

10-2018

Getting Blood From Stones: Results and Policy Implications of an Empirical Investigation of Child Support Practice in St. Joseph County, Indiana Paternity Actions

Margaret F. Brinig

Notre Dame Law School, mbrinig@nd.edu

Marsha Garrison

Brooklyn Law School

Follow this and additional works at: https://scholarship.law.nd.edu/law_faculty_scholarship



Part of the [Family Law Commons](#)

Recommended Citation

Margaret F. Brinig & Marsha Garrison, *Getting Blood From Stones: Results and Policy Implications of an Empirical Investigation of Child Support Practice in St. Joseph County, Indiana Paternity Actions*, 56 *Fam. Ct. Rev.* 521 (2018).

Available at: https://scholarship.law.nd.edu/law_faculty_scholarship/1357

This Article is brought to you for free and open access by the Publications at NDLScholarship. It has been accepted for inclusion in Journal Articles by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

**GETTING BLOOD FROM STONES: RESULTS AND POLICY
IMPLICATIONS OF AN EMPIRICAL INVESTIGATION OF CHILD
SUPPORT PRACTICE IN ST. JOSEPH COUNTY, INDIANA PATERNITY
ACTIONS**

Margaret F. Brinig and Marsha Garrison

Today, there is consensus that the current system of allocating and enforcing child support obligations does not work well for disadvantaged families, most of which are nonmarital. Nonmarital children are less likely to have support orders established than marital children, and they are much less likely to experience full payment. In this article, we report data on child support awards and enforcement associated with a sample of paternity actions brought in 2008 or 2010 in St. Joseph County, Indiana. We found that child support practice in St. Joseph County promotes limited contact between children and their absent fathers, nonpayment of prior support obligations, and the accrual of arrears that can never be paid. These results strongly support recent changes in federal child support regulations and programs that postdate the orders in our study. Our results also demonstrate both the need for additional reforms and the difficulties that lie ahead as the states begin to grapple with applying the new standards.

Key Points for the Family Court Community:

- Child support enforcement among the very disadvantaged neither makes fathers more responsible nor collects significant money
- It also makes contact with their children less likely and results in the amassing of arrearages that will never be paid
- While recent federal legal changes move in the right direction, we fear that local agencies are still unable to calculate incomes when none can be shown, and, as with credit for other paid support orders, resort to shortcuts that are inaccurate and unproductive

Keywords: *Child Support; Child Support Enforcement; Empirical Research; Indigent Fathers; Nonmarital Children; Paternity; Poverty; and Unmarried Parents.*

Today, there is consensus that the current system of calculating and enforcing support obligations does not work well for disadvantaged families, most of which are nonmarital. Nonmarital children are less likely to have support orders established than marital children, and they are much less likely to experience full payment.

In this article, we report data on parenting time, child support calculation, and enforcement actions in a population of nonmarital children for whom paternity actions were brought in 2008 or 2010 in St. Joseph County, Indiana. The computerized, court-based record system we utilized to collect data gave us access to information on parental characteristics and child outcomes that other researchers investigating child support practice in disadvantaged populations have been unable to access. Our research thus offers an unusually data-rich window into current outcomes in a population where problems are large and new solutions are desperately needed. Our findings demonstrate that recent changes in federal child support regulations and programs, which postdate the orders in our study, were very much needed. Our findings also demonstrate the need for additional reforms and the difficulties that lie ahead as the states begin to grapple with applying the new standards.

Corresponding: marsha.garrison@brooklaw.edu; Margaret.Brinig.1@nd.edu

I. THE DEVELOPMENT, AIMS, AND RESULTS OF U.S. CHILD SUPPORT POLICY

Ensuring that child support orders are entered and enforced against nonresident, “deadbeat” fathers¹ has been a guiding principle of U.S. support law for the past half century. Current law and practice generally derives from a federal initiative, inaugurated in 1975, designed to raise support values and increase the likelihood that a support award would be paid. This initiative stemmed from sharp increases both in the number of single-parent families² and in the cost of public assistance to these families.³ Due to similar demographic shifts and increased public-assistance burdens, many other industrialized nations initiated comparable changes in child support law and practice during the same period.⁴

The first major U.S. legislation, enacted by Congress in 1975, established the federal Office of Child Support Enforcement (OCSE) and required the states to create their own child support enforcement agencies as a condition of receiving reimbursement for public assistance to needy children and their families (Aid to Families with Dependent Children [AFDC]).⁵ The new federal law required parents (typically mothers) applying for AFDC benefits to assign their child support claims to the state as a condition of receiving assistance. It required the new support agencies (popularly described as IV-D agencies because they originated in Title IV-D of the federal Social Security Act) to establish support obligations for absent parents of federal-supported children, collect support from those parents, and provide a parent-locator service equipped to search state and local records for information on parents who could not be found. To reduce applications for public assistance, the 1975 law also made IV-D services available to all parents who paid a reasonable fee.

The 1975 requirements were expanded by the Child Support Enforcement Amendments of 1984 (CSEA)⁶ and Family Support Act of 1988.⁷ These new laws required the states to change the method by which child support orders were calculated. Support determination had previously relied primarily on judicial discretion to produce an award value; under the new federal rules, states were required to adopt guidelines that took into account “all earnings and income of the absent parent” and used “specific descriptive and numeric criteria” to produce a presumptive award value.⁸ CSEA also required the states to add new enforcement weapons to their arsenals, including immediate wage withholding, the imposition of liens against nonpaying obligors, the deduction of unpaid support from federal and state income tax refunds, and statutes of limitation permitting the establishment of paternity up to eighteen years after a child’s birth. This package of requirements was further expanded by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996,⁹ which mandated innovations in paternity establishment, expanded informational resources used for parent locating, required certain expedited procedures for routine cases, and provided funds for programs to improve unemployed fathers’ job prospects and to support fathers’ access to their children.

In response to these various federal mandates, state child support law and practice have shifted dramatically. Before the 1975 law was enacted, parents seeking support were invariably forced to find the obligor parent themselves and to pay for legal assistance in establishing and/or enforcing a support award; today, 50–60% of all support orders are obtained through the IV-D program.¹⁰ Before federally required innovations in paternity establishment, paternity was often not established; indeed, in 1979, the ratio of paternitys established by IV-D offices to the number of nonmarital births was .19.¹¹ Today, paternity is established in 100% of IV-D cases.¹² The shift in law and practice has also dramatically increased child support collections. In fiscal year 1977, state IV-D agencies served fewer than a million cases and collected less than \$1 billion. In fiscal year 2015, these same agencies served nearly 16 million children and collected \$28.6 billion.¹³

Increased child support collections serve a range of goals. Child support payments lift approximately a million family members out of poverty every year.¹⁴ Because of child support’s positive effects on labor supply, welfare participation, fertility, and marriage decisions, every dollar of support paid also lifts the household income of recipient families by a much larger amount.¹⁵ Moreover, because fathers who pay child support are more likely to spend time with their children,¹⁶ it is possible that the federal child support program has increased parent–child contact for at least some children.¹⁷

Despite these successes, the likelihood of neither a formal child support order nor full payment has increased. In 1979, when the first federal survey of child support awards was published, 59.1% of mothers eligible to receive child support had obtained support orders, and about half of those awarded support received full payment.¹⁸ In 2014, 53.1% of eligible mothers had a court order or some type of agreement to receive financial support from the noncustodial parent(s), and 46.2% received full payment.¹⁹ In inflation-adjusted dollars, the average value of a support award actually declined from \$5,866 in 1978 to \$3,936 in 2014.²⁰

The reason for the seeming anomaly of vastly increased child support collections but lower award rates and values is a substantial increase in single-parent families. Between 1975 and 2016, the number of U.S. single-parent families increased from 4.9 to 11 million.²¹ The percentage of U.S. children living with a single parent also increased, from 17% in 1975 to 26.8% in 2015.²²

This increase in single-parent households—the type eligible for child support—was initially driven, in part, by a rising divorce rate. But the U.S. divorce rate in recent years has leveled off and even declined for college-educated couples.²³ The continuing increase in the proportion of single-parent households is thus due to a dramatic rise in nonmarital parenting. In 1970, 11% of U.S. births were nonmarital²⁴; in 2015, 40.3% of U.S. births took place outside of marriage.²⁵

Nonmarital relationships are much less stable than marital relationships, and they tend to terminate more quickly. In the United States, children born to unmarried parents are about three times as likely to see their parents separate before the age of five as are children born to married parents.²⁶ Moreover, as compared to married fathers, unmarried fathers are, on average, younger when their first child is born,²⁷ less well educated,²⁸ and have lower income.²⁹ They are less likely to be in the labor force than married fathers³⁰ and more likely to be members of a racial or ethnic minority.³¹

Today's population of support obligors contains a high percentage of disadvantaged men with deeply impaired capacity to adequately support their children. Indeed, based on a 1998 survey, researchers calculated that one-third of nonresident, unmarried U.S. fathers lived in a household with income below the poverty line.³² Given declining male wages for all but the college-educated over the past twenty years,³³ the proportion of support obligors who are poor may be even higher today.

The low capacity of unmarried fathers to pay support is exacerbated by the fact that they are far more likely than married fathers to have children with more than one mother. Researchers have found that men unmarried when their first child is born are three to four times as likely to have children with additional partners as compared to fathers married at the birth of their first child.³⁴ Multiple-partner fertility (MPF) translates into multiple support obligations, much harder to meet than just one.

An accumulating body of evidence has also revealed that the current system for assessing and collecting child support does not work well for low-income obligors. First, support orders typically require poor obligors to pay a much higher income percentage than that mandated for higher-income obligors.³⁵ For example, one survey found that 28% of poor fathers were required to pay half or more of their incomes in child support.³⁶ Such almost-impossible-to-meet obligations result primarily from state rules that impose minimum support obligations³⁷ or impute income to unemployed parents.³⁸ Both types of rules are common; in 2013, approximately half of the states had support guidelines that mandated a minimum payment obligation,³⁹ and all states permit income imputation.

Unsurprisingly, high-percentage support obligations produce nonpayment. Researchers have found that both the percentage of current support collected and payment consistency significantly decline when an obligor is required to pay more than 20% of his gross income.⁴⁰ They have also found that support orders based on fictional, imputed income will most likely yield \$0 in total payments during the year after the order was entered.⁴¹

In many states, noncustodial parents whose children receive federally funded public assistance benefits also have reduced incentives to pay support because whatever they do pay goes directly to the state and will not benefit their children. Despite strong evidence that policies under which an obligor's support is passed through to the residential parent without a reduction in public benefits

increase children's support without reducing parental workforce participation or producing large public costs,⁴² about half of the states retain all support payments they collect from obligors whose children receive public assistance.⁴³

To avoid paying the state, many low-income obligors make in-kind contributions to their children.⁴⁴ In surveys, 40–50% of low-income mothers eligible for child support report in-kind contributions from fathers.⁴⁵ The value of these contributions is often significant, particularly in view of fathers' low incomes.⁴⁶ But these contributions do not count in the formal support system.

Thus, low-income obligors are responsible for the bulk of unpaid child support. Indeed, in one nine-state study, 70% of unpaid child-support debt was owed by parents with incomes of \$10,000 per year or less.⁴⁷ Many of these low-income obligors are unemployed. In another survey, only 34% worked full time, and only 8% worked full time throughout the year; 41% (excluding those incarcerated) had not worked at all during the prior year.⁴⁸

When a support obligor is not working, wage withholding—which accounted for three-quarters of all child support collections in 2015⁴⁹—cannot ensure that he makes payments. The problem of collection is particularly acute for men who have been incarcerated.⁵⁰ Although the proportion of currently incarcerated noncustodial parents in state and federal prisons is only about 5% of the total IV-D caseload, 30–40% of cases state offices describe as “hard to collect” involve a noncustodial parent with a criminal record.⁵¹

Because low-income parents with arrears often have no assets that can be attached or wages that can be garnished, IV-D agencies have typically employed the threat of jail—civil contempt proceedings—as a means of collection.⁵² Although we lack hard data on either the number of contempt petitions filed by IV-D agencies or the proportion of these petitions targeted at obligors unable to pay, commentators have generally concluded both that contempt is routinely used when wage withholding is unavailable and that most of those who go to jail are unable to pay.⁵³

Mounting evidence of the disproportionate support burden borne by low-income parents has led some critics to argue that support nonpayment results more from dads being “dead broke” than “deadbeat.”⁵⁴ Not all of the evidence supports the hypothesis that low income drives support nonpayment; for example, researchers have found that fathers are more likely to pay support, both formally and informally, if they are in continued contact with their children.⁵⁵ But it is now clear that low income, unrealistic support obligations, and lack of payment incentives all play a major role in obligors' failure to pay.

In recent years, the OCSE has responded to the accumulating research on nonpayment and obligor poverty with several new initiatives. To reduce payment disincentives for children supported by public assistance, the Deficit Reduction Act of 2005 required the federal government to share in the cost of child support collections for children supported by public assistance that was passed through to custodial parents.⁵⁶

New child-support regulations that became effective in 2017 address the problem of fictional, imputed income and civil contempt.⁵⁷ The new regulations require IV-D agencies to base support obligations on “the specific circumstances of the noncustodial parent”; the OCSE's interpretive memo specifies that, under this standard, “[i]mputing income will need to be done on a case-by-case basis, when there is an evidentiary gap.”⁵⁸ The regulations also address excessive use of civil contempt by requiring agencies to determine whether a support obligor has the “actual and present” ability to pay his support obligation as a precondition to filing a contempt petition and to provide the relevant court with information regarding such ability.⁵⁹

Since 2012, the OCSE has also funded a number of demonstration projects aimed at helping low-income fathers gain the capacity to meaningfully support their children.⁶⁰ This initiative is based on research showing that child-support-linked employment programs are more likely than others to yield positive results for support obligors and their children.⁶¹ Evaluation of these OCSE programs has not yet been completed, but a review of other child-support-linked employment programs found that some strategies had promising effects on the employment and earnings of low-income adults.⁶² The effects were extremely modest, however, and surveys suggest that many poor obligors face major barriers in obtaining employment. In one survey, 41% lacked a high school

diploma, a quarter had a health condition that limited their capacity to work, and 16% were institutionalized, mostly in prison.⁶³ Designing programs that work for obligors so multiply disadvantaged will be a challenging task.

II. OUR STUDY SITE AND SAMPLE

Our study focuses on 688 paternity actions brought in St. Joseph County, Indiana during 2008 and 2010.⁶⁴ For these cases, the court-based record system that we obtained judicial permission to access provided us with extraordinarily rich and detailed information about focal children (the oldest born to parents named in the paternity order) and their families. Unusually (perhaps uniquely), the record system provides clickable links to other family court records for parents and their children. Using this system, we were able to access detailed information on initial child support awards, award modification and enforcement, the allocation of parenting time and legal custody, orders of protection, child maltreatment reports and findings, juvenile status and delinquency charges, and the child's and parents' addresses and moves. The court records also enabled us to determine if the focal child's parents had children with other partners and, most of the time, both the number of other partners involved and the total number of children the parent had with those partners. For half-siblings living in St. Joseph County, we were able to access the same information available for focal children and their siblings. The same information was available for parents if the parent lived in St. Joseph County during his/her minority. For children and parents with a history of court involvement, the files also contained case notes. For example, we could typically see the results of drug tests, the number and duration of residential placements, school history (truancy, expulsion, behavioral problems), family background (parents involved in crime, family receives welfare, etc.), and the child's mental and emotional state (suicide precautions, risk of violence, known substance abuse). Using other databases, we were also able to determine whether parents had adult criminal records, if they had been incarcerated, and, most of the time, the charges that produced imprisonment. In sum, the database from which we obtained case information offered the opportunity to look at child support practice in an unusually detailed way.

The study site, St. Joseph County, Indiana, is also an excellent location in which to examine the calculation and enforcement of child support for nonmarital children. The demography of St. Joseph County is fairly consistent with that of the United States as a whole except that it is somewhat poorer and has a lower proportion of Hispanic and foreign-born residents.⁶⁵ St. Joseph County also offers extremes. It is home to the University of Notre Dame, a prestigious school with more than 1,000 full-time faculty members and a large professional staff. It also contains South Bend (population around 100,000), a once-thriving hub of manufacturing employment that is now, like most of the American rust belt, struggling with a massive decline in stable, blue-collar employment. Most Notre Dame faculty and staff live in or near St. Joseph County, creating a large base of well-educated, well-paid citizens. But South Bend also has entrenched pockets of deep poverty. In 2015, *The Economist* reported that “[t]he city's unemployment rate remains in the low double digits; 28% of its inhabitants live below the poverty line and 75% of children in public schools are eligible for the free lunches offered to low-income families.”⁶⁶ St. Joseph County is thus a place that, in the aggregate, is pretty average. But its averages mask large contrasts and, reflecting these contrasts, crime, unemployment, poverty—and the families we studied—are highly concentrated in some neighborhoods.⁶⁷

Our sample, composed exclusively of unmarried parents, reflects the demographic variables—youth, membership in a racial minority, MPF, and low income—associated with nonmarital birth.⁶⁸ Fathers' median age at the birth of the focal child was 25.0 years; mothers' median age was 22.2.⁶⁹ Fully 51% of sample fathers for whom race information was available were African American,⁷⁰ more than four times the proportion of African Americans in St. Joseph County generally.⁷¹ We found that 56.8% of mothers and 47.8% of fathers had at least one child with another partner.⁷²

Indeed, thirteen mothers and fifteen fathers were parties to two (or, in one case, three) paternity actions.⁷³

Median family income for the sample was \$27,248 per year, well below the \$42,316 St. Joseph County median⁷⁴; only 25% of sample parents had combined incomes exceeding \$30,680 per year. As one would expect, individual parental incomes were also low. The median paternal income was \$13,624 per year. In 5.9% of cases, the father had a listed income of zero dollars,⁷⁵ and 25% had incomes of \$12,168 per year or less. Maternal incomes were quite similar. Median maternal income was, again, \$13,624 per year; 6.7% of mothers had listed incomes of zero dollars; and 25% had incomes of \$12,168 per year or less.

African American incomes lag behind those of non-Hispanic Whites nationally.⁷⁶ This was also true in the study population, at least for men. Fathers' incomes varied significantly by their own race/ethnicity⁷⁷ and that of the mother.⁷⁸ Mothers' incomes did not vary significantly by either the father's or the mother's race/ethnicity; only the mother's identification as non-Hispanic White was significantly correlated with her income.⁷⁹

A very high percentage of both mothers and fathers also had incomes that are highly likely to be imputed. Indeed, this is why the median income of mothers and fathers in the lowest income quartiles are identical. Although the Indiana Supreme Court has disallowed the practice of imputing income when a parent is incarcerated,⁸⁰ the Indiana Support Guidelines in effect when support orders in the cases we studied were entered permit income imputation in a range of other circumstances. More specifically, although the guidelines specified that income imputation "may be inappropriate ... when a parent ... suffers from a debilitating mental illness, a debilitating health issue, or is caring for a disabled child," and "when a custodial parent with young children at home has no significant skills or education and is unemployed," they also encourage income imputation for most unemployed parents. Under the guidelines,

[e]ven though an unemployed parent has never worked before, potential income should be considered for that parent if he or she voluntarily remains unemployed without justification [and] ...

[w]hen a parent is unemployed by reason of involuntary layoff or job termination, it still may be appropriate to include an amount in gross income representing that parent's potential income. . . .⁸¹

Although the guidelines state that "potential income shall be [assessed] ... by determining employment potential and probable earnings level based on the obligor's work history, occupational qualifications, prevailing job opportunities, and earnings levels in the community,"⁸² they also specify that, in the absence of "any other evidence of potential earnings," the "federal minimum wage should be used in calculating potential income for that parent."⁸³ The guidelines currently in effect suggest a somewhat more discretionary approach, specifying that "[p]otential income equivalent to the federal minimum wage may be attributed to that parent."⁸⁴

In our sample, approximately half (47.1% of fathers, 55.9% of mothers) of parents whose incomes were recorded had listed income that was likely imputed⁸⁵; 39.2% of fathers and 47.4% of mothers had listed incomes representing the value of the minimum wage for the year in question multiplied by forty hours.⁸⁶ An additional 7.9% of fathers and 8.5% of mothers had listed incomes of \$104 per week, a value representing one-half of the federal poverty-level income for a single person. This lower-value imputed income was introduced by the local IV-D agency in 2010. The unwritten policy authorizes the lower value when a parent has a known substance-abuse problem, impaired work ability due to a medical problem, a felony record, and when s/he lacks both a high school diploma or GED degree and an employment history.⁸⁷ Prior to 2010, the minimum-wage value was invariably used to measure imputed income when there was no basis for a higher figure.

The evidence from our sample thus strongly suggests that the Support Guidelines' command to "consider" income imputation has had the effect, in St. Joseph County, of producing automatic income imputation for individuals who are not working or not working officially. The files also

suggest an “either-or” decision: if the parent was not working, the minimum-wage imputation value was assigned unless the IV-D attorney concluded (after 2010) that the \$104 figure was appropriate. The father’s history of incarceration and his history of drug/alcohol abuse, the two stated decision-making factors on which we typically had case information, were both significantly correlated with wage imputation at the \$104 level.⁸⁸ However, the case files contained absolutely no information on parents’ education level, work history, or job training. Therefore, we cannot fully assess how consistently the lower value was applied.

The father-obligor’s having likely imputed income at the minimum-wage level was positively and significantly related to the imputation of income to the mother at that level, the father’s African American race,⁸⁹ and his having failed to appear at the paternity establishment hearing. It was negatively related to a 2010 petition year, the mother’s residence in St. Joseph County at or before age fourteen, the father’s receipt of disability benefits or being incarcerated, and mediator involvement.⁹⁰

However, these variables explained only 22–30% of case variance (see Table 1).⁹¹

In cases of imputed income, we have no way of knowing how much income the parent to whom income was imputed actually earns. He may be working off the books (engaged in activities that are legal or illegal), but the resources from which child support might come are, at best, speculative.

The high level of income imputation in our sample suggests a high level of poverty. But given that both mothers and fathers often lived in complex households that included children from other relationships and new partners with children from earlier relationships, it is close to impossible to estimate how many parents and children lived below the poverty line.

We can say that the vast majority of sample families had incomes well below what would be needed for self-sufficiency. The Indiana Self-Sufficiency Calculator, developed by the Indiana Institute for Working Families, captures “the income working families need to meet their basic necessities without private or public assistance.”⁹² In St. Joseph County in 2016, a family composed of one adult and one preschool-age child needed a \$17.91 hourly wage—\$33,300 per year in \$2009—to achieve self-sufficiency, well above the \$27,248 median *total* income of sample parents.

Another clue to the sample’s poverty rate is the large proportion—95.3%—who were in the IV-D program. IV-D involvement is mandatory where a child is receiving federal welfare benefits or is in foster care, both strongly linked to poverty. And, while use of the IV-D program is optional, services are not limited to those who are low income; surveys show that parents who are poor, never married, young, and poorly educated are much more likely to receive IV-D services than others. Nationally, in 2010, 52% of parents in the IV-D program had family incomes below 150% of the poverty line, 47% were never married, 30% were under thirty years of age, and 12% had a college degree. By contrast, only 28% of non-IV-D families had comparable low incomes; only 27% were never married, 16% were under age thirty, and 24% had a college degree. Reflecting these divergent

Table 1

Predictors of Paternal Income Imputed at Minimum Wage (Father Required to Pay Support, $N = 621$)

<i>Variable</i>	<i>B</i>	<i>Stand. Error</i>	<i>Wald</i>	<i>Signif.</i>	<i>Odds Ratio</i>
Father is African American	.651	.199	10.711	.001	1.917
Father did not appear	.896	.331	7.329	.007	2.450
Father incarcerated or disability recipient	-3.205	.783	16.766	<.001	.041
Father’s total known moves	.079	.023	12.290	<.001	1.083
Focal child has half-sibling	.469	.219	4.573	.032	1.599
Mother’s income imputed at minimum wage	1.282	.198	41.953	<.001	3.604
Mediator involved	-1.960	.805	5.927	.015	.141
Mother in county from age 14	.660	.210	9.917	.002	1.935
2010 petition year	-.696	.210	10.955	.001	.498
Constant	-2.306	.301	58.559	<.001	.100

profiles, about two-thirds of IV-D recipients receive some sort of public assistance, as compared to 25% of the non-IV-D group.⁹³ The IV-D population is also disproportionately composed of women and parents of color. Nearly 90% are female, and close to half are either African American (27%) or Hispanic (20%).⁹⁴ Given the strong correlation between IV-D and disadvantage, it is unsurprising that, in our sample, IV-D status was significantly and negatively correlated with both maternal and paternal income.⁹⁵

While the demographic characteristics of our sample are consistent with those of American non-marital parents generally, the sample contains an even larger proportion of unstable relationships. In the U.S. Fragile Families study, 35% of couples with a nonmarital child were still together after five years.⁹⁶ In our population, the median age of focal children (the first born to this mother and father) at the time a paternity/support order was entered was two years (average 3.6 years), and only 24.6% of focal children were five years or older at order entry.⁹⁷

Perhaps reflecting this high level of instability, in a very large proportion of sample cases, paternity was established through genetic testing at the time a paternity action was brought while, nationally, paternity is established consensually through an affidavit of paternity signed by both parents in the hospital at least 60% of the time.⁹⁸ The court records typically did not permit us to determine which parents cohabited and which did not, but the high rate of genetic testing also suggests a lower rate of cohabitation than among the general pool of unmarried parents.

Given the lack of national data, we cannot draw comparisons between the sample and the larger pool of nonmarital parents with respect to involvement with the child welfare system, family court, and criminal justice system. But the parents we studied had a very high rate of such involvement. Almost a quarter (23.8%) of sample mothers had one or more children who were the subject of a substantiated child maltreatment report, 30.1% of fathers had been incarcerated, and 30.7% of fathers had a record of alcohol or drug abuse. For fathers who lived in St. Joseph County by age fourteen, 28.5% had at least one juvenile status (runaway, truancy, habitual disobedience, curfew violations) record, and 50.2% had at least one juvenile delinquency arrest.

In sum, our study population is disproportionately composed of the most disadvantaged and most fragile of nonmarital families, a group that is itself far more fragile and disadvantaged than marital families.

III. LEGAL CUSTODY AND PARENTING TIME: ALLOCATION PATTERNS AND PREDICTABILITY

Support obligations typically follow the assignment of primary residential care, alternately described as primary physical custody. When the mother obtains primary custody, the father is the support obligor, and vice versa. If the child lives with both parents a significant amount of the time, child support obligations may be eliminated entirely or the higher-income parent may obtain a significant reduction in his support obligation as compared to what he would have been obliged to pay had the child lived primarily with one parent. Legal custody, which determines decision-making rights, may again be assigned to one parent or shared. The legal custody assignment does not typically affect support obligations, however.

Among the families in our sample, mothers were awarded primary physical and legal custody in 94.2% of cases in which a custody order was made.⁹⁹ Fathers obtained primary physical and legal custody in only 2.4% of cases and shared custody in .3%; father custody was less likely than a custody award to a third party (3.1%).¹⁰⁰

Mothers failed to obtain primary custody primarily when they were unable to perform parenting functions: 45% of father or third-party custody cases involved a mother who was imprisoned or who had a known alcohol or drug addiction problem, and 51% involved a mother with at least one substantiated child-maltreatment report. Shared custody was ordered in only two cases, one of which involved split custody. Even where the father was awarded visitation amounting to half the year or more, mothers still, invariably, obtained primary physical and legal custody.¹⁰¹

Extensive visitation was rare, however. The average number of overnight visits awarded to sample fathers was thirty-three, less than half the average for previously married fathers in Indiana during the same time period.¹⁰² Only 21% obtained at least 52 (one night per week) or more visits, and 68% of fathers were awarded no visitation at all.¹⁰³ Indiana has enacted parenting-time guidelines explicitly specifying that nonmarital fathers are entitled to the same visitation as marital fathers so this result does not reflect any legal bias against visitation by nonmarital fathers.¹⁰⁴

The number of overnight visits awarded to the father was positively related to the value of the basic total support award,¹⁰⁵ the father's dollar share of the total support obligation, and the focal child's male gender¹⁰⁶; it was negatively related to the father's self-representation at the paternity proceeding, his having failed to appear at the time support and visitation were determined,¹⁰⁷ the value of the final child support order,¹⁰⁸ the focal child's history of maltreatment or guardianship, and an incarceration history for one or both parents. However, these variables explained only about 20% of case variance.¹⁰⁹ Prior orders of protection were not significantly related to the father's visiting time¹¹⁰; the low level of visitation thus cannot be explained as a reaction to reported intimate-partner violence (see Table 2).

IV. SUPPORT AWARD CALCULATION: VALUE AND PREDICTABILITY

Even in the rare cases where mothers did not obtain custody, they were unlikely to be ordered to pay support. Among the 676 cases in which a support obligation was imposed, fathers were required to pay support in 96.9%. Thus, our analysis of support orders is confined to paternal obligations.

The Indiana Support Guidelines use combined parental income, the number of children in the family, the amount of residential time allocated to each parent, and each parent's support obligations for children with other partners to produce a presumptive support value.¹¹¹ For example, under the 2007 guidelines in effect when sample orders were made,¹¹² when combined parental income is \$150 per week, the parents have one child, and there are no other children with other partners, the presumptive award value is \$22; that value increases to \$30 if the couple has two children and \$35 if there are three (assuming that, again, the parents have no children with other partners). If the parents were to have combined income of \$170 per week, their support obligation would increase to \$28 (one child), \$38 (two children), and \$48 (three children). The obligor parent's share of the total presumptive value is based on his share of total income after credits for obligations to prior children are subtracted. Health insurance and childcare costs, when relevant, are added to the presumptive award. If a judge makes a child support award, s/he must justify deviation from the presumptive award, but the parents may agree to a different support value. Some states provide low-income

Table 2

Predictors of Father Visitation (Number of Overnight Visits: Father Ordered to Pay Support and Mother Has Primary Custody, $N = 647$)

<i>Variable</i>	<i>Beta (Unstand.)</i>	<i>Stand. Error</i>	<i>Beta (Stand.)</i>	<i>T</i>	<i>Signif.</i>
Constant	17.264	10.601		1.628	.104
Parental incarceration	-17.603	5.320	-.138	-3.309	.001
Final CS order (\$)	-.613	.073	-.449	-8.406	<.001
Basic Total CS order (\$)	.452	.064	.381	7.063	<.001
Focal child was male	18.598	4.745	.159	3.919	<.001
Father appeared at hearing	20.600	6.660	.127	3.093	.002
Father had no lawyer	-20.141	6.479	-.126	-3.109	.002
Focal child history of maltreatment or guardianship	-16.746	8.503	-.080	-1.969	.049

obligors with a self-support reserve or income-based obligation adjustment; the Indiana Support Guidelines do not. They do specify \$12 “as a minimum child support order.” However, they also state that “there are situations where a \$0.00 support order is appropriate.”¹¹³

For our sample, the value of child support awards was low, reflecting the low incomes of parents. For cases in which the father was ordered to pay support, the average award was \$51.29 weekly, the median \$45 weekly¹¹⁴; 12.2% of obligor fathers were ordered to pay nothing, and 15.7% were required to pay \$10 per week or less; the guidelines “minimum” of \$12 was imposed as the final award in only twelve cases (1.8%). The highest award was \$330 weekly; only 9.5% of awards were \$100 per week or higher. Unsurprisingly, the value of the final child support order was positively and significantly related to both maternal¹¹⁵ and paternal income.¹¹⁶

For cases in which the father’s income was stated as more than zero, awards averaged 19.25% of his gross income (median value, 16.6%).¹¹⁷ In 25% of cases, awards represented 11.5% of gross income or less; in 25% of cases, the ratio of award to gross income exceeded 20%. When existing child support obligations were subtracted from gross income, the average ratio of award to income increased to 21% (median 17.9%); more than a third (36%) of sample obligors had award-to-adjusted-income ratios exceeding 20%.

Under the guidelines, awards should be higher when an obligor has more income and lower when he has less income, when he has other children that he is supporting, and when he has more residential time with the child(ren) subject to a support award. All of these legislatively prescribed variables were, for our sample, highly significant predictors of award value; after stepwise regression analysis, the father’s income, total parental income, the father’s parenting days, the number of children to be supported by the order, and the credit the father received for supporting other children were all significant at the .001 confidence level. The fact that the mother’s income was probably imputed and a parental history of mental health problems or drug/alcohol abuse also survived regression analysis. Together, these variables explained almost two-thirds of the variance in support awards (see Table 3).¹¹⁸

The relatively robust predictability of support calculation in St. Joseph County suggests, at first blush, that the Support Guidelines are applied in a fair and consistent manner. But there is reason to be skeptical that this is in fact the case.

First, recall that the incomes of about half of fathers and mothers appear to be imputed or, in plain English, invented. When income is imputed to a parent, it is impossible to determine how much cash the parent actually has coming in or how much he could realistically pay in child support.

Second, the credits both fathers and mothers receive for other support obligations may significantly alter award values, and they are quite variable. Consider these examples¹¹⁹: Father A, with \$262 (likely imputed) weekly income and four children by two other mothers, received a \$101 credit; Father B, again with \$262 (likely imputed) weekly income and five children by one other mother, received a \$0 credit; and Father C, again with \$262 listed income and with four children by three mothers, received a \$50 credit. This variation is explicable, in large part, by whether prior support orders are known to support enforcement officials and, if so, the amount the prior order

Table 3
Predictors of Child Support Obligation Value (Fathers Ordered to Pay Support, *N* = 656)

<i>Variable</i>	<i>Beta (Unstand.)</i>	<i>Stand. Error</i>	<i>Beta (Stand.)</i>	<i>T</i>	<i>Signif.</i>
(Constant)	-4.170	3.738		-1.116	.265
Father’s gross income (\$)	.139	.009	.662	14.658	<.001
Parenting time (days)	-.209	.020	-.271	-10.323	<.001
Children supported this order (#)	10.329	1.447	.188	7.138	<.001
Father’s child support credit (\$)	-.126	.023	-.144	-5.471	<.001
Total parental income (\$)	.024	.006	.173	3.838	<.001
Mother’s income imputed at minimum wage	-6.634	2.281	-.075	-2.909	.004
Parental history drugs/alcohol/mental problems	-5.724	2.351	-.064	-2.435	.015

required the father to pay (which will, in turn, reflect the incomes (or imputed incomes) of the father and other mother on the date the earlier order was entered). Thus, Father A's \$101 credit reflects the two prior support orders to which he was subject when the sample order was entered; these orders total \$101, the exact value of his credit. Father B received a \$0 credit because his five children were unknown to the IV-D staff. They lived out of state and their mother did not succeed in obtaining a support order against Father B until four years after entry of the order in our sample case. Father C received only a \$50 credit because that was the value of the support order for two of his children for whom support orders had been entered; his parental rights had already been terminated to one of his other children, ending his support obligation. We cannot say why the other support order was ignored because it was missing from the file; possibly that is the reason it did not produce a credit. The file with the missing support order did contain reams of support-enforcement data; we can confidently say that the father's arrearage on this order at the time the 2008 order was entered was \$69,000 and counting. However, one cannot suppose that the arrearage is why the order did not produce a credit; Father C was also in arrears on the order for which he received a \$50 credit. At the time the order in our sample case was entered, he owed \$2,995, and his driver's license had been suspended. Father A, who received a \$101 credit, was also in arrears (\$1,734) on one order to which he was subject at the time the sample order was entered. In the other case (as in ours), Father A's support obligation was reduced to zero shortly after entry due to his incarceration; as a result, arrears did not accumulate. We have described only three of 688 cases, but these three cases are typical of what we saw throughout the sample. Almost invariably, support credits were based on the values stated in prior support orders, without regard to payment history.

The high level of award predictability in our sample thus appears to reflect, to a very large extent, the routinization of support calculation rather than genuinely consistent treatment of like cases. The awards produced by this methodology thus rest, for what is probably a large portion of the sample, more on wishful thinking than economic reality: fathers were assumed to have incomes when they were likely unemployed; they were assumed to pay prior support obligations when it was clear that they were not doing so. Even the credits fathers obtained for overnight visits may not reflect reality. A large percentage of unmarried fathers significantly reduce their visitation with prior children after moving on to new relationships.¹²⁰ In our sample, the number of overnight visits awarded to the father was a significant predictor of a later motion to increase the support order,¹²¹ suggesting that many sample fathers did not in fact use their visitation time. In sum, consistency in sample support orders appear to represent the consistently rote application of rules ungrounded in the real-life circumstances of support obligors and their children.

V. SUPPORT NONPAYMENT AND ENFORCEMENT

Slightly more than half (51.3%) of sample fathers' support orders were not fully paid. Arrearage values were enormously varied, ranging from \$58 to \$60,355. For those cases with an arrearage, the average value was \$6,507, the median \$4,365.

The size of the arrearage was significantly and positively related to the value of the original order, the number of children to which the order applied, and the father's likely imputed income. Arrearage value was negatively related to parental reconciliation and a 2010 petition year. None of these relationships is particularly surprising. Imputed income is less likely to represent ability to pay than real wages; a higher value award will produce a larger arrearage when unpaid, and a later decision creates a shorter time over which an arrearage can build.

Petition year is also significant because the lower, \$104 imputed-income figure was used only in 2010, and the \$104-imputed-income cases were much less likely to produce arrearages than higher-value (minimum-wage) imputed income cases. For fathers with income imputed at \$104, 57% had no arrearage and 75% had an arrearage of \$1,500 or less; the group mean was \$1,204, the median \$0. For fathers with income imputed at the minimum wage, only 35% had no arrearage and 46% had an arrearage of \$1,500 or less; the group mean was \$3,494, the median \$1,895.¹²²

Surprisingly, however, arrearage value was not significantly correlated with either the percentage of gross income the obligor was required to pay in support or the percentage adjusted for prior support obligations.¹²³ It is also notable that neither the father's income nor his other children (the existence of other families, number of families, or number of children), although significantly correlated with the size of his arrearage, survived regression analysis as predictive variables. The total number of residential moves the father was known to have made did survive regression analysis as a predictive variable, however (see Table 4).¹²⁴

Regression analysis predicted less than 20% of arrearage-value variance, however.¹²⁵ Again, what contributes to the growth of arrears for low-income fathers like those in our sample is largely unexplained by our data.

We also analyzed the value of arrears for the smaller group of cases in which the arrearage value was greater than zero. Using regression analysis, these variables explained slightly more than a quarter of case variance.¹²⁶ For this group, the proportion of obligor gross income represented by the support obligation (both adjusted for prior support obligations and unadjusted), the number of children supported by the order, parental reconciliation, the father's total known moves, his identification as African American, and the petition year were predictive.

VI. SUPPORT ENFORCEMENT

Arrearages were typically followed by support enforcement proceedings. 48.9% of paternal support obligors in our sample—97% of those with an arrearage—were subject to one or another type of enforcement action. Enforcement proceedings were, unsurprisingly, strongly related to the size of a father's arrearage. Logistic regression analysis eliminated all other variables as predictors but predicted only a modest amount of case variance.¹²⁷ Enforcement was far more predictable, of course, when zero-arrearage cases were included. Logistic regression analysis for this larger group explained two-thirds to nine-tenths of case variance (see Table 5).¹²⁸

The most typical type of enforcement action was a contempt proceeding, which threatens the obligor in arrears with jail if he fails to pay some stated sum. Contempt proceedings were brought in 83% of enforcement cases.¹²⁹ Indeed, contempt proceedings were often brought multiple times in a single case. We found that 25.8% of enforcement cases involved two contempt petitions and 12.7% three or more.

By contrast, other forms of support enforcement—driver's license suspension, asset attachment, tax refund interception, and wage garnishment—were relatively rare. These enforcement techniques were used in only 30.1% of enforcement cases.

The reason for contempt being favored over other enforcement techniques is fairly straightforward: a very high percentage of the obligors in our sample did not have jobs that produced regular paychecks which could be garnished, tax refunds that might be intercepted, assets that could be attached, or passports that might be revoked; approximately half of paternal incomes were invented through income imputation. It is possible that driver's license suspension might have been more

Table 4

Dollar Value of Child Support Arrearage (Father Ordered to Pay Support, \$0 Arrearage Included, *N* = 617)

<i>Variable</i>	<i>Beta (Unstand.)</i>	<i>Stand. Error</i>	<i>Beta (Stand.)</i>	<i>T</i>	<i>Signif.</i>
(Constant)	-1458.768	673.863		-2.165	.031
Father's total known moves	367.728	55.507	.251	6.625	<.001
Children supported this order	1547.933	308.467	.193	5.018	<.001
2010 petition year	-1762.773	474.150	-.138	-3.718	<.001
Final CS order (\$)	22.414	5.309	.159	4.222	<.001
Parents reconciled	-2475.906	682.576	-.138	-3.627	<.001
Father's imputed income is minimum wage	1495.229	497.757	.115	3.004	.003

Table 5Dollar Value of Child Support Arrearage (Father Ordered to Pay Support, \$0 Arrearages Excluded, $N = 293$)

<i>Variable</i>	<i>Beta (Unstand.)</i>	<i>Stand. Error</i>	<i>Beta (Stand.)</i>	<i>T</i>	<i>Signif.</i>
(Constant)	896.146	1162.488		.771	.441
% of obligor income paid in support (adjusted prior orders)	44361.350	6506.652	.594	6.818	<.001
2010 petition year	-3345.450	760.082	-.216	-4.401	<.001
% of obligor income paid in support (unadjusted)	-27283.823	7247.993	-.327	-3.764	<.001
Children supported this order	1899.315	489.337	.214	3.881	<.001
Parents reconciled	-2893.830	1256.123	-.123	-2.304	.022
Father's total known moves	220.911	83.837	.132	2.635	.009
Father is African American	-1592.457	781.733	-.102	-2.037	.043

widely utilized, but in checking conviction data for our sample, we discovered that many obligors had had drivers' licenses suspended or revoked for other reasons. Other obligors were in prison where they could not use a driver's license, and some obligors undoubtedly had failed to obtain one. Likely, even license suspension is unavailable as a useful enforcement technique for a fairly large percentage of obligors.

What is less clear from our data is why local IV-D staff vigorously pursue some obligors with multiple contempt petitions and largely ignore others. Ability to pay does not seem to be a motivating factor. For the group of fathers with arrearages (the only candidates for enforcement action), paternal income was not significantly correlated with the number of enforcement proceedings.¹³⁰ The size of the arrearage, value of the final order, the father's having imputed income at the minimum-wage level, and the father's total known moves were all positively correlated with the number of contempt petitions. These variables predicted slightly more than 30% of variance in the number of contempt proceedings (see Table 6).¹³¹

The Supreme Court's 2011 decision in *Turner v. Rogers*,¹³² requiring "procedures that ensure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the support order," had no apparent impact on local contempt practice. The sample included fifty-seven cases with orders entered in 2011 or later with arrearages. Both the mean and median number of contempt actions per year was slightly *higher* for this post-*Turner* group than for cases with earlier order dates.¹³³ Nor is any difference in practice apparent in the case files. Indeed, post-*Turner* as well as pre-*Turner*, contempt orders were entered on default in a high percentage of cases, completely precluding any individualized inquiry.

Given the typical lack of other alternatives, it is easy to see why contempt proceedings are widely used. But our data demonstrate that this tempting remedy is not effective in the vast majority of cases in which it is used. The maximum collected—in a case with an arrearage totaling

Table 6Predictors of Contempt Proceedings Number (Father Pays Support, Arrearage Greater than Zero Dollars, $N = 330$)

<i>Variable</i>	<i>Beta (Unstand.)</i>	<i>Stand. Error</i>	<i>Beta (Stand.)</i>	<i>T</i>	<i>Signif.</i>
(Constant)	.693	.141		4.905	<.001
Arrearage value (\$)	6.955E-5	.000	.450	8.855	<.001
Final CS Order (\$)	-.006	.001	-.216	-4.229	<.001
Father's imputed income is minimum wage	.443	.116	.191	3.835	<.001
Father's total known moves	.037	.013	.145	2.901	.004

\$18,878—was \$6,500. The median value of support collected after contempt proceedings were brought was a mere \$428.92, and absolutely nothing—\$0—was collected in 58.3% of contempt proceeding cases. Even when fathers did pay, it was simply to avoid or escape jail. Almost invariably, arrears began to grow again as soon as the father was released.

Contempt proceedings might also represent an effort to deter further childbearing by obligors who cannot or will not meet their current support obligations. But, to the extent that contempt proceedings were motivated by such a goal, they did not work. Among sample fathers, having children with other mothers after entry of the support order was significantly and positively correlated both with the initiation of support enforcement¹³⁴ and the number of contempt proceedings¹³⁵ brought. We do not mean to suggest, of course, that contempt proceedings caused further child bearing. But neither did they deter it.

VII. POLICY IMPLICATIONS OF OUR FINDINGS

We can unequivocally say that St. Joseph County's child support system is broken. In our sample, fathers were rarely awarded more than token visitation and virtually never awarded joint legal custody, despite the well-established benefits of contact with both parents. Income was routinely imputed to parents at a minimum-wage level without any effort to assess actual earning capacity or to assist the obligor in building work qualifications and obtaining employment. Fathers' existing support obligations were credited at face value, perversely incentivizing nonpayment. Enforcement proceedings were initiated without any assessment of either the reason an arrearage has accrued or obligor capacity to make current and make-up payments. Contempt proceedings were routinely utilized for enforcement despite their lack of efficacy, high cost, and potential for causing obligors to go underground and discontinue or limit contact with their children. In sum, child support practice in St. Joseph County promotes limited contact between children and their absent fathers, nonpayment of prior support obligations, and the accrual of arrears that can never be paid. A lot of taxpayer money is spent in pursuit of these irrational goals.

We are not, of course, the first to criticize routinized overuse of income imputation and contempt proceedings. It is these very practices that the new federal regulations, just now effective, were designed to curb. Our study unequivocally supports the need for these new rules and their emphasis on individualized assessment of both income and capacity to pay when arrearages develop. It also supports the current policy shift away from costly, ineffectual contempt proceedings and toward job-skills and employment training. Such programs should, in our view, be mandatory for all obligors who are incarcerated or in residential treatment programs and highly incentivized for high-risk, unemployed obligors living in the community. Designing programs that work will not be easy or cheap, of course. But an investment in training makes much more sense than an investment in ineffective threats of jail. In our view, savings from reduced reliance on contempt proceedings should be quantified and dedicated to the development of best practices skills training and employment programs.

Our data also support additional changes in support practice. In this brief article, we can only outline further directions for reform. But, just as our data demonstrate the need for the reforms currently in progress, we believe that they also demonstrate the inadequacy of these reforms.

First, our data demonstrate the need to extend individualized assessment to support crediting. It is perverse to equally credit payment obligations when a father pays everything and when he pays nothing. This sort of routinization unfairly penalizes fathers who do pay. It also incentivizes the accumulation of new support obligations.

Second, our data demonstrate that changes in parenting-time allocation and custody assignment are necessary adjuncts to shifts in support rules. As we noted above, researchers have found again and again that the payment of both formal and informal support is significantly correlated with parenting time. Parents are more likely to support children with whom they have lived for substantial periods and those whom they see frequently after separation¹³⁶; fathers' contact with children is

also associated with less hardship in the child's household.¹³⁷ While it is unclear whether visitation promotes support payment or whether other factors promote both outcomes, it is clear that, unless contact exposes the child to high levels of parental conflict, children who spend meaningful amounts of time with both parents tend to do better than children who do not.¹³⁸

Researchers have found that income is significantly correlated with shared parenting and visitation time, both when parents divorce and when they separate; higher income is associated with more shared parenting.¹³⁹ Our findings are consistent with this earlier research. But there is no evidence that children of low-income parents benefit less from visitation than do children of high-income parents.

Given the various advantages to children associated with meaningful father contact, we believe that IV-D agencies must develop policies that ensure children enjoy significant amounts of time with nonresidential fathers except in cases where such visitation would be harmful.¹⁴⁰ There is simply no excuse for the fact that two thirds of sample fathers were awarded literally no overnight visits with their children. Nor is there any possible excuse for the lack of shared physical and legal custody orders in our sample.¹⁴¹ In contrast to some states, the courts that hear paternity and related child support matters in Indiana are not precluded from addressing custody and visitation.¹⁴² To the contrary, visitation time is included on the child support worksheet that the local IV-D agency utilizes. Moreover, although intimate-partner violence is a common cause of relationship dissolution in low-income, nonmarital families like those that we studied,¹⁴³ prior orders of protection were not significantly correlated with the number of visitation days awarded to fathers in our sample.¹⁴⁴ This good reason for restricting visitation cannot explain the low level of visitation awarded fathers and the lack of joint custody orders.

Guidelines, like those already in effect in Indiana,¹⁴⁵ which specify that unmarried fathers have the same visitation rights as married fathers, are clearly inadequate to promote the routine award of meaningful visitation time. More robust legislation is needed. Legislative action should be preceded, however, by more research on the sources of current visitation awards and on the effects of different statutory regimes.¹⁴⁶ While the significant associations between visitation time and the father's failure to appear at the hearing and lack of a lawyer both suggest that court practice plays an important role in producing the outcomes we have documented, other factors may well be at work, too. For example, fathers in our sample had a high level of residential instability; a significant number may not have housing adequate for overnight visits. Visitation schedules could be altered to take daytime visitation into account. Some states already follow this approach,¹⁴⁷ which might serve the valuable purpose of facilitating maternal employment as well as paternal visitation. New legislation is necessary, but it should be guided by research into the needs of families like those in our sample and the causes of visitation awards like those that predominated in our sample.

Finally, our data demonstrate the difficulties in moving beyond routine income imputation in a way that meets the competing goals of fairness and payment incentivization. Certainly, pass-through laws that incentivize payment by low-income obligors should be universal. In our view, obligors should also receive credit for in-kind support, assuming that the custodial parent is content with this form of contribution. Child support worksheets could easily be reformulated to take such contributions into account, and both parents could easily be involved in a discussion of how much support should be paid in-kind and in cash. In appropriate cases, fathers could also be given credit for child-care that facilitates maternal employment.

A self-support reserve for low-income obligors would also be valuable. Such a reserve would recognize the obligor's legitimate subsistence needs, reduce the likelihood of impossible-to-pay awards, and potentially create incentives for legal, higher-wage employment.

However, formulating rules that appropriately impute income to unemployed fathers—rules that are easy to use, consistently produce support obligations that can be met, and promote parent-child contact, parental harmony, and employment—will not be easy. Further, while the new regulations demanding individualized assessment are needed and overdue, an individualized-assessment mandate will not, by itself, produce altered results any more than did the Indiana statute, specifying that nonmarital parents have the same visitation rights as marital parents or the Supreme Court's

decision in *Turner v. Rogers*. Neither the statute nor *Turner* had any apparent effect on case processing in our sample, and there is no reason to expect that the new federal mandate will achieve more. The law on the books is simply not the same as the law in action.

It is also far from clear how the harried IV-D attorney, burdened with a caseload numbering in the hundreds, typically confronted with obligors who have minimal work experience, poor job qualifications, and a range of problems—prior incarceration, a history of drug abuse or alcoholism, lack of a car, and mental and/or physical impairments—is supposed to translate the individualized-inquiry mandate into an individualized dollars-and-cents number. The problems are legion. In some cases, the obligor will not even be present; 9.5% of fathers in our sample defaulted. Very few will have legal representation. Only 15.4% of sample fathers and 12.1% of sample mothers were represented by counsel; in only 6.5% of cases were both parties represented. Moreover, of course, lawyer representation is most rare in cases of imputed income; parent with imputed income typically lack money to pay a lawyer. 20.2% of fathers without imputed income were represented by counsel as compared to 8.8% of fathers with imputed income.

Checklists and similar decision-making tools are unlikely to be adequate. Assume the typical candidate for imputed income, an unemployed obligor with no special skills, a high school education, who has not worked in the past year, and has no work experience beyond minimum-wage employment; the obligor is not clearly disabled. Then consider one such decision-making tool, which requires the imputation decision maker to take into account:

- a. The parent's prior employment experience;
- b. The parent's education;
- c. The parent's physical and mental disabilities, if any;
- d. The availability of employment in the geographic area in which the parent resides;
- e. The prevailing wage and salary levels in the geographic area in which the parent resides;
- f. The parent's special skills and training;
- g. Whether there is evidence that the parent has the ability to earn the imputed income;
- h. The age and special needs of the child subject to the child support order...;
- i. The parent's increased earning capacity because of experience;
- j. The parent's decreased earning capacity because of a felony conviction; or
- k. Any other relevant factor.¹⁴⁸

Using these factors, how much income should be imputed to the obligor? The answer is almost certainly a minimum-wage income, the very same value that decision makers now turn to. There is no basis for assuming more income and, given the obligor's lack of a disability, no particular basis for assuming less. There is, of course, the fact that the obligor is not working and has not been working. But unless the local unemployment rate is particularly high, why shouldn't the decision maker assume that reasonable effort would turn up a minimum-wage job?

Should we do away with income imputation for cases like this one? The advantage of a no-imputation strategy is that the obligor will not accumulate arrears. He may also be more motivated to spend time with his child if he does not feel hounded by the support enforcement agency. However, the large disadvantage of assuming that all unskilled, unemployed obligors have no earning capacity is that their incentives to obtain employment and better job skills are markedly reduced. Moreover, the research evidence demonstrates that most low-income fathers do have some income. Here, fathers with imputed income often developed arrearages, but most also made some payments. Moreover, researchers have found that about half of fathers make in-kind contributions and informal payments to mothers.¹⁴⁹ In one study, support paid informally to mothers averaged \$175 per month.¹⁵⁰ Where does the money come from? Researchers who have reported on in-kind contributions do not detail the sources of paternal income and our study, too, offers no data on this important question. At this point, it is fair to say that we simply don't know how much the typical "unemployed" obligor brings in, let alone what he could realistically earn in the legal, wage economy.

Our research data do demonstrate that low-value imputed income is far less likely to produce arrearages than minimum-wage-level imputed income. For fathers with income imputed at \$104,

57% had no arrearage and 75% had an arrearage of \$1500 or less; for fathers with income imputed at the minimum wage, only 35% had no arrearage and only 46% had an arrearage of \$1500 or less. The average arrearage value of the minimum-wage group was also close to triple that of the \$104 group.¹⁵¹ This difference strongly supports an approach, for disadvantaged fathers like those in our sample, that minimizes the level at which income is imputed. Support enforcement proceedings are costly and largely ineffectual for this group. There is no obvious value in using an unrealistic, fictional income value to produce an award that will not be paid and will cost the state money for futile collection efforts.

Beyond these basics, we think more research is needed. Likely, the best approach would test multiple income-imputation models over time to come up with the most workable approach.

As the states turn their attention to meeting the requirements of the new federal regulations, they will be tempted to rely on factor lists, like the one we quoted, and whitewash the difficulty of applying it. We hope that, instead, they honestly confront the difficulties of compliance and avoid this road to failure.

NOTES

1. Child support obligors are overwhelmingly male. See text, *infra* at page 529.
2. See *infra* notes 21–22 and accompanying text.
3. See, e.g., U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REP.: MONEY, INCOME AND POVERTY STATUS OF FAMILIES AND PERSONS IN THE U.S.: 1983 tbl.115, 21–22 (SERIES P-60, No. 145, 1985198521–22 (1984)). See also House Comm. on Gov't. Operations, Opportunities/or Self-Sufficiency for Women in Poverty, H.R. REP. NO. 459, 99th Cong. at 3 (1st Sess.) 3 (1985).
4. See OECD SOCIAL POL'Y DIVISION, DIRECTORATE EMP., LABOUR & SOCIAL AFFAIRS, OECD FAMILY DATABASE: CHILD SUPPORT, tbl. PF1.5.A 2–4 (2010), www.oecd.org/els/social/family/database.
5. Social Services Amendment of 1974, Pub. L. No. 93-647, 88 Stat. 2337 (1975) (codified at 42 U.S.C. §§ 651-665 (1988)).
6. Child Support Enforcement Amendments of 1984, Publ. L. No. 98-378, 98 Stat. 1305 (codified at 42 U.S.C. §§651, 653-658, 664 (1988)).
7. Family Support Act of 1988, Pub. L. No. 100-485, sec. 103f, 102 Stat. 2346 (1989) (codified at 42 U.S.C. § 667(b) (2) (1988)).
8. 45 C.F.R. §302.56. For information on the guidelines' development, see Marsha Garrison, *Autonomy of Community: An Evaluation of Two Models of Parental Obligation*, 86 CAL. L. REV. 41 (1998); see also Marsha Garrison, *Child Support: Guidelines and Goals*, 33 FAM. L.Q. 157 (1999).
9. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.
10. See CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., CHILD SUPPORT ENFORCEMENT: PROGRAM BASICS (U.S. Congressional Research Service, 2013), <https://fas.org/sgp/crs/misc/RS22380.pdf>.
11. See Daniel R. Meyer, *Paternity and Public Policy*, 14 FOCUS 1, 3 (1992).
12. See Vicki Turetsky, *Child Support Performance Has Never Been Stronger*, 38 CHILD SUPPORT 6 (July 2016), https://www.acf.hhs.gov/sites/default/files/programs/css/july_2016_child_support_report.pdf.
13. See ELAINE SORENSON, THE CHILD SUPPORT PROGRAM IS A GOOD INVESTMENT 3 (U.S. Office of Child Support Enforcement, 2016), https://www.acf.hhs.gov/sites/default/files/programs/css/sbtn_csp_is_a_good_investment.pdf [hereinafter GOOD INVESTMENT].
14. See *id.*; see also Elaine Sorenson, *Child Support Plays an Increasingly Important Role For Custodial Families* (Urban Institute, 2010), <http://www.urban.org/sites/default/files/publication/2942/412272-Child-Support-Plays-an-Increasingly-Important-Role-for-Poor-Custodial-Families.PDF> (among families that receive child support, child support represents 40% of income for poor custodial families and 63% for families that are “deeply poor”).
15. See Irwin Garfinkel et al., *Child Support Enforcement: Incentives and Well Being*, THE INCENTIVES OF GOVERNMENT PROGRAMS AND THE WELL BEING OF FAMILIES (Bruce Meyer & Gregg Duncan eds., Joint Center for Poverty Research 2001) (for every dollar of child support received, the incomes of custodial mothers and their children increases by two dollars).
16. See Jacob Cheadle et al., *Patterns of Nonresident Father Contact*, 47 DEMOGRAPHY 205 (2010) (summarizing literature); see also Kimberly J. Turner & Maureen R. Waller, *Indebted Relationships: Child Support Arrears and Nonresident Fathers' Involvement with Children*, 79 J. MARRIAGE & FAM. 24 (2016).
17. It is unclear whether support payment stimulates visitation, visitation stimulates support payment, or whether the relationship between visitation and support payment is more complex. See, e.g., Margaret F. Brinig, *Chickens and Eggs: Does Custody Move Support, or Vice-Versa*, 29 J. AM. ACAD. MATRIMONIAL LAW. 269 (2017).
18. See U.S. BUREAU OF THE CENSUS, CHILD SUPPORT AND ALIMONY: 1978 3 tbl.A (Current Population Reports, SERIES P-23, NO. 106, 2 (1980)) [hereinafter 1978 Child Support Report] (in 1978, 59.1% of women survey respondents who had one or

more children under twenty-one years of age had been awarded any support from an absent father and only 48.9% of those awarded support had received full payment).

19. *Id.* at 5. See Timothy Grall, *Custodial Mothers and Fathers and Their Child Support: 2013*, 7 U.S. CENSUS BUREAU tbl. 2 (2016), <https://www.census.gov/content/dam/Census/library/publications/2016/demo/P60-255.pdf> (10.2% of reported agreements were informal).

20. See 1978 *Child Support Report*, *supra* note 18, at 3, tbl.B (reporting average value in 1978 of child support received as \$1799); Grall, *supra* note 19, at 7, tbl.2.

21. See *Household and Family Characteristics: March 1975*, 7 U.S. CENSUS BUREAU (1976); *Majority of U.S. Children Live with Both Parents*, U.S. CENSUS BUREAU (2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-192.html>.

22. See *Historical Living Arrangements of Children*, U.S. CENSUS BUREAU tbl.CH-1 (2017) <https://www.census.gov/data/tables/time-series/demo/families/children.html>.

23. See JUNE CARBONE & NAOMI CAHN, *RED FAMILIES, BLUE FAMILIES* (2010); Sara McLanahan, *Diverging Destinies: How Children Are Faring Under the Second Demographic Transition*, 41 *DEMOGRAPHY* 607 (2004).

24. See Meyer, *supra* note 11.

25. See Joyce A. Martin et al., *Births: Final Data for 2015*, 66 *NAT. VITAL STATISTICS RPTS.* 1–2 (2017), https://www.cdc.gov/nchs/data/nvsr/nvsr66/nvsr66_01.pdf. This increase reflects both an increase in the birthrate of unmarried women and decline in that of married women. See Stephanie J. Ventura & Christine A. Bachrach, *Nonmarital Childbearing in the United States, 1940–99*, 48 *NAT. VITAL STATISTICS RPTS.* 1, 3 (2000), https://www.cdc.gov/nchs/data/nvsr/nvsr48/nvs48_16.pdf.

26. See Sara McLanahan & Irwin Garfinkel, *Fragile Families: Debates, Facts, and Solutions*, MARRIAGE AT THE CROSSROADS (Marsha Garrison & Elizabeth S. Scott eds., 2013).

27. See Steven L. Nock, *Marital and Unmarried Births to Men: Complex Patterns of Fatherhood Evidence from the National Survey of Family Growth, 2002*, U.S. DEP'T OF HEALTH & HUMAN SERVICES tbl.4 (2007), <https://aspe.hhs.gov/basic-report/marital-and-unmarried-births-men-complex-patterns-fatherhood-evidence-national-survey-family-growth-2002> (on average, married men were 25.6 years of age when their first child was born and unmarried men were 22.5).

28. See *id.* at tbl.6 (average years of schooling was 13.4 for men with all-marital births and 11.6 for men with all cohabiting and single births).

29. See *id.*; Elaine Sorensen & Helen Oliver, *Policy Reforms are Needed to Increase Child Support from Poor Fathers*, 5 *URBAN INSTITUTE* (2002), <http://www.urban.org/sites/default/files/publication/60406/410477-Policy-Reforms-are-Needed-to-Increase-Child-Support-from-Poor-Fathers.PDF> (36% of unmarried fathers were poor, twice the percentage of married fathers).

30. See Nock, *supra* note 27, at tbl.7 (4.5% of men with all-marital births and 19.6% of men with only-cohabiting births were out of the labor force).

31. See *id.*, at tbl.2 (among men with two or more births, 71.6% of Non-Hispanic White, 25.9% of African American, and 48.9% of Hispanic fathers had married-only births).

32. See Sorensen & Oliver, *supra* note 29, at 3–4.

33. See Carmen Solomon-Fears et al., *Child Well-Being and Noncustodial Fathers*, CONGRESSIONAL RESEARCH SERVICE 8–10 figs. 4 & 5 (2013), <https://www.ncea.org/documents/CRS-Child-Well-Being-Noncustodial-Fathers-2.12.13.pdf>.

34. See Marcia J. Carlson & Frank Furstenberg Jr., *The Prevalence and Correlates of Multipartnered Fertility Among Urban U.S. Parents*, 68 *J. MARRIAGE & FAM.* 718 (in 59% of unmarried couples and 21% of married couples, both parents already had at least one child by another partner); Mindy E. Scott et al., *Multiple Partner Fertility Among Unmarried Nonresident Fathers*, *HANDBOOK OF FATHER INVOLVEMENT: MULTIDISCIPLINARY PERSPECTIVES* 97–115 (C.S. Tamis-LeMonda & N Cabrera eds., 2013) (in a national survey, 14% of all fathers and 48% of fathers who were unmarried and nonresident when first child was born had children with more than one partner).

35. See Elaine Sorensen et al., *Assessing Child Support Arrears in Nine Large States and the Nation* 11, *URBAN INST.* (2007), <http://www.urban.org/sites/default/files/publication/29736/1001242-Assessing-Child-Support-Arrears-in-Nine-Large-States-and-the-Nation.PDF>; Sorensen & Oliver, *supra* note 29, at 7, tbl.1.

36. See Sorensen & Oliver, *supra* note 29, at 7, tbl.1 (28% of poor fathers and 2% of non-poor fathers were required to pay 50% or more of their personal incomes in support).

37. See Nat'l Conference of State Legislatures, *States' Treatment of High and Low Income Parents in Making Child Support Determinations* (2013), <http://www.ncsl.org/Research/Human-Services/States-Treatment-Of-Low-High-Income-Child-Support.aspx>.

38. See Steven Eldred & Mark Takayesu, *Understanding Payment Barriers to Improve Child Support Compliance* 25 (Orange County Dep't Child Support Services 2013); Carl Formoso, *Determining the Composition and Collectability of Child Support Arrearages*, VOLUME 1. THE LONGITUDINAL ANALYSIS (2003), <https://www.dshs.wa.gov/sites/default/files/ESA/dcs/documents/cvol1prn.pdf>; Sorensen & Oliver, *supra* note 29.

39. See Nat'l Conference of State Legislatures, *supra* note 37.

40. See Eldred & Takayesu, *supra* note 38; Formoso, *supra* note 38; Sorensen et al., *supra* note 35; Mark I. Takayesu & Steven C. Eldred, *How Do Child Support Orders Affect Payments and Compliance* (Orange County Dep't Child Support Services, 2011), <http://www.css.ocgov.com/about/researchstudies>.

41. See Eldred & Takayesu, *supra* note 38 (19.5% of cases in this study had imputed income; these cases had lower compliance levels, higher rates of inconsistent payments, and lower payments per child when compared to cases with actual reported income).

42. See Maria Cancian et al., *Welfare and Child Support: Complements, Not Substitutes*, 27 J. POL'Y ANALYSIS & MANAGEMENT 354 (2008); MARIA CANCIAN & DAVID R. MEYER, THE CHILD SUPPORT DEMONSTRATION EVALUATION RESEARCH SUMMARY (Institute for Research on Poverty, 2007); Judith H. Cassetty & Royce Hutson, *Effectiveness of Federal Incentives in Shaping Child Support Enforcement Outcomes*, 27 CHLD. & YOUTH SERV. REV. 271 (2005); Maureen A. Pirog & Kathleen M. Ziol-Guest, *Child Support Enforcement: Programs and Policies, Impacts and Questions*, 25 J. POL'Y ANALYSIS & MGMT. 943 (2006); LAURA WHEATON & ELAINE SORENSON, THE POTENTIAL IMPACT OF INCREASING CHILD SUPPORT PAYMENTS TO TANF FAMILIES (Urban Institute, 2008), <http://www.urban.org/research/publication/potential-impact-increasing-child-support-payments-tanf-families>. Full pass-through to custodial mothers does not appear to reduce their participation in the workforce. See Laura Cuesta & Maria Cancian, *The Effect of Child Support on the Labor Supply of Custodial Mothers Participating in TANF*, 54 CHLD. & YOUTH SERV. REV. 49 (2015). It may reduce both child maltreatment and cohabitation between mothers and men who are not the fathers of their children. See Maria Cancian & David R. Meyer, *Testing the Economic Independence Hypothesis: The Effect of an Exogenous Increase in Child Support on Subsequent Marriage and Cohabitation*, 51 DEMOGRAPHY 857 (2014); Maria Cancian et al., *The Effect of Additional Child Support Income on the Risk of Child Maltreatment*, 87 SOC. SERV. REV. 417 (2013). Researchers have generally found that generous pass-through and disregard policies decrease government expenses on some services such as child care and food stamps but may increase other government costs. See Pirog & Ziol-Guest, *supra*, at 42.

43. In February 2012, 22 states and the District of Columbia had a child support pass-through and disregard policy, and 28 states did not. See Solomon-Fears et al., *supra* note 33, at 25.

44. In-kind contributions also serve to ensure that the child actually receives the benefit of the contribution, to make a contribution more visible to the child, and to gain status in the obligor's community. See Jennifer Kane et al., *How Much In-Kind Support Do Low-Income Nonresident Fathers Provide? A Mixed-Method Analysis*, 77 J. MARRIAGE & FAM. 591 (2015).

45. See Steven Garasky et al., *Toward a Fuller Understanding of Nonresident Father Involvement: An Examination of Child Support, In-Kind Support, and Visitation*, 20 POP. RES. & POL'Y REV. 363 (2010) (47% of low-income households in national survey reported in-kind support); Kane et al., *supra* note 44 (46% of surveyed low-income fathers with absent children contributed in-kind support); Lenna Nepomnyaschy & Irwin Garfinkel, *Child Support, Fatherhood, and Marriage: Findings from the First 5 Years of the Fragile Families and Child Wellbeing Study*, 1 ASIAN SOC. WORK & POL'Y REV. 1 (2007) (43% of unmarried mothers (predominately low-income) in national study received in-kind contributions from the father of the focal child when that child was five years old).

46. See Kane et al., *supra* note 44, at tbl.2 (average value of in-kind support of fathers who gave in-kind support only was \$63 per child per month; average value of in-kind and informal cash payments was \$175 per month); Lenna Nepomnyaschy & Irwin Garfinkel, *Fathers' Involvement with Their Nonresident Children and Material Hardship*, 85 SOC. SERV. REV. 3 (2011) (42% of Fragile Families Study fathers made informal cash contributions, averaging \$53 per month across all fathers).

47. See ELAINE SORENSON ET AL., ASSESSING CHILD SUPPORT ARREARS IN NINE LARGE STATES AND THE NATION 11 (Urban Institute, 2007), <http://www.urban.org/sites/default/files/publication/29736/1001242-Assessing-Child-Support-Arrears-in-Nine-Large-States-and-the-Nation.PDF>. See also Sorensen & Oliver, *supra* note 29.

48. See Sorensen & Oliver, *supra* note 29, at 6–7, tbl.3 (49% of poor and 92% of nonpoor nonresident fathers were working).

49. See GOOD INVESTMENT, *supra* note 13, at 3.

50. Incarceration rates for low-income men have also skyrocketed. See Solomon-Fears et al., *supra* note 33, at 8–15, figs.4–9.

51. See *id.* at 30.

52. See REBECCA MAY & MARGUERITE ROULET, A LOOK AT ARRESTS OF LOW-INCOME FATHERS FOR CHILD SUPPORT NONPAYMENT: ENFORCEMENT, COURT AND PROGRAM PRACTICES 40 (Ctr. for Family Pol'y & Practice, 2005), <http://www.cffpp.org/publications/LookAtArrests>; Elizabeth G. Patterson, *Civil Contempt & the Indigent Child Support Obligor: The Silent Return of Debtor's Prison*, 18 CORNELL J.L. & PUB. POL'Y 95, 126 (2008).

53. See Patterson, *supra* note 52, at 118. See also Solomon-Fears et al., *supra* note 33, at 5 (“Anecdotally, it appears that it is not uncommon for low-income noncustodial parents to be incarcerated for nonpayment of child support or contempt of court charges that relate to nonpayment of child support.”).

54. See, e.g., Solangel Maldonado, *Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers*, 39 U.C. DAVIS L. REV. 991 (2006); Sorensen & Oliver, *supra* note 29. See also Margaret F. Brinig & Douglas W. Allen, *Child Support Guidelines: The Good, the Bad, and the Ugly*, 45 FAM. L.Q. 135 (2011–2012).

55. See Cheadle et al., *supra* note 16 (summarizing literature); Garasky et al., *supra* note 45; Nepomnyaschy & Garfinkel, *supra* note 45; Turner & Waller, *supra* note 16.

56. P.L. 109–171 (the Deficit Reduction Act of 2005) requires the federal government to share in the costs (up to \$100 per month for one child and \$200 per month for two or more children) of child support collections passed through and disregarded by states. This provision took effect in 2008.

57. Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 81 Fed. Reg. 93492 (2016).

58. The Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule: Guidelines, https://www.acf.hhs.gov/sites/default/files/programs/css/fem_final_rule_guidelines.pdf (last visited August 22, 2018). The final rule also provides that state guidelines may not treat incarceration as “voluntary unemployment” in establishing or modifying child support orders, essentially prohibiting the states from barring modification of support obligations during

incarceration. Some states have also adopted individualized-assessment requirements legislatively. *See, e.g.,* ARIZ. REV. STAT. ANN. § 25–320.

59. 45 C.F.R. § 303.6(c)(4) (2000); The Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule: Civil Contempt - Ensuring Noncustodial Parents Have the Ability to Pay, https://www.acf.hhs.gov/sites/default/files/programs/css/fem_final_rule_civil_contempt.pdf (last visited September 13, 2018). This portion of the regulations is responsive, in part, to *Turner v. Rogers*, 564 U.S. 431 (2011), holding that, although the state was not constitutionally required to provide counsel in a civil contempt proceeding, it was required to provide “procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the support order.” *Id.* at 431.

60. *See* The National Child Support Noncustodial Parent Employment Demonstration (CSPED) Fact Sheet #1, https://www.acf.hhs.gov/sites/default/files/programs/css/csped_fact_sheet_1_march_2015.pdf (last visited August 22, 2018).

61. *See* FRED DOOLITTLE ET AL., BUILDING OPPORTUNITIES, ENFORCING OBLIGATIONS: IMPLEMENTATION AND INTERIM IMPACTS OF PARENTS’ FAIR SHARE (MDR, 1998).

62. *See* EMILY SAMA-MILLER ET AL., ASSESSING THE EVIDENCE BASE: STRATEGIES THAT SUPPORT EMPLOYMENT FOR LOW-INCOME ADULTS 6 (ESER 2016).

63. *See* Sorenson & Oliver, *supra* note 29, at 8–9.

64. We included all paternity actions filed in January, April, June, September and December of 2008 and 2010 except those in which a paternity order was not entered or an older sibling had already been included in our database.

65. *See* U.S. Census Bureau, *Small Area Income and Poverty Estimates*, https://www.census.gov/did/www/saipe/data/interactive/saipe.html?s_appName=saipe&map_yearSelector=2010&map_geoSelector=mhi_c&s_state=18&s_county=18141&s_measures=mhi_snc&s_year=2015,2010 (last visited August 22, 2018).

66. *Life in South Bend: A Company Town without a Company*, THE ECONOMIST (May 19, 2015), <http://www.economist.com/blogs/democracyinamerica/2015/05/life-south-bend>.

67. More than half of focal children lived in seventeen of the county’s seventy-three census tracts.

68. *See supra* notes 27–31 & 34.

69. Hispanic parents tended to be younger than others, with a median age of twenty for mothers and twenty-four for fathers. Non-Hispanic White women (median age twenty-two) tended to be older than Hispanic or African American mothers (median age twenty-one and twenty); non-Hispanic White and African American fathers had extremely similar age profiles. In many cases, we were unable to determine the parent’s age when his or her first child (with any partner) was born and thus do not report parental age at first birth.

70. Thirty-six percent were non-Hispanic White and 11.3% were Hispanic; 44% of mothers were African American, 45% were non-Hispanic White, and 11% were Hispanic ($N = 686$).

71. In 2010, 12.7% of St. Joseph County residents were African American, 78.7% were Non-Hispanic White, and 7.3% were Hispanic. (2.5% were other). *See* U.S. CENSUS BUREAU, 2010 INTERACTIVE POPULATION MAP, <https://www.census.gov/2010census/popmap/> (last visited Feb. 17, 2018).

72. These percentages reflect MPF recorded in the St. Joseph County database by Spring 2017, when we last reviewed the database for MPF information. Given the relatively young ages of sample parents, their MPF is likely to increase over the next few years. For a more detailed analysis of MPF in the sample, see Margaret F. Brinig & Marsha Garrison, *Multipartner Fertility in a Disadvantaged Population: Findings from an Empirical Investigation of Paternity Actions in St. Joseph County, Indiana*, 51 FAM. L.Q. (2018). The gap between maternal and parental MPF is likely due to underreporting by fathers who had not consistently lived in St. Joseph County. Whether the father had lived in St. Joseph County from age fourteen was a significant positive predictor of recorded MPF. Pearson’s $r = .111$, $p = .003$.

73. The children who are the subjects of these paternity actions and related child support orders are, of course, different. We have thus not excluded them. All statistics and analyses contained in this article relate to the full sample of child support orders ($N = 688$).

74. $N = 646$.

75. Obligor with listed incomes of zero were, almost invariably, currently incarcerated or recipients of federal disability benefits (Supplemental Security Income).

76. *See* Valerie Wilson & William M. Rodgers III, *Black-White Wage Gaps Expand with Rising Inequality*, ECON. POL’Y INST. (2016), <http://www.epi.org/publication/black-white-wage-gaps-expand-with-rising-wage-inequality/>.

77. Pearson’s $r = -.178$, $p < .001$.

78. Pearson’s $r = -.183$, $p < .001$.

79. Pearson’s $r = .082$, $p = .038$. The father’s identification as non-Hispanic White was significantly and positively correlated with both his income (Pearson’s $r = .244$, $p < .001$) and total income (Pearson’s $r = .199$, $p < .001$), but not the mother’s income (Pearson’s $r = .060$, $p = .128$).

80. *Lambert v. Lambert*, 861 N.E.2d 1176 (Ind. 2007).

81. IND. CHILD SUPPORT GUIDELINES § 3(A)(3), cmt 2c(4) (2010). Guideline 3(A)(3) is revised to provide that potential income should be imputed to a parent only when the unemployment or underemployment is “without just cause.” The commentary to this section is also revised to provide that where the underemployment or unemployment is the result of a disability, health issue, excessive child care costs, or similar circumstances, it may be improper to impute any income to the parent.

82. *Id.* § 3(A)(3) (2010).

83. *Id.*

84. *Id.* § 3 cmt. c(4). The guidelines also changed slightly between 2007 and 2010. The 2010 guideline incorporates the Indiana appellate decision in *Lambert v. Lambert*, forbidding income imputation for an incarcerated parent. It also added the words “without just cause” to the basic income imputation standard, and in comments to the “just cause” language, specified “where the underemployment or unemployment is the result of a disability, health issue, excessive child care costs or similar circumstances, it may be improper to impute any income to the parent.” See Michael J. Kohlhaas & James A. Reid, *A Brief Survey of the New Amendments to the Indiana Child Support Rules & Guidelines*, RES GESTAE 29, 30 (Nov. 2009).

85. Employed mothers typically have childcare expenses listed on the support calculation worksheet, but there is typically no method of assessing whether a father is actually employed from the support worksheet.

86. All cases: F 46% M 53%. An additional 2% of fathers were assigned imputed income after entry of the original order, typically following release from incarceration.

87. Interview with Ethan S. McKinney, Child Support Director, Deputy Prosecuting Attorney St. Joseph County (April 14, 2018) (on file with authors).

88. For 2010 cases: father’s drug/alcohol abuse, Pearson’s $r = .125$, $p = .033$; father’s incarceration, Pearson’s $r = .133$, $p = .023$.

89. 47.3% of African American fathers had imputed income at the minimum-wage level, as compared to 30.1% of non-Hispanic White fathers and 27.1% of Hispanic fathers.

90. We separately analyzed cases in which the father lived in St. Joseph County from age fourteen because we have data for this group (family history, juvenile status and juvenile delinquency, truancy, runaway, etc.) that we lack for other parents. For this group, four variables survived regression analysis, but they did not explain a larger amount of case variance (Cox & Snell $R^2 = .194$; Nagelkerke $R^2 = .261$; $N = 363$).

Variable	B	Stand. Error	Wald	Signif.	Odds Ratio
Father is AfricanAmerican	1.117	.255	19.266	<.001	3.057
Father’s family has delinquency history	.604	.245	6.067	.014	1.830
F incarcerated/receives disability benefits	-2.680	.822	10.621	.001	.069
Mother’s income imputed minimum wage	1.597	.247	41.744	<.001	4.938
Constant	-1.916	.263	53.043	<.001	.147

91. Cox & Snell $R^2 = .226$; Nagelkerke $R^2 = .305$.

92. See Diana M. Pearce, *The Self-Sufficiency Standard for Indiana* 8 fig. A, IND. INST. FOR WORKING FAM. (2016), <http://www.incap.org/iwfw/self-sufficiency/2016-Self-sufficiency-report.pdf>. The standard is based on a family’s “basic minimum needs” which are defined to include housing, childcare, food, transportation, health care, miscellaneous expenses (clothing, telephone, household items), and taxes (minus federal and state tax credits). *Id.*

93. See Kye Lippold & Elaine Sorensen, *Characteristics of Families Served by the Child Support (IV-D) Program: 2010 Census Survey Results*, URBAN INST. (2013), https://www.acf.hhs.gov/sites/default/files/programs/css/iv_d_characteristics_2010_census_results.pdf.

94. *Id.*

95. For maternal income, Pearson’s $r = -.199$, $p = .012$; for paternal income, Pearson’s $r = -.218$, $p < .001$.

96. See Sara McLanahan & Audrey N. Beck, *Parental Relationships in Fragile Families*, 20 FUTURE CHILD. 17 (2010).

97. Again, there was some variation based on parental race/ethnicity. Hispanic children were somewhat older (median age 2, average age 4.5 years) at order entry than non-Hispanic white (median age 2, average age 3.3 years) or African American (median age 2, average age 3.7 years).

98. See Child & Family Research Partnership, *In-Hospital Paternity Establishment Literature Review* 3 (2012) (2010 data), http://childandfamilyresearch.org/content/uploads/2013/04/CFRP_AOP_Literature-Review_October2012_web.pdf.

99. Legal custody need not be assigned to the parent with primary physical custody, but in our sample, this was invariable.

100. $N = 678$.

101. This oddity may reflect an interpretation of Indiana law, which specifies that an unmarried mother has sole custody absent a joint-custody agreement contained in a paternity affidavit or a determination that the child’s best interests require a different custody arrangement. See IND. CODE § 31-14-13-1(1) (LexisNexis 2010).

102. See Margaret F. Brinig, *Result Inequality in Family Law*, 49 U. AKRON L. REV. 471, 493, tbl. 3 (2015) (reporting mean 74.68 days of visitation for sample of Indiana divorce cases decided in 2008 and drawn from five counties, including St. Joseph).

103. $N = 647$.

104. See Indiana Rules of Court, Indiana Parenting Time Guidelines § C.1, <https://www.in.gov/judiciary/rules/parenting/parenting.pdf> (specifying that, except in cases of significant risk to the child’s health or safety, a “noncustodial parent is entitled to reasonable parenting time” and that this standard applies to “all child custody situations, including paternity cases. . .”).

105. The Basic Total Award represents the value of the parents’ total support obligation. It is based on the income (real or imputed) of each parent minus the value of each parent’s credit for supporting children not covered by the current order.

106. This value reflects both credits for prior support orders and the father’s share of total parental income.

107. In a study of 2008 Indiana divorces, failure to appear was also a significant predictor of visitation time. *See* Brinig, *supra* note 102, at 503.

108. The final order, which represents what the obligor parent must pay in child support, is based on the basic award. Each parent's work-related child-care costs and health insurance premiums paid on behalf of the covered children are added to the basic award. The presumptive child support order is calculated by multiplying this sum by the obligor parent's percentage of total income adjusted for prior child support obligations. The presumptive award becomes the final award unless the parents deviate from the presumptive award by agreement.

109. Adjusted $R^2 = .300$.

110. Pearson's $r = .020$, $p = .614$.

111. The Indiana guidelines take account of visitation with a numerical formula based on the number of nights, which the child spends in the noncustodial parent's household. *See* IND. CHILD SUPPORT GUIDELINES, *supra* note 81, at § G. The current guidelines are available at http://www.in.gov/judiciary/rules/child_support/ (last visited August 22, 2018).

112. The support values contained in the Indiana guidelines are revised every four years, most recently in 2015. All initial support awards for families in our sample were based on guideline values effective during 2007–2011.

113. IND. CHILD SUPPORT GUIDELINES, *supra* note 81, at § 2.

114. $N = 655$.

115. Pearson's $r = .728$, $p < .001$.

116. Pearson's $r = .267$, $p < .001$.

117. $N = 595$.

118. Adjusted $R^2 = .650$.

119. The examples derive from random selection of an income-imputation group (i.e., \$262 per week). We then selected the first three listed cases in which the father had more than three children with other mothers.

120. *See* Wendy Manning & Pamela Smock, "Swapping" Families?: Serial Parenting and Economic Support for Children, 62 J. MARRIAGE & FAM. 111 (2000).

121. For cases in which the father was required to pay support, Pearson's $r = .095$, $p = .016$.

122. $N = 49$, \$104 group; $N = 88$, minimum-income group.

123. Percentage of gross income, Pearson's $r = .008$, $p = .845$; percentage of adjusted income, Pearson's $r = .035$, $p = .391$.

124. Residential instability might result from the attempt to evade contempt proceedings. Or, conversely, residential instability might contribute to the accrual of a large arrearage.

125. Adjusted $R^2 = .168$.

126. Adjusted $R^2 = .276$.

127. Cox & Snell $R^2 = .026$; Nagelkerke $R^2 = .226$.

128. Cox & Snell $R^2 = .660$; Nagelkerke $R^2 = .880$.

Variable	Beta	Stand. Error	Signif.	Odds Ratio
Biggest arrearage	.005	.001	<.001	1.005
Postorder petition more parenting time	1.154	.482	.017	3.171
Constant	-2.942	.261	<.001	.053

129. $N = 322$.

130. Pearson's $r = .060$, $p = .281$ ($N = 324$).

131. Adjusted $R^2 = .327$.

132. *Turner v. Rogers*, 564 U.S. 431, 435 (2011).

133. For arrearage cases with orders entered after 2010 ($n = 57$), mean contempts per year = .1653; median = .1483. For cases with orders entered in 2010 or earlier ($n = 282$), mean contempts per year = .1510; median = .1121.

134. Pearson's $r = .268$, $p < .001$.

135. Pearson's $r = .283$, $p < .001$.

136. *See* sources cited in note 55, *supra*.

137. *See* Nepomnyaschy & Garfinkel, *supra* note 46.

138. *See* PAUL R. AMATO & ALAN BOOTH, A GENERATION AT RISK: GROWING UP IN AN ERA OF FAMILY UPHEAVAL 220 (1997); Robert Bauserman, *Child Adjustment in Joint-Custody Versus Sole-Custody Arrangements: A Meta-Analytic Review*, 16 J. FAM. PSYCHOL. 91, 97–98 (2002); William V. Fabricius & Linda J. Luecken, *Post-Divorce Living Arrangements, Parent Conflict, and Long-Term Physical Health Correlates of Children of Divorce*, 21 J. FAM. PSYCHOL. 195 (2007); Valerie King & J? M. Sobolewski, *Nonresident Fathers' Contributions to Adolescent Well-Being*, 68 J. MARRIAGE & FAM. 537 (2006); M? F. Whiteside & B? J. Becker, *Parental Factors and the Young Child's Postdivorce Adjustment: A Meta-Analysis with Implications for Parenting Arrangements*, 14 J. FAM. PSYCHOL. 5 (2000).

139. See Judi Bartfeld, *Shared Placement: An Overview of Prevalence, Trends, Economic Implications, and Impacts on Child Well-Being* (2011), <https://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/2011-12/Task13-CS2011-12-Report.pdf>; Brinig, *supra* note 102, at 491–94, figs. 3–4; Marygold S. Melli & Patricia R. Brown, *Exploring A New Family Form—The Shared Time Family*, 22 INT'L J.L. POL'Y & FAM. 231 (2008); Suzanne Reynolds et al., *Back to the Future: An Empirical Study of Child Custody Outcomes*, 85 N.C. L. REV. 1629 (2007).

140. Again, we are not the first to make such criticisms. See, e.g., CLAIRE HUNTINGTON, FAILURE TO FLOURISH: HOW LAW UNDERMINES FAMILY RELATIONSHIPS 190–92 (2014); Maldonado, *supra* note 54; Laura Tach et al., *The Family-Go-Round: Family Complexity and Father Involvement from a Father's Perspective*, 654 ANNALS AM. ACAD. POL. SCI. 169 (2014).

141. Joint legal custody is associated with more visitation, although not with higher levels of child support after preexisting parental attributes are taken into account. See Marjorie L. Gunnoe & Sanford L. Braver, *The Effects of Joint Legal Custody on Mothers, Fathers, and Children Controlling for Factors that Predispose a Sole Maternal Versus Joint Legal Award*, 25 L. & HUM. BEHAV. 25 (2001); Judith A. Seltzer, *Father by Law: Effects of Joint Legal Custody on Nonresident Fathers' Involvement with Children*, 35 DEMOGRAPHY 135 (1998).

142. See Stacy L. Brustin & Lisa V. Martin, *Paved with Good Intentions: Unintended Consequences of Federal Proposal to Integrate Child Support and Parenting Time*, 48 IND. L. REV. 803, 815 (2015).

143. See, e.g., KATHRYN EDIN & MARIA KEFALAS, PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE (2005); Anna Aizer, *Poverty, Violence and Health: The Impact of Domestic Violence During Pregnancy on Newborn Health*, 46 J. HUM. RESOURCES 518 (2011) (reviewing evidence and reporting that women with income below \$10,000 report rates of domestic violence five times greater than those with annual income greater than \$30,000). See also Deborah M. Capaldi et al., *A Systematic Review of Risk Factors for Intimate Partner Violence*, 3 PARTNER ABUSE 231 (2012).

144. Pearson's $r = -.020$, $p = .614$. Postorder protective orders were significantly and positively correlated with father's visitation time, however (Pearson's $r = .137$, $p < .001$); when fathers had more visitation time, it was more likely that a protection order against one or the other parent would be entered. Postorder protective orders were also significantly and positively correlated with postorder motions for a custody shift or an alteration (positive or negative) in visiting time ($p < .001$). Greater amounts of visitation time may signify a higher level of father involvement that sometimes creates conflict or it may simply offer more opportunity for the continuation of prior parental conflict. Certainly, when intimate-partner violence occurs, courts should make sure that children are not exposed to it, limiting parental visitation as is needed to achieve that goal.

145. See Indiana Rules of Court, Indiana Parenting Time Guidelines § C.1, <https://www.in.gov/judiciary/rules/parenting/parenting.pdf>.

146. Some states have statutes which specify that both parents have equal guardianship or custody rights regardless of marital status, for example. See, e.g., CONN. GEN. STAT. ANN. § 45a-606 (West 2015) (“The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal”); ME. REV. STAT. TIT. 19-A § 1651 (2015) (“The father and mother are the joint natural guardians of their minor children and are jointly entitled to the care, custody, control, services and earnings of their children. Neither parent has any rights paramount to the rights of the other with reference to any matter affecting their children”). But we lack evidence that these statutes are associated with results different from those we found in Indiana.

147. See Arizona Supreme Court, Arizona Child Support Guidelines (July, 2015), <https://des.az.gov/sites/default/files/2015CSGuidelinesRED.pdf> (describing methodology for counting partial days of visitation).

148. OHIO ADMIN. CODE § 5101:12–45-10 (2017).

149. See *supra* note 45.

150. See Kane et al., *supra* note 44 (total includes in-kind and cash support).

151. The minimum-wage group mean was \$3494, the median \$1895. The \$104 group mean was \$1204, the median \$0.

Margaret F. Brinig is the Fritz Duda Family Professor of Law at Notre Dame Law School. She currently serves as an advisor to the American Law Institute's Restatement on Children and the Law.

Marsha Garrison is the Suzanne J. and Norman Miles Professor of Law at Brooklyn Law School and the immediate past president of the International Society of Family Law.