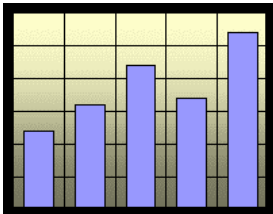


Massachusetts' Child Support Guidelines: Economics Based Recommendations for Reform[©]

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Introduction

States currently engage in child support guideline reviews in order to comply with federal regulations for state receipt of federal funding for state child support enforcement programs. According to federal regulations (45 CFR 302.56), the intended purpose of a state's child support guideline is to result in an economically appropriate child support award. A review of Massachusetts child support guideline clearly shows that it conflicts with mainstream economic data on consumer spending in general and on child costs in particular. Some of these key conflicts with economic data are discussed below. Clearly, a presumptive award should track economic data on child costs. Also, to be economically appropriate, the presumptive award should ensure that neither parent has his or her available income reduced below the amount needed for basic living needs. Therefore, to help make Massachusetts' guideline economically appropriate, two key reforms are recommended: (1) retain but equalize the set aside reserve for both parents and (2) lower the percentages to reflect actual child costs.

The detailed economic bases for these recommendations follow. In summary, the set aside should be retained and equalized to conform with prior federal regulations, to meet equal protection standards, and to help alleviate growing problems with overburdened low-income obligors. The guideline percentages should be lowered to conform to the underlying economic studies, to take into account progressive income tax rates, to take into account rising personal saving rates, to share the cost offset the custodial parent receives from child-related tax benefits, and to mitigate the fact that under typical circumstances 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.

A summary note focuses on the fact that the intended purpose of the guideline must be that stated within federal regulation—to result in an economically appropriate presumptive award. To not meet the intended purposes raises both regulatory and constitutional questions.

I. Recommendation: Equalize the Set Aside Reserve for Both Parents.

The set aside of \$15,000 in annual income for only the custodial parent clearly violates the non-custodial parent's right to equal protection. Both parents should be required to provide financial support to their children on the same basis in regard to available income. Both parents are equally entitled to having income protected in order to meet each parent's own basic living needs. From an economic perspective, it is preferable to raise (create) the set aside for the non-custodial parent to equal that of the custodial parent. Establishing a set aside for the non-custodial parent while retaining the current set aside for the custodial parent both satisfies the needs for each parent having enough income to meet basic living needs. Establishing the set aside at equal levels eliminates the issue of equal protection being violated in this particular issue.

➤ **A self-support reserve should be created for the non-custodial parent for regulatory reasons.**

The state of Massachusetts agreed to comply with all federal regulations regarding child support in order to receive federal funding for child support enforcement programs. Subsequent to the enactment of the federal Family Support Act of 1988, states were required by federal regulation to include in the child support guideline a means of protecting obligor income needs for basic living needs as part of the formula. This was found in 45 CFR 302.53(a)(3) in 1988 and in subsequent years in which the state of Massachusetts submitted grant applications to the U.S. Department of Health and Human Services stating compliance with these regulations.

From the Code of Federal Regulations, October 1988, 45 CFR 302.53 is as follows:

§ 302.53 Formula for determining the amount of the obligation.

The State plan shall provide as follows:

(a) There shall be a formula to be utilized by the IV-D agency in determining the amount of the support obligation pursuant to § 302.50 when there is no court order covering the obligation. Such formula must take into consideration the following criteria:

(1) All earnings, income and resources of the absent parent including real and personal property;

(2) The earnings potential of the absent parent;

(3) The reasonable necessities of the absent parent;

(4) The ability of the absent parent to borrow;

(5) The needs of the child for whom the support is sought;

(6) The amount of assistance which would be paid to the child under the full standard of need of the State's IV-A plan;

(7) The existence of other dependents; and

(8) Other reasonable criteria which the State may choose to incorporate.

(b) The formula described in paragraph (a) of this section must be designed to insure, as a minimum, that the child for whom support is sought benefits from the income and resources of the absent parent on an equitable basis in comparison with any other minor children of the absent parent.

(c) The formula described in paragraph (a) of this section shall be utilized to determine the required monthly support obligation, the amount of support obligation arrearage, if any, and the amount to be paid periodically against such arrearage.

Massachusetts has received federal monies for claiming to comply with a federal regulation that it had not.

➤ **The Federal Medical Child Support Working Group Recommends a Self-Support Reserve Equal to 133 Percent of the Federal Poverty Level**

Recently, the U.S. Department of Health and Human Services established an expert panel to make recommendations on policy and procedure for implementing medical child support. Part of this group's analysis involved determining when an obligor was able to afford paying medical support. This involved determining a level of income for supporting basic needs of the obligor. The federal Medical Child Support Working Group (2000) recommended that specific to its task, that medical child support should not be imposed on the obligor in situations in which the obligor had less income than 133 percent of the federal poverty threshold. This is the dollar amount that

this group found to be that the appropriate level of obligor income that should be protected for basic living needs of the obligor. See “The Medical Child Support Working Group’s Report to the Honorable Donna E. Shalala, Secretary of Health and Human Services, and to the Honorable Alexis M. Herman, Secretary of Labor,” June 2000.

This recommendation was reached by a consensus of a broad range of representatives in and affected by child support regulations. Both the U.S. Department of Labor and the U.S. Department of Health and Human Services had a wide range of representatives on the working group. These included the Commissioner of the U.S. Office of Child Support Enforcement, State IV-D directors, human resource and payroll professionals (Society for Human Resource Management; American Payroll Association), plan administrators and plan sponsors of group health plans, members of child advocacy organizations (including the Children’s Defense Fund, the National Center for State Courts, and the National Women’s Law Center), and organizations representing state child support programs (National Child Support Enforcement Association).

➤ **Advocacy Groups for the Working Poor Find a Need for Protecting an Obligor’s Ability to Meet Self Support Needs**

There has been a recent surge in economic and policy literature on the adverse impact that presumptive child support guidelines have on low-income obligors. There is a growing consensus that child support burdens are excessive for low-income obligors. The inability of low-income obligors to meet both basic living needs and pay child support have led to a long list of bad public policy outcomes.

- From "Low-Income, Non-Residential Fathers: Off-Balance in a Competitive Economy, In Initial Analysis" by Kathryn Edin, Laura Lein, Timothy Nelson, September 28, 1998, report to Office of the Assistant Secretary for Planning and Evaluation, United States Department of Health and Human Services:

While critics of our welfare system want to see women emerge into economic "self-sufficiency," the goals for men in our society are even more economically demanding. Not only should they be economically self-sufficient, but they should be able to support the women and children in their households. One predominant view — that fathers of poor children are able but simply unwilling to pay — cannot currently be supported by evidence, since we know relatively little about fathers' true income and job stability, under what circumstances they feel obligated to pay, and what they consider their multiple responsibilities. Furstenberg (1992) suggests that poor fathers' failure to pay may be a result of "obligation overload." In other words, fathers' financial obligations to their families and others outstrip their earning capacity in the labor market.

- From "The Unnecessary Tragedy of Fatherless Children: Welfare Reform's opportunities for Reversing Public Policies That Drove Low-Income Fathers out of Their Children's Lives," by Margaret Stapleton, staff attorney with the National Clearinghouse for Legal Services, Chicago, IL:

In the face of the neglect of and hostility toward low-income men/fathers, the realization that their plight had massive adverse effects on the well-being of their children gradually

began to register with policymakers. Evidence that low-income men were kept at a distance from their children, whom they could not support financially, began to creep into testimony before Congress and other public discussions. In many cases, fathers were afraid or ashamed because of their poverty to support their children with time, attention, and affection.

So too did the realization that the disparaging term "deadbeat" was simply inappropriate when applied to many low-income fathers. As Elaine Sorenson, who has studied low-income noncustodial fathers extensively, points out, in the child support arena a distinction must be made between "able nonpayers" (noncustodial fathers who can afford to pay child support but do not) and "low-income nonpayers." The latter need employment-related services. Her research, based on data from the 1990 Survey of Income and Program Participation, revealed that three million noncustodial fathers were poor enough to qualify for food stamps themselves. Two-thirds of these fathers did not pay support and, when compared to noncustodial fathers who could afford to pay child support but did not, tended to be younger (half were under 30), less educated (half had not completed high school), and had less work experience (only 14 percent worked at all in the year studied) than the more well-off nonpayers.

- See "Income and Demographic Characteristics of Nonresident Fathers in 1993," June 2000, by Elaine Sorensen and Laura Wheaton of the Urban Institute. These authors note that during the past few years, research has shown that nonresident fathers, as a whole, can afford to pay more child support, but that a minority of them are poor and have limited ability to pay child support. The findings confirm that strengthening child support enforcement is warranted, but that poor fathers may need a different approach, one building on their capacity to pay child support.
- Massachusetts' presumptive awards push low-income obligors below the poverty level—creating an extraordinary burden. Such an extraordinary burden likely means that the presumptive guideline percentages are unconstitutional due to that issue alone.
- It has been established in case law that the child support award should leave the obligor with adequate income for the obligor's basic living needs. One landmark case on this issue is *Smith v. Smith*, 626 P.2d. 342 (Or 1981), as noted:

Yet the burden on the one paying support should not be so heavy as to preclude the ability to support oneself and one's other dependents. See *Hockema v. Hockema*, 18 Or App 273, 524 P2d 1238 (1974).
- Retaining the set aside and equalizing for both parents has important equity features over a policy decision to eliminate the set aside. It is important that both parents have a self support reserve. To not provide this for both parents will too often lead to minimum wage obligors being pushed below the poverty level—an extraordinary burden. Similarly, when an obligee's income is considered in the child support formula, the obligee should not be expected to support the children out of income needed for that parent's basic needs. Having a set aside for both parents redefines how the child support obligation is allocated between the two parents. The allocation formula would only look at shares of income above the self support reserve. The lower income parent will have a lower share of total available income

than of combined gross income inclusive of the self support reserve. The lower income parent receives greater protection with a self support reserve for both parents than in a situation in which neither parent has a self support reserve. This focus on available income above self support levels is economically appropriate and desirable in terms of equity.

II. Recommendation: Lower the Guideline Percentages to Conform to Actual Data on Child Costs

➤ Recommendation: Lower the Guideline Percentages to More Accurately Reflect Child Costs and to be Consistent with Underlying Studies

Massachusetts' child support guideline is a variation of percent of obligor-only guidelines originally established for use only in welfare cases and only with certain restrictions in the application of percentages recommended in underlying studies. However, Massachusetts' guideline does not comply with the underlying studies in several respects. Massachusetts' guideline percentages should be lowered to reflect the economic assumptions of economic studies underlying obligor-only guidelines.

Massachusetts' child support guideline—despite the “tacking on” of a custodial parent income adjustment—is a variation of the obligor-only guideline developed by the Institute for Research on Poverty at the University of Wisconsin in the late 1970s and early 1980s. If the custodial parent's income is held constant while the obligor's income varies, the guideline operates as a percentage of obligor-only income guideline. Just as a pure obligor-only guideline has after-tax percentages that rise a share of obligor income, so does Massachusetts' presumptive awards when custodial parent income is held constant. Such an outcome conflicts with the findings of all professional economic studies on child costs and consumer spending. Child cost percentages should decline as income rises for both the custodial parent and the non-custodial parent. With Massachusetts' presumptive award rising as a share of obligor net income, the presumptive award has a pattern that is opposite actual data on child costs as a share of obligor net income. These issues are discussed in more detail in “Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation,” *Family Law Quarterly*, Spring 1999, 135-156, American Bar Association 1999 Child Support Symposium, by R. Mark Rogers.

- ◆ Massachusetts' guideline is dramatically above the “starting point” specified in the underlying study.

Massachusetts' guideline is particularly burdensome on obligors since these percentages are dramatically above the percentages that the underlying study recommends for low-income situations. Obligor-only guidelines were designed specifically for welfare situations and only were to be applied with specific constraints and adjustments to the presumptive percentage. It is from the recommended “starting point” (percentages) that adjustments should be made for custodial parent income.

These issues are discussed in:

“On Measuring the Cost of Children,” Child Support: Technical Papers, Volume III, SR32C, Institute for Research on Poverty, Special Report Series, University of Wisconsin, Jacques Van der Gaag. pp. 1-44, 1982, p. 21.

“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, Institute for Research on Poverty, University of Wisconsin-Madison, pp. 143-144.

The original percentages for obligor-only guidelines were implemented initially in Wisconsin with the assumption that the custodial parent had no earned income. The percentages implemented originally for welfare cases were:

<u>Number of Children</u>	<u>Percentage of Obligor’s <i>Gross</i> Income</u>
1	17 percent
2	25 percent
3	29 percent
4	31 percent
5 or more	34 percent.

Massachusetts’ guideline percentages are substantially higher and have no underlying economic study to validate the use of current percentages.

- ◆ Custodial parent income adjustments should be applied to the lower percentages as indicated by the Wisconsin studies—not the higher percentages arbitrarily imposed in Massachusetts.

The following discussion applies to the lower percentages of the Wisconsin guideline. The original guidelines that were advisory in nature were intended to provide guidelines for family income to be contributed for child support. Specifically, in the study, the guideline percentages were in reference to percentages to be applied to family income. Both parents were intended to pay to support the children.

The originally intended implementation of Wisconsin-style guidelines was most clearly described in a memorandum by the Secretary of Wisconsin’s Department of Health and Social Services upon the initial use of these guidelines in an advisory capacity in 1983 as allowed by 1983 Wisconsin Act 27 (in contrast to a later rebuttable presumption). The following referenced “standard” is the guideline percentages then in effect and continuing to this day in Wisconsin as a rebuttable presumption for child support obligations. The memorandum was a set of instructions to the Wisconsin judiciary on how to apply the advisory guidelines.

The standard determines the amount both parents are expected to contribute to their child’s care. Therefore, if a child is in the physical care of someone other than a parent, the standard may be used to determine the amount each of the parents are ordered to pay [emphasis is original]. Similarly, if both parents continue to provide care, as in shared physical custody cases, the court may find that the gross income available for child support payments of the parents is proportionately reduced, and that the obligation of one is set-off, all or in part, by the obligation of the other. For example, if parents provide

monthly alternating residential care, and each parent has the same gross income, the court may find that no child support should be paid by either parent. If one of the parents had twice the others earnings, the court could apply the standard to one-half that parent's earnings.¹

The excessive burden of Wisconsin-style guidelines derives not only from the fact that these guidelines were extended beyond the original welfare circumstances but also because the original constraining conditions were left out. The original concepts underlying Wisconsin's child support guidelines, based on academic recommendations, were: (1) to exempt income for basic necessities, (2) to require the custodial parent to pay for any difference between guaranteed welfare benefits and what the non-custodial parent could pay, and (3) to cap the benefits at a low level so that the "tax" was regressive (declining percentages) for the obligor. These guidelines were *never* intended by those conducting the *original* studies to apply to anything other than low-income situations *and* with these additional restrictions. Both parents' incomes also were to be part of the child support formula.²

These "constraints" are further elaborated in: Ada Skyles and Sherwood K. Zink, "Child Support in Wisconsin: Income Sharing as a Standard of Law," paper presented at the Women's Legal Defense Fund Conference at The Aspen Institute, September 15-17, 1986, at 4; 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. See also *Improving Child Support Practice*, Robert G. Williams, *Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches*, I *Improving Child Support Practice* (1986), at I-221; Institute for Research on Poverty, University of Wisconsin-Madison, *Documentation of the Methodology Underlying the Cost Estimates of the Wisconsin Child Support Program*, III Child Support: Technical Papers SR32C, 143-144, (Special Report Series 1982); and ; Institute for Research on Poverty, University of Wisconsin-Madison, II Child Support: A Demonstration of the Wisconsin Child Support Reform Program and Issue Papers SR32B (Special Report Series 1981), at 51.

➤ **Recommendation: Lower the Guideline Percentages to More Accurately Reflect Sharply Rising Marginal Tax Rates for Obligor**

The underlying economic studies for obligor-only guidelines for which Massachusetts' child support guideline is largely based assumed that the obligor paid little or no income tax. The guideline percentages—on a gross income basis—were intended to be used for only for welfare situations. The percentages also were limited to a ceiling such that recovery of the welfare payments to the custodial parent was the limiting factor. The economists making the recommendations never envisioned such presumptive percentages for gross income to be applied beyond welfare situations in which the obligor would have child support taken out of a shrinking share of net income.

¹ 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.

² See Rogers, R. Mark. "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, Spring 1999, p. 148.

The sharply rising marginal income tax rates for obligors (filing as “single” tax payers) can be seen in the table showing Schedule X and Schedule Z, 2000 1040, Forms and Instructions, Department of the Treasury, page 71.

Table 1.

<u>Schedule X—Use if your filing status is Single</u>			
If the amount On Form 1040, Line 39, is” Over --	But not over--	Enter on Form 1040, line 40	of the amount over--
\$0	\$26,250 15%	\$0
26,250	63,550	\$3,937.50 + 28%	26,250
63,550	132,600	14,381.50 + 31%	63,550
132,600	288,350	35,787.00 + 36%	132,600
288,350	-----	91,857.00 + 39.6%	288,350
<u>Schedule Z—Use if your filing status is Head of household</u>			
If the amount On Form 1040, Line 39, is” Over --	But not over--	Enter on Form 1040, line 40	of the amount over--
\$0	\$35,150 15%	\$0
35,150	90,800	\$5,272.50 + 28%	35,150
90,800	147,050	20,854.50 + 31%	90,800
147,050	288,350	38,292.00 + 36%	147,050
288,350	-----	89,160.00 + 39.6%	288,350
Source: "2000 Tax Rate Schedules," p. 71, 2000 Federal Form 1040			

➤ **Recommendation: Lower the Guideline Percentages to More Accurately Reflect Rising Personal Saving Rates for Obligor**

Modern economic theory has been developed over for perhaps the past 150 years. Over the past 100 years, theory of consumer behavior has been a fundamental focus of economic analysis and certain tenets have become key to understanding and analyzing consumer behavior. Certain fundamentals of consumer behavior have become accepted by both liberal and conservative economists alike based both on accepted theory and respected empirical analysis. A renowned

macroeconomic theorist and educator of the 1960s and 1970s, Gardner Ackley, succinctly describes these key facets of consumer spending behavior.

At various times over the past 100 years, and in various countries, comparative studies have been made of family budgets. For a group or “cross-section” of families at a given time, data have been collected regarding size and disposition of income. ... These data also ordinarily reveal the *total expenditures* [emphasis added is original] on all objects (or the savings) of the families covered by the study. Almost without exception budget studies show a relationship between family income and total family consumption like that which Keynes postulated for the total economy: low-income families typically dis-save; high-income families typically spend less than income. As one moves along the distribution from lower to higher incomes, average consumption rises, but by less than income; and the higher the income the less the rise in consumption from a further increment of income. The MPC [marginal propensity to consume—the tendency of consumers to consume a given proportion out of *additional* income] is positive, less than one, and declines as income rises.³

In a nutshell, low-income families do not have enough income to cover expenses without public assistance. Second, as income rises, the percentage of the additional income that is spent declines, leading to a decline in the average of total income that is spent as income rises. Other economists corroborate these findings.

One of the most extensive reviews of studies of household spending patterns was made by the economist, H. S. Houthakker. His review covered 40 surveys from 30 countries. His summary strongly endorses modern theory of consumer behavior which began over 100 years ago, starting out as what is known to economists as “Engel’s Law.”

Few dates in the history of econometrics are more significant than 1857. In that year Ernst Engel (1821-1896) published a study on the conditions of production and consumption in the Kingdom of Saxony, in which he formulated an empirical law concerning the relation between income and expenditure on food. Engel’s law as it has since become known, states that the proportion of income spent on food declines as income rises. Its original statement was mainly based on an examination of about two hundred budgets of Belgian laborers collected by Ducpétiaux. Since that date the law has been found to hold in many other budget surveys; similar laws have also been formulated for other items of expenditure.⁴

Engel’s law as extended to overall consumer spending has been embraced by mainstream economists across the political spectrum. A laissez-faire economist, Milton Friedman, in one of his historic tomes, describes and endorses the basics of the theory of consumer behavior espoused by the liberal economist who founded a branch of modern behavioral economics known as Keynesianism:

³ Gardner Ackley, *Macroeconomic Theory*, The Macmillan Company, New York, Collier-Macmillan International Edition, Third Printing, 1973, p. 221.

⁴ H. S. Houthakker. “An International Comparison of Household Expenditure Patterns, Commemorating the Centenary of Engel’s Law,” *Econometrica*, 25 (October 1957), pp. 532-551, p. 532.

The relation between aggregate consumption or aggregate savings and aggregate income, generally termed the consumption function, has occupied a major role in economic thinking ever since Keynes made it a keystone of his theoretical structure in *The General Theory*. Keynes took it for granted that current consumption expenditure is a highly dependable and stable function of current income—that “the amount of aggregate consumption mainly depends on the amount of income (both measured in terms of wage units).” He termed it a “fundamental psychological rule of any modern community that, when its real income is increased, it will not increase its consumption by an equal *absolute* amount,” and stated somewhat less definitely that “as a rule, . . . a greater *proportion* of income . . . (is) saved as real income increases.”⁵

Friedman continues in his book to review his and other economists’ empirical work to expound how consumer spending as a proportion of income declines as income rises as a result of an increased saving rate as disposable income rises.

Recent child cost studies confirm the pattern of consumer spending as developed by mainstream economists. In a 1984 study, Thomas J. Espenshade confirmed the basic pattern that household spending on children rises in absolute dollars as net income rises but declines as a share of net income as net income rises. However, Espenshade used an “Engel estimator” for his methodology and his estimates are generally viewed as too high due to methodology biases. More recently, see “Technical Report: The Costs of Raising Children,” the Joint Legislative Audit and Review Commission (JLARC), Virginia General Assembly, November 7, 2000.

The progressive nature of federal (and some state) income taxes necessarily means that personal consumption as a share of gross income must decline as gross income rises. The rising share of gross income that must by law be allocated to taxes reduces the share of gross income available for personal consumption—although the level of consumer spending continues to rise. But what do economic data tell us about consumer spending as a share of after-tax or net income and what are the implications for child cost patterns as related to a share of net income? Because consumers can do three things with income—pay taxes, spend, and save—once taxes have been paid first as a legal mandate, any description of after-tax spending patterns necessarily describes household saving behavior and vice-versa.

These issues are important for child support cost estimates. Data have shown that consumers spend a declining proportion of before-tax income as income rises—indicating that child support guidelines that based presumptive awards on fixed percentages of gross income go against basic economic fact. The issue of after-tax consumption patterns is important because some Wisconsin-style states base child support using fixed percentages applied to after-tax income. Do these schemes go against established economic facts?

For over 100 years, mainstream economic studies on consumer saving have produced consistent results that household saving rises as a share of income as income rises.

⁵ Milton Friedman. *A Theory of the Consumption Function*, Princeton University Press, Princeton, New Jersey, 1957, p. 3.

The first large-scale surveys in this country, Carroll Wright's studies of selected wage-earner groups from 1887 to 1889 and the much wider sample of families in 1901, verified Engel's law of nourishment and posed the problem of saving. From the standpoint of the consumer, two major alternative uses existed for income: consumption and saving. At low-income levels, families had to use most or all of their income in order to obtain the "necessities of life"—those meager living conditions deplored by social workers. At higher-income levels, the "essentials" of food, shelter, and clothing were more easily come by. Although dollar expenditures on these consumption *categories* [emphasis is original] were larger in every larger-income class, they represented a smaller *percentage* of income at higher-income levels than at lower-income levels. Hence, either "sundries" or savings or both absorbed larger shares of income from upper-income families than from lower-income families.⁶

What did some of the earlier studies find regarding personal saving behavior and were the differences in personal saving significant at different levels of income? One of the more notable historical studies was entitled, "Family Saving and Income, by Income Class, Nonfarm Families, 1935-36," published by Dorothy S. Brady. With family saving rates ranging from minus 69 percent to plus 25 percent as shown in Table 2, it is quite clear that there are dramatic differences in saving rates by income class. In turn, personal spending as a share of after-tax income necessarily declines.

In the Table 2, this paper's author converts the 1935-36 dollar values into 2000 dollar values using consumer price indexes. However, this is for perspective of the 1935-36 saving rates and not intended as estimates of current saving rates. Mainstream economics continues to acknowledge that personal saving rates rise with income but that economy-wide saving rate patterns drift over time.

This drift in saving rates was noted with a large-scale review of studies by famed economist, Simon Kuznets in *Shares of Upper Income Groups in Income and Savings*, National Bureau of Economic Research, Inc., New York, New York, 1953. Basically, personal saving rates vary by current dollar income, according to current dollar family income above basic levels of subsistence, and more complex factors such as changes in the financial structure of the economy (availability of credit to replace the need for saving). Essentially, as shown in Table 4 Kuznets scaled the saving rates from different studies according to income levels relative to a study's average income level per consuming unit as well as by household unit. This re-scaling of the data meant that he could compare the relative levels of saving rates by income class over a very extended time frame. Kuznet's results were that saving rates rise notably as income rises with the implication that after-tax consumption declines as a share of income as after-tax income rises. The implication is that child costs, too, decline as a share of after-tax income.

⁶ Carolyn Shaw Bell. *Consumer Choice in the American Economy*, Random House, New York, 1967, p. 38.

Table 2.

**Family Saving and Income, by Income Class,
 Nonfarm Families, 1935-36**

<u>Average Income Class</u>	<u>Average Income</u>	<u>Average Saving</u>		
		<u>Expenditures</u>	<u>Dollars</u>	<u>Per Cent</u>
Under \$500	\$ 292	\$ 493	-201	-69
500-999	730	802	-72	-10
1,000-1,499	1,176	1,196	-20	-2
1,500-1,999	1,636	1,598	38	2
2,000-2,999	2,292	2,124	168	7
3,000-3,999	3,243	2,814	429	13
4,000-4,999	4,207	3,467	740	18
5,000-10,000	6,598	4,950	1,648	25

Levels Converted to Year 2000 Dollars

**Family Saving and Income, by Income Class,
 Nonfarm Families, 1935-36**

<u>Income Class*</u>	<u>Average Income</u>	<u>Average Expenditures</u>	<u>Average Saving</u>	
			<u>Dollars</u>	<u>Per Cent</u>
Under \$6,199	\$ 3,644	\$ 6,152	-2,508	-69
6,200-12,499	9,109	10,008	-898	-10
12,500-18,699	14,674	14,924	-250	-2
18,700-24,999	20,414	19,940	474	2
25,000-37,399	28,600	26,504	2,096	7
37,400-49,899	40,467	35,114	5,353	13
49,900-62,399	52,496	43,262	9,234	18
62,400-124,800	82,332	61,767	20,564	25

*Income levels are rounded to the nearest hundred since the low dollar levels in 1935-36 and the relatively high inflation adjustment factor leave "gaps" between 2000 dollar income classes otherwise. 1935-36 income class values are revalued in 2000 dollars using the Bureau of Labor Statistics' CPI-U annual averages.

Source: Carolyn Shaw Bell, *Consumer Choice in the American Economy* (New York: Random House, 1967), p. 45; original source: Dorothy S. Brady, "Family Saving, 1888 to 1950," *A Study of Saving in the United States* (Princeton, N.J.: Princeton University Press, 1956), Vol. III, p. 183.

- **Recommendation: Lower the Guideline Percentages to Offset the Effect of the Current Percentages that Custodial Parents in Typical Cases End Up with a Substantially Higher Standard of Living than the Non-custodial Parent Even When the Non-custodial Parent Grosses Significantly More than the Custodial Parent**

A recent study of obligor-only guidelines showed that when comparisons were made between custodial parent and non-custodial parent incomes on an after-tax, after-child support basis, that in typical income situations (the custodial parent earns as little as 70 percent of the non-custodial parent's gross income), that the custodial parent generally ends up with the higher standard of living presumptively.⁷ Essentially, these types of guidelines were never intended to be applied to non-welfare cases and transfer very large amounts of alimony from the non-custodial parent in the guise of child support. This standard of living transfer occurs both because the percentages exceed actual spending patterns on children and because the differential tax treatment for the two parents is ignored. Massachusetts' guideline percentages are higher than the percentages examined in this study and have even greater impact in terms of creating an unbalanced sharing of the child cost responsibility.

SUMMARY RECOMMENDATIONS

- **1) Equalize the Set Aside for Both Parents and 2) Lower the Guideline Percentages Because the Guideline Does Not Result in Economically Appropriate Presumptive Awards, Violating the Intended Purpose of the Guideline as Defined in Federal Regulations**

This memorandum has sketched a number of economic facts that clearly shows that Massachusetts' child support guideline does not result in economically appropriate presumptive awards. Yet, the intended purpose of the guideline is to do exactly that. This intended purpose is found in federal regulations related to federal funding of state child support enforcement programs—specifically 45 CFR 302.56. Because the guideline does not meet its intended purpose, because the guideline does not treat similarly situated parents equally, and because the guideline creates extraordinary benefits and extraordinary burdens, the guideline appears to not meet constitutional standards. For discussion of the elements of a guideline procedure that passes constitutional muster, see *Meltzer v. Witsberger*, 480 A.2d 991 (Pa. 1984) and *Conway v. Dana*, 318 A.2d 324 (Pa. 1985). Similarly, the basis for an appropriate, economics based award was delineated in *Smith v. Smith*, 626 P.2d 342 (Or. 1980).

Related to the issue of economic appropriateness, it is important to note that Massachusetts' child support guideline is promulgated in a non-statutory manner—it is promulgated administratively. Because the guideline is promulgated to comply with federal regulations, the promulgation must conform to the federal Administrative Procedure Act. Case law specifically states that a promulgated rule must have prior factual basis and must not be arbitrary.

⁷ See Rogers, R. Mark. "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, Spring 1999, p. 148.

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