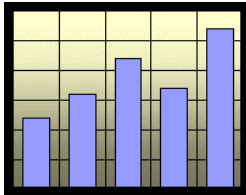


**The “Cost Shares”
Child Support Guideline:
Application, Updates, and Policy Issues[©]**

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Policy Issues on Child Support Guidelines

Guidelines should be established on sound legal principles

- Awards should be based on “needs” of the children and ability of parents to pay
 - Both parents’ net child costs
 - Both parents’ incomes
- Guidelines cost tables should not be arbitrary—should be based on sound, professional economic study on marginal cost of children.

Importance of “getting it right”

- Children should be appropriately supported—too low is not good policy.
- Children should be supported in both households by both parents.
- Too high awards create bad policy outcomes:
 - Fighting over custody and parenting time due to profit from child support.
 - Higher unwed pregnancy rates due to incentives.
 - Unfair domino effects from enforcement of unsound guidelines (inability to support self, forced arrearages on child support, license revocation, jail, loss of parenting time).
 - Cost to tax payers for bureaucracy to oversee problems it helped to create.
 - Employers lose good workers over child support issues (low income workers forced into underground economy; others lose focus).

Best Strategy: Expanded Cost Shares

- Current guidelines are designed—though not publicly acknowledged—to include alimony for situations in which the custodial parent has sharply lower income than the non-custodial parent.
- BUT current guidelines include alimony for the custodial parent even when the custodial parent has the higher income.
- Economically, it is not possible to have fixed child cost tables or fixed percentages of income that include alimony for possibly proper circumstances and then not have alimony when not needed. The upward bias remains for all circumstances.
- Cost Shares can be expanded to cover various income circumstances.

Cost Shares—“Expanded” Application

- If there is no standard of living issue (notable differences in the parents’ incomes), Cost Shares is exactly appropriate. Current guidelines are biased toward profit for the custodial parent.
- If there is moderate to significant (but not dramatic) differences in both parents’ incomes, how might one deviate from a Cost Shares award?
- If the two parents’ incomes are dramatically different, what is the best policy option or options including Cost Shares?

Suggested Progression for Child Support Award Determination Strategy

- 1) If parents' incomes are similar, use Cost Shares with standard types of deviations (add-ons for day care, medical insurance, etc.)
 - a. Calculate for no parenting time for one benchmark.
 - b. If parenting time, make parenting time adjustments.
- 2) If parents' incomes are "moderately" different, use Cost Shares to look at alternative standards of living spending to set a benchmark for a possible limit on deviating for notable income differences.
- 3) If parental incomes are sharply different, consider alimony as an issue.

Key, Basic Fact:

- **No "simple" child support guideline can be economically correct for all of these situations.**

Income Shares tries to "fix" situations when the NCP has sharply higher income than CP—builds in alimony. May be right for the wrong reasons for this type situation. But Income Shares is economically wrong in all other types of cases.

Policy Implications

- A new emphasis on separating child support from alimony is the only way to have economically sound child support awards.
- From an equity standpoint, it also is likely necessary to re-emphasize alimony as a consideration in divorce when appropriate.
- Long-term issue—research should be conducted for analogous guidelines for alimony—perhaps similar to private sector corporate retirement plans such that alimony benefits vest over time.
- Additional long-term issue—increased funding and programs for retraining parents to reenter the work force after long periods of absence. Such might be through community colleges and technical schools. Many such programs already exist but need to be more accessible.

Background

Presumptive child support guidelines were enacted by the States by the end of 1989 to comply with the federal Family Support Act of 1988 in order to retain certain federal funding. In retrospect, it is clear that the guidelines implemented were and are very flawed in terms of their economic foundation. Today's child support guidelines, as implemented, are based on two general models with only a few minor exceptions:

- **Income Shares.** The Income Shares guideline is based on indirect estimates of child costs for pre-divorce households. These indirect estimates establish the child(ren)'s entitlement to that share of the parents' combined income. Hence, "Income Shares" refers to the child(ren)'s share of the parents' income as an entitlement—not the sharing of the obligation between the two parents. This approach has been marketed only by Policy Studies, Incorporated, of Denver, Colorado. The initially implemented version was based on the research of Thomas Espenshade. This version is still in use by many States. The current version is based on the research of David Betson. The definition of child cost used in Income Shares guidelines is not generally accepted by the academic community and leads to upwardly biased estimates of child costs.
- **Percentage of obligor-only income.** This guideline sets awards as a percentage of obligor-only income with higher percentages for greater numbers of children being supported. Some States apply the percent to gross income while other States use after-tax income. There is no economic basis for using fixed percentages over a wide range of incomes nor for only considering the obligor's income and ignoring the custodial parent's income.

Unsound Economic Basis of Current Guidelines

Original Income Shares

For both the original version of Income Shares and for the current version, child costs are not defined in terms of out-of-pocket expenses as often assumed by the public. For the original version of Income Shares, child costs are defined according to how food consumption changes between varying types of families according to family size.

The original Income Shares definition of child costs as used by Policy Studies, Incorporated, is essentially:

Based on intact family data, when comparing two families (one with children and one without children), the child cost is the difference in household spending between the two families when both consume equal proportions of their budget on food.

This is a "standard-of-living" equivalence definition—not a measure of money spent on actual child cost items. In this definition, there are no specific, out-of-pocket components for child costs for an interested party to rebut in court.

Current Income Shares Definition

David Betson of Notre Dame University revised the underlying data used by Policy Studies, Incorporated, for Income Shares cost tables. He used a “Rothbarth” methodology—hence, his estimates are often called Betson-Rothbarth estimates. The Rothbarth technique presumes that when families of two different sizes (with and without an additional child) spend the same amount of money on purely adult goods, then both families are equally well off and the difference in total household spending is the child cost. This methodology is an income entitlement approach in which the amount of the child’s entitlement to each parent’s income (not specific costs) is presumably based on an estimate of child costs. This definition of child costs is highly suspect.

The current Income Shares definition of child costs used by Policy Studies, Incorporated, is essentially:

For intact families—one with an additional child and one with no additional child—the child cost is the difference in household spending between the two families when both families spend equal dollar amounts on adult clothing, alcohol, and tobacco.

Income Shares basically determines a child’s entitlement to each parent’s income based on changes in household spending patterns of adult clothing, alcohol, and tobacco.

Percent of Obligor-Only Income

This type of guideline is based mostly on work of Jacques van der Gaag of the Institute for Research on Poverty, University of Wisconsin, Madison.¹ These guidelines were intended only for welfare cases. Accordingly, the study assumed mother had the children 100 percent of the time, the mother had no income, the father was a low-income worker and paid little in income taxes, and that the child support payment would not exceed the low level needed to reimburse welfare benefits paid to the mother. Current obligor-only guidelines violate almost every assumption of the underlying study.

Rebuttal of Current Guidelines

Current guidelines, according to federal regulations, should be rebutted if it is shown that the presumptive award is unjust and inappropriate. If the case before the court does not fit with the economic assumptions underlying the guideline or if the economic assumptions are flawed, then such a showing should rebut the presumption. As seen below, neither the Income Shares model nor the obligor-only model are appropriate for more than a small percentage of cases based on their economic circumstances.

¹ Since the academic work on obligor-only guidelines was largely done at the University of Wisconsin, Madison, and since the State of Wisconsin was one of the first States to implement these guidelines as a presumption, obligor-only guidelines are often referred to as “Wisconsin-style” guidelines.

Rebuttal of Obligor-Only Guidelines

For variations of the obligor-only models, a showing in contrast to the guideline assumptions listed below should rebut the presumption:

These underlying economic characteristics of the household are:

- The household is a low-income household. For the underlying study, the households (both parents) annual gross income averaged \$12,000 in 1982 dollars. In year 2002 dollars, this would be household income of \$22,371. The underlying study specifically states that at higher incomes, the applicable percentage of income spent on the children 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.
- 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.² The underlying study set a low ceiling on the amount of income on which the percentages would be applied.

Rebuttal of Income Shares Guidelines

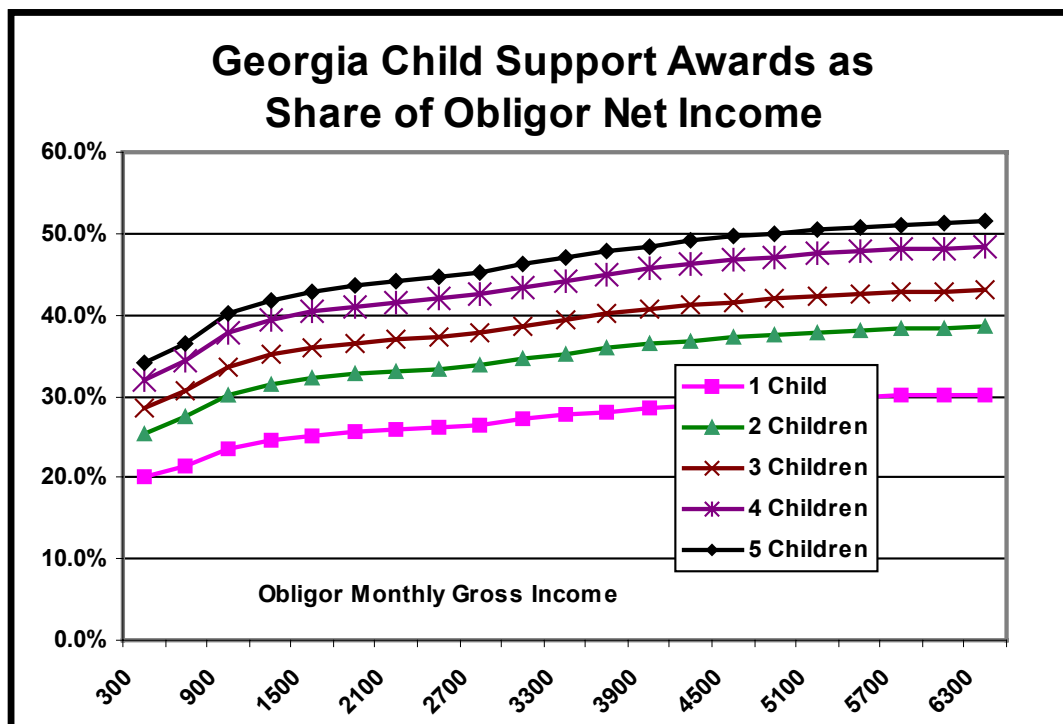
For variations of the Income Shares guidelines, a showing in contrast to the guideline assumptions listed below should rebut the presumption:

- 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.

² 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.

- There is additional “phantom” income when a child is added to the family—this is the needed additional income to bring the standard of living back to its previous level. In real life, families do not spend on children based on income they are assumed to have.
 - Tax benefits that are attributable to the child(ren) should not be shared by both parents. The Income Shares methodology, as implemented by Policy Studies, Incorporated, does not share with both parents the tax benefits that are attributable to the child(ren) and are cost offsets.
 - The child is with the custodial parent 100 percent of the time (assumed within the basic child cost tables of Income Shares).
 - 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.
- **All but a small percentage of cases before the courts have economic circumstances that diverge sharply from the above assumptions. Application of either of these types of guidelines rarely would be appropriate.**

Chart 1. An example of a gross income, percent-of-obligor-income guideline.



Georgia’s obligor-only guideline is an example of a guideline conflicting with all professional economic studies on household spending patterns. That is, child costs do not rise as a share of net income as net income rises but rather decline. Other States with similar conflicts with economic studies include Mississippi, Nevada, New York, and Wisconsin.

Notes on Cost Shares Methodology

- The “Cost Shares” methodology closely reflects child support award practices that existed prior to the implementation of presumptive guidelines (which are not based on rational economic foundations). Judges and lawyers practicing family law prior to 1989 should find the methodology familiar, reasonable, and a sound basis for awarding child support.
- The Cost Shares methodology was most recently espoused as the most appropriate child support guideline methodology following the enactment of the federal Family Support Act of 1988 in *Child Support Guidelines: the Next Generation*, Office of Child Support Enforcement, 1994, U.S. Department of Health and Human Services in Chapter 11 written by Donald J. Bieniewicz.
- The legal publishing community has published “Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines,” with Donald J. Bieniewicz, co-author, Reading #20 in *Assessing Damages in Injuries and Deaths of Minor Children*, ed. by Thomas R. Ireland and John O. Ward, Lawyers & Judges Publishing Co., Tucson, AZ, 2002.
- The Cost Shares methodology has been peer reviewed by professional economists and favorably received. Presentations by R. Mark Rogers have been at: the Southern Economic Association, November 2000; Allied Social Science Association Annual Meeting, Section for National Association of Forensic Economics, Atlanta, Georgia, January 5, 2002; and the Conference on the Law and Economics of Child Support Payments, University of California, Santa Barbara, September 20, 2002.
- A Cost Shares approach is already in use for “add-ons” (e.g., child care) in almost all States.

Basic Steps in the Cost Shares Model

- 1) Determines Basic Child Costs for a single-parent household using an average of both parents' incomes setting an appropriate standard of living for spending on the children. The Table of Basic Child Costs has child costs for a single-parent household according to gross income and the number of children.
- 2) Allocates Basic Child Costs between the two parents according to shares of parenting time, e.g. each parent's number of overnights with the children.
- 3) Adds other non-basic expenses (not in the Costs Table) when appropriate (such as child care expenses) to the parent that incurs such costs to get each parent's gross child costs.
- 4) Deducts from each parent's gross child costs the child-related tax benefits that each parent (but generally the custodial parent) receives to calculate each parent's net child costs.
- 5) Calculates how much each parent owes the other parent as that parent's share of the other parent's net child costs, based on the parents' relative incomes above a self-support level. These two numbers are netted to determine the child support award.

Table 1.

Cost Shares Estimate Detail for Two Children
With No Parenting Time Adjustments

- **Child-related tax benefits can be calculated by comparing each parent's after-tax income with child-related tax benefits versus how much it is without the child-related tax benefits.**

	Father, With tax benefits Status	Father, Without tax benefits Status	Mother, With tax benefits Status	Mother, Without tax benefits Status
Monthly gross income, adjusted	\$4,000	\$4,000	\$3,000	\$3,000
Annual gross income, Fed. adj.	48,000	48,000	36,000	36,000
Standard deduction	-4,700	-4,700	-6,900	-4,700
Exemptions	-3,000	-3,000	-9,000	-3,000
Federal taxable income	40,300	40,300	20,100	28,300
Federal income tax	-7,234	-7,234	-2,519	-3,994
Earned income credit	0	0	0	0
Child credits	0	0	1,200	0
Child care credits	0	0	0	0
Social Security tax	-2,976	-2,976	-2,232	-2,232
Medicare tax	-696	-696	-522	-522
MN adjusted income, annual	48,000	48,000	36,000	36,000
MN standard deduction	-4,700	-4,700	-6,900	-4,700
MN exemptions	-3,000	-3,000	-9,000	-3,000
MN taxable income	40,300	40,300	20,100	28,300
MN income tax	-2,527	-2,527	-1,078	-1,681
After Tax Income, Annual	\$34,567	\$34,567	\$30,849	\$27,571

- **The father has no child-related tax benefits—they equal \$0 annually and monthly.**
- **The mother's child-related tax benefits annually are \$30,849 minus \$27,571 or \$3,278. This is \$273 monthly (rounded) in extra after-tax income.**
- **After-tax income is used to determine each parent's share of net child costs.**

Chart 2.

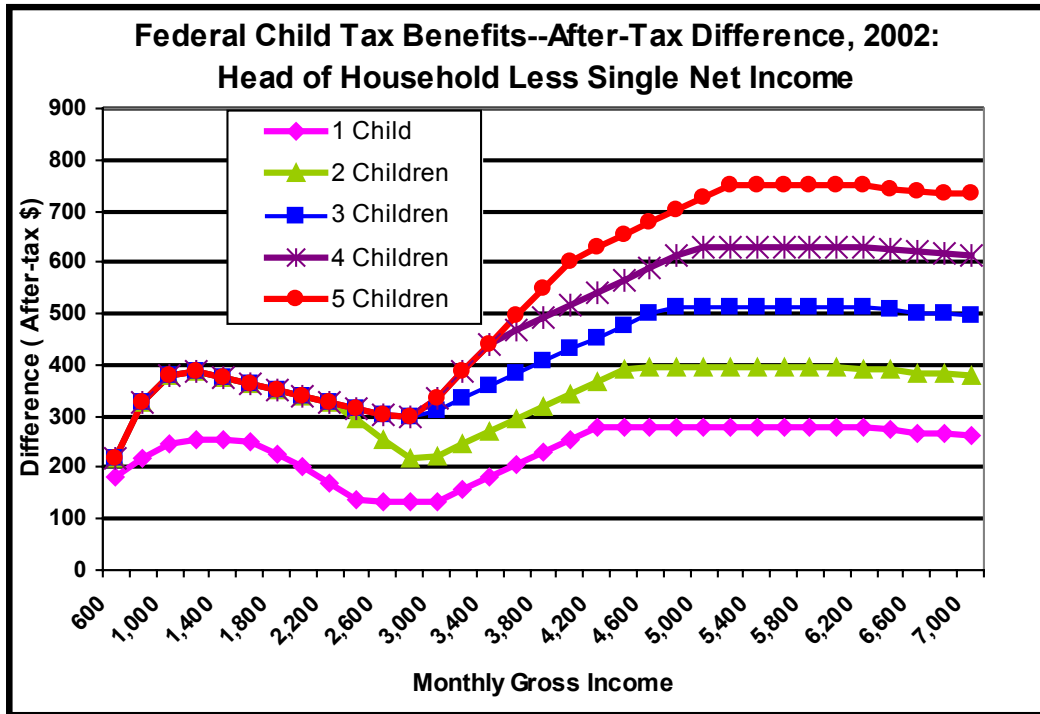
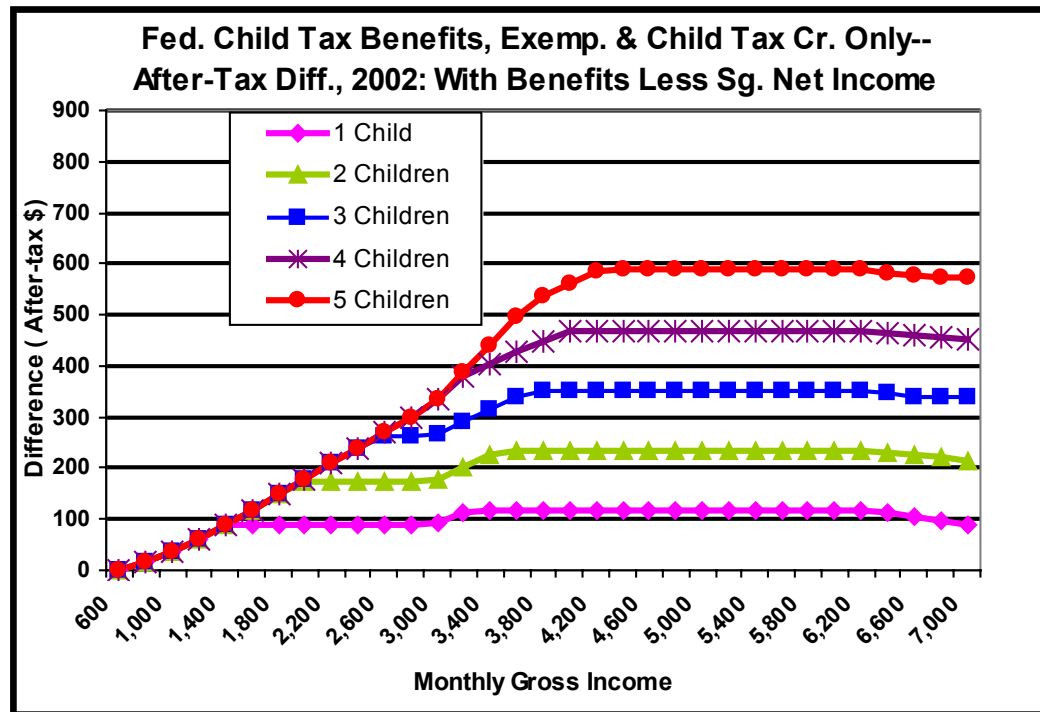
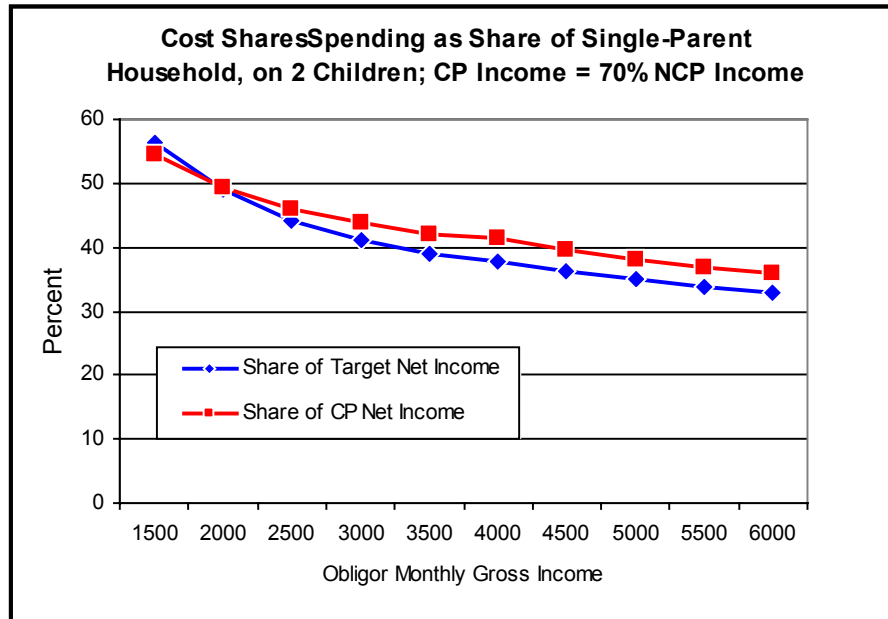


Chart 3.



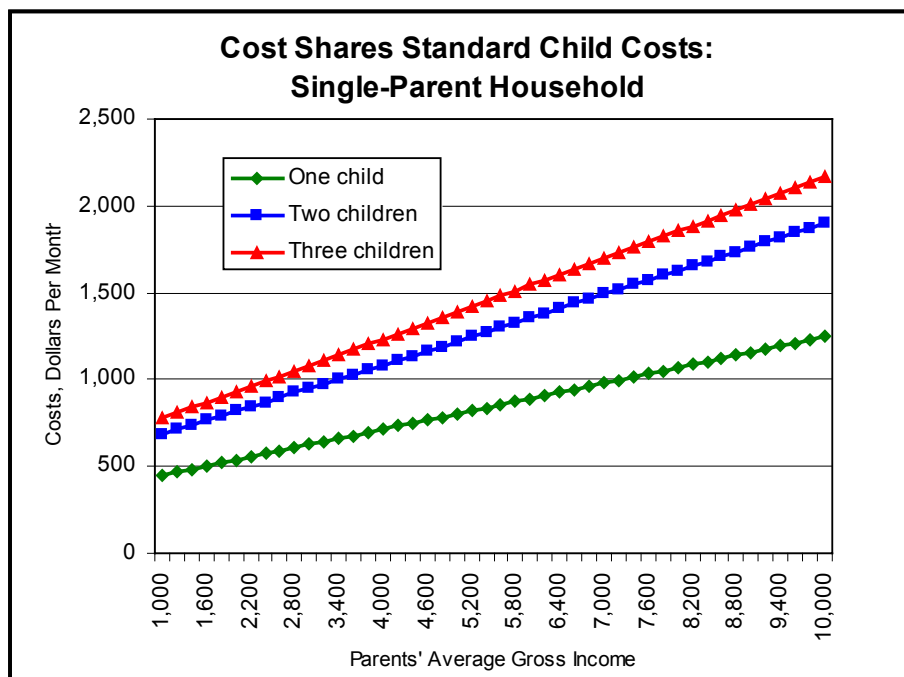
- Even if only the child exemptions and tax credits are considered, the extra after-tax monthly income from child-related tax benefits is quite substantial—typically over \$100 per child per month.

Chart 4.



Cost Shares spending figures on children are very generous as a share of custodial parent income. Target income is the average of the two parents—it is the “look up value” for cost tables. This reflects child costs for maximum income in both parents' households. These percentages are not minimum needs but typical at rising income levels.

Chart 5.



Cost Shares child costs are very realistic—reflecting sound economic data. Child costs rise with income and cannot be portrayed as minimum needs.

Table 2.

Cost Shares Estimate Detail for Two Children
 With No Parenting Time Adjustments

In this example, between the two parents \$1,016 will be spent on the two children monthly. As seen below, \$439 is paid by the father (cash to the children's mother), \$273 by the government, and \$304 by the mother.

Cost Shares Summary Page, With Parenting Time Adjustments

Number of children in current case: Two

	<u>Father's</u>	<u>Mother's</u>
Monthly gross income	\$4,000	\$3,000
Average gross income	\$3,500	

MONTHLY:

	<u>Combined</u>
Standard child costs excluding child care & education:	\$1,016
Less:	
Med. & related insurance paid directly by father	0
"Other" paid directly by father	0
Med. & related insurance paid directly by mother	0
"Other" paid directly by mother	0
Portion to be prorated by time with children:	<u>\$1,016</u>

Time with children (share):	Father	Mother
	0%	100%

	<u>Father's</u> <u>Expenses</u>	<u>Mother's</u> <u>Expenses</u>
Each parent's share of basic child costs excl. directly paid items	\$0	\$1,016
Med. & related insurance paid directly	0	0
Other paid directly	0	0
Child-related tax benefits as cost offset	0	-273
Child care for self	0	0
Child care for other parent	0	0
Other add-ons for self	0	0
Other add-ons for other parent	0	0
Each parent's total child costs incurred	<u>\$0</u>	<u>\$743</u>

Share of combined income above "self-support" level:	59.1%	40.9%
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NETTING:

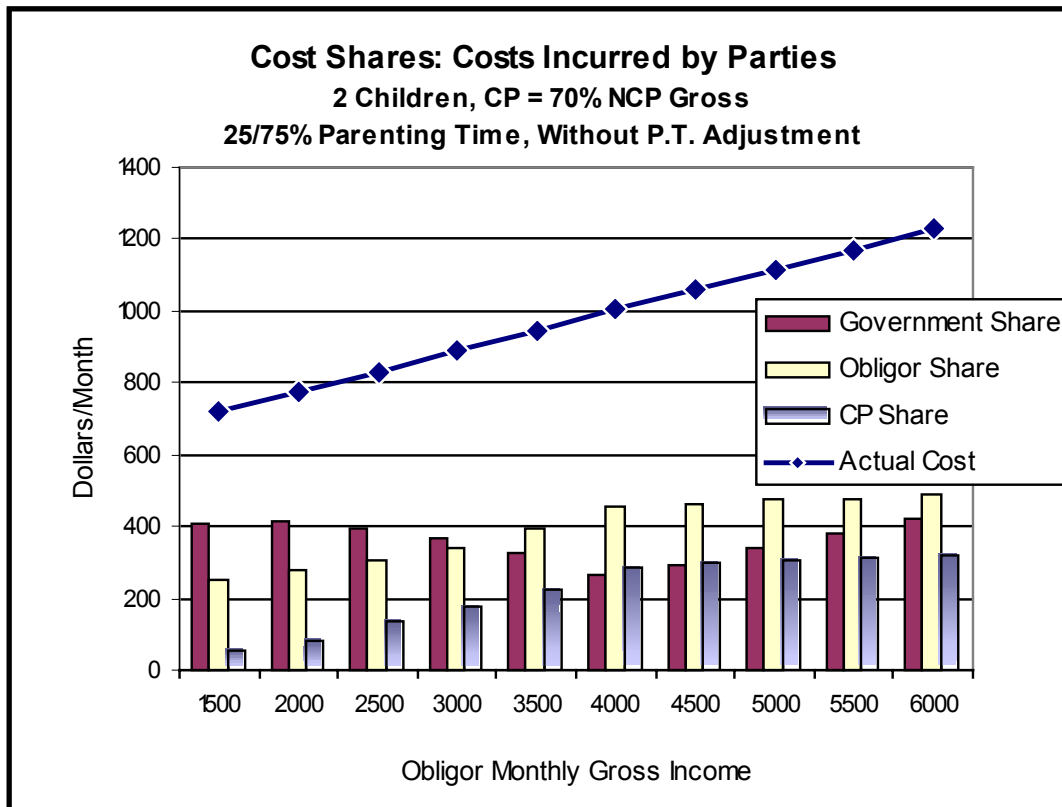
	<u>Father</u>	<u>Mother</u>
Father's share of mother's expenses	\$439	
Mother's share of father's expenses		\$0
<u>CASH obligation to other parent</u>	\$439	\$0

A Cost Shares award ensures that the children receive appropriate support in each parent's household. Cost Shares calculations are similar to those found in about 35 States' guidelines.

With the \$439 cash award, \$1,016 is still spent per month on the two children.

Child Costs Are Covered by Tax Benefits as Well as by the Father and Mother

Chart 6.



- **Child costs are actually covered by three parties—not two. These are the father, the mother, and the government.**
- **Cost Shares awards represent an obligor’s fair share of total spending on children with costs also apportioned between the other parent and the government’s portion (child-related tax benefits which are cost offsets).**
- **Cost Shares child cost schedules show that total spending on children rises over a wide income range even though the Cost Shares award levels out at moderately high income levels. For custodial parents with gross income over roughly \$3,500 per month, the child-related tax benefits rise sharply for an extended income range. These rising tax benefits fund the higher growth in child costs for both parents over that income range.**

Table 3.

**Cost Shares Estimate Detail for Two Children
WITH Parenting Time Adjustments**

In this example, between the two parents \$1,016 will be spent on the two children monthly.

Cost Shares Summary Page, With Parenting Time Adjustments

Number of children in current case: Two

	Father's	Mother's
Monthly gross income	\$4,000	\$3,000
Average gross income	\$3,500	

MONTHLY:

Standard child costs excluding child care & education:

\$1,016

Less:

Med. & related insurance paid directly by father

0

"Other" paid directly by father

0

Med. & related insurance paid directly by mother

0

"Other" paid directly by mother

0

Portion to be prorated by time with children:

\$1,016

Time with children (share):

Father
25%

Mother
75%

	Father's Expenses	Mother's Expenses
Each parent's share of basic child costs excl. directly paid items	\$254	\$762
Med. & related insurance paid directly	0	0
Other paid directly	0	0
Child-related tax benefits as cost offset	0	-273
Child care for self	0	0
Child care for other parent	0	0
Other add-ons for self	0	0
Other add-ons for other parent	0	0
Each parent's total child costs incurred	\$254	\$489

Share of combined income above "self-support" level:

59.1%

40.9%

NETTING:

Father's share of mother's expenses

\$289

Mother's share of father's expenses

\$104

CASH obligation to other parent

\$185

\$0

- The father pays \$185 cash to the mother.
- However, the father's total child costs are \$439, direct plus cash to mother.
- The mother's net child costs are \$304, spending less tax benefits and less cash received.
- The mother receives \$458—cash plus government tax benefits.
- The government pays \$273 per month toward child costs.
- \$1,016 gross is spent on the two children each month, \$743 after-tax. Of this, the father incurs 59.1 %, the mother, 40.9 %.

Traditional Case Law Supports Cost Shares Parenting Time Adjusted Awards

For shared physical custody, cash awards in this dollar range are supported by traditional case law and are seen as providing properly for the children when both parents provide direct care for the children.

See *Little v. Little*, 657 A.2d 12, 441 PaSuper. 185. In *Little v. Little*, a Pennsylvania appeals court determined that a custodial parent, the father in this case, may be ordered to pay child support to the non-custodial parent, the mother, should the parenting time shares, relative incomes, and direct contributions of the non-custodial parent indicate that such is appropriate.

We agree that a child support calculation should be made by the court below and that after such a review child support may be ordered to Wife. Given the testimony of the extensive amount of time the children are in the custody of Wife, and of wife's limited income versus Husband's \$20,000 per month income, such an award may be appropriate. "Parents are liable for the support of their children who are unemancipated and eighteen (18) years of age or younger." 23 Pa.C.S.A. s 4321(2), *Luzerne County Children and Youth Services v. Cottam*, 412 Pa.Super. 268, 603 A.2d 212, 214 (1992), alloc. denied 530 Pa. 666, 610 A.2d 45 (1992), cert. denied, --- U.S. ----, 113 S.Ct. 425, 121 L.Ed.2d 347 (1992). "Child support is a shared responsibility; both parents must contribute to the support of their child in accordance with their relative income and ability to pay." *Depp v. Holland*, 431 Pa.Super. 209, 636 A.2d 204, 206 (1994).

Melzer v. Witsberger, 505 Pa. 462, 480 A.2d 991 (1984) (FN1) stated that a hearing court should calculate child support awards by: calculating the reasonable expenses of raising the children involved; determining the respective abilities of the parents to support their children; calculating each parent's total support obligation; and, finally, determining what portion of the obligation is offset by support provided directly to the children and what portion must be satisfied by support payments to the other parent. We believe, given the facts before us today, that the court below should make this analysis to determine if child support to Wife is appropriate.

See also *Clarke v. Clarke*, 619 So. 2d 1046 (Fla. Dist. Ct. App. 1993); *LeBlanc v. LeBlanc*, 597 A.2d 62 (Me. 1991); *Matz v. Matz*, 166 Wis. 2d 326, 479 N.W.2d 245 (Ct. App. 1991).

In *James v. James*, 246 Ga. 233 (1980), The Supreme Court of Georgia states that "[w]e find that a trial court, in the exercise of its discretion, may properly order a custodial parent to pay for the support of minor children while visiting with the non-custodial parent."

The Cost Shares Methodology Is Extremely Flexible and Allows Appropriately Customized Awards

Cost Shares easily takes into account:

- Both parents' income
- Child-related tax benefits as cost offsets
- Shared parenting
- Medical insurance
- Day care
- Education expenses
- Special fixed expenses incurred by one parent, not varying by parenting time
- Special needs

Cost Shares Addressing Multiple Special Economic Factors

Cost Shares Estimate Detail for Two Children

WITH Parenting Time Adjustments and Other Considerations

In this example, between the two parents \$1,004 (lower because a bankruptcy payment is excluded from income) on standard costs will be spent on the two children monthly. Add-ons total \$425 per month (day care and education expenses. Total spending on the two children is \$1,429 per month.

Adjustments are made for:

- Mother's bankruptcy payment of \$200 per month. This is subtracted from the mother's gross income.
- Day care for the younger child, \$400 per month incurred by the mother. This is an add-on to be shared.
- Education expenses of \$25 per month for the older child (miscellaneous supplies and fees). This is an add-on to be shared.
- Monthly activity fees for the two children per month of \$75 by mother (soccer fees, Girls Scouts). This is treated as a direct expense going into the mother's expense column and does not vary by parenting time.
- Medical insurance coverage cost of \$75 per month by the father. This is treated as a direct expense going into the father's expense column and does not vary by parenting time.
- 25 percent parenting time for the father. Costs that do not vary by parenting time are pro-rated between the parents.
- Mother's receipt of the child-related tax benefits. This is treated as a cost offset.
- Custodial and non-custodial parents' incomes are the basis for pro-rating the costs between each other.
- Self-support. Costs are allocated between the two parents by income but only by each parent's share above self-support. This takes some more of the burden off the lower income parent.

Cost Shares Addressing Multiple Special Economic Factors

Table 4.

Cost Shares Summary Page, With Parenting Time and Other Adjustments

Number of children in current case: Two

	Father's	Mother's
Monthly gross income	\$4,000	\$3,000
Exclusions (bankruptcy payment by mother)	0	-200
Monthly gross income less exclusions	4,000	2,800
Average monthly gross income less exclusions	3,400	

MONTHLY:

	Combined	
Standard child costs excluding child care & education:	\$1,004	
Less:		
Med. & related insurance paid directly by father	-75	
"Other" paid directly by father	0	
Med. & related insurance paid directly by mother	0	
"Other" paid directly by mother	-75	
Portion to be prorated by time with children:	\$854	

Time with children (share):	Father	Mother
	25%	75%

	Father's Expenses	Mother's Expenses
Each parent's share of basic child costs excl. directly paid items	\$213	\$641
Med. & related insurance paid directly	75	0
Other paid directly (activity fees)	0	75
Child-related tax benefits as cost offset	0	-313
Child care	0	400
Other add-ons (education expenses)	0	25
Each parent's total child costs incurred	\$288	\$828

Share of combined income above "self-support" level:	63.0%	37.0%
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NETTING:

	Father	Mother
Father's share of mother's expenses	\$522	
Mother's share of father's expenses		\$107
<u>CASH obligation to other parent</u>	\$415	\$0

- **The Cost Shares methodology provides the maximum flexibility for the court to handle each case in an economically sound manner.**

Cost Shares: Alternative Standard of Living (SOL) Scenarios

How might one set a “boundary” on the upper limit (in general) for a child support award (anything higher must come through alimony)?

Cost Shares is based in part on the economic fact that it is only average income that can be spent in both households on a sustainable basis. Combined income cannot be spent in both households. The target standard of living for the children is based on the average income. This is equivalent to the children experiencing each parent’s standard of living half of the time or essentially the same income being available in both households.

However, one can compare child costs at each of the standards of living: CP, average, and NCP. What would be spent on the children if the children were to live with just one parent 100 percent of the time and be supported just by that parent’s income?

Table 5.

<u>TWO CHILDREN, Without “Add-ons”</u>	Monthly Gross Income	Monthly Child Costs Based on Alternative Incomes/SOL	Custodial Parent’s Child- Related Tax Benefits	Monthly Child Costs Less CP’s Child- Related Tax Benefits
CP's income/SOL	\$3,000	\$951	\$273	\$678
Average of parents' income/SOL	\$6,000	\$1,354	\$273	\$1,081
NCP's income/SOL	\$9,000	\$1,764	\$273	\$1,491

Table does not include parenting time adjustments.

As seen in the above table, \$1,764 is what the NCP would spend on the children if entirely in the NCP’s care and did not have any “add-ons.” An award that exceeds this would be making the NCP spend more on the children in the CP’s household than in the NCP’s.

As elaboration, if the children are in the NCP's care alone and the NCP is the sole provider, a parent at the NCP's income level typically would spend \$1,764 per month on the children. This is inclusive of the children's share of housing costs as well as other expenses. Since the children have this standard of living while in the NCP's care, an award equal to that standard of living without parenting time adjustments would require the NCP to provide the same standard of living twice for the child. Additionally, the CP must share the child costs—otherwise the award does not conform to an equal duty of support standard.

Showing the alternative standard of living spending amounts can be done automatically with moderately detailed software or merely by looking up the values in the cost table.

- **This table shows how one can deviate in an economics-based manner for significantly divergent incomes. This is a listed deviation factor for Cost Shares.**

Child Support Guidelines: Underlying Methodologies, Assumptions, and the Impact on Standards of Living

By R. Mark Rogers and Donald J. Bieniewicz

Presented at Conference on the Law and Economics of Child Support Payments, University of California, Santa Barbara, September 20, 2002. Publication scheduled in *The Law and Economics of Child Support Payments*, William S. Comanor, ed., Edward Elgar Publishing, late 2003.

Summary

The child support guidelines currently in use typically generate awards that are much higher than would be the case if based on economically sound cost concepts and with an equal duty of support for both parents. These guidelines do not conform to equitable standard of living outcomes. They include Wisconsin-style guidelines (gross and net income basis) and Income Shares (Espenshade-Engel and Betson-Rothbarth basis) as well as a recently proposed USDA child cost table that has sparked legislation in Minnesota.

Specifically, all of these guidelines have presumptive awards that exceed child costs to such an extent that:

1. In many cases where the custodial parent has significantly lower gross income than the non-custodial parent, the custodial parent still receives a significantly higher standard of living than the non-custodial parent.
2. In other cases where the custodial parent has significantly higher gross income than the non-custodial parent, the presumptive award boosts the custodial parent's relative standard of living rather than narrowing it.

Only the Cost Shares guideline conforms to expected standards of equity. These outcomes include:

1. In typical cases in which the custodial and non-custodial parents have equal gross incomes, the child-support award results in essentially equal standards of living on an after-tax, after-child support basis.
2. In typical cases, the higher income parent (whether custodial or non-custodial) retains a higher standard of living than the other, but the child support award narrows the standard of living gap.

The following comparisons are based on the non-custodial parent having 25 percent of the parenting time.

Proof is in the economic pudding—which guidelines make economic sense and have rational outcomes?

Table 6.

Custodial Parent's % Higher/Lower Standard of Living Compared to NCP

For Wisconsin-Style Guideline, Net Income Basis, Minnesota

One Child

NCP Monthly Gross Income:	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>	<u>3,500</u>	<u>4,000</u>	<u>4,500</u>	<u>5,000</u>	<u>5,500</u>	<u>6,000</u>
CP Gross = 50 % < NCP Gross	15	12	9	5	3	1	-1	-1	-1	-1
CP Gross = 30 % < NCP Gross	42	34	27	22	21	22	23	23	23	23
CP Gross = NCP Gross	71	59	53	53	55	57	56	55	54	54
CP Gross = 30 % > NCP Gross	95	87	86	86	86	85	85	84	83	84
CP Gross = 100 % > NCP Gross	162	160	153	149	150	153	156	157	158	159

Two Children

NCP Monthly Gross Income:	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>	<u>3,500</u>	<u>4,000</u>	<u>4,500</u>	<u>5,000</u>	<u>5,500</u>	<u>6,000</u>
CP Gross = 50 % < NCP Gross	29	27	22	17	15	13	11	9	7	7
CP Gross = 30 % < NCP Gross	59	49	42	36	33	31	31	31	32	32
CP Gross = NCP Gross	89	77	66	63	64	66	65	64	63	62
CP Gross = 30 % > NCP Gross	117	100	96	96	96	95	94	93	92	92
CP Gross = 100 % > NCP Gross	175	172	165	160	160	161	163	164	165	166

Note: Traditional standard of living analysis underestimates the custodial parent's standard of living when the comparison is made at income levels significantly higher than the poverty level. Traditional standard of living comparisons assume that child costs are constant as a share of income as income rises. Economic studies indicate that child costs decline as a share of income as income rises.

Table 7.

Custodial Parent's % Higher/Lower Standard of Living Compared to NCP

For Income Shares Guideline, Betson-Rothbarth Estimator Version, Pennsylvania

One Child

NCP Monthly Gross Income:	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>	<u>3,500</u>	<u>4,000</u>	<u>4,500</u>	<u>5,000</u>	<u>5,500</u>	<u>6,000</u>
CP Gross = 50 % < NCP Gross	11	6	-2	-10	-13	-16	-18	-19	-20	-20
CP Gross = 30 % < NCP Gross	36	24	11	5	3	2	2	2	1	0
CP Gross = NCP Gross	62	44	35	33	33	33	31	30	27	26
CP Gross = 30 % > NCP Gross	84	68	64	62	61	59	57	54	54	54
CP Gross = 100 % > NCP Gross	140	135	125	119	117	118	120	121	120	119

Two Children

NCP Monthly Gross Income:	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>	<u>3,500</u>	<u>4,000</u>	<u>4,500</u>	<u>5,000</u>	<u>5,500</u>	<u>6,000</u>
CP Gross = 50 % < NCP Gross	41	34	20	11	7	3	-2	-5	-7	-8
CP Gross = 30 % < NCP Gross	71	52	37	27	20	17	16	15	14	12
CP Gross = NCP Gross	101	74	56	50	49	48	46	43	39	38
CP Gross = 30 % > NCP Gross	125	91	83	79	77	74	70	67	67	66
CP Gross = 100 % > NCP Gross	167	157	145	137	132	131	133	133	130	128

Note: Traditional standard of living analysis underestimates the custodial parent's standard of living when the comparison is made at income levels significantly higher than the poverty level. Traditional standard of living comparisons assume that child costs are constant as a share of income as income rises. Economic studies indicate that child costs decline as a share of income as income rises.

Table 8.

Custodial Parent's % Higher/Lower Standard of Living Compared to NCP

For USDA Child Cost Table Based Guideline, 'Shared Responsibility' Legislation, Minnesota

One Child

NCP Monthly Gross Income:	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>	<u>3,500</u>	<u>4,000</u>	<u>4,500</u>	<u>5,000</u>	<u>5,500</u>	<u>6,000</u>
CP Gross = 50 % < NCP Gross	66	10	1	-5	-9	-11	-14	-15	-15	-15
CP Gross = 30 % < NCP Gross	44	28	16	9	7	6	6	6	6	5
CP Gross = NCP Gross	66	47	37	34	35	36	35	33	32	31
CP Gross = 30 % > NCP Gross	85	69	64	62	61	60	59	58	57	58
CP Gross = 100 % > NCP Gross	138	130	120	115	115	117	119	120	117	114

Two Children

NCP Monthly Gross Income:	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>	<u>3,500</u>	<u>4,000</u>	<u>4,500</u>	<u>5,000</u>	<u>5,500</u>	<u>6,000</u>
CP Gross = 50 % < NCP Gross	85	58	39	28	23	19	14	11	8	7
CP Gross = 30 % < NCP Gross	106	73	54	42	36	33	31	30	29	29
CP Gross = NCP Gross	124	93	71	63	63	62	61	58	56	55
CP Gross = 30 % > NCP Gross	142	108	95	90	89	87	85	83	82	81
CP Gross = 100 % > NCP Gross	182	166	152	143	142	143	144	145	137	131

Note: Traditional standard of living analysis underestimates the custodial parent's standard of living when the comparison is made at income levels significantly higher than the poverty level. Traditional standard of living comparisons assume that child costs are constant as a share of income as income rises. Economic studies indicate that child costs decline as a share of income as income rises.

Table 9.

Custodial Parent's % Higher/Lower Standard of Living Compared to NCP

For Cost Shares Guideline, without Tax Benefits as Cost Offsets nor NCP 25% Share of Child Costs Considered

One Child

<u>NCP Monthly Gross Income:</u>	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>	<u>3,500</u>	<u>4,000</u>	<u>4,500</u>	<u>5,000</u>	<u>5,500</u>	<u>6,000</u>
CP Gross = 50 % < NCP Gross	58	31	14	-4	-13	-18	-22	-24	-26	-27
CP Gross = 30 % < NCP Gross	94	41	14	2	-3	-5	-6	-7	-7	-8
CP Gross = NCP Gross	56	36	25	21	21	21	19	18	16	15
CP Gross = 30 % > NCP Gross	51	48	46	45	44	43	41	40	39	39
CP Gross = 100 % > NCP Gross	90	100	96	93	93	95	97	97	98	99

Two Children

<u>NCP Monthly Gross Income:</u>	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>	<u>3,500</u>	<u>4,000</u>	<u>4,500</u>	<u>5,000</u>	<u>5,500</u>	<u>6,000</u>
CP Gross = 50 % < NCP Gross	166	98	60	24	10	1	-6	-11	-15	-17
CP Gross = 30 % < NCP Gross	230	91	44	25	14	8	5	3	2	1
CP Gross = NCP Gross	93	63	43	34	32	31	29	27	25	23
CP Gross = 30 % > NCP Gross	71	63	58	55	54	52	49	48	46	45
CP Gross = 100 % > NCP Gross	92	106	104	100	99	99	99	100	100	100

Note: Traditional standard of living analysis underestimates the custodial parent's standard of living when the comparison is made at income levels significantly higher than the poverty level. Traditional standard of living comparisons assume that child costs are constant as a share of income as income rises. Economic studies indicate that child costs decline as a share of income as income rises.

Table 10.

Custodial Parent's % Higher/Lower Presumptive Standard of Living Compared to NCP

For Cost Shares Guideline, with Tax Benefits as Cost Offsets and NCP 25% Share of Child Costs Considered

One Child

<u>NCP Monthly Gross Income:</u>	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>	<u>3,500</u>	<u>4,000</u>	<u>4,500</u>	<u>5,000</u>	<u>5,500</u>	<u>6,000</u>
CP Gross = 50 % < NCP Gross	-18	-28	-32	-36	-37	-37	-38	-38	-39	-39
CP Gross = 30 % < NCP Gross	-5	-14	-19	-21	-21	-21	-23	-24	-25	-25
CP Gross = NCP Gross	5	2	1	-1	-1	-2	-3	-3	-3	-3
CP Gross = 30 % > NCP Gross	17	20	19	17	18	18	18	18	18	19
CP Gross = 100 % > NCP Gross	56	62	61	60	62	65	67	69	70	71

Two Children

<u>NCP Monthly Gross Income:</u>	<u>1,500</u>	<u>2,000</u>	<u>2,500</u>	<u>3,000</u>	<u>3,500</u>	<u>4,000</u>	<u>4,500</u>	<u>5,000</u>	<u>5,500</u>	<u>6,000</u>
CP Gross = 50 % < NCP Gross	-4	-20	-25	-31	-34	-35	-35	-36	-37	-37
CP Gross = 30 % < NCP Gross	5	-9	-17	-20	-20	-20	-22	-23	-24	-25
CP Gross = NCP Gross	5	2	0	-2	-3	-4	-4	-5	-5	-6
CP Gross = 30 % > NCP Gross	13	16	15	14	14	14	14	14	14	14
CP Gross = 100 % > NCP Gross	43	51	51	51	53	55	57	59	60	61

Note: Traditional standard of living analysis underestimates the custodial parent's standard of living when the comparison is made at income levels significantly higher than the poverty level. Traditional standard of living comparisons assume that child costs are constant as a share of income as income rises. Economic studies indicate that child costs decline as a share of income as income rises.

Economic Benchmark Targets for Economically Sound and Equitable Child Support Guidelines

- 1) For situations in which both parents start out with equal standards of living (without the child), that after a child support award is made, both households have equal standards of living.**
 - 2) This benchmark should apply to situations in which both parents incur parenting time costs.**
- Income Shares, percent-of-obligor-income, and pure USDA based (per capita child costs) guidelines fail to conform to these benchmarks.**
 - Cost Shares does conform to these benchmarks for economic equity.**

“Cost Shares” Child Support Legislation

Minnesota, 2003-2004 Legislative Term

- House Bill HF664 is sponsored by Rep. Rob Eastlund

Georgia, 2003-2004 Legislative Term

- House Bill 149 is sponsored by Rep. Earl Ehrhart
- Senate Bill 17 is sponsored by Sen. Seth Harp

For more information, go to: GuidelineEconomics.com

Constitutional Challenges to Existing Child Support Guidelines

Minnesota

About five constitutional challenges have been filed in Minnesota. All are in early stages at the trial level. Challenge based on Minnesota’s child support guidelines: being arbitrary and without any supporting economic study, violating due process (the underlying facts do not exist in application), violating equal protection (separate standard for NCP than CP, tax benefits not shared, windfall profit for CP), and guidelines do not conform to federal regulations (economic data requirement).

Georgia

Georgia Department of Human Resources v. Michelle Sweat. In 2002, Judge C. Dane Perkins of Atkinson County ruled Georgia’s obligor-only guidelines violated constitutional guarantees of due process, equal protection, and right to privacy. In April 2003, the Georgia Supreme Court reversed and found the guidelines to be constitutional. The appeal court did not address the issues raised by the trial court. Many trial court judges in the State have quietly expressed their disgust with the Supreme Court of Georgia and state their agreement with Judge Perkins.

Ward v. McFall. Rockdale County, Georgia, Superior Court Judge Sydney Nation found Georgia’s guidelines to conflict with federal regulations requiring the guidelines to be based on valid economic data on child costs and to be modified after quadrennial reviews based on deviation case studies. Judge Nation found the guidelines to not be based on up-to-date valid economic data nor have required case studies and incorporation into formula of deviations taken place. The case is still on appeal and Judge Nation’s ruling still is in effect.

For more information, go to: GuidelineEconomics.com

Issues for Child Support Guideline Reviews

Summary: Economic evidence and bad policy outcomes increasingly show that current guidelines are badly flawed. A working version of the “Cost Shares” child support guideline is available as an alternative. The “Cost Shares” guideline should be presented as an alternative during child support guideline reviews. Reviews should focus on meeting the standard of equal protection for the child(ren) being supported on the same basis when in the care of either parent as based on actual economic data. Only the Cost Shares guideline meets equal protection standards.

Why should States find it advantageous to consider and review “costs shares” for the presumptive award?

- Federal regulations require a periodic economic evaluation of each State's child support guidelines or risk loss of federal monies.
- Federal formulas for child support incentive payments changed in 1998 and some States are at a clear disadvantage to other States in receiving a share of those funds. Some States' collection rates (a key factor in a State's share of federal child support monies) are too low because of economically inappropriate presumptive awards.
- Current guideline methodologies are increasingly being criticized for lack of economic foundation and States may be at risk for using only one evaluator of the State's guidelines (usually the guideline creator).
- Current child support models use outdated methodologies of questionable economic validity. Alternative child support guideline methodologies have been developed that can both improve a State's collection rate (and share of federal funds) and lead to better outcomes in family court. These outcomes would include less contention over child support awards, better compliance and enforceability (lower burden on family courts), and less spillover into custody/visitation issues.
- Two-thirds of a State's costs for guideline evaluation is reimbursable by the U.S. Department of Health and Human Services. Because of this reimbursement, the actual State cost of hiring economic experts is very modest.

A guideline review, at a minimum, should:

- Determine if the State has conducted an appropriate quadrennial review that complies with federal regulations.
- Determine if there is an actual, publicly available study on the economic basis of the guidelines. Such a study must be available for use in rebuttal in court.
- Review the underlying economic study. Is it sound and still relevant? Is the study in line with mainstream economic theory on household spending on children?

- Determine if the child support guidelines rationally follow from the underlying economic study.
- Provide better alternative guidelines or components of guidelines based on more up-to-date data on household spending on children and based on recent improvements in economic methodologies for child support guidelines.
- Determine the overall impact of the State's child support guidelines on both the custodial-parent and non-custodial-parent households. Compare standard of living outcomes.
- Determine if the State child support guidelines meet equal protection standards as suggested by economic data and tax law. Tax laws have changed immensely since guidelines were first developed—notably, federal law initially assumed the parent with higher income received the tax benefits but now assumes the custodial parent receives the tax benefits related to the children.
- Evaluate if the State's guidelines comply with federal regulations and laws such as the Consumer Credit Protection Act.
- Review how the State's guidelines affect the State's share of federal payments under the federal Child Support Program. Federal incentives changed dramatically in 1998 and some States are now at a disadvantage with their old guidelines.

Needed Directions for Child Support Guideline Reform

- 1) Improve Income Shares guidelines already in use**
 - a. Add child-related tax benefits as an offset to be shared automatically**
 - b. Add economically sound parenting time adjustments automatically**
 - c. Add an adjustment to the cost tables for dual households (separate from parenting time costs)**
- 2) Develop stronger economic and legal critiques of existing guidelines for guideline reviews and for legislative activity.**
- 3) Develop alimony guidelines for joint use with Cost Shares child support guidelines.**

R. Mark Rogers' Credentials as Child Cost Expert

- Rogers is recognized as an expert in child costs before Georgia Superior Court. Rogers has given expert testimony as a child cost expert in cases in Florida, Georgia, Missouri, Ohio, Texas, and Virginia. He has consulted on cases in Alabama, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Minnesota, Missouri, New Hampshire, New York, Ohio, Texas, Virginia, and Washington State.
- Nationally recognized economist. Author of *Handbook of Key Economic Indicators, Second Edition* (McGraw-Hill Professional Publishing, 1998; Chinese edition, 1999). He has lectured nationally on the use and analysis of economic data with the Institute for Professional Education, Arlington, VA. Professional economist, Federal Reserve Bank of Atlanta, 19 years, retired. Published and conducted research on child costs in addition to other duties as economist.
- Member, 1998 Georgia Commission on Child Support.

Expertise in child cost analysis has been recognized by:

- **American Bar Association:** "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, Spring 1999, pp.135-156. Economic impact studies based on methodologies used in court.
- **Georgia Bar Association:** "Georgia's Child Support Guidelines—No Economic Basis: Facts for a Constitutional Challenge?" State Bar of Georgia, *Family Law Section Newsletter*, July/August 2000, pp. 14-23. Specifically includes methodology of child cost analysis used in court.
- **National Association of Forensic Economics:** "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," with Donald J. Bieniewicz, co-author. Presented, Southern Economic Association, National Association of Forensic Economics section, November 12, 2000. Recognized methodology used in court for child cost analysis. This article has been published in *Assessing Damages in Injuries and Deaths of Minor Children*, ed. by Thomas R. Ireland and John O. Ward, Lawyers & Judges Publishing Co., Tucson, AZ, 2002.
- **U.S. Congress:** Invited and testified as expert witness before Human Resources Subcommittee of U.S. House Ways & Means Committee, regarding Hyde-Woolsey Child Support bill, March 16, 2000, regarding technical issues on proposal to put child support enforcement under the IRS. Testimony published as part of Congressional record.

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