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How to apply attachment theory in family courts: The world's leading experts weigh in

By Child & Family Blog Editor | January 2021

Seventy attachment researchers with long track records in the field collaborated globally to produce a seminal statement concerning the widespread use of attachment theory in family courts.

The start of 2021 sees a major new contribution to family court practice by child development researchers. A 35-page "Consensus position based on the concerted body of attachment research" has been published, under the names of 70 leading attachment

researchers. It is the most comprehensive statement ever produced on how attachment theory can be applied in family courts worldwide in the best interests of children. It also shows ways in which attachment theory is frequently misused.

This summary highlights the key points in the statement, but family court professionals who wish to learn more about this important topic should read the document in full. References to page numbers are included in this summary to enable quick access to the more detailed account.

The “best interests of the child” has become the fundamental consideration in family courts. The concept is included in the U.N. Convention on the Rights of the Child (1989): “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration (#3.1)” (p. 5).

This article addresses four issues:

1. The challenge of using attachment theory in family courts
2. What is attachment theory?
3. Three attachment principles for family court practice
4. Eight pieces of advice for family courts

1. The challenge of using attachment theory in family courts

A fundamental difficulty applying attachment science in family courts is that the science and the courts start from very different places. The measures used in attachment research are accurate enough to produce average scores that predict patterns of future child development across groups, but they are not sensitive enough to be used as diagnostic tools for individual families, which is what courts need (p. 5). Correlations found in attachment science, while statistically significant, may not be substantial, and rarely provide the basis for making a prediction about one individual (p. 21). Even the more fine-grained attachment assessments have been designed and validated for standardized contexts and may not apply in highly charged situations common in family courts.

> Family courts are under pressure to appear to base their decisions on evidence, and attachment theory has become by far the most popular theory among professionals working with children and families.

Therefore, specific measures of attachment quality should be used with great caution. They may

play a part, but only in combination with other assessments. Other measures include the child's physical, cognitive, and socioemotional development, and very importantly, the capacity of a parent to provide care or be helped to develop caring skills. Above all, it is crucial to assess risk of harm to the child. Every one of these factors is hard to assess, not least because each can change over time, particularly if the assessment is made at a moment of heightened trauma and change (pp. 15-16, 20-21, 30-32).

Family courts are under pressure to appear to base their decisions on evidence, and attachment theory has become by far the most popular theory among professionals working with children and families. This creates an environment in which over-confidence about the application of attachment classifications or concepts to individual cases is common (p. 21). Because of the complexity of cases in family courts, proceedings can be influenced by personal opinions or cultural and social values and norms (pp. 5, 6, 32).

2. What is attachment theory?

2.1 Defining attachment

The 70 attachment researchers who contributed to the statement defined attachment this way:

> Attachment refers to an affectional bond in which an individual is motivated to seek and maintain proximity to, and comfort from, particular familiar persons (Bowlby, 1969/1982). Children are born with a predisposition to develop this motivation in relation to significant others ("attachment figures") who have been sufficiently present and responsive. For children, these persons are usually their caregivers. The motivation is held to be governed by an attachment behavioral system. This system seeks to maintain a certain degree of proximity between child and attachment figures, with the setting for desirable level changing dynamically in response to internal and external cues. The motivation to increase proximity is activated when a person is alarmed by internal cues (e.g. pain, illness) and/or external cues (e.g. fear-evoking stimuli, separation), and manifests in a tendency to seek the availability of an attachment figure. When the attachment system is strongly activated, some kind of physical contact with an attachment figure is generally sought, especially by infants, though this contact can also be achieved by non-physical means later in development … Caregivers who have regularly interacted with and protect the infant when the infant has been alarmed usually come to be represented by the infant as someone he or she can turn to when in need (i.e. as a safe haven). Importantly, even the most sensitive and responsive of caregivers necessarily "tune out" from time to time – to visit the bathroom, make tea, or even temporarily hand over caregiving to another trusted person familiar to the infant, while the caregiver attends to other matters. Thus, that a caregiver provides a

> safe haven does not necessitate that this person is constantly accessible for the infant physically, or even psychologically, or that the child is securely attached to that caregiver. Conversely, being physically present does not necessarily mean that a caregiver is emotionally available (pp. 7-8).

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2.2 Attachment quality is measured by secure/insecure, not strong/weak

In attachment research, trained and certified coders measure the quality of attachment through standardized observation of children's relative ability to use their caregiver as a *safe haven* to which they can turn for protection, and as a *secure base* from which they can explore the environment (p. 8).

Secure attachment manifests itself in the child's expectation that the adult will be available in times of need. *Insecure attachment* manifests itself in the child's expectation that the adult will be relatively unavailable (p. 8).

Insecure attachment is not *weak* and is extremely common and normal. Insecure attachment is an important strategy for children to maximize the potential availability of a caregiver who is unavailable or insensitive. An insecure attachment does not mean that the caregiver is never a safe haven for the child (pp. 10, 17).

Insecure attachment is observed in three forms:

- *Insecure-avoidant* is when the child does not seek his or her familiar person when mildly alarmed, but remains near (p. 17).
- *Insecure-resistant* is when the child seeks proximity but is not readily comforted and can show anger toward the caregiver. Both this and insecure-avoidant behavior are termed *organized insecure attachment* because they are coherent and work to increase the availability of less sensitive carers (p. 17).
- *Disorganized attachment* is when the child is conflicted, confused, or apprehensive about a family caregiver in a situation of mild to moderate alarm. It is often associated with frightened, frightening, or dissociative behavior on the part of the caregiver, or a caregiver's hostility, withdrawal, or maltreatment (p. 18).

All these forms of insecure attachment correlate with later compromised child development, but even in the case of disorganized attachment, the associations are not strong enough to infer that observing insecure attachment foretells poor development outcomes for a specific child (p. 19).

Furthermore, researchers observe patterns of attachment in carefully controlled conditions that involve only mild to moderate stress for a child. Family courts commonly deal with children in situations of intense stress. Disorganized behavior on the part of a seriously stressed child does not necessarily imply disorganized attachment (p. 19).

> Specific measures of attachment quality should be used with great caution. They may play a part, but only in combination with other assessments.

2.3 Attachment disorder differs from insecure attachment

The negative effects of insecure attachments, as presented earlier, are far surpassed by the potential damage of attachment disorder.

Two types of attachment disorder have been defined. *Reactive attachment disorder* is when a child shows a lack of care-seeking toward any caregiver when alarmed. *Disinhibited social engagement disorder* is when a child is over-friendly with unfamiliar people.

Reactive attachment disorder is seen in children who have experienced extremely inadequate caregiving in their early years, for example, those who have lived in institutions. The symptoms are reversible if the child is placed in a stable caregiving environment (p. 19).

2.4 Children form attachments with multiple caregivers

There is a widespread belief in the importance of *one psychological parent*, which emerges from the practice in some cultures of a single parent being the primary caregiver. A related idea has emerged: that an attachment with one person competes with other attachment relationships. Bowlby himself started with the idea of a single attachment in his 1969 book, but had changed his mind by the time he wrote his second book in 1984.

The reality is that children form attachment relationships with multiple caregivers simultaneously if they have sufficient time with the caregivers and if the caregivers provide enough of a safe haven in times of need. For decades, the vast majority of attachment researchers have believed that children benefit from having more than one safe haven (p. 6, 11-12).

The presence of multiple caregivers is the norm in many cultural settings across the world. Multiple caregivers and a network of attachment relationships constitute a protective factor in child development when caregiving is inconsistent (e.g., a caregiver is unwell or unavailable). This does not imply that the number of attachments is limitless, nor that a child may not prefer some caregivers over others. A child's preferences are often shaped by the current accessibility of one carer over another and do not seem to depend on relative attachment quality with the caregivers. However, in the context of inter-parental conflict and custody disputes, less is known about how children's preferences play out (p. 11-12).

While all attachments with regular caregivers are important, researchers' opinions differ about whether a most familiar carer should be afforded priority in the early years. Variations in context – such as cultural and family factors – might influence the organization of continuous contact with different caregivers (p. 12).

2.5 New attachments can form

> Insecure attachment is not *weak* and is very common – the average rate of insecure attachment in the general population is nearly half.

When a child and new caregiver spend sufficient time together, attachments usually form. The time together can activate not only the child's attachment system but also a complementary caregiving system in the caregiver. Both are malleable. This is a relevant consideration in decisions about custody and overnight stays. However, no empirical research shows that overnight stays are a necessary condition for the development of an attachment relationship (p. 14).

3. Three attachment principles for family court practice

In their statement, the researchers present three principles for family court practice based on a full consideration of attachment research.

Principle 1: A child needs to experience safe havens provided by particular, familiar, and non-abusive caregivers.

Two considerations are key:

- Limited contact with a caregiver makes it more difficult for a child to form, enhance, and maintain expectations of that caregiver's availability in times of need.
- Almost all non-abusive and non-neglecting family-based care is likely to be better than institutional care (p. 25).

Principle 2: Safe, continuous, "good enough" care is in the child's best interest and caregivers should be helped to provide it.

A safe haven requires particular familiar relationships and sufficiently continuous interaction with these caregivers. Even if another caregiving environment may be better in some way than the child's current one, continuity of good enough care constitutes part of a child's best interests. Disrupting existing attachments in favor of an "optimal" solution should be pursued with extreme caution (pp. 25-26).

Safe, continuous, good-enough care can be actively supported. Many studies and meta-analyses demonstrate effective interventions that improve caregiving quality. Many of these interventions are limited in time, typically lasting just 6 to 10 sessions (p. 26).

To this end, it is important to assess a caregiver's *potential* to provide good enough care with sufficient support, not just the caregiver's actual caregiving. The assessment also needs to consider a future time, if a current extreme state of distress diminishes the caregiver's current ability (e.g., fear of loss of custody). Also, any particular intervention does not suit every caregiver, so alternatives should be made available (p. 32).

In families where roles were different prior to the separation, it is important to give the less experienced caregiver the opportunity to develop the ability to provide a safe haven (p. 12).

Bowlby put it this way in 1951: "Just as children are absolutely dependent on their parents for sustenance, so … are parents … dependent on greater society for economic provision. If a community values its children it must cherish their parents" (p. 28).

> The reality is that children form attachment relationships with multiple caregivers simultaneously.

Principle 3: Maintain a child's existing safe havens if they don't pose a threat.

A decision to maintain a child's existing safe havens does not provide a blueprint for allocating time in shared care arrangements. Time must be sufficient for attachment relationships to be developed and maintained (p. 28).

This principle can also apply to foster care, where relationships with biological parents can be maintained during fostering. Similarly, relationships with foster carers can maintained after foster care (p. 29).

In addition, grandparents, step-parents, siblings, and extended family members can often provide a safe haven for children (p. 29).

4. Eight pieces of advice for family courts

1. Do not equate attachment quality with caregiver sensitivity.

Caregiver sensitivity – the ability to notice a child's signals, interpret them correctly, and respond to them appropriately and in a timely way – is, of course, important and correlates with attachment. However, gender norms can influence how care is expressed, and measures of safe haven and caregiver sensitivity may be shaped by gendered assumptions about caregiving (pp. 8-9). For example, sensitive caregiving in mothers predicts secure attachment more than it does in fathers, suggesting that other factors play a greater role in father-child attachment.

2. Do not equate attachment quality with relationship quality.

Relationships are made up of more than attachment alone. Other factors, such as basic physical care, play, supervision, teaching/learning, setting standards for conduct, and discipline, are also important (p. 9).

3. Do not interpret one-off behaviors of children as reliably indicating attachment quality.

Children's behaviors depend on context. Attachment is measured in very controlled contexts. A very frightened child behaves differently than a less frightened child. A child in a highchair

may cry in response to a threatening noise, but not cry if he or she is free to move to the caregiver. Children's behaviors are also a function of their individual temperaments (p. 9).

4. The Tender Years Doctrine is wrong.

The Tender Years Doctrine holds that custody automatically goes to the mother for children under a certain "tender" age. While this concept has been formally replaced in most countries by standards related to the best interests of the child, it remains influential (p. 13). In Israel, it remains the policy: custody automatically goes to the mother for children under the age of six. The researchers state: "We are in full consensus that the ultimate establishment of a network of attachment relationships is generally a protective factor in the long term and thus a desirable outcome in child development. We are also in full agreement that losses of and permanent separations from attachment figure are in themselves risk factors that should be prevented wherever possible in child development." (p.13)

5. Overnight care with a second parent is not inherently harmful for children.

In the 1990s, researchers concluded that co-parenting arrangements that included overnight visits to the co-parent were associated with insecurity in a child's attachment with the resident parent (Solomon & George, 1999). However, the data presented in the study actually showed that parental conflict, not overnight stays, was the problem. The inaccurate conclusion of this study has been quoted frequently to defend a position that is not supported by this or other evidence (p. 13).

The key question regarding decisions about overnight stays is whether the child experiences a safe haven with each caregiver. Of course, having a secure attachment does not preclude a child being unsettled for a time by unfamiliarity with, say, a new home. Also, the application of Principle 2 (safe, continuous, "good enough" care is in the child's best interest and caregivers should be helped to provide it) requires attention to actively enabling the caregiver to develop a safe haven over time (p. 14).

> It is important to assess a caregiver's *potential* to provide good enough care with sufficient support, not just the caregiver's actual caregiving.

6. Addressing and reducing conflict is key.

Inter-parental conflict and hostility undermine a parent's own caring competencies and ability to let the

other parent provide care. Interventions to reduce parental conflict are important (pp. 14-15).

If courts are clear about their decisions regarding custody and time allocation, they can increase parents' capacity to overcome conflict. Similarly, if courts are clear about their commitment to the three principles outlined earlier, caregivers' anxiety can be reduced and their motivation for cooperation increased (p. 33).

7. Ensure that family court professionals are adequately trained in attachment assessment.

While attachment theory is typically a mandatory part of professionals' training, specialist training in *assessing* attachment quality is not. This can lead to attachment theory being either under-estimated or used with over-confidence. If assessments of attachment are used, they must be performed by formally trained observers (pp. 23, 31).

8. Take evidence directly from experts, not via representing parties.

Appeals to attachment in family courts would be less partial, more balanced, and more aligned with convergent evidence if courts called in experts, rather than the representing parties (p. 23).

References

- *Forslund T et al (2021), Attachment goes to court: Child protection and custody issues, Attachment & Human Development*

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