Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines

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Introduction

With the implementation of presumptive child support guidelines by the states, is there a role for forensic economists in family court? Yes! Contrary to public perception, child support guidelines enacted, judicially implemented, or administratively implemented by the states bear little relationship to actual expenditures on children. The divergence of presumptive awards from economic-based child support obligations is significant not only for high-income situations but generally all income levels. Given that the financial stakes can be high for the parties involved and that presumptive awards do not reflect true economic costs, there clearly is a role for economists to offer an economics basis for rebutting the legal presumption. The forensic economist can then present a rational, economic-based recommendation for the child support obligation. Federal regulations require that state guidelines allow for a rebuttal of the presumptive award when the presumptive award is shown to be unjust or inappropriate and states have put such language in their guideline statutes.

In order to clarify the potential role of a forensic economist in family court, it is appropriate to briefly review the origins of the prevailing child support models and their economic implications. That is, how do these presumptive awards diverge from actual child cost patterns? How can the excesses of presumptive child support awards be shown along with the extraordinary burden on the obligor and the windfall to the obligee? What is an alternative methodology for a forensic economist to recommend an economic-based child support obligation?

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This paper is organized in the following manner: (I) a review of current child support guideline methodologies and their flawed economic foundations, (II) special discussion of favored tax treatment for custodial parents and the proper treatment of tax benefits as a cost offset, (III) presentation of an economics based child support model, (IV) the role of the forensic economist in family court, and (V) notes on economic background and comparisons with guidelines and guideline awards.

I. Review of Current Child Support Guidelines and Their Flawed Economic Foundations

Over the last decade, child support determination in family court situations has changed dramatically. Prior to 1989, non-welfare cases generally were argued on a case-by-case basis but within parameters established by statute and case law. With the Family Support Act of 1988, the U.S. Congress established funding incentives for states to adopt statewide child support guidelines. The states only had one year to implement statewide presumptive guidelines—but in reality, the deadline was tighter since most state legislatures do not operate year-round. Federal regulations—without requiring any specific guidelines—require that state guidelines be based on economic data and result in an economically appropriate award. The intent of the new law and regulations was to boost the level of award "adequacy," to create uniformity in application of child support awards, and to simplify the process of child support determination—all of which theoretically would reduce the incentive to seek modifications or to contest the original finding.

Origins of Child Support Guidelines in General Use by the States

There are three basic child support models in the United States: (1) percent of obligor income only (known as Wisconsin-style guidelines due to the origin), (2) income shares, and (3) Delaware-Melson. Percent of obligor guidelines are used by only about a dozen states and base the presumptive award on the obligor's income but not the obligee's. Generally, the percentage is fixed across the applicable income range but increases with the number of children. Income shares guidelines generally are based on a statistical technique known as Betson-Rothbarth and take into account both parents' income to identify a portion of the parents' income as the child's share. Child support obligations rise in dollar value with income but decline as a share of income. About 35 states use this type of guideline. Delaware-Melson was originated by Judge Elwood F. Melson in the State of Delaware and is a hybrid of Wisconsin-style guidelines and income shares. This guideline type is used in only a few states and for simplicity is not discussed in further detail in this paper. What are the origins of Wisconsin-style guidelines and incomes shares and what are their economic implications?

Origin and Original Intent of the Percent of Obligor Income Model (Wisconsin-Style)

Obligor-only child support guidelines in the U.S. are based on those developed for the State of Wisconsin. Wisconsin regulatory code specifically points to the origins. Chapter HSS 80 of the Wisconsin State *Register*, January 1987, No. 373, is entitled, “Child Support Percentage of Income Standard.” This chapter's introduction explains the alleged academic underpinnings for this particular obligor only child support model. As seen in Section HSS 80.01:

> The percentage standard established in this chapter is based on an analysis of national studies, including a study done by Jacques Van der Gaag as part of the

Child Support Project of the Institute for Research on Poverty, University of Wisconsin, Madison, entitled "On Measuring the Cost of Children," which disclose the amount of income and disposable assets that parents use to raise their children.[1]

Van der Gaag's Definition of Child Costs

Van der Gaag's definition of child costs diverges sharply from common definitions that generally are tied to how much families with children actually choose to spend on children. His study's definition begins with one-child costs being based on how much income a one-child couple must be compensated in order to be equally well off economically as without the child. From Van der Gaag, "Thus the question is: How much income does a couple with one child need, to obtain the same level of economic well-being as a childless couple?"[2] His studies did not look at actual expenditures on children but rather how much income the parents needed to get back to the prior standard of living. He expanded this definition for additional children. The State of Wisconsin took Van der Gaag's estimates and with minor adjustments, adopted them for advisory guidelines for welfare cases. Wisconsin's guidelines, based on Van der Gaag's study, are as follows:

Number of Children	Percentage of Obligor's *Gross* Income
1	17 percent
2	25 percent
3	29 percent
4	31 percent
5 or more	34 percent.

One of the chief criticisms of the Van der Gaag's cost estimates is brought up by Van der Gaag himself as commentary within his study. The cost estimates do not take into account any "utility"—or satisfaction—that children give to the parents. Essentially, his cost estimates are based on a definition such that all that matters is economic well-being of the parents—as though that is the only consideration used to determine whether to have children or not. His definition leads to an overstatement of child costs. In real life, when parents choose to have children, they realize it is with the loss of the standard of living for "other" goods and services consumed. They choose this lower standard of living for "other" because of the satisfaction from having children. Curiously, this issue has implications for the methodology behind income shares models—to be discussed later. Also, Van der Gaag assumed the custodial parent has the child 100 percent of the time.

Additionally, the studies reviewed by Van der Gaag are for low-income families and the studies ignore the impact of government transfers to subsidize child costs. The baseline income for the families studied is $12,000 (1982 dollars) for Van der Gaag's table comparing child costs as a percentage of gross income. The low-income base would necessarily lead to high percentages for child costs since necessities would take up almost all and in many cases more than all income. Dependence on subsidies also would boost child costs as a share of income.

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[1] Wisconsin, State of, *Register*, January 1987, No. 373, Chapter HSS 80, p. 316-1.

[2] Jacques Van der Gaag, "On Measuring the Cost of Children," Child Support: Technical Papers, Volume III, SR32C, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982, p.18.

Importantly, these percentages were estimated as indirect measures of child costs from data in the late 1970s and early 1980s for low-income obligors. These obligors paid little if any income tax. The tax impact was not an issue since the percentages were only used in welfare cases. Also, today's earned income credits and child credits had not yet been enacted—which now can add thousands of dollars to the custodial parent's household annually. The adjusted percentages were adopted by the State of Wisconsin in 1983 as guidelines to be used in an advisory capacity and later as a rebuttable presumption.[3]

Wisconsin's Guidelines Were Never Intended by the Original Researchers to Apply to Situations Other than Low Income or Low Benefits

Based on early papers providing the technical foundations for Wisconsin's child support guidelines, the guidelines were originally developed for only welfare situations (in research papers, the child support obligation is described as a "tax" since the intent was for automatic with-holding as with other taxes). The intent was for both parents' income to be part of the formula and that there be a maximum level of benefits (child support).[4]

Wisconsin's child support guidelines originally were intended to be applied to only very limited circumstances. The original concept underlying Wisconsin's child support guidelines based on academic recommendations was to exempt some income for basic living needs, to require the custodial parent to pay for any difference between guaranteed benefits and what the non-custodial parent could pay, and to cap the benefits at a low level so that the "tax" (child support obligation) was regressive for the obligor.

It is well documented that the original concept of Wisconsin's child support plan included low-income exemptions, ceilings on income subject to the guidelines, and was based on a modest level of publicly guaranteed benefits to the child with the state's objective as recovery of the costs of those benefits from both parents as much as was practical. These guidelines were never intended to be extended beyond low-income situations or beyond low benefit guarantees.[5]

How did Wisconsin's welfare situation guidelines become applied to all types of cases? In its rush to comply with the Family Support Act of 1988, the Wisconsin legislature delegated guideline authority to the Wisconsin Department of Health and Social Services which in turn administratively chose to use welfare percentages in non-welfare cases. Additionally, other states—for example, Georgia—adopted their guidelines from Wisconsin's in the same rush to comply with Federal regulations to keep Federal funding. Essentially, Wisconsin's and states adopting their guidelines for general use conflict with the underlying economic study and original

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[3] Irwin Garfinkel, "The Evolution of Child Support Policy," *Focus*, Vol. 11, No. 1, Spring 1988, University of Wisconsin-Madison, Institute for Research on Poverty, p. 13.

[4] Institute for Research on Poverty, University of Wisconsin-Madison. "Documentation of the Methodology Underlying the Cost Estimates of the Wisconsin Child Support Program," Child Support: Technical Papers, Volume III, SR32C, Special Report Series, 1982, pp. 143-144.

[5] Institute for Research on Poverty, University of Wisconsin-Madison. *Child Support: A Demonstration of the Wisconsin Child Support Reform Program and Issue Papers*, Volume II, SR32B, Special Report Series, 1981, p. 51.

intended use as indicated by that study.[6] Also, a federal advisory panel recommended that states not use obligor-only guidelines but rather should use guidelines taking into account both parents' incomes.[7]

Origins and Methodology of Income Shares Child Support Guidelines

The income shares model for child support guidelines was developed by Dr. Robert Williams of Policy Studies, Inc. (PSI) of Denver, Colorado. Williams obtained a grant from the National Center for State Courts to develop recommendations for state guideline use. The recommendations were part of a report requested by the U.S. House Ways and Means Committee. This committee had requested the establishment of an advisory panel on child support in 1984. Williams' research was published in 1987 along with the panel's recommendations.[8] Williams' original version of the income shares guideline was based on the research of Thomas Espenshade but more recent versions have been based on the research of David Betson. The more recent guidelines generally produce higher child support awards than the earlier version.

Robert Williams' child support model—known as "income shares"—is a variation of an income equivalence model. In simplified terms, income equivalence researchers look at data over a range of income levels and compare percentages of certain adult types of goods consumed and then compare to percentages after having the additional child. The cost of the additional child is the amount of income needed to restore the percentage of income spent on these specified adult goods. This is the definition of child costs in Van der Gaag's study of low-income families that underlies Wisconsin-style models.

For Williams' income shares models, the approach is to look at intact families with and without the additional child and compare income and consumption levels when the share of adult goods consumed has returned to the pre-additional child level. The extra *total* consumption is attributed to the child and is the estimate of child costs. The measure is indirect—there are no components for actual expenses. There are no components for child costs of food, housing, medical costs, etc. Williams' income shares model is based on the academic work of David Betson who developed his own version of a Rothbarth estimator for child costs. In his model, the specified bundle of adult goods is: adult clothing, tobacco, and alcohol. If two families of different size have the same proportion of their total expenditures on these adult goods, they are deemed to be equally well off economically. As noted in Williams' own notes on his methodology:

[6] Apparently, the only appeals case to address the issue of using child support guidelines specifically designed for welfare cases in non-welfare situations was in Oregon. Although not in the context of constitutional issues, the Oregon Supreme Court in *Smith v. Smith*, 626 P2d 342 (1981) specifically stated that it is not appropriate to use welfare guidelines in higher income situations, citing a long list of economic and equity reasons (with many of those repeated in this article).

[7] See the recommendation of the Federal Advisory Panel on Child Support Guidelines, appointed by the U.S. House Ways & Means Committee in Robert G. Williams, *Development of Guidelines for Child Support Orders*, U.S. Department of Health and Human Services, Office of Child Support Enforcement, September 1987, p.I-16.

[8] Ibid., Preface.

> Of the models used by Dr. Betson for these new estimates of child-rearing expenditures, the "Rothbarth estimator" seems to have the most economic validity and plausibility. As discussed in more detail below, this estimator defines equivalent well-being between households (with and without children, for example) in terms of their spending on "adult goods." In our judgment and in the judgment of Dr. Betson, estimates based on this Rothbarth model constitute the best available evidence on child-rearing costs for use in the development of child support guideline tables.[9]
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> Several economic methodologies have been developed to produce such estimates [of child costs]. Most attempt to estimate the marginal, or extra, costs of child-rearing relative to expenditures in the absence of any children. They do so by comparing expenditures between two households that are equally well off economically, one with children and one without. The additional expenditures by the household with children are deemed to be the costs of child rearing.[10]

In contrast to Van der Gaag's emphasis on low-income situations, Williams did evaluate the Rothbarth definition at varying income levels and obtained child cost estimates with the appropriately shaped pattern—that of declining percentages at income levels higher than low income levels. This, however, does not mean the methodology identified the estimated level of child costs correctly nor the proper slope of the guideline decline in percentages of income. The income shares methodology appears to overstate child costs.

<u>Reasons Behind Income Shares Model's Overstatement of Child Costs</u>

There are several reasons why Williams' methodology leads to an overstatement of child costs: (1) non-recognition of a budget constraint, (2) the choice of adult goods share of consumption as a target definition, and (3) the use of intact families to estimate child costs. First, the income equivalence approach ignores the budget constraint faced by families who have children. In "real life," families do not spend on children based on some notion of extra income for economic well-being equivalence, but must make spending decisions based on the same level of income as prior to having the additional child. Furthermore, families assume their economic standard of living will decline as a result of new child costs. The income constraint seen in real life leads to much lower actual child costs than those that are estimated by income equivalence models of child costs—as in income shares.

The choice of adult goods consumed as the defining measure of income equivalence leads to an upward bias for child cost expenditures. Not only is there an income constraint, but there are substitution effects—consumers switching consumption between types of goods—that make the approach of targeting a fixed share of adult goods inappropriate. The child actually becomes a consumption good for a parent. Notably, consumption of some of the particular adult goods chosen by Williams to target—tobacco and alcohol—may be intentionally consumed less as a result of having children. The parent consumes fewer adult goods after having the child as a matter of choice. Using a standard that targets equalizing consumption shares of adult goods

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[9] See Robert G. Williams, David A. Price, & Jane C. Venohr, *Economic Basis for Updated Child Support Schedule, State of North Carolina*, November 24, 1993, Policy Studies, Inc., Denver, Colorado, pp. 3-4.
[10] *Id.* p. 8.

overstates child costs because families choose to consume fewer adult goods after having children. This standard results in an income level that is too high for the comparison of the change in total consumption that is attributed to child costs.[11]

Both Wisconsin-style guidelines and Williams' income shares guidelines are based on studies of intact families. A key economic feature of divorced and unwed families is that there is dramatically higher household overhead compared to intact families. Instead of paying a mortgage or rent on one house, there are now payments for two. This also is the case for overhead items such as utilities, insurance, and probably transportation (automobiles). Higher overhead means that the amount of income left over for other spending is less than in an intact family situation. Notably, one of the "other" categories would be for child costs. Higher overhead of divorced families would have the effect of reducing the percentages of overall income spent on children. By using intact family data, Wisconsin-style and income shares models tend to overestimate child costs.

The Myth That Income Shares Estimates of Child Costs Are Low

In the very limited amount of literature discussing the nature of the Rothbarth estimation technique, there are assertions that this methodology is biased downward and can be considered a "lower bound" (floor) to estimates for child costs.[12] This is based on the belief (that is never substantiated in studies) that with the addition of children, adults choose to consume more purely adult goods and fewer goods shared between the adults and children. This shift supposedly is because when a good is shared with kids, the adult has to purchase more to have the same amount of the adult's consumption, thereby raising the overall perceived price of the shared good. Supposedly, since a family shifts toward greater consumption of adult goods after having additional children, it takes less income to restore the previous level of consumption of targeted adult goods. This allegedly leads to an underestimate of child costs since this additionally needed income to restore the standard of living is less than if the household did not have this change in preference.

But this argument completely lacks credibility with the consumption goods used in the Betson-Rothbarth estimator: alcohol, tobacco, and adult clothing. The Betson-Rothbarth technique uses the share of total consumption of these goods to measure overall well being for the family. For the argument that Betson-Rothbarth underestimates child costs to be true, one would have to believe that when a household has an additional child, the adults suddenly decide to drink more alcohol, smoke and chew more tobacco, and go on spending binges for adult clothes. Common sense tells us that social pressure from other family members tends to lead to less consumption of these particular goods after having an additional child. Economic studies also tell us that consumption of these goods does not respond well to changes in income and therefore require larger increases in income to restore previous levels of consumption. Therefore, Betson-Rothbarth likely overestimates child costs. As a consequence, Betson-Rothbarth estimates of child costs cannot be argued to be a floor to "true" child costs. Without basis, this erroneous

[11] The corollary is that any adjustments to income shares basic cost estimates—with the adjustment based on percentage add on factors (a multiple of the base)—exacerbates the upward bias. An example would be age-of-child adjustments. Another example would be the income shares multiplier (allegedly economically based) for shared custody situations.

[12] See the October 1990 "Lewin Report" on child costs, section 2, page 29.

argument has been used to discredit estimates of child costs that are lower than Betson-Rothbarth estimates.

II. Favored Tax Treatment for Custodial Parents and Treating Tax Benefits as a Cost Offset

One reason why obligor only and income shares methodologies are not soundly based on economic principles is that they do not take into account the significant cost offset enjoyed by the custodial parent through favored tax treatment. Additionally, the progressive income tax structure in the U.S. means that child costs decline as a share of gross income—meaning that most obligor-only guidelines conflict with actual child cost patterns. As will be shown further below, the tax benefit offset helps the custodial parent enjoy a higher presumptive standard of living than the non-custodial parent in most income situations—even when the custodial parent earns significantly less prior to the child support transfer. For all of these reasons, it is appropriate to review the favored tax treatment received by custodial parents. This includes a review of how tax treatment has changed since development of Wisconsin-style guidelines.

Differences in Tax Treatment Between Head of Household/Custodial Parent Versus Single-Taxpayer/Non-custodial Parent

As seen in Federal Form 1040 from the Internal Revenue Service for calendar tax year of 1999, the divergent treatment of custodial and non-custodial parents is substantial:

- The standardized deduction (line 36, Form 1040), for a single person (the non-custodial parent) was $4,300 compared to $6,350 for a head of household taxpayer (the custodial parent). This is a bonus of $2,050 in deductions for the custodial parent.

- The custodial parent only is able to claim the dependent exemptions as a legal right (lines 6c and 38, Form 1040). The 1999 value of each dependent exemption was $2,750.

- For low income and moderately low income working parents, custodial parents receive dramatically more favorable treatment than do non-custodial parents in terms of the size of earned income credits under Federal income tax law.

  The earned income credit was as much as—
  - $347 if you did not have a qualifying child (non-custodial parent),
  - $2,312 if you had one qualifying child, or
  - $3,816 if you had more than one qualifying child.

- The Taxpayer Relief Act of 1997 gave custodial parents a tax credit of $400 per child and additional credit for a third child under special circumstances. The credit went to $500 per child in 1999.

- Child care credits can be as high as $480 per child for high, moderate income families.

- As with Federal tax code, personal income tax laws for individual states generally give custodial parents significant exemptions that non-custodial parents generally do not get.

- The marginal tax rate increases for head of household taxpayers kick in at higher income threshold levels than for single, non-custodial parents. This is seen in Table 1, showing Schedule X and Schedule Z in 1999 1040, Forms and Instructions, Department of the Treasury.

Table 1.

Schedule X—Use if your filing status is **Single**

If the amount On Form 1040, Line 39, is" Over --	But not over--	Enter on Form 1040, line 40	of the amount over--
$0	$25,750	……… 15%	$0
25,750	62,450	$3,862.50 + 28%	25,750
62,450	130,250	14,138.50 + 31%	62,450
130,250	283,150	35,156.50 + 36%	130,250
283,150	---------	90,200.50 + 39.6%	283,150

Schedule Z—Use if your filing status is **Head of household**

If the amount On Form 1040, Line 39, is" Over --	But not over--	Enter on Form 1040, line 40	of the amount over--
$0	$34,550	……… 15%	$0
34,550	89,150	$5,182.50 + 28%	34,550
89,150	144,400	20,470.50 + 31%	89,150
144,400	283,150	37,598.00 + 36%	144,400
283,150	---------	87,548.00 + 39.6%	283,150

Source: "1999 Tax Rate Schedules," p. 69, 1999 Federal Form 1040

The Impact of Tax Benefits on Each Parent's Ability to Pay Shares of Child Costs

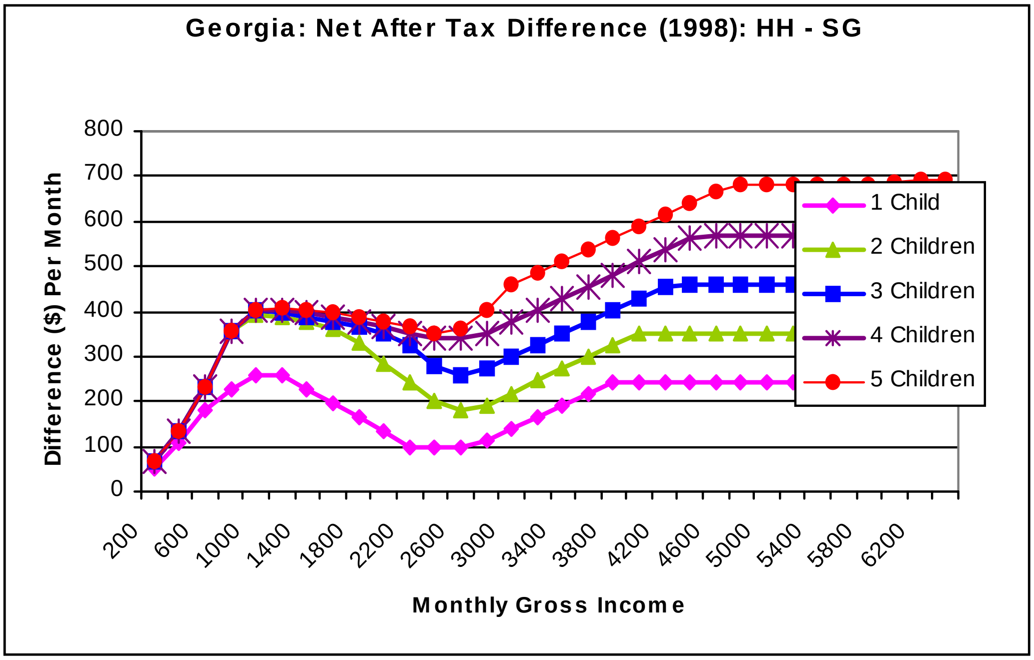
Chart 1 summarizes the difference in tax code treatment of custodial parents (CPs) to that of non-custodial parents (NCPs). The horizontal axis is gross income for each parent (with each having the same gross income). The vertical axis is the net income advantage that the custodial parent has at each level of gross income. It shows the after-tax income of the CP minus the after-tax income of the NCP. Taxes are Federal and Georgia (as a state example) personal income taxes, Medicare, and Social Security taxes (1998 tax code). Earned income credits are added. Standard deductions are used. Chart 1 shows a dramatic after-tax advantage for the custodial parent.

As seen in the chart, the first "hump" is primarily due to the earned income credit that the custodial parent receives as a cost offset. The rising advantage on the right two-thirds of the chart is due to differences in marginal tax rates. Deductions and exemptions also boost the overall level for custodial parents. Use of gross income for guidelines ignores the advantage that custodial parents receive from preferential tax treatment. This advantage typically is worth several hundred dollars in net income per month. For example, at gross income of $4,000, the custodial parent with two children has about $350 more net income monthly than the non-custodial parent to support the children (roughly $4,200 after tax extra income annually). At low-income levels, the difference is quite striking. A little above the poverty level, for equal levels of gross income, the custodial parent has 35 to 45 percent more after-tax income than the non-custodial parent for which to support the children due to favorable tax treatment.

On a final note regarding ability to pay near the poverty level, the above analysis does not include discussion of other potential cost offsets that a custodial parent has that the NCP does not have—or at least the CP has more readily. Food stamps, WIC, Medicaid, housing subsidies are generally more available to the CP and are not part of the formula for sharing child costs and cost offsets with the NCP.

Because of these tax code changes, for a given level of gross income, the custodial parent has a significantly higher ability to provide the CP's share of child costs compared to the NCP. Use of gross income without adjustments for the sharing the child tax benefits between both parents clearly creates an unequal burden for the NCP.

Chart 1.



States have differing statutes and case law on whether a court can award deductions and exemptions to the non-custodial parent over the objection of the custodial parent. However, this issue can be easily side-stepped to achieve economic equity. Courts can address the differential tax treatment by treating the tax benefits as a direct cost offset against total child expenditures prior to determining the child support award. The child support guidelines should take into account the favored tax treatment for the custodial parent by requiring that the tax benefit be deducted from overall child costs as part of a specific step in the calculation of the NCP's child support obligation. The cost offset the custodial parent receives would simply be the difference in the CP's after-tax income comparing filing as head of household and filing as a single taxpayer. States' statutory and case law clearly indicates that each parent has an equal duty to bear the financial costs of rearing children. It only follows that both parents have an equal right to share the cost offsets of tax benefits attributable to the same children.

III. Introduction to An Economic Based Child Support Model: Cost Shares—An Expenditure Based Model

In the mid-1990s, the Children's Rights Council (CRC) developed a prototype child support model based on the parents' sharing of child costs with the costs being based on actually measured costs in surveys of households.[13] This sharing of costs differs from the Betson-Rothbarth model which is a sharing of income (based on a flawed, upwardly biased measure of the amount to be shared). The CRC model focuses on sharing the marginal costs of children and is differentiated from income shares methodology by being called cost shares. By marginal cost, one means the added costs incurred by a household by having a child. For example, one looks at how much a utility bill is higher after having a child than before to calculate a child's share of utility costs. This is the appropriate method since the adult household would incur the earlier costs without the child anyway.

It is appropriate to review in a little greater depth what sets the CRC model apart. The CRC cost shares child support guideline model diverges from percent-of-obligor income models and income shares models in several key facets. For the CRC model, child expenditures are based on actual costs as measured by surveys. Percent-of-obligor and income shares models base child costs on indirect estimation methodologies. Their estimates of child costs are derived by comparing changes in adult consumption before and after having a child or additional child. Cost shares measures are based on actual child costs—not some theoretical concept.

CRC child expenditures are taken from surveys of single-parent households rather than of intact households. Similarly, the appropriate income used in the support tables is average gross income of the two parents instead of combined income.

The cost shares methodology explicitly shares between the parents both child costs and child cost offsets. An explicit measure of child-related tax benefits is used as a cost offset as an intermediate step in determining the economically appropriate child support award. This is a procedural advance over percent-of-obligor and income shares models which ignore the tax

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[13] See Donald J. Bieniewicz, "Child Support Guideline Developed by Children's Rights Council," Chapter 11, *Child Support Guidelines: the Next Generation*, U.S. Department of Health and Human Services, April 1994, pp. 104-125.

benefit impact on net child costs. It also is a procedural simplification for states that allow courts to order the custodial parent to sign over (per IRS regulations) the tax benefits every other year.

The cost shares model has components for various major child cost categories. These are housing, food, transportation, clothing, health and education, and "other." The "other" category includes child care while health and education includes medical insurance expenses. Each category is based on an average of the expenditures by category from survey data. Families within the survey varied as to whether they spent specifically on day care or medical insurance. Importantly, explicit dollar values for a presumptive award by category allows for a specific basis for rebutting the presumption. Neither percent-of-obligor only nor income shares models have components to create a rebuttable presumption. Neither of these models have components because the estimates are made indirectly by measuring changes in adult consumption—not actual child costs.

Basic Steps in the Cost Shares Model

The CRC cost shares methodology can be implemented with varying degrees of "richness." Just as income shares models have differing levels of depth for quantifying (putting into the guidelines formula), so does the cost shares model. **The basic model makes the following simple calculations:**

1) Determines basic child costs for a single-parent household using an average of both parents' income as the income factor. The basic child support table has child costs for a single-parent household according to gross income.

2) Adds other non-basic expenses when appropriate.

3) Deducts from total child costs the tax benefit that the custodial parent receives that is solely attributable to having custody of the child(ren).

4) Allocates the net child cost obligation (net of tax benefits) between the two parents based on each parent's share of combined after-tax income that is above a recommended self-support level.[14]

The CRC guideline sets a limit on the amount of the child support obligation so that the obligor retains income sufficient for basic living needs and so the state and employer (when involved with an income deduction order) comply with the Consumer Credit Protection Act.
Where the NCP provides direct support for the child, the CRC guideline also considers this when setting the award. This can be handled through simple cross crediting based on the number of overnights visited or by using a more sophisticated approach. That would be to include adjustments for differentiating the fixed cost of housing from other "moveable" child expenses

[14] A self-support reserve of 133 percent of the poverty threshold is the recommendation of an appointed panel on medical child support reporting to the U.S. Department of Health and Human Services and U.S. Department of Labor. See U.S. Department of Health and Human Services, "21 Million Children's Health: Our Shared Responsibility, The Medical Child Support Working Group's Report, Full Report," June 2000, p. 70. The poverty threshold for a one-adult only household in 1999 is $8,667 annually or $722 monthly.

when the non-custodial parent provides housing for the child(ren) on a year round basis; that is, the NCP pays for and maintains housing for the child(ren) even when they are not in the NCP's custody—e.g., the child(ren) has/have a bedroom in each parent's house or apartment. The cost shares formula can be designed to quantify how to allocate child costs based on each parent's fixed costs for the child(ren), moveable costs, and the number of days and/or nights each parent has parenting time with the child(ren). Such a methodology can be a replacement for current methodologies in use for shared parenting (joint physical custody or extended visitation) adjustments to basic guidelines. Nonetheless, the shares adjustment can be a simple, analogous version to current methodologies by simply using overall net child costs and making a simple allocation based on each parent's share of total parenting time.

Table 2 shows expenditures on children for one, two, and three children. Data are not shown for four or more children since the original data source compiled data only for households with one through three children. The authors are currently updating these tables based on recently released data from the Department of Agriculture as well as other sources, with publication anticipated in coming months.

Underlying Data for the Cost Shares Child Support Model

The CRC child cost tables are based primarily on "Expenditures on a Child by Families 1992," Family Economics Research Group (FERG), U.S. Department of Agriculture, 1993. This FERG report is based on the Consumer Expenditure Survey of the Bureau of Labor Statistics, U.S. Department of Labor.

The FERG report provides estimates of family expenditures on children for separate cost categories. The FERG estimates are on a marginal cost basis, except for the housing, transportation, and other miscellaneous cost estimates, which are per capita (household costs are allocated equally to all household members, including children). Per capita estimation is known to yield much higher estimates of child costs than marginal cost estimation.

The housing costs in the cost shares tables are based on a housing survey by Dr. David Garrod of Purdue University (currently retired) instead of the unrealistically high per capita estimates from the FERG report. Adjustments were made to the data to include furniture and utilities costs.[15] For future updates of these tables, it may be appropriate to base the transportation component on a cost per mile basis for the family trips that are solely attributable to the child's activities. If refined and incorporated, this approach would lead to substantially lower transportation costs.

The tables from the Bieniewicz 1994 publication were updated by indexing the data to the consumer price index, all urban series. Child expenditure levels were interpolated at $50 increments using a regression based methodology, correlating updated published data between income and expenditures.

[15] More detail on the source data can be found in Donald J. Bieniewicz, "Child Support Guideline Developed by Children's Rights Council," Chapter 11, *Child Support Guidelines: the Next Generation*, U.S. Department of Health and Human Services, April 1994, pp. 104-125.

Table 2

Child Costs Based on Cost Shares Methodology

Notes: The following table is for total expenditures on one, two, and three children based on gross income of a single-parent household. The income level associated with the expenditure level on children is the average of both parents' incomes. The expenditure levels shown are total child costs, to be netted against tax benefit offsets and then allocated between both parents. Income and expenditures for 1999. Copyright 2000, R. Mark Rogers and Donald J. Bieniewicz.

Annualized Gross Income	Monthly Gross Income	Monthly Expenditures on 1 Child	Monthly Expenditures on 2 Children	Monthly Expenditures on 3 Children
12000	1000	393	570	656
12600	1050	399	578	667
13200	1100	405	587	677
13800	1150	411	596	687
14400	1200	417	605	697
15000	1250	424	614	708
15600	1300	430	623	718
16200	1350	436	632	728
16800	1400	442	641	738
17400	1450	449	650	749
18000	1500	455	659	759
18600	1550	461	668	769
19200	1600	467	677	779
19800	1650	473	686	790
20400	1700	480	695	800
21000	1750	486	704	810
21600	1800	492	713	820
22200	1850	498	722	831
22800	1900	504	731	841
23400	1950	511	739	851
24000	2000	517	748	861
24600	2050	523	757	872
25200	2100	529	766	882
25800	2150	536	775	892
26400	2200	542	784	902
27000	2250	548	793	913
27600	2300	554	802	923
28200	2350	560	811	933
28800	2400	567	820	943
29400	2450	573	829	954
30000	2500	579	838	964
30600	2550	585	847	974
31200	2600	591	856	984
31800	2650	598	865	995
32400	2700	604	874	1005

Table continues.

Table 2 Continued

Notes: The following table is for total expenditures on one, two, and three children based on gross income of a single-parent household. The income level associated with the expenditure level on children is the average of both parents' incomes. The expenditure levels shown are total child costs, to be netted against tax benefit offsets and then allocated between both parents. Income and expenditures for 1999. Copyright 2000, R. Mark Rogers and Donald J. Bieniewicz.

Annualized Gross Income	Monthly Gross Income	Monthly Expenditures on 1 Child	Monthly Expenditures on 2 Children	Monthly Expenditures on 3 Children
33000	2750	610	883	1015
33600	2800	616	891	1025
34200	2850	622	900	1036
34800	2900	629	909	1046
35400	2950	635	918	1056
36000	3000	641	927	1066
36600	3050	647	936	1077
37200	3100	652	941	1081
37800	3150	658	950	1092
38400	3200	664	959	1102
39000	3250	671	968	1113
39600	3300	677	978	1123
40200	3350	683	987	1134
40800	3400	690	996	1144
41400	3450	696	1005	1155
42000	3500	702	1014	1165
42600	3550	708	1023	1176
43200	3600	715	1032	1186
43800	3650	721	1042	1197
44400	3700	727	1051	1207
45000	3750	734	1060	1218
45600	3800	740	1069	1228
46200	3850	746	1078	1239
46800	3900	753	1087	1249
47400	3950	759	1096	1260
48000	4000	765	1105	1270
48600	4050	771	1115	1281
49200	4100	778	1124	1291
49800	4150	784	1133	1302
50400	4200	790	1142	1312
51000	4250	797	1151	1323
51600	4300	803	1160	1334
52200	4350	809	1169	1344
52800	4400	815	1179	1355
53400	4450	822	1188	1365
54000	4500	828	1197	1376
54600	4550	834	1206	1386
55200	4600	841	1215	1397
55800	4650	847	1224	1407
56400	4700	853	1233	1418

Table continues.

Table 2 Continued

Notes: The following table is for total expenditures on one, two, and three children based on gross income of a single-parent household. The income level associated with the expenditure level on children is the average of both parents' incomes. The expenditure levels shown are total child costs, to be netted against tax benefit offsets and then allocated between both parents. Income and expenditures for 1999.

Annualized Gross Income	Monthly Gross Income	Monthly Expenditures on 1 Child	Monthly Expenditures on 2 Children	Monthly Expenditures on 3 Children
57000	4750	859	1243	1428
57600	4800	866	1252	1439
58200	4850	872	1261	1449
58800	4900	878	1270	1460
59400	4950	885	1279	1470
60000	5000	891	1288	1481
60600	5050	897	1297	1491
61200	5100	904	1307	1502
61800	5150	910	1316	1512
62400	5200	916	1325	1523
63000	5250	922	1334	1533
63600	5300	929	1343	1544
64200	5350	935	1352	1554
64800	5400	941	1361	1565
65400	5450	948	1370	1575
66000	5500	954	1380	1586
66600	5550	960	1389	1596
67200	5600	966	1398	1607
67800	5650	973	1407	1617
68400	5700	979	1416	1628
69000	5750	985	1425	1638
69600	5800	992	1434	1649
70200	5850	998	1444	1660
70800	5900	1004	1453	1670
71400	5950	1010	1462	1681
72000	6000	1017	1471	1691
72600	6050	1023	1480	1702
73200	6100	1029	1489	1712
73800	6150	1036	1498	1723
74400	6200	1042	1508	1733
75000	6250	1048	1517	1744
75600	6300	1055	1526	1754
76200	6350	1061	1535	1765
76800	6400	1067	1544	1775
77400	6450	1073	1553	1786
78000	6500	1080	1562	1796
78600	6550	1086	1572	1807
79200	6600	1092	1581	1817
79800	6650	1099	1590	1828

Table continues.

Table 2 Continued

Notes: The following table is for total expenditures on one, two, and three children based on gross income of a single-parent household. The income level associated with the expenditure level on children is the average of both parents' incomes. The expenditure levels shown are total child costs, to be netted against tax benefit offsets and then allocated between both parents. Income and expenditures for 1999.

Annualized Gross Income	Monthly Gross Income	Monthly Expenditures on 1 Child	Monthly Expenditures on 2 Children	Monthly Expenditures on 3 Children
80400	6700	1105	1599	1838
81000	6750	1111	1608	1849
81600	6800	1117	1617	1859
82200	6850	1124	1626	1870
82800	6900	1130	1635	1880
83400	6950	1136	1645	1891
84000	7000	1143	1654	1901
84600	7050	1149	1663	1912
85200	7100	1155	1672	1922
85800	7150	1161	1681	1933
86400	7200	1168	1690	1943
87000	7250	1174	1699	1954

Table 3

Cost Shares Estimate Detail for Two Children

	NCP, Single Taxpayer Status	CP, Head of Household Status	CP, Single Taxpayer Status
Monthly gross salary	3,500	2,333	2,333
Annual gross salary	42,000	27,996	27,996
Standard deduction	-4,300	-6,350	-4,300
Exemptions	-2,750	-8,250	-2,750
Federal taxable income	34,950	13,396	20,946
Federal income tax	-6,446	-2,006	-3,139
Earned income credit	0	549	0
Child credits	0	1,000	0
Social Security tax	-2,604	-1,736	-1,736
Medicare tax	-609	-406	-406
Georgia adjusted income, annual	42,000	27,996	27,996
Standard deduction	-2,300	-2,300	-2300
Exemptions	-2,700	-8,100	-2700
Georgia taxable income	37,000	17,596	22,996
Georgia income tax	-2,033	-817	-1187
After Tax Income, Annual	**30,308**	**24,580**	**21,528**
Child Cost Calculations, Monthly:			
Average monthly gross income	2,917		
Child cost, 2, at ave. mo. gross, base	**909**		
Child care	0		
Other	0		
Total child costs	909		
Custodial tax benefit as cost offset[16]	-254		
Net child costs to be shared[17]	**655**		
CP share of child costs	242		
NCP share of child costs	**412**		
NCP credit for medical insurance pmt.	-110		
NCP obligation after credits	**302**		
Presumptive award based on (pre-credits):			
a) Obligor-only (Georgia version)	893		
b) Income shares (North Carolina version)	653		

Components of two-child cost estimate total of $909: housing, $192; food, $212; transportation, $189; clothing, $90; health & education, $47; and "other," $179.

[16] Defined as the difference in the CP's net income, head of household basis less single taxpayer status.
[17] Based on share of net income (above self-support) on a single taxpayer basis for both. This example assumes there is no adjustment for the non-custodial parent's share of physical custody.

An Example of Applying the Cost Shares Methodology

Applying the basic cost shares model is not difficult as can be seen in Table 3. Table 3 shows the monthly gross income and after-tax income for the non-custodial parent (NCP) and custodial parent (CP). There are two columns for the CP—one with calculations for after-tax income with the tax benefits related to custody (head of household status) and one for without the tax benefits. The difference between these after-tax incomes defines the tax benefit cost offset ($24,580 minus $21,528; $3,052 annually or $254 monthly). Average monthly gross income of $2,917 determines the level of child support expenditures to be shared. Looking at Table 2, one can see that for average monthly gross income of $2,900, the associated two-child cost is $909 monthly. This is carried over to Table 3. In this example, there are no added "other" costs not included within the basic table, so total child costs are $909 monthly.

For this example, the tax benefit from having custody is $254 monthly. This amount is subtracted from total child costs before allocating between the parents—$655 is left for this division. This amount is shared between the parents based on each parent's share of after-tax income that is above a self-support reserve of 133 percent of the poverty threshold. The after-tax income for the CP is based on single taxpayer status so as to not double-count the cost offset. The basic cost shares are $242 for the CP and $412 for the NCP. The non-custodial parent receives credit for any court ordered child costs included in the total costs. In this example, the medical insurance payment is subtracted from the NCP's share of total costs, resulting in a cash award of $302 due to the CP monthly. Finally, the court should determine that the total obligation of the NCP does not push the obligor into a financial position in which basic living needs cannot be met.

At the bottom of Table 3 presumptive awards are shown for an obligor only type guideline based on gross income and a "standard" income shares guidelines. These presumptive awards would be $893 and $653, respectively, compared to the cost shares basic award of $412. Using estimates based on actual child expenditures, adjusting for tax benefit offsets, and properly allocating remaining costs to both parents results in an economics based award that is substantially lower than presumptive awards based on current child support models.

Cost shares estimates show that current presumptive awards typically are two to three times awards justified by actual expenditures on children—<u>not</u> taking into account parenting time adjustments for the NCP. A comparison of Wisconsin-style, income shares, and cost shares awards is shown in Chart 2. In this example, the custodial parent is assumed to have 70 percent of the gross income that the non-custodial parent has. The cost shares award is shown with and without the tax benefit adjustment to show how significant this factor is. At a minimum, current child support models should incorporate this feature for equal protection considerations.

Chart 2.

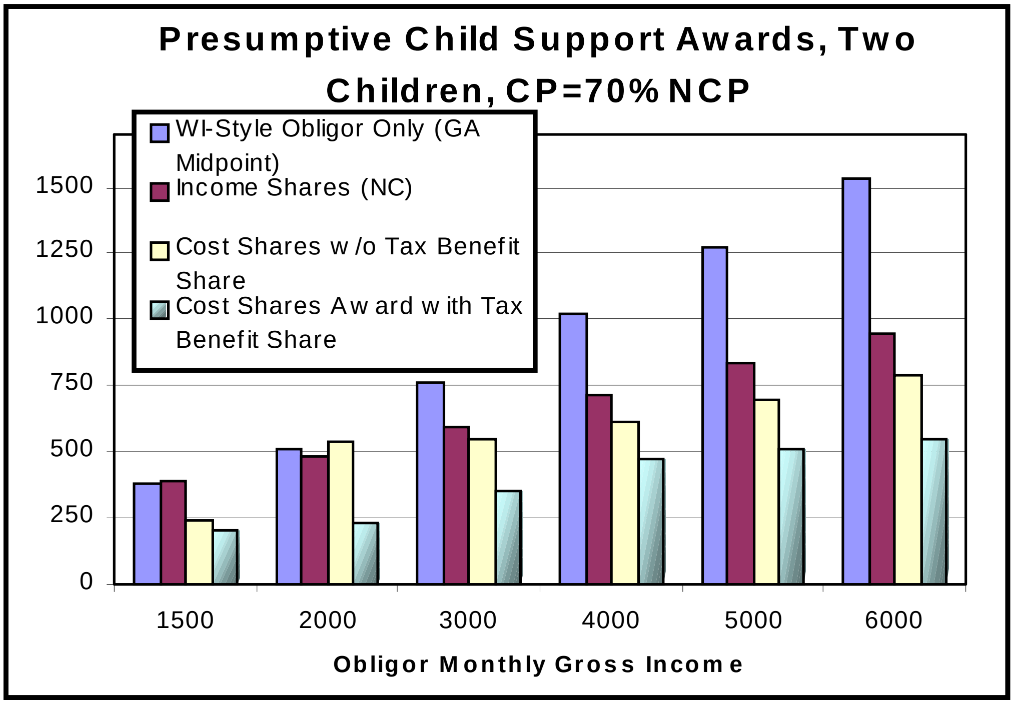

Chart 2 also shows awards that highlight self-support features of the cost shares methodology. For the comparative awards at the $1,500 monthly level, there is little difference in the cost shares awards with and without the tax benefit share. This is because the "without" award has been constrained by available income that is above self-support levels. The award equals this available amount. Lack of income results in some child costs not being covered. Under the other models, this is the resulting (and growing) arrearage. At the $2,000 level, the "without tax benefit" cost shares burden is relatively high for the NCP. This is because the CP has self-support protection also and in this instance results in the NCP having a large share of combined income above self-support levels.

Which Income Basis: Why Average Income Instead of Combined Income?

The use of average income helps to guarantee a child support award that is consistent with a budget for both the CP and the NCP and that is also consistent with a reasonable and sustainable standard of living for both. A child support award that is based on combined incomes is not economically rational. The family is no longer intact—or never was intact—and has household overhead that is notably higher per adult income earner. Neither the CP nor the NCP engages in actual child expenditures based on intact family income and household costs. Each parent engages in economic behavior clearly different from that of an intact household. Each parent makes expenditure choices as a single-parent/earner. Both the CP and the NCP have higher adult overhead and spend on children accordingly.

A joint income standard for child support imposes a greater burden on the NCP than the CP. The NCP is forced to pay for child costs assuming less burdensome intact family overhead that is not the actual circumstance. Instead, the NCP pays child support for intact family expenditure standards but truly can only afford one-parent household spending because of higher overhead. In contrast, the CP receives intact family based child support but actually spends on the child as though the CP is in a one-parent household because that indeed is the case. The intact family based child support that exceeds one-parent based expenditures is then a windfall—or profit—for the CP. The most obvious example when the joint income basis for child support benefits the standard of living for the CP at the expense of the NCP is when both parents have the same income. This preference for boosting the CP standard of living can be construed as a violation of equal protection—especially since it is not rational to base child support on combined income in non-intact family situations with higher overhead. Certainly, child support guidelines should have rational outcomes when both parents have equal financial resources.

A one-parent household standard treats unwed situations the same as divorced situations. This is desirable for equal protection considerations. Both situations have higher overhead. The one-parent household basis also has the desirable effect of keeping the issue of alimony separate from determining the appropriate target level of child expenditures. The court does not have to address the issue of that a family has never experienced the standard of living created by a joint household of those two parents. Certainly, it is not rational to use an intact family basis for support when such a standard never existed and when different overhead (higher) exists.

However, the average income basis does take into account differences in income between two parents. Whether an unwed or divorced situation, the child support basis is boosted if the NCP has higher income than the CP and in a cost shares formula the higher income parent would incur a higher share of the support burden.

Miscellaneous Issues in Applying the Cost Shares Model

Child Care, Medical Expenses, and Other as Above the Line or Below the Line Expense

Special cost needs can be handled both "above the line" and "below the line" in terms of the basic obligation. By "above the line," this means that the item would be included as part of on-going child support and would be a part of an income deduction order (IDO) should an IDO be made. This is an important issue in terms of whether the particular cost issue is likely to occur and continue to occur. For example, if child costs include day care, the question becomes, will the CP actually continue to incur day care expenses or will the CP discontinue high-cost, private company day care and find some other option after getting the day care expense made a part of the child support order? Will the NCP be made to pay child support for an expense that no longer exists but for which the NCP cannot afford to seek modification nor for which the court will want to "waste" time for a "minor" (for the court) issue? Yet, whether day care expenses are part of the above the line court order or on a reimbursement basis is an important issue. Day care easily can be $400 to $600 a month with the NCP share $200 to $300 or more a month. If day care is above the line and the CP ceases to incur private company expenses, then the CP is receiving a windfall in child support and the NCP continues to pay a portion of child support with no rational basis for that portion being incurred.

To preclude this inequity, non-recurring, non-guaranteed expenses probably should be below the line and included as part of the order on a reimbursement basis. Should non-payment (arrears) occur, then the arrears could be added above the line.

Because child care costs are potentially a "budget buster" for both the CP and NCP, the court probably should give preference to in-kind offers of assistance by either parent before allowing a claim for actual child care expenses through a third party provider. For example, if the NCP offers to alter the NCP's work schedule to provide child care or to offer one or both of his or her parents as care givers during the day (with an affidavit from the child's grandparent), then such an offer should be given priority over a scheme that sends either of the two parents' financial resources to outside parties.

Medical expenses are already included in the basic tables on average expenditures. Any child support order requiring the NCP to pay for medical and/or dental insurance should treat that payment as a credit against the basic presumptive cost. Otherwise, NCPs are held to a higher standard than for intact family parents. Also, the NCP would be paying medical costs twice. Both would violate equal protection standards. However, using this model, either party could argue to rebut the medical expense amount that should be part of the total child costs to be shared. Component rebuttal is one of the key features of this model.

Child Support Adjustments for Joint Custody and for Crediting the Non-custodial Parent for Non-custodial Parenting Time

Equal protection should always be a consideration when designing any portion of child support guidelines. A key question in designing child support guidelines is "what is the basis for a custodial parent being 'entitled' to child support?" The answer generally is along the line that the custodial parent has physical custody of the child and incurs costs to support the child. A variation is that the child is entitled to a share of the other parent's income when in the care of the custodial parent. For either situation, for equal protection to be in effect, the non-custodial parent should have the same entitlement when the child is in the non-custodial parent's care. Equal protection calls for perfect symmetry in the application of child support guidelines with the application of the guidelines being pro-rated by parenting time shares.

A more economically sophisticated variation would call for cross-crediting to be categorized by fixed costs and by shiftable costs. Fixed costs would include higher rent or mortgage payment for year-round housing for the child. The argument has been made erroneously that the non-custodial parent should not have child support cross-credited until a threshold is reached in terms of the number of days or nights that the non-custodial parent has the child because the custodial parent incurs fixed costs anyway. The question should be divided into: (1) does the NCP incur fixed costs for additional housing and (2) how much shiftable cost does the NCP incur? Child costs can be cross credited depending on the answer to each question without regard to a threshold and thereby meet equal protection standards.

If child support awards actually reflect true child costs and cross-crediting takes place to accurately reflect each parent's incurred child costs, then there is no monetary incentive to ask for increased shares of parenting time. Only when child support guidelines exceed true costs (representing a profit from custody) do parents ask for or seek to prevent changes in parenting time for financial reasons. Curiously, any argument that an NCP is asking for increased parenting time to reduce child support is at the same time an argument the CP is making a profit from child support.

IV. Child Support Determination—What Should the Role Be for a Forensic Economist?

What are the specific points an economist should present in court? Key points should highlight the issues just discussed. The proper role of an economist broadly should be to rebut the presumptive award. This is a two-fold process: (1) to differentiate the instant case economic circumstances from the economic assumptions underlying the given state's child support guidelines, and (2) to prepare and present to court a child cost estimate based on the economic circumstances of the case and based on actual economic studies on child costs. Rebuttal of the presumptive award requires that the award be shown to be unjust, unfair, and inappropriate for the circumstances. See 45 CFR 302.56 in Appendix material. Distinguishing the case circumstances from guideline assumptions is one part of this rebuttal. Showing divergence of appropriate economic-based child costs from the presumption is the second part of the rebuttal, showing an extraordinary burden for the non-custodial parent and/or an extraordinary windfall for the custodial parent. The key points in such a rebuttal would be as follows.

Showing a Divergence from Guideline Economic Presumptions

Each state's child support guidelines is based on some variation of obligor-only (Wisconsin-style) or income shares (Betson-Rothbarth) guidelines. Rebuttal will revolve around showing the lack of applicability or short-comings of the economic underpinnings of these guidelines.

Contrasting the Instant Case from Obligor-Only Assumptions

Child support guidelines for several states were taken from child support guidelines initially implemented by the State of Wisconsin for Title IV-D cases. The underlying economic study and conditions for appropriate application of the guidelines were conducted and published by Dr. Jacques Van der Gaag in 1982.[18] The guidelines were designed to be applicable only if the household had certain economic characteristics. These underlying economic characteristics of the household are:

- The household is a low-income household. For the study, the households (both parents) averaged annual gross income of $12,000 in 1982 dollars. In year 2000 dollars, this would be household income of $21,426. The underlying study specifically states that at higher incomes, the applicable percentage should decline. The study also assumed the percentage would be applied only after setting aside a self-support reserve. Obligor-only guidelines generally do not have percentages that decline with income.

- The mother is assumed to care for the children and not earn any income outside the home.

[18] Jacques Van der Gaag, "On Measuring the Cost of Children," Child Support: Technical Papers, Volume III, SR32C, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982.

- The father is the sole income earner and the percentages applied to the father's income are based on tax law of 1982. Under the tax code in which the percentages are derived, the non-custodial parent that provided over half of the child's support would receive use of all child income tax benefits.

- The low-income characteristic also includes the fact that the guidelines were to be applied to income earners paying little or no income tax. Hence, under the appropriate low-income application, there is no need to take into account differences between gross income and net income.

- The guideline percentages were derived based on the assumption that the father is absent and that the children are with the mother 100 percent of the time. The father is assumed to not incur any overhead expenses for the child such as a set-aside room and utilities costs.

- The guideline percentages were to be applied with the amount of the award limited to the size of the welfare payments to the custodial household.[19] The underlying study set a low ceiling on the amount of income on which the percentages would be applied.

Economic circumstances of the instant case that would show the presumptive award to be inappropriate would be:

- Combined income likely is significantly higher than the current dollar equivalent used in the underlying study. State the joint income of the parties and the difference from the study's assumption.

- The custodial parent earns $______ outside the home—in contrast to the underlying assumption of no income for the custodial parent.

- The CP receives the tax benefits in contrast to the guideline assumption that the NCP receives any tax benefits.

- The non-custodial parent is in a relatively high tax bracket, in contrast to the underlying assumption of a low income tax burden. State the NCP's marginal tax rate (federal, state, Social Security, and Medicare).

- The NCP has significant visitation with the child(ren), in contrast with the assumption of none. State how many overnights the NCP has and as a share of the total. Assert that the NCP is entitled to support for the child(ren) on the same basis as the CP. State (if true) that the NCP has set aside housing for the child(ren).

- The current case is not a welfare case. The percentages are not intended to be applied beyond an award equaling a welfare entitlement.

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[19] Institute for Research on Poverty, University of Wisconsin-Madison. “Documentation of the Methodology Underlying the Cost Estimates of the Wisconsin Child Support Program,” Child Support: Technical Papers, Volume III, SR32C, Special Report Series, 1982, pp. 143-144.

Contrasting the Instant Case from Income Shares Methodology (Betson-Rothbarth) Assumptions

Income shares methodology assumes that:

- The family is still in an intact household.
- There is no additional overhead from an additional household that would reduce income available to spend on children.
- There is additional income when a child is added to the family—additional income to bring the standard of living back to its previous level.
- Tax benefits attributable to the child should not be shared by both parents and makes no appropriate adjustment in the child cost tables.
- The child is with the custodial parent 100 percent of the time (within the basic child cost tables).
- The best method of estimating child costs is to compare adult consumption levels of alcohol, tobacco, and adult clothing before and after having an additional child.

The first part of a rebuttal to a child support award based on income shares methodology would be to contrast the economic circumstances of the instant case with the assumptions of the income shares methodology. One would show or argue that:

- The family is no longer intact. Both parents must incur adult overhead living expenses (mortgage or rent, utilities, car note, etc.) that are no longer shared, thereby reducing funds available to spend on other goods—including children.
- The child support award will be spent according to the economic behavior of a single-parent household—not according to that of an intact household. A child support award based on an intact family standard treats the child support burden unequally—placing a higher preference for the standard of living of the custodial parent household. Essentially, a custodial parent would receive child support based on an intact family expenditure pattern but would spend the money based on single-parent household behavior—spending less on the child and a portion on the parent.
- There is no "phantom income" as assumed by the income shares methodology beyond what the parents actually earn.
- Regarding the tax benefit, it would be appropriate to calculate the tax benefit received by the custodial parent, show that it is significant, and argue that just as both parents are responsible for meeting the costs of the child(ren) both parents are equally entitled to the cost offsets (tax benefits) attributable to the child(ren).

- The NCP is as entitled as the CP for child support based on the typical number of days and overnights that parent has with the child(ren). The non-custodial parent should be prepared to show that fixed costs also are incurred in behalf of the child(ren)—such as their own room(s) being set aside.

- Adult consumption patterns of alcohol, tobacco, and adult clothing bear no relationship to the instant case and that a better methodology is to examine actual expenditures on children.

Certainly, the economic studies underlying each state's guidelines vary and rebuttals clearly should be based on and respond to economic assumptions underlying the state's study. The assumptions themselves may not be economically sound. Such an underlying study should be available from the state agency inclusive of Child Support Enforcement.

The final portion of rebuttal would be presentation of an economics based estimate of the child support award and contrasting it with the presumptive award. The cost shares model provides data and a methodology for providing such an economics based recommended award. One would then compare how much the presumptive award exceeds this rational, economics based recommended award. State law generally requires a showing that the presumptive award is "unjust or inappropriate" for the case at hand.[20] A showing that the presumptive award drastically exceeds actual child costs based on economic data and sharing of the tax benefits should meet this requirement for rebuttal.

V. Notes on Economic Background and Comparisons with Guidelines and Guideline Awards

To strengthen an economist's rebuttal in court, it can be useful to be familiar with the flaws in current guideline foundations as well as economic analysis showing current presumptive awards to be excessive. Much of this material is referenced in this paper's bibliography. Specifically, Bieniewicz (1999) outlines the economic features of a cost shares child support guideline. Rogers (June and July 1998) focuses on how obligor only guidelines contradict mainstream economic studies on household spending and lead to CP households generally having a higher presumptive standard of living than NCP households; Rogers (1999) expands this analysis to income shares models; and Rogers (2000) elaborates on how economic flaws in obligor only guidelines can form the basis of a constitutional challenge.

[20] See 45 CFR 302.56.

APPENDIX A

Federal Regulations on Child Support[21]

TITLE 45--PUBLIC WELFARE AND HUMAN SERVICES

PART 302--STATE PLAN REQUIREMENTS

Sec. 302.56 Guidelines for setting child support awards.

(a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration all earnings and income of the absent parent;

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and

(3) Provide for the child(ren)'s health care needs, through health insurance coverage or other means.

(d) The State must include a copy of the guidelines in its State plan.

(e) The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut

[21] When the Family Support Act of 1988 took effect, federal regulations also required states to comply with 45 CFR 302.53 which required, among others, that states include in the state child support guideline formula a method of protecting the obligor's ability to pay for basic living needs.

the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 22354, May 15, 1991]

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