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Child Placement and Child Support

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Legislative Study Committee on Child Placement and
Support

September 25, 2018 Meeting

Research / Training / Policy / Practice

Acknowledgements

- Most of this research has been funded by the Office of Child Support Enforcement (OCSE), Administration for Children and Families, U.S. Department of Health and Human Services, through the Wisconsin Department of Children and Families
- This talk draws on the work of many colleagues at IRP
- *Any views expressed here are ours alone and not necessarily those of the sponsoring institutions.*

Overview

- Child placement
 - Trends
- Child support orders
 - Process and models for setting orders
 - Costs of raising a child
 - Special issue: incarceration
 - Interaction between placement and orders
- Emerging issues



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Trends in child placement

Momentary diversion: Legal custody

- Decision-making, not time
- May be joint or sole; presumption that joint legal custody is in best interest of child (767.41(2)(am))
 - Sole legal custody only if in best interest and both parties agree or court makes specific finding; domestic violence addressed
- Joint legal custody nearly universal in divorce cases
- Increase in joint legal custody in nonmarital cases: from 2% around 1990 to 70% in the 2000s (Chen 2015)

Physical placement

- Time (need not match decision-making)
- Placement may be sole or shared
- Placement schedule
 - “regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent...” (767.41(4)(a2))
- Factors to consider listed include wishes of parents, wishes of child, time spent in the past, developmental and educational needs, etc. (767.41(5))

Why might there be a trend toward shared placement?

- The division of labor in married couple families has changed
 - Married mothers of young children are more likely to be in the labor force: 30% in 1970, 64% in 2015 (Waldman, 1983; BLS 2016)
 - Married fathers' time with children has increased (Sandberg & Hofferth, 2001; Sayer et al. 2004)
- As have social norms & policies governing custody, from:
 - “Tender years” doctrine favoring mothers' care, to
 - “Best interest of the child,” and formal visitation arrangements, to
 - Explicit preference for shared parenting

Policy for shared placement

- Shared placement/custody policies enacted (Halla, 2013):
 - 1970s: 9 states
 - 1980s: 38 states
 - 1990s: 48 states
- Wisconsin Statute, e.g.:
 - “A child is entitled to periods of physical placement with both parents unless, after a hearing, the court finds that physical placement with a parent would endanger the child’s physical, mental or emotional health.” (767.41(4)(b))
 - “The court may not prefer one parent or potential custodian over the other on the basis of the sex or race of the parent or potential custodian” (767.41(5))

Data & Sample

- Data: Wisconsin Court Record Data (CRD)
 - Court cases with child support potential in 21 Wisconsin counties, including Milwaukee, collected by IRP from the late 1980s through early in this decade
 - Over 12,000 divorces

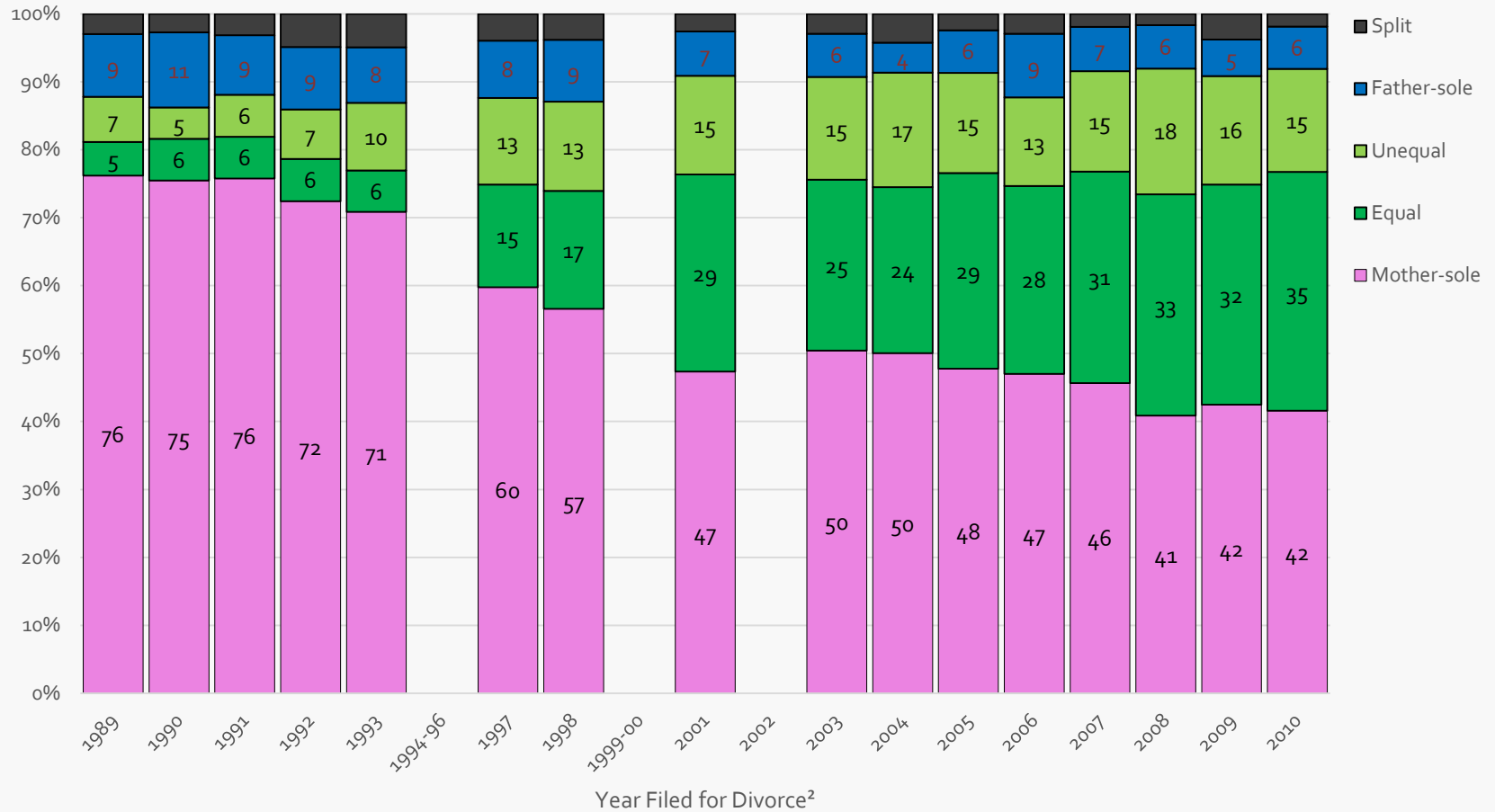
Measures

- Time children are expected to spend with each parent measured in detail in CRD
- We distinguish custody types:
 - Shared Custody
 - Equal shared (50%/50%)
 - mother or father primary (each parent at least 25%)
 - Mother sole (at least 75% of overnights with mother)
 - Father sole (at least 75% of overnights with father)
 - Split (some children with each parent)
- Categories correspond to current guideline cutoffs (Current: 25% for shared; 30% prior to 2004)

Approach

- Changes in prevalence of shared (equal + unequal) custody over two decades
- Simple descriptive analysis (confirmed by more complicated statistical analysis)
- Variation by:
 - child gender and age
 - parents' income
 - legal representation (may reflect placement situation)

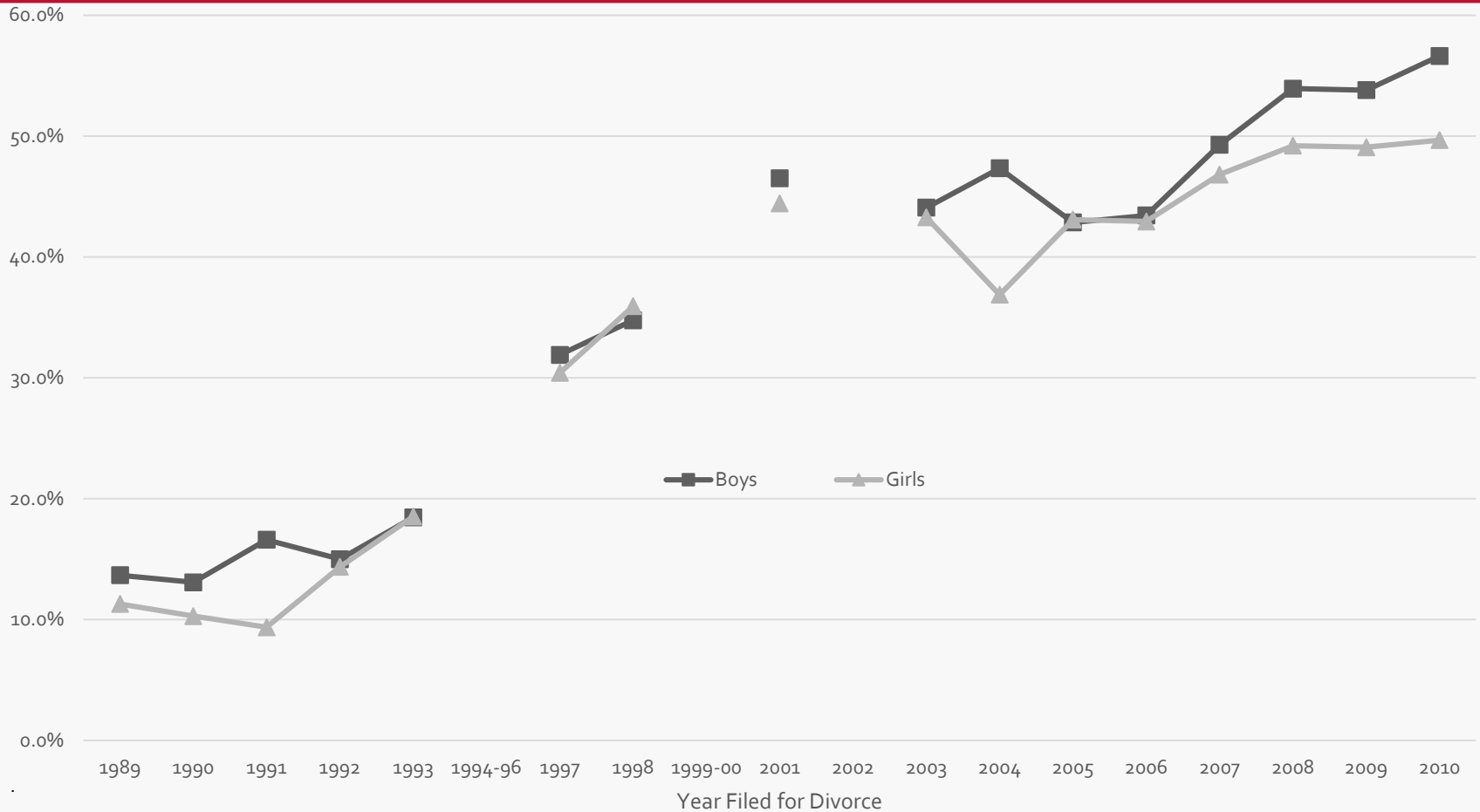
Trends in Physical Custody upon Divorce¹



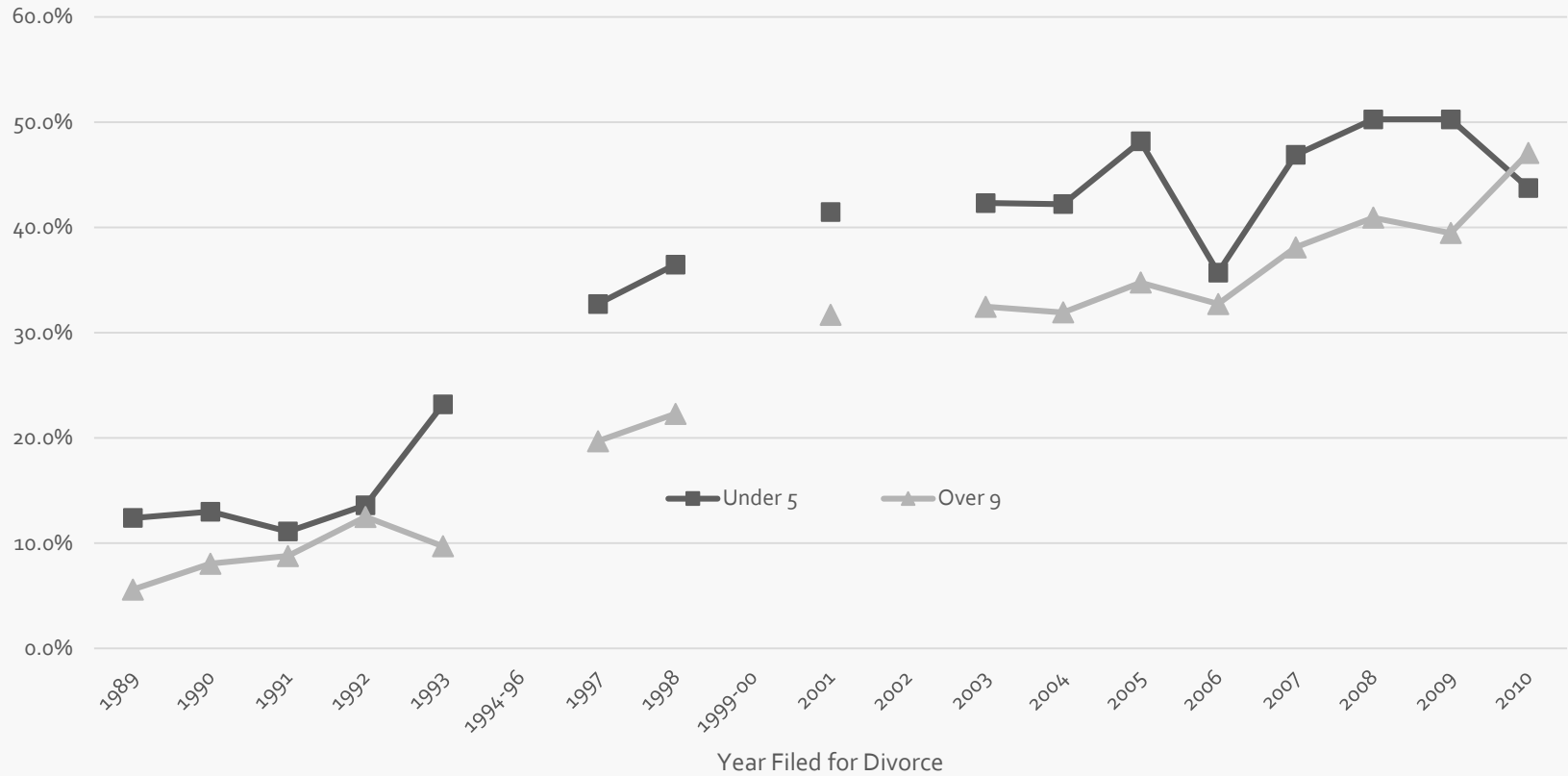
¹The number of cases in each cohort ranges from 672 to 889.

²For most year, the divorce filing date is within the 12 months prior to June 30 of the year shown.

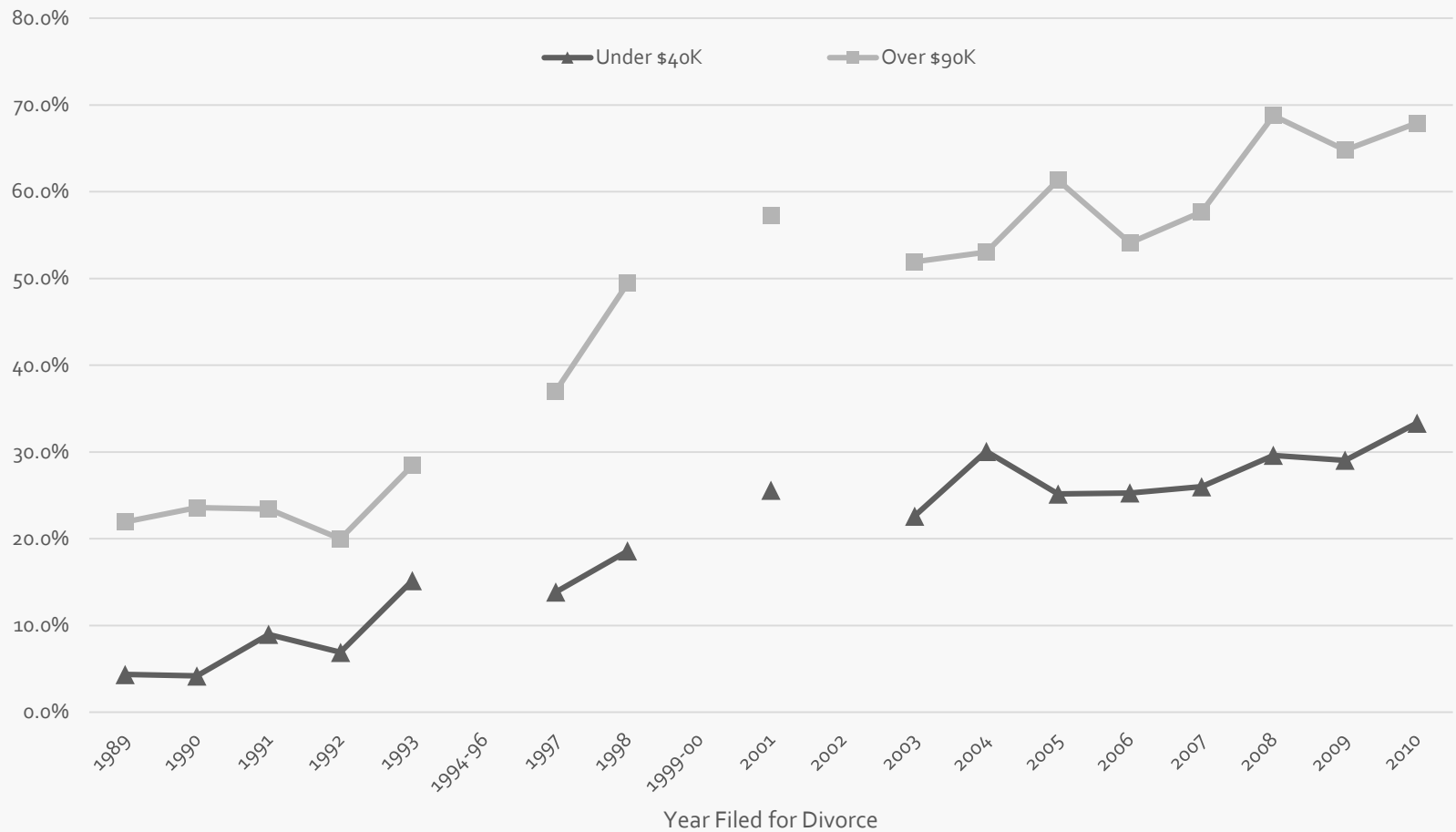
% Shared custody by children's gender



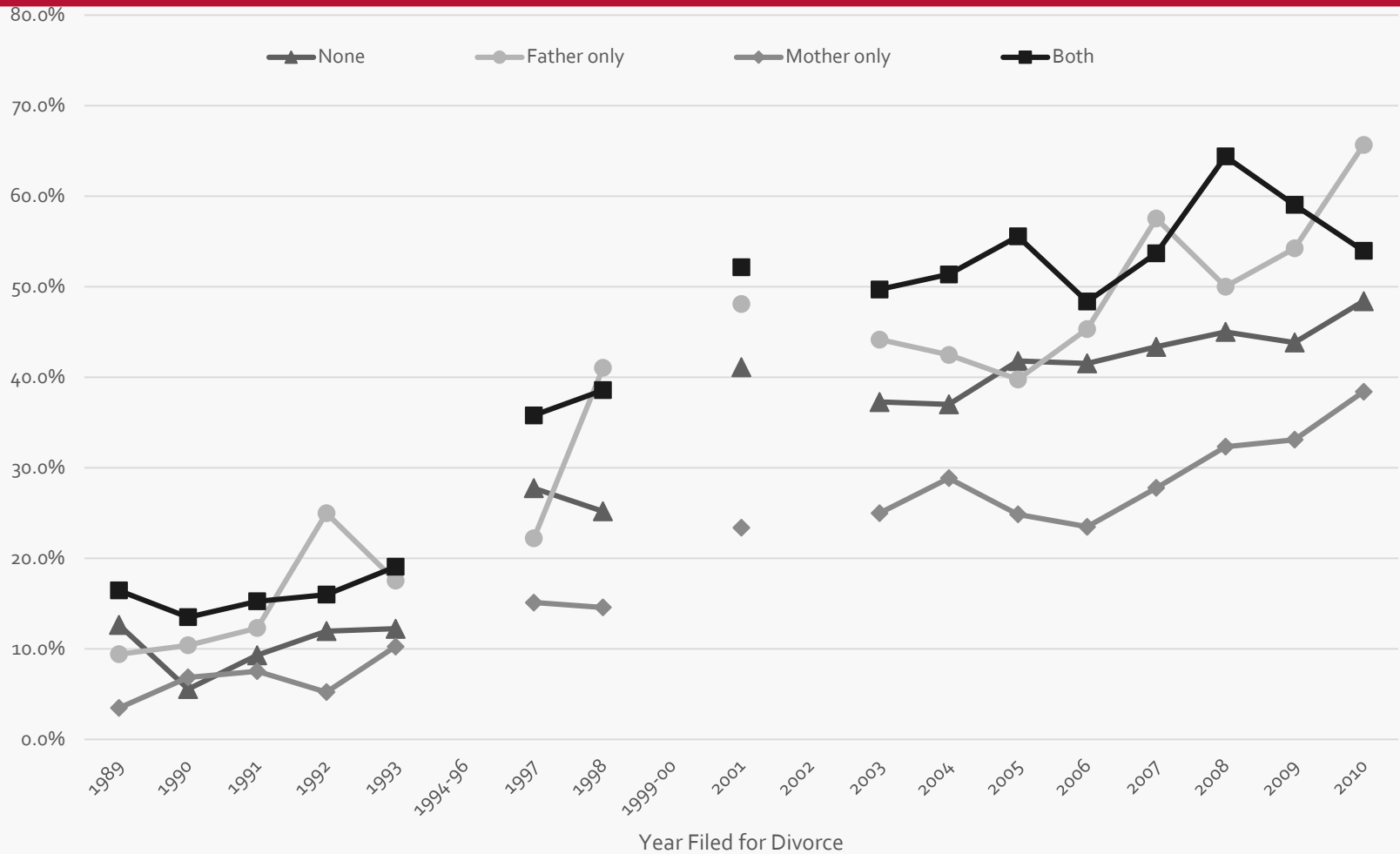
Shared custody by children's age



Shared custody by parents' total family income



Shared custody by legal representation



Increase in shared for nonmarital cases, but at substantially lower level

- Nonmarital cases come to court for adjudicating paternity (if not already voluntarily acknowledged) or for setting child support order. Placement set at that time.
- Shared placement among paternity adjudication cases: 1% in 1997 to 7% in 2007
- Shared placement when paternity already acknowledged: 6% in 2001 to 16% in 2007

Summary

- Shared custody grew from 12% to 50% in just 20 years– now the most common arrangement
- Substantial differences by income, but about 1/3 of cases even for parents with combined incomes of \$40k
- Policy favoring shared custody raises questions about supports for shared parenting for lower income parents (e.g. housing policy)
- Implications for other policy areas (e.g. tax, education) and research (e.g. household measures, survey design)



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Child support orders



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Process and models for setting orders

Process of setting orders

- Parents who were married
 - Divorce is a legal proceeding
 - Court petition, then (typically) temporary, then final judgment. May or may not be represented
 - Judgment includes placement (parenting plan), legal custody, and child support
- Parents who were not married
 - Generally do not come to court unless getting child support order or adjudicating paternity
 - Actions could include placement (parenting plan), legal custody, and child support, once paternity established (if not previously acknowledged)
- Child support agency can assist with setting orders

Each state required to have guideline

- Used to set order unless written finding that use is “unjust or inappropriate” (rebuttable presumption)
- Reviewed every 4 years
- New regulations about guidelines (12/16, phased in). Orders must:
 - Be based on a formula with specific criteria
 - Be based on NCP earnings, income and other evidence of ability to pay (specific factors, not general imputation)
 - Consider basic subsistence needs of NCP if limited ability to pay (low-income adjustment)
 - Address child’s health care needs
 - Incarceration is not “voluntary” unemployment

Could be based on different goals

- Historical framing: how much do children cost? Goal is to accurately determine cost and apportion that amount fairly
- Contemporary framing recognizes child's right to share in both parents' incomes. Goal is to accurately determine how much parents would share if family were intact and apportion that amount fairly

Child support guideline models

- 2 main models, with adaptations for shared placement, serial families, low-income and high-income cases
- Income shares
 - Add NCP and CP income. Multiply total income by percentage for children based on that income. Divide based on relative income: NCP share is order; CP share is assumed
- Percent-of-income
 - Multiply NCP income by percentage for children. Result is NCP order. (CP income times percentage is assumed)

2 Simple Example Cases

A: 1 child, NCP income \$3000/mo, CP \$3000/mo

B: 1 child, NCP income \$3000/mo, CP \$2000/mo

- Minnesota (Income shares):
 1. Calculate total income: A: \$6000, B: \$5000
 2. Look up total on chart: A: \$864 (14.4%), B: \$780 (15.6%)
 3. Divide based on relative incomes to get order: A:
 $3000/6000 * 864 = \$432$; B: $3000/5000 * 780 = \$488$
- Wisconsin (Percent-of-Income)
 1. Multiply NCP income by required % (17%) to get order:
A and B: $3000 * .17 = \$510$

Differences between types

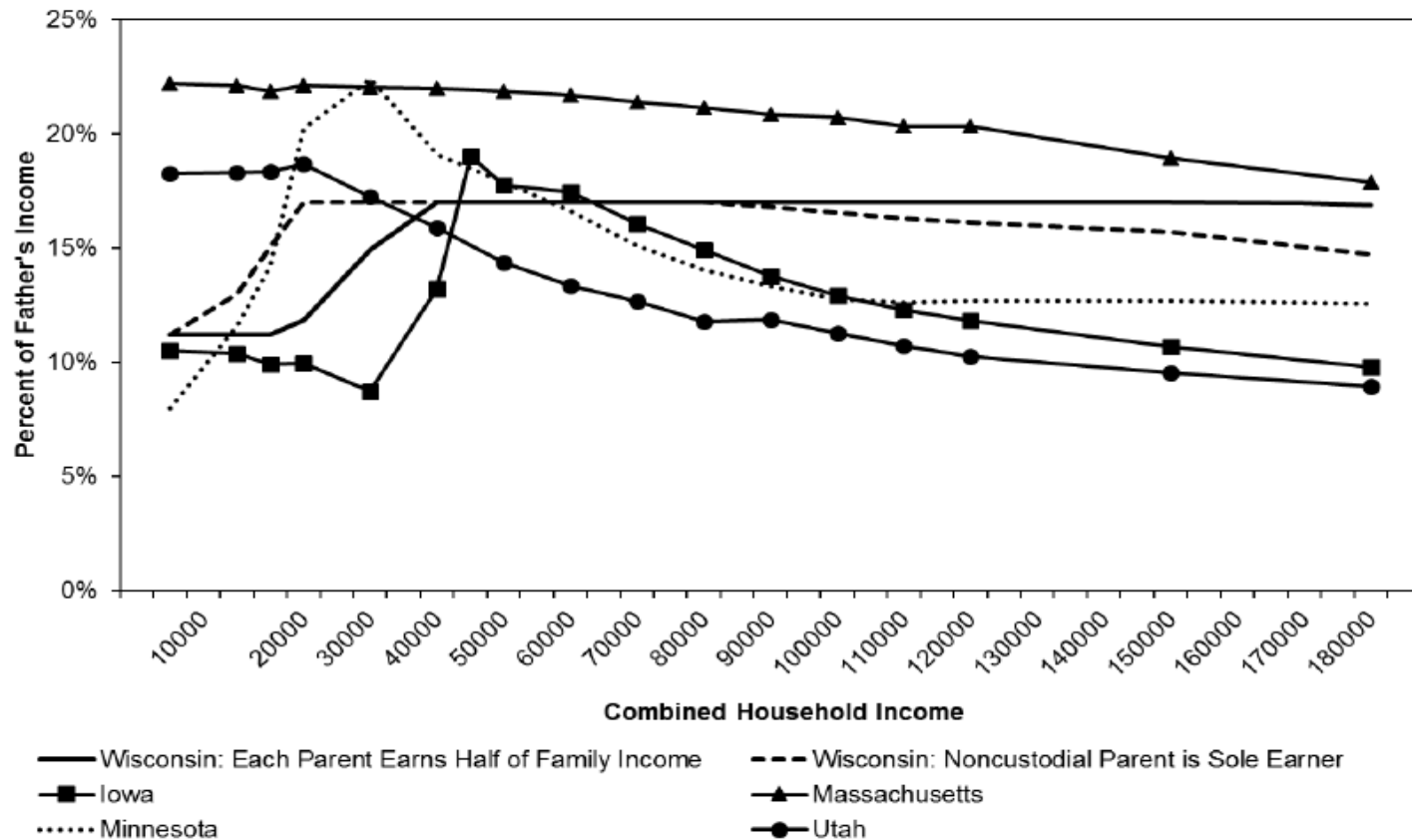
- Example showed higher orders for WI POI than MN IS – but this is not about POI vs. IS
- IS more complicated, POI simpler (administratively, public understanding)
- IS seems fairer to many in that it explicitly includes CP income
- IS seen as more flexible to varied situations, but actually either has adaptations for shared time, serial families, medical support

Recent IRP study compares orders in WI to 4 states that use income shares

- Uses both hypothetical data and actual Wisconsin cases to explore whether states that use income shares have higher or lower orders
- Cancian & Costanzo 2017

The % for children is critical

Figure 1: Share of Income Required by Guidelines

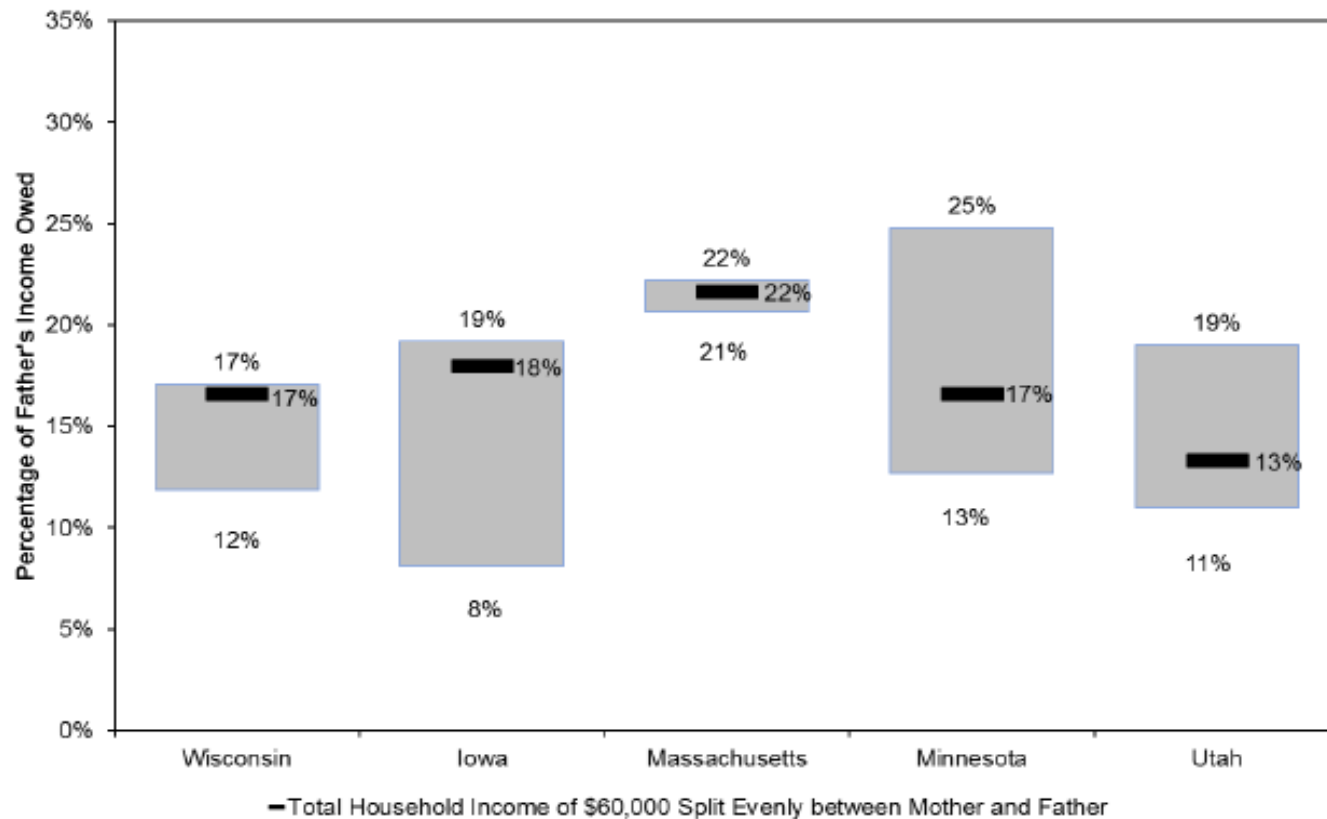


Note: For calculating low-income guidelines in Wisconsin when assuming equal income for mother and father, we keep low-income guidelines in place until father and mother income=\$18,000, and combined income=\$36,000 and high-income guidelines start at combined income = \$168,000

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H on

States vary in order levels

Figure 4: Range of Percentage of Father's Income Owed:
Father Income \$10,000 - \$50,000 & Household Income \$20,000 - \$100,000



Note: Father income range selected to roughly represent 20th-80th percentiles of paternal income range in analytic sample.

Guidelines more complex than shown so far

- Definition of income (gross v. net)
- Definition of income sources
- Could vary by:
 - Age of child
 - NCPs new family (partner and/or child)
 - CPs new family (partner and/or child)
- Treatment of child care and health care expenses
- Variation by placement level (and rule for split placement)
- Adjustments for low- and high-income

Are the Wisconsin guidelines used?

- Most recent research (Cook & Brown, 2013) examines cases coming to court 2004-2007
- When we can determine if guidelines used and there is an order, 57% consistent with guideline, 22% below, 21% above
- Lower use for divorce, more children, older children, high combined income
- Higher use if only mother has lawyer (66%) than if both have lawyers, or only father, or neither (all about 45%)



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Additional information on costs of raising children and expenditures on children

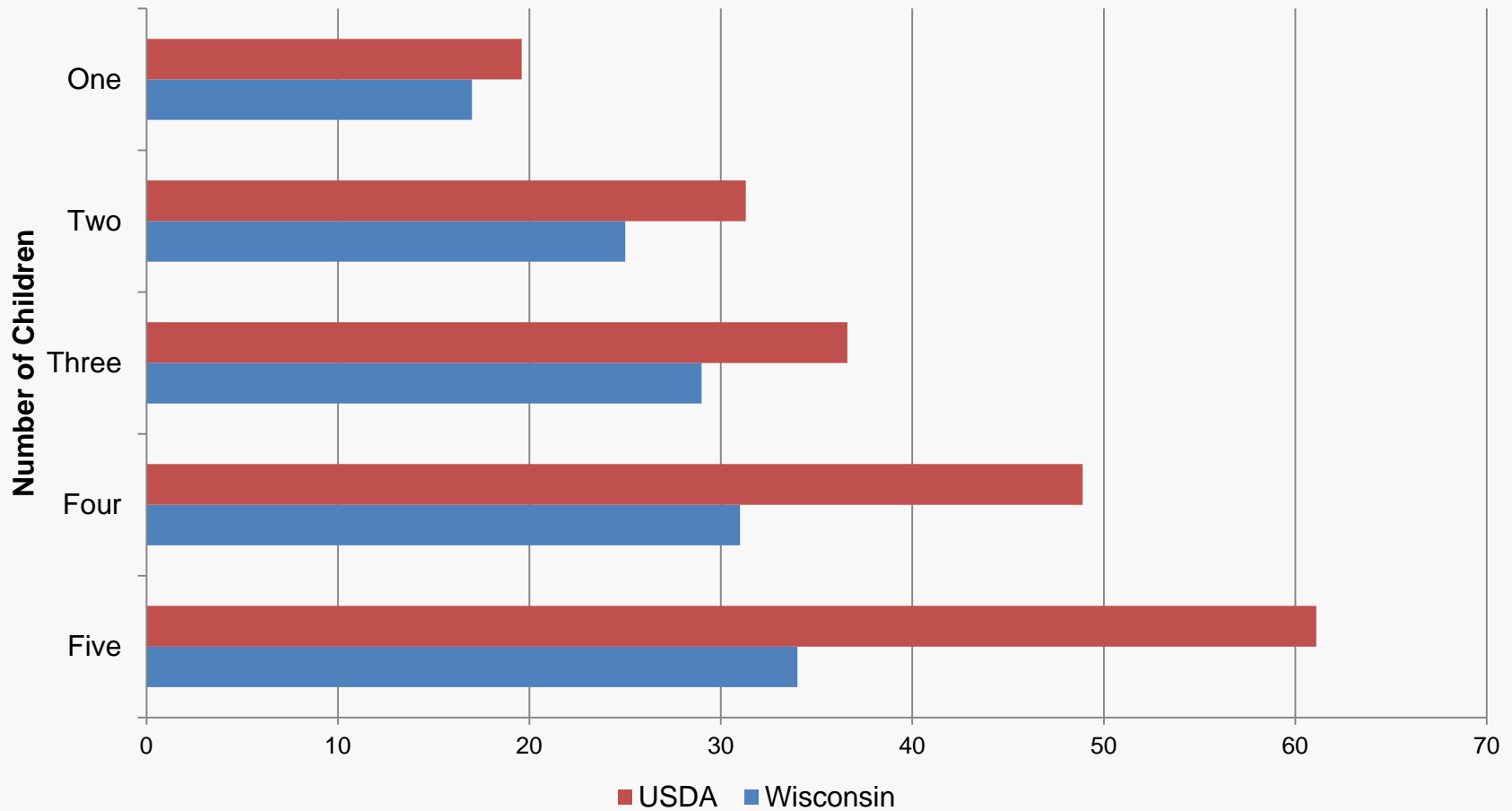
Costs of children, expenditures on children

- Must be considered in guideline review
- Contentious statistical approaches, all limited
- Common indirect approaches try to estimate expenditures on children from (a) expenditures on food or (b) expenditures on “adult goods”
- Alternative approach, now more popular, from USDA (Mark Lino). Direct expenditure focus:
 - Some expenditures clearly for children: clothing, child care, education
 - Some expenditures assign a portion of family expenditures to children, for example, the cost of an additional bedroom, per capita transportation, etc.
- Most recent estimates from USDA are based on data from 2011-15, presented in inflation-adjusted 2015\$

USDA (Lino) estimates

- USDA has separate estimates for 5 geographic regions, 6 ages of children, 3 different income levels, different estimates for husband-wife and single-parent families
- In previous research (2011) compared USDA estimates with Wisconsin guideline; tentatively planning to update research next year

Estimated Percentage of Income Spent on Children (2010)



Summary

- Wisconsin guideline below estimates of USDA
 - Not a result of simplifications
 - Note, however, that medical costs are included in the USDA numbers, and generally handled separately in the guidelines
- Expenditures on children not the only criterion
- Wisconsin guideline designed to determine the “minimum amount each parent is expected to contribute”



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Child support orders and the incarceration of noncustodial parents

3 Issues

1. Overlap between child support and criminal justice
2. How child support systems respond when the noncustodial parent is incarcerated
3. Recent estimates of effects of different policies

Child support and incarceration: Overlap

- 53% of those incarcerated in state or federal prison in 2007 were parents of minor children
- At least 350,000 prisoners have open child support cases
- 1,700,000 children had an incarcerated NCP in 2008
- Studies of new births in large cities (~ 2001):
 - 40% of African American fathers had ever been incarcerated by the time their child was one, compared to 18% of white fathers

Four potential policy schemes when NCP is incarcerated

1. Incarceration should result in automatic modification
 2. Incarceration in and of itself may be a justification for order modification
 3. Incarceration is one factor that may be considered in order modification
 4. Incarceration is not a justification for order modification (incarceration is “voluntary unemployment”).
- Trend is toward more modifications. Option 4 **NO LONGER ALLOWED**

Reasons for change

- Growing awareness of problems of arrears
 - Reduces child support payments?
 - Reduces formal employment?
 - Increases recidivism?
 - Hurts CSE system performance
- But highly contentious. Most changes not result of new legislation, but legal challenges to previous policy

Effects of different policies

- Demonstrations:
 - allowing modification
 - child support worker visits prisons to educate and encourage modification
 - expedited processes for modification
 - procedures for forgiving debts
 - automatic modification innovation in CO
 - Related policy: grace period upon release
- Evaluations mostly short-term and not rigorous
- 2017 important evaluation of Milwaukee Prison Project by Noyes, Cancian, Cuesta & Rios Salas

Milwaukee Prison Project

- Compared outcomes in Milwaukee (which proactively sought to suspend orders for incarcerated NCPs), and counties that did not
- Using non-experimental methods (DDD, PSM) found suggestive evidence of improved child support outcomes:
 - Lower arrears
 - Lower orders post-release
 - Increase in likelihood of payment (3/4 years)
 - Increase in amount paid and compliance (1st year)
 - No effect on earnings

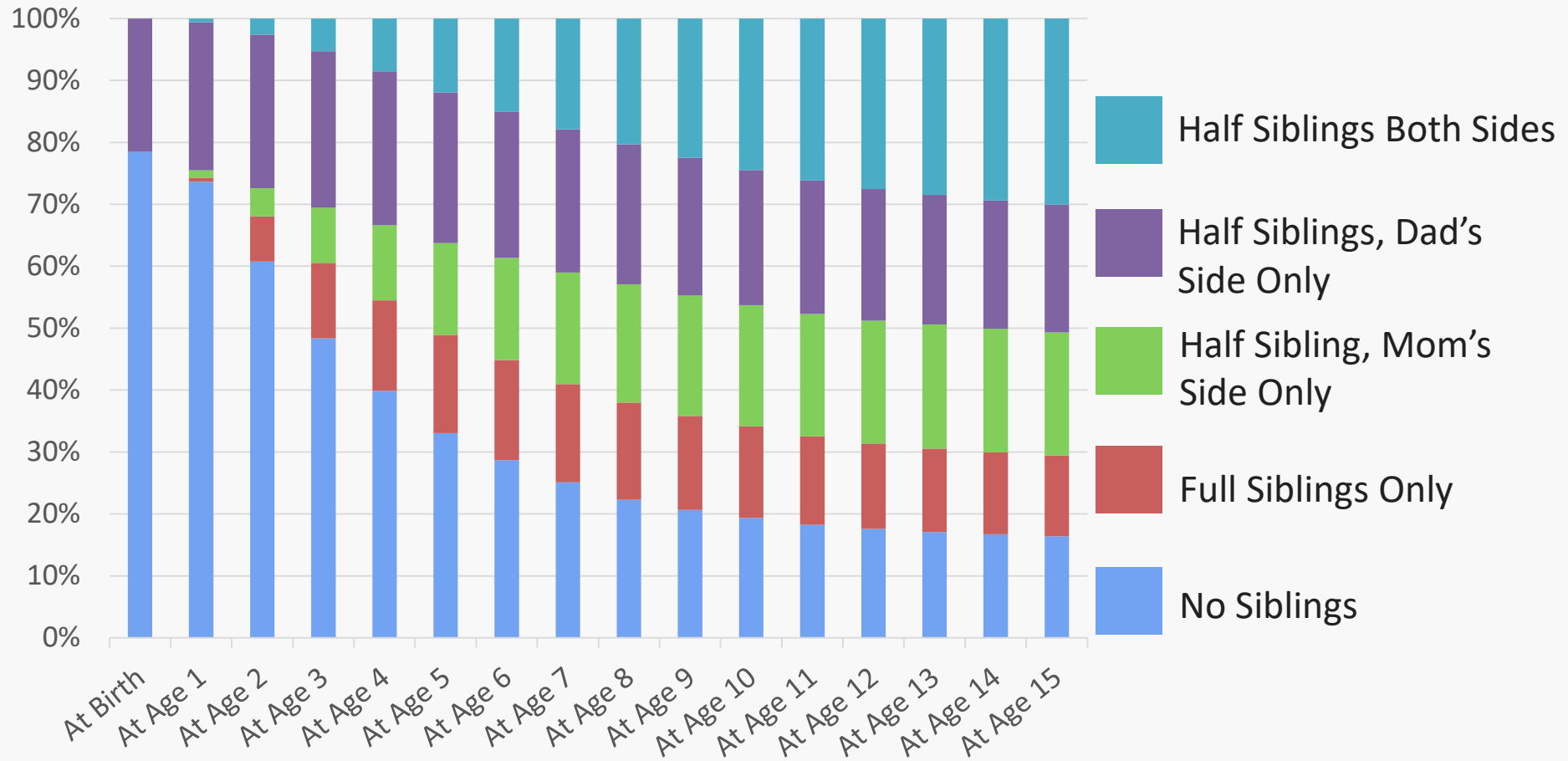
Emerging Issues

Selected issues for the future

1. Family change

- Multiple-partner fertility (especially NCPs) creates difficulty. Want equal treatment, affordability, and not to adjust orders to 1st children, tradeoffs
- Shared custody (especially equal) creates difficulty in rest of income support system
- Fluid relationships create difficulty in knowing when policy should apply

Most children born to unmarried parents will be part of complex families



Note: Authors' calculations from Wisconsin administrative data for 1997 cohort

Selected issues for the future (2)

2. Balancing “sticks” with some carrots
 - NCP EITC? Services? Recognition of in-kind?
3. Labor market changes
 - Wage withholding most powerful tool, yet trends are not favorable
4. Is irregularity a problem?



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