

**Does a Nonresident Parent Have the Right to Make Decisions for His Nonmarital Children?: Trends in Legal Custody among Paternity Cases**

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## **Abstract**

Using the Wisconsin Court Record Data, I show that among nonmarital cases joint legal custody increased from 2% in 1988-93 to 20% in the late 90s, jumping further in 2000 and staying relatively high at around 70% in the 2000s. I hypothesize that an increasing preference for joint legal custody, a policy change that made joint legal custody presumptive, a change in the demographic composition of never-married parents, or a combination of these influences explains this trend. Logit models and Blinder–Oaxaca decomposition analyses both suggest that the difference in joint legal custody is mostly explained by the process (the coefficients) rather than the changes in parental characteristics (the independent variables). The patterns of the data suggest that an increasing parental or societal preference for joint legal custody, encouraged by the policy change, is the primary drive for the recent rise in joint legal custody among nonmarital cases.

*Keywords:* Legal custody; unmarried parents; nonmarital children

## **1. Introduction**

The research community has strived to understand the family life of low-income, unmarried, and minority fathers (Coley, 2001). An unwed father's relationship with his child's mother is not defined by marriage, and therefore, compared to divorced fathers, the parent-child relationship is less visible to policymakers who are concerned about poverty and child development. The poverty rate of their children is extraordinarily high. Close to half of children in families with a female householder are living in poverty, compared to one tenth of children in married-couple families (DeNavas-Walt & Proctor, 2014). Since the number of nonmarital births reached a record high in the past decade in the U.S (Martin, Hamilton, Osterman, Curtin, & Mathews, 2013; Ventura, 2009), and the majority of those parents remained unmarried to each other (Harknett & McLanahan, 2004), new policies and programs have emerged to address poverty and family instability among nonmarital children, calling for research on paternity establishment, visitation and contact of the nonresident parent, child support transfers, and fatherhood programs (Amato & Gilbreth, 1999; Cabrera, Tamis-LeMonda, Bradley, Hofferth, & Lamb, 2000; Coley, 2001; Lerman, 2010; Nelson, 2004).

This study documents the trends in legal custody among unmarried parents in Wisconsin, where joint legal custody was made presumptive by law in 1999. Legal custody is the right and obligation to make major decisions for the child, such as medical care, religion, and education (Emery, 2011; Stevenson, Braver, Ellman, & Votruba, 2013). It is a concept different from but often jointly determined with physical custody, which specifies the parent that the child physically lives with. If in practice, parents with joint legal custody follow the legal requirement that they cooperate in decision-making for the child, communication and exchange of information will then ensue, preventing

nonresident parents from dropping out of their children's lives. Nonetheless, little is known about legal custody in nonmarital cases. Studies on child custody mostly focus on physical custody for divorced families (Cancian & Meyer, 1998; Cancian, Meyer, Brown, & Cook, 2014; Fox & Kelly, 1995; Juby, Le Bourdais, & Marcil-Gratton, 2005; Melli & Brown, 2008). Among the few studies that examine legal custody, samples are restricted to divorce cases (Huang, Han, & Garfinkel, 2003; Seltzer, 1990, 1991, 1998).

## **2. Literature review**

### **2.1 Policies relating to legal custody**

For most nonmarital children, their father voluntarily signs an acknowledgment of paternity in hospitals, which becomes legal if not contested. In many states, an unmarried woman automatically has sole legal custody of the child she gives birth to, regardless of paternity establishment, unless the court rules otherwise.<sup>1</sup> Signing paternity acknowledgment gives the father the right to request legal custody, visitation or physical custody in court; a child support order could also be established, just as it could for cases in which the father did not acknowledge paternity in the hospital but was found to be the father by a court. When the court establishes a child support order for nonmarital children, it can also review their custodial arrangement. Parents on public assistance (including TANF and Medicaid nationwide, plus SNAP and/or child care subsidies in some states) are required to cooperate with the child support office to identify the absent parent and establish child support (Roberts, 2005). Therefore, the entry of a paternity case into court

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<sup>1</sup> For example, this is true in Wisconsin (Wisconsin Department of Children and Families, 2010) and Ohio (Ohio Revised Code Section 3109.042). Paternity establishment does not affect an unmarried mother's custodian status unless the court determines that a different person shares custody or has sole custody of the child.

due to paternity establishment, child support orders (for some parents as a consequence of welfare receipts), or child welfare predisposes the parents to a change of child custody from mother legal custody, which is presumed at the child's birth.

The incidence of joint legal custody is affected by welfare and child support policy that enrolls unmarried parents into court. A series of child support legislations between 1974 and 1996 made paternity establishment more accessible for nonmarital children<sup>2</sup> (Garfinkel, Meyer, & McLanahan, 1998; Office of Child Support Enforcement, 2002; Pirog & Ziol-Guest, 2006). As a result, more than two thirds of unmarried parents established paternity; most of these paternitys were established in hospitals (Mincy, Garfinkel, & Nepomnyaschy, 2005; Rossin-Slater, 2012). Paternity was also established for 82% of nonmarital children in IV-D cases (Huang & Edwards, 2009). In the same period, welfare caseloads had substantially declined due to the strong economy, the EITC expansions, and welfare reforms (Grogger, 2003; Meyer & Rosenbaum, 2001; Ziliak, Figlio, Davis, & Connolly, 2000), potentially changing the population entering court for child support orders and custody awards.

Custody preferences, presumptions, and policies are theorized to have a direct impact on the prevalence of joint legal custody. The most important change in custody laws in the 20th century is the movement from maternal preference to the best interest of the child, encouraged by the Uniform Marriage and Divorce Act of 1970 (Mason, 1996), then followed by states' adoption of the Act in various forms (Atkinson, 1984; Fox & Kelly, 1995). By 1988, 38 states had introduced a preference for joint legal custody

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<sup>2</sup> For example, the federal legislation of 1988 (the Family Support Act) required blood and genetic testing in disputed paternity cases. The PRWORA of 1996 required in-hospital paternity acknowledgment be available in all states. The 1988 law also appropriated grants to a few states, and the 1996 reform expanded them to all states for access and visitation programs (Garfinkel, Meyer, & McLanahan, 1998).

(Mason, Fine, & Carnochan, 2001). By 1993, all but five states included joint custody as an option, with or without the distinction between legal and physical custody (Brinig & Buckley, 1998). To conclude, by the early 1990s in most states, legal custody had been awarded separately from physical custody, and joint legal custody had been a legally available option for unmarried parents. During the 2000s, several states moved further to impose a statutory presumption for joint legal custody, requiring the writing of findings for a reward of sole legal custody (Botts & Nestor, 2011). All of the policy changes apply to unwed fathers, who have been statutorily given parental rights to children since the 1970–80s (Shanley, 1995).

Since this study uses data from Wisconsin, here I briefly review its welfare reforms and approach to child custody. Before the PRWORA of 1996, Wisconsin had taken various measures that restrict welfare eligibility and benefits and transition former recipients to the labor market, effectively reducing the caseloads since 1986 (Wiseman, 1996). In terms of custody policy, the legislation in 1977 overturned the requirement to grant custody to one parent only and made joint custody an alternative for parents (Kapner, 1983). Ten years later, the statute began to distinguish legal and physical custody (1987 Wisconsin Act 355). In 1999, a guideline was created that “the court shall presume that joint legal custody is in the best interest of the child” unless both parents agree to sole legal custody, or one parent requests it and the court finds evidence that justifies sole legal custody to protect the child’s best interest (1999 Wisconsin Act 9).

## **2.2 Trends in legal custody**

Joint custody, either legal or physical, was a very rare custody outcome among unmarried parents in the 1980s. For example, only 6% of families with a nonmarital child

had joint legal custody in the mid-1980s, compared with 27% of separated or divorced families (Seltzer, 1998). Parents in over a half of divorce cases were awarded mother physical and joint legal custody in the late 1980s in Wisconsin; however, this was the custodial arrangement for only 1.9% of paternity (nonmarital) cases in the same period.<sup>3</sup> Because there are very few studies on legal custody for paternity cases, in this section I review the body of the literature on divorce cases to provide a context for understanding custody trends.

Studies on legal custody for divorce cases are fewer than those on physical custody (Bauserman, 2002), mostly using data from the 1980s when joint legal custody began to increase in popularity (Gunnoe & Braver, 2001). Joint legal custody was increasingly more common, although the prevalence varied substantially across localities (Albiston, Maccoby, & Mnookin, 1990; Bahr, Howe, Mann, & Bahr, 1994; Berger, Brown, Joung, Melli, & Wimer, 2007; Koel, Clark, Phear, & Hauser, 1988; Maccoby, Depner, & Mnookin, 1988; Seltzer, 1990).<sup>4</sup> By the late 1980s, joint legal custody was awarded in half to three-quarters of divorce cases with mother physical custody and was the arrangement for the majority of cases with shared physical custody (Albiston et al., 1990; Huang et al., 2003; Pearson, 1991; Seltzer, 1998). It was awarded in close to 80%

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<sup>3</sup> This is based on the author's own tabulation using the Wisconsin Court Record Data. If the sample is restricted to cases in which children were placed with the mothers, parents in two thirds of the cases obtained joint legal custody in Wisconsin. In California, the rate was about three quarters (Albiston, Maccoby, & Mnookin, 1990).

<sup>4</sup> Of all case types, the share of divorce cases with joint legal custody increased from less than 1% in the early 1970s to 21% in the early 1990s in Utah (Bahr, Howe, Mann, & Bahr, 1994), from 55% in the late 1970s to 90% in the mid-1980s in one Massachusetts county (Koel, Clark, Phear, & Hauser, 1988), from 18% of divorce cases in 1980 to 87% in 2000 in Wisconsin (Berger, Brown, Joung, Melli, & Wimer, 2007), from 26% in 1979 to 71% in 1984 in Santa Clara County, California (Maccoby, Depner, & Mnookin, 1988). Mother physical with joint legal custody had become the norm among divorced families in California in the mid-1980s (Albiston et al., 1990). In contrast, the prevalence of father custody remained stagnant in one study that uses regional data (Maccoby et al., 1988); this is similar to the national proportion of cases with father sole custody, around 12% between the 1980s and 1990s (Huang, Han, & Garfinkel, 2003).

of all divorce cases in the early 1990s in Wisconsin (Berger et al., 2007). In areas where data on legal custody are available, the rise in joint legal custody (the 1980s–1990s) generally took place before the increases in shared physical custody (the 1990s–2000s) for divorced families (Cancian & Meyer, 1998; Cancian et al., 2014; Cook & Brown, 2005; Seltzer, 1990).<sup>5</sup>

### **2.3 Theoretical frameworks for legal custody**

The parents' economic resources, human capital, bargaining power, and parent-child relationship, as well as conflict and disagreement between parents all theoretically predict legal custody. Based on monitoring theory (Brinig & Buckley, 1998), nonresident parents with higher income and thus larger child support orders acquire joint legal custody because this arrangement facilitates monitoring how child support is spent. Because joint legal custody is expected to increase the nonresident parent's access to children, it creates a context in which the children are more likely to secure economic resources from affluent nonresident parents. Moreover, parents' age and education levels, particularly the nonresident parent's education, represent the human capital that could allow better decision making for the child. Therefore, empirical studies generally support the positive associations between income, education or age, and joint legal custody, either in univariate comparisons or multivariate regressions (Arditti, 1992; Huang et al., 2003; Koel et al., 1988; Phear, Beck, Hauser, Clark, & Whitney, 1983; Seltzer, 1990, 1991, 1998).

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<sup>5</sup> Recent studies find evidence for a growth in shared physical custody among divorce cases in the past two decades. For example, in Wisconsin, shared physical custody increased from 2.3% of the divorce cases in the early 1980s to more than 40% in the late 2000s (Cancian & Meyer, 1998; Cancian, Meyer, Brown, & Cook, 2014; Cook & Brown, 2005; Seltzer, 1990). The prevalence of shared physical custody is similar in Washington (George, 2010).



Given the same family income, joint legal custody is theoretically affected by the parent's relative income (measured by each parent's income divided by the couple's total income). Division of household labor is more distinct among couples who are not equally involved in paid work and thus the two parents may have very different income levels. From a bargaining perspective, the lower-income parent may be willing to exchange custody rights for income or child support from the higher-income parent (Mnookin & Kornhauser, 1979). In this framework, joint legal custody is more likely if the nonresident parent's income is substantially higher than the resident parent's. On the other hand, the court is likely to award legal custody in a way that mimics the relationship prior to separation because stability and continuity of care are important factors determining the best interest of the child (Elrod & Dale, 2008). Therefore, in this perspective, joint legal custody is less likely in cases in which division of household labor is distinct. One empirical study finds that joint legal custody is less likely if the resident parent is not employed (Huang et al., 2003), but others find that it is not statistically associated with the mother's income when income of both parents is controlled in the models (Seltzer, 1990, 1991, 1998).

A higher quality relationship between the nonresident parent and the child could increase the likelihood of joint legal custody due to the belief that maintaining the relationship through such an arrangement promotes the child's social and emotional wellbeing (or simply because custody law stipulates a consideration of relationship factors<sup>6</sup>). For example, after couples separated and before a custodial decision was made, fathers who were later awarded joint legal custody spent more overnights with their

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<sup>6</sup> For example, see factors in custody and physical placement determinations in the Wisconsin Statute 767.41 (5).

children (Albiston et al., 1990). This theoretical reasoning may explain the empirical finding that joint legal custody is more common among parents who have been married (and thus have been living with their children) for a long time (Arditti, 1992; Huang et al., 2003; Koel et al., 1988; Phear et al., 1983). However, the evidence is mixed. Marital duration has no effects on legal custody in other studies (Seltzer, 1990, 1991, 1998); joint legal custody is not more likely for fathers who reported higher-quality relationships with the children before separation (Seltzer, 1998).

Joint legal custody is also linked to lower conflict between parents, as well as the ability to cooperate in decision making post-separation. Joint legal custody is more likely among parents who file for divorce rapidly upon separation or who file under a no-fault provision (Arditti, 1992; Koel et al., 1988; Phear et al., 1983), and more likely in mediation rather than an adversarial process (Pearson, 1991). Conversely, in one study that observes quality of the parental relationship, frequent disagreement is positively associated with the likelihood of joint legal custody (Seltzer, 1998), perhaps because both parents are trying to ensure their perspectives on child-rearing is considered.

Prior research also suggests that the policy environment could influence parents' propensities of custody awards. Seltzer (1998) finds that joint legal custody is more likely for parents who filed for divorce in states with legislation favoring joint legal custody, which is not supported by Huang et al. (2003). On the other hand, living in states with more effective child support enforcement increases the likelihood of joint legal custody, presumably because parents with child support orders are more interested in making decisions for their children (Huang et al., 2003). The findings reported here may only be applied to divorced parents.

## **2.4 Approaches to estimating a policy effect**

In the literature on custody, evidence for the effect of a custody law is grounded in the rate of a change in custody patterns (Maccoby & Mnookin, 1992), with an assumption that changes due to other factors such as preference would probably not change sharply. Other studies identify the policy effect in multivariate regressions that include an indicator for filing the case in a state that favors joint legal custody (Huang et al., 2003; Seltzer, 1998). Still other common approaches to estimating a policy effect that are not utilized in the custody literature include the exploitation of variation across states and time (Adda & Cornaglia, 2010; Donohue & Levitt, 2001), difference-in-differences estimation (Card & Krueger, 1994; Meyer & Rosenbaum, 2001), and regression discontinuity (Angrist & Lavy, 1999; Van Der Klaauw, 2002). In all of these approaches, investigators identify a comparison unit either theoretically or inferred by the data. Specifically, comparing different periods within a state controls for the idiosyncratic state policy environment that is associated with the outcome of interest. The difference-in-differences approach compares trends (differences over time) in the affected population with a population that is not influenced by the policy but is similar to the target population in some characteristics. In a classical regression discontinuity design, a group that slightly fails the eligibility rule is compared with a group that just passes the test (such as an age limit, an application deadline, or an income threshold). In the methods section, I will explain how these different methods may or may not be applied to the data in this study.

## **2.5 Summary**

To the author's best knowledge, there has yet to be an empirical study focusing on legal relationship of nonresident parents and children in paternity cases. I answer these questions: (1) What are the trends in legal custody among nonmarital cases? (2) To what extent can these trends be explained by changes in policy favoring joint custody, a general time trend, and changes in case characteristics? Since paternity must be established before a custody award and child support is often settled with custody, as public intervention in paternity establishment and child support expands, the family relationship is made formal for more unmarried parents. This study aims to improve the understanding of custody outcomes among nonmarital children, an economically and socially disadvantaged group that has been under-researched in the literature of child custody.

### **3. Methodology**

#### **3.1 Data**

This study uses data of cohorts 1989–2008 from the Wisconsin Court Record Data (WCRD), a probabilistic sample of court cases that involved decisions for children in 21 counties of Wisconsin.<sup>7</sup> The collection of court cases was adjourned between 1993 and 1996, in 1999 and 2000, and in 2002. Cases were followed beginning with their first court actions and for at least 2 years following, which allows data users to observe a custodial arrangement that typically occurs some time after the first action. I retrieve

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<sup>7</sup> A WCRD cohort consists of divorce and paternity cases that were filed between July of a calendar year and June of the next year; cohorts were named by the year in which the staff went into the field to collect data. The only exceptions are cohorts 1989–1992 in Milwaukee County. For example, cases from Milwaukee in cohort 1992 are those that entered the court between February 1992 and January 1993, instead of between July 1991 and June 1992 as for cases in other counties.

information on the court action in which a custody decision was first made within one year after paternity establishment.

The original sample size of cohorts 1989–2008 is 8,910 cases. I drop 440 cases in which the observation period is less than one year after paternity establishment or the child’s gender is missing, and 665 cases with missing physical or legal custody information.<sup>8</sup> The data show that parents in 1,258 cases have two or more children. This number includes parents who returned to court for their second or third child and parents who first went to court for issues involving their multiple children. Because data that identify these two groups were not collected in the earlier cohorts, I eliminate all such cases.<sup>9</sup> This allows me to focus on the trends for the first-time entry of paternity cases into court since custody awards for returning parents may be influenced by the decision previously made for their first child. I use the remaining sample ( $N = 6,547$ ) to summarize the custody trends in Table 1, where cases are categorized into five groups by physical/legal custody: mother/mother, mother/joint, shared/mother, shared/joint, and father or split physical custody. Then I drop cases with uncommon custody outcomes, 170 cases with father, split, or other physical or legal custody and 118 cases with shared

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<sup>8</sup> I find that different treatments of cases with missing legal custody yield similar estimates for child custody. These approaches are treating cases with missing legal custody as separate categories, assuming mother legal custody, assuming joint legal custody, or eliminating cases with missing legal custody. Most of the cells in Table 1, if the first three treatments have been taken, would be different from those under the base approach (elimination) by no more than 2 percentage points. The percentage of cases with mother physical and joint legal custody would be higher by around 4 percentage points in 2004–2009 if I assume mother legal custody for cases with missing values. This is due to a recent increase in cases with mother physical and missing legal custody.

<sup>9</sup> In cohorts for which data on returning parents were collected (cohorts 2001–2008), parents in 11% of the cases were identified as returning parents. These parents had already established paternity or a child support order for their first child in court; they returned to court for issues involving their younger child. Four percent are cases that were first filed in court for the couple’s multiple children together. The remaining 85% had only one child when their cases were reviewed. Because such data are not available in earlier cohorts, I am unable to distinguish returning parents among parents for whom the data show multiple children. I include multiple-child cases in one of the multivariate models to examine if results differ.

physical and mother legal custody, because the incidence of these outcomes has been low and stable across all cohorts. The final sample size for statistical analyses is 6,259 cases with mother/mother, mother/joint, or shared physical/joint legal custody.

### **3.2 Independent variables**

The WCRD collects data on child support, child custody, legal information (such as petitioners and the purpose of a court action), and demographic and economic characteristics of parents. The income measure is the maximum of the annual income in the WCRD and the annual earnings from the administrative records (i.e., the Unemployment Insurance records), prior to the custody award. Multiple imputations are performed for cases in which parents' income is still missing after I pool two data sources.<sup>10</sup> To account for mother's economic independence or bargaining power over the father, I differentiate cases in which the mother's income is greater than 120%, or less than 80% of the father's income, compared to those in which the mother's income is between 80 and 120% of the father's income. I hypothesize that not only the father's income but also his poverty status has an effect on the custodial arrangement. I define father poverty as having an income lower than the 2013 federal poverty line for childless single individuals (all dollar values are adjusted to 2013).

Other case characteristics include age and gender of the child, age of parents, whether parents have children with partners other than each other (multiple-partner fertility), and the county court where the case was filed. I only include whether the father has legal representation because nearly all mothers (96.7%) have legal representation and

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<sup>10</sup> Fifty income imputations are generated with a multivariate normal model which includes child custody, visitation, child support owed, legal representation, age of parents, age of parents at birth of the first child, multiple-partner fertility, county, year, and the type of missing data in UI. I flag cases in which only the father's/mother's, both parents', neither parents' income were originally missing in both data sources in my multivariate models for joint custody.

most (94.7%) use public attorneys. Another case characteristic is the duration (in months) between the petition and the custody award. This variable captures the complexity of a case that requires a longer time for parents to resolve child-related issues.<sup>11</sup> I do not include a variable to flag voluntary paternity acknowledgment (VPA) cases because VPA pilots were launched in only a few counties prior to the 1998 law, which mandated VPA programs in all hospitals in Wisconsin (Wisconsin Department of Children and Families, 2010). Data on AFDC/TANF receipts, SNAP participation, and incarceration<sup>12</sup> are only available for cases filed after 1996. Variables on mother's welfare receipts and father's incarceration are excluded from multivariate analyses of cases between 1988 and 2009 but are included in one of the logit models for cases between 1996 and 2009.

### **3.3 Analytic methods**

I first summarize the trends in all custody outcomes (Table 1). In Table 2 and the subsequent analyses, as noted above, I eliminate cases with unusual outcomes (father or split physical custody and cases with shared physical custody and mother legal custody), focusing only on cases with mother or shared physical custody. I use the dichotomous outcome, joint versus mother legal custody, instead of the outcome variables involving three categories, mother physical/mother legal, mother/joint, and shared/joint. This approach is taken because, first, similar to shared physical custody, joint legal custody recognizes the father's rights to children, and second, the incidence of shared physical custody has only increased in more recent years.

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<sup>11</sup> The duration is strongly influenced by whether parties show up for hearings and whether the putative father claims that he is not the biological father, requiring blood tests. It also depends on the workload of each judge or court commissioner. For the first set of reasons, the likelihood of joint legal custody may be disproportionately lower, reflecting the unobserved characteristics of parents that predispose an award of sole mother custody.

<sup>12</sup> Only data on sentences served in the Milwaukee Jail and State Prison are available.

The prevalence of joint legal custody may have increased in five ways: (1) there were more unmarried parents who entered the court system and who had characteristics positively associated with joint legal custody (for example, parents who would have been married, had they belonged to earlier generations, but under current cultural norms have the option of remaining unmarried and cohabitating); (2) parents increasingly preferred joint legal custody regardless of the policy change; (3) the policy change led to an overall increase in the propensity of joint custody for all cases; (4) the same parental characteristics were evaluated differently due to the policy change; or (5) a combination of these influences initiated the change. For reason 1 in particular, I investigate whether the composition of cases with a variety of variables changes by comparing whether each period is different from the preceding period (Table 2). However, this approach finds at a time whether one characteristic changed between the periods. The Blinder–Oaxaca decompositions examine changes in all characteristics weighted at their relative importance. I describe this decomposition method in more detail later in this section.

I estimate logit models to understand the factors hypothesized to associate with the change in custody (Table 3). The multivariate models also estimate the increase in joint custody had all other covariates been held constant. The coefficients on years suggest whether there has been an increase in joint legal custody over time that cannot be explained by parental or case characteristics. If the independent variables are all of the factors considered in a custody hearing (that is, no omitted variable bias), the year coefficients can be interpreted as a changing taste for joint custody (reason 2) or a policy effect (reason 3). If there were sufficient observations only a few months before and after the policy change, I would be able to separate the shift in preference from the policy



impact with techniques such as regression discontinuity. However, the sample sizes are inadequate. The alternative is to examine changes in other outcomes that are closely related to joint custody but theoretically would not be affected by the policy, but there are no such measures in the WCRD.<sup>13</sup> To infer a policy change, I rely on the speed and timing of the change because a social trend void of a policy change is typically slower. An abrupt change in 2000 is expected given that the presumption rule was first implemented in that year.

The Blinder–Oaxaca decompositions for logit regressions are also conducted to understand the extent to which the proportion of the observed change is attributed to changes in characteristics (reason 1) versus changes in the process (reason 4) (Sinning, Hahn, & Bauer, 2008). Following their notations, assume that  $Y$  represents joint legal custody, and  $X$  represents a vector of variables that are associated with the outcome. Using subscript 0 for an early period and 1 for a later period, the probabilities of joint legal custody in the early and later periods can be represented as  $E(Y_0) = E(b_0X_0)$  and  $E(Y_1) = E(b_1X_1)$ , respectively. The predicted change in joint custody between the periods, then, is  $E(Y_1) - E(Y_0)$ , and through manipulation becomes

$$E(Y_1) - E(Y_0) = [E_{b_1}(Y_1|X_1) - E_{b_1}(Y_0|X_0)] + [E_{b_1}(Y_0|X_0) - E_{b_0}(Y_0|X_0)] \quad (3)$$

The term in the first square brackets represents the predicted change in the joint custody level if only characteristics had changed, evaluated with the late-period coefficients  $b_1$ .

The second term represents the predicted change in the joint custody level using early-period characteristics  $X_0$ , evaluated with the change in coefficients. The first term clearly

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<sup>13</sup> One close concept is visitation awards, another form of father's access to children. The share of cases without visitation awards or with restricted visitation was 13.2% in 1988–1993, which declined to 5.0% in 2000/5–2001, but bounced back to around 10% in the more recent periods. The fact that visitation is jointly determined with custody weakens this identification strategy.

represents the change in characteristics (the X vector); I call the second term changes in the “process.” The late-period coefficient vector  $b_1$  and the early-period vector  $b_0$  include both the constant and the other coefficients of the logit regressions for joint legal custody for the late and early periods, respectively. The alternative approach to testing the null hypothesis that  $b_0 = b_1$  without weights is to fully interact the logit regression with the period dummy. For parsimony, I do not present interaction models but discuss those results briefly in the results section.

I partition cases into two groups by whether a custodial arrangement was made before May 2000, the month in which the presumption for joint legal custody took effect. I also examine periods immediately before and after 1996, 2002, and the policy change (May 2000). The bootstrap method is applied to simulate the standard errors for the changes in characteristics versus the change in the process. If results show that characteristics of the parents remained unchanged, the same parents were treated similarly before and after the policy change, and that the estimates of period coefficients are significant, they would confirm the rise in joint custody is driven by a general increase for all cases. Finally, I estimate the probabilities of joint custody had the population remained at the sample means, 1988–93 means, 1996–April 2000 means, May 2000–2001 means, and for two more hypothetical cases in which parents are the least and the most likely to obtain joint legal custody to explore the counterfactual custody trends.

## 4. Results

### 4.1 Custody trends

Table 1 summarizes the trends in physical and legal custody between 1989 and 2009, showing six distinct periods.<sup>14</sup> There were three periods in which the prevalence of mother physical and joint legal custody was statistically different from the previous period: in 1996–April 2000, May 2000–2001, and 2002–2003. There is a sharp rise of the share of cases with mother physical and joint custody when the presumption rule was implemented in May 2000. A detailed tabulation shows that it was constantly low in all years during 1996–April 2000: The rates of mother physical and joint legal custody were 8.9, 15.7, 16.9, 15.0% in 1996, 1997, 1998, and 1999–April 2000, respectively, and it increased by three times within one year after the policy change, to 50.1% in the May 2000–2001 period. The increase at the time of policy change occurred with a decline in the prevalence of mother physical and mother legal custody; the percentages of other custody outcomes remained steady. Due to the lack of data between 1993 and 1996, it is indiscernible whether the first increase was a drastic or a gradual change, but the scale of the change was significant.

[Table 1 here]

It was not until 2002–2003 that there was a sizeable increase in the proportion of cases with shared physical and joint custody. In the meantime, the share of cases with mother physical and mother joint custody dropped significantly, by 15.4 percentage points within a couple of years. However, the change in 2002–2003 is not as rapid as the

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<sup>14</sup> For parsimony, I categorize cases into 6 groups by year in which a custodial arrangement was made: 1988–1993, 1996–April 2000, May 2000–2001, 2002–2003, 2004–2005, and 2006–2009. I differentiate parents who were awarded custody before and after May 1, 2000 because the Act that established the presumption of joint legal custody was signed into law on October 27, 1999 and took effect on May 1, 2000 (Wisconsin Legislative Reference Bureau, 1999).

previous increase in May 2000–2001 and thus more likely to be a result of a social change (or a joint impact of policy and a social change). In the following analyses, I drop cases with uncommon arrangements: shared/mother and father or other physical custody. I combine cases in 2002–2003 and 2004–2005 for parsimony since the patterns of child custody are not statistically different.

#### **4.2 Changes in parental characteristics**

The next natural inquiry is to ask whether the increase in joint legal custody is due to a selection of different unmarried parents into court. Table 2 summarizes important demographic and economic characteristics and significance levels of adjusted Wald tests of mean differences between the current and preceding periods. Data show that father’s average annual income increased substantially in the 1990s and has remained similar since the late 1990s, which coincides with a decline in the poverty rate among fathers. Mother’s income also grew in the same period, not only in its absolute term but also relative to the father’s income. There were fewer cases in which the mother’s income is less than 80% of the father’s income and more cases in which the mother’s income is similar to the father’s. Different from the trend in father’s income, this trend persisted till the next period (i.e., May 2000-2001).<sup>15</sup>

[Table 2 here]

There are no consistent trends in other demographic characteristics of the unmarried parents and children in court. Changes in ages of the child and the mother are

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<sup>15</sup> All statements made here are also true if I use non-imputed father’s and mother’s income or the median income. In Table 2, I present the average instead of the median income here because it will be used in the Blinder–Oaxaca decomposition analysis. The median father’s income was around 12,000 dollars in 1988–1993 and increased to 14,000–15,000 dollars in the later periods; the median mother’s income was around 4,000 dollars, increased to 9,000 in 1996–1999, increased again to 10,000–11,000 dollars in the later periods.

trivial (at most by one year) although they are statistically significant. Over the periods when data are available, the share of cases in which the father was incarcerated in the previous year increased in May 2000–2001; the prevalence of mother’s and father’s receipts of public assistance increased once in 2002–2005. In 1996–April 2000, the time required for a custody decision was shorter. During the same period, the share of cases from Milwaukee declined. However, they did not strictly increase or decrease in the later periods. One exception to the lack of patterns is the change in multiple-partner fertility. In May 2000–2001, there is a significant increase in the prevalence of only the father or both parents having children with other partners and, in the more recent periods, minor but significant increases in only the father or only the mother having other children.

#### **4.3 Logit models for joint legal custody**

To examine whether the upward trend exists *ceteris paribus*, I estimate logit models for joint legal custody with controls associated with the outcome. All logit regressions include period-fixed effects, cluster standard errors at the county level, and are estimated with weights.<sup>16</sup> Table 3 summarizes the logit coefficients for three different samples: the base sample of one-child cases, the sample that also includes cases in which parents are flagged as having multiple children, and the sample of only cases with mother physical custody. The third model aims to “control” for physical custody by eliminating cases with shared physical and joint legal custody. The fourth model drops cohorts 1988–1993 to include variables on public assistance and father incarceration, which are not available for those cohorts.

[Table 3 here]

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<sup>16</sup> I use probability weights in the logit regressions in order to conduct the Blinder–Oaxaca decomposition analysis with weighted averages from Table 2.

Joint legal custody had been on the rise until the early 2000s and remained unchanged since then, suggested by only the coefficients on the first three periods being statistically different from one another. In contrast, joint legal custody continued to increase even in the late 2000s for multiple-child cases (including returning cases). For one-child cases, the odds of joint legal custody in 1996–April 2000 and May 2000–2001 are 92 and 58% lower than the odds in 2006–2009. To state this differently, the predicted probabilities are 0.019, 0.184, 0.549, 0.725, and 0.746 in the five periods, respectively, with all characteristics held at their means. The first increase is smaller than the raw difference, and the increase at the time of policy implementation is slightly larger. Eliminating shared physical custody from the sample leads to the same conclusion. The increase in the likelihood of joint legal custody in 2002–2003 is almost identical to the estimate without controls (by 17.5 versus 18.0 percentage points).

In addition to custody trends, the models show that joint legal custody is less likely as the father's income decreases or when it is below the poverty line. These findings are consistent across different samples and specifications, except that father's poverty status fails the statistical test for cases with mother physical custody. The results imply that joint legal custody would be more common if the father's income has improved over time. The effect size is larger for father's poverty status than for a 10,000-dollar increase in the father's income.

Mother's income relative to the father's is controlled in the models, which characterizes that a custodial arrangement is made by comparing the two parents. Nonetheless, it is not associated with the likelihood of joint legal custody. The likelihood of joint custody is alike for cases with only the mother's income imputed and those with

neither parents' income imputed. I also estimate Seltzer's specification in her study on legal custody for divorce cases (1991) by replacing the mother's relative income with her actual income (not shown but available from the author). This type of model follows the hypothesis that the mother's economic status is evaluated independently of the father's when a custody decision is made. Although the coefficient is positive, the mother's income does not statistically predict joint legal custody. Both Seltzer's study and my investigation show that the mother's income is less important than the father's income.

Joint legal custody is more likely among cases in which both parents are less than 25 years of age or have younger children, and the father has legal representation. Only the father having children with a partner other than the mother is not associated with the custody outcome, but the propensity is lower for cases in which only mother or both parents have other children, compared to neither parents having other children. Joint legal custody is also less likely for fathers who have ever been incarcerated in the prior year. The longer the duration between the first petition and the custody award is, the less likely that parents are awarded joint legal custody. These results are largely robust to different samples and model specifications.

To conclude, the results confirm that economic resources of the father play an important role in determining legal custody. I find mixed evidence for the bargaining perspective as mother's relative income is not associated with joint legal custody, but father's legal representation is linked to a higher likelihood of joint legal custody. There is a lack of support for human capital theory affecting custody decisions. Contrary to the literature on custody for divorce cases, joint legal custody is more likely among younger

unmarried parents. One major limitation of this study is not having data on quality of parent-child or parental relationship.

#### **4.4 The Blinder–Oaxaca decomposition**

The previous analyses reveal an increase in joint legal custody for all cases over the first four periods, as well as several relationships between the economic, demographic, and case characteristics with the likelihood of joint legal custody. I further explore how much the increasing prevalence of joint legal custody is due to changes in the characteristics versus changes in the decision-making process (namely, the coefficients, including the constant). In Table 4, I first estimate logit regressions with the sample and the specification of the first model in Table 3 separately for cases in which the custody decision was made before and after May 2000, when the presumption policy took effect. I then perform the Blinder-Oaxaca decomposition using the coefficient estimates from these logit regressions.<sup>17</sup>

[Table 4 here]

All results in Table 4 indicate a substantial share of the increase in joint legal custody is attributed to changes in the way that a custodial arrangement was made. The prevalence of joint legal custody increased by 61.3 percentage points between periods 1988–April 2000 and May 2000–2009 (the raw change). Depending on whether the change is evaluated at the early- or late-period coefficients, only 1.9 to 3.8% of the increase can be explained by changes in characteristics of parents between the two

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<sup>17</sup> Because income is multiply imputed with 50 imputations, I perform the nonlinear (logit) decomposition for each of the 50 imputations with weights. I sort the 50 sets of results by predicted change in joint legal custody using early-period characteristics, evaluated with change in process. I select the median value and present the decomposition results of that particular imputation. I also use the bootstrap method to obtain standard errors of the decomposition coefficients, setting the number of bootstrap samples set to be 50.



periods (not shown but available from the author). I then restrict the sample to cases obtaining custody awards right before and after the policy change, i.e., 1996–April 2000 and May 2000–2001. The changes in parental characteristics do not statistically affect the increase in joint custody. In each column of column 2 and 3, which contrast 1988–1993 and 1996–April 2000, May 2000–2001 and 2002–2005, a larger proportion of the increase in joint legal custody is explained by changes in characteristics, although the decomposition coefficients are not statically significant. I conclude that the change in process is more likely to be the driving force underlying the upward trends in joint legal custody. However, the Blinder–Oaxaca decomposition does not inform details of the change in process: whether it is driven primarily by the differences in the early- versus the late-period coefficients or the difference in the constants.

To identify the individual characteristics that were considered differently in a custody award across periods, I estimate logit models with fully interacted terms of period dummies and covariates using two successive periods at a time. The results do not reject that the interaction terms are jointly associated with the likelihood of joint legal custody in each of the models (not shown but available from the author upon request). However, there has not been a consistent pattern in the signs and significance levels of the interaction terms that would suggest characteristics are increasingly more or less likely to affect the propensity of joint legal custody. In 2002–2005, the characteristics are treated very differently such that the overall difference between the earlier and the later period is no longer significant. An overall, across-the-board increase (marked by the difference in the constants across periods) characterizes the earlier trend in legal custody but is less the case in the more recent periods.

## 4.5 Counterfactual exercises

On a final note, I examine the counterfactual outcome supposing the parents had the average characteristics of parents in 1988–1993, 1996–April 2000, May 2000–2001, or the entire sample, using the legal process estimated for 1988–2009. I find that the increase around the time of policy change is 35.9 to 36.7 percentage points, slightly larger than the raw change. The first increase over 1988–April 2000 is 15.6 to 16.7 percentage points; the rate of joint legal custody has reached a plateau since 2005 (Table 5).

[Table 5 here]

Table 5 also examines the predicted probabilities for two hypothetical cases: (1) a case in which joint legal custody is unlikely, specifically, the father does not have any income and has no legal representation, only he has other children, the mother's income is similar to the father's income, both parents are over age 25, the couple has one boy together and file their case in a rural county, (2) one in which the father's income is at the 90th percentile of the sample (\$48,809), the father has legal representation, the couple has similar income, has one boy together, file the case in an urban county, both parents have other children and are more than 25 years of age. The results show that even for disadvantaged parents like those in case one, the likelihood of joint legal custody increases by 23.6 percentage points in May 2000-2001. For more advantaged couples, the increase is more likely to occur before the presumption policy went into effect. Parents who are the most likely to obtain joint custody are less susceptible to policy change.

## 5. Discussion

### 5.1 Summary of findings

The prevalence of joint legal custody increased dramatically, from essentially nothing in 1988–1993 to roughly one fifth of custody cases in the late 1990s, jumping in 2000 to over than half of the cases, and staying relatively high at around two-thirds since 2002–2005. The increase in joint legal custody was primarily at the expense of mother sole legal custody, which decreased markedly during this period. Some other characteristics of cases also changed during this period. The father’s income increased and poverty rate dropped in 1996–April 2000 but had remained constant since then, whereas the mother’s income persisted to increase and the share of cases with mother having lower income continued to decline in the third period (May 2000–2001). Around the time of policy change, there were fewer cases in which neither parents has children with other partners. Both father’s income and both parents having children with other partners are associated with the likelihood of joint legal custody *ceteris paribus*.

However, the Blinder–Oaxaca decomposition shows that these changes in characteristics explain at most 10% of the increase between 1988 and 2009 as well as in shorter periods within this timeframe. I also examine whether characteristics had been assessed differently from the preceding period for all periods between 1988 and 2009, by fully interacting the models with period dummies. Reading results from both the decomposition and the interacted models, I find the majority of the increase is explained by a general increase in the likelihood of joint custody for all cases in 1996–April 2000 and a different assessment of the parental characteristics in the more recent period (2002–2005). The nature of the change immediately after the presumption rule took effect is likely to be a mixture of these two mechanisms. However, the signs of these interaction effects do not suggest consistent time trends. Finally, the counterfactual exercises show

that had the parental characteristics been unchanged over time, the prevalence of joint custody would still increase by a similar degree. It is concluded that the impact of the changes in parental characteristics on the trends in legal custody is negligible.

Is the increase at policy change resulting from the policy itself or a shift in preference for joint legal custody, or more generally, an egalitarian, gender-neutral arrangement among paternity cases? Limitations in the data prohibit a further assessment of the hypothesis, but the scale and pattern of the increases suggest that while a social change is likely to be the driving force, it would hardly result in a rapid increase in joint legal custody by one third within a year. To conclude, although the presumption policy has its intended effect, it did not work in vacuum. A social change took place before and after joint legal custody was regulated to be presumptive; it is likely to be the force both underlying and reinforcing the policy change.

## **5.2 Future studies and policy implications**

The research on relationships between unwed fathers and their children proliferates, partly because children are more vulnerable to living away from the absent father and in poverty than those in married-couple families. For all unwed fathers, an extra step by the father is required to establish a legal relationship with his children, by acknowledging paternity in a hospital or establishing paternity in court. Joint legal custody allows a nonresident parent to participate in the decision-making after his relationship with the mother ends. This is one way to maintain the parent-child relationship for parents who do not obtain some (shared) physical custody, in addition to visitation and child support.

The increase in joint legal custody among paternity cases occurred several years after it was made one of the custodial arrangements by law. A series of Supreme Court

decisions during the 1970–80s provided guidelines for thinking about unwed fathers’ rights to his children, which generally recommend the biological connection alone be insufficient and parental rights be preserved for a father who has taken a caring role or developed a personal or financial relationship with his child (Shanley, 1995). The 1977 legislation in Wisconsin statutorily replaced the requirement to award custody to one parent with options of both joint and sole custody. The 1987 law formally differentiated legal and physical custody in Wisconsin. Based on the WCRD, mother physical and joint legal custody was already awarded in 28% of all divorce cases in 1988 (45, 50, 55, 61, and 60% in 1989, 1990, 1991, 1992, and 1993, respectively). In contrast, my study finds that joint legal custody was very rare for nonmarital cases in 1988–1993 in Wisconsin, which were virtually unaffected by the 1987 law.

For paternity cases in Wisconsin, joint legal custody initially increased between 1993 and 1996 by around 15 percentage points. As discussed previously in the literature section, the characteristics of unmarried parents granted custody in court might have been different because welfare reforms in Wisconsin (prior to the PRWORA of 1996) had generally discouraged participation. Parents who remained on welfare and thus were required to cooperate in setting child support orders might have more employment barriers than parents who left. On the other hand, the expansions of child support enforcement in this period might enroll more parents into court to establish child support orders and therefore change legal custody of their children. Several case characteristics are statistically different between 1988–1993 and 1996–2000; nonetheless, controlling for changes in characteristics does not yield a different estimate for the increase in joint legal custody. The extent to which the welfare reform affected custody outcomes is very

limited based on the Wisconsin data. Due to the lack of data during this period (1993–1996), I leave this issue to be determined by scholars with data from other localities.

On the other hand, this study finds that moving from joint legal custody as an option to a presumption is associated with a significant increase in joint legal custody among paternity cases. The descriptive analysis of detailed data shows that the prevalence was flat and low in every year during 1996–2000/4 before a sharp increase in 2000/5–2001. The decomposition analysis, along with the interacted models, reveals that the first increase in joint legal custody was an overall increase in the likelihood of joint legal custody for all cases. Then the mechanism for this upward trend became more complex: the same parental characteristics were considered differently in the later periods. In all periods, changes in parental characteristics explain very minimally the increases in joint legal custody.

This study is limited in the way that data on parents' desires and perspectives are not available. Maccoby and Mnookin (1992) find in a study of divorce cases in California that joint custody was awarded in one third of the cases in which both parents sought sole custody. One rationale for awards of joint custody in this type of cases is to resolve disputes between parents. For paternity cases, very little is known about the prevalence of unmarried parents seeking joint legal custody in court. Such data, if available in the WCRD, may improve the validity of the inference that the presumption policy has its intended effect. No observations are available on whether unwed fathers have been increasingly involved in the upbringing of children before cases of their children are presented in court for child support and custody arrangements. Neither do I have data on whether the child desired or expressed the wish to have contact with his/her father, or

other information on the parent-child relationship. Because the WCRD does not collect information on the parental relationship and the anticipated feasibility of cooperation after the relationship ends, my findings would be incomplete or even biased if over time, there has been less conflict when unmarried parents separate. However, this study is still significant to the literature because it finds many of the economic and demographic characteristics affect a custody award but did not lead to the sharp increase in joint legal custody.

It is possible that the majority of unwed fathers would have been considered “fit” parents had the legal context been friendlier to them, so the presumption rule can be viewed as a positive change. Nonetheless, indiscriminate awards of joint legal custody could be problematic if joint legal custody is more than labeling or symbolic to parents and children. The literature has not concluded whether joint legal custody is in the “best interest” of the child. Some scholars argue that joint legal custody is not simply a “label” that appears less offensive to nonresident fathers but has legal consequences for parents and children (Fineman, 1988), whereas others suggest that families with joint legal and mother physical custody do not live their lives differently from those with the arrangement of mother legal and mother physical custody (Kelly, 1993; Maccoby et al., 1988). Some worry that the presumption or the award of joint legal custody forces the resident parent to share decision-making without the nonresident parent’s return of sharing responsibilities (Delorey, 1989; Singer & Reynolds, 1987). This presumption could create tension for children whose parents are unable to cooperate, decrease individualized treatments for different families, and undermine the practice that addresses uniqueness of each child (Botts & Nestor, 2011). Although the presumption for joint

legal custody is rebuttable, more research is needed to understand how often and why it is questioned and/or overruled in order to safeguard the child's best interest.

I recommend that future studies investigate the selection process in which paternity cases entered court for child-related issues as the first step to understand the custody awards among unmarried parents. Future studies are required on unmarried parents who are not known by the court or the child support agency to estimate precisely the prevalence of joint legal custody. To supplement the findings of this study, more studies should be conducted to disclose how factors are considered and weighted by their importance in a custody decision for paternity cases, as well as whether parents with joint legal custody actually cooperate in decision-making for their children. Not only determinants but also consequences of joint legal custody deserve policy attention. Research is highly valuable on whether and how joint legal custody resembles the intact family, encourages never-married parents to cooperate in decision making, promotes children's emotional ties to nonresident parents, sustains the nonresident parent's interests and prevents him from dropping out from his childrearing responsibility, and improves child support payments (or more generally, whether it serves to protect the best interest of the child). My analyses suggest that policy change can have the intended effect. This raises the stakes, increasing the responsibility of policy makers to understand the likely consequences of policy decisions.



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**Table 2** Statistical comparisons of case characteristics across periods.

											significant change from previous period			
	1988–1993		1996–April 2000		May 2000–2001		2002–2005		2006–2009		1996–April 2000	May 2000–2001	2002–2005	2006–2009
	Mean	Std. err.	Mean	Std. err.	Mean	Std. err.	Mean	Std. err.	Mean	Std. err.				
Joint legal custody	0.023	0.005	0.213	0.018	0.534	0.031	0.714	0.013	0.725	0.014	***	***	***	
Father's income	13,931	774	18,415	932	17,531	1,274	17,698	675	16,690	654	***			
Father's income below poverty line	0.505	0.024	0.435	0.025	0.442	0.033	0.457	0.016	0.467	0.017	**			
Mother's income	6,939	587	11,911	616	13,520	725	12,923	392	12,829	393	***	*		
Mother's income <80% father's	0.650	0.026	0.573	0.024	0.475	0.035	0.495	0.016	0.472	0.017	**	**		
Mother's income >120% father's	0.288	0.024	0.326	0.024	0.403	0.035	0.385	0.016	0.397	0.017		*		
Mother's income similar to father's	0.064	0.013	0.101	0.015	0.122	0.021	0.121	0.010	0.131	0.011	*			
Father's receipts of SNAP	NA	NA	0.116	0.015	0.147	0.023	0.239	0.013	0.253	0.014	NA		***	
Mother's receipts of AFDC/TANF or SNAP	NA	NA	0.659	0.021	0.662	0.027	0.716	0.012	0.731	0.013	NA		*	
Father incarceration	NA	NA	0.217	0.020	0.306	0.031	0.256	0.014	0.265	0.015	NA	**		
Boy child	0.478	0.022	0.496	0.023	0.525	0.030	0.510	0.014	0.499	0.015				
Girl child	0.522	0.022	0.504	0.023	0.475	0.030	0.490	0.014	0.501	0.015				
Age of child	2.086	0.142	2.405	0.149	2.886	0.271	1.875	0.082	1.635	0.080			***	**
Father's age	26.712	0.354	27.510	0.334	28.263	0.485	27.314	0.202	27.245	0.212			*	
Mother's age	24.080	0.272	25.072	0.276	25.602	0.426	24.579	0.162	24.846	0.183	**		**	
Only father <25	0.022	0.006	0.045	0.010	0.032	0.011	0.042	0.006	0.057	0.007	*			
Only mother <25	0.169	0.016	0.190	0.017	0.240	0.026	0.220	0.012	0.213	0.012		*		
Both parents <25	0.478	0.022	0.401	0.022	0.375	0.029	0.411	0.014	0.382	0.015	**			

Both parents $\geq 25$	0.331	0.021	0.364	0.023	0.353	0.030	0.327	0.013	0.349	0.015			
Only father has other children	0.129	0.014	0.126	0.015	0.184	0.024	0.203	0.011	0.234	0.013	**	*	
Only mother has other children	0.130	0.015	0.104	0.016	0.084	0.019	0.132	0.011	0.109	0.011		**	
Both have other children	0.057	0.011	0.046	0.011	0.132	0.024	0.114	0.011	0.103	0.011	***		
Neither has other children	0.684	0.021	0.723	0.021	0.600	0.031	0.551	0.014	0.554	0.015	***		
Father has legal representation	0.091	0.011	0.062	0.010	0.065	0.015	0.070	0.007	0.059	0.007	*		
Duration between petition and custody award (months)	5.259	0.193	4.264	0.149	4.654	0.185	4.186	0.102	4.919	0.152	***	**	***
Milwaukee county	0.685	0.017	0.599	0.020	0.637	0.024	0.568	0.013	0.536	0.015	***	**	
Rural county	0.054	0.004	0.064	0.006	0.076	0.008	0.079	0.004	0.094	0.005			**
Other urban county	0.261	0.016	0.336	0.019	0.287	0.021	0.353	0.012	0.370	0.013	***	*	***
Sample size	1,130		731		609		2,102		1,687				

1. \*\*\* $p < 0.01$ , \*\* $0.01 < p < 0.05$ , \* $0.05 < p < 0.1$ .

2. I present the imputed income in this table.

3. NA: Data are not available.

**Table 3** Logit models for joint legal custody.

Periods	(1) One Child			(1) + Two Children			(1) – Shared Physical Custody			(1) – Early Cohorts		
	1988–2009			1988–2009			1988–2009			1996–2009		
Sample size	6,259			7,428			5,555			5,129		
	Coef.	Std. err.	Sig. level	Coef.	Std. err.	Sig. level	Coef.	Std. err.	Sig. level	Coef.	Std. err.	Sig. level
<b>Economic characteristics</b>												
Father's income (10,000)	0.167	0.048	***	0.127	0.036	***	0.180	0.053	***	0.169	0.051	***
Father's income below poverty line	-0.215	0.095	**	-0.220	0.067	***	-0.161	0.102		-0.193	0.098	**
Relative income (base: mother's similar to father's)												
Mother's income < 80% father's	-0.045	0.121		0.011	0.100		-0.036	0.119		-0.066	0.110	
Mother's income > 120% father's	-0.118	0.122		-0.116	0.092		-0.106	0.116		-0.071	0.113	
Father on SNAP in the past year										0.041	0.078	
Mother on SNAP/TANF/AFDC in the past year										0.075	0.072	
Father ever incarcerated in the past year										-0.407	0.049	***
<b>Children's characteristics</b>												
One boy (base: one girl)	0.028	0.056		-0.032	0.063		0.010	0.041		0.019	0.082	
Age of the child	-0.079	0.003	***	-0.052	0.005	***	-0.068	0.005	***	-0.080	0.004	***
<b>Parents' characteristics</b>												
Age of parents (base: both ≥25)												
Only mother <25	0.012	0.104		0.013	0.089		0.022	0.082		-0.005	0.110	
Both parents <25	0.358	0.038	***	0.330	0.036	***	0.390	0.040	***	0.358	0.050	***
Multiple-partner fertility (base: neither has other children)												
Only father has other children	-0.114	0.120		-0.074	0.101		-0.059	0.100		-0.107	0.124	
Only mother has other children	0.466	0.036	***	0.455	0.030	***	0.509	0.035	***	0.423	0.040	***
Both have other children	0.670	0.034	***	0.614	0.028	***	0.669	0.034	***	0.598	0.040	***

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<b>Case characteristics</b>									
Father has legal representation	0.900	0.196 ***	0.966	0.207 ***	0.853	0.173 ***	0.657	0.182 ***	
Duration between petition and custody award	-0.068	0.011 ***	-0.069	0.010 ***	-0.059	0.014 ***	-0.066	0.014 ***	
County (base: other urban counties)									
Milwaukee	-0.198	0.160	-0.150	0.174	-0.069	0.189	-0.040	0.177	
Rural	-0.384	0.272	-0.358	0.273	-0.517	0.303 *	-0.427	0.282	
<b>Period (base: 2006–2009)</b>									
1988–1993	-5.010	0.350 ***	-5.161	0.383 ***	-5.033	0.344 ***			
1996–2000/4	-2.567	0.214 ***	-2.593	0.201 ***	-2.659	0.202 ***	-2.575	0.220 ***	
2000/5–2001	-0.878	0.111 ***	-0.977	0.152 ***	-0.761	0.137 ***	-0.865	0.113 ***	
2002–2005	-0.108	0.093	-0.236	0.053 ***	-0.065	0.069	-0.108	0.093	
Constant	1.417	0.212 ***	1.595	0.203 ***	1.034	0.211 ***	1.375	0.177 ***	

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1. \*\*\* $p < 0.01$ , \*\* $0.01 < p < 0.05$ , \* $0.05 < p < 0.1$

2. Standard errors are clustered by county.

3. These models also contain indicator variables denoting cases in which income is imputed for only the father, only the mother, or both parents.

**Table 4** The Blinder–Oaxaca decomposition of the change in legal custody.

Period	Column 1		Column 2		Column 3		Column 4	
	1988–2009		1988–2000/4		2000/5–2005		1996–2001	
Year differentiating early and late	May 2000		1996		2002		May 2000	
	Coef.	Explained	Coef.	Explained	Coef.	Explained	Coef.	Explained
Predicted change in joint custody level using change in characteristics, evaluated with late-period process	0.012 (0.009)	1.9%	0.020 (0.015)	10.4%	0.018 (0.013)	9.9%	-0.008 (0.024)	-2.6%
Predicted change in joint custody level using early-period characteristics, evaluated with change in process	0.601 (0.013)	98.1%	0.170 (0.024)	89.6%	0.162 (0.030)	90.1%	0.330 (0.038)	102.6%
Raw change in joint custody levels	0.613 (0.011)	100%	0.190 (0.022)	100%	0.180 (0.031)	100%	0.321 (0.043)	100%
Number of cases in early period	1,861		1,130		609		731	
Number of cases in late period	4,398		731		2,102		609	

**Table 5. Counterfactual Analysis of Changes in Legal Custody**

	1988- 1993	1996- April 2000	May 2000- 2001	2002- 2005	2006- 2009
Raw means	0.023	0.213	0.534	0.714	0.725
Predicted probabilities when variables are evaluated at Sample means in 1988-2009	0.019	0.184	0.549	0.725	0.746
Sample means in 1988-1993	0.018	0.174	0.534	0.712	0.734
Sample means in 1996-2000/4	0.019	0.186	0.553	0.728	0.749
Sample means in 2000/5-2001	0.018	0.176	0.536	0.714	0.735
Case 1. The father does not have any income and has no legal representation, only he has other children, the mother's income is similar to the father's income, both parents are over age 25, the couple has one boy together, and file their case in a rural county	0.006	0.059	0.295	0.456	0.472
Case 2. One in which the father's income is at the 90th percentile of the sample (\$48,809), the father has legal representation, the couple has similar income, has one boy together, file case in an urban county, both parents have other children, and are more than 25 years of age	0.159	0.685	0.922	0.962	0.966