

# **GUIDELINES FOR THE USE OF SOCIAL SCIENCE RESEARCH IN FAMILY LAW**

## Preamble

In recent years, increasing attention has been given to social science research in family law<sup>1</sup> – especially how it can inform professional practice and contribute to “best interest” decisions for children. Social science research is defined here as knowledge claims or general assertions about children, parents, and families in their social context that are derived from data gathered using one or more of a wide-range of scientific research methodologies. Beyond a literature review, a recognized scientific research methodology involves description of the population of study and systematic, transparent, and replicable methods for ethically collecting and analyzing data, and reporting the results of studies.

Vigorous debates have occurred within publications, professional conferences and individual cases about the extent to which social science research claims are more or less well substantiated by research data (versus being speculative, untested, or based upon erroneous assumptions). Some debate is expected and useful for deepening our understanding of children and families; however, unresolved differences in the family law field can also magnify conflict and confusion. With more contentious issues, unresolved, inconsistent, and competing research claims and assertions may, in part, reflect misunderstanding and misuse of research data itself.

In 2016, then-AFCC President Marsha Kline Pruett appointed an interdisciplinary task force to develop guidelines to promote more critical thinking about effective, responsible, and ethical use of social science research in family law-related education, practices, programs, and policy making.<sup>2</sup> The two-year process of task force meetings, drafting, and revision gave rise to these Guidelines for Use of Social Science Research in Family Law.

AFCC does not intend these Guidelines to define mandatory practice. Rather, they are intended to provide family justice practitioners with guidance, parameters, and boundaries supporting the responsible use of research in family law.

Feedback received throughout the process made clear there is not universal agreement about when and if research should be used in family law. Many family justice practitioners value the general trend toward evidence-informed practice, recognizing the importance of anchoring life-changing assertions to the most objective sources of knowledge available. Others commented that family law-related research is of insufficient quality and quantity to be used to support

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<sup>1</sup> These Guidelines refer to family law in the broadest sense and include the practice of law, all family law related dispute resolution processes, education and training programs, and policy advocacy or initiatives.

<sup>2</sup> AFCC President Marsha Kline-Pruett, Ph.D., MSL, ABPP, convened the following people to serve with her on the task force: Honorable William Fee, J.D., Chair; ; Stacey Platt, J.D., Reporter; Milfred “Bud” Dale, J.D., Ph.D.; Kristin Doeberl, J.D.; Amy Holtzworth-Munroe, Ph.D.; Janet Johnston, Ph.D.; Gabriela Misca, Ph.D.; Lorie Nachlis, J.D.; Sol Rappaport, Ph.D.; Michael Saini, Ph.D.; Liana Shelby, Psy. D.; Honorable Jim Williams, J.D.; Theresa Williams, M.S.; Jeffrey Wittmann, Ph.D.; and Peter Salem, M.A., Executive Director of AFCC.

parenting time recommendations. Still others warned that, because research is often derived from group data and focused on majority populations, it may serve to reinforce the norm, to the detriment of the individual child and minority groups. The Guidelines themselves take no position on what research methodologies should be used, e.g. qualitative or quantitative. Rather, they focus on helping consumers of research think critically about how research can be held accountable to the constraints of its own methodology and how it can be used, presented, and challenged in individual cases, educational settings, legal matters, and policy making.

## **Part A: Introduction**

### **Rationale and Purpose**

The purpose of these Guidelines is to promote the effective, responsible, and ethical use of social science research in family law-related practices, programs, and policies. The Guidelines seek to encourage the use of research by all family justice professionals and self-represented litigants in a manner that is valid, useful, and applicable in family proceedings.

Social science can support evidence-informed decisions about how best to assist families. Integrating high quality research into practice promotes the use of empirically-grounded approaches to resolving difficult human problems through best interest determinations, dispute resolution processes, therapeutic interventions, educational programs, and public policies. However, inaccurate or misleading use of research may introduce distortions into decision-making or policy that lead to unfortunate outcomes for children and families. The Guidelines seek to minimize the likelihood of such outcomes.

The Guidelines have been written with the understanding that family justice practitioners (e.g. mental health providers, custody evaluators, educators, researchers, mediators, attorneys, and judges) each have different professional obligations. Moreover, practitioners play different roles (e.g., researchers produce research, expert witnesses present research, lawyers and self-represented litigants offer and challenge research, and judges are consumers of research), each of which requires a different level of knowledge regarding research methods and uses. The Guidelines recognize and respect interdisciplinary differences. They strive to join practitioners around a set of core values – thoroughness, precision, and integrity – that transcend differing roles in the family law process.

### **Target Audience(s)**

The Guidelines are intended for use by the multi-disciplinary professionals who comprise the membership of AFCC and by all family justice practitioners, including those making, evaluating, and challenging social science assertions.<sup>3</sup>

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<sup>3</sup> Family justice practitioners include all professionals and litigants, including self-represented litigants, who seek to present, use, and critique research claims.

The Guidelines are applicable to three types of practice that rely upon social science research to inform and support the work of family law:

1. Education and Problem Solving: this includes trainers and educational instructors, as well as other practitioners who use education in their problem-solving roles, such as mediators, parenting coordinators, child and parent advocates, judges, collaborative lawyers, parent educators, and therapists;
2. Litigation/Negotiation/Advocacy: this includes judges, arbitrators, attorneys, expert witnesses such as custody evaluators and trial consultants, and parents;
3. Public Policy and Program Initiatives: this includes court and community stakeholders, concerned citizens, special interest groups, lay and professional advocates, government policy officials, and legislators.

### **Guiding Principles**

The responsible use of empirical research involves looking beyond research claims to consider the quantity and quality of research evidence in support of those claims. It requires the user of research to be alert to how research findings are selected, analyzed, summarized, communicated to others, and applied. The following principles, further explained in the Guidelines, provide exemplary criteria for these tasks.

Assertions regarding the state of research evidence on any issue or question should be:

1. complete rather than selective in scope;
2. relevant and appropriate to the question or purpose of the issue at hand;
3. accurate, organized, clear to follow, and sufficiently detailed;
4. based on studies and research that have been independently assessed as high quality;
5. self-critical, acknowledging limitations;
6. balanced and fair.

### **Part B: Guidelines**

**FAMILY JUSTICE PRACTITIONERS USING SOCIAL SCIENCE RESEARCH SHOULD STRIVE TO:**

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## **1. USE HIGH QUALITY SOURCES**

**Identify reliable and trustworthy sources for research claims (using citations and full references to authors and publications of research studies).**

When using social science, family justice practitioners should rely on the best available research. Social science research relevant to family law can be found in a variety of sources and within a range of disciplines, including psychology, law, social work, family studies, sociology, and anthropology. High-quality research publications and reports are evaluated through a peer-review process, typically by experts in that specific area of research.

One purpose of the peer-review process is to identify errors or evidence of bias in the design and/or implementation of the research, in the analysis and/or reporting of findings, and in the assertions about implications for policy and practice. Generally, research from a peer reviewed publication is likely to be of higher quality than that which appears in a non-peer-reviewed journal. Nevertheless, this does not mean that all peer reviewed research is superior; peer review alone does not ensure high quality. Other factors, such as the quality of the publication source (e.g., journal) and the experience and reputation of the researcher should be considered. Generally, these factors provide indicators of the quality of the research:

- a. Peer-reviewed published research should be the preferred source of research evidence for family justice practitioners. Text books, monographs, and edited volumes are increasingly subject to a peer-review process prior to their publication, although they are not usually as thoroughly assessed as journal articles. If non-peer-reviewed materials are used, they should be identified as such.
- b. High-quality information comes from direct research or reviews, summaries, and commentaries on research. While meta-analyses, secondary reviews, and research summaries are often practical and efficient tools, family justice practitioners should recognize the risks involved in not inspecting the original studies on a topic and instead relying on the interpretations of researchers or authors who did not do the original research.
- c. The most informative summaries and reviews draw on all available data that meet certain preselected criteria, leading to inclusiveness of only high-quality studies. If summaries and reviews do not describe how they chose studies to include or exclude, they may be biased or incomplete.
- d. A complete reference list with accurate citations should be provided for any written source.

## **2. UNDERSTAND BASIC RESEARCH METHODS**

**Have a basic understanding of research design and the scientific methods used to produce social science research claims.**

A basic understanding of research methods requires familiarity with various research designs and methods used to study different situations. This helps the family law practitioner understand a study's strengths and limitations. Without such knowledge, family justice practitioners are at risk of misunderstanding, misusing, or unknowingly accepting the misuse of data.

Non-researchers need not understand in depth what each aspect of methodology means in regard to particular studies or outcomes. However, they should seek to understand enough to know what questions to ask in order to find out whether a study is relevant to or representative of their particular circumstances. Non-researchers can improve their research literacy through continuing education and consultation. Having working knowledge of fundamental concepts such as probability, quantitative and qualitative analysis, and generalizability of group data, is necessary to effectively and ethically make and dispute social science claims.

### **3. VERIFY TRANSPARENCY**

**Ensure that research studies are accurately reported so distinctions among studies can be understood.**

Transparency, or openness, in reporting research provides readers sufficient information to assess potential research biases, the reliability of the methods used, and the credibility and applicability of the conclusions.

The responsibility for promoting transparency in the dissemination of social science research is a shared task among researchers, journal editors, peer reviewers, and consumers of research. Researchers should ensure they are transparent about the methods they used and the potential limitations of their findings. Those who share research (e.g. create reviews of research findings, share findings with clients or students, or provide expert testimony about research) should be transparent about the strength, quality, and credibility of the studies that support their conclusions. Those who read and use research should ask critical questions about the strength and limitations of the research so they may determine the appropriate weight and impact of the effects reported.

### **4. REPORT ACCURATELY**

**Assess and ensure that research studies are accurately reported.**

Persons making and disputing research claims should consider the full range of research available on an issue, rather than selectively drawing on studies or research reviews that support their arguments. Incomplete or inaccurate reporting of methods and findings, whether from mistakes or from advocacy toward a specific outcome, diminishes the value of research.

Family justice practitioners should strive to be as accurate as possible in sharing research findings, and should avoid the distortion of findings to support a case or cause. Expert witnesses,

child custody evaluators, and lawyers have an ethical duty to refrain from offering expert evidence in court that they know would be untruthful, unsupported, unreliable, invalid, or misleading.

## **5. BE CURRENT AND COMPREHENSIVE**

**Ensure that claims about the state of research evidence on any issue are based upon complete reviews of the cumulative body of foundational and current research studies on that issue.**

When reporting the current state of the scientific knowledge on a given topic, family justice practitioners should strive to be up to date regarding available research findings on that topic, identifying results that both support their position and contradict it. When not reporting in a current or comprehensive manner, those making research claims should be explicit about the scope of those claims.

To stay current in their understanding of the scientific literature, family justice practitioners should routinely read the research and attend seminars or conferences. They might also seek professional consultations from knowledgeable colleagues with appropriate expertise.

## **6. VERIFY GENERALIZABILITY OF RESEARCH CLAIMS**

**Verify the extent to which research claims can be generalized (a) to the facts of a particular case, (b) to diverse populations of clients and service providers, (c) to family law settings not included in the original studies, over time, and (d) in diverse places.**

Conclusions from research conducted on specific groups of people may not apply to everyone. Family justice practitioners should consider cultural, racial, socioeconomic, and other relevant factors when applying research findings to a specific family. Research is often based on “convenience samples” using narrow social, racial, socio-economic or other groupings (e.g., white middle class), and the findings may not be applicable to persons of differing race/ethnicity, social class, or other social identifications or circumstances. Family justice practitioners should identify when research findings being presented may not apply to a specific family or group.

Furthermore, research typically reports on group, or aggregate, data (the exception being case studies), and the results do not mean that everyone will experience the same outcome. For example, if research suggests that many children adjust to divorce by exhibiting certain behaviors (e.g., poor academic performance), this does not mean every child of divorce will have the same reaction. Therefore, when using research to support or explain an opinion, make a recommendation, or provide general education, family justice practitioners should be clear that while the group data may support a specific conclusion, it does not guarantee that same behavior or outcome for particular persons or family circumstances.

## **7. COMMENT ON STUDY LIMITATIONS**

**Understand and acknowledge the limitations of research design and methodology that may impact a study’s findings in reports and summaries.**

Thoroughly describing the limitations of a study or a research review helps prevent it from being given more weight or being considered more broad-based than is warranted. For example, if data are collected only at the conclusion of an intervention being studied, one cannot make assumptions about the intervention’s short or longer term effectiveness. Similarly, without a pre-test assessment and a control group, we cannot attribute change after an intervention to the program itself. Family justice practitioners should acknowledge the limitations of the research and scientific literature when presenting information and making recommendations. Specifically, they should discuss any limitations related to how strong the findings are, and for whom, in their reports, testimony, and presentations.

**8. CONSIDER ALTERNATIVE INTERPRETATIONS**

**Consider and acknowledge alternative explanations of research claims and their applicability to a new problem, issue, case, or dispute.**

It is important to consider research findings from different perspectives. Empirical studies are often focused on specific questions/hypotheses that frame the interpretations of the data. In discussion of the data, alternative perspectives should be identified and competing hypotheses examined. The research may have failed to include or measure other factors that might explain the outcome or behavior of interest. For example, a study may report that children’s adjustment to divorce may be attributable to father involvement or mother’s parenting if these are the variables studied, when in reality conflict or poverty might explain as much or more of the outcomes. It is also possible that a study shows no significant results, because what really mattered wasn’t studied. For example, outcomes of “separation” may be largely a function of ongoing parental conflict that wasn’t identified in a study.

Family justice practitioners must, therefore, be cautious about interpretations presented as if they are the only possible conclusions to draw. They should, for example, be careful to distinguish between correlational and causal findings. What researchers find is affected by what they choose to study, how they choose to study it, and what they cannot study due to practical limitations.

**9. IDENTIFY CONSENSUS AND DISAGREEMENT ON QUANTITY AND QUALITY OF RESEARCH**

**Identify areas of broad consensus and disagreement about the state of the research on an issue, acknowledging strengths and deficits in quantity and quality of research studies.**

Family justice practitioners should disclose whether there is sufficient research – considering the number and quality of separate research studies - on a topic to draw firm conclusions. It is also important that they be transparent about the extent to which those studies generate findings that are consistent or contradictory, and the possible reasons for contradictory findings, as not all

research is of equal scientific quality or has the same relevance to the issue at hand. Meta-analyses and systematic reviews are exemplary means of culling results to show a consensus of findings that extend across different kinds of studies.

It is rarely safe to draw on a single study to offer or dispute firm evidence on an issue. One can be more confident when a study has been replicated, that is, when multiple studies on the same topic that rely on similar methodologies and draw from similar samples generate similar results.

## **10. DISCLOSE CONFLICTS OF INTEREST**

**Identify and disclose potential conflicts of interest that may influence or bias research claims in support of specific interventions, services, or child custody policies.**

Family justice practitioners should reflect on and be open about motivations that might impair their ability to objectively and accurately appraise research claims. For example, a person who conducts research on a program they developed, or in which they have an advocacy or financial interest, should disclose this information along with any steps taken to ensure that the study has been conducted, and the findings reported, in an objective manner. Conflicts of interest should be avoided when possible and disclosed when present. Consumers of research should remain vigilant for research reports that espouse a particular interpretation of the existing data, but are less than reliable due to conflicting interests impacting the expert presenting it.

## **11. IDENTIFY BASES OF CLAIMS**

**Distinguish the parts of a claim or opinion that are based on social science research from parts drawing on other bases, such as clinical observation, personal and professional values, or professional experience.**

Social science research should be used to inform but not determine a specific course of action. Other factors or sources of knowledge are also relevant. The key is to clarify the basis of knowledge.

Individual research studies, or even synthesized meta-analyses or reviews of studies, are not sufficient on their own to definitively support a specific determination or course of action, particularly when applying group research findings to an individual case. Resolutions and arguments presented in family law matters will therefore often draw on other bases beyond social science research, including professional judgment, clinical observation, financial considerations, and societal values, as reflected in laws. Persons making claims should be transparent about the different factors that led them to a particular conclusion, and the relative weight they applied to these factors.

## **12. ACKNOWLEDGE AND ADDRESS POWER IMBALANCE**

**Be aware of and correct for power imbalances between professional and client or differing professions that may lead to uncritical consideration or acceptance of research claims.**

Family justice professionals should be mindful of the impact, or perceived impact, of their expertise and influence over their clients and other practitioners. For example, parents attending a divorce education program may accept research claims by the presenter at face value and without critical assessment. Similarly, a lawyer with limited social science literacy may uncritically accept the representation made by a researcher or expert witness.

As such, family justice professionals who are presenting research should thoughtfully consider the manner in which it is being shared. Those listening to presentations have a right to a full and fair airing of the research so that they are better positioned to critically review and question the information.

### **13. ESTABLISH RELEVANCE**

**Establish the relevance of social science research claims to the issue in family law by addressing the degree of fit between the research and the family law matter.**

The use of social science research findings offered as evidence in an adjudicative process, as information to enhance decision making in a dispute resolution process, or in educational programs, requires consideration of how the research applies to the issue(s) in the case. This requires determining how the concepts, findings, or principles of the research fit the context and facts, and therefore whether the research helps decision makers (e.g., courts or parents) to resolve important and material issues in the case. The connection between the social science information put forward and the disputed issue or issues in a case should be examined each time it is introduced, whether for a trial or an alternative dispute resolution process.

### **14. ADHERE TO RULES OF COURT AND RULES OF EVIDENCE**

**Know and follow the Rules of Court and relevant statutes as they relate to the use and presentation of social science in family law proceedings.**

The rules of court (and, often, other dispute resolution processes) are designed to balance fairness and efficiency, resulting in a just process. Rules of evidence provide the means for determining what evidence is admissible, how it will be heard and challenged, and how much weight it will be given. The rules of evidence regarding the admissibility of scientific evidence require additional considerations of soundness, validity, and reliability. If scientific evidence is admitted in court, the ultimate weight given to that evidence is the responsibility of the judge.

The rules of evidence govern when, how, and under what conditions an expert witness can introduce social science knowledge into the court process. Knowing the rules of evidence helps social science and legal professionals use and challenge research properly, in ways that satisfy the requirements of evidence laws. Working on any interdisciplinary boundary -- but especially one where research sometimes provides influential evidence -- dictates that professional

participation is in keeping with the highest ethical, scientific, and professional standards. Achieving these standards requires familiarity and understanding of the laws and policies governing the introduction and use of research in family law proceedings.

The rules of evidence for family proceedings are not always identical to those applicable in criminal and most other civil proceedings, as family courts must take account of the best interests of children as well as fairness to the parties. Further, judges and other professionals are inevitably affected by their implicit understandings of social reality and family life. Judges and other family justice professionals need to be self-aware, articulate their social understandings, and check them against the best available social science knowledge.

## **15. AVOID MISLEADING TACTICS**

**Avoid tactics that contribute to false or misleading empirical claims.**

Deliberate misrepresentation of social science is unethical. Examples of misrepresentation include using one's status as an expert in the field (rather than the research itself) to legitimize advocacy claims; impugning the integrity of another researcher to delegitimize alternate interpretations; or cherry picking, i.e., selecting and presenting studies that support an argument while ignoring those that refute it.

Information should be presented in a way that organizes the evidence clearly and clusters information to offer an informed and balanced opinion of the research presented.

## **16. SEEK CONTINUING EDUCATION**

**Improve research literacy by participating in and promoting personal, professional, and public education regarding the findings and use of social science research in family law.**

Research literacy addresses the degree to which family court practitioners understand the general purposes, methods, and contexts associated with generating, conducting, and reporting research. Family justice practitioners should seek and promote continuing education on an ongoing basis by attending continuing education programs, and keeping current on the professional literature.

Continuing education is especially important in an interdisciplinary setting such as family law. Family justice practitioners should endeavor to stay up to date on the most recent social science research related to family law topics such as child development, the impact of separation and divorce on children, parent-child contact problems, intimate partner violence, the role of fatherhood, and the efficacy of various programs and processes (including mediation, parenting coordination, and divorce education) that families might encounter.