

Minority Report of the Georgia Commission on Child Support

Submitted to Georgia Governor Zell Miller

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by R. Mark Rogers

Introductory Comment

Georgia has a peculiar model of child support guidelines. Reasonably, however, Georgia's guidelines are based on a percentage of income that varies according to the number of children. But oddly, just the non-custodial parent's income is considered and, even stranger, the percentage is fixed for all levels of income and on a before-tax basis. In complete contrast to all known economic studies on consumer spending behavior, application of Georgia's guidelines leads to the curious result that a non-custodial parent's child support obligation rises as a share of after-tax income. In turn, after-tax obligations become bizarrely high. For example, a before-tax obligation for two children of 25 percent of obligor income translates into about a 40 percent after-tax obligation for moderately high incomes.

Only about a dozen states use a percent of obligor-only income model. Even fewer use one on a before-tax basis as Georgia does. Additionally, some of these states use an obligor-only model that severely restricts application to a ceiling level of child support award. Georgia is one of less than a handful of states that use such a simplistic, before-tax, income-of-obligor-only model as it does. Notably and in contrast, about thirty-five states base their child support guidelines on both parents' income and have presumptive awards that decline as percentages of combined income and take into account special needs at the poverty level. Curiously, the Federal Advisory Panel on Child Support recommended against using the type of guidelines that Georgia adopted in 1989 and currently uses. Curiously, Georgia's guidelines go against the recommendations of those conducting the original economic study allegedly underlying Georgia's guidelines. In contrast to popular myth, in most situations Georgia's guidelines have been shown statistically to leave the non-custodial parent with a lower standard of living than the custodial parent household.

The Minority agrees, as discussed below, with the vast majority of attorneys surveyed for this Commission that Georgia's child support guidelines should be changed.

Summary

The Georgia Commission on Child Support convened on February 13, 1998, after appointment by Governor Zell Miller in December 1997, in order to initiate a review of Georgia's child support guidelines. This review was begun with the intent to comply with Federal government requirements as pertaining to the State's receipt of Federal funds in exchange for the State's agreement to comply with Title 45 of Code of Federal Regulations, Section 302.56.

In order for the State to satisfy requirements for receipt of Federal funds, the State is given one broad objective and two specific requirements for its four year review of the State's child support guidelines. The broad objective is that the State is required once every four years to review, and revise if appropriate, the State's child support guidelines to ensure that their application results in the determination of appropriate child support award amounts. That is, the states must review the guidelines in terms of their "appropriateness." The two specific requirements are that the State must (1) consider economic data on the cost of raising children, and must (2) analyze case data on the application of and deviations from the guidelines. Georgia Governor Zell Miller has appointed the Georgia Commission on Child Support to act for the State in order to meet these Federal regulatory mandates.

Experts Testify That Georgia's Guidelines Are Not Appropriate

- Expert testimony by Williams and Bieniewicz shows custodial parents frequently receive large amounts of hidden alimony under the guise of child support in Georgia.
- Expert testimony by feminist advocate Entmacher backed an evaluative method that shows custodial parents generally have a higher standard of living than non-custodial parents based on Georgia's guidelines.

For the broad objective—the one of "appropriateness," all three economic experts directly or indirectly stated that Georgia's presumptive guidelines are excessive at moderately high and high-income levels.¹ All three experts stated that while the guidelines are inadequate at poverty levels of income in terms of covering child costs, all experts stated that the burden on the obligor is excessive and inappropriate. Separately, an economic study was conducted and presented by the author of this Minority Report. This study on Georgia's presumptive child support obligations indicates that an application of the guidelines generally results in an inappropriate, significantly higher standard of living for the custodial parent household than for

¹ The three guests presenting expert economic testimony were Robert Williams, Don Bieniewicz, and Joan Entmacher. Robert Williams is director of Policy Studies, Incorporated of Denver Colorado and is the developer of the income shares child support model used by about 35 states. Don Bieniewicz is a policy consultant with Children's Rights Council. Joan Entmacher is a legal analyst with National Partnership for Women and Families (formerly Women's Legal Defense Fund).

the non-custodial parent.² The result is that Georgia's guidelines are inappropriately high in many, if not most, income situations. This study also found that Georgia's guidelines go against mainstream economic research and data. . Earlier expert witnesses corroborated this author's research that Georgia's guidelines violate mainstream economic theory and data. Experts testified that there are no economic studies that show that child costs rise as percentage of after-tax income as Georgia's do. Essentially, Georgia's guidelines as applied to a wide income range are without any economic basis. All experts testified that the proper award cannot be determined without both parents' income as part of the presumptive formula and reflecting actual costs to be proportioned. Essentially, the evidence presented to the Commission was that Georgia guidelines do not result in appropriate child support award amounts and that the Commission—in order to meet Federal requirements for funding—should recommend changing the guidelines as necessary.

Case Study Requirement Not Met

For the first specific requirement of the guideline review related to reviewing data on child costs, the Commission received testimony from three expert witnesses on the national cost of raising children. However, it is not clear that the Federal requirement regarding review of cost data was satisfied, pending whether the Federal regulation requires state-specific data or not. Additionally, the Commission did not obtain data nor did it review any studies on the cost of raising children in high-income situations. The Commission is not in a position to determine if changing the guidelines is appropriate for high income situations. For the second specific requirement that is in regard to case studies, the Commission did not obtain case data and therefore has not satisfied the requirement to evaluate application of and deviations from guidelines based on case data.

Essentially, the Georgia Commission on Child Support has not met Federal requirements to continue receive Federal funding without penalties imposed. Additionally, 45 CFR Section 302.56 states specific requirements regarding State implementation of child support guidelines into statutory law. Georgia still does not comply in at least two respects and the Commission is obligated to recommend changes to the Georgia Legislature in order to comply and to qualify for continued Federal funding.

Current Guidelines Still Do Not Meet Federal Regulatory Requirements

The first specific requirement with which Georgia statutory law does not comply is that the guidelines must be based on specific descriptive and numeric criteria and result in a computation of the support obligation. This is required under 45 CFR Section 302.56(c)(2). Georgia's use of a range of percentages does not result in a singular presumptive award and violates this requirement. All three expert witnesses stated that Georgia is in non-compliance on this matter. The intent of this regulation is to reduce uncertainty regarding the likely outcome of any hearing regarding child support awards and to treat all similarly situated parents equally.

² The author, R. Mark Rogers, is author of *Handbook of Key Economic Indicators, 2nd Ed.*, McGraw-Hill (1998). The study cited is Appendix material, "How Wisconsin-Style Child Support Guidelines Violate Mainstream Economic Theory and Empirical Research: Georgia as an Example," working paper presented to Georgia Commission on Child Support, June 4, 1998.

Georgia's use of a range of percentages is in contrast to both intents—a parent that is a party in a child support case does not know where within the guidelines a particular judge may choose for the presumptive award and there is no guarantee that judges will treat all similarly situated parties equally.

Second, Federal regulations under 45 CFR Section 302.56 require that the State create presumptive awards that are rebuttable. Georgia's statutory presumptive guidelines do not have a published basis for rebuttable presumption. The criteria underlying the presumptive guidelines are unknown and cannot be rebutted. One does not know what weight various types of child costs are given in the presumptive guidelines. For example, how much of the guideline award is presumed to be for a child's educational expenses or perhaps medical expenses? How would one compare one's own child's possible private school expenses against the unstated school expense implied in the presumptive awards? The same question applies for any other category that a parent might want to rebut. This lack of published basis for rebuttable presumption violates 45 CFR Section 302.56(f) and (g).

Original Study Underlying Georgia Guidelines Uncovered—the Guidelines Are Not What Was Recommended and Go Against the Study

A surprising—if not shocking—outcome of research conducted for presentation to the Commission just prior to its conclusion is that Georgia's presumptive guidelines conflict with the original economic study and policy recommendations by researchers who developed Wisconsin's model of child support guidelines—the percent of obligor's gross income model—that Georgia later adopted. Apparently, the original sponsors of Georgia's guidelines either were misled by special interest advocacy groups about these guidelines or the sponsors misled the Georgia Legislature regarding Federal recommendations and underlying studies. Georgia's presumptive guidelines not only should be changed but should never have been enacted in their current form which conflict with Wisconsin's original research and mainstream economics in general.³

The impact of continuing with the current child support guidelines result in a continuation of bad public policy with negative effects on the welfare of Georgia's children. The Majority has focused almost solely on “adequacy” of award from a custodial parent's perspective, emphasizing maintaining a child's pre-divorce standard of living. Almost no attention has been given to the impact of the guidelines on the standard of living of the non-custodial parent and that of the child when with the non-custodial parent nor the long-term impact on the child when application of the guidelines interfere with the non-custodial parent's ability to contribute to the child's emotional development. As will be discussed below, current guidelines create incentives that are adverse to the child's development. Excessive awards are shown to not be better for the child but worse in the long-run. The Federal Advisory Panel on Child Support was aware of these negative effects and recommended against the guidelines that Georgia enacted into law in 1989 and are still law with only trivial changes since.

³ See *Register*, State of Wisconsin, January 1987; Institute for Research on Poverty, University of Wisconsin-Madison, 1981; and R. Mark Rogers, “How Wisconsin-Style Child Support Guidelines Violate Mainstream Economic Theory and Empirical Research: Georgia as an Example,” working paper presented to Georgia Commission on Child Support, June 1998.

Recommendations

In summary, the Majority Report's recommendation for "no change" in Georgia's presumptive guidelines that are based only on obligor gross income leaves Georgia obligors with excessive and inappropriate child support awards in most case circumstances. The State also is not in compliance for receipt of Federal funds as a result of the Commission not taking necessary actions regarding cases studies and not recommending guidelines that are appropriate as reflecting economic data. Federal regulations require that the guidelines result in an appropriate award. The first recommendation is that the State should comply with the Federal requirement for a case study—a study of cases actually obtained from Courthouse records and from Child Support Enforcement or contractor agencies. Additionally, in order for the State of Georgia to comply with Federal regulatory requirements for an appropriate award—defined by the Minority as reflecting economic data, this Commission should recommend that child support guidelines be enacted into law that are:

- Based on both parents' income,
- Based on after-tax income,
- Based on percentages of income that decline as after-tax income rises,
- Inclusive of a self-support reserve so that a parent's basic needs can be met,
- Inclusive of formula adjustments for differences in how much time each parent has with the child rather than based on a single assumption for "standard" visitation,
- A single-value percent for each combined parents' income level rather than a range of percentages, and
- Based on published cost estimates for expenditure components of child costs for rebuttal purposes.

As a final note for the summary, the recent signing into Federal law of the Deadbeat Parents Punishment Act, on June 24, 1998, creates federal felony punishment for arrearages of child support based on a Federal presumption that the state ordered child support is correct. Given the excessive and oppressive nature of Georgia's current child support guidelines, it is unconscionable to leave Georgia's guidelines unchanged, thereby creating a class of federal felons—non-custodial parents unable to pay all of court ordered child support due to circumstances not of their making.

This report will next detail the Minority's disagreement with Majority positions.

Georgia's Presumptive Guidelines Do Not Reflect Economic Reality, Generally Are Excessive, and Are Not "Appropriate"

The primary task of this Commission is to determine if the presumptive guidelines are "appropriate."⁴ This is a multifaceted task. It involves more than the focus of the Majority--that of seeking only to look at whether child costs are covered for the custodial household. (1) The guidelines for presumptive awards should reflect the reality of known economic spending

⁴ From 45 CFR Section 302.56(e) [10-1-95 edition], "The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts."

patterns based on well-accepted economic theory and data—covering typical expenditure patterns (which in intact families is inclusive of both concepts of “covering costs” and staying within “ability to pay.”) (2) Appropriateness involves making sure that the burden of caring for children financially is shared equally by each parent. “Appropriate” means having taken into account not just whether the presumptive award at least covers child costs as experienced by an intact family but also whether the obligor parent can afford to pay the presumptive award, whether the burden is shared equally (with burden being defined as according to each parent’s available income).

Expert testimony show that Georgia’s guidelines only fare well in terms of covering costs to the custodial household. Otherwise, Georgia’s presumptive child support guidelines are not appropriate because the guidelines do not reflect economic data patterns and because the burden of child support falls disproportionately on the obligor, often resulting in hidden alimony for the custodial parent. For detail, what economic data do Georgia guidelines contradict?

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

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

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

At various times over the past 100 years, and in various countries, comparative studies have been made of family budgets. For a group or “cross-section” of families at a given time, data have been collected regarding size and disposition of income. ... These data also ordinarily reveal the *total expenditures* [emphasis added is original] on all objects (or the savings) of the families covered by the study. Almost without exception budget studies show a relationship between family income and total family consumption like that which Keynes postulated for the total economy: low-income families typically dis-save; high-income families typically spend less than income. As one moves along the distribution from lower to higher incomes, average consumption rises, but by less than income; and the higher the income the less the rise in consumption from a further increment of income. The MPC [marginal propensity to consume—the tendency of consumers to consume a given proportion out of *additional* income] is positive, less than one, and declines as income rises.⁵

⁵ Gardner Ackley, *Macroeconomic Theory*, The Macmillan Company, New York, Collier-Macmillan International Edition, Third Printing, 1973, p. 221.

In a nutshell, there is a long history of economic studies that shows that low income families do not have enough income to cover expenses without public assistance. Second, these studies show that as income rises, the percentage of the additional income that is spent declines, leading to a decline in the average of total income that is spent as income rises.

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

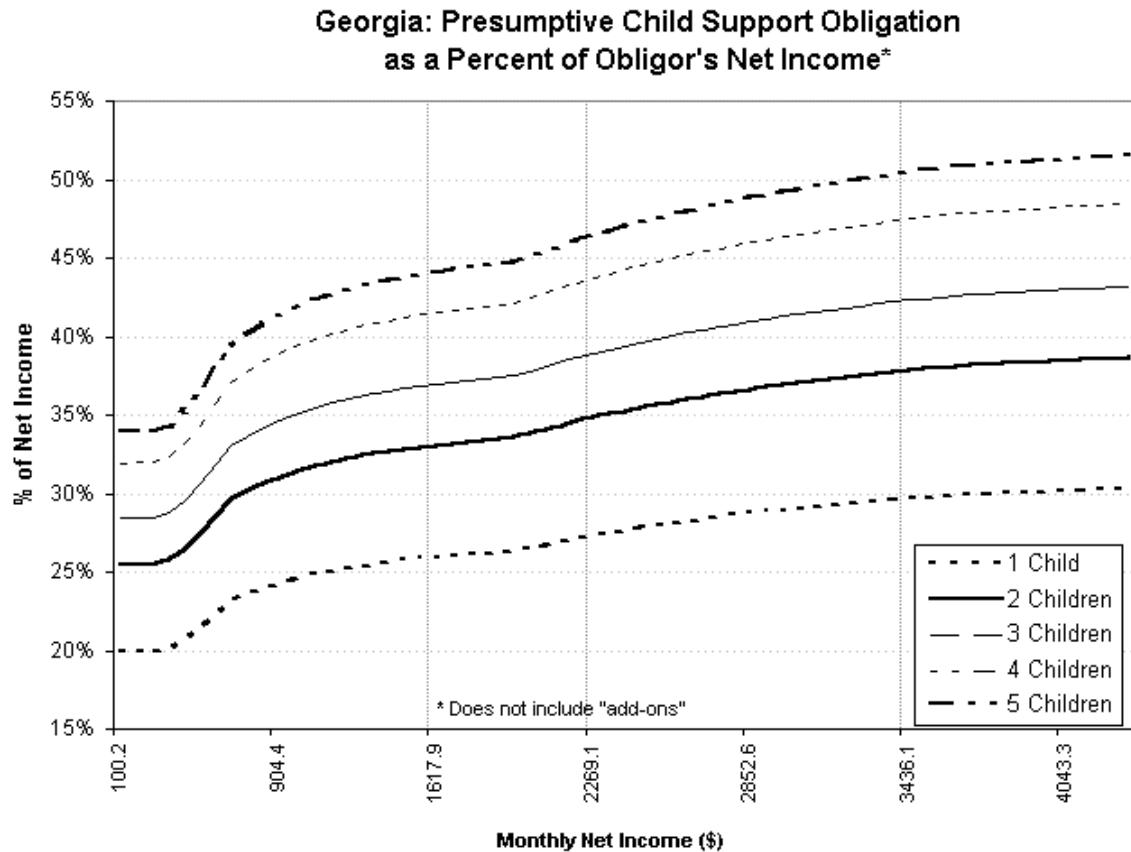
How do Georgia guidelines stand in contrast to known economic data? Georgia's presumptive child support awards are based on obligor-only gross income. However, it is after-tax income from which an obligor must pay the support and meet the obligor's own living expenses. Chart 1 below shows after-tax income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

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

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

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? First, a presumptive award that rises as a share of net income, at some point, leads to an excessive child support award as income rises and includes portions that are hidden alimony. Second, the importance is that because personal consumption declines as a percentage of rising net income, an obligor parent's child support obligation *cannot* be determined without the custodial parent's income as part of the equation. It is the combined income of the parents that determines which percentage that the family spends on children and what the resulting family expenditure level on children is. It is this level of expenditures on children that properly determines the share that should be allocated to the non-custodial/obligor parent.

Chart 1:



Georgia’s Guidelines on a Before-Tax Basis Ignore Differences in Tax Treatment for Custodial Versus Non-custodial Households, Thereby Treating Them Differently in Their Contribution of Support Related to Their Ability to Support Children

Georgia’s Wisconsin-type child support guidelines assume that both parents are equally capable of support based on gross income and based on family spending studies—in contrast to non-intact family studies. Are these valid assumptions as indicated by current tax law and by changes in tax law since these guidelines were derived?

Based on differences in treatment for custodial versus non-custodial parents on Federal and state income taxes, use of gross income as the basis for the determination of child support obligations is inappropriate. The differences in tax treatment are quite substantial, leaving the non-custodial parent with a significantly lower ability to support children relative to the custodial parent at equal levels of gross income. Based on the fact that it is after-tax income that determines a parent’s ability to support children, and that both parents have an equal responsibility to support their children, use of gross income for determination of child support awards leads to an excess burden on the non-custodial parent.

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 1997, the divergent treatment of custodial and non-custodial parents is substantial:

- The standardized deduction (line 35, Form 1040), for a single person (the non-custodial parent) was \$4,150 compared to \$6,050 for a head of household taxpayer (the custodial parent). This is a bonus of \$1,900 in deductions for the custodial parent.
- The custodial parent only is able to claim the dependent exemptions as a legal right (lines 6c and 37, Form 1040). The 1997 value of each dependent exemption was \$2,650.
- For low income and moderately low income working parents, custodial parents receive dramatically more favorable treatment than do non-custodial parents in terms of the size of earned income credits under Federal income tax law.

The earned income credit was as much as—

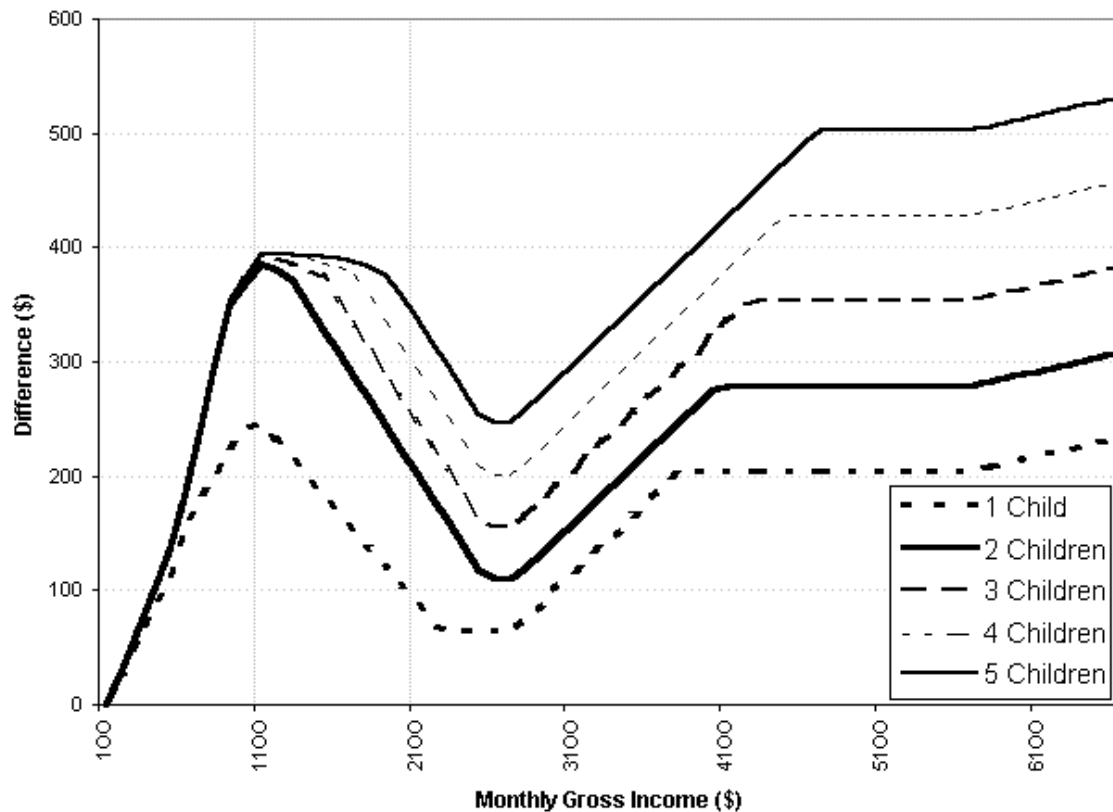
- \$332 if you did not have a qualifying child,
- \$2,210 if you had one qualifying child, or
- \$3,658 if you had more than one qualifying child.

As with Federal tax code, Georgia personal income tax law gives custodial parents significant exemptions that non-custodial parents generally do not get. As noted earlier, also the marginal tax rate increases for head of household taxpayers kick in at higher income threshold levels than for single, non-custodial parents

Chart 2 summarizes the difference in tax code treatment of custodial parents (labeled head of household—HH) to that of non-custodial parents (labeled single taxpayer—SG). The horizontal axis is gross income for both parents and the vertical axis is the net income advantage that the custodial parent has for 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. The rising advantage on the right two-thirds of the chart are 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.

Chart 2:

Georgia: Net After Tax Difference: HH - SG



Tax Code Has Shifted Significantly to Custodial Parent's Favor Since Georgia's Guidelines Were Originally Designed

Georgia's child support guideline model was based on economic research and tax code in the late 1970s and up to a 1982 study by Jacques Van der Gaag working for the University of Wisconsin's Institute for Research on Poverty. Georgia's guidelines were taken directly from Wisconsin's research. Even if the guidelines were appropriate in 1982, they certainly have not kept up with tax code changes that have since favored the custodial parent. Since 1982, some of the key legislation are:

- **1997:** Most recently, the Taxpayer Relief Act of 1997 provides a \$500 (\$400 for taxable year 1998--\$500 per year thereafter) tax credit for each qualifying child under the age of 17.
- **1993:** The Omnibus Budget Reconciliation Act of 1993 added two new marginal tax rates that affect higher-income individuals. First, there is a 36-percent rate applicable to taxpayers with taxable incomes (for calendar tax year 1993) in excess of \$140,000 for married individuals filing joint returns, \$115,000 for unmarried individuals filing as single, and \$127,500 for unmarried individuals filing as head of household. Starting in 1995 these income thresholds were indexed for inflation. Notably, these rates were not in effect when

the Wisconsin-style guidelines were implemented and there now are differing thresholds for custodial versus non-custodial parents.

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

The Act also boosted the earned income credit substantially with the rate and base of the earned income credit to 14 percent of the first \$5,714 of an eligible individual's earned income with phase-out income levels also raised. With these changes combined, the 1986 Act benefited a custodial parent substantially more than a non-custodial parent. Based on wage and salary gross income, the income tax threshold in 1988 for a single individual taxpayer was \$4,950, compared to \$3,760 under prior law—a difference of \$1,190. Based on the same type of income, the income tax threshold in 1988 for a head of household taxpayer with one dependent was \$12,416, compared to \$8,110 under prior law—a difference of \$4,306. For a head of household with three dependents, the difference was \$5,566.

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

Standard of Living Comparisons—After-Tax, After-Child Support

As mentioned earlier, Georgia's guidelines do not take into account whether the obligor actually has the ability to pay the presumed award. This is especially notable at low income levels. Chart 3 compares for both non-custodial and custodial parents their after-tax, after-child support incomes with the poverty level subtracted for each. The poverty level varies according to the number of children. The chart is based on the assumptions of standard taxes, credits, deductions, and exemptions and that the child support is actually paid. This latter assumption is questionable at low income levels. The two-child case is shown as an example. All data are for 1997. Two lines are shown for the custodial parent—one such that the custodial parent has the

same gross income as the non-custodial parent and one such that the custodial parent has only 70 percent of the gross income of the non-custodial parent.⁶

It is quite clear that at low income levels the non-custodial parent is pushed below the poverty level (the horizontal axis) and cannot afford to pay child support and meet basic needs. Given the alternatives, the non-custodial parent must purchase minimal food and clothing and come up short on child support. Because of enforcement practices, these low income non-custodial parents are forced into an underground, cash economy to survive. Georgia's unrealistic guidelines drive these parents out of the official economy and children get less child support than if the guidelines were realistic and the non-custodial parent stayed in the reported economy. Additionally, these low income parents no longer get to see their children for fear of being arrested.

Certainly at low income levels, as shown in the chart, custodial parents also have a difficult time financially. However, custodial parents do qualify for government assistance programs that non-custodial parents do not qualify for.

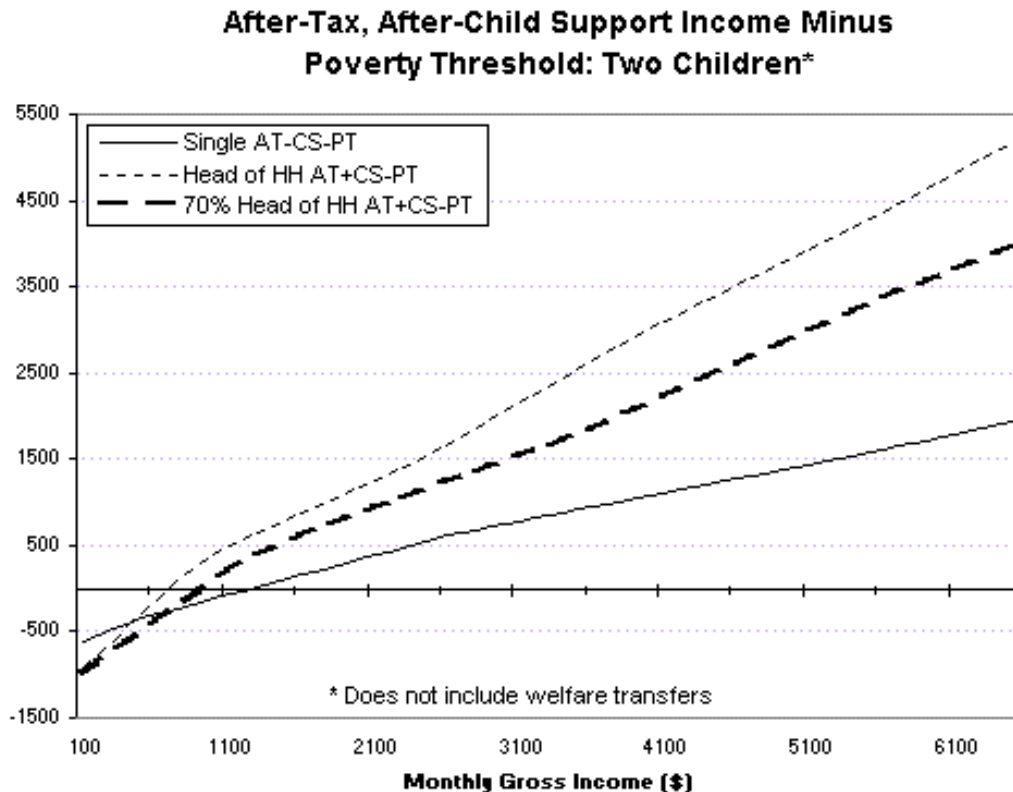
Custodial Parents Generally End Up with a Higher Standard of Living than the Non-custodial Parents

A standard of living comparison is not a comparison of child costs. This type of comparison necessarily at some point is inclusive of alimony since traditionally case law has defined child support in terms of needs and costs and alimony in terms of standard of living. Nonetheless, a comparison of after-tax, after-child support compared to a baseline of the poverty level is a useful evaluation of the impact of the transfer of income through child support. Chart 3 not only shows payment difficulties of the obligor at low income levels but also shows that at higher income levels, the payment of child support leads to an increasingly higher level of above poverty income to the custodial parent than the non-custodial parent. This method of comparison actually has been advocated by a "women's group"—the National Partnership for Women and Families (formerly Women's Legal Defense Fund)—to evaluate child support guidelines.

Based on these comparisons, Georgia's guidelines are excessive in most instances. A comparison of these numbers in ratio form gives these results. That is, the custodial parent generally has more multiples of poverty level income than the non-custodial parent. Based on Georgia's guidelines—even though both parents are worse financially after divorce—the custodial parent generally has a higher standard of living than the non-custodial parent. The relative levels of each parent's gross income and the number of children do affect this outcome. Essentially, one cannot say how the standards of living compare without knowing both parent's income—something that Georgia's guidelines do not address.

⁶ For full detail on the standard of living comparison, see R. Mark Rogers, "How Wisconsin-Style Child Support Guidelines Violate Mainstream Economic Theory and Empirical Research: Georgia as an Example."

Chart 3:



Expert Testimony Shows Georgia Guidelines Give Custodial Parents Large Amounts of Hidden Alimony in Many Cases

Dr. Robert Williams of Policy Studies, Incorporated, Denver, Colorado presented testimony and data from income shares models showing that in moderate and high income cases the custodial parent receives large amounts of hidden alimony through child support payments, depending on the custodial parent's income relative to that of the non-custodial parent. For situations such that the custodial parent has from one half to equal net income of the non-custodial parent, the hidden alimony can be:

Hidden Alimony as a Percent of Georgia Child Support Awards

- One child: up to 49 to 53 percent hidden alimony
- Two children: up to 43 to 47 percent hidden alimony
- Three children: up to 40 to 44 percent hidden alimony.

The lower figure is the percent that is hidden alimony with custodial parent income at half that of the non-custodial parent. The upper is for equal net income. Figures are for the \$5,000 per month level in net income for the non-custodial parent. Expert testimony from Don Bieniewicz stated that the share of hidden alimony is likely to be higher since Williams' income share model is not a true marginal cost model and include some aspects of alimony.

Georgia Guideline Violations of Economic Data—Summary

- Expert testimony and evidence presented show that Georgia’s presumptive awards do not reflect economic reality—no economic data support the guidelines that Georgia uses over an extensive income range that result in an obligation that rises as a share of after-tax income.
- In general, the guidelines place a disproportionate share of the burden of child support on moderate income non-custodial parents and at moderately high and high income levels, the non-custodial parent actually pays large amounts of hidden alimony to the custodial parent under the guise of child support.
- At low income levels, the guidelines do not recognize self-support needs of the non-custodial parent.

In most income situations, the custodial parent ends up, after child support, with a much higher standard of living than the non-custodial parent—even when the custodial parent earns a moderately lower gross income.

Origin and Background of Georgia’s Percent of Obligor Model (Wisconsin-Style)

Georgia’s child support guidelines are based on those developed for the State of Wisconsin. On what were their guidelines based and were the laws implemented according to economic research? 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.⁷

Clearly, a review of Van der Gaag’s study is necessary in order to fully evaluate the economic appropriateness of percent of obligor income guidelines.

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.

⁷ Wisconsin, State of. *Register*, January 1987, No. 373, Chapter HSS 80, page 316-1.

From Van der Gaag, “Thus the question is: How much income does a couple with one child need, to obtain the same (pre-specified) level of economic well-being as a childless couple?”⁸ This table is viewed as the basic share that children are entitled to of their parents’ income.

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

There were several arguments for adopting lower than average percentages for setting support. First, additional earnings capacity of the custodial parent. Second, the non-custodial parent’s costs for normal visitation.⁹

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

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

One of the chief criticisms of the Van der Gaag’s cost estimates is brought up by Van der Gaag himself. The cost estimates do not take into account any “utility” that children give to the parents. Essentially, his cost estimates are based on a definition such that all that matters is economic well-being of the parents—as though that is the only consideration used to determine whether to have children or not. His definition leads to an overstatement of child costs. Also, he did not credit the non-custodial parent for time that the child is in the non-custodial parent’s custody.

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

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, 1982, pp. 18.

⁹ Ada Skyles and Sherwood K. Zink, “Child Support in Wisconsin: Income Sharing as a Standard of Law,” paper presented at the Women’s Legal Defense Fund Conference at The Aspen Institute, September 15-17, 1986, p. 4.

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 1987.¹⁰

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

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

Based on early papers providing the technical foundations for Wisconsin's child support guidelines, the guidelines were originally developed for only welfare situations (note that the child support obligation is described as a "tax" since the intent was for automatic with-holding as with other taxes). The intent was for both parents' income to be part of the formula and that there be a maximum level of benefits (child support).¹¹

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

A proportional tax rate structure is one in which the tax rate on all income is identical. A regressive tax rate structure is one in which the tax rate declines as income increases while the tax rate increases as income increases in a progressive tax.

Because the child support tax will not apply to income in excess of the amount required to finance the public benefit, on income above this maximum the child support tax structure can be said to be regressive. But our concern here is with the tax rate structure up to this maximum [with a proportional tax being implemented as long as the public benefit is not exceeded].¹²

¹⁰ 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.

¹¹ 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.

¹² 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.

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

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

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

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

The standard determines the amount both parents are expected to contribute to their child's care. Therefore, if a child is in the physical care of someone other than a parent, the standard may be used to determine the amount each of the parents are ordered to pay [emphasis is original]. Similarly, if both parents continue to provide care, as in shared physical custody cases, the court may find that the gross income available for child support payments of the parents is proportionately reduced, and that the obligation of one is set-off, all or in part, by the obligation of the other. For example, if parents provide monthly alternating residential care, and each parent has the same gross income, the court may find that no child support should be paid by either parent. If one of the parents had twice the other's earnings, the court could apply the standard to one-half that parent's earnings.¹³

¹³ Linda Reivitz. "Percentage of Income Standard for Setting Child Support Awards," memorandum by Secretary, Department of Health and Social Services, State of Wisconsin, to members of the Wisconsin

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

The Majority's Argument for Standard of Living Is an Argument for Income Shares

The Majority of this Commission argues that income shares should not be adopted because this method does not address maintaining the standard of living at about the same level for the child in both parents' household. First, courts traditionally have focused on needs of the child as well as typical expenditures on the child by the intact household when awarding child support, thereby reserving standard of living issues for alimony requests. Importantly, standard of living is an issue only if in the first instance the custodial parent has a substantially lower income than the non-custodial parent. The court cannot know this without a comparison of parent incomes. This requires some formula involving both incomes. Additionally, to argue the issue of standard of living, to be consistent the Majority must argue that if the non-custodial parent has a significantly lower income than the custodial parent, then income should flow from the custodial parent to the non-custodial parent. At a minimum, acceptance of the standard of living standard for child support would include the belief that if a child has a right to a share of the non-custodial parent's income when in the custody of the custodial parent, then the child has an equal right to a share of the custodial parent's income when in the physical custody of the non-custodial parent. To be consistent, the Majority must argue for some form of income shares—the Majority must argue for change away from Georgia's percent-of-obligor-only income model.

Separately, as already discussed, Georgia's current guidelines in most situations lead to a higher standard of living for the custodial parent than the non-custodial parent on an after-tax, after child support basis. This certainly is true for cases such that the custodial parent has 25 to 35 percent less gross income than the non-custodial parent, depending on the income level of the non-custodial parent and on the number of children. It seems ludicrous for the Majority to raise a standard of living issue when in most circumstances the custodial parent has the higher standard of living based on payment of Georgia's current presumptive child support awards. Certainly there are cases when the custodial parent has a much lower gross income and in those

situations, a request for alimony would be appropriate. It should be noted that it is not appropriate for the Majority to use statistics on national standards of living when it is Georgia guidelines and standards of living that are at issue.

The State's Noncompliance with the Federal Requirement for a Case Study

From 45 CFR 302.56(h):

As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

The intent of this requirement is that data on economic costs and data on child support awards from case studies be evaluated in a meaningful statistical manner to make sure that guidelines reflect actual costs and that court practices reflect that. If court practices of actual case situations result in a significant number of deviations, then the guidelines should be changed to reflect court experience with actual costs. To meet the intent of this requirement, there must be a comparison of actual case data on child support awards with presumptive awards and statistical analysis to evaluate if any differences between the two are statistically significant.

The Majority believes that the State has complied with the requirement for a case study to evaluate application of and deviations from presumptive guideline awards. The Majority believes that a survey of attorneys regarding their opinions on the application of Georgia's child support guidelines satisfies this Federal requirement. The survey—attached with the Minority Report as Appendix matter—was sent to attorneys with the Georgia Bar Association who attended a Georgia Bar Association meeting over the 1998 Memorial Day weekend at a luxury resort on Amelia Island, Florida. The number of respondents—those indicating that they had experience applying Georgia's presumptive child support guidelines in actual cases—was 72. The Commission also heard expert testimony from one Georgia Superior Court judge, Judge Alton J. Dempsey, Jr., and received a written report from another, Judge Martha Christian of Bibb County Superior Court, regarding their opinion on how well the guidelines are working. Finally, the Commission heard testimony from about four Title IV-D agency attorneys also regarding their opinion on how well the guidelines are working. These surveys of opinion are believed by the Majority to satisfy this Federal requirement for an evaluation of case studies.

Attorney Survey Not a Valid Case Study for Multiple Reasons

The Minority finds that these surveys of opinion do not satisfy the Federal requirement in 45 CFR 302.56(h) in several respects. The survey is a survey of opinion and is not a compilation of data on actual child support awards. Opinions cannot be compared to actual awards for necessary statistical analysis of whether actual awards are deviating from presumptive amounts. The sample is not representative—the respondents were selected from a sample of attorneys attending a conference (on a self-selected basis) sponsored by the Georgia Bar Association at a luxury resort on Amelia Island, Florida. This is not a representative sample of Georgia attorneys,

much less a representative sample of cases before Georgia courts. A sample of 72 respondents is not statistically significant. Two of the three economic experts appearing before the commission, Dr. Robert Williams and Don Bieniewicz, indicated that such a survey was not adequate to meet Federal requirements. These two noted that for actual case studies, at least 500 to 600 cases would be needed to be statistically meaningful. The remaining economic expert, Joan Entmacher, did not address the issue.

Judges Testify That Deviations Occur to Notable Extent

The issue of to what degree child support awards deviate from the presumptive level is one that this Commission is required to evaluate. The Majority appears to rely in part on testimony by Judge Alton J. Dempsey, Jr. and Judge Martha Christian to expand its survey panel for this purpose. Yet, Judge Dempsey specifically stated that he regularly deviates from the guidelines. Additionally, Judge Christian stated that juries regularly deviate from the guidelines in modification hearings. Testimony from the only two judges to testify before the Commission indicates that deviations occur to a sufficient degree that a casual review is insufficient to address the required cases study issue. Essentially, testimony before the Commission from judges—limited as it is—indicates that the Commission should make a recommendation that the guidelines be changed to fall in line with deviations such that the presumptive award tends to have limited deviations.

The Majority also believe that the one public hearing added to the Commission's review of application of the guidelines. However, the number of those appearing and those sending in letters only totaled roughly 40. The sample was self-selected, primarily from metropolitan Atlanta, and was not known to be representative of the state nor various socioeconomic backgrounds. Nor did the Commission engage in any type of statistical analysis of the opinion expressed. There was essentially no verified case data presented by the public for the Commission to analyze as also held for testimony by judges and attorneys.

Errors in Majority Findings from the Attorney Survey

Regardless of these shortcomings, the Majority attempts to interpret the survey results from Amelia Island, some of the interpretations being questionable or biased by the wording of a few of the survey questions. The survey, part of Appendix material, asked selected attorneys attending the conference (among other questions) how well the presumptive child support awards provided for children and also asked if the guidelines were fair to both parents. The answers were broken down between "high," "about right," and "low" and were asked separately for three income ranges, \$0 to \$30,000; \$30,000 to \$75,000; and over \$75,000. Few economists would argue that guidelines at low income levels are excessive for providing for children because before divorce, income was scarce relative to needs and was even scarcer as two-household costs rose. The survey answers reflected that difficulty. However, the \$30,000 to \$75,000 income range is very broad. An "about right" answer might be correct for \$35,000 but for \$55,000 "high" might be more appropriate, yet both are clumped together in the question. This likely biased some answers toward "about right." Furthermore, lumping the question of fair for "both" parents is puzzling. A "high" situation for an obligor might not be a "high" situation for the obligee. This may have invalidated some answers. What may be indicative of such a problem is

that at least one respondent stated, “Hard to answer this unless we know CP’s income.” Additionally raising this question of invalid answers is a comparison of the number of respondents finding the guideline award “low” in terms of fairness to both parents. For the \$30,000 to \$75,000 range, only 1 of 72 respondents said the guidelines were “low.” Oddly, for the over \$75,000 range, 18 of 72 respondents said the guidelines were “low.” It is not clear what the respondents meant since the guidelines are not defined beyond \$75,000.

Attorneys Favor Changing the Guidelines

One issue was quite clear from the Amelia Island survey of Georgia Bar attorneys. Importantly, the vast majority of attorneys surveyed were in favor of changing the guidelines. Simplicity of the current system was not a sufficient argument for them to answer than they desire to retain it. Out of 72 respondents, 45 said the guidelines should be changed and 11 said they didn’t know. Only 15 respondents indicated they preferred to keep Georgia’s guidelines in their current form. Many complained that the guidelines need to take into account the custodial parent’s income, are too high in many circumstances, and need to take account for multiple families.

Georgia’s Current Child Support Guidelines Still Conflict with Federal Recommendations and Georgia’s Guidelines Still Are Bad Public Policy

The Federal government, in developing the practices and policies, which led to the Family Support Act of 1988, had established the national “Advisory Panel on Child Support Guidelines”. The U.S. Office of Child Support Enforcement In 1984 at the request of the House Ways and Means Committee established this Advisory Panel. The Advisory Panel published a manual - “Development of Guidelines for Child Support Orders” - that was to be used by state child support commissions in the development of their guidelines. The Panel adopted eight principles by which states should development their own child support guidelines. The panel reviewed three types of guideline models, recommending for two and against the third because that third violated almost all principles that should underlie the guidelines. The Panel recommended against using the percent-of-obligor-income-only model—the model that Georgia chose and continues to use.

The Federal “Advisory Panel” adopted eight (8) general principles - which they (the Panel) recommended that states follow in their development of guidelines. Those principles are:

- 1) *Both parents share legal responsibility for supporting their children. The economic responsibility should be divided in proportion to their available income.*
- 2) *The subsistence needs of each parent should be taken into account in setting child support, but in virtually no event should the child support obligation be set at zero.*
- 3) *Child support must cover a child’s basic needs as a first priority, but to the extent either parent enjoys a higher than subsistence level standard of living, the child is entitled to share the benefit of that improved standard.*

- 4) *Each child of a given parent has an equal right to share in that parent's income, subject to factors such as age of the child income of each parent; income of current spouses, and the presence of other dependents.*
- 5) *Each child is entitled to determination of support without respect to the marital status of the parents at the time of the child's birth. Consequently, any guideline should be equally applicable to determining child support related to paternity determinations, separations, and divorces.*
- 6) *Application of a guideline should be sexually non-discriminatory. Specifically, it should be applied without regard to the gender of the custodial parent.*
- 7) *A guideline should not create extraneous negative effects on the major life decisions of either parent. In particular, the guideline should avoid creating economic disincentives for remarriage or labor force participation.*
- 8) *A guideline should encourage the involvement of both parents in the child's upbringing. It should take into account the financial support provided directly by parents in shared physical custody or extended visitation arrangements, recognizing that even a fifty-percent sharing of physical custody does not necessarily obviate the child support obligation.¹⁴*

The Federal manual published by the Advisory Panel describes the “Percentage of Gross Income” model - adopted by Georgia - as “**simple, but inequitable**”. The Federal Advisory Panel recommended that states adopt either the Income Shares model or the Delaware-Melson formula as the basis for their child support guidelines for the following reasons:

The Income Shares Model was developed, as an approach that is consistent with the best available economic evidence on child-rearing expenditures. It is also designed specifically to be consistent with the basic principles for child support guidelines specified by the federal Advisory Panel. The Delaware-Melson Formula defines levels of basic, or subsistence, needs for the parents and children. It provides that parents are entitled to support themselves at a basic level before having the formula applied.

At best, Georgia's guidelines meet only numbers 5 and 6 of the Panel's principles—those of applying equally for children regardless of parents' marital status and being gender neutral. Even meeting these criteria is suspect in actual application by Georgia courts. Notably, non-custodial mothers generally are ordered to pay less child support than non-custodial fathers in similar circumstances.

¹⁴ Williams, Robert G., Ph.D.- Economics. 1987. *Development of Guidelines for Child Support Orders*, a manual published under grant to the National Center for State Courts for use by state child support commissions and legislative bodies. Washington, D.C.: U.S. Department of Health and Human Services, Office of Child Support Enforcement.

By continuing to use the guidelines the Federal Panel recommended against, Georgia engages in bad public policy with adverse consequences for children and families.

- Georgia's guidelines are excessive and well above child costs at moderately high and high income levels.
- Georgia's guidelines turn children of divorce into a financial prize—one to be fought over in a winner-take-all situation where sole custody is the hallmark of Georgia courts.
- Sole custody and hidden alimony aspects of Georgia's guidelines create the incentive for custodial parents—generally mothers—to keep the children out of their father's life as much as possible so as to not risk losing the bonus money associated with winning custody and child support.
- This State-encouraged behavior by custodial parents—primarily mothers—has led to extensive social problems such as more crime in single-parent dominant neighborhoods (men are not around to discourage crime nor are around to help discipline children) and children do not do as well in school as when fathers are more involved.
- Georgia's guidelines are burdensome to low-income obligors although presumptive awards at the low-income level are inadequate for covering child costs. Yet low-income obligors cannot meet their own subsistence needs but are burdened with child support they cannot pay.
- Low-income and moderately low-income obligors are driven into an underground cash economy by excessive child support burdens combined with automatic income deduction orders through employers. When income deduction orders are implemented, low-income obligors must quit their job and work for cash just to survive. This deprives obligors of a decent career path, puts them in a situation where they cannot pay mandated child support, leaves them in arrears and under threat of arrest for contempt if they show up to visit their children.
- Georgia's presumptive guidelines drives low income obligor fathers underground and those suffering the most are children and fathers who wish they could spend time together but cannot because of an inflexible child support system.

Cruel to Non-custodial Parents and Georgia's Guidelines at Risk in U.S. District Court: Impact of Deadbeat Parents Act of 1998

Recent enactment of Federal legislation make change in Georgia's child support guidelines an urgent priority. On June 24, 1998, President Clinton signed into law the Deadbeat Parents Punishment Act of 1998, which creates Federal felony penalties for owing child support arrears. Under this new statute, felony punishment would apply if the amount owed by an obligor of child support was \$5,000 or more and the payments were more than a year delinquent and were based on willful nonpayment. Out-of-state parents owing \$10,000 or more or who fail to pay for two years could also face up to two years in prison. Parents also could face fines and

would be responsible for making restitution for unpaid child support. Under the bill, the state court findings would be presumed to be correct.

The problem is that Georgia's guidelines are excessive and most non-custodial parents who are behind in support payments are delinquent because they can't pay not because they won't pay. The law would also apply to situations in which a father is ordered to pay years of back support for a child he for years was not told existed. Yet, Georgia courts are notorious for refusing to acknowledge that Georgia's guidelines are excessive and regularly find delinquent obligors guilty of contempt when they should not be doing so. These regular awards of excessive child support and unjustified findings of contempt would carry over as presumptions in Federal court. Georgia judges are reluctant because of either ignorance or political pressure and do not deviate from the guidelines as frequently as they should and, in turn, are setting the stage for creating Federal felons out of non-custodial parents for no reason other than the fact that they are non-custodial parents.

Finally, since any Federal district court can potentially enforce Georgia's child support guidelines under the above circumstances (as now do other states' state courts in broader circumstances) this is an additional venue in which Georgia's guidelines could be challenged as a violation of equal protection under the U.S. Constitution. This new Federal law is one more reason that Georgia's child support guidelines should be brought in line with economic reality.

Attachments to Minority Report

Rogers, R. Mark. "How Wisconsin-Style Child Support Guidelines Violate Mainstream Economic Theory and Empirical Research: Georgia as an Example," working paper presented to Georgia Commission on Child Support, June 4, 1998.

"Summary of Responses to Attorney Questionnaires, Georgia Commission on Child Support Attorney Questionnaire"

Venohr, Jane C. and Robert G. Williams. "Briefing Material: Georgia Child Support Guidelines Review," May 1, 1998.

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