Improving State Child Support Guidelines

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In 1984, the Congress passed the Child Support Enforcement Amendments, which required states to develop numeric formulas as non-binding guidelines for determining child support awards. The Family Support Act of 1988 further mandated that each state implement within one year a numerical child support guideline, and that there be a rebuttable presumption that application of the guideline results in computation of the correct amount of support in any judicial or administrative hearing for the award of child support.

The States had to act quickly. In their urgent need to comply with federal requirements, about two-thirds of the states choose to adopt an "income shares" guideline recommended by an advisory panel in a 1987 Department of Health and Human Services (DHHS) funded report.[1] About a dozen states choose to adopt an even simpler guideline – a "fixed percentage of payor income" approach – that was reviewed and not recommended in the 1987 report. That both these guidelines drifted considerably from established state legal principles for setting child support awards seems not to have been an issue.

Historically, under state law, judges have followed a cost-sharing approach to setting child support awards.[2] Federal policy statements and directives suggest that the envisioned state response to the federal child support law of the 1980s was that the states would simply systematize their traditional cost-sharing method, with its comprehensive set of factors for setting fair and reasonable child support awards. Instead, the states adopted new, entirely untested guidelines based on theoretical models of child costs, not on actual costs.
None of these guidelines consider all of the factors that state law deems relevant to setting

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The author prepared this paper in response to a written request from Joseph S. Crane, Chairman, 1999 Virginia Child Support Quadrennial Review Panel, for a submission setting forth the author's method and suggestions as to guidelines for determining child support award amounts. The views expressed in the paper are those of the author and do not necessarily reflect those of any federal agency.

[1]Office of Child Support Enforcement, U.S. Department of Health and Human Services, *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report* (1987).

[2]Irwin Garfinkel and M.S. Melli, *The Use of Normative Standards in Family Law Decisions: Developing Mathematical Standards for Child Support*, 24 FAM. L. Q. 171 (1990).

appropriate awards. All, in fact, fail to consider what were once held to be absolutely essential factors.

After 10 years in use, these guidelines remain very controversial. Analysts have identified some significant problems with their design, implementation, and use. There is much concern with the accuracy and equity of these guidelines among practitioners and both custodial and non-custodial parent groups.[3]

But the state guideline review commissions, which are mandated to review the guidelines every four years, have generally continued to re-adopt these guidelines, simply adding on other elements, such as health-care or day-care costs, when required by federal or state law. There has been little evident movement to other, hopefully better, guidelines.

One reason for this stability is there has been little market competition for this business. To my knowledge, there is only one company actively marketing a child support guideline – Policy Studies, Inc. (PSI), which markets the "income shares" model. Is it any great surprise that this company has captured about two-thirds of the market? Or that its guideline has not changed significantly in 10 years? There has been virtually no market pressure to do so. If there had been this meager degree of competition in the personal computer industry, we would still be doing our word processing using WordStar on IBM XTs.

Another reason for the minimal change is that the guidelines have become highly politicized. Once adopted, they gain advocates. This makes it quite difficult to modify them, even where improvements are evident.

This is a matter of great concern. Peoples' lives are intimately affected by these guidelines. The welfare of millions of children and their parents is at stake. The federal government is spending billions of dollars per year enforcing these guidelines. People are going to jail who do not pay in accordance with them.

The American public needs and deserves the best possible child support guidelines. Such guidelines should be based on real numbers, not hypothetical assumptions.

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[3]In a recent article, Robert G. Williams states that "To one degree or another, all of the models for child support guidelines are linked to estimates of child-rearing expenditures. Although the income shares model is the only one that directly uses estimates of child-rearing expenditures in the child support calculation, the percentages used in various versions of the percentage model, and even the Melson formula parameters, are justified on the basis of economic research on child-rearing costs. However, there is no consensus among economists on the most valid theoretical model to use in deriving estimates of child-rearing expenditures. Moreover, use of alternative models yields widely divergent estimates of the percentages of parental income or consumption allocated to the children." This is a shocking vote of "no confidence" in the "income shares" guideline by its author, who has promoted and marketed this guideline for over 10 years. See Robert G. Williams, *Implementation of The Child Support Provisions of the Family Support Act: Child Support Guidelines, Updating of Awards, and Routine Income Withholding* in Irwin Garfinkel, S.S. McLanahan, & P.K. Robins, eds., CHILD SUPPORT AND CHILD WELL BEING (1994) at 104-105.

What would an excellent child support guideline look like? It would be automated, and would be simple to use but rich in structural detail, much like any good computer program. It would have inputs for all relevant factors, but would have standard defaults for all non-key factors, to simplify its use. It would summarize and print out all the information needed to allow the judge and the parents to observe the equity and adequacy of the award. It would look much like the financial assistance software that is beginning to come on the market to help divorcing parents develop shared-parenting plans for their children.

Such a cost-sharing guideline would have three basic steps:
1) Identify a reasonable amount of spending by the parents sufficient for the children's basic needs or, where financially feasible, above that, at the actual level of expenditures on the children reported by the parents in their separate households. Where such information is not available, documented typical expenditures by parents in similar circumstances would be used.
2) Determine how much of these expenditures are offset by federal and state subsidies, e.g., child-care tax credits.
3) Determine how the parents will share in paying for the net child expenditures, and the transfer payment between the parents (the child support award) necessary to achieve this result. This determination should be based on a fair-sharing rule that will provide for equity for these parents in their particular situation, and which properly accounts for which parent is paying for which expenses directly.

A generic version of such a guideline was included in a 1994 OCSE publication intended to help the states in their quadrennial reviews.[4] A fully developed computer program version of this model guideline could serve as a starting point for states to develop a truly fair and accurate guideline. New Jersey has already adopted certain improvements introduced in this guideline.[5]

States have tended to play follow-the-leader with their child support guidelines, looking at each other for guidance. This has yielded little opportunity for improving guidelines, since all states use the same basic guidelines.[6] A better approach would be for the states to:

- follow the American National Standards Institute (ANSI) standards for accrediting a standards-setting body when establishing a quadrennial review commission;
- be cautious about inputs from its own child support enforcement team;
- look beyond what other states are doing;
- gather their own in-state data on spending by divorced parents on their children; and
- be willing to invest in needed studies and data analysis.

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[4]Donald J. Bieniewicz, *Child Support Guideline Developed by Children's Rights Council*, in CHILD SUPPORT GUIDELINES: THE NEXT GENERATION (1994); see also, Donald J. Bieniewicz, *A Fair-Shares Formula for Child Support*, BALANCE QUARTERLY, Vol.1, No.2 (1994/95).

[5]One adopted improvement is to treat separately those types of expenditures on children that are fixed in one or both households, such as housing, and those that shift between the parents' households in proportion to the amount of time the children spend with each parent, such as food.

[6]See CSR, Inc., *op. cit.*.

In the past 10 years, states have moved in the direction of greater use of cost sharing. Current state guidelines are really hybrids that utilize cost sharing as the primary method for handling cost add-ons, such as child care. These add-ons are the best-handled and validated part of these guidelines.

For example, the State of Michigan handles child care expense as an add-on to the basic support amount. The out-of-pocket expense paid by the custodial parent for child care is reduced by the child care credit the custodial parent will claim against income taxes; the balance after subtracting the credit must be paid by the parents in proportion to their incomes.

The 1994 model child support guideline basically handles all child expenditures by cost category, such as clothing, in the above fashion. It sets a target level of spending by setting these cost elements at default values for a standard of living in a one-parent household of income equal to the average of the parents' incomes.

The default values were developed based on the best data on hand in 1994, and were intended to be primarily for illustrative purposes, but they could serve as starting points for states to evolve their own state-specific data. The states could require all parents who come into court on a custody matter to track in detail and report periodically their expenditures on their children.[7] Special computer software, like Quicken, could be provided to help them in this task, and to help ensure that they do their accounting properly on a marginal-cost basis. These reported data would be entered (anonymously) into a state data base accessible by the public. This data base would aid enormously in determining the real cost of raising children in the state, and would allow for much improved estimates for use in state child support guidelines. If this had been done ten years ago, each state would by now have an excellent data base for use in setting child support awards.

[7]"The research community might want to consider the following in future work: Developing new approaches to estimating expenditures on children including the possibility of directly estimating these expenditures by asking families how much they spend on their children." Lewin/ICF, *Estimates of Expenditures on Children and Child Support Guidelines* (1990) at section 7-15.