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**Wisconsin-Style and Income Shares Child Support Guidelines:
Excessive Burdens and Flawed Economic Foundation**

by R. Mark Rogers*

I. Introduction

Prior to the late 1980s, most states determined child support awards on a case-by-case basis, although rules of thumb were in use and case law was well established. The 1984 child support amendments (to the Social Security Act) required each state to establish, by October 1987, child support guidelines for use in an advisory capacity. Federal regulations implementing this made the provision more specific: State child support guidelines must be based on specific descriptive and numeric criteria and result in a computation of the support obligation. The Family Support Act of 1988 required states to pass legislation making the state child support guidelines a “rebuttable presumption.”

States generally use one of three basic types of guidelines to determine award amounts: “Income shares,” which is based on the combined income of both parents (31 states); “percentage of income,” in which the number of eligible children is used to determine a percentage of the noncustodial parents’ income to be paid in child support (15 states); and “Melson-Delaware,” which provides a minimum self-support reserve for parents before the cost of rearing the children is prorated between the parents to determine the award amount (Delaware, Hawaii, West Virginia). Two jurisdictions (the District of Columbia and Massachusetts) use variants of one or more of these three approaches.¹

Key issues when establishing or reviewing child support guidelines should include how well do guidelines actually reflect economic costs of child rearing. That is, do the guidelines reflect economic theory and data? Is there a rational basis for these guidelines?

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¹ U.S. House of Representatives Ways and Means Committee, *Committee Prints #104-14, GREENBOOK*, 542-543 (1996).

When child support guidelines are evaluated the focus is often on the "adequacy" of the award in covering child costs. The effect is to generally ignore the impact of the income transfer of child support on the household of the noncustodial parent. The broader important question is how are living standards of both households affected by child support awards—after taking into account tax effects as well. Do child support awards create extraordinary burdens or benefits for one parental household or the other? The traditional belief—or perhaps myth—that custodial parent households are less well off economically than noncustodial parent households after divorce was based on analysis of awards prior to establishment of presumptive child support awards and prior to major changes in tax code that affected custodial and noncustodial parent households differently.

This study finds, in contrast to myth, custodial parents end up on an after-tax, after-child support basis with higher standards of living than noncustodial parents under one type of traditional Wisconsin-style child support guidelines under the vast majority of income situations—including when the custodial parent earns notably less than the noncustodial parent. This higher standard of living for the custodial parent also holds true with standard income shares models in most low and moderate income situations. Flaws in the underlying economic foundations—or lack of one for Wisconsin-style guidelines—appear to be the cause of the excess income transfers to custodial parents. Wisconsin-style child support guidelines were developed for welfare situations but then later applied to all income levels, not taking into account well-established economic facts on consumers spending and tax patterns. They essentially do not have an economic foundation as a generalized child cost model. Income shares guidelines' excessive burdens on obligors flow from a flawed definition of child costs. Income shares guidelines also blur the distinction between child costs and alimony.

II. Wisconsin-Style Guidelines—Georgia as Example

The percent of obligor income model is generally known as the Wisconsin-style child support model because this type of guideline originated with Wisconsin's use in welfare cases. Wisconsin-style models, used by eleven states, result in the greatest disparity in the standard of living of the noncustodial parent. Georgia uses percent-of-income guidelines based on the number of children for whom child support is being determined.² The applicable percentages are:

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

Even though Georgia's presumptive child support awards are based on obligor-only gross income, it is after-tax income from which an obligor must pay the support and meet the obligor's

² GA. CODE ANN. § 19-6-15(b) (1998).

own living expenses. For efficiency of comparison, Figure 1 shows two sets of data: (1) Georgia's presumptive child support awards as a percent of a single, obligor's net income and (2) economic based estimates of child costs as a percent of two-parent net income (discussed further below). First, Figure 1 shows presumptive child support obligations based on mid-point percentages of Georgia's guidelines, according to the number of dependents compared to after-tax income for a single, noncustodial parent. The presumptive award is shown as a percentage of obligor's net income *before* "add-ons."³ The percentages after add-ons are higher.

III. Economic Characteristics of Georgia's Percentage-of-Income Guidelines

A key economic characteristic of Georgia's presumptive mid-point awards is that they rise dramatically as a percentage of obligor net income as gross and net income rise. This is seen in Figure 1 along with, for contrast, an estimate of child costs by Thomas Espenshade, revised from his 1984 study to convert 1983 dollars into 1997 dollars.⁴ Espenshade only derived estimates for child costs for 1, 2, and 3 children families. For an obligor paying support for one child, the mid-point presumption rises from 20 percent of net income at below poverty level income to over 30 percent for monthly net income of \$4,043 (\$6,100 monthly gross). For the frequently occurring case of a two-child obligation, the presumptive mid-point obligation rises from 25.5 percent of net income at minimal income levels to, for example, 38.5 percent for \$4,043 monthly net income (\$6,100 monthly gross). These figures do not include "add-ons." Espenshade's estimates of child costs (for an intact family) *decline* as percentages of income over the income range examined.

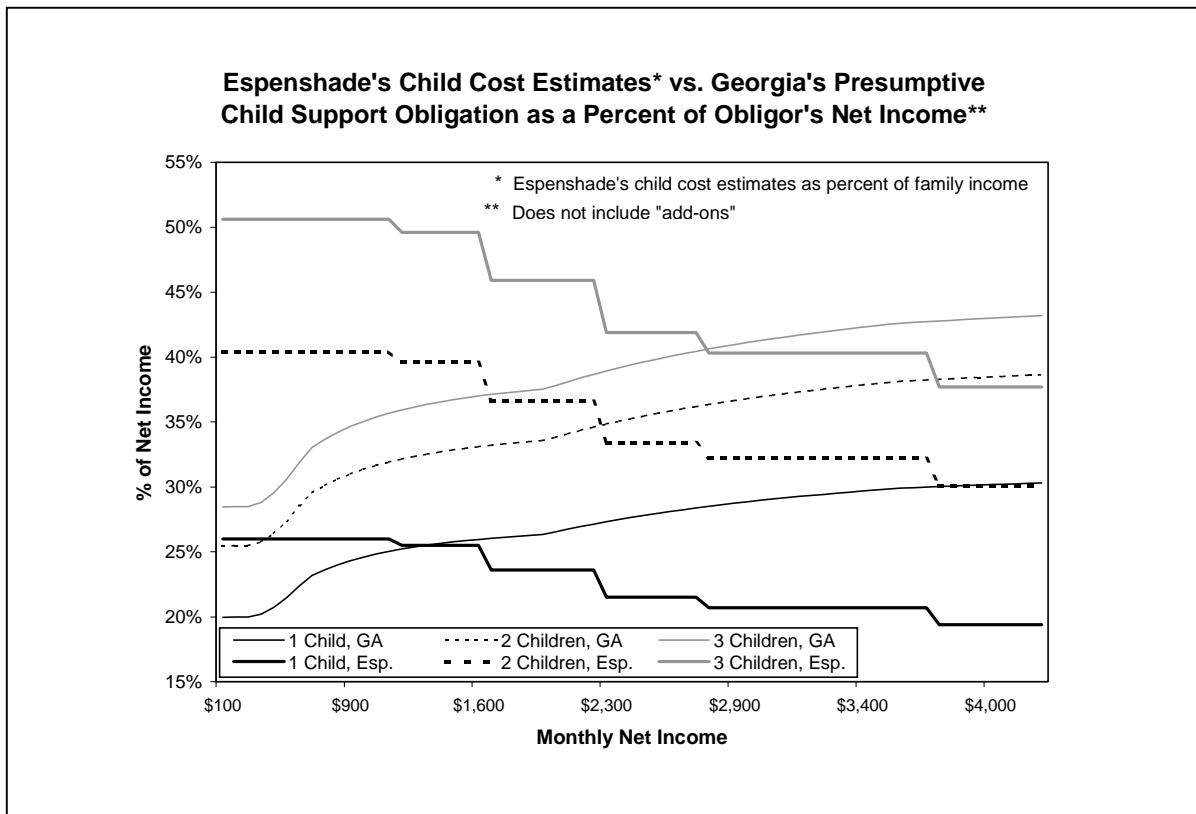
Statutorily allowed "add-ons" boost the after-tax presumptive obligation above what is shown in Figure 1. For example, for an obligor making \$2,500 gross monthly with an add-on of \$75 per month for medical insurance, the two-child support obligation would rise from \$638 to \$713 per month and the net income obligation would rise from 33.5 percent without medical insurance to 37.4 percent. For \$3,000 in monthly gross income, the same respective net income percentage would rise from 34.6 percent to 38.0 percent.

A second key characteristic of Georgia's child support guidelines is that low-income obligors receive no special treatment, with the result that low-income obligors are pushed below the federal poverty threshold income level. Low-income obligors have the same presumptive award percentages of gross income as high-income obligors, even though low-income obligors most likely do not have the ability to make payment on much of the presumptive child support obligation, much less than the ability to afford basic needs.

³ After-tax income is gross income less Federal and Georgia personal income taxes, Social Security taxes, Medicare taxes, plus earned income credits. It is assumed that the obligor has no child deductions and no child exemptions and uses standard deductions. Generally, the obligor parent is not entitled to child deductions or exemptions (as required by IRS regulations).

⁴ See THOMAS ESPENSHADE, *INVESTING IN CHILDREN: NEW ESTIMATES OF PARENTAL EXPENDITURES* (1984). The income values were converted using a simple ratio of the CPI for both years' average.

Figure 1.



Another major characteristic of Georgia's presumptive guidelines is that they transfer income from noncustodial parents to custodial parents in a manner that results in the *custodial* parent having a *significantly higher* standard of living than the noncustodial parent in most income situations and involving from one through five children. The custodial parent in most cases ends up with a higher standard of living than the noncustodial parent on an after-tax, after-child support basis. However, one or both parents will end up with a lower absolute standard of living compared to prior to separation.

IV. Mainstream Economics on Consumer Spending and Child Cost Patterns

Before explaining the standard of living comparison, it is necessary to identify the mainstream economic findings on household spending and tax obligations do Wisconsin-style guidelines contradict—with extensions to income shares models.

Over the past 100 years, theory of consumer behavior has been a fundamental focus of economic analysis. Certain fundamentals of consumer behavior have become accepted by both liberal and conservative economists alike based both on accepted theory and respected empirical analysis.

At various times over the past 100 years, and in various countries, comparative studies have been made of family budgets. For a group or “cross-section” of families at a given time, data have been collected regarding size and disposition of income. . . . These data also ordinarily reveal the *total expenditures* [italics is original] on all objects (or the savings) of the families covered by the study. Almost without exception budget studies show a relationship between family income and total family consumption like that which Keynes postulated for the total economy: low-income families typically dis-save; high-income families typically spend less than income. As one moves along the distribution from lower to higher incomes, average consumption rises, but by less than income; and the higher the income the less the rise in consumption from a further increment of income.⁵

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

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

Engel’s law as it has since become known, states that the proportion of income spent on food declines as income rises. Its original statement was mainly based on an examination of about two hundred budgets of Belgian laborers collected by Dupétioux. Since that date the law has been found to hold in many other budget surveys; similar laws have also been formulated for other items of expenditure.⁶

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

[Keynes] termed it a “fundamental psychological rule of any modern community that, when its real income is increased, it will not increase its consumption by an equal *absolute* amount,” and stated somewhat less definitely that “as a rule, . . . a greater *proportion* of income . . . (is) saved as real income increases.”⁷

⁵ GARDNER ACKLEY, *MACROECONOMIC THEORY*, 221 (1973).

⁶ H. S. Houthakker. *An International Comparison of Household Expenditure Patterns, Commemorating the Centenary of Engel’s Law*, 25 *ECONOMETRICA* 532 (1957).

⁷ MILTON FRIEDMAN, *A THEORY OF THE CONSUMPTION FUNCTION* 3 (1957).

The developer of income shares child support models, Robert Williams, in documentation on his models notes this pattern in spending on child costs:

Recent child cost studies confirm the pattern of consumer spending as developed by mainstream economists. In a 1984 study, Thomas J. Espenshade confirmed the basic pattern that household spending on children rises in absolute dollars as income rises but declines as a share of income as income rises.⁸

Figure 1 compares the Espenshade estimates for a *family's* (two parent) child cost expenses as a share of family net income to Georgia's presumptive percentages for the obligor.⁹ Espenshade's estimates were for income ranges and only for up to three children. The net income values are in 1997 current dollars. The comparison contrasts the fact that percentages based on actual studies for *extended* income ranges show that child costs decline as a share of rising net income. Georgia's presumptive percentages are excessive at moderate and upper income ranges at net income levels beyond which the Espenshade estimates intersect the Georgia presumptive percentages.¹⁰

At low-income levels, the projected Espenshade estimates lie above Georgia's presumptive percentages, emphasizing the public policy "problem" of low-income levels. These child costs are so high as a percentage of income that many families are unable to cover child (and family) costs without public assistance.

This divergence is significant—Georgia's presumptive percentages rise as a share of obligor net income in contrast to mainstream economic evidence that spending declines as a percentage of rising net income. *First, because family consumption declines as a percentage of rising net income, an obligor parent's child support obligation cannot be determined without the custodial parent's income as part of the equation.* It is the combined income of the parents that determines which percentage that the family spends on children and what the resulting family expenditure level on children is. It is this level of expenditures on children that properly determines the share that should be allocated to the noncustodial/obligor parent. Percent of obligor income models *cannot* determine the economically *appropriate* child support award on a generalized basis. *Second, a presumptive award that rises as a share of net income, at some point, leads to an excessive child support award as income rises and includes portions that are hidden alimony.*

⁸ Robert G. Williams, *Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches*, I IMPROVING CHILD SUPPORT PRACTICE 7,8 (1986).

⁹ See ESPENSHADE, *supra* note 4.

¹⁰ It should be noted that Espenshade figures are for family child costs while Georgia's presumptive percentages are for one parent's share of child costs of that parent's income—that of the obligor whose income is less than family income. Were the percentages put on a comparable basis, the points of intersection would lie further to the left—further extending the income ranges in which Georgia's guidelines are excessive.

V. Differences in Tax Treatment for Custodial Versus Noncustodial Households

Based on differences in treatment for custodial versus noncustodial parents on federal and state income taxes, use of gross income—as with Georgia's Wisconsin-style guidelines—as the basis for the determination of child support obligations is inappropriate. The differences in tax treatment are quite substantial, leaving the noncustodial parent with a significantly lower ability to support children relative to the custodial parent at equal levels of gross income. Use of gross income for determination of child support awards leads to an excess burden on the noncustodial parent.

The Internal Revenue Service form 1040 for calendar tax year of 1998, the divergent treatment of custodial and noncustodial parents is substantial:

- The standardized deduction (line 35, Form 1040), for a single person (the noncustodial parent) was \$4,250 compared to \$6,250 for a head of household taxpayer (the custodial parent)—a bonus of \$2,000 in deductions for the custodial parent.
- Unless otherwise agreed by the parties or ordered by the court, only the custodial parent is able to claim the dependent exemptions as a legal right (lines 6c and 37, Form 1040). The 1998 value of each dependent exemption was \$2,700.
- For low-income and moderately low-income working parents, custodial parents receive dramatically higher earned income credits than do noncustodial parents under federal income tax law. The earned income credit was as much as
 - \$341 if you did not have a qualifying child (noncustodial parent),
 - \$2,271 if you had one qualifying child, or
 - \$3,756 if you had more than one qualifying 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 in 1999.

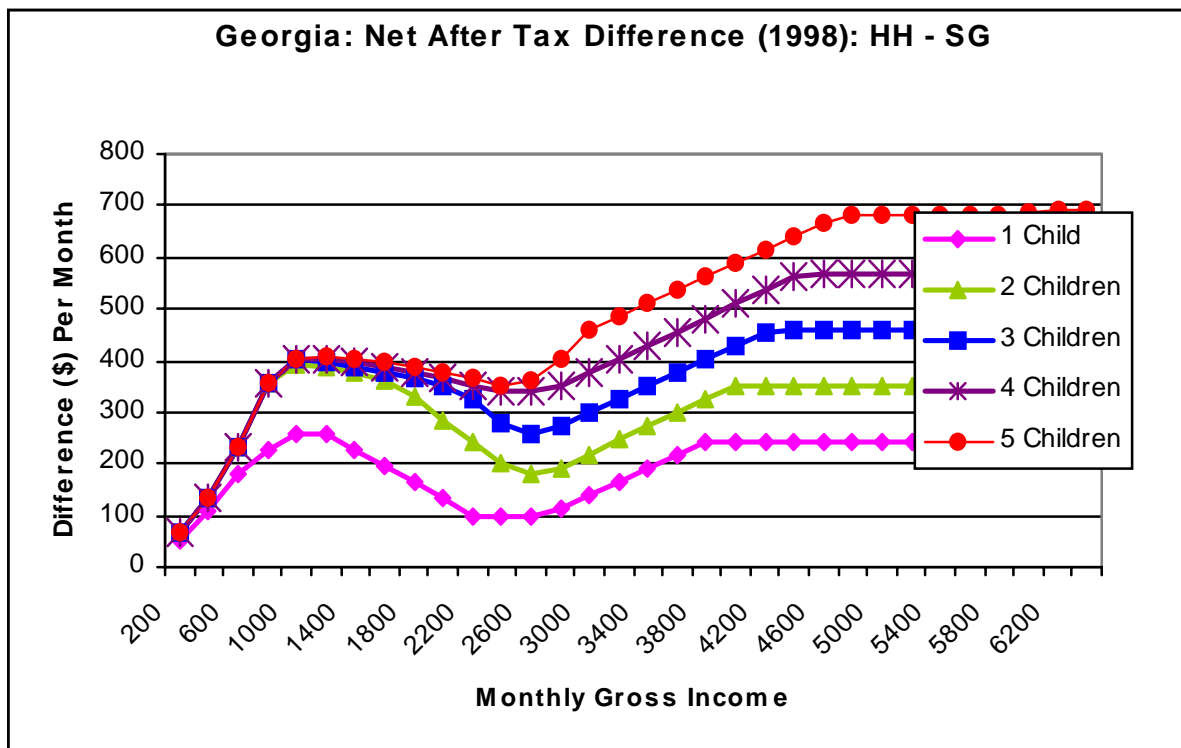
As with federal tax code, Georgia personal income tax law gives custodial parents significant exemptions that noncustodial parents generally do not get. Also, the *marginal tax rate increases for head of household taxpayers kick in at higher income threshold levels than for single, noncustodial parents.*¹¹

Figure 2 contrasts the difference in tax code treatment of custodial parents (head of household) to that of noncustodial parents (single taxpayer). The horizontal axis shows gross income for each parent—which are assumed equal. The vertical axis is the monthly *net* income advantage that the custodial parent has for each level of monthly gross income. It shows the

¹¹ See Department of the Treasury, Schedule X and Schedule Z in 1998 1040, FORMS AND INSTRUCTIONS.

after-tax income of the custodial parent minus the after-tax income of the noncustodial parent.¹² Figure 2 shows a dramatic after-tax advantage for the custodial parent. The first “hump” is primarily due to the earned income credit that the custodial parent receives. The jump in the custodial parent’s advantage as seen on the right two-thirds of the Figure is due to differences in marginal tax rates. Deductions, exemptions, and credits also boost the overall level for custodial parents. Use of gross income for guidelines ignores the advantage that custodial parents receive from preferential tax treatment. This tax advantage typically is worth several hundred dollars in net income per month.

Figure 2:



As an extension to other child support models, income shares models that are not on a net income basis in the published support tables ignore the custodial parent’s tax advantages and are not on a rational, equitable basis. Income shares models are based on intact family spending patterns with tax obligations on a joint basis.

¹² Taxes are Federal and Georgia personal income taxes, Medicare, and Social Security taxes. Earned income credits are added. Standard deductions are used.

VI. Standard of Living Comparisons

Figures 3 and 4 compare custodial to noncustodial parent household income, after-tax, after-child support, as a ratio of poverty threshold income with child support transfers for two and three children, respectively, under Georgia guidelines. The bottom axis is the monthly gross income for the noncustodial parent. The head of household custodial parent's income is shown both as equal to and as 70 percent of the noncustodial parent's income. Add-on child costs are not included in the analysis—only basic presumptive awards using the midpoint of Georgia's range of percentages.

The poverty level varies according to the number of children with the index value of 1 being the poverty level as appropriate for each household. The vertical axis is the ratio of after-tax, after-child support income to poverty threshold income. Each household's standard of living by this measure is expressed as multiples of poverty threshold income. The Figure is based on the assumptions of standard taxes, credits, deductions, and exemptions and that the child support is actually paid. The two-child case is shown as an example. All data are for 1998. Two lines are shown for the custodial parent—one for gross income equal to that of the noncustodial parent and one for 70 percent of the gross income of the noncustodial parent.¹³

Figures 3 and 4 show that at low-income levels the noncustodial parent is pushed below the poverty level (the horizontal axis) and cannot afford to pay child support and meet basic needs. Given the alternatives, the noncustodial parent must purchase minimal food and clothing and still come up short on child support.

A comparison of after-tax, after-child support income to a baseline of the poverty level is a useful evaluation of the impact of the transfer of income through child support.¹⁴ However, a standard of living comparison is not a comparison of child costs. This type of comparison necessarily at some point is inclusive of alimony since traditionally case law has defined child support in terms of needs and costs while defining alimony in terms of standard of living.

¹³ For full detail on the standard of living comparison, see R. Mark Rogers, "How Wisconsin-Style Child Support Guidelines Violate Mainstream Economic Theory and Empirical Research: Georgia as an Example," working paper presented to Georgia Commission on Child Support, June 4, 1998. *See also* DIANE DODSON & JOAN ENTMACHER, REPORT CARD ON STATE CHILD SUPPORT GUIDELINES (1994).

¹⁴ This method of comparison has been advocated by the National Partnership for Women and Families (formerly Women's Legal Defense Fund) for evaluating child support guidelines.

Figure 3:

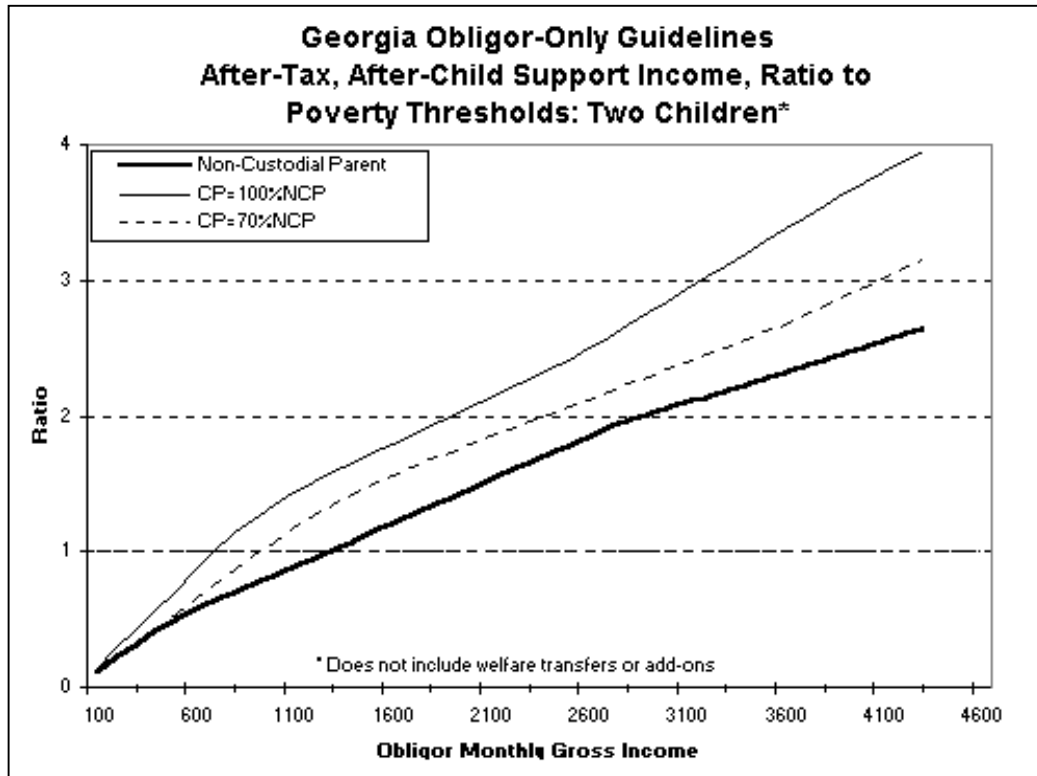
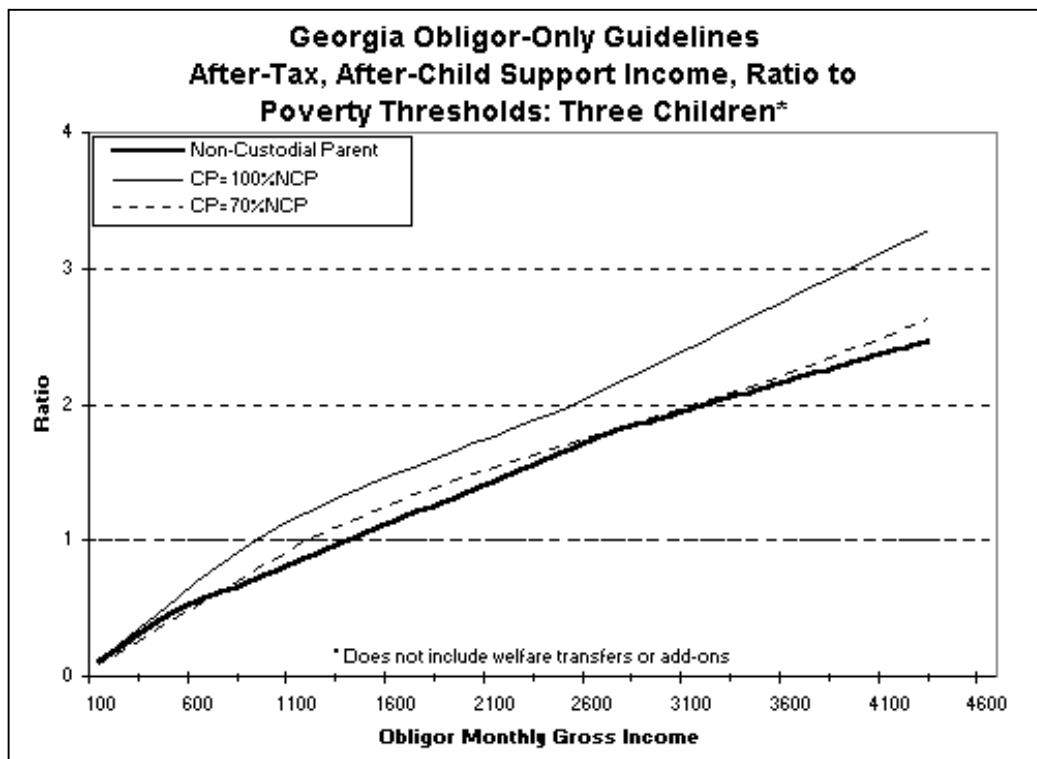


Figure 4:



Figures 3 and 4 not only show payment difficulties of the obligor at low-income levels but also shows that at higher income levels, the payment of child support leads to an increasingly higher level of above poverty income to the custodial parent than the noncustodial parent. This difference can be quite substantial. For example in Georgia for the two-child case, with the noncustodial parent earning a monthly \$2,000 in gross income and the custodial parent earning 70 percent of this, the custodial parent ends up with a 25 percent higher standard of living than the noncustodial parent. This does not take into account add-ons.

Based on a comparison of custodial and noncustodial ratios, Georgia's child support awards are excessive in most instances. The custodial parent generally has more multiples of poverty level income than the noncustodial parent. Based on Georgia's guidelines—even though both parents are worse off financially after divorce—the custodial parent generally has a higher standard of living than the noncustodial parent.

An important caveat for this type of standard of living comparison is that the comparison is most appropriate when both parents' incomes are near the poverty level. Further away from the poverty level, the comparison is less reliable. Specifically, this type of analysis compares fixed percentage child costs over a wide income range. The custodial parent household spends the same percentage of income on child costs regardless of the income level. This assumption contradicts economic studies that show spending on child costs declines as a share of income. Above low-income levels, this type of ratio likely understates the custodial parent's standard of living because at higher levels of income, smaller proportions of income are spent on child costs.¹⁵

VII. Origin and Background of the Percent of Obligor Model

Given the contradictions of Wisconsin-style guidelines with mainstream economic facts, what can be learned from the origins of Georgia's Wisconsin-style guidelines that may be applicable to income shares models as well? Wisconsin regulatory code specifically points to the origins.

The percentage standard established in this chapter is based on an analysis of national studies, including a study done by Jacques Van der Gaag as part of the Child Support Project of the Institute for Research on Poverty, University of Wisconsin, Madison, entitled "On Measuring the Cost of Children," which disclose the amount of income and disposable assets that parents use to raise their children.¹⁶

A review of Van der Gaag's 1982 study is necessary in order to fully evaluate the economic appropriateness of percent of obligor income guidelines--with eventual insight into problems with income shares models.

¹⁵ The ratios in this study also do not take into account visitation costs. This omission overstates the noncustodial parent ratio and understates that for the custodial parent.

¹⁶ Ch. HSS 80, Wis. Admin. Reg. No. 373 (Jan. 1987), at 316-I.

A. *Van der Gaag's Definition of Child Costs*

Van der Gaag's definition of child costs diverges sharply from common definitions of actual child costs. His study's definition begins with one-child costs calculated as how much income a one-child couple must be compensated in order to be equally well off economically as without the child. Van der Gaag posed the question as "How much income does a couple with one child need, to obtain the same (pre-specified) level of economic well-being as a childless couple?"¹⁷ This definition was then extended to multiple-child families. The State of Wisconsin took Van der Gaag's estimates as baseline cost estimates and then adjusted them downward slightly, allegedly for custodial parent earnings and noncustodial parent child costs.¹⁸

Van der Gaag's cost definition is a "utility" equalizing measure. But, these cost estimates do not take into account any "utility" that children give to the parents. His cost estimates are based on a definition such that all that matters is economic well-being of the parents. His definition leads to an overstatement of child costs—and this has implications for the methodology behind income shares models. Further, he did not credit the noncustodial parent for time that the child is in the noncustodial parent's custody, nor did he calculate the increased costs of those periods of possession.

The bulk of the studies reviewed by Van der Gaag were for low-income families. These studies ignore the impact of government transfers to subsidize child costs. The baseline income for the families studied is \$12,000 (as of 1982). The low-income leads to high percentages for child costs since necessities would take up almost all and in many cases more than all income. Gross income was the appropriate base since little or no taxes were paid by low-income obligors. Wisconsin adopted the adjusted percentages in 1983 as advisory guidelines and as a rebuttable presumption for child support obligations at all income levels in 1987.¹⁹

B. *Application to Other than Low Income Families*

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

¹⁷ Jacques van der Gaag, *On Measuring the Cost of Children*, in III CHILD SUPPORT: TECHNICAL PAPERS SR32C (Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982), at 18.

¹⁸ Ada Skyles and Sherwood K. Zink, "Child Support in Wisconsin: Income Sharing as a Standard of Law," paper presented at the Women's Legal Defense Fund Conference at The Aspen Institute, September 15-17, 1986, at 4.

¹⁹ Irwin Garfinkel, *The Evolution of Child Support Policy*, FOCUS 13 (Spring 1988).

part of the child support formula.²⁰ Based on early papers providing the technical foundations, one report stated:

A proportional tax rate structure is one in which the tax rate on all income is identical. A regressive tax rate structure is one in which the tax rate declines as income increases while the tax rate increases as income increases in a progressive tax. Because the child support tax will not apply to income in excess of the amount required to finance the public benefit, on income above this maximum the child support tax structure can be said to be regressive. But our concern here is with the tax rate structure up to this maximum [with a proportional tax being implemented as long as the public benefit is not exceeded].²¹

The originally intended implementation of Wisconsin-style guidelines was most clearly described in an early memorandum by the Secretary of Wisconsin's Department of Health and Social Services in 1983. The memorandum was a set of instructions to the Wisconsin judiciary on how to apply the advisory guidelines, taking into account both parents' incomes. The memorandum acknowledges that the presumptive percentages were based on studies of intact families with the studies using income equivalence to define child costs—as in Van der Gaag's table—and were for a *family's* obligation.

The standard determines the amount both parents are expected to contribute to their child's care. Therefore, if a child is in the physical care of someone other than a parent, the standard may be used to determine the amount each of the parents are ordered to pay [emphasis is original]. Similarly, if both parents continue to provide care, as in shared physical custody cases, the court may find that the gross income available for child support payments of the parents is proportionately reduced, and that the obligation of one is set-off, all or in part, by the obligation of the other. For example, if parents provide monthly alternating residential care, and each parent has the same gross income, the court may find that no child support should be paid by either parent. If one of the parents had twice the other's earnings, the court could apply the standard to one-half that parent's earnings.²²

Only after the guidelines became a rebuttable presumption in Wisconsin, and later in other states such as Georgia, were the original procedures and theoretical underpinnings forgotten—apparently as political maneuverings. The memorandum also called for judicial

²⁰ Institute for Research on Poverty, University of Wisconsin-Madison, *Documentation of the Methodology Underlying the Cost Estimates of the Wisconsin Child Support Program*, III CHILD SUPPORT: TECHNICAL PAPERS SR32C, 143-144 (Special Report Series 1982).

²¹ INSTITUTE FOR RESEARCH ON POVERTY, UNIVERSITY OF WISCONSIN-MADISON, II CHILD SUPPORT: A DEMONSTRATION OF THE WISCONSIN CHILD SUPPORT REFORM PROGRAM AND ISSUE PAPERS SR32B (Special Report Series 1981), at 51.

²² Linda Reivitz. "Percentage of Income Standard for Setting Child Support Awards," memorandum by Secretary, Department of Health and Social Services, State of Wisconsin, to members of the Wisconsin Judiciary, December 20, 1983. See also IMPROVING CHILD SUPPORT PRACTICE, *supra* note 8, at I-221.

discretion to lower the presumptive percentages for higher incomes. The history on how Wisconsin's welfare situation guidelines became applied to all types of cases is a simple one. The Wisconsin legislature delegated guideline authority to the Wisconsin Department of Health and Social Services, which in turn administratively chose to use welfare percentages in non-welfare cases as well.

VIII. Extension of Findings to Income Shares Models

A. Higher Standards of Living for Custodial Households

Under Georgia's Wisconsin-style guidelines, there is a large shift in the standard of living toward the custodial household. This is not just an outcome of Wisconsin-style child support guidelines. Income shares models as developed by Dr. Robert Williams also generally lead to a significant shift in the standard of living to the custodial parent household. For low and low middle-income ranges, the income shares presumed awards for two and three children generally are higher than those presumed under Georgia's guidelines—with the implication that income shares awards at these income levels leave the custodial parent with a higher standard of living than the noncustodial parent.

Under income shares, at higher income levels the custodial parent's relatively higher standard of living dwindles. Nonetheless, the custodial parent household clearly has a higher standard of living after the child support transfer. That is, for example, if a custodial parent's before-tax income is 70 percent of the noncustodial parent's income, the custodial parent's after-tax, after-child support standard of living generally is 80 to 120 percent of the noncustodial parent's standard of living (not counting add-ons). The implication is that awards under income shares models have an alimony component resulting from the cost estimation technique.

Figures 5 through 8 compare standards of living under income shares child support guidelines as used in the state of North Carolina.²³ Figure 5 compares noncustodial parents (single taxpayers) and custodial parents (head of household taxpayers) with equal gross incomes with child support transferred for two children. Figure 6 makes the same comparison except that the custodial parent's gross income is 70 percent of the noncustodial single taxpayer. When incomes are equal, income shares leads to a higher standard of living for the custodial parent for all shown monthly income levels.

²³ More accurately, the charts are comparisons of North Carolina income shares guidelines as would be applied under federal and Georgia tax code (personal income taxes) as a simplification by the author.

Figure 5:

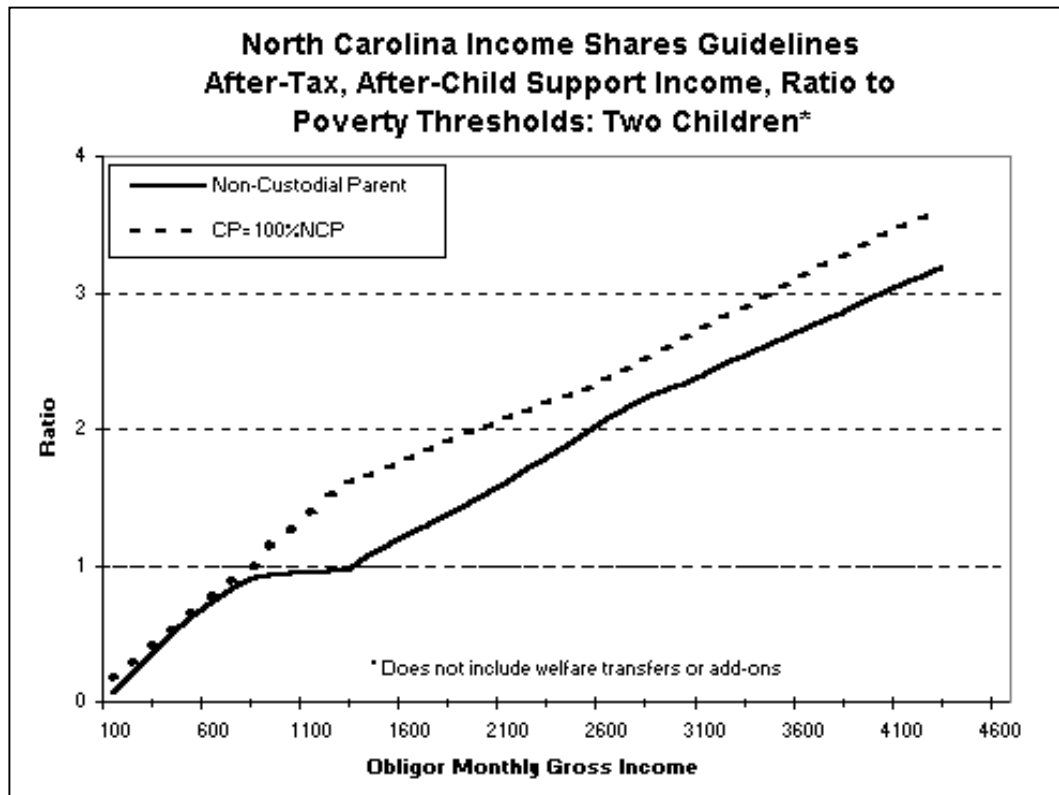


Figure 6:

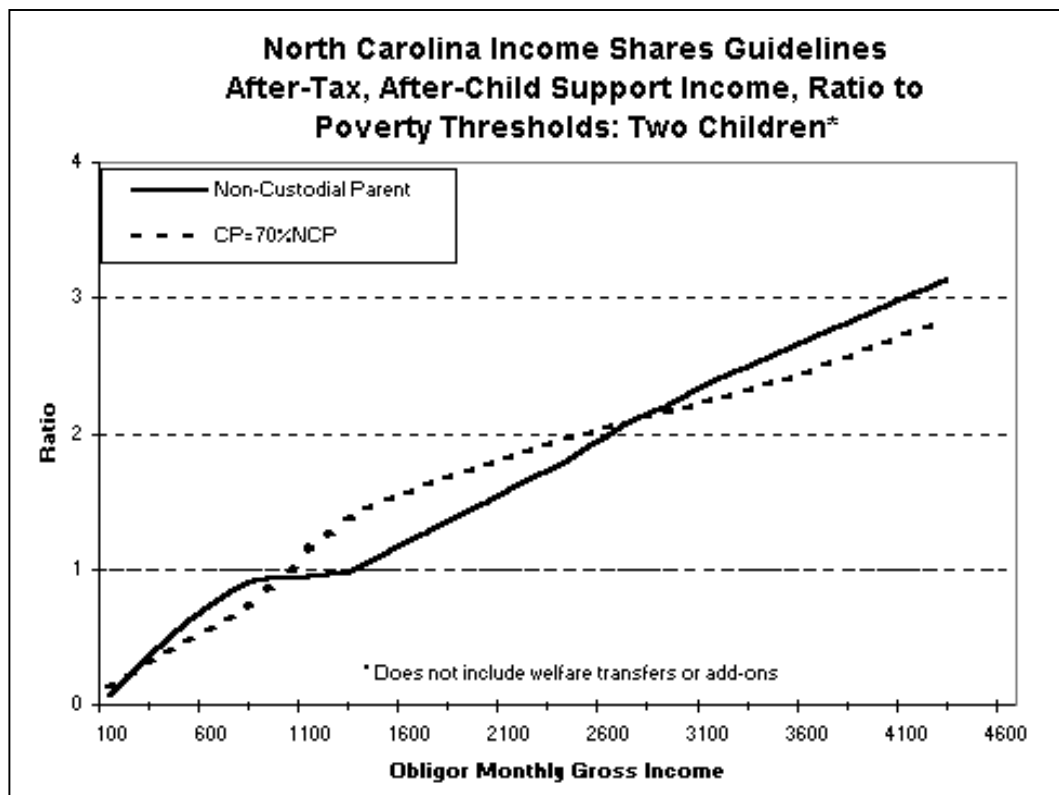


Figure 7:

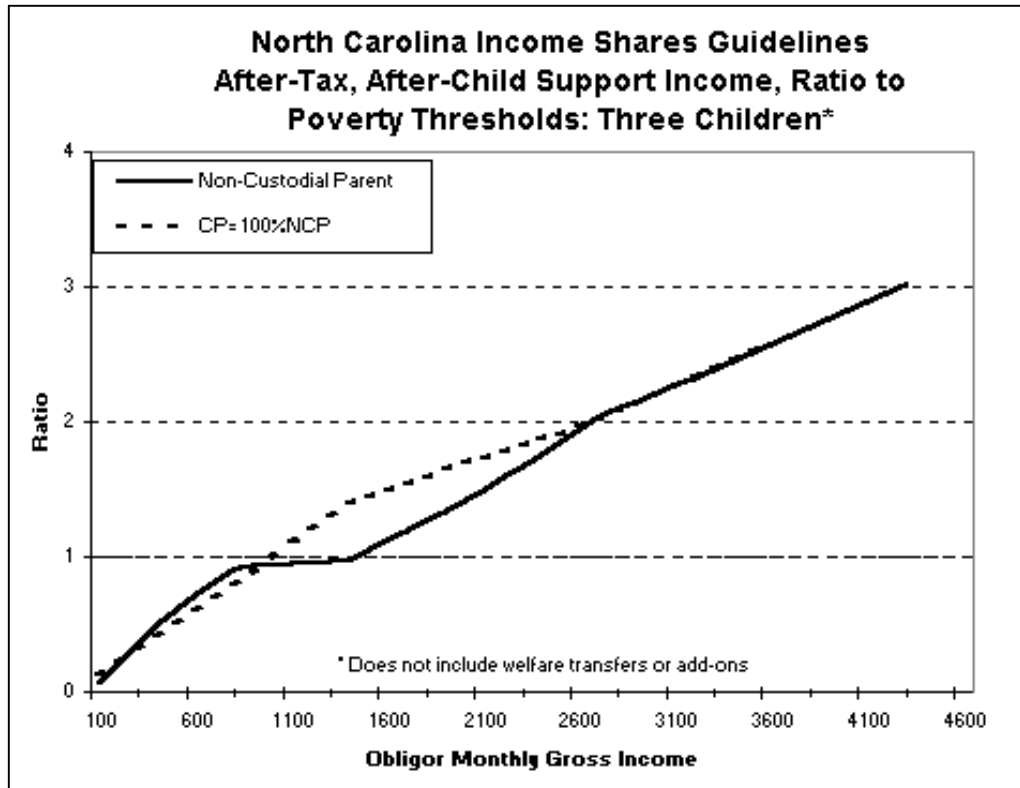
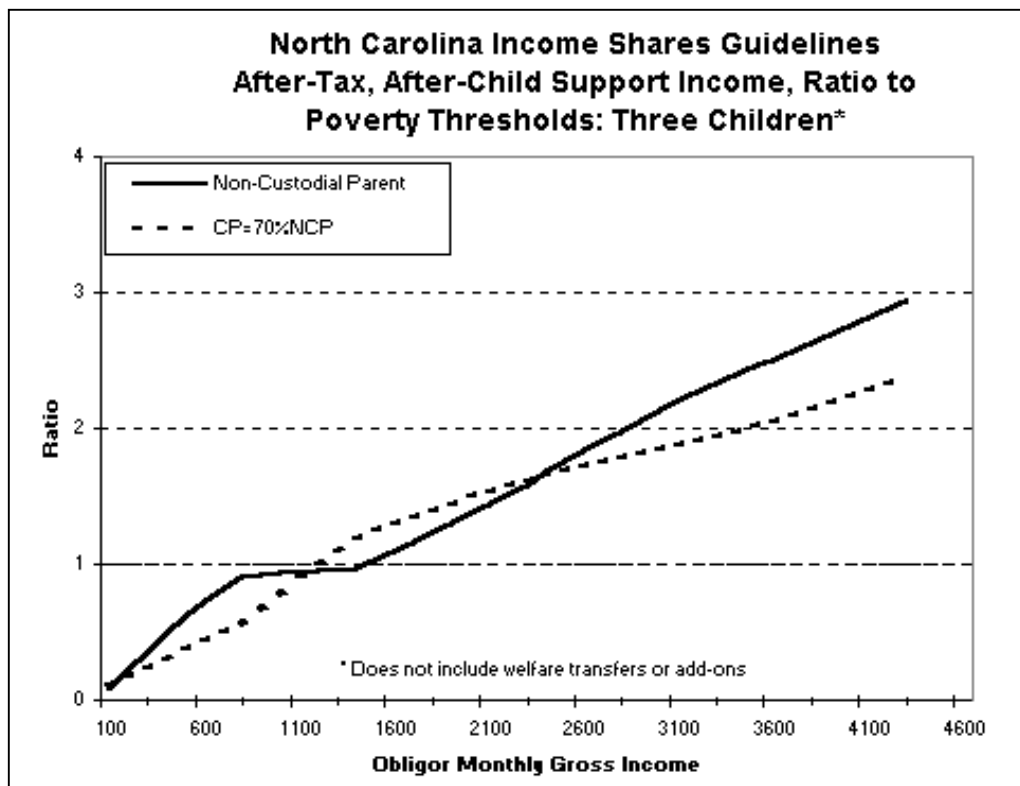


Figure 8:



As seen in Figure 6, even when the custodial parent makes 30 percent less gross income than the noncustodial parent, the custodial parent ends up with a higher standard of living over a wide income range and the difference often is substantial. For the noncustodial parent making \$1,100 to about \$2,900 monthly gross income and the custodial parent making 30 percent less, the noncustodial parent pays enough in child support to keep the custodial parent's household standard of living well above that of the noncustodial parent. For example, with the two child obligor earning \$1,500, \$2,000, and \$2,500, the custodial parent (earning 70 percent of the noncustodial parent) has a *higher* standard of living by 34 percent, 20 percent, and 9 percent, respectively. As seen in Figures 7 and 8, the custodial parent's relatively higher standard of living is reduced as the number of children increases. Also, the measured standard of living advantage of the custodial parent disappears at higher income levels. This is largely a result of this standard of living definition being based on a fixed percentage cost for children. In this somewhat faulty measure of child costs, child costs are constant as a percentage of income across all income ranges while the income shares model has child costs declining as a percentage of income as income rises at higher income levels.

For an extended income range—for moderately low and middle incomes—the income shares model for determining child support awards results in a notably higher standard of living for the custodial parent household than for the noncustodial parent household in many types of income circumstances for one to three children cases. At a minimum, income shares presumptive awards are income transfers that exceed child costs, contain an alimony component, and boost the custodial parent's standard of living. At the same time in a significant percentage of cases the noncustodial household can earn a significantly higher income than the custodial parent household and yet end up with a lower standard of living than the household receiving the income transfer called child support. The theoretical underpinnings of Wisconsin-style guidelines and, in turn, Williams' version of income shares child costs that lead to this peculiar outcome are unclear at best.

B. Income Equivalence Models Overstate Child Costs

The primary problem of current child cost models is that they do not measure actual out-of-pocket child costs, but rather measure the amount of income needed to restore an intact household to the level of economic well-being enjoyed based on goods and services consumed prior to having the additional—or first—child. This is an income equivalence concept of costs rather than one based on itemized, measured costs. Wisconsin-style guidelines are directly based on this principle as noted in Van der Gaag's study, discussed earlier. Williams' income shares methodology is similar and is biased toward overstating child costs.

In simplified terms, income-equivalence researchers look at data over a range of income levels and compare percentages of certain adult types of goods consumed and then compare to percentages after having the additional child. The cost of the additional child is the amount of income needed to restore the percentage of income spent on these specified adult goods. This is the definition of child costs in Van der Gaag's study of low-income families that underlies Wisconsin-style models.

For Williams' income shares models, the approach is to look at intact families with and without the additional child and compare income and consumption levels when the share of adult goods consumed has returned to the pre-additional child level. The extra *total* consumption is attributed to the child and is the estimate of child costs. The measure is indirect—there are no components for actual expenses. There are no components for child costs of food, housing, medical costs, etc. For Williams' income shares model, the specified bundle of goods that is examined at various income levels and with various numbers of children is adult goods: adult clothing, tobacco, and alcohol. If two families of different size spend the same proportion of their incomes on these adult goods, they are deemed to be equally well off economically. As noted in Williams' own notes on his methodology:

Of the models used by Dr. Betson for these new estimates of child-rearing expenditures, the "Rothbarth estimator" seems to have the most economic validity and plausibility. As discussed in more detail below, this estimator defines equivalent well-being between households (with and without children, for example) in terms of their spending on "adult goods." In our judgment and in the judgment of Dr. Betson, estimates based on this Rothbarth model constitute the best available evidence on child-rearing costs for use in the development of child support guideline tables.²⁴

Several economic methodologies have been developed to produce such estimates [of child costs]. Most attempt to estimate the marginal, or extra, costs of child-rearing relative to expenditures in the absence of any children. They do so by comparing expenditures between two households that are equally well off economically, one with children and one without. The additional expenditures by the household with children are deemed to be the costs of child rearing.²⁵

In contrast to Van der Gaag's emphasis on low-income situations, Williams did evaluate the Rothbarth definition at varying income levels and obtained child cost estimates with the appropriately shaped pattern—that of declining percentages at income levels higher than low income levels. This, however, does not mean the methodology identified the estimated level of child costs correctly nor the proper slope of the guideline decline in percentages of income. The income shares methodology appears to overstate child costs.

C. Reasons Behind Income Shares Overstatement of Child Costs

There are several reasons why Williams' methodology leads to an overstatement of child costs: (1) non-recognition of a budget constraint, (2) the choice of adult goods share of consumption as a target definition, 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. In "real life," families do not spend on children based on some notion of extra income

²⁴ See Robert G. Williams, David A. Price, & Jane C. Venohr, *Economic Basis for Updated Child Support Schedule, State of North Carolina*, November 24, 1993, Policy Studies, Inc., Denver, Colorado, at 3-4.

²⁵ *Id.* at 8.

for economic well-being equivalence, but must make spending decisions based on the same level of income as prior to having the additional child. Furthermore, families assume their economic standard of living will decline as a result of new child costs. 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 choice of adult goods consumed as the defining measure of income equivalence 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. Notably, consumption of some of the particular adult goods chosen by Williams to target—tobacco and alcohol—may be intentionally consumed less as a result of having children. The parent consumes fewer adult goods after having the child as a matter of choice. Using 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 level that is too high for the comparison of the change in total consumption that is attributed to child costs.²⁶

Both Wisconsin-style guidelines and Williams' income shares guidelines are based on studies of intact families. A key economic feature of divorced and unwed families is that there is dramatically higher household overhead compared to intact families. Instead of paying a mortgage or rent on one house, there are now payments for two. This also is the case for overhead items such as utilities, insurance, and probably transportation (automobiles). Higher overhead means that the amount of income left over for other spending is less than in an intact family situation. Notably, one of the "other" categories would be for child costs. Higher overhead of divorced families would have the effect of reducing the percentages of overall income spent on children. By using intact family data, Wisconsin-style and income shares models tend to overestimate child costs.

IX. Conclusion

First, there is no economic basis for using Wisconsin-style guidelines as a generalized model for presumptive awards of child support. These models generally result in a higher standard of living for the custodial parent than the noncustodial parent. Income shares models for child support awards share a basic flaw of Wisconsin-style models—the underlying methodology for child cost estimates is biased upward based on income/consumption equivalence for adult goods. In turn, income shares models overstate child costs and boost the standard of living for the custodial parent. In many frequently occurring instances, the

²⁶ The corollary is that any adjustments to income shares basic cost estimates—with the adjustment based on percentage add on factors (a multiple of the base)—exacerbates the upward bias. An example would be age-of-child adjustments. Another example would be the income shares multiplier (allegedly economically based) for shared custody situations.

noncustodial parent has a lower standard of living than the custodial parent even though the custodial parent can earn notably less than the noncustodial parent. Income shares child cost models do not answer the question, "what are child costs," but rather blur the issue by including elements of alimony in the definition of child costs.