BOSTON COLLEGE LEGAL SERVICES LAB
Family Justice Litigation Clinic

BOSTON COLLEGE LAW SCHOOL

COURT ORDERED PARENTING CLASSES IN MASSACHUSETTS PROBATE AND FAMILY COURT

Introduction

The creation of family courts[1] as a distinct branch or division of a civil court system signals a sense that what the court and judges are doing is intervening into a family, not merely presiding over a breach of contract or brokering the terms for a party wishing to modify their marital contract.[2] Family courts were originally designed to "mend, and if possible cure, sick marriages."[3] Judges, then, became marriage doctors and conciliators.[4] Divorce reform and the no-fault regime meant courts no longer had to locate blame for the failed marriage which led courts to shift their "regulatory" energy

[1] Family matters, starting with divorce, were historically not a matter for courts at all. Marriage was initially a matter of "status and cultural location" as well as economic security (of dependent women) and property rights (of men). Because divorce was about restructuring one's economic life and one's public standing, it was quite public and political. Perhaps the greatest indication of this was the manner of seeking a divorce, namely through a petition to the legislature. A popularly elected branch of government decided whether a marriage harmed the spouses and the community to such an extent that justified ending the marriage. Claire P. Donohue, *50 Ways to Leave Your Lover: Doing Away With Separation Requirements for Divorce*, 96 S. CAL. L. REV. 77, 85 (2023).

[2] Once divorce moved to the courts, the courts addressed divorce as an adversarial process concerning a breached marital contract. The terms of the contract flowed between husband and wife reflecting normative values. The jurisprudence of divorce also reflected a second social contract that flowed between the couple and the state. The state had an interest in reinforcing predictable, regulated expectations of support and obligation. Conduct such as adultery, desertion, or cruelty- and eventually habitual drunkenness and use of illicit drugs- became acceptable grounds for divorce, because they were obvious breaches of the contract between husband and wife, and also breach of the contract between married couple and state. The early days of judicial divorce and the jurisprudence of fault invited an era of judicial paternalism in which parties aired the failures of their spouses and the court's orders were a mechanism to replace the failed male head of household. Donohue, *supra* note 1, at 92.

[3] Lawrence M. Friedman, *Dead Language: Divorce Law and Practice before No-Fault,* 86 VA. L. REV. 1497, 1501 (2000) at 1531.

[4] Donohue, *supra* note 1, at 93.

and emphasis toward "internal aspects of family life."[5] One such aspect is custody arrangements generally and co-parenting goals and styles specifically.

In early days, common law principles made custodial decisions straightforward. At its earliest inception, the law of marriage and family gave the rights of organizing family affairs to the husband and, by extension, husbands had rights to the custody of the children in the event of separation in order to secure for themselves the earning potential and labor of their children.[6] But by the end of the 19th century, men were leaving farms for the industry in city centers. As a consequence, there was less focus on retaining family laborers to work the land, and a new norm emerged: that of mother as caretaker and father as unfettered employee.[7] The British Parliament codified this norm when it declared the Tender Years Doctrine, which presumed that mothers were the best custodians of children in their early years.[8] The majority of states in the United States followed suit and the practice would be the norm for almost a century.[9] Eventually, however, the cultural revolution of the 1960s normalized divorce and ushered in a powerful surge in the wave of feminism that rethought the roles women occupied. Both of these forces renewed interest in deciding the issue of which parent is best situated to care for children.[10] At this time, courts began to move away from gendered assumptions underlying the tender years doctrine by abandoning the reasoning, stepping down consideration of tender years to that of a presumption, or absorbing it into the more elusive "best interest of the child" calculus.[11]

The standards before a family court judge are notoriously subjective, and the best interest of the child standard in custody matters is incredibly so. On the margins—where

---

[5] Scott Coltrane and Michele Adams, *The Social Construction of the Divorce "Problem": Morality, Child Victims, and the Politics of Gender*, 52 (4) FAM. RELS. 363, 363 (2003); Donohue, *supra* note 1, at 92.
[6] Nancy D. Polikoff, *Beyond (Straight And Gay) Marriage: Valuing All Families Under the Law* 13-14 (2008) at 12.
[7] Claire P. Donohue, *The Unexamined Life: A Framework to Address Judicial Bias in Custody Determinations and Beyond*, XXI.3 GEO. J. OF GENDER & L. 557, 569 (2020).
[8] *See* Martha J. Bailey, *England's First Custody of Infants Act*, 20 QUEEN'S L.J. 391, 410 (1995).
[9] Lynne Marie Kohm, *Tracing the Foundations of the Best Interest of the Child Standard in American Jurisprudence*, 10 J. L. FAM. STUD. 337, 367 (2008).
[10] Under Colo Rev. Stat. § 14-10-124-1.5(a)(VI), for example, the 68th General Assembly, "urge[d] parents to share the rights and responsibilities of child-rearing and to encourage the love, affection, and contact between the children and the parents."
[11] Angela Marie Caulley, *Equal Isn't Always Equitable: Reforming the Use of Joint Custody Presumptions in Judicial Child Custody Determinations*, 27 B.U. PUB. INT. L.J. 403 (2018).

one parent is unfit or dangerous—making determinations concerning a child's welfare and happiness may be an easy call, but, in the vast majority of cases, judges attempt to parse facts about things like parental involvement, a "child's adjustment," and "the wishes" of the parties and the child in order to make predictive determinations about what arrangements will best serve the needs of a child. As is the case with any elusive standard, the best interest of the child standard is indeterminate and ripe for insertion of subjective impressions. These determinations inevitably turn on a judge's opinion of the parents—opinions, which are in turn, based on the judge's own observations and values.[12] Meanwhile, attitudes about who parents and how they parent have changed in important ways.

As parents begin to parent in ways that defy historical socialization and as judges search for ways to inform their view of parenting and what might be in the best interest of children, there has been a marked rise in use of therapeutic, educational, or investigative interventions in custody cases. These interventions include, but are not limited to, appointment of Guardians ad Litem (GALs) and Parenting Coordinators, orders to see Mediators and Conciliators, and, as shall be developed and discussed in this paper, the use of parenting classes.

Currently, parenting programs for parents in Massachusetts are in flux, with mandatory parenting programs temporarily suspended, though rumored to be returning, and ongoing use of court-ordered parenting classes that are not certified or regulated by the Probate & Family Court. One example is Courses for Parents, an entirely online and self-paced course with options for four to sixteen (4-16) hours of instruction.[13] Another course is The Center for Divorce Education, which offers zoom or in-person classes.[14] A final specific other example at William James College stylizes itself as a "High Conflict Parenting Class" for parents "who engage in protracted conflict." Both parents participate in a nine (9) week course with weekly classes and homework

[12] Donohue, *supra* note 1, at 90-91.
[13] Courses for Parents, (2023), https://courseforparents.com.
[14] The Center for Divorce Education, (2023), https://divorce-education.com/ma/ clinical-services/children-families-law/court-ordered-classes.html.

assignments.[15] While both the mandatory classes and courses like those at William James aim to provide co-parenting skills, the approaches differ considerably in duration, cost, and design. Considering the vast differences between the proposed mandatory parenting classes and current high conflict parenting classes, there are genuine questions as to if, how, and when the Probate & Family Court should use such programs to help litigants navigate their co-parenting relationships.

This paper follows in three primary sections: part one offers an overview of the context of parenting classes, namely the history of mandatory courses and the landscape of therapeutic, educational, or investigative interventions in custody cases; part two offers a literature review of the use and efficacy of parenting classes, and part three highlights certain implications and challenges that the use of parenting classes provokes. These considerations conclude with recommendations if there is to be continued use of parenting classes.

I. The Context for Parenting Classes: the History of Mandatory Courses and the Landscape of Therapeutic, Educational, or Investigative Interventions in Custody Cases

Within the Massachusetts Probate and Family Court, some judges order parents into parenting classes during the consideration of a custody case. These courses are situated within a history of mandatory parenting courses and a landscape of other court-ordered interventions that could be described as therapeutic, educational, or investigative. In the context of custody cases, there are myriad approaches, including appointment of Guardians ad Litem, Parenting Coordinators, Reunification Therapies, and Conciliation. Such steps are a product of, or echo the commitments of, the therapeutic divorce movement which sought to "recast the divorce court as a psychoanalytic institution."[16] In Massachusetts, such GALs and Parenting Coordinators are defined and regulated by guidance issued from the trial court or by standing orders

[15] William James College – Experiential Education in Graduate Psychology, Court Ordered Parenting Classes, (2023), www.williamjames.edu/centers-and-services/forensic-and-clinical-services/children-families-law/court-ordered-classes.html.
[16] Carolyn B. Ramsey, *The Exit Myth: Family Law, Gender Roles, and Changing Attitudes toward Female Victims of Domestic Violence*, 20 MICH. J. GENDER & L. 1, 14 (2013).

of the court.[17] For GALs specifically, statutory authority guides and regulates their appointment.[18] This combinations of directives list qualifications for those appointed as of GALs and Parenting Coordinators, define the roles that they will play, and even suggest the deliverables that they will provide the parties or the court. There is also some detailing of their roles in Massachusetts case law.[19] Conciliators and the conciliation process is similarly defined by Rule 1:18 of the Supreme Judicial Court, which articulates the uniform rules on dispute resolution providing definitions, duties, and ethical standards.[20] The clarity of roles, qualifications, and process becomes fuzzier on the topic of reunification therapy and nonexistent in the context of parenting classes.

Nonetheless, parenting courses provide, or at least purport to provide, yet another avenue for both parents and the court to gain insight into the co-parenting dynamics that are at issue in a case. The format of parent education classes as well as the content they present varies across states, jurisdictions, and individual programs. Some programs involve only a single session, while others span several sessions. Enrollment for some classes requires a court order, while other classes accept those who enroll voluntarily; still other courses are mandated by the courts immediately upon filing. Parenting education programs can be purely informational, therapeutic, skills-based, or a combination of the approaches.[21] The difference in design and focus may be the product of the varied goals that parental education programs have.[22] The most common goals for court-affiliated parenting education courses include increasing non-residential parenting time, improving the coparenting relationship, improving the

---

[17] *See* The Trial Court, Probate and Family Court Department, *Standards for Category F Guardian ad Litem Investigators* (2005), https://www.mass.gov/doc/standards-for-category-f-guardian-ad-litem-investigators/download; *Standards for Category E Guardians ad Litem/Evaluators*, https://www.mass.gov/doc/category-e-gal-evaluator-standards/download; Probate and Family Court Standing Order 1.17: Parenting Coordination, https://www.mass.gov/doc/probate-and-family-court-standing-order-1-17-parenting-coordination/download.

[18] Mass. Gen. Laws c. 215, § 56A.

[19] *See e.g.*, Bower v. Bournay-Bower, 469 Mass. 690 (2014).

[20] Massachusetts Supreme Judicial Court Rule 1.18: Uniform Rules on Dispute Resolution (1998), https://www.mass.gov/supreme-judicial-court-rules/supreme-judicial-court-rule-118-uniform-rules-on-dispute-resolution.

[21] Robin M. Deutsch & Marsha Kline Pruett, *Child Adjustment and High-Conflict Divorce*, *in* The Scientific Basis of Child Custody Decisions 353 (Robert M. Galatzer-Levy, Louis Kraus, & Jeanne Galatzer-Levy ed., 2009).

[22] *Id.*; Amanda Sigal, Irwin Sandler, Sharlene Wolchik, Sanford Braver, *Do Parent Education Programs Promote Healthy Post-Divorce Parenting? Critical Distinctions and a Review of the Evidence*, 49 FAM. COURT. REV. 120 (2011).

relationship between children and parents, educating parents about the impact of divorce on children, and reducing the amount of relitigation.[23]

In the case of mandatory parenting classes specifically, such classes emerged across the country in the 1970s, with the trend growing in family courts in the 1980s and 90s.[24] The Massachusetts State Legislature adopted a pilot for these classes in 1993 and, by 2008, parenting classes were mandatory state-wide.[25] Although these classes were part of a lobbying effort from judges and advocates and appeared to be in keeping with national trends toward their use, there is no evidence that the programs realized any of the benefits they aspired to. There is in fact, no data on them at all; this despite the strong recommendation by the committee advocating for the creation of mandatory courses that "empirical research be undertaken as part of the pilot programs to determine whether the expected benefits of the parent education [are] being realized."[26]

---

[23] Deutsch and Pruett, *supra* note 21; Sigal et al., *supra* note 22; *see also* Family and Trial Court Department, Office of the Chief Justice, *Guidelines and Procedures for the Approval of Parent Education Programs* (June 2010) https://www.mass.gov/doc/parent-education-programs-approval-guidelines-and-procedures/download at 3, citing goals such as:

> After completing the program, it is expected that parents will:
>
> - understand that their own pain, rage, stress, needs, and vulnerability are normal in the divorce process;
> - be aware of the divorce process from the child's perspective, including the misbelief that "the divorce is my fault", and the effect of the loss of extended family, home, school, camp, or friends on the child;
> - realize that being emotionally available and involved, being able to communicate effectively, being able to give reassurance, and being able to provide consistency will benefit their child;
> - understand the serious harm to children from: witnessing parental confrontation and conflict, prematurely introducing children to dating partners, bad mouthing the other parent, returning children late from visits or not having children ready for visits, using children as messengers or informants, and placing adult burdens on children (e.g. "What would I do without you?");
> - demonstrate a knowledge of reflective listening, and dispute resolution techniques, including the availability of alternative dispute resolution services;
> - appreciate the need for productive, positive communication skills;
> - understand the child's right to and need for both parents;
> - understand both parents' responsibility to provide financially for the child; and, !
> - have written materials to which parents can refer and a list of local resources for future use.

[24] Catherine Elton, *Is Massachusetts Shaming Divorced Parents?*, Boston Magazine, November 25, 2020, https://www.bostonmagazine.com/news/2020/11/25/state-parenting-classes/.

[25] *Id.*; *see also Guidelines and Procedures for the Approval of Parent Education Programs*, *supra* note 23.

[26] *Id.*; The Trial Court of Massachusetts, Probate and Family Court, *Suspension of Probate and Family Court Standing Order 2-16: Parent Education Program Attendance* (2021), https://www.mass.gov/doc/parent-education-outline-on-suspension-of-probate-and-family-court-

Indeed, even looking outward to other jurisdictions, there exist few credible studies that confirm that parenting education is successful. Nonetheless, in 2020 Massachusetts remained one of only seventeen (17) states to require these parenting classes regardless of whether the divorce was contested or if the parents had an amicable relationship.[27] Concerns eventually did emerge about the lack of consistency between programs, deficient accreditation process or compliance, and also public pushback against programming that seemed shame-driven or otherwise uncomfortable or problematic for participants.[28]

In an attempt to assess the merit of these classes, Chief Justice John Casey suspended the courses under Standing Order 2-16 in 2021. The Chief Justice outlined the lack of evidence-based practices, the outdated guidelines, the unfair treatment of married parents, and class providers' failure to follow state guidelines.[29] With the Chief Justice's decision, the vast majority, if not all, of parenting programs shuttered completely, unable to sustain a client base for even voluntary participation.[30] Chief Justice Casey has recently stated, however, that a new mandatory course will be launching shortly.[31] Despite this pause button on *mandatory* parenting courses, judges continue to order litigants in their courtrooms into parenting courses such as the William James University-led program described above.

Throughout the tenure of parenting classes across the Commonwealth specifically, there are considerable differences between mandatory classes and other parenting courses such as a high conflict parenting classes. Mandatory courses were (at least theoretically) regulated by the Probate and Family Court until their suspension in

---

standing-order-2-16/download; *Parent Education Programs: A Report to the Legislature by the Probate and Family Court Department* (1994), https://ia802205.us.archive.org/26/items/parenteducationp00mass/parenteducationp00mass_djvu.txt.

[27] *Suspension of Probate and Family Court Standing Order 2-16: Parent Education Program Attendance*, *supra* note 26.

[28] *Id.*; Elton, *supra* note 24.

[29] *Suspension of Probate and Family Court Standing Order 2-16: Parent Education Program Attendance*, *supra* note 26.

[30] *See e.g.*, Mediation Works Inc, *Parent Education Programs,* https://www.mwi.org/mediation-services/divorce-mediation/parent-education-programs/ (stating that "due to the suspension of mandatory court-approved parent education programs in Massachusetts, MWI's Better Parent program is not currently conducting any new court-approved Parent Education Programs for parents seeking divorce or to establish paternity.").

[31] Chief Justice John D. Casey, Presentation at Jane Does Well Conference, (April 27, 2023).

2021 and intended to give all divorcing parents an overview of effective co-parenting skills. The last revision of the mandatory parenting class guidelines was published in 2010.[32] In those guidelines, courses were limited to five (5) hours, usually over the course of two (2) days. Additionally, courses could not cost more than eighty dollars ($80), and that fee could be waived if the court found that a litigant was indigent.[33] These courses typically did not have any homework assignments for participants to complete between sessions. A litigant's usual attendance and attentiveness would be enough to get a certificate of completion. Lastly, per state guidelines, divorcing spouses could not take a course together, regardless of whether they were in an amicable parenting relationship.[34] In terms of course content, the state guidelines provided general objectives but course content could differ based on the provider. [35] For example, some providers adjusted course content based on feedback from students while others used supplemental materials, like prepared handbooks or guidelines from other states.[36]

In contrast, high conflict parenting programs intend to teach parenting skills to divorcing parents deemed "high conflict" by a judge. It is the position of the Probate and Family Court that being ordered into a parenting education course is not the same as having to attend a mandatory parenting course.[37] To be sure, an order into parenting education is not *automatic* as it once was in the mandatory education regime, but litigants are ordered to attend a course, file a certificate of completion for the course, and told that their access to the court is contingent on completion of the course. Perhaps not surprisingly, litigants struggle to see the distinction between these courses and the "mandatory" parenting courses.[38]

---

[32] *Guidelines and Procedures for the Approval of Parent Education Programs*, *supra* note 22.
[33] *Id.* at 3-6.
[34] *Id.* at 4.
[35] *Id.* at 3-6.
[36] *See e.g.,* Interviews by Sydney Blomstrom, Boston College Law School Clinical Student with former Massachusetts parenting program administrators, educators, and attendees (Spring 2023) (on file with author).
[37] Response Letter from Chief Justice John D. Casey Regarding High Conflict Parenting Education Courses on December 29, 2022 (on file with authors).
[38] *See e.g.,* Interviews by Sydney Blomstrom, Boston College Law School Clinical Student with former Massachusetts parenting program administrators, educators, and attendees (Spring 2023) (on file with author); Temporary Order to attend a parenting class (on file with authors).

Meanwhile, unlike the mandatory programs, high conflict programs were not promulgated or reviewed by the Probate and Family Court or the legislature. There are, therefore, no articulable certification criteria or process for them, and they are not regulated by the Probate and Family Court. So here too, litigants have legitimate worry. If mandatory classes were stopped due to lack of evident compliance with certification criteria and no evidence-based practices, why can classes with *no* certification criteria at all *and* no evidence-based practices not be subject to Judge Casey's standing order? Why instead do they continue to enjoy the endorsement of the Probate and Family Court by way of its judges ordering litigants into them.

Yet in terms of obvious distinction from mandatory courses, the cost of courses varies greatly, leading to lack of equitable access. The course at William James, for example, costs litigants nine hundred fifty dollars ($950), and there is no path for indigent litigants to get lower fees.[39] Additionally, high conflict parenting classes like William James have heightened requirements for attendance and homework compared to any of the mandatory programs reviewed for this analysis.[40] Most worryingly, the course makes specific directives about how to parent and participation and assignments require parents to have immediate and mandatory contact with their former spouse, in some cases even where there were open restraining orders between parents.[41]

[39] William James College, *supra* note 15.
[40] *See e.g.,* Interviews by Sydney Blomstrom, Boston College Law School Clinical Student with former Massachusetts parenting program administrators, educators, and attendees (Spring 2023) (on file with author).
[41] *See e.g.,* Interviews by Claire Donohue, Boston College Law School with former participants (Spring 2023) (on file with author). Former participants provided several examples of required homework assignments involving their respective abusive co-parents, including having to: purchase "similar items and/or foods" as their co-parent, which the participant found "intrusive and burdensome," "meet in public with the child and the other parent and spend time together," consider how "[participants] get [their] co-parent angry," or "press [their co-parent's] buttons," "voicemail the past," "come to the next class ready to say 'yes' to something you know your [co-parent] wants or has asked of you" in front of the entire class," "place a picture of the other parent in [their] child's bedroom" or in their home, with one participant noting that their children asked for the photo to be taken down. A former participant was even asked to redo a homework assignment after submitting "unacceptable" responses to some of the above questioning. Indeed, a former participant found participation in the course to be "diminishing, humiliating, and trauma-inducing."

II. Literature Review

Family courts typically have two goals in ordering participation into parenting courses, though one is arguably articulated more loudly: 1) the happiness and welfare of children whose parents are involved in divorce, particularly high conflict divorce; and 2) to lessen the burden on the courts of litigious parties.[42] One would hope for efficacy in achieving either goal, but one would hope that the first goal would be the primary driver in deciding whether or not to endorse, let alone order, attendance in a given course or intervention.

Many researchers have suggested that divorce and parental separation can lead to negative outcomes for children, including mental health problems, physical health issues, lower academic performance, antisocial or disruptive behavior, and greater likelihood of divorce in adulthood.[43] More recent research, however, is not yet clear about what factors exactly produce these outcomes. For example, income level, parental competence, and level of pre-divorce conflict may be highly influential on a child's post-divorce adjustment.[44] Additionally, what early studies failed to ask was how long or pronounced that suffering would be; and moreover, how evidence of anxiety, depression, or clinical antisocial behavior was linked to the quality of family life *prior* to divorce.[45] More nuanced studies have also revealed that children in marriages marked by high dysfunction suffer, so their antisocial behavior *decreases* when parents dissolve unhappy marriages.[46] Other studies suggest a positive relationship between divorce and measures of increased resilience across time.[47] Paying attention to the experiences and

---

[42] Caution is warranted to make sure that the first goal is not weaponized in service of the softer stated second goal. Alicia M. Homrich, Michelle Muenzenmeyer Glover & Hon. Alice Blackwell White, *Program Profile: The Court Care Center for Divorcing Families*, 41 FAM. CT. REV. 141 (2004).
[43] Susan L. Pollet & Melissa Lombreglia, *A Nationwide Survey of Mandatory Parent Education*, 46 FAM. CT. REV. 375 (2008); Deutsch and Pruett, *supra* note 21.
[44] Stephen J. Bahr, *Social Science Research on Family Dissolution: What It Shows and How It Might Be of Interest to Family Law Reformers* (The ALI Family Dissolution Principles: Blueprint to Strengthen or to Deconstruct American Families?, 2001, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=269091.
[45] Lisa Strohschein, *Parental Divorce and Child Mental Health Trajectories*, 67 J. MARRIAGE & FAM. 1286, 1286–87 (2005); Paul R. Amato, Jennifer B. Kane & Spencer James, *Reconsidering the "Good Divorce,"* 60 FAM. RELS. 511, 514 (2011).
[46] *Id.*
[47] *Risk and Resilience in Children Coping with Parental Divorce*, Dartmouth Undergraduate J. Sci. (May 30, 2010), https://sites.dartmouth.edu/dujs/2010/05/30/risk-andresilience-in-children-coping-with-parental-divorce [https://perma.cc/V8TV-RLS9].

outcomes for high conflict families is particularly important when one considers the reality that divorce is also a means of escape from affirmatively abusive environments.[48] Approximately, twenty-five percent (25%) of divorces are initiated in response to domestic violence.[49]

Meanwhile, it is undisputed that divorce proceedings use judicial resources. Some researchers have noted that divorce cases are the most frequently litigated matters in state civil court systems.[50] Other reports are not as unequivocal but to support the notion that family law cases are among the most common cases in the state court system.[51] Budget allocations also confirm that the Probate and Family Court in Massachusetts is a busy court, with a budget line that is on par with the Superior Court of the trial court system.[52] In an effort to improve child outcomes and/or limit litigation between divorcing parties, courts in many states have mandated divorcing parents to enroll in some form of parenting education classes either through compulsory education programs used previously in Massachusetts or through court-ordered participation based on the judge's sense that such education is required in a given case.

A. Efficacy of Court-Ordered Parent Education

Evaluations of randomized experimental trials with large samples show that parents can be taught to improve the quality of their parenting and that such changes in quality of parenting lead to reductions in children's mental health and substance use problems, and to improvements in their academic functioning.[53] What is less clear is if court-ordered parent education succeeds in improving the quality of parenting. Some evaluations of certain parent education programs do suggest at least that parents who

[48] Donohue, *supra* note 1, at 118.
[49] Mary Pat Brygger, *Domestic Violence: The Dark Side of Divorce*, 13 FAM. ADVOC. 48, 48–51 (1990).
[50] Pollet and Lombreglia, *supra* note 43.
[51] United States Courts, *Comparing Federal and State Courts*, https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts#:~:text=The%20State%20Court%20System,-Cases%20that%20deal&text=Most%20contract%20cases%2C%20tort%20cases,divorces%2C%20adoptions
[52] Commonwealth of Massachusetts, *FY2021 Enacted Budget, Trial Court*, https://budget.digital.mass.gov/summary/fy21/enacted/judiciary/trial-court?tab=budget-summary.
[53] Sigal et al., *supra* note 22, at 135.

take the courses are satisfied with their experience and find them helpful. Consider the following examples.

In 1999, McKenry, Clark, and Stone evaluated Ohio's Parents' Education About Children's Emotions (PEACE) program and found that program participants "perceived greater closeness with their children since the divorce than the nonprogram parent." and on average participants found the program "helpful" or "very helpful."[54] The PEACE program uses a two-and-a-half-hour seminar to educate parents on the effects of divorce on children and parents, common reactions to divorce based on a child's developmental age, and ways to positively influence children's post-divorce adjustment. The program also teaches parents communication skills and ways to isolate interparental conflicts from children. Additionally, the PEACE Program aims to help parents understand how to attend to children's grief that may arise throughout the divorce process.[55] A critical note in regards to this study, however is that "participants may have represented *less* conflictual post-divorce relationships; the participants represented higher [socioeconomic] backgrounds, experienced *less* adversarial divorces as indicated by seeking a no-fault dissolution, and were *more* likely to choose joint legal custody."[56] (emphasis added) In other words, the individuals electing into these classes were not necessarily high conflict couples, nor were they a representative sample.

In 2004 Homrich, Glover, and White evaluated the Court Care Center for Divorcing Families (CCCDF) in Orange County, Florida.[57] CCCDF offers a program specifically designed for parents experiencing high conflict and prolonged litigation. This program, the Focus on the Children - Orlando program, follows an eight (8) week schedule with two hour sessions each week. There is also a final session six (6) months after the completion of the initial eight weeks. The program focuses on learning communication and conflict management skills and developing parents' abilities to identify the impacts of high conflict on children. Using preliminary data from parent reports, the researchers found that parents reported improvements in communicating

[54] Patrick C. McKenry, Kathleen A. Clark & Glenn Stone, *Evaluation of a Parent Education Program for Divorcing Parents*, 48 FAM. RELS.: AN INTERDISC. J. OF APPLIED FAM. STUD. 129, 134-135 (1999).
[55] Homrich et al., *supra* note 42.
[56] McKenry et al., *supra* note 54.
[57] Homrich et al., *supra* note 42.

with the coparent, protecting children from interparental conflict, understanding the child's needs and feelings for the coparent, and acknowledging how both parents contribute to conflict.[58]

While research such as the studies described above is promising, it is also worryingly inconclusive and dated. One reason for the ambiguity in studies of these programs is that the structure, content, and goals of such programs vary greatly.[59] When this is the case, it is difficult for researchers to determine whether a particular parenting education course is successful in accomplishing its goals or fulfilling its purpose.[60] The evidence regarding the efficacy of such programs on improving parent or child outcomes is also modest due in large part to the evaluation methodology used to assess parent education classes.[61] Only a small number of evaluations conducted on mandated parent education classes utilized a control group, wherein a portion of study participants is enrolled in a mandated parent education class and a second portion is not. When control groups are used, researchers are able to make stronger inferences between outcomes they observe and mandated parenting education classes.[62] Because many evaluations of mandated parenting education programs either do not use control groups or use control groups living under a different set of circumstances, the inference suggesting that any different outcomes between the two groups is attributable to the parenting education program is weak.[63] To the extent one can glean best practices from the research, it appears that parent education classes are most effective when they employ skill-building techniques and an interactive approach as opposed to passive education–interactive programs that tend to be more helpful employ role playing, group discussions, class exercises, and interactions between program participants, though this observation is inconclusive.[64]

[58] *Id*. at 157.
[59] Sigal et al., *supra* note 22, at 133.
[60] *Id*.
[61] *Id*.
[62] *Id*. at 126, 133.
[63] *Id*.
[64] Deutsch and Pruett, *supra* note 21.

B. Efficacy of Mandated Treatment

Given the therapeutic nature of some parenting education programs, one must consider the efficacy of mandated or court-ordered treatment more generally. Research suggests that mandated therapeutic treatment may not be effective, in part because the majority of interventions require a level of voluntariness on the part of the person treated. Generally speaking, those who are mandated into therapy demonstrate *more* resistance and are *less* motivated to change.[65] Researchers have offered a number of reasons why mandated treatment may be met with resistance. For example, some have suggested that resistance is a normal reaction to what may feel like a loss of independence.[66] Others have argued that resistance is a reasonable response to imposed treatment.[67] Additionally, court-mandated therapy is disproportionately ordered for minority populations.[68] Perceptions of and attitudes toward therapy vary greatly amongst cultures, with some cultures maintaining negative views of therapy or perceiving therapy as punishment. These culturally-based sentiments may contribute to a sense of resistance for some people mandated into treatment.[69]

Research suggests that those mandated into therapy exhibit less intrinsic motivation to change than do their counterparts who voluntarily participate in therapy. However, research has also shown that there is not necessarily a direct link between intrinsic motivation at the start of therapy and outcomes. Researchers have conceptualized motivation on a spectrum representing five stages of one's readiness to change.[70] These stages include precontemplation, contemplation, preparation to change,

---

[65] Christine M. J. Snyder & Stephen A. Anderson, *An Examination of Mandated Versus Voluntary Referral as a Determinant of Clinical Outcome*, 35 J. OF MARITAL AND FAM. THERAPY 255 (2009).
[66] John Weakland & Lynn Jordan, *Working Briefly With Reluctant Clients: Child Protective Services as an Example*, 5 FAM. THERAPY CASE STUD. 231 (1992); Henning Hachtel, Tobias Vogel & Christian G. Huber, *Mandated Treatment and Its Impact on Therapeutic Process and Outcome Factors*, 10 FRONTIERS IN PSYCHIATRY 1 (2019).
[67] *See e.g.*, Fran Ackerman, Jorge Calapinto, Constance Scharf, Margot Weinshel, & Honda Winawer, *The Involuntary Client: Avoiding 'Pretend Therapy"*, 9 FAM. SYS. MED. 3 (2001); Weakland & Jordan, *supra* note 66.
[68] Thomas O'Hare, *Court-Ordered Versus Voluntary Clients: Problem Differences and Readiness for Change*, 41 SOC. WORK 417 (1996).
[69] Fanny Waldman, *Violence or Discipline? Working With Multicultural Court-Ordered Clients*, 25 J. of MARITAL AND FAM. THERAPY 503 (1999).
[70] James O. Prochaska, Carlo C. DiClemente & John C. Norcross, *In Search of How People Change: Applications to Addictive Behaviors*, 47 AM. PSYCH. 1102 (1992).

taking action to change, and maintaining the change. Some researchers have found that those engaging with treatment because of a court order are in the precontemplation and contemplation stages, meaning they are not yet in the motivational stage necessary to accomplish change.[71] Given how resistance and lack of motivation may mitigate the effects of mandated treatment, practitioners should employ interventions that align with a particular client's motivation and mindset.[72]

III. Difficulties and Implications

Family courts attempt to navigate some of the most fraught situations that litigants and jurists encounter. Consideration of divorce, the needs of children, abuse prevention, apportioning debts and assets and access to homes create some of the most highly charged moments in litigants' lives. The decision making in family courts has tremendous implications for the financial and social ordering of families. The court is entering litigants' lives at a time when they are often distrustful of each other, or when their inability to cooperate effectively is the reason they have resorted to coming to the court in the first place. Meanwhile, legal solutions and bright line rules do not adequately or tidily map onto the needs of families. Yet families do not have ready alternatives to presenting themselves in court. The state has a monopoly on divorce, for example.[73] And it is the court that is authorized to apply statutory law if a couples' attempts to broker arrangements for themselves and their children outside of court fail.[74] Once in court, judge's will usher litigants through decision-making or substitute their own judgment when the litigants cannot agree. In doing so, courts seek to bring peace to families and see matters resolve in a way that is satisfactory to all involved. The court's efforts to reach these goals must be attended to with proper recognition of, and restraint concerning, the enormous authority the Court wields in demanding that

[71] *Id.*
[72] James O. Prochaska, Carlo C. DiClemente, Wayne F. Velicer & Joseph S. Rossi, *Standardized, Individualized, Interactive, and Personalized Self-Help Programs for Smoking Cessation*, 12 HEALTH PSYCH. 399 (1993).
[73] Boddie v. Connecticut, 401 U.S. 371, 374 (1971).
[74] *See e.g.,* Bates v. Bodie, 245 U.S. 521 (1918).

litigants conform to specific social behavior.[75] And for litigants, access to courts, and meaningful opportunity to be heard in and with and through the messiness of it all, matters.

A. Judge's Discretion, Due Process, and Barriers to Access

Probate and Family Courts, like most state courts, must operate with a keen awareness of the barriers to access that the public faces when they interface with the courts. Indeed, in 2007, the Access to Justice Commission made a report to the Supreme Judicial Court in which it declared that "[i]t is apparent to all in the legal community that there are numerous, substantial barriers to justice in the Commonwealth."[76] There are myriad sources of these barriers including availability of affordable legal assistance, accessibility of courts by public transportation, understandability of legal process for pro se litigants, delays and backlogs in court dockets, lack of control of litigants in calendaring matters, etc. Despite the recommendations made by the commission and the intervening sixteen (16) years since the report, there is considerable work yet to be done to improve litigants access to and experiences with the Probate and Family Court. The use of parenting classes, meanwhile, presents or creates two potential barriers to access dilemmas in the Probate and Family Court. The first concern arises if the court believes there is particular value in the courses, because then there is a concern that the high cost of the courses render them unavailable to a host of litigants. The second barrier flows from the practice of judges ordering that litigants cannot be heard in contested hearings during the pendency of the course.

In terms of the cost, the previous mandatory courses were eighty dollars ($80) and litigants unable to pay were eligible for a fee waiver. In contrast, parenting courses like that at William James are nine hundred fifty dollars ($950) with no state-pay option.[77] Additionally, the mandatory class was a short, five (5)-hour course with no

---

[75] *See* Palmore v. Sidoti, 466 U.S. 429, 433 (1984).
[76] Massachusetts Access to Justice Commission, *Barriers to Access to Justice in Massachusetts: A Report, with Recommendations, to the Supreme Judicial Court* (June 2007), https://archives.lib.state.ma.us/bitstream/handle/2452/266100/ocn261133473.pdf?sequence=1&isAllowed=y.
[77] *Id.*; William James College, *supra* note 15.

outside assignments while the William James program requires weekly classes for nine (9) weeks and outside assignments.[78] For many litigants balancing the demands of work and childcare, the requirements of the parenting programs such as this presents both a financial and logistical burden that create barriers of access for them successfully completing a program with those requirements. The reality of not completing the program, meanwhile, becomes particularly problematic if the court resolves the failure to complete the program as contemptuous or at least oppositional behavior; indeed judge's orders will caution that "[f]ailure to attend the class, or to participate in good faith, may result in the imposition of sanctions by this court, as appropriate."[79]

The second barrier to access is embedded in any order that the parties are not permitted to be before the court unless and until completion of the parenting classes. Essentially, the classes operate as a form of mandatory alternative dispute resolution, but lacks any known, formal regulation.[80] Outside of family and probate law, Massachusetts encourages and regulates several forms of alternative dispute resolutions including arbitration proceedings, tribunals, and mediations. In arbitration proceedings, for example, Massachusetts allows adverse parties across legal, *commercial* areas to elect arbitration to avoid the various costs of litigation either through pre-dispute mandatory arbitration clauses within contracts or post-dispute agreements. The Massachusetts Arbitration Act, in fact, "expresses a strong public policy favoring arbitration as an expeditious alternative to litigation…"[81] As such, Massachusetts comprehensively regulates nearly every aspect of arbitration proceedings, from the appointment and power of arbitrators to venue, time, and place of the proceeding to arbitration awards and appeals.[82]

---

[78] *Guidelines and Procedures for the Approval of Parent Education Programs*, *supra* note 23; William James College, *supra* note 15.
[79] Temporary Order, *supra* note 38.
[80] G. L. c. 231, § 60(B).
[81] Home Gas Corp. of Mass., Inc. v. Walter's of Hadley, Inc., 403 Mass. 772 , 774 (1989) (quoting Danvers v. Wexler Constr. Co., 12 Mass. App. Ct. 160 , 163 (1981)); Brian Jerome, *Arbitration – Voluntary or Mandatory? The Use of Pre-Dispute Arbitration Agreements*, Massachusetts Dispute Resolution Services Blog, https://www.mdrs.com/faqs/mdrs-articles/arbitration-voluntary-or-mandatory-the-use-of-pre-dispute-arbitration-agreements/.
[82] G. L. c. 251, § 1-19; Massachusetts Dispute Resolution Services, *Arbitration,* https://www.mdrs.com/mdrs-services/arbitration/.

Tribunal proceedings serve similar functions as arbitration and are similarly regulated and structured as arbitrations. Such tribunals are required in medical malpractice lawsuits, for example.[83] Each medical malpractice case must first be reviewed by a tribunal composed of a judge, a physician, and an attorney.[84] Massachusetts further specifies the timing requirements, party responsibilities, and procedures of such tribunal proceedings before parties can proceed with litigation in a courtroom. As a last example of alternative dispute resolution, Massachusetts implemented a statewide Housing Mediation Program that offers "pre-court mediation between landlords and tenants for lease disputes" in order to maintain housing stability and prevent homelessness or foreclosures.[85] Meetings with Housing Specialists is now a mandatory "first-tier event," which includes the directive to "attempt to reach resolution of the matter through mediation."[86] Housing specialists' role and authority are defined by statute and they are employees of the court subject to the review of and regulation of the courts human resources division.[87]

On the contrary, the role of parenting classes in Probate and Family Court litigation, and the authority of their staff have been, and continue to be, entirely unregulated. When Massachusetts required divorcing parties to endure mandatory programming, Chief Justice John Casey suspended the courses citing, among various other issues, the programming's lack of compliance with state guideline requirements, program mismanagement, and lack of state oversight over the programs' efficacy.[88] Meanwhile court-ordered parenting classes exist and operate in the lives of the litigants

---

[83] G. L. c. 231, § 60(B).
[84] *Id.*; Gilman & Bedigian, LLC, *Massachusetts Medical Malpractice Laws,* https://www.gilmanbedigian.com/massachusetts-medical-malpractice-laws/#:~:text=The%20law%20in%20Massachusetts%20does,or%20if%20it%20is%20frivolous.
[85] Executive Office of Housing and Livable Communities, *Eviction Legal Services and Mediation* https://www.mass.gov/info-details/eviction-legal-services-and-mediation#overview:-housing-mediation-program-; Massachusetts Court System, About Mediation, https://www.mass.gov/info-details/about-mediation.
[86] Standing Order 1.23:Interim Housing Court Standing Order 1-23: Continuation of temporary modifications to court operations, https://www.mass.gov/housing-court-rules/interim-housing-court-standing-order-1-23-continuation-of-temporary-modifications-to-court-operations.
[87] G.L. c. 185C, §16; Housing Court Resources, https://www.mass.gov/guides/housing-court-resources#-housing-specialist-department-.
[88] *Suspension of Probate and Family Court Standing Order 2-16: Parent Education Program Attendance*, *supra* note 26. https://www.mass.gov/news/suspension-of-probate-and-family-court-standing-order-2-16-parent-education-program-attendance-and-the-temporary-amendment-to-standing-order-2-16-effective-september-1-2021.

ordered into them as a mandatory requirement for their access to the court. Despite these programs entirely similar activities and despite their very similar vulnerabilities as compared to mandatory courses, they somehow escape the critique that was embedded in the suspension of near similar programs. Judges continue to rely on them, ordering litigants into programs that have wide latitude to offer unmonitored curriculum with no evidence-based claims of efficacy.

Even assuming- and it is a big assumption- that high conflict parenting classes are appropriate and meaningful for everyone ordered into them, there is next the issue of the delay their use causes, and the cost of delay on balance with whatever benefits these courses are assumed to have. Using the program at William James as an example, even assuming the ability to begin a course promptly, this still means that a litigant is barred from court for nine (9) weeks. The assumption that the course will begin promptly, meanwhile, is naive. The program requires a screening with each parent contingent on availability and scheduling. The family is then coupled with other families to begin the program, as the William James model contemplates groups completing the course together. Several participants reported a timeline of approximately eight months from the moment of the order until the completion of the class.[89] Specifically, one participant was ordered to take the class in April, but the class did not start until October.[90] Once the course is completed, the court expects a certificate of completion. Certain participants reported that even though they finished the class in December of 2022, they *still* have not received their certificates in these last ten (10) months.[91]

Meanwhile, early moments of filings in divorce and custody matters can be critical moments for some families in terms of creating predictability and stability. Some parties may feel they need court intervention to understand, negotiate, and contract around their property interests, support needs, or child custody issues.[92] Delays or interruptions in securing temporary orders on these matters hurt these litigants. Social

[89] *See* Interviews by Lauren Ladino-Saunders, Boston College Law School Student with former participants (Spring 2023) (on file with author).
[90] *Id.*
[91] *Id.*
[92] Donohue, *supra* note 1, at 124-126.

science literature buttresses the conclusion that delay is agony.[93] People do not like to wait; and waiting for uncertain time periods, for an uncertain outcome, is the worst kind of waiting.[94] "Waiting in ignorance creates a feeling of powerlessness, which frequently results in visible irritation and rudeness."[95] Consider, for example, patients asked to wait for medical procedures due to COVID-19 protocols and barriers. Here, patients showed marked symptoms of mental distress as they waited to undergo their procedures.[96] To add insult to injury, the psychic toll did not just cause suffering in the patient but it also adversely impacted patients' trust in the healthcare system.[97] Such findings do and have translated onto the legal system generally and family courts specifically. Delay and delay with uncertainty exacerbates the social emotional stress a family is under and diminishes litigants' ability to work together and threatens their confidence in the legal system.[98]

This raises the question: can't a parent in Massachusetts simply appeal a judge's order for parenting classes? While appealing an interlocutory order by a probate and family court judge is allowable under G. L. c. 231, § 118, it is not necessarily feasible or practicable.[99] Appealing an interlocutory, or temporary, order can be challenging, costly, and time-consuming.[100] Appellate courts may decide to not even consider an appeal of a temporary order given that the Probate and Family Court has the ability to change the order during the pendency of the case.[101] Moreover, to the extent a judge is looking at a

---

[93] Palermo v. Palermo, 950 N.Y.S.2d 724 (Sup. Ct. 2011), *aff'd*, 953 N.Y.S.2d 533 (2012) (discussing legislative history that highlights the logistical and mental loads caused by delay).
[94] *Psychology Behind How Waiting Affects Patients*, Experity, https://www.experityhealth.com/ebooks/psychology-behind-how-waiting-affects-patients/(last visited Oct. 3, 2021); David H. Maister, *The psychology of waiting in lines*, Harv. Bus. Sch. 5 (1984).
[95] Maister, *supra* note 92, at 6.
[96] Anna R. Gagliardi, *The Psychological Burden Of Waiting For Procedures And Patient-Centered Strategies That Could Support The Mental Health Of Wait-Listed Patients And Caregivers During The Covid-19 Pandemic*, 24 HEALTH EXCEPTIONS 978 (Mar. 26, 2011).
[97] *Id.*
[98] News Release, Alicia Davis, Principal Court Management Consultant, National Center for State Courts (Oct. 4, 2018) (on file with authors).
[99] *See* G. L. c. 231, § 118 ("A party aggrieved by an interlocutory order of a trial court justice in the superior court department, the housing court department, the land court department, the juvenile court department or the probate and family court department may file, within thirty days of the entry of such order, a petition in the appropriate appellate court seeking relief from such order.").
[100] *See* JACQUELYNNE J. BOWMAN ET AL., FAMILY LAW ADVOCACY FOR LOW AND MODERATE INCOME LITIGANTS 529 (3d ed. 2018).
[101] *See id.*; *see also* Borman v. Borman, 378 Mass. 775, (1979) (holding that the policy limiting appeals of temporary decisions is justified).

party's litigiousness when determining whether their parenting is high conflict, appealing the temporary order may further inflame the court. Thus, parties might feel discouraged from appealing.

Given these concerns, one would hope and expect that judges would receive careful guidance and support about when to order families into parenting courses if at all, but particularly those that are as involved and expensive as the one at William James. Worryingly, it is unclear what orientation, if any, judges have to any given program, and whether the programs conduct evaluations at all, let alone provide the feedback of litigants to the bench.

B. Judge's Discretion and Defining High Conflict

Being ordered into a parenting course, and thus out of the court, denies litigants–at least for a time–the 'opportunity to be heard' that is so critical to our judicial system.[102] The current litigation may be put on hold until the court-ordered program has been completed. Attendance and participation may be reported back to the court and used as a tool for ordering or understanding the case going forward. This means the format of the program itself may have procedural and substantive consequences for the litigants ordered into them.[103] While Probate and Family Court judges may "exercise their inherent powers to secure the full and effective administration of justice,"[104] they cannot exercise those powers "in a manner that undermines the very constitutional rights from which those powers arise…due process concerns [identify] the outer limits of a judge's inherent authority to refer parties" for therapeutic, educational, or investigative intervention. Given the questions about the procedural due process issues and the barriers to access, one would hope that there is intentionality and precision in the decision making around who is ordered into involved parent education programs. It appears as though judge's use the program when they deem the parenting relationship

[102] *Compare* Bower, 469 Mass. at 690 (expressing concern where a judge's order placed "prior restraint on future claims" and deferred decision on pending contempt complaints") *with* J.M. v. A.Q., 96 Mass. App. Ct. 1115 (2020).
[103] Some programs may be online, allowing participants to determine when and where they will complete the program's coursework, or structured such that they can be completed after the filing of a complaint and before one of the first court dates. Other parenting education courses have a much more involved design. See Section I and II.A. above for a discussion of alternative approaches and models.
[104] Querubin v. Commonwealth, 440 Mass. 108, 114-115 (2003).

to be "high conflict."[105] There is, however, murkiness in deciding what high conflict is and in knowing the full range of judicial discretion to react to it.

To begin, because use of high conflict parenting classes is not codified or regulated in any way, there is no companion rule or standing order defining high conflict. Caselaw, in turn, only provides limited clues. *D.B. v. J.B.*, describes a scenario where "the parties had had difficulty prioritizing the children's needs above their own."[106] *Yoon v. Na*, describes a couple whose "relationship has been dysfunctional, virtually nonexistent, and one of continuous conflict."[107] *Bower v. Bournay-Bower* describes the matter more as an issue of timeline or persistence of disagreement: the parties litigated for over two (2) years before the divorce and a companion parenting plan was finalized; approximately seven (7) months later both parties had filed complaints for contempt alleging violations of the parenting plan.[108]

Having decided that litigants are in high conflict, perhaps it is fair enough that the court can seek outside assistance; but surely the involvement of the third party and the court's deference to it must demonstrate some restraint. The U.S. Supreme Court case, *Troxel v. Granville*, offers a cautionary tale against broadly allowing a third party to exercise control over someone else's child.[109] The statute at issue in *Troxel* allowed any person to petition a state court for child visitation rights at any time, and also authorized the court to order visitation rights for a petitioner, even if the parent objected to such visitation, so long as the court determined visitation was in the child's best interest.[110] Thus, courts were not required to give any deference to the parents' wishes.[111] Moreover, the statute did not require there to be a finding that the parent was unfit.[112] Instead, under this statute, courts could allow third-party opinions on child rearing to impact the parental autonomy of assumedly fit parents.[113] The *Troxel* Court held that the

[105] William James College, *supra* note 15.
[106] D.B. v. J.B., 97 Mass. App. Ct. 170, 182 (2020).
[107] Yoon v. Na, 97 Mass. App. Ct. 1114, 2 (2020).
[108] *See* Bower, 469 Mass. at 692.
[109] *See* Troxel v. Granville, 530 U.S. 57, 57 (2000).
[110] *Id.* at 61.
[111] *Id.* at 67.
[112] *See id.* at 68.
[113] *See id.*

application of this state statute violated a parent's "fundamental right to make decisions concerning the care, custody, and control of [her children]."[114]

To be clear, the factual scenario in *Troxel* does not provide us with a perfect comparison to courts now ordering participation in parenting programs. It does, however, offer a helpful analytical frame to evaluate this practice. In the largest sense, parenting programs are a third party that presumes to know what is best for children, and perhaps further assumes that its opinion on that matter trumps the values, norms, and instincts of a child's parents. In deferring to the intervention of this third party into the parent child relationship, and in crediting the programs assessment of a parent's capacity or good intentions to parent, the court is ordering assumedly fit parents to surrender their control of parenting over to that third party. In this frame, a homework assignment from one of these programs can be understood as a directive that a third party is placing on a parent regarding how they raise their child. For instance, one assignment from the William James program requires the parents to make a genuine compliment about the other parent in front of their child. Another directs parents to put a picture of the other parent in the child's bedroom. Still another asks parents to agree on laundry detergent or to prepare food and deliver it to the other household to produce the same smell in each house. Still another assignment begins with suggesting that co-parents decide on a similar routine for the child in their mutual care, but goes on to suggest that they coordinate on decorations in the child's bedroom and utensils in the kitchen. Parents are given scripts for phone calls and asked to report back about how long they spoke and whether they covered the scripted issues.[115] These directives are in the weeds of parents' day to day decision making, not just visa vi each other, but visa vi their child; and they are being assessed, literally quizzed, on their compliance with the directives.[116]

---

[114] *Id.* at 72.
[115] Assignment from William James College to Claire Donohue (2022) (on file with author).
[116] Thus, these assignments can seriously influence a parent's decisions regarding the care of their child. Consider, for example, that a parent may believe that an assignment requiring them to compliment their abuser in front of their child is actually counterproductive to how they wish to raise their child. *But see*. Troxel, 530 U.S. at 68 (stating that "there is a presumption that fit parents act in the best interests of their children.").

What's more, this third party will often complete an assessment of participants' parenting by deciding whether to offer a certificate of completion.[117] While the court has "inherent authority to refer parties" the court cannot delegate its authority by declining to draw its own conclusions in deciding a case nor compelling a party to submit to the decision making authority of a third party without consent.[118] The court must exercise independent assessment, not just of the litigants, but of the third party's opinions. In *D.B. v. J.B.*, for example, the trial judge demonstrated that independent judgment in declining to follow the GAL's recommendation upon "findings of 'troubling' conduct by the GALs in acting 'outside of their prescribed roles.'"[119] Lastly, the court must show caution in deferring or delaying decision making or restraining future litigation.[120] In *Bower v. Bournay-Bower* the court appointed a parent coordinator against the mother's wishes and further ordered that the parent coordinator "hear all of the parties' current and future disputes. . . before the parties could file any action regarding these disputes in court [and] . . . granted the parent coordinator the authority to make binding decisions on matters of custody and visitation, [decisions that] must be complied with by the parties as if they were court orders."[121] The Supreme Judicial Court held that this constituted "an unlawful delegation of judicial authority because . . . the judge abdicated her statutory authority to decide whether modifications to the custody arrangement are warranted."[122]

C. Domestic Violence Considerations

The research on parent education programs has paid insufficient attention to the impacts of domestic violence on parents' participation and experiences in such programs. The presence of past or present domestic violence must be considered in the development of mandated parental education classes because the period of divorce proceedings is often the most dangerous time for survivors of domestic violence.[123]

---

[117] William James College, *supra* note 15.
[118] Bower, 469 Mass. at 701-02; D.B., 97 Mass. App. Ct. at 182.
[119] D.B., 97 Mass. App. Ct. at 182.
[120] Bower, 469 Mass. at 702-03.
[121] *Id.* at 692-93.
[122] *Id.* at 706.
[123] Jeffrey T. Cookston et al., *Prospects for Expanded Parent Education Services for Divorcing Families with Children*, 40 FAM. CT. REV. 190, 200 (2002).

Domestic violence is cited as the reason for divorce for over one-fifth of middle class couples. Divorced women are disproportionately represented in the population of domestic violence survivors. Specifically, three-fourths of physically-violent interactions between spouses take place after separation.[124]

Given this reality, domestic violence advocates have argued that survivors of domestic violence should not be mandated to attend parent education classes, whether that mandate is the product of an automatic referral into a program as was historically the case in Massachusetts or the product of a court order as can still be the case in Massachusetts. The inherent tension in cases of domestic violence is that the knowledge and communication skills taught in parent education classes could help parents mediate early stage experiences of domestic violence; on the other hand, the communication and contact often required in these programs could expose survivors to further abuse.[125]

---

[124] *Id.* at 201.

[125] A similar tension is playing out on a national stage with the push and pull regarding the concept of "parental alienation." Is there genuine violence that should be avoided or is the dog whistle of violence being used as a form of resistance to change? Parental alienation theory posits that children are or can be psychologically manipulated by their custodial parent to alienate their non-custodial parent so their resistance to visits should not be credited as fear for themselves of allegiance to an abused parent, but rather the sign of their having been manipulated. The introduction of Kayden's Law is based on the premise that the theory of parental alienation is under theorized and yet being weaponized against parents who advocate for their children when their child resists deeper or further contact with a non-custodial parent. Kayden's Law, Law. H.R. 1620 Violence Against Women Act Reauthorization Act of 2021 is a legislative initiative focused on family court reform, as well as limiting judicial discretion. See H.R. 1620 – Violence Against Women Reauthorization Act of 2021, https://www.congress.gov/bill/117th-congress/house-bill/1620/text. There are seven overall substantive requirements of the federal initiative, operating under grant-making authority to subsidize the changes and reward states for making them. To qualify for these grants under Kayden's Law, the state must: require experts in proceedings to demonstrate clinical and not just forensic knowledge on the matter; require any and all allegations of domestic violence or child abuse (DV/CA), past and present, to be considered in custody; require uniform standards for court-appointed experts in DV/CA; prevent removal of a child from a "competent protective, non-physically or sexually abusive parent or litigating party to whom the child is bonded or attached," or altering their visitation, solely to address child resistance to a parent's contact; prevent "reunification treatments" that are not "scientifically valid and generally accepted proof of the safety, effectiveness and therapeutic value;" require that orders to remediate child's resistance "must address the resisted parent's behaviors or contributions to the child's resistance" before they can ask the other parent to encourage the child to cease resistance; and lastly must create training programs for all judges and magistrates that are evidence-based, with minimum annual hour requirements. Kayden's law is not without its push back in the states; and comparatively, other countries continue to credit parental alienation and address it through law and regulation. In Brazil, for example, legislation exists to impose criminal penalties for parental alienation. *Brazil: Parental Alienation Criminalized*, https://www.loc.gov/item/global-legal-monitor/2010-09-02/brazil-parental-alienation-criminalized/ The Department Of Justice in Ireland began an initiative in 2021 to fund research into alienating behaviors and its effects on families. Department of Justice, *Department of Justice Statement of Strategy 2021-2023* (2021), https://www.gov.ie/en/organisation-information/15dea-department-of-justice-

To limit the risks presented to domestic violence survivors by parent education classes, commentators have suggested modifications to curricula and formatting. Some modifications include emphasizing separate parallel parenting, assisting with safety planning, providing information about domestic violence and manipulation strategies, requiring parents to attend separate sessions, increasing physical security precautions around classes (i.e., ensuring parking areas are well-lit), and keeping class locations and participant lists confidential.[126] The mandatory programs in Massachusetts eliminated concerns about divorcing spouses taking the class together by requiring spouses to take classes separately; but there is no such accommodation in high conflict parenting classes.[127] Per the information on William James' website, for example, the program screens for "current domestic violence," yet there have been instances where divorcing spouses with active restraining orders were ordered into the course.[128]

Moreover, there is a lack of clarity about what domestic violence is understood to be. There is some indication of how domestic violence is defined in the "ground zero" material advocating for the launch of the mandatory parenting classes in Massachusetts. In a Report to the Legislature by the Probate and Family Court Department, proponents of the pilot project, indicate that the "[t]his course is designed for families where *serious or chronic* violence is not an issue," and further support a system by which courts may waive participation "only…upon a demonstrable showing of *chronic and severe violence* which negates safe parental communication."[129] The emphasis on violence and specifically severe violence as the only authentic or demonstrable proof of domestic

---

statement-of-strategy-2021-2023/?referrer=http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf#;
Furthermore, the Children And Family Court Advisory And Support Service in the United Kingdom acknowledges alienating behaviors as an issue that both parents are capable of, and thus deserves scientific attention and study. *Alienating Behaviours*, Cafcass, https://www.cafcass.gov.uk/grown-ups/parents-and-carers/divorce-and-separation/what-to-expect-from-cafcass/alienating-behaviours/?highlight=parental%20alienation.

[126] Victoria L. Lutz & Cara E. Gady, *Necessary Measures and Logistics to Maximize the Safety of Victims of Domestic Violence Attending Parent Education Programs*, 42 FAM. CT. REV. 363, 363–64 (2004); Nancy Ver Steegh, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 LA. L. REV. 1379, 1405 (2005).

[127] *Guidelines and Procedures for the Approval of Parent Education Programs*, *supra* note 23.

[128] *Id.*

[129] *Parent Education Programs: A Report to the Legislature by the Probate and Family Court Department*, *supra* note 26.

violence was not uncommon in 1994 when the report was being made, but continued reliance on it is misplaced. Worrisome trends of discounting survivor's reports of domestic violence are thrown into greater relief when courts require documented injuries or prosecutions to substantiate the experience of violence.[130] Moreover, physical violence is an impediment to safety, but the social and psychological dynamics of domestic violence generally are an impediment to the very progress the court seeks. Dynamics of coercive control, for example, will stymie progress in any program that anticipates or hopes to inspire cooperation and collaboration.[131]

A final consideration of domestic violence returns to the issue of defining high conflict. It is seemingly logical that courts perceive litigiousness as a proxy for high conflict. Stated plainly: a lot of filings = a lot of conflict. Courts must exercise caution in the conclusions they draw from litigiousness, because litigation is a well studied strategy of batterers to control and harass their victims.[132] If a court reacts to litigiousness by ordering both parties into parenting classes, particularly synchronous parenting classes, the court may unwittingly be playing into a batterers' conscious or subconscious strategy to prolong engagement with and control over the target of their abuse.[133]

Recommendations & Conclusions

Therapeutic, educational, or investigative interventions in the context of a high conflict divorcing and parenting couple have potential to be helpful tools in a successful

---

[130] Ramsey, *supra* note 16, at 20.
[131] One of the recent changes to Canada's divorce law asks the fact finder to identify "whether there is a pattern of coercive and controlling behavior in relation to a family member" which is recognition of the fact that "controlling partner often tries to use the children to control their former spouse. Effective parallel, or even "good enough", co-parenting is unlikely to co-exist with past or ongoing coercive control. The Department of Justice has stated that coercive interactions before, during, or after separation will not support co-parenting. Government of Canada, *The* Divorce Act *Changes Explained: Best Interests of the Child* (March 2021), https://canada.justice.gc.ca/eng/fl-df/cfl-mdf/dace-clde/div62.html; Glenda Lux, *The* Divorce Act *and Invisible Abuse: Coercive Control in Family Law*, LawNow (November 2021), https://www.lawnow.org/the-divorce-act-and-invisible-abuse-coercive-control-in-family-law/.
[132] Heather Douglas, Kate Fitz-Gibbon, Jude McCollough, and Sandra Walklate, *Legal Systems Abuse And Coercive Control*, 18 (1) CRIMINOLOGY AND CRIM. JUST. 84, 86-87 (2018).
[133] Jessica Klein, *How Domestic Abusers Weaponize the Courts*, The Atlantic (July 2019), https://www.theatlantic.com/family/archive/2019/07/how-abusers-use-courts-against-their-victims/593086/.

separation where children are involved. It is important, however, to ensure that such interventions do not overburden litigants, limit their procedural or substantive access to court proceedings, or potentially retraumatize a litigant. What follows are recommendations for both parenting programs and Probate and Family Court judges who chose to order litigants into courses.

A. Considerations for Participating Programs

For programs that offer parenting classes, bolstering efficacy would require: (1) locating evidence-based studies for best practices; (2) committing to collect, generate, and report data about the effectiveness of classes to stakeholders; and (3) thoroughly screening for signs and histories of domestic violence as part of the intake process.

Parenting class providers should first re-examine their own offerings after making an effort to locate evidence-based studies for best practices. This could include examining the academic literature about such courses, as well as assessing other similar courses while taking inventory of the course's own practices. Upon review, parenting courses should then assess whether their practices are in line with other offered courses, and in what ways their practices could be altered to facilitate a better and more comprehensive experience. William James' course, as explained in Section I above, is potentially cost-prohibitive for some parents at $950, and requires parents to attend classes together in groups. While they do offer an online option, most of their classes are in-person, and there is nothing in their materials to suggest that parents can opt to take the class individually or asynchronously. This is in contrast to other courses offered in other states that William James' own website claims are "similar to ours."[134] These other classes, on the whole, are free or low-cost, do not require in-person participation, allow parents to take the classes on their own, and can be offered asynchronously. In fact one of the programs listed as "similar to ours," namely the High Conflict Institute, is not a program for litigants at all, and rather is a resource of training, consulting, and education for those in the business of "handling individuals" who "create" conflict.[135] It

[134] William James College, *supra* note 15.
[135] *Id.*, citing High Conflict Institute, https://www.highconflictinstitute.com/.

is important in system design in the first instance, and evaluation in the latter instance to be sure one is comparing apples to apples.[136]

Further, parenting class providers should make a concerted effort to collect, generate, and report data to related stakeholders to review the effectiveness of the programs. Transparency and willingness to modify approaches to better serve litigants is vital to ensure best practices, and perhaps review whether such programs are serving their intended purposes. Some parenting classes are more transparent with their data, approach, and challenges than others. In collecting data for this project, several former mandatory courses spoke to the authors, while William James, for example, eschewed the authors' inquiries. A uniform commitment to data collection, generation, and reporting will ensure that programs can be assessed on their merits with all available facts, instead of shrouded in mystery with no measurable data.

Data collection could include surveys and interviews with participating parents before, during, and after the program to track progress, with guidance from each program's stated goals and operating principles. Generation of this data could be synthesized into annual reports, with both qualitative and quantitative data that clearly lay out the efficacy–or lack of–such programs, measured against other evidence-based studies. Recommendations should be offered in each report that discuss whether and how changes to the program should be made. Each report should be submitted to the Probate and Family Court for review, to assess which programs can be reliably offered to parents.

In an effort to reduce the retraumatizing effects of interacting with an abuser as part of a high conflict parenting class, programs should thoroughly screen for signs and histories of domestic violence in their intake process, and make every effort to separate abusers from survivors. This should include a standard set of questions and evidence-

[136] Clinical practice benchmarking involves structured comparisons of processes and the sharing of best practices in clinical care. See Amina Ettorchi-Tardy, Marie Levif, & Philippe Michel, BENCHMARKING: A METHOD FOR CONTINUOUS QUALITY IMPROVEMENT IN HEALTH, *Health Care Policy (2012)*. *See also* Samuel Kounev, Klaus-Dieter Lange Jóakim von Kistowski, SYSTEMS DESIGN, 4 (2020) (defining benchmarking in the context of computer systems design as "A benchmark is a tool coupled with a methodology for the evaluation and comparison of systems or components with respect to specific characteristics, such as performance, reliability, or security.")

based assessments that ascertain a history of abuse, whether physical, emotional, or sexual, between the couple. The Psychological Maltreatment of Women Inventory (PMWI) is commonly used and well tested.[137] Unlike reliance on legal evidence of physical assault, the inventory's subscales measure the type of violence and control that can affect co-parenting, namely: "dominance-isolation and emotional-verbal abuse." The Center of Disease Control cites twelve other assessment tools, all designed to identify psychological and emotional abuse beyond the physical, sexual, or stalking abuse that the legal dragnet catches with its preoccupation with criminal prosecution or restraining orders as proof of domestic violence.[138] Upon disclosure of the abuse dynamic, survivors and abusers should take the class apart from one another in separate sections. If communication is deemed to be a necessary part of the course, every effort should be made to supervise such communication, whether by allowing written or electronic correspondence or other asynchronous means. Program administrators should inquire about the level of comfort a survivor has in interacting with their abuser and adjust their course administration accordingly.

B. Considerations for the Probate and Family Court System

As judges contemplate ordering litigants into parenting classes, their decision to intervene this way should: (1) be based on clear definitions of what a high conflict relationship is, and guidance on who might benefit from a high conflict parenting class, as well as how they might benefit; and (2) limit prohibitions to litigate once a referral to a high conflict parenting course has been made.

High conflict is not currently defined in the law, regulations, or standing orders of the Massachusetts Probate and Family Court. As such, the court should endeavor to develop language that encompasses an objective and comprehensive understanding of the term for judges to utilize in determining whether a high conflict parenting program is appropriate in a given case. Ideally, the court would authorize a working group to

---

[137] *See e.g.*, UNC CFAR Social and Behavioral Science Research Core SABI Database, *Psychological Maltreatment of Women Inventory (PMWI)-48-Item and 14-Item Short Version*, https://sabi.unc.edu/pdf/Psychological%20Maltreatment%20of%20Women%20Inventory%20(PMWI)_%20Tolman_combined%20with%20instrument.pdf.

[138] *Measuring Intimate Partner Violence Victimization and Perpetration: A compendium Assessment Tools*, Center For Disease Control And Prevention, Section C, p.47 (2006).

study the existing literature and common law as well as survey other states' definitions of high conflict. An audit of existing courses in the Commonwealth should be conducted to determine if the courses align with the group's definition. Additionally, the group should consider dynamics of litigation abuse to bring greater awareness of that dynamic to the judiciary. These findings and recommendations should be presented in the form of a report to the Probate and Family Court for review and implementation. The group's definitions and conclusions could be the basis for promulgating bench books that explain what high conflict divorce and parenting is and offer judges guidance in terms of who they order into the courses and what goals for participation are reasonable. Trainings around litigation abuse would be helpful particularly as this issue can be easily overlooked in the broader picture of parties who present with a contentious dynamic.

Additionally, so as not to unduly burden litigants due process rights and access to courts, there must be limits on prohibitions to litigate once a referral to a parenting class has been made.[139] As parents usually must wait until the completion of a parenting course, and as an intake for entry can sometimes take weeks, parents are frequently stuck without recourse. This reality is particularly pronounced for pro se litigants who cannot use the services of counsel to broker interim stipulations with an opposing party. In some cases, this precludes litigant from proceeding in a timely way and their cases are harmed. In an effort to curb this, the Probate and Family Court can articulate safeguards to ensure that litigation is carried on even during the completion of a parenting class; for example, the court can allow subsequent filings in concurrence with the parenting class, or signal to litigants that a parenting class is needed early in the case so that they may pre-book their classes to avoid a significant wait time in the intake process. Likewise, parties should not be prohibited from bringing contempt claims; for example, where the contemptuous behavior threatens their financial security or where the actions of a party signals that successful completion of the course is not possible.

[139] *See supra* note 100 and accompanying text (*comparing* Bower, 469 Mass. 690 *with* J.M., 96 Mass. App. Ct. 1115).

As courts continue to focus their "regulatory" energy and emphasis on parenting, they must show care in the interventions they deploy. [140] Given that parenting programs lack clear evidence of efficacy, and given the worrisome procedural and substantive blindspots the use of the classes can create, it is critical that the Probate & Family Court develop an understanding of what courses their judges are relying on and then think critically about if, how, and when, being ordered into such programs to help litigants navigate their co-parenting relationships.

[140] Coltrane et al., *supra* note 5, 363.