

THE REPORT OF THE
GUIDELINES COMMITTEE
TO THE
GOVERNOR'S COMMISSION
ON
CHILD SUPPORT

October, 1985

Preface

The Report of the Guidelines Committee to the Governors Commission on Child Support represents the Guidelines Committee Consensus recommendation for guidelines for setting child support orders for Massachusetts.

The Child Support Commission reviewed the Committee's report, which was based on extensive research and deliberation, and adopted in full its recommendations set forth in the section entitled "Objectives of Guidelines." Child support guidelines will be promulgated by a committee chaired by the Chief Administrative Justice of the Trial Court and composed of members of the judiciary appointed by the Chief Administrative Justice of the Trial Court and members of the Child Support Commission and others appointed by the Governor.

The Guidelines Committee offers its report as a framework to focus the further dialogue on the objectives and content of child support guidelines, and remains receptive to comment and recommendations from others.

Several areas have been identified for further review. Because under current federal tax law child support payments can no longer be included with alimony and thereby deducted from the obligor's income, the Committee is considering equitable methods for addressing the tax consequences for the parties. The Committee is also considering an adjustment in the percentage amounts when the combined income of both parents exceeds \$75,000, and where consistent with the overall objectives of child support policy. Finally, other areas for further clarification include planning for higher education, upper income cases, and specification of cases that fall outside guidelines

Chairperson

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Guidelines Committee
Governor's Commission on
Child Support

REPORT OF THE GUIDELINES COMMITTEE
TO THE GOVERNOR'S CHILD SUPPORT COMMISSION

The Child Support Enforcement Amendments of 1984 (P.L. 98-378) require each state to establish child support guidelines, to be made available by October 1, 1987 to all judges and other officials who set child support amounts for separation, divorce and paternity cases. The guidelines must be based on "specific descriptive and numeric criteria and result in a computation of the support obligation" (45 CFR 302.56). In other words, the guidelines must be a quantitative formula based on such factors as income of the parents and number of children, rather than a list of discretionary criteria for consideration by the adjudicator.

One of the charges of the Governor's Commission on Child Support is to analyze and recommend guidelines which may then be implemented by law or by judicial or administrative action. The Guidelines Committee was composed of the following members of the Child Support Commission: Marilyn Ray Smith, Chairperson, family law practitioner; Charles Atkins, Commissioner, Department of Public Welfare; Representative Kevin P. Blanchette; Joseph Gallant, Associate Commissioner, Department of Public Welfare; Honorable Theodore A. Glynn, Chief Administrative Justice, Boston Municipal Court; Mary Haskell, family law practitioner; Ruth-Arlene Howe, Professor of Law, Boston College Law School; John Laramore, legal services attorney; Honorable Arthur Mason, Chief Administrative Justice, Trial Court; and William O'Malley, District Attorney, Plymouth County.

The Committee's work progressed through an evaluation of the need for guidelines, a determination by the Committee of the appropriate social and administrative policy objectives of guidelines, an analysis of the various theoretical bases for determining child support awards, a review of guidelines from other jurisdictions, and finally, a consideration of the numerous factors included in the cost of raising children.

The Need for Guidelines

Lack of uniformity for similarly situated families and inadequate awards which do not meet the true cost of child rearing are the two major problems in child support practice which guidelines address.

Lack of uniformity and subjectivity in setting child support awards on a case-by-case basis foster in obligors a perception of unfair treatment by the courts which in turn discourages payment. Inconsistency between courts leads to forum shopping; in Massachusetts it is widely believed that the probate courts order higher awards than the district courts, and even within a single division of the probate court, knowledgeable attorneys seek out individual judges who are more likely to be favorable to the interests of a particular client (Laramore). Finally, the predictability resulting from guidelines promotes settlement and reduces conflict in already highly emotionally charged divorce and paternity cases, to the benefit of both the parties and the courts.

Current economic research indicates that the cost of children has been vastly understated in the setting of child support awards. Economic analysis of government sponsored surveys of family expenditures shows that a medium income intact family with two children spends an average of \$763 per month (in 1981 prices) on those two children from birth to the age of 18 for such expenses as housing, food, transportation, clothing, healthcare and recreation (Espenshade). Yet according to the Census Bureau report, the average child support award for 1981 was \$171 per month, which is 40% below the 1981 poverty level for two children (\$280 per month) and only one-fourth of the \$763 per month amount a middle income intact family spends on its children (Williams).

The committee reviewed studies which further document the dramatic decline in children's standard of living upon divorce, while the standard of living of their absent parent actually improves. A study of divorced families in California found that the standard of living of the custodial parent and children one year after divorce had declined by 73% from the pre-divorce level, while that of the noncustodial parent had gone up by 42% (Weitzman). Similar results were reported in Michigan where after the divorce of 90% of the fathers lived above the BLS Lower Standard Budget as compared to only 3% of the mothers and

children, if the mother tried to live on child support alone (Chambers). Even if a father pays one-third of his gross income in child support, he is better off financially than before divorce because of the decreased needs of his smaller household. The needs of the children's household decrease only slightly in his absence, yet there will be up to a two thirds decrease in the resources to meet those needs unless the mother is able to make a significant additional financial contribution.

Other statistics support these findings. Over half of those living below the federally defined poverty levels are female-headed families. According to the U.S. Office of Child Support Enforcement, 87% of those receiving Aid to Families with Dependent Children do so because of inadequate child support, at an annual national cost of between \$20 to \$30 billion per year. The figures in Massachusetts, even during periods of high employment, reflect this nationwide trend that mothers and children constitute the fastest growing group of people in poverty (Harrington). According to 1980 Census data for Massachusetts, the median income for a female householder with children under age eighteen was less than one third (\$7,393) of that of a comparable married couple family (\$23,833), while the median income of a female householder with children under the age of six was only 23% (\$4,588) of that of the married couple counterpart (\$20,366). For most of these families, child support, at its best, can mean the difference between living below the poverty line and living at a very modest standard of living somewhat above it (Chambers). The Committee's own analysis of the relative standards of living of the two households after payment of taxes and child support confirmed the results of these empirical studies.

Objectives of Guidelines

Before developing a set of guidelines, the Committee sought to establish an objective basis for child support awards grounded on economic, legal, and social theory, and began by defining underlying social and administrative objectives against which to evaluate a proposed formula. It reached consensus on the following principles:

1. The economic impact on the child of family break-up should be minimized whenever possible. The Committee used as its guidepost the situation that the child

would be in, and the resources available to him or her, had the family been intact.

2. Both parents should share responsibility for supporting their children, in proportion to their income.
3. Child support should meet a child's survival needs in the first instance, but to the extent either parent enjoys a higher standard of living, the child is entitled to share that higher standard.
4. Child support should be structured to accommodate the subsistence needs of parents at the low end of the income range, but should always require at least a token payment. This payment helps maintain a psychological bond between absent parent and child, establishes a pattern of regular payment, to be increased when income goes up, and enables the enforcement agency to maintain contact with the obligor.
5. The guidelines should avoid creating adverse effects on other life decisions of the parents. The scope of the child support obligation should be predictable so that both parents can plan other parts of their lives accordingly. Second families, whether providing additional resources from a current spouse or creating new obligations for new dependents, should not affect pre-existing child support obligations.
6. The guidelines should take into account the non-monetary contributions of the custodial parent, such as time, services and opportunity costs. Mindful of the double loss that children often suffer upon divorce when one parent leaves the home and the other parent is less available because of increased financial demands, the Committee concluded that the formula should not explicitly impute income to a custodial parent who did not work out of consideration for the best interests of the children.
7. The guidelines should be simple-easy to prove for the parties and easy to administer for the courts. Recognizing that subtlety would undoubtedly be sacrificed in some individual cases, the Committee

nevertheless concluded that the benefits of simplicity in reducing opportunities for manipulating evidence and prolonging litigation outweighed its drawbacks.

8. The guidelines should reach most cases, again acknowledging the need for flexibility in the treatment of cases with unique circumstances. (Cases outside the guidelines are discussed in greater detail below.)

Types of Formula

Having established its operative principles, the Committee then turned to a consideration of the types of formulas in use in other jurisdictions or developed by child support experts, as well as those unofficially in use in Massachusetts. Guidelines from other jurisdictions includes those from Wisconsin, Michigan, Delaware, Washington, California, Minnesota, Oregon and several counties in a variety of states. Guidelines proposed by child support experts included works of Judith Cassetty, Isabel V. Sawhill, Robert G. Williams, Phillip Eden and Florence T. Hall. Massachusetts examples included the chart for voluntary agreements used by the Department of Public Welfare (sliding scale percentage of net income based on number of children, with 30%, 35%, 40%, 45%, and 50% for 1 to 5 or more children); standards proposed by a district court committee on non-support (one-third of gross income as starting point); and an article published by the Honorable Edward M. Ginsberg, Justice of the Middlesex Probate Court (undifferentiated alimony and child support as percentage of gross income based on number of children, with 34%, 36%, 38% and 40% of gross income for 1 to 4 or more children).

There are three basic formulas or combinations thereof, generally characterized as "income equalization," "cost sharing" and "income sharing" (Williams).

Income equalization aims at reducing equally the standard of living of all family members as one household separates into two, typically with the custodial parents and children in one household and the noncustodial parent in another. (Approximately 90% of the children in single-headed families reside primarily with their mother).

Various formulas have different methods of calculation, but in essence the combined incomes of the two units are reallocated so that the net income of each unit nears the same ratio to a recognized measure of standard of living for that size unit, such as the federal poverty level. For example, if the pre-divorce income of a family of four was \$22,000, its standard of living would be about twice the poverty level, which for 1985 is \$10,650. After divorce, income would be reallocated so that the custodial parent and two children receive \$13,800, which is 1.6 times the poverty level for three (\$8,850), while the non-custodial parent receives \$8,200, which is 1.6 times the poverty level for one (\$5,250). The standard of living of both households would be reduced equally, from two times the poverty level to 1.6 times the poverty level for that size family unit. If the noncustodial parent is the only wage earner, this transfer represents 63% of his gross income. If each parent earns \$11,000, the transfer becomes \$2,800, or 25% of his gross income, again so that the custodial parent and two children receive \$13,800, leaving the noncustodial parent with \$8,200.

The most appealing aspect of this approach is that all family members suffer equally from the economic burdens of divorce, thereby addressing the phenomenon described above where typically only the custodial parent and children experience a decline in living standards. The Committee rejected this approach, however, finding that the potential range of transfers for a single obligor was too extreme. The formula undermines the incentive of both parents to work to reasonable capacity. For the custodial parent, every dollar earned will cause a reduction in child support. For the noncustodial parent, the child support amount is tied directly to the income of the custodial parent, and in cases where her earnings are limited, the child support obligation is potentially quite burdensome. Another result is that two noncustodial parents with the same income and same number of children would have dramatically different child support obligations because of the differences in the custodial parent's income. Finally, it implicitly includes alimony and prolongs the economic entanglement of the parents, requiring adjustments not only as income of the parents changes but also as family composition changes as either party enters subsequent marriages.

The cost sharing approach focuses on the cost of the child, based on either a minimum standard of living or on a review of actual expenses associated with the child, with the dollar amount then apportioned between the parents according to income. For example, if the cost of two children were determined to be \$700 per month and the custodial parent made \$500 per month while the noncustodial parent made \$1,500 per month, the latter's child support obligation would be \$525 per month. Because the noncustodial parent's income is three times that of the custodial parent, his child support payments amounts to 75% of the total cost of the children.

Because it ran counter to several of the principles initially established by the Committee, the Committee also rejected this approach. First a minimum subsistence amount does not permit the child to share in the parent's standard of living. Second, proof of itemized household expenses associated with children will generate conflict over whether a child "needs" a particular expenditure and will require adjudication on a case-by-case basis and therefore does not promote uniformity and predictability. Finally, as shown below, the cost of children beyond the survival level is actually a function of available economic resources rather than an amount that can be determined in the abstract.

In the income sharing approach, parents commit a set percentage of their income to child support on the premise that children should receive the same proportion of parental income that they would have received had the family remained intact. Economic studies of expenditures in intact families find that although the dollar amount spent on children increases as parental income increases, the percentage of family expenditures devoted to children remains remarkably constant across a wide range of income levels, and that that percentage varies primarily with the number of children (Espenshade).

The Committee preferred this approach over the others for a variety of reasons. First, the approach is based on empirical data and has a sound social, economic and legal foundation. By taking a percentage of income of both parents, it aims to preserve the level of expenditures that would have been devoted to children in an intact family as joint resources are pooled. The economic impact on children of divorce on nonmarriage is therefore minimized. A percentage of income formula is simple to calculate and

provides predictability as both parents can readily determine their respective child support obligations and plan other parts of their lives accordingly.

Members of the Guidelines Committee reviewed studies on the cost of children by economists Philip Eden, Carolyn S. Edwards, Jaques van der Gaag, Robert G. Williams and Thomas J Espenshade, all of which concluded that the cost of children is a function of parental income. Although there was some variation among these analyses in data bases and methodology, the results were similar. The Committee decided that Espenshade's work was the most comprehensive, up-to-date, reliable and in a form most usable for the Committee's purposes.

Using the most recent and comprehensive consumer expenditures survey conducted by the U.S. Department of Agriculture and the Bureau of Labor Statistics updated in 1981 prices, Espenshade looked at such variables as income, education and occupation of the parents, employment status of the mother, number and age of the children, race, region of the country, urban or nonurban residence, and a breakdown of expenditure categories. By comparing standards of living of families with different compositions and incomes, Espenshade was able to isolate the household expenditures devoted to children. For example, he found that a family with two children, a medium socio-economic status and a wife who worked part-time is likely to spend \$82,400 (in 1981 prices) to rear each child to age 18 (these costs do not include higher education), while families with one child, a full-time working wife and a high socio-economic status can be expected to spend as much as \$135,700 from the child's birth to age 18. By contrast, a family with three children, a low socio-economic status and a wife who does not work for pay would commit an average of \$58,000 per child to age 18.

Espenshade found, however, that even though the dollar amount changes as parental income changes, the percentage of expenditures devoted to children remains remarkably constant across a wide range of income levels, and that the most important variable is the number of children in the family. This and other research indicates that the economies of scale resulting from having several children are less than is widely assumed, with total savings of only 5 to 10 percent of expenditures on the previous child when all 18 years are combined (Espenshade).

Thus, families with one child devote approximately 30% of their expenditures to that child, while the percentage of child-related expenditures rises to 40-45% in families with two children and to nearly 50% in families with three children.

There are persuasive arguments that relying on the cost of children in intact families continues to underestimate the true cost of children in divorce. The surveys underestimate daycare costs. Moreover, there are additional costs associated with maintaining children in two households, such as extra travel, clothes, toys, and equipment. The custodial parent also incurs additional household expenses to compensate for the non-monetary services previously performed by the absent parent, such as babysitting and routine household chores and maintenance (Bruch).

The Committee nevertheless used Espenshade's figures as the basis for its formula. The financial contribution of the absent parent to the children would be similar to that in an intact family. This approach does not ensure that the child's standard of living is not reduced, however, for without a significant contribution by the custodial parent, the overall household income is drastically reduced. Nor does it address issues of spousal support and compensation for non-monetary services or opportunity costs for employment opportunities foregone by the custodial parent as a result of child rearing.

Having selected a formula based on percentage of parental income and number of children, the Committee turned to a consideration of various factors to be included or excluded in determining the final percentages.

Income Base. The first factor to be considered was what income base should be used: gross, adjusted gross, or net and what deductions would be used to obtain net. Committee members expressed strong support for using gross income as the income base. Gross income is already widely used in Massachusetts as a basis for calculating child support awards. Most importantly, it is more easily determined than net income and subject to fewer opportunities for manipulation. Simplicity in proof and administration was a Committee priority.

The Committee adjusted Espenshade's figures to 24%, 34%, 40% and 44% for one to four children.

Tax Treatment. Formerly, child support was often designated as undifferentiated alimony and child support because of favorable tax treatment to the obligor. Because such designation is more difficult under recent federal tax law, the Committee has assumed that the payments were child support. The Committee concluded that changes in the tax law that might be disadvantageous to the obligor should nevertheless not affect the size of child support awards. Expenditures on behalf of a child in an intact family are made with after-tax dollars. To the extent possible under current federal and state laws, however, parties may, by agreement and upon approval of the adjudicator, designate the payments or portion thereof as alimony so long as the net benefits to the children's household are the same.

Definition of Income. Gross income was defined as all income from any source, whether earned or unearned, including wages, salary, interest, dividends, net rental income, self-employment income, alimony, business profits, pensions, bonuses, and payments from any government programs (except public assistance), such as workers compensation, unemployment benefits, veterans' administration benefits, disability, etc. Income of the self-employed includes income from business operations and rental properties, less reasonable expenses. Depreciation, home offices and excessive promotional, travel and car expenses should not be considered reasonable expenses.

As for overtime and second jobs, the Committee recommends including income from those sources at a rate of 50% to 67% depending on such circumstances as work history (if such extra work was a pre-divorce pattern, include it at the higher percentage; if taken after divorce to meet other obligations of the obligor, include it at the lower percentage).

In circumstances where an obligor is voluntarily underemployed or unemployed, earning capacity should be imputed based on employment potential and probable earnings as derived from recent work history, occupational qualifications and prevailing earnings for persons of similar backgrounds in the community. Imputation of earnings in such cases is a clearly established legal principle in Massachusetts. In addition, the Committee determined that non-performing assets should have earnings imputed at current Treasury bill rates. Such non-performing assets would include vacation homes, idle land or extensive art or other collections, but not a primary residence,

automobile or reasonable personal belongings or home furnishings. The purpose here is to discourage a parent from placing assets into non-income producing assets for the purpose of avoiding child support obligations.

Age of Children. Research on the cost of children indicates that older children cost significantly more than younger children (Espenshade, Eden, Edwards). Espenshade reports that nearly 75% of the total expenditures occur when the child is between the age of 6 and 17, and that the cost of a teenager is approximately 50% more than the cost of a child under the age of 6. Although it is possible to construct a formula with a sliding percentage scale to take into account the higher costs for older children, the Committee decided not to do so, preferring to keep the formula simple. The additional expenses of older children can be met by periodically updating child support awards in response to the expected increased income both parents would typically experience as careers and earning capacity develop. In addition, the custodial parent with older children would typically be able to commit more time to the workplace while incurring lower day care costs, and therefore meet part of this additional expense. Finally, the decision not to increase the noncustodial parents percentage of income obligation for child support in response to the higher costs of older children weighed heavily in the decision not to decrease the noncustodial parent's child support obligation in relation to the custodial parent's income, as discussed further below.

Day Care. Formulas in many jurisdictions treat work-related day care expenses outside the basic calculation by apportioning them between the parents on the basis of income in addition to the percentage of income child support obligation. Day care expenses are highly variable depending on the number and ages of the children, the time of day and hours worked, and the varying quality and cost of care available in different communities. Such separate treatment is thought to provide additional incentives to the custodial parent to work.

The Committee reviewed evidence of day care costs in Massachusetts finding that costs range from \$40 to \$160 per week per child and that day care costs are estimated to be 10% or more of income, with higher percentages reported by single parents. Child care is among the main budget items along with food and housing (Boston Magazine, My, 1985;

Final Report of the Governor's Day Care Partnership Project, 1985).

Notwithstanding these considerations, the Committee decided not to treat day care as a separate item, concluding that separate treatment would create problems of proof and additional opportunities for conflict between parents who disagreed on the type and cost of appropriate care. Separate treatment also conflicted with the Committee's objective of providing predictability to the noncustodial parent of the child support obligation by limiting the number of variables which generated "add-ons" to that basic calculation of percentage of income based on the number of children. Rather, the Committee decided to give the custodial parent a credit for day care expenses by deducting them from the custodial parent's gross income before calculating the custodial parent's child support obligation and then place the responsibility on the custodial parent for taking day care expenses into account in the choice of available employment options.

Medical Expenses. Medical expenses include the cost of insurance, routine uninsured medical bills such as portions payable by the insured and extraordinary medicals such as orthodontia, psychotherapy or catastrophic illness. Because medical expenses can be highly variable and unpredictable from case to case depending on the scope and cost of available coverage and on the health of the children, the Committee chose to treat medical expenses separately and to allocate them between the parents on an equitable basis. In addition, the Committee sought simplicity of proof and calculation.

After reviewing information on the average cost of insurance and uninsured medicals and mindful of the federal mandate to obtain third-party coverage whenever possible, the Committee decided that the noncustodial parent should presumptively be required to provide health insurance for the children where available at a reasonable cost, and for the custodial parent whenever possible. As an incentive to do so, the noncustodial parent who provides family coverage should receive not only a deduction from gross income of the cost of the insurance to him, including the cost of self-coverage, but also a reduction in the percentage of income amount of 2%.

Both to share the burden of this unpredictable expense and to discourage needless medical bills, routine uninsured

medical expenses should be borne by the custodial parent. The percentage of income obligation of the custodial parent who covers uninsured medical expenses should also be reduced by 2%.

Extraordinary medical expenses such as orthodontia, psychotherapy or other costly uninsured expenses should be allocated between the parents in proportion to income., Expenses of catastrophic illness of either parent or children should be determined outside guidelines on a case-by-case basis.

Income of Current Spouse. The Committee considered whether income of a current spouse or cohabitee should affect the child support obligation and concluded that it should not, even though that individual's contribution toward household expenses of the obligor might free up more resources for child support. The reasons for not including that source of income are that step-parents or other adult household members are not legally responsible for supporting another's children, and requiring them to do so would create disincentives for either parent to remarry. The Committee considered it not good social policy to discourage remarriage, particularly in the case of the custodial parent who would in effect be bringing a "negative dowry" to the new marriage (Bruch). In fact, studies show that one of the ways a custodial parent can raise the standard of living of herself and her children is by remarriage (Chambers).

Moreover, remarriage and cohabitation and their effect on child support (as opposed to alimony) are a source of prolonged bitterness and conflict between parents. And eliminating consideration of the new partner's income is consistent with the Committee's goal of a straightforward approach to reduce conflict and promote predictability. The Committee considered the noncustodial parent's obligation for child support to be a personal one; even though additional resources may indirectly become available to a child through the largesse of a step-parent, such benefits should not be a justification for reducing child support, but rather an opportunity for increasing the child's standard of living.

However, the new partner's income may appropriately be a consideration in modification of alimony awards. And where an obligor reduces his or her earnings as a result of

remarriage or cohabitation, income should be imputed as described above.

Support Orders for Other Dependents. In allocating resources between children of first and subsequent families, the Committee gave priority to the children of the first family. Because starting a second family is a voluntary act, the absent parent's action in undertaking new support obligations was not considered a justification for reducing pre-existing ones. In addition, as noted above, older children cost more. The Committee's formula does not require the absent parent to increase the percentage of support to meet these increased needs, and therefore does not permit a reduction because of children in a new family who typically arise at a time when a substantial level of support is most needed for the older children of the first family.

In the case of multiple child support orders arising from different marriages or paternity adjudications, the Committee recommends deducting the amount actually paid toward pre-existing orders from gross income and applying the appropriate percentage to the balance so long as the limits and procedures of section 303(b) of the federal Consumer Credit Protection Act (15 U.S.C. 1673 (b)) are met.

Custodial Parent's Income. The Committee recommends that the percentage of the noncustodial parent's income allocated to child support not decrease in relation to increases in the custodial parent's income. The basic underlying premise of the guidelines is that child support should be based on the amount of each parent's income that would have been devoted to children in an intact family as parents pool joint resources. In an intact family, when one parent's income goes up, the other does not decrease resources available to the children. Rather, children benefit from the increase. Economic research indicates that earnings of the wife have a significant impact on the level of spending on children and their standard of living. For example, medium socio-economic intact families with two children where the wife works full-time spend 23% more on their children than families where the wife does not work (Espenshade). Furthermore, where the custodial parent works full-time, children forego the non-monetary services and time that the custodial parent would otherwise be able to commit to them, in return for an increased standard of living.

The Committee's most compelling reason, however, is that it is only through income in addition to child support that the standard of living of the children's household can be significantly improved. If a noncustodial parent with an income of \$25,000 pays 34% or \$8,500 for child support for two children and there is no additional income into the children's household, their standard of living is below the 1985 poverty level for three (\$8,850), while the noncustodial parent's standard of living after child support is more than three times the 1985 poverty level for one (\$5,250). By contrast, if the custodial parent earns \$10,000, the children's standard of living rises to twice the poverty level, although noncustodial parent's standard of living is still one and a half times that of the children.

Reducing the noncustodial parent's contribution as the custodial parent's income increases thus has several undesirable effects: 1) the children lose the benefits of the non-monetary services yet the total household income remains the same; 2) there is a disincentive for the custodial parent to maximize income, even though the additional income is needed to increase the children's standard of living; 3) the custodial parent is required to assume a disproportionate amount of the joint parental financial responsibility for child rearing, in addition to providing custodial parent services such as meals preparation, laundry, shopping, chauffeuring, discipline, etc.; and 4) finally, the noncustodial parent is in effect unjustly enriched, for a reduction in the percentage of his contribution permits him to keep more for himself than he would have done in an intact family, thus allowing him to improve his own standard of living while the children's remains the same or even declines.

Moreover, as discussed above, the Committee's formula requires the custodial parent to absorb the costs of older children, routine uninsured medicals, and day care, in addition to food, clothing, shelter, transportation, etc. on the expectation that increases in her income would not trigger a reduction in child support.

Range of Income. Except as specified below, the guidelines percentages should be applied to all income levels. However, when an obligor's annual income exceeds \$75,000, the Committee recommends that the support order may be fulfilled by transfers in a form other than present cash. For example, the support order might authorize

contributions to an educational or special trust fund. This decision not to reduce the percentage applied to very high annual incomes is consistent with the broad social policy objectives articulated earlier, especially points 1 through 3. The Committee also was persuaded that among very high income intact families, educational or other special trusts are commonly used vehicles for income transfers between generations to ensure that subsequent younger generations will continue to enjoy the same standard of living as their forebears. Such trusts or similar vehicles may then serve as a source of funds for higher education costs.

Moreover, studies of the impact of economic changes on children of divorce have found that the children who often experience the most dramatic drop in their standard of living are children of upper income families. A significant discrepancy between the households—with affluence in one and downward mobility in the other—was observed to impair the father-child psychological relationship and to engender in the children bitterness, anger and a pervasive sense of deprivation (Wallerstein and Kelly).

Obligors with incomes at or near the poverty level face more intense economic pressure than other obligors. A child support order set under the guidelines could force them into a position of inability to pay for their own most basic needs; if they are involved with dependents of their own, application of the guidelines in their pure form could drive that family onto the welfare rolls. Because of this special circumstance, the Committee determined that a sliding scale of obligation should apply to obligors at the low end of the income scale. The Committee is still addressing the specifics of this scale, but at the present time it covers obligors with incomes up to slightly above the poverty line. Those with incomes below \$5,000 annually would be required to make only token payments, and payments for those with higher incomes would range from 8-40% of their incomes, depending upon income and number of children. Judges would be asked to set the percentage within a range given in the guidelines, with variations based on specified factors such as whether the obligor is supporting a second family and whether he has other special needs.

The Committee concluded that at least token payments should be required in all cases except those when the obligors themselves were exempt from judgement under law. These payments sustain the tie between parents and their

children, as well as allowing the authorities to remain in touch with obligors.

Higher Education. The costs of higher education are substantial. According to the College Entrance Examination Board in academic year 1981-1982, the costs ranged from \$3,230 per year for a two-year public institution and \$6,885 per year for a four-year private institution. With inflation and other increases these costs can be assumed to be higher at present and for the future (Espenshade).

In intact families where higher education for children is a family goal, planning for the cost of higher education often begins well before the child's graduation from high school. In cases of divorce or out of wedlock, however, such planning is often lacking even where the resources are available to the parents. The child is then forced to forego higher education altogether or to choose an institution on the basis of cost that is not otherwise commensurate with his or her ability or expectation had the family been intact, or the child and custodial parent assume a disproportionate share of these expenses. (According to one study, over fifty percent of the college-age children of divorced families in a wealthy suburban county in northern California (Marin County) did not receive financial support for higher education from their affluent absent parent, even where income exceeded \$100,000 (Wallerstein, ABA Journal, September, 1985).

The Committee recommends that where appropriate under M.G.L. Chapter 208, Section 28, at least four years before the child's eighteenth birthday, both parents be required to develop a realistic plan for payment of costs of higher education.

Custody and Visitation. Studies on the impact of divorce on children support frequent communication and contact between the child and the noncustodial parent (Wallerstein & Kelly). The Committee recommends that visitation be encouraged and enforced (except where it is not in the child's best interest because of neglect, physical, sexual, or psychological abuse or other circumstances having adverse effects on the child). However, the exercise of visitation and payment of child support should not be linked. Disagreements over visitation are not a basis for withholding child support, nor is the noncustodial parent's failure to pay child support a justification for denial of visitation by the custodial

parent. The child has an independent right to both financial support from, and regular contact with, the noncustodial parent.

Until the mid-seventies, legal and physical custody was typically awarded to one parent while the other parent paid child support and exercised visitation. In recent years, joint legal custody has become more widespread with both parents sharing in such decisions relating to medical care, education and religion, although one parent is still typically the primary physical caretaker. In both instances, the primary caretaker provides services and direct expenditures for food, housing, clothing, medical care, day care, transportation and the like assisted by the child support payments provided by the noncustodial parent.

The Committee's formula assumes a liberal visitation pattern, with the child spending approximately 30% of overnights with the noncustodial parent. This is based on two overnights every other weekend, alternate holidays, four to six weeks of vacation during the school year and summer and miscellaneous extra days or nights. Visitation in many cases will be subsequently less (20% or less). Normally, the custodial parent's expenses change little if at all, by visitation.

In cases of shared physical custody where visitation exceeds 30% of overnights, the Committee recommends an adjustment to the noncustodial parents child support obligation on the expectation that such increased time will result in the assumption by the noncustodial parent of a greater portion of direct expenditures. However, even a 50/50 split in custody will nevertheless require child support payments unless both parents have equal incomes and share all expenses equally. Moreover, joint physical custody is more costly than traditional custody, because of the duplication of shelter and equipment associated with children and should not be used as a vehicle for further lowering the standard of living of the traditional custodial parent's household. Although the noncustodial parent has higher costs, there is not a parallel reduction in costs for the custodial parent. In shared physical custody, there is typically only a nominal reduction in the custodial parent's food costs (Kelly).

The Committee rejected a reduction in the child support percentages based on the percentage of time alone (e.g., if time is 50%, reduce child support by 50%). There

is not necessarily a direct correlation between time and expenditures because one parent may assume more responsibility-either voluntarily or by default-for buying clothes books, toys and equipment and paying for lessons, daycare, medical expenses, etc.

Joint physical custody may be appropriate for treatment on a case by cases basis within the framework set by guidelines, with a careful review by the adjudicator or a documented agreement between parents as to which parent is responsible for specific expenses and so long as adequate provision is made for the fixed costs of a traditional custodial parent such as shelter (including utilities, furnishings, and maintenance) and transportation (including automobile ownership, insurance, and maintenance) which together constitute approximately 50% of the cost of children (Espenshade).

An arrangement should not result in a dramatic disparity in the standards of living of the households, as such disparity has been observed to aggravate the child parent relationship with both parents (Wallerstein and Kelly). In fact cases involving joint physical custody may be suited to the income equalization approach, where the standards of living of both households are approximately equal, and particularly since joint physical custody presupposes a high degree of interaction and contact between the parents.

The Committee is analyzing options to establish a framework for structuring and managing these joint physical custody arrangements based on a breakdown of fixed and variable costs.

Cases Outside Guidelines. The Committee's formula should be presumptively applied to all cases. In cases where its application will clearly be inequitable, the adjudicator should give written reasons for going outside the guidelines. For example, a deviation would be justified where there are extraordinary medical expenses for any family member or special education or emotional needs for a child. Complex property divisions where there are in-kind contributions in the nature of child support may also result in a deviation so long as the net benefit to the child is the same. Unreasonable excessive living expenses of an obligor would not be a justification for going outside the formula as the formula is based on the premise that expenses will always expand to consume income and that

the child's claim on that income within the parameters of the formula takes priority over the parent's.

Periodic Updating of Child Support Awards. Inflation, income increases and increased needs of older children all contribute to the decline in the purchasing power of a child support order over time if it is not regularly updated. According to economist Philip Eden, in the ten years preceding 1979, the real value of a support award set at \$500 declined to \$275, yet personal income typically increases faster than inflation, particularly as a wage earner matures and moves up the career ladder. Finally, as discussed above, teenagers cost as much as 50% more than pre-schoolers. If child support awards are not updated periodically, the child does not benefit from the parent's increased ability to pay and the custodial parent who may have more limited resources to begin with will have to absorb the shortfalls.

On the other hand, recession, cyclical profits and unemployment may cut into an obligor's ability to pay, requiring downward adjustments. So long as such reductions are not the result of the obligor's voluntary actions, a reduction in child support would be appropriate, and again, reflective of circumstances that would affect the finances of an intact family.

For these reasons, the Committee recommends annual review and updating of child support awards. A formula based on percentage of income facilitates updating which in most cases can be done by agreement of the parties after exchange of financial information.

Summary of the Formula. The formula consists of a percentage of gross income based on the number of children derived from economic analysis of percentages of expenditures devoted to children in an intact family as parents pool resources. There is a 2% credit to the noncustodial parent who provides medical insurance for the child and to the custodial parent who pays for routine uninsured medical expenses. The cost of medical insurance to the noncustodial parent is deducted from gross income before applying the appropriate percentage; the cost of work-related day care is deducted from the custodial parent's gross income before applying the appropriate percentage in that case as well.

The formula, simply stated is therefore:

Number of Children	Percentage of Gross Income After Deduction of Medical Insurance or Day Care, if Applicable	Medical Credit of Two Percent
One child	24%	22%
Two children	34%	32%
Three children	40%	38%
Four or more	44%	42%

The guidelines should be presumptively applied except where their application would clearly be inequitable to either party or the child.

Conclusion. The report summarizes the major considerations that influenced the Committee's decisions. The different percentages and factors accounted for in the Committee's formula are interdependent; a change in the treatment of one factor would require a consideration of the treatment of the others, particularly if such a change shifted the allocation of financial responsibility.