

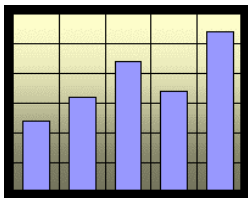
# **A Brief Economic Critique of North Carolina's Child Support Guidelines<sup>®</sup>**

## **Economic Exhibits**

**Original: August 17, 2005**

**Revised: May 3, 2006**

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## **PART I.**

### **Overview**

North Carolina child support guidelines allow for a child support award that deviates from the presumptive award based on specific factors. Additionally, state rules and federal law set standards for rebuttal of the award on a generalized basis—including that the underlying facts do not exist in application for a given case. This reports documents key economic issues that indicate that North Carolina’s presumptive child support awards should be rebutted in a significant number of assumed facts no longer existing for the case before the court. Additionally, the presumptive award should be set aside or rebutted due to certain key assumptions in the guidelines being without economic foundation.

The following analysis begins in Part II with broad legal principles to which presumptions must conform according to constitutional principles and traditional case law. Part III discusses the assumptions of the economic methodology underlying North Carolina’s guidelines and contrasts with typical case circumstances. It is documented that North Carolina’s presumptive child support guidelines are based on intact family child cost data, do not take child-related tax benefits into account when allocating the child support burden between the custodial and non-custodial parents, and the child cost tables assume zero parenting time for the non-custodial parent. This discussion provides the starting point for the economic flaws of the guidelines in application—notably in terms of needing to take child-related tax benefits into account as cost offsets to be shared, needing to apply an economically sound parenting time adjustment, and taking into account that the use of intact family data overstates child costs in non-intact family situations.

Part IV is standard of living comparisons of the impact of presumptive awards on the after-tax, after child support incomes of the custodial and non-custodial parents. Part IV shows that the presumptive awards result in grossly inequitable awards that result in a lower duty of support for the custodial parent than for the non-custodial parent. Part IV shows that there is economic harm from the application of the presumptive child support guidelines.

Part V specifically focuses on documenting that the presumptive guidelines do not take into account child-related tax benefits as cost offsets and essentially provide a financial windfall on the custodial parent. Part V documents the large magnitude of the child-related tax benefits in typical cases.

Part VI documents that there is no economic basis for using the “multiplier” approach for parenting time adjustments. It is shown that the multiplier approach conflicts with economic data that indicate that significant portions of non-custodial child costs are fixed (such as housing) and rise faster than parenting time. Part VI shows that economically sound parenting time adjustments result in notably lower child support awards than using the presumptive multiplier parenting time adjustment. That is, the presumptive parenting time adjustment is shown to hold the custodial parent to a lower duty of support than the non-custodial parent.

Part VII documents Freedom of Information Act (FOIA) requests of North Carolina child support officials for various economic studies that would provide the basis for various economic assumptions in the presumptive child support guidelines. Based on replies from the AOC and the chair of North Carolina's child support review panels, Part VII shows that there are no economic studies serving as the basis for key economic assumptions in North Carolina's child support guidelines. There exists no available and valid basis for the following facets of North Carolina's child support guidelines:

- The exclusion of the first 123 overnights of parenting time incurred by the non-custodial parent from the child support calculation in the state's child support guidelines;
- The “multiplier” of 1.5 that is used for joint physical custody situations in the state's child support guidelines;
- The assumption that all child costs in shared parenting situations are costs that vary by parenting time—there are no fixed costs (such as housing) incurred; and
- The assumption that child-related tax benefits have already been taken into account as cost offsets in the presumptive child cost schedule.

## **PART II.**

### **Underlying Legal Principles for Economically Sound Awards**

To be acceptable in court, presumptive child support awards also must be based on sound legal principles. For proper economic analysis of North Carolina's presumptive child support guidelines, on the basis of the Federal Family Support Act of 1988, the 14th Amendment to the U.S. Constitution, and Section 50-13.4 of North Carolina General Statutes, it is assumed that the guidelines used in the State of North Carolina:

- 1) must be based on correct use of authentic economic data in their development,
- 2) must reasonably indicate in most cases an amount of child support due, assuming an equal duty of both father and mother to supply the reasonable needs of their children according to the resources available to each,
- 3) must be fully and fairly rebuttable,
- 4) shall not include arbitrary features, and
- 5) must be developed by responsible public authority on the basis of appropriate economic data and legal principles.

Accordingly, this economic critique relies on the argument filed by Mast, Schulz, Mast, Mills, Stem & Johnson in the case of *Rodney Row v. Leigh Row*, No. 00-CVD-2694 on the docket of the District Court Division of the North Carolina General Court of Justice in Cumberland County.<sup>1</sup>

## **PART III.**

### **Background and Assumptions of the Income Shares Methodology**

North Carolina's child support guidelines are a variation of child support guidelines developed by Policy Studies, Inc (Denver, CO) and known as Income Shares. North Carolina's guidelines are based on national research on child costs as discussed in *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, by David M. Betson, University of Notre Dame, September 1990. See AOC-A-162, Rev. 10/02, "Assumptions And Expenses Included In Schedule of Basic Child Support Obligations." See also Robert Williams, et al., *Economic Basis for Updated Child Support Schedule, State of North Carolina*, prepared for Administrative Office of the Courts, North Carolina Supreme Court, State of North Carolina, submitted by Policy Studies, Inc., November 19, 1993. The relevance of this report and research related to the Betson version of Income Shares is that they provide the underlying facts for the guidelines for determining if the presumptive awards are economically appropriate when applied in specific child support cases in North Carolina. The North Carolina guidelines were designed

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<sup>1</sup> See also the contribution by John Remington Graham, retired law professor of Hamline University School of Law, in *Alabama, Economic Report on Alternative Child Support Cost Schedules and Related Issues*, R. Mark Rogers, submitted to State of Alabama, Administrative Office of Courts, Montgomery, Alabama, March 31, 2006. See Appendix I.

to be applicable only if the household had certain economic characteristics. These underlying economic characteristics of the household are:

- The household is intact. The child support award is based on combined parental incomes. The household does not have the additional overhead that is incurred by a separated family that would reduce income available to spend on children. The cost table assumes that the household has income available for children based on both parents sharing adult overhead costs.
- The custodial parent is assumed to care for the children 100 percent of the time and the non-custodial parent is assumed to have no parenting time costs.
- There is additional income when a child is added to the family—additional income to bring the standard of living back to its previous level. At every level of income in the cost tables, the estimation technique assumes that the parents have more income than they actually have.
- The underlying study by David Betson treats child-related tax benefits as cost offsets shared in an intact family household but the guidelines misapply this feature by only allowing these benefits to accrue to the custodial parent instead of to both parents. Tax benefits attributable to the children are not treated as cost offsets.
- For Betson-Rothbarth based Income Shares guidelines, the best method of estimating child costs is to compare household consumption levels of adult clothing before and after having an additional child. It is assumed that adult consumption preferences for these goods are not affected by having children or additional children. It is also assumed that for the income range studied, that these goods have income elasticity equal to one.

## **Explaining Why Income Shares Guidelines Overestimate Child Costs<sup>2</sup>**

### **The Basics of the Income Shares Child Support Guideline Methodology**

There are two basic versions of Income Shares models—the original Income Shares based on the research of Ernst Engel (currently in use in about a dozen states) and the version based on the research of David Betson and Erwin Rothbarth (now advocated for

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<sup>2</sup> This section is based on excerpts from "Child Support Guidelines: Underlying Methodologies, Assumptions, and the Impact on Standards of Living," co-author, Donald J. Bieniewicz, Conference on the Law and Economics of Child Support Payments, University of California, Santa Barbara, September 20, 2002. Publication scheduled in *The Law and Economics of Child Support Payments*, William S. Comanor, ed., Edward Elgar Publishing, forthcoming early 2004.

updates by Policy Studies, Incorporated (PSI) and in use in about two dozen states).<sup>3</sup> Each uses a somewhat different definition of child costs. However, both are what are known to economists as income equivalence measures.

The Income Shares methodology uses indirect estimation techniques for deriving child costs. The reason stated for using indirect estimation techniques is due to data issues involving the underlying data used which is the Consumer Expenditure Survey (CEX) of the U.S. Bureau of the Census. Notably, the expenditure categories do not always separate household expenditures into spending on children's goods and on adult goods. For example, there are categories for children's clothing and adult clothing. In contrast, there are broad categories for housing, food, and transportation. For these latter categories, specific purchases might be consumed on a shared basis or on a private basis (individually). Housing is shared by all family members. Food purchases are consumed privately but determining how much of a loaf of bread is consumed by adults and how much by children can be difficult. For housing, the issue would be how to allocate a portion of housing costs to children.

To address the problems of shared consumption and difficult-to-separate private consumption items, the developers of Income Shares turned to what are known in the economics community as income equivalence measures. Income equivalence measures were originally developed by economists in the 1800s to answer a very specific type of question: how much income is needed for different family types (varying the number of adults and number of children) to have the same standard of living. For example, these studies would attempt to quantify how much income a two-parent-one-child family needed to have the same standard of living as a two adult household. These measures were never intended to be used as a measure of child costs. However, the earliest studies on income equivalence underlie the child cost definition currently in use in a significant number of Income Shares states and a recent variation of these techniques underlie the current PSI definition of child costs. They both look at the income needed to restore the standard of living to a family's pre-child status to define child costs. However, these definitions are very flawed and are based on assumptions that are not applicable for child support cases.

### **The Original Version of Income Shares—The Engel Measure of Child Costs**

The economist to originally work on income equivalence measures was Ernst Engel.<sup>4</sup> His idea was to measure some basic measure of consumption and see how the percentage consumed in families varied by the level of income and by the number of household members. He found that the share of income allocated to food consumption declined as income rose. As income increased, spending would increasingly be allocated to non-

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<sup>3</sup> Jane Venohr and Robert G. Williams, David A. Price. *Economic Basis for Updated Child Support Schedule, Commonwealth of Kentucky*, Policy Studies, Incorporated, Denver, Colorado, September 1, 2000.

<sup>4</sup> 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.

basic consumption goods (luxury goods) and to savings. A family having children would boost its share of food consumption relative to a family not having children. Engel would then compare how much additional income would be needed to restore the family back to its earlier share of spending on food, thereby restoring the family's standard of living.<sup>5</sup>

This Engel income equivalence methodology was used by Thomas Espenshade to estimate child costs in a 1984 U.S. national study.<sup>6</sup> He basically defined child costs as the difference in overall consumption between a family with and without children but with the same share of the budget spent on food. Two families of different size are equally well off when spending the same share of their budgets on food. PSI used data from Espenshade's study to develop specific tables for use in PSI's original Income Shares guideline. Therefore, states that adopted the Income Shares guidelines in the late 1980s (and have not since adopted the newer Income Shares methodology) define child costs according to how food consumption changes between varying types of families according to family size. See Table 2 below for Espenshade's child cost estimates as a percentage of net income.

PSI's original definition of child costs for Income Shares child support schedules:

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

This is an "income equivalence" definition—not a measure of money spent on actual child cost items. In this definition, there are no components for an interested party to use to rebut in court. There are other flaws to be discussed later.

**The Rothbarth Measure of Child Costs—the Current Definition Used in Income Shares Guidelines in North Carolina**

The Rothbarth methodology is currently used by PSI for estimating child costs and for developing child cost schedules. The Rothbarth methodology compares changes in levels of household spending on purely adult goods to determine child costs.<sup>7</sup> The idea is that

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<sup>5</sup> Lewin/ICF, Washington D.C. "Estimates of Expenditures on Children and Child Support Guidelines," Submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, October 1990, p. 2-13.

<sup>6</sup> See Espenshade, Thomas J. *Investing in Children: New Estimates of Parental Expenditures*, The Urban Institute Press, Washington, D.C., 1984.

<sup>7</sup> See David M. Betson, *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, Institute for Research on Poverty, University of Wisconsin-Madison, September 1990. See also Lewin/ICF, Washington D.C. "Estimates of Expenditures on Children and Child Support Guidelines," Submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, October 1990.

looking at purely adult goods reduces the problem of shifts between adult and shared goods after having a child or additional child. One of the latest versions of this technique and which is incorporated in PSI's latest Income Shares child support guideline was developed by David Betson of the University of Notre Dame. His estimator of child costs is called the Betson-Rothbarth estimator. Betson specifically uses changes in spending adult clothing to measure changes in household well-being and, in turn, child costs.

The Rothbarth technique focuses on the level of consumption by a family on purely adult goods rather than the share of the budget. When families of two different sizes (with and without an additional child) spend the same amount of money on the purely adult goods, then both families are equally well off and the difference in total consumption is the child cost. For Betson, child costs are defined when spending on adult clothing are equal for the families with and without the additional child.<sup>8</sup>

New definition of child costs by PSI for any newly proposed child support schedules (since 2001):

For intact families—one with an additional child and one with no additional child, the difference in expenditures between the two families is the child cost when both families consume equal dollar levels of adult clothing. Child costs are defined by comparing changes in consumption of adult clothing.

### **Reasons Behind Income Shares Model's Overstatement of Child Costs**

There are several reasons why PSI's methodology—using either version of Income Shares—leads to an overstatement of child costs: (1) non-recognition of a budget constraint, (2) the choice of household food consumption as a target definition in the old Engel estimator version and the choice of adult goods share of consumption as a target definition in the newer version of Income Shares, and (3) the use of intact families to estimate child costs. First, the income equivalence approach ignores the budget constraint faced by families who have children. Families do not have the “phantom

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<sup>8</sup> Policy Studies, Inc. (PSI) quietly made a switch in the equivalence methodology, focusing on adult clothing for the “target” goods for measuring household well-being. Previously and after the Espenshade version, PSI had used a combination of adult goods—adult clothing, alcohol, and tobacco. The new definition is based on *Judicial Council of California: Review of Statewide Uniform Child Support Guideline, 2001*, by David Betson. North Carolina's 1998 cost schedule is based on the Income Shares Rothbarth methodology as discussed in *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey, A Final Report to the U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation*, September 1990, by David M. Betson, Department of Economics, University of Notre Dame.

income” used in income equivalence techniques. The income constraint seen in real life leads to much lower actual child costs than those that are estimated by income equivalence models of child costs—as in Income Shares.

The Espenshade estimates of child costs using the Engel estimator are upwardly biased.

The validity of the Engel estimator is critically dependent on the assumption that the percentage of the family’s expenditures on non-food items that should be attributed to the family’s children is the same as the percentage of the family’s food expenditures that is attributable to the family’s children. There is reason to believe that this assumption is invalid; children are probably “food-intensive.” That is to say, the percentage of the family’s food that is consumed by children is probably greater than the percentage of non-food items consumed by children. If this is the case, then the Engel estimator overestimates [emphasis original] the true expenditures on children.<sup>9</sup>

Research by other economists support the view that Engel’s original research is not appropriate as a way to estimate child costs.

Deaton and Muellbauer’s analysis indicates that the degree of overestimation [of child costs] may be quite substantial. This leads Deaton and Muellbauer to conclude that, “We can construct no plausible defense for the belief that the food share correctly indicates welfare [well-being] between households of different size, and we do not believe that credence should be given to estimates based on that belief.”<sup>10</sup>

For the newer definition of child costs in Income Shares, the choice of adult goods consumed as the defining measure of income equivalence also leads to an upward bias for child cost expenditures. Not only is there an income constraint, but there are substitution effects—consumers switching consumption between types of goods—that make the approach of targeting a fixed share of adult goods inappropriate. The child actually becomes a consumption good for a parent. A standard that targets equalizing consumption shares of adult goods overstates child costs because families choose to consume fewer adult goods after having children. This standard results in an income

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<sup>9</sup> Lewin/ICF. *Estimates of Expenditures on Children and Child Support Guidelines*, submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, October 1990, Section 2, page 28.

<sup>10</sup> Lewin/ICF. *Estimates of Expenditures on Children and Child Support Guidelines*, submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, October 1990, Section 2, page 13 and Section 2, pages 28-29. Deaton and Muellbauer are quoted from “On Measuring Child Costs: With Applications to Poor Countries,” *Journal of Political Economy*, 1986, vol. 94, no. 4, p. 741, by Angus S. Deaton and John Muellbauer.

level that is too high for the comparison of the change in total consumption that is attributed to child costs.<sup>11</sup>

In the very limited amount of literature discussing the nature of the Rothbarth estimation technique, there are assertions that this methodology is biased downward and can be considered a "lower bound" (floor) to estimates for child costs.<sup>12</sup> This is based on the belief (that is never substantiated in studies) that with the addition of children, adults choose to consume more purely adult goods and fewer goods shared between the adults and children. This shift supposedly is because when a good is shared with kids, the adult has to purchase more to have the same amount of the adult's consumption, thereby raising the overall perceived price of the shared good. Supposedly, since a family shifts toward greater consumption of adult goods after having additional children, it takes less income to restore the previous level of consumption of targeted adult goods. Since adults have less use of shared goods, they change preferences to adult goods. This undocumented theoretical belief is stated by Barnow in the Lewin study for U.S. HHS in 1990:

The Rothbarth estimator, on the other hand, is likely to underestimate [emphasis original] expenditures on children. The Rothbarth estimator does not account for the possibility that the presence of children in a household may lead to substitution from goods that must be shared with children toward goods consumed only (or mostly) by adults. If such substitution does occur, the Rothbarth estimator will indicate that relatively low levels of additional income are needed to restore the level of adult expenditures to that which would have prevailed in the absence of children.<sup>13</sup>

The required assumption in this claim is that adults behave in a "selfish" manner—preferring to maintain pre-child levels of consumption of adult goods. It requires that adults not like sharing shared goods with children. It is this expected "selfish" conduct that allegedly biases the statistical outcome of the Rothbarth methodology.

Importantly, Barnow, et al raise the issue that the Rothbarth methodology may actually overestimate child costs if adults do not behave selfishly related to sharing shared goods with children. From footnote 37:

There is, of course, the possibility that adults behave "selflessly," and that the substitution mechanism works in the opposite manner of that which is

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<sup>11</sup> See R. Mark Rogers, "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, Spring 1999, pp.135-156..

<sup>12</sup> See the October 1990 "Lewin Report" on child costs, section 2, page 29.

<sup>13</sup> Burt S. Barnow et al., *Estimates of Expenditures on Children and Child Support Guidelines*, Submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, Submitted by Lewin/ICF, Washington, D.C., October 1990, page 2-29.

outlined here. In this case, the validity of all the estimation procedures discussed here is called into question.<sup>14</sup>

What does this mean using real life examples? Shared goods are such as bath rooms, living rooms, and the television. Based on the current version of the Rothbarth methodology, the claim that Rothbarth understates child costs means that parents realize they have to share the living room with their children and therefore decide to buy more adult clothes instead. The shift in preferences then biases the estimate of how much income is needed to restore pre-children spending on adult clothes—it takes less income to restore pre-children spending on adult clothes. However, there is no empirical study that validates the alleged theory behind Rothbarth estimates of child costs being “low” due to a shift in preferences to adult clothes after having children.

In fact, if one believes that after having children, the parents have a preference to spend more time with shared goods, then the Rothbarth methodology overestimates child costs. That is, if parents decide they want to spend Friday or Saturday nights with the children watching videos, then that likely leads to the Rothbarth methodology overstating child costs because there is now a parental bias toward the shared goods and away from adult clothing. It therefore takes more income to restore the pre-children level of spending on adult clothes.

One can claim that the Rothbarth methodology understates child costs only if one also claims that parents do not want to share household shared goods with children. If parents want to share household shared goods with children, then the Rothbarth methodology overstates child costs.

Both the PSI Rothbarth and the earlier Engel versions of the Income Shares guideline are based on studies of intact families. Yet, when two households must be supported with the same income, there is an increase in adult overhead (mortgage and utilities, for example). There is less income left for spending on other things—including children. By using intact family data, Income Shares guidelines tend to overestimate the level of child costs to be shared.

Indeed, there is considerable confusion over the issue of differences in spending patterns on children by single-parent households versus appropriate child costs for non-intact families. Studies indicate that single-parent households spend a greater share of household income on children than husband-wife households. The important factor for reaching this conclusion is that one is comparing two households with equal income and number of children but one household has one adult while the other has two adults. The intact household spends significantly more on the two adults and has less income remaining to spend on the children than the single parent household. But for divorced

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<sup>14</sup> Burt S. Barnow et al., *Estimates of Expenditures on Children and Child Support Guidelines*, Submitted to Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, Submitted by Lewin/ICF, Washington, D.C., October 1990, page 2-26.

situations (and unwed), one is comparing two different household situations. The intact situation is the same as earlier discussed. However, after divorce, there are two single-parent households that on average have half the combined income of the intact situation. So, the spending on the children is larger as a share of the halved combined income but less than what the intact family spends because there now is about double the original adult overhead and less remaining income available to spend on the children. The appropriate level of spending on children in divorced situations should be based on single-parent spending patterns but based on an average of the parents' incomes—not combined income.<sup>15</sup>

Some argue that no one type of cost tables fit all situations because some parents are single and others remarry. However, this argument is contrary to the fact that during a divorce, the parties are single and not remarried. It is the lesser circumstance that child support guidelines apply to re-married parents and even less so for both parents to be remarried. Arguing intact family data is appropriate for remarried parents begs the question of whether the new spouse's income should be taken into account in the guideline formula—although there is no legal duty of support for the new spouse.

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<sup>15</sup> The issue of how to adjust intact family data for the added expense of a second household is discussed in detail in *Alabama, Economic Report on Alternative Child Support Cost Schedules and Related Issues*, R. Mark Rogers, submitted to State of Alabama, Administrative Office of Courts, Montgomery, Alabama, March 31, 2006. See Chapter III.

## PART IV.

### **Statistical Analysis Shows that Improper Presumptive Handling of Child-Related Tax Benefits and Parenting Time Adjustments Results in Non-Custodial Parents Carrying a Disproportionate Burden of Child Costs**

There are four key underlying facts of the presumptive guidelines that frequently do not exist in application or have no sound economic basis and, in turn, result in sharply excessive presumptive awards. These are: child-related tax benefits are not presumptively shared, child costs incurred by non-custodial parents are not presumptively shared by the custodial parent for situations in which the non-custodial parent has less than 124 overnights per year, the parenting time adjustment using the 1.5 multiplier and straight-line allocation has large accounting errors regarding child fixed costs (such as housing), and the child cost schedule is based on intact family data. What statistical evidence is there that presumptive awards are excessive—given the conflict between typical case facts and underlying facts? From an economic perspective, traditional standard of living analysis often provides some insight into the impact of presumptive awards on the after-tax, after child support transfer standard of living of each parent's household (inclusive of caring for the children).

#### **Standard of living comparisons**

A traditional standard-of-living comparison uses the federal poverty threshold as a benchmark. Poverty thresholds vary according to household size. Starting with the one-child case, the issue here is one of how the payment of presumptive child support awards affect the standard of living for a one-adult household of the non-custodial parent and for the one-adult and one-child household of the custodial parent. Comparisons are also made for the one-adult household versus a one-adult-and-two-children household. The poverty thresholds established by the Bureau of the Census vary by the number of children, so that using these varying thresholds takes into account the custodial parent's higher costs from supporting the children. The relevant poverty thresholds are:

**Table 1.**

#### **Poverty Thresholds, 2004, U.S. Bureau of the Census Annual, Current Dollars**

One adult, under age 65	\$9,827
One adult, one child	\$13,020
One adult, two children	\$15,219
One adult, three children	\$19,223

However, non-custodial parents often have significant amounts of parenting time. This increases the non-custodial parent's poverty threshold costs while reducing those of the custodial parent. We assume that the non-custodial parent has 25 percent of total

parenting time and that the children’s portion of the poverty threshold shifts between the parents by that proportion. For one child, the difference between a one-adult household and a one-adult, one-child household is \$3,193 annually. Allocating 25 percent of this amount to the non-custodial parent results in a one-child poverty threshold of \$10,625 for the non-custodial parent and \$12,222 for the custodial parent. This adjustment takes into account the non-custodial parent’s need to provide for the children while in his or her care.

It can be argued that because of fixed costs such as housing, a straight-line allocation of the child portion of the poverty threshold is inappropriate. However, while studies indicate that custodial parent child costs go down less than proportional to parenting time, they also indicate that a non-custodial parent’s child costs go up more than proportional to parenting time.<sup>16</sup> Therefore, straight-line allocation appears to be an accurate measure of the non-custodial parent’s share of poverty threshold levels as compared to that of the custodial parent. These are provided in Table 2.

**Table 2.**

**Parenting Time Adjusted Poverty Thresholds, 2002, Annual**

25 Percent Parenting Time Assumption for the NCP

	<u>Custodial Parent (CP)</u>	<u>Non-custodial Parent (NCP)</u>
One child case	\$12,222	\$10,625
Two children case	\$13,871	\$11,175
Three children case	\$16,874	\$12,176

In the analysis below, we express living standards as multiples of the appropriate poverty threshold provided in Table 2. Scenarios start with custodial parent gross incomes that are 50 percent of that of the non-custodial parent. Additional comparisons assume the ratio of 70 percent, 100 percent, 130 percent, and 200 percent.

What are reasonable expectations for the outcomes of these standard of living comparisons? After-tax and after-child support transfer, we believe that equitable outcomes would be such that where both parents have equal gross incomes, they both have equal standards of living after taking into account differences in household size and the cost of the children. However, in cases where the non-custodial parent begins with a higher gross income, one would expect that the non-custodial parent would still have the higher standard of living after paying support. One might consider it equitable that the standard of living gap be narrowed somewhat, but not eliminated, by the child support transfer when one parent has a significantly higher gross income. However, one would

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<sup>16</sup> See Paul Henman and Kyle Mitchell, "Estimating the Costs of Contact for Non-resident Parents: A Budget Standards Approach," *Journal of Social Policy*, 30:3, pp 495-520, Cambridge University Press, 2003.

not expect child support transfers to increase the initial standard of living gap for the higher earning parent.

Table 3 shows the basic calculations for both parents' living standards relative to the poverty threshold.

**Table 3.**

**The Standard of Living Impact of North Carolina's  
Income Shares Guideline: An Example**

**For One Child, 25%/75% Parenting Division**

	<u>NCP</u>	<u>CP</u>
Gross income, annual	\$48,000	\$48,000
After-tax income	34,723	37,803
Presumptive child support	-5,538	5,538
<b>After tax, after presumptive child support income (2004 tax code excl. temp. child credit)</b>	<b>\$29,185</b>	<b>\$43,341</b>
Adjusted poverty threshold	\$10,625	\$12,222
Income as multiple of threshold	2.75	3.55
<b>Custodial parent's higher (+) or lower (-) standard of living compared to non-custodial parent</b>		<b>+29%</b>

The example provided in Table 3 starts with equal gross incomes. An equitable result would be to end with equal living standards after accounting for tax differences, the child support award, and household size. However, one finds a very different result. As can be seen, the custodial parent's living standard is almost one-third higher than that of the non-custodial parent.

The standard of living analysis in Table 3 is expanded in Table 4. There are scenarios for one, two, and three children, and for non-custodial parent monthly gross incomes ranging from \$1,500 through \$6,000. Custodial parent income is then set at different percentages of non-custodial parent income: 50 percent, 70 percent, 100 percent, 130 percent, and 200 percent. These tables show the standard of living outcomes which are comparable to the final figure given in Table 3.

As can be seen in Table 4, the presumptive award creates a substantial shift in the living standards from the non-custodial to the custodial parent. The simplest comparisons are for situations in which the gross incomes of the parents are equal—as seen in the gray-highlighted rows. For one-child cases, with NCP and CP income at \$4,000 per month,

the CP household's standard of living is 29 percent higher than that of the NCP. When, the parents' gross incomes are equal, typically the CP households' standard of living is 25 to 40 percent higher than the NCP's—even though an equal standard of living outcome would be equitable given that the parents have the same gross income. The CP's standard of living advantage is even higher at low income levels where earned income tax credits are very high.

For the line just below the previous example, these are scenarios in which the CP has 30 percent more gross income than the NCP. For these scenarios in which the CP has higher gross income than the NCP, the presumptive child support awards exceed actual costs to such an extent that the CP household standard of living advantage over that of the NCP is widened. In terms of equity, one would expect that the presumptive award would either narrow the gap (the CP takes on a greater burden) or least leaves the standard of living gap unchanged.

The presumptive guidelines conflict with any sense of equity in most types of scenarios. When the custodial parent has moderately lower income than the non-custodial parent, the former typically ends with a higher standard of living than the latter. For situations where the custodial parent has the higher gross income, the combination of child-related tax benefits and the child support transfer boosts the custodial parent's advantage. The income sharing mechanism does not share the child cost burden in a manner to narrow any standard of living difference between higher and lower income parents in a consistent manner, regardless of whether the custodial or the non-custodial parent has the higher income. Instead, these guidelines always boost the custodial parent's standard of living—even when the custodial parent is the one with the higher income level. These outcomes apply to situations with one or more children as seen in Table 4.

The presumptive child support guidelines typically generate awards that are much higher than would be the case if based on economically sound adjustments for parenting time and child-related tax benefits as cost offsets and with an equal duty of support for both parents.

- **Clearly, improper handling of child-related tax benefits, parenting time, and use of intact family data result in excessive presumptive child support burdens for non-custodial parents in typical cases.**

**Table 4.**

**North Carolina Presumptive Awards:  
Custodial Parent's % Higher/Lower Standard of Living Compared to NCP\***

**One Child**

<b>NCP Monthly Gross Income:</b>	<b><u>1,500</u></b>	<b><u>2,000</u></b>	<b><u>2,500</u></b>	<b><u>3,000</u></b>	<b><u>3,500</u></b>	<b><u>4,000</u></b>	<b><u>4,500</u></b>	<b><u>5,000</u></b>	<b><u>5,500</u></b>	<b><u>6,000</u></b>
CP Gross = 50 % < NCP Gross	13	10	5	-2	-7	-11	-15	-18	-21	-22
CP Gross = 30 % < NCP Gross	37	30	22	12	6	4	1	-1	-1	-1
CP Gross = NCP Gross	66	54	40	34	32	29	28	27	25	24
CP Gross = 30 % > NCP Gross	89	74	65	60	56	54	52	51	48	47
CP Gross = 100 % > NCP Gross	140	130	119	110	107	108	108	108	108	107

**Two Children**

<b>NCP Monthly Gross Income:</b>	<b><u>1,500</u></b>	<b><u>2,000</u></b>	<b><u>2,500</u></b>	<b><u>3,000</u></b>	<b><u>3,500</u></b>	<b><u>4,000</u></b>	<b><u>4,500</u></b>	<b><u>5,000</u></b>	<b><u>5,500</u></b>	<b><u>6,000</u></b>
CP Gross = 50 % < NCP Gross	41	38	30	19	9	4	-1	-7	-12	-14
CP Gross = 30 % < NCP Gross	71	58	45	31	23	15	10	7	6	5
CP Gross = NCP Gross	99	82	62	47	43	37	36	34	32	30
CP Gross = 30 % > NCP Gross	122	100	80	71	64	61	59	56	53	50
CP Gross = 100 % > NCP Gross	166	145	130	117	113	110	109	109	107	106

**Three Children**

<b>NCP Monthly Gross Income:</b>	<b><u>1,500</u></b>	<b><u>2,000</u></b>	<b><u>2,500</u></b>	<b><u>3,000</u></b>	<b><u>3,500</u></b>	<b><u>4,000</u></b>	<b><u>4,500</u></b>	<b><u>5,000</u></b>	<b><u>5,500</u></b>	<b><u>6,000</u></b>
CP Gross = 50 % < NCP Gross	39	39	30	19	8	1	-4	-9	-14	-15
CP Gross = 30 % < NCP Gross	71	58	45	28	20	14	8	4	3	2
CP Gross = NCP Gross	103	80	59	45	40	33	31	30	27	24
CP Gross = 30 % > NCP Gross	132	98	77	66	58	55	53	49	45	42
CP Gross = 100 % > NCP Gross	198	138	122	108	102	99	96	95	93	91

\*The non-custodial parent incurs 25 percent of the parenting time and there is no parenting time adjustment to the presumptive award.

## **PART V.**

### **Income Shares Child Support Guidelines and the Issue of Child-Related Tax Benefits as a Cost Offset**

#### **Underlying Assumptions of Income Shares Child Support Guidelines Regarding Child-Related Tax Benefits**

The primary model for child support guidelines in the United States is the Income Shares model developed by Policy Studies, Inc., of Denver, Colorado. The Income Shares guideline is used by 34 states.<sup>17</sup>

The current version of Income Shares child support guidelines was developed by Policy Studies, Inc., of Denver, Colorado based on research by David Betson of the University of Notre Dame.<sup>18</sup> The Income Shares child cost tables are derived from estimates of expenditures on children as a share of family consumption spending (excluding saving). These expenditure numbers are then converted to a share of net income and then a share of household gross income.<sup>19</sup>

That is, child costs are expressed as a matrix of child costs (for one and then additional children) relative to various levels of net income. See Chart 1. Child costs are based on intact family data and include child-related tax benefits as part of net income. However, child costs in the presumptive cost tables are gross spending—not net of child-related tax benefits. Thus the net income portion of the matrix must then be converted to gross income. However, in this conversion process, no adjustments are made for child-related tax benefits as cost offsets. Specifically, “all income is assumed to be earned by a non-custodial parent with no dependents.”<sup>20</sup> Assumptions for income tax withholdings reflect a standard deduction for a single tax payer and one personal exemption. Essentially, the child support guidelines used by 33 states (plus pending in Tennessee) include child-related tax benefits as net income when deriving the child cost tables but then ignore child-related tax benefits as partial cost offsets to child costs. Income Shares guidelines require the two parents to share child costs in proportion

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<sup>17</sup> See Jane Venohr and Robert G. Williams, "The Implementation and Periodic Review of State Child Support Guidelines," *Family Law Quarterly*, Volume 33, Number 1, Spring 1999, Table 1, page 11. Tennessee switched from obligor-only guidelines to Income Shares in January of 2005.

<sup>18</sup> An earlier version of Income Shares was first developed by Thomas Espenshade and Robert Williams. See *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report*, Office of Child Support Enforcement, U.S. Department of Health and Human Services, September 1987.

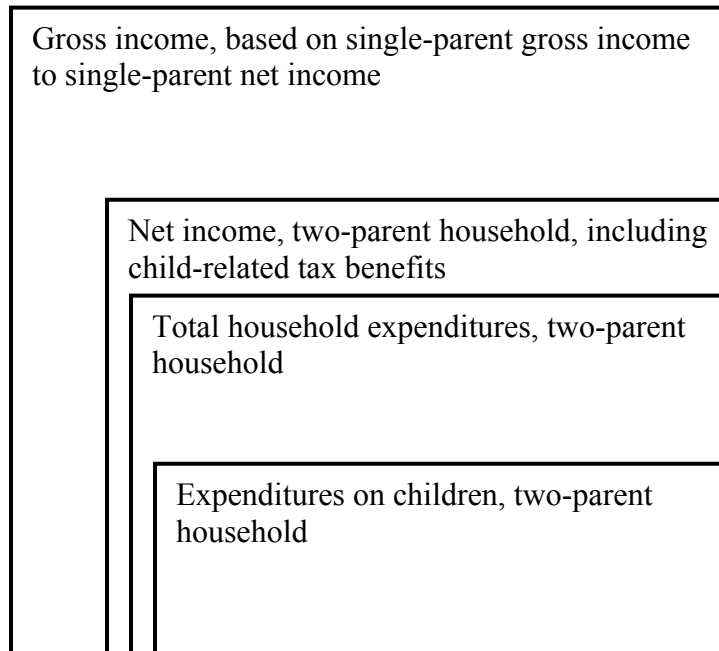
<sup>19</sup> This process is typical Income Shares methodology. See, for example, Robert Williams, et al., *Economic Basis for Updated Child Support Schedule, State of North Carolina*, prepared for Administrative Office of the Courts, North Carolina Supreme Court, State of North Carolina, submitted by Policy Studies, Inc., November 19, 1993. See also, Robert G. Williams, et al., *Economic Basis for Updated Child Support Schedule, State of Maryland, December 2, 1996*, submitted to School of Social Work, University of Maryland, submitted by Policy Studies, Inc., Denver, CO.

<sup>20</sup> See Robert Williams, et al., *Economic Basis for Updated Child Support Schedule, State of North Carolina*, prepared for Administrative Office of the Courts, North Carolina Supreme Court, State of North Carolina, submitted by Policy Studies, Inc., November 19, 1993, page 28.

to each parent's share of gross income, but allow only the custodial parent to presumptively enjoy the cost offset from child-related tax benefits.<sup>21</sup>

**Chart 1.**

**Income Shares child costs converted from share of total household expenditures to share of gross income**



Between the 2000 and 2004 updates to the child cost schedule, some portions of the cost schedule are lower for a given level of income while some portions are higher. These changes are primarily related to changes in the underlying methodology of Income Shares and not changes in tax code.

- **The Income Shares cost schedule takes into account child-related tax benefits only to the extent of treating these benefits as after-tax income in the intact household that incurs child costs—but not as cost offsets.**
- **Not only are child-related tax benefits as cost offsets not built into the child cost schedule but they cannot be built in as a cost offset in a sound manner since the cost schedule is based on combined income and the magnitude of child-related tax benefits depends on an individual parent's income.**

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<sup>21</sup> Even were Income Shares to use net income to allocate the child costs (as in Florida), the child-related tax benefits would still be primarily a windfall to the custodial parent. Only the portion of the tax benefits equal to the marginal propensity to spend on children would be taken into account through use of net income if the benefits are not specifically identified and shared between the parents.

The Income Shares cost schedule reflects child costs associated with combined parental income. However, the size of the tax benefits depends on the income level of the parent (or parents) with the child-related tax benefits. For example, if at combined monthly gross income of \$10,000 for the parents, if the custodial parent has all of the child-related tax benefits, these benefits are higher when the custodial parent has \$5,000 monthly gross income than \$3,000 monthly income because the value of exemptions and standard deduction as head of household is higher when the marginal income tax rates are higher. See Chart 2. Yet, the Income Shares cost schedule cannot predetermine the income of the custodial parent for a given level of combined parental income. There is no economically sound method for building child-related tax benefits into a single child-cost schedule.

- **Even though there are no child-related benefits as cost offsets built into the Income Shares child cost schedule, were such adjustments already included there would be a before adjustment table and a documented process of how the adjustments were made in order to see if they are appropriate for a particular case.**

There is no before adjustment table for child-related tax benefits as cost offsets, nor documentation of the adjustments since there are no built in adjustments.

Curiously, a number of states actually put “explanations” in the guideline code that it is assumed that the custodial parent receives the child-related tax benefits. See, for example, the child support guidelines of Alabama, Missouri, and North Carolina.<sup>22</sup> Essentially, the fact that the child-related tax benefits are counted as net income to determine spending on children is confused with the issue of treating the child-related tax benefits as a partial cost offset. States including such language that the child-related tax benefits are assumed to be claimed by the custodial parent at a minimum have misleading language in the child support code. Indeed, the child-related tax benefits are counted as net income for the intact households used in Income Shares survey data—but there is no treatment of these benefits as cost offsets which is economically appropriate.

A review of the only documentation of North Carolina’s child cost schedule shows no incorporation of child-related tax benefits as cost offsets. Policy Studies, Inc.’s 1993 submission to the Administrative Office of the Courts, shows in that submission’s Appendix I and Appendix II the tables of data for each of the key steps in the process of developing North Carolina’s schedule of child costs. In Appendix I, Table I-1 shows net income and household consumption at selected net income levels for one to three children. Table I-2 shows factors for expanding child costs to 4 through 6 children since the key data were for one to three children only. Table I-3 shows parental expenditures on children as a share of total household consumption expenditures. Table I-4 shows how adjustments for child care expenditures and medical expenses are factored into the computation of a proportion that relates expenditures on children to net income. Table I-5 shows child costs as shares of net income by income brackets. Immediately following Table I-5, Appendix II is a conversion table of gross income to net

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<sup>22</sup> See Alabama Rules of Judicial Administration, Rule 32, Comment; Supreme Court of Missouri, *Order*, March 2, 1998, *In re: ... Civil Procedure Form No. 14*, Assumptions; and North Carolina Administrative Office of the Courts, G.S. 50-13.4, Assumptions And Expenses Included In Schedule Of Basic Child Support Obligations.

income from which Table I-5 child costs as a percentage of net income are converted to child costs in gross dollars related to gross income levels. Appendix II simply assumes that the gross income is for a non-custodial parent with two withholding exemptions (a simulated equivalent of single tax payer standard deduction with one exemption). At no point in this calculation process is there an adjustment to the gross child costs for child-related tax benefits as a cost offset.

The Administrative Office of the Courts did not pay Policy Studies, Inc. to produce a “full report” for the 2002 updated child cost schedule but only paid for the production of the cost schedule. However, Policy Studies, Inc., still uses the same process as outlined in the 1993 submission. For example, a review of the full report submitted to the Washington, D.C. child support review panel for December 2003 shows the same process used for the 2002 North Carolina cost schedule. See *Report of the District of Columbia Child Support Guideline Commission, Initial Recommendations, December 2003*, Appendix I—Technical Appendix and Appendix II—Net Income Schedule and Gross to Net Income Conversion Table, by Policy Studies, Inc. Denver, Colorado.

➤ **Any statement that any of the Income Shares child support guidelines—including those of North Carolina—already take into account child-related tax benefits as a cost offset is factually incorrect.**

Some states correctly state the fact that child-related tax benefits as cost offsets have not been taken into account in the cost table. One such state is Indiana. According to commentary in this state’s guidelines, “Development of these Guidelines did not take into consideration the awarding of the income tax exemption.”<sup>23</sup> Also, Arizona in its guidelines acknowledges that the tax benefits are not treated as cost offsets in the cost schedule. That state’s guidelines specifically state that the child exemptions should be pro-rated between the parents as close as possible to each parent’s share of combined income. Pro-rating is both by exemptions (if multiple exemptions) and by alternating years for when a parent is entitled to the exemption.<sup>24</sup>

Kansas also requires that if the custodial parent does not agree to share the economic benefits of child-related tax benefits with the non-custodial parent, that the court shall consider the tax effects in the award calculation.<sup>25</sup> Kansas also states how the value of the child-related tax benefits should be calculated.<sup>26</sup>

The clincher regarding the fact that the Income Shares cost tables do not already take into account child-related tax benefits as cost offsets is that Colorado child support guidelines

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<sup>23</sup> See *Indiana Child Support Rules and Guidelines*, Guideline 6. Additional Commentary, adopted effective October 1, 1989, Supreme Court of Indiana.

<sup>24</sup> See *Arizona Child Support Guidelines Adopted by the Arizona Supreme Court for Actions Filed After April 30, 2001*, Section 26, “Federal Tax Exemption for Dependent Children.

<sup>25</sup> See Kansas Judicial Branch, Rules Adopted by the Supreme Court, Rules Relating to District Court, Administrative Order 180, Re: 2003 Kansas Child Support Guidelines, Kansas Child Support Guidelines, IV(E)(3).

<sup>26</sup> See Kansas Judicial Branch, Rules Adopted by the Supreme Court, Rules Relating to District Court, Administrative Order 180, Re: 2003 Kansas Child Support Guidelines, Kansas Child Support Guidelines, Appendix V.

mandate that the child exemptions shall be shared between the parents in the same proportion that parents share gross costs. This is found in the Colorado Statutes Annotation for the guidelines code section.<sup>27</sup> Colorado adopted the guidelines from those developed by Policy Studies, Inc. of Denver, Colorado.

Unpublished case law has recognized this short-coming of the Income Shares child support guideline—that child-related tax benefits are unrecognized cost offsets. In *Dyas Shifflett v. Debra Page*, (Nelson County, Virginia, Juvenile and Domestic Relations District Court, case number 2498220, December 5, 2002), the trial court ordered a deviation award based on the child-related tax benefits received by the custodial parent being treated as a cost offset.

### **What Are Child-Related Tax Benefits?**

The child-related tax benefits received by custodial parents can include:

- head of household tax payer status,
- child dependency exemptions,
- child tax credits,
- child care tax credits, and
- higher earned income credits for low-income working custodial parents.

Before quantifying the magnitude of these child-related tax benefits, what are some of the specifics of these benefits?

### **Differences in Tax Treatment between the Custodial Parent and the Non-custodial Parent**

The Internal Revenue Service generally attributes child-related tax benefits to the custodial parent in divorced and unwed situations. The custodial parent is entitled to head of household status while the non-custodial parent typically has single tax payer status. Child-related tax benefits are summarized in Federal Form 1040 from the Internal Revenue Service. The divergent treatment of custodial and non-custodial parents is substantial:

- The standardized deduction (line 39, Form 1040), for a single person (the non-custodial parent) was \$4,850 compared to \$7,150 for a head of household taxpayer (the custodial parent). This is a bonus of \$2,300 in deductions for the custodial parent.

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<sup>27</sup> See Colorado Statutes, 14-10-115, Annotation, General Consideration, Tax exemptions: Tax exemptions. Court has authority to divide tax exemptions between the parents. In re Berjer, 789 P.2d 468 (Colo. App. 1989); In re Nielson, 794 P.2d 1097 (Colo. App. 1990); In re Larsen, 805 P.2d 1195 (Colo. App. 1991). Court must allocate dependency exemption between the parties based on their respective gross incomes. Federal tax law contemplates such an allocation, and does not preempt it. S.F.E. in Interest of T.I.E., 981 P.2d 642 (Colo. App. 1998). When allocating tax exemptions between the parents, the phrase "contributions to the costs of raising the children" refers to the percentage of child support attributed to each parent in the course of making the child support computation. In re Staggs, 940 P.2d 1109 (Colo. App. 1997).

- The custodial parent only is able to claim the dependent exemptions as a legal right (lines 6c and 38, Form 1040). The 2004 value of each dependent exemption is \$3,100.
- 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 2004 code.

The earned income credit was as much as—

- \$390 if you did not have a qualifying child (non-custodial parent),
  - \$2,604 if you had one qualifying child, or
  - \$4,300 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. Subsequent legislation boosts child tax credits to \$1,000 per child by 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 Schedule X and Schedule Z, 2004 1040, Forms and Instructions, Department of the Treasury, page 76.

**Table 2.**

**Schedule X—If your filing status is Single**

If your taxable income is:		The tax is:		
Over—	But not over—			of the amount over—
\$0	\$7,150	-----	10%	\$0
7,150	29,050	\$715.00	+ 15%	7,150
29,050	70,350	4,000.00	+ 25%	29,050
70,350	146,750	14,325.00	+ 28%	70,350
146,750	319,100	35,717.00	+ 33%	146,750
319,100	-----	92,592.50	+ 35%	319,100

**Schedule Z—If your filing status is Head of household**

If your taxable income is:		The tax is:		
Over—	But not over—			of the amount over—
\$0	10,200	-----	10%	\$0
10,200	38,900	\$1,020.00	+ 15%	10,200
38,900	100,500	5,325.00	+ 25%	38,900
100,500	162,700	20,725.00	+ 28%	100,500
162,700	319,100	38,141.00	+ 33%	162,700
319,100	-----	89,753.00	+ 35%	319,100

## Defining the Value of Child-Related Tax Benefits

The value of child-related tax benefits is defined as the difference in after-tax income for a parent with the child-related tax benefits versus without the child-related tax benefits. These benefits generally are limited to head of household status, the child exemption, and the child tax credits. There may also be earned income credits and child care credits. The below table is an example of calculating the child-related tax benefits for a custodial parent in North Carolina using official 2004 tax code (but excluding the temporary boost to federal child tax credits). The example is for two children (under age 17) and with related child dependency exemptions and child tax credits.

<b><u>Table 6.</u></b>	Custodial Parent With Tax Benefits	Custodial Parent Without Tax Benefits
Monthly Gross Wages/Salary	\$3,000	\$3,000
Monthly Gross Income Total	3,000	3,000
Annual Total Gross Income	36,000	36,000
Standard Deduction (2004 tax code)	-7,150	-4,850
Exemptions	-9,300	-3,100
Federal Taxable Income	19,550	28,050
Federal Income Tax	-2,426	-3,854
Earned Income Credit	+0	+0
Child Tax Credits	+1,200	+0
Social Security Tax	-2,232	-2,232
Medicare Tax	-522	-522
North Carolina Income Tax Owed	-1,319	-2,009
After Tax Income, <u>Annual</u>	\$30,701	\$27,383
Addendum: After-Tax Income, <u>Monthly</u>	\$2,558.42	\$2,281.92

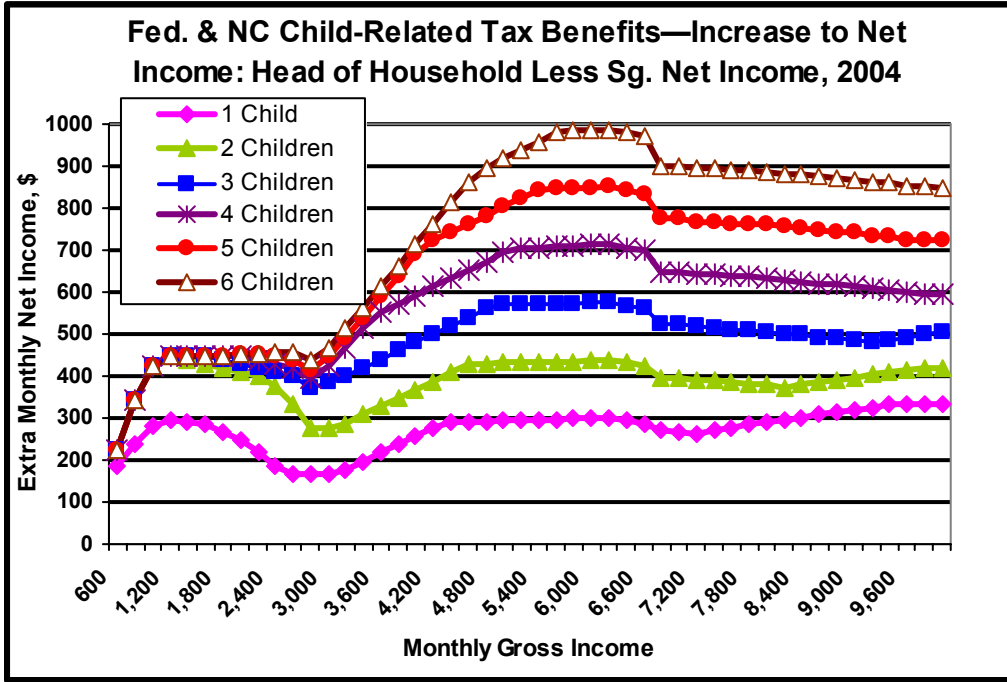
In Table 6, one sees an example for a moderate income custodial parent with \$3,000 monthly gross income—or \$36,000 annual salary. The example is for two children. One sees the child-related tax benefits in part with the higher federal standard deduction for head of household status for the CP with tax benefits (\$7,150 versus \$4,850), the two extra federal dependency exemptions (\$9,300 versus \$3,100), and the child tax credits (\$1,200 versus zero). Additionally at the federal level, the with-benefits federal income tax is \$2,426 versus \$3,854 without. Similar effects are seen at the state level. The net impact of the child-related tax benefits is that the custodial parent's after-tax income is \$30,701 with the child-related tax benefits versus \$27,383 without. The annual child-related tax benefit is an extra \$3,318 in after-tax income, or \$277 monthly. Essentially, the custodial parent has \$277 per month in child-related tax benefits as a cost offset against spending on the children.

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

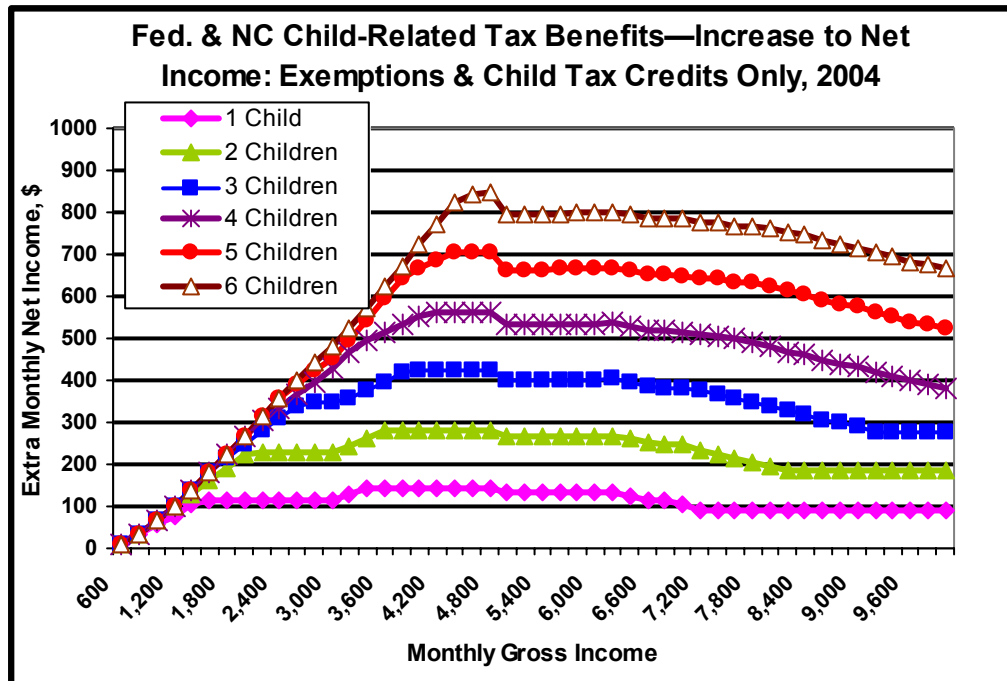
Chart 2 summarizes the difference in Federal and North Carolina tax code treatment of custodial parents (CPs) to that of non-custodial parents (NCPs). The horizontal axis is gross income for each parent (with each having the same gross income). The vertical axis is the net income advantage that the custodial parent has at each level of gross income. It shows the after-tax income of the CP minus the after-tax income of the NCP. Taxes are Federal personal income taxes, Medicare, Social Security taxes (2004 tax code but excluding the temporary child tax credit boost), and North Carolina income taxes. Earned income credits are added. Standard deductions are used. Chart 2 shows a dramatic after-tax advantage for the custodial parent.

## Child-Related Tax Benefits: Additional Net Income Per Month, Federal and North Carolina Income Tax Code, 2004

**Chart 2.**



**Chart 3.**



- As seen in Chart 2, 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 (for one to two children). Child-related tax benefits typically include head of household status, exemptions, child tax credits, and earned income credits.
- As seen in Chart 3, even if only the child exemptions and tax credits are considered, the extra after-tax monthly income from child-related tax benefits is quite substantial—generally about \$100 per child per month.

**Not Treating Child-Related Tax Benefits as a Cost Offset to be Shared Results in Lower Duty of Support for the Custodial Parent—Conflicting with Legal Principle of Child Support Awards Being Based on Needs and Ability to Pay and With Equal Duty of Support**

Table 7 shows the presumptive sole custody award for a case for two children based on the incomes shown in Table 6—\$3,000 in monthly salary for each parent. The parents have equal salaries.

**Table 7.**

**NORTH CAROLINA PRESUMPTIVE AWARD, WORKSHEET A FOR PRIMARY CUSTODY**

	Father	Mother	Combined
1. MONTHLY GROSS INCOME	\$3,000	\$3,000	
a. Minus pre-existing child support payment			
b. Minus responsibility for other children			
2. MONTHLY ADJUSTED GROSS INCOME	\$3,000	\$3,000	\$6,000
3. PERCENTAGE SHARE OF INCOME	0.500	0.500	
4. BASIC SUPPORT OBLIGATION			\$1,138
5. ADJUSTMENTS			
a. Work-related child care costs	\$0	\$0	
b. Health insurance premium costs-child(ren)	\$0	\$0	
c. Extraordinary expense			
d. Total Adjustments	\$0	\$0	\$0
6. TOTAL CHILD SUPPORT OBLIGATION			\$1,138
7. EACH PARENT'S CHILD SUPPORT OBLIGATION	\$569.00	\$569.00	
8. NON-CUSTODIAL PARENT ADJUSTMENT	\$0	\$0	
9. RECOMMENDED CHILD SUPPORT ORDER	\$569.00	\$0.00	

Each parent has a support obligation of \$569 per month as a share of combined gross income. This is a gross obligation. However, gross income does not reflect ability to pay since each parent can only spend out of after-tax income. The father's net income per month is the same as the mother's without child-related tax benefits—\$2,281.92 per month. However, the mother's net income with child-related tax benefits is \$2,558.42 per month. The mother's obligation is taken out of a larger amount of net income even though gross incomes are equal. Also, as noted

above, the annual child-related tax benefit is an extra \$3,318 in after-tax income, or \$277 monthly. While the father's after-tax child cost is the same as the father's before tax child cost (\$569 per month), the mother's after-tax child cost is \$292 per month (\$569 minus \$277).

- **The mother's "real" child support obligation is 49 percent lower than the father's—even though they have the same gross incomes—because the child-related tax benefits are not treated as cost offsets to be shared on the same basis as the gross costs.**
- **By not taking into account child-related tax benefits as a cost offset to be shared, the presumptive calculation does not conform to a standard of needs and ability to pay when setting child support.**
- **Additionally, by not taking into account child-related tax benefits as a cost offset to be shared, the presumptive calculation does not conform to a standard of equal duty of support.**

## **PART VI.**

### **North Carolina's Income Shares Child Support Guidelines and the Issue of Parenting Time Adjustments**

North Carolina's Income Shares child support guidelines have a presumptive adjustment for parenting with several key economic facets:

- There is a threshold of 124 overnights for the non-custodial parent before parenting time adjustments are made.
- There is "multiplier" of 1.5 to be applied to sole custody basic child costs from the presumptive child cost schedule such that shared custody child costs are 50 percent higher than sole custody child costs.
- Once the 124 overnight threshold is met, child costs are allocated between the two parents after applying the 1.5 multiplier and then using straight-line pro-rating between the parents in proportion to parenting time shares.

The economic significance of these assumptions includes:

- It is assumed that the non-custodial parent can provide care for the children for as many as 123 overnights per year without incurring any child expenses.
- It is assumed that duplicated expenses between the two parents are equal to 50 percent of the sole custody costs incurred by the custodial parent. It is also assumed that the 50 percent higher additional costs of shared custody are

attributed to the custodial parent prior to allocating the costs between the parents according to parenting time shares.

- It is assumed that the non-custodial parent in a shared parenting arrangement has no duplicated fixed costs such as housing for the children and that all duplicated costs are costs that vary only by parenting time (such as food).
- For shared parenting situations in which the non-custodial parent has as many as 123 overnights, the custodial parent has no reduction in child costs as a result of the non-custodial parent assuming care of the children on an overnight basis.

As to be discussed further below, there are no economic studies to support the assumption that care can be provided for children for as many as 123 overnights without incurring any expenses. There is no economic study to support the assumption of 50 percent higher costs for shared parenting arrangements. Importantly, child cost studies indicate that a very significant proportion of child costs is for fixed costs such as housing. The combination of the facets results in North Carolina's parenting time adjustment establishes a sharply lower duty of support for custodial parents and sharply overstates an economically sound cash obligation for the non-custodial parent.

### **North Carolina's Presumptive Child Cost Tables Do Not Include Any Built in Adjustments for "Standard" Parenting Time**

Should there be any argument that the child cost tables for North Carolina's presumptive guidelines include a built in adjustment for standard visitation, documentation clearly shows that the child cost tables assume zero parenting time for the non-custodial parent. Income Shares guidelines—including the one for North Carolina—have cost schedules that assume the child is with the custodial parent 100 percent of the time.

The developer of Income Shares, Robert G. Williams, specifically states in the original manual issued by the federal government for developing child support guidelines that the Income Shares costs tables are based on intact family data and are allocated between the parents according to intact family costs. That is, all of the child costs in the cost tables are assumed to be in one household—there are no built-in parenting time adjustments.

The Income Shares model calculates child support as the share of each parent's income estimated to have been allocated to the child if the parents and child were living in an intact household. A basic child support obligation is computed based on the combined income of the parents (replicating total income in an intact household).<sup>28</sup>

An Ohio appeals court has confirmed that Income Shares has no built in adjustment for standard visitation. See *Thomas D. Vliek, Plaintiff-Appellant v. Kristina G. Myllykoski, Defendant-*

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<sup>28</sup> Robert G. Williams, *Development of Guidelines for Child Support Orders*, U.S. Department of Health and Human Services, Office of Child Support Enforcement, September 1987, p. II-68.

*Appellee*, Accelerated Case No. 97-L-300, Court of Appeals of Ohio, Eleventh Appellate District, Lake County, December 11, 1998.

Second, appellant says there is no statutory basis for the proposition that the worksheet "presumes" a standard visitation order, so that deviation is necessary when there is no visitation. He argues that each court has its own conception as to what constitutes a "standard" order of visitation. Two months may be standard in Lake County, but another amount might be standard elsewhere. He also says that visitation for a newborn is highly irregular, so the magistrate could not "presume" the juvenile court would order a standard two months visitation if it had been asked to decide that issue.

These arguments have some merit. We agree that nothing in the structure of the Child Support Worksheet set forth in R.C. 3113.215(E), or in the terms of R.C. 3113.215 "presume" a standard, two-month visitation order. In fact, the opposite is true. If the magistrate's "presumption" that the Worksheet accounted for two months of visitation were valid, then the trial court would be instructed in the Worksheet to divide the annual child support obligation by ten to arrive at the amount of support to be paid each month. The magistrate's rule would reflect only ten months of child support obligations (spread out over twelve payments), and two months off when the child spends time with the obligor spouse pursuant to a visitation order, during which the obligor spouse pays the child care expenses directly instead of to the residential parent. Line 28 of the Worksheet actually directs the court to divide the annual child support obligation of the payor spouse by twelve. In our view, that means the payor spouse owes his child support all twelve months of the year, and the Worksheet makes no implied allowances for a standard, two-month visitation order.

Policy Studies, Inc. (PSI) continues to document that visitation costs of a non-custodial parent are not taken into account in Income Shares cost schedules. Examples are found in recent reports by PSI. From Economic Basis for Updated Child Support Schedule, State of Oregon, Salem, Oregon, December 31, 2001, submitted to Oregon Department of Justice, Division of Child Support; submitted by Policy Studies Inc., Denver, Colorado, p. 40:

Visitation costs are not factored into the schedule. Since the Schedule is based on expenditures for children in intact households, there is no consideration given for visitation costs. Taking such costs into account would be further complicated by the variability in actual visitation patterns and the duplicative nature of many costs incurred for visitation (e.g. housing, home furnishings).

Finally, Policy Studies, Inc., specifically states that a 1993 version of North Carolina's child cost schedules assumes that the children are in the care of the custodial parent 100 percent of the time. This language is identical to that in the more recent 2001 study for Oregon just cited above.

Visitation Costs Are Not Factored Into the Schedule. Since the Schedule is based on expenditures for children in intact households, there is no consideration given for visitation costs. Taking such costs into account would be further complicated by the variability in actual visitation patterns and the duplicative nature of many costs incurred for visitation (e.g. housing, home furnishings).<sup>29</sup>

**Example of Why Parenting Time Adjustment Cannot Be “Built Into” the Child Cost Schedule**

A true parenting time adjustment depends not just on parenting time shares but also on each parent’s income. If the cost schedule is based on combined income, you do not know each parent’s share from the table.

Assume: 1) Combined income of \$10,000/month; 2) Child cost of \$1,000 per month; and 3) NCP parenting time of 25 percent. Use straight-line allocation.

**Scenario 1: CP has \$7,000 income, NCP has \$3,000.**

**Table 8.**

	<b>CP</b>	<b>NCP</b>
<b>Gross income/month</b>	<b>\$7,000</b>	<b>\$3,000</b>
<b>Child costs by parenting time</b>	<b>\$750</b>	<b>\$250</b>
<b>Share of combined income</b>	<b>.70</b>	<b>.30</b>
<b>Share of other’s costs</b>	<b>\$175</b>	<b>\$225</b>
<b>Net cash paid for support</b>		<b>\$50</b>

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<sup>29</sup> See Robert Williams, et al., *Economic Basis for Updated Child Support Schedule, State of North Carolina*, prepared for Administrative Office of the Courts, North Carolina Supreme Court, State of North Carolina, submitted by Policy Studies, Inc., November 19, 1993, page 41.

**Scenario 2: CP has \$3,000 income, NCP has \$7,000.**

**Table 9.**

	<b>CP</b>	<b>NCP</b>
<b>Gross income/month</b>	<b>\$3,000</b>	<b>\$7,000</b>
<b>Child costs by parenting time</b>	<b>\$750</b>	<b>\$250</b>
<b>Share of combined income</b>	<b>.30</b>	<b>.70</b>
<b>Share of other's costs</b>	<b>\$75</b>	<b>\$525</b>
<b>Net cash paid for support</b>		<b>\$450</b>

Each scenario has same information from the cost schedule but each has very different outcomes.

**Fixed Costs Are Significant Shares of Overall Child Costs and Play a Major Role in Determining Economically Sound Parenting Time Adjustments**

If child costs have a significant share of total costs that are “fixed” (do not vary by parenting time), then using a simple straight-line sharing of child costs is not economically sound. Additionally, if the non-custodial parent has sizeable fixed child costs to exercise parenting time, then a simple straight-line sharing of child costs will understate the non-custodial parent’s share of total shared custody child costs and overstate the non-custodial parent’s cash share of child costs.

First, it should be noted that the Income Shares definition of child costs has no components because the costs are estimated indirectly (by comparing changes in household spending patterns with and without additional children). One must look at other child cost studies to determine if custodial and non-custodial incur fixed costs as well as costs that vary by parenting time. What do other child cost studies find regarding fixed costs?

Table 10 shows child costs by component as a share of total child costs for one child in a middle income, husband-wife family.<sup>30</sup>

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<sup>30</sup> See *Expenditures on Children by Families, 2004*, U.S. Department of Agriculture, Miscellaneous Publication Number 1528-2004, Table ES-1, p.ii. Percentages are derived from totals over the child’s 18 years.

**Table 10**

From USDA, 2004, Table ES-1 component costs as a share of total costs, middle income family:

**U.S.D.A. Child Costs by Component  
as a Share of Total Child Costs**

Total	100.0%
Housing	33.2%
Food	19.7%
Transportation	13.9%
Clothing	6.3%
Health care	7.9%
Child care & education	9.0%
Miscellaneous	10.0%

Housing is a fixed cost that does not vary by parenting time—once additional housing space has been arranged for the children. According to the U.S. Department of Agriculture, fixed costs are about 34 percent of total costs. However, U.S.D.A. child cost figures base the housing component on per capita estimates from total housing costs and are viewed as a likely high estimate for housing costs for children.

As an alternative, the U.S.D.A. child cost estimates have been modified in what is called a Cost Shares methodology by R. Mark Rogers and Donald J. Bieniewicz.<sup>31</sup> Housing costs for children are based on rental costs for owner-occupied types of housing. These estimates are on the low end for housing costs for children. See Table 9 which is based on Costs Shares data updated by the author and are for single-parent families with one child and annual income of \$55,500 (to be comparable to the middle income average for USDA data).

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<sup>31</sup> See R. Mark Rogers and Donald J. Bieniewicz, “Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines,” Reading #20 in *Assessing Damages in Injuries and Deaths of Minor Children*, ed. by Thomas R. Ireland and John O. Ward, Lawyers & Judges Publishing Co., Tucson, AZ, 2002, pp. 333-380. Data are updated to 2004.

## **Table 11**

Cost Shares child costs by component as a share of total costs, middle income family with housing in the Southeast:

### **Cost Shares Child Costs by Component as a Share of Total Child Costs**

Total	100.0%
Housing	18.4%
Food	24.4%
Transportation	15.5%
Clothing	7.3%
Health care	9.9%
Child care & education	12.6%
Miscellaneous	11.9%

The implication of child costs having sizeable fixed costs is that for shared parenting arrangements, when the non-custodial parent incurs fixed costs such as housing, it is economically inappropriate to use a straight-line allocation of costs by parenting time with a multiplier. Instead of adding the 50 percent (from the 1.5 multiplier) to the custodial parent's total costs and then pro-rating by parenting time, the duplicated fixed costs should be attributed directly to the non-custodial parent. The custodial parent's fixed costs also should be deducted from the custodial parent's total child costs and then the remainder only should be pro-rated by parenting time. Doing so, however, reduces the total costs incurred by the custodial parent (of which the non-custodial parent should share) and increases the total child costs of the non-custodial parent (of which the custodial parent should share).

### **The Myth of the “Multiplier”**

- “Need” for multiplier flows from setting large thresholds for applying parenting time adjustments.
- If there is no parenting time adjustment until perhaps a 30 percent share of parenting time is reached, then there is a sharp drop in the presumed parenting time award when the NCP has 20 to 29 percent parenting time and then the NCP has 30 percent parenting time. This is what is called the “cliff effect” from applying a parenting time adjustment.
- The cliff effect exists only if there is a minimum amount of parenting time required before applying a parenting time adjustment.
- The multiplier is used to “smooth” out the cliff effect. Essentially, the multiplier is calculated to be whatever factor is needed for the initial parenting time adjustment to be very small when first applied. That is, going from 29 percent to 30 percent parenting time for the NCP results in a small adjustment to the presumed award.

- The creative economic justification for the multiplier is that shared parenting arrangements result in duplicated child costs that must be shared. Allegedly, these duplicated costs range from 25 to 50 percent of no visitation child costs. Thus, basic child costs are multiplied by this factor to obtain shared parenting costs.
- However, even though the multiplier concept correctly identifies the issue of duplicated costs (but not necessarily the amount of duplicated costs), this approach is vastly incorrect in its application.
- The multiplier approach has large accounting errors. Instead of placing the duplicated costs in the NCP's cost column, the multiplier places the added costs in the CP's cost column. The duplicated costs are duplicated by the CP—not the NCP—according to the multiplier!

What would the “effective multiplier” be if the duplicated costs are put in the correct parent’s cost column? What would be the ratio of parenting time adjusted awards (correctly done) to a simple straight-line parenting time adjustment?

### **Accounting Errors in North Carolina's Shared Parenting Guidelines**

North Carolina's shared parenting guidelines require a multiplier of 1.5 to be applied to the presumptive guideline amount. That is, the child cost to be shared in the shared parenting situation is 50 percent higher than that in the sole custody situation. This multiplier approach is used based on the belief that in shared parenting situations there are duplicated costs that should be shared. However, the shared parenting formula does not correctly account for the costs being properly allocated between the two parents in a shared parenting situation.

There are various versions of Income Shares guidelines that have been implemented by various states that do have adjustments for how much time the children spends with each parent. However, the "multiplier" approach for adjusting overall child costs has very large accounting and mathematical errors that favor the parent with the greater parenting time to retain child support substantially in excess of the amount justified by correct accounting of costs between the two parents.

One important legal principle that is required to meet equal protection standards is an equal duty of support. Among other factors, because of the use of a multiplier in shared parenting situations, North Carolina's Income Shares guidelines do not require the custodial parent to have a duty of support commensurate with that of the non-custodial parent. Fixed and shiftable (varying with parenting time) costs are not properly allocated to expense columns for each parent. Certainly, some costs are duplicated in shared parenting arrangements—notably housing costs. However, housing costs are largely fixed costs. As a non-custodial parent incurs housing costs for the children, these costs sharply accelerate the amount the custodial parent owes the non-custodial parent as a shared duty toward the other parent’s costs. The outcome of this fixed cost factor is to push the effective “multiplier” below “1” in some cases—in contrast to North Carolina’s presumptive incorrect assumption of 1.5.

The impact of the duplicated cost of housing on the multiplier is shown below and is taken from the Cost Shares methodology from analysis developed for child support applications in North Carolina. If Income Shares had similar components, the outcome of proper accounting of fixed and variable costs would be essentially the same. An example of an effective multiplier equal to 1 follows.

One can use the Cost Shares methodology which has a very conservative estimate—relative to U.S.D.A. estimates—for housing costs as a share of total child costs. The higher the housing cost estimate, the lower the multiplier should be based on correct accounting. Hence, Cost Shares has a cautious estimate of how low the multiplier should be.

**To calculate an economically sound multiplier, one needs first to calculate the award with a simplified parenting time adjustment using straight-line pro-rating of child costs. Then one should make a parenting time adjustment for the same case but separate the fixed costs (housing) from the costs that vary by parenting time. The ratio of the economically sound (and accounting sound) calculation with duplicated housing costs to the straight-line adjustment will give a multiplier that tells us what kind of ratio should be applied to the simple adjustment to get an economically correct award.**

For one child, with the father having monthly gross income of \$5,000 and the mother's gross income of \$3,000, standard child costs are \$923 per month. The mother is the custodial parent. With the father having 30 percent of the parenting time, the basic child costs are allocated to the father and mother with shares of \$277 and \$646, respectively. Based on shares of combined gross income, the father owes the mother 62.5 of her expenses and the mother owes the father 37.5 percent of his expenses. This results in a net figure for which the father owes the mother \$300 per month in support (\$404 minus \$104). This is seen in the first half of Table 12.

The second half of the table treats housing as a duplicated fixed cost. The housing component is \$170 per month. This is taken out of standard costs and directly added to each parent's cost column. Standard costs excluding housing are \$753 per month. The father's share of non-housing costs is \$226 per month and the mother's is \$527. The two parent's costs are totaled. The father's costs are \$396 and the mother's costs are \$697. After netting each parent's responsibility toward the other's costs, the father owes the mother \$287 per month. When the costs are duplicated but correctly accounted as fixed costs, the non-custodial parent ends up owing marginally less than if a multiplier of "1" is used.

For this example, using the multiplier methodology, to get the correctly accounted shared parenting child cost award the basic child cost figure would need a multiplier of .96. In contrast, North Carolina's Income Shares guidelines require a multiplier of 1.5. That is, the basic cost amount is multiplied by 1.5 in order to get what is alleged to be a proper shared parenting child cost award. It is appropriate to note that the effective multiplier does change in varying circumstances. For example, if Table 12 were recalculated but with 40 percent parenting time for the non-custodial parent, the effective multiplier would be 1.02. If the non-custodial parent's share of parenting time for the same example was 20 percent, the effective multiplier would be .92. An economics based multiplier does vary according to circumstances—it is not constant across all cases. Nonetheless, North Carolina's Income Shares multiplier of 1.5 is dramatically

higher than the effective, true multiplier that is close to 1.0 for most circumstances—or somewhat lower.

Table 13 shows how using a standard Worksheet B calculation would result in an award of \$451 per month. The Worksheet B methodology is economically flawed and results in an award that is \$164 per month higher than an award based on more economically sound accounting of the fixed duplicated and time variable child costs.

Research indicates that this facet of the Cost Shares guidelines is conservative in allocating costs to the non-custodial parent. Research actually shows that child costs incurred by the non-custodial parent occur at a greater rate than parenting time shares. See "Estimating the Costs of Contact for Non-resident Parents: A Budget Standards Approach," by Paul Henman and Kyle Mitchell in *Journal of Social Policy*, Cambridge University Press (2001). This research corroborates the Cost Shares use of an "effective multiplier" equal to "1" and even indicates that the effective multiplier should be lower than 1.

- **North Carolina's presumptive use of a multiplier approach is arbitrary, reflects large errors in accounting of actual or typical child costs in shared parenting arrangements, and sharply overstates a non-custodial parent's obligation in typical circumstances.**

Table 12.

<b>SIMPLIFIED, STRAIGHT-LINE ADJUSTMENT, ONE CHILD</b>		
Standard Child Costs (NC Child Cost Schedule)	\$923	
Housing as percent of total child costs	18.4%	
	Father	Mother
Gross Income	\$5,000	\$3,000
Parenting Time (Share of Days/Overnights)	30.00%	70.00%
	Father	Mother
Each parent's share of standard child costs	\$277	\$646
Each parent's share of available income (percent)	62.5%	37.5%
Father's share of mother's expenses	\$404	
Mother's share of father's expenses	\$104	
Father's net obligation (can be negative)	\$300	

<b>ADJUSTMENT WITH FIXED COSTS</b>		
Standard Child Costs	\$923	
Housing for Custodial Parent	-\$170	
Standard Child Costs Excluding Housing	\$753	
	Father	Mother
Parenting Time (Share of Days/Overnights)	30.0%	70.0%
	Father's	Mother's
	Expenses	Expenses
Each parent's share of basic child costs excl. housing	\$226	\$527
Housing	\$170	\$170
Each parent's total child costs incurred	\$396	\$697
Each parent's share of available income (percent)	62.5%	37.5%
Father's share of mother's expenses	\$436	
Mother's share of father's expenses	\$148	
Cash obligation to other parent	\$287	
<b>“EFFECTIVE MULTIPLIER”: RATIO OF SCENARIO AWARDS</b>		
Duplicated Housing Scenario Award	\$287	
Simplified Cost Allocation Scenario Award	\$300	
<b>Ratio</b>	<b>0.96</b>	

**Table 13.**

**NORTH CAROLINA PRESUMPTIVE AWARD, WORKSHEET B FOR PRIMARY CUSTODY  
IF APPLIED TO ONE-CHILD CASE, 30 PERCENT PARENTING TIME FOR NON-CUSTODIAL  
PARENT**

	Father	Mother	Combined
1. MONTHLY GROSS INCOME	\$5,000	\$3,000	
a. Minus pre-existing child support payment			
b. Minus responsibility for other children			
2. MONTHLY ADJUSTED GROSS INCOME	\$5,000	\$3,000	\$8,000
3. PERCENTAGE SHARE OF INCOME	0.625	0.375	
4. BASIC SUPPORT OBLIGATION			\$923
5. SHARED CUSTODY BASIC OBLIGATION (Multiply by 1.5)			\$1,385
6. EACH PARENT'S PORTION OF SHARED CUSTODY SUPPORT OBLIGATION	\$866	\$519	
7. OVERNIGHTS WITH EACH PARENT (must total 365 times number of children)	110	256	365
8. PERCENTAGE WITH EACH PARENT [line 7 divided by (365 X total number of children)]	0.30	0.70	
9. SUPPORT OBLIGATION FOR TIME WITH OTHER PARENT (line 6 time other parent's line 8)	\$606	\$156	
10. ADJUSTMENTS (expenses paid by each)			
a. Work-related child care costs	\$0	\$0	
b. Health insurance premium costs-child(ren)	\$0	\$0	
c. Extraordinary expense	\$0	\$0	
d. Total Adjustments	\$0	\$0	\$0
11. EACH PARENT'S FAIR SHARE OF ADJUSTMENTS	\$0	\$0	
12. ADJUSTMENTS PAID IN EXCESS OF FAIR SHARE	\$0.00	\$0.00	
13. EACH PARENT'S ADJUSTED SUPPORT ORDER	\$606	\$156	
14. RECOMMENDED CHILD SUPPORT ORDER	\$451	-\$451	

## **Some States Base Parenting Time Adjustments According to Types of Child Costs Incurred: Missouri as an Example**

### **Notes from Judge Joseph A. Goeke, III<sup>32</sup>**

Previous presumed child support amounts were determined as if the child or children were residing with the parent receiving support 100% of the time. The basic child support amount included neither an adjustment for visitation nor for any direct expenditures made by the parent paying support while the child or children are with that parent.

An increasing number of states have recognized, as has our legislature, the need for an adjustment for visitation and shared parenting time.

When the actual spending patterns on children in non-intact families are examined, the following becomes obvious:

- (1) parents paying support incur some direct costs for their children, such as food, transportation, and entertainment, while caring for their [children], and
- (2) parents receiving support do not incur direct expenses for similar items during the time their child or children are being cared for by the other parent.

In other words, marginal expenditures for items such as food, transportation, and recreation for a child are *variable expenditures* incurred only by the parent who has the child (i.e., they follow the child and are incurred only by one parent at any given time) while the child is with that parent.

The absence of a mechanism in the guidelines to adjust support awards for variable expenditures during visitation periods is inconsistent with income shares and marginal cost principles, since the parent paying support is required to make duplicate expenditures for the child (as a child support payment *and* as a direct expenditure) while the child is with the paying parent.

Thus, a presumed child support amount without a *custody adjustment* is appropriate only when there is absolutely no visitation or shared parenting and the parent receiving support is providing for the child's needs 100% of the time.

A further review of the actual spending patterns on children in non-intact families would reveal that, unlike the intact family which has expenses for only a single residence, there are often increased housing costs associated with the exercise of visitation.

If a parent paying support has no overnight visitation or only infrequent overnight visitation, he or she will generally not incur significant additional housing costs to accommodate such visitation periods. If, however, the parent paying support has visitation, on average, more than two days per week he or she is likely to need an additional bedroom, etc., to accommodate the child or children when in his or her custody. On the other hand, once the visitation time is over a

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<sup>32</sup> Judge Joseph A. Goeke, III, "The Missouri Custody Adjustment Methodology: Where Did the Numbers Come From?" *Journal of the Missouri Bar*, Vol. 54, No. 6, November/December 1998.

determined threshold percentage of the year, the actual expenditure each parent incurs for these expenses does not vary with the number of periods of overnight visitation, nor does the addition of these expenditures by the parent paying support reduce the expenditure necessary by the parent receiving support. These types of expenditures are thus *duplicated fixed expenditures*.

A final category of expenditures for children, generally called *non-duplicated fixed expenditures*, are usually paid only by the parent receiving support and do not vary with the amount of time a child spends with each parent. Examples of non-duplicated fixed expenditures are: the registration costs for the child to play sports for the season, most routine clothing costs, etc.

### Summary of Missouri Child Cost Categories

(1) *Variable expenditures* are child-related expenditures that vary *directly* with the amount of time a child spends with each parent, such as food and transportation.

(2) *Duplicated fixed expenditures* are child-related expenditures that do not vary with the amount of time a child spends with each parent but are incurred by both parents, such as housing.

(3) *Non-duplicated fixed expenditures* are child-related expenditures that do not vary with the amount of time a child spends with each parent and are usually incurred by the parent . . . [receiving support], such as, clothes.

To determine the appropriate portion of the basic child support amount to be allocated for expenditure by the parent paying support under this analysis, the percent that each type of expenditure comprises of the total basic child support amount must be determined. The Missouri guidelines assume the following percentages for components of total child costs when determining the *custody adjustment*:

- Variable = 38%
- Duplicated fixed = 30%
- Non-duplicated fixed = 32%

**Parenting time adjustments are economically sound only if the “added expenses” of shared parenting are primarily fixed costs—and fixed costs that are directly attributed to the non-custodial parent separately from parenting time based allocation of variable costs.**

## **PART VII.**

### **Income Shares Child Support Guidelines and the Issue of Intact Family Data Overstating Child Costs**

#### **Documentation of Use of Intact Family Data for the Presumptive Child Cost Table**

Whether North Carolina's child support guidelines are based on intact family data is an economic issue for rebuttal because child support awards are determined for non-intact families. The fact that North Carolina's child support guidelines have a child cost schedule based on intact family data is clearly documented in a 1993 report when the state began a switch to the current version of Income Shares guidelines using a methodology known as Betson-Rothbarth.

The child-rearing expenditures discussed in this report are estimates from samples of two-parent households.<sup>33</sup>

#### **Use of Intact Family Data on Child Costs Overstates Child Costs for Situations in Which There Are Two, Single-Parent Families**

The use of intact family data results in child cost tables that reflect situations in which for any given level of combined income (of the two parents), there is only one set of adult "overhead" or adult fixed costs such as housing and utilities. Once the fixed costs of a mortgage or rent payment and utilities are paid and shared by the two parents, the remaining after-tax income can be spent on other "things"—including children. In contrast, when the two parents are divorced or unwed, there are two sets of adult overhead for the same level of combined income. There is less after-tax income after paying for housing and utilities. There is less discretionary income available combined for other things—including children. In each of the two households, there is on average half of the income available less housing and utilities. Less income is spent on children in a divorced situation simply because in part there is less combined income after paying for adult fixed costs. This has been recognized in the forensic economic literature.

A joint income standard for child support imposes a greater burden on the NCP than the CP. The NCP is forced to pay for child costs assuming less burdensome intact family overhead that is not the actual circumstance. Instead, the NCP pays child support for intact family expenditure standards but truly can only afford one-parent household spending because of higher overhead. In contrast, the CP receives intact family based child support that exceeds one-parent based child support but actually spends on the child as though the CP is in a one-parent household because that indeed is the case. The intact family based child support

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<sup>33</sup> See Robert Williams, et al., *Economic Basis for Updated Child Support Schedule, State of North Carolina*, prepared for Administrative Office of the Courts, North Carolina Supreme Court, State of North Carolina, submitted by Policy Studies, Inc., November 19, 1993, page 14.

that exceeds one-parent based expenditures is then a windfall—or profit—for the CP.<sup>34</sup>

### **Use of Intact Family Data for the Child Cost Schedule Gives the Child the Right to a Higher Standard of Living than Either Parent**

A simple example shows the economic inequity of using intact family data for child cost schedules. Assume that the mother and father each earn \$4,000 gross income per month. The child is entitled under intact family guidelines to a standard of living based on \$8,000 per month. In contrast, each of the parents spends on themselves based on \$4,000 gross income per month. In reality, the non-custodial parent is required to pay child support based on an intact family standard, the custodial parent receives child support based on an intact family standard, but the custodial parent only spends the child support as if in a single-parent household. Not all of the child support is spent on the child and the custodial parent receives a sizeable financial windfall from child support based on intact family data.

### **Solutions to the Presumption of Intact Family Child Cost Schedule's Conflict with the Fact that Child Support Is Applied to Non-Intact Family Situations**

There are two economic solutions to the presumption of intact family child costs:

- Use single-parent child costs based on an average of the two parents' incomes, or
- Make adjustments to the intact family data to reflect the additional adult overhead from two single-parent households compared to one intact household.

Use of single-parent data is the most economically sound approach. Such an approach is discussed by Rogers and Bieniewicz in various economics articles and professional presentations. The child cost schedule should be based on single-parent household data and on an average of the two parents' incomes.<sup>35</sup> Average income is the maximum standard of living that can be sustained in both households.

The Betson-Rothbarth intact family data on child costs can be at least partially corrected for the additional adult overhead of a second household to be maintained after divorce or in unwed situation. One can deduct the cost of a second mortgage (or rent) and utilities from combined

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<sup>34</sup> See R. Mark Rogers and Donald J. Bieniewicz, "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," Reading #20 in *Assessing Damages in Injuries and Deaths of Minor Children*, ed. by Thomas R. Ireland and John O. Ward, Lawyers & Judges Publishing Co., Tucson, AZ, 2002, p. 358.

<sup>35</sup> See R. Mark Rogers and Donald J. Bieniewicz, "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," Reading #20 in *Assessing Damages in Injuries and Deaths of Minor Children*, ed. by Thomas R. Ireland and John O. Ward, Lawyers & Judges Publishing Co., Tucson, AZ, 2002, pp. 333-380. See also "Child Support Guidelines: Underlying Methodologies, Assumptions, and the Impact on Standards of Living," R. Mark Rogers and Donald J. Bieniewicz, Conference on the Law and Economics of Child Support Payments, University of California, Santa Barbara, September 20, 2002. Publication scheduled in *The Law and Economics of Child Support Payments*, William S. Comanor, ed., Edward Elgar Publishing, early 2004.

income used in the “look up” of child costs. That is, the “look up” value of income should not be just combined gross income but combined gross income minus the additional mortgage and utilities. Should there be some question as to which parent’s mortgage and utilities should be deducted, it may be reasonable to use an average of the two parents. The same cost schedule can be used but the income used should be redefined for this adjustment.

Adjusting the cost schedule amount for the added cost of a second household is not a novel idea. Kansas has built in such a calculation in its presumptive child cost table. Kansas uses a variation of the Income Shares methodology. As noted in the Kansas guidelines:

The [child cost] schedules also include a built-in reduction from average expenditures per child (the dissolution burden), because of the financial impact on the family of maintaining two households instead of one.<sup>36</sup>

## **PART VIII.**

### **Documentation of FOIA Requests and Replies Regarding Key Assumptions in North Carolina’s Presumptive Child Support Guidelines**

North Carolina’s presumptive child support guidelines should be based on valid economic studies as required by federal regulations (see 45 *CFR* 302.56) and as required under standards of due process and equal protection. Additionally, the underlying studies should be available for review by any party to whom the guidelines are applied in order to determine whether presumptive facts are applicable to particular case circumstances.

To obtain economic studies that provide the basis for the economic assumptions of North Carolina’s child support guidelines, a Freedom of Information Act (FOIA) request was sent to the North Carolina Administrative Office of the Courts (AOC) on December 31, 2003. The Administrative Office of the Courts replied on January 7, 2004 that none of the studies requested were available from the AOC—the state entity responsible for establishing North Carolina’s child support guidelines.

A follow-up FOIA request for economic studies underlying North Carolina’s child support guidelines was mailed to the chair of North Carolina’s child support guideline review panels. On January 28, 2004, the chair replied that the chair did not have any underlying studies.

See further below for text of each FOIA request and for each reply.

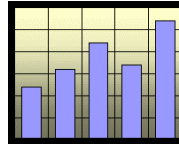
Based on replies from the AOC and the chair of North Carolina’s child support review panels, there are no economic studies serving as the basis for key economic assumptions in North

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<sup>36</sup> See Kansas Judicial Branch, Rules Adopted by the Supreme Court, Rules Relating to District Court, Administrative Order 180, Re: 2003 Kansas Child Support Guidelines, Kansas Child Support Guidelines, II(C).

Carolina's child support guidelines. There exists no available and valid basis for the following facets of North Carolina's child support guidelines:

- The exclusion of the first 123 overnights of parenting time incurred by the non-custodial parent from the child support calculation in the state's child support guidelines;
- The "multiplier" of 1.5 that is used for joint physical custody situations in the state's child support guidelines;
- The assumption that all child costs in shared parenting situations are costs that vary by parenting time—there are no fixed costs (such as housing) incurred; and
- The assumption that child-related tax benefits have already been taken into account as cost offsets in the presumptive child cost schedule.



R. Mark Rogers  
Economic Consulting  
130 Woodmont Drive  
Griffin, GA 30224  
770-412-1059

North Carolina Administrative Office of the Courts  
P.O. Box 2448  
Raleigh, NC 27602

Freedom of Information Act Request

5 U.S.C. § 552 *et seq.*

December 31, 2003

Administrative Office of the Courts, North Carolina:

This is a request under 5 U.S.C. § 552 *et seq.* for inspection and copying of certain public records prepared, maintained, and received in the ordinary course of business by your office.

#### Background

The State of North Carolina receives federal monies as a participant in the federal child support enforcement program under the amended Social Security Act—including the federal Family Support Act of 1988. Part of this latter act is codified in federal regulations under 45 CFR 302.56. This code section includes federal requirements for child support guidelines and child support guideline review panels. Additionally, child support guidelines as legal presumptions must conform to due process and equal protection standards. Because the items requested by this correspondence exist or should exist as part of compliance with federal legislation for federal funds, the items requested are subject to the federal Freedom of Information Act (FOIA).

The State of North Carolina since 1989 has submitted a State Plan for compliance with 45 CFR 302.56 and other federal regulations related to federal funding of child support programs. This State Plan is required to include child support guidelines that are economically appropriate as presumptive awards. See 45 *CFR* 302.56. The State of North Carolina's child support guidelines currently assess child support based on a guideline model known as Income Shares, as developed primarily by Policy Studies, Inc. (PSI), of Denver, CO. See AOC-A-162, Rev. 10/02 and N. C. Gen. Stat. 132. The State of North Carolina may have been responsible for implementing various features of the state's current guidelines that were not developed by PSI but were developed by the guideline review panels or elsewhere.

As an economic consultant and expert witness, I have been asked to review the underlying facts of North Carolina's child support guidelines for a client involved with their application in court. Access to the below requested items is critical as a due process issue for my client. Case law indicates that the court and parties must be able to

freely access the underlying facts of a presumption in order to be able to determine its applicability for the given case. It is in the public interest that these documents be available.

I request that I be permitted to inspect the following documents, as filed, as well as all of the contents of the folders in which these documents are normally stored and, optionally, to obtain copies of the documents inspected. Any reference below to child support guidelines is in reference to AOC-A-162, Rev. 10/02. The records I request to inspect (and optionally copy) are:

- 1) The economic study that underlies the state's schedule of child costs in the presumptive child support guidelines.
- 2) The study that is the basis for the "multiplier" of 1.5 that is used for joint physical custody situations in the state's child support guidelines. The assumptions regarding the non-custodial parent's additional child costs (above the custodial parent's) in terms of fixed costs (do not vary by parenting time, e.g., housing) and variable costs (vary by parenting time, e.g., food). That is, what are the assumptions regarding the non-custodial parent's child costs by share of fixed costs versus variable costs in the state's child support guidelines?
- 3) The economic basis for excluding the first 123 overnights of parenting time incurred by the non-custodial parent from the child support calculation in the state's child support guidelines.
- 4) Given the minimum threshold for parenting time adjustments in the state's child support guidelines, any economic studies that show that a non-custodial parent can incur 123 days parenting time without incurring any expenses of providing care for that parent's children during those 123 days.
- 5) The economic study that indicates if and how child-related tax benefits are treated as cost offsets when the state's child cost schedule in the child support guidelines was developed. North Carolina's apparent claim to have already taken into account child-related tax benefits as cost offsets conflicts with economic facts from the procedure used by Policy Studies, Inc., in creating North Carolina's presumptive child cost table. North Carolina's claim also conflicts with explanations in Income Shares guidelines code in other states—such as Indiana and Arizona—that indicate that such cost offsets are not taken into account in the cost tables.
- 6) If it is claimed that the child cost schedule in the state's child support guidelines includes child-related tax benefits as cost offsets, a copy of the child cost schedule without these adjustments for child-related tax benefits.
- 7) If it is claimed that the child cost schedule in the state's child support guidelines includes child-related tax benefits as cost offsets, the assumptions regarding the custodial and non-custodial parents' shares of combined income in the cost schedule.

Tax benefits vary according to the custodial parent's income—not directly by the combined income of both parents.

- 8) Minutes of the child support guideline review panel meetings in which the 124 overnight minimum for a shared parenting adjustment was discussed and for meetings in which this minimum was made a part of the state's child support guidelines.
- 9) Minutes of the child support guideline review panel meetings in which the shared parenting multiplier of 1.5 was discussed and for meetings in which this multiplier was made a part of the state's child support guidelines.
- 10) If there is an assumption in the state's child support guidelines that child-related tax benefits are automatically taken into account as cost offsets within the child cost schedule, minutes of the guideline review panel meetings in which this issue was discussed and for meetings in which any such assumption was made a part of the state's child support guidelines.
- 11) Case studies of child support guidelines conducted since 1989 to comply with 45 CFR 302.56.
- 12) Any study used to incorporate case study findings regarding deviation awards in child support cases into the presumptive child support guideline formula. That is, documentation of case study findings being incorporated into the presumptive guideline formula.

This information is sought in the public interest. Its release is likely to contribute significantly to public understanding of the operations or activities of the government. It is not sought primarily in the commercial interest of the requester. This is a request that copies of these documents be provided at no charge to the extent provided by the FOIA.

If no such documents exist, or if you claim a privilege of nondisclosure, please notify me in writing of the nonexistence or of your statutory basis for a claimed privilege of nondisclosure within three days. If such documents do exist, please let me know when and where I may inspect these documents or how the documents can be forwarded to me. Thank you for your cooperation in this matter.

Sincerely,

R. Mark Rogers  
Economic Consulting  
130 Woodmont Drive  
Griffin, GA 30224  
770-412-1059  
[RMRogers@mindspring.com](mailto:RMRogers@mindspring.com)



ADMINISTRATIVE OFFICE OF THE COURTS  
JUSTICE BUILDING

P.O. BOX 2448 • RALEIGH, N.C. 27602  
PHONE: (919) 733-7107  
FAX: (919) 733-1845

JOHN M. KENNEDY  
DIRECTOR  
DAVID F. HOKE  
ASSISTANT DIRECTOR

PETER E. POWELL  
DEPUTY DIRECTOR  
LEGAL AND LEGISLATIVE SERVICES

January 7, 2004


R. Mark Rogers  
Economic Consulting  
130 Woodmont Drive  
Griffin, Georgia 30224

Dear Mr. Rogers:

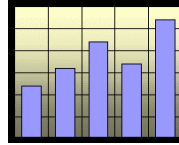
I have discussed your phone call as well as your letter with The Honorable Elizabeth Keever. During my conversation with you, I believe I informed you that Judge Keever served as the chairperson for the Child Support Guideline Review Committee.

I regret to say that we do not have any of the information you are requesting. Much of what you are requesting may be found in the study that Policy Studies, Inc. conducted on our behalf; therefore, you may wish to contact them at 1899 Ywnkoop Street, Suite 300, Denver, Colorado 80202, or 303.863.0900.

If I can be of further assistance, please give me a call at 919.733.7107. Thank you.

Sincerely,  
  
Jo B. McCants  
Associate Counsel

Cc: The Honorable Elizabeth Keever



R. Mark Rogers  
Economic Consulting  
130 Woodmont Drive  
Griffin, GA 30224  
770-412-1059

Honorable Elizabeth Keever  
Cumberland County Courthouse  
P.O. Box 363  
Fayetteville, NC 28302

Freedom of Information Act Request

5 U.S.C. § 552 *et seq.*

January 20, 2004

Judge Keever:

This is a request under 5 U.S.C. § 552 *et seq.* for inspection and copying of certain public records prepared, maintained, and received in the ordinary course of business by your office.

The below request was previously made of the Administrative Office of the Courts. Ms. Jo McCants, associate counsel, indicated that you served as chairperson for the North Carolina Child Support Guideline Review Committee. Ms. McCants indicated that the Administrative Office of the Courts does not have any of the requested information. This request is directed to you as the last apparent possibility that the requested documents are available within the State of North Carolina since you would maintain or have knowledge of the requested documents in your position as chairperson for the North Carolina Child Support Guideline Review Committee.

#### Background

The State of North Carolina receives federal monies as a participant in the federal child support enforcement program under the amended Social Security Act—including the federal Family Support Act of 1988. Part of this latter act is codified in federal regulations under 45 CFR 302.56. This code section includes federal requirements for child support guidelines and child support guideline review panels. Additionally, child support guidelines as legal presumptions must conform to due process and equal protection standards. Because the items requested by this correspondence exist or should exist as part of compliance with federal legislation for federal funds, the items requested are subject to the federal Freedom of Information Act (FOIA).

The State of North Carolina since 1989 has submitted a State Plan for compliance with 45 CFR 302.56 and other federal regulations related to federal funding of

child support programs. This State Plan is required to include child support guidelines that are economically appropriate as presumptive awards. See 45 *CFR* 302.56. The State of North Carolina's child support guidelines currently assess child support based on a guideline model known as Income Shares, as developed primarily by Policy Studies, Inc. (PSI), of Denver, CO. See AOC-A-162, Rev. 10/02 and N. C. Gen. Stat. 132. The State of North Carolina may have been responsible for implementing various features of the state's current guidelines that were not developed by PSI but were developed by the guideline review panels or elsewhere.

As an economic consultant and expert witness, I have been asked to review the underlying facts of North Carolina's child support guidelines for a client involved with their application in court. Access to the below requested items is critical as a due process issue for my client. Case law indicates that the court and parties must be able to freely access the underlying facts of a presumption in order to be able to determine its applicability for the given case. It is in the public interest that these documents be available.

I request that I be permitted to inspect the following documents, as filed, as well as all of the contents of the folders in which these documents are normally stored and, optionally, to obtain copies of the documents inspected. Any reference below to child support guidelines is in reference to AOC-A-162, Rev. 10/02. The records I request to inspect (and optionally copy) are:

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- 5) The economic study that indicates if and how child-related tax benefits are treated as cost offsets when the state's child cost schedule in the child support guidelines

was developed. North Carolina's apparent claim to have already taken into account child-related tax benefits as cost offsets conflicts with economic facts from the procedure used by Policy Studies, Inc., in creating North Carolina's presumptive child cost table. North Carolina's claim also conflicts with explanations in Income Shares guidelines code in other states—such as Indiana and Arizona—that indicate that such cost offsets are not taken into account in the cost tables.

- 6) If it is claimed that the child cost schedule in the state's child support guidelines includes child-related tax benefits as cost offsets, a copy of the child cost schedule without these adjustments for child-related tax benefits.
- 7) If it is claimed that the child cost schedule in the state's child support guidelines includes child-related tax benefits as cost offsets, the assumptions regarding the custodial and non-custodial parents' shares of combined income in the cost schedule. Tax benefits vary according to the custodial parent's income—not directly by the combined income of both parents.
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This information is sought in the public interest. Its release is likely to contribute significantly to public understanding of the operations or activities of the government. It is not sought primarily in the commercial interest of the requester. This is a request that copies of these documents be provided at no charge to the extent provided by the FOIA.

If no such documents exist, or if you claim a privilege of nondisclosure, please notify me in writing of the nonexistence or of your statutory basis for a claimed privilege of nondisclosure within three days. If such documents do exist, please let me know when and where I may inspect these documents or how the documents can be forwarded to me. Thank you for your cooperation in this matter.

Sincerely,

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770-412-1059  
[RMRogers@mindspring.com](mailto:RMRogers@mindspring.com)



State of North Carolina  
General Court of Justice  
12th District Court District

DISTRICT COURT JUDGES

A. ELIZABETH KEEVER, CHIEF  
JOHN S. HAIR, JR.  
JAMES FLOYD AMMONS, JR.  
ROBERT J. STIEHL, III  
ED PONE  
C. E. DONALDSON  
KIMBRELL KELLY TUCKER  
JOHN W. DICKSON  
CHERI BEASLEY  
DOUGALD N. CLARK, JR.

CUMBERLAND COUNTY COURTHOUSE  
PO Box 363  
FAYETTEVILLE, NC 28302  
TEL: (910) 678-2901  
FAX: (910) 486-8555

R. Mark Rogers  
Economic Consulting  
130 Woodmont Drive  
Griffin, Georgia 30224  
January 28, 2004

Dear Mr. Rogers:

I do not have any of the information that you are seeking.

Sincerely yours,

A handwritten signature in cursive script that reads "A. Elizabeth Keever".

A. Elizabeth Keever  
Chief District Court Judge

Cc: Jo B. McCants, AOC