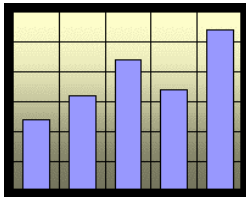


# **Brief Comments from an Economic Critique of North Carolina's Child Support Guidelines<sup>©</sup>**

**Submitted to the  
Conference of Chief District Court Judges  
Administrative Office of the Courts  
Raleigh, North Carolina**

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## Overview

The report, *A Brief Economic Critique of North Carolina's Child Support Guidelines*, was prepared for use by a client for rebuttal of the presumptive child support guidelines.<sup>1</sup> Having conducted the economic research based on mainstream economic applications and conforming to legal principles for legal presumptions, there are a number of disconcerting findings.

These findings include, among others:

- North Carolina's child support guidelines are not established as if they were a legal presumption but instead are developed on the basis that child support guidelines are mere public policy and can be arbitrary.
- The guidelines do not conform to a standard of equal duty of support—taking into account each parent's proportional share of resources. Key reasons include:
  - the use of intact family data which overstates child costs,
  - not sharing child-related tax benefits proportionally with both parents, and
  - not treating the non-custodial parent's child costs on the same basis as those of the custodial parent.
- The guidelines have a number of key assumptions that do not exist in application. These include:
  - The family is still intact, living in the same household.
  - Child-related tax benefits have no value as cost offsets.
  - The non-custodial parent has no parenting time costs.
  - In the vast majority of cases, these assumptions do not apply and render the application of the guidelines inappropriate.

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<sup>1</sup> This report can be downloaded at [GuidelineEconomics.com](http://GuidelineEconomics.com) from the link for Analysis, By State, and then North Carolina.

- The guidelines' parenting time adjustment is heavily flawed in terms of economic concepts and in terms of applying a standard of equal duty of support.
- Federal regulations require that the state conduct a case study of child support cases for deviation patterns. North Carolina has never conducted a case study nor has North Carolina incorporated deviation patterns into guideline formula as required by Federal regulations. North Carolina officials have admitted not having these case studies and the state is not in compliance with Federal regulations.

**North Carolina's child support guidelines are not established as if they were a legal presumption but instead are developed on the basis that child support guidelines are mere public policy and can be arbitrary.**

North Carolina's guidelines include a number of arbitrary features. Yet, the guidelines act as presumptive evidence in court. Arbitrary features include the choice of intact family data instead of child cost data that takes into account both parents' "adult overhead," and a parenting time adjustment that assumes a non-custodial parent can provide care for a child 123 days each year without incurring any child costs, and that child-related tax benefits have no value as a cost offset when, in fact, they do.

**Adjusting the Child Cost Schedule for the Added Cost of an Additional Household Is Important and Not Difficult**

It is important to use child cost data that take into account both parents' housing costs. [Note: A non-custodial parent's costs associated with parenting time is a separate issue. The non-custodial parent has housing costs whether or not the non-custodial parent has parenting time.]

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. Is it a sound legal principle that the child is entitled to a higher standard of living than either parent?

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.

How can one adjust intact family data for second household expenses? One can estimate one-adult housing costs across various levels of income, deduct those costs from combined available income, and then associate the appropriate child costs from the standard cost table with the adjusted combined income. A similar methodology is already in use with the Income Shares guidelines used in Kansas. This methodology is discussed in more 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.<sup>2</sup>

### **North Carolina's Parenting Time Adjustments Are Arbitrary and Do Not Conform to a Standard of Equal Duty of Support**

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.

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<sup>2</sup> This report can be downloaded at [GuidelineEconomics.com](http://GuidelineEconomics.com) from the link for Analysis, By State, and then Alabama.

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. There is no economic study that provides the basis for this assumption.
- 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.

These assumptions are arbitrary and conflict with realistic accounting practices for custodial and non-custodial child costs.

The custodial parent is held to a lower standard of support than the non-custodial parent due to ignoring non-custodial child costs for 123 overnights per year, ignoring reductions in custodial child costs that occur during the first 123 overnights for the non-custodial parent, due to the arbitrary 50 percent multiplier amount, due to placing the 50 percent duplicated costs in the custodial parent's expense before transferring to those of the non-custodial parent, and by ignoring non-custodial fixed costs for children.

## **North Carolina's Guidelines Do Not Take Child-Related Tax Benefits Into Account as Cost Offsets to be Shared by Both Parents**

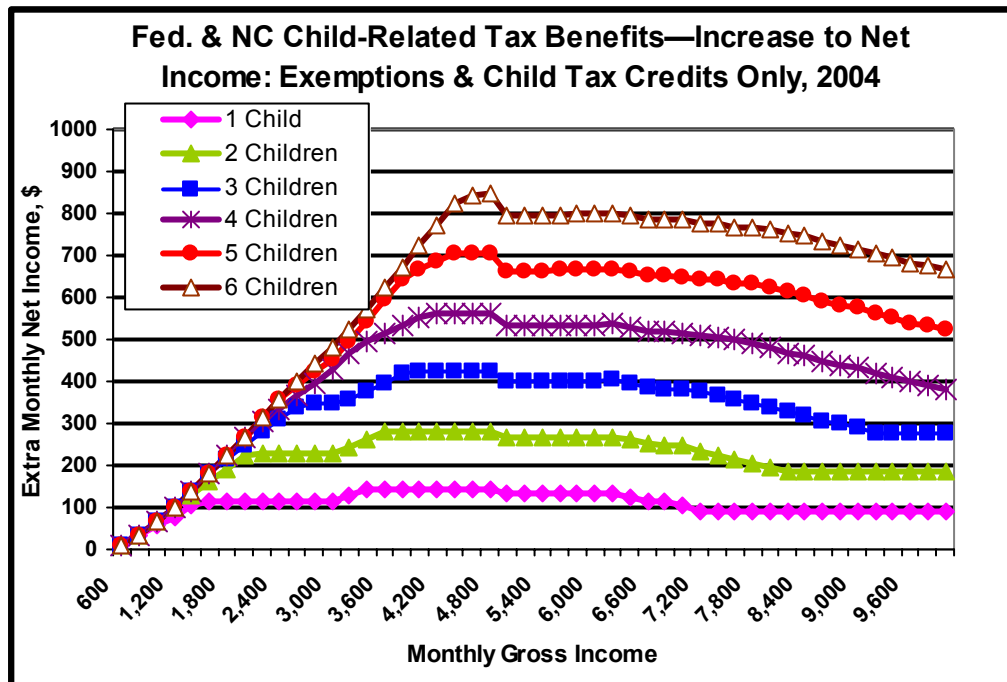
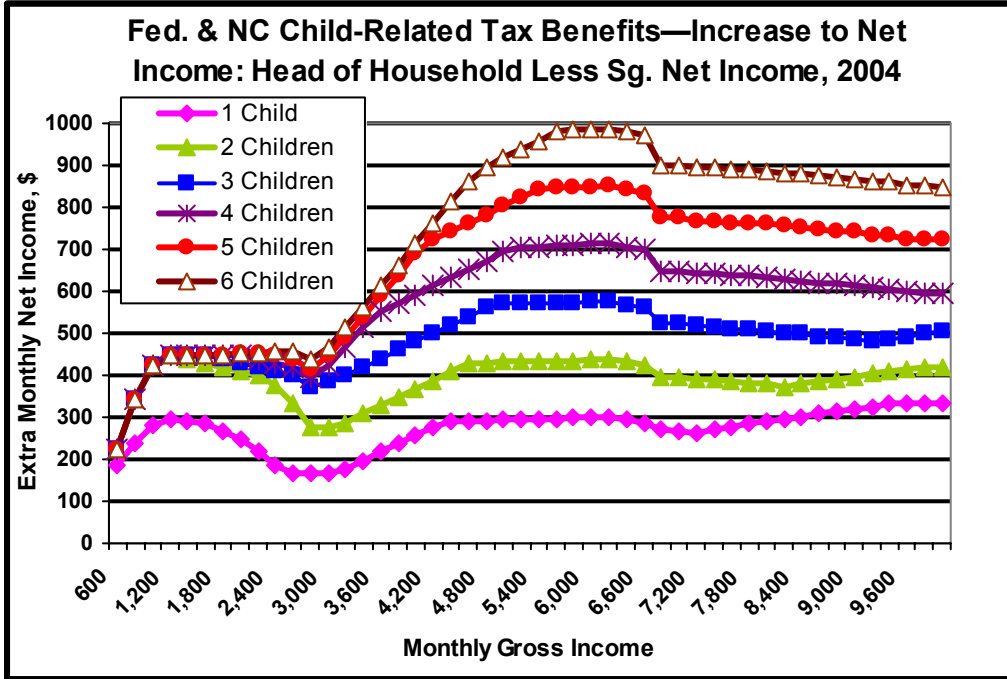
The child-related tax benefits received by custodial parents can include:

- 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.

For the Income Shares child cost schedule, 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 table must then be converted to gross income. However, in this conversion process, no adjustments are made for child-related tax benefits as cost offsets. There is confusion over the grossing up process which assumes single tax payer status with the issue of cost offsets. Use of the first does not mean that the cost offsets are shared with the non-custodial parent even though a standard of equal duty of support requires such.

Several states acknowledge the lack of taking into account child-related tax benefits as cost offsets by presumptively requiring sharing the child dependency exemptions. These states include Colorado and Arizona. Colorado's guidelines were developed with the help of Policy Studies, Inc.—PSI's corporate headquarters are in Colorado. Additionally, Idaho and Kansas put quantitative numbers on the value of the child-related tax benefits and share those presumptively.

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



## **Standard of Living Impact Analysis Reveals Broad Inequities in the Guidelines**

Standard of living impact analysis indicates that in average income situations, the custodial household generally ends up with a significantly higher standard of living than the non-custodial parent household. This holds true even when the custodial parent starts out with somewhat lower gross income than the non-custodial parent. The guidelines typically boost the standard of living of the custodial parent household relative the non-custodial parent even when the custodial parent has the higher gross income.

There are three key possible reasons for what some might consider standard of living outcomes that are inequitable. These are: the custodial parent's child-related tax benefits not being shared, the lack of a parenting time adjustment in average parenting time situations, and the presumptive child cost schedule being too high due to flaws in the estimation methodology.

## **North Carolina Has Not Complied with Federal Regulations Requiring Case Study of Deviation Awards**

Federal regulations require each state to conduct a study of child support awards for deviation patterns and to incorporate deviation patterns into the guideline formula. North Carolina has never conducted such case studies. The Federal requirements are documented in 45 CFR 302.56 and in the Federal Register. See 56 FR 22335, May 15, 1991.

## **Recommendations**

To bring North Carolina's child support guidelines into conformity with a sound economic basis for a legal presumption that applies to child support cases in which the parents live in separate households and in which in a substantial percentage of cases both parents have parenting time, the following are recommended:

The North Carolina Child Support guidelines should:

- Be viewed strictly as a legal presumption and not a policy choice and should include no arbitrary components;

- Apply a standard of equal duty of support;
- Reflect up-to-date child costs; and
- Reflect actual case circumstances that households are no longer intact and that the parents do not have the ability to pay as if they were living in one household.

Based on these criteria, the following modifications are recommended:

- Update the Basic Child Support Obligation schedule with either the Income Shares child cost schedule adjusted for second household costs or the Cost Shares child cost schedule;
- Presumptively share the child-related tax benefits either by pro-rating the child-dependency exemptions according to shares of combined adjusted gross income or by developing a schedule of the value of child-related tax benefits and treating them as a cost offset in the award calculation;
- Adopt a parenting time adjustment based on sound accounting and both parents' child costs—either the Missouri adjustment or the Arizona parenting time adjustment;