth transitions from parent to parent occur. The worst outcome is a chaotic and tension-filled exchange that dysregulates the infant.

Having and understanding this knowledge is imperative for the family law lawyer/divorce professional. The Bounds of Advocacy requires adherence to the philosophy of mitigating the damage to children during the divorce process. It is evident during the infant stage that bonding is important for both parents. While it is true that research on the relationship with fathers may not be as prevalent as that with mothers, it should go without saying that

an infant needs that bonding with both parents. Considering the developmental stages and tasks identified above, as a practitioner, you should be creating parenting plans/timesharing schedules and custody arrangements that allow bonding with both parents. Each parent should have the opportunity to participate in feeding, bathing, and changing, as well as play to increase the infant's motor skills, etc. The goal for all lawyers, except in truly egregious situations of abuse, should be to work with the other lawyer and other parent to create a timesharing schedule that maximizes bonding for both parents. Arguing that only the mother can breastfeed or the father is not capable of providing care are outdated arguments that should truly be abandoned but in the rarest of situations. The advice of the practitioner should focus on problem solving to create a low-stress environment for the child, and not on problem creating to meet unrealistic expectations of clients. The counseling role of the family law lawyer truly becomes paramount in cases involving minor children. The idea that the client wants it so it should be argued should be removed from the vocabulary of a lawyer dealing with minor children in paternity and divorce. Clients should be counseled about the developmental stages of the infant and provided guidance, perhaps by including a mental health professional on the team, on a timesharing plan that is best for the infant, not just what the client believes is best for that client.

**Tasks of development for toddlers:** Toddlerhood begins at around 1 and continues for the next several years. Much like infants, attachments and trust are essential to healthy psychological development. Toddlers' attachment enters the phase of goal-corrected partnerships. It is at this stage that fathers may increase their involvement and change the



nature of the role they play in relation to the child. Walking, language, and cognitive development are the most notable achievements for toddlers. Exploring their world from a mobile view of the world changes so much for them.

**Stages of achievement:** Toddlers become socially engaged, develop verbal expressions that include feelings, needs, and purpose. Cognitive changes include memory recall, and they begin to be able to hold the absent parent in their thoughts.

**Attachments in this phase.** Toddlers begin to develop the capacity for longer periods of time away from their primary caregiver, although they have a notoriously difficult time with separation anxiety. Toddlers smile, express their needs, and run. From 3 to 6, children learn to copy, develop a pencil grasp, express their emotions, and can have friendships. They ask *why* questions, demonstrate emotional responsiveness, and express frustrations.

**Early childhood** begins at 3 and continues until 5. They achieve school readiness. Success is based on family support, including developing a shared belief about the importance of school, including attendance and completing homework, and what type of education the child will participate in.

Attachments continue to be critical. Children need frequent, quality time with both parents. Typically, it is better to have more frequent exchanges than those consisting of longer periods of time.

**Parenting considerations:** Developing similar parenting philosophies at this stage is critical in that similarity provides stability, consistency, and predictability for the child. When representing parties are divorcing or addressing custody or timesharing issues during the toddler and early childhood years, it is important to understand the developmental stages and incorporate those into a parenting plan. It might be appropriate, when fashioning an agreement for timesharing, for the plan to be different during infancy and then change the frequency or number of exchanges to account for the new stages the child has achieved. During these years it might also be necessary to incorporate a parenting plan that addresses the special needs a child may have, including therapeutic support. Working with clients to explain the necessity of achieving common ground between the parents during these important years can create consistency for a minor child. For example, sharing information between parents regarding friends, food habits, etc., can provide the child a sense of stability. While this may not be feasible in very high conflict or abuse cases, in most cases the divorce lawyer is likely to be dealing with clients who do not like each other any longer, but they do love their children. Honing in on supporting the love of the child in co-parenting with the parent who is on the “outs” should be the goal and job of the divorce professional. The flow of information regarding friends, activities, etc., can create a situation where the child grows to learn that no matter at which house they may be sleeping, their routine activities can be consistent, and they can work on growing friendships and other skills that will carry them into the next stages of development.

**Tasks of development for latency-aged children 6 to 11:** Around 6, children begin attending school, forming relationships, and becoming involved in their community. They

begin to focus outside of the family toward developing friendships. Their self-concept is emerging, they have an increasing ability to be self-reflective, and at this age children start to gain control of their emotions. Group norms are internalized. All of these major tasks occur during this phase of development.

**Attachment at latency age:** Although a lot of attention has been given to infant and toddler attachments, there has been less focus on this age range. A review of recent studies suggests that the continued development of the mental health of a child of this age depends greatly on the ability to have secure bonds with reliable parents.

**Tasks of development for adolescents:** Adolescent children are our toughest population. They have similar patterns of attachment as when they were infants. Their developmental changes seem to happen overnight and typically have an early, middle, and late stage. They mature while still making poor choices and become defiant as an expression of their independence and identity. Social relationships dominate their attention. Secure attachments result in happy, friendly, and trusting individuals. Their relationships last longer as compared to their anxiously attached peers. Avoidant adolescents have difficulty building, enjoying, and maintaining relationships. These are the kids with fewer close friends or long-term love relationships. Anxious, ambivalent adolescents report more obsessions, extreme sexual attractions, and jealousy. Family time takes a back seat. Abstract reasoning is firmly established. Parents seek to have their older adolescents prepare to become emotionally ready to leave home safely.

## **Normative behaviors are often misinterpreted as divorce trauma.**

Attorneys and their support staff need to be informed of typical and expected behavior, or what is referred to as normal developmental responses. All children can be naughty, loud, deregulated, disobedient, or impulsive. Typical childhood behaviors are often misattributed to the divorce and the other parent.

Separation anxiety is a normal response to the environment for infants and toddlers and sometimes even children up to 4 years of age. The world is a scary place, and they prefer the comfort of their primary attachment. The critical years for establishing an attachment hierarchy are 6 months to 4 years. If they are unfamiliar with a caregiver, they will cling and cry. Their distress causes distress in the parent they are separating from. Attorneys will often hear that the child is being damaged by the exchange and advocate to stop timesharing. Children missing too much time with a parent serves to exacerbate the response. Delaying is not an answer for the typical child, but instead focus on finding out what works at the time of separation. Evidence indicates that securely attached children possess a protective factor for whatever environmental challenges occur. Children with disorganized attachments are more susceptible to environmental stressors, which is a predictor of more serious maladaptive behaviors.

Body exploration can set in motion a series of negative responses and parental distress. This distress can lead to questioning and blame. More typically for older children, they learn sexual terms or descriptions of behaviors from older siblings, friends, and friends

with older siblings. Understanding normal childhood behavior can serve to calm the situation. As examples, the following chart can assist with the recognition of typical child exploration:

**Childhood Sexual Development Chart<sup>1</sup>**

<b>Age</b>	<b>Typical Behaviors</b>	<b>Behaviors or Areas of Concern That May Indicate Abuse</b>
<b>2–3 years</b>	<ul style="list-style-type: none"> <li>• Explore and touch their own genitals and show them to others</li> <li>• Rub their genitals on purpose (masturbate)</li> <li>• Can have erections (boys)</li> <li>• Take off their clothes and want to be naked</li> <li>• Try to touch mother’s breasts</li> <li>• Ask questions about bodies and bodily functions like “poop” and “pee”</li> <li>• Respond to requests to do something else other than genital play</li> <li>• Begin to understand this kind of genital play is private</li> </ul>	<ul style="list-style-type: none"> <li>• A sexually transmitted disease</li> <li>• Bruising around the genitals or on the face</li> <li>• These also apply to any age group</li> </ul>
<b>4–6 years</b>	<ul style="list-style-type: none"> <li>• Sometimes masturbate in front of others and can have orgasms.</li> <li>• Try to see other people naked.</li> <li>• Explore genitals with other children, such as “playing doctor.”</li> <li>• Play-act dating behavior, such as holding hands and kissing.</li> <li>• Can be taught that genital play and masturbation are private behaviors</li> <li>• Talk about genitals and use sexual slang and swear words even when they don’t understand them</li> </ul>	<ul style="list-style-type: none"> <li>• Cannot redirect their genital play or masturbation when asked</li> <li>• Have excessive interest, knowledge, or language about sexual behaviors</li> <li>• Act out sexualized behaviors not typical for children of their age</li> <li>• Have knowledge of sexual behaviors not typical for children their age</li> <li>• Have behaviors typical of a</li> </ul>

<b>7–12 years</b>	<ul style="list-style-type: none"> <li>• Masturbate, usually in private</li> <li>• Play games involving sexual behavior such as “Truth or Dare” or “Spin the Bottle”</li> <li>• Try to see people without their clothes</li> <li>• Look at pictures of people who are naked or with just a few clothes on</li> <li>• Watch or listen to media with sexual content (TV, movies, music, websites, games)</li> <li>• Want more privacy, such as wanting to undress alone, or not wanting to talk about sexual issues</li> <li>• Begin to be sexually attracted to their peers</li> <li>• Begin to have a sexual orientation</li> </ul>	<ul style="list-style-type: none"> <li>• younger child</li> <li>• Are overly concerned about their bodies—for example, may wear multiple layers of clothing</li> </ul>
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**Special needs children:** Special needs children are unique in both their individual development and their particular needs when their parents divorce. The American Psychological Association defines special needs as a child who requires special education. Such children may have learning disabilities, intellectual disabilities, physical disabilities, or emotional difficulties. Special education requires specially designed programs, services, and instructions. Gifted and talented children fall into this category. These are high achieving children with high intellectual, creative, artistic, or athletic skills. Each case should be evaluated separately as there is not one size that fits all categories for these children. It is normative to address these cases based on the severity of disorder, the specific services needed for the child and an assessment of each parent’s understanding and appreciation of the child’s condition.

**Resist/Refuse Dynamics:** Resist and refuse dynamics exist in a large number of cases we will see. We use these terms to replace the traditional comments about parental alienation, as the term is simplistic, is based on a phenomenon, and is not helpful in assisting the court

with a determination of the needs of the family. The behavior of a child rejecting a parent is multifactorial, and cases with resist/refusal have to be individually evaluated to understand what is typically described as a complex family system. Rarely is the answer a simple, single phenomenon. Parenting inadequacies, co-parenting dysfunction, mental health issues, violence and control, and the child's age, capacity, and temperament are only a few issues to explore. Consider that a family system can include those attorneys and mental health professionals who turn into advocates for the family and end up providing more harm than help. High-conflict parents may be in competition and use these alienating behaviors so they can be seen as the more loved parent. Judges play a critical role in intervening quickly with specific orders and case management. The work starts with the favored parent. The progression of the intervention begins with supporting the parents' ability to solve problems and make decisions for their children. If that is unsuccessful, the progression of interventions becomes increasingly intrusive to force parents to make good decisions. These complex families will need the assistance of a well-trained, experienced, mental health professional who can guide the family and potentially other mental health team members. Individual therapy or reunification alone is unlikely to be successful for most of these families. Children and parents become quickly entrenched in their positions, which can be further exacerbated by litigation. Delay reinforces rejections as some children only know avoidance when relationships become difficult. These children lack the ability to be their own counterbalance to their disproportionate or unjustified rejection of a parent.

Later latency-age and adolescent children are more susceptible to resist and refusal dynamics primary because they can incorporate their own experiences as justification for their unwise choices.

Other normative behavior for children includes adjustment periods to divorce and beginning to live in two separate homes with different things, rules, and sometimes people. Adjustment periods are not adjustment disorders as defined by DSM-5-TR. Children tend to be on the resilient side and given support, time, and encouragement, they will adjust within a reasonable time. When there is a resistance to adjustment, professional guidance may be warranted. Remember, children argue, have temper tantrums, hate doing homework, don't use their manners, fight with their siblings, and lie and steal. These last behaviors should not be occurring often, and if they are, professional guidance may be necessary. Any negative behavior that is seen for a prolonged period may require attention.

Temper tantrums are very common in children. They become frustrated, angry, and these outbursts often appear to be out of proportion to the triggering event. The child is not communicating their needs to their parents at that moment. Often parents will look for an explanation for the behavior and blame their co-parent. Often professionals hear "He/she doesn't act this way until they see their father/mother." That would be a developmentally inaccurate view of a common childhood response. This is not to say that temper tantrums are all normal. The frequency with which tantrums occur, and the child's age are determining factors. If a child is over 5 and a tantrum lasts more than 15 minutes, or the child injures himself, professional assistance may be needed.



With the onset of puberty, children have a shift in their ability to engage in abstract reasoning, which means they can argue. They develop the ability to use internal symbols or images to represent reality. They engage in adult levels of complex cognitive reasoning which includes future thinking. This developmental milestone provides them with the ability to argue, even about unimportant issues. High-conflict parents attribute this natural shift in brain maturity to the other parent. Professionals hear statements like, “He/she never used to argue or be disrespectful. They must have learned that at their father’s/mother’s house.” This brain development is related to social experiences during adolescence and can reflect their peer interactions, the lack of emotional regulation consistent with their brain development, or a host of other experiences the teen may have had. Rarely is there a direct link to the other parent in these circumstances. Rather, it may be the primary attached parent looking for an explanation of why their teen is engaging in behaviors which serve to naturally separate a parent and a child as they become ready to leave home.

Bedwetting can have causes which aren’t due to underlying diseases. Bedwetting can occur up to age 5 as part of normal childhood development. Although a parent might assume the enuresis is a response to an emotional or psychological problem (timing of beginning overnights, as an example), this is not always the case. Bedwetting when a child has been dry for at least six months can be an indication of an underlying medical problem. When this occurs, first seek a medical opinion.

It is not uncommon for children going through a divorce to have bedtime refusal and nighttime waking. This likely reflects the adjustment to two homes, different routines, and varying nighttime rituals. It is not uncommon for children to experience sleep difficulties through these transitions. Since sleep is essential to a child's growth and development, consider constructive ways to help the child through the transitions in a positive manner. Encourage parents to communicate, reach an agreement on bedtime, and share their bedtime rituals and routines. Focus parents on what they can control, meaning what they do in their home, when all else fails.

## Summary

Most children of divorce adapt with time and support. They can transition successfully if allowed to, even with different rules and expectations in each home. Encourage parents to see emotional and behavioral changes as normative and only if the maladaptive emotional or behavioral changes are sustained over time, is there a need for concern. Removing a parent from a child's life for a prolonged period can negatively impact attachments and should be avoided. Try to remember that time for a 6-year-old is much different than the understanding of time for an adult. Any lawyer dealing with child custody-related issues should familiarize themselves with the normal developmental stages discussed herein. It is strongly encouraged to have a mental health practitioner to rely on to provide detailed information and training on these phases so that when clients approach you with issues and concerns, you have a knowledge base on which to determine if there is truly an issue, or if normal childhood developmental stages are being reached. Generally speaking, the goal should be to mitigate the acrimony between the parents. This means, as lawyers, we need to be able to look for the good in situations, not just the bad. The clients are in an awful place in their lives and are innately looking for the worst explanation for what could be a very normal situation. So, if a teenage daughter does not want to go to her father's house, it is feasible that it is not because of alienation, but because she wants "her" things in "her" room. Similarly, a son could be spending all day in his bedroom brooding and being mean to his mother, not because his father told him to, but because he is a 13-year-old boy going through hormonal changes. . If a client calls with these types of concerns, it is incumbent upon us, as lawyers, to look for the other explanation before exacerbating things

with motions and filings that can forever change the trajectory of not just the case, but these children's lives.

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