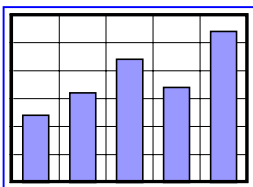


**The Cost Shares Child Support Guideline—A Common
Sense and Economics Based Improvement
Over the Income Shares Guideline[®]**

February 7, 2001

A Response to and Critique of
"Economic Basis for Updated Child Support
Schedule, Commonwealth of Kentucky,
September 1, 2000" by
Policy Studies, Incorporated,
Denver, CO

Submitted to:
Commonwealth of Kentucky
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PART I.

Summary and Economic Critique of Current and Proposed Income Shares Child Support Guideline for Kentucky

Summary

Neither the current version of the income shares child support guideline in use in Kentucky nor the version proposed by Policy Studies, Incorporated has a sound economic foundation. Neither guideline meets equal protection standards. As an alternative, a cost shares child support guideline has been developed that has a more sound and rational economic basis and meets equal protection standards. Importantly, the cost shares methodology closely tracks the historical practices of family court judges in the determination of child support awards. Close review of the methodology should lead to rapid acceptance by the judiciary—especially given the sound, historical basis for this guideline.

Background and Standards for Analysis

Federal law sets the tone and requirements for evaluating child support guidelines and for whether a state's guideline should be modified. Current federal regulations on these child support guideline issues primarily were enacted under the federal Family Support Act of 1988. Key regulations implemented under authority of this law can be summarized in the following key points:

- Presumptive child support guideline awards should have a clear basis for being rebutted in court.
- A state's child support guideline should be based on economic data on child costs.
- The presumptive award should be economically "appropriate."
- A state should regularly review actual child support cases from court or other forums to see if actual child support awards are deviating in a significant number of cases from presumptive awards. When deviations occur in a significant number of cases, the state's guidelines must be amended to reflect actual court practices in order to limit the occurrences of deviations.
- Guideline awards at a minimum must be based on the obligor's income and the award should take into account the obligor's basic living needs.
- In addition to federal regulatory requirements, the child support guideline should pass equal protection standards when evaluating in terms of economic criteria.

Following submission of the recommendations from Policy Studies, Incorporated to the Division of Child Support, several interrelated questions arise:

- Does the income shares guideline recommended by Policy Studies, Incorporated meet federal requirements and equal protection standards for an appropriate child support guidelines?
- Does the version of the income shares child support guideline currently in use in Kentucky meet federal requirements and equal protection standards for an appropriate child support guidelines?
- Is there a better alternative child support guideline that has a stronger economic foundation, better complies with federal regulations, meets equal protection standards, and is based on a more familiar methodology for judges accustomed to historical child support award practices?

These issues should be kept in mind as the following is reviewed and should form the basis for conclusions on the appropriateness of a particular child support guideline.

What Is An Income Shares Guideline?

Public Perceptions and Misconceptions

A good starting point for explaining the income shares guideline may be public perception and what this guideline is not. The public perception of what an income shares guideline is appears to be the following:

Determine the cost of the child(ren) and then allocate that cost based on the each parent's share of combined income. The basis for this award is the fact that the custodial parent has actual costs to pay in behalf of the child since that parent has physical custody and incurs child costs.

There are a number of misconceptions in this set of beliefs about an income shares guideline. The word "cost" has a special meaning in this methodology—it does not mean the amount that a parent actually spends on a child or children. Waiting for greater detail later, for income shares, "cost" means the amount of income needed to restore the pre-child standard of living. Child costs are not based on actual spending but rather on crude estimates of how much money is needed to restore an intact family's standard of living to pre-child status. This basis for the award cannot be the fact that the custodial parent incurs actual child costs since child costs are not considered equally for both parents.

Essentially, the income shares model is not a cost sharing child support guideline but rather is a guideline that gives the custodial parent an entitlement to the other parent's income. This entitlement is not directly related to actually incurred child costs. Additionally, the entitlement is based on being a custodial parent—and is not specifically tied to economic costs of a child. For identical existing circumstances in terms of actual child costs, the non-custodial parent does not

have the same entitlement to the other parent's income when the child is in the care of the non-custodial parent.

In sum, the income shares guideline is an income entitlement specifically for the custodial parent and does not track actual spending on children—especially after taking into account the net costs incurred by both parents. Because an income shares child support award is an income entitlement instead of a cost reimbursement, these child support awards generally, and frequently by significant amounts, exceed actual child costs. These issues will become clearer after further explanation of the income shares methodology.

The Basics of the Income Shares Child Support Guideline Methodology

There are two different income shares models being considering in this discussion—the original income shares currently in use in Kentucky and the version proposed by Policy Studies, Incorporated.¹ Each uses a somewhat different definition of child costs. However, both are what are known to economists 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 Kentucky and a recent variation of these techniques underlie the PSI definition. They both look at the income needed to restore the standard of living to a family's pre-child status as the child cost. However, these definitions are very flawed and do not lend themselves well for a party to rebut in court—a likely violation of due process.

Kentucky's Current Definition of Child Costs—The Engel Measure of Child Costs

The economist to originally work on income equivalence measures was Ernst Engel.² His idea was to measure some basic measure of consumption and see how the percentage consumed in family 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-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

¹ 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.

² 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.

would be needed to restore the family back to its earlier share of spending on food, thereby restoring the family's standard of living.³

Kentucky's current child support guideline is based on this definition as indicated by the "genealogy" of Kentucky's guideline. This Engel income equivalence methodology was used by Thomas Espenshade to estimate child costs in a 1984 national study.⁴ 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. In turn, Kentucky adopted a version of PSI's original income shares model and child costs for Kentucky's child support guideline. Therefore, Kentucky's child costs are defined according to how food consumption changes between varying types of families according to family size.

Kentucky's current definition of child costs for Kentucky's child support schedule:

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 Definition Proposed for Kentucky by PSI

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.⁵ The idea is that looking at pure adult goods reduces the problem of shifts between adult and shared goods after having a

³ 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.

⁴ See Espenshade, Thomas J. *Investing in Children: New Estimates of Parental Expenditures*, The Urban Institute Press, Washington, D.C., 1984.

⁵ 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

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 Dr. David Betson of the University of Notre Dame. His estimator of child costs is called the Betson-Rothbarth estimator. Betson specifically uses a particular bundle of adult goods to measure a household's level of well being—this bundle being adult clothing, alcohol, and tobacco.

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 level 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, alcohol, and tobacco are equal for the families with and without the additional child.

Proposed new definition of child costs by PSI for Kentucky's child support schedules:

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, alcohol and tobacco. Child costs are defined by comparing changes in consumption of adult clothing, alcohol, and tobacco.

Why Use Indirect Estimation for Child Costs?

Why is an income equivalence technique used instead of actual child cost expenditures? PSI makes the argument that many child costs are intertwined with adult costs and are difficult to separate between the adult portion and the child portion. Under this argument, day care is noted to be clearly a child expenditure but housing, food, and transportation costs would be difficult to sort by adult and child.

However, many economic studies routinely sort out such costs. The most plausible explanation for the preference by some to use indirect methodologies to estimate child costs is that in only the indirect methodologies can there be a hidden alimony component within child support. It appears to be a personal policy preference of these researchers that child support should include an alimony component—one that frequently is quite large. This is shown by example further below. Child support awards that are based on data reflecting expenditures on children by specific categories (on a marginal cost basis) have less opportunity for the inclusion of alimony as part of child support.

It should be clear that income shares guidelines do not share actual child costs but rather seek a child support award inclusive of alimony to restore an intact family standard of living. Specific examples will show that the income shares methodology even goes beyond the questionable goal

of equalizing the standard of living between divorcing parents and actually results in the custodial parent household frequently having a higher standard of living than a higher salaried non-custodial parent. Income shares is an income sharing methodology—not a sharing of actual costs with the allocation based on relative incomes. This is a big misconception by many.

A policy preference for including alimony in child support appears to be a key factor for a researcher to use income equivalence techniques to define child costs. Direct estimation of marginal child costs would tend to only include actual child costs. Curiously, the alimony component is included in income shares awards even when the custodial parent earns more than the non-custodial parent.

Changes in Historical Views on the Role and Opportunities for Women

One reason that it may have been either accepted or intended that alimony be included in a child support award was the historical view of women in the 1970s and 1980s. Frequently, the wife in a marriage was still expected to be a “stay at home mom.” Additionally, there was the view that a woman in the workforce had dramatically less opportunity than a man. Finally, there was the (now shown to be erroneous) view that the standard of living for a woman declined after divorce while the standard of living for a man rise. Clearly, these circumstances have changed. Women have high participation rates in the work force. Women now make up more than half of new college graduates. Recent studies show that the believed standard of living gap was based on both mathematical error and faulty government data but also show that the earnings gap is now almost non-existent.⁶

As an important side note to the standard of living issue, presumptive child support guidelines and automated enforcement procedures (income deductions orders, automated reporting of arrears, automated revocation of drivers licenses, etc.) have been implemented during an extended period of strong economic growth (since the 1990-91 recession). The impact of these child support procedures has never been seen during a broad economic downturn when obligors have a reduced ability to pay child support. Currently weak economic conditions—along with long-term economic gains by women—are both reasons for re-examining the appropriateness of presumptive child support awards that include substantial amounts of alimony.

Upward Bias in Current and Proposed Guidelines for Kentucky

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

⁶ See Sanford L. Braver and Diane O'Connell, *Divorced Dads: Shattering the Myths*, Jeremy P. Tarcher/Putnam Publishing, New York, 1998, pp. 55-107.

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 “phantom” income 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 Beston 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.⁷

Both the PSI Rothbarth and the earlier Engel versions of the income shares guideline 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 level of overall income spent on children. Single-parent families spend a higher percentage share of single-parent household income on children. But the dollar level spent on children is less than spent in combined income, two-parent households. By using intact family data, income shares models tend to overestimate the level of child costs to be shared.

The Myth That Income Shares Estimates of Child Costs Are Low

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.⁸ This is based on the belief (that is never substantiated in studies) that with the addition of children, adults choose to consume more purely

⁷ 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.

⁸ See the October 1990 “Lewin Report” on child costs, section 2, page 29.

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. This allegedly leads to an underestimate of child costs since this additionally needed income to restore the standard of living is less than if the household did not have this change in preference.

But this argument completely lacks credibility with the consumption goods used in the Betson-Rothbarth estimator: alcohol, tobacco, and adult clothing. The Betson-Rothbarth technique uses the share of total consumption of these goods to measure overall well being for the family. For the argument that Betson-Rothbarth lead to underestimates of child costs to be true, one would have to believe that when a household has an additional child, the adults suddenly decide to drink more alcohol, smoke and chew more tobacco, and go on spending binges for adult clothes. Common sense tells us that social pressure from other family members tends to lead to less consumption of these particular goods after having an additional child. Economic studies also tell us that consumption of these goods does not respond well to changes in income and therefore require larger increases in income to restore previous levels of consumption. Therefore, Betson-Rothbarth likely overestimates child costs. As a consequence, Betson-Rothbarth estimates of child costs cannot be argued to be a floor to "true" child costs. Without basis, this erroneous argument has been used to discredit estimates of child costs that are lower than Betson-Rothbarth estimates.

For the argument that Betson-Rothbarth methodology leads to underestimates of child costs to be true, one would have to believe that when a household has an additional child, the adults suddenly decide to drink more alcohol, smoke and chew more tobacco, and go on spending binges for adult clothes.

If indeed when a family has a child there is social pressure that on average leads to a reduction in spending on adult goods such as alcohol and tobacco, then the Betson-Rothbarth estimator will overstate child costs. This is because consumption of these goods is known to be "income inelastic"—consumption does not change much in response to income changes. Thus, reduced consumption (a new child) is caused by a non-income factor (the new child) and will be slow to respond to increases in income. Thus, more income is needed to offset a non-income related decrease in consumption than for an income related (drop in income) decrease in consumption of these adult goods.

This overestimation of child costs ends up as hidden alimony and can be substantial. The magnitude of the amount of alimony in child support is shown further below.

Comparing decreases in household spending on adult clothing, alcohol and tobacco when having a child and then seeing how much overall family consumption must increase to restore adult spending on those goods is simply a badly flawed way of estimating child costs.

Summary of Key Flaws in the Current and Proposed Income Shares Guideline for Kentucky

What are the primary shortcomings of the income shares guidelines as currently implemented and the one proposed by PSI? These issues will be touched on briefly and then some of these issues will be expanded upon later.

- The underlying child cost definition is upwardly biased.

As already stated, the income equivalence definition of child costs used by both the current Kentucky schedule of child costs and the proposed schedule is upwardly biased, overstate child costs, and lead to financial windfalls for the custodial parent. The windfall is of such magnitude that in a significant percentage of cases the custodial parent ends up with an after-tax, after-child support higher standard of living than the non-custodial parent even when the custodial parent earns significantly less. This is an extraordinary benefit for the custodial parent.

- The tax benefits attributable to the child(ren) are sizeable but are not shared with both parents.

Neither version of the income shares guideline allocates the tax benefits attributable to the child to both parents. It is not possible to discount the tax benefits within the schedule of child costs since the size of the tax benefit depends on the custodial parent's income and this is not discernable within the combined income figures in this schedule. Yet, the tax benefits are quite significant and act as a partial cost offset to overall child costs. Since both parents have a legal responsibility to share in paying for child costs, both parents should be equally entitled to sharing the tax benefits attributable to the child(ren). The lack of addressing this issue within the guidelines means that equal protection standards are not met.

- Kentucky's guidelines using either schedule of child costs can frequently result in low-income obligors being pushed below the poverty level.

Neither version of income shares has an adequate self-support reserve to cover basic living needs of the parents—the obligor parent in particular. Kentucky's current guideline has no self-support protection built into the basic child support obligation for low-income payers. For low-income cases, the presumptive award can push obligors below the poverty level. The obligor will not be able to pay for basic food and shelter and still have enough income to pay the entire presumptive child support award. The income shares cost schedule proposed by PSI has a self-support reserve built into the schedule of child costs. However, there is no mechanism in the child support award

calculation to ensure enough income for the obligor for basic living needs after "add-ons" have been added to the basic child cost figure. The fact that under either income shares child cost schedule that the Kentucky child support award procedure can result in a presumptive award that can push an obligor below the poverty level creates an extraordinary burden and violates equal protection standards.

- The intact family standard for determining the child cost is neither economically justifiable nor meets equal protection standards.

Both versions of income shares child cost schedules are based on studies of intact families. The child cost is based on income equivalence for restoring an intact family's standard of living after having a(n) (additional) child. This definition creates a preference for maintaining the standard of living of the custodial parent at the expense of the non-custodial parent. In divorced or unwed situations, there is increased "adult overhead" as a share of each parent's income. Because of this increased overhead, with the same incomes both parents mathematically cannot maintain the same standard of living as in an intact, two-parent household. The intact family standard of living can only be maintained for the custodial parent by creating a heavier (disproportionate) financial burden for the non-custodial parent. This can be done only by having the child support award dramatically exceed actual child costs. This creates an extraordinary benefit for the custodial parent and an extraordinary burden for the non-custodial parent.

Additionally, the child support award is spent in a single-parent household. If an intact family based award is paid to the custodial parent, the custodial parent will still "behave" as a parent making budget decisions in a single-parent household and will only spend the portion of the award on the child(ren) that is equal to a single-parent household based award. To not base the award on single-parent household spending patterns on children is not economically rational.

- The Kentucky guideline does not base the custodial parent's "right" to child support in a manner reflecting a defined and reasonably quantified economic basis and grants any such right only to the custodial parent. This condition holds true regardless of which schedule of child costs the state retains or adopts.

There is a very basic question regarding the custodial parent's right to child support that is not addressed by Kentucky's child support guidelines. It is assumed that the custodial parent receives child support not merely because of custodial parent status but because the custodial parent incurs child costs when the child is in the physical custody of the parent. Specifically, the concept of custodial parent is not a quantified economic concept of child costs. However, there are identifiable and quantifiable economic costs associated with being a custodial parent. It is these identifiable and quantifiable costs that form the underlying basis for a custodial parent having a right to child support. These child costs include fixed costs such as additional housing and medical insurance as well as costs that vary with the amount of time that the child is with the parent. These shiftable costs include food and clothing. The key question is whether or not when these same economic costs exist and are incurred by the non-custodial parent, does the non-custodial parent have the same right to child support?

Kentucky's child support guideline has no method of explicitly taking into account the non-custodial parent's incurred child costs—both fixed and shiftable. There are no adjustments for how much time the child(ren) spend with each parent. Additionally, the current and proposed schedules of child costs assume that the child is with the custodial parent 100 percent of the time.⁹ By not treating the non-custodial parent equally when incurring similar child costs as incurred by the custodial parent, Kentucky's child support guideline does not meet equal protection standards.

Importantly, Kentucky's child support guideline gives no guidance on how to treat true joint custody situations—those that specifically give both parents near equal access to the child(ren). This is a major flaw, given the growing trend nationwide to award more equal access in terms of physical custody.

An Example of the Large Amounts of Hidden Alimony in the Proposed Guideline

Perhaps the best way to show the hidden alimony in the proposed child cost schedule is to look at a comparison of before and after incomes for each parent after taking into account taxes and the presumptive child support award. This is shown in Table 1 below.

This example has the custodial parent earning only 70 percent of the income of the non-custodial parent. The custodial parent and non-custodial parent each earn an annualized \$16,800 and \$24,000, respectively. Each parent then pays taxes based on standard deductions and exemptions and with the custodial parent claiming all child-related tax benefits, filing as head of household. The non-custodial parent goes from \$24,000 in gross income to \$18,581 in after-tax income while the custodial parent goes from \$16,800 to \$17,985. The custodial parent actually has higher after-tax income because of just over \$3,300 in child credits and earned income tax credits. Based on combined gross income of \$40,800 annually or \$3,400 monthly, the basic child cost to be shared is \$839 monthly for two children based on the proposed new child cost schedule for Kentucky. The non-custodial parent's share is \$494 monthly or \$5,928 annually. This does not include "add-ons" such as day care or medical insurance.

With the payment and receipt of the child support award, the non-custodial parent has after-tax, after-child support annual income of \$12,659 while the custodial parent has \$23,907.

How does the standard of living for each parent compare to the other? The "standard" comparison for standard of living is to look at how many multiples of the poverty threshold a household has in income. If a household has twice the income of the poverty threshold, the ratio is 2.00. The poverty threshold varies according to how many persons are in the household and according to how many are adults and how many are children. For a one adult household, the poverty threshold for 2000 is \$8,959 annually. For a one adult, two children household, this

⁹ PSI has various versions of income shares guidelines that have been implemented by various states that do have adjustments for how much time the child(ren) spend(s) with each parent. However, PSI's "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.

figure is \$13,874. The ratio of the non-custodial parent's after-tax, after-child support income to its poverty threshold is 1.41 while for the custodial parent, it is 1.72. The custodial parent's ratio is 22 percent higher than that for the non-custodial parent. That is, the custodial parent has a 22 percent higher standard of living than the non-custodial parent on an after-tax, after-child support basis even though the custodial parent starts out earning 30 percent less than the non-custodial parent.

Additionally, even though PSI has indicated that the current version of income shares used in Kentucky should have an upwardly revised schedule of child costs for moderate and upper income cases, a standard of living comparison indicates that the current schedule of child costs already is too high.

From this example, it is clear that the proposed child support schedule has substantial amounts of alimony built in and in excess as shown by the non-custodial parent ending up with the lower standard of living even though earning substantially more than the custodial parent. The large amount of alimony built into the latest version of the income shares guideline has been discussed in other publications—notably in a “Child Support Symposium” in the Spring 1999 edition of the *Family Law Quarterly*.¹⁰ Additionally, even though PSI has indicated that the current version of income shares used in Kentucky should have an upwardly revised schedule of child costs for moderate and upper income, a standard of living comparison indicates that the current schedule of child costs already is too high. For the example in Table 1, if Kentucky's current schedule of child costs were used, the custodial parent ends up with a nine percent higher standard of living than the non-custodial parent even though the custodial parent started out earning 30 percent less than the non-custodial parent.

¹⁰ 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.

Table 1.

**Proposed Kentucky Child Support Guideline:
An Example of An After-Tax,
After-Child Support Comparison**

**How Hidden Alimony Frequently Gives the Custodial
Parent a Significantly Higher Standard of Living
than the Non-Custodial Parent**

Custodial Parent Earns 70% of Non-custodial Parent's Income

| <u>TWO CHILDREN EXAMPLE</u> | NCP, Single Taxpayer Status | CP, Head of Household Status |
|-------------------------------------------------------------------------------------------|------------------------------------------------|-------------------------------------------------|
| Monthly gross salary | \$2,000 | \$1,400 |
| Gross salary, annual | 24,000 | 16,800 |
| Federal income tax | -2,524 | -294 |
| Child credit | 0 | 294 |
| Earned income credit | 0 | 3,017 |
| Social Security tax | -1,488 | -1,042 |
| Medicare tax | -348 | -244 |
| Kentucky income tax liability | -1,059 | -547 |
| After-Tax Income, Annual | 18,581 | 17,985 |
| Child Support, Annual* | -5,922 | 5,922 |
| After-Tax, After-Child Support Income, Annual, | \$12,659 | \$23,907 |
| The poverty threshold is the benchmark for this particular standard of living comparison. | | |
| Poverty threshold for each household.# | \$8,959 | \$13,874 |
| Ratio of after-tax, after-child support income to poverty threshold | 1.413 | 1.723 |
| Percent higher standard of living for CP | | 22.0% |

* For two children, based on combined monthly gross of \$3,400 for the parents. Child cost to be shared is a monthly \$839 for the base amount with the non-custodial parent's monthly share at \$494. This excludes add-ons and has no adjustments for visitation.

Poverty threshold for the year 2000.

Conclusion of Comparison: Although the custodial parent "starts out" earning 30 percent less than the non-custodial parent, the custodial parent ends up with a 22 percent higher standard of living than the non-custodial parent because of the very large amount of hidden alimony in the child support award.

Favored Tax Treatment for Custodial Parents and Treating Tax Benefits as a Cost Offset

One reason why obligor only and income shares methodologies are not soundly based on economic principles is that they do not take into account the significant cost offset enjoyed by the custodial parent through favored tax treatment. Additionally, the progressive income tax structure in the U.S. means that child costs decline as a share of gross income—meaning that most obligor-only guidelines conflict with actual child cost patterns. As will be shown further below, the tax benefit offset helps the custodial parent enjoy a higher presumptive standard of living than the non-custodial parent in most income situations—even when the custodial parent earns significantly less prior to the child support transfer. For all of these reasons, it is appropriate to review the favored tax treatment received by custodial parents.

Use of gross income to determine the child support award without making adjustments for the sharing the child tax benefits between both parents clearly creates an disproportionate burden for the non-custodial parent.

Differences in Tax Treatment Between Head of Household/Custodial Parent Versus Single-Taxpayer/Non-custodial Parent

From Federal form 1040 from the Internal Revenue Service for calendar tax year of 2000, the divergent treatment of custodial and non-custodial parents is substantial:

- The standardized deduction (line 36, Form 1040), for a single person (the non-custodial parent) was \$4,400 compared to \$6,450 for a head of household taxpayer (the custodial parent). This is a bonus of \$2,050 in deductions for the custodial parent.
- The custodial parent only is able to claim the dependent exemptions as a legal right (lines 6c and 38, Form 1040). The 2000 value of each dependent exemption is \$2,800.
- 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 2000 code.

The earned income credit was as much as—

- \$353 if you did not have a qualifying child (non-custodial parent),
- \$2,353 if you had one qualifying child, or
- \$3,888 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.
- 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 Table 2, showing Schedule X and Schedule Z, 2000 1040, Forms and Instructions, Department of the Treasury, page 71.

Table 2.

Schedule X—Use if your filing status is Single

| If the amount On Form 1040, Line 39, is” <u>Over --</u> | But not <u>over--</u> | Enter on Form 1040, <u>line 40</u> | of the amount <u>over--</u> |
|------------------------------------------------------------------|--------------------------|------------------------------------------|-----------------------------------|
| \$0 | \$26,250 | 15% | \$0 |
| 26,250 | 63,550 | \$3,937.50 + 28% | 26,250 |
| 63,550 | 132,600 | 14,381.50 + 31% | 63,550 |
| 132,600 | 288,350 | 35,787.00 + 36% | 132,600 |
| 288,350 | ----- | 91,857.00 + 39.6% | 288,350 |

Schedule Z—Use if your filing status is Head of household

| If the amount On Form 1040, Line 39, is” <u>Over --</u> | But not <u>over--</u> | Enter on Form 1040, <u>line 40</u> | of the amount <u>over--</u> |
|------------------------------------------------------------------|--------------------------|------------------------------------------|-----------------------------------|
| \$0 | \$35,150 | 15% | \$0 |
| 35,150 | 90,800 | \$5,272.50 + 28% | 35,150 |
| 90,800 | 147,050 | 20,854.50 + 31% | 90,800 |
| 147,050 | 288,350 | 38,292.00 + 36% | 147,050 |
| 288,350 | ----- | 89,160.00 + 39.6% | 288,350 |

Source: "2000 Tax Rate Schedules," p. 71, 2000 Federal Form 1040

The Impact of Tax Benefits on Each Parent’s Ability to Pay Shares of Child Costs

Chart 1 summarizes the difference in tax code treatment of custodial parents to that of non-custodial parents. 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 custodial parent minus the after-tax income of the non-custodial parent. Taxes are federal and state personal income taxes, Medicare, and Social Security taxes.¹¹ Earned income credits are added. Standard deductions are used. Chart 1 shows a dramatic after-tax advantage for the custodial parent.

As seen in the chart, the first “hump” is primarily due to the earned income credit that the custodial parent receives as a cost offset. The rising advantage on the right two-thirds of the chart is due to differences in marginal tax rates. Deductions and exemptions 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 advantage typically is worth several hundred dollars in net income per month. For example, at gross income of \$4,000, the custodial parent with two children has about \$350 more net income monthly than the non-custodial parent to support the children (roughly \$4,200 after tax extra income annually). At low-income levels, the difference is quite striking. A little above the poverty level, for equal levels of gross income, the custodial parent has 35 to 45 percent more after-tax income than the non-custodial parent for which to support the children due to favorable tax treatment.

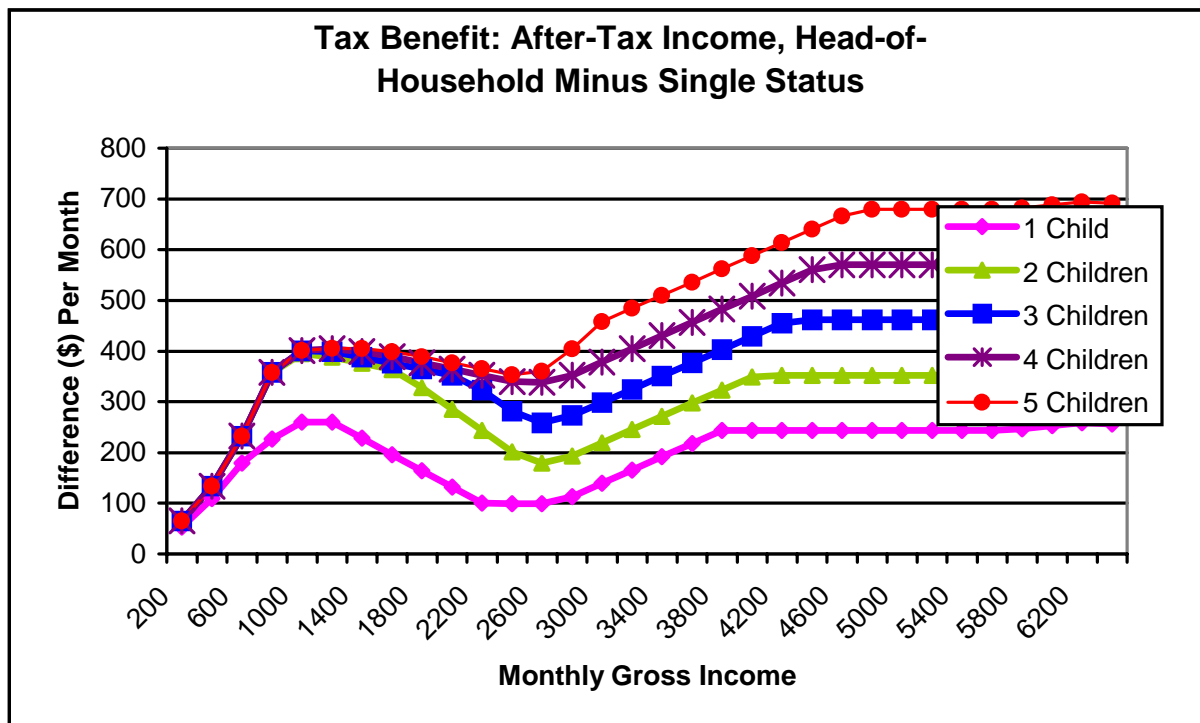
On a final note regarding ability to pay near the poverty level, the above analysis does not include discussion of other potential cost offsets that a custodial parent has that the non-custodial parent does not have—or at least the custodial parent has more readily. Food stamps, WIC, Medicaid, housing subsidies are generally more available to the custodial parent and are not part of the formula for sharing child costs and cost offsets with the non-custodial parent.

Because of these tax code changes, for a given level of gross income, the custodial parent has a significantly higher ability to provide the custodial parent’s share of child costs compared to the non-custodial parent. Use of gross income without adjustments for sharing the child tax benefits between both parents clearly creates an disproportionate burden for the non-custodial parent.

States have differing statutes and case law on whether a court can award deductions and exemptions to the non-custodial parent over the objection of the custodial parent. However, this issue can be easily side-stepped to achieve economic equity. Courts can address the differential tax treatment by treating the tax benefits as a direct cost offset against total child expenditures prior to determining the child support award. The child support guidelines should take into account the favored tax treatment for the custodial parent by requiring that the tax benefit be deducted from overall child costs as part of a specific step in the calculation of the non-custodial parent’s child support obligation. The cost offset the custodial parent receives would simply be the difference in the custodial parent’s after-tax income comparing filing as head of household and filing as a single taxpayer. States' statutory and case law clearly indicates that each parent has an equal duty to bear the financial costs of rearing children. It only follows that both parents have an equal right to share the cost offsets of tax benefits attributable to the same children.

¹¹ This chart is from an earlier study and publication. 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. In this chart, Georgia was used for the state income tax calculation. Georgia and Kentucky have very similar state income taxes with both having a marginal tax rate of 6 percent at moderate and higher income levels. The study used 1998 tax code.

Chart 1.



Examples of Presumptive Award Pushing Low-Income Obligor Below the Poverty Threshold

Showing that Kentucky’s current guideline presumptively pushes low-income obligors below the poverty level is relatively simple. One can start with a minimum wage worker/obligor that works a 40 hour week, four weeks a month. This worker earns \$824 a month at this rate or rounded to \$825 a month for simplicity. If one subtracts the presumptive award from this obligor’s earnings, this obligor is pushed below the poverty threshold according to the number of children supported by the following amounts monthly: one child, \$82; two children, \$125; three children, \$130; four children, \$135; five children, \$140; and six or more children, \$145. These figures are the shortfalls—the amount of income below the poverty level the obligor is left with. Clearly, it is an extraordinary burden on an obligor for a presumptive award to leave the obligor with less income than needed for basic food and shelter. Certainly, Kentucky’s guidelines are excessive for low-income obligors in low-income cases.

Neither Version of Kentucky’s Income Shares Guideline Complies with Applicable Federal Regulations

Basic analysis of the underlying methodology of income shares guidelines and the procedures implemented by Kentucky to calculate a presumptive child support award indicates that neither

the current income shares guideline nor the version proposed by PSI complies with federal regulations on child support guidelines.

- The income shares guideline award is difficult or at least awkward to rebut in court.

The income shares guideline has no components for one to compare for rebuttal. Kentucky has not specifically stated the basis for rebuttal. This basis must be clear. It is not published and common knowledge for all interested parties what the economic basis is for Kentucky's guidelines. As part of the federal Administrative Procedure Act, it is required that the basis for any promulgated rule for compliance with federal regulations must be published prior to the promulgation of the rule. If an administratively promulgated rule does not comply with these provisions, that promulgated rule is not legal.

- The current and proposed income shares guideline awards are not economically appropriate.

The Engel and Rothbarth estimates for child costs are upwardly biased and overstate child costs. These estimates are based on intact family data and do not take into account extra adult overhead that occurs in divorced and unwed situations. These estimates are income equivalence measures and depend on "phantom income" to measure child costs. In real life, non-custodial parents do not have this extra "phantom income" to pay the child support. Tracking overall family spending—such as food for the Engel estimator—or adult expenditures—such as adult clothing, alcohol, and tobacco—is not an appropriate method for estimating child costs. Neither estimate includes child-related tax benefits as a partial cost offset and result in non-custodial parents paying some child costs that have already been paid by a third party. The custodial parent receives double payment for some child costs. Neither method takes into account the shift in child costs when the non-custodial parent has physical custody of the child(ren). Both guidelines—especially the current version—can result in low-income obligors being pushed below the poverty level by a presumptive award. This is not economically appropriate. For all of these reasons, neither guideline is assured of being even reasonably close to the economically appropriate award.

The current and proposed income shares guidelines do not meet equal protection standards.

Both versions of income shares guidelines do not meet equal protection standards for reasons that are closely related to their lack of appropriate economic characteristics. The upward bias of the Engel and Rothbarth methodologies result in financial windfalls for the custodial parent. This is an extraordinary benefit for the custodial parent. Since both parents are equally responsible for bearing the financial costs of the child(ren), both parents are equally entitled to any cost offsets—such as tax benefits—attributable to the child(ren). Neither version shares the tax benefits with the non-custodial parent and is a violation of equal protection. Both versions treat the similarly situated child costs that custodial and non-custodial parents incur differently. Custodial parents are entitled to child support for incurring fixed and variable costs of having physical custody of the child(ren). Non-custodial parents do not have equal entitlement when incurring fixed and variable costs associated with having physical custody of the child(ren). Both versions can result

in a presumptive award that pushes a low-income obligor below the poverty threshold. This is an extraordinary burden for the obligor to be expected to pay a presumptive child support award and not have enough income for just basic food and shelter. For all of these reasons, both versions of the income shares guideline do not meet equal protection standards.

PART II.

The Cost Shares Child Support Guideline as an Economics Based Improvement Over an Income Shares Guideline

Introduction to An Economic Based Child Support Model: Cost Shares—An Expenditure Based Model

In the mid-1990s, the Children's Rights Council (CRC) developed a prototype child support model based on the parents' sharing of child costs with the costs being based on actually measured costs in surveys of households.¹² This sharing of costs differs from the Betson-Rothbarth model which is a sharing of income (based on a flawed, upwardly biased measure of the amount to be shared). The cost shares model focuses on sharing the marginal costs of children and is differentiated from income shares methodology by being called cost shares. By marginal cost, one means the added costs incurred by a household by having a child. For example, one looks at how much a utility bill is higher after having a child than before to calculate a child's share of utility costs. This is the appropriate method since the adult household would incur the earlier costs without the child anyway.

It is appropriate to review in a little greater depth what sets the cost shares model apart. The cost shares child support guideline model diverges from percent-of-obligor income models and income shares models in several key facets. For the cost shares model, child expenditures are based on actual costs as measured by surveys. Percent-of-obligor and income shares models base child costs on indirect estimation methodologies. Their estimates of child costs are derived by comparing changes in adult consumption before and after having a child or additional child. Cost shares measures are based on actual child costs—not some theoretical concept.

Costs shares child expenditures are taken from surveys of single-parent households rather than of intact households. Similarly, the appropriate income used in the support tables is average gross income of the two parents instead of combined income.

¹² See Donald J. Bieniewicz, "Child Support Guideline Developed by Children's Rights Council," Chapter 11, *Child Support Guidelines: the Next Generation*, U.S. Department of Health and Human Services, April 1994, pp. 104-125.

The cost shares methodology explicitly shares between the parents both child costs and child cost offsets. An explicit measure of child-related tax benefits is used as a cost offset as an intermediate step in determining the economically appropriate child support award. This is a procedural advance over percent-of-obligor and income shares models which ignore the tax benefit impact on net child costs. It also is a procedural simplification for states that allow courts to order the custodial parent to sign over (per IRS regulations) the tax benefits every other year.

The cost shares model has components for various major child cost categories. These are housing, food, transportation, clothing, health, child care & education, and "other." Each category is based on an average of the expenditures by category from survey data. Families within the survey varied as to whether they spent specifically on day care or medical insurance. Importantly, explicit dollar values for a presumptive award by category allows for a specific basis for rebutting the presumption. Neither percent-of-obligor only nor income shares models have components to create a rebuttable presumption. Neither of these models have components because the estimates are made indirectly by measuring changes in adult consumption—not actual child costs.

Basic Steps in the Cost Shares Model

The cost shares methodology can be implemented with varying degrees of "richness." Just as income shares models have differing levels of depth for quantifying (putting into the guidelines formula), so does the cost shares model. The basic model makes the following simple calculations:

- 1) Determines basic child costs for a single-parent household using an average of both parents' income as the income factor. The basic child support table has child costs for a single-parent household according to gross income. Basic child costs do not include child care and education expenses which are treated as "add-ons."
- 2) Adds other non-basic expenses when appropriate.
- 3) Deducts from total child costs the tax benefit that the custodial parent receives that is solely attributable to having custody of the child(ren).
- 4) Allocates the net child cost obligation (net of tax benefits) between the two parents based on each parent's share of combined after-tax income that is above a recommended self-support level.¹³

¹³ A self-support reserve of 133 percent of the poverty threshold is the recommendation of an appointed panel on medical child support reporting to the U.S. Department of Health and Human Services and U.S. Department of Labor. See U.S. Department of Health and Human Services, "21 Million Children's Health: Our Shared Responsibility, The Medical Child Support Working Group's Report, Full Report," June 2000, p. 70. The poverty threshold for a one-adult only household in 2000 is \$8,959 annually or \$747 monthly.

- 5) Each parent is treated as being equally entitled to reimbursement by the other parent for that parent's share of child costs incurred while in the parent's care. Therefore, when more than one parent has physical custody, the child costs are allocated between each parent according to each parent's share of the child(ren)'s time.

The cost shares guideline sets a limit on the amount of the child support obligation so that the obligor retains income sufficient for basic living needs and so the state and employer (when involved with an income deduction order) comply with the Consumer Credit Protection Act.

Where the non-custodial parent provides direct support for the child, the cost shares guideline also considers this when setting the award. This can be handled through simple cross crediting based on the number of overnights visited or by using a more sophisticated approach. That would be to include adjustments for differentiating the fixed cost of housing from other "moveable" child expenses when the non-custodial parent provides housing for the child(ren) on a year round basis; that is, the non-custodial parent pays for and maintains housing for the child(ren) even when they are not in the non-custodial parent's custody—e.g., the child(ren) has/have a bedroom in each parent's house or apartment. The cost shares formula can be designed to quantify how to allocate child costs based on each parent's fixed costs for the child(ren), moveable costs, and the number of days and/or nights each parent has parenting time with the child(ren). Such a methodology can be a replacement for current methodologies in use for shared parenting (joint physical custody or extended visitation) adjustments to basic guidelines. Nonetheless, the shares adjustment can be a simple, analogous version to current methodologies by simply using overall net child costs and making a simple allocation based on each parent's share of total parenting time.

The Schedule of Child Costs for the cost shares guideline is found in Part III.

Source Data for the Cost Shares Guideline

The primary source of data for the cost shares child support model is 1999 Expenditures on Children by Families, published by the Family Economics Research Group (FERG), U.S. Department of Agriculture.¹⁴ Data are used to estimate expenditures on children are from the 1990-92 Consumer Expenditure Survey-Interview portion. This survey is administered by the Bureau of Labor Statistics, U.S. Department of Labor. This survey is based on a sample of 12,850 husband-wife households and 3,395 single-parent households. The Bureau of Labor Statistics weights the survey data to reflect the composition of the overall U.S. population of interest. Econometric analysis was used to estimate household and child-specific expenditures. That is, statistical techniques were used to evaluate the expenditure data to control for family size, income, and other factors to determine expenditures on children by family size.

¹⁴ More detail on the source data can be found in Donald J. Bieniewicz, "Child Support Guideline Developed by Children's Rights Council," Chapter 11, *Child Support Guidelines: the Next Generation*, U.S. Department of Health and Human Services, April 1994, pp. 104-125.

The cost shares model has components for various major child cost categories. As noted, these are housing, food, transportation, clothing, health, child care & education, and "other." Each category is based on an average of the expenditures by category from survey data. These categories are being updated to reflect category changes in the latest annual report for Expenditures on Children by Families from the U.S. Department of Agriculture.

The FERG report provides estimates of family expenditures on children for separate cost categories. The FERG estimates are on a marginal cost basis, except for the housing, transportation, and other miscellaneous cost estimates, which are per capita (household costs are allocated equally to all household members, including children). Per capita estimation is known to yield much higher estimates of child costs than marginal cost estimation and should be viewed as an "upper limit" for child costs for these categories.

To obtain marginal housing costs for children, the housing costs in the cost shares tables originally were based on a housing survey by Dr. David Garrod of Purdue University (currently retired) instead of the unrealistically high per capita estimates from the FERG report. Adjustments were made to the data to add furniture and utilities costs.

More recently, the cost shares model incorporated housing cost data from the more recent U.S. Department of the Interior's "Regional Quarters Rental Survey Covering Government-Furnished Quarters Located in the Southeast Survey Region," February, 1997. This is an extensive survey of market values of private housing for determining market values of government-furnished housing to employees.

The tables from the Bieniewicz 1994 publication were updated by using data from the FERG report, "1999 Expenditures on Children by Families." Child expenditure levels were interpolated at \$50 increments using a regression based methodology, correlating updated published data between income and expenditures.

For future updates of these tables, it may be appropriate to base the transportation component on a cost per mile basis for the family trips that are solely attributable to the child's activities. If refined and incorporated, this approach would lead to substantially lower transportation costs.

Corroboration of Cost Shares Data

The underlying data in the cost shares is gaining professional acceptance and has been corroborated by additional studies. The cost shares paper that was presented to the National Association of Forensic Economics section of the Southern Economic Association annual meeting in November 2000 was favorably received by peer review.

These published estimates of child costs in the cost shares model have been corroborated by a legislative research panel appointed by the Legislature of the State of Virginia. In "Technical Report: The Costs of Raising Children," the Joint Legislative Audit and Review Commission

(JLARC), a standing commission with a professional staff, the expenditure levels on children for low-income households were very close to the cost shares numbers. However, the JLARC cost estimates were notably lower than the cost shares expenditure figures. The lower JLARC numbers are likely attributable to the use of data from a more recent Consumer Expenditure Survey than is used by the Department of Agriculture in its child cost estimates. Additionally, the econometric technique used by JLARC focuses more on marginal child costs than the Department of Agriculture's technique. Hence, the cost shares model incorporates conservatively high estimates of child costs. It likely will be appropriate to incorporate the JLARC data after additional professional review of these child cost estimates.

A Comparison of Cost Shares Awards with Income Shares Awards

Chart 2 compares presumptive child support awards for: (1) the current income shares guideline in use in Kentucky, (2) the revised income shares guideline proposed by PSI, (3) a cost shares guideline that does not share the custodial parent tax benefit, and (4) a full fledged cost shares guideline that includes sharing with both parents the custodial parent tax benefit. All awards in this example assume no visitation for the non-custodial parent.

Chart 2.

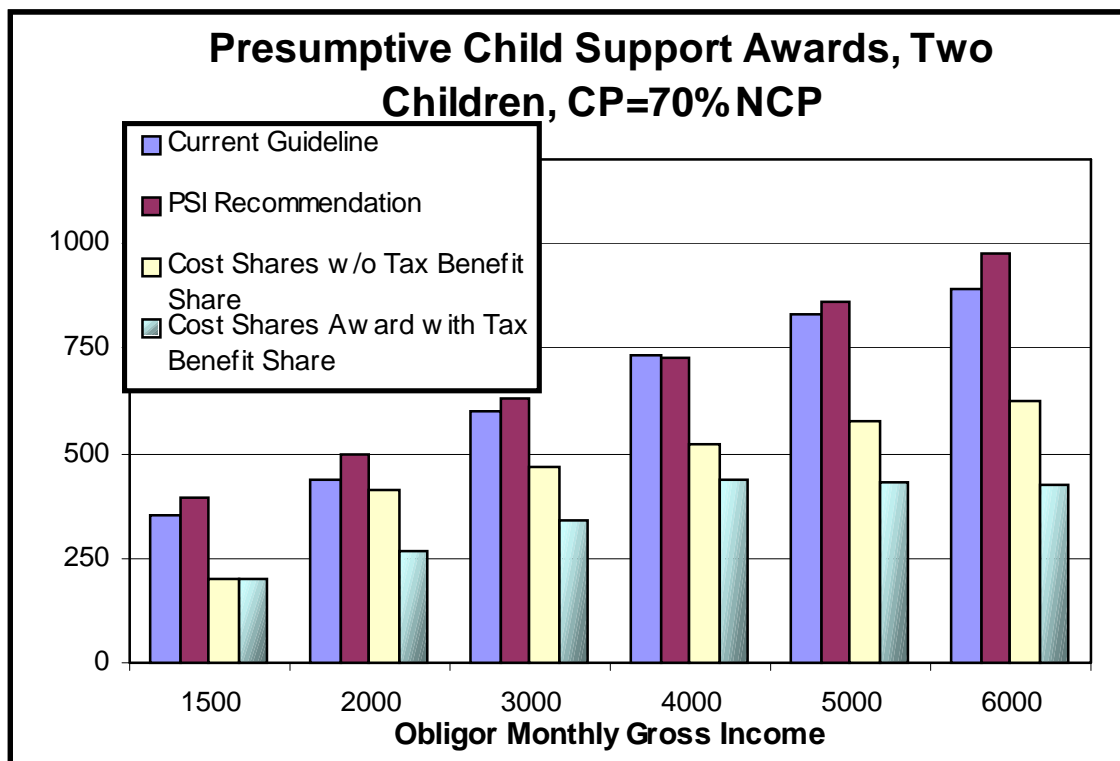


Chart 2 compares the presumptive award at various levels of gross income for the non-custodial parent in which the custodial parent earns a gross income that is 70 percent of that for the non-custodial parent. The non-custodial parent is the obligor parent. At the low

income figure of \$1,500 the cost shares awards are significantly lower than either version of Kentucky income shares. This is because the obligor award reflects available income—the obligor share of child costs exceeds available income. The income share awards have no adequate self-support mechanism at this income level. Without the self-support constraint, the cost shares award would be similar to the other two when not including tax offsets in the cost shares award. However, the cost shares award that includes sharing the tax benefit would be sharply lower. This would reflect the sizeable amount of tax benefits received by the custodial parent—including child credits and earned income credits. These adjustments in the example do not include food stamps and WIC payments.

In Chart 2, at higher incomes, the proposed revised version of income shares is somewhat higher than the current version. However, the cost shares award is significantly lower—especially after taking into account the tax benefit. The difference between the two calculations for the cost shares award—the tax benefit sharing effect—clearly shows the magnitude of the upward bias in the income shares guideline award from not including a tax benefit sharing adjustments. The gap between the cost shares award without the tax benefit share and the income shares awards shows the upward bias in their child cost definitions. The gap between the income shares award and the full fledged costs shares award shows the extraordinary benefit that a custodial parent receives with either income shares award.

A Major Federal Government Review Recommended Consideration of Using Actual Child Cost Data for Child Support Guidelines

The Family Support Act of 1988 included funding a federally sponsored independent review of guideline methodologies. One of the key final recommendations from that review was that actual child costs should be considered for child support guidelines. The final recommendation of the Lewin/ICF Group, Washington D.C. submitted to the U.S. Department of Health and Human Services on improving child support guidelines stated:

That the research community should consider "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."¹⁵

The final recommendation in this report basically suggests that the best method to estimate child expenditures is to simply ask parents what the costs are. The cost shares guideline better than any other child support guideline methodology most closely follows this concept of using actual data on child cost expenditures compared to other methodologies such as the Engel version of income shares or the Rothbarth version of income shares.

Additionally, the cost shares guideline closely tracks the historical approaches of family courts in setting child support awards used prior to the adoption of untested income

¹⁵ See 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, page 15 of chapter 7 (p. 15-7).

equivalence methodologies such as income shares guidelines. Upon close inspection by the judiciary and the bar, the cost shares methodology will look very familiar and should gain acceptance.

PART III.

A Model Bill for a Cost Shares Child Support Guideline

The following is a model child support bill drafted for use by a representative in the Georgia State House of Representatives. The language in the bill is broadly generic and adaptable for use by other states. As noted in the Legislative Purpose, the Schedule of Child Costs is based on national data except for housing costs. Housing costs are based on regional data for the Southeast and for Georgia. These housing costs are comparable on average to housing costs in Kentucky. However, local housing data can be substituted.

Legislative Purpose.

The following child support guideline is based on a generic cost shares guideline published in Chapter 11 of *Child Support Guidelines: the Next Generation*, by the Office of Child Support Enforcement, U.S. Department of Health and Human Services, 1994. This publication was a compilation of experts recommendations for improving child support guidelines. The cost shares methodology was the general approach used by Georgia courts prior to guideline changes in 1989. The following guideline is a systemization of that approach. The basic child cost table has been updated with the same methodology but using the more recent data from *1999 Expenditures on Children by Families*, U.S. Department of Agriculture, published in 2000. Housing costs additionally are based on data from the U.S. Department of the Interior's Regional Quarters Rental Survey, Southeast Region, 1997.

O.C.G. Section 19-6-15 is deleted and replaced with the following:

OFFICIAL CODE OF GEORGIA

19-6-15

Child support in final verdict or decree; definitions of income; computation of award; duration of support; modification of award; worksheets to facilitate computation of award; Schedule of Basic Support Obligation.

a) The Georgia Child Support Guidelines shall apply as a rebuttable presumption to all child support orders in Georgia, except as discussed below. The guidelines shall be used for temporary and permanent child support orders. The guidelines shall be used by the court as the basis for reviewing the adequacy of child support levels in non-contested cases as well as contested. The court may deviate from the guidelines in cases where application would be inequitable to one of the parents or to the child(ren). If the court orders an amount other than the amount determined by the application of these guidelines, the court must make written findings of fact that justify the deviation, that state the amount of the award which would have resulted from the application of the guidelines, and that justify the amount of support awarded by the court.

The court may consider the following reasons for deviating from the Guidelines:

- 1) Ages of the children;
- 2) A child's extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available;
- 3) Educational costs;
- 4) Other support a parent is providing or will be providing, such as payment of a mortgage;
- 5) A parent's own extraordinary needs, such as medical expenses;
- 6) Unusually high debt structure; For the existence of the factor of unusually high debt structure, the court shall consider a reasonable restructuring plan of the parent's repayment of debt and shall consider treating the on-going payment of that debt as an adjustment—that is, a subtraction—to that parent's Monthly Adjusted Gross Income.

This adjustment may also include the cost of income taxes and other taxes on the income needed for payment of this debt;

- 7) Historical spending in the family for children which would result in an award that varies significantly from the attached tables;
 - 8) Considerations of the economic cost-of-living factors of the community of each parent, as determined by the trier of fact;
 - 9) In-kind contribution of either parent;
 - 10) Extraordinary travel expenses to exercise visitation/parenting time or shared physical custody; and;
 - 11) Any other factor which the trier of fact deems to be required by the ends of justice.
- b) The Guidelines include a self-support reserve that ensures the obligors have sufficient income to maintain a minimum standard of living based on the federal poverty threshold for a one adult only household. The self-support reserve is set at 133 percent of the federal poverty threshold as recommended in June 2000 by the federal Medical Child Support Working Group reporting to the U.S. Department of Health and Human Services and the U.S. Department of Labor.
- c) The Schedule of Basic Child Costs is based on economic data which represent estimates of total expenditures on child-rearing costs to age 18 and is inclusive of typical expenditures by parents on children—including health insurance and health care costs but excluding day care and educational expenses which are handled separately as add-ons. These expenditures are for a single-parent household with income equal to the average of both parents' incomes.

- d) For the purpose of these guidelines, "income" is defined as actual gross income of the parent(s) or potential income if unemployed or underemployed.

All income is assumed to be taxable. Gross income of each parent should be determined as specified below:

- 1) **Gross Income:** Gross income includes income from the following sources except as excluded below, and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers compensation benefits, unemployment insurance benefits, disability pay and insurance benefits, gifts, prizes and alimony or maintenance received from persons other than parents to the instant action. The computation of gross income based on salaries and wages shall be limited to the earnings of a normal 40 hour work week, that is, the income from salary and wages shall exclude overtime earnings or extra, part-time employment earnings as long as the child(ren)'s basic needs are being met.

Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to Aid to Families with Dependent Children (AFDC), Temporary Assistance to Needy Families (TANF), Supplemental Security Income (SSI), Food Stamps and General Assistance.

Payments received for the benefit of the child(ren) as a result of the disability of a parent are counted as part of gross income of the disabled parent but also are credited as a payment toward the disabled parent's child support obligation.

- 2) **Income from self-employment or operation of a business:** For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a

partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses for the purposes of the Guidelines are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the Court to be inappropriate for determining gross income for purposes of determining child support. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine the appropriate level of gross income available to the parent to satisfy a child support obligation. Self-employment taxes shall be deducted from gross income. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. Such payments might include a company car, free housing, or reimbursed meals.

- 3) Potential income: If a parent is voluntarily unemployed or underemployed, child support may be calculated based on a determination of potential income, except that a determination of potential income should not be made for a parent who is physically or mentally incapacitated. Parents are entitled to their choice of jobs and life-styles and shall not be penalized for legitimate choices that still allow them to provide financially and emotionally for their children. However, if either parent is voluntarily unemployed or underemployed to the extent that the parent cannot

provide for him or herself and the children in his or her own home at a basic level of welfare established by state regulation or law, e.g., at the poverty guidelines, when that parent is capable of earning and providing at that level, then net income necessary to provide that basic level of welfare shall be imputed to that parent. An exception shall be if the parent is participating in an organized strike. If the parent has no recent work history and/or vocational training, the Court may determine potential income in an amount based on the minimum hourly wage for a work week that is likely obtainable by the parent based on the parent's job skills, current economic conditions—including low or high local unemployment or reduced work week hours, availability of transportation, and any other relevant factors. The Court shall not impute an income based on potential income or job offers which would require the parent to relocate from the area of primary residence of the child(ren) as long as the child(ren)'s basic needs are being met.

- 4) Payment of alimony—if any—shall be determined prior to the determination of the child support obligation—either on a temporary or on a permanent basis—and in calculations for the child support obligation shall be counted as income for the receiving parent and as a deduction from income for the paying parent.
- 5) Income verification: Income statements of the parents should be verified with documentation of both current and past income. Suitable documentation of current earnings (at least one full month) includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current income must be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period. Sanctions may be imposed for failure to comply with

this provision on the motion of either parent or by the Court on its own motion.

- e) The full or partial cost of health insurance (medical, or medical and dental) for the child(ren) due support may be added to the basic child support obligation if the insurance is not provided by one or both of the parents and is available at reasonable cost. The portion to be included in the child support calculation is the amount of the health insurance premium actually attributable to the child(ren) subject to the order. If coverage is provided through an employer, only the employee's portion of cost shall be considered. This cost should be calculated net of any tax offsets that may exist and are specifically attributable to provision of the medical insurance. When considering whether to add the cost of such insurance in full or in part to the basic child cost from the Schedule, the court shall take into account that this Schedule is already inclusive of average expenditures on these child cost categories. Medical or dental expenses in excess of \$250 (Two Hundred Fifty Dollars) per year/per child and uncompensated by insurance shall be divided between the parents in proportion to their respective adjusted after-tax incomes.
- f) Child care and educational costs are not included in the Schedule of Basic Child Costs and shall be added when appropriate. These costs shall be net of any tax benefits directly attributable to incurring these specific child costs.
- g) Pre-existing child support orders and other children and maintenance:
 - 1) The amount of child support payments actually made by a parent under any pre-existing court order(s) or separation agreement(s) should be deducted from the parent's Monthly Gross Income in order to determine Monthly Adjusted Gross Income and Monthly Adjusted After-Tax Income.
 - 2) The amount of a parent's financial responsibility for his or her natural or adopted

child(ren) currently residing in the household who are not involved in this action should be deducted from a parent's Monthly Gross Income. The amount that should be deducted for a parent's other child(ren) is one-half of the Monthly Incurred Total Child Costs for the child(ren) who live(s) with the parent and for whom the parent owes a duty of support (other than the child(ren) involved in the instant action). For purposes of this deduction, the Monthly Incurred Total Child Costs for the other child(ren) living with the parent is based on the average Monthly Adjusted Gross Incomes of the parent and the other responsible parent of such child(ren).

- 3) Actual payments or receipts of alimony or other court ordered maintenance should be deducted from or added to the parent's Monthly Gross Income and Monthly After-Tax Income in order to determine Monthly Adjusted Gross Income and Monthly Adjusted After-Tax Income.

h) Retention of income for obligor's subsistence:

The Presumptive Child Support Award shall not exceed an amount that would leave the obligor with income less than needed for basic living needs. Additionally, the Presumptive Child Support Award shall not exceed a level that causes or would cause if implemented income deduction orders to exceed any withholding limit as established by the Federal Consumer Credit Protection Act.

i) Duration of support orders:

Except as defined below, the duty of both parents to provide support for a minor child are continuing, however said duty/obligation shall automatically cease when the child:

- 1) reaches the age of 18,
- 2) dies,

- 3) marries,
- 4) lives an emancipated lifestyle,
- 5) enters military service or,
- 6) becomes a fugitive from justice;

provided, however, that, in any temporary or final order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1 immediately following the signing into law of this bill, the trier of fact, in the exercise of sound discretion, may direct both parents to provide financial assistance to a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age. The provisions for support provided in this subsection may be enforced by either parent or the child for whose benefit the support is ordered.

- 7) The provisions of subsection (i) of this Code in regards to a child support obligation beyond the age of majority shall be applicable only to a temporary order or final decree for divorce, separate maintenance, legitimation, or paternity entered on or after July 1 immediately following the signing into law of this bill.

j) Modification:

The adoption of these guidelines by the State of Georgia shall constitute a significant material change in the establishment and calculation of child support orders. In any proceeding to modify an existing order which is 2 years old or older, an increase or decrease respectively of 15% or more between the amount of the existing order and the

amount of child support resulting from the application of these guidelines, shall be presumed to constitute a substantial change of circumstances warranting a modification.

- k) In the event that the parent paying child support suffers an involuntary termination of employment, has an extended involuntary loss of average weekly hours, is involved in an organized strike, incurs a loss of health, or similar involuntary adversity resulting in a loss of income of 25 percent or more, then the portion of the child support attributable to such lost income shall not accrue.
- l) Determination of Presumptive Child Support Award. Use of Worksheet "A" will facilitate the computation of the appropriate Presumptive Child Support Award in cases of sole physical custody, split custody, and in cases of shared parenting.

The obligor parent's Presumptive Child Support Award to be paid is determined by applying the following steps:

- 1) Determine each parent's Monthly Gross Income.
- 2) Determine each parent's Monthly Adjusted Gross Income by subtracting from Monthly Gross Income preexisting child support obligations and other current child support obligations not involved in the instant action. Alimony (maintenance) shall be deducted or added to Monthly Gross Income appropriately for alimony payments made or received.
- 3) Determine each parent's Monthly Adjusted After-Tax Income. Each shall be calculated assuming single taxpayer status with no children. The child-related tax benefits are taken into account in a separate step.
- 4) Determine the Self-Support Reserve for basic living needs. The Self-Support Reserve is equal to 133 percent of the federally defined poverty threshold for a

"household of one unrelated individual under age 65."

- 5) Calculate each parent's Monthly Income Available for Child Support by subtracting the Self-Support Reserve from each parent's Monthly Adjusted After-Tax Income. If a negative number results, set it to zero. Add these two values to calculate combined Monthly Income Available for Child Support.
- 6) Calculate each parent's Share of Combined Monthly Income Available for Child Support by dividing each parent's Monthly Income Available for Child Support by the combined figure and then multiplying by 100 to put in percentage form.
- 7) Determine the parents' Basic Child Costs. This is done by averaging the parents' Monthly Adjusted Gross Incomes and looking up the corresponding Basic Child Costs for the appropriate number of children in the following Schedule of Basic Child Costs.
- 8) Estimate each parent's percentage Share of Child(ren)'s Time, which is the relative percentage of time that each parent has primary physical responsibility for the child(ren) and must sum to 100 percent. The court may use a conversion table for this purpose. In cases in which parents have different time share responsibilities for different children, use the average of the percentages each parent spends with each child.
- 9) Calculate each parent's Incurred Basic Child Costs by pro-rating Basic Child Costs by each parent's Share of the Child(ren)'s Time.
- 10) Identify for each parent any significant Additional Child Cost Items, such as child care, that are not included in the Schedule of Basic Child Costs. Calculate these costs net of tax offsets.

- 11) Calculate the Custodial Tax Benefit Attributable to the Child(ren), which shall be treated as a child cost offset—a negative cost. Unless the parents voluntarily have made a sharing arrangement of the tax benefits, the court shall allocate the custodial parent tax benefit. For joint custody situations, the court shall either order the parents to alternate each year the right to claim the child-related tax benefits or name a parent as custodian of the tax benefits and then allocate the tax benefit. The Custodial Tax Benefit is defined as the difference between the tax benefit custodian's after-tax income as head of household and as a single tax payer. This calculation shall be made inclusive of alimony received. The Custodial Tax Benefit includes any child-related welfare benefits, such as WIC payments, for which child support is not a reimbursement to the state.
- 12) Calculate Incurred Total Child Costs by adding together: Basic Child Costs, Additional Child Cost Items, and the Custodial Tax Benefit Attributable to the Child(ren).
- 13) Calculate Monthly Amount Owed to Other Parent. The father's Monthly Amount Owed to Other Parent is equal to the mother's Incurred Total Child Costs multiplied by the father's Share of Combined Monthly Income Available for Child Support. The mother's Monthly Amount Owed to Other Parent is equal to the father's Incurred Total Child Costs multiplied by the mother's Share of Combined Monthly Income Available for Child Support.
- 14) Calculate the Preliminary Presumptive Child Support Award. The parent with the higher Monthly Amount Owed to Other Parent is the obligor parent. Calculate the Preliminary Presumptive Child Support Award by subtracting the lower Monthly

Amount Owed to Other Parent from the higher Monthly Amount Owed to Other Parent. Depending on relative incomes, each parent's share of the child(ren)'s time, and the size of the child-related tax benefits, either parent may be the obligor parent. The court shall designate which parent is the obligor and which is the obligee separately from which is non-custodial and which is custodial.

15) The obligor parent's Presumptive Child Support Award to be paid is the lesser of that parent's Monthly Income Available for Child Support and the Preliminary Presumptive Child Support Award.

m) Worksheet "A":

insert facsimile of worksheet A here

n) Georgia Child Support Guidelines Schedule of Basic Child Costs for Single-Parent Household, excluding day care and education costs, using average of parents' Monthly Adjusted Gross Income:

| | Five | | | | |
|---------------|--------------|-----------------|-----------------|-----------------|-----------------|
| Average | One | Two | Three | Four | or more |
| <u>Income</u> | <u>Child</u> | <u>Children</u> | <u>Children</u> | <u>Children</u> | <u>Children</u> |
| 400 | 25 | 25 | 25 | 25 | 25 |
| 425 | 42 | 50 | 54 | 58 | 60 |
| 450 | 60 | 75 | 82 | 90 | 95 |
| 475 | 77 | 101 | 111 | 123 | 131 |
| 500 | 94 | 126 | 140 | 155 | 166 |
| 525 | 112 | 151 | 169 | 188 | 201 |
| 550 | 129 | 176 | 197 | 220 | 236 |
| 575 | 146 | 202 | 226 | 253 | 271 |
| 600 | 164 | 227 | 255 | 285 | 307 |
| 625 | 181 | 252 | 283 | 318 | 342 |

| | | | | | |
|------|-----|-----|-----|-----|-----|
| 650 | 198 | 277 | 312 | 350 | 377 |
| 675 | 216 | 302 | 341 | 383 | 412 |
| 700 | 233 | 328 | 370 | 415 | 447 |
| 725 | 250 | 353 | 398 | 448 | 483 |
| 750 | 268 | 378 | 427 | 480 | 518 |
| 775 | 285 | 403 | 456 | 513 | 553 |
| 800 | 302 | 429 | 484 | 545 | 588 |
| 825 | 319 | 454 | 513 | 578 | 623 |
| 850 | 337 | 479 | 542 | 610 | 659 |
| 875 | 354 | 504 | 571 | 643 | 694 |
| 900 | 371 | 529 | 599 | 675 | 729 |
| 925 | 389 | 555 | 628 | 708 | 764 |
| 950 | 406 | 580 | 657 | 740 | 799 |
| 975 | 423 | 605 | 685 | 773 | 835 |
| 1000 | 441 | 630 | 714 | 805 | 870 |
| 1050 | 444 | 636 | 720 | 812 | 877 |
| 1100 | 448 | 641 | 726 | 819 | 884 |
| 1150 | 452 | 646 | 732 | 826 | 892 |
| 1200 | 456 | 652 | 738 | 833 | 899 |
| 1250 | 459 | 657 | 744 | 839 | 907 |
| 1300 | 463 | 663 | 750 | 846 | 914 |
| 1350 | 467 | 668 | 756 | 853 | 921 |
| 1400 | 471 | 673 | 762 | 860 | 929 |
| 1450 | 475 | 679 | 768 | 867 | 936 |
| 1500 | 478 | 684 | 775 | 873 | 943 |
| 1550 | 482 | 689 | 781 | 880 | 951 |
| 1600 | 486 | 695 | 787 | 887 | 958 |
| 1650 | 490 | 700 | 793 | 894 | 965 |
| 1700 | 493 | 705 | 799 | 901 | 973 |
| 1750 | 497 | 711 | 805 | 908 | 980 |
| 1800 | 501 | 716 | 811 | 914 | 988 |

| | | | | | |
|------|-----|-----|-----|------|------|
| 1850 | 505 | 721 | 817 | 921 | 995 |
| 1900 | 508 | 727 | 823 | 928 | 1002 |
| 1950 | 512 | 732 | 829 | 935 | 1010 |
| 2000 | 516 | 738 | 835 | 942 | 1017 |
| 2050 | 520 | 743 | 841 | 948 | 1024 |
| 2100 | 523 | 748 | 847 | 955 | 1032 |
| 2150 | 527 | 754 | 853 | 962 | 1039 |
| 2200 | 531 | 759 | 859 | 969 | 1046 |
| 2250 | 535 | 764 | 865 | 976 | 1054 |
| 2300 | 538 | 770 | 871 | 983 | 1061 |
| 2350 | 542 | 775 | 877 | 989 | 1068 |
| 2400 | 546 | 780 | 883 | 996 | 1076 |
| 2450 | 550 | 786 | 889 | 1003 | 1083 |
| 2500 | 553 | 791 | 895 | 1010 | 1091 |
| 2550 | 557 | 797 | 901 | 1017 | 1098 |
| 2600 | 561 | 802 | 908 | 1023 | 1105 |
| 2650 | 565 | 807 | 914 | 1030 | 1113 |
| 2700 | 568 | 813 | 920 | 1037 | 1120 |
| 2750 | 572 | 818 | 926 | 1044 | 1127 |
| 2800 | 576 | 823 | 932 | 1051 | 1135 |
| 2850 | 580 | 829 | 938 | 1058 | 1142 |
| 2900 | 583 | 834 | 944 | 1064 | 1149 |
| 2950 | 587 | 839 | 950 | 1071 | 1157 |
| 3000 | 591 | 845 | 956 | 1078 | 1164 |
| 3050 | 595 | 850 | 962 | 1085 | 1172 |
| 3100 | 598 | 855 | 968 | 1092 | 1179 |
| 3150 | 602 | 861 | 974 | 1098 | 1186 |
| 3200 | 606 | 866 | 980 | 1105 | 1194 |
| 3250 | 610 | 872 | 986 | 1112 | 1201 |
| 3300 | 613 | 877 | 992 | 1119 | 1208 |
| 3350 | 617 | 882 | 998 | 1126 | 1216 |

| | | | | | |
|------|-----|------|------|------|------|
| 3400 | 621 | 888 | 1004 | 1132 | 1223 |
| 3450 | 625 | 893 | 1010 | 1139 | 1230 |
| 3500 | 628 | 898 | 1016 | 1146 | 1238 |
| 3550 | 632 | 904 | 1022 | 1153 | 1245 |
| 3600 | 636 | 909 | 1028 | 1160 | 1253 |
| 3650 | 640 | 914 | 1034 | 1167 | 1260 |
| 3700 | 643 | 920 | 1040 | 1173 | 1267 |
| 3750 | 647 | 925 | 1047 | 1180 | 1275 |
| 3800 | 651 | 930 | 1053 | 1187 | 1282 |
| 3850 | 655 | 936 | 1059 | 1194 | 1289 |
| 3900 | 658 | 941 | 1065 | 1201 | 1297 |
| 3950 | 662 | 947 | 1071 | 1207 | 1304 |
| 4000 | 666 | 952 | 1077 | 1214 | 1311 |
| 4050 | 670 | 957 | 1083 | 1221 | 1319 |
| 4100 | 673 | 963 | 1089 | 1228 | 1326 |
| 4150 | 677 | 968 | 1095 | 1234 | 1333 |
| 4200 | 680 | 973 | 1100 | 1241 | 1340 |
| 4250 | 684 | 978 | 1106 | 1247 | 1347 |
| 4300 | 688 | 983 | 1112 | 1254 | 1354 |
| 4350 | 691 | 988 | 1118 | 1260 | 1361 |
| 4400 | 695 | 993 | 1123 | 1267 | 1368 |
| 4450 | 698 | 998 | 1129 | 1273 | 1375 |
| 4500 | 702 | 1003 | 1135 | 1280 | 1382 |
| 4550 | 705 | 1008 | 1141 | 1286 | 1389 |
| 4600 | 709 | 1013 | 1146 | 1293 | 1396 |
| 4650 | 712 | 1018 | 1152 | 1299 | 1403 |
| 4700 | 716 | 1023 | 1158 | 1306 | 1410 |
| 4750 | 719 | 1028 | 1164 | 1312 | 1417 |
| 4800 | 723 | 1033 | 1169 | 1319 | 1424 |
| 4850 | 726 | 1038 | 1175 | 1325 | 1431 |
| 4900 | 730 | 1044 | 1181 | 1332 | 1438 |

| | | | | | |
|------|-----|------|------|------|------|
| 4950 | 734 | 1049 | 1187 | 1338 | 1445 |
| 5000 | 737 | 1054 | 1192 | 1345 | 1452 |
| 5050 | 741 | 1059 | 1198 | 1351 | 1459 |
| 5100 | 744 | 1064 | 1204 | 1358 | 1466 |
| 5150 | 748 | 1069 | 1210 | 1364 | 1473 |
| 5200 | 751 | 1074 | 1215 | 1371 | 1480 |
| 5250 | 755 | 1079 | 1221 | 1377 | 1487 |
| 5300 | 758 | 1084 | 1227 | 1384 | 1494 |
| 5350 | 762 | 1089 | 1233 | 1390 | 1501 |
| 5400 | 765 | 1094 | 1239 | 1397 | 1508 |
| 5450 | 769 | 1099 | 1244 | 1403 | 1515 |
| 5500 | 772 | 1104 | 1250 | 1410 | 1523 |
| 5550 | 776 | 1109 | 1256 | 1416 | 1530 |
| 5600 | 779 | 1114 | 1262 | 1423 | 1537 |
| 5650 | 783 | 1119 | 1267 | 1429 | 1544 |
| 5700 | 787 | 1124 | 1273 | 1436 | 1551 |
| 5750 | 790 | 1130 | 1279 | 1442 | 1558 |
| 5800 | 794 | 1135 | 1285 | 1449 | 1565 |
| 5850 | 797 | 1140 | 1290 | 1455 | 1572 |
| 5900 | 801 | 1145 | 1296 | 1462 | 1579 |
| 5950 | 804 | 1150 | 1302 | 1468 | 1586 |
| 6000 | 808 | 1155 | 1308 | 1475 | 1593 |
| 6050 | 811 | 1160 | 1313 | 1481 | 1600 |
| 6100 | 815 | 1165 | 1319 | 1488 | 1607 |
| 6150 | 818 | 1170 | 1325 | 1494 | 1614 |
| 6200 | 822 | 1175 | 1331 | 1501 | 1621 |
| 6250 | 825 | 1180 | 1336 | 1507 | 1628 |
| 6300 | 829 | 1185 | 1342 | 1514 | 1635 |
| 6350 | 833 | 1190 | 1348 | 1520 | 1642 |
| 6400 | 836 | 1195 | 1354 | 1527 | 1649 |
| 6450 | 840 | 1200 | 1360 | 1533 | 1656 |

| | | | | | |
|--------------|-----|------|------|------|------|
| 6500 | 843 | 1205 | 1365 | 1540 | 1663 |
| 6550 | 847 | 1211 | 1371 | 1546 | 1670 |
| 6600 | 850 | 1216 | 1377 | 1553 | 1677 |
| 6650 | 854 | 1221 | 1383 | 1559 | 1684 |
| 6700 | 857 | 1226 | 1388 | 1566 | 1691 |
| 6750 | 861 | 1231 | 1394 | 1572 | 1698 |
| 6800 | 864 | 1236 | 1400 | 1579 | 1705 |
| 6850 | 868 | 1241 | 1406 | 1585 | 1712 |
| 6900 | 871 | 1246 | 1411 | 1592 | 1719 |
| 6950 | 875 | 1251 | 1417 | 1598 | 1726 |
| 7000 | 878 | 1256 | 1423 | 1605 | 1733 |
| 7050 | 882 | 1261 | 1429 | 1611 | 1740 |
| 7100 | 886 | 1266 | 1434 | 1618 | 1747 |
| 7150 | 889 | 1271 | 1440 | 1624 | 1754 |
| 7200 | 893 | 1276 | 1446 | 1631 | 1761 |
| 7250 | 896 | 1281 | 1452 | 1637 | 1768 |
| 7300 | 900 | 1286 | 1457 | 1644 | 1775 |
| 7350 | 903 | 1292 | 1463 | 1650 | 1782 |
| 7400 | 907 | 1297 | 1469 | 1657 | 1789 |
| 7450 | 910 | 1302 | 1475 | 1663 | 1796 |
| 7500 | 914 | 1307 | 1480 | 1670 | 1803 |
| 7550 | 917 | 1312 | 1486 | 1676 | 1810 |
| 7600 | 921 | 1317 | 1492 | 1683 | 1817 |
| 7650 | 924 | 1322 | 1498 | 1689 | 1824 |
| 7700 | 928 | 1327 | 1504 | 1696 | 1831 |
| 7750 | 932 | 1332 | 1509 | 1702 | 1838 |
| 7800 | 935 | 1337 | 1515 | 1709 | 1845 |
| 7850 | 939 | 1342 | 1521 | 1715 | 1852 |
| 7900 | 942 | 1347 | 1527 | 1722 | 1859 |
| 7950 | 946 | 1352 | 1532 | 1728 | 1866 |
| 8000 & above | | | | | |

- o) O.C.G. Section 19-6-30 is amended by inserting after 19-6-30(a)(3) the following as a continuation of subpart (a):
- 1) For income deduction orders issued on July 1 of the year this bill becomes law and thereafter, no order shall be valid without listing the birth dates of the dependent children for whom the obligor is having income deducted. Income deduction order(s) shall also state the date(s) on which said dependent children attain the age of eighteen years, on which latter date the income deduction order shall no longer be valid, without a showing that said dependents are still in secondary school and have not yet attained the age of 20.
 - 2) It shall be the responsibility of the State Department of Human Resources, Department of Child Support Enforcement to ensure that income deduction orders are ceased when obligation ceases, regardless of whether the case at hand was initiated by the Department of Human Resources, Office of Child Support Enforcement. This Department is authorized to establish and shall establish administrative procedures for obligors to file a petition with the Department to administratively cease income deduction orders when the obligor's obligation of support has ceased.
 - 3) Any overpayment resulting from the Department of Human Resources' failure to terminate an income deduction order within 90 days of the date the income deduction order should cease shall bear interest at the existing judgment rate.
- p) This bill shall take effect 45 days after the signing into law of this bill by the governor or 45 days after which it effectively becomes law otherwise.

Worksheet Below

**Worksheet A: For Sole, Shared, and Split Physical Custody
State of Georgia**

IN THE _____ COURT OF _____ COUNTY CASE NO.

Mother: _____ SSN: _____ Custodial Parent (Y or N):

Father: _____ SSN: _____ Custodial Parent (Y or N):

| Children | SSN | Date of Birth | Children | SSN | Date of Birth |
|----------|-----|---------------|----------|-----|---------------|
| | | | | | |
| | | | | | |
| | | | | | |

| Child Support Order | Father | Mother | |
|--------------------------------------------------------------------------------------------------------------|---------|---------|----------------|
| 1. Monthly Gross Income (See O.C.G. 19-6-15 ___) | \$ | \$ | |
| a. Minus preexisting child support payment | -\$ | -\$ | |
| b. Minus deduction for other children in household | -\$ | -\$ | |
| c. Minus maintenance paid | -\$ | -\$ | |
| d. Plus maintenance received | \$ | \$ | |
| 2. Monthly Adjusted Gross Income | \$ | \$ | Average \$ |
| 3. Monthly Adjusted After-Tax Income | \$ | \$ | |
| 4. Self-Support Reserve (133% of Poverty Threshold) | \$ | \$ | |
| 5. Monthly Income Available for Child Support. (Line 3 minus line 4. Enter zero if negative result) | \$ | \$ | Combined \$ |
| 6. Share of Monthly Income Available for Child Support (Percentage share of Combined in line 5.) | 6a % | 6b % | 100% |
| 7. Basic Child Costs (Use Average Monthly Adjusted Gross Income from line 2 to find amount from schedule) | | | \$ |
| 8. Share of Child(ren)'s Time | % | % | 100% |
| 9. Incurred Basic Child Costs (Line 7 times line 8) | \$ | \$ | |
| 10. Additional Child Cost Items. List by parent incurring. | | | |
| a. Child care | \$ | \$ | |
| b. Medical insurance | \$ | \$ | |
| c. Other | \$ | \$ | |

| | | | |
|----------------------------------------------------------------------------------------------------------|-----------|-----------|--|
| d. Other | \$ | \$ | |
| 11. Custodial Tax Benefit Attributable to the Child(ren). Enter as a negative. | -\$ | -\$ | |
| 12. Incurred Total Child Costs (Line 9 plus lines 10a, 10b, 10c, 10d and 11.) | 12a \$ | 12b \$ | |
| 13. Monthly Amount Owed to Other Parent. (6a times 12b for Father; 6b times 12a for Mother) | 13a \$ | 13b \$ | |
| 14. Preliminary Presumptive Child Support Award. (Higher of 13a and 13b minus the lesser of the two.) | \$ | \$ | |
| 15. Presumptive Child Support Award. (Enter the lesser of line 5 and line 14 for paying parent only.) | \$ | \$ | |
| Comments or rebuttals:: | | | |

CURRICULUM VITA:

R. MARK ROGERS

ECONOMIST, CHILD COST AND CHILD SUPPORT GUIDELINES EXPERT

R. Mark Rogers is an economic consultant, with expertise in corporate and government applications. He also is a nationally recognized expert on child costs as related to family law issues. Previously, as a 19-year veteran economist for the Federal Reserve Bank of Atlanta, Rogers became an expert in analysis of economic data and indicators and in economic forecasting. He is the author of the nationally recognized *Handbook of Key Economic Indicators, Second Edition* (McGraw-Hill Professional Publishing, 1998; Chinese edition, 1999). He has lectured nationally on the use and analysis of economic data with the Institute for Professional Education, Arlington, VA. His primary roles at the Atlanta Fed were macroeconomic forecast coordinator for the Macropolicy Group and the supervising economist for the Atlanta Fed's Survey of Southeastern Manufacturing. He has regularly published about analysis of economic conditions and on child costs.

Rogers has used his economic expertise in public service as a governor's appointee to the Georgia Commission on Child Support, 1998, and was the commission's only member economist. In this role, Rogers engaged in economic research regarding the origins of Georgia's guidelines and conflict with long-established, mainstream economic research and theory. His child cost research included, but was not limited to: review of child support guideline methodologies, child costs by differing methodologies, analysis of differential tax treatment for custodial and non-custodial parents, and comparative standards of living for custodial and non-custodial parents.

Rogers is qualified as an expert on child costs and related income analysis for custodial and non-custodial parents, before Georgia Superior Court. Rogers has qualified and testified before Fulton County and DeKalb County Superior Courts.

Publications and research related to child cost research and analysis include:

- "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," with Donald J. Bieniewicz, co-author. Presented, Southern Economic Association, National Association of Forensic Economics section, November 12, 2000.
- "Georgia's Child Support Guidelines—No Economic Basis: Facts for a Constitutional Challenge?" State Bar of Georgia, *Family Law Section Newsletter*, July/August 2000, pp. 14-23.
- Invited and testified as expert witness before Human Resources Subcommittee of U.S. House Ways & Means Committee, regarding Hyde-Woolsey Child Support bill, March

16, 2000, regarding technical issues on proposal to put child support enforcement under the IRS. Testimony published as Congressional record.

- "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, Spring 1999, pp.135-156.
- "Minority Report," Georgia Commission on Child Support, July 1, 1998, submitted to Governor Zell Miller as part of official record presented to U.S. Department of Health and Human Services.
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