



# Protecting Your Children Before, During, and After Your Divorce

By JOAN H. MCWILLIAMS

**W**hen you are struggling with the financial, psychological, and legal issues associated with a divorce, it's difficult to remember that your children need more attention than ever before. The good news is that your children can successfully survive your divorce if you follow some basic commonsense guidelines. The following will help you provide for their needs at all stages of the process even as you face your own challenges.



**1. Draft a Child Agreement.** A Child Agreement is a plan for how you will treat your children before, during, and after your divorce. Unlike a Parenting Plan that provides for the way in which you will make major decisions for the children (custody) and the way they will spend time with you and your co-parent (visitation), a Child Agreement simply reflects your intent and serves as a guide in troubled times. Ideally, you and your co-parent can agree on the terms of your Child Agreement. If not, make the Agreement with yourself and use it as a self-directed guide.

The provisions of the Child Agreement can be quite simple. For example, you might make the following commitments.

- You will not engage in conflict in front of or within earshot of your children.
- You will provide physical and emotional support for your children.
- You will listen to your children.
- You will always treat your co-parent with respect (even if you think it's not warranted).
- You will not disparage your co-parent in the presence or within earshot of your children.
- You will not abandon your children.
- You will not attempt to turn your children against your co-parent.

Your Child Agreement will serve as a beacon of reasonableness in the heat of your divorce and after the divorce is final. Unless it is incorporated into your Parenting Plan, the Child Agreement may not be enforceable in court. However, it will be a reflection of your intent, your goals, and your values. It will benefit your children.

## **2. Understand how unresolved parental conflict can affect your children.**

For many years, professionals have told parents that conflict hurts their kids. However, we now have studies that clearly show that unresolved parental conflict in the children's presence not only hurts them at the moment they witness or listen to the fighting or arguing, but it can affect them, literally, for the rest of their lives. They may suffer from chronic stress, fear, or anxiety. They may experience uncontrolled anger, depression, or delinquency. Some children perform poorly in school or have suicidal thoughts. These conditions can continue into adulthood and affect children's health and their ability to cope in the adult world.

This does not have to happen. If possible, make an agreement with your co-parent to take your conflict away from the children. You may (and probably will) have arguments, but take them out of the presence and earshot of the children. Separate your anger with the other parent from your relationship with the children. It's challenging—but it's critically important for your children.

**3. Protect your children from societal conflict.** Unfortunately, parental disagreements are not the only conflict that endangers children. Societal conflict does as well. It may be in the form of actual or threatened violence, or it may be virtual violence that comes into your children's lives through television, the Internet, video games, and explicit recordings. Mobile Internet access puts cyber-bullying, violence, and pornography in the hands of your children if they have a smartphone or tablet.

While you will never be able to shield your children from all threats, you and your co-parent can agree on rules for your children regarding their use of mobile devices. You can talk to your children about potential online dangers and put parental controls on all electronic devices. If your co-parent does not cooperate in protecting your children from these dangers, it may raise legal issues you should address with an attorney. Hopefully, this will be a joint effort between you and your co-parent. It is critical that you work together to define the guidelines for your children and that you cooperatively enforce them.

**4. Talk to your children.** One of the most painful conversations you will ever have will be the conversation with your children in which you tell them that you are getting a divorce. For some children, it will be a relief. Others will be very aware that something has been wrong for a long time, and the announcement will come as no surprise. Others will be devastated and broken-hearted. For all children, it represents the start of an enormous change in their lives.

Regardless of whether your children anticipate the announcement, there are ways in which you can handle the conversation to lessen the pain.

- **If possible, speak to your children with your co-parent.** They will need to hear the information from both of you.
- **Generalize rather than blame.** Share only the basic facts of the divorce with them, not the intimate details. Announcing that one parent had an affair, for example, is information that will hurt your kids rather than help them. Let your children know that divorce is a choice that neither of you anticipated or chose when you married. However, they should know that it will be a reality regardless of either of your wishes. It is hard not to blame, but this is an adult issue—not a child issue.
- **If possible, let your children know your plans.** Alternatively, let them know that you are still in the decision-making mode and will keep them informed. At the very least, they should know if you or the other parent will be moving and how that will affect their lives. The children need to know timelines, if you have them.
- **Protect your children from outside gossip.** You will need a confidant—someone with whom you can



Speak openly and confidentially. However, be careful not to broadcast the intimate details of your divorce to your neighbors, the parents of your children's friends, or their teachers. If your children learn that their best friend's mother, for example, knows all the details of their parent's divorce, they will be humiliated. This will increase their pain and can cause treasured friendships to end. Protect your children's privacy. Share your personal information on a need-to-know basis.

- **Give your children informational updates as the divorce proceeds.** However, keep divorce documents out of their reach. Those documents often contain information that is and should be confidential.
- **Let the children know if you are planning to participate in mediation.** Many courts require it, and children often know that it is a way to problem-solve and avoid fighting. They will appreciate it.
- **Keep talking.** Your children's need for information and attention will not end just because the legal divorce is over.

In your painful moments, you may be tempted to tell the children far more than they want or need to know about your situation. Be cautious. This is a time to protect your children and shield them. They really just want to know that you still love them and that you will continue to support them and provide for them.

**5. Listen to your children.** Children usually want to share their ideas about things that affect their lives. They are stake-holders in the family and have a significant interest in the outcome of your divorce. Many children want to know that they are part of the solution. You and/or the other parent will be responsible for the ultimate decisions you make for your children. But if your children are allowed to speak to issues that are important to them, they will know that you have heard them and validated their efforts.

There are many ways you can accommodate the children's wishes to be heard. Of course, they can speak directly to you. However, some parents retain the services of a mediator to meet with the children and report the children's ideas to them or facilitate the communication with all family members. Alternatively, it may be helpful for the family to work with a therapist or counselor to discuss their opinions. The therapist meets with the family members to facilitate discussion of concerns, expectations, and goals. You should sign a confidentiality agreement if you want this process to be confidential.

Sometimes children, particularly older children in contested divorce cases, appreciate the opportunity to speak to the judge. Because not all judges are trained to speak to children and some judges do not want to speak to children, the availability of this option will depend on your particular situation.

Children can, in some instances, be witnesses at trial if the judge allows it, but this can be very traumatic for the child. To avoid this situation, you may want to ask the court to appoint a custody evaluator who can interview your child and other people who play an important role in your child's life. The evaluator may also observe your child with you and, separately, with your co-parent. The evaluator will write a report to the judge and submit it to the court. The evaluator may be called as a witness. It is a way to gain an understanding of your child's ideas without having him or her testify.

A child can also be represented by an attorney who, depending on the laws in your state, may be appointed by the court. It is important to understand the role and responsibilities of the child's lawyer. Depending on the nature of the appointment, the lawyer can provide independent legal counsel for your child, in which case, he or she would owe the same duties to your child that would be owed to an adult client. Alternatively, the lawyer would provide independent legal services for the purpose of protecting your child's best interests without being bound by your child's directives or objectives. The roles of the attorney may be defined by the laws of your state. However, having a lawyer for your child is a way to assure that his or her voice is heard. It can be expensive, but it may be an alternative to consider.

**6. Provide counseling for your children.** Children often benefit by having someone they can talk to (other than a family member) about their situation. In such cases, parents can retain the services of a counselor or therapist. For some families, this is a preventative step. In other words, a child might not appear to be having problems, but the parents want to create a relationship between the therapist and the child so that they can call upon that person if the child needs help in the future. Other parents can see that their child is having problems and believe that counseling would be of great help.

There are things you may want to consider when making this decision.

- **What are your child's needs?** Has therapy been recommended by the school or someone involved in the divorce case? Has a therapist been recommended to you?
- **Do you and the other parent both support therapy?** If not, how will you resolve this issue? You might try mediation or court intervention.
- **How will you choose the therapist?** It is a good idea for both parents to interview the person to be certain that you agree on the type of therapy the person offers and the guidelines for parental participation.
- **How will you pay for therapy?** Will therapy be covered by insurance?
- **Who will take the child to therapy?**



- **Will you and the other parent be asked to attend sessions?** Together? Separately?
- **Will the therapist create a treatment plan for your child?**
- **Will the therapy be confidential and “privileged”?** That is, can what’s discussed in the therapy be, as a matter of law, kept confidential from lawyers and others? Will your child hold the privilege or, if your child is too young or is unable to maintain confidences, will you as the parent hold the privilege?

It’s extremely helpful in many cases for a child to have a person with whom he or she can speak confidentially. A divorce creates many changes for children, and they often benefit by being able to step away from the conflict and quietly explain their situation to an independent third party. However, it is the responsibility of the parents to select a counselor who is competent and trustworthy and who can relate to the child.

## 7. Help your children become resilient.

Resilience is the ability to recover from change, difficulties, misfortune, and adversity. It can enable children to escape from the pain of their parent’s divorce and, in particular, unresolved parental conflict. Even if a child’s experience has not been marred by adversity, it is, nonetheless, a remarkable life skill from which children can learn to regulate their emotions and behavior and establish healthy relationships. You can help your children develop resilience and guide them toward a successful adulthood. To develop resilience, your children must have:

- **Your unconditional love.** Children need to know that you will be there for them and love them—even if they make mistakes. You are the consistent rock in their lives, and they need you to be there so that they can receive your love and give you their love. It is especially helpful if you have family members, mentors, and friends who can also provide support.
- **Parents who are willing to be parents and who will reach out for help from others** to learn how to be a good parent (if you don’t know already). Kids don’t come with an instruction manual. Parents sometimes have to get help. It’s okay—your children will benefit.
- **The freedom to just be kids.** Children need the time and space to be kids—to play, jump, dream, make mistakes, and love. They cannot assume the role of the absent parent. They must be free to meet the challenges of childhood and gain a sense of control over their future.
- **Permission to grieve and express their emotions.** The loss of an intact family is huge. Additionally, your children may have to change schools, make new friends, and adopt a new lifestyle due to financial constraints. They must be able to grieve the loss of their former life; they must be able to express their emotions.

- **Food and necessities.** The financial needs of the children do not stop when you get divorced. Each parent has a duty to support the children. It can be overwhelming, but it is a priority. Children need stability and security. Their life will be different, and you will need to reassure them that the difficulties will be resolved.
- **Education.** To raise strong, independent children, you must educate them and instill in them a love of learning. Make sure that they finish their homework. Get involved with their school. Talk to their teachers. Teach them to respect themselves and others, to take responsibility for their actions and decisions, to be honest, to cooperate, to keep commitments, and to love and sacrifice. You are their most important teacher.
- **Rules and boundaries.** Children need boundaries, and they need to understand the rules. Let your children know what is expected of them. Be consistent and predictable. It will make them feel more secure.
- **Both parents.** Children need both parents. You might have to structure the visitation to provide for their safety, but don’t make them choose between parents.
- **Role models.** Set an example. Bring other adults into their lives who will also act as role models. Show your children how to treat people with respect. They will model their behavior after you.

Resilience can be learned and developed. So be mindful of the needs of your children. Take responsibility for them. Anticipate problems and make agreements with your co-parent to protect them. Give your children the gift of resilience.

Successfully managing your parental responsibilities before, during, and after your divorce will be one of the most challenging things you ever do. But if you do it well, it will be one of your most rewarding. Your children may not recognize your efforts, but their well-being and accomplishments will be a reflection of your good work. **FA**



**JOAN H. MCWILLIAMS** (joan@mcwilliamsmediation.com) is an attorney/mediator who has conducted a full-time dispute resolution practice through her firm, McWilliams Mediation Group LTD, for more than twenty-five years. Joan has received many awards and is recognized for her work on behalf of children. In 2017, she drafted an amendment to the Colorado Rules of Professional Conduct, Rule 2.1, Comment 2, which was adopted by the Colorado Supreme Court. The amendment, the first of its kind in the nation, states that a lawyer should consider advising the client that parental conflict can have a significant adverse effect on minor children. Joan is the author of *Parenting Plans for Families After Divorce*, *The PeaceFinder*, and her new book, *Divorce. Conflict. Kids*. She often speaks on the topic of children and divorce.