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**GEORGIA'S CHILD SUPPORT GUIDELINES—NO ECONOMIC BASIS:
FACTS FOR A CONSTITUTIONAL CHALLENGE?**

By R. Mark Rogers

(This article is especially written for the Newsletter by Mr. Rogers. The author is an economist with the Federal Reserve Bank of Atlanta. He served as the only economist member of the 1998 Georgia Commission on Child Support. He has published on child costs and extensively on the use of economic data. The views are those of the author and do not necessarily represent those of the Federal Reserve Bank of Atlanta or the Federal Reserve System. Comments can be emailed to the author at rmrogers@mindspring.com.)

Introduction

Child support award practices have changed dramatically since the period prior to 1989. The Federal Family Support Act of 1988 mandated that states wanting to participate in the Federal child support recovery/enforcement program enact child support guidelines that would be presumptive on a state-wide basis by the end of 1989. This Act led states to rush to comply in order to avoid loss of millions of dollars of Federal funding. For Georgia, legislators and policy-makers had from the middle of 1988 through April of 1989 to properly decide and enact presumptive guidelines. The April 1989 deadline reflected when the 1989 Georgia Legislative Session concluded—Georgia's last chance to comply with the Federal regulation. Did the Georgia Legislature do a good job in its rush to keep from losing approximately \$25 million in Federal funding (the state's share of Federal child support funds the next year)? Are Georgia's child support guidelines rational, based on sound economic principles? Are the guidelines economically fair and appropriate or do they create extraordinary burdens and extraordinary benefits? Does the lack of a rational, economic basis and the existence of extraordinary burdens and benefits form a factual basis for a constitutional challenge to these guidelines?

First, what do Federal regulations require of states when establishing child support guidelines? Separate from the requirement that the obligor's income be a factor in determining the award, there have been two basic economic requirements (many in terms of procedure) and one very specific numeric requirement related to equal protection. The Code of Federal Regulations (CFR) in 1988 required that the basic living needs of the obligor (non-custodial parent—or NCP) be taken into account and that the guidelines be economically appropriate. Two basic questions for evaluating Georgia's guidelines to determine if they meet the intended purpose is whether basic living needs of the NCP are part of the guidelines and whether the guidelines result in economically appropriate awards.¹

CFR also requires that the guidelines result in a specific computation of the award. That is, the guideline must result in a specific numeric presumptive award—based on the numeric

factors in the guideline (parental income, number of days of custody, etc.). This requirement is intended to treat all parties similarly situated equally and also to increase certainty in the award process and reduce the number of contested cases.²

What Are the Key Economic Characteristics of Georgia's Child Support Guidelines?

Georgia's presumptive child support guidelines are fixed percentages of obligor before-tax income. The percentages rise as the number of children to be supported rises but remain fixed regardless of the income level. The guideline range percentages applied to the obligor's gross income are: one child, 17-23%; two children, 23-28%; three children, 25-32%; four children, 29-35%, and five or more children, 31-37%.

The key economic characteristics of Georgia's child support guidelines are: (1) the presumptive award rises as a share of an obligor's after-tax income, (2) the presumptive award does not vary by family income—only by obligor income, (3) the presumptive award pushes minimum wage obligors below the poverty level, (4) the presumptive award does not allocate between both parents the significant cost offset to child costs from tax benefits the custodial parent receives and are attributable to the children, and (5) in most cases, the presumptive award exceeds actual child costs, typically leaving the custodial parent household with a higher standard of living than the non-custodial parent household—even when the NCP grosses a notably higher salary than the CP. Georgia's child support guidelines are not economically rational and generally do not result in economically appropriate awards. Separately, Georgia's presumptive guidelines are a range of percentages for obligor gross income—with a very significant economic impact depending on where within the range the award is made.

Georgia's Guidelines Rise as a Share of Net Income and Conflict with Economic Studies

Georgia's presumptive child support awards are based on obligor-only percentages that are applied to the obligor's before-tax income. These percentages are fixed across income levels (but rise with the number of children). However, Federal and Georgia personal tax code combined are progressive—primarily at the Federal level. Federal marginal personal income tax rates rise sharply within the range covered by Georgia's child support guidelines. For single taxpayers (NCPs), marginal tax rates start at 15 percent for taxable income but jump to 28 percent at \$25,750 in taxable income, and to 31 percent at \$62,450 (1999 tax code). Additionally, earned income credits disappear at moderate income levels. The overall effect is that a fixed, before-tax percentage of obligor income for child support results in presumptive child support awards rising sharply as a share of obligor net income. Chart 1 shows Georgia presumptive awards (midpoints) as a rising share of obligor income. This chart also takes into account Social Security and Medicare taxes. The presumptive awards shown do not include “add-ons”—such as child care and medical insurance—which can add several hundred more dollars to the award each month.

Chart 1 also shows child cost data from a study by Thomas J. Espenshade in 1984. Espenshade's child cost estimates decline as a share of family income. The high

percentages for low-income families show the public policy problem of low-income families having child costs high relative to income and often not being able to cover child costs without public assistance. Espenshade data are for family income—pushing the Espenshade chart data further to the right relative to the Georgia presumptive awards for obligor parent income only.

Not counting add-ons, the presumptive award becomes quite large on an after-tax basis for even moderate income obligors. For an obligor paying support for one child, the mid-point presumption rises from 20 percent of net income at below poverty level income to over 30 percent for monthly net income of just under \$4,000 (\$6,000 monthly gross). For the frequently occurring case (for divorce-related rather than unwed situations) of a two-child obligation, the presumptive mid-point obligation rises from 25.5 percent of net income at minimal income levels to 38.5 percent for just under \$4,000 monthly net income (\$6,000 monthly gross). These figures do not include “add-ons.”

Statutorily allowed “add-ons” boost the after-tax presumptive obligation significantly. For example, for an obligor making \$3,000 gross monthly with an add-on of \$75 per month for medical insurance (a cost figure highly subsidized by private employers), the two-child (mid-point) support obligation would rise from \$765 to \$840 per month and the net income obligation would rise from 34.2 percent without medical insurance to 37.6 percent. For \$5,000 in monthly gross income, the same respective net income percentage would rise from 37.5 percent to 39.7 percent. Should child care costs be added at a rate of \$400 per month, then the child cost share of net income for monthly gross income levels of \$3,000 and \$5,000 reaches 55.5 percent and 51.5 percent, respectively. Other add-ons, such as unreimbursed medical expenses, would boost these percentages further. At lower income levels, these add-ons take a bigger share of net income.

What Do Economists Say about Child Cost Patterns—Implications for an “Economically Appropriate” Award?

Modern economic theory has been developed over for at least the past 150 years. Over the more recent 100 years, theory of consumer behavior has been a fundamental focus of economic research. One of the most extensive reviews of studies of household spending patterns was made by the economist, H. S. Houthakker.³ His review covered 40 surveys from 30 countries. His summary strongly endorses what is known to economists as “Engel’s Law”—that is, family spending declines as a share of family income as income rises. This is a key characteristic of child cost patterns that has been extensively documented.⁴

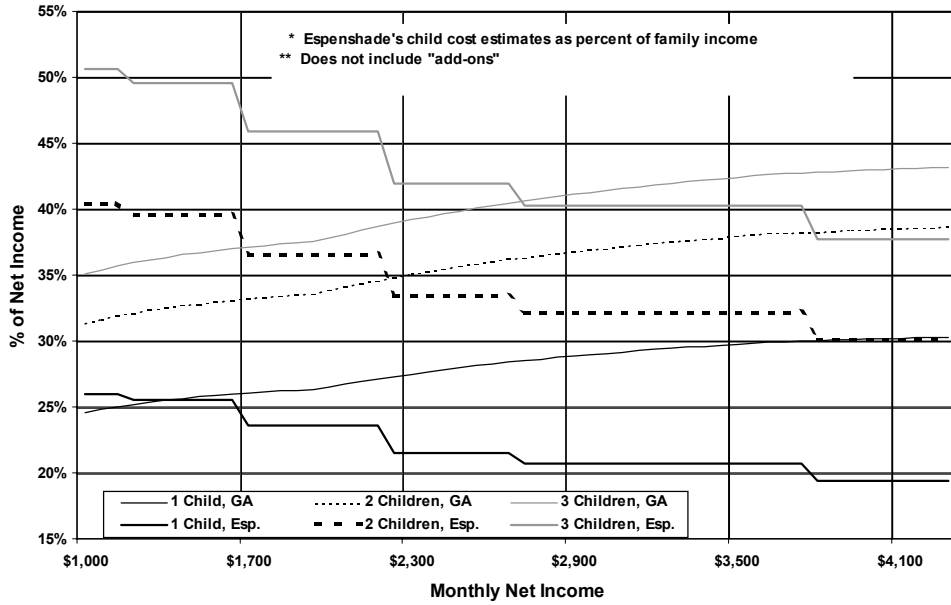
Engel’s Law as extended to overall consumer spending has been embraced by mainstream economists across the political spectrum—including such as conservative economist Milton Friedman and liberal economist John Maynard Keynes.⁵ Recent child cost studies confirm the pattern of consumer spending as developed by mainstream economists. In a 1984 study, Thomas J. Espenshade confirmed the basic pattern that household spending on children rises in absolute dollars as income rises but declines as a share of income as income rises (as shown in Chart 1 above).⁶ More recently, David Betson’s studies of child costs (underlying so-called income shares models) confirm that child costs as a declining

percentage of rising household income follow a pattern that is consistent with mainstream economic theory and evidence on consumer spending.⁷ As a final note on historical studies on household spending patterns, the study by Van der Gaag—upon which the Wisconsin-style guidelines are based (discussed in a later section)—makes numerous references to the fact that consumption as a share of income declines as household income rises. The economic characteristics of Georgia's guidelines contradict the pattern of declining shares of income indicated as factual in its underlying study.⁸ In fact, there are no economic studies that show child costs rising as a share of rising net income.⁹ This conflict with economic studies shows that Georgia's guidelines are not on a rational basis.

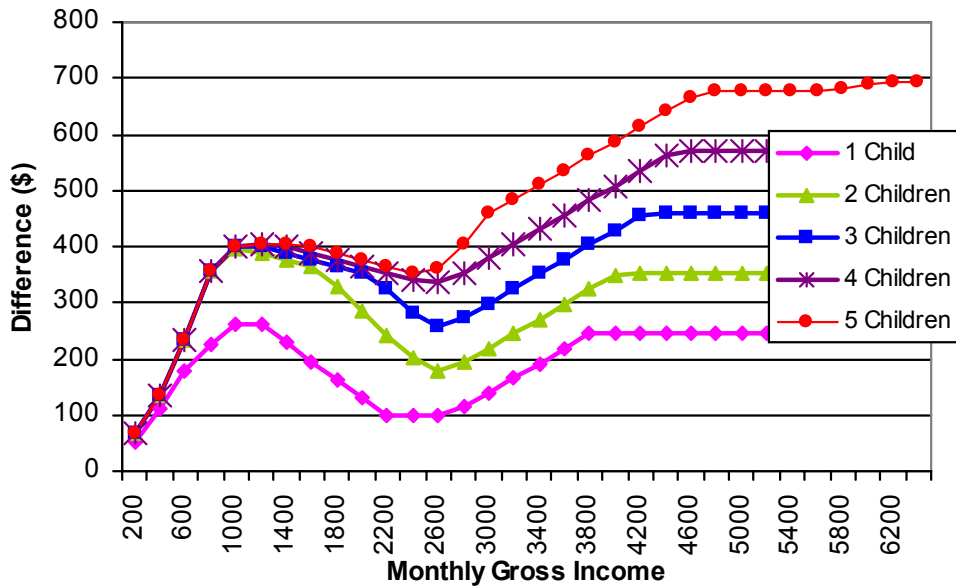
Why is this divergence significant—that Georgia's presumptive percentages rise as a share of obligor net income in contrast to mainstream economic evidence that spending declines as a percentage of rising net income? The importance is that because personal consumption declines as a percentage of rising net income, an obligor parent's child support obligation cannot be determined without the custodial parent's income as part of the equation. First, for an intact family it is the combined income of the parents that determines which percentage that the family spends on children. At higher levels of income, the family spends at a level of expenditures that is a smaller percentage of net income. It is this level of expenditures on children that properly determines the share that should be allocated to the non-custodial/obligor parent. For child costs based on single parent household expenditures, those expenditures also decline as a share of net income. Thus, an average of the two parents' incomes must be used to determine the appropriate shared level and a share allocated based on both parents' incomes. In either case, the economically appropriate award cannot be determined without both parents' income. (See the example discussed below for Table 1.)

Without the custodial parent income as part of the award formula, the non-custodial parent obligation is not on a rational basis and generally results in an inappropriate child support award. For example, if the custodial parent earns substantially more than the non-custodial parent, then the custodial parent's income pushes the combined family income into a lower percentage of net income expenditure level than would be the case if both parents had income equal to that of the non-custodial parent.

Chart 1. Espenshade's Child Cost Estimates* vs. Georgia's Presumptive Child Support Obligation as a Percent of Obligor's Net Income**



Custodial v. Non-Custodial After-Tax Difference



The Shift in Tax Code to Benefit Custodial Parents

Prior to the early 1980s, Federal tax law gave tax benefits and deductions to the parent primarily providing the financial support. This changed during the mid-1980s (and subsequently) with the IRS now giving tax benefits related to supporting a child to the custodial parent on a presumptive basis—regardless of whether the custodial parent provided the majority of the financial support. The Deficit Reduction Act of 1984 allocated the dependency exemption to the custodial parent in all cases unless the custodial parent signed a written declaration each year that the non-custodial could claim the dependency exemption. In non-intact families, the person who previously could claim this exemption typically was the non-custodial parent prior to 1985. This change in tax code was subsequent to when Wisconsin-style child support guidelines were first derived based on obligor gross income in 1981-82 and earlier. The Tax Reform Act of 1986 had a notably divergent impact on custodial versus non-custodial taxpayers. Prior to this change, custodial and non-custodial parents had the same standard deductions—or zero bracket amount as it was known at the time. With the new tax code, the standard deductions for 1988 for heads of household and for single individuals diverged significantly at \$4,400 and \$3,000, respectively. The Act also boosted the earned income credit substantially for custodial parents. Most recently, the Taxpayer Relief Act of 1997 provided a \$500 (\$400 for taxable year 1998--\$500 per year thereafter) tax credit for each qualifying child. Child care credits also are now available as a cost offset for custodial parents.

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

From Federal form 1040 from the Internal Revenue Service for calendar tax year of 1999, the divergent treatment of custodial and non-custodial parents is substantial:

- The standardized deduction (line 36, Form 1040), for a single person (the non-custodial parent) was \$4,300 compared to \$6,350 for a head of household taxpayer (the custodial parent). This is a bonus of \$2,050 in deductions for the custodial parent.
- The custodial parent only is able to claim the dependent exemptions as a legal right (lines 6c and 38, Form 1040). The 1999 value of each dependent exemption was \$2,750.
- For low income and moderately low income working parents, custodial parents receive dramatically more favorable treatment than do non-custodial parents in terms of the size of earned income credits under Federal income tax law.

The earned income credit was as much as—

- \$347 if you did not have a qualifying child (non-custodial parent),
- \$2,312 if you had one qualifying child, or
- \$3,816 if you had more than one qualifying child.

- The Taxpayer Relief Act of 1997 gave custodial parents a tax credit of \$400 per child and additional credit for a third child under special circumstances. The credit went to \$500 per child in 1999.
- Childcare credits can be as high as \$480 per child for high moderate income families.
- As with Federal tax code, Georgia personal income tax law gives custodial parents significant exemptions that non-custodial parents generally do not get. Also the marginal tax rate increases for head of household taxpayers kick in at higher income threshold levels than for single, non-custodial parents. This is seen in Schedule X and Schedule Z in *1999 1040, Forms and Instructions*, Department of the Treasury.

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

Chart 2 summarizes the difference in tax code treatment of custodial parents to that of non-custodial parents. The horizontal axis is gross income for each parent (with each having the same gross income) and the vertical axis is the net income advantage that the custodial parent has at each level of gross income. It shows the after-tax income of the custodial parent minus the after-tax income of the non-custodial parent. Taxes are Federal and Georgia personal income taxes, Medicare, and Social Security taxes. Earned income credits are added. Standard deductions are used. Chart 2 shows a dramatic after-tax advantage for the custodial parent. The first “hump” is primarily due to the earned income credit that the custodial parent receives as a cost offset. The rising advantage on the right two-thirds of the chart is due to differences in marginal tax rates. Deductions and exemptions also boost the overall level for custodial parents. Use of gross income for guidelines ignores the advantage that custodial parents receive from preferential tax treatment. This advantage typically is worth several hundred dollars in net income per month. For example, at gross income of \$4,000, the custodial parent with two children has \$376 more net income monthly than the non-custodial parent to support the children (equal to \$4,512 after tax extra income annually). At low-income levels, the difference is quite striking. A little above the poverty level, for equal levels of gross income, the custodial parent has between 40 to 50 percent more after-tax income than the non-custodial parent for which to support the children due to favorable tax treatment.

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

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

Georgia case law has clearly stated that Georgia courts do not have the authority to order a custodial parent to sign over the tax benefits to the NCP on an alternating basis or even to the NCP at all. See *Blanchard v. Blanchard*, 261 Ga. 11 (1991) and more recently *Bradley v. Bradley*, No. S98A1801(Feb. 8, 1999). Other states' higher courts, in contrast, have ruled that family courts can award the tax benefits to the obligor. However, this issue can be easily side-stepped to achieve economic equity. Courts can address the differential tax treatment by treating the tax benefits as a direct cost offset to the child support award. The child support guidelines should take into account the favored tax treatment for the custodial parent by requiring that the tax benefit be deducted from overall child costs as part of a specific step in the calculation of the NCP's child support obligation. The cost offset the custodial parent receives would simply be the difference in the CP's after-tax income comparing filing as head of household and filing as a single taxpayer. Georgia statutory and case law clearly indicate that each parent has an equal duty to bear the financial costs of rearing children. It only follows that both parents have an equal right to share the cost offsets of tax benefits attributable to the same children.

Examples of Georgia Presumptions Not Following Economic Patterns and the Poverty Level Burden.

Table 1 shows the how the presumptive guidelines determine the presumptive award based on various income levels for both the non-custodial parent and custodial parent. The first column on the left shows the obligor income, the second column, the custodial parent income, the third column shows their combined income, and the fourth column shows the presumptive award based on the given income levels for both the obligor and obligee. Awards are stated for the lower bound of the presumptive range, the mid-point, and the upper bound.

This table starts with the obligor having minimum wage earnings. When the obligor is making minimum wage and earning \$825 a month, one sees the presumptive award to be \$190, \$210, and \$231 for lower bound, mid-point, and upper bound, respectively. This is the presumptive award regardless of whether the CP's income is \$0 or \$5,833 monthly. In column 3, one sees the "family" income rising as the CP income rises, yet there is no impact on the obligor's presumptive award. There is no economic theory or data that supports that outcome—one where the presumptive award does not change as family income changes substantially. This characteristic of Georgia's guidelines holds true whether the obligor has a low income or a high income. The custodial parent income—and in turn, "family" income—has no impact on the presumptive award. The guidelines do allow the custodial parent income to be a reason for the court to deviate from the presumption but give no guidance on how to apply that factor in an equitable, rational, and consistent manner.

In Table 1, Column 6 from the left demonstrates how far a presumptive award pushes a minimum wage obligor working a 40 hour week below the poverty level. This table shows data for lower bound, mid-point, and upper bound awards. The obligor is assumed to earn \$5.15 an hour for 40 hours per week for 4 weeks per month. This equals \$824 monthly but is rounded to \$825 in the table. For 1999, the official poverty level threshold income for a one individual household (under 65 years of age) was \$8,667 annually or \$722 monthly. Column

6 shows the result of taking gross income monthly and then subtracting the presumptive child support award and then subtracting the poverty threshold. At minimum wage, the presumptive award clearly pushes the obligor below the poverty level. The obligor cannot pay child support and meet basic living needs. For the five-child case, the presumptive award pushes the obligor with these same earnings below the poverty level by \$153, \$178, and \$202 for the lower bound, mid-point, and upper bound awards, respectively. The presumptive award for low-income obligors clearly creates an extraordinary burden of presuming an obligation that leaves the obligor less than enough for basic living needs. If child care and medical insurance are added, then the NCP is pushed below the poverty level further. This can easily be \$100 to \$200 further below the poverty level. Courts may deviate for low-income obligors but there is no guideline requirement to do so and no instructions on how to do so in a rational and consistent manner.

Table 1 also shows the significance of Georgia's range of percentages for presumptive awards and potential unequal treatment of obligors. In Table 1, column 5 from the left shows both the dollar difference between the presumptive upper bound and lower bound. This difference is shown for two children situations and the difference can be substantial—almost \$300 per month different when the obligor has a monthly income of \$5,833 (\$70,000 annualized). Table 2 summarizes the percentage differences between upper and lower bound presumptive awards. Similarly situated individuals can be given very different presumptive awards. These differences clearly go beyond mere mathematical imprecision.

**Table 1. GEORGIA CHILD SUPPORT PRESUMPTIVE AWARDS:
IMPACT OF CUSTODIAL PARENT INCOME
AND OBLIGOR POVERTY LEVEL BURDEN**

TWO CHILDREN
(Excluding "Add-ons")

<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>	<u>Difference Between Lower and Upper:</u>		<u>After CS Poverty Level Difference Lower, Mid, Upper</u>
				<u>Dollars</u>	<u>Percent</u>	
\$825	\$0	\$825	\$190, \$210, \$231	\$41	22%	-\$87, -\$107, -\$125
\$825	\$825	\$1,650	\$190, \$210, \$231	\$41	22%	-\$87, -\$107, -\$125
\$825	\$2,500	\$3,325	\$190, \$210, \$231	\$41	22%	-\$87, -\$107, -\$125
\$825	\$3,333	\$4,158	\$190, \$210, \$231	\$41	22%	-\$87, -\$107, -\$125
\$825	\$5,833	\$6,658	\$190, \$210, \$231	\$41	22%	-\$87, -\$107, -\$125
\$2,500	\$0	\$2,500	\$575, \$638, \$700	\$125	22%	
\$2,500	\$825	\$3,325	\$575, \$638, \$700	\$125	22%	
\$2,500	\$2500	\$5,000	\$575, \$638, \$700	\$125	22%	
\$2,500	\$3,333	\$5,833	\$575, \$638, \$700	\$125	22%	
\$2,500	\$5,833	\$8,833	\$575, \$638, \$700	\$125	22%	
\$5,833	\$0	\$5,833	\$1,342, \$1,487, \$1,633	\$291	22%	
\$5,833	\$825	\$6,658	\$1,342, \$1,487, \$1,633	\$291	22%	
\$5,833	\$2500	\$8,333	\$1,342, \$1,487, \$1,633	\$291	22%	
\$5,833	\$3,333	\$9,166	\$1,342, \$1,487, \$1,633	\$291	22%	
\$5,833	\$5,833	\$11,666	\$1,342, \$1,487, \$1,633	\$291	22%	

Two Children Presumptive Guidelines: Percentage range of obligor gross income: 23 to 28 percent [O.C.G. §19-6-15(b)(5)].

\$825=\$9,900 annualized. \$2,500=\$30,000 annualized. \$3,333= \$40,000 annualized. \$5,833=\$70,000 annualized.

Minimum wage: \$5.15. \$5.15 @ 40 hours @ 4 weeks = \$824 (rounded to \$825). Poverty level, one person under 65 years, 1999: \$8,667 (\$722 monthly).

Table 2. 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>Percent 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

Real Life Example of Extraordinary Benefits to the Obligee

Table 3 gives an example of how large the income transfer is to the CP under the guise of child support. This table is based on standard deductions and exemptions and a mid-point child support award. Initially, the NCP has 43 percent more gross income than the CP. Yet, on an after-tax, after child support basis, the CP has 52 percent more income than the NCP. Taking into account the extra cost of the child, the CP has ended up with a 15 percent higher standard of living than the NCP—even though the NCP started out earning 43 percent more than the CP. This standard of living comparison is discussed in more detail in "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, Spring 1999, pp.141-162, by R. Mark Rogers. With Georgia's child support guidelines, the income transfer is so large and in excess of actual child costs that the CP in most circumstances ends up with a higher presumptive standard of living than the NCP even though the CP earns significantly less than the NCP. This is an extraordinary benefit for the CP.

Table 3.

Child Support Obligations in Georgia

Comparison of NCP and CP Incomes: Before and After,
Taxes and Child Support (1999 Tax Code)

One Child

<u>Non-Custodial Parent/Obligor</u>	<u>Custodial Parent/Obligee</u>
\$50,000 Gross and adjusted gross	\$35,000 Gross and adjusted gross
-8,688 Federal income tax	-3,476 Federal income tax
-2,513 Georgia income tax	-1,381 Georgia income tax
-3,100 Social Security tax	-2,170 Social Security tax
-725 Medicare tax	-508 Medicare tax
\$34,974 After-tax income	\$27,966 After-tax income
-\$10,000 Child support payment (\$833/month)	+\$10,000 Child support received (\$833/month)
\$24,974 After-tax, after-CS income	\$37,966 After-tax, after-CS income

Based on:

Presumptive child support award of
20 percent of NCP gross income*
\$4,300 Federal standard deduction
\$2,750 Federal personal exemption
\$0 child exemption
\$42,950 Federal taxable income
\$0 Federal child tax credit

Based on:

\$6,350 Federal standard deduction (HH)
\$2,750 Federal personal exemption
\$2,750 child exemption
\$23,150 Federal taxable income
\$500 Federal child tax credit

* Example does not include add-ons such as medical insurance and child care.

Origin and Original Intent of Georgia's Percent of Obligor Model (Wisconsin-Style)

Georgia's child support guidelines are based on those developed for the State of Wisconsin. Wisconsin regulatory code specifically points to the origins. Chapter HSS 80 of the Wisconsin state *Register*, January 1987, No. 373, is entitled, "Child Support Percentage of Income Standard." The Introduction to this chapter explains the alleged academic underpinnings for this particular model of determining a non-custodial parent's child support obligation. As seen in Section HSS 80.01:

The percentage standard established in this chapter is based on an analysis of national studies, including a study done by Jacques Van der Gaag as part of the Child Support Project of the Institute for Research on Poverty, University of Wisconsin, Madison, entitled "On Measuring the Cost of Children," which disclose the amount of income and disposable assets that parents use to raise their children.¹⁰

Van der Gaag's Definition of Child Costs

Van der Gaag's definition of child costs diverges sharply from common definitions that generally are tied to how much families with children actually choose to spend on children. His study's definition begins with one-child costs being based on how much income a one-child couple must be compensated in order to be equally well off economically as without the child. From Van der Gaag, "Thus the question is: How much income does a couple with one child need, to obtain the same level of economic well-being as a childless couple?"¹¹ His studies did not look at actual expenditures on children but rather how much income the parents needed to get back to the prior standard of living. He expanded this definition for additional children. The State of Wisconsin took Van der Gaag's estimates and with minor adjustments, adopted them for advisory guidelines for welfare cases. Wisconsin's guidelines, based on Van der Gaag's study, are as follows:

<u>Number of Children</u>	<u>Percentage of Obligor's Gross Income</u>
1	17 percent
2	25 percent
3	29 percent
4	31 percent
5 or more	34 percent.

One of the chief criticisms of the Van der Gaag's cost estimates is brought up by Van der Gaag himself as commentary within his study. The cost estimates do not take into account any "utility"—or satisfaction—that children give to the parents. Essentially, his cost estimates are based on a definition such that all that matters is economic well-being of the parents—as though that is the only consideration used to determine whether to have children or not. His definition leads to an overstatement of child costs. In real life, when parents choose to have children, they realize it is with the loss of the standard of living for "other" goods and services consumed. They choose this lower standard of living for "other" because of the satisfaction from having children. Curiously, this issue has implications for the methodology behind income shares models—to be discussed later. Also, Van der Gaag assumed the custodial parent has the child 100 percent of the time.

Additionally, the bulk of the studies reviewed by Van der Gaag are for low-income families and the studies ignore the impact of government transfers to subsidize child costs. Importantly, the baseline income for the families studied is \$12,000 (1982 dollars) for Van der Gaag's table comparing child costs as a percentage of gross income. The low-income base would necessarily lead to high percentages for child costs since necessities would take up almost all and in many cases more than all income. Dependence on subsidies also would boost child costs as a share of income.

Importantly, these percentages were estimated as indirect measures of child costs from data in the late 1970s and early 1980s for low-income obligors. These obligors paid little if any income tax. The tax impact was not an issue since the percentages were only used in welfare cases. Also, today's earned income credits and child credits had not yet been

enacted—which now can add thousands of dollars to the CP household annually. The adjusted percentages were adopted by the State of Wisconsin in 1983 as guidelines to be used in an advisory capacity and as a rebuttable presumption for child support obligations in 1987.¹²

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

Based on early papers providing the technical foundations for Wisconsin's child support guidelines, the guidelines were originally developed for only welfare situations (in research papers, the child support obligation is described as a "tax" since the intent was for automatic with-holding as with other taxes). The intent was for both parents' income to be part of the formula and that there be a maximum level of benefits (child support).¹³

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

It is well documented that the original concept of Wisconsin's child support plan included low-income exemptions, ceilings on income subject to the guidelines, and was based on a modest level of publicly guaranteed benefits to the child with the state's objective as recovery of the costs of those benefits from both parents as much as was practical. These guidelines were never intended to be extended beyond low-income situations or beyond low benefit guarantees.¹⁴

How did Wisconsin's welfare situation guidelines become applied to all types of cases? In its rush to comply with the Family Support Act of 1988, the Wisconsin legislature delegated guideline authority to the Wisconsin Department of Health and Social Services which in turn administratively chose to use welfare percentages in non-welfare cases also. Additionally, Georgia adopted its guidelines from Wisconsin's in the same rush to comply with Federal regulations to keep Federal funding. Essentially, Georgia's and Wisconsin's current child support guidelines conflict with the underlying economic study and original intended use as indicated by that study.¹⁵ Additionally, the Federal government recommended that states not use obligor-only guidelines such as used for welfare cases because of the economic inequity of such use. See the recommendation of the Federal Advisory Panel on Child Support Guidelines, appointed by the U.S. House Ways & Means Committee in *Development of Guidelines for Child Support Orders*, U.S. Department of HHS, September 1987.

Georgia Presumptive Child Support Awards Compared to Economic Estimates of Child Costs

There are two basic types of methodologies for estimating child costs. One can take surveys of actual household expenditures on child costs. Second, one can use some indirect estimation technique. This second methodology is actually the more commonly applied methodology even though most assume otherwise. Some economists, for simplicity, have chosen to indirectly estimate child costs by looking at changes in family spending on adult goods. Under a methodology known as “Betson-Rothbarth,” child costs are defined as the amount of income needed to restore a family’s pre-child (or additional child) standard of living. The standard of living is defined by the share of a family’s consumption of alcohol, tobacco, and adult clothing. Economists compare how much income is needed to restore that share of consumption back to the pre-child level. This is defined as the child cost.

This methodology, however, tends to overstate child costs because it ignores extra overhead when families are no longer intact and ignores that when a family has a child that the budget constraint forces the family to consume less of other goods. Also, families often choose to spend less on these types of goods—alcohol and tobacco—after having children. This definition of child costs is basically the same as that in the Van der Gaag study except the Betson-Rothbarth methodology estimates child costs at varying levels of income—not just for low-income families.¹⁶ This methodology—while overstating child costs—at least results in estimates of child costs that decline as a share of gross income. This methodology is what underlies so-called “income shares” child support guidelines—at least those that are in pure form. Also, this methodology does not allocate the custodial parent's tax benefits (attributable to the children) between both parents.

There are few studies of actual expenditures on child costs using a marginal cost basis. Marginal cost studies look at the additional cost a child creates rather than averaging it in with adult overhead. For example, a child’s marginal costs for housing utilities would be the cost above what adults incur without the child. The same idea would apply to other cost categories. One such study in prototype form, however, was published by the U.S. Department of Health and Human Services in 1994 and offers a reasonable comparison to Georgia’s presumptive awards.¹⁷ This methodology is called “cost shares.” Marginal costs for actual expenditures in single-parent households on one, two, and three children were derived from surveys on various categories—housing, food, transportation, etc.—for several income ranges.

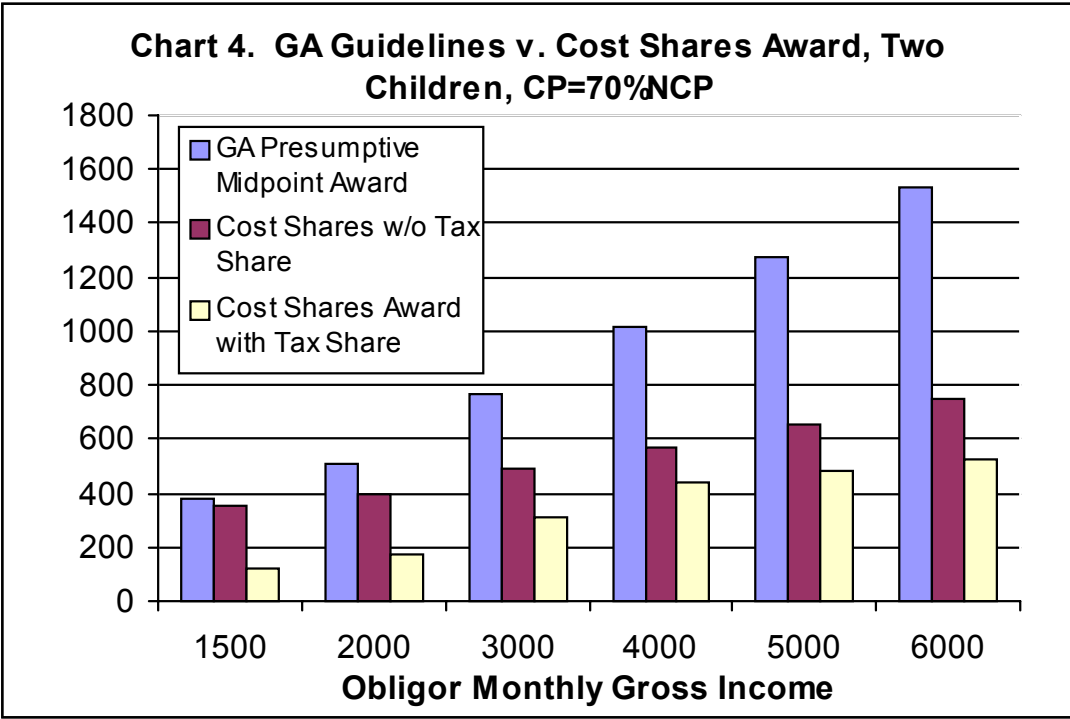
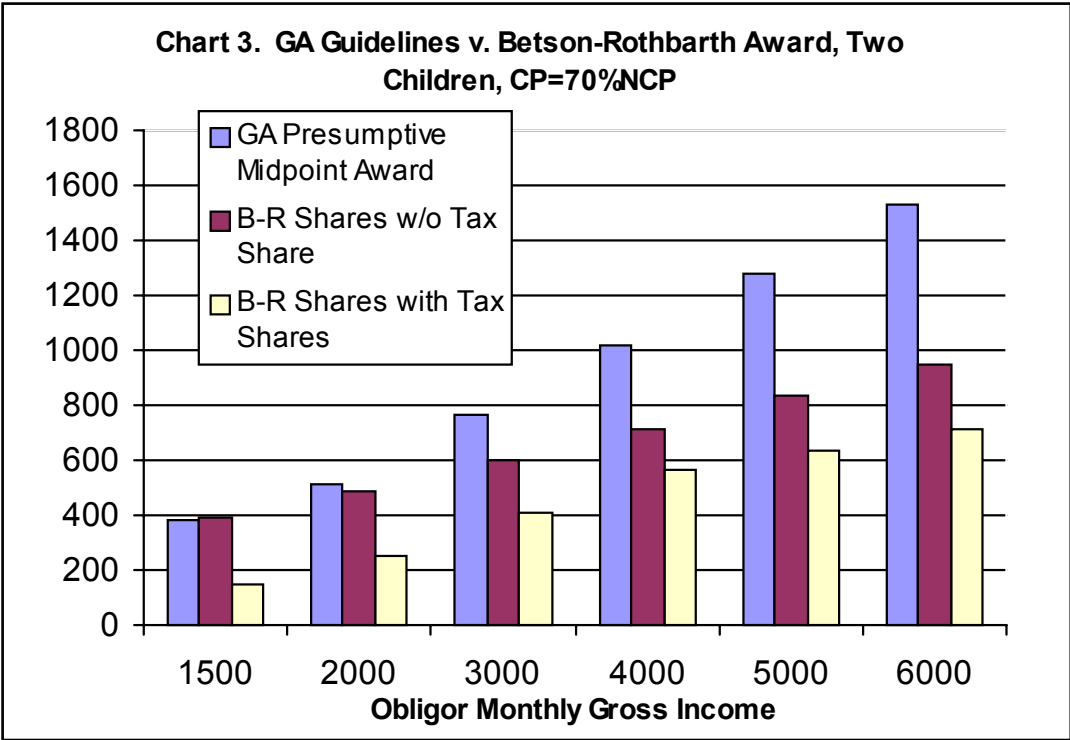
The cost share methodology takes these basic child costs and then treats the custodial parent's tax benefits as a cost offset—as legislatively intended. The tax-adjusted costs are then shared by the two parents based on their relative incomes. This author updated the 1994 cost shares child cost estimates with a 1999 CPI index and by interpolating child costs for smaller income categories than published in 1994.

Chart 3 shows the Georgia presumptive awards for various gross income levels for the obligor and with the custodial parent earning 70 percent gross of the obligor's income. It also shows the Betson-Rothbarth estimate for the NCP’s share of child costs in standard

estimates and also with a tax benefit share adjustment ("with tax shares"). The difference between these Betson-Rothbarth numbers and the Georgia presumptive award is a low estimate of the amount of "hidden alimony" or profit the custodial parent makes from having custody. These amounts are quite substantial, resulting in extraordinary benefits for the custodial parent.

For situations such that the custodial parent has from one half to equal net income of the non-custodial parent, for up to \$5,000 per month in net income for the NCP, the profit for the CP is: one child: up to 49 to 53 percent of the presumptive mid-point award; two children: up to 43 to 47; and three children: up to 40 to 44 percent. The lower figure is the percent that is profit with custodial parent income at half that of the non-custodial parent. The upper figure is for equal net income. For situations in which the CP earns more than the NCP, the amount of hidden alimony is even greater. These figures are without taking into account an appropriate sharing of the cost offset from tax benefits. Also, the Betson-Rothbarth methodology overstates child costs, further indicating that the amount of profit is even larger.

Chart 4 shows the Georgia presumptive awards for various gross income levels for the obligor and with the custodial parent earning 70 percent gross of the obligor's income along with "cost shares" estimates for the NCP's share of child costs with and without a tax benefit share adjustment ("tax shares"). The difference between these cost share numbers and the Georgia presumptive award is a more reasonable estimate of the actual amount of "hidden alimony" or profit the custodial parent makes from having custody. For example, at \$3,000 monthly gross income for the two-child obligor and the CP earning 70 percent of that, the presumptive mid-point award exceeds the NCP's share of actual child costs (excluding tax benefit offsets) by \$278 monthly and after the tax benefit offset this excess payment rises to \$455 monthly. These numbers come to \$3,336 and \$5,460, respectively, annually. For moderate to high income situations, the share of the presumptive mid-point award that is hidden alimony (with the CP earning 50 to 100 percent of NCP gross) runs from about 55 percent to 70 percent for one child, 55 percent to 65 percent for two children, and 45 percent to 65 percent for three children. The tax benefit effect is quite large—especially for low-income situations—and as a result a very large share of the child costs are covered by the tax benefits. Based on these cost offsets and sharing the remaining costs with the custodial parent, Georgia's presumptive awards at low income levels (moderately above poverty level) have hidden alimony components that frequently equal or exceed 70 percent of the award. Clearly, Georgia's presumptive awards result in extraordinary benefits for the custodial parent by not being based on actual child costs and on a sharing of the tax benefits.



Summary

Georgia's child support guidelines—which rise as a share of net income—conflict with all economic studies on child costs. This conflict also is with the underlying study from Wisconsin. There is no rational basis for using flat percentages of gross income for a wide income range. Georgia's presumptive awards result in large financial windfalls to the custodial parent in which awards substantially exceed economic-based child costs. This results in extraordinary benefits for custodial parents and extraordinary burdens for non-custodial parents. A significant portion of the financial windfall for the custodial parent is due to the tax offsets being given entirely to the custodial parent rather than being shared with the CP as child costs are a joint statutory obligation. Use of obligor-only percentages also means that the presumptive award does not systematically take into account family income. Without taking into account family income, the economically appropriate award cannot be determined—as is the case using Georgia's child support guidelines. For low-income obligors, Georgia's presumptive awards push the obligor below the poverty level—creating an extraordinary burden. Finally, Georgia's use of a presumptive range of percentages results in substantial opportunity for similarly situated obligors to receive very different treatment. This use of a range of percentages not only conflicts with Federal regulations on child support guidelines but also violates equal protection standards.

(THIS ARTICLE DOES NOT REFLECT THE OPINIONS OF THE STATE BAR OF GEORGIA FAMILY LAW SECTION OR EDITORS. IT IS PRESENTED TO STIMULATE DISCUSSION AND COMMENTS ARE WELCOME.)

¹ Formerly 45 CFR 302.53 and currently 45 CFR 302.56.

² See 45 CFR 302.56(c)(2).

³ H. S. Houthakker. "An International Comparison of Household Expenditure Patterns, Commemorating the Centenary of Engel's Law," *Econometrica*, 25 (October 1957), pp. 532-551, p. 532.

⁴ As discussed below, progressive income taxes are a key reason child costs decline as a share of gross income. The other significant reason is rising personal saving rates. This factor is not discussed in this article but numerous bibliographic references on this are found in *The Minority Report of the Georgia Commission on Child Support, 1998*, by R. Mark Rogers.

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

⁶ Robert G. Williams references Espenshade (1984 study) in "Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches," *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, p. I-7-I-8.

⁷ See David M. Betson, *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, Report to U.S. Department of Health and Human Services, University of Wisconsin Institute for Research on Poverty (September 1990).

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

⁹ This fact "begs" for one particular question for discovery by any party in child support litigation that might raise the issue of the constitutionality of Georgia's guidelines: the citation of any economic study showing child costs rising as a share of net income (there would be none).

¹⁰ Wisconsin, State of. *Register*, January 1987, No. 373, Chapter HSS 80, page 316-1.

¹¹ Jacques van der Gaag, "On Measuring the Cost of Children," *Child Support: Technical Papers, Volume III, SR32C*, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982, pp. 18.

¹² Irwin Garfinkel, "The Evolution of Child Support Policy," *Focus*, Vol. 11, No. 1, Spring 1988, University of Wisconsin-Madison, Institute for Research on Poverty, p. 13.

¹³ 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.

¹⁴ Institute for Research on Poverty, University of Wisconsin-Madison. *Child Support: A Demonstration of the Wisconsin Child Support Reform Program and Issue Papers*, Volume II, SR32B, Special Report Series, 1981, p. 51.

¹⁵ Apparently, the only appeals case to address the issue of using child support guidelines specifically designed for welfare cases in non-welfare situations was in Oregon. Although not in the context of constitutional issues, the Oregon Supreme Court in *Smith v. Smith*, 626 P2d 342 (1981) specifically stated that it is not appropriate to use welfare guidelines in higher income situations, citing a long list of economic and equity reasons (with many of those repeated in this article).

¹⁶ See David M. Betson, *Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey*, Report to U.S. Department of Health and Human Services, University of Wisconsin Institute for Research on Poverty (September 1990).

¹⁷ See Donald J. Bieniewicz, "Child Support Guideline Developed by Children's Rights Council," *Child Support Guidelines: The Next Generation*, U.S. Department of Health and Human Services, 1994, pp. 104-125.