

How Wisconsin-Style Child Support Guidelines Violate Mainstream Economic Theory and Empirical Research: Georgia as an Example

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Summary

This paper evaluates Wisconsin-style child support guidelines in terms of how they are or are not consistent with mainstream economic theory and empirical research. The focus is on comparisons of overall consumer spending patterns with discussion on the impact of taxes, saving, and subsistence needs affecting consumer spending. Importantly, this paper also evaluates the impact of Wisconsin-style child support guidelines on the changes in the standard of living of custodial and non-custodial parents on an after-tax, after-child support basis. Additionally, the economic studies underlying the original Wisconsin guidelines are evaluated against mainstream economic theory and data to explain any divergences in current practice guidelines from mainstream economic theory and research.

Indeed, this paper finds dramatic divergence in Wisconsin-style child support guidelines—with Georgia used as an empirical example—from mainstream economic theory and research. Notably, these guidelines inappropriately result in child support obligations that rise as a proportion of after-tax income, creating an especially large transfer of after-tax income at moderate and high income levels to the custodial parent. Importantly, this paper empirically shows that Georgia's presumptive child support guidelines result in custodial parent households (inclusive of children) having a significantly higher standard of living than the non-custodial parent on an after-tax, after-child support basis in most income situations—including situations such that the custodial parent has moderately lower gross income than the non-custodial parent. The

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primary reasons for this result are: presumptive percentages that are flat percentages across all income levels rather than declining as income rises, presumptive percentages that are on a before-tax basis rather than after-tax basis, and the custodial parent having a significant preferential tax treatment compared to the non-custodial parent.

Given that the transfer of income under these guidelines results in custodial parents generally ending up with a higher standard of living than the non-custodial parent even when the custodial parent has moderately lower gross income, it is clear that these presumptive child support awards (at least at moderate and high income levels) include alimony and are excessive as suited for the purpose of child support. This paper finds that the custodial parent's after-tax advantage in net income is as high as 40 to 50 percent more than for the non-custodial parent in a low to moderately low income range.

Finally, this paper reviews and finds that the current practice for Wisconsin-style guidelines is contrary to the underlying economic study for Wisconsin-style child support guidelines. The underlying study recommended: application of the guidelines only to low income situations, a limitation on publicly guaranteed "benefits" (child support), and use of both income shares and cross crediting for shared parenting time.

Introduction

Before 1989, the determination of how much child support a parent should pay was left for the most part to the discretion of the individual court based on each state's case law on how to determine child related costs on a case-by-case basis. Individual courts did not apply the same criteria in a consistent manner and federal regulation was enacted to increase the use of consistent criteria. It should be noted that although individual courts did not award child support in a consistent manner, this is not the same as saying that individual states did not have case law for awarding child support in a consistent manner. Nonetheless, federal statutes and regulations were enacted to create consistent child support guidelines for use within each state—noting that there was not any particular national guideline mandated, just a federal mandate for each state to choose its own guidelines to be applied consistently within its jurisdiction. As seen in the House Ways and Means "Greenbook" for 1996:

In an attempt to increase the use of objective criteria, the 1984 child support amendments [to the Social Security Act] required each State to establish, by October 1987, guidelines for determining child support award amounts "by law or by judicial or administrative action" and to make the guidelines available "to all judges and other officials who have the power to determine child support awards within the State." Federal regulations made the provision more specific: State child support guidelines must be based on specific descriptive and numeric criteria and result in a computation of the support obligation. The 1984 provision did not make the guidelines binding on judges and other officials who had the authority to establish child support obligations. However, the Family

Support Act of 1988 required States to pass legislation making the State child support guidelines a “rebuttable presumption” in any judicial or administrative proceeding and establishing the amount of the order which results from the application of the State-established guidelines as the correct amount to be awarded.

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

The percentage of income approach is based on the non-custodial parent’s gross income and the number of children to be supported (the child support obligation is not adjusted for the income of the custodial parent). The percentages vary by State. In Wisconsin, a highly publicized percentage of income guideline State, child support is based on the following proportions of the non-custodial parent’s gross income: one child—17 percent; two children—25 percent; three children—29 percent; four children—31 percent; and five or more children—34 percent. There is no self support reserve in this approach nor is there separate treatment for child care or extraordinary medical expenses. The States that use a percentage of income approach are Alaska, Arkansas, Connecticut, Georgia, Illinois, Minnesota, Mississippi, Nevada, New Hampshire, New York, North Dakota, Tennessee, Texas, Wisconsin, and Wyoming.²

One should note that the Greenbook summary of these guidelines is incorrect in more than one respect—a number of these Wisconsin-style guideline states use net income rather than gross income although the presumptive percentages are higher than in gross income states. Additionally, although the original studies upon which Wisconsin guidelines were based included these expenses, many states allow for an “add on” of medical insurance premiums and/or un-reimbursed medical care expenses. Georgia, for example, allows for the addition of medical care premiums, for non-reimbursed medical care expenses, and for life insurance on the parent for the benefit of the child, plus significant discretion on the fact-finders part to describe payment on items such as a mortgage as child support (all of which theoretically should fall within the guideline ranges). Notably, these add-ons generally push actual awards well over the presumptive mid-point.

² U.S. House of Representatives Ways and Means Committee, *Committee Prints #104-14*—“House Ways and Means ‘Greenbook,’” 1996, Chapter 9, pp. 542-543.

Now that Wisconsin-style guidelines have been defined—at least in broad terms—let’s look at some of the economic characteristics of these guidelines using the guidelines enacted by the State of Georgia in 1989. Then, this paper will look at standard economic theory and data on consumer behavior as a standard against which to compare the economic characteristics of Wisconsin-style guidelines as enacted by Georgia.

Wisconsin-Style Guidelines as Enacted in Georgia and Their Economic Characteristics

The percent-of-obligor-income guidelines enacted by the State of Georgia are as follows, based on 1997 Official Code of Georgia, Section 19-6-15:

- (b) The child support award shall be computed as provided in this subsection:
 - (1) Computation of child support shall be based upon gross income;
 - (2) For the purpose of determining the obligor's child support obligation, gross income shall include 100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income, and all other income, except need-based public assistance;
 - (3) The earning capacity of an asset of a party available for child support may be used in determining gross income. The reasonable earning potential of an asset may be determined by multiplying its equity by a reasonable rate of interest. The amount generated by that calculation should be added to the obligor's gross monthly income;
 - (4) Allowable expenses deducted to calculate self-employment income that personally benefit the obligor, or economic in-kind benefits received by an employed obligor, may be included in calculating the obligor's gross monthly income; and
 - (5) The amount of the obligor's child support obligation shall be determined by multiplying the obligor's gross income per pay period by a percentage based on the number of children for whom child support is being determined. The applicable percentages of gross income to be considered by the trier of fact are:

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

Application of these guidelines shall create a rebuttable presumption that the amount of the support awarded is the correct amount of support to be awarded.

Georgia's presumptive child support awards are based on obligor-only gross income. However, it is after-tax income from which an obligor must pay the support and meet the obligor's own living expenses. Chart 1 shows after-tax income for a single, non-custodial parent, not entitled to child deductions or exemptions (as required by IRS regulations) and resulting presumptive child support obligations based on mid-point percentages of Georgia's presumptive range of percentages, according to the number of dependents, and the presumptive award as a percentage of obligor's net income before "add-ons." After-tax income is gross income less Federal and Georgia personal income taxes, Social Security taxes, Medicare taxes, plus earned income credits. It is assumed that the obligor has no child deductions and no child exemptions and uses standard deductions.

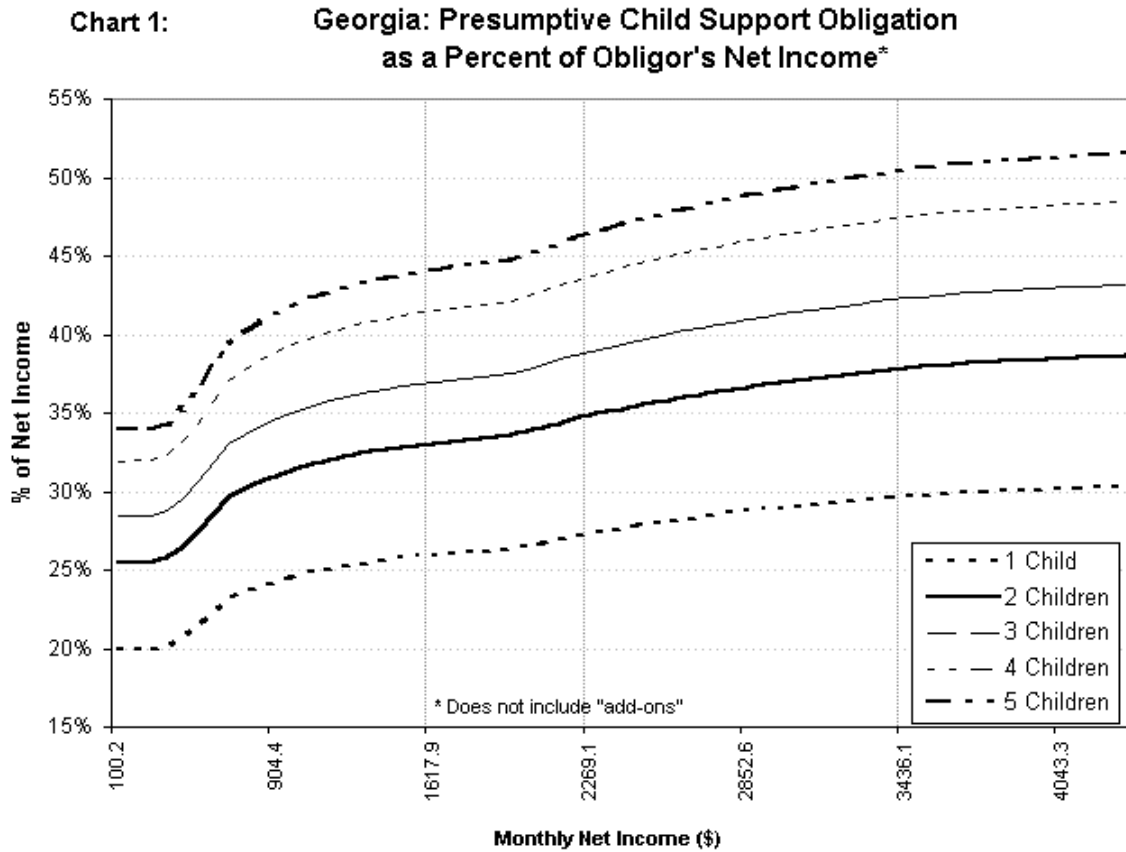
Georgia's Wisconsin-Style Presumptive Obligations Rise as a Percentage of Rising Net Income

As shown in Chart 1, a key economic characteristic of Georgia's presumptive mid-point awards is that they rise dramatically as a percentage of obligor net income as gross and net income rise. For an obligor paying support for one child, the mid-point presumption rises from 20 percent of net income at below poverty level income to over 30 percent for monthly net income of \$4,043 (\$6,100 monthly gross). For the frequently occurring case (for divorce-related rather than unwed situations) of a two-child obligation, the presumptive mid-point obligation rises from 25.5 percent of net income at minimal income levels to 38.5 percent for \$4,043 monthly net income (\$6,100 monthly gross). These figures do not include "add-ons."

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

Other Key Economic Characteristics of Georgia's Presumptive Child Support Awards

Two other economic characteristics of Georgia's guidelines should be mentioned briefly before this paper reviews some basic, mainstream economic evidence on consumer spending habits. A second key characteristic of Georgia's child support guidelines is that low income obligors receive no special treatment with the result that low income obligors are pushed below the Federal poverty threshold income level. Low income obligors have the same presumptive award percentages of gross income as higher income obligors even though low income obligors likely do not have the ability to make payment on much of the presumptive child support obligation much less to afford basic needs. This will be discussed in detail in a later section.



Another major characteristic of Georgia’s presumptive guidelines is that they transfer income from non-custodial parents to custodial parents in a manner that results in the custodial parent having a significantly higher standard of living than the non-custodial parent in most income situations and involving from one through five children. This is not the same as finding that the custodial parent’s income is higher after divorce than prior to divorce but that the shift in the relative standard of living is favorable for the custodial parent. The custodial parent in most cases ends up with a higher standard of living than the non-custodial parent on an after-tax, after-child support basis. However, one or both parents end up with a lower absolute standard of living compared to prior to separation.

Before going into details of this standard of living comparison, it is appropriate to review some mainstream economic findings on household spending and some divergent tax effects on custodial and non-custodial parents.

Mainstream Economic Theory and Empirical Data on Key Characteristics of Consumer Spending

According to mainstream economic theory and data, what are consumer spending characteristics against which Georgia's presumptive guideline obligations for the non-custodial parent should be compared?

Modern economic theory has been developed over for perhaps the past 150 years. Over the past 100 years, theory of consumer behavior has been a fundamental focus of economic analysis and certain tenets have become key to understanding and analyzing consumer behavior. Certain fundamentals of consumer behavior have become accepted by both liberal and conservative economists alike based both on accepted theory and respected empirical analysis. A renowned macroeconomic theorist and educator of the 1960s and 1970s, Gardner Ackley, succinctly describes these key facets of consumer spending behavior.

At various times over the past 100 years, and in various countries, comparative studies have been made of family budgets. For a group or "cross-section" of families at a given time, data have been collected regarding size and disposition of income. ... These data also ordinarily reveal the *total expenditures* [emphasis added is original] on all objects (or the savings) of the families covered by the study. Almost without exception budget studies show a relationship between family income and total family consumption like that which Keynes postulated for the total economy: low-income families typically dis-save; high-income families typically spend less than income. As one moves along the distribution from lower to higher incomes, average consumption rises, but by less than income; and the higher the income the less the rise in consumption from a further increment of income. The MPC [marginal propensity to consume—the tendency of consumers to consume a given proportion out of *additional* income] is positive, less than one, and declines as income rises.³

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

One of the most extensive reviews of studies of household spending patterns was made by the economist, H. S. Houthakker. His review covered 40 surveys from 30 countries. His summary strongly endorses modern theory of consumer behavior which began over 100 years ago, starting out as what is known to economists as "Engel's Law."

³ Gardner Ackley, *Macroeconomic Theory*, The Macmillan Company, New York, Collier-Macmillan International Edition, Third Printing, 1973, p. 221.

Few dates in the history of econometrics are more significant than 1857. In that year Ernst Engel (1821-1896) published a study on the conditions of production and consumption in the Kingdom of Saxony, in which he formulated an empirical law concerning the relation between income and expenditure on food. Engel's law as it has since become known, states that the proportion of income spent on food declines as income rises. Its original statement was mainly based on an examination of about two hundred budgets of Belgian laborers collected by Ducpétiaux. Since that date the law has been found to hold in many other budget surveys; similar laws have also been formulated for other items of expenditure.⁴

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

The relation between aggregate consumption or aggregate savings and aggregate income, generally termed the consumption function, has occupied a major role in economic thinking ever since Keynes made it a keystone of his theoretical structure in *The General Theory*. Keynes took it for granted that current consumption expenditure is a highly dependable and stable function of current income—that “the amount of aggregate consumption mainly depends on the amount of income (both measured in terms of wage units).” He termed it a “fundamental psychological rule of any modern community that, when its real income is increased, it will not increase its consumption by an equal *absolute* amount,” and stated somewhat less definitely that “as a rule, . . . a greater *proportion* of income . . . (is) saved as real income increases.”⁵

Friedman continues in his book to review his and other economists' empirical work to expound how consumer spending as a proportion of income declines as income rises as a result of an increased saving rate as disposable income rises.

Recent child cost studies confirm the pattern of consumer spending as developed by mainstream economists. In a 1984 study, Thomas J. Espenshade confirmed the basic pattern that household spending on children rises in absolute dollars as income rises but declines as a share of income as income rises. See Table 1 and Chart 2.

⁴ 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.

⁵ Milton Friedman. *A Theory of the Consumption Function*, Princeton University Press, Princeton, New Jersey, 1957, p. 3.

Table 1.

PROPORTION OF NET INCOME SPENT ON CHILDREN BY INCOME LEVEL⁶

1983 Net Income Dollar Levels

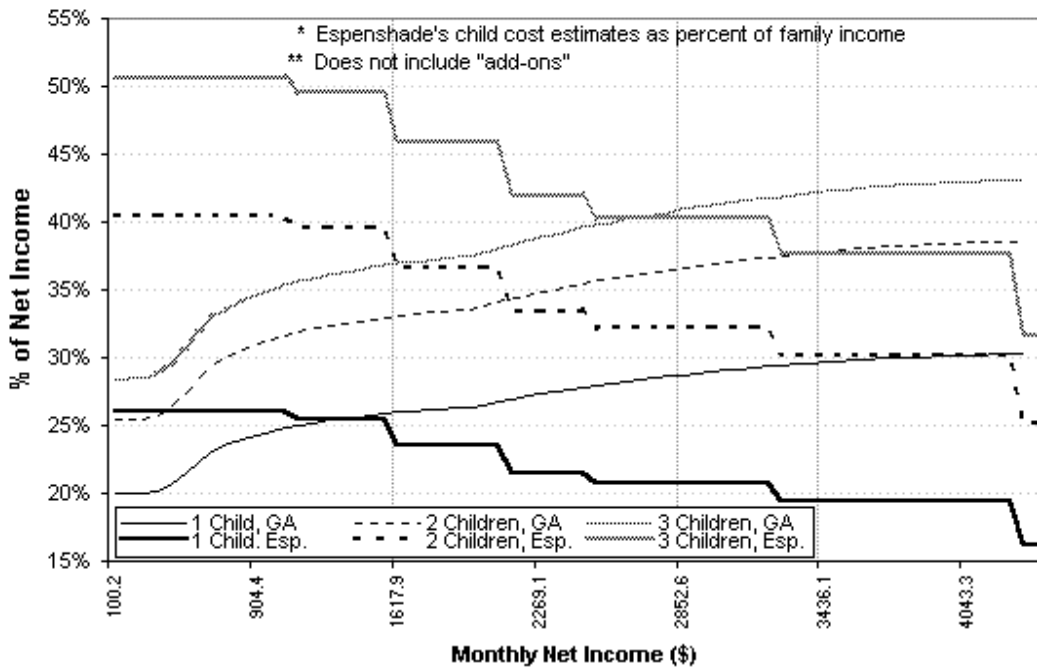
	<u>\$ 0 – \$ 8,499</u>	<u>\$ 8,500- 12,249</u>	<u>\$ 12,250- 16,499</u>	<u>\$ 16,500- 19,999</u>	<u>\$ 20,000- 27,999</u>	<u>\$ 28,000- 39,499</u>	<u>39,500+</u>
One Child	26.0	25.5	23.6	21.5	20.7	19.4	16.2
Two Children	40.4	39.6	36.6	33.4	32.2	30.1	25.2
Three Children	50.6	49.6	45.9	41.9	40.3	37.7	31.6

*1997 \$ ranges:

	<u>\$ 0 – \$13,683</u>	<u>\$13,684- 19,721</u>	<u>\$19,722- 26,563</u>	<u>\$26,564- 32,198</u>	<u>\$32,199- 45,078</u>	<u>\$45,079- 63,593</u>	<u>63,594+</u>
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*Corresponding 1997 dollar net income ranges supplied by Rogers, based on the ratio of the All-Urban Consumer Price Index, ratio of 1997 annual average to 1983 annual average.

Chart 2: Espenshade's Child Cost Estimates* vs. Georgia's Presumptive Child Support Obligation as a Percent of Obligor's Net Income**



⁶ Robert G. Williams references Espenshade (1984 study) in "Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches," *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, p. I-8.

As can be seen from Espenshade's estimates for three socioeconomic levels, amounts spent on children in intact households go up as family income increases. Based on Espenshade's figures, we have derived estimates for the proportion of net income expended for two children by income level of the parents. These estimates . . . show that spending on children can be validly described as proportions of household income, although the proportions decline as household income increases.⁷

Chart 2 compares the Espenshade estimates for a family's (two parent) child cost expenses as a share of family net income to Georgia's presumptive percentages for the obligor. Espenshade's estimates were for income ranges and only for up to three children. The net income values are in 1997 current dollars. The comparison contrasts the fact that percentages based on actual studies for extended income ranges show that child costs decline as a share of rising net income. Clearly, Georgia's presumptive percentages are excessive at moderate and upper income net income ranges at income levels beyond which the Espenshade estimates intersect the Georgia presumptive percentages. It should be noted that Espenshade figures are for family child costs while Georgia's presumptive percentages are for one parent's share of child costs of that parent's income—that of the obligor whose income is less than family income. Were the percentages put on a comparable basis, the points of intersection would lie further to the left—further extending the income ranges in which Georgia's guidelines are excessive.

At low income levels, the Espenshade estimates lie above Georgia's presumptive percentages. This emphasizes the public policy “problem” in which at low income levels, child costs are high as a percentage of income and many families are unable to cover child (and family) costs without public assistance. This issue of the burden of child costs/support on low income families is addressed later in this paper.

More recently, Robert Williams' studies of child costs confirm that child costs as a percentage of household income follow a pattern that is consistent with mainstream economic theory and evidence on consumer spending. For example, Williams estimates that costs for one child as a percentage of net household income declines from 23.5 percent for low income families to 14.7 percent for high income families or on a before-tax tax basis, from 23.5 percent for low income families to 11.6 percent for high income families. For costs for two children, the net income shares decline from 36.5 percent for low income households to 22.8 percent for high income families. Williams estimated the

⁷ Robert G. Williams, “Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches,” *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, p. I-7.

respective gross income shares for two children to drop from 36.5 percent to 17.9 percent.⁸

As a final note on historical studies on household spending patterns, ironically the study by Van der Gaag—upon which the Wisconsin-style guidelines are based—makes numerous references to the fact that consumption as a share of income declines as household income rises. Van der Gaag notes the implications of Engel’s law on consumption patterns and acknowledges the work of Friedman on the consumption function as an extension of Engel’s law.⁹ Quite curiously, Van der Gaag discusses the primary underlying theory of his definition of child costs—that of income needed to compensate a couple to maintain constant utility from consuming goods after having a child—noted that based on this definition of cost that the cost as a share of income declined as income rose. Van der Gaag essentially states that studies on the theory underlying his definition of child costs contradict the type of child support guideline put into law by the State of Wisconsin—and eventually Georgia among others—based on Van der Gaag’s review of economic studies.

A final word on the effect of the income level. It can be shown that for the constant utility approach (Barten, 1964, Muellbauer, 1977) the percentage of compensating income decreases if the income (utility) level increases.¹⁰

Quite clearly, Georgia’s Wisconsin-style child support guidelines violate very basic tenets of modern economic theory and research on household consumption—that the share of spending out of gross and net income declines as income rises—although the level of spending continues to rise at least for moderately high income ranges. Georgia’s guidelines are in contradiction with not only with mainstream economic theory but also the very study that underlies Georgia’s guidelines. This is addressed in more detail later.

Why is this divergence significant—that Georgia’s presumptive percentages rise as a share of obligor net income in contrast to mainstream economic evidence that spending declines as a percentage of rising net income? The importance is that because personal consumption declines as a percentage of rising net income, an obligor parent’s child support obligation **cannot** be determined without the custodial parent’s income as part of the equation. It is the

⁸ Robert G. Williams, “Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches,” *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, pp. I-14 through I-15. These percentages exclude child care costs and extraordinary medical expenses.

⁹ Jacques Van der Gaag, “On Measuring the Cost of Children,” *Child Support: Technical Papers, Volume III, SR32C*, Institute for Research on Poverty, Special Report Series, University of Wisconsin, pp. 1-44. Undated, circa 1981-85, pp. 8-10.

¹⁰ Jacques Van der Gaag, “On Measuring the Cost of Children,” *Child Support: Technical Papers, Volume III, SR32C*, Institute for Research on Poverty, Special Report Series, University of Wisconsin, pp. 1-44. Undated, circa 1981-85, p. 21.

combined income of the parents that determines which percentage that the family spends on children and what the resulting family expenditure level on children is. It is this level of expenditures on children that properly determines the share that should be allocated to the non-custodial/obligor parent.

Without the custodial parent income as part of the award formula, the non-custodial parent obligation is not on a rational basis and generally results in an inappropriate child support award (with chance proper award being the exception). For example, if the custodial parent earns substantially more than the non-custodial parent, then the custodial parent's income pushes the combined family income into a lower percentage of net income expenditure level than would be the case if both parents had income equal to that of the non-custodial parent. A custodial parent's having higher income than the non-custodial parent would lower the non-custodial parent's obligation relative to the equal income (to the lower non-custodial parent income) situation because spending percentage decline relative to rising net family income. Georgia's percentages that rise as a share of rising net income necessarily mean that at some point, obligors will begin paying substantial portions of child support award that are actually in the nature of alimony to an ex-spouse.

Evidence on Federal and Georgia Income Tax Exemptions, Deductions, and Marginal Tax Rates

This paper earlier looked at the impact of Georgia's child support guidelines on non-custodial parents' net income. But how do differences in tax treatment for custodial parents versus non-custodial parents affect the relative ability of each to financially support their children? Wisconsin-type child support guidelines assume that both parents are equally capable of support based on gross income and based on family spending studies—in contrast to non-intact family studies. Are these valid assumptions as indicated by current tax law and by changes in tax law since these guidelines were derived?

Based on differences in treatment for custodial versus non-custodial parents on Federal and state income taxes, use of gross income as the basis for the determination of child support obligations is inappropriate.¹¹ The differences in tax treatment are quite substantial, leaving the non-custodial parent with a significantly lower ability to support children relative to the custodial parent at equal levels of gross income. Based on the fact

¹¹ This statement applies to situations such that states use gross income for determination of child support awards without taking into account divergent tax treatment of custodial and non-custodial parents. However, some states such as North Carolina, use gross income in their calculations of joint obligation of support in a shared cost formula but base these gross income figures on previously calculated net income obligations. The gross income figures were merely “backed out” of the net income figures. Assuming that the “backing out” process is handled with due care, this use of gross income in child support formulas is not inappropriate as long as these guidelines are updated with tax code changes.

that it is after-tax income that determines a parent's ability to support children, and that both parents have an equal responsibility to support their children, use of gross income for determination of child support awards leads to an excess burden on the non-custodial parent. First, what are the differences in tax treatment of custodial versus non-custodial parents that give custodial parents a significant advantage at equal levels of gross income. The following comparisons are based on 1997 Federal and Georgia tax code.

Federal Income Tax Differences

From Federal form 1040 from the Internal Revenue Service for calendar tax year of 1997, the divergent treatment of custodial and non-custodial parents is substantial.

- The standardized deduction (line 35, Form 1040), for a single person (the non-custodial parent) was \$4,150 compared to \$6,050 for a head of household taxpayer (the custodial parent). This is a bonus of \$1,900 in deductions for the custodial parent.
- The custodial parent only is able to claim the dependent exemptions as a legal right (lines 6c and 37, Form 1040). The 1997 value of each dependent exemption was \$2,650.
- In addition to the favored treatment for deductions and exemptions, the head of household taxpayer (custodial parent) receives favored tax rate treatment. For a given level of taxable income, the custodial parent has lower average tax rates because higher marginal tax rate brackets "kick in" at higher levels of taxable income for head of household taxpayers. For example, in 1997 the 28 percent marginal tax rate is effective for the single status taxpayer at \$24,650 taxable income but not until \$33,050 for the head of household taxpayer. Essentially, in addition to the favored treatment that heads of household get in terms of exemptions and deductions, these taxpayers also have higher marginal rates enter their tax schedule at much higher income levels. The following is taken from "1997 Tax Rate Schedules", p. 51, 1997 Federal Form 1040:

Table 2.

Schedule X—Use if your filing status is Single

If the amount On Form 1040, Line 38, is” Over --	But not over--	Enter on Form 1040, line 39	of the amount over--
\$0	\$24,650 15%	\$0
24,650	59,750	\$3,697.50 + 28%	24,650
59,750	124,650	13,525.50 + 31%	59,750
124,650	271,050	33,644.50 + 36%	124,650
271,050	-----	86,348.50 + 39.6%	271,050

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

If the amount On Form 1040, Line 38, is” Over --	But not over--	Enter on Form 1040, line 39	of the amount over--
\$0	\$33,050 15%	\$0
33,050	85,350	\$4,957.50 + 28%	33,050
85,350	138,200	19,601.50 + 31%	85,350
138,200	271,050	35,985.00 + 36%	138,200
271,050	-----	83,811.00 + 39.6%	271,050

- 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.

The earned income credit was as much as—

- \$332 if you did not have a qualifying child,
- \$2,210 if you had one qualifying child, or
- \$3,658 if you had more than one qualifying child.

For the non-custodial parent with no qualifying children, this tax-payer could claim the limited credit only if modified adjusted gross income was less than \$9,770. The scale is sliding, initially rising as earned income rises, peaking at \$332 for earned income over the range of \$4,300 through \$5,450, and then declining to zero at earned income over \$9,750. For those with one child, the ceiling income was \$25,760 and was in 1997 \$29,290 with more than one child. Scales are similarly sliding. One should note that

these are tax credits rather than tax exemptions or deductions and have a one-for-one dollar impact on after-tax income.

Georgia Income Tax Differences

As with Federal code, Georgia personal income tax law gives custodial parents significant exemptions that non-custodial parents generally do not get. As noted earlier, also the marginal tax rate increases for head of household taxpayers kick in at higher income threshold levels than for single, non-custodial parents, although the differences in Georgia's tax rate change thresholds has only a small impact on net income.

The impact of Georgia's exemptions is notable. For 1997, the standard exemption per dependent child was \$2,500. The non-custodial parent does not have an automatic legal right to claim these exemptions as does the custodial parent. For a moderate income custodial parent with two dependents, the exemptions are equivalent to an extra \$300 in annual after-tax income (based on a 6 percent marginal tax rate for Georgia personal income taxes) or an extra \$25 in after-tax monthly income. This is above the benefits of favored federal tax treatment for custodial parents.

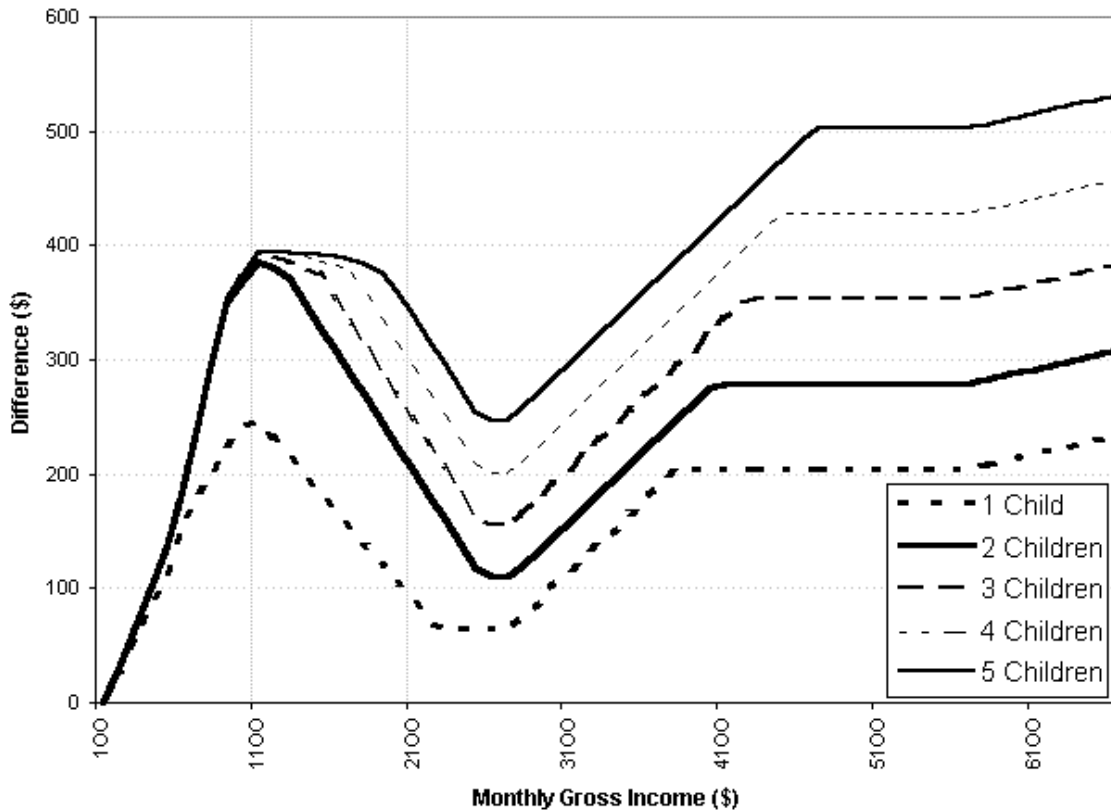
Differences in Personal Income Tax Treatment in Georgia for Custodial Versus Non-custodial Parents

What is the overall impact of these differences in tax treatment for custodial versus non-custodial parents and is the difference significant? That is, are the differences significant enough that gross income is not a proper basis for determining child support awards?

Charts 3 and 4 summarizes the differences in the tax treatment for custodial (head of household) parents versus non-custodial (single). Net income is gross income less Federal and Georgia personal income taxes and less Social Security and Medicare taxes plus earned income credits. Comparisons are for 1997 net income at equal levels of gross income for custodial and non-custodial parents. It is assumed that both take standard deductions.

The difference in net income available to support children is quite dramatic. Chart 3 is the dollar difference in net income between custodial and non-custodial parents at the same level of gross income—net income for head of household taxpayers minus net income for single taxpayers at equal levels of gross income. Chart 4 is the amount of more net income that the head of household taxpayer has as a percentage of the single taxpayer's net income. Chart 3 compares the dollar advantage that the custodial parent has in terms of net income while Chart 4 compares this advantage as a percentage.

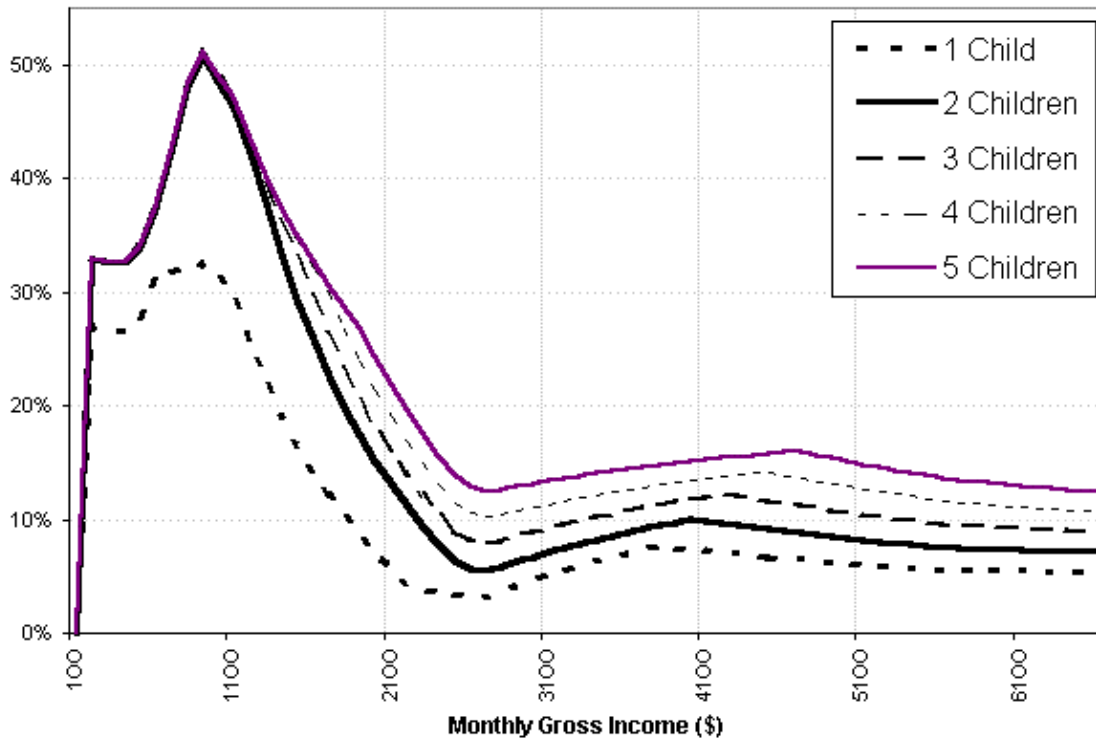
Chart 3: Georgia: Net After Tax Difference: HH - SG



The first “hump” in Charts 3 and 4 (peaking near the \$1,100 monthly gross income level) reflects the major impact of differences in earned income credit each parent receives. The earned income difference (with minor help from other factors) gives the result that the custodial parent has 40 to 50 percent more net income than the non-custodial parent at monthly gross income levels in roughly the \$900 to \$1,400 range. The earned income effect shows up as a hump because earned income credits initially rise as earnings increase from no income, peak near the poverty threshold, and then decline with additional earnings—all with much greater magnitude for the head of household taxpayer.

At higher levels of gross income, the absolute differences in net income rise noticeably from the \$2,500 monthly gross income level with a brief leveling off range reflecting when the head of household marginal tax rate equals the single taxpayer’s marginal tax rate. In dollar terms, at \$1,100 in monthly gross income, the custodial parent has almost \$400 more monthly net income than the non-custodial parent for two or more children. This advantage declines with moderate gains as gross income rises and earned income credits decline. The advantage rises again as non-custodial parents incur higher average tax rates—giving the custodial parent a sizeable dollar value advantage at moderately high income levels. For example, at \$4,500 in gross income the custodial

Chart 4: Georgia: Net After Tax Percent Advantage
Net: (HH - SG)/SG



parent has \$200 more in monthly net income for one child and up to \$500 more monthly net income for five children.

At all gross income levels, the head of household taxpayer has a significantly higher net income than the single taxpayer although the percentage advantage begins to slowly decline at high income levels, reflecting a peak in differences in marginal tax rates for both parents and with child deductions declining as a percentage of income.

Quite clearly, custodial parents have a significant net income advantage over non-custodial parents at low and moderate gross income levels—and also at higher gross income levels but the advantage is not as great—in their ability to cover child costs and other living expenses with available after-tax income for equal levels of gross income. Later, this paper will examine the impact of differential tax treatment when the custodial parent’s gross income is significantly less than the non-custodial parent’s income—but as an objective starting point for a comparison, with equal gross income, the custodial parent has a distinct net income advantage not acknowledged by Georgia’s Wisconsin-style child support guidelines. Wisconsin-style child support guidelines that are based on gross income cannot be claimed to treat custodial and non-custodial parents equally.

Homeownership, Divorce, and Tax Benefits

As an additional note related to the magnitude of the favored tax treatment for custodial parents, these tables do not take into account any tax benefits from home ownership. In many divorce decrees, the custodial parent is awarded the marital residence. In these cases, the custodial parent essentially is awarded a tax benefit—the mortgage deduction—that is equivalent to an income flow. This adds to the preferential tax treatment given custodial parents and can be quite substantial. For example on an \$80,000 mortgage in which only a modest amount of principle has been paid down, based on a 30-year mortgage with a fixed 8 percent interest rate, the monthly interest would be roughly \$500. For a custodial parent in a 28 percent Federal personal income tax bracket and 6 percent Georgia personal income tax bracket, this would be the equivalent of \$170 in extra income, compared to if one were renting as is typically the case for the non-custodial parent who does not have funds for down payment nor the after-tax, after-child support income to afford a home purchase. For a custodial parent in the 15 percent Federal tax bracket and 6 percent Georgia bracket, this benefit would still be roughly \$105 monthly.

Changes in Federal Tax Law Add Favored Treatment to Custodial Parents

As noted above, Wisconsin-style child support guidelines ignore differences in tax treatment for custodial parents versus non-custodial parents. This divergent treatment dramatically affects each parent's ability to support themselves and their children with after-tax income. While these guidelines are allegedly based on income entitlement theories that are decades old, the guidelines were derived and implemented for welfare situations in the early 1980s. Separate from the disparate tax treatment, it is important to note that in general the Wisconsin-style guidelines have not changed—at least in Georgia—since their original implementation even though there have been significant changes in Federal tax law that affect custodial and non-custodial parents' after-tax personal income. This means that Wisconsin-style guidelines—based on gross income of obligor only—treat non-custodial parents in a disparate manner. These types of guidelines cannot be said to properly take into account different tax treatment so that both parents are required to support their children equally. Disparate tax treatment is an additional argument that renders false the claim that the custodial parent provides equal support to that of the presumptive award for the non-custodial parent. Since the early 1980s, key changes to Federal tax code were made in acts during 1984, 1986, 1993, and 1997 as discussed below.

Tax Code Changes in 1997

Most recently, the Taxpayer Relief Act of 1997 provides a \$500 (\$400 for taxable year 1998--\$500 per year thereafter) tax credit for each qualifying child under the age of 17. A qualifying child is defined as an individual for whom the taxpayer can claim a dependency exemption and who is a son or daughter of the taxpayer (or a descendent of either), a stepson or stepdaughter of the taxpayer or an eligible foster child of the

taxpayer. These tax credits cannot be claimed by a non-custodial parent unless given written permission by the custodial parent. For a custodial parent with moderate or high income and two children, these tax credits result in a little over \$80 per month in additional after-tax income.¹²

Tax Code Changes in 1993

Legislation prior to 1997's Act also had important impacts on after-tax income subsequent to the enactment of child support guidelines based solely on obligor gross income. The Omnibus Budget Reconciliation Act of 1993 added two new marginal tax rates that affect higher-income individuals. First, there is a 36-percent rate applicable to taxpayers with taxable incomes (for calendar tax year 1993) in excess of \$140,000 for married individuals filing joint returns, \$115,000 for unmarried individuals filing as single, and \$127,500 for unmarried individuals filing as head of household. Starting in 1995 these income thresholds were indexed for inflation. Notably, these rates were not in effect when the Wisconsin-style guidelines were implemented and there now are differing thresholds for custodial versus non-custodial parents.

Tax Code Changes in 1986

The Tax Reform Act of 1986 had a notably divergent impact on custodial versus non-custodial taxpayers. Most of the tax code changes were effective in 1988 although there was a transitional period in 1987 for some of the tax code changes. There was a clear divergence in treatment between single taxpayers and head of household taxpayers. Prior to the change, for the 1986 tax-rate schedule, the minimum 11-percent bracket started at \$2,480 in taxable income for both categories—that is, the zero bracket amount (ZBA) was the same for custodial and non-custodial parents. This also is the standard deduction (taxpayers pay a zero tax rate on this amount of income). With the implementation of the new tax code, the standard deductions for 1988 for heads of household and for single individuals diverged significantly at \$4,400 and \$3,000, respectively.¹³

The Act also boosted the earned income credit substantially with the rate and base of the earned income credit to 14 percent of the first \$5,714 of an eligible individual's earned income with phase-out income levels also raised. With these changes combined, the 1986 Act benefited a custodial parent substantially more than a non-custodial parent. Based on wage and salary gross income, the income tax threshold in 1988 for a single individual taxpayer was \$4,950, compared to \$3,760 under prior law—a difference of \$1,190. Based on the same type of income, the income tax threshold in 1988 for a head of

¹² U.S. Congress, Joint Committee on Taxation, Joint Committee Print, # JCS-23-97, "General Explanation of Tax Legislation Enacted in 1997," (Joint Committee on Taxation 'Bluebook'), December 17, 1997, p. 19.

¹³ U.S. Department of the Treasury, Internal Revenue Service, Form 1040, 1988, p. 17.

household taxpayer with one dependent was \$12,416, compared to \$8,110 under prior law—a difference of \$4,306. For a head of household with three dependents, the difference was \$5,566.¹⁴

Tax Code Changes in 1984

The Deficit Reduction Act of 1984 significantly affected domestic relations taxation in the areas of alimony, property divisions and transfers, and dependency exemptions. For custody decrees subsequent to 1984, this act allocated the dependency exemption to the custodial parent in all cases unless the custodial parent signed a written declaration each year that the non-custodial could claim the dependency exemption.¹⁵ Previously, the parent paying over half of a child's support could claim the exemption regardless of custodial status. In non-intact families, the person who previously could claim this exemption typically was the non-custodial parent prior to 1985. This change in tax code was subsequent to when Wisconsin-style child support guidelines were first derived based on obligor gross income in 1981-82 and earlier.

Overall, significant changes in personal income tax laws have further increased the disparate tax treatment of custodial versus non-custodial parents in terms of applying a Wisconsin-style child support guideline. These changes in tax code since Wisconsin-style guidelines were implemented have increased the inequitable share born by non-custodial parents of financially supporting their children under this type of guideline. These changes are additional evidence that this type of guideline based on gross income of only the non-custodial parent does not reflect economic reality of each parent's ability to pay child costs—reflecting in part the changes in relative tax burdens.

Evidence on Personal Saving Rates

The progressive nature of Federal (and some State) income taxes necessarily means that personal consumption as a share of gross income must decline as gross income rises. The rising share of gross income that must by law be allocated to taxes reduces the share of gross income available for personal consumption—although the level of consumer spending continues to rise. But what do economic data tell us about consumer spending as a share of after-tax or net income and what are the implications for child cost patterns as related to a share of net income? Because consumers can do three things with income—pay taxes, spend, and save—once taxes have been paid first as a legal mandate, any description of after-tax spending patterns necessarily describes household saving behavior and vice-versa.

¹⁴ U.S. Congress, Joint Committee on Taxation. Joint Committee Print, # JCS-10-87, “General Explanation of the Tax Reform Act of 1986,” (Joint Committee on Taxation ‘Bluebook’), May 4, 1987, p. 16.

¹⁵ Steven D. Kittrell. “An Overview of the 1984 Domestic Relations Tax Provisions,” *Improving Child Support Practice, Volume Two*, The American Bar Association, 1986, page IV-57.

For over 100 years, mainstream economic studies on consumer saving have produced consistent results that household saving rises as a share of income as income rises.

The first large-scale surveys in this country, Carroll Wright's studies of selected wage-earner groups from 1887 to 1889 and the much wider sample of families in 1901, verified Engel's law of nourishment and posed the problem of saving. From the standpoint of the consumer, two major alternative uses existed for income: consumption and saving. At low-income levels, families had to use most or all of their income in order to obtain the "necessities of life"—those meager living conditions deplored by social workers. At higher-income levels, the "essentials" of food, shelter, and clothing were more easily come by. Although dollar expenditures on these consumption *categories* [emphasis is original] were larger in every larger-income class, they represented a smaller *percentage* of income at higher-income levels than at lower-income levels. Hence, either "sundries" or savings or both absorbed larger shares of income from upper-income families than from lower-income families.¹⁶

The relationship to saving to income that is exhibited in household budgets or in national economic accounts became a subject of critical interest late in the '30s, after the publication of John Maynard Keynes' classic *General Theory of Employment, Interest and Money*. To the early investigators of working-class families, the very term "saving" seemed frequently inappropriate, so conscious were they of the struggle for a "living" wage. But by the definition that was developed much later, "saving" consists of income that is not spent on consumer goods and services for immediate use. It can be calculated simply, therefore, by subtracting total consumption spending from total income. It is true that some consumers use this "saving" to make purchases, but income "spent" on such assets as real estate, houses, or savings bonds is, nevertheless, not spent on immediate consumption.¹⁷

What did some of the earlier studies find regarding personal saving behavior and were the differences in personal saving significant at different levels of income? One of the more notable historical studies was entitled, "Family Saving and Income, by Income Class, Nonfarm Families, 1935-36," published by Dorothy S. Brady. With family saving rates ranging from minus 69 percent to plus 25 percent as shown in Table 3, it is quite clear that there are dramatic differences in saving rates by income class. In turn, personal spending as a share of after-tax income necessarily declines.

¹⁶ Carolyn Shaw Bell. *Consumer Choice in the American Economy*, Random House, New York, 1967, p. 38.

¹⁷ *Ibid*, p. 39.

Table 3.

**Family Saving and Income, by Income Class,
Nonfarm Families, 1935-36**

<u>Income Class</u>	<u>Average Income</u>	<u>Average Expenditures</u>	<u>Average Saving</u>	
			<u>Dollars</u>	<u>Per Cent</u>
Under \$500	\$ 292	\$ 493	-201	-69
500-999	730	802	-72	-10
1,000-1,499	1,176	1,196	-20	-2
1,500-1,999	1,636	1,598	38	2
2,000-2,999	2,292	2,124	168	7
3,000-3,999	3,243	2,814	429	13
4,000-4,999	4,207	3,467	740	18
5,000-10,000	6,598	4,950	1,648	25

Levels Converted to 1997 Dollars

**Family Saving and Income, by Income Class,
Nonfarm Families, 1935-36**

<u>Income Class*</u>	<u>Average Income</u>	<u>Average Expenditures</u>	<u>Average Saving</u>	
			<u>Dollars</u>	<u>Per Cent</u>
Under \$5,800	\$ 3,396	\$ 5,734	-2,338	-69
5,801-11,600	8,490	9,327	-837	-10
11,601-17,400	13,677	13,909	-233	-2
17,401-23,200	19,027	18,585	442	2
23,201-34,900	26,656	24,702	1,954	7
34,901-46,500	37,716	32,727	4,989	13
46,501-58,100	48,927	40,321	8,606	18
58,101-116,300	76,735	57,569	19,166	25

*Income levels are rounded to the nearest hundred since the low dollar levels in 1935-36 and the relatively high inflation adjustment factor leave “gaps” between 1997 dollar income classes otherwise. 1935-36 income class values are revalued in 1997 dollars using the Bureau of Labor Statistics’ CPI-W for 1936 through 1947 and the CPI-U for 1947 through 1997, using annual averages.

Source: Carolyn Shaw Bell, *Consumer Choice in the American Economy* (New York: Random House, 1967), p. 45; original source: Dorothy S. Brady, “Family Saving, 1888 to 1950,” *A Study of Saving in the United States* (Princeton, N.J.: Princeton University Press, 1956), Vol. III, p. 183.

In the Table 3, this paper’s author converts the 1935-36 dollar values into 1997 dollar values using consumer price indexes. However, this is for perspective of the 1935-36 saving rates and not intended as estimates of current saving rates. Mainstream

economics continues to acknowledge that personal saving rates rise with income but that economy-wide saving rate patterns drift over time.

This drift was noted with a large-scale review of studies by famed economist, Simon Kuznets in *Shares of Upper Income Groups in Income and Savings*, National Bureau of Economic Research, Inc., New York, New York, 1953. Basically, personal saving rates vary by current dollar income, according to current dollar family income above basic levels of subsistence, and more complex factors such as changes in the financial structure of the economy (availability of credit to replace the need for saving). Essentially, as shown in Table 4 Kuznets scaled the saving rates from different studies according to income levels relative to a study’s average income level per consuming unit as well as by household unit. This re-scaling of the data meant that he could compare the relative levels of saving rates by income class over a very extended time frame. Kuznet’s results were that saving rates rise notably as income rises with the implication that after-tax consumption declines as a share of income as after-tax income rises. The implication is that child costs, too, decline as a share of after-tax income.

Table 4.

Savings as Percentages of Income, Given Relative Levels of Income per Consuming or Spending Unit, Various Samples, 1929-1950¹⁸

	Multiples of Arithmetic Mean Income Per Consuming Or Spending Unit	Brookings Data, 1929 Assumption		Consumer Purchases Study 1935-36	Survey of Spending & Saving in Wartime 1942 1 st Qu.		Survey of Consumer Finances					
		1	2		1941	1 st Qu.	1945	1946	1947	1948	1949	1950
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
1	0.25	-30.4	-30.4	-32.1	-15.6	-25.1	4.9	-9.3	-14.8	-22.2	-31.1	-15.9
2	0.50	-1.7	-1.3	-7.4	0.2	-0.1	7.9	1.9	1.4	-1.3	-5.7	-0.8
3	0.75	7.6	8.1	-1.5	5.3	8.3	10.7	7.0	4.6	3.2	-0.6	3.9
4	1.00	11.0	11.6	3.5	5.0	10.9	12.9	10.8	7.0	6.4	5.0	7.4
5	1.50	15.5	16.3	9.4	10.7	15.9	15.7	15.9	10.2	10.8	11.2	12.1
6	2.00	18.0	19.5	14.1	13.9	18.2	19.6	19.7	14.0	14.0	15.6	15.4
7	3.00	20.4	23.6	21.9	19.3	22.7	28.6	24.9	21.5	18.5	21.8	20.2
8	4.00	24.6	29.0	27.2	24.8	27.2						
9	7.00	29.3	37.0	37.5								
10	10.00	28.5	38.5	39.8								
11	25.00	28.0	43.1	49.2								

¹⁸ Simon Kuznets, *Shares of Upper Income Groups in Income and Savings*, National Bureau of Economic Research, Inc., New York, New York, 1953, p. 187.

The Poverty Level: A Baseline for Financial Burdens--Non-custodial Parent Versus Custodial Parent

The first key question regarding the pattern of presumptive child support awards is how much do families typically spend on child costs. The second important question is whether or not there is an income constraint on an obligor—in other words, is an obligor unable to pay typical child costs at low income levels simply because of inadequate income to meet the obligor's basic needs of subsistence? If an obligor cannot meet subsistence needs and meet a presumptive award, what is the point of having such a presumptive award? A standard estimate of the cost of subsistence is the poverty threshold level of income as estimated by the U.S. Department of Agriculture and U.S. Commerce Department. A basic question regarding a child support obligation is, "does the presumptive award acknowledge the basic economic need of meeting one's own level of subsistence before supporting another?" A comparison of after-tax, after-child support income to the poverty level is one method of determining the reasonableness of the economic burden on an obligor at low levels of income.

Table 5 shows the 1997 poverty threshold levels of income by size of family unit. For one person under 65 years in age, the poverty threshold level was \$8,350 for 1997. Data also are shown for families with various numbers of children, numbering from none to five. Charts 5 through 9 clearly show that Georgia's presumptive child support obligations for one through five children push an obligor below the poverty line at monthly gross income levels from \$1,100 for one child to \$1,500 for five children. It should be noted that these charts include calculations based only on basic child support obligations and do not include "add ons." Wisconsin-style child support guidelines, in which the obligation as a share of income is the same for both low and high income obligors, ignore the economic need of subsistence for an obligor before being able to support another. If an obligor cannot feed himself, afford clothing, and pay expenses related to maintaining employment, then the obligor is not in position to support a child nor is able to develop a career in which to better be able to support a child.

The child support burden on an obligor is only one side of the picture not only at low income levels but at all income levels. There also is the question of how does the transfer of income from obligor to obligee affect the standard of living of not only the obligor but also the obligee and children. The poverty level estimates provide a baseline also for the standard of living of the custodial parents and children. As mentioned above, Table 5 lists poverty threshold income according to family size. The income levels in bold (along the diagonal from top left to bottom right) are the thresholds in head of household families in which there is only one adult. These numbers provide a baseline for a standard of living for a family being supported in part by child support. The flip side to the question of how does the child support obligation affect the after-tax, after-child support income of the obligor is how does the same transfer affect the person receiving child support and incurring basic child costs? Charts 5 through 9 also plot after-tax, after-child support (receipt of) income for the custodial (head of household)

family compared to the poverty level according to the number of children in the household.

Charts 5 through 9 compare two income circumstances for the custodial parent—one such that the custodial parent’s gross income is equal to that of the non-custodial parent and one such that the custodial parent’s gross income is only 70 percent of that of the non-custodial parent. The left side of the chart shows after-tax, after-child support (minus child support for the NCP and plus child support for the CP) income with the poverty threshold level subtracted. The poverty level income is subtracted according to the type of household—single or head of household and according to how many children. The horizontal line at zero is such that after-tax, after-child support income equals the appropriate poverty threshold level of income. The horizontal axis shows monthly gross income for the non-custodial parent and corresponding gross income for the custodial parent (either at the 100 percent or 70 percent level of that of the NCP). The dashed lines are for the custodial parent’s after-tax, after-child support income with the heavier line being for the situation with 70 percent of the non-custodial parent’s income. Naturally, the heavier dashed line lies below the lighter dashed line.

Table 5.

Poverty Thresholds: 1997

Size of Family Unit	Related Children Under 18 Years					
	None	One	Two	Three	Four	Five
One person, Under 65 Years	8,350					
Two persons Householder Under 65 Years	10,748	11,066				
Three persons	12,554	12,919	12,931			
Four persons	16,555	16,825	16,276	16,333		
Five persons	19,964	20,255	19,634	19,154	18,861	
Six persons	22,962	23,053	22,578	22,123	21,446	21,045

Source: U.S Bureau of the Census.

Charts 5 through 9 show that not only is the obligor below the poverty level of income at low levels of income but so is the obligee—even with the assumption of child support being paid. Below the poverty level, this is not a good assumption. At very low levels of income, the head of household has an after-tax, after-child support income that is further below the poverty threshold than for the non-custodial parent because the custodial parent also needs to meet the needs of the children. At these levels of very low income, the head of household and the obligor equally cannot support themselves but the head of household also incurs needed expenses for children that are under covered by both parents. Essentially, at low levels of income neither parent can pull themselves and children above the poverty level without public assistance.

Custodial and Non-custodial Parent Comparative Standards of Living Above the Poverty Level

After-tax, after-child support income less the poverty threshold level of income provides a basic comparison of standards of living for custodial and non-custodial parents—especially at low income levels. Charts 5 through 9 compare the standards of living for custodial and non-custodial parents with an equal amount of gross income and with the custodial parent having only 70 percent of the non-custodial parent's gross income. At very low levels of income, both custodial parent and non-custodial parent households have below poverty levels of income under both circumstances for the CP. Just under and beyond the poverty threshold, it is quite clear that the head of household family (the custodial parent household) has a higher after-tax, after-child support-less-poverty-level income than the non-custodial parent. For example at \$1,100 in monthly gross income, the single taxpayer obligor after paying child support is at the poverty threshold when paying child support for one child while the head of household parent with equal gross income is over \$300 above the poverty level and this gap widens dramatically as gross income rises. When the custodial parent makes only 70 percent gross income of that of the non-custodial parent, this gap remains but it is narrower. Nonetheless, as a result of the child support transfer of income, the custodial parent still has higher income after deducting basic living costs.

For two children, the single taxpayer obligor after paying child support is just below the poverty level at monthly gross income of \$1,100 while under the equal gross income assumption the custodial parent's household is almost \$500 above the poverty level in monthly after-tax income. This is a substantial burden on the obligor and results in an extraordinary benefit to the obligee. Even when the custodial parent earns only 70 percent of the non-custodial parent's income, the custodial parent still has over a \$200 per month advantage in income above the poverty level. As shown in Charts 5 through 9, under the equal gross income assumption, at all levels of gross income above the poverty level, the custodial parent has a dramatically rising amount of after-tax, after-child support income compared to that of the obligor in situations where the custodial parent is shown to earn either 100 percent or even 70 percent of the non-custodial parent's gross income and also for all five situations for the number of children supported. At low and

moderate levels of income, this is a very appropriate comparison which shows that the presumptive child support award is excessive once the children's basic needs are met and the head of household family's standard of living exceeds that of the obligor.

Charts 5 through 9 clearly show a widening gap in after-tax, after-child support income at income levels above the poverty level. This gap is larger with more children supported. This should be expected since these charts are in dollar values and the standard of living should rise in some proportion to the number of children. The next question is then whether the transfer of child support leads to not only an absolute level of after-tax, after-child support level of income for the custodial parent that exceeds that of the custodial parent but also whether the proportion of this income to the poverty level is higher for one parent than the other. A proportional standard takes into account a standard of living based on the number of people in the household. This standard of living analysis—using ratios—is appropriate for comparisons across an extended income range. Before moving on to the analysis, it should be noted that obligor add-ons are not included nor are welfare payments to the custodial parent. Inclusion of these factors would widen the gap favoring the custodial parent.

Standard of Living Comparison—Not a Comparison of Child Expenses

Before answering the question of which parent has a higher standard of living after-tax and after-child support, one should recognize that “standard of living” is not a basis for determining actual child support costs. Costs involve measuring actual expenditures made just on children, while a standard of living comparison necessarily involves the concept of alimony—standard of living looks at relative incomes, not typical expenses. Hence, when child support is a transfer of income that results in an increase in the custodial parent's standard of living relative to that of the non-custodial parent, this type of comparison is an upper limit on what child support should be. Clearly, when child support payments lead to a standard of living (relative to the poverty level) that is higher than the same measure for the obligor, then the child support obligation is excessive since it involves alimony that even exceeds an equal standard of living standard. Additionally, when the child support obligation drops just below the level that would result in equal standards of living for each parent's household one cannot say that the child support obligation is too low because the basis of comparison includes alimony—not just child cost. Hence, this ratio of standard of living measures can only be described as a method to determine upper limits on what child support obligations should be.

Chart 5: After-Tax, After-Child Support Income Minus Poverty Threshold: One Child*

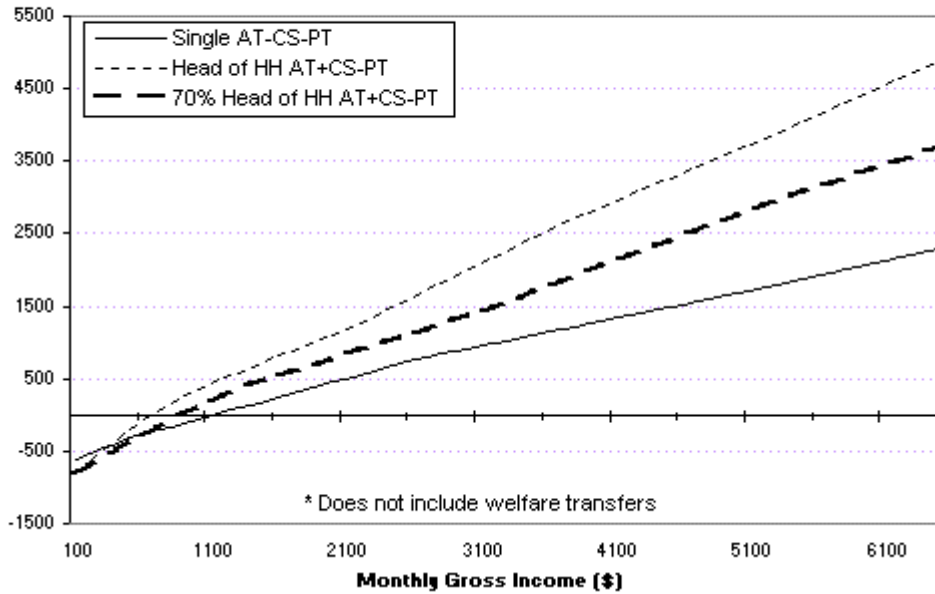


Chart 6: After-Tax, After-Child Support Income Minus Poverty Threshold: Two Children*

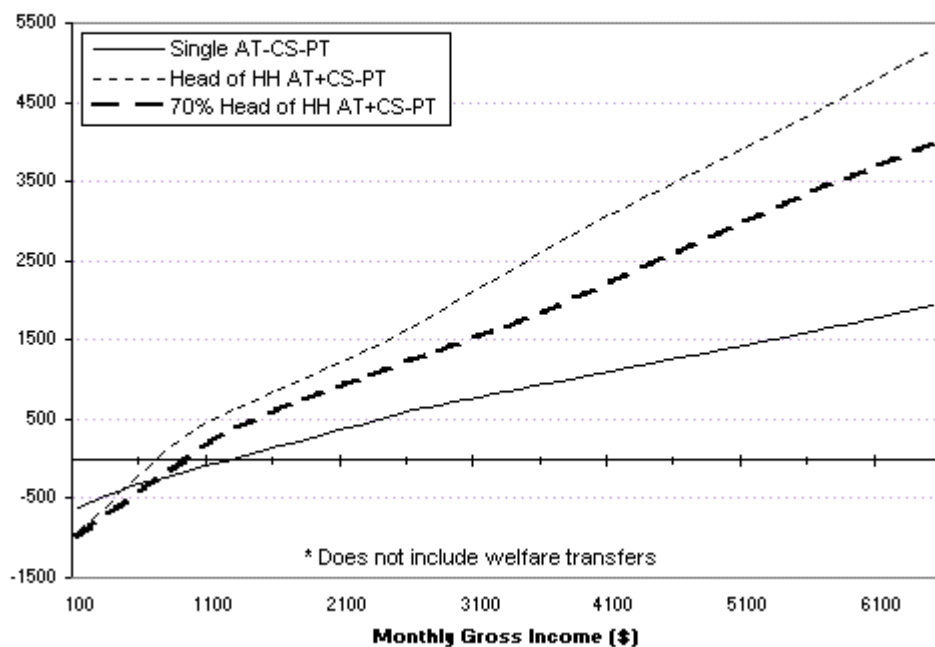


Chart 7: After-Tax, After-Child Support Income Minus Poverty Threshold: Three Children*

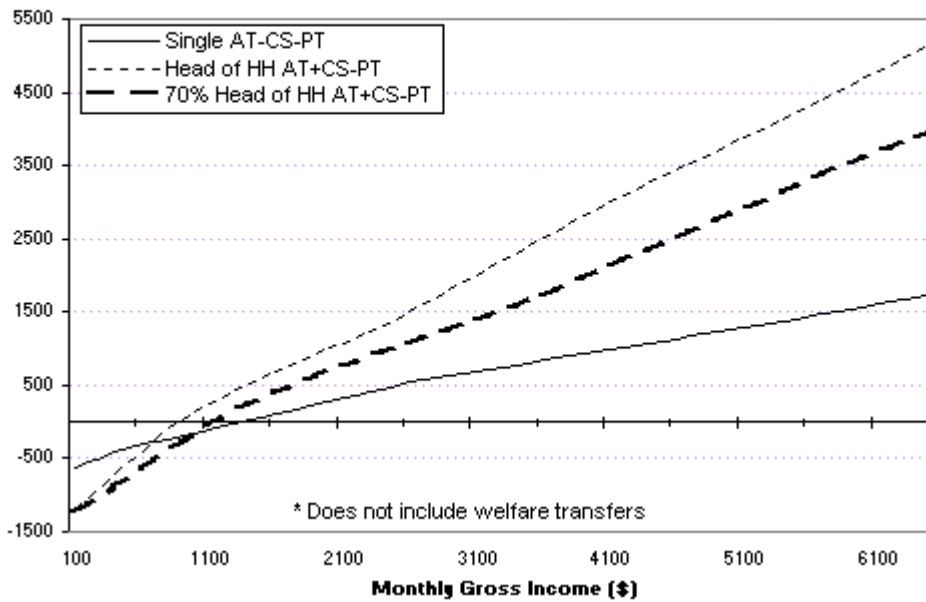
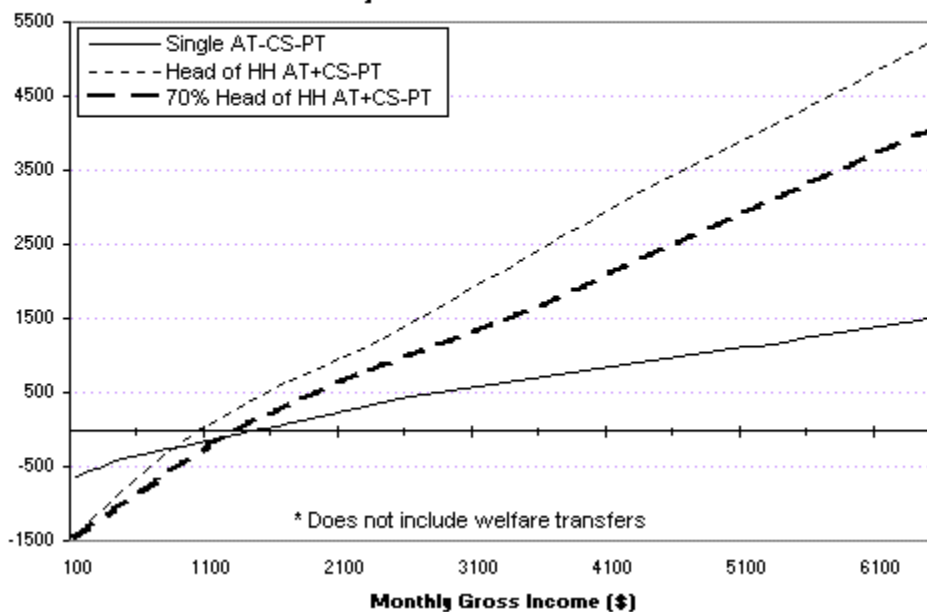
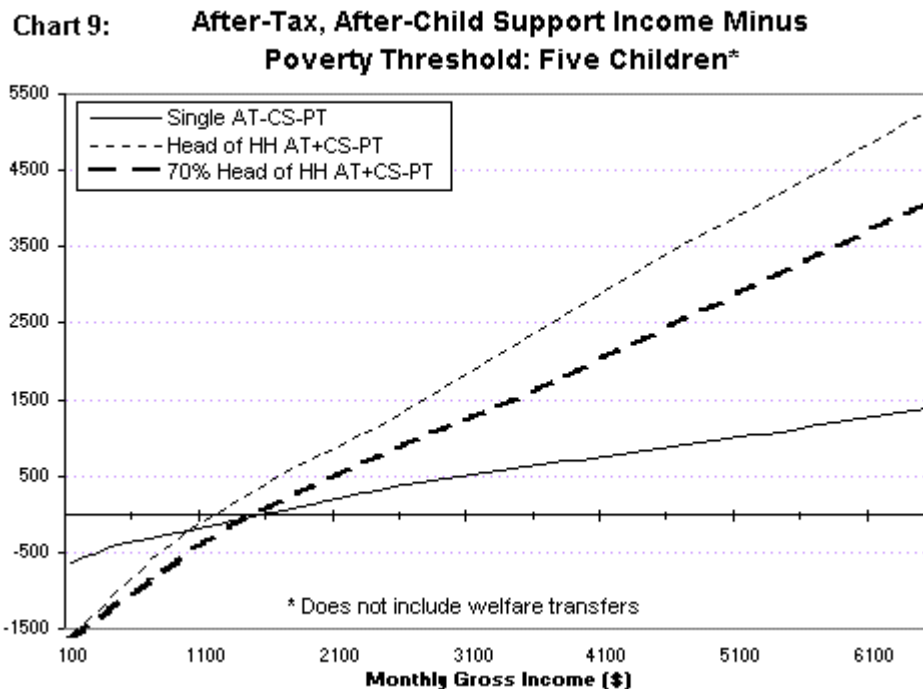


Chart 8: After-Tax, After-Child Support Income Minus Poverty Threshold: Four Children*





As mentioned above, the after-tax, after-child support income of custodial parents rises substantially more than that for the non-custodial parent at gross income levels above the poverty threshold. While it is clearly inappropriate for custodial parent income of this nature to be substantially above that for the non-custodial parent at poverty level ranges, another question is appropriate at moderate and high income levels. Once basic needs of the custodial parent household and the non-custodial parent are met, what is an appropriate comparison for living standards? A starting point is a measure of the multiples of income each household—custodial parent and non-custodial—has of the costs of basic needs.

A ratio measure takes into account the number of adults and children in each comparison, evaluating dollar income needed to keep all parties at various standards of living. Certainly, a single, non-custodial parent requires less additional income to boost his or her standard of living compared to what is necessary to boost the standard of living for all parties in the custodial parent’s household. Since the poverty threshold for each increases as the number of children increases, a comparison of ratios of the after-tax, after-child support income to the poverty threshold is a reasonable measure of comparable standard of living for custodial and non-custodial households. Remember, this is a comparison of a defined standard of living and not one of comparing child cost expenses covered. The child support award is considered to be merely an income transfer—not necessarily a reflection of actual child costs. Ratios above 1 mean that a particular household has after-tax, after-child support income that is above the poverty threshold. Incidentally, this method of comparing custodial parent income to that of the non-custodial parent has been urged by women’s advocacy groups such as the National

Partnership for Women and Families—formerly known as the Women’s Legal Defense Fund—to show the inadequacy of child support guidelines.¹⁹

In Charts 10 through 14, the left axis measures the ratio of this income to the poverty threshold for each household. These numbers indicate the multiples of poverty level income that each household has at given levels of gross income for the custodial parent and non-custodial parent. The bottom axis shows non-custodial parent monthly gross income and corresponding monthly gross income for the custodial parent—both for 100 percent and 70 percent of the non-custodial parent income. The dashed lines are for head of household or custodial parent income. The heavier dashed line is for when the custodial parent gross income is 70 percent of that of the non-custodial parent.

In Chart 10, it is shown that the income transfer of child support leaves the custodial parent with a significantly higher standard of living than the non-custodial parent—even when the custodial parent only has 70 percent of the gross income of the non-custodial parent. The child support transfer more than compensates the custodial parent for a fair share of child support costs as measured by relative standards of living. The gap between standards of living widens as gross income rises, reflecting high marginal tax rates at those income levels plus the fact that child support is not taxed for the custodial parent.

In Chart 11, it is seen that supporting two children instead of one lowers the standard of living for both households due to increased costs. The left scale maximum number has fallen from 7 in Chart 10 to 6 in Chart 11. Yet, the relative gap has widened. The custodial parent has an even greater advantage in relative standard of living compared to the non-custodial parent. The child support income transfer results in a windfall in the relative standard of living—essentially alimony since the transfer exceeds the income necessary to merely equalize standards of living which in itself definitionally includes alimony at least at moderate and high income levels.

Charts 12 through 14 (for three, four, and five children supported) show a similar pattern for the situation in which the custodial parent income equals that of the non-custodial parent except that the left axis shows lower maximum numbers—indicating a decline in both parents’ standard of living as the number of children increases. However, the standard of living remains significantly higher for the custodial parent than for the non-custodial parent. For cases such that the custodial parent has 70 percent of the non-custodial parent’s income, the standards of living are about equal for low and middle incomes. For moderately high and high incomes, the custodial parent again has a distinct advantage in standards of living.

¹⁹ See Diane Dodson and Joan Entmacher. *Report Card on State Child Support Guidelines*, Women’s Legal Defense Fund (now known as National Partnership for Women & Families), 1994.

Chart 10: Ratio: After-Tax, After-Child Support Income to Poverty Threshold: One Child*

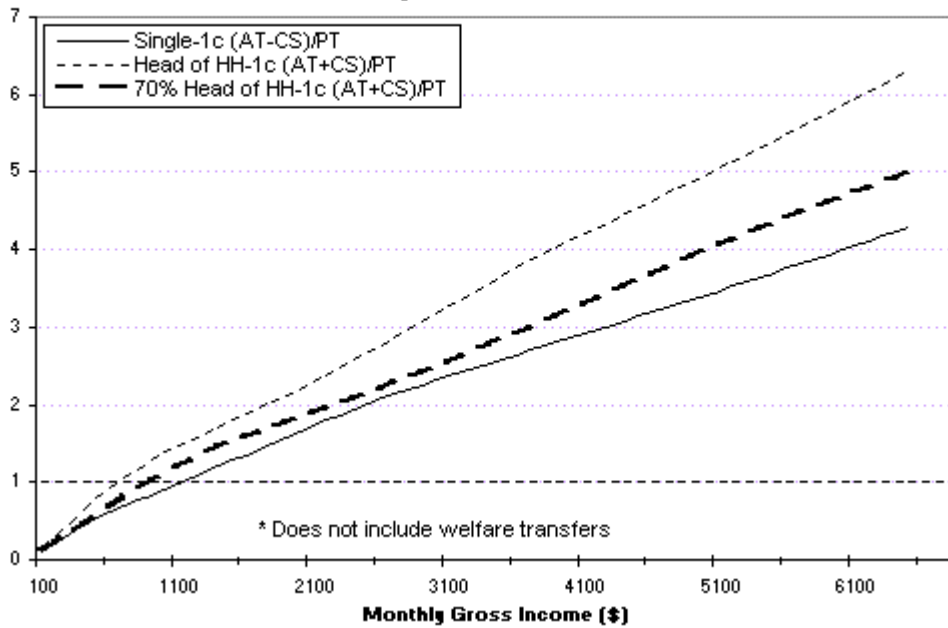


Chart 11: Ratio: After-Tax, After-Child Support Income to Poverty Threshold: Two Children*

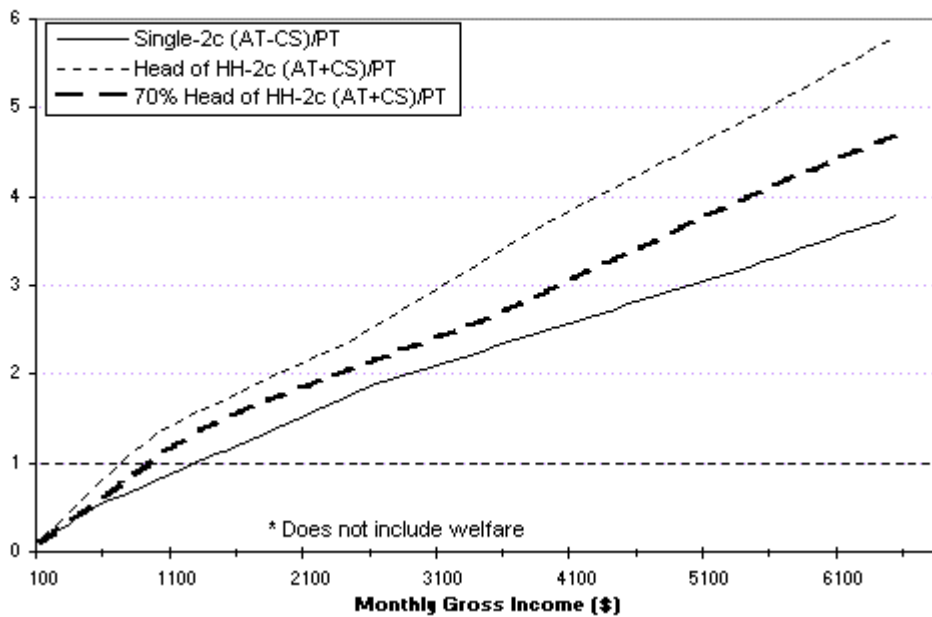


Chart 12: Ratio: After-Tax, After-Child Support Income to Poverty Threshold: Three Children*

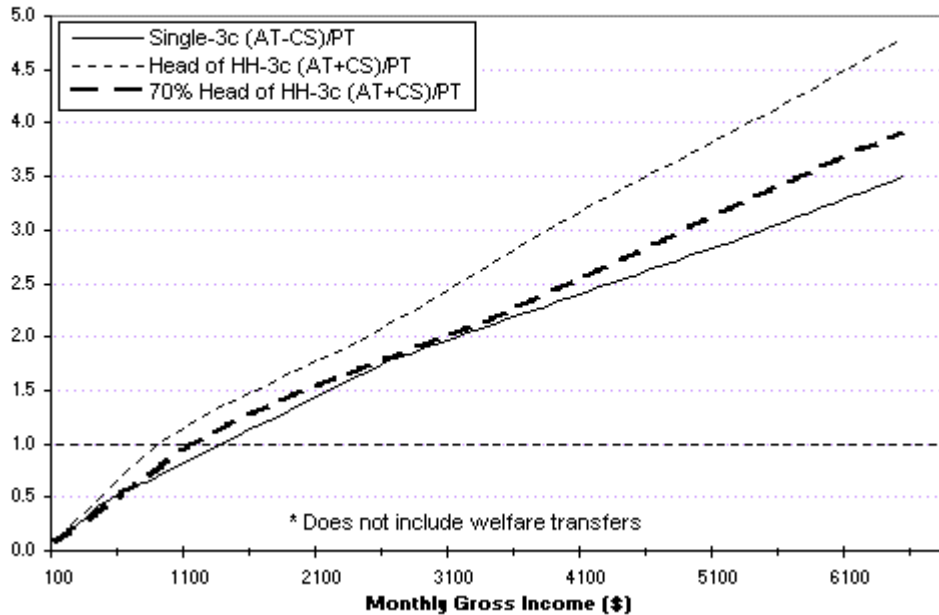


Chart 13: Ratio: After-Tax, After-Child Support Income to Poverty Threshold: Four Children*

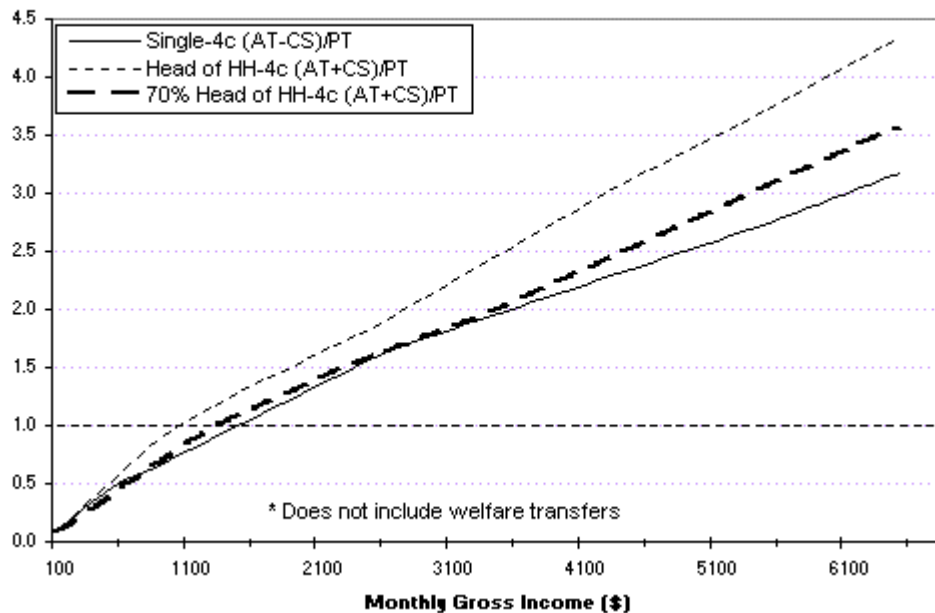
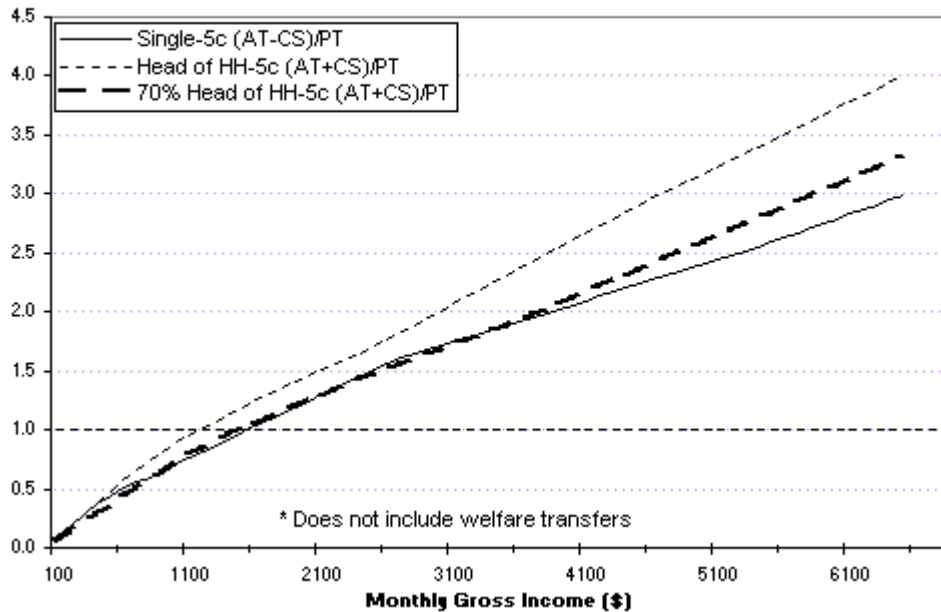


Chart 14: Ratio: After-Tax, After-Child Support Income to Poverty Threshold: Five Children*



Standard of Living Comparison—Omitted Factors

It should be noted that these standard of living comparisons do not include add-on child support obligations nor public assistance benefits. Taking into these factors would boost further the standard of living for the custodial parent household while lowering further that for the non-custodial parent. Public assistance programs that would be relevant include Aid to Families with Dependent Children (AFDC), Temporary Assistance to Needy Families (TANF); Women, Infants, and Children (WIC), housing subsidies, and food stamps among others. In some cases, however, child support is a partial offset to government assistance, but still leaving the custodial parent with a net gain.

Key Characteristics of Consumer Spending Behavior According to Mainstream Economists and Wisconsin-Style Guideline Violations

In summary, these national studies reveal some basic characteristics of consumer behavior as derived from mainstream economic theory and empirical research. These at a minimum are:

- The federal tax rate for personal income taxes rises as gross income rises;
- The personal saving rate rises as disposable income rises;

- The share that households consume out of income declines as income rises both for before-tax and after-tax income;
- Low income families do not have adequate income to cover necessities—requiring government assistance to provide basic needs.

Wisconsin-style child support guidelines violate all of these broadly accepted characteristics of consumer behavior that have been accepted by mainstream economists over the last 100 years.

Origin and Background of the Percent of Obligor Model (Wisconsin-Style)

It is quite clear that Wisconsin-style child support guidelines result in forced spending by an obligor on child costs that contradict economic theory and evidence. Remaining questions are “from what economic theory and data—if any—were these guidelines derived and does a review of this theory and data undermine the applicability of these types of guidelines as a basis for determining child support obligations?” To evaluate how closely or not Wisconsin-style guidelines fit mainstream economic theory and empirical data, one should include an evaluation of the underpinnings of the guidelines as enacted in Wisconsin which subsequently were adopted by over a dozen other states. Wisconsin regulatory code specifically points to the origins. Chapter HSS 80 of the Wisconsin state *Register*, January 1987, No. 373, is entitled, “Child Support Percentage of Income Standard.” The Introduction to this chapter explains the alleged academic underpinnings for this particular model of determining a non-custodial parent’s child support obligation. As seen in Section HSS 80.01:

The percentage standard established in this chapter is based on an analysis of national studies, including a study done by Jacques Van der Gaag as part of the Child Support Project of the Institute for Research on Poverty, University of Wisconsin, Madison, entitled “On Measuring the Cost of Children,” which disclose the amount of income and disposable assets that parents use to raise their children. The standard is based on the principle that a child’s standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. It determines the percentage of a parent’s income and potential income from assets that parents should contribute toward the support of the children if the family does not remain together. The standard determines the minimum amount each parent is expected to contribute to the support of their children. It expects that the custodial parent shares his or her income directly with their children. It also presumes that the basic needs of the children are being met. This latter presumption may be rebutted by clear and convincing evidence that the needs of the children are not being met.²⁰

²⁰ Wisconsin, State of. *Register*, January 1987, No. 373, Chapter HSS 80, page 316-1.

Clearly, a review of Van der Gaag’s study is necessary in order to fully evaluate the economic appropriateness of percent of obligor income guidelines. What is the economic theory that underlies Wisconsin’s guidelines? How are child rearing expenses defined?

Van der Gaag’s Definition of Child Costs

Van der Gaag’s definition of child costs diverges sharply from common definitions that generally are tied to how much families with children actually choose to spend on children. His study’s definition begins with one-child costs being based on how much income a one-child couple must be compensated in order to be equally well off economically as without the child. From Van der Gaag, “Thus the question is: How much income does a couple with one child need, to obtain the same (pre-specified) level of economic well-being as a childless couple?”²¹ In the study underlying the Wisconsin guidelines, the definition of child cost is based on a very nebulous idea of income compensation of having a first child. The definition is *not* based on specific expenditure criteria. Van der Gaag reviews others’ studies based on this type of approach and subjectively “averages” their results to derive a table of child costs expressed as a percent of gross income. This table is shown below. This table is viewed as the basic share that children are entitled to of their parents’ income.

The State of Wisconsin took Van der Gaag’s estimates as baseline cost estimates and then adjusted them downward slightly. The primary reasons for doing so follow:

There were several arguments for adopting lower than average percentages for setting support. First, additional earnings capacity of the custodial parent. Second, the non-custodial parent’s costs for normal visitation.²²

The State of Wisconsin, based on Van der Gaag’s table and subsequent adjustments, thereby presumes that the child support obligation for the non-custodial parent is as follows:

<u>Number of Children</u>	<u>Percentage of Obligor’s <i>Gross</i> Income</u>
1	17 percent
2	25 percent
3	29 percent
4	31 percent

²¹ Jacques van der Gaag, “On Measuring the Cost of Children,” *Child Support: Technical Papers*, Volume III, SR32C, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982, pp. 18.

²² Ada Skyles and Sherwood K. Zink, “Child Support in Wisconsin: Income Sharing as a Standard of Law,” paper presented at the Women’s Legal Defense Fund Conference at The Aspen Institute, September 15-17, 1986, p. 4.

5 or more

34 percent.

One of the chief criticisms of the Van der Gaag's cost estimates is brought up by Van der Gaag himself. The cost estimates do not take into account any "utility" that children give to the parents. Essentially, his cost estimates are based on a definition such that all that matters is economic well-being of the parents—as though that is the only consideration used to determine whether to have children or not. His definition ignores the reality of most couples choosing to have children and enduring an expected loss of economic well-being because that is their preference. These families choose their expenditures on children with the full knowledge that they have chosen a less well-off economic life-style so as to have the pleasure of raising children. Van der Gaag, however, does specifically state that should the "utility" that children give parents be taken into account this utility-based definition would result in lower estimates of child costs. Van der Gaag does not produce any such downwardly adjusted tables.

Additionally, the bulk of the studies reviewed by Van der Gaag are for low income families and the studies ignore the impact of government transfers to subsidize child costs. As noted, the baseline income for the families studied is \$12,000 for Van der Gaag's table comparing child costs as a percentage of gross income. The low income base would necessarily lead to high percentages for child costs since necessities would take up almost all and in many cases more than all income. Dependence on subsidies also would boost child costs as a share of income.

Finally, the studies reviewed by Van der Gaag that did look at direct expenditures to a large degree used average costs for items such as housing. For example, for electric utility costs, rather than look at the increase in electricity costs owing to the addition of a child, these studies average the costs among adults and children even though adults would have incurred almost all of the electric utility cost without any added children. The same problem applies to costs such as for transportation and direct housing expenses—all of which result in overestimates of child costs.

The adjusted percentages were adopted by the State of Wisconsin in 1983 as guidelines to be used in an advisory capacity and as a rebuttable presumption for child support obligations in 1987.²³

State of Wisconsin's Double Standard: Flaws in the Adoption Into Law of Van der Gaag's Estimates of Child Costs for a Family

As noted above, the State of Wisconsin adopted Van der Gaag's percentages for child costs as their advisory and then presumptive guideline award after adjusting his percentages for costs incurred by the non-custodial parent. A review of this methodology

²³ Irwin Garfinkel, "The Evolution of Child Support Policy," *Focus*, Vol. 11, No. 1, Spring 1988, University of Wisconsin-Madison, Institute for Research on Poverty, p. 13.

clearly shows that Wisconsin used a double standard for custodial and non-custodial parents to meet their obligation to support their children with the result that the non-custodial parent's obligation is overstated. While the Van der Gaag concept of income entitlement is questionable, a *proper application* of even Van der Gaag's estimates result in dramatically lower obligations for the non-custodial parent than implemented into law by the State of Wisconsin.

How are Wisconsin's presumptive guideline percentages the result of a double standard? Let's review the legal obligations and underlying assumptions of the model. First, each parent has an equal obligation to provide financial support for their children. Under Van der Gaag's standard (regardless of whether one agrees with it as the proper foundation for "child costs"), a child when not living with both parents is entitled to a portion of an absent parent's income when in the custody of the other parent. Therefore, when a child is in the custody of the custodial parent, the child is entitled to a portion of the non-custodial parent's income according to estimates of costs based on Van der Gaag's study.

Wisconsin assumes that the child (the custodial parent in actual practice) is entitled to a full share of the non-custodial parent's income as based on Van der Gaag's percentages. However, the child generally is not in physical custody of the custodial parent one hundred percent of the child's time. The non-custodial parent generally has some percentage of time as visitation. Wisconsin basically awards the custodial parent all of Van der Gaag's percentage but then only adjusts downward slightly the original percent by some fraction based on costs incurred by the non-custodial parent. The amount the percentages should be reduced can be deduced from Van der Gaag's tables. Instead, Wisconsin reduced the percentages slightly and based on nebulous, unstated costs to be credited for the non-custodial parent. Under enacted Wisconsin law, for the custodial parent, the standard is income shares; for the non-custodial parent, the standard is marginal, undefined costs. Both parents are not treated by the same standard. For both parents to be treated equally by the same standard that underlies Van der Gaag's model, income shares should be applied to both.

How should Van der Gaag's estimates of child costs (based on income entitlement) be applied equally? First, the child's entitlement should be based on the actual percentage of time that the child is in the other parent's custody. If a child has standard visitation, then Van der Gaag's percentages should be applied to about 80 percent of the non-custodial parent's income since the custodial parent has physical custody of the child about 80 percent of the time. Second, when the child is in physical custody of the non-custodial parent, the child should be entitled to an equal portion (percentage) of the custodial parent's income based on how much time the child spends with the non-custodial parent. Based on standard visitation, when the child is with the non-custodial parent, the child should be entitled to the custodial parent's income multiplied by Van der Gaag's percentage and then by 20 percent (since the child is with the non-custodial parent about 20 percent of the time).

Essentially, a proper application of Van der Gaag's model of child costs requires (to avoid a double standard) that there be a cross crediting of parental obligations based on Van der Gaag's percentages, each parent's income, and each parent's share of the child's time. Table 7 shows how this cross crediting works and what the non-custodial parent's presumptive award would be if Van der Gaag's standard is properly applied based on the above assumption of an 80/20 percent time share and equal gross income (and ignoring the impact of tax differentials). Table 8 shows the same calculation but based on the assumption of the custodial parent's gross income being one-half that of the non-custodial parent.

Table 9 compares presumptive awards enacted into law in Georgia and in Wisconsin allegedly based on Van der Gaag's study but actually put into practice with a double standard of the custodial parent receiving child support based on income shares entitlement (rather than actual costs) while the non-custodial parent receives credit only for actual expenses rather than receiving the child's entitlement to a portion of the custodial parent's income. Table 9 equitably assumes that the child is entitled to a time pro-rated share of each parent's income when in the custody of the other. Table 9 shows the percentages that Wisconsin should have derived and enacted into law based on Van der Gaag's child cost theory and estimates if applied according to the same standard to both parents. Table 9 clearly shows that the theory underlying Wisconsin-style guidelines cannot be applied without violating some equal protection standard unless both parents' incomes are part of the formula as well as each parent's share of the child's time. Accordingly, Georgia's and Wisconsin's presumptive guidelines place an unfair burden on the non-custodial parent.

Wisconsin's Guidelines Were Never Intended by the Original Researchers to Apply to Situations Other than Low Income or Low, Minimal Benefits

Wisconsin's child support guidelines originally were intended to be applied to only very limited circumstances. The original concept underlying Wisconsin's child support guidelines based on academic recommendations was to exempt some income, to require the custodial parent to pay for any difference between guaranteed benefits and what the non-custodial parent could pay, and to cap the benefits at a low level so that the "tax" was regressive for the obligor. These guidelines were *never* intended by those conducting the *original* studies to apply to anything other than low income levels or for other income levels but to obtain minimal benefits for the child as guaranteed by the state.

Table 6.

Average Cost of Children²⁴

Number of Children (1)	Cost of Subsequent Child (%) (2)	Equivalence Scale (3)	Income (4)	Cost of Subsequent Child (\$) (5)	Cost of All Children (\$) (6)	% income “shared with children” (7)
0	-	100.00	\$12,000	-	-	-
1	25.00%	125.00	15,000	\$3,000	\$3,000	20%
2	12.50	137.50	16,500	1,500	4,500	27
3	12.50	150.00	18,000	1,500	6,000	33
4	6.25	156.25	18,750	750	6,750	36
5	6.25	162.00	19,440	750	7,500	39

Note: The reference household, a childless couple = 100; the reference income is \$12,000

²⁴ From “On Measuring the Cost of Children,” by Jacques Van der Gaag, Child Support: Technical Papers, Volume III, SR32C, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982, p. 25.

Table 7.

Van der Gaag's Intact Family Child Costs Applied to Divorced Parents
 Custodial Parent's Income Equals Non-custodial Parent's Income

Number of Children (1)	Van der Gaag's Child Costs, Percent (2)	CP's Gross Monthly Income (3)	NCP's Gross Monthly Income (4)	CPA's Share of Child's Time (5)	NCP's Share of Child's Time (6)	Child's Portion of NCP's Income (7)	Child's Portion of CP's Income (8)	NCP's Net Support Obligation (9)	NCP's Obligation, % Gross Income (10)
1	20%	\$2,000	\$2,000	80%	20%	\$320	\$ 80	\$240	12%
2	27	2,000	2,000	80	20	432	108	324	16
3	33	2,000	2,000	80	20	528	132	396	20
4	36	2,000	2,000	80	20	576	144	432	22
5 or more	39	2,000	2,000	80	20	624	156	468	23

Table 8.

Van der Gaag's Intact Family Child Costs Applied to Divorced Parents
 Custodial Parent's Income as Half of Non-custodial Parent's Income

Number of Children (1)	Van der Gaag's Child Costs, Percent (2)	CP's Gross Monthly Income (3)	NCP's Gross Monthly Income (4)	CP's Share of Child's Time (5)	NCP's Share of Child's Time (6)	Child's Portion of NCP's Income (7)	Child's Portion of CP's Income (8)	NCP's Net Support Obligation (9)	NCP's Obligation, % Gross Income (10)
1	20%	\$2,000	\$4,000	80%	20%	\$640	\$ 80	\$560	14%
2	27	2,000	4,000	80	20	864	108	756	19
3	33	2,000	4,000	80	20	1,056	132	924	23
4	36	2,000	4,000	80	20	1,152	144	1,008	25
5 or more	39	2,000	4,000	80	20	1,248	156	1,092	27

Table 9.

Georgia and Wisconsin Guideline Percentages Versus Van der Gaag Percentages With Child’s “Entitlement” Applied Consistently to Both Parents

Percent of Non-custodial Parent’s Gross Income

Number of Children (1)	Georgia Presumptive Obligation for NCP (2)	Wisconsin Presumptive Obligation for NCP (3)	Van der Gaag’s Original % (4)	Van der Gaag’s Original % with Cross-Crediting, CP Income <u>Equals</u> NCP’s (5)	Van der Gaag’s Original % with Cross-Crediting, CP Income <u>Half</u> of NCP’s (6)
1	17 - 23%	17%	20%	12%	14%
2	23 - 28	25	27	16	19
3	25 - 32	29	33	20	23
4	29 - 35	31	36	22	25
5 or more	31 - 37	34	39	23	27

Based on early papers providing the technical foundations for Wisconsin’s child support guidelines, the guidelines were originally developed for only welfare situations (note that the child support obligation is described as a “tax” since the intent was for automatic with-holding as with other taxes). As seen below, the intent was for both parents’ income to be part of the formula and that there be a maximum level of benefits (child support). From one of the key technical papers describing the intent and implementation of Wisconsin’s child support program²⁵:

In summary, the implementation of the Wisconsin Child Support program can be thought of as consisting of four components, each of which would have major impact on the costs of implementation of the reform. These four components are:

- *Payments made to children (B);*
- *A tax on absent parents (T_{AS});*

²⁵ Institute for Research on Poverty, University of Wisconsin-Madison. “Documentation of the Methodology Underlying the Cost Estimates of the Wisconsin Child Support Program,” Child Support: Technical Papers, Volume III, SR32C, Special Report Series, 1982, pp. 143-144.

- A tax on custodial parents (T_{CP}); and
- Savings in mean tested programs (S_{AFDC}).

These four components can be mathematically expressed for any household as the following:

$$B = \text{MAX}(MB, T_{AS})$$

$$T_{AS} = t_{AS} * \text{MIN}\{\text{MAX}(0, Y_{AS} - \text{EXMP}_{AS}), YM_{AS}\}$$

$$T_{CP} = \text{MIN}\{\text{MAX}(0, MB - T_{AS}), t_{CP} * \text{MIN}(\text{MAX}(0, Y_{CP} - \text{EXMP}_{CP}), YM_{CP})\}$$

$$S_{AFDC} = \text{MAX}\{0, AFDC - (B - CS_0)\}$$

Where

MB = the minimum benefit paid to the child,

t_{AS} = the tax rate on the absent parent,

t_{CP} = the tax rate on the custodial parent,

Y_{AS} = the taxable income of the absent parent,

Y_{CP} = the taxable income of the custodial parent,

EXMP_{AS} = income exemption for the absent parent,

EXMP_{CS} = income exemption for the custodial parent,

YM_{AS} = the maximum amount of the absent parent's income to be taxed,

YM_{CP} = the maximum amount of the custodial parent's income to be taxed,

AFDC = the AFDC benefit received before the reform, and

CS₀ = the amount of child support received before the reform.

Further corroborating these original intentions, the following comes from an early technical paper described the child support “tax” as a proportional tax—but only as applied to low benefit situations and only up to the guaranteed public benefit to the child:

A proportional tax rate structure is one in which the tax rate on all income is identical. A regressive tax rate structure is one in which the tax rate

declines as income increases while the tax rate increases as income increases in a progressive tax.

Because the child support tax will not apply to income in excess of the amount required to finance the public benefit, on income above this maximum the child support tax structure can be said to be regressive. But our concern here is with the tax rate structure up to this maximum [with a proportional tax being implemented as long as the public benefit is not exceeded].²⁶

It is quite clear that the original concept of Wisconsin's child support plan included low income exemptions, ceilings on income subject to the guidelines, and was based on a modest level of publicly guaranteed benefits to the child with the state's objective as recovery of the costs of those benefits from both parents as much as was practical. These guidelines were never intended to be extended beyond low income situations or beyond low benefit guarantees. These guidelines were developed for a very narrow set of economic circumstances but have since been extrapolated to apply to non-welfare cases and to high income/high award cases without the benefit of any substantiating economic theory or empirical evidence to support such application in these extended economic circumstances.

The Original Intent of Wisconsin's Guidelines—Based on Van der Gaag's Model—Was for True Income Shares and Custodial Time Adjustments

Current practice Wisconsin-style guidelines focus on obligor income only. However, the original guidelines that were advisory in nature were intended to provide guidelines for family income to be contributed for child support. Specifically, in the study, the guideline percentages were in reference to percentages to be applied to family income. Both parents were intended to pay to support the children.

The originally intended implementation of Wisconsin-style guidelines was most clearly described in a memorandum by the Secretary of Wisconsin's Department of Health and Social Services upon the initial use of these guidelines in an advisory capacity in 1983 as allowed by 1983 Wisconsin Act 27 (in contrast to a later rebuttable presumption). The following referenced "standard" is the guideline percentages then in effect and continuing to this day in Wisconsin as a rebuttable presumption for child support obligations. These guidelines essentially were duplicated by Georgia but with the addition of a range around Wisconsin's percentages and with the one-child obligation arbitrarily boosted 3 percentage points. The memorandum was a set of instructions to the Wisconsin judiciary on how to apply the advisory guidelines. The memorandum acknowledges that the presumptive percentages were based on studies of intact families

²⁶ Institute for Research on Poverty, University of Wisconsin-Madison. *Child Support: A Demonstration of the Wisconsin Child Support Reform Program and Issue Papers*, Volume II, SR32B, Special Report Series, 1981, p. 51.

with the studies using income equivalence to define child costs—as in Van der Gaag’s table—and were for a family’s obligation.

The standard determines the amount both parents are expected to contribute to their child’s care. Therefore, if a child is in the physical care of someone other than a parent, the standard may be used to determine the amount each of the parents are ordered to pay [emphasis is original]. Similarly, if both parents continue to provide care, as in shared physical custody cases, the court may find that the gross income available for child support payments of the parents is proportionately reduced, and that the obligation of one is set-off, all or in part, by the obligation of the other. For example, if parents provide monthly alternating residential care, and each parent has the same gross income, the court may find that no child support should be paid by either parent. If one of the parents had twice the others earnings, the court could apply the standard to one-half that parent’s earnings.²⁷

The originally intended application of the guidelines closely resembled the theoretical underpinnings of Van der Gaag’s estimated child cost percentages (regardless of whether the theoretical definition of child costs was correct). Under the legally allowed advisory capacity of the guidelines, proper application required appropriate consideration of taking into account (1) each parent’s custodial time with the child and (2) each parent’s share of combined income. Only after the guidelines were enacted into law as a rebuttable presumption were the original procedures forgotten—apparently as political maneuverings. Only after the guidelines were adopted second-hand by states such as Georgia were the original theoretical underpinnings forgotten—that true income shares child support guidelines require the taking into account of both parents’ income and parenting time shares and only for low income situations or minimal benefit situations. The memorandum also called for judicial discretion to lower the presumptive percentages for higher incomes.

Conclusions

Current practice Wisconsin-style child support guidelines are essentially without any meaningful theoretical and empirical underpinnings. Current practice Wisconsin-style guidelines have deviated from the original intent of true income shares and custodial time adjustments as called for by the original theoretical underpinnings.

²⁷ Linda Reivitz. “Percentage of Income Standard for Setting Child Support Awards,” memorandum by Secretary, Department of Health and Social Services, State of Wisconsin, to members of the Wisconsin Judiciary, December 20, 1983, *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, pp. I-221.

There are neither professionally recognized economic theories nor economic data that support guidelines based on a flat percentage of obligor's before-tax income over any significant income range. This type of guideline violates basic economic principles such as a rising percentage of income used for saving and a declining percentage of income (both before- and after-tax) spent on essential goods and also goods and services in general. Additionally, the guidelines ignore the existence of progressive federal income taxes which necessarily mean that spending declines as a percentage of gross and also net income if saving rises as a share of net income. Extraordinary economic assumptions for a narrow, low income range have been used to derive percentages of child support "costs"—or income entitlements—that are actually income preferences to that of the costs and lost income of having children rather than actual expenditures on children. These studies also ignore the fact that low income spending on children is to a very large degree funded by government welfare payments. In other words, Wisconsin-style guidelines do not give low income obligors a self-support reserve as is the case if the family is intact and also as is the case for custodial parents whose income is below the poverty line.

Wisconsin-style guidelines—originally intended for low income situations—(which have high presumptive percentages as a result of a low income base as well as due to the peculiar and extraordinary definition of cost) have been extrapolated to middle and high income ranges with total disregard to mainstream economic theory and evidence that consumers do not pattern expenditures as indicated by these guidelines. For these income situations, the frequent result is that the custodial parent receives large amounts of alimony as a child support award. Wisconsin-style guidelines are without any legitimate economic theoretical or empirical foundation for application in other than very narrowly-defined circumstances.

Importantly, current practice Wisconsin-style guidelines lack a proper cross-crediting of both parent's income which were included in the original academic studies that were the basis for Wisconsin's child support guidelines as used in an advisory capacity in 1983. Current guidelines also fail to account for differences in tax treatment since the guidelines were drawn based on code such that the non-custodial parent shared in favored tax treatment related to dependents. Finally, the presumptive percentages fail to decline as combined parents' after-tax income rises so as to conform to mainstream economic empirical research.

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