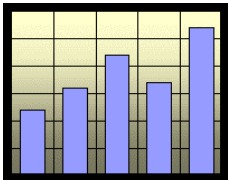


# Why the Georgia Supreme Court Erred in the April 2003 *Sweat* Opinion, Economics Basis<sup>©</sup>

June 20, 2003



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## **Why the Georgia Supreme Court Erred in the May 2003 *Sweat* Opinion, Economics Basis**

### **The Latest Opinion by the Supreme Court of Georgia:**

In the case of *Georgia Department of Human Resources v Sweat et al.*, April 29, 2003, the Supreme Court of Georgia ruled:

The trial court erred in concluding that Georgia's child support guidelines violate both the Georgia and United States' Constitutions guarantees of substantive due process. ....

The trial court erred in concluding that Georgia's child support guidelines violate both the Georgia and United States' Constitutions guarantee of equal protection under the law.

Is there any obvious economic evidence that the Supreme Court of Georgia's decision has key omissions, conflicts with fact, is without evidentiary basis, or is based on convoluted argument? First, it is appropriate to review the nature of Georgia's child support guidelines.

### **Background: Georgia's Child Support Guidelines**

The percent-of-obligor-income guidelines enacted by the State of Georgia are as follows, based on 2003 Official Code of Georgia, Section 19-6-15:

- (b) The child support award shall be computed as provided in this subsection:
  - (1) Computation of child support shall be based upon gross income;
  - (2) For the purpose of determining the obligor's child support obligation, gross income shall include 100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income, and all other income, except need-based public assistance;
  - (3) The earning capacity of an asset of a party available for child support may be used in determining gross income. The reasonable earning potential of an asset may be determined by multiplying its equity by a reasonable rate of interest. The amount generated by that calculation should be added to the obligor's gross monthly income;
  - (4) Allowable expenses deducted to calculate self-employment income that personally benefit the obligor, or economic in-kind benefits received by an employed obligor, may be included in calculating the obligor's gross monthly income; and
  - (5) The amount of the obligor's child support obligation shall be determined by multiplying the obligor's gross income per pay period by a percentage based on the number of children for whom child support is being determined. The applicable percentages of gross income to be considered by the trier of fact are:

<u>Number of Children</u>	<u>Percentage Range of <i>Gross</i> Income</u>
1	17 percent to 23 percent
2	23 percent to 28 percent
3	25 percent to 32 percent
4	29 percent to 35 percent
5 or more	31 percent to 37 percent.

## **Key Economic Arguments on Why the Supreme Court of Georgia Erred**

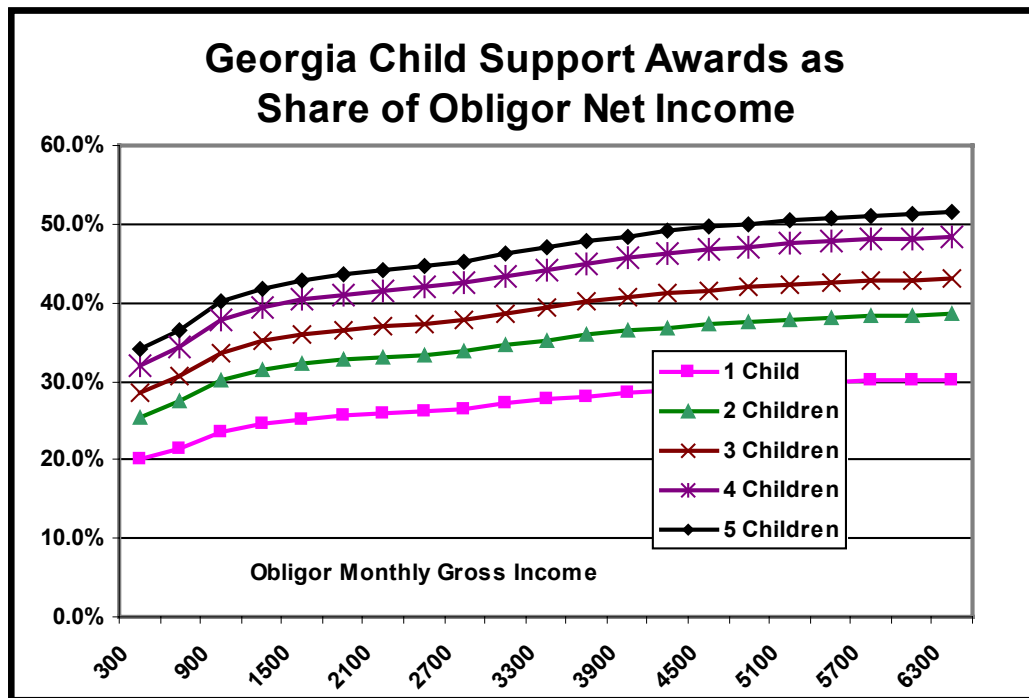
➤ **The more obvious economic reasons (corroborated by constitutional and federal case law) for the April 29, 2003 *Sweat* decision to be in error include:**

- Georgia's child support guidelines conflict with all professional studies on child costs and are arbitrary.
- In *Sweat*, the Georgia Supreme Court did not rule on whether the underlying facts of the presumptive guidelines for Georgia exist in application for any given case. This is a due process issue. The underlying facts of Georgia's child support guidelines do not exist in application.
- In *Sweat*, the Georgia Supreme Court did not rule on whether it is an equal protection violation for presumptive awards to push minimum wage obligors below the poverty level. Case law indicates that it is an equal protection violation to presumptively push obligors below poverty.
- In *Sweat*, the Georgia Supreme Court did not rule on whether it is an equal protection violation for Georgia to use a range of percentages for the presumption rather than just one percentage for a given case.
- In *Sweat*, on this same issue the Georgia Supreme Court did not rule on whether it is violation of federal regulations and the federal Supremacy Clause for Georgia to use a range of percentages for the presumption rather than a formula with a single dollar value award for any given case.
- In *Sweat*, the Georgia Supreme Court did not rule on whether it is an equal protection violation for non-custodial parents to have to pay child support out of gross (before-tax) income while custodial parents pay child costs out of after-tax income. This Court did not rule on whether only custodial parents getting child-related tax benefits violates equal protection. Both parents are required to share costs but only one parent gets the tax benefits as cost offset.
- There is a long list of additional economic findings by the trial court that the *Sweat* opinion deliberately ignores.

These issues are highlighted below.

➤ **Georgia’s child support guidelines conflict with all professional studies on child costs and are arbitrary.**

Georgia’s child support guidelines rise as a share of obligor net income. Every professional child cost study shows child costs declining as a percentage of household net income as net income increases. Georgia’s child support guidelines conflict with all child cost studies. There is no economic study to validate Georgia’s child support guidelines. Georgia’s child support guidelines are arbitrary in every sense of the word. Neither the Georgia Department of Human Resources, nor the Georgia Attorney General, nor the Supreme Court of Georgia can point to a single professional study that shows child costs rising as a share of household net income.



Note: chart does not include “add-ons” such as day care or medical insurance which would boost these percentages.

Georgia’s presumptive awards are stated in fixed percentages of obligor gross income. When converted to net income, the presumptive awards rise as a share of obligor net income. This pattern conflicts with all professional studies which show child costs declining as a share of net income. Case law indicates that economic regulatory policy decisions should be based on sound economic studies and should not be arbitrary. See *Sierra Club v. Martin*, 168 F. 3d 1 (11<sup>th</sup> Cir., 1999). Similarly, case law indicates that there must be a rational relationship between basic facts and presumed facts, again stating that a presumption cannot be arbitrary. See *Leary v. United States*, 395 U. S. 6 at 32-37 (1969). Federal regulations require child support guidelines to be based on economic data on the cost of raising children (45 CFR 302.56). Since Georgia’s guidelines conflict with all studies on child costs, Georgia’s guidelines cannot be based on economic studies on the cost of raising children.

- **In *Sweat*, the Georgia Supreme Court did not rule on whether the underlying facts of the presumptive guidelines for Georgia exist in application for any given case. This is a due process issue. The underlying facts of Georgia's child support guidelines do not exist in application.**

Georgia's child support guidelines were taken from child support guidelines initially implemented by the state of Wisconsin for Title IV-D welfare cases—that is, for welfare recovery situations. The underlying economic study and conditions for appropriate application of the guidelines were conducted and published by Dr. Jacques van der Gaag in 1982.<sup>1</sup> 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 2002 dollars, this would be household income of \$22,371. 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.
- The custodial parent is assumed to care for the children and not earn any income outside the home.
- The non-custodial parent is the sole income earner and the percentages applied to the non-custodial parent'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-related 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 non-custodial parent is absent and that the children are with the custodial parent 100 percent of the time.
- 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.<sup>2</sup> The underlying study set a low ceiling on the amount of income on which the percentages would be applied.

**The underlying facts of Georgia's child support guidelines do not exist in application for typical cases. In typical cases:**

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<sup>1</sup> 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.

<sup>2</sup> 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.

- In general, the household income (combined for both parents) in question is not low income. The obligor currently grosses substantially above the poverty level. Joint income of the father and mother generally is dramatically above the underlying study's low-income definition in year 2002 dollars of \$22,371. Lower percentages are economically appropriate at higher incomes as stated in the underlying economic study.<sup>3</sup>
- The obligee (the mother) generally has significant income in contrast to the presumption of no income. The underlying study states that when the obligee earns income, that both parents' income should factor into the child support determination and with lower percentages.<sup>4</sup>
- The underlying study assumes that a higher earning non-custodial parent receives all of the child-related tax benefits based on tax law of 1982. However, since 1984, federal tax code gives the custodial parent the child-related tax benefits but this change is not reflected in the child support guidelines.<sup>5</sup> No changes have been made in the basic percentages since the original study. The tax benefit "swing" from the non-custodial parent to the custodial parent is substantial. Generally, the custodial parent gets the child exemptions and related child tax credits. The underlying study treats child-related tax benefits as cost offsets for both parents.
- The child support obligor pays substantial amounts in taxes each year, in contrast to the assumption of little or no taxes. The obligor's marginal tax rate generally is quite significant ranging from 28.65 percent for lower middle income obligors (\$2,000 gross per month) to 43.65 percent for moderately high income obligors (\$7,000 gross per month)—30 percent for federal income tax, 6.0 percent for state income tax, zero percent on the margin for Social Security, and 1.45 percent for Medicare for this higher bracket under 2002 tax code. These high marginal tax rates are in sharp contrast to the underlying study's assumption of close to zero under 1982 tax code for low-income obligors.
- The obligor generally has significant parenting time with the children. The obligor generally has 20 to 35 or more of the total parenting time with the child. The obligor generally incurs significant overhead expenses in child costs and incurs significant variable costs. In contrast with the underlying assumption of the guideline, the child is not

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<sup>3</sup> Linda Reivitz. "Percentage of Income Standard for Setting Child Support Awards," memorandum by Secretary, Department of Health and Social Services, State of Wisconsin, to members of the Wisconsin Judiciary, December 20, 1983, *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, pp. I-221.

<sup>4</sup> 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.

<sup>5</sup> The Deficit Reduction Act of 1984 significantly affected domestic relations taxation in the areas of alimony, property divisions and transfers, and dependency exemptions. For custody decrees subsequent to 1984, this act allocated the dependency exemption to the custodial parent in all cases unless the custodial parent signed a written declaration each year that the non-custodial could claim the dependency exemption. See Steven D. Kittrell. "An Overview of the 1984 Domestic Relations Tax Provisions," *Improving Child Support Practice, Volume Two*, The American Bar Association, 1986, page IV-57.

with the obligee 100 percent of the time but is with the obligor significantly. The underlying study states that under shared parenting, adjustments should be made in the award.<sup>6</sup>

- Generally, the case is not a welfare case and the guidelines are not intended by the underlying studies to be applied outside of situations in which the award is limited to low benefits. The percentages were intended to be applied only to income needed to recover the welfare payment and not to any higher income.

Case law indicates that when the underlying facts of a statutory presumption no longer exist in application, applying the presumption is a due process violation. See *Leary v. United States*, 395 U.S. 6 at 32-37 (1969) and especially footnote 68. Case law indicates that it is economically unsound to apply welfare recovery guidelines to non-welfare cases. See *v. Smith*, 626 P.2d 342 (Or. 1981).

- **Additionally, for welfare recovery cases, the underlying study stated that self-support income should be set aside for the obligor before applying the guideline percentages. In Georgia, self-support is not set aside at all. This conflicts with the underlying facts of the underlying study—even for welfare recovery situations.**<sup>7</sup>
- **In *Sweat*, the Georgia Supreme Court did not rule on whether it is an equal protection violation for presumptive awards to push minimum wage obligors below the poverty level. Case law indicates that it is an equal protection violation to presumptively push obligors below poverty.**

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<sup>6</sup> Linda Reivitz. "Percentage of Income Standard for Setting Child Support Awards," memorandum by Secretary, Department of Health and Social Services, State of Wisconsin, to members of the Wisconsin Judiciary, December 20, 1983, *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, pp. I-221.

<sup>7</sup> 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.

**The following table shows how much the presumptive award pushes minimum wage workers below the poverty level.**

One sees minimum wage monthly gross income at \$825 per month (second column). The third column shows the low end, mid range, and upper end presumptive awards for gross income of \$825 per month for the varying numbers of children. The fourth column is gross income minus the poverty threshold (\$747 per month in year 2000) minus the presumptive award. The fourth column is how much the obligor is pushed below the poverty level.

**GEORGIA CHILD SUPPORT PRESUMPTIVE AWARDS:  
OBLIGOR POVERTY LEVEL BURDENS**  
(Excluding "Add-ons")

<u>Number of Children</u>	<u>Obligor Monthly Gross Income</u>	<u>Presumptive Award Lower, Mid, Upper</u>	<u>After CS Poverty Level Difference Lower, Mid, Upper</u>
One	\$825	\$140, \$165, \$190	-\$62, -\$87, -\$112
Two	\$825	\$190, \$210, \$231	-\$112, -\$132, -\$153
Three	\$825	\$206, \$235, \$264	-\$128, -\$157, -\$186
Four	\$825	\$239, \$264, \$289	-\$161, -\$186, -\$211
Five or more	\$825	\$256, \$281, \$305	-\$178, -\$203, -\$227

Poverty level, one person under 65 years, for year 2000: \$8,959 (\$747 monthly). Source: U.S. Department of Agriculture.

The presumptive pushing of low-income obligors below the poverty level creates an extraordinary burden for obligors and violates obligor equal protection rights. Other states have ruled such a burden is inappropriate and a due process violation. See *Harris v. Harris*, 590 So. 2d 321 (Ala. Civ. App. 1991) and *Smith v. Smith*, 626 P.2d 342 (Or. 1980).

- **In *Sweat*, the Georgia Supreme Court did not rule on whether it is an equal protection violation for Georgia to use a range of percentages for the presumption rather than just one percentage for a given case.**

The use of a range of percentages creates substantial opportunity for similarly situated individuals to be treated differently. The difference between a lower percentage award and upper percentage award is as much as 35.3 percent—meaning that in completely identical situations, one obligor can have a presumptive award that is 35.3 percent higher than another obligor.

**Georgia's Child Support Guidelines:  
Difference between Upper and Lower Bounds  
for Presumptive Awards**

<u>Number of Children %</u>	<u>Percentage Range of Gross Income</u>	<u>Percent More Obligor Pays: Higher to Lower</u>
1	17 percent to 23 percent	35.3 percent
2	23 percent to 28 percent	21.7 percent
3	25 percent to 32 percent	28.0 percent
4	29 percent to 35 percent	20.7 percent
5 or more	31 percent to 37 percent	19.4 percent

- **In *Sweat*, on this same issue the Georgia Supreme Court did not rule on whether it is a violation of federal regulations and the federal Supremacy Clause for Georgia to use a range of percentages for the presumption rather than a formula with a single dollar value award for any given case.**

Federal regulations under 45 CFR 302.56 require states to have a single value award presumptive award for any given case so as to reduce uncertainty regarding presumptions. In fact, with Georgia's guidelines, there is no presumptive award—just a range from which to choose the award. The court completes all presumptive calculations but still does not know what the award is. The choice within the range is arbitrary for determining the presumptive award.

- **In *Sweat*, the Georgia Supreme Court did not rule on whether it is an equal protection violation for non-custodial parents to have to pay child support out of gross (before-tax) income while custodial parents pay child costs out of after-tax income. This Court did not rule on whether only custodial parents getting child-related tax benefits violates equal protection. Both parents allegedly are required to share costs but only one parent gets the tax benefits as cost offset. The guidelines do not take into account child-related tax benefits.**

When Georgia's guidelines were developed in the early 1980s, tax code gave child-related tax benefits to the higher-income non-custodial parent. Since then, tax code has changed completely, giving child-related tax benefits to the custodial parent—but the guidelines have not changed at all to reflect these changes. The child-related tax benefits are quite substantial. From Federal form 1040 from the Internal Revenue Service for calendar tax year of 2002, the divergent treatment of custodial and non-custodial parents is substantial:

- The standardized deduction (line 38, Form 1040), for a single person (the non-custodial parent) was \$4,700 compared to \$6,900 for a head of household taxpayer (the custodial parent). This is a bonus of \$2,200 in deductions for the custodial parent.

- The custodial parent only is able to claim the dependent exemptions as a legal right (lines 6c and 40, Form 1040). The value of each dependent exemption is \$3,000 for tax year 2001.
- 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, calendar 2002 code.

The annual earned income credit was as much as—

- \$364 if you did not have a qualifying child (non-custodial parent),
  - \$2,428 if you had one qualifying child, or
  - \$4,008 if you had two qualifying children.
  - Under special circumstances there are additional credits for a third child.
- The Taxpayer Relief Act of 1997 gave custodial parents a tax credit of \$400 per child up to two children and additional credit for a third child under special circumstances. The credit went to \$500 per child in 1999.
  - The Economic Growth and Tax Relief Reconciliation Act of 2001 boosts the custodial parent's after-tax advantage even more. The new law lowers from 15 to 10 percent the tax rate for the first \$12,000 of taxable income on a joint return, \$6,000 for singles, \$10,000 for heads of household, and \$6,000 for married persons filing separate returns. The creation of the 10 percent bracket provides tax savings of up to \$600 for married couples; \$300 for singles and \$500 for heads of household. Lowering the tax rate on the lowest income bracket also lowers the average rate for those earning above that bracket. In addition to the greater benefits to custodial parents from lowering the tax on the lowest income bracket, the Tax Relief Act of 2001 will double the size of child credits over the next several years. The per child credit rises from \$500 in 2000 to \$600 in 2001. The per child tax credit subsequently rises to \$700 in 2005, \$800 in 2009, and \$1,000 in 2010.
  - 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 the table below, showing Schedule X and Schedule Z, 2002 1040, Forms and Instructions, Department of the Treasury, page 75.

<b><u>Schedule X—Use if your filing status is Single</u></b>			
If the amount On Form 1040, Line 41, is” <u>Over --</u>	But not <u>over--</u>	Enter on Form 1040, <u>line 40</u>	of the amount <u>over--</u>
\$0	\$6,000	..... 10%	\$0
6,000	\$27,950	\$600.00 + 15%	6,000
27,950	67,700	3,892.50 + 27%	27,950
67,700	141,250	14,625.00 + 30%	67,700
141,250	307,050	36,690.00 + 35%	141,250
307,050	-----	94,720.00 + 38.6%	
307,050			
<b><u>Schedule Z—Use if your filing status is Head of household</u></b>			
If the amount On Form 1040, Line 41, is” <u>Over --</u>	But not <u>over--</u>	Enter on Form 1040, <u>line 40</u>	of the amount <u>over--</u>
\$0	\$10,000	..... 10%	\$0
10,000	37,450	\$1,000.00 + 15%	10,000
37,450	96,700	\$5,117.50 + 27%	37,450
96,700	156,600	21,115.00 + 30%	96,700
156,600	307,050	39,085.00 + 35%	156,600
307,050	-----	91,742.50 + 39.1%	
307,050			
Source: "2002 Tax Rate Schedules," p. 75, 2002 Federal Form 1040			

In stating that Georgia establishing separate categories of custodial and non-custodial parents is constitutional, the Georgia Supreme Court cited (*Boris v. Blaisdell*, 142 Ill. App. 3d 1034, 492 N.E.2d 622 (1986)) as the basis for separate treatment. The Georgia Supreme Court cited a case from Illinois with guidelines based on net income for the obligor. This argument lacked economic integrity and neither addressed the issue of tax benefits as cost offsets nor that of non-custodial parents having to pay support out of gross income while custodial parents pay for child costs out of net income. Additionally, this case from Illinois only addressed situations in which the obligor does not have any significant parenting time and does not address situations in which both parents incur child costs.

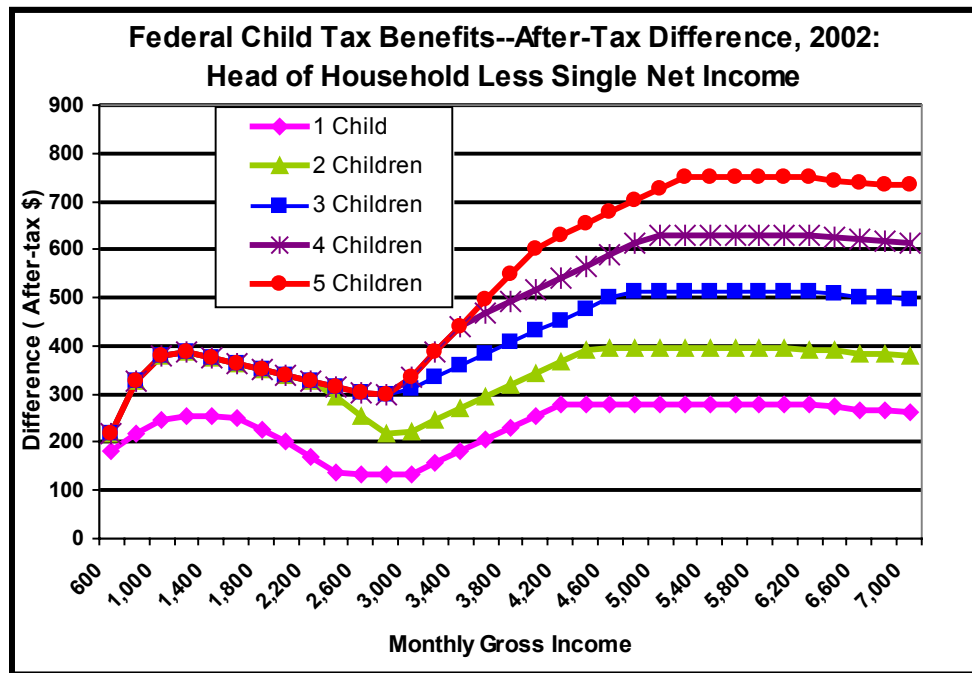
### An Example of the Gross Inequity of Fixed, Gross Income Percentages for Child Support Guidelines

Both parents have a salary of \$3,000 gross per month or \$36,000 annually. There is one child. The father is the obligor and pays \$75 per month for medical insurance for the child in addition to the mid-point presumptive award of 20 percent of gross income.

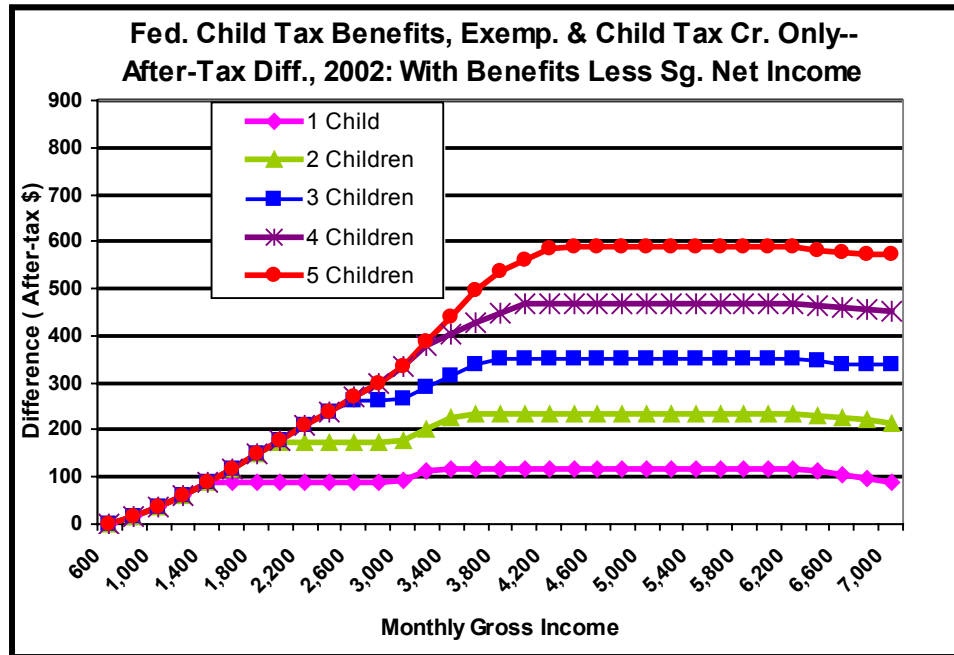
<u>PRESUMPTIVE AWARD, ANNUAL</u>	Father	Mother
<b>Gross income</b>	<b>\$36,000</b>	<b>\$36,000</b>
Federal & state income taxes, Soc. Sec. & Medicare	-8,421	-7,164
<b>After-tax income</b>	<b>27,579</b>	<b>28,836</b>
Presumptive child support (midpoint), (\$600/month)	-7,200	7,200
Directly paid support, medical insurance (\$75/month)	-900	900
Total presumptive child support, cash, direct, & add-ons	-8,100	8,100
<b>After Tax, After Presumptive Child Support Income</b>	<b>\$19,479</b>	<b>\$36,936</b>

The presumptive award is so excessive that the mother has almost as much after-tax income to spend on the child as the father has to spend on himself!

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



- Child-related tax benefits are a very significant offset to total child costs—typically worth \$250 to \$400 in extra monthly after-tax income for the custodial parent.



- 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—about \$100 per child per month.

The child-related tax benefits issue is a large equal protection issue the Georgia Supreme Court deliberately did not address.

These are only the more obvious issues not addressed by the April 29, 2003 *Sweat* opinion.

Separately from the issues not addressed in the *Sweat* opinion, the reversal of the lower court decision does not affect the *Ward v. McFall* trial court decision in which Judge Sydney Nation of Rockdale County found Georgia’s child support guidelines to not be in compliance with federal regulations. Judge Nation’s order suspended use of the guidelines until the Georgia legislature brings the guidelines into compliance with federal regulations. Judge Nation’s order still stands, finding that Georgia’s child support guidelines violate the U.S. Constitution’s Supremacy Clause.

## Summary

**The *Sweat* opinion by the Supreme Court of Georgia on April 29, 2003 deliberately omits addressing key constitutional issues and deliberately misconstrues evidence and argument for the issues that were addressed. The opinion has no basis in the evidence presented.**

- **There is a long list of findings by the trial court that the *Sweat* opinion deliberately ignores. These are:**
- 1) The Guidelines adopted by Georgia as originally designed by the underlying economic study were intended only for welfare situations—the current use for all situations was not the intended purpose.
  - 2) Georgia’s presumptive awards rise as a share of obligor after-tax income. No child cost studies show child costs rising as a share of after-tax income. All child cost studies show child costs declining as a share of after-tax income. The state has presented no evidence that child costs rise as a percentage of household net income. (emphasis original in the trial court order) Georgia’s Guidelines are arbitrary and are not rational since there is no economic foundation for presumptive awards that rise as a share of household net income.
  - 3) There are no baseline components to the Guidelines. It is not clear what is being rebutted, therefore they are arbitrary and a due process violation.
  - 4) The Guidelines do not take into account the large tax-related child cost offsets the custodial parent receives.
  - 5) The presumptive award results in the custodial parent receiving a huge financial windfall—or profit—in excess of child costs. For typical income situations, the custodial parent ends up with a higher standard of living than the non-custodial parent—even when the non-custodial parent earns significantly more than the custodial parent. This is an extraordinary benefit for the custodial parent and an extraordinary burden for the obligor.
  - 6) The Georgia presumptive award does not allocate the child support burden according to the parents’ relative ability to pay. This is because the obligor has a rising after-tax percentage of income paid to the custodial parent for child support. These percentages exceed actual child costs and the custodial parent uses the profit as an offset to the custodial parent’s implied contribution to child costs. Additionally, the custodial parent receives substantial child-related tax benefits that the non-custodial parent does not receive.
  - 7) Evidence presented based on presumptive after-tax, after-child support awards and the standard of living benchmark of the U.S. government’s poverty thresholds show that the Guideline presumptive awards include such large amounts of hidden alimony (presumptive award less an economics based award) that a non-custodial parent is unable to provide for a child when in the non-custodial parent’s care to the same extent as in the custodial parent’s household.

- 8) The Guidelines are biased toward including hidden alimony for the custodial parent even when the custodial parent earns substantially higher gross income than the non-custodial parent. The Guidelines do not meet standards of fairness even for alimony.
- 9) The use of a range of percentages allows substantial opportunity for similarly situated individuals to receive dissimilar treatment. That is, different obligors with the same income can end up with presumptive obligations that differ by hundreds of dollars per month.
- 10) The presumptive award for low-income obligors (for example, minimum wage workers) pushes low-income obligors below the poverty level. A presumptive award that leaves the obligor with less income than needed for basic living needs creates an extraordinary burden for the obligor and, potentially, an additional burden on taxpayers. This violates equal protection.
- 11) The Guidelines do not take into account custodial parent income. The presumptive child support award does not vary with family income—only obligor income. This is not economically rational and violates equal protection. The custodial parent is not held to the same standard for contributing to child costs.
- 12) Child costs of only the custodial parent are covered by the Guidelines. Similar costs incurred when the child is with the non-custodial parent do not receive similar consideration. Yet, parents are similarly situated when child costs are incurred by either parent. Each parent has an equal duty to provide financially for the children when in the care of the other parent.
- 13) Medical insurance costs are not treated the same for all obligors. The presumptive award includes typical medical expenses. The Guidelines allow the court to either treat an obligor's payment of the children's medical insurance as an add-on or as a credit toward the presumptive award. This dissimilar treatment violates equal protection.
- 14) The Guideline criteria for deviation do not give any guidance on how to apply the deviations in a consistent manner. This is unconstitutionally vague and generally results in no deviations in most cases—even when the circumstances to deviate exist.
- 15) The Guidelines are arbitrary and bear no relationship to the intended federal purpose of determining an economically appropriate child support award. The Guidelines have no rational relationship to child cost data. Among other considerations, first of all, the Guidelines were implemented for all cases (beyond just welfare cases) without the benefit of any supporting economic data. Additionally, the presumptive awards rise as a share of net income—which conflicts with all child costs studies. The Guidelines do not take into account where the actual child costs are incurred—that is, which parent incurs what costs. The Guidelines do not take into account child costs net of tax benefit offsets. The Guidelines bear no relationship to the constitutional standards for child support of requiring each parent to have an equal duty in supporting the child.

16) Which parent is the obligor and which is the obligee should be determined only after examination of the relevant factors—not before. The financial circumstances should determine which parent is obligor. The Guidelines arbitrarily presume that the obligor is always the non-custodial parent when the financial circumstances may indicate just the opposite. Importantly, mere classification before-hand of the obligor does not provide sufficient information to determine the economically appropriate award. The classifications of obligor and obligee are not rationally related to the intended purpose of the Guidelines of determining the economically appropriate award.

17) The Guidelines interfere with a non-custodial parent's constitutional right to raise one's children without "unnecessary" government interference. The Guidelines are so excessive as to force non-custodial parents to frequently work extra jobs for basic needs—detracting from parenting without state justification. Low-income obligors are frequently forced to work in a cash economy to survive as a result of child support obligations that if paid push the obligor below the poverty level.

➤ **For more detailed discussion of how Georgia's child support guidelines conflict with economic data on child costs, see the economic exhibit upon which the trial court originally found the guidelines to be unconstitutional. See *Why Georgia's Child Support Guidelines Are Unconstitutional: Economic Exhibits, October 29, 2001*, by R. Mark Rogers. This document can be downloaded from [GuidelineEconomics.com](http://GuidelineEconomics.com).**

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