

Oklahoma Joint Senate and House Judiciary Child Support

Guideline Review for House Interim Study 97-33

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November 25, 1997

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ABSTRACT

This document has been prepared on behalf of the noncustodial parents in the State of Oklahoma who routinely provide emotional and financial support for their children. This document is intended to help the Oklahoma Joint Senate and House Judiciary Child Support Guideline Review Committee for House Interim Study 97-33 to facilitate their review process. The Family Support Act of 1988 requires a review of the State's child support guidelines every 4 years. The Federal Government set two requirements for the review of child support guidelines that include consideration of (1) economic data related to the cost of raising children in the State, and (2) then analyze case data related to the application of and deviations from the child support guidelines [45 CFR 302.56(h)].

This document contains a history of child support guidelines and an overview of the approaches used by the 50 States in establishing their child support guidelines. Also included are several newer child support guideline formulas provided by Roger Gay and Donald J. Bieniewicz. We have also included a section that covers median family income in Oklahoma in comparison to the U.S. median family income over the past 10 years. We have included an explanation and discussion of the USDA estimates on expenditures on children by families. A historical analysis of expenditures on children by families using a percentage of gross family income spent per category is also provided, and demonstrates that there has been little change by category since 1985. There is a review of welfare and the entitlement programs that encompass welfare in the third section. We have also included summary information on the most recent and comprehensive study on child support compliance in the U.S. compiled by the U.S. Census Bureau. A comparison of child support guidelines in Oklahoma and surrounding States that was given to the House Judiciary Committee in the spring is included. Last, several myths about child support and its role in removal of welfare recipients from the welfare rolls are debunked. It is our hope that this document will help educate and inform committee members of the Joint Senate and House Judiciary Child Support Guideline Review Committee, especially those who may not have been involved in review of child support guidelines in the past.

Our analysis of the available data on cost of living, current Oklahoma child support guidelines, and the estimates of expenditures on children by families indicate noncustodial parents in Oklahoma have been paying more than their fare share of child support. Noncustodial parents have not only been paying more than their share of child support needed to raise children in Oklahoma since implementation of the presumptive guidelines in 1990, but they continue to do so even to this day. Oklahomans at present pay child support at levels that are comparable to those present in the guidelines used in surrounding states. It is therefore unnecessary at this time to raise the child support guidelines in Oklahoma.

I. Federal Law and 4 Year Child Support Guideline Review

The Federal Government set only two requirements in the Family Support Act of 1988 for State guideline child support reviews that are to occur every 4 years. States must consider (1) economic data related to the cost of raising children in the State, and (2) then analyze case data related to the application of and deviations from the child support guidelines [45 CFR 302.56(h)]. The purpose of the 4 year child support guideline review process is to ensure that their applications result in the determination of appropriate child support awards (effective October 13, 1989). [Section 103(b) of the Family Support Act, supra note 5 to be codified at 42 U.S.C. 667(a) (1991).]

According to the Department of Health and Human Services¹, States reviewing their child support guidelines to date have considered childrearing cost analyses, surveys, case studies, have had public discussions and comments, interviews with custodial parents and noncustodial parents and attorneys and judges, and used expert research. One area that has been missing as an essential part of the child support guideline review process has been determination of the effects of child support on the noncustodial parent and his/her interaction with the children, and the well being of the children. In States having gone through the review process, once the relevant information was gathered it was analyzed in regard to “relevant statutes, regulations, court rules, administrative procedures, State and local practice, and public perception”. It is only through having an understanding of the history of the derivation and implementation of child support guidelines, the basis for the guidelines, structure of the guidelines, in combination with results of how the guidelines were implemented over the past 4 years with newly acquired information such as cost surveys, etc., can reviewers determine whether to change the guidelines and how best this can be done. The modification of State child support guidelines involves the modification of the formula used to generate the child support tables in each State.

I.A. Child Support Guideline History

The U.S. Congress in 1984 dictated to the States to establish child support guidelines as a requisite for receiving Federal funding for public welfare programs. [The Child Support Enforcement Amendments of 1984, Public Law (P.L.) 98 – 378, 98 Stat. 1305 (1984).] The child support guidelines only had to serve in an advisory capacity. Upon passage of the Family Support Act of 1988, States were required to establish child support guidelines that operate as rebuttable presumptions of the proper support amount. According to the Department of Health and Human Services¹, the following Federal requirements were to guide States in developing support guidelines:

- “•Support guidelines must be uniform throughout the State.
- Support guidelines must be **numerical formulas** that, at a minimum, consider all of an obligor's income and provide for the child's health care needs. [See 45 CFR 302.56.]
- Support guidelines must provide rebuttable, presumptive amounts in any judicial or administrative proceeding involving the establishment of a child support order.
- Support guidelines must be used both to establish an initial child support order as well as to determine any subsequent award modification. [42 U.S.C. 666(a)(10)(A), (B).]
- A State must apply the guidelines to all cases; it cannot exclude an entire category of cases (e.g., high-income or low-income cases). [See 56 Fed. Reg. 22,335 (1191).]
- State criteria for deviating from a guideline must take into consideration the child(ren)'s best interests. [45 CFR 302.56(g).]”

¹Evaluation of Child Support Guidelines. Volume 1. Findings and Conclusions. March 1996. US. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement.

There is no uniform Federal child support guideline. The Federal law requiring the establishment of State child support guidelines also did not dictate what elements should go into their creation. There is no Federal law that mandates that one parent be more accountable for the support of the child(ren) than the other, nor is there a requirement that one parent support the lifestyle of the custodial parent to the lifestyle they had prior to divorce/separation. Lifestyle support that some States mandate under the guise of child support is little more than backdoor alimony. No State at present requires an accounting by the obligee of the use of child support funds received from the obligor, or accounting of the funds that the obligee is responsible for contributing towards maintaining the children.

Many States vary on what constitutes additions or deductions to a child support obligation that determines the support paid from the obligor to the obligee. Common additions to child support obligations include medical care and childcare provisions. Importantly, child support formulas that establish a percentage of gross or net income of parents in determining a child support obligation (that are equivalent to USDA estimates on gross income expenditures on children by families) and then add in medical care and childcare, double charge the obligor for childcare and medical care for the children as these categories are built into the estimates². In addition to establishing the cost of raising children in that State, several States take into account the type of custody and the costs associated with maintaining the children when with either parent, costs associated with extended parenting time, travel expenses of parents and children, second families, tax burdens, other support obligations, etc. The variation that exists in State laws that influence child support guidelines is one major reason why there are differences in the child support awards amongst different States¹.

I.A. 1. Child Support Guideline Models

Federal law at present does not require States to adopt a particular type of child support guideline and thus State guidelines vary. The Family support Act of 1988 mandated all States to have implemented a child support guideline by 1992 that awarded the presumptively correct amount of child support. Three approaches account for the child support guidelines used in the different States, including some form of a percentage-of-income model, the income-shares model, and the Delaware Melson formula. Since the implementation of child support guidelines by the States in response to the Family Support Act of 1988, other models and formulas have been developed that more accurately apportion the costs of raising children to both parents. These latter models are used in income-shares approaches to determining child support and more accurately assess the costs associated with raising children and the costs that each parent incurs while parenting. One model was presented by Donald J. Bieniewicz in a recent DHHS publication³ (Appendix) and has been recently adopted in New Jersey. A second child support guideline formula developed by Roger Gay was provided to the House Judiciary Committee during the spring meeting on child support guideline review and is included again in the Appendix.

The three basic approaches to determining child support guidelines are presented below and the information was obtained from the U.S. Department of Health and Human Services¹ and the U.S.

²Lino, Mark. 1996. Expenditures on Children by Families, 1995 Annual Report. U.S. Department of Agriculture, Center for Nutritional Policy and Promotion, Miscellaneous Publication No. 1528-1995.

³Bieniewicz, D. Child Support Guideline Developed by the Children's Rights Council. 1994. In: Child Support Guidelines: The Next Generation. 1994. Ed: M.C. Haynes. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child support Enforcement

House and Ways Committee Green Book⁴. The District of Columbia and Massachusetts use variations that combine several of these three approaches.

I.A. 1.a. Percentage-of-Income Approach

Child support awards that are based on a percentage of the obligor's income are used in 15 States. The percentage of income approach is based solely on the noncustodial parent's 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 as does the use of gross or net income. The percentage of the noncustodial parent's income allocated as child support is fixed and remains constant at varying income levels. Wisconsin is one State that uses this model and the following allocation of noncustodial parent gross income per child: 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 noncustodial parent income set aside for that parent to live as a self-support reserve, i.e. what ever is left of the noncustodial parent's income after paying child support is what they have for housing, food, transportation, medical, etc. Other States that use this approach for setting child support guidelines include Alaska, Arkansas, Connecticut, Georgia, Illinois, Minnesota, Mississippi, Nevada, New Hampshire, New York, North Dakota, Tennessee, Texas, Wisconsin, and Wyoming.

I.A. 1.b. Income-Shares Approach

The income-shares model is used in 31 States including Oklahoma. This model was developed by Dr. R. Williams and attempts to determine the costs of raising children in the U.S. This approach increases the dollar amount allocated to raising children as income level of both parents increases, but takes into account the actual percentage of parental income spent on a child decreases as income increases. That is, the award amount is calculated based on the combined incomes of both parents, and takes into consideration that poorer parents spend more of their income in supporting themselves and their children than richer parents. Upon determining from the guidelines the appropriate support amount for the children, the child support is the apportioned between the parents based on each parent's proportion of the total parent income. In many States the similarly apportioned cost for child care and medical expenses are added to the basic support amount⁵. Other states using this approach include Alabama, Arizona, California, Colorado, Florida, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, and Washington. What most States have failed to do according to the Department of Health and Human Services, Office of Child support Enforcement¹ is to accurately determine the costs associated with raising children in the State and determine if the costs have changed when reviewing the guidelines.

I.A. 1.c. Delaware Melson Approach

Four States (Delaware, Hawaii, Montana, and West Virginia) use a version of the Melson-Delaware approach. Judge Elwood F. Melson, Jr., of Delaware developed his formula in 1979 and it has been used in Delaware since then with only one revision in 1990. The Melson-Delaware formula starts

⁴WMCP: 104–14. 1996 Green Book. Background Material and Data on Programs within the Jurisdiction of the Committee on Ways and Means. 104th Congress. Committee on Ways and Means, U.S. House of Representatives

⁵Williams, R. 1987. Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report, II-68 to II-75. Washington, DC: U.S. Department of Health and Human Services, Office of Child Support Enforcement

with net income of both parents and sets aside a self-support reserve that allows subsistence requirements--this reserve is below the poverty level income for a single person as established by the Federal government. The parental income left is then used to determine their proportion of a guideline specified basic cost per child. Then based on the number of dependent children an additional percentage of parental income is added as additional support. Child care expenses and extraordinary medical expenses are then added to the child's primary support amount and also prorated to each parent's support obligation.

I.A. 1.d. Newer Approaches for Child Support Guidelines

Mr. Roger Gay has written several articles and testified as an expert nationally and internationally on child support estimations. He has outlined those parameters that are important in constructing a formula to establish a child support guideline (appendix) as well as generating a child support formula. In contrast to the USDA methodology for determining expenditures on children (Section II), Mr. Gay analyses each category of spending based on what a single parent "spends" rather than what both parents' might be spending if they were living together. He also blends in the poverty rate for each parent calculating "ability to pay", that could be substituted with the income level at which income is low enough to become eligible for TANF benefits in each individual state. I have provided a copy of a paper of his, with his authorization, that details his integrated model used to calculate child support. The basic definition of "child support" should serve as the highest authority in determining the award, rather than the rigid formula. The break down of costs into categories in his model serves to assist the court in determining if there are items within the total estimate of cost that are inappropriate in an individual case, and how much deviation would be appropriate.

Similarly, I have also provided a copy of the Children's Rights Council (CRC) child support formula that has been published recently in a U.S. Department of Health and Human Services, Office of Child Support Enforcement book³. Their stated objective is to insure that both biologic parents meet the needs of the children both financially and emotionally. The CRC approach also takes into account a self-support reserve for each parent as well as apportioning the costs for both parents raising children in separate households. The CRC approach does not take into account the problems that arise with second families and this issue was addressed by the State of New Jersey prior to adopting this newer and more accurate child support guideline approach.

I.A. 2. Problems with Original Child Support Guidelines

When Congress passed the Family Support Act of 1988, there were very few child support guideline approaches in existence. One approach that was adopted by most States, including Oklahoma, was the formula proposed by Williams using an income-share approach. Although this model attempts to equally distribute financial responsibilities for raising children to both parents it has a number of short comings. Several issues not addressed in the Williams approach is the actual expenditures on children by families. Most cost accounting methods used to track family expenditures do not actually track all costs per person through a marginal cost accounting basis and thus do not reflect true costs. The Williams approach was no different. Further, estimated expenditures that rely on a percentage of gross income from the Williams formula already included all expenditures including childcare and medical, yet Congress mandated health care for children be included in the guidelines, and most States added childcare expenses. Thus the States that use the Williams model are often charging the noncustodial parent twice for these expenditures on children. The Williams model also fails to account for costs incurred while the noncustodial parent exercises his/her parenting time. And finally, the Williams model does not account for new families and children. In summary, the formulas and

approaches used to generate child support guidelines between 1988 and 1992 were inaccurate, and poor designed for allocating the costs of raising children between both biologic parents.

In many states a lump-all-family situations into one approach has resulted in unforeseen hardships on the custodial parent, noncustodial parent, and children from the first family and secondary families. Review of child support orders and modifications can take months, does not allow backwards adjustments for both noncustodial parents and custodial parents, and a rigid guideline approach doesn't allow for rapid but unforeseen changes in circumstances such as loss of employment, health problems, injuries, or in many cases new obligations. This inability to rapidly address emergency situations can lead to a custodial parent not receiving the assistance they need, or the ruination of the noncustodial parent by laws in place to punish willful evaders of child support and their parenting responsibilities. According to both the General Accounting Office and results from the last comprehensive Census survey, parents who can pay support do pay support while those who do not pay are unable to pay support^{6,7}.

For example, the courts and laws typically take the position that the father's prior child support obligations take absolute precedence over the needs of the new family or changes in circumstances of that family. A new family may contain children of the new spouse from a previous marriage for example, who lose their child support because of death/loss of the obligor's income for the non-biologic children of the father of this family, who already has a child support obligation to the children of his first family. Disregarding the circumstances that have caused the hardship now in the second family or to an obligor because of rigid laws with no plasticity, thereby potentially making one group of children more "privileged" than another, is unfair to all of the children and families involved in the long-term because ruination of a obligor affects both families. In intact, once married families with children, the family must cope with job loss, injury, etc. and will do its best to avoid ruin and hardship while in second families or complex families with support obligations, rigid laws do not allow the flexibility to handle catastrophe/hardship/change in circumstance. Similarly, child support guidelines that ruin financially an obligors ability to live and work in the long-term hurt not only the obligor, but the their children as well.

I.A. 3. The Goals of Child Support Guideline Review

In order to determine the effectiveness of State child support guidelines in supporting children, a review is by law to occur every four years. Questions the Department of Health and Human Services has addressed while evaluating States performance on child support guidelines include¹:

“ •How are State child support guidelines applied?

•What are the extent, amount, direction, and causes of deviations from the guideline formula?

•How do States account for families' special circumstances, such as second-family members (e.g., former or other children, stepchildren, and subsequent spouses), work-related and other child care, health insurance or health care expenses, and visitation and custody expenses? In addition, how do States extend guideline application to children who are past the age of majority or emancipation? To what degree are guidelines applied in the case of children who are students in postsecondary vocational or academic schools? Do decisionmakers address these circumstances by

⁶Interstate Child Support: Mothers Report Receiving Less Support From Out-of-State Fathers. U.S. General Accounting Office Report" GAO/HRD-92-39FS, January, 1992

⁷U.S. Bureau of the Census, Current Population Reports, Consumer Income Series P60-187, Child Support for Custodial Mothers and Fathers, 1991. Issued August 1995, by Lydia Scoon-Rogers and Gordon H. Lester

adjusting the award amount or by deviating from the guideline formula? When guidelines are implemented, is a verified income statement used? Is income imputation mentioned in the guidelines?

•What special issues relate to interstate child support cases? Have any problems arisen in applying guidelines to such cases? What aspect(s) of establishing interstate support orders using guidelines present particular challenges (e.g., gathering financial information and seeking or preventing deviations)?

•What is the extent and quality of each mandated State guideline review? What findings resulted and what actions were taken as a result of these mandated reviews? Are the guideline reviews up to date, and do they meet the regulatory requirements (e.g., collect data on deviations and provide evidence of analyzing the cost of raising children when determining guidelines)?

•What is the impact of mandated guidelines on the level of the award amount and on compliance? What is the effect of case status (in-state versus interstate) on the award amount?"

The efficacy of the child support guideline review process conducted in each State, according to the Department of Health and Human Services, was dependent on the effort and time put into the guideline review process. The questions the Department of Health and Human Services addressed in their review should be part of the State guideline review process. In depth analysis of child support issues from the guidelines, to awards, to compliance, to effects on parents and their ability to parent, to effects on poverty, to providing for children will better enable the child support guideline review committee to best serve its citizens-- including those unable to represent themselves--the children.

I.A. 4. Federal Audits and Financial Penalties

One issue that arises when States follow or fail to follow mandated Federal laws is what happens to Federal funds provided to the State. To inform the committee on the penalties to the State for failure to comply with the Family Support Act of 1988 I have included the section present in the House Ways and Means Committee Green Book of 1996⁴. As this excerpt describes, the penalties to the State for failure to comply with any aspect of the Family Support Act of 1988 does not put into jeopardy those families, nor the children, most likely to need assistance.

"Audits are required at least every 3 years to determine whether the standards and requirements prescribed by law and regulations have been met by the child support program of every State. If a State fails the audit, Federal AFDC matching funds must be reduced by an amount equal to at least 1 but not more than 2 percent for the first failure to comply, at least 2 but not more than 3 percent for the second failure, and at least 3 but not more than 5 percent for the third and subsequent failures. According to OCSE, two States that had follow-up reports issued in fiscal year 1993 and failed to achieve substantial compliance had a 1 percent penalty imposed during fiscal year 1994. If a penalty is imposed after a follow-up review, a State may appeal the audit penalty to the HHS Departmental Appeals Board. Payment of the penalty is delayed while the appeal is pending. The appeals board reviews the written records which may be supplemented by informal conferences and evidentiary hearings. The penalty may be suspended for up to 1 year to allow a State time to implement corrective actions to remedy the program deficiency. At the end of the corrective action period, a follow-up audit is conducted in the areas of deficiency. If the follow-up audit shows that the deficiency has been corrected, the penalty is rescinded. However, if the State remains out of compliance with Federal requirements, a graduated penalty, as provided by law, is assessed against the State. The actual amount of the penalty—between 1 and 5 percent of the State's AFDC matching funds (see above)—depends on the severity and the duration of the deficiency. If a State is under penalty, a comprehensive audit is conducted annually until the cited deficiencies are corrected (Office of Child Support, 1994, pp. 14–16). Penalty disallowance collections from five States (Mississippi, New Mexico, Ohio, Wyoming, and the District of Columbia) totaled \$1.253 million in fiscal year 1994."

II. The Costs of Raising Children

II. A. Oklahoma and US Family Income

Most families in Oklahoma would fall into the low income category earning less than 33,800/year, as defined by the USDA in 1995, when determining their estimates on expenditures on children by families. An examination of U.S. Census data on median family⁸ income in Oklahoma since 1988, when the Family Support Act was passed by Congress, shows a 16% rise in median family income through 1996 (Figure 1). By using the median family income for analysis where 50% of the families earn below this amount and 50% earn above this amount, the bias that can be introduced by extremely high wage earners or many non-earning families is avoided. The increase in median family income in Oklahoma has been approximately one half of the increase in median family income that has occurred for the US during the same time period (Figure 2)⁸. When income is adjusted to 1996 consumer price index adjusted dollars for the period from 1988 to 1996, the State of Oklahoma has seen a 15% decrease in spendable income while the US has experienced only a 2% decline (Figures 1 and 2). The low family incomes in Oklahoma place Oklahoma 46th out of the 50 States and the District of Columbia when examining rank by median family income in 1996⁸.

II. B. Historical Expenditures on Children by Families

Household Expenditures identified by the USDA include (1):

Housing expenses include shelter (mortgage interest, property taxes, or rent; maintenance and repairs; and insurance), utilities (gas, electricity, fuel, telephone, and water), and house furnishings and equipment (furniture, floor coverings, major appliances, and small appliances). It should be noted that for homeowners, housing expenses do not include mortgage principal payments; such payments are considered in the CE to be a part of savings. So total dollars allocated to housing by homeowners are underestimated in this report.

Food expenses include food and nonalcoholic beverages purchased at grocery, convenience, and specialty stores, including purchases with food stamps; dining at restaurants; and household expenditures on school meals.

Transportation expenses include the net outlay on purchase of new and used vehicles, vehicle finance charges, gasoline and motor oil, maintenance and repairs, insurance, and public transportation.

Clothing expenses include children's apparel such as diapers, shirts, pants, dresses, and suits; footwear; and clothing services such as dry cleaning, alterations and repair, and storage.

Health care expenses include medical and dental services not covered by insurance, prescription drugs and medical supplies not covered by insurance, and health insurance premiums not paid by employer or other organization.

Child care and education expenses include day care tuition and supplies; baby-sitting; and elementary and high school tuition, books, and supplies.

Miscellaneous expenses include personal care items, entertainment, and reading materials.”

The USDA estimates the expenditures for raising children from the ages of birth through age 17 from families of different incomes². The major budgetary components that comprise these estimates include housing, food, transportation, clothing, health care, child care and education, and miscellaneous goods and services (Box 1). The USDA has published estimates on expenditures on children by families since before 1985. The percentage of gross family income the USDA estimates

⁸Historical Incomes Tables-Households (Table H-8). Income Statistics Branch/HHES Division, US. Bureaus of the Census, September 1997

as expenditures per child by families for each of the seven major cost categories has not changed more than a few percent since 1985 for either low income families (those families with incomes less than \$33,800/year in 1995) (Figure 3) or for moderate income families (those families with incomes less than \$56,900 in 1995) (Figure 4).

II. C. USDA Yearly Reports on Expenditures

The USDA selects households with two children when determining expenditures because this is the average number of children in two parent families². They then use similar methodology to evaluate expenditures for families with one child or more than two children so that cost factors can be determined for families of different sizes. They found no significant difference between single-parent and dual parent households in the costs associated with raising children.

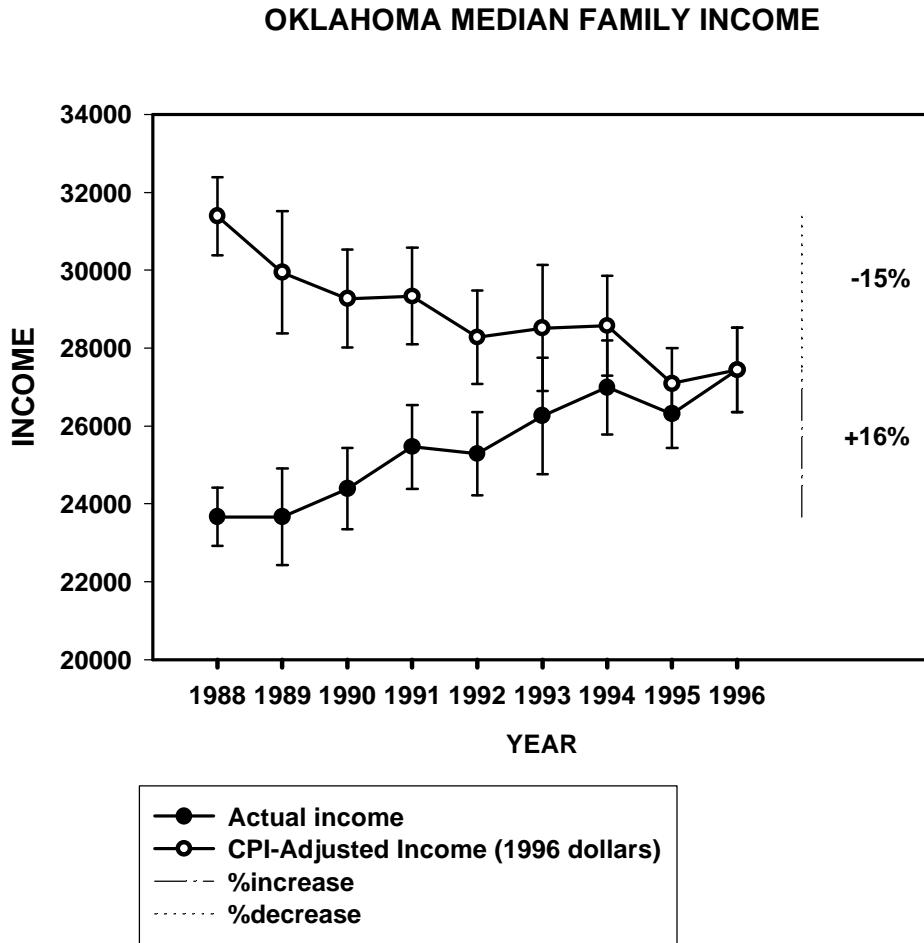
The one housing expenditure that is excluded by the USDA is principal payments on a mortgage. Although they claim this leads to underestimation of true housing costs.....the first 10-15 years of a 30 year mortgage is predominantly interest that is included in the estimate. Taxes however are not taken into account anywhere in their methodology to yield a true estimate of net income available to spend on family members. The USDA estimates for family expenditures also fails to account/allocate income to saving/retirement plans for families.

Several budgetary components of these USDA estimates directly reflect expenditures on children. Food plans developed by the USDA were used to allocate food expenses among family members by age and household income level. Health care expenses were similarly derived from budget share data and allocated to each family member. In contrast, household expenditures for housing, transportation, and other miscellaneous goods and services are allocated on a per capita method (divided equally among the members). A per capita method for determining household expenditures minimizes the costs to adult family members while raising the level of expenditures associated with raising children.

A marginal cost method that would determine the difference between couples with no children and couples with children was not used by the USDA, although this method would be more reflective of the true cost of raising children. For example, the additional cost of adding a bedroom in a dwelling reflects the additional cost of the addition of a child. The cost share method divides the total cost of the housing by the number of members in the family. This is merely a change in accounting methods for costs when in reality the total costs for housing do not change by the addition of a family member to the same size dwelling. Marginal cost analyses of housing costs demonstrated a 44% reduction from USDA housing cost expenditures for children². Importantly, housing costs account for the greatest percentage of gross income in the USDA estimates on expenditures on children by families, over 30% of gross income, and thus accounts for the largest single cost estimate error in the USDA report.

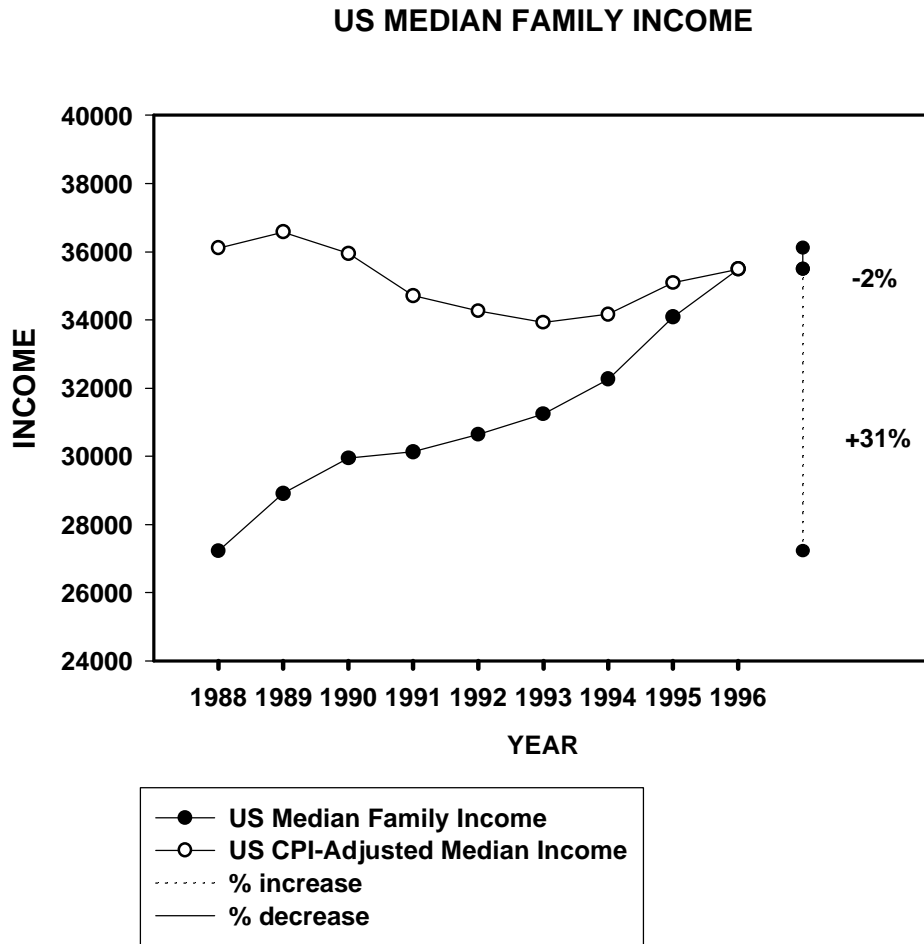
A marginal cost analyses of miscellaneous expenses also yielded estimates that were 28% lower than USDA estimates². The cost share method used by the USDA to determine miscellaneous costs per person does include costs such as manicures, make-up, hair styling, health club memberships, country club memberships, etc. Many of the expensive costs associated with maintaining adults should not be equally distributed amongst all family members including children since they are not costs associated with raising children.

Figure 1



Historical Incomes Tables-Households (Table H-8). Income Statistics Branch/HHES Division, US. Bureau of the Census, September 1997

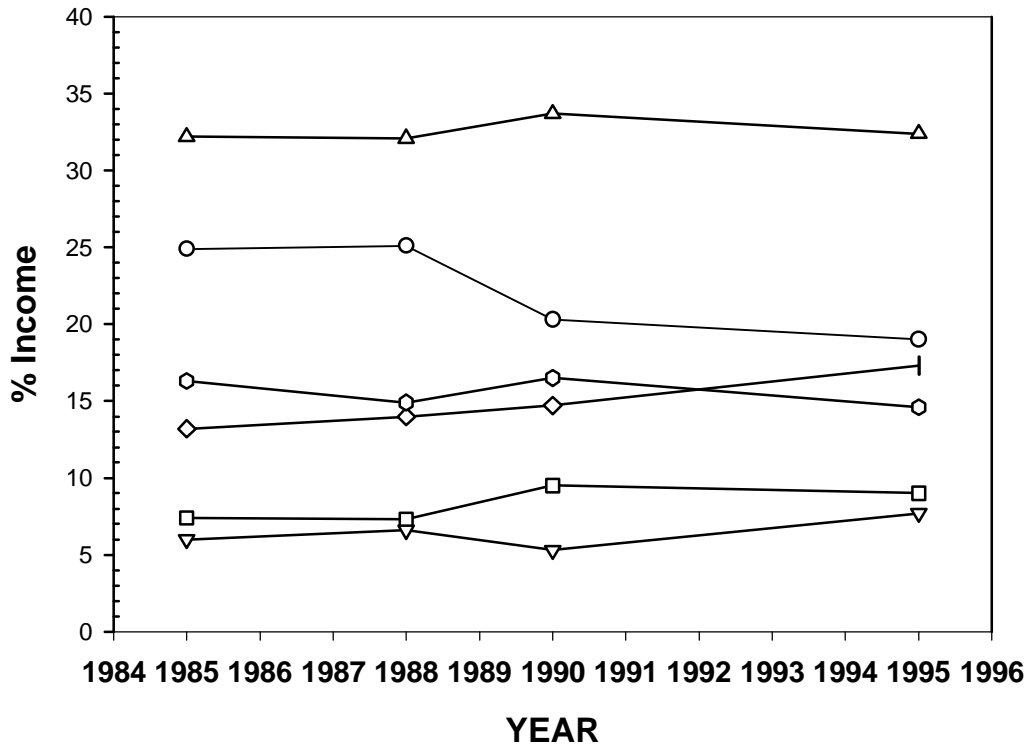
Figure 2



Historical Incomes Tables-Households (Table H-8). Income Statistics Branch/HHES Division, US. Bureau of the Census, September 1997

Figure 3

Expenditures on Children by Families (Low Income)



- Food
- Clothing
- △— Housing
- ▽— Medical
- ◇— Education/Daycare/Miscellaneous
- Transportation

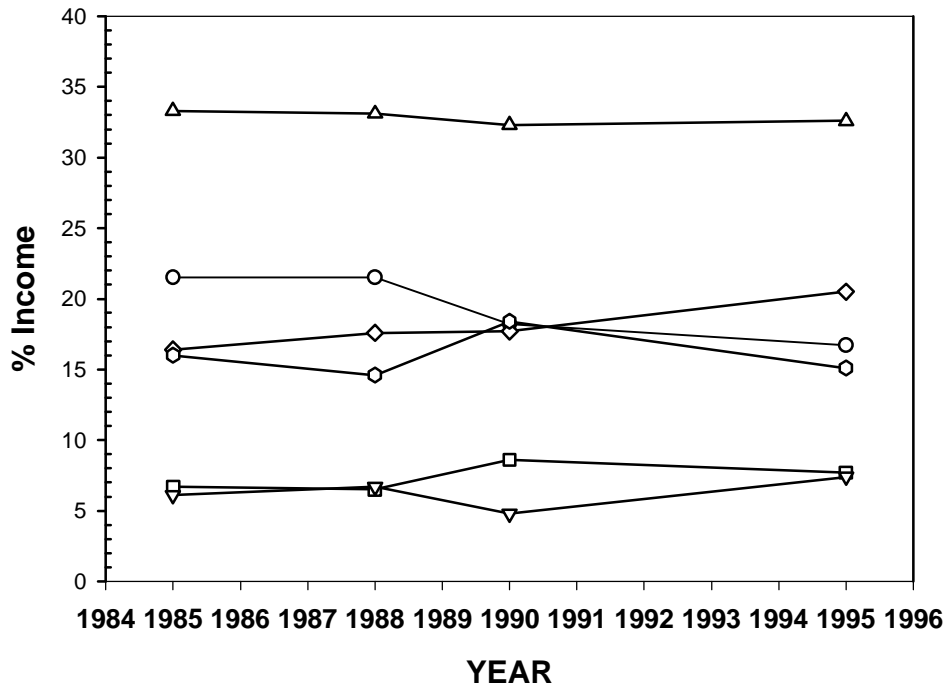
Expenditure/Child
 1985-\$3600/child/year
 1988-\$4015/child/year
 1990-\$5211/child/year
 1995-\$6395/child/year

Low income families earned less than \$33,800/year in 1995.
 Moderate income families earned between \$33,880-\$56,900/year in 1995.

Data obtained from USDA, Center for Nutrition Policy and Promotion,
 Expenditures on Children by Families, 1985, 1988, 1990, 1995

Figure 4

Expenditures on Children by Families (Moderate Income)



- Food
- Clothing
- △ Housing
- ▽ Medical
- ◇ Education/Daycare/Miscellaneous
- Transportation

Expenditure/Child
 1985-\$5767/child/year
 1988-\$6451/child/year
 1990-\$7193/child/year
 1995-\$8721/child/year

Low income families earned less than \$33,800/year in 1995.
 Moderate income families earned between \$33,880-\$56,900/year in 1995.

Data obtained from USDA, Center for Nutrition Policy and Promotion,
 Expenditures on Children by Families, 1985, 1988, 1990, 1995

Transportation cost share as determined by the USDA included vacation travel expenses as well as automobile transportation expenses that were calculated by subtracting the costs associated with travel to work. That is they subtracted the mileage associated with getting to work from the costs of the automobile, insurance, maintenance, etc. and then divided this amount by the number of members in a family. This cost share method for determining transportation expenses for children utilized by the USDA attributes an equal cost share for the automobile to children from birth to age 17. Children do not drive nor do they typically own automobiles. Since today the majority of couples work and require two automobiles, the cost of the automobile is attributable to the adults and not the children. Thus the mileage associated with transporting children is an accurate method to determine this expenses, and the USDA estimates are grossly exaggerated for this budgetary component

A comparison of USDA estimates for expenditures for children for **1995**, using the three USDA income brackets, by family gross income is shown in Table 1. The USDA estimated total expenditures (including health care and child care and educational expenses) for 2 children by families in 1995 ranged from \$916.00/month to \$1887.00 month for the three income brackets. Of note, the median family income for Oklahoma would put more than 50% of all Oklahoma families in the low income bracket category used by the USDA. The expenditures on two children according to USDA estimates ranged from 27% to 52 % of the family gross income. Using the consumer price index as a predictor of inflation, the USDA then proceeds to estimate that in the next 10 years the expenditures on children will more than double, reaching a 300% increase by the year 2012.....or \$16,000-\$31,000/child/year. These figures should raise questions as to the validity of their study and the usefulness of using cost of living adjustments (COLAs) for child support determinations.

State and Federal taxes on gross income were not accounted for in the USDA estimates. It is mentioned in their report that basic costs such as food and clothing (Tables 1-7, Page 15-21)² are uniform across the country when taxes are removed from gross income prior to performing the calculations. In the lower and middle income brackets, after subtraction of State and Federal and Social Security and Medicare taxes, the parents (one or two) would be left with substantially less income than the children; again raising serious questions on the validity of the USDA estimates. Child support determinations in Oklahoma today are also based on gross pay, where one third or more of the earned income may go towards taxes, and thus is non-spendable income. Additionally, the shared cost accounting method used by the USDA substantially overestimates the expenditures for children on housing, transportation, and miscellaneous items for children².

The child support levels for two children in Oklahoma, present in the Oklahoma Child Support Guidelines today, that became operative in Oklahoma in 1990, are shown in Table 2. Importantly, the child support levels in Oklahoma can be upwards modified for childcare, health care insurance, and medical costs, that are all costs that are included in the USDA estimates for expenditures for children. Day care and medical costs can easily add \$3000-6000/year and \$1500/year or more, respectively, to the guideline-mandated child support levels each year in Oklahoma. Thus the present Oklahoma child support guideline tables, operative in 1990, are already equivalent to the USDA overestimates of expenditures on children by families in 1995. Further, a comparison of Oklahoma child support obligations for two children to child support obligations awarded in States surrounding Oklahoma are comparable. This latter information was presented last Spring to the House Judiciary Committee and is again included for reference in the Appendix.

Table 1: USDA 1995: Expenditure¶ on Children by Families

Gross Family Income (avg)	Monthly Family Gross Income (avg)	Average Cost/Year/2 Children	Average Cost/Month/2 Children	Average % Expenditure of Gross Income/Child	Remaining Parental Gross Income
<33,700 (21,000)	2808 (1750)	10,980	916	28	10,020
33,700-56700 (44,800)	2808-4725 (3733)	15,220	1268	18	29,580
>56,700 (84,800)	>4725 (7067)	22,640	1887	14	62,160

¶ Includes housing (33-37%), and transportation (~14-15%), food (15-20%), clothing (6-8%), health care (5-7%), child care and education (7-10%), miscellaneous (10-12%). Expenses cover average over all age groups (0-17). Housing and transportation and miscellaneous expenses are determined by cost share.

Table 2. Oklahoma 1990 Child-Support Guidelines without Medical and Childcare(§)

Gross Family Income (avg)	Monthly Family Gross Income (avg)	Average OK Child Support/2 Children/year§	Average OK Child Support/2 Children/month§	OK Average % of Gross Income§	OK gross income remaining (avg)
<33700 (21,000)	2808 (1750)	6744 (4668)	562 (389)	(22)	?
33,700-56700 (44,800)	2808-4725 (3733)	6744-9060 (7728)	562-755 (644)	(17)	?
>56,700 (84,800)	>4725 (7067)	>9060 (12,600)	>755 (1050)	(15)	?

§Medical costs and childcare costs are considered when determining the child support award in Oklahoma. These costs are added to the obligors child support obligation prorated to the proportion of income the obligor contributes to total parental income. Childcare and medical care expenses can add an additional \$600/month or more before prorating by proportion of income to the noncustodial parent’s child support obligation.

What becomes undeniable when reviewing available accounting methods determining expenditures for children by families, is that today there are no accurate estimates for the cost of raising children at the Federal or State level. Families do not spend 20-50% of their gross income on children for if they did....we would have no children and little income for parents after taxes. The median family income in the United States is only around \$36,000/year and in the State of Oklahoma the median family income is closer to \$27,000/year.....yet USDA estimates put the costs of children outside the financial limits of residents of our State. Yet there are children in Oklahoma. What is also clear is that the Family Support Act of 1988 that mandated States adopt a child support guideline by 1992, that operates as a rebuttable presumption of the proper support amount, resulted in many States copying other state's child support guidelines without proper review or evaluation of expenditures on children by families for that particular State.

Using either US averages or regional averages for determining expenditures on children by families for Oklahoma will overestimate the true costs associated with raising children in Oklahoma because of the States lower family incomes and the inexpensive cost of living. It is time for the State of Oklahoma to determine the costs of raising children in the State of Oklahoma, by using professionals in Oklahoma, with the skills and abilities to determine accurately the true costs of raising children in Oklahoma, in order to develop Oklahoma's next generation child support guideline.

III. The Myth that Child Support Reduces the Number of TANF Families

III.A. Welfare

III.A.1. Programs

Although the first Federal welfare entitlement programs were created in 1935 to aid the needy who were older, incapacitated in some manner, or children, the definition of who received entitlements and the programs have expanded continually. The number of families that receive Aid to Families with Dependent Children (AFDC) increased from 787,000 families in 1960 to 1.41 million families by the end of President Johnson's institution of his Great Society programs in 1968⁹. By 1994 there were over 5 million families receiving AFDC benefits, or approximately 15% of all families with children under 18 years of age⁹.

Welfare includes many different state and federal assistance programs to the poor including Temporary Aid to Needy Families (TANF) (formerly AFDC), food stamps, medical care (Medicaid), housing, nutrition assistance programs, utility assistance programs, amongst others that total 77 major federal programs not counting State and local programs. AFDC/TANF only comprise 6% of the total welfare expenditures by the federal government¹⁰. There are numerous other programs with many being provided on a nonentitlement basis that are available to the poor. In fiscal year 1994 approximately one-sixth of the Federal budget was spent on these entitlement programs or about \$246 billion⁴. A summary of these programs is shown in Table 3 and comes from the 1996 Green Book⁴.

Because the public has been misled to what welfare encompasses, many people today consider welfare to be the TANF program of several hundred dollars per month. The passage and signing into law on August 22, 1996 of the Personal Responsibility and Work Opportunity Reconciliation

⁹Welfare Caseloads: Families and Recipients 1960-1997. Administration for Children and Families, U.S. Department of Health and Human Services. August 1997

¹⁰Tanner, M., and Lopez, N. 1996. The Value of Welfare: CATO vs CBPP. CATO Briefing Paper No. 27:1-26.

Act of 1996 (Public Law 104–193) ends some of welfare as we know it⁴. The major welfare program ended by this law was the entitlement to cash welfare under title IV–A of the Social Security Act. In place of outright cash assistance are block grants that (1) provide States with funds to help families

TABLE 3. NUMBER OF PROGRAMS IN EIGHT SOCIAL POLICY DOMAINS, 1994

<u>Social policy domain</u>	<u>Number of programs</u>
Cash welfare	8
Child welfare and child abuse	38
Child care	46
Employment and training	154
Social services	30
Food and nutrition	11
Housing	27
Health	22

escape welfare such as cash and other benefits to help needy families support their children while the states try to move some of these families to work, and (2) provide States with funds to subsidize child care for families on welfare and low-income families . The entitlement programs other than AFDC that existed before the passage of the welfare reform bill last year still remain. Even though the TANF cash assistance is made temporary by instituting a five year limit, States can exempt up to 20 percent of their caseload; caseload is not equal to number of families.

When the Federal OCSE discusses removing families off of welfare they are referring to their program mandated by Congress--the recovery of AFDC/TANF benefits in the form of child support. Although the family can receive other welfare benefits, there is no federal law that demands that the other assistance for welfare be paid back to the government as reimbursement. Custodial parents, the overwhelming majority of which are mothers, are not held responsible for repaying the government for any welfare received for themselves or their children--a responsibility that has fallen exclusively to the noncustodial parent or father.

III.A.2. Welfare Recipients

A major source of the OCSE caseload are women who have children outside of the institution of marriage and form single-parent households. It has been estimated by the Centers for Disease Control (CDC) that for the year 1996, 505,514 females less than 20 years of age gave birth¹¹. Although the birth rates for teenagers in the 1970's were higher than today (before the availability of abortion as an option) and the mothers were more likely to be married, today most of the teenage mothers are single parents^{12,13,14}. While there has been a 4% decline in the teenager birth rate in

¹¹Morbidity and Mortality Weekly Report, Centers for Disease Control, Department of Health and Human Services. 1997. Volume 46, No.36.

¹²Ventura SJ, Clarke SC, Mathews TJ. Recent declines in teenage birth rates in the United States: variations by state, 1990-1994. Hyattsville, Maryland: US Department of Health and Human Services, Public Health Service, CDC, National Center for Health Statistics, 1996. (Monthly vital statistics report; vol 45, no. 5, suppl).

¹³Ventura SJ, Peters KD, Martin JA, Maurer JD. Births and deaths: United States, 1995. Hyattsville, Maryland: US Department of Health and Human Services, Public Health Service, CDC, National Center for Health Statistics, 1997. (Monthly vital statistics report; vol 46, no. 1, suppl 2).

1996 (54.7 births per 1000 females aged 15-19 years) from the rate for 1995 (56.8)¹¹, from 1986 to 1991 the teenage birth rate increased 24% and has only dropped 12% since 1991¹⁰. It has been estimated that only one third of the births to teenagers are intended¹⁵.

Between 1980 and 1995 the number of children born to unmarried women has increased from 665,747 to 1.254 million that is equal to an increase from 18.4% to 32.2 % of all births. In the last 11 years alone there have been 12,126,901 births to unmarried mothers and since 1990 there has been more than 1.2 million births/year to unmarried women.¹⁶ This translates to a 188% increase in births to unmarried mothers in the past 15 years. The number of female headed single-parent households with children under 18 has also increased from 4.917 million in 1974 (15.6% of families with children under 18) to 8.957 million in 1996 (24.1% of families with children) equal to approximately a 182% increase in female headed families with children under 18¹⁷.

A major consequence of women having children out-of wedlock is an increase in the number of families living below the poverty level. Over the last 20 years the percentage of single-parent mothers with children under 18 living in poverty has remained relatively constant-- ranging from 44% in 1975 to 41.5% in 1995. The 20 year median poverty rate for single parent household with children headed by a mother was 45.4% with a mean of 44.4% and a standard deviation of 2.1%¹⁶. While the percentage of single-parent mothers with children under 18 living below the poverty level has remained constant, the increase in total number of single parent households with children headed by a mother living below the poverty level has increased dramatically (166.7%) in relation to the number of families with children under 18 (a 118% increase between 1975 and 1996). Thus there were 2.252 million single parent households with children under 18 headed by mothers living in poverty in 1975 that increased to 3.755 million in 1996. The increase in father-headed single-parent households with children under 18 living in poverty is even more dramatic with there only being 65,000 in 1975 (11.7% of single-parent household with children under 18 headed by fathers) that has increased to 412,000 in 1996 (20% of single parent households with children under 18 headed by fathers) that is a 633.8% increase¹⁶.

III.A.3. Welfare Recipients Long-Term Dependency

The public is often told that most welfare recipients are transient members of the welfare roles. The statement that comes to mind is that roughly half the families that begin to receive AFDC stop receiving the entitlement within one year. This statement says nothing about the other Federal and

¹⁴Ventura SJ, Martin JA, Curtin SC, Mathews TJ. Report of final natality statistics, 1995. Hyattsville, Maryland: US Department of Health and Human Services, Public Health Service, CDC, National Center for Health Statistics, 1997. (Monthly vital statistics report; vol 45, no. 11, suppl 1).

¹⁵Abma JC, Chandra A, Mosher WD, Peterson LS, Piccinino LJ. Fertility, family planning, and women's health: new data from the 1995 National Survey of Family Growth. Hyattsville, Maryland: US Department of Health and Human Services, Public Health Service, CDC, National Center for Health Statistics, 1997. (Vital and health statistics; series 23, no. 19).

¹⁶Report on Final Natality Statistics 1995. Centers for Disease Control, National Center for Health Statistics, U.S. Department of Health and Human Services, 1997

¹⁷U.S. Bureau of the Census, Current Population Reports, Series P20-495, "Household and Family Characteristics: March 1996 (Update)" and earlier reports.), table 4.

State and local entitlement/assistance programs these recipients may be receiving. More importantly, what the public is not made aware of is that most of these initial recipients of AFDC who leave the rolls return to obtain AFDC⁴. Of the welfare recipients receiving AFDC, nearly 65% of them will spend at least 8 years on welfare⁴ (Figure 5). Even with all of the welfare recipients who receive AFDC for a short time, the average length of total time spent by families receiving AFDC was greater than 13 years⁴.

III.B. Families Absent a Biologic Parent

How many parents are there with children that have either a single parent or a situation where both biologic parents are no longer living together because of separation or divorce.....the total number of families with children that may be eligible for a child support ? According to the U.S. Census there were approximately 11.5 million custodial parents in 1992 with only 6.2 million having a child support award or agreement⁷. Approximately 46 % of these families, 5.3 million, did not have a child support award because the custodial parent did not pursue an award (34.0%), the parent did not want an award (17.5%), the father was unable to pay (16.5%), the paternity of the father not established (5.7%), other financial arrangement made (5.5%), the other parent lives in the same household (1.0%), or other reasons (14.2%). In 17.5% of these cases with no child support award the custodial parent didn't know where the father was.

For those custodial parents with a child support award with child support actually due that year, the level of compliance for child support payments is approximately 80% for all noncustodial parents⁷. The percentage of female noncustodial parents assigned a child support award that owed money in 1992 was only 28% of all female noncustodial parents, and their compliance rate was less than male noncustodial parents⁷. Yet most fathers pay their child support if they can according to both the U.S. Census^{7,18} and a GAO report⁶. Of the 3.7 million custodial parents living in poverty, only 1.257 million or 34% had a child support award and 181,000 were not supposed to receive child support in 1991. Of those poor custodial parents with child support orders, 70% of the poor mothers received child support payments that was a comparable rate of receiving child support as non-poor custodial parents⁷. In Oklahoma the collection of child support from obligors has increased dramatically since 1991 mirroring the increases observed at a National level, that is in response to increases in child support owed since implementation of child support guidelines (Figure 6).

With recent Federal and State legislation, noncustodial parents who fail to pay their child support for whatever reason stand to lose professional and vehicle licenses or can be sent to prison. Further, the best compliance rates that approach 90% are achieved when both parents continue to have involvement with their children through joint physical custody⁷. So why is joint physical and legal custody where both parents share the parenting responsibilities not the norm in every state?

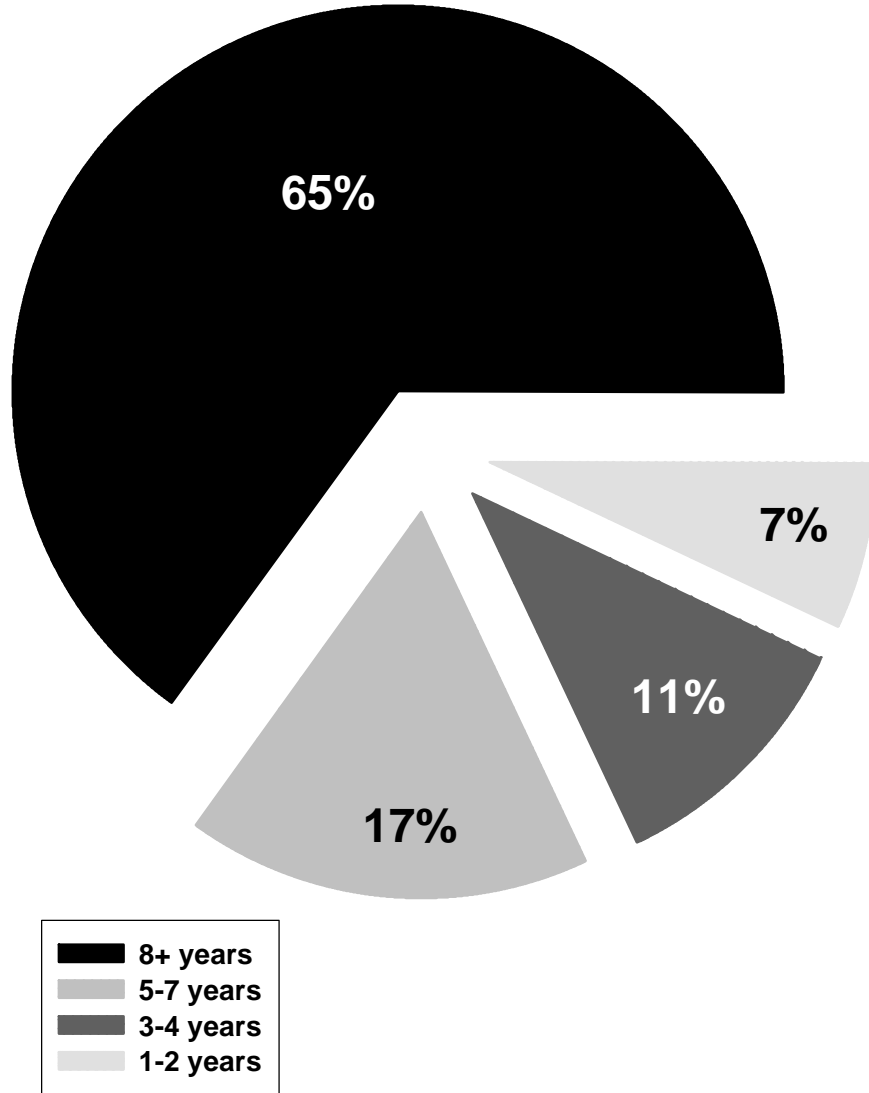
III.C. Myths

Several points have been made numerous times in the last year by politicians and the Department of Health and Human Services during discussion of child support and its impact on welfare reform. One was that increased child support collections would remove individuals from the welfare rolls in droves; and two, forcing welfare recipients to take responsibility for themselves would also reduce

¹⁸**SB/95-16. U.S. Department of Commerce, U.S. Bureau of the Census, Economics and Statistics Administration. Who Receives Child Support? Issued June 1995**

Figure 5

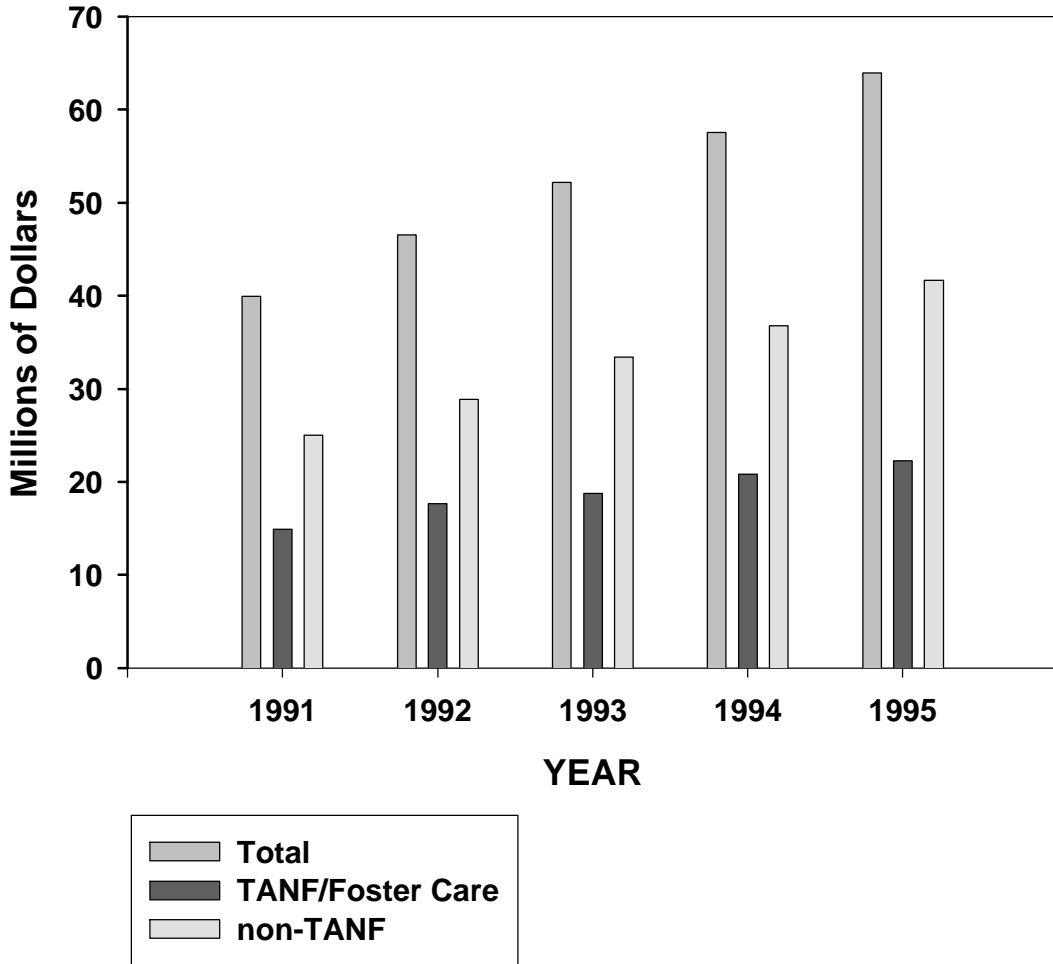
Long -Term Dependency on Welfare



From: House Ways and Means Committee Green Book 1996, Appendix L, pg. 1327

Figure 6

Oklahoma CSE Collections



20th Annual Report to Congress for the Period Ending September 30, 1995. Office of Child Support Enforcement, U.S. Department of Health and Human Services, 1997

the number of individuals that received the entitlement. The President of the United States repeated this earlier this year while on a visit to the State of North Carolina. This statement was excerpted from his speech on March 13, 1997 given during session with the North Carolina Legislature:

"Let me just say one final word in closing about another big job we have to do together. We have to finish the work of welfare reform. In the first four years of my presidency, we gave waivers from federal rules to 43 states to do all kinds of things to help move people from welfare to work. We now know that partly because of the growing economy, partly because of state welfare reform efforts, and partly because of a 50 percent increase in child support collections nationwide, the welfare rolls went down by 2.6 million in four years -- a record number."

The president's speech writers were excellent in starting with welfare reform and the states role, and then obfuscating the issue with the increased economy and more state efforts, and ending with increased child support collections and reduction in TANF participants.....even though the increase in child support collections are due mainly to non-TANF cases (see below). Most readers might not appreciate how subtly but powerfully these concepts were linked in this speech, nor how wrong this association is when it comes to the effects of child-support collections on TANF families. Later press releases by the White House have suggested that increases in child support collections **MAY** reduce the welfare roles by 800,000 families. This assumption by the White House is misleading and totally false because the number of families that receive child support and who receive assistance that normally cycle on and off welfare assistance in a given year can account in total for the claim of reduction. It is the ability to reduce the number of long-term welfare recipients that counts.

So what do the early returns indicate about the accomplishment of these objectives? An article was published in the Wall Street Journal on Tuesday, February 11, 1997, by Dana Milbank and Christopher Georges titled "Early Warning: Oklahoma's Poor get the Message, Opt Out of the Welfare System". Their summary of the situation in Oklahoma, and the rest of the country, is that State welfare workers have been telling the poor that there is no welfare for them and that the government is pulling the plug on the assistance so they better go earn a living. State workers have been stressing this message for several years -- before the legislation was even passed to "end welfare as we know it" in 1996. If those individuals who apply for assistance refuse to do as they are instructed by the State workers within 30 days their applications or payments are stopped and they are deleted from the system. The welfare roles have dropped 30% since 1994 in the US and they are down 45% in Oklahoma, and the caseload is dropping every year for applications (30% in Oklahoma last year alone). The combination of State treatment of welfare recipients and potential recipients, reclassifying welfare recipients as working, and a better economy that has absorbed welfare recipients into the workforce, are the changes that have led to the reduction in number of families receiving TANF. This however does not mean these families who no longer receive TANF are not receiving other benefits, as the Oklahoma Department of Human Services budget for Fiscal Year 1998 reflects by the absence of a corresponding 45% reduction in its budget.

Importantly, there is no evidence that suggests child support collections are responsible for this massive drop in the number of recipients receiving welfare.

Currently more than 3 billion dollars per year is being spent on child support enforcement (CSE)¹⁹ in addition to the money being spent on automation of CSE that in 1995 was almost 600 million dollars²⁰. The amount of child support collected for AFDC/TANF cases between the years 1991 to

¹⁹20th Annual Report to Congress for the Period Ending September 30, 1995. Office of Child Support Enforcement, U.S. Department of Health and Human Services, 1997

²⁰GAO/AIMD-97-72, June 30, 1997. United States General Accounting Office Report to Congressional Requesters. Child Support Enforcement: Strong Leadership Required to Maximize Benefits of Automated Systems

1995 has risen from 2 billion dollars in 1991 to 2.7 billion dollars in 1995 (35% increase), yet the cost for collecting the child support has risen from 1.804 billion dollars to 3.012 billion dollars during the same time span not including money spent on automation. The administrative cost for CSE has grown approximately 12.0%/year on average since 1992 without including the costs for automation of CSE, while the collection rate has increased 5%/year since 1992. As of 1995, there were more than 55,000 Federal and State CSE workers, that is approximately half the total number of workers that staff the Internal Revenue Service. Since 1988, the CSE program has run deficits costing the taxpayers a billion dollars a year; i.e. the enforcement program collects less money for welfare recipients from parents than it spends trying to collect child support. The major increases in child support collection have come from the non-TANF cases handled by the OCSE. The question that has not been addressed by the OCSE or the GAO is what would be the collection rate and growth of child support collections without the OCSE.

III.D. Can Child Support Replace Welfare?

According to the CATO Institute¹⁰ the welfare benefits from the seven major Federal entitlement programs (out of 77) result in a payment of pre-tax income in Oklahoma of \$17,700 per year for a family of three or \$1475.00/month -- or a salary of \$8.51/hour. The median family income in Oklahoma in 1995 was \$26,311.00 or \$2193/month. Doubling of the child support guidelines presently in existence in Oklahoma from \$457 (\$5484/year) to \$10,968/year (guideline amount for \$26,311/yr income) and transferring this money to a non-working custodial parent of two children will not bring this family to the previous level of income they received in welfare benefits of \$17,700/year. Clearly the support of children by both parents as well as parenting of the children is essential for following the best interest of the child mandate...but the reduction in TANF will not occur through increasing already inflated child support guidelines higher.

Will increased efficiency of child support collection remove custodial parents from the welfare rolls? It was reported by the US. Census that even though child support accounted for 12-17% of the income for a custodial parent, there would have been no significant change in the percentage of parents who fall below the poverty level (24%) had all child support been collected (21%) in 1992⁷. Why does the billions of dollars collected in child support not move families off of the welfare rolls and to self sufficiency? Because almost all of the welfare dollars collected are distributed to the better off and working custodial parents. The information collected and presented are consistent with poor parents having children together and many poor custodial parents having poor employment chances because of few marketable skills. Poor parents can not be expected to have the money required to maintain two households when middle class parents are failing at maintaining two households.

In total, the data presented in this report and in others suggest child support has had minimal to no influence on preventing families from living in poverty over the last 20 years; likely because the majority of child support ordered and collected, that has risen dramatically since the Family Support Act of 1988, is given to custodial parents who are already well off.

APPENDIX

March 19, 1997

Judiciary Committee, House of Representatives:

I am writing to voice my opinion concerning your proposed recodification of Oklahoma's child support obligations. When it is in the best interest of the children to have frequent and substantial contact with each parent, your legislation is moving in the opposite direction. Laws continue to be formulated and passed that in effect extort excessive child support payments from the noncustodial parent for minimal child-contact, jeopardizing the noncustodial parent's parent-child relationship. For example, in the word design of the proposed child support guidelines, every effort is made to maximize the child support amounts and excessively burden the noncustodial parent. This type of covert alimony serves to impoverish and possibly criminalize the noncustodial parent. The special interest groups that are driving this legislation are concerned with economic policy and not family policy, this is resulting in a pro-divorce/anti-family ideology and a huge amount of money for Oklahoma. The USDA derived data that is use in Oklahoma's child support tables already include medical insurance, medical costs, and child care. Yet these expenses are added a second time to the child support obligation. Also, USDA's data concerning housing and transportation expenses, which account for about fifty percent of the child support amounts, are artificially high due to the crude proportion methods.

I appeal to this committee and any involved representative to adjust the present table downward or at least maintain the present one which is more than adequate to provide for the material needs of children. Moreover, I implore from those involved, the enhancement of the noncustodial parent's parent-child relationship and to enforce the maintenance of this relationship in the same manner as child support.

Sincerely,
Patrick J. Finley, DVM, MPH

Comparison of Oklahoma Child Support Amounts and Adjustments to the Contiguous States

At first glance, Oklahoma in the below tables appears to be less than the contiguous states. However, when related to median income, using the \$33,700/yr. table, Oklahomans pay 25.63% of their yearly gross income in child support. This amount is median in a range of 18.84% to 31.44% for the contiguous states. Also relevant are the adjustments. Most states, e.g., Kansas, make more downward adjustments to the base child support amount than Oklahoma. It can be reasonably concluded that Oklahoma's child support amounts need no further increases but downward adjustments or at least no change.

\$1750 Combined gross monthly income (\$21,000/yr.)

States (median income)	1 child	2 kids	3 kids	4 kids	5 kids	6+ kids	Adjustments deducted from gross
OK (\$26,311)	250	389	485	549	607	644	-PCS, -PJD, -PVT, joint custody, split custody, extended visitation
AK (\$25,814)	296	432	608	784	960	N/A	adjusted per case
CO (\$40,706)	293	454	568	641	700	747	-PCS, -AL, -OC, -ED, shared physical custody, split custody
KS (\$30,341)	277	442	576	644	705	756	-PCS, -AL, +HI, -CCC, +/-EA, shared physical custody, split custody, living expenses, income tax, visitation
LA (\$27,949)	303	469	588	663	723	774	-PCS, -AL, +CCC, +HI, +EE, -IC
MO (\$34,825)	332	482	570	629	682	730	not available at time of writing
NM (\$25,991)	333	482	568	628	680	728	+HI, +CCC, joint custody, visitation
TX (\$32,039)	20% of net	25% of net	30% of net	35% of net	40% of net	45% of net	+HI, joint custody

PCS= preexisting child support AL= alimony ED= post-secondary education exp OC= other children
 CCC= child care costs (net) HI= health insurance EA= extraordinary adjustments EE= extraordinary expenses
 IC= income of child PJD= preexisting joint debt PVT= payer transportation expenses

Comparison of Oklahoma Child Support Amounts and Adjustments to the Contiguous States

\$2808 Combined gross monthly income (\$33,700/yr.)

States (median income)	1 child	2 kids	3 kids	4 kids	5 kids	6+ kids	Adjustments
OK (\$26,311)	361	562	714	793	869	922	-PCS, -PJD, -PVT, joint custody, split custody, extended visitation
AK (\$25,814)	400	640	920	1200	1480	N/A	adjusted per case
CO (\$40,706)	413	639	800	903	985	1052	-PCS, -AL, -OC, -ED, shared physical custody, split custody
KS (\$30,341)	400	618	855	988	_125	1392	-PCS, -AL, +HI, -CCC, +/-EA, shared physical custody, split custody, living expenses, income tax, visitation
LA (\$27,949)	436	677	848	955	1042	1115	-PCS, -AL, +CCC, +HI, +EE, -IC
MO (\$34,825)	492	713	839	927	1005	1076	not available at time of writing
NM (\$25,991)	471	681	802	886	960	1027	+HI, +CCC, joint custody
TX (\$32,039)	20% of net	25% of net	30% of net	35% of net	40% of net	45% of net	+HI, joint custody

PCS= preexisting child support AL= alimony ED= post-secondary education exp OC= other children
 CCC= child care costs (net) HI= health insurance EA= extraordinary adjustments EE= extraordinary expenses
 IC= income of child PJD= preexisting joint debt PVT= payer transportation expenses

Comparison of Oklahoma Child Support Amounts and Adjustments to the Contiguous States

\$3667 Combined gross monthly income (\$44,000/yr.)

States (median income)	1 child	2 kids	3 kids	4 kids	5 kids	6+ kids	Adjustments
OK (\$26,311)	419	636	789	888	964	1031	-PCS, -PJD, -PVT, joint custody, split custody, extended visitation
AK (\$25,814)	488	816	1224	1552	1920	N/A	adjusted per case
CO (\$40,706)	508	786	985	1111	1211	1294	-PCS, -AL, -OC, -ED, shared physical custody, split custody
KS (\$30,341)	505	762	1042	1204	1360	1497	-PCS, -AL, +HI, -CCC, +/-EA, shared physical custody, split custody, living expenses, income tax, visitation
LA (\$27,949)	542	842	1054	1187	1296	1387	-PCS, -AL, +CCC, +HI, +EE, -IC
MO (\$34,825)	583	844	994	1098	1190	1274	not available at time of writing
NM (\$25,991)	524	756	887	980	1063	1137	+HI, +CCC, joint custody
TX (\$32,039)	20% of net	25% of net	30% of net	35% of net	40% of net	45% of net	+HI, joint custody

PCS= preexisting child support AL= alimony ED= post-secondary education exp OC= other children
 CCC= child care costs (net) HI= health insurance EA= extraordinary adjustments EE= extraordinary expenses
 IC= income of child PJD= preexisting joint debt PVT= payer transportation expenses

Comparison of Oklahoma Child Support Amounts and Adjustments to the Contiguous States

\$4725 Combined gross monthly income (\$56,700/yr.)

States (median income)	1 child	2 kids	3 kids	4 kids	5 kids	6+ kids	Adjustments
OK (\$26,311)	497	755	927	1056	1142	1228	-PCS, -PJD, -PVT, joint custody, split custody, extended visitation
AK (\$25,814)	614	1039	1559	1985	2457	N/A	adjusted per case
CO (\$40,706)	630	975	1222	1379	1502	1607	-PCS, -AL, -OC, -ED, shared physical custody, split custody
KS (\$30,341)	622	922	1275	1468	1650	1812	-PCS, -AL, +HI, -CCC, +/-EA, shared physical custody, split custody, living expenses, income tax, visitation
LA (\$27,949)	622	1029	1286	1450	1582	1692	-PCS, -AL, +CCC, +HI, +EE, -IC
MO (\$34,825)	656	945	1109	1226	1329	1422	not available at time of writing
NM (\$25,991)	615	885	1036	1145	1241	1328	+HI, +CCC, joint custody
TX (\$32,039)	20% of net	25% of net	30% of net	35% of net	40% of net	45% of net	+HI, joint custody

PCS= preexisting child support AL= alimony ED= post-secondary education exp OC= other children
 CCC= child care costs (net) HI= health insurance EA= extraordinary adjustments EE= extraordinary expenses
 IC= income of child PJD= preexisting joint debt PVT= payer transportation expenses

Comparison of Oklahoma Child Support Amounts and Adjustments to the Contiguous States

\$5750 Combined gross monthly income (\$69,000/yr.)

States (median income)	1 child	2 kids	3 kids	4 kids	5 kids	6+ kids	Adjustments
OK (\$26,311)	576	888	1096	1252	1356	1460	-PCS, -PJD, -PVT, joint custody, split custody, extended visitation
AK (\$25,814)	748	1265	1889	2405	2977	N/A	adjusted per case
CO (\$40,706)	742	1150	1442	1625	1770	1_94	-PCS, -AL, -OC, -ED, shared physical custody, split custody
KS (\$30,341)	739	1103	1507	1730	1942	2127	-PCS, -AL, +HI, -CCC, +/-EA, shared physical custody, split custody, living expenses, income tax, visitation
LA (\$27,949)	771	1196	1496	1687	1841	1968	-PCS, -AL, +CCC, +HI, +EE, -IC
MO (\$34,825)	746	1074	1258	1390	1507	1612	not available at time of writing
NM (\$25,991)	700	1007	1179	1303	1412	1511	+HI, +CCC, joint custody
TX (\$32,039)	20% of net	25% of net	30% of net	35% of net	40% of net	45% of net	+HI, joint custody

PCS= preexisting child support AL= alimony ED= post-secondary education exp OC= other children
 CCC= child care costs (net) HI= health insurance EA= extraordinary adjustments EE= extraordinary expenses
 IC= income of child PJD= preexisting joint debt PVT= payer transportation expenses

Comparison of Oklahoma Child Support Amounts and Adjustments to the Contiguous States

\$6750 Combined gross monthly income (\$81,000)

States (median income)	1 child	2 kids	3 kids	4 kids	5 kids	6+ kids	Adjustments
OK (\$26,311)	643	1009	1253	1436	1530	1679	-PCS, -PJD, -PVT, joint custody, split custody, extended visitation
AK (\$25,814)	878	1485	2228	2835	3510	N/A	adjusted per case
CO (\$40,706)	844	1310	1643	1852	2017	2159	-PCS, -AL, -OC, -ED, shared physical custody, split custody
KS (\$30,341)	856	1267	1729	1980	2220	2427	-PCS, -AL, +HI, -CCC, +/-EA, shared physical custody, split custody, living expenses, income tax, visitation
LA (\$27,949)	866	1341	1677	1892	2065	2207	-PCS, -AL, +CCC, +HI, +EE, -IC
MO (\$34,825)	840	1208	1414	1563	1694	1813	not available at time of writing
NM (\$25,991)	792	1140	1334	1474	1598	1710	+HI, +CCC, joint custody
TX (\$32,039)	20% of net	25% of net	30% of net	35% of net	40% of net	45% of net	+HI, joint custody

PCS= preexisting child support AL= alimony ED= post-secondary education exp OC= other children
 CCC= child care costs (net) HI= health insurance EA= extraordinary adjustments EE= extraordinary expenses
 IC= income of child PJD= preexisting joint debt PVT= payer transportation expenses

***Rational Basis is the Key Focus in Emerging
'Third Generation' Child Support Technology***

Roger. F. Gay, Independent Research Consultant

Prepared for the Proceedings of the
Seventh Annual Conference of the Children's Rights Council

April 28 - May 2, 1993
Holiday Inn, Bethesda, Maryland

This presentation will provide a follow-up from last year's progress report on the development of a prototype child support guideline for states to consider as an alternative to the second generation technology now in use.

First generation: First generation child support "guidelines" were developed in local courts and counties to provide "normative" factual information about actual and reasonable child rearing costs or award levels. "Guidelines" were applied with discretion in the context of principles and detailed considerations provided in statute. *First generation technology was not designed for presumptive use.*

Second generation: The Family Support Act of 1988 mandated presumptive use of state-wide guidelines. Second generation technology is much like the first with some very important exceptions. Among them; higher numbers are used, *in-kind contributions* are mostly ignored, and in many states the fundamental principles and detailed considerations (rational basis) upon which child support decisions had been based have been eliminated from statutes.

Third generation: The proposed 'third generation' design approach focuses on the need to reinstate fundamental principle in child support law and to provide a 'reality based' framework in which to compare model circumstances with those in an individual case.

Last year, four separate presentations were given on existing technology, child support policy, studies of the "economic cost" of raising children, and guideline design method. The goal this year has been to follow that discussion with a product. A prototype guideline will be presented and a draft report will be provided as a hand-out. Version 1 of the final report is expected within six months of the conference.

Child support guidelines are technology used to assist courts in the application of law; specifically that of awarding child support. It is a matter of first principle that this technology can never meet Constitutional requirements without being firmly grounded in *rational principles* that are clearly pronounced in statute and in which any detailed considerations correspond in some rational way to the reality that must be considered in decision-making.

It follows that it can only be appropriate to apply a child support guideline when (if and only if) it has been shown to correspond to the principles of law that it is expected to uphold. It is also necessary to be able to make a comparison between individual circumstances impacting an award decision and the *model circumstances* corresponding to the routine output of the guideline. The limits to the application of any guideline rule must be understandable to the practitioner.

The *iron triangle* of proper design and use of child support guidelines includes consideration of the circumstances of the family members involved, comparison with the model circumstances on which the routine outcome of the guideline has been based, and the fundamental principles that rule the award decision. An *efficient design* is one in which the routine output of the guideline is carefully matched to the principles that must be applied. A *rational design* is one in which model circumstances are easily comparable to real circumstances.

The following outline provides 10 steps that can lead to development of better child support guidelines.

1. ***Decide on the general principles that are used to decide a child support award*** (including the purpose and goal of awarding support). For example; meeting children's physical needs, with each parent contributing in cash and kind in proportion to their relative ability to meet those needs, and each parent has an equal duty to the financial support of their children.
2. ***Decide upon the factors that are relevant in the decision process.*** For example; net income of the parents, marital property and its division, amount of time children spend with each parent, basic needs such as food, clothing and shelter, education and day-care, medical expenses, debts, tax law, children of second families, new spouses, etc.
3. ***Explain in general terms how the guideline is applied.*** For example; as the first presumption, challengeable by statute and fact.
4. ***Write a first draft child support statute which explains the purpose and goal of awarding support, the general principles upon which the award decision should ultimately rest, the factors to be considered, and how the guideline fits into the decision process.***
5. ***Restate all the conceptual information in the statute using a more precise language.*** The new statements must be precise in order to translate them accurately into mathematical expressions. These precise statements are the design criteria that must be met by guideline engineers.
6. ***Formulate the mathematical and logical steps of the guideline.*** These steps must be validated in comparison to the design requirements. (For a more detailed explanation of the validation process, see the Pilot Study.)
7. ***Decide the precise need for numerical information from what has already been completed.*** No data base in the world contains sufficient information to define child support policy. Before you got this far, you had no basis for answering questions about the specific need for numbers. Now you should.
8. ***Decide on appropriate modifications to the numbers available from various numerical studies.*** Don't be surprised if data is not available to answer all your questions. In conceptual terms, what is the difference between existing numeric information and what was asked for?
9. ***Test your model against a broad range of synthetic circumstances.*** This is a very important step which should be much easier if the guideline was designed carefully. Remember that in practice; litigants, lawyers and judges must repeat this step at every hearing. *Every child*

support hearing is a field test. How will they be able to adjust the outcome to account for relevant factors that your committee did and did not explicitly include? Consider the “iron triangle“ to judge the quality of the design.

10. Revisit all previous results (repeating any step as appropriate) applying any new knowledge gained from the experience of working through these steps the first time.
(Known as the learning cycle.)

What child support doctrine should we use? The prototype presented at the conference will be based on child support statutes and case law that was in effect prior to their replacement in the late 1980s by child support technology. The choice to use the doctrine actually decided upon by state legislatures, as interpreted by state courts, is appropriate for several reasons. Among them is the fact that no one has presented genuine and convincing evidence demonstrating that we should have deviated from those standards.

As a practical matter, it is also far better to transform the child support system one piece at a time in order to avoid chaos. A more competent use of new technology would most likely result if designs are based on laws already understood by family lawyers and judges. By virtue of the same understanding, a more fruitful discussion about proposed changes to child support doctrine should also result. Basing guidelines on rational and widely-understood child support principles should make application of guidelines much simpler, even while supporting a more sophisticated decision process.

The final report, which should be available within six months of the conference, will contain examples developed from alternative policy choices. The examples will demonstrate the flexibility and power of the design process described above.

See Also (list updated to include follow up reports, 1993-94);

Gay, Roger F., *New Equations for Calculating Child Support and Spousal Maintenance With Discussion on Child Support Guidelines*, Final Report of the Project for Improvement of Child Support Litigation Technology, 1994.

Gay, Roger F., *An Alternative Child Support Guideline for State's to Consider, Preliminary Report*, Presented at the Seventh Annual Conference of the Children's Rights Council, Holiday Inn, Bethesda, MD, April 28 - May 2, 1993.

Gay, Roger F., *The Alimony Hidden in Child Support, New Scientific Proof that Many Child Support Awards are Too High*, The Children's Advocate (NJCCR, Box 316, Pluckemin, NJ 07978-0316), January, 1995, Vol. 7 No. 5.

Gay, Roger F., *Time Limiting Cash Assistance in President Clinton's Welfare Reform Proposal*, submitted for the record to the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, August 16, 1994

Gay, Roger F., *Transitional Assistance, Work, The Role of States in Welfare Reform, and Financing Issues*, submitted for the record to the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, August 9, 1994

- Gay, Roger F., *Welfare Reform and Parental Responsibility*, submitted for the record to the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, July 26-29, 1994
- Gay, Roger F., *Settling the Debate Once and For All, An Essay on the Nature of 'Child Cost Estimates' and their Application in Child Support Award Calculations*, A table-top paper available to attendees at the conference book store, at the Eighth National Conference of the Children's Rights Council, held at the Holiday Inn, Bethesda, Maryland, April 13-17, 1994
- Children's Rights Council (Washington, DC), *Model Child Support Guideline*, Donald J. Bieniewicz, et al. (As Consultant) Published in a book on alternative child support guidelines by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement.
- Gay, Roger F., *Child Support Reforms in Perspective: Written statement for Oversight Hearing on Child Support Enforcement*, submitted for the record to the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, June 10, 1993
- Gay, Roger F., *Comment on Canadian Child Support Guideline Report*, Submitted to the Canadian Federal / Provincial / Territorial Family Law Committee by the Association of Concerned Academics, University of Alberta, Canada; M.E.R.G.E., Suite 501, 10011 - 116 Street, Edmonton, Alberta T5K 1V4, October 7, 1992
- Gay, Roger F., *Written statement on the subject of the Changes in the Poverty Rate and Distribution of Income*, submitted for the record to the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, September 10, 1992.
- Gay, Roger F., *Written statement on the subject of the Downey / Hyde child support enforcement and assurance proposal*, submitted for the record to the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, July 17, 1992.
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- Gay, Roger F., *Brief History of Prevailing Child Support Doctrine*, in Proceedings of the Sixth Annual Conference of the National Council for Children's Rights, Arlington, VA, March 19-22, 1992. {Presented in relation to conference presentations.}
- Gay, Roger F., Robert Bancroft, Brent Whiting, and Ronald K. Henry, *Project for the Enhancement of Child Support Litigation Technology*, A Concept Paper Submitted to: the State Justice Institute, Alexandria, VA, December 4, 1991
- Gay, Roger F., *Recalculating Espenshade's 'Cost' of Raising Children*. Intelligent Systems Research Corporation Report; Special Report No. ISR-100191.01, Child Support Series Report No. 3, October 1, 1991.

Oklahoma Joint Judiciary Child Support Guideline Review, by Gregory J. Palumbo, Ph.D., November 25, 1997

Gay, Roger F., *Child Support Guidelines: Resolving the Dilemma, A Summary Report on Design of Federally Mandated Child Support Schedules*, Intelligent Systems Research Corporation Report; Special Report No. ISR-091490.01, Child Support Series Report No. 2, September 30, 1990.

Gay, Roger F., *Pilot Study on the Development and Evaluation of State Guidelines for Calculation of Child Support Payments*, Intelligent Systems Research Corporation Report; Special Report No. ISR-032590.01, Child Support Series Report No. 1, April 16, 1990.

July 20, 1994

**New Equations for
Calculating Child Support and Spousal Maintenance
With Discussion on Child Support Guidelines**

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Abstract

Child support formulae used in all states provide a rigid mathematical approach for calculating awards. But, do these formulae provide a hidden margin of spousal maintenance? A new equation for distinguishing between child support and spousal maintenance is presented in this paper. Analysis shows that there are natural limits to the effectiveness of child support transfer payments for improving the economic well-being of children. This is an important breakthrough for those who design and evaluate child support guidelines, for attorneys engaged in family law, and in discussion of child support as part of welfare reform. Adjustment to the theoretical upper limit to account for individual circumstances and a theoretical lower limit are also discussed. Application of the equal duty principle leads to the conclusion that the adjusted upper limit is the award level that is just and appropriate. Higher or lower awards result in disproportionate sharing of the financial cost of raising children. Additional equations are given for calculating child support and spousal maintenance to reach a standard of living target for an entire household.

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Introduction

Although the prohibition against spousal maintenance in a child support award is well established, methods for distinguishing between the two are not. Prior to the Family Support Act of 1988, all states awarded child support in order to assist a custodial parent in providing for the cost of raising children while in her or his care. Case law emerged developing explicit prohibition against spousal maintenance as part of a child support award. In Oregon, for example, the Supreme Court wrote that “the money is for the support and welfare of the children, not for the enrichment of the custodial parent.”²¹ Child support guideline advisory committees have also recognized the prohibition against the inclusion of spousal maintenance on other grounds. In its 1986 report to the legislature, the Washington State Child Support Guideline committee acknowledged that using child support to equalize income between households was illegal, because spousal maintenance could be awarded separately when appropriate.

Child support guideline developers have had no objective technique for placing upper limits on award standards. It has recently become fashionable to assume that higher child support awards would result in more spending on children, and therefore any amount would qualify. According to initial estimates, using new child support award formula would increase child support awards nation-wide by 250-350 percent.²² Legal commentators have criticized the “more is better” philosophy,²³ and it has caused much frustration among payers. But, neither proponents nor opponents have had a scientific method of showing how much of a calculated award is legally definable as child support.²⁴

Another rule of traditional child support law is that to a practical extent, children should be shielded from the reduction in standard of living that usually accompanies divorce.²⁵ The theory presented in this paper is based on the fact that payment of child support adds income to the custodial parent household. Therefore, custodial parents receiving child support will potentially spend a significantly higher amount on children than the marginal rate they would spend on their own. There is a natural limit to this effect, which is found by calculating the maximum standard of living increase that can be obtained from child support payments alone. Therefore, the theory presented in this paper will sometimes be referred to as the *limit theory* of child support. In the section entitled; “Adjusted Limits,” variations based on the resulting model are discussed. The calculation for the amount of

²¹ In re Marriage of Hering, 84 Or App 360, 733 P2d 956 (1987).

²² 250%: Robert G. Williams, *Development of Guidelines for Child Support Orders: Final Report*, U.S. Department of Health and Human Services, Office of Child Support Enforcement, March 1987. The Amendments required the Department of Health and Human Services to provide technical assistance to states. (page II-32). 350%: Ronald Haskins, Andrew W. Dobelstein, John S. Akin, and J. Brad Schwartz, *Estimates of National Child Support Collections Potential and the Income Security of Female-Headed Families*, Final Report, Office of Child Support Enforcement, April 1, 1985.

²³ Ronald K. Henry, 1990, “Litigating the Validity of Support Guidelines,” *The Matrimonial Strategist*, Volume VII, No. 12, January, 1990.

²⁴ In *Fitzgerald v. Fitzgerald*, 566 A 2d 719 (D.C. App. 1989), judges noted that litigants who questioned the results of formula had to do so without having and definition for “just” and “appropriate”. Robert W. Braid, *The Making of a Deadbeat Dad*, Trial Lawyer, March 1993. Mr. Braid noted that there was no legal definition for “child support” in New Jersey. Conversations with attorneys in several states and with the Office of Child Support Enforcement have not revealed a single state with a definition for “child support” that does not depend directly on guideline formulae for its interpretation.

²⁵ In the Marriage of Smith, Or 626 P2d 342 (1981).

spousal maintenance contained in a child support award that is above the limit is explained in the section entitled; "Differentiating Child Support and Spousal Maintenance."

The initial question that led to the model presented in this paper was; How much spousal maintenance is contained in child support awards determined by current child support models. To answer that question required the development of a mathematical definition for child support and alimony based on traditional doctrine. It is necessary to use traditional doctrine for basic definitions because state legislatures have not provided new definitions for "child support" and "spousal maintenance" to correspond with application of the current generation of child support guidelines. Rigid application of guidelines has replaced fundamental definitions, leaving judges and litigants without guiding principles to determine whether calculated amounts are just and appropriate.

An analytic preoccupation in the guideline debate has been whether to use single-parent or intact family data as a basis for determining the "cost" of children. The issue is of serious concern. Estimates of both range widely and there is no real scientific or political consensus. The author of the first major report on development of child support guidelines to be published in compliance with the Child Support Enforcement Amendments of 1984 chose the highest estimates of intact family spending available at the time.²⁶ That choice had an enormous impact on the current generation of child support guidelines.

The great majority of guidelines currently in use have applied the Income-Shares or Percentage-of-Income formulae. Both approaches rely heavily on economic "cost of raising children" studies as the fundamental basis and justification for their design. Yet it is the weakest point in our collective knowledge of the child support issue. A report on an early 1980s proposal for the Washington State child support guidelines, written for the Washington State Judges Association said the following.²⁷

. . . a simple methodology which explicitly relies on "user opinion" will be more effective in moving practices more uniformly toward a fair standard than does reliance on opaque and highly derivative expert interpretations of existing but fundamentally off-target primary economic data.

The techniques used to derive the "cost of raising children" underlying most child support guidelines today are not new. Complaints have appeared regularly. University of Chicago economists, Edward Lazear and Robert Michael have argued that the task of predicting consumption by individual members of households is extremely difficult due to wide variation in spending behavior. They also had this to say about the underlying methodology of many "cost of raising children" studies and their application in public policy.²⁸

²⁶ Robert G. Williams, *Development of Guidelines for Child Support Orders: Final Report*, U.S. Department of Health and Human Services, Office of Child Support Enforcement, March 1987. The Amendments required the Department of Health and Human Services to provide technical assistance to states. (page II-32).

²⁷ William Hewitt, 1982, Report on the Washington State Association of Superior Court Judges, *Uniform Child Support Guidelines*, Institute for Court Management, Court Executive Development Program.

²⁸ Edward P. Lazear and Robert T. Michael, *Allocation of Income Within the Household*, University of Chicago Press, 1988, page 25

. . . the presumption that underlies the focus of much of the empirical research and policy debate on income distribution seems born of ignorance and is supported by neither theory nor fact. This situation can be improved.

The fraction of household expenditure that is actually used to support children is a hotly debated topic. Estimates of spending on children in intact families range from under 10 to over 30 percent for one child.²⁹ Less work has been done on estimates of spending on children by single parents.³⁰ Assuming research on spending in single-parent homes improves, future numeric estimates and techniques can be used to refine the numeric tables used in standard child support calculations and in bettering our understanding of what individual parents actually spend on their children.

The distinction between child support and spousal maintenance is one of the important questions of concern in this paper. It is naturally of interest to differentiate between income used to support children and other household income during the time that child support is being paid. Therefore, it is necessary to consider custodial parents' post-divorce spending on children. Only minor attention will be paid to intact family spending in this paper, when the economics of remarriage is considered.

Some commentators have thought it important to distinguish between the "cost" of raising children and what is "spent" on children. Economists and others might find this an interesting starting point for defining child support since there is a basic distinction between the meaning of the two terms. It should be clear however, that the common distinction is not applicable in child support decisions. Parents are both the producers and consumers. What they spend on their children is equal to their cost. To apply the academic definitions of "cost" and "spending" would require that one parent be designated for each role and adding a profit margin. This would violate the equal duty principle.

What legal experts have meant, can be easily explained by example. If a custodial parent spends \$80 for tennis shoes, the non-custodial parent may complain that tennis shoes can be purchased for \$25. The lowest price is what has been referred to as the "cost" of tennis shoes. If we consider the total cost of raising children instead of just tennis shoes, we can say that part of the judges job was to answer the questions whether the cost is too low or what is actually spent is too high. While the non-custodial parent might be quoting prices of goods that are cheaper than those the family would normally purchase, the custodial parent might make temporary adjustments to her spending habits in an effort to obtain a higher award. The problem of discovering what is "reasonable" gave rise to the use of standard tables to avoid the complexity of working this question out, item by item, case by case. Judges wanted to know what "normal" is.

²⁹ David M. Betson, *Alternative Estimates of the Cost of Raising Children from the 1980-86 Consumer Expenditure Survey*, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, September 1990; or Lewin/ICF, *Estimates of Expenditures on Children and Child Support Guidelines*, U.S. Department of Health and Human Services, Office of Child Support Enforcement, October 1990; For a summary of his results, see Lewin/ICF, *Estimates of Expenditures on Children and Child Support Guidelines*, U.S. Department of Health and Human Services, Office of Child Support Enforcement, October 1990, table 4.5, page 4-19.

³⁰ here has been some. See Lino, Mark, *Expenditures on a Child by Families, 1993 Technical Report*, Family Economics Research Group, Family Economics Review.

But the question of cost does not encompass the entire question of child support. Although it may seem reasonable to divide the cost between the two parents, new questions arise from the existence of two households supporting the children of separated parents. How much of the second parent's income is used directly in the support of their children? And there is the tricky question of providing a standard of living commensurate with the parents' income. There are special circumstances in which expenses such as medical bills or transportation involved in visitation are much higher than normal. Some parents are remarried, some are not. In other words, whenever "normal" is defined, the first consequent is to discover that many families do not fit the definition. It is probably true that most cases require application of fundamental principles and deviations from "normal" child support models to determine an award that is just and appropriate.

Robert W. Braid, an accounting, finance and economics professor, performed a detailed cost analysis in his own case in New Jersey.³¹ Based on a comprehensive cost and cash flow analysis, he calculated that he should pay approximately \$180 per month to the mother in addition to sharing the direct costs of education for one child in college. Based on the established New Jersey formula, he was ordered to pay \$903 per month, plus half his daughter's college expenses. Mr. Braid found that the judges decision implied that it "must cost \$21,672 a year in after tax money to support one child at home full-time (excluding any medical expense and any money the father spends on vacations, entertainment and hobbies with the boy), and one child spending about 25% of her time at home and the rest in college."

States have displaced their traditional child support definitions with references to the application of child support formulae. Mr. Braid found no legal definition for child support, and therefore had to rely on his own educated view. His definition had no legal standing. Therefore, he was unable to advance any argument that would impact the judges decision to use the established formula without deviation. In Washington, the legal purpose of making a child support award is to increase the amount awarded.³² No state has been able to show correspondence between a clear and detailed basic definition of "child support" and the formula they use to make an award.³³

In this paper, two mathematical approaches are used to derive an equation for the limit between child support and spousal maintenance. To promote understanding among the widest possible audience, examples are often used either instead of or along with abstract mathematics. Adjustments for individual circumstances are also discussed. Once the equations for the upper limit have been derived, they can be used to investigate the effect of awards that are below this limit. In the section entitled "Awards that are 'Just and Appropriate'" it is shown that awards that are higher or lower than the adjusted upper limit

³¹ Robert W. Braid, *The Making of a Deadbeat Dad*, Trial Lawyer, March 1993.

³² P.O.P.S. v. Gardner, Ninth Circuit U.S. Court of Appeals No. 91-36118, D.C. No. CV-90-5344-RJB, P.O.P.S. (Parents Opposed to Punitive Support)

³³ States often provide a definition that is weaker than traditional statutes and rely directly on their support formula for interpretation. In other words, the meaning of their "definition" is that the formula is used to calculate the award. Requests have been made of the U.S. Office of Child Support Enforcement, and as of the date of this submission, they can provide no evidence that any state has an independent definition or has shown correspondence.

violate the equal duty principle.³⁴ Therefore, the “adjusted upper limit” is seen as the award level that is just and appropriate.³⁵

The first is an iterative approach in which each iteration results in a higher standard of living in the custodial parent household. Each time the standard of living is increased, the resulting increase in the custodial parent’s spending on children must again be compensated by a higher child support award. The iterative solution is mathematically cumbersome, but is developed in a way that is easy to understand. The exact equation is much less cumbersome to apply. The term “exact equation” is typically used in mathematics only when there is an alternative iterative approach. The “exact equation” is based on the same theory as its iterative equivalent and provides the same answer. Performing the calculation without iterating makes the process of deriving actual limits on child support much simpler.

Considering the quality of “child cost” estimates, those of intact and single-parent spending are essentially on equal footing. The universal problem of having no common solution to the “cost” question should not cause hesitation to apply the limit theory presented in this paper. The detailed questions that lead to numbers should become focused on customizing the design of an estimating technique specifically in the context of the child support question. In fact, a detailed understanding of the ultimate question is necessary in order to determine the most appropriate cost estimating technique. In addition to its other applications, the limit theory offers contextual information useful for defining the “cost” question in detail. Ultimately, the question we are trying to answer is not; What, on average, do children generally “cost?” The ultimate question is; How much should each child support award be?

“Ability to Pay” verses Income

The equations for finding the limit between child and spousal support will be explained by example in the following two sections. First, we must decide how child support (once it is mathematically defined) should be divided between the parents. Although the form of the limit equation will not be effected by this decision, it will effect the numbers that are used in examples. The most popular method is to divide the total obligation in proportion to the parents’ respective incomes. That is the basis of the Income-Shares model. A more complete model of each parent’s relative ability to pay will be explained and comparisons between the two models will be made throughout the paper. Annual income will be used to calculate the annual limit on child support for a simple case.

A never-married couple living apart has one child. The child has lived continuously with the mother, and for the sake of simplicity, no visitation has ever been exercised and no visitation will be awarded. The child is one year old, and the father has paid no child support. The mother’s personal income has been the only source of financial support for one year. The mother’s net (after tax) income is \$18,000 per year and the father’s is \$25,000 per year. The amount the mother spends on the child is derived from information in her support affidavit as \$3,600 per year, which is 20 percent of her income. The figure has been

³⁴ See also Doris Freed and Timothy Walker, “Family Law in the Fifty States: An Overview,” for commentary on the constitutional roots of the “equal duty principle.” *Family Law Quarterly*, Vol. XIX, No. 4 (Winter 1986), pp. 331-442, 411

³⁵ “Adjusted” upper limit is explained in the section; “Adjusted Limits.”

examined and accepted by both parties and the judge. For comparison, the Income-Shares method is first used to calculate each parent's share.

$$\text{Father's Share} = \frac{25,000}{25,000 + 18,000} = 0.58$$

$$\text{Mother's Share} = \frac{18,000}{25,000 + 18,000} = 0.42$$

Using the Income-Shares method for allocating child support between these parents, the father's share is 0.58 times \$3,600, or \$2,088.00 per year.

It should not be disregarded, that the phrase "ability to pay" appears in traditional statutes concerned with dividing the child support obligation between parents.³⁶ Those statutes and their accompanying case law have a much richer intellectual and practical history than do the highly efficient statistical techniques that have replaced them. A more complete model of "ability to pay" would be better.

Several analysts have computed relative ability to pay by subtracting a self-support reserve from each parent's income.³⁷ There has been a traditional prohibition against forcing a parent below the self-sufficiency level. ". . . the burden on the one paying support should not be so heavy as to preclude the ability to support oneself and one's other dependents."³⁸ As long as the duty of both parents to provide for their children is equal, the same must be true of the recipient.³⁹

This being only an example, a reasonable approximation of the poverty level for one adult of \$8,000 per year will be used as the self-support reserve.⁴⁰ Other expenses can effect ability to pay, but they are left out of this example for simplicity.⁴¹

$$\text{Father's RAP} = \frac{17,000}{17,000 + 10,000} = 0.63$$

$$\text{Mother's RAP} = \frac{10,000}{17,000 + 10,000} = 0.37$$

The father's contribution to the mother should be either 58 percent or 63 percent of the cost of raising their child, depending on whether the self-support rule is applied. Simply

³⁶Oregon, Indiana, are two examples.

³⁷ Judith Cassetty and Frank Douthitt, *Support and Visitation Schedules, Guidelines and Formulas*, in Williams (*ibid.* 3, page III-77); Judge Melson's guidelines were in effect in Delaware in 1985, see Thompson, R.D., *The Delaware Child Support Formula, Report to the 132nd General Assembly*, April 15, 1984; Roger Gay, *Pilot Study on the Development and Evaluation of State Guidelines for Calculation of Child Support Payments* (1990, available from author) and *An Alternative Child Support Guideline for States to Consider* presented at the 7th Annual Conference of the Children's Rights Council, Holiday Inn, Bethesda, MD, April 28 - May 2, 1993.

³⁸ See for example *Hockema v. Hockema*, 18 Or. App. 273, 524 P.2d 1238 (1974)

³⁹ For example; ORS 109.010; 109.030, 1988

⁴⁰ Alternatively, we could calculate the sum of welfare benefits, including AFDC, food stamps, housing support, and so on, for a single adult with no income living alone. The total is undoubtedly estimable even though AFDC is for families with dependent children.

⁴¹ See section: "Adjusted Limits"

enough, choosing the greater number would appear consistent with the quest for an upper limit on child support. The choice has actually been made based on the common necessity for a self-support reserve.⁴² Other adjustments to “ability to pay” will be discussed throughout the paper. For the sake of comparison, computations using relative income will also be made.

Conceptual Approach: Iterative Solution

When the self-support rule is applied to both parents equally, the father’s share is 0.63 times \$3,600, which is \$2,268.00 per year. But payment of that amount adds to the mother’s total income. Assuming the fraction of the mother’s income spent on the child does not decrease in this range, the addition of \$2,268.00 to the mother’s income should result in an increase in the amount she spends on the child of 0.20 times her increase in income, or \$453.60. The father’s additional share is 0.63 of the mother’s additional spending, which is \$285.77. The goal is to compute the father’s share of what the mother will spend on the child once the maximum standard of living increase supportable by child support alone is reached. The following table provides the results for seven iterations, the last of which increases the father’s share by less than one cent. The effect of awarding child support above the amount calculated by this method will be discussed in later sections.

0.63 x 0.20 x \$18,000.00	\$2,268.00
0.63 x 0.20 x 2,268.00	285.77
0.63 x 0.20 x 285.77	36.01
0.63 x 0.20 x 36.01	4.54
0.63 x 0.20 x 4.54	0.57
0.63 x 0.20 x 0.57	0.07
0.63 x 0.20 x 0.07	0.0091
Sum Total	\$2,594.97

Using symbolic terms, we can summarize the iterative approach. The ‘*’ symbol represents the multiplication operation (times).

$$Father's\ s = DadsPart * ChildsPart * \sum_n^{i=1} A_{i-1}$$

$$A_0 = Mother$$

$$A_i = DadsPart * ChildsPart * A_{i-1}$$

Mother is mother’s personal net income.

DadsPart is the father’s relative ability to pay.

ChildsPart is the fraction of income spent on the child.

Father’s s is the child support award.

The new method results from a rational approach to the child support award question. The standard of living increase in the custodial parent household that is solely obtainable from child support has been calculated based on what is known of the custodial parent’s

⁴² Note that the level is adjustable. A young father living with his parents while attending high school may not need as much. A self-employed parent, a parent who provides his own tools, or a parent who acquires the family debt during divorce may need more.

spending behavior. Therefore, a child support award equal to the amount calculated will be based on a reasonably accurate estimate of what the custodial parent will actually spend on children when child support is received.

The question will later arise whether basing child support on the custodial parent's ability to pay will increase dependency on public funds. In fact, the new formula is very direct in dealing with that.⁴³ In the new formula, potential welfare benefits can be included in the custodial parent's income when estimating spending. In that case, the calculation yields as much offset to government payments as the payer can afford. A custodial parent's inability to provide basic support on her own does not have the effect of limiting the offset to public assistance entitlements.

It is apparent why early versions of the Income-Shares method may have failed to produce adequate child support awards for low income mothers. The limit on child support in this example, using a more complete definition for "ability to pay" and including the standard of living increase resulting from child support payments, results in an award limit that is significantly higher than an award calculated by the traditional approach.

A mother with a lower income would benefit by a larger amount from application of the self-support reserve. If the mother's income in this example was at or below the adult poverty level, her share would be 0 percent. Using the Income-Shares method, a mother with an income at the poverty level for one adult (using \$8,000) would be assigned a share of 24 percent. (The father's net income in this example is \$25,000.) The money she would provide for child support would either force her below the poverty level or would be made up from public funds.

Simplifying the Mathematics: The Exact Equation

The total net income of the non-custodial parent (before the child support transfer payment) will be represented by the symbol *Father*. The total net income of the custodial parent (before the child support transfer payment) will be represented by the symbol *Mother*. The parents are expected to spend a fraction of their available income on their children.

Relative ability to pay is calculated by subtracting a self-support reserve (*Re serve*) from income. Note however, that other items of expenditure can be included in this definition.⁴⁴ The fraction of child support that should be contributed by the non-custodial parent (*DadsPart*) is calculated by the following equation.

$$DadsPart = \frac{Father - Re\ serve}{(Father - Re\ serve) + (Mother - Re\ serve)}$$

The symbol *Father's* will be used to represent the amount the non-custodial parent should contribute to child support. In this simple example, that amount is equal to the child support payment. The question to be answered is; How much should *Father's* be?

⁴³ See section: "Poverty and Welfare"

⁴⁴ See section: "Adjusted Limits."

After *Father's* is paid, the mother will have (*Mother + Father's*) in income. Of this, she will spend a fraction of this income (*ChildsPart*) on their children.

$$\text{Mother's} = \text{ChildsPart} * (\text{Mother} + \text{Father's})$$

The child support payment should be *DadsPart* of what is actually spent on their children.

$$\text{Father's} = \text{DadsPart} * \text{ChildsPart} * (\text{Mother} + \text{Father's})$$

In order to make the equation useful, *Father's* must be removed from the right-hand-side. This can be accomplished easily by the following two algebraic steps.

$$\text{Father's} * (1 - (\text{DadsPart} * \text{ChildsPart})) = \text{DadsPart} * \text{ChildsPart} * \text{Mother}$$

THE EXACT EQUATION
$\text{Father's} = \frac{\text{DadsPart} * \text{ChildsPart} * \text{Mother}}{1 - (\text{DadsPart} * \text{ChildsPart})}$

Putting numbers from the first example into the exact equation yields the same answer as the iterative method.

$$\text{Father's} = \frac{0.63 * 0.20 * \$18,000}{1 - (0.63 * 0.20)} = \$2,594.97$$

It is interesting to note what happens if we use the Income-Shares definition for *DadsPart*.

$$\text{'s} = \frac{0.58 * 0.20 * \$18,000}{1 - (0.58 * 0.20)} = \$2,361.99$$

As discussed above, a lower income mother would benefit even more from use of a more complete model of “ability to pay.” What may seem contradictory is that current Income-Shares guidelines often produce results that are above the limit. The upper limit between child support and spousal maintenance has been defined by the total amount actually spent on children. Current guidelines use “economic estimates” indicating what developers would like to see spent. Arbitrarily high estimates of spending are not required to produce guidelines that “improve the adequacy” of child support awards. Inappropriate awards result from increasing the “cost” factor arbitrarily. A much better approach is to improve the relationship between the calculation and the real-life circumstances of the family.⁴⁵

⁴⁵ Additional factors that effect the limit, that are often neglected in current guidelines, are discussed below in the section entitled “Adjusted Limits.”

Differentiating Child Support and Spousal Maintenance

In order to identify the spousal maintenance component in a child support award calculation, it is necessary to calculate the limit and compare it to the result of the award calculation. Anything higher than the limit contains an *a priori* hidden spousal maintenance award. In the example above, the mother spends 20 percent of her income on one child. The purely adult component of the over-payment would be 80 percent of any amount that exceeds the limit. The mother should be contributing 37 percent of the cost of raising their child. Therefore, the amount of spousal maintenance contained in any over-payment is the adult component plus 37 percent of the child's portion of the over-payment.

$$(Adult_Percent + (MomsPart * ChildsPart)) * (Award - Father's)$$

In order to present an example calculation, a modern Income-Shares approach developed by Robert Williams will be used to calculate an award.⁴⁶ The Williams' model was used to develop guidelines in most states that now use the Income-Shares method.⁴⁷ When the parent's combined income is \$43,000 as in our example above, the standard (non-age adjusted) Williams' calculation assigns approximately 21 percent of the parent's combined net income as child support. Of this, the father's share would be 58 percent.

$$Father's = 0.58 \times 0.21 \times \$43,000 = \$5,237.40 \text{ per year.}$$

The limit for a child support award in the example is \$2,594.97 per year. Assuming the mother continues to spend 20 percent of her income on the child, the spousal maintenance portion included in this standard Income-Shares result is 80 percent of the difference, plus the mother's portion of any increase in spending on their child. The spousal maintenance portion calculated as follows.

$$(0.80 + (0.37 * 0.20)) * (\$5,237.40 - \$2,594.97) = \$2,309.48$$

In order for the mother to reach the Income-Shares derived amounts, she would have to spend a total of 21 percent of their combined income on one child, which is \$9,030 per year. After receiving child support payments, this would amount to 39 percent of her total income of \$23,237.40. At the limit, both parents together contribute \$4,119.00 to the support of the child. She should be contributing 37 percent of the total, which is \$1,524.03 per year. In this example, the adult support component in Williams' Income-Shares award would be greater than the mother's share of financial support for the child.

The spousal maintenance portion of the award would be higher if the father had been awarded regular visitation or joint physical custody. Williams' Income-Shares method restricts credit for visitation periods and joint physical custodial arrangements in such a way that no credit is given in many cases even when time with the non-custodial parent is

⁴⁶ Williams, (*ibid.* 3) table 16, page II-78.

⁴⁷ The distinction between age categories used by Williams is not used here because the validity of that aspect of his design has been previously questioned in economics literature. See Mark Lino, (*ibid.* 9); and Roger F. Gay, *An Alternative Child Support Guideline for States to Consider* presented at the 7th Annual Conference of the Children's Rights Council, Holiday Inn, Bethesda, MD, April 28 - May 2, 1993.

significant. Other circumstances can also effect the amount of spousal maintenance in an award.⁴⁸

Adjusting for Changes in “ ”

It has so far been assumed that the fraction of a custodial parent’s income spent on *ChildsPart*) is not effected by the increase in standard of living that results from the receipt of child support payments. This contradicts the observations of a century of economics.⁴⁹ When only small changes in income are anticipated, the difference may not be significant. When the child support award is high, the error may be unacceptable.

The proper limit can be obtained by replacing *ChildsPart* with a new value that corresponds to the higher standard of living. But this creates a mathematical problem. The *ChildsPart* needed for its calculation. One method of obtaining the result is by use of successive approximation with the help of standard tables. Another is finding an exact equation using a formula for predicting changes in the recipient’s spending. An equation for *ChildsPart* (in addition to the exact equation for the child support award) would be quite helpful in any case. Either of the following two equations can be helpful in testing whether a child support award corresponds to the proper target value for *ChildsPart*. Note however, that when a custodial parent has a history of receiving child support, current spending should more accurately reflect anticipated spending.⁵⁰

$$ChildsPart = \frac{Mother' s + Father' s}{Mother + Father' s}$$
$$ChildsPart = \frac{Father' s}{DadsPart * (Mother + Father' s)}$$

Poverty and Welfare

According to the U.S. poverty guidelines, the poverty level for one adult in March 1993 was \$7,471. For one adult and one child living together it was \$9,897. The difference of \$2,426 to include a child is just over 24.5 percent of poverty-level income. Take the example of a custodial mother with income equal to the poverty level for one adult, and a father whose income is at least poverty level for one adult and one child living together. Applying the poverty level self-support reserve to both incomes means that the mother’s relative ability to pay is zero and the father’s is equal to 100 percent of the total child support amount. If we apply the formula, the upper limit is the same as the amount needed to bring the mother’s household to the poverty level.⁵¹

$$Father' s = \frac{1.0 * 0.245 * \$7,471}{1 - (1.0 * 0.245)} = \$2,426$$

⁴⁸ See section: “Adjusted Limits”

⁴⁹ Ernst Engel, *Die Lebenskosten belgischer Arbeiter -- Familien Früher und jetzt*, International Statistical Institute Bulletin, no. 9: 1-74, 1895.

⁵⁰ See section: “Updating Child Support Awards.”

⁵¹ Note that 0.245 is rounded off. The precise number is used in the calculation.

What effect would the application of this formula have on public assistance programs such as AFDC? Let us assume that a child support assurance program is in effect that guarantees families with children, including single-parent households, a level of income equal to the poverty level. The child portion is expected to be spent on children. When the mother's income is below that needed to support one adult, the formula can still be applied without taking into consideration supplemental adult income. We can assume in this case that total contributions from our imaginary system would result in \$2,426 spending on one child in a single-parent household.

Consider a mother with \$3,639 in income plus a potential child support assurance payment to guarantee that \$2,426 is available for their child. Her personal income should still be used in the calculation because we want to know how much the parents can pay on their own and what her share of expenses should be. But we expect her total spending on the child to be at the guaranteed level. Therefore, the money to be spent on the child should equal 40 percent of her personal income. (\$2,426 divided by the sum of \$3,639 and the \$2,426 in guaranteed income)

$$Father's = \frac{1.0 * 0.40 * \$3,639}{1 - (1.0 * 0.40)} = \$2,426$$

The father's share is based on what will be spent on their child, not just what the mother can afford on her own. From a public policy perspective, a perfectly rational target is reached. The parents pay as much as possible to offset the assured benefit. When parents can afford to support their children, the public doesn't. But that is not always the end of the story. Defining the upper limit on child support does not deter the award of spousal maintenance, when appropriate, in order to further increase the standard of living in the custodial parent home.⁵²

One additional point on dealing with low custodial parent income is in order. When the mother's personal income is zero, the denominator in the limit equation is also zero. All the income given to the mother in child support assistance is expected to be spent on children. (*ChildsPart* is 1.0.) The numerator in the equation would also be zero, simply because the mother's income is. Using mathematical terminology, we need to find the limit for the calculation as the mother's income approaches zero. It should be obvious however, that the exact solution will be equal to 100 percent of expected spending. The answer in this example is still \$2,426.

Adjusted Limits

It is obvious that the highest possible financial transfer for child support should occur when the entire cost of children is borne directly by a custodial parent. Visitation, joint physical custody arrangements, and other factors such as tax advantages reduce the natural child support award by effecting the distribution of direct payments and ability to pay. Non-standard expenses such as extra-ordinary medical bills and professional day-care that are not included in standard tables and formulae borne by the custodial parent can increase the natural limit on child support.

⁵² See section: "Spousal Maintenance Awards".

However, increasing expenditure on some things can have the effect of decreasing expenditure on others, because usually the parent's resources do not adjust themselves to compensate for need.⁵³ Therefore, it is not necessarily true that increases and reductions should equal 100 percent of the amount of all non-standard expenses. The natural limit can be adjusted by accounting for non-standard expenses paid directly by each parent and then adjusting the ability of each to pay for standard expenses. A question arises as to whether non-standard expenses should be subtracted from income before the standard calculation. The calculations should be made so that all significant expenses are accounted for when making the final order. Each type of expense ultimately comes out of the same "sugar bowl."

Using limit theory as background, three somewhat complicated situations are discussed below. They have been chosen because they have often been raised in discussions, and reportedly have been treated in a great variety of ways by different judges.⁵⁴

A mother might remarry and chose to remain at home if supported financially by her new spouse. The mother's income would be zero. The new situation may disqualify her from public assistance, even though she is unable to provide any child support. This would preclude using the government assured benefit approach taken in the section, "Poverty and Welfare." The practical effect is that the new family has appointed the new spouse as the guarantor of child support. If we simply consider the wife's income to have become zero, then the payer's share becomes 100 percent (assuming the payer has sufficient income). Generally speaking, this is not an equitable result.

Two technical solutions are possible. Either the new spouse (perhaps in combination with potential government entitlements) is treated as the guarantor of basic support or the calculation is based on the actual expenditure on children by the custodial parent household. In either case, it is logically consistent to also count the new spouse's income when computing relative ability to pay, either at the basic support level or the level of actual spending on children. Failure to do so can create impossible situations. For example, the level of spending in the new custodial home could be much more than the payer can afford. Any award that is disproportionate to the payer's relative ability to pay is inequitable.⁵⁵

A complicated situation exists when a custodial parent houses children from more than one other parent. The upper limit on child support should be calculated in the same way that it is with only one other parent. When computing the custodial parent's relative ability to pay, the average income of the paying parents should be used. Payments by individual payers should be based on their relative ability to pay (compared to each other and the custodial parent) and number of children they support. This does not mean that each payer should pay in proportion to the number of children. When making this calculation, the diminishing cost of multiple children should be applied using a standard table. For example, if the standard for the cost of two children is 1.5 times the cost of one, then the payment by

⁵³ Collection of insurance benefits is an exception.

⁵⁴ For a more detailed and comprehensive discussion, see Roger F. Gay, *An Alternative Child Support Guideline for States to Consider, preliminary report*, presented at the 7th Annual Conference of the Children's Rights Council, approx. 30 pages

⁵⁵ Note that this is a rephrasing of the equal duty principle. It merely presents a rather obvious logical proposition. Unfortunately, it is not yet part of in post Family Support Act case law.

the payer who has two children in the custodial parent's home should be weighted by just 1.5 instead of 2.

A payer's ability to pay is also effected by establishing a new family. Accounting for a reduction in ability to pay is a simple matter. A reduction in the payer's ability to pay reduces the fraction of child support that should be paid to the custodial parent. Equations can be developed which find the corresponding balance for dividing assets between households. The first step toward completing this task is to define an unambiguous policy that analysts can use to derive the equations. How equal are children in different families? If they are not equal, in what way are they not equal? Child support is a quantitative question. How unequal are they?

This has been a difficult political question. The man who has married a mother receiving child support might say that the first family is more important. The man who is paying support might believe that all his children are equal. There is an important difference in comparing the limit theory to current guideline calculations. The current methods operate by taking a portion of the payer's buying power, without regard to the actual needs of the children of the recipient household. The underlying reality of the political question is much different if child support calculations are made according to children's needs, and basing each parent's share on their relative ability to pay.

Minimum Child Support

The emphasis in this paper has been to define a scientific method for establishing maximum levels of child support. This is a timely contribution, since recent political reforms have led to dramatic increases. A scientific method for testing the reforms has been needed. But this is not to say that the highest numbers obtainable, illustrated by the simple example in this paper, are appropriate in every case.

Spending is sometimes inelastic. In many cases, the receipt of child support payments will not result in a change in day-care arrangements for example. In situations where it does, there will still often be a fixed cost for the new arrangement. Additional income resulting from a higher standard of living will not effect its cost.⁵⁶ The theoretical lower limit is reached whenever all costs are fixed. The corresponding minimum limit is obtained by ignoring the standard of living increase in the calculations. Subject to adjustments discussed above, the lower limit is still *DadsPart* of what is actually spent on children. An illustration is given in the following section.

Accounting for Fixed Expenses

There has been debate on the subject of fixed costs. What portion of any additional money will be spent on children? One view is that whenever one cost is fixed, additional money will be used to increase spending on something else.⁵⁷ This view has been prevailing in the design of child support guidelines. The practical result is that the payer's share of non-standard expenses have simply been added to standard awards. This is not an equitable procedure. When money is spent on a fixed cost such as day-care for example, the parent's

⁵⁶ Although it might effect a custodial parent's ability to pay for it.

⁵⁷ *ibid.* 3

ability to pay for other things is reduced. An example of inelasticity of spending can be given without complicated mathematical analysis.

Take the example of a single mother whose net personal income is just sufficient to provide for herself and two children at the poverty level without sending either to a licensed day-care center. In her request for child support from the father, she proposes to send their two children to a center costing \$300 apiece. In this example, the father's "ability to pay" is equal to \$600 per month, exactly the cost of the proposed day-care arrangement. If the proposal is accepted, 100 percent of the \$600 in child support will be absorbed by the cost of day-care. Nonetheless, it should be recognized that the standard of living in the mother's household increases by the \$600 in revenue contributed by the father.

Of course, the calculations in every situation are not so convenient. Let us increase the incomes of the parents in this example, so that the mother is able to provide day-care and other necessities. The father's income is also higher, so that he is able to provide an additional standard of living increase. What is the balance between the additional cost of raising children for day-care and the reduction in ability to pay experienced by parents who pay for it?

We can find a solution by deducting the proper share of the day-care expense from each parents' ability to pay.⁵⁸ What is spent on the children will be based on the remainder of their income. The adjustment to ability to pay is found by subtracting $DadsPart * DayCare$ from the father's ability to pay and $MomsPart * DayCare$ from the mother's ability to pay. This might appear to effect the parent's relative ability to pay. Relative ability to pay is not effected. It is easily confirmed that the new equations for $DadsPart$ and $MomsPart$ are algebraically equivalent to the originals. Of course, care should always be exercised to assure that proposed expenses do not exceed the parents ability (including government entitlements) to pay for them.

Updating Child Support Awards

In the first example, the father had paid no child support for the first year of his child's life. A limit on child support was calculated that included a standard of living increase for the mother's household. When child support awards are updated, spending by the custodial parent may already reflect a standard of living increase due to payment of child support in the past. The majority of single-mothers in government surveys are receiving private child support payments, public assistance, or both. So, the same is true when using average data on single-parent spending.

The correct value for $ChildsPart$ can be easily obtained by adding the old child support award to the recipient's income. That is easily confirmed by replacing the mother's original spending with $ChildsPart * (Mother + Father's)$ and her income with $(Mother + Father's)$. Dividing spending by income obviously reduces to $ChildsPart$. Using this direct technique, it is easier to find an accurate value for $ChildsPart$, because otherwise we would have to speculate more than necessary on the effect of child support payments on the custodial parent's spending patterns.

⁵⁸ This approach was previously taken by Judge Melson, the architect of the Delaware-Melson formula.

The final calculation is made in the same way as before, except with the new value of *ChildsPart*. No change should be made in the definition of either parent's income. The value of *Mother* is included in the calculation without adding child support received. Relative ability to pay is still calculated using the parent's income without adjusting for the old child support award. It should be obvious that if there is no change in the circumstances of either parent or the children, the final answer should remain the same as well.

Awards that are "Just and Appropriate"

The amount of child support that is just and appropriate depends on children's needs, family circumstances, and choices made by parents. The character of individual circumstances, those of each independent family, are not the same as the average or aggregate character of the general demographic groups they are associated with. This is the point often missed by those who favor simple statistical solutions. There is much diversity of needs and much discretion is normally exercised among intact and divided families. Therefore, the ability to ascertain fairness in individual cases is essential to fair treatment in general. It is also a legal requirement of the Family Support Act.⁵⁹

Purely economic arguments favoring current high award levels depend on two basic assumptions. One is that the economic effects of split households demand a standard of living transfer to the primary residence of the children.⁶⁰ The other is the expectation that increasing the income of a primary care parent will increase spending on children.⁶¹ These economic assumptions will not be discussed at length in this paper, since that would demand a much lengthier analysis that would distract from the main point. There are several important points that can be made in the context of this presentation.

Beyond subsistence level, much of spending is discretionary.⁶² When national data on family spending in particular consumption categories⁶³ is plotted, it looks like a shot-gun scatter plot. Economic analysis comparing pre- and post-divorce standard of living is highly speculative, is based on unsubstantiated assumptions about family spending patterns, and leaves out many important considerations that would tend to show that post-divorce standard of living is more nearly equal among the households of split parents.⁶⁴

⁵⁹ See section on evaluation of guidelines. Deviation is also required in individual cases when the presumptive result would be unjust or inappropriate. In order to deviate, judges must be able to identify specific reasons for deviation. Therefore, the Family Support Act cannot be implemented without the ability to ascertain fairness in individual cases.

⁶⁰⁶⁰ Lenore J. Weitzman, *The Divorce Revolution, Unexpected Consequences for Women and Children in America*, The Free Press, New York, 1985; and David Betson, Erik Evenhouse, and Siobhan Reilly, *Trade-offs implicit in child-support guidelines*, *Journal of Policy Analysis and Management*, volume II, Winter 1992, p 1-20.

⁶¹ This is the assumption applied by Williams (*ibid.* 3) relying on estimates found in the following: Espenshade, Thomas J., *Investing in Children, New Estimates of Parental Expenditures*, The Urban Institute Press, Washington, D.C., 1984.

⁶² This is apparent from direct analysis of data in the Consumer Expenditure Survey, Bureau of Labor Statistics (any survey for any year), and is pointed out in discussion by Lazear and Michael (citation 7).

⁶³ ... such as food, clothing, shelter, transportation, entertainment, and medical expenses,

⁶⁴ *ibid.* 34, Weitzman and Betson use the same approach to estimating pre- and post-divorce standard of living differences. Betson's paper provides a short list, including items such as visitation and tax consequences that are not included in his standard of living analysis. For a critical review of Weitzman's analysis, see the following. Abraham, Jed H., 1989, *The Divorce Revolution Revisited: A Counter-Revolutionary Critique*, Northern Illinois University Law Review, Vol. 9, No. 2, p. 47.

Rebuttal to the increased investment theory is given in the section entitled; "Promoting Investment in Children." What is shown in this paper is that there is a natural limit to the effectiveness of child support transfers in increasing spending on children. In combination with an understanding of the extent to which spending by adults is discretionary, the logical conclusion is that actual spending by the adult recipient of child support is the most important indicator of whether a particular child support award is fair or reasonable.

A problem arises in the use of evidence on spending by single parents. Some parents have been receiving child support, others have not, and others receive only part of what is due.⁶⁵ If circumstances in the family have changed, the appropriate update may require only a partial adjustment to the existing award. The limit equation presented in this paper, is appropriate in all circumstances. The equation uses the parents' current income, reasonable projections of spending during the period when child support should be received, and accounts for an appropriate standard of living increase regardless of income history.

An obvious question is; What happens when a child support award is less than the adjusted upper limit? The equation developed for finding the upper limit can also be used to answer this question. There is a definite answer as long as we remain consistent in the way the equal duty principle is expressed. An example was presented in which the father's net available income is \$25,000 and the mother's is \$18,000. The mother is spending 20 percent of her income on one child. The total combined child support is \$4,119. The father's share is 63 percent of that amount and the mother's share is 37 percent. Take these two percentages, representing the parents relative ability to pay, as the test criteria for adherence to the equal duty principle.

What happens when the father's contribution is reduced from \$2,594.97 to \$2,000 per year? The mother's total income, including child support payments, would be \$18,000 plus \$2,000, which is \$20,000. Of this, she spends 20 percent on one child. Therefore, we expect the mother to spend \$4,000 per year in child support. In that case, the parents would be paying a 50-50 share. By comparison with the established values for relative ability to pay, the lower award also violates the equal duty principle. The adjusted upper limit is also the adjusted lower limit. Therefore, the just and appropriate amount of child support can be derived using the adjusted limit equation.

Evaluating Child Support Guidelines

The Family Support Act of 1988 established a requirement for periodic review and evaluation of all state child support guidelines.⁶⁶

. . . , and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts

There has been no objective, detailed criteria for determining whether guidelines meet the requirements of federal law. The Family Support Act provided general criteria for the application of child support guidelines.⁶⁷

⁶⁵ 3. U.S. Bureau of the Census, Child Support and Alimony: 19xx, Current Population Reports, Special Studies, Series P-23. Found in any year.

⁶⁶ P.L. 100-485, Oct. 13, 1988, Sec. 103,b

There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

In order to meet the requirements for application of child support guidelines, states must assure that calculated awards are just and appropriate. When an award is calculated for a particular case, there should be objective criteria for determining whether the award is just and appropriate. What is “just?” What is “appropriate?” Federal law is silent on the essential details.

Litigants trying to prove that the application of a child support guideline is “unjust” or “inappropriate” in their case have been asked to do so without knowing what just and appropriate means.⁶⁸ The same technical problem is faced by child support guideline committees who must attempt to review their guidelines to determine whether “their application results in the determination of appropriate child support award amounts.”

Clearly, objective criteria for determining whether guidelines are designed properly are needed. Definitive statements and mathematical tools are necessary to achieve a proper balance between the strength of presumptive guidelines in determining awards and litigation to determine whether a particular award is appropriate. The development of definitive mathematics for differentiating between child support and spousal support is an essential step in fulfilling the requirements of The Family Support Act.⁶⁹

Simplifying Child Support Guidelines

One of the desires expressed by child support committee members and judges is that guidelines should be simple. Simplifying child support guidelines is not the same as simplifying their application. This author has previously argued that the best approach to building guidelines that are easy to use comes from maintaining a relationship between child support calculations and the real-life factors that effect the award decision.⁷⁰ This is also an essential part of assuring that awards determined by guidelines are just and appropriate.

Consider the alternative. Begin the process of calculating an award by applying numbers that at best have an obscure, fundamentally off-target relationship to the circumstances presented in court. How do you decide whether the standard award is

⁶⁷ *ibid.*, Sec. 103,a

⁶⁸ *ibid.* 5, *Fitzgerald v. Fitzgerald*

⁶⁹ Additional commentary on design requirements for child support guidelines is given by the author of this paper in the Proceedings of the Seventh Annual Conference of the Children’s Rights Council (Washington, DC, 1993) and in several reports available from the author.

⁷⁰ Roger F. Gay, *Rational Basis is the Key Focus in Emerging 'Third Generation' Child Support Technology*, Seventh Annual Conference of the Children’s Rights Council, Holiday Inn Bethesda, 1993 and *Child Support Guidelines: Resolving the Dilemma, A Summary Report on Design of Federally Mandated Child Support Schedules*, Intelligent Systems Research Corporation, 1990

appropriate in a particular case? If a deviation is needed, how should it be calculated, and on what information should the calculation be based?

When no deviation is appropriate, the standard calculation should be as simple as possible, just as it is in current guidelines. But it should also be easy to understand why it is appropriate in that case.

Promoting Investment in Children

It has been implied in policy debate that increasing child support awards will dramatically improve the economic well-being of children.⁷¹ But does it perform well in that role? University of Chicago Economists Yoram Weiss and Robert Willis studied transfers among divorced couples.⁷² The amount that effectively transfers from non-custodial parents to the care of children depends on children's needs, family circumstances, and custodial parent choices. Weiss and Willis estimated that in some cases as little as one additional dollar is spent on children for each sixteen dollars in payment.

In the examples below, comparisons are made between spending on children and custodial parent income with and without receipt of child support payments. The limit theory will be applied to the specific question; How much impact should we expect child support payments to have on a custodial parent's spending behavior?

In the rather extreme example in which the mother could not afford day-care and the father was just able to pay for it, total spending after payment of child support would be about 97 percent of the mother's net income. But this result is only reached by adding the fixed expense of day-care that the mother could not provide on her own. The mother herself was expected to continue to contribute 24.5 percent (at poverty rate) of her income to child support. Nonetheless, in this low income example the mother's situation has improved dramatically. When needed services are not otherwise affordable, it is reasonable to expect that income for those services can have a significant impact on the recipient's life.

When the mother's income exceeds the poverty level by a comfortable margin, the comparison is not so dramatic. In the first example above, the mother's net income is \$18,000 and the father's is \$25,000. Including child support payments, her income is comfortably in the middle class. At the limit, the combined contribution of both parents to the support of one child is \$4,119. This is 22.9 percent of the mother's net personal income, only 2.9 percent higher than her contribution alone. In this situation, the payment of child support has increased the mother's income by 14.4 percent, but has resulted in a much smaller increase in spending on the child. Spending on the child is increased only by *ChildsPart* of the award.

This last example illustrates the reason a private child support award is not generally the proper mechanism to promote increased investment in children. There are natural limits

⁷¹ Irwin Garfinkel, 1979, *Welfare Reform: A New and Old View*, The Journal of The Institute for Socioeconomic Studies, Volume IV, Number 4, Winter, 1979; and Ronald Haskins, Andrew W. Dobelstein, John S. Akin, and J. Brad Schwartz, *Estimates of National Child Support Collections Potential and the Income Security of Female-Headed Families*, Final Report, Office of Child Support Enforcement, April 1, 1985.

⁷² Yoram Weiss and Robert Willis, *Transfers among divorced couples: evidence and interpretation*, Journal of Labor Economics, volume II, October 1993, p 629-79.

to the effectiveness of child support transfers for improving the economic well-being of children because spending behavior by the recipient of the transfer is controlled by the recipient's choices. The most effective and appropriate role of child support is what it has traditionally been, a non-custodial parent's share of the actual and necessary expenses of raising children.

The focus of discussion on political reforms is a practical one. Many people believed that increases in private child support awards would have a dramatic effect in lowering dependence on public assistance. This has turned out not to be true.⁷³ Oddly enough, the belief seemed to be scientifically supported. Testimony before Congress had often relied on average values for parental income, combining the purchasing power of all income groups into one.⁷⁴ The critical flaw in that analysis is obvious. The income combinations of individual parents must be considered. Single mothers with low income do not benefit when higher awards are paid by fathers with higher income to mothers with higher income. Fathers with low income cannot afford to pay high amounts of child support to mothers with low income.

Gender-related Inequality

Another consideration given in the debate on child support is that on average, women earn less than men.⁷⁵ This has raised the question whether child support awards should be higher, since it is most often that men pay child support and women receive it. This would tend, statistically, to offset some of the gender-related inequality of earnings. The method presented in this paper accounts for income differences in a more precise way. In any case in which the payer's income is significantly higher, the difference is expressed in the parents' relative ability to pay. This is of course, a traditional approach.

Although not a new idea, it is still worthy of discussion. Guidelines that focus on ability to pay, in contrast with the average or assumed effects of income, deal more directly and appropriately with income inequalities. It is important to recognize that this is a positive effect of comprehensive and appropriate design. Using general statistical measures, the answers may be coincidentally appropriate for some, but will be wildly inappropriate for many others. Our current case in point is the Income-Shares model. When the standard number table represents what parents actually spend on children, low income mothers receive less than the support they need from higher income fathers. When the numbers are adjusted upwards to compensate for this effect, a disproportionate amount is ordered in cases where ability to pay is more nearly equal and when income disparity is reversed.

⁷³ Data and analysis is published in *Written statement of Roger F. Gay on the subject of the Changes in the Poverty Rate and Distribution of Income*, submitted for the record to the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, September 10, 1992.

⁷⁴ This approach is still very popular among advocates for across the board increases in awards. For examples, see *Child Support Enforcement*, Hearing before the Subcommittee on Human Resources of the Committee on Ways and Means, One Hundred Third Congress, June 10, 1993; testimony from Center for Law and Social Policy, U.S. Commission on Interstate Child Support, Children's Defense Fund, National Women's Law Center, United States Catholic Conference, Women's Legal Defense Fund, Association for Children for Enforcement of Support, Inc. (ACES), U.S. Department of Health and Human Services Office of Planning and Evaluation.

⁷⁵ Lenore J. Weitzman, *The Divorce Revolution, Unexpected Consequences for Women and Children in America*, The Free Press, New York, 1985; and David Betson, Erik Evenhouse, and Siobhan Reilly, *Trade-offs implicit in child-support guidelines*, *Journal of Policy Analysis and Management*, volume II, Winter 1992, p 1-20.

Application of the formulae presented in this paper leads to a clear conclusion that a spousal maintenance award is a much more appropriate mechanism for dealing further with income inequality. There is a definitive difference between child support and spousal maintenance. A spousal maintenance award should only be made in cases where it is appropriate. The effects of including a margin of spousal support in standard child support formulae are as random as the variety of situations faced by separated parents. The following section explains how the award of spousal support can be balanced with a child support award to provide an additional standard of living adjustment for the entire custodial parent household.

Spousal Maintenance Awards

Spousal maintenance can be awarded separately when appropriate in order to raise the standard of living in a custodial parent household. Following the mathematical reasoning to this point, it should be obvious that any increase in income in the custodial parent household can potentially increase the amount spent on children, and therefore increase the natural limit of child support.

For the sake of discussion, assume again that government welfare programs guarantee every single-parent household a poverty level income for all family members. At the same time, imagine a government policy intended to move all single-parent households off welfare whenever the non-custodial parent is able to pay the required support. What should the amount of spousal maintenance be in order to justify a target child support award that would reduce public assistance to the minimum amount necessary? The solution is obvious. The non-custodial parent would be ordered to pay as much as he or she can until the government assured support level is reached. But this pat answer is only good in the limited case of welfare recipients. When the amount of child support ordered is restricted by application of the equal duty principle, the division between child and spousal support is not arbitrary.

For general use, a formula for calculating the amount of spousal and child support needed to bring the custodial parent's income to any target level would be convenient. A small amount of algebra yields the equations for spousal and child support to obtain a target standard of living for the entire household. The target standard of living is equal to the amount of total income that the custodial parent will have, including personal net income, child support, and spousal maintenance, adjusted to the number of people supported by that income. The amount spent on children will be used to specify the target. The spousal maintenance component can then be calculated using the formula given below.

Let us say that an attorney for a custodial parent wishes to justify an increase in the standard of living in the custodial parent household such that child support is equal to \$3,000 per year. For the sake of simplicity, there is one child, the case involves a father who will not spend time with the child and there are no adjustments to be made for any other reason. The father's income is \$25,000 per year. The calculations are quite simple as long as we know the percent spending on the child by the mother. In this example, she spends 23 percent of her income on the child. The total income needed by the mother, including her income, spousal and child support, is \$3,000 divided by 0.23, which is \$13,043.48. Since we know in advance what the child cost is, it is easy to find the adult component of the target amount of spousal maintenance.

$$Adult_Component = \frac{Child_Support(Target)}{ChildsPart} - Child_Support(Target) - Mother$$

Let us say that the mother's income is \$9,000 per year. To spend \$3,000 on a child, the mother needs \$3,000 plus an additional \$1,043.48.

$$Adult_Component = \frac{\$3,000}{0.23} - \$3,000 - \$9,000 = \$1,043.48$$

All that needs to be done to find the target spousal maintenance award is to compute the mother's share of child support (*Mother's*) and add that to the adult component.

$$Mother's = \frac{Child_Support(Target) * (Mother + Adult_Component - Reserve)}{Father + Mother - (2 * Reserve) - Child_Support(Target)}$$

$$Spousal_Maintenance(Target) = Adult_Component + Mother's$$

When performing the computation, it is advisable to check to see that the answers are correct. To check the spousal maintenance award, add *Spousal_Maintenance(Target)* to the custodial parent's income and subtract it from the non-custodial parent's income. Then compute the child support award, beginning with relative ability to pay. The new *Mother's + Father's* should be equal to *Child_Support(Target)*. The following computations are based on our example, with a child support target of \$3,000.

$$Mother's = \frac{\$3,000 * (\$9,000 + \$1,043.48 - \$8,000)}{\$25,000 + \$9,000 - \$16,000 - \$3,000} = \$408.69$$

$$Spousal_Maintenance(Target) = \$1,043.48 + 408.70 = \$1,452.18$$

$$DadsPart = \frac{(\$25,000 - \$1,452.18) - \$8,000}{\$25,000 + \$9,000 - \$16,000} = 0.86377$$

$$Father's = \frac{0.86377 * 0.23 * (\$9,000 + \$1,452.18)}{1 - (0.86377 * 0.23)} = \$2,591.31$$

$$Child_Support(Target) = \$2,591.31 + \$408.69 = \$3,000.00$$

Together with the father's share of child support (*Father's*), he would pay the entire cost of raising their child and additional money to the mother so that she can afford to support their child at the target standard of living. In the section entitled, "Differentiating Child Support and Spousal Maintenance," an example was given in which application of a modern Income-Shares formula gave a similar result (numerically) without differentiating between child support and spousal maintenance.

Discussion

According to traditional legal doctrine, the child support obligation is based on the actual and necessary needs of children and divided between parents in proportion to their

relative ability to meet those needs. The presumptive use of modern child support calculations has increased child support awards from levels that had been awarded by judges who had been independently applying these principles.

One of the important questions for guideline developers is why the use of guidelines has increased child support awards. There are at least three commonly understood answers to this question. Numeric tables in guidelines use estimates of intact family spending instead of actual expenses incurred by the custodial parent. The estimates used include a higher than marginal percentage of expenditures on joint needs such as housing and transportation. And consideration for factors that would naturally reduce the child support award, such as visitation, joint physical custody arrangements, and tax credits have been greatly reduced or eliminated for most families.

Traditional child support was paid by the person not given primary care of children, in an amount that “constitutes just and proper contribution toward the support and welfare of such children.”⁷⁶ Guidelines should be developed with concern for both the justice in the decisions made and the perception of justice among those whose lives it effects.⁷⁷ Basic calculations should correspond to a reasonable child support doctrine and it should be clear that facts in individual cases impact on the decision in a rational way. Several key features should be incorporated into the next generation of guidelines.

It has been shown in this paper that there is a natural limit to the effect of child support transfers on spending on children. In order to adhere to the equal duty principle, it is necessary to base child support awards on what will actually be spent on children during the time period that the payments are being made. Single-parent spending patterns and a marginal rate for allocating expenditure on joint needs should be used for the creation of numeric tables.

Supplemental income for maintenance of a household should increase as the custodial parent’s ability to maintain a household decreases. In other words, assuming a comparison between payers with equal and sufficient ability to pay, a custodial parent with a low income should receive a higher fraction of housing, transportation, entertainment, and possibly health care and insurance costs than would a custodial parent with a middle or higher income.

Housing and transportation expenses offer the easiest explanations. The correlation between these expenditures and income is strongly positive. In other words, the more people make, the more they spend. This general rule is independent of whether they have children. People with more children actually tend to spend less on housing and transportation than those without. The child support payment offsets expenditure on children, thereby freeing some of the custodial parent’s income for personal investment in houses and other things. It has the effect of raising the standard of living of the entire household. Care should be taken that expenditures counted as child costs are actually child costs, rather than adult investment.

⁷⁶ Oregon statute, 1989 ORS 107.105

⁷⁷ *ibid.* 3

There should be a resurgence of interest in circumstances that reduce the natural limit of an award, such as visitation costs and tax advantages. It is generally understood that visitation often reduces the financial burden on custodial parents at the expense of non-custodial parents. In lower income homes this can cause a conflict. Part of the child support payment may be necessary to maintain the primary home and to pay other necessary expenses. This can be handled easily by applying a partial exemption in such cases.⁷⁸

Negative stereotypes should not be presumed in standard calculations. Examples include the following. Fathers often take lower paying jobs in order to obtain a smaller child support order. Fathers jump from job to job in order to pretend they are unemployed or to avoid child support collections. Fathers become unemployed voluntarily to avoid child support. Self-employed people usually under-report income. Many of these popular stereotypes represent irrational economic choices and there is no valid evidence that they represent the common behavior of parents. Parents are left with a bizarre choice whenever these and other negative stereotypes are built into guideline calculations. Either accept awards that are inappropriate or adopt a lifestyle that fits the stereotype.

Conclusion

Under the pressure of the Child Support Enforcement Amendments and The Family Support Act, the scientific / political work on child support guidelines in the 1980s produced results that are often better described as a bizarre collage of ideas than coherent technology for the courts. The primary flaw in the process has been a lack of meaningful analysis and definition for key goals such as “improving the adequacy of child support awards.” No fundamental research indicated that child support technology was ready for use as a presumptive calculator. The political will raced far ahead of technical developments. As a direct consequence, many of today’s child support laws are lacking in such essentials as a basic legal definition of “child support.”

As the science and engineering of child support decision making tools improves, it appears more likely that current guideline calculations will be found to be constitutionally flawed. The Income-Shares method, currently used in more states than any other formula, provides erratic results compared to more complete models of post divorce family circumstances. As the models improve, the arbitrary nature of current guidelines will become more apparent. But those same advancements could also lead to better guidelines, compensating for many of the same flaws they expose.

It is difficult to predict how new knowledge will impact the political and judicial system. One application of limit theory is in litigation. A technique for defining the difference between child support and spousal maintenance is an important tool for those wishing to show guideline results are too high. The fact that the equal duty principle is also violated whenever awards are too low offers other litigants an opportunity to apply the theory. The evaluation of existing state guidelines can also be improved. The quality of any evaluation of child support guidelines depends on having tools available that can be used for making objective, comparative judgments.

⁷⁸ Formula for accounting for visitation effects can be found in an article by Maurice R. Franks, *How to Calculate Child Support*, Case & Comment, January-February, 1981. The partial exemption can be handled in the way Franks handles non-time-divisible expenses. See the section in his paper entitled; “How to Handle the Extraordinary expense.”

During the 1980s, reformers tied a sense that the equal duty principle is constitutionally mandated with the belief that some child support orders were too low. The reaction has been major change in the way child support is calculated. The good news is that child support awards have increased in many of those cases in which inequity previously existed. The bad news is that the equal duty principle has not been a central feature in the design of new guidelines. The inequity has merely been shifted to different income groups.⁷⁹

There are fundamental limits to the effectiveness of financial child support as a mechanism for improving the lives of children. More careful consideration of the effects of financial transfers are needed to produce equitable results for separated parents and policies that are beneficial to children. Contrary to the currently popular view, maximizing income to custodial parents does not always maximize the standard of living of children. Careful application of the equal duty principle can go a long way toward improving the effects of child support award decisions.

⁷⁹ *ibid.*, *Pilot Study on the Development and Evaluation of State Guidelines for Calculation of Child Support Payments*

