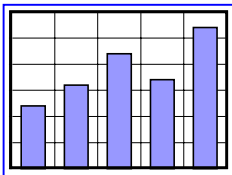


**The “Cost Shares”  
Child Support Guideline:  
A Working, Superior Alternative  
To Current Guidelines<sup>©</sup>**

Presented to the  
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on Child Support  
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## Georgia's Child Support Guidelines

The amount of the obligor's child support obligation shall be determined by multiplying the obligor's gross income per pay period by a percentage based on the number of children for whom child support is being determined. The applicable percentages of gross income to be considered by the trier of fact are:

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

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

### Deviations allowed based on:

- (1) Ages of the children;
- (2) A child's extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available;
- (3) Educational costs;
- (4) Day-care costs;
- (5) Shared physical custody arrangements, including extended visitation;
- (6) A party's other support obligations to another household;
- (7) Income that should be imputed to a party because of suppression of income;
- (8) In-kind income for the self-employed, such as reimbursed meals or a company car;
- (9) Other support a party is providing or will be providing, such as payment of a mortgage;
- (10) A party's own extraordinary needs, such as medical expenses;
- (11) Extreme economic circumstances including but not limited to: (A) Unusually high debt structure; or (B) Unusually high income of either party or both parties, which shall be construed as individual gross income of over \$75,000.00 per annum;
- (12) Historical spending in the family for children which varies significantly from the percentage table;
- (13) Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact;
- (14) In-kind contribution of either parent;
- (15) The income of the custodial parent;
- (16) The cost of accident and sickness insurance coverage for dependent children included in the order;
- (17) Extraordinary travel expenses to exercise visitation or shared physical custody; and
- (18) Any other factor which the trier of fact deems to be required by the ends of justice.

HOWEVER, courts rarely deviate and the statute gives no guidance on how to deviate in a consistent manner for similarly situated parties. Key factors should be part of the formula.

## Background

Presumptive child support guidelines were enacted by the states by the end of 1989 to comply with the federal Family Support Act of 1988 in order to retain certain federal funding. In retrospect, it is clear that the guidelines implemented were and are very flawed in terms of their economic foundation. Today's child support guidelines, as implemented, are based on two general models with only a few minor exceptions:

- **Income Shares.** The income shares guideline is based on indirect estimates of child costs for pre-divorce households. These indirect estimates establish the child(ren)'s entitlement to that share of the parents' combined income. Hence, "income shares" refers to the child(ren)'s share of the parents' income as an entitlement—not the sharing of the obligation between the two parents. This approach has been marketed only by Policy Studies, Incorporated of Denver, Colorado. The initially implemented version was based on the research of Thomas Espenshade. The current version is based on the research of David Betson. The definition of child cost used in income shares guidelines is not generally accepted by the academic community and leads to upwardly biased estimates of child costs.
- **Percentage of obligor-only income.** This guideline sets awards as a percentage of obligor-only income with higher percentages for greater numbers of children being supported. Some states apply the percent to gross income while other states use after-tax income. There is no economic basis for using fixed percentages over a wide range of incomes nor for only considering the obligor's income and ignoring the custodial parent's income.

## Unsound Economic Basis of Current Guidelines

### Original Income Shares

For both the original version of income shares and for the current version, child costs are not defined in terms of out-of-pocket expenses as often assumed by the public. For the original version of income shares, child costs are defined according to how food consumption changes between varying types of families according to family size.

The original income shares definition of child costs as used by Policy Studies, Incorporated is essentially:

Based on intact family data, when comparing two families (one with children and one without children), the child cost is the difference in household spending between the two families when both consume equal proportions of their budget on food.

This is a "standard-of-living" equivalence definition—not a measure of money spent on actual child cost items. In this definition, there are no specific, out-of-pocket components for child costs for an interested party to rebut in court.

### **Current Income Shares Definition**

David Betson of Notre Dame University revised the underlying data used by Policy Studies, Incorporated for income shares cost tables. He used a “Rothbarth” methodology—hence, his estimates are often called Betson-Rothbarth estimates. The Rothbarth technique presumes that when families of two different sizes (with and without an additional child) spend the same amount of money on purely adult goods, then both families are equally well off and the difference in total household spending is the child cost. This methodology is an income entitlement approach in which the amount of the child’s entitlement to each parent’s income (not specific costs) is presumably based on an estimate of child costs. This definition of child costs is highly suspect as discussed in the following text box.

The current income shares definition of child costs used by Policy Studies, Incorporated is essentially:

For intact families—one with an additional child and one with no additional child—the child cost is the difference in household spending between the two families when both families spend equal dollar amounts on adult clothing, alcohol and tobacco. Child costs are defined by comparing changes in household spending on adult clothing, alcohol, and tobacco.

Income shares basically determines a child’s entitlement to each parent’s income based on changes in household spending patterns of adult clothing, alcohol, and tobacco.

### **Percent of Obligor Income Only**

This type of guideline is based mostly on work of Jacques van der Gaag of the Institute for Research on Poverty, University of Wisconsin, Madison.<sup>1</sup> These guidelines were intended only for welfare cases. Accordingly, the study assumed mother had the children 100 percent of time, the mother had no income, the father was a low-income worker and paid little in income taxes, and that the child support payment would not exceed the low level needed to reimburse welfare benefits paid to the mother. Current obligor-only guidelines violate almost every assumption of the underlying study.

### **Rebuttal of Current Guidelines**

Current guidelines, according to federal regulations, should be rebutted if it is shown that the presumptive award is unjust and inappropriate. If the case before the court does not fit with the economic assumptions underlying the guideline or if the economic assumptions are flawed, then such a showing should rebut the presumption. As seen below, neither the income shares model nor the obligor-only model are appropriate for more than a small percentage of cases based on their economic circumstances.

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<sup>1</sup> Since the academic work on obligor-only guidelines was largely done at the University of Wisconsin, Madison, and since the state of Wisconsin was one of the first states to implement these guidelines as a presumption, obligor-only guidelines are often referred to as “Wisconsin-style” guidelines.

## **Rebuttal of the Presumption of Applicability of Georgia's Child Support Guidelines**

Georgia's child support guidelines were taken from child support guidelines initially implemented by the state of Wisconsin for Title IV-D cases. The underlying economic study and conditions for appropriate application of the guidelines were conducted and published by Dr. Jacques van der Gaag in 1982.<sup>2</sup> The guidelines were designed to be applicable only if the household had certain economic characteristics. These underlying economic characteristics of the household are:

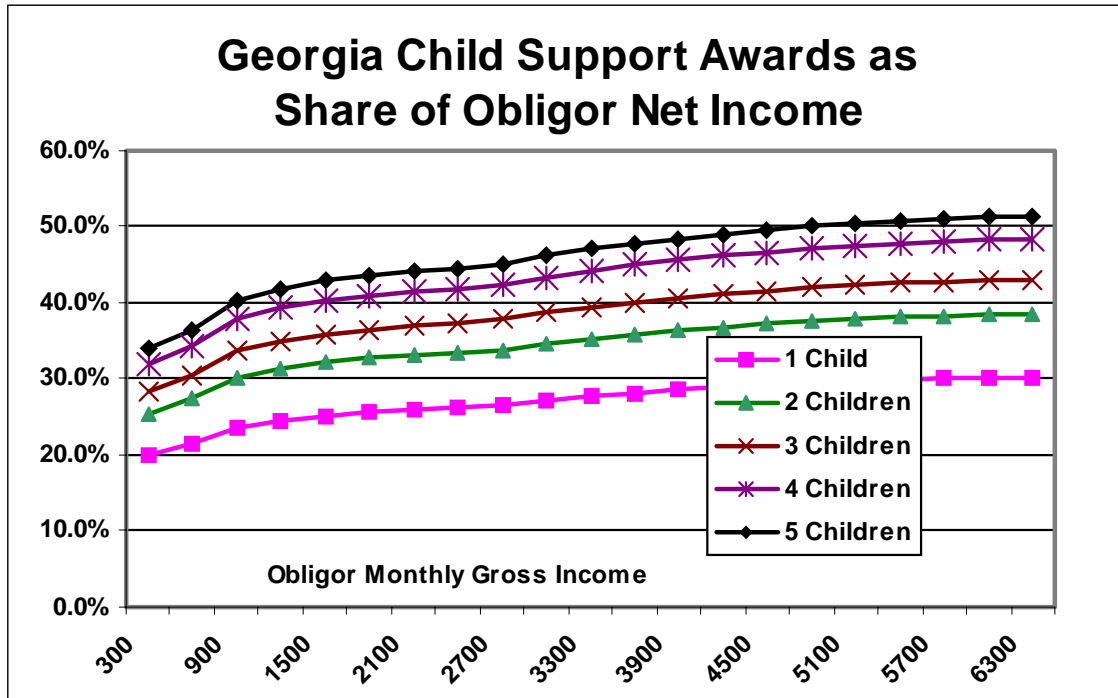
- The household is a low-income household. For the study, the households (both parents) averaged annual gross income of \$12,000 in 1982 dollars. In year 2000 dollars, this would be household income of \$21,426. The underlying study specifically states that at higher incomes, the applicable percentage should decline. The study also assumed the percentage would be applied only after setting aside a self-support reserve.
- The mother is assumed to care for the children and not earn any income outside the home.
- The father is the sole income earner and the percentages applied to the father's income are based on tax law of 1982. Under the tax code in which the percentages are derived, the non-custodial parent that provided over half of the child's support would receive use of all child income tax benefits.
- The low-income characteristic also includes the fact that the guidelines were to be applied to income earners paying little or no income tax. Hence, under the appropriate low-income application, there is no need to take into account differences between gross income and net income.
- The guideline percentages were derived based on the assumption that the father is absent and that the children are with the mother 100 percent of the time.
- The guideline percentages were to be applied with the amount of the award limited to the size of the welfare payments to the custodial household.<sup>3</sup> The underlying study set a low ceiling on the amount of income on which the percentages would be applied.

**All but a small percentage of cases before the courts have economic circumstances that diverge sharply from these assumptions—application of the guideline would not be appropriate.**

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<sup>2</sup> Jacques Van der Gaag, "On Measuring the Cost of Children," Child Support: Technical Papers, Volume III, SR32C, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982.

<sup>3</sup> Institute for Research on Poverty, University of Wisconsin-Madison. "Documentation of the Methodology Underlying the Cost Estimates of the Wisconsin Child Support Program," Child Support: Technical Papers, Volume III, SR32C, Special Report Series, 1982, pp. 143-144.

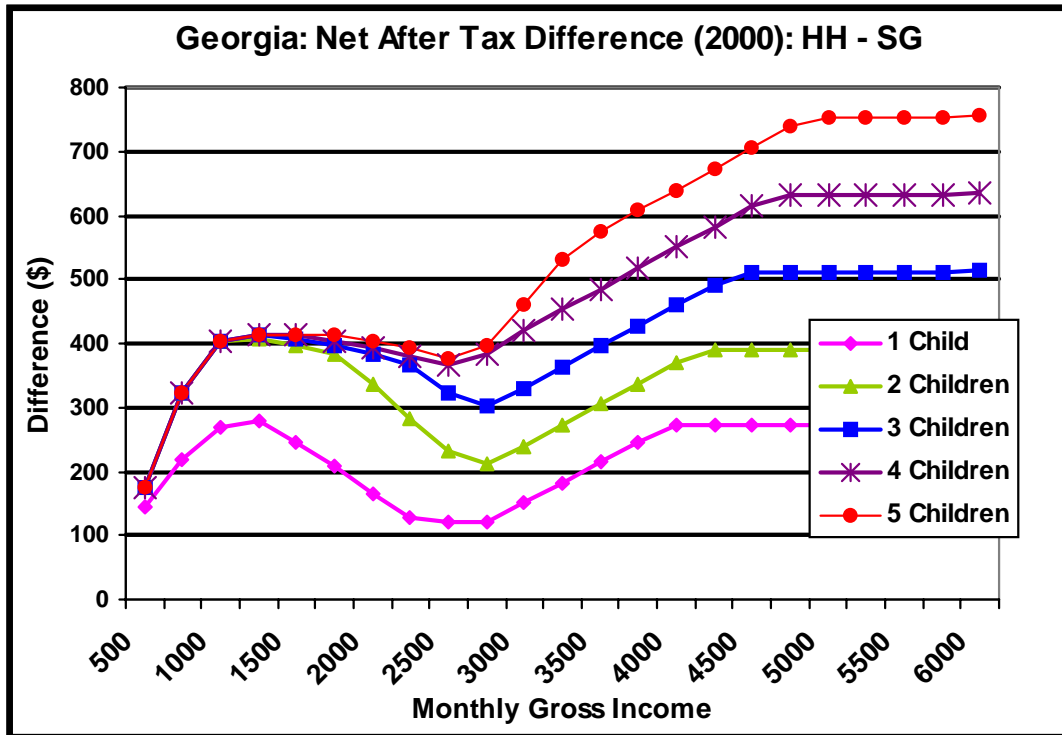
**Chart 1.**

- Georgia’s guidelines reflect fixed percentages that vary with the number of children and are applied to obligor before-tax income.
- The guideline fixed percentage of before-tax income becomes a rising percentage on an after-tax basis since federal income tax rates rise as taxable income rises.
- No economic studies show child costs rising as a share of after-tax income.
- Economic studies actually show child costs declining as a share of after-tax income.
- Georgia’s guidelines conflict with all known studies on child costs and result in large financial windfalls for custodial parents.
- Georgia’s child support guidelines—as fixed percentages—started out as only being used for welfare cases. The fixed percentages were intended to applied only to low-income obligors (paying little or no income tax) and only after setting aside income for basic living needs. The fixed percentages were never intended by the designing economist to be applied outside of this (welfare) type of situation.
- Georgia’s presumptive guideline was enacted during a rush to comply with federal regulations or face loss of \$25 million in federal funding (deadline of 1989 enacted in mid-1988; GA legislative session ended in April 1989). Also, the guideline was enacted during misleading editorials by the Atlanta Journal-Constitution that limits on the guidelines would “exempt the wealthy” from child support obligations. The editorials conflicted with all professional economic opinion. Clearly, there was a certain amount of hysteria during the legislative debate in 1989.

## **Key "Problem Areas" for Georgia's Guideline**

- **Ignores rising tax rates for obligor. Chart 1 already illustrates this problem.**
  - **Marginal tax rates quickly exceed 30 percent and frequently exceed 40 percent of obligor gross income. Within the middle income to upper middle income range, it costs the obligor from \$1.50 to \$1.77 in gross earnings to pay for each dollar of child support.**
- **Ignores the significant cost offset the custodial parent receives from child-related tax benefits.**
- For equal levels of gross income, the after-tax advantage a custodial parent has is very large.
  - Earned income credits
  - Child credits
  - Child exemptions
  - Head of household status.
  - Lower marginal tax rates
- Typically, the after-tax advantage for the middle income custodial parent is worth two hundred to three dollars per month just for two children—and is higher with additional children.
- These tax benefits cover child costs that the parents otherwise should share. Both parents should share the cost offsets rather than the non-custodial parent paying what the government has already paid of child costs.
- Guideline ignores the fact that all economic studies show child costs declining as a share of income as income rises.
  - Leads to large windfall for custodial parent. Leads to extraordinary burden for obligor.

Chart 2.



- Custodial parents get a large boost in after-tax income from child-related tax benefits.
- The earned income credit is very large for low-income custodial parents but then fades in impact.
- Head of household status, child credits, exemptions, and deductions are large for middle and upper middle income custodial parents.



**GEORGIA CHILD SUPPORT PRESUMPTIVE AWARDS:  
LACK OF IMPACT OF CUSTODIAL PARENT INCOME**

- **The custodial parent's income has no impact on the child support presumptive award.**
- **Child support does not vary with either the custodial parent income or family income.**
- **No economic study validates the result that child costs do not vary with family income.**

**Table 1.**

**TWO CHILDREN**

<u>Obligor Monthly Gross Income</u>	<u>Obligee Monthly Gross Income</u>	<u>Combined Monthly Gross Income</u>	<u>Presumptive Award Lower, Mid, Upper</u>
\$825	\$0	\$825	\$190, \$210, \$231
\$825	\$825	\$1,650	\$190, \$210, \$231
\$825	\$2,500	\$3,325	\$190, \$210, \$231
\$825	\$3,333	\$4,158	\$190, \$210, \$231
\$825	\$5,833	\$6,658	\$190, \$210, \$231
\$2,500	\$0	\$2,500	\$575, \$638, \$700
\$2,500	\$825	\$3,325	\$575, \$638, \$700
\$2,500	\$2500	\$5,000	\$575, \$638, \$700
\$2,500	\$3,333	\$5,833	\$575, \$638, \$700
\$2,500	\$5,833	\$8,833	\$575, \$638, \$700
\$5,833	\$0	\$5,833	\$1,342, \$1,487, \$1,633
\$5,833	\$825	\$6,658	\$1,342, \$1,487, \$1,633
\$5,833	\$2500	\$8,333	\$1,342, \$1,487, \$1,633
\$5,833	\$3,333	\$9,166	\$1,342, \$1,487, \$1,633
\$5,833	\$5,833	\$11,666	\$1,342, \$1,487, \$1,633

**Table 2.****GEORGIA CHILD SUPPORT PRESUMPTIVE AWARDS:  
IMPACT OF CUSTODIAL PARENT INCOME****TWO CHILDREN**

<u>Obligor Monthly Gross Income</u>	<u>Presumptive Award Lower, Mid, Upper</u>	<u>Difference Between Lower and Upper:</u>	
		<u>Dollars</u>	<u>Percent</u>
\$825	\$190, \$210, \$231	\$41	22%
\$2,500	\$575, \$638, \$700	\$125	22%
\$5,833	\$1,342, \$1,487, \$1,633	\$291	22%

**Table 3. Georgia's Child Support Guidelines: The Difference Between Upper  
and Lower Bounds For Presumptive Awards**

<u>Number of Children</u>	<u>Percentage Range of Gross Income</u>	<u>% More Obligor Can Pay: Higher to Lower %</u>
1	17 percent to 23 percent	35.3 percent
2	23 percent to 28 percent	21.7 percent
3	25 percent to 32 percent	28.0 percent
4	29 percent to 35 percent	20.7 percent
5 or more	31 percent to 37 percent	19.4 percent

- The use of a range of percentages violates equal protection standards.
  - Similarly situated obligors can be given presumptive awards that differ by hundreds of dollars per month in gross income.
- The use of a range of percentages also conflicts with federal regulations on child support that require the presumptive award be a definitive, single value computation by formula. 45 CFR 302.56.

**Table 4.****OBLIGOR POVERTY LEVEL BURDEN, MONTHLY**

<u>Obligor Monthly Gross Income</u>	<u>Presumptive Award Lower, Mid, Upper</u>	<u>Poverty Threshold, 2000</u>	<u>After Child Support, Amount Income Is Below Poverty Level: Lower, Mid, Upper</u>
<u>One Child:</u>			
\$825	\$140, \$165, \$190	\$747	-\$22, -\$47, -\$72
<u>Two Children:</u>			
\$825	\$190, \$210, \$231	\$747	-\$112, -\$132, -\$153
<u>Three Children:</u>			
\$825	\$206, \$235, \$264	\$747	-\$128, -\$157, -\$186
<u>Four Children:</u>			
\$825	\$239, \$264, \$297	\$747	-\$161, -\$186, -\$219
<u>Four Children:</u>			
\$825	\$256, \$281, \$305	\$747	-\$178, -\$203, -\$227

- The presumptive award presumptively pushes a minimum wage, 40 hour week, worker below the poverty level.
- The presumptive award for minimum wage workers means that the worker either cannot pay for basic living needs or presumptively cannot pay the full child support award.
- The presumptive award for low-income obligors creates an extraordinary burden.

\$825=\$9,900 annualized. Minimum wage: \$5.15. \$5.15 @ 40 hours @ 4 weeks = \$824.  
Poverty level, one person under 65 years, 2000: \$8,959 (\$747 monthly).

## What About Income Shares (in Contrast to Cost Shares)?

### Rebuttal of Income Shares Guidelines

For variations of the income shares guidelines, a showing in contrast to the guideline assumptions listed below should rebut the presumption:

- The family is still in an intact household. There is no additional overhead from an additional household that would reduce income available to spend on children.
  - There is additional “phantom” income when a child is added to the family—this is the needed additional income to bring the standard of living back to its previous level. In real life, families do not spend on children based on income they are assumed to have and do not.
  - Tax benefits that are attributable to the child(ren) should not be shared by both parents. The income shares methodology, as implemented by Policy Studies, Incorporated, does not share with both parents the tax benefits that are attributable to the child(ren) and are cost offsets.
  - The child is with the custodial parent 100 percent of the time (assumed within the basic child cost tables of income shares).
  - The best method of estimating child costs is to compare adult consumption levels of alcohol, tobacco, and adult clothing before and after having an additional child.
- **All but a small percentage of cases before the courts have economic circumstances that diverge sharply from the above assumptions. Application of either of these types of guidelines rarely would be appropriate.**

### **Reasons Behind Income Shares Model's Overstatement of Child Costs**

There are several reasons why PSI's methodology—using either version of income shares—leads to an overstatement of child costs: (1) non-recognition of a budget constraint, (2) the choice of adult goods share of consumption as a target definition, and (3) the use of intact families to estimate child costs. First, the income equivalence approach ignores the budget constraint faced by families who have children. In "real life," families do not spend on children based on some notion of extra "phantom" income for economic well-being equivalence, but must make spending decisions based on the same level of income as prior to having the additional child. Furthermore, families assume their economic standard of living will decline as a result of new child costs. The income constraint seen in real life leads to much lower actual child costs than those that are estimated by income equivalence models of child costs—as in income shares.

The choice of adult goods consumed as the defining measure of income equivalence leads to an upward bias for child cost expenditures. Not only is there an income constraint, but there are substitution effects—consumers switching consumption between types of goods—that make the approach of targeting a fixed share of adult goods inappropriate. The child actually becomes a consumption good for a parent. Notably, consumption of some of the particular adult goods chosen by Beston to target—tobacco and alcohol—may be intentionally consumed less as a result of having children. The parent consumes fewer adult goods after having the child as a matter of choice. Using a standard that targets equalizing consumption shares of adult goods overstates child costs because families choose to consume fewer adult goods after having children. This standard results in an income level that is too high for the comparison of the change in total consumption that is attributed to child costs.<sup>4</sup>

Both the PSI Rothbarth and the earlier Engel versions of the income shares guideline are based on studies of intact families. A key economic feature of divorced and unwed families is that there is dramatically higher household overhead compared to intact families. Instead of paying a mortgage or rent on one house, there are now payments for two. This also is the case for overhead items such as utilities, insurance, and probably transportation (automobiles). Higher overhead means that the amount of income left over for other spending is less than in an intact family situation. Notably, one of the "other" categories would be for child costs. Higher overhead of divorced families would have the effect of reducing the level of overall income spent on children. Single-parent families spend a higher percentage share of single-parent household income on children. But the dollar level spent on children is less than spent in combined income, two-parent households. By using intact family data, income shares models tend to overestimate the level of child costs to be shared.

### **The Myth That Income Shares Estimates of Child Costs Are Low**

In the very limited amount of literature discussing the nature of the Rothbarth estimation technique, there are assertions that this methodology is biased downward and can be considered a "lower bound" (floor) to estimates for child costs.<sup>5</sup> This is based on the belief (that is never

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<sup>4</sup> The corollary is that any adjustments to income shares basic cost estimates—with the adjustment based on percentage add on factors (a multiple of the base)—exacerbates the upward bias. An example would be age-of-child adjustments. Another example would be the income shares multiplier (allegedly economically based) for shared custody situations.

<sup>5</sup> See the October 1990 "Lewin Report" on child costs, section 2, page 29.

substantiated in studies) that with the addition of children, adults choose to consume more purely adult goods and fewer goods shared between the adults and children. This shift supposedly is because when a good is shared with kids, the adult has to purchase more to have the same amount of the adult's consumption, thereby raising the overall perceived price of the shared good. Supposedly, since a family shifts toward greater consumption of adult goods after having additional children, it takes less income to restore the previous level of consumption of targeted adult goods. This allegedly leads to an underestimate of child costs since this additionally needed income to restore the standard of living is less than if the household did not have this change in preference.

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

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

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

## Notes on Cost Shares Methodology

- The “cost shares” methodology is a systematized process that closely reflects child support award practices that existed prior to the implementation of presumptive guidelines (which are not based on rational economic foundations). Judges and lawyers that have practiced in family law prior to 1989 should find the methodology familiar, reasonable, and a sound basis for awarding child support.
- The cost shares methodology was most recently espoused as the most appropriate child support guideline methodology following the enactment of the federal Family Support Act of 1988 in *Child Support Guidelines: the Next Generation*, Office of Child Support Enforcement, 1994, U.S. Department of Health and Human Services in Chapter 11 written by Donald J. Bieniewicz.
- The primary source of data for the cost shares child support model is 1999 Expenditures on Children by Families, published by the Family Economics Research Group (FERG), U.S. Department of Agriculture.
- Data are compiled by major child cost components. Except for housing, data are national numbers. Housing data comes from U.S. Department of Interior—southeastern data.
- The cost shares methodology was recently presented to the Southern Economic Association in November 2000 by R. Mark Rogers and was well received as an appropriate economic model for child support. The presentation was before the attending members of the National Association for Forensic Economics.
- A cost shares approach is already in use for “add-ons”—such as for child care—in almost all states. The cost shares approach is the natural and logical way to establish child support awards. It follows the thought process most people use in identifying their own child costs, e.g., out-of-pocket expenses.

### **The Basic Steps in the Cost Shares Methodology:**

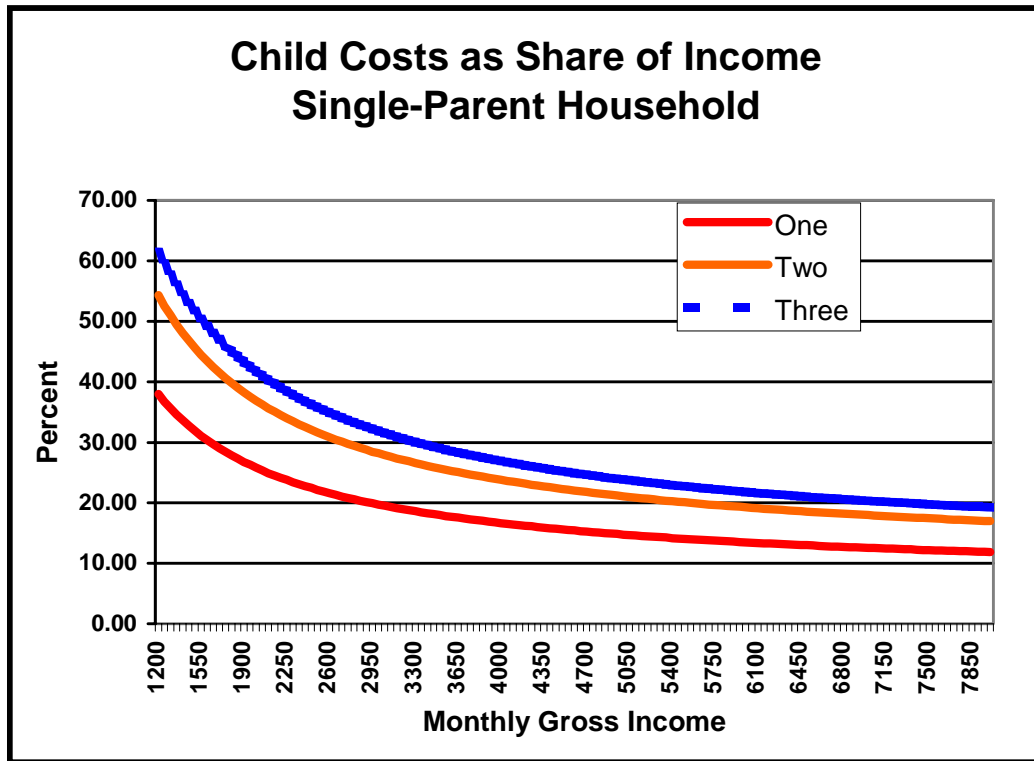
The following are the key steps in the cost shares child support guideline.

- 1) Calculate the average gross income of the parties by adding their incomes and dividing by two.
- 2) Look up the child cost expenditure associated with the average gross income for the appropriate number of children in the table provided. This determines the base child cost.
- 3) Fixed costs that are paid directly by either parent and are included in basic costs are subtracted from the total. This is because the basic costs are going to be allocated by time shares and fixed costs do not vary according to time shares. These fixed costs are added back in a subsequent step. The most typical example of a fixed cost is medical insurance.
- 4) Costs are allocated into two categories—one for the father and one for the mother.
- 5) The base child costs (excluding specified fixed costs such as medical insurance) are allocated between the father and mother according to each parent's time with the child(ren).
- 6) Add to each parent's cost category any respective add-on—such as child care—and any respective fixed cost—such as medical insurance.
- 7) Calculate both parent's tax benefits attributable to the children (may be one or both parents with benefits) and enter into the respective parent's cost category. Enter as a negative cost.
- 8) Sum each parent's child costs incurred.
- 9) Determine each parent's share of the other parent's child costs. This is done by multiplying each parent's share of combined available income against the other parent's incurred child costs.
- 10) Net each parent's obligation to the other. The obligor is the parent with the higher cash obligation to the other. This netted figure is the preliminary (tentative) cash obligation of the obligor.
- 11) The actual cash obligation of the obligor is the lesser of the preliminary cash obligation and the obligor's available income (after-tax income above self-support level). The total cost shares obligation includes the cash obligation plus any directly paid child cost such as medical insurance.

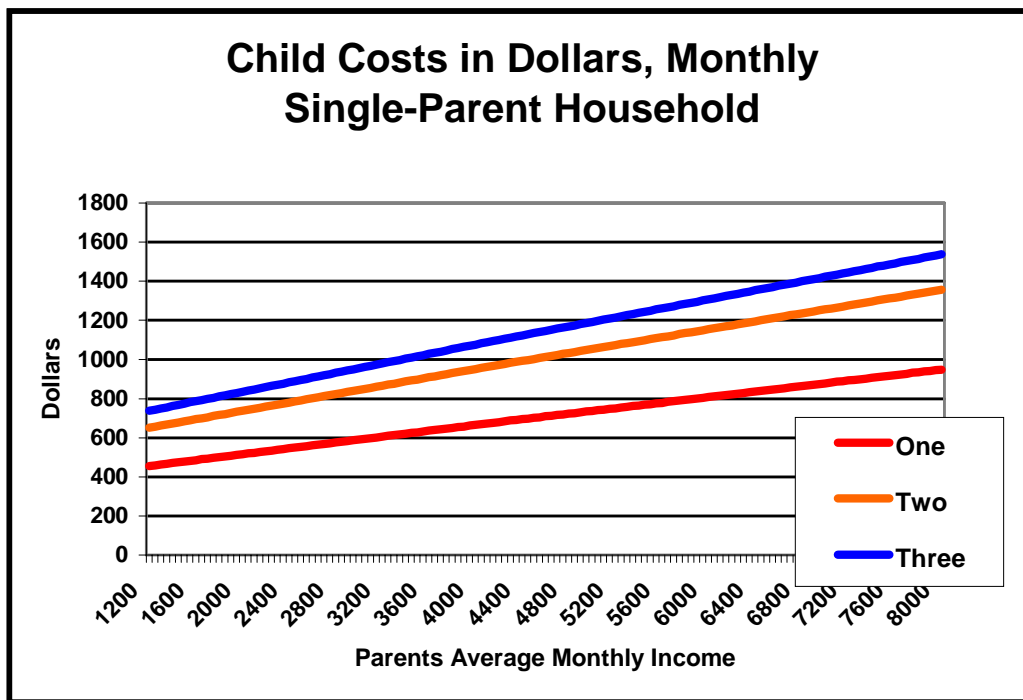
➤ **Cost shares can be the basis for rebuttal and for deviation from presumption.**



**Chart 3.**



**Chart 4.**



### Example of Input Page for Cost Shares

<b>COST SHARES CHILD SUPPORT GUIDELINE 5.0 TEST PROGRAM</b>	
Father's monthly gross income:	3500
If father is self-employed, enter "1," otherwise, enter "0."	0
Mother's monthly gross income:	1500
If mother is self-employed, enter "1," otherwise, enter "0."	0
Number of children in case before the court	2
Father's tax filing status: "1" for single; "2" for head of household	1
Mother's tax filing status: "1" for single; "2" for head of household	2
Father's child exemptions, number of (do not count father)	0
Father's child credits, number of	0
Mother's child exemptions, number of (do not count mother)	2
Mother's child credits, number of	2
<i>Father's</i> share of children's time (enter as decimal, e.g., .25)	0.20
Father's payment of pre-existing CS orders, \$	0
Mother's payment of pre-existing CS orders, \$	0
Father's deduction for "other" children in current household, \$	0
Mother's deduction for "other" children in current household, \$	0
Father's payment of alimony, \$	0
Father's receipt of alimony, \$	0
Mother's payment of alimony, \$	0
Mother's receipt of alimony, \$	0
Father's extraordinary expenses (deducted against gross), monthly \$	0
Mother's extraordinary expenses (deducted against gross), monthly \$	0
<b>Add-ons (items not in basic costs):</b>	
Father's payment on child care and education	0
For father, number of children 13 and under receiving child care (by paid provider)	0
Father's other add-ons	0
Mother's payment on child care and education	0
For mother, number of children 13 and under receiving child care (by paid provider)	0
Mother's add-ons	0
<b>Fixed cost items of basic costs paid directly by each parent</b>	
Father's payment of medical and related insurance	0
Father's other fixed costs	0
Mother's payment of medical and related insurance	0
Mother's other fixed costs	0

**Table 5. Example One: Cost Shares Estimate Detail for Two Children**

<u>No Visitation Adjustment</u> <u>Low Middle Income Example</u>	<u>NCP, Single Taxpayer Status</u>	<u>CP, Head of Household Status</u>	<u>CP, Single Taxpayer Status</u>
Monthly gross salary	2,300	2,000	2,000
Annual gross salary	27,600	24,000	24,000
Standard deduction	-4,400	-6,450	-4,400
Exemptions	-2,800	-8,400	-2,800
Federal taxable income	20,400	9,150	16,800
Federal income tax	-3,064	-1,376	-2,524
Earned income credit	0	1,501	0
Child credits	0	1,000	0
Social Security tax	-1,711	-1,488	-1,488
Medicare tax	-400	-348	-348
Georgia adjusted income, annual	27,600	24,000	24,000
Standard deduction	-2,300	-2,300	-2,300
Exemptions	-2,700	-8,100	-2,700
Georgia taxable income	22,600	13,600	19,000
Georgia income tax	-1,169	-559	-953
<b>After Tax Income, Annual</b>	<b>21,256</b>	<b>22,730</b>	<b>18,687</b>
<b>Child Cost Calculations, Monthly:</b>			
Average monthly gross income	2,150		
<b>Total child costs excl. child care &amp; ed.</b>	<b>754</b>		
Less fixed costs paid directly (med. ins.)	-75		
Total child costs to be pro-rated by time	679		
<b>Parent's incurred child cost expenses:</b>			
	<u>Father's</u>	<u>Mother's</u>	
Time share of basic costs excluding fixed	0	679	
Tax benefits as cost offset <sup>6</sup>	0	-337	
Child care and education	0	0	
Fixed costs paid directly (med. insur.)	75	0	
<b>Each parent's total child costs incurred</b>	<b>75</b>	<b>342</b>	
Father's share of mother's expenses	198		
Mother's share of father's expenses		32	
<b>Prelim. cash payment to other parent</b>	<b>167</b>		
Preliminary total obligation	242		
Available income for child support	778	564	
<b>Child support obligation</b>	<b>242</b>		

Components of two-child cost estimate total of \$754: housing, \$128; food, \$221; transportation, \$137; clothing, \$88; health, \$73; and "other," \$107.

<sup>6</sup>This is the difference in the CP's net income, head of household basis less single taxpayer status.

## Based on Example One, Comparison of Income Shares to Cost Shares

Table 6.

### After Tax, After Child Support Comparisons, Presumptive Award, Income Shares (North Carolina)<sup>7</sup>

<u>TWO CHILDREN: Example One</u> No visitation adjustment.	NCP, Single Taxpayer Status	CP, Head of Household Status
Monthly gross salary	\$2,300	\$2,000
<b>Gross salary, annual</b>	<b>27,600</b>	<b>24,000</b>
After tax income, annual	21,256	22,730
Child support payment/receipt, <b>Presumptive</b> award, including share of med. insurance (\$953 + \$75 combined obligation times .535 for NCP share)	-6,600	+6,600
<b>After Tax, After Child Support Income, Annual, <u>Presumptive</u> Award and Insurance</b>	<b>\$14,656</b>	<b>\$29,330</b>

Table 7.

### After Tax, After Child Support Comparisons, Cost Shares Award

<u>TWO CHILDREN: Example One</u> No visitation adjustment.	NCP, Single Taxpayer Status	CP, Head of Household Status
Monthly gross salary	\$2,300	\$2,000
<b>Gross salary, annual</b>	<b>27,600</b>	<b>24,000</b>
After tax income, annual	21,256	22,730
Child support payment/receipt, <u>Cost shares, no visitation award,</u> <b>\$167 cash, \$75 medical ins. monthly</b>	-2,904	+2,904
<b>After Tax, After Child Support Income, Annual, <u>Cost Shares</u> Award</b>	<b>\$18,352</b>	<b>\$25,634</b>

<sup>7</sup> For simplicity for the author, the award is based on North Carolina's guideline but with Georgia tax code for the cost shares application. Both states have similar income taxes.

**Table 8. Example Two: Cost Shares Estimate Detail for Two Children**

<b><u>No Visitation Adjustment</u></b> <b><u>Moderately High Income Example</u></b>	<b>NCP, Single Taxpayer</b> <b><u>Status</u></b>	<b>CP, Head of Household</b> <b><u>Status</u></b>	<b>CP, Single Taxpayer</b> <b><u>Status</u></b>
Monthly gross salary	4,300	5,000	5,000
Annual gross salary	51,600	60,000	60,000
Standard deduction	-4,400	-6,450	-4,400
Exemptions	-2,800	-8,400	-2,800
Federal taxable income	44,400	45,150	52,800
Federal income tax	-9,027	-8,080	-11,379
Earned income credit	0	0	0
Child credits	0	1,000	0
Social Security tax	-3,199	-3,720	-3,720
Medicare tax	-748	-870	-870
Georgia adjusted income, annual	51,600	60,000	60,000
Standard deduction	-2,300	-2,300	-2,300
Exemptions	-2,700	-8,100	-2,700
Georgia taxable income	46,600	49,600	55,000
Georgia income tax	-2,609	-2,719	-3,113
<b>After Tax Income, Annual</b>	<b>36,017</b>	<b>45,611</b>	<b>40,918</b>
<b>Child Cost Calculations, Monthly:</b>			
Average monthly gross income	4,650		
<b>Total child costs excl. child care &amp; ed.</b>	<b>1,018</b>		
Less fixed costs paid directly (med. ins.)	-75		
Total child costs to be pro-rated by time	943		
<b>Parent's incurred child cost expenses:</b>	<b><u>Father's</u></b>	<b><u>Mother's</u></b>	
Time share of basic costs excluding fixed	0	943	
Tax benefits as cost offset	0	-391	
Child care and education	0	300	
Fixed costs paid directly (med. insur.)	75	0	
<b>Each parent's total child costs incurred</b>	<b>75</b>	<b>852</b>	
Father's share of mother's expenses	387		
Mother's share of father's expenses		41	
<b>Prelim. Cash payment to other parent</b>	<b>346</b>		
Preliminary total obligation	421		
Available income for child support	2,008	2,417	
<b>Child support obligation</b>	<b>421</b>		

Components of two-child cost estimate total of \$1,018: housing, \$161; food, \$260; transportation, \$216; clothing, \$101; health, \$102; and "other," \$178. Note: The income shares award would be \$873 monthly compared to cost shares at \$421 and Georgia's obligor-only presumption of \$1,300 with ins. & day care.

**Based on Example Two, Example with Moderately High Income  
Obligor-Only versus Cost Shares**

Table 9.

**After Tax, After Child Support Comparisons,  
Presumptive Award, Obligor-Only (Georgia)**

<u>TWO CHILDREN: Example Two</u> No visitation adjustment.	<u>NCP, Single Taxpayer Status</u>	<u>CP, Head of Household Status</u>
Monthly gross salary	\$4,300	\$5,000
<b>Gross salary, annual</b>	<b>51,600</b>	<b>60,000</b>
After tax income, annual	36,017	45,611
Child support payment/receipt, <b>Presumptive</b> award, 25% of gross, \$1,075 monthly.	-12,900	+12,900
Medical insurance, \$75 monthly	-900	+900
Child Care, \$150 monthly	-1,800	+1,800
<b>After Tax, After Child Support Income, Annual, <u>Presumptive</u> Award, Insurance, and Day Care</b>	<b>\$20,417</b>	<b>\$61,211</b>

Table 10.

**After Tax, After Child Support Comparisons,  
Cost Shares Award**

<u>TWO CHILDREN: Example Two</u> No visitation adjustment.	<u>NCP, Single Taxpayer Status</u>	<u>CP, Head of Household Status</u>
Monthly gross salary	\$4,300	\$5,000
<b>Gross salary, annual</b>	<b>51,600</b>	<b>60,000</b>
After tax income, annual	36,017	45,611
Child support payment/receipt, <b><u>Cost shares</u>, no visitation award, Including med. ins. &amp; day care</b>	-5,052	+5,052
<b>After Tax, After Child Support Income, Annual, <u>Cost Shares</u> Award</b>	<b>\$30,965</b>	<b>\$50,663</b>

Note: The income shares presumption would be \$734 monthly or \$8,808 annually.

Chart 5.

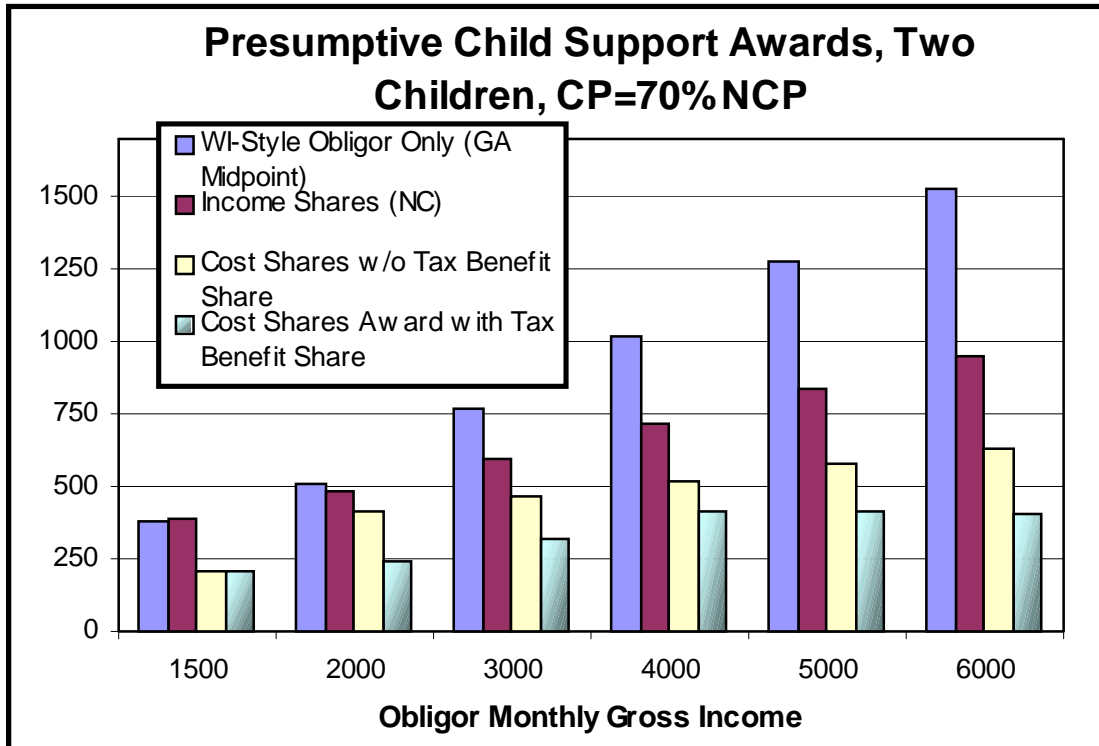


Chart 6.

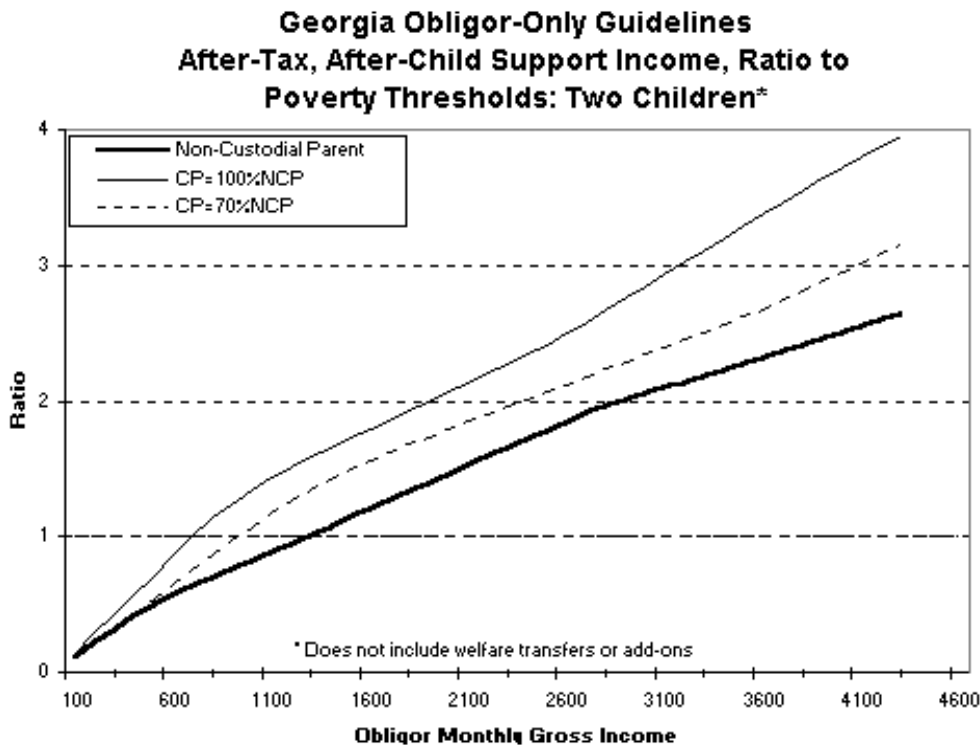


Chart 7.

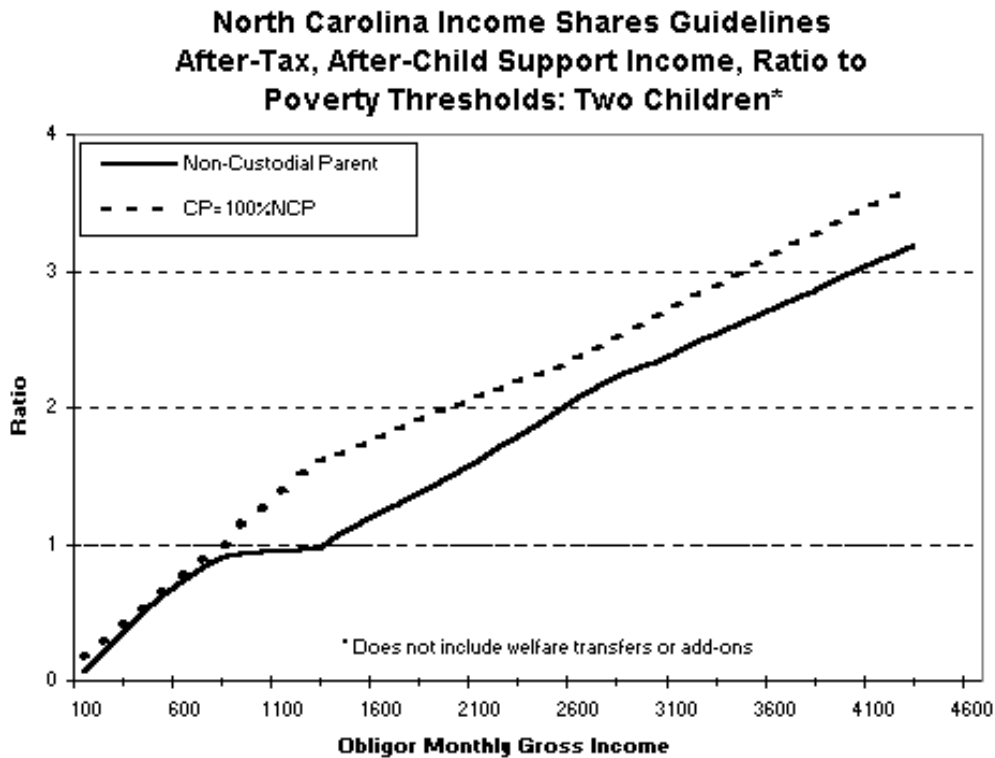
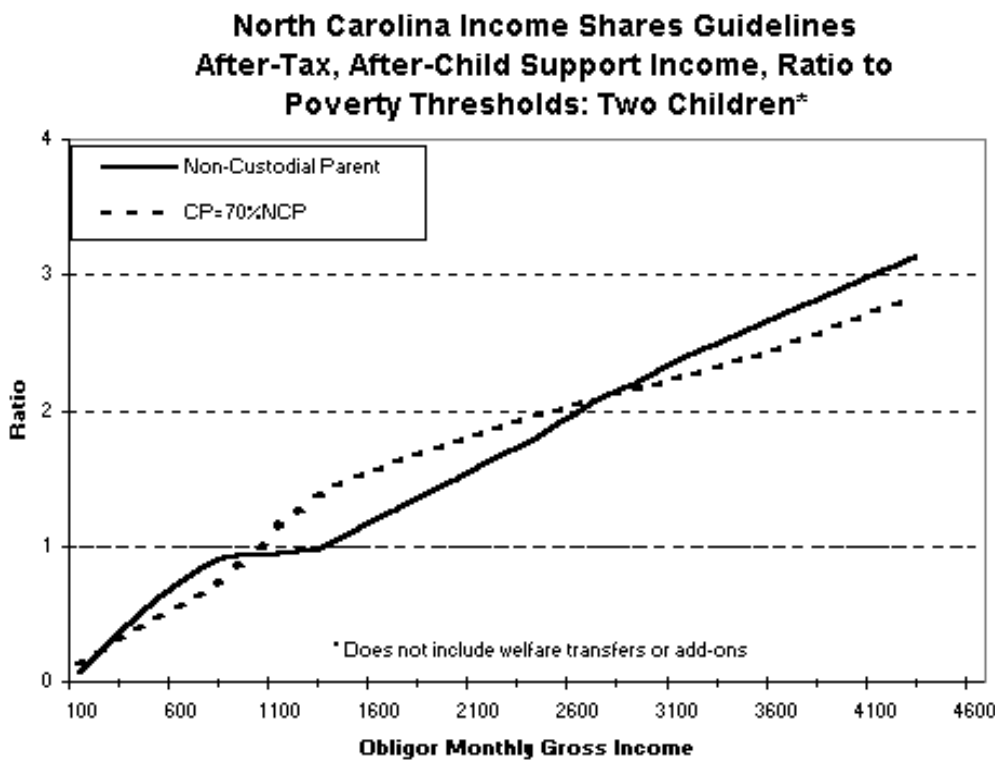


Chart 8.



- Both Georgia and income shares guidelines include large amounts of hidden alimony. Frequently, both more-than-equalize the standard of living.



## **Basis for Constitutional Challenge to Georgia’s Child Support Guidelines**

Most of these grounds for a challenge apply to both obligor-only guidelines and income shares guidelines. Details of a challenge would vary by state. If examined closely, income shares guidelines in all states do not treat obligor child costs on the same basis as those of the obligee.

- Federal regulations require that the intended purpose of each state’s child support guideline be the computation of the economically appropriate child support award. Georgia’s guidelines do not result in economically appropriate awards and do not meet the intended purpose of the guidelines.
- Current guidelines only intended for welfare situations—current use for all situations not for purpose intended.
- No components to guidelines—it is not clear what is being rebutted—due process violation.
- No child cost studies show child costs rising as a share of after-tax income—guideline not on a rational basis. All child cost studies show child costs declining as a share of after-tax income.
- Guidelines do not take into account the large tax-related child cost offsets the custodial parent receives. Not sharing the child-related tax benefit violates equal protection. Extraordinary benefit for custodial parent.
- The presumptive award results in the custodial parent receiving a huge financial windfall in excess of child costs. This is an extraordinary benefit for the custodial parent and extraordinary burden for the obligor.
- The use of a range of percentages allows substantial opportunity for similarly situated individuals to receive dissimilar treatment—violates equal protection.
- The presumptive award for low-income obligors (for example, minimum wage workers) pushes low-income obligors below the poverty level. A presumptive award that leaves the obligor with less income than needed for basic living needs creates an extraordinary burden for the obligor. This violates equal protection.
- The guidelines do not take into account custodial parent income. The presumptive child support award does not vary with family income—only obligor income. This is not rational and violates equal protection.
- Child costs of only the custodial parent are covered by the guideline. Similar costs incurred by the non-custodial parent do not receive similar consideration. This violates equal protection.
- Medical insurance not treated the same for all obligors—included in presumptive award or not. Different treatment depending on insurance availability through employer.
- The guideline reasons allowed for deviation do not give any guidance on how to apply the deviations. This is unconstitutionally vague.

### **“Cost Shares Guideline” Submitted as Legislation: 2001, Georgia House Bill 672**

- A cost shares guideline to replace current obligor-only guideline.
- The “cost shares” methodology is a systematized process that closely reflects child support award practices that existed prior to the implementation of presumptive guidelines (which are not based on rational economic foundations). Judges and lawyers that have practiced in family law prior to 1989 should find the methodology familiar, reasonable, and a sound basis for awarding child support.
- The cost shares methodology brings attorneys back into the child support debate. The guideline has presumptive costs for major components but “asks” for alternative costs for major components should different costs be appropriate. Debate is over the inputs—not over how to calculate.
- The cost shares methodology looks at “actual child costs,” takes into account tax benefit offsets, adjusts for shared parenting costs, and allows for additional circumstances such as alimony or extraordinary debt.
- The cost shares methodology is still relatively simple. Nonetheless, software is under development (and anticipated to be completed by mid-June 2001) to make cost share calculations based only on basic inputs.
- With automated software, judges and attorneys will be able to focus on individual economic issues rather than how to calculate the impact on child support. Attorneys and judges will merely need to determine each issue and then input the finding or use the presumptive component.
- The cost shares guideline results in a child support award that is affordable yet provides for typical expenditures for children. The cost shares award provides for children’s needs while eliminating the incentive for parents to fight over custody and visitation shares.
- House Bill 672 is sponsored by Rep. Earl Ehrhart (404-656-5058) and co-sponsored by Rep. Ben Allen (404-656-7859). The bill is in the House Judiciary committee chaired by Jim Martin (404-656-5125). Hearings on the bill are anticipated over Summer 2001. Those wishing to support the bill should contact these parties.
- For more info, go to: <http://www.economic-indicators.com/CSXcsbillGA.html>

## Issues for Child Support Guideline Reviews

**Summary: Economic evidence and bad policy outcomes increasingly show that current guidelines are badly flawed. A working version of the "cost shares" child support guideline is available as an alternative. The "cost shares" guideline should be presented as an alternative during child support guideline reviews. Reviews should focus on meeting the standard of equal protection for the child(ren) being supported on the same basis when in the care of either parent as based on actual economic data. Only the "cost shares" guideline meets equal protection standards.**

Why should states find it advantageous to consider and review "costs shares" for the presumptive award?

- Federal regulations require a periodic economic evaluation of each state's child support guidelines or risk loss of federal monies.
- Federal formulas for child support incentive payments changed in 1998 and some states are at a clear disadvantage to other states in receiving a share of those funds. Some states' collection rates (a key factor in a state's share of federal child support monies) are too low because of economically inappropriate presumptive awards.
- Current guideline methodologies are increasingly being criticized for lack of economic foundation and states may be at risk for using only one evaluator of the state's guidelines (usually the guideline creator).
- Current child support models use outdated methodologies of questionable economic validity. Alternative child support guideline methodologies have been developed that can both improve a state's collection rate (and share of federal funds) and lead to better outcomes in family court. These outcomes would include less contention over child support awards, better compliance and enforceability (lower burden on family courts), and less spillover into custody/visitation issues.
- Two-thirds of a state's costs for guideline evaluation is reimbursable by the U.S. Department of Health and Human Services. Because of this reimbursement, the actual state cost of hiring economic experts is very modest.

A guideline review, at a minimum, should:

- Determine if the state has conducted an appropriate quadrennial review that complies with federal regulations. This includes conducting a case study to ensure that actual award practices minimize deviations. That is, if deviations are occurring, the guideline is to be changed to match actual court practices.
- Determine if there is an actual, publicly available study on the economic basis of the guidelines. Such a study must be available for use in rebuttal in court.
- Review the underlying economic study. Is it sound and still relevant? Is the study in line with mainstream economic theory on household spending on children?
- Determine if the child support guidelines rationally follow from the underlying economic study.
- Provide better alternative guidelines or components of guidelines based on more up-to-date data on household spending on children and based on recent improvements in economic methodologies for child support guidelines.
- Determine the overall impact of the state's child support guidelines on both the custodial-parent and non-custodial-parent households.
- Determine if the state child support guidelines meet equal protection standards as suggested by economic data and tax law. Tax laws have changed immensely since guidelines were first developed—notably, federal law initially assumed the parent with higher income received the tax benefits but now assumes the custodial parent receives the tax benefits related to the children.
- Evaluate if the state's guidelines comply with federal regulations and laws such as the Consumer Credit Protection Act.
- Review how the state's guidelines affect the state's share of federal payments under the federal Child Support Program. Federal incentives changed dramatically in 1998 and some states are now at a disadvantage with their old guidelines.

## R. Mark Rogers' Credentials as Child Cost Expert

- Rogers is recognized as an expert in child costs before Georgia Superior Court. Rogers has qualified and testified before Fulton County and DeKalb County Superior Courts in Georgia.
- Nationally recognized economist. Author of *Handbook of Key Economic Indicators, Second Edition* (McGraw-Hill Professional Publishing, 1998; Chinese edition, 1999). He has lectured nationally on the use and analysis of economic data with the Institute for Professional Education, Arlington, VA. Professional economist, Federal Reserve Bank of Atlanta, 19 years. Published and conducted research on child costs in addition to other duties as economist.
- Member, 1998 Georgia Commission on Child Support.

### Expertise in child cost analysis has been recognized by:

- **American Bar Association:** "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, Spring 1999, pp.135-156. Economic impact studies based on methodologies used in court.
- **Georgia Bar Association:** "Georgia's Child Support Guidelines—No Economic Basis: Facts for a Constitutional Challenge?" State Bar of Georgia, *Family Law Section Newsletter*, July/August 2000, pp. 14-23. Specifically includes methodology of child cost analysis used in court.
- **National Association of Forensic Economics:** "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," with Donald J. Bieniewicz, co-author. Presented, Southern Economic Association, National Association of Forensic Economics section, November 12, 2000. Recognized methodology used in court for child cost analysis.
- **U.S. Congress:** Invited and testified as expert witness before Human Resources Subcommittee of U.S. House Ways & Means Committee, regarding Hyde-Woolsey Child Support bill, March 16, 2000, regarding technical issues on proposal to put child support enforcement under the IRS. Testimony published as part of Congressional record.

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