

2017

# Racial and Gender Justice in the Child Welfare and Child Support Systems

Margaret F. Brinig

Follow this and additional works at: <http://scholarship.law.umn.edu/lawineq>

---

## Recommended Citation

Margaret F. Brinig, *Racial and Gender Justice in the Child Welfare and Child Support Systems*, 35 *LAW & INEQ.* 199 (2017).  
Available at: <http://scholarship.law.umn.edu/lawineq/vol35/iss2/3>

*Law & Inequality: A Journal of Theory and Practice* is published by the  
University of Minnesota Libraries Publishing.



## Racial and Gender Justice in the Child Welfare and Child Support Systems

Margaret F. Brinig<sup>†</sup>

### Introduction

Academics have studied married and divorcing couples for many years. It is relatively easy to do so,<sup>1</sup> because marriage and divorce records are, for the most part, public and because many separating married couples consult mental health and legal professionals. Intact or separating unmarried couples, a growing segment of the U.S.<sup>2</sup> (and world)<sup>3</sup> population, have been studied

---

<sup>†</sup> Fritz Duda Family Professor of Law, University of Notre Dame. The author wishes to thank Judge James Fox and Magistrate James Stewart-Brown of the St. Joseph County Probate Court for their help in giving the author access to the data involved in this project.

1. It was much easier, at least on the state level, when the National Center for Health Statistics collected detailed marriage and divorce statistics. This practice of collecting marriage and divorce statistics ended in 1990. See Sally C. Clarke, *Advance Report of Final Divorce Statistics, 1989 and 1990*, MONTHLY VITAL STAT. REP., Mar. 1995, at 1, 2 (reporting divorce statistics from every state and the District of Columbia for 1989 and 1990). Marriage and divorce data now used includes surveys, such as the National Survey of Family Growth. See, e.g., Jill Daugherty & Casey Copen, *Trends in Attitudes about Marriage, Childbearing, and Sexual Behavior: United States, 2002, 2006–10, and 2011–2013*, NAT'L HEALTH STAT. REP., Mar. 2016, at 1 (describing the method of collecting survey data of marriage and divorce using samples of men and women in the household population of the United States); ROSE M. KREIDER & RENEE ELLIS, U.S. CENSUS BUREAU, NUMBER, TIMING, AND DURATION OF MARRIAGES AND DIVORCES: 2009 (2011) (explaining marital patterns for men and women ages fifteen and older found in data collected by the Survey of Income and Program Participation); U.S. DEPT OF HEALTH & HUMAN SERVICES, MARRIAGE AND COHABITATION IN THE UNITED STATES: A STATISTICAL PORTRAIT BASED ON CYCLE 6 (2002) OF THE NATIONAL SURVEY OF FAMILY GROWTH (2010) (discussing trends in cohabitation and marriage and their relation to factors including educational attainment, gender, race, and ethnicity based on data from the National Survey of Family Growth).

2. See, e.g., CHILD TRENDS DATABANK, BIRTHS TO UNMARRIED WOMEN: INDICATORS ON CHILDREN AND YOUTH 3 fig.1 (2015) (highlighting the rise in childbirths among unmarried women, which has gone from 5% in 1960 to 41% in 2008 and has stabilized at 40% in 2014); SALLY C. CURTIN, STEPHANIE J. VENTURA & GLADYS M. MARTINEZ, U.S. DEPT OF HEALTH & HUMAN SERVS., RECENT DECLINES IN NONMARITAL CHILDBEARING IN THE UNITED STATES 1 (2014) (noting a decline in the number of non-marital childbirths in the United States among all age groups under thirty-five and a decline for Black and Hispanic women).

3. See, e.g., Sharon Jayson, *Out-of-Wedlock Births on the Rise Worldwide*, USA TODAY (May 13, 2009, 7:39 PM), [http://usatoday30.usatoday.com/news/health/2009-05-13-unmarriedbirths\\_n.htm](http://usatoday30.usatoday.com/news/health/2009-05-13-unmarriedbirths_n.htm) (noting that there has been a significant increase in

less frequently and systematically. Some good ethnographic work has been done since the turn of the century,<sup>4</sup> and celebrated survey data<sup>5</sup> has added to the knowledge base. A problem from a data perspective is that the separations themselves do not require a legal process before a new relationship begins,<sup>6</sup> and that even where the legal system does get involved, any records are likely to be confidential.<sup>7</sup>

Professor Barber's work with young unmarried women suggests that they suffer more intimate partner violence (IPV) when they have children or are pregnant, than when they do not have children or are not pregnant.<sup>8</sup> I would like to begin at the point of childbirth, but look beyond it to consider the many kinds of cases where children and their unmarried parents confront the child welfare and juvenile justice systems.

My cases come from a single county in Indiana, St. Joseph, whose probate court handles not only wills and guardianship cases, but also those involving child welfare (termination of

childbirths among unmarried women in cohabitating relationships in several European nations; also noting that the United States and United Kingdom have more women raising children as single parents). See SHARE OF BIRTHS OUTSIDE OF MARRIAGE (2016), SOC. POLICY DIV., ORG. FOR ECON. CO-OPERATION & DEV. (OECD), [https://www.oecd.org/els/family/SF\\_2\\_4\\_Share\\_births\\_outside\\_marriage.pdf](https://www.oecd.org/els/family/SF_2_4_Share_births_outside_marriage.pdf) (reporting on the number of births occurring outside of marriage across OECD member countries).

4. See KATHRYN EDIN & MARIA J. KEFALAS, PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE (2005); KATHRYN EDIN & TIMOTHY J. NELSON, DOING THE BEST I CAN: FATHERHOOD IN THE INNER CITY (2013).

5. While there have been other publications, the best known is the Fragile Families and Child Wellbeing Study. Jan Waldfogel et al., *Fragile Families and Child Wellbeing*, 20 FRAGILE FAMILIES 87 (2010) [hereinafter *Fragile Families Study*].

6. Of course, there may be a legal proceeding to divide property. See, e.g., *Connell v. Francisco*, 898 P.2d 831, 352 (Wash. 1995) ("There is a rebuttable presumption that property acquired during the relationship is owned by both of the parties and is therefore before the court for a fair division."). There may also be a legal proceeding to determine custody or spousal support. See, e.g., *Marvin v. Marvin*, 557 P.2d 106, 122–23 (Cal. 1976) ("[A] nonmarital partner may recover in quantum meruit for the reasonable value of household services rendered less the reasonable value of support received if he can show that he rendered services with the expectation of monetary reward."). There were no trials in my dataset, though there were contested custody modification proceedings.

7. For example, records will usually be sealed if they involve parents younger than eighteen, juvenile court, or child welfare proceedings.

8. Jennifer S. Barber et al., *The Relationship Context of Young Pregnancies*, 35 LAW & INEQ. 175 (2017); Jennifer S. Barber et al., *The Dynamics of Intimate Partner Violence and the Risk of Pregnancy During the Transition to Adulthood*, (Univ. Mich. Population Studies Stud. Ctr., Working Paper 2016); Yasamin Kusunoki et al., *Black-White Differences in Sex and Contraceptive Use Among Young Women*, 53 DEMOGRAPHY 1399, 1403 (2016) (stating that low-income women are more likely to experience IPV).

parental rights<sup>9</sup> and dependency proceedings because of allegations of abuse, neglect, or abandonment),<sup>10</sup> paternity establishment,<sup>11</sup> child support establishment<sup>12</sup> and enforcement,<sup>13</sup> and status and delinquency offenses.<sup>14</sup> Except for divorce, typically handled in the circuit court, the St. Joseph Probate Court is an all-purpose family court.<sup>15</sup>

Indiana follows the current federal suggestion that visitation,<sup>16</sup> called parenting time, be offered in paternity establishment cases. Indiana, however, began this practice in 1997, well before the federal government initiative.<sup>17</sup> While legal custody defaults to unmarried mothers,<sup>18</sup> it has for nearly twenty years been possible for Indiana fathers to have primary custody or

---

9. Involuntary termination of parental rights is governed by IND. CODE ANN. § 31-35-2-11–§ 31-35-2-8 (LexisNexis 2013).

10. Children in Need of Services (CHINS) proceedings are governed by IND. CODE ANN. § 31-34-1-1–§ 31-34-25-5 (LexisNexis 2013). The circumstances appear in IND. CODE ANN. § 31-34-1-1 (LexisNexis 2013) (including inability, refusal, or neglect to supply child with necessary food, clothing shelter, medical care, education, or supervision); IND. CODE ANN. § 31-34-1-2 (LexisNexis 2013) (including abuse, physical or mental) and a variety of other offenses following in IND. CODE ANN. § 31-34-1-3–§ 31-34-1-14 (LexisNexis 2013) (including abuse of sibling, sexual trafficking or obscene performance, missing children, fetal alcohol or drug abuse in newborn, and various defenses relating to good faith or religious beliefs or practices).

11. Paternity establishment cases are generally governed by IND. CODE ANN. § 31-14-1-1–§ 31-14-21-12 (LexisNexis 2013).

12. In general, establishment is governed by IND. CODE ANN. § 31-16-2-1–§ 31-16-2-8 (LexisNexis 2007), with amounts governed by IND. CODE ANN. § 31-16-6-1–§ 31-16-6-2 (LexisNexis 2007).

13. Child support enforcement is discussed in IND. CODE ANN. § 31-16-12-1–§ 31-16-12-14 (LexisNexis 2013).

14. Juvenile delinquency offenses are generally acts that would constitute crimes if committed by adults. Delinquency offenses are mostly governed by IND. CODE ANN. § 31-37-1-1–§ 31-37-1-2 (LexisNexis 2013). Status offenses are those that are made illegal only for juveniles, and tend to be less serious. They are governed by IND. CODE ANN. § 31-37-2-1–§ 31-37-2-7 (including leaving home without permission of parent, guardian, or custodian; truancy; habitual disobedience of parent, custodian, or guardian; curfew violations; consumption of alcohol; and use of fireworks causing harm to property).

15. ST. JOSEPH PROBATE COURT, [www.jjconline.org](http://www.jjconline.org) (last visited Mar. 22, 2017).

16. Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 303, 128 Stat. 1919, 1946 (2014).

17. See IND. CODE ANN. § 31-14-14-1 (LexisNexis 2007).

18. IND. CODE ANN. § 31-14-13-1 (LexisNexis 2007) (“A biological mother of a child born out of wedlock has sole legal custody of the child, . . . unless a statute or court order provides otherwise under the following:”). Legal custody involves important decision making involving the child. See IND. CODE ANN. § 31-9-2-67 (LexisNexis 2007) (defining “joint legal custody” as meaning “that the persons awarded joint custody will share authority and responsibility for the major decisions concerning the child’s upbringing, including the child’s education, health care, and religious training.”).

to spend significant court-ordered parenting time with their children.<sup>19</sup> Some academics have questioned the federal rule at least partially because of the opportunities visitation creates for domestic violence,<sup>20</sup> which a number of studies has found especially prevalent in unmarried couples.<sup>21</sup> As was true in the St. Joseph cases studied here, support is typically established when couples separate,<sup>22</sup> especially if the mother is receiving public assistance.<sup>23</sup> The literature has suggested that domestic violence may increase or escalate when couples separate,<sup>24</sup> because that is

---

19. The default arrangement gives the mother sole legal and primary physical custody, but typically, unless the parties agree otherwise, custody is ordered under the Indiana Parenting Time Guidelines. *Ind. Parenting Time Guidelines*, IND. RULES OF COURT (2017), available at <http://www.in.gov/judiciary/rules/parenting/>. The most frequent noncustodial parenting arrangement for children over three, according to the Guidelines, is every other weekend, one weekday evening, and every holiday, *id.* at § II(D), as well as four non-consecutive weeks during the year, *id.* at § II(D)(2). This increases to half of summer vacation once the child is five years old. *Id.* at § II(D)(3). The 2008 data regarding Indiana divorcing parents revealed that this arrangement, of 52–96 overnights a year, occurred 26.1% of the time for divorcing parents with children. Another 17.1% had 96–111 overnights per year (data on file with author).

20. Stacy Brustin & Lisa Vollendorf Martin, *Paved with Good Intentions: Unintended Consequences of Federal Proposals to Integrate Child Support and Parenting Time*, 48 IND. L. REV. 803, 837–41 (2015).

21. Catherine T. Kenney & Sara S. McLanahan, *Why Are Cohabiting Relationships More Violent Than Marriages?* 43 DEMOGRAPHY 127, 127 (2006) (“One of the more consistent (and potentially alarming) findings in the emerging literature is the higher rate of intimate-partner violence and intimate-partner homicide among cohabiting couples than among married couples.”).

22. Many fathers will register in the hospital when a child is born, as was true in the *Fragile Families Study*, see *supra* note 5, but will not have paternity tested within the first sixty days. While the parents live together, both are theoretically contributing to support, but upon separation, the duty to support is fixed and enforcement under various federal rules established. If the couple never lived together, support may be fixed if the mother goes on Temporary Assistance to Needy Families so that the state may recoup the benefits paid, at least in part.

23. See IND. CODE ANN. § 31-14-5-4 (LexisNexis 2007) (describing the right of the division or county office of family and children that is furnishing public assistance to file an action to recoup benefits paid in the form of child support).

24. See Demetrios N. Kyriacou et al., *Risk Factors for Injury to Women from Domestic Violence*, 341 NEW ENG. J. MED. 1892, 1894 (1999) (finding the risk of injury to be 3.5 times higher where a former partner relationship is present); LUNDY BANCROFT, WHY DOES HE DO THAT? INSIDE THE MINDS OF ANGRY AND CONTROLLING MEN (2002); Jacquelyn C. Campbell et al., *Intimate Partner Homicide: Review and Implications of Research and Policy*, 8 TRAUMA, VIOLENCE, & ABUSE 246 (2007) (reporting incident rates of intimate partner or former partner homicide of females); LUNDY BANCROFT & JAY G. SILVERMAN, THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS 240 (2002); Walter S. DeKeseredy et al., *Separation/Divorce Sexual Assault: The Contribution of Male Support*, 1 FEMINIST CRIMINOLOGY 228 (2006) (reporting incidents of sexual assault committed against women who want to end a relationship, are in the process of leaving a relationship, and who have left a relationship); Julie Kunce Field, *Visits in Cases Marked by Violence: Judicial*

when the fathers might first be made aware of their legal parenting opportunities.

The St. Joseph County Probate Court not only handles many kinds of cases, but also keeps electronic files via Quest<sup>25</sup> that are linked together by the individuals involved. Each child receives a unique number. Once a child is identified by his or her unique number, all the cases of whatever kind that involved other family members (that occurred in the county) are viewable, and not only the cases, but also all documents related to them. Significant demographic information is available as well, including race, birthdate, height, weight, and addresses. Beginning with the date paternity was established, a person with access<sup>26</sup> can look back at “the system’s” involvement with the child and the child’s parents (and, if they hailed from the county as well, the grandparents). A person with access can also look forward to see what has happened since the original order. By 2016, several children subjected to 2008 paternity orders had been involved with child welfare or juvenile justice, a number of actions had been filed by parents seeking increased or decreased custody or child support, and many payor parents (almost always, but not always, fathers)<sup>27</sup> had been subjected to child support enforcement proceedings. Some parents have been or remain incarcerated.<sup>28</sup>

My data is both similar and different from that used by Professor Barber and her colleagues. I begin with differences between the subjects. Professor Barber began with a random sample of 880 eighteen- to nineteen-year-old women from one county in Michigan,<sup>29</sup> 183 of whom became pregnant during the

---

*Actions That Can Help Keep Children and Victims Safe*, 35 CT. REV. 23 (1998); Brittany E. Hayes, *Abusive Men’s Indirect Control of Their Partner During the Process of Separation*, 27 J. FAM. VIOLENCE 333 (2012).

25. See QUEST SIGN ON, <https://jjconline.org/equest/quest> (last visited Mar. 20, 2017).

26. Order Granting Access, Order 94S00-1312-MS-0080, Ind. (May 29, 2014) (granting access to the Quest database, which was renewed on April 22, 2016, after receiving institutional review board certification in ND 16-04-3112; under my agreements with the Court and Notre Dame, I do not record individual identifying information other than the court’s person number) (on file with author). The remaining uncited, substantive footnotes refer to the research I derived from my access to this information.

27. Eight fathers (i.e. 2.1%) had custody, and custody was equal in another three cases. Someone else, typically a grandparent, had custody in twenty-four cases (i.e., 6.2%).

28. There were forty-six parents incarcerated, and all but two were fathers.

29. Barber et al., *The Relationship Context of Young Pregnancies*, *supra* note 8, at 181.

two-and-a-half year study period.<sup>30</sup> Mine begins with all the paternity establishment cases filed in one Indiana County during the months of January, April, September, and December of 2008.<sup>31</sup> All of the cases I analyzed involve childbirths, and the mothers were somewhat older at the birth of their first child, with a mean age at that point of 22.4.<sup>32</sup> According to Barber's tables, 3% of couples she studied were or became married.<sup>33</sup> While 8% of the parents in my study reconciled, only twenty-two, or 5.7%, married.<sup>34</sup> More of the couples in my study than Barber's were persons of color since her study was random, while mine concerned only unmarried births. Barber reports 35% percent Black and 8% Latinas, while my data shows 54.7% Black and 11.1% Hispanic couples.<sup>35</sup>

The type of data with which we worked was also different. Barber's data comes from semi-structured interviews and weekly online surveys taken from the women in question. My data comes from analysis of court documents: establishment orders and child support worksheets used to complete them, motions to change or enforce custody or support, protective orders, juvenile arrests and dispositions, and Children in Need of Services (CHINS) filings and reports.<sup>36</sup> Our measures of violence in the relationships are also

---

30. *Id.* at 185–86, tbl.1. In my findings, a few women miscarried, and eleven women had abortions.

31. Some cases were dismissed early for a variety of reasons, leaving me with 386 cases to analyze.

32. The youngest mother was fourteen, and the oldest mother was forty-two. *But see* Barber et al., *The Relationship Context of Young Pregnancies*, *supra* note 8, at 185 (noting that the median age of women in the study was 19.18).

33. Barber et al., *The Relationship Context of Young Pregnancies*, *supra* note 8, at 189, tbl.3.

34. Some of the couples married in 2008, truncating the information available to me. Two married in 2015, and one married in 2011 and later divorced. Once the parents married, the noncustodial parent would no longer owe child support, so the case would be dismissed. I also know from the files that eight of the mothers married someone other than their child's biological father, with one stepfather adopting the child, and that five of the fathers married women other than their child's biological mother. These numbers probably underestimate the actual number of remarriages since in many cases remarriage by itself would not be noted because it typically does not affect child support.

35. The 2010 Census for St. Joseph County, Indiana, shows 12.7% Black and 7.3% Hispanic or Latino population. CITY OF S. BEND DEP'T OF CMTY. & ECON. DEV. DIV. OF CMTY. DEV., 2010 CENSUS REPORT: SOUTH BEND-ST. JOSEPH COUNTY COMMUNITY OVERVIEW 10 (2011). In 2014, for Indiana as a whole, 79.5% of births to Black were to unmarried parents, 38.5% to Whites, and 55.9% to Hispanics. IND. STATE DEP'T. OF HEALTH, INDIANA NATALITY REPORT–2014, TABLE 25: NUMBER AND PERCENT OF LIVE BIRTHS TO UNMARRIED PARENTS BY AGE AND RACE/ETHNICITY OF MOTHER: INDIANA RESIDENTS, 2014 (2015).

36. In 2013, for example, Indiana had 160,878 referrals for child abuse and

different. Barber's data comes largely from surveys and semi-structured interviews, which showed violence in the women's relationships, and asked whether physical assault or threats were part of the incident.<sup>37</sup> My data, however, comes mostly from protective orders, sometimes from CHINS proceedings (for example, if children were removed because they witnessed violence between their mother and her domestic partner, who may or may not have been the father), and occasionally from custody-related pleadings and orders.<sup>38</sup> Although the amount of violence is consistent between the two samples, my data probably underestimates the actual amount of violence that occurred.<sup>39</sup>

This Article provides the opportunity to make some unique observations on gender and race as reflected in cases involving children from one local court system. I make no claim that these results should be generalized to cover all counties within Indiana, let alone in the rest of the United States or the world.<sup>40</sup> The general procedure could be replicated (and, I would suggest, should be) and would work best with a unified family court system, like St. Joseph's, that has extensive electronic record-keeping and, therefore, permits following cases over a number of years.

---

neglect, of which 95,140 reports were referred for investigation. The total rate of founded cases was 13.7/1000 children (21,755/1,587,542 children under eighteen). The rate among the studied population was 45/386 children or 117/1000 children, nearly nine times as many. See DEP'T OF HEALTH & HUMAN SERVS., CHILD MALTREATMENT 2013 12, 33 (2015), <http://www.acf.hhs.gov/sites/default/files/cb/cm2013.pdf>.

37. Barber et al., *The Relationship Context of Young Pregnancies*, *supra* note 8, at 184.

38. For example, some of the parenting time exchanges needed to be supervised or made in public places because of past violence or because of a protective order that was not included in the file.

39. A woman still living in an abusive relationship is unlikely to report the abuse, particularly if there is no physical violence but only coercive control or threats. If it is not reported to police, courts, or child welfare personnel, it would not show up in my file.

40. See Barber et al., *The Dynamics of Intimate Partner Violence*, *supra* note 8, at 27 (making the same disclaimer while reporting from a single, diverse county in the Midwest).



**Table 1. Descriptive Statistics**

	<b>N</b>	<b>Min.</b>	<b>Max.</b>	<b>Mean</b>	<b>Std. Dev.</b>
Number of noncustodial overnights	375	0	260	36.44	60.000
Child support enforcement	385	0	1	.51	.501
Total income of parents	366	.00	3609.00	583.5922	300.43119
Age of focal child	386	.00	18.00	3.2539	4.01850
Father's juvenile delinquency	386	0	1	.32	.466
Mother's juvenile delinquency	386	0	1	.32	.469
Child in Need of Services	386	0	1	.12	.321
Gross weekly income of father	367	.00	3300.00	310.8605	243.95688
Valid N (listwise)	365				

### I. Child Custody, Child Support, and the Role of Race

Solangel Maldonado has claimed that many fathers of color fail to pay child support not out of willfulness, but because they do not have the money to do so.<sup>41</sup> Fathers of color, therefore, may provide in-kind support (such as purchasing diapers and formula for infants) or child care instead of payments.<sup>42</sup> In the St. Joseph

---

41. See Solangel Maldonado, *Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers*, 39 U.C. DAVIS L. REV. 991, 995 (2006) (stating that Black fathers do not pay child support "because most are poor themselves and the majority are unemployed."). See also Karen Benjamin Guzzo, *Maternal Relationships and Nonresidential Father Visitation of Children Born Outside of Marriage*, 71 J. MARRIAGE & FAM. 632, 643 (2009) (explaining that Black fathers are twice as likely to have seen their child at either follow-up interview compared to White fathers); Lenna Nepomnyaschy, *Child Support and Father-Child Contact: Testing Reciprocal Pathways*, 44 DEMOGRAPHY 93, 106 (2007) ("[I]t is very likely that fathers who see their children but do not pay support through the formal system contribute to these children and to their mothers informally."); Christine Winquist Nord & Nicholas Zill, *Non-Custodial Parents' Participation in their Children's Lives: Evidence from the Survey of Income and Program Participation*, NAT'L ARCHIVES (Aug. 14, 1996), <http://webharvest.gov/peth04/20041108182924/http:/fatherhood.hhs.gov/sipp/noncusp1.htm> (finding that "custodial parents who received the full amount [of child support] due were financially more secure than those who received only partial payments and than those who received no child support.").

42. Jennifer B. Kane et al., *How Much In-Kind Support Do Low-Income*

sample, because it includes the race of the fathers, it is possible to discern whether or not fathers of color in fact are more likely to have close relationships with their children,<sup>43</sup> but are less likely to pay child support.<sup>44</sup> In fact, this is true. However, it is Hispanic unmarried fathers overall, rather than Black fathers, who tend to have the most court-ordered parenting time and the least child support enforcement actions brought against them (Table 2).<sup>45</sup> White unmarried fathers had the lowest number of overnights, though this difference was not statistically significant. However, if the fathers with zero parenting days are excluded, the result is that the value is highest for Black unmarried fathers.<sup>46</sup> I believed

---

*Nonresident Fathers Provide? A Mixed-Method Analysis*, 77 J. MARRIAGE & FAM. 591, 591 (2015) (stating that child support in the form of “in-kind support—meaning non-cash goods purchased by the father (e.g., diapers, clothing, food, and gifts) or services (e.g., as child care) that the father pays for directly—is relatively common.”).

43. While I cannot observe parent and child closeness directly, I can take the number of parenting time days (i.e., overnights) used in calculating child support from the child support worksheets. Fathers and mothers would likely report these accurately because they are used to compute the final amount of support one is to pay the other, and both must sign off on the computations.

44. Willingness to pay child support is calculated two ways. The first is whether an arrearage led to a filing of an enforcement (usually contempt) action. While this might not occur each time payment was not made, it is a fairly good proxy because so many of the custodial mothers had received public assistance, so the Child Support Enforcement Office is seeking recoupment of money paid to the mothers (called a Title IVD action). There were also a few non-IVD actions brought by custodial parents. In some cases, the payor fathers sought to reduce child support owed and an arrearage was calculated at that time.

45. It is possible, of course, that enforcement actions were brought more often because of racial discrimination. However, it is also likely that enforcement occurred more often because Black fathers’ income was lower ( $p < .001$ ), and their employment less secure.

Race	N	Weekly Income
Black	206	\$274.78***
White	120	\$366.13
Hispanic	41	\$330.36
Total	367	\$310.00

For Indiana as a whole in 2008, Blacks had an unemployment rate of 23.3%, Whites 5.7%, and Hispanics 12.1%. In 2012, the unemployment rate in St. Joseph County for Blacks was 20.9%, 8% for Whites, and 21% for Hispanics. See BRUCE D. McDONALD III, ST. JOSEPH COUNTY HOUS. CONSORTIUM, ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING, 2014 37 (2016), <http://mishawaka.in.gov/sites/default/files/communitydevelopment/2014-analysis-impediments-fair-housing.pdf>.

46. Black fathers had, on average, 112.09 overnights, compared to 106.75 for Hispanic fathers and 102.98 for White fathers, who in this case were, however, the least likely to have child support enforcement actions brought against them. Blacks had the highest rate of child support enforcement actions, as Maldonado would suggest. The fathers’ incomes in this sample were very low: 61.6% had incomes of \$262 per week or less. The amount available for forty hours at minimum

this might reflect the much larger number of Black fathers in the sample who were incarcerated<sup>47</sup> than those of other races.

**Table 2. All Unmarried Fathers**

Race of Father		Parenting Time	Child Support Enforcement
White	Mean	33.78	.45
	N	125	132
Black	Mean	37.00	.57
	N	209	211
Hispanic	Mean	41.66	.38*
	N	41	42
Total	Mean	36.44	.51
	N	375	385

\* Significant at  $p < .10$

I therefore ran the correlations for only those cases that did not include an incarcerated father, and obtained very similar results to those Maldonado postulated. In Table 3, the non-incarcerated Black fathers had the most parenting time (while White fathers had the least), but were also the most likely to have child support actions brought against them,<sup>48</sup> with Hispanic fathers the least likely to have child support actions brought against them.

---

wage at this time and imputed for unemployed, but theoretically employable, fathers.

47. Sixty-seven of the fathers, or 14.8% of the sample, were imprisoned at some point after the paternity decree. Seventy-five percent of these were Black, with 12.5% for each of the other two races. Only two of the mothers were incarcerated.

48. Again, Blacks' incomes were significantly lower. Additionally, more of the Black mothers were on public assistance (.84, compared to .69 for White mothers and .74 for Hispanic mothers).

**Table 3. Non-Incarcerated Fathers**

Race of Father		Parenting Time Days	Child Support Enforcement
White	Mean	34.90	.44
	N	118	125
Black	Mean	39.81	.59**
	N	176	177
Hispanic	Mean	39.14	.42
	N	35	36
Total	Mean	37.98	.52
	N	329	338

\*\* Significant at  $p < .004$ .

This result indicates once again the problems that incarceration causes for families,<sup>49</sup> particularly Black families.<sup>50</sup> It also reinforces the academic claim about reasons many low-income mothers do not marry the fathers of their children.<sup>51</sup>

Another obvious question raised by prior literature is whether in fact domestic violence within this population is related to the visitation that unmarried fathers enjoy. However, in this population, a post-paternity order of protection is not significantly correlated with the number of parenting time days.<sup>52</sup> It is statistically related, however, to the age of the oldest child,<sup>53</sup>

---

49. For a special issue of a publication discussing these issues, see Myrna S. Raeder, *Special Issue: Making a Better World for Children of Incarcerated Parents*, 50 *FAM. CT. REV.* 23 (2012). See, e.g., Joyce A. Arditti, *Child Trauma Within the Context of Parental Incarceration: A Family Process Perspective*, 4 *J. FAM. THERAPY & REV.* 181, 181 (2012) (stating that [p]arental incarceration involves significant emotional, social, and economic losses to the family . . ."); Amanda Geller et al., *Parental Incarceration and Child Well-Being: Implications for Urban Families*, 90 *SOC. SCI. Q.* 1186 (2009) (concluding from *Fragile Families Study*, *supra* note 5, that children of incarcerated parents showed more economic and residential instability than their counterparts).

50. See Sara Wakefield & Christopher Wildeman, *Mass Imprisonment and Racial Disparities in Childhood Behavior Problems*, 10 *CRIMINOLOGY & PUB. POL'Y* 793, 807 (2011) (reporting that 37% of Black children compared to 14% of White children experience at least one family member incarcerated).

51. See, e.g., Kathryn Edin & Joanna M. Reed, *Why Don't They Just Get Married? Barriers to Marriage Among the Disadvantaged*, 15 *FUTURE CHILD* 117, 126–27 (2005) (stating that men's employment and earnings are a reason for low marriage rates among poor individuals).

52.  $p < .179$ .

53.  $p < .082$ .

whether or not child support was enforced,<sup>54</sup> whether or not the father had drug, alcohol, or mental illness issues,<sup>55</sup> and whether or not the child was multiracial.<sup>56</sup> A very simple logistic regression containing a number of these variables follows.<sup>57</sup>

**Table 4. Prediction of Post-Establishment Domestic Violence<sup>58</sup>**

	<b>B</b>	<b>Sig.</b>	<b>Exp(B)</b>
Child Support Enforcement Action	1.008 (.456)**	.027	2.740
Child is Multiracial	1.030 (.462)**	.026	2.802
Mother's weekly gross income	-.003 (.002)	.221	.997
Mother's age at birth of oldest child	-.034 (.046)	.459	.967
Constant	-1.978 (1.159)*	.088	.138

The number of parenting time days in any case is far fewer than if the parents were married. The mean number of parenting time overnights for married non-custodial parents was 74.70 for the state as a whole<sup>59</sup> and 98.06 for St. Joseph County alone,<sup>60</sup> both of which are more than twice the number of overnights for unmarried fathers, in cases drawn from the same months in 2008.<sup>61</sup> Child support enforcement was less than half as likely.<sup>62</sup>

54.  $p < .026$ .

55.  $p < .057$ .

56.  $p < .028$ .

57. Cox and Snell  $R^2 = .032$ . The mother's income and age at the time of the oldest child's birth were included as each could be considered an indication of her relative power in the relationship, but neither were statistically significant here. For an explanation of how to calculate a Cox and Snell logistic regression, see JEREMY FREESE & J. SCOTT LONG, *REGRESSION MODELS FOR CATEGORICAL DEPENDENT VARIABLES USING STATA* (2d ed. 2006).

58. Domestic violence after the 2008 establishment order could be identified in twenty-eight cases, or 7.3% of the time.

59. The standard deviation was 54.90. Margaret F. Brinig, *Religion and Child Custody*, 2016 U. ILL. L. REV. 1369, 1378 tbl.3 (2016). Visitation time is described in parenting days, which is equivalent to overnights. See *supra* note 43.

60. The standard deviation was 46.57. Only sixty-one cases were coded from the county that involved marriages with children, so racial differences would not be statistically meaningful (but could be computed).

61. See *supra* Table 2.

62. The mean was .207, standard deviation .4086. This is not surprising given

## II. Gender and Perceptions of Juvenile Problems

I also examined whether judges viewed fathers' and mothers' juvenile status and juvenile delinquency differently. In fact, they did—the number of overnights of the unmarried father's parenting time was correlated positively to his juvenile delinquency: if he had a juvenile record, he had more overnights<sup>63</sup> (Table 5). However, the father also obtained orders for significantly more parenting time if the mother had a juvenile status or delinquency record (Table 6). The mother was apparently penalized for her juvenile record. In both cases income was included and is, unsurprisingly, significant.<sup>64</sup> Very few indigent fathers are likely to have rooms for children to visit overnight, no matter how often they see the child during the day. The significance of and the negative correlation between the age of the focal child and number of overnights a non-custodial parent received is initially surprising. This is because as the child's age increases, the Indiana Parenting Time Guidelines call for an increasing number of overnights for the noncustodial parent.<sup>65</sup> Despite the recommendations in the Guidelines, noncustodial parents may have less interest in overnights as children reach their teens or as the fathers establish new families with new children.<sup>66</sup> The age of children is occasionally found to be negatively correlated to a

---

the relative wealth of the two samples. The total income of the two parents in the divorced-with-children sample was \$1079.77 weekly, and it was \$583.59 for the unmarried sample.

63. These estimates, while they are suggestive, are limited, since the only juvenile offenses or CHINS proceedings kept in the databases were those from St. Joseph County. Some of the parents grew up elsewhere and would seem to have no offenses when in fact there were undoubtedly at least some and perhaps many. I did not have access to other counties' juvenile files. The regressions only consider 144 families (forty-four percent of the total) where both parents lived in the county at least back to age fourteen.

64. See, e.g., Margaret F. Brinig, *Result Inequality in Family Law*, 49 AKRON L. REV. 471, 494–97 figs.3 & 4 (2016) (discussing data from Indiana and Arizona indicating that fathers' parenting time decreases as fathers' income decreases, with a stronger effect among unmarried parents); Gerald W. Hardcastle, *Joint Custody: A Family Court Judge's Perspective*, 32 FAM. L.Q. 201, 212–13 (1998) (noting that the high cost of joint custody, which stems from each parent needing to maintain suitable housing, clothing, and toys, may make such arrangements infeasible for low-income parents).

65. *Ind. Parenting Time Guidelines*, supra note 19, § 2.

66. See, e.g., Wendy Manning & Pamela J. Smock, *New Families and Nonresident Father-Child Visitation*, 78 SOC. FORCES 87, 105–06 (1999) (finding that while some fathers increase visitation after forming new families, most do not, and that it is new births, not stepchildren, that affect visitation of children from prior relationships).

father's visitation (following divorce),<sup>67</sup> as here, though sometimes positive, and sometimes insignificant.<sup>68</sup>

**Table 5. Parenting Time and Father's Juvenile Delinquency<sup>69</sup>**

Variable	B (Std. Error)	Standardized Coefficient	Sig.
(Constant)	.861 (.024)**		.000
Parents' total income	.000 (.000)***	.303	.000
Age of focal child	-.008 (.002)***	-.163	.001
Father's juvenile delinquency	.042 (.021)	.102	.043

**Table 6. Parenting Time and Mother's Juvenile Delinquency<sup>70</sup>**

Variable	B (Std. Error)	Beta	Sig.
(Constant)	.862 (.024)***		.000
Mother's juvenile delinquency	.047 (.020)**	.115	.021
Parents' total income	.000 (.000)***	.295	.000
Age of focal child	-.008 (.001)***	-.165	.001

Do judges view men's and women's histories differently? Is this another way of stereotyping good and bad mothers,<sup>71</sup> based on

67. See, e.g., Doris J. Jacobson, *Family Type, Visiting Patterns, and Children's Behavior in the Stepfamily: A Linked Family System*, in REMARRIAGE AND STEPPARENTING: CURRENT RESEARCH AND THEORY 257, 267 (Kay Pasley & Marilyn Ihinger-Tallman eds., 1987) (finding noncustodial parents spent more time visiting younger rather than older children); Jonathan R. Veum, *The Relationship Between Child Support and Visitation: Evidence from Longitudinal Data*, 22 SOC. SCI. RES. 229, 242 (1993) (presenting data showing parenting time for both fathers and mothers is negatively correlated to the age of the youngest child).

68. See, e.g., Manning & Smock, *supra* note 66, at 95, 102 tbl.3 (1999) (discussing earlier mixed evidence on child age and parenting time, and presenting data showing a positive but insignificant relationship).

69.  $R^2 = .134$ .

70.  $R^2 = .131$ .

events that were supposedly were eliminated from their records when they reached majority?

This would seem to be discrimination on the basis of gender, but may actually make a kind of unfortunate sense. As Table 7 shows, a child was more likely to be involved with the child welfare system (that is, a CHINS proceeding had been brought involving the family)<sup>72</sup> if the mother had a juvenile delinquency<sup>73</sup> or juvenile status<sup>74</sup> record, or had been involved with the child welfare system as a subject herself, and if the parents' income was low,<sup>75</sup> and less likely if the child was Hispanic.<sup>76</sup> The father's prior involvement with any of these systems was statistically irrelevant. The child was also far more likely to be involved with the delinquency system if the mother had been herself, but actually less likely if the father had a juvenile record, though this was not statistically significant (Table 8).

---

71. See, e.g., Siobhan Weare, "The Mad," "The Bad," "The Victim": Gendered Constructions of Women Who Kill within the Criminal Justice System, 2 LAWS 337, 346, 348–50 (2013) (discussing how notions of motherhood impact the dichotomy between "good" and "bad" women used when conceptualizing women murderers); Eden B. King, *The Effect of Bias on the Advancement of Working Mothers: Disentangling Legitimate Concerns from Inaccurate Stereotypes as Predictors of Advancement in Academe*, 61 HUM. REL. 1677, 1686 (2008) (exploring the relationship between perceptions of being a "good mother" and a "good worker"); JULIA T. WOOD, GENDERED LIVES: COMMUNICATION, GENDER AND CULTURE 236–38 (1994) (discussing media portrayals of "good" and "bad" women); SHARI L. THURER, THE MYTHS OF MOTHERHOOD: HOW CULTURE REINVENTS THE GOOD MOTHER 147–49, 154, 180 (1994) (describing specific notions of the "good mother" throughout history); Carol Sanger, *M is for the Many Things*, 1 S. CAL. REV. L. & WOMEN'S STUD. 15, 32–34 (1992) (identifying ways in which the label "good mother" constrains maternal diversity and automatically makes certain acts by mothers inherently "bad").

72. Forty-five (11.7%) families in the sample were the subject of CHINS actions.

73.  $p < .015$  (and the exponent was 2.242).

74.  $p < .000$ .

75.  $p < .005$ .

76.  $p < .092$ . This value became insignificant when combined with income, so it was dropped from the regressions.



**Table 7. Child as Subject of CHINS Proceeding<sup>77</sup>**

	<b>B (Std. Error)</b>	<b>Sig.</b>	<b>Exp(B)</b>
Mother's juvenile delinquency	.774** (.344)	.024	2.169
Father's juvenile delinquency	.169 (.358)	.638	1.184
Parents' total income	-.002** (.001)	.048	.998
Age of focal child	-.136** (.063)	.031	.873
Constant	-1.131** (.569)	.047	.323

**Table 8. Child's Juvenile Delinquency<sup>78</sup>**

<b>Variable</b>	<b>B (Std. Error)</b>	<b>Sig.</b>	<b>Exp(B)</b>
Mother's juvenile delinquency	1.147 (.681)*	.092	3.147
Father's juvenile delinquency	-1.515 (1.103)	.169	.220
Age of focal child	.337*** (.064)	.000	1.401
Father's gross weekly income	-.002 (.002)	.208	.998
Constant	-4.602 (.801)***	.000	.010

### Conclusions

In this look at unmarried families in an Indiana county, we have seen that certain predictions about race can be verified. Black fathers are likely to spend more time with their children than other noncustodial parents, but only when the effect of imprisonment is removed from the analysis. They also have the highest rate of nonpayment of child support, and the lowest incomes.

In general, the number of noncustodial overnights is related to income, as expected, but also to the mother's, but not the father's, juvenile delinquency, and is negatively related to the age of the focal child. This would seem to indicate that the mothers

---

77. Logistic Regression, Cox & Snell R<sup>2</sup> = .05.

78. Cox & Snell R<sup>2</sup> = .130.

with juvenile records were seen—by courts or the fathers in question—not to conform to some sort of ideal about motherhood. However, the children’s outcomes<sup>79</sup> do seem to be affected by cases of maternal, but not paternal, delinquency.

Post-paternity domestic violence, though its incidence is about the same as in Barber’s sample, here is significantly related to child support enforcement<sup>80</sup> and the parents being of two races.<sup>81</sup> Most often when the child was described as multiracial, the mother was White and the father Black or Hispanic.<sup>82</sup>

---

79. Measured by CHINS involvement or juvenile delinquency.

80. Perhaps this is a function of seeking power, particularly when the father is unemployed. For some evidence that this is important, see MICHAEL L. BENSON & GREER LITTON FOX, NAT’L INST. OF JUSTICE, WHEN VIOLENCE HITS HOME: HOW ECONOMICS AND NEIGHBORHOOD PLAY A ROLE 1–3 (2004), <https://www.ncjrs.gov/pdffiles1/nij/205004.pdf>; Kristin L. Anderson, *Gender, Status, and Domestic Violence: An Integration of Feminist and Family Violence Approaches*, 59 J. MARRIAGE & FAM. 655, 667 (1997) (finding more male-perpetrated violence when the couple does not conform to the provider role of manhood). A recent article in the American Sociological Review shows that male unemployment (but not total income or women’s employment) also causes instability in marriages. Alexandra Killewald, *Money, Work, and Marital Stability: Assessing Change in the Gendered Determinants of Divorce*, 81 AM. SOC. REV. 696, 696 (2016).

81. This result has been found before. See Brittny A. Martin et al., *Intimate Partner Violence in Interracial and Monoracial Couples*, 62 FAM. REL. 202, 208–09 (Feb. 2013) (finding interracial couples experienced more intimate partner violence than monoracial White couples, but not more than monoracial Black couples); Rachel A. Fusco, *Intimate Partner Violence in Interracial Couples: A Comparison to White and Ethnic Minority Monoracial Couples*, 25 J. INTERPERS. VIOLENCE 1785, 1792–93 (2010) (finding odds ratios exceeding two for interracial couples’ likelihood of having a history of prior IPV compared to ethnic minority monoracial couples and of engaging in mutual assault, compared to both ethnic minority and White monoracial couples). But see Kristin Carbone-Lopez, *Across Racial/Ethnic Boundaries: Investigating Intimate Violence Within a National Sample*, 28 J. INTERPERS. VIOLENCE 3, 3 (2013) (finding the greatest risk of physical violence in ethnic monoracial relationships, but higher rates of nonphysical forms of violence reported by women in interracial relationships).

82. The father was White in five of the multiracial child cases, Black in thirty-seven, and Hispanic in fourteen. There was one Black mother married to a White man and four Hispanic women married to White men. In two cases, the mother was described as multiracial.