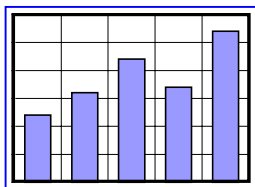


Why Minnesota's Child Support Guidelines Are Unconstitutional: Economic Exhibits[©]

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I. Introduction

Minnesota's child support guidelines originally began as a guideline intended to be used only in welfare situations in order to recover from fathers the welfare payments given to unwed mothers. These welfare guidelines were then in 1983 pushed by Minnesota's Department of Human Services for use in general divorce cases and was enacted into law in 1983 by the state legislature. But, are Minnesota's child support guidelines rational, based on sound economic principles? Are the guidelines economically fair and appropriate or do they create extraordinary benefits and extraordinary burdens? In fact, as shown below, the guidelines are not economically rational and indeed do create extraordinary benefits and burdens. 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 non-custodial parent) be taken into account and that the guidelines be economically appropriate. See 45 CFR 302.53 (1988) and 45 CFR 302.56.

The intent of Minnesota's child support guidelines being found in federal regulations can be corroborated from additional sources. In "Evaluation of Child Support Guidelines," U.S. Department of Health and Human Services, March 1996, in Chapter 1, page 3, the U.S. Department of Health and Human Services specifically states that regarding state guidelines, "their applications result in the determination of appropriate child support awards" and reviews must be based on "economic data." This shows that guidelines must reflect child cost patterns shown in economic data in order to be appropriate. It follows that child support guidelines that follow no known child cost pattern cannot result in appropriate child support awards.¹

Two basic questions for evaluating Minnesota's guidelines to determine if they meet the intended purpose is whether basic living needs of the non-custodial parent are part of the guideline and

¹ Federal case law indicates that the federal intent for child support guidelines supercedes any state intent. The U.S. Court of Appeals—among other federal courts—has published opinion that when states engage in program agreements with the federal government, federal regulations supercede not just state rules and regulations but also related state statutes. A key opinion is *Jackson v. Rapps*, U.S. Court of Appeals for the Eight Circuit, October 17, 1991. 947 F.2d 332. This case specifically addressed child support program regulations. It follows that the federal regulation defines the intent of state child support guidelines because of the supremacy clause. There is a long list of case law to substantiate this. Recently, from the issues of the last presidential election regarding federal regulation of overseas ballots, the case of *Robert Harris, et al., v. Florida Elections Canvassing Commission, et al.*, United States District Court for the Northern District of Florida, Tallahassee Division, Case No. 4:00cv459, December 9, 2000 was important. This case stated that federal regulations supercede state law and that a state regulation implemented to cure a defect in complying with federal regulation supercedes the state law in which that state regulation may conflict.

whether the guidelines result in economically appropriate awards. Importantly, if the guidelines do not result in economically appropriate awards, then the guidelines are unconstitutional because they do not result in the intended purpose. This issue can be restated in terms of the question, "Are the guidelines rationally related to child costs as they are incurred by each parent while providing for the financial needs of the child?"

Equal protection is an issue subsumed within the question of whether the guidelines are economically appropriate. Child costs are fungible between parents. The child has the same type of financial needs when in the care of either parent. There is no economic distinction between a child expenditure incurred by a custodial parent versus that incurred by a non-custodial parent—other than the amount incurred. The child is equally entitled to support when in the care of either parent and both parents have equal legal responsibility for supplying financial resources for meeting these costs. The equal protection issue, therefore, has two facets: the guidelines requiring each parent to contribute financial resources with equal responsibility commensurate with that parent's financial resources and the guidelines requiring that the child costs of each parents receive equal consideration for support by the other parent.

Nationwide, the federal Family Support Act of 1988 has led all states to adopt various types of generic child support guidelines which operate on various broad assumptions about obligor and obligee economic circumstances. These guidelines have never been explicitly scrutinized for meeting standards for constitutionally sound guidelines. However, prior to the adoption of these generic guidelines, some states did issue specific criteria for a constitutionally sound child support award process or guideline.

A review of the economics that underlies Minnesota's child support guidelines indeed finds that there is no rational relationship between the guidelines and economically appropriate child support awards. The key reasons for this finding are:

- The guideline percentages do not follow the economic trend of declining as net income rises. Decades of economic studies show a significant rise in household saving rates as net income rises, reflecting lower consumption percentages—including for children—as net income rises.
- The guidelines ignore the cost offset the custodial parent receives with child-related tax benefits. These cost offsets are very large and affect the net cost of child expenditures that should be shared between the parents. It will be shown that guideline percentages in after-tax terms do not cure this defect.
- The guidelines ignore which parent actually incurs the child costs. Without examining which parent incurs what costs, an economically appropriate award cannot be determined.
- The guidelines do not take into account that two households are being supported (each parent's household), that intact family standards of living cannot be maintained, and that the award is being spent in a single-parent household.
- The guideline percentages grossly exceed actual child costs.

Minnesota's child support guidelines create extraordinary benefits for the custodial parent and extraordinary burdens for the non-custodial parent. The guidelines' divergence from a true economic foundation is the basis for creating these extraordinary benefits and burdens. Key economic comparisons to show these extraordinary benefits and burdens include:

- A comparison of after-tax, after-child support standards of living for custodial and non-custodial parents shows that custodial parents typically have a higher presumptive standard of living than the non-custodial parent even when the custodial parent earns substantially less than the non-custodial parent.
- The guidelines have such a bias for including hidden alimony within the child support award that the presumptive award typically boosts the standard of living for the custodial parent even when the custodial parent has the higher income and should be shouldering a greater burden of child support. This bias toward inclusion of hidden alimony is quite large.
- When standard of living comparisons are adjusted for shared parenting arrangements such that the custodial parent has reduced child costs and the non-custodial parent has increased child costs, the non-custodial parent is forced to provide a dramatically lower standard of living for the child than the custodial parent. This occurs even when the non-custodial parent typically earns more than the custodial parent.
- A comparison can be made for after-tax income for a custodial parent with head of household status and other child-related tax benefits with a non-custodial parent with equal gross income and no child-related tax benefits. The custodial parent receives a very large boost in after-tax income from child-related tax benefits. These benefits are cost offsets to child costs and should be shared with the non-custodial parent but are not under the presumptive guideline formula.
- A comparison of awards based on actual child costs with the presumptive award shows that presumptive awards typically are double—or more—the economically appropriate award.
- An examination of the total child cost implied by the guidelines in many instances results in awards in which the child cost exceeds a per capita share of the custodial parent's net income. That is, the child implicitly receives a greater share of the custodial parent's net income than does the parent. No economic study supports such an implicit child cost.
- The presumptive award for minimum wage workers pushes these obligors below the federal poverty threshold. It is an extraordinary burden to presumptively order a child support obligation that leaves an obligor with less than what is required to meet basic living needs.

The guidelines do not treat similarly situated parents equally. These particular equal protection violations include:

- The child-related tax benefits are not shared with the non-custodial parent. These benefits are intended as cost offsets to child expenditures. Both parents are equally responsible for covering expenditures and both are equally entitled to any cost offset resulting from child-related tax benefits.
- The guidelines do not treat child costs incurred by each parent on an equal basis. This also violates the child's right to be supported in each parent's household by both parents.
- The guidelines' use of a cost-of-living adjustment (COLA) index for administrative modifications treats similarly situated obligors differently. COLA based modifications have essentially no economic relationship to income based modifications. Equal protection standards are violated.
- Minnesota presumptive child support guidelines result in awards based on total child costs that dramatically exceed equivalent costs for reimbursement under Minnesota's foster care program. This creates an equal protection violation for non-custodial parents that are required to pay child costs based on Minnesota's child support guideline.

Background: Minnesota's Child Support Guidelines

Minnesota's child support guidelines work by applying a given percentage to obligor net income. Table 1 shows these percentages as they vary by the number of children and by net income.

Table 1.

<u>Obligor Monthly Net Income</u>		<u>Presumptive Percentage According to: Number of Children</u>							
<u>From</u>	<u>Through</u>	<u>One</u>	<u>Two</u>	<u>Three</u>	<u>Four</u>	<u>Five</u>	<u>Six</u>	<u>Seven</u>	<u>Plus</u>
551	600	16%	19%	22%	25%	28%	30%	32%	
601	650	17%	21%	24%	27%	29%	32%	34%	
651	700	18%	22%	25%	28%	31%	34%	36%	
701	750	19%	23%	27%	30%	33%	36%	38%	
751	800	20%	24%	28%	31%	35%	38%	40%	
801	850	21%	25%	29%	33%	36%	40%	42%	
851	900	22%	27%	31%	34%	38%	41%	44%	
901	950	23%	28%	32%	36%	40%	43%	46%	
951	1,000	24%	29%	34%	38%	41%	45%	48%	
1,001	6,280	25%	30%	35%	39%	43%	47%	50%	

Net income excludes standard state and federal withholding taxes and a few other items such as reasonable pension deductions, the cost of medical insurance, and union dues. The percentages rise with the number of children. The percentages also start lower for below poverty level obligors and then remain fixed for obligors with more than \$1,000 in monthly net income. The lower percentages and associated income levels were designed in the early 1980s when those levels were still above the poverty level. Currently, almost all of the lower percentages are for

income levels below the poverty level. For all practical purposes, the guideline percentages are fixed percentages, varying only according to the number of children.

The ceiling level for application to income is adjusted every two years based on the Minneapolis consumer price index. The \$6,280 ceiling is in effect through June 30, 2002.

Background: Constitutional Standards and Economic Issues

For child support guidelines, constitutional issues can involve many facets—from economic application and outcomes of a guideline, to due process, to issues related to assumptions or presumptions regarding custody. For now, the focus of discussion is on economic application and outcomes of a child support guideline. First, more generally, child support guidelines must pass equal protection standards. The United States' Constitution provides that no state may "deny to any person within its jurisdiction the equal protection of the laws." All individual state constitutions have similar equal protection clauses. There is a long history of federal and state case law establishing standards for equal protection. A few key cases are: *Yic Wo v. Hopkins*, 118 U.S. 356 (1886); *Truax v. Corrigan*, 257 U. S. 312, 42 S.Ct. 124, 130 (1921); *Caban v. Mohammed*, *Winningham v. H.V.D.*, 371 F. Supp. 1140 (S. D. Ga., 1974), aff'd 512 F.2d 617 (5th Cir., 1975); *Eisenstadt v. Baird*, 405 U.S. 438 (1972); *Romer v. Evans*, 517 U.S. 620, 116 S. Ct. 1620 (1996).

Key principles from these cases are that: (1) the statute or regulation must be rationally related to the intended purpose, and (2) similarly situated individuals should be treated equally. For child support guidelines, the intended purpose is to establish an economically appropriate child support award. As noted, this purpose is documented in 45 *CFR* 302.56 and is the state intent for the guidelines by the supremacy clause of the U.S. Constitution and related case law. The rational relationship must include a rational economic basis for the guideline. Specifically, the guideline must not be arbitrary. This "shall not be arbitrary" is also a due process issue. Substantive due process guarantees are violated if the questioned statute or a part thereof is a patently arbitrary classification lacking any rational justification. *U. S. v. Neal*, 46 F. 3d 1405 (7th Cir., 1995), aff'd 516 U.S. 284 (1996). The U.S. Supreme Court has found that a presumption cannot be arbitrary, otherwise the presumption violates due process. This is found in *Manley v. Georgia*, 279 U.S. 1, 49 S.Ct. 215 (1929):

A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause of the Fourteenth Amendment. *Bailey v. Alabama*, 219 U.S. 219, 233, *et seq.*

Other courts have found it to be violations of equal protection to implement rules that are arbitrary and without an underlying basis, such as an examination of appropriate data. See *Sierra Club v. Martin*, 168 F. 3d 1 (11th Cir., 1999). As will be shown, Minnesota's child support guidelines were derived only with data for low-income situations and extended to non-welfare cases without the benefit of data for non-welfare cases.

Related to the issue of whether the guidelines are arbitrary, one of the key issues is whether the underlying facts of the presumption continue to exist. If they do not, then the presumption is

unconstitutional. For Minnesota's guidelines, as will be shown, the underlying facts are that the guidelines will be applied in welfare cases only and also under various constraints in application (e.g., ceilings for awards). These facts no longer exist as the presumptions are applied to all cases—welfare and non-welfare—and without limiting the application of the percentages to recovery of welfare payments to the custodial parent. The non-existence of the underlying facts renders the presumptive guidelines unconstitutional. See *Leary v. United States*, 395 U.S. 6 at 32-37 (1969) and especially footnote 68:

A statute based upon a legislative declaration of facts is subject to constitutional attack on the ground that the facts no longer exist; in ruling upon such a challenge a court must, of course, be free to re-examine the factual declaration. See *Block v. Hirsh*, 256 U.S. 135, 154-155 (1921); *Communist Party v. SACB*, 367 U.S. 1, 110-114 (1961).

The lack of existence of the underlying facts of the guideline presumption—application only to welfare cases and a low ceiling—is probably the most obvious constitutional violation of the guidelines. Summarizing this issue, *Leary* and related cases find that a statutory presumption is unconstitutional unless the predicate facts are reasonably related to and rationally support the facts presumed. The premises must support the conclusion. The Minnesota child support guidelines do not meet that standard.

Whether Minnesota's child support guidelines meet their intended purpose is an important constitutional issue. Minnesota's child support guidelines violate the principle of being rationally related to the intended purpose because the guidelines do not result in the intended federal purpose—that of resulting in economically appropriate presumptive awards. The guidelines were arbitrarily enacted for use in non-welfare cases when there was no economic basis for using these guidelines in non-welfare situations. As will be shown, these guidelines conflict with economic data for economically appropriate awards in non-welfare cases.

Minnesota's child support guidelines do not meet equal protection standards. For equal protection standards to be met, both parents must contribute equally for the child's needs according to the parents' financial resources. Each parent has an equal duty to provide for the child's needs. A key equal protection case for domestic relations law is *Orr v. Orr*, 440 U.S. 268 (1979), which struck down as unconstitutional on its face a statute allowing alimony for women but not for men. This case made it clear that family courts are to treat men and women equally.

Importantly, for child support issues, when each parent incurs child costs in a reasonable and appropriate manner, the guidelines should ensure that both parents contribute equally toward covering those costs. In application, the guidelines should create neither extraordinary benefits nor extraordinary burdens for either parent. These issues are discussed in more detail in William C. Akins, "Why Georgia's Child Support Guidelines Are Unconstitutional," *Georgia Bar Journal*, October 2000, at 8 et seq, in R. Mark Rogers, "Georgia's Child Support Guidelines—No Economic Basis: Facts for a Constitutional Challenge?" State Bar of Georgia, *Family Law Section Newsletter*, July/August 2000, pp. 14-23, and in R. Mark Rogers, "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, Spring 1999, pp.135-156.

A few court opinions have specifically stated general requirements for economically appropriate child support awards and for child support guidelines to pass constitutional muster. One of the earliest opinions to articulate how to derive an economically appropriate award was *Smith v. Smith*, 626 P.2d 342 (Or. 1980). This opinion specifically stated that it is economically inappropriate and unjust to apply a welfare case guideline to non-welfare cases. Cases that defined constitutionally sound child support award processes are *Meltzer v. Witsberger*, 480 A.2d 991 (Pa. 1984) and *Conway v. Dana*, 318 A.2d 324 (Pa. 1985).

These cases established several key principles. There is equal responsibility for both the father and mother according to their income and other financial standing. Child support may be used for enjoyments of the child beyond basic needs but this factor may not outweigh the need for a parent to meet one's own basic living needs. The amount of child support paid in money should take into account other factors which supply the child's basic needs or allow them to be met, including in-kind and non-cash contributions, division of property, alimony or spousal maintenance, trust funds, and other available resources of the child and both parents. Child support may not be used to accomplish objectives other than the intended purpose of child support—providing for the reasonable needs of the child. That is, child support may not involuntarily impose hidden alimony, division of property, or redistribution of wealth.

It will be shown below that the child support guidelines bear no relationship to the constitutional standards for child support of requiring each parent to have an equal duty in supporting the child.

Related to the issue of each parent being treated equally when incurring child costs, the classification scheme of obligor and obligee parents is not rationally related to the intended purpose. Presumptively, the obligor parent is the non-custodial parent and the obligee parent is the custodial parent. Yet, these classifications do not have a rational relationship in regard to which parent incurs what child costs and child cost offsets of tax benefits. Examining merely the classification of each parent (obligor and obligee) and the income of the obligor parent does not provide information sufficient for an economically appropriate child support award. Each parent's child costs, non-cash contributions, and other factors must be considered. In fact, the classification of obligor and obligee should be determined separately from which parent is custodial and which is non-custodial. Obligor and obligee classifications in each case should be determined after examination of the relevant factors—not before. This will be shown in more detail below. The classifications of obligor and obligee under Georgia law are not rationally related to the intended purpose of the guidelines of determining the economically appropriate award. At least one state—California—clearly differentiates between establishing which parent is obligor and which is obligee from the classification of which parent is custodial or non-custodial parent. In California as is appropriate for defining these classifications, classifications of obligor and obligee are based on a number of explicit cost factors on an *ex post* examination basis rather than on an *ex ante* basis of which parent is non-custodial.

Yet, Minnesota's guidelines conflict with the constitutional principles (including due process) of examining the relevant factors and making findings of fact underlying the child support award. A judicial opinion made shortly after statewide promulgation of Minnesota's welfare guidelines to all cases in that state expressed concern over these issues. See *Moylan v. Moylan*, 384 N.W.

2d 859 (Minn. 1986). Minnesota Chief Justice Douglas Amdahl held that the guidelines might be used as a starting point in ascertaining child support in a private divorce, but that, regardless of the wording of the new subdivision in Section 518.17 of Minnesota Statutes 1984 (added by Section 15 of Chapter 308 of Minnesota Laws of 1983), a family court must always make findings to justify a proper amount in terms of Section 518.17 Subdivision 4 of Minnesota Statutes 1982 and 1984. In the concurring opinion of Justice Larry Yetka, the strict application of the guidelines to private divorces would be unconstitutional as invading family privacy and as legislative interference with the judicial duty to find facts, and that the guidelines so applied were saved only because they were weakened by interpretation to nominal and vanishing significance. However, current statutory presumptions and court application conflict with these requirements for proper and constitutional determination of child support awards.

On a final note, there is a significant question regarding the extent to which a state may order child support. Normally states do not intervene in family matters. The domain of the family is sacrosanct, based on the parental autonomy principle.² Based on this principle the courts have no constitutional authority to require a higher standard for support than that the government imposes on intact families. A recent case affirming the limits to government intervention in family matters is *Troxel v. Granville*, 530 U.S. 57; 120 S. Ct. 2054; 147 L. Ed. 2d 49.

Minnesota's child support guidelines are arbitrary and without any economic foundation for application in general child support cases.

Minnesota's child support guidelines were originally designed only for use in welfare cases with the purpose of recovering welfare payments made to the mother. The application was for low-income fathers with application limited to the ceiling set by the amount of the welfare award to the mother. In 1983, the Minnesota Department of Human Services submitted the welfare guidelines to the legislature to expand their application to all child support cases. This request was an arbitrary decision without any economic foundation. This is corroborated in Chart 1, a letter from the Minnesota Department of Human Services, states there was no economic study to provide an economic foundation for Minnesota's child support guidelines to be applied outside of welfare situations. The 1991 study that was conducted ex post specifically recommended other guidelines and not the ones in use. Additionally, a federal advisory panel in 1984 recommended against using obligor-only guidelines as Minnesota had put into use.³

In summary, the implementation of Minnesota's current child supports guideline for non-welfare cases was arbitrary and without any economic foundation. Any presumptive award from these guidelines should be rebutted as inappropriate based on the arbitrary expansion of welfare situations only guidelines for general use.

² "Under the parental autonomy principle, parents generally may decide, free from government supervision, at what level and by what means they will support their children." Leslie J. Harris, D. Waldrop, & L.R. Waldrop, *Making and Breaking Connections Between Parents' Duty to Support and Right to Control Their Children*, 69 OREGON L. REV. 689 (1990).

³ See *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report*, Office of Child Support Enforcement, U.S. Department of Health and Human Services, September 1987.

Chart 1.



Minnesota Department of **Human Services** _____

June 19, 2001

R. Mark Rogers
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130 Woodmont Drive
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Dear Mr. Rogers:

I am in receipt of your June 15, 2001 letter requesting information on Minnesota's child support guidelines.

Minnesota enacted guidelines in 1983 before the passage of the Federal Family Support Act. There are no known studies that accompanied the 1983 enactment. The Minnesota Department of Human Services did contract with an outside vendor to review our guidelines in compliance with federal law. I am enclosing a copy of the final report which is dated January 3, 1991. I hope this provides the information you are seeking.

Sincerely,



Christa Anders
Legislative Manager

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The Intended Use of the Guidelines Only for Welfare Situations Provides a Starting Point for Explaining How Application of the Guideline in Non-Welfare Cases Violates Equal Protection Standards

Minnesota's child support guidelines are a variation of child support guidelines initially implemented by the state of Wisconsin for Title IV-D cases. The underlying economic study and conditions for appropriate application of the guidelines were conducted and published by Dr. Jacques van der Gaag in 1982.⁴ The guidelines were designed to be applicable only if the household had certain economic characteristics—those of typical welfare cases. These underlying economic characteristics of the household are:

- The household is a low-income household. For the study, the households (both parents) averaged annual gross income of \$12,000 in 1982 dollars. In year 2000 dollars, this would be household income of \$21,426. The underlying study specifically states that at higher incomes, the applicable percentage should decline. The study also assumed the percentage would be applied only after setting aside a self-support reserve.
- The custodial parent is assumed to care for the children and not earn any income outside the home.
- The non-custodial parent is the sole income earner and the percentages applied to the non-custodial parent's income are based on tax law of 1982. Under the tax code in which the percentages are derived, the non-custodial parent that provided over half of the child's support would receive use of all child income tax benefits.
- The low-income characteristic also includes the fact that the guidelines were to be applied to income earners paying little or no income tax.
- The guideline percentages were derived based on the assumption that the non-custodial parent is absent and that the children are with the custodial parent 100 percent of the time.
- The guideline percentages were to be applied with the amount of the award limited to the size of the welfare payments to the custodial household.⁵ The underlying study set a low ceiling on the amount of income on which the percentages would be applied.

Under current statutory application, these underlying economic circumstances are rarely met when guideline percentages are applied in a case. Application of the guideline percentages outside of these intended circumstances results in outcomes that are not economically rational. Additionally, application outside of these intended circumstances leads to extraordinary benefits for custodial parents and extraordinary burdens for non-custodial parents. These outcomes are discussed below. Importantly, the underlying facts of the presumption no longer exist. These

⁴ 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.

⁵ 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.

non-existent facts include in part: application of the guidelines to only welfare situations, application of the guideline percentages only to the extent of recovering the welfare payment, and tax code that gives child-related tax benefits to the obligor rather than to the custodial parent.

Favored Tax Treatment for Custodial Parents and Treating Tax Benefits as a Cost Offset

One reason why obligor only and income shares methodologies are not soundly based on economic principles is that they do not take into account the significant cost offset enjoyed by the custodial parent through favored tax treatment. Additionally, the progressive income tax structure in the U.S. means that child costs decline as a share of gross income—meaning that obligor-only guidelines conflict with actual child cost patterns. As will be shown further below, the tax benefit offset helps the custodial parent enjoy a higher presumptive standard of living than the non-custodial parent in most income situations—even when the custodial parent earns significantly less prior to the child support transfer. For all of these reasons, it is appropriate to review the favored tax treatment received by custodial parents. This includes a review of how tax treatment has changed since development of Wisconsin-style guidelines.

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 2000, 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 \$4,400 compared to \$6,450 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 2000 value of each dependent exemption is \$2,800.
- 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, calendar 2000 code.

The earned income credit was as much as—

- \$353 if you did not have a qualifying child (non-custodial parent),
 - \$2,353 if you had one qualifying child, or
 - \$3,888 if you had two qualifying children.
 - Under special circumstances there are additional credits for a third child.
- The Taxpayer Relief Act of 1997 gave custodial parents a tax credit of \$400 per child up to two children and additional credit for a third child under special circumstances. The credit went to \$500 per child in 1999.
 - 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 Table 2, showing

Schedule X and Schedule Z, 2000 1040, Forms and Instructions, Department of the Treasury, page 71.

Table 2.

<u>Schedule X—Use if your filing status is Single</u>			
If the amount On Form 1040, Line 39, is" <u>Over --</u>	But not <u>over--</u>	Enter on Form 1040, <u>line 40</u>	of the amount <u>over--</u>
\$0	\$26,250 15%	\$0
26,250	63,550	\$3,937.50 + 28%	26,250
63,550	132,600	14,381.50 + 31%	63,550
132,600	288,350	35,787.00 + 36%	132,600
288,350	-----	91,857.00 + 39.6%	288,350
<u>Schedule Z—Use if your filing status is Head of household</u>			
If the amount On Form 1040, Line 39, is" <u>Over --</u>	But not <u>over--</u>	Enter on Form 1040, <u>line 40</u>	of the amount <u>over--</u>
\$0	\$35,150 15%	\$0
35,150	90,800	\$5,272.50 + 28%	35,150
90,800	147,050	20,854.50 + 31%	90,800
147,050	288,350	38,292.00 + 36%	147,050
288,350	-----	89,160.00 + 39.6%	288,350
Source: "2000 Tax Rate Schedules," p. 71, 2000 Federal Form 1040			

The Economic Growth and Tax Relief Reconciliation Act of 2001 boosts the custodial parent's after-tax advantage even more. The new law lowers from 15 to 10 percent the tax rate for the first \$12,000 of taxable income on a joint return, \$6,000 for singles, \$10,000 for heads of household, and \$6,000 for married persons filing separate returns. The creation of the 10 percent bracket provides tax savings of up to \$600 for married couples; \$300 for singles and \$500 for heads of household. Lowering the tax rate on the lowest income bracket also lowers the average rate for those earning above that bracket. In addition to the greater benefits to custodial parents from lowering the tax on the lowest income bracket, the Tax Relief Act of 2001 will double the size of child credits over the next several years. The per child credit rises from \$500 in 2000 to \$600 in 2001. The per child tax credit subsequently rises to \$700 in 2005, \$800 in 2009, and \$1,000 in 2010. Custodial parents' after-tax advantage that is solely attributable to custody of children rises sharply as a result of the Tax Relief Act of 2001. These tax benefits should be treated as offsets to child costs and should be equitably shared with the non-custodial parent that shares responsibility of paying child costs attributable to the same children.

Custodial Parent Tax Benefits as Child Cost Offsets Under Minnesota Income Tax Code

Minnesota income tax code gives custodial parents (filing as head of household) significant tax benefits that partially offset the costs of spending on children. These benefits include a significantly higher standard deduction than that for a taxpayer filing as single: \$6,450 versus \$4,400 for calendar 2000. The custodial parent also receives child tax exemptions of \$2,800 per child. Additionally, higher marginal tax rates take effect at higher income levels for heads of household than for single taxpayers.

Table 3. Minnesota Tax rate schedules

Single

If line 6 of Form M-1 is:

Your 2000 tax is:

Over---	but not over---		of the amount over--
\$ 0	\$17,570	5.35%	\$ 0
17,570	57,710	\$940 + 7.05%	17,570
57,710	or over	\$3,770 + 7.85%	57,710

Head of household

If line 6 of Form M-1 is:

Your 2000 tax is:

over---	but not over---		of the amount over--
\$ 0	\$21,630	5.35%	\$ 0
21,630	86,910	\$1,157 + 7.05%	21,630
86,910	or over	\$5,759 + 7.85%	86,910

Source: *2000 Minnesota Individual Income Tax Forms and Instructions*, p. 27.

Minnesota has three marginal tax rate brackets for state income taxes (see Table 3). As seen in "Tax rate schedules," *2000 Minnesota Individual Income Tax Forms and Instructions*, page 27, the tax brackets for the two higher marginal tax rates start much "later" (higher income levels) for heads of household, thereby lowering the state income tax burden on heads of household relative to single taxpayers. This is a cost offset to child costs that must be shared with the non-custodial parent to meet equal protection standards. Both parents are equally responsible for covering child costs.

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). 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 Minnesota personal income taxes, Medicare, and Social Security taxes (2000 tax code). Earned income credits are added. Standard deductions are used. Chart 1 shows a dramatic after-tax advantage for the custodial parent.

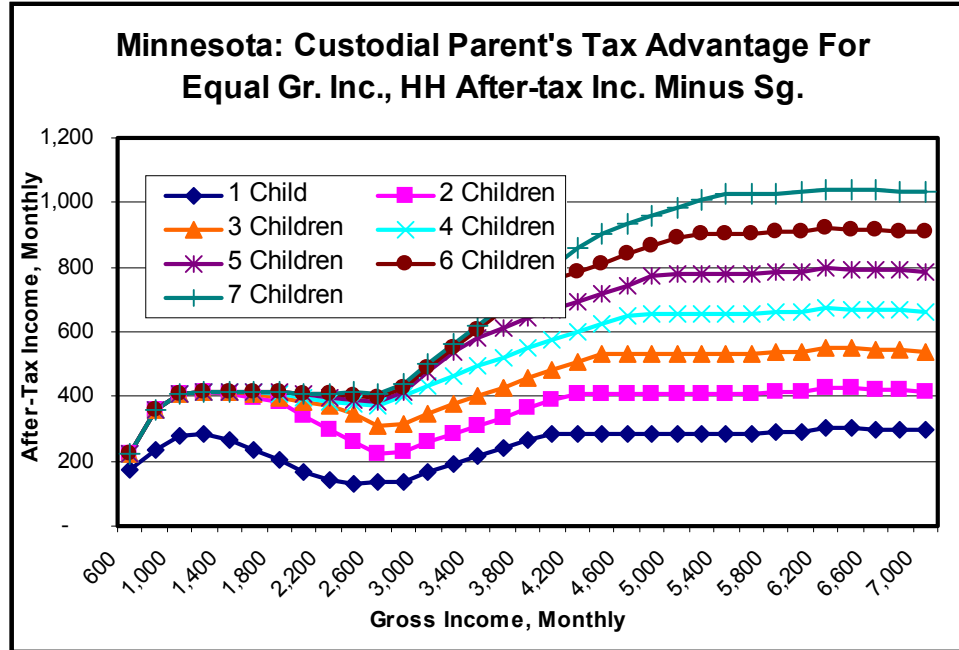
As seen in the chart, the first "hump" is primarily due to the earned income credit that the custodial parent receives as a cost offset. The rising advantage on the right two-thirds of the chart is due to differences in marginal tax rates. Deductions and exemptions also boost the overall level for custodial 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 almost \$400 more net income monthly than the non-custodial parent to support the children (roughly \$4,800 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 30 to 45 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 non-custodial parent does not have—or at least the custodial parent has more readily. Food stamps, WIC, Medicaid, housing subsidies are generally more available to the custodial parent and are not part of the formula for sharing child costs and cost offsets with the non-custodial parent.

Because of these tax code changes, for a given level of gross income, the custodial parent has a significantly higher ability to provide the custodial parent's share of child costs compared to the non-custodial parent.

States' statutory and case law clearly indicates 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.

Chart 2.



Use of After-Tax Percentages in the Guidelines Does Not "Save" the Guidelines from Violating Equal Protection Standards.

Any statement that the custodial parent implicitly contributes to child costs on an equal after-tax basis as the non-custodial parent is contrary to economic facts. The non-custodial parent contributes at a rate equal to the guideline percentage applied to the non-custodial parent's after-tax income. This after-tax income generally is calculated on a single-taxpayer basis. In contrast, the custodial parent has a gain in after-tax income that is entirely related to having custody of the child or children. The custodial parent's contribution to child costs at the margin (that is in regard to the additional net income) may be implied to be equal to the guideline percentage. The custodial parent at most only spends a portion of this gain in after-tax income on the child or children. This portion is the custodial parent's marginal propensity to spend on the children. At most, this is equal to the guideline percentage with the remainder being a windfall profit for the custodial parent. Economic data show that this marginal propensity to spend on the children is well below the guideline percentages. What should be a cost offset to child costs for both parents to share is almost entirely a windfall gain in after-tax income for the custodial parent. The non-custodial parent does not share the child cost offset from child-related tax benefits. This violates equal protection. Both parents are required to be responsible for costs of the child, but both parents are not equally entitled to the cost offsets that are the tax benefits attributable to the children. Additionally, economic data indicate that an even smaller fraction is spent on the children than suggested by the guideline percentages—leaving the custodial parent an even larger windfall.

Any argument that the Minnesota guidelines meet equal protection standards because the percentages are applied to after-tax income must fail. This is because the cost offset of the child-

related tax benefits is not shared with the non-custodial parent. The custodial parent is free to spend as little of the tax benefit on the child as desired. The windfall in after-tax income to the custodial parent typically is worth \$200 to \$400 per month. The implicit contribution of the custodial parent is the same after-tax contribution that the non-custodial parent makes plus the portion of the tax benefit that is spent on the child. Since only a portion of the tax benefit is spent on the child, the remainder of the tax benefit (the portion that is not spent on the child) is a windfall to the custodial parent that reduces the net contribution to the child. This remainder of the tax benefit is subtracted from the custodial parent's contribution to calculate the custodial parent's implicit contribution to covering child costs.

Therefore, the implicit contribution (by the guideline definition--not true economics) of the custodial parent is the guideline percentage applied to the custodial parent's after-tax income on a single-taxpayer basis, plus the guideline percentage applied to the child-related tax benefits the custodial parent receives, MINUS the remainder of these tax benefits (the portion not applied to the child support percentage). The custodial parent has a lesser implicit obligation than the non-custodial parent, thereby violating equal protection standards. No constitutional challenge to obligor-only guidelines has addressed this issue.

On a technical note, IRS regulations allow only the custodial parent to have head of household status. This portion of the cost offset can be shared with the non-custodial parent only in explicit calculations of the total dollar amount of spending on the children less the dollar value of the tax benefit. Also, child-related earned income credits are available only for custodial parents. The same analysis holds for child exemptions and credits if not shared with the non-custodial parent.

The fact that households—when at income levels significantly beyond the poverty level—have a marginal propensity to consume that is significantly below the value of one (less than 100 percent of income is spent) is well established in economic literature and also that the marginal propensity to consume declines as income rises (that is, saving rates rise with income).⁶ That the marginal propensity to consume for any one member of the household out of total household income is only a fraction of one is also well established in economic literature. See for example, Michael R. Ruble et al, "Patton-Nelson Personal Consumption Tables 1997-98 Update," *Journal of Forensic Economics* 13(3), 2000, pp. 303-307. This is one standard used for personal injury cases. For estimating economic losses in personal injury cases, courts have accepted well-established economic expertise that marginal and average expenditure rates decline as net income rises.

Hence, only a fraction of a custodial parent's child-related tax benefit is actually spent on child costs when left to the discretion of the custodial parent. The child-related tax benefit can only be fully attributed as being spent on the child when the tax benefit is explicitly a part of the child support formula. The child-related tax benefit must be treated as a direct cost offset to total child expenditures before allocating these net costs between the two parents. Otherwise, the guideline award includes at least partial windfalls to the custodial parent from the child-related tax benefits and the two parents are not treated equally. The custodial parent is alleged to be responsible for

⁶ For example, see also Paul A. Samuelson, *Economics, 9th Edition*, McGraw-Hill Book Company (New York) 1973, pp. 208-215.

child costs and has cost offsets from tax benefits while the non-custodial parent is responsible for child costs but is not allowed any portion of the cost offsets from child-related tax benefits.

Table 4.

**Exhibit Showing Divergent Implied Child Support Obligations:
Custodial Parent v. Non-custodial Parent**

- **Under Minnesota statute, the custodial parent is not held to the same standard as the non-custodial parent for contributing to child costs.**

**NCP obligation = single taxpayer net income times
guideline percentage**

Implied:

**CP obligation = single taxpayer net income times
guideline percentage
plus custodial tax benefit times guideline
percentage
minus remainder of custodial tax benefit
(portion not applied to guideline percentage)**

Actual:

**CP contribution = actual spending on children (which is less
than guideline percentage)
minus non-custodial parent's child
support payment
minus custodial parent's tax benefit**

CP has lesser obligation; tax benefit not shared as cost offset for both.

Both the actual contribution and implied obligation are less than the standard for the non-custodial parent.

Even if the guidelines handled tax benefit effects correctly (but did not) when enacted in 1983, federal tax code has changed substantially. Changes in federal tax code since 1983 have boosted custodial parent tax advantages and no changes have been made in the guideline percentages to reflect these increased tax advantages.

Since the early 1980s, key changes to Federal tax code were made in acts during 1984, 1986, 1993, 1997, and 2001.

Tax Code Changes in 1984

The Deficit Reduction Act of 1984 significantly affected domestic relations taxation in the areas of alimony, property divisions and transfers, and dependency exemptions. For custody decrees subsequent to 1984, this act allocated the dependency exemption to the custodial parent in all cases unless the custodial parent signed a written declaration each year that the non-custodial could claim the dependency exemption.⁷ 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.

Tax Code Changes in 1986

The Tax Reform Act of 1986 had a notably divergent impact on custodial versus non-custodial taxpayers. Most of the tax code changes were effective in 1988 although there was a transitional period in 1987 for some of the tax code changes. There was a clear divergence in treatment between single taxpayers and head of household taxpayers. Prior to the change, for the 1986 tax-rate schedule, the minimum 11-percent bracket started at \$2,480 in taxable income for both categories—that is, the zero bracket amount (ZBA) was the same for custodial and non-custodial parents. This also is the standard deduction (taxpayers pay a zero tax rate on this amount of income). With the implementation of the new tax code, the standard deductions for 1988 for heads of household and for single individuals diverged significantly at \$4,400 and \$3,000, respectively.⁸

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 \$5,566.⁹

Tax Code Changes in 1993

Legislation prior to 1997's Act also had important impacts on after-tax income subsequent to the enactment of child support guidelines based solely on obligor gross income. The Omnibus Budget Reconciliation Act of 1993 added two new marginal tax rates that affect higher-income

⁷ Steven D. Kittrell. "An Overview of the 1984 Domestic Relations Tax Provisions," *Improving Child Support Practice, Volume Two*, The American Bar Association, 1986, page IV-57.

⁸ U.S. Department of the Treasury, Internal Revenue Service, Form 1040, 1988, p. 17.

⁹ U.S. Congress, Joint Committee on Taxation. Joint Committee Print, # JCS-10-87, "General Explanation of the Tax Reform Act of 1986," (Joint Committee on Taxation 'Bluebook'), May 4, 1987, p. 16.

individuals. First, there is a 36-percent rate applicable to taxpayers with taxable incomes (for calendar tax year 1993) in excess of \$140,000 for married individuals filing joint returns, \$115,000 for unmarried individuals filing as single, and \$127,500 for unmarried individuals filing as head of household. Starting in 1995 these income thresholds were indexed for inflation. Notably, these rates were not in effect when the Wisconsin-style guidelines were implemented and there now are differing thresholds for custodial versus non-custodial parents.

Tax Code Changes in 1997

The Taxpayer Relief Act of 1997 provides a \$500 (\$400 for taxable year 1998--\$500 per year thereafter) tax credit for each qualifying child under the age of 17. A qualifying child is defined as an individual for whom the taxpayer can claim a dependency exemption and who is a son or daughter of the taxpayer (or a descendent of either), a stepson or stepdaughter of the taxpayer or an eligible foster child of the taxpayer. These tax credits cannot be claimed by a non-custodial parent unless given written permission by the custodial parent. For a custodial parent with moderate or high income and two children, these tax credits result in a little over \$80 per month per child in additional after-tax income.¹⁰

Tax Code Changes in 2001

The Economic Growth and Tax Relief Reconciliation Act of 2001 boosts the custodial parent's after-tax advantage even more. The new law lowers from 15 to 10 percent the tax rate for the first \$12,000 of taxable income on a joint return, \$6,000 for singles, \$10,000 for heads of household, and \$6,000 for married persons filing separate returns. The creation of the 10 percent bracket provides tax savings of up to \$600 for married couples; \$300 for singles and \$500 for heads of household. Lowering the tax rate on the lowest income bracket also lowers the average rate for those earning above that bracket. In addition to the greater benefits to custodial parents from lowering the tax on the lowest income bracket, the Tax Relief Act of 2001 will double the size of child credits over the next several years. The per child credit rises from \$500 in 2000 to \$600 in 2001. The per child tax credit subsequently rises to \$700 in 2005, \$800 in 2009, and \$1,000 in 2010. Custodial parents' after-tax advantage that is solely attributable to custody of children rises sharply as a result of the Tax Relief Act of 2001.

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

¹⁰ U.S. Congress, Joint Committee on Taxation, Joint Committee Print, # JCS-23-97, "General Explanation of Tax Legislation Enacted in 1997," (Joint Committee on Taxation 'Bluebook'), December 17, 1997, p. 19.

Minnesota's child support guidelines—as fixed percentages above \$1,000 per month in obligor net income—conflict with the well established economic fact that personal saving rates rise as net income rises, thereby reducing spending rates—including on children. Minnesota's child support guideline is not on a rational economic basis.

In order to conform to professionally accepted economic facts, Minnesota's child support guideline percentages should decline as net income rises. Minnesota's guidelines conflict with long established economic facts. 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.¹¹

Table 5 is an example of economic research showing that personal saving rates rise as income rises and, in turn, marginal spending rates decline. The data have been converted to year 2000 data by this report's author. Data are for households—not individuals. Minnesota's child support guideline conflicts with these types of findings and is not on a rational economic basis. This conflict with mainstream economics is one factor behind extraordinary benefits and extraordinary burdens created by the guideline.¹²

¹¹ Gardner Ackley, *Macroeconomic Theory*, The Macmillan Company, New York, Collier-Macmillan International Edition, Third Printing, 1973, p. 221.

¹² See also for example, Michael R. Ruble et al, "Patton-Nelson Personal Consumption Tables 1997-98 Update," *Journal of Forensic Economics* 13(3), 2000, pp. 303-307. This is one standard used for personal injury cases. For estimating economic losses in personal injury cases, courts have accepted well-established economic expertise that marginal and average expenditure rates decline as net income rises.

Table 5.

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

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

**Levels Converted to Year 2000 Dollars:
Family Saving and Income, by Income Class,
Nonfarm Families, 1935-36**

<u>Income Class*</u>	<u>Average Income</u>	<u>Average Expenditures</u>	<u>Average Saving</u>	
			<u>Dollars</u>	<u>Per Cent</u>
Under \$6,199	\$ 3,644	\$ 6,152	-2,508	-69
6,200-12,499	9,109	10,008	-898	-10
12,500-18,699	14,674	14,924	-250	-2
18,700-24,999	20,414	19,940	474	2
25,000-37,399	28,600	26,504	2,096	7
37,400-49,899	40,467	35,114	5,353	13
49,900-62,399	52,496	43,262	9,234	18
62,400-124,800	82,332	61,767	20,564	25

*Income levels are rounded to the nearest hundred since the low dollar levels in 1935-36 and the relatively high inflation adjustment factor leave "gaps" between 2000 dollar income classes otherwise. 1935-36 income class values are revalued in 2000 dollars using the Bureau of Labor Statistics' CPI-U annual averages.

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

Examples of Minnesota Guideline Awards Having Such Large Amounts of Hidden Alimony that Custodial Parents Generally Have a Higher Standard of Living than Non-custodial Parents

A traditional economic method of evaluating the standard of living of a household is to compare the household income to a benchmark income figure. Traditionally, this benchmark has been the U.S. Department of Agriculture's poverty threshold income. These benchmarks are calculated for different sizes of households. These sizes include data for one-parent households with no children and up to with eight children.

That is, the poverty level varies according to the number of children in the household. Each household's standard of living by this measure is expressed as multiples of poverty threshold income. One can calculate for each parent—custodial and non-custodial—after-tax, after-child support income. These figures are based on the assumptions of standard taxes, credits, deductions, and exemptions and that the child support is actually paid. Then the after-tax, after-child support income level is expressed as a ratio to the poverty threshold.¹³ The poverty threshold was originally designed when the poverty threshold household paid no income tax.

A comparison of after-tax, after-child support income to a baseline of the poverty level is a useful evaluation of the impact of the transfer of income through child support.¹⁴ However, 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 while defining alimony in terms of standard of living.

An important caveat for this type of standard of living comparison is that the comparison is most appropriate when both parents' incomes are near the poverty level. Further away from the poverty level, the comparison is less reliable. Specifically, this type of analysis compares fixed percentage child costs over a wide income range. The custodial parent household spends the same percentage of income on child costs regardless of the income level. This assumption contradicts economic studies that show spending on child costs declines as a share of income. Above low-income levels, this type of ratio likely understates the custodial parent's standard of living because at higher levels of income, smaller proportions of income are spent on child costs.

Table 6 is an example of comparing standards of living for custodial and non-custodial parents in given financial circumstances. For this example, there is one child, the non-custodial parent has monthly gross income of \$2,000, and the custodial parent has monthly gross income that is 70 percent of the non-custodial parent's (70 percent is \$1,400). It is assumed that the child is with the custodial parent 100 percent of the time (a no visitation assumption). The table shows the standard deductions for net income for child support purposes and the appropriate guideline percentage of 25 percent. The presumptive award is \$391 monthly or \$4,692 annually.

¹³ 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," working paper presented to Georgia Commission on Child Support, June 4, 1998. *See also* DIANE DODSON & JOAN ENTMACHER, REPORT CARD ON STATE CHILD SUPPORT GUIDELINES (1994).

¹⁴ This method of comparison has been advocated by the National Partnership for Women and Families (formerly Women's Legal Defense Fund) for evaluating child support guidelines.

In the lower half of the table, one sees the after-tax income of each parent: \$18,739 annually for the non-custodial parent and \$16,736 for the custodial parent. The non-custodial parent's after-tax income is based on single tax payer status and the custodial parent has head of household status with all child-related tax credits. The annual child support obligation of \$4,692 is subtracted from the non-custodial parent's after-tax income and added to that of the custodial parent. The resulting after-tax, after-child support income for the non-custodial parent is \$14,047 and \$21,428 for the custodial parent. Each parent's resulting income is divided by their respective poverty threshold—\$8,959 for the non-custodial parent and \$11,869 for the custodial parent (year 2000 threshold levels). The standard of living ratios are 1.57 and 1.81, respectively, for the non-custodial and custodial parent. Even though the custodial parent had 30 percent less gross income than the non-custodial parent, the divergent tax effects and the above cost, child support award lead to the custodial parent having a 15 percent higher standard of living than the non-custodial parent. Oddly, the higher earning parent ends up with the lower standard of living.

Table 7 shows another example of comparing standards of living between custodial and non-custodial parents. In this example, the custodial parent has monthly gross income equal to that of the non-custodial parent—\$2,000. For one child, the custodial parent—after-tax, after-child support—ends up with a 37 percent higher standard of living than the custodial parent.

Further evaluation of situations in which the parents have equal gross incomes highlights the disparate impact of guideline awards. In the Table 7 example, each parent has gross annual income of \$24,000. If each parent's status as a single adult with single taxpayer status is taken as the starting point of analysis, each parent has a standard of living equal to the other. The standard of living ratio for each is 2.09 (\$18,739 in annual net income divided by the poverty threshold of \$8,959). For one child with no visitation adjustments, Table 7 shows that after the child support transfer, the custodial parent's standard of living ratio actually goes up—to 2.15. Meanwhile, the non-custodial parent's standard of living ratio falls to 1.57. The non-custodial parent bears the entire burden of supporting the child while the custodial parent actually gains in living standards relative to single status. The guidelines clearly create extraordinary benefits for the custodial parent and extraordinary burdens for the non-custodial parent. Importantly, the guidelines do not allocate the responsibility of child support between the two parents according to their respective financial resources.

This last example is not an isolated example. For a one-child no visitation adjustment case, with each parent grossing \$48,000 annually, the starting point standard of living ratio for each parent is 3.76. After the child support transfer, the custodial parent's standard of living ratio goes up 2 percent to 3.84 while the non-custodial parent's standard of living ratio drops 25 percent to 2.82. These examples exclude add-ons which if included would widen the custodial parent standard of living advantage even further.

Table 8 shows the standard of living for each parent when the custodial parent earns 130 percent of the non-custodial parent. One would think that the child support guidelines would shift a little more of the child cost burden onto the parent with the higher income. However, on an after-tax, after-child support basis, the custodial parent ends up with a 62 percent higher standard of living than the non-custodial parent. The child support award and tax effects actually adds to the

standard of living of the custodial parent when it is the non-custodial parent that should have some financial consideration.

Each of these examples of a standard of living comparison has assumed that the child is with the custodial parent 100 percent of the time. Yet, this is the situation a minority of the time. The non-custodial parent typically has the child a significant portion of the time. In fact, joint custody is awarded in a rising share of cases. Obligor only guidelines assume that only one parent has child costs. What happens to each parent's standard of living when adjustments are made for the shift in child costs toward the non-custodial parent? Importantly, what happens to the child's standard of living when in the care of the non-custodial parent? The bias of the guidelines against providing support for the child while in the care of the non-custodial parent can be shown by extending the standard of living comparison.

Table 9 is an example of comparing adjusted standards of living for custodial and non-custodial parents when the non-custodial parent has 25 percent of the parenting time. The benchmark poverty level figures are adjusted for the lower child costs for the custodial parent and for the added child costs for the non-custodial parent. The difference between the poverty level for a one adult household and a one-adult, one-child household is apportioned between the two households in proportion to the parenting time shares. The resulting poverty thresholds are \$11,142 annually for a one-adult, one-child household with 75 percent parenting time (the custodial parent household) and \$9,687 annually for a one-adult, one-child household with 25 percent parenting time (the non-custodial household). These figures may be a little low given that each parent has full housing costs that the adjustment does not take into account. However, the underestimate is greater for the non-custodial parent household. Therefore, this standard of living comparison will tend to overstate the standard of living for the non-custodial parent relative to that of the custodial parent. In turn, any conclusions regarding the custodial parent's higher standard of living remain valid. Table 9 shows that with parenting time adjustments to the poverty thresholds (25/75 percent), for one child and with the custodial parent earning gross income that is 70 percent of the non-custodial parent's \$2,000 monthly gross, that the custodial parent ends up with 33 percent higher standard of living than the non-custodial parent.

For the same situation except that the custodial parent has monthly gross income equal to the \$2,000 monthly gross income of the non-custodial parent, Table 10 shows that the custodial parent ends up with a 58 percent higher standard of living than the non-custodial parent. The non-custodial parent is unable to provide for the child in the same manner as the custodial parent because of this dramatic advantage the child support guidelines give the custodial parent. The child is denied the financial support when in the care of the non-custodial parent that the child support statute provides the child when in the care of the custodial parent. This denies the child equal protection. This denies the non-custodial parent equal protection.

Further evaluation of situations in which the parents have equal gross incomes highlights the disparate impact of guideline awards when the non-custodial parent has 25 percent of the parenting time. In the Table 10 example, each parent has gross annual income of \$24,000. If each parent's status as a single adult with single taxpayer status is taken as the starting point of analysis, each parent has a standard of living equal to the other. The standard of living ratio for each is 2.09 (\$18,739 in annual net income divided by the poverty threshold of \$8,959). For the

one-child case in which the non-custodial parent has 25 percent of the parenting time, Table 10 shows that after the child support transfer, the custodial parent's standard of living ratio actually goes up—to 2.29. Meanwhile, the non-custodial parent's standard of living ratio falls to 1.45. The non-custodial parent bears the entire burden of supporting the child while the custodial parent actually gains in living standards relative to single status. The guidelines clearly create extraordinary benefits for the custodial parent and extraordinary burdens for the non-custodial parent. The guidelines deny the non-custodial parent the ability to support the child in the same manner as when in the care of the custodial parent. The child when in the care of the non-custodial parent has a 36 percent lower standard of living than when in the care of the custodial parent. Importantly, the guidelines do not allocate the responsibility of child support between the two parents according to their respective financial resources.

This last example is not an isolated example. For a one-child case in which the NCP has 25 percent of the parenting time and with each parent grossing \$48,000 annually, the starting point standard of living ratio for each parent is 3.76. After the child support transfer, the custodial parent's standard of living ratio goes up 9 percent to 4.09 while the non-custodial parent's standard of living ratio drops 31 percent to 2.61. These examples exclude add-ons, which if included would widen the custodial parent standard of living advantage even further.

Table 11 carries this parenting time adjusted standard of living comparison further. For the same circumstances except that the custodial parent has 130 percent of the non-custodial parent's monthly gross income of \$2,000, Table 11 shows that the tax benefits and child support award boosts the custodial parent household's standard of living to 87 percent more than that of the non-custodial parent household. Instead of shifting some of the child support burden onto the higher income parent, the guideline boosts the standard of living of the custodial parent and lowers the standard of living of the lower income non-custodial parent. This is irrational by any standard of equitable allocation of child costs. The guidelines clearly create extraordinary benefits for the custodial parent and extraordinary burdens for the non-custodial parent.

These tabular examples of standard of living comparisons show the biases, the extraordinary benefits, and the extraordinary burdens of the guidelines for a few circumstances. By examining a broader range of circumstances, what broad conclusions can be reached on these issues for the guidelines overall? Charts 3 through 11 examine a wide range of circumstances.

Table 6.**Example with CP having only 70 percent of the NCP's gross income:**

Assumes the child is in the care of the custodial parent 100 percent of the time.

**MINNESOTA PRESUMPTIVE AWARD CALCULATION,
ONE CHILD**

<u>Monthly</u> Net Income Calculation:	<u>NCP</u>	<u>CP</u>
Gross Income (Fed.Adj.) with Alimony, Monthly	2,000	1,400
LESS		
Federal income tax (net of standard credits)	(210)	123
State income tax	(75)	(21)
Social Security deductions	(124)	(87)
Medicare	(29)	(20)
MN Net Income for Child Support Calculation	1,562	1,395
MN presumptive %, contingent upon which parent is obligor	0.25	
MN Presumptive Award Obligation Against Net Income	391	

"BEFORE AND AFTER" WITH PRESUMPTIVE AWARD

	<u>NCP</u>	<u>CP</u>
<u>Annual</u> Gross Salary (Fed.Adj.)	24,000	16,800
After Tax Income, Annual,	18,739	16,736
Presumptive child support, annualized	(4,692)	4,692
After Tax, After Presumptive Child Support, One Child	14,047	21,428
Poverty Thresholds, Single Adult; Adult with 1 Child, Year 2000 Data.	8,959	11,869
Multiple of Poverty Level	1.57	1.81
Percentage Higher Standard of Living for CP Household than NCP Household		+15%

- The custodial parent has only 70 percent of the non-custodial parent's gross income yet ends up with a 15 percent higher standard of living than the non-custodial parent after taking into account the child support transfer. This is an extraordinary benefit for the custodial parent.

**Examples of Minnesota Guideline Awards Having Such Large Amounts
of Hidden Alimony that Non-custodial Parents Are Unable
to Provide Adequately for the Children During Parenting Time**

Table 9.

Example with CP having only 70 percent of the NCP's gross income:

Assumes the non-custodial parent has 25 percent of the parenting time.

**MINNESOTA PRESUMPTIVE AWARD CALCULATION,
ONE CHILD**

<u>Monthly Net Income Calculation:</u>	<u>NCP</u>	<u>CP</u>
Gross Income (Fed.Adj.) with Alimony, Monthly	2,000	1,400
MN Net Income for Child Support Calculation	1,562	1,395
MN presumptive %, contingent upon which parent is obligor	0.25	
MN Presumptive Award Obligation Against Net Income	391	

"BEFORE AND AFTER" WITH PRESUMPTIVE AWARD

	<u>NCP</u>	<u>CP</u>
<u>Annual</u> Gross Salary (Fed.Adj.)	24,000	16,800
After Tax Income, Annual,	18,739	16,736
Presumptive child support, annualized	(4,692)	4,692
After Tax, After Presumptive Child Support, One Child	14,047	21,428
Poverty Thresholds, <u>Adjusted for 25% Parenting Time for</u> <u>NCP</u> , Year 2000 Data.	9,687	11,142
Multiple of Poverty Level	1.45	1.92
Percentage Higher Standard of Living for CP Household than NCP Household		+33%

Table 10.**Summary Results for:****Example with CP having gross income equal that of the NCP's gross income:**

Assumes the non-custodial parent has 25 percent of the parenting time.

**"BEFORE AND AFTER" WITH PRESUMPTIVE AWARD,
ONE CHILD**

	<u>NCP</u>	<u>CP</u>
<u>Annual Gross Salary (Fed.Adj.)</u>	24,000	24,000
After Tax Income, Annual,	18,739	20,770
Presumptive child support, annualized	(4,692)	4,692
After Tax, After Presumptive Child Support, One Child	14,047	25,462
Poverty Thresholds, <u>Adjusted for 25% Parenting Time for NCP,</u> Year 2000 Data.	9,687	11,142
Multiple of Poverty Level	1.45	2.29
Percentage Higher Standard of Living for CP Household than NCP Household		+58%

Table 11.**Summary Results for:****Example with CP having gross income 130 % of the NCP's gross income:**

Assumes the non-custodial parent has 25 percent of the parenting time.

**"BEFORE AND AFTER" WITH PRESUMPTIVE AWARD,
ONE CHILD**

	<u>NCP</u>	<u>CP</u>
<u>Annual Gross Salary (Fed.Adj.)</u>	24,000	31,200
After Tax Income, Annual,	18,739	25,413
Presumptive child support, annualized	(4,692)	4,692
After Tax, After Presumptive Child Support, One Child	14,047	30,105
Poverty Thresholds, <u>Adjusted for 25% Parenting Time for NCP,</u> Year 2000 Data.	9,687	11,142
Multiple of Poverty Level	1.45	2.70
Percentage Higher Standard of Living for CP Household than NCP Household		+86%

- Minnesota's child support guideline clearly include alimony for the custodial parent under the guise of child support—which is not the purpose intended for child support guidelines.

Extraordinary Benefits to Custodial Parents—Extreme Relative Gains in Standard of Living Over a Broad Range of Circumstances

Charts 3 through 11 compare custodial parent and non-custodial parent standards of living. There are separate comparisons for one, two, and three child cases. For each of these, comparisons are made for when the custodial parent has 30 percent less gross income than the non-custodial parent, when gross incomes are equal, and when the custodial parent has 30 percent more gross income than the non-custodial parent. Gross income is chosen for the starting point of the comparisons because it is on this basis that labor markets value the work of employees. When gross incomes are equal, then generally the two workers have equal market value.

Starting with Chart 3, one sees that this chart merely applies the methodology of Tables 6 through 8 but for a broader range of gross income. For each observation of gross income starting at \$600 per month, the net income, child support award, and net income after the child support transfer are calculated. This last figure is then re-calculated as a ratio to the poverty level. For the one-child, custodial parent gross income equals 70 percent of non-custodial parent gross income case with no visitation, one sees that the custodial parent actually ends up with a higher standard of living than the higher grossing non-custodial parent through the \$3,000 monthly gross figure for non-custodial parent income.

The third line in Chart 3 (declining left to right) shows the custodial parent standard of living as a percentage higher or lower than the non-custodial parent's standard of living after the child support transfer. Looking at the right-hand axis, one sees that the custodial parent standard of living is as much as 75 percent higher than the non-custodial parent's standard of living but never more than 10 percent lower. Remembering that the starting point was the custodial parent having 30 percent less gross income, then the tax benefits and presumptive child support award always sharply boosts the custodial parent standard of living relative to the non-custodial parent's over this income range.

Chart 4 shows a one-child, no visitation, equal gross incomes case. The custodial parent always has a substantially higher standard of living than the non-custodial parent. The guideline award and tax benefits give the custodial parent from about a 115 percent higher (more than double) standard of living and not less than 15 percent higher over this income range.

For the case of one-child, no visitation, custodial parent grosses 30 percent more than the non-custodial parent, one sees in Chart 5 that the custodial parent always has a higher standard of living than the non-custodial parent. But what is shocking and economically unjust is that the guideline award and tax benefits dramatically widen the custodial parent's standard of living relative to that of the non-custodial parent. The custodial parent ends up with a 140 percent to 40 higher standard of living than the non-custodial parent.

Chart 3.

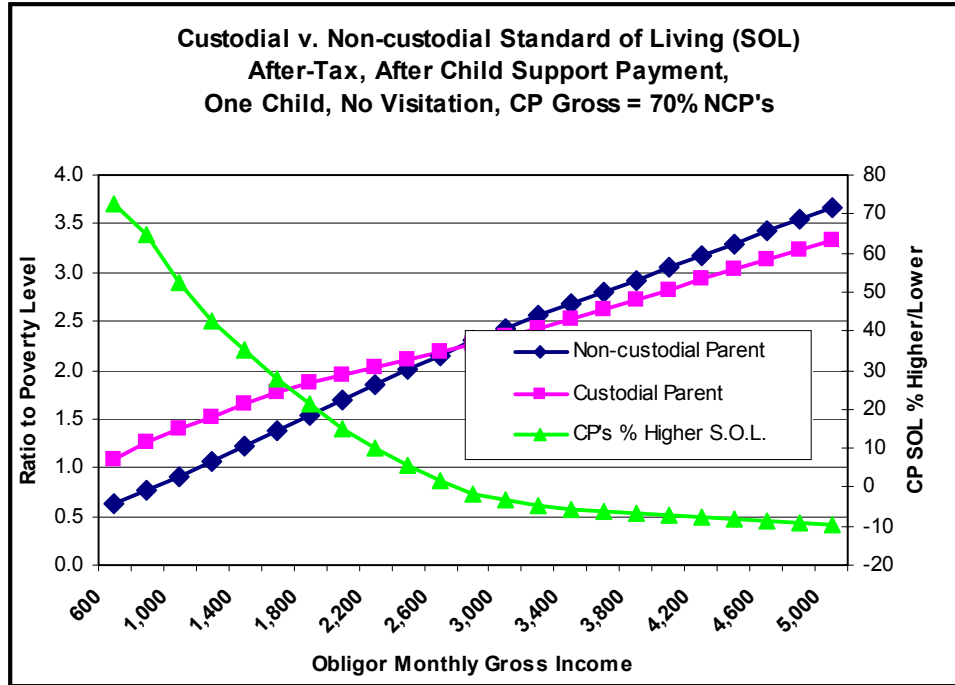


Chart 4.

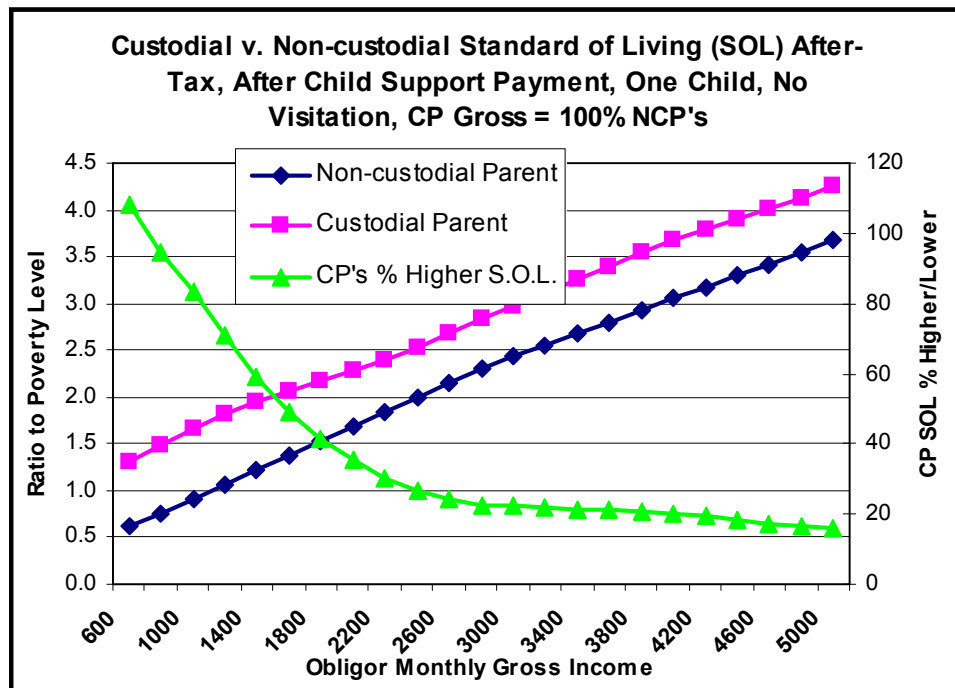


Chart 5.

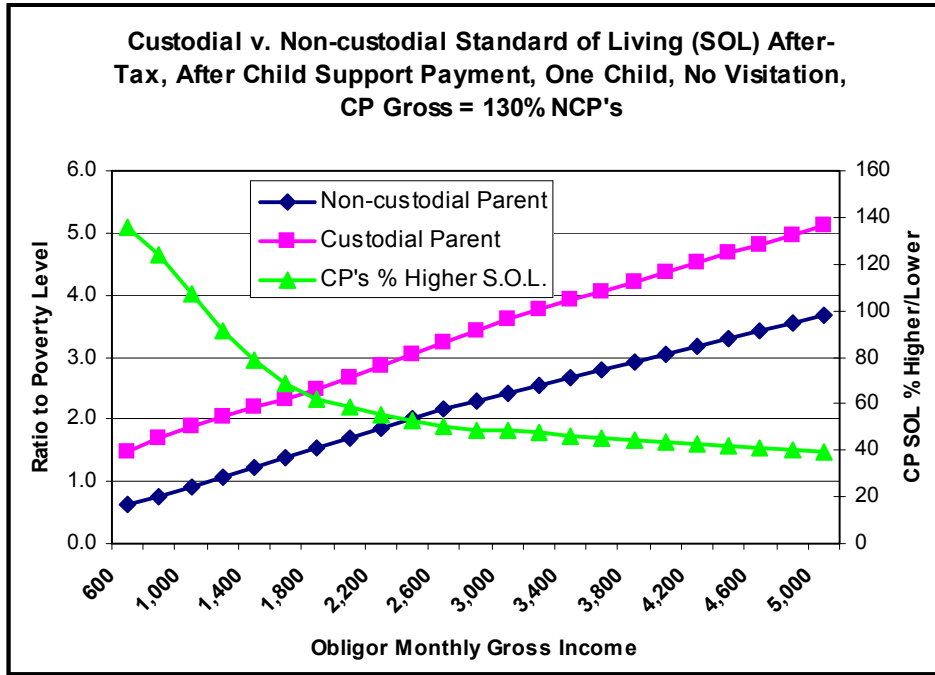


Chart 6.

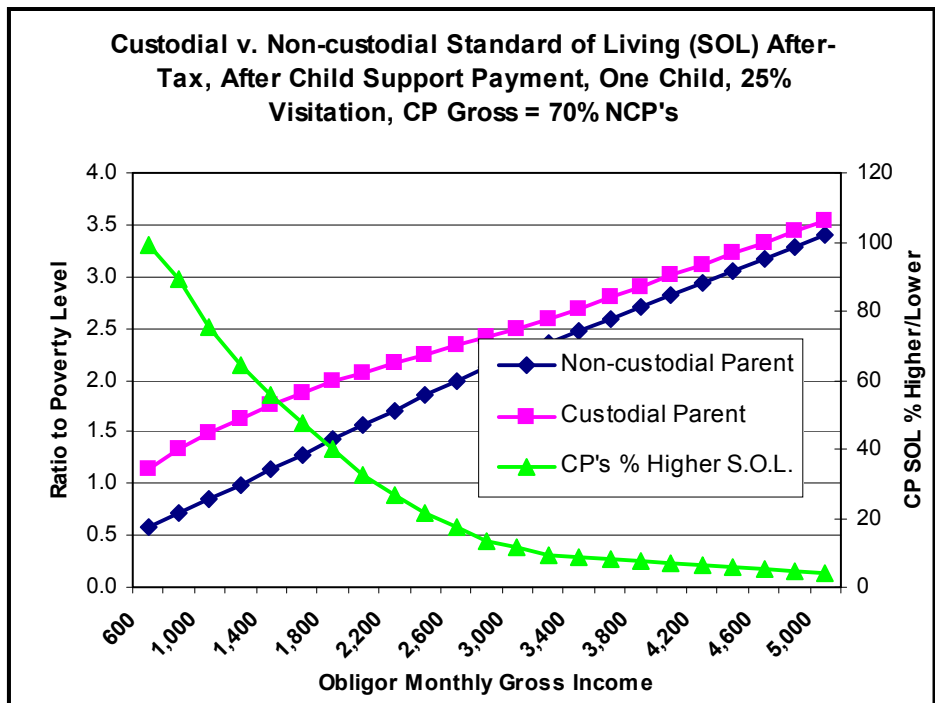


Chart 7.

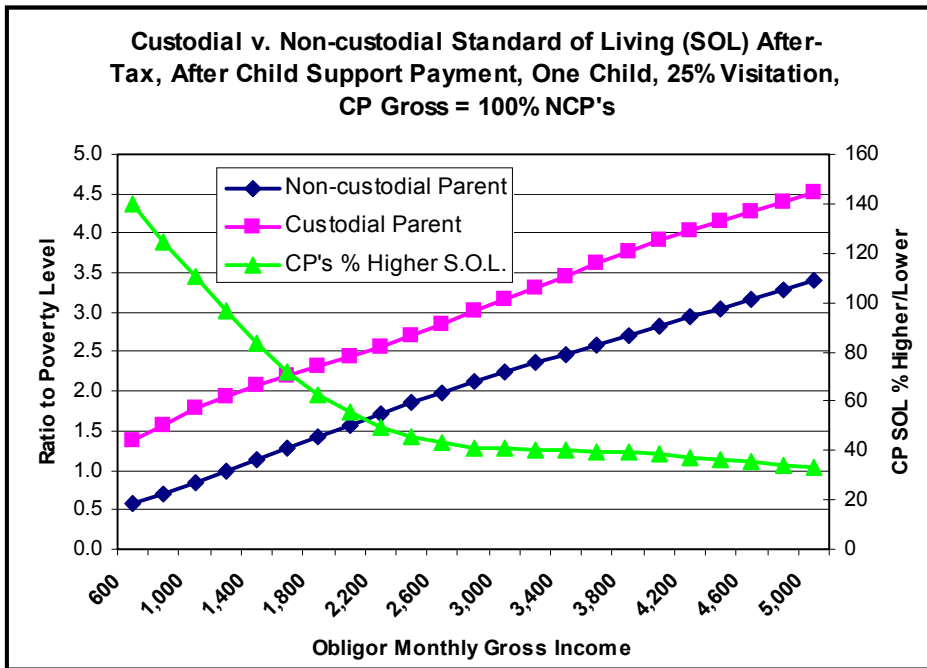


Chart 8.

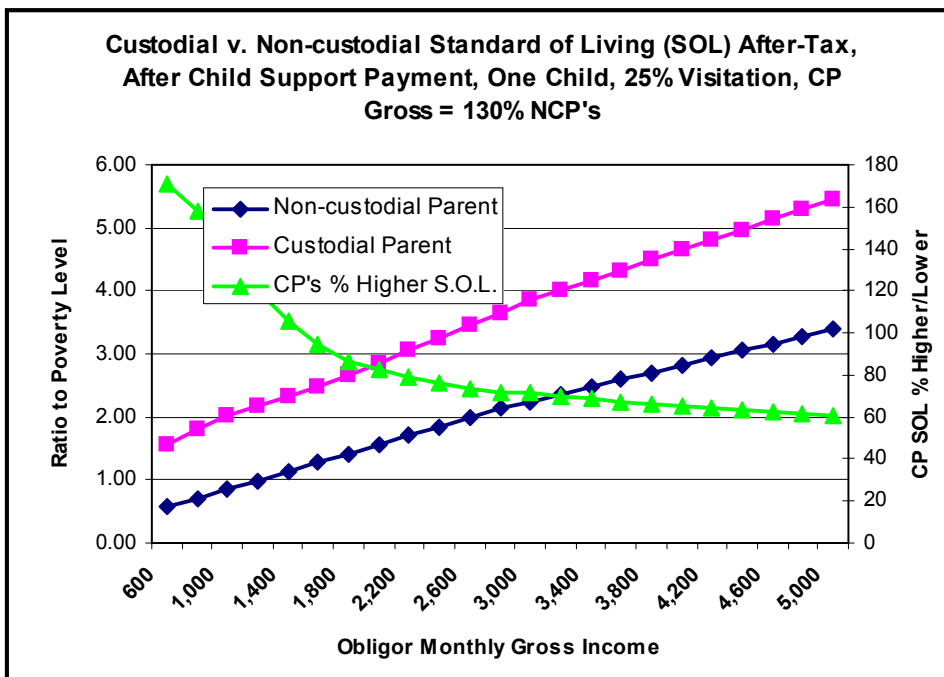


Chart 9.

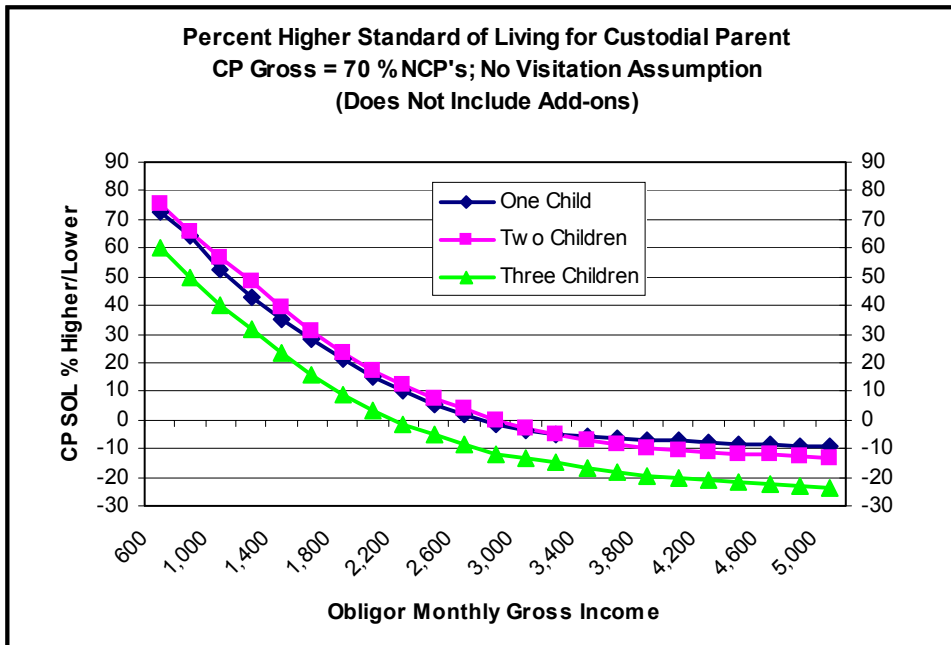


Chart 10.

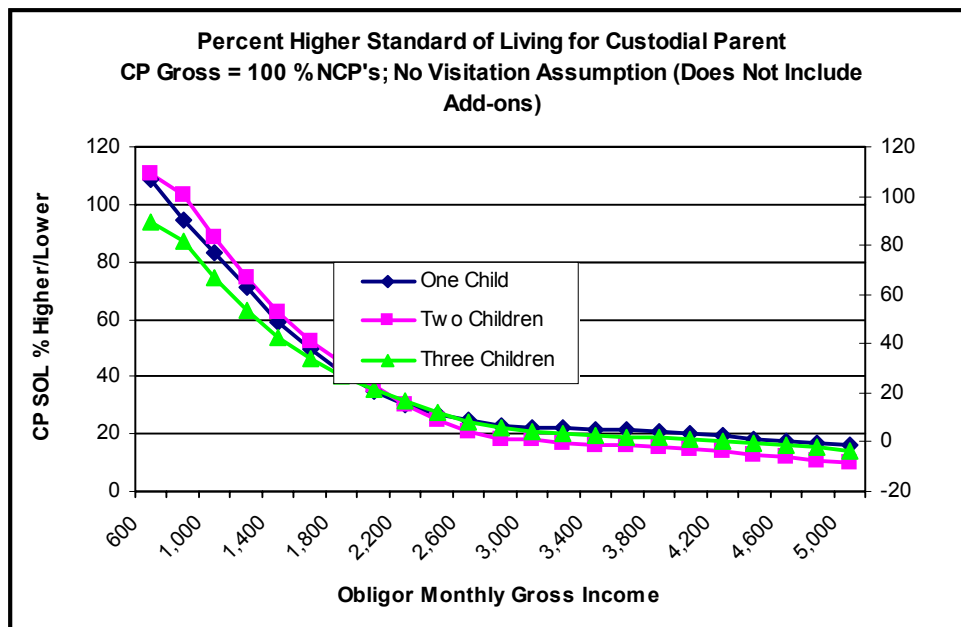
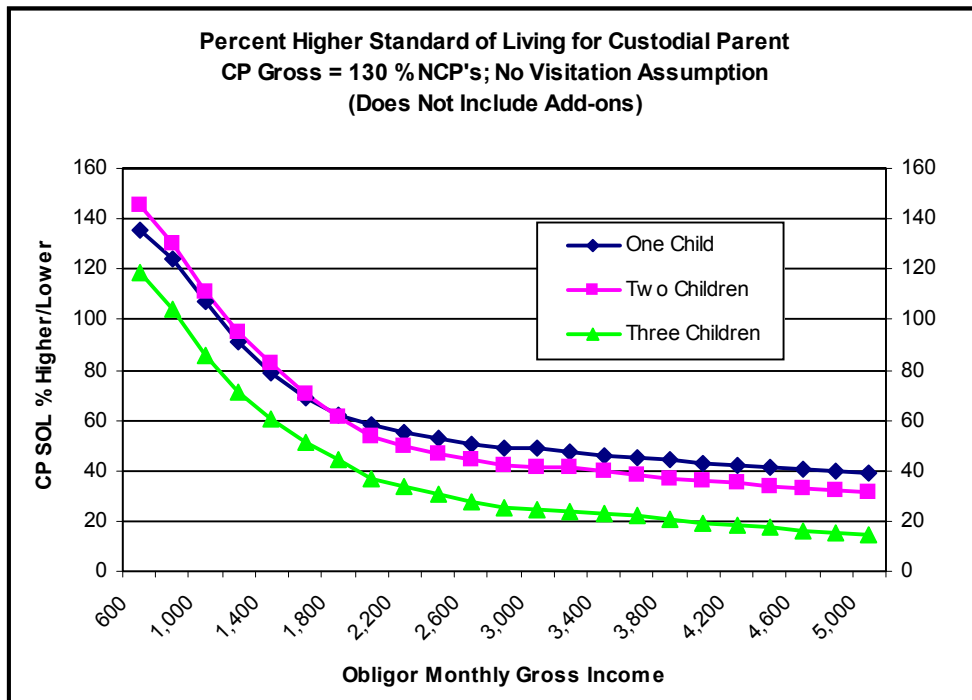


Chart 11.



The Custodial Parent's Extraordinary Benefits Rise Further with Parenting Time Adjustments to Standard of Living Comparisons

The no visitation case is rarely realistic. A more appropriate comparison would be when the non-custodial parent has a significant share of the parenting time. Charts 6 through 8 follow the methodology of Tables 9 through 11 for standard of living comparisons when the non-custodial parent has a 25 percent parenting time share. The results seen in Charts 6 through 8 show an even greater disparity between the standard of living gains by the custodial parent relative to that of the non-custodial parent. When the custodial parent has 30 percent less gross income, Chart 6 shows the custodial parent with a 100 percent (double) to 5 percent higher standard of living than the higher grossing non-custodial parent. When gross incomes are equal, the custodial parent has a 140 percent to 30 percent higher standard of living. When the custodial parent has a 30 percent higher gross income than the non-custodial parent, one again sees the gross disparity of how the guideline award and tax benefits widen the custodial parent's standard of living advantage. The custodial parent has from a 170 to 60 percent higher standard of living than that of the non-custodial parent.

The Standard of Living Analysis Extended to a Broad Range of Circumstances

This analysis can be extended to situations with additional children. As a simplification to the comparative charts, only the series showing how much higher or lower the custodial parent's standard of living is relative to the non-custodial parent's standard of living are shown. Charts

9 through 11 show the relative standard of living for the custodial parent to the non-custodial parent for no visitation cases and Charts 12 through 14 indicate situations with a 25 percent parenting time adjustment.

The following are summary findings from the standard of living comparisons for one to three children, without and with parenting time adjustments:

- With the custodial parent grossing 30 percent less income than the non-custodial parent for one, two, and three child cases with no visitation adjustments (as shown in Chart 12), the guideline award and tax benefits always boost the custodial parent's standard of living. This occurs to such an extent that at low- and low, middle-income income levels for the non-custodial parent that the higher grossing non-custodial parent ends up with a substantially lower standard of living than the custodial parent.
- With the custodial parent grossing income equal to the non-custodial parent for one, two, and three child cases with no visitation adjustments (as shown in Chart 13), the guideline award and tax benefits boost the custodial parent's standard of living substantially above the non-custodial parent's standard of living at low- and moderate-income levels. At high middle incomes, the calculated standard of living is slightly lower for the custodial parent in two-children and three-children cases. However, if the upward bias of this standard of living comparison is taken into account, the custodial parent's standard of living is at least equal to that of the non-custodial parent.¹⁵ For these circumstances, the custodial parent standard of living is either unjustifiably boosted substantially above the non-custodial parent standard of living or remains equal.
- For the situations in which the custodial parent grosses 30 percent more income than the non-custodial parent and in which there are no parenting time adjustments (Chart 14), there is some divergence between the guideline and tax benefit effects on relative standards of living depending on the number of children. First, at low- and low-middle incomes, the custodial parent's standard of living is always boosted further higher than the 30 percent starting point of gross income differences. There is no justification for the guidelines to force the lower grossing parent to take on a greater child support burden than the higher grossing parent.
- Continuing analysis of the prior case (Chart 14), at moderate and upper income levels for the one-child case, the custodial parent always ends up with a standard of living that is boosted further higher than the 30 percent starting point of gross income differences. For two children, except for high-income cases, the custodial parent ends up with a standard of living that is boosted further higher than the 30 percent starting point of gross income differences. At these high income levels, the standard of living is back at the starting point of being 30 percent higher for the custodial parent. For the three-child case, at low incomes, the custodial parent's relative standard of living is boosted higher, while at the higher income levels, the custodial parent's relative standard of living is reduced.

¹⁵ The standard of living comparison has an increasing bias toward overestimating custodial parent child costs as gross income levels move higher and away from the poverty thresholds. This is because this methodology holds child costs constant as a share of custodial parent household costs rather than declining as a share as indicated by other economic data.

- When comparing the standard of living of custodial parent and non-custodial parent households, making adjustments for parenting time makes a substantial difference in boosting the extraordinary benefits that the custodial parent receives more clear cut. For one-, two-, and three-child cases, with the custodial parent grossing 30 percent less or 30 percent more than the non-custodial parent, the custodial parent's standard of living is either boosted dramatically higher than the non-custodial parent's standard of living or is boosted even further than the initial starting point advantage of the custodial parent. See Charts 12 and 14. Only for the situation in which the custodial parent has equal gross income and for the three-child case is there a modest negative impact on the custodial parent's relative standard of living and even this disappears after adjustment for this methodology's biases.

Chart 12.

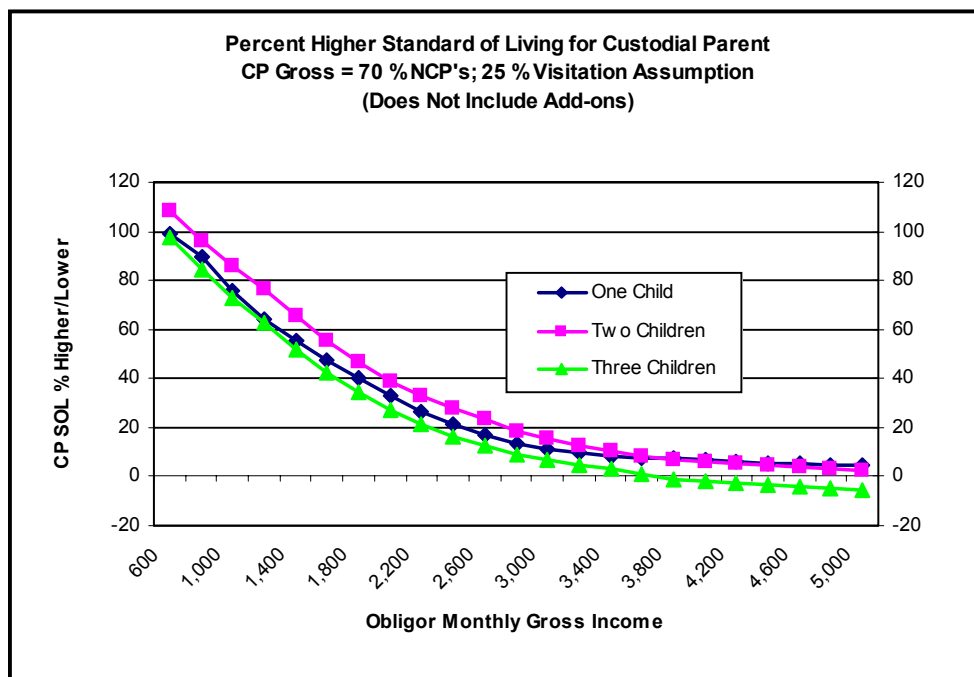


Chart 13.

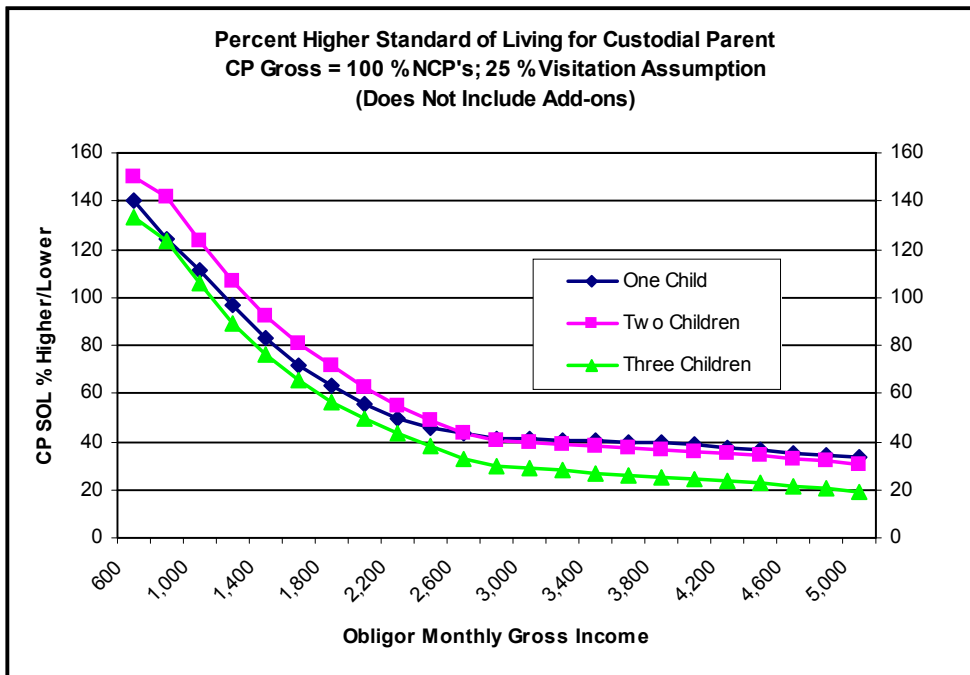
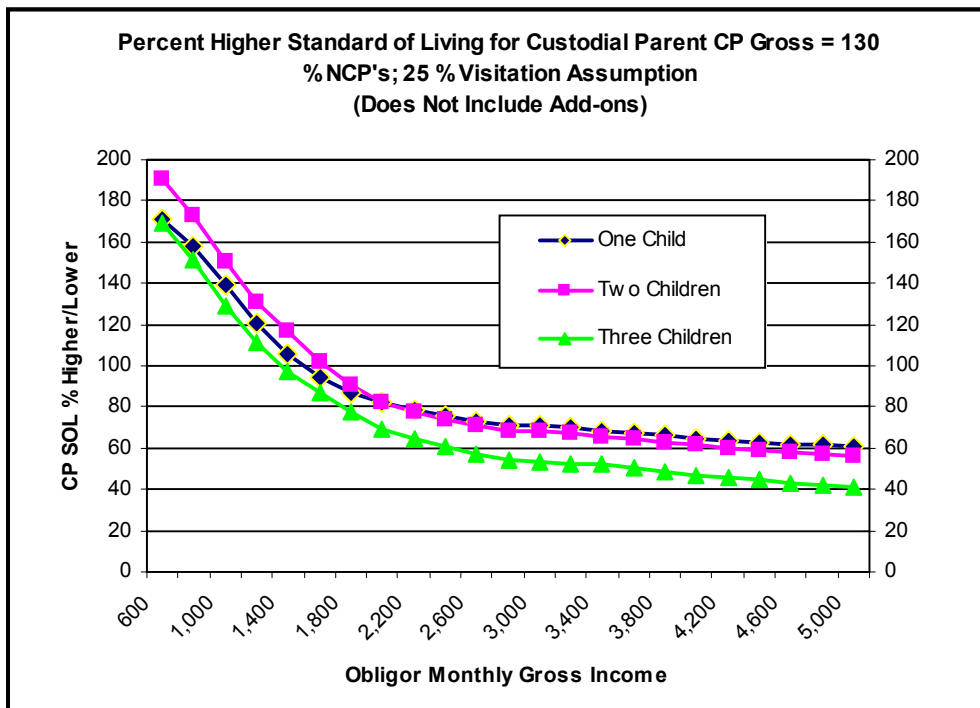


Chart 14.



Summary Findings from Standard of Living Analysis Regarding Guideline Equity

- The Minnesota presumptive awards do NOT allocate the child support burden according to the parents' relative ability to pay.
- Importantly, the gains in the standard of living of the custodial parent reflect the economic fact that the custodial parent contributes to child costs at a far lower rate than the non-custodial parent. Economic data show that any case law that assumes that the custodial parent contributes at the same rate as the non-custodial parent is unfounded. The logic of such an assumption is quite bizarre. If one assumes that the custodial parent always spends in the same proportion implicitly as the non-custodial parent explicitly, then the logic is that one could make the custodial parent spend more on a child by making the non-custodial parent spend more on the child. Such assumptions also violate the principles of the underlying economic study.
- Minnesota's child support guidelines do not explicitly provide for financial support of a child when in the care of the non-custodial parent.
- Minnesota's guideline awards include such large amounts of hidden alimony that a non-custodial parent is unable to provide for a child when in the non-custodial parent's care to the same extent as in the custodial parent's household. This violates equal protection standards for both the child and the non-custodial parent. Such excessive child support awards are not in the best interest of the child.
- Astonishingly, the guidelines are biased toward including hidden alimony for the custodial parent even when the custodial parent earns substantially higher gross income than the non-custodial parent. The guidelines do not even meet standards of fairness for alimony. If the guidelines did, there would be a narrowing of the standard of living gap for the non-custodial parent when the custodial parent has a higher gross income. Instead, the guideline boosts the standard of living of the custodial parent relative to non-custodial parent in both circumstances—when the custodial parent earns either substantially less or substantially more than the non-custodial parent.
- The child support guidelines are arbitrary and bear no relationship to the intended federal purpose of the guidelines of determining an economically appropriate child support award.
- The child support guidelines bear no relationship to the constitutional standards for child support of requiring each parent to have an equal duty in supporting the child.
- Obligor and obligee classifications should be determined after examination of the relevant factors—not before. The classifications of obligor and obligee are not rationally related to the intended purpose of the guidelines of determining the economically appropriate award.

Extraordinary Benefits and Burdens: Presumptive Awards Versus Typical Expenditure Awards

The extreme magnitude of the extraordinary benefits custodial parents receive and extraordinary burdens placed on obligors can be seen by comparing presumptive awards to awards based on sharing actual child costs. Actual child costs can be derived according to the "cost shares" methodology published in Chapter 11 of *Child Support Guidelines: the Next Generation*, by the Office of Child Support Enforcement, 1994, U.S. Department of Health and Human Services. With this methodology, the child cost is more than mere basic needs. The child cost figures are typical (average) expenditures for single-parent households according to household income. That is, expenditures on the children rise as income rises and reflects what a household with a given income spends on children. The cost to be allocated between the parents is the net cost—actual expenditures minus the child-related tax benefits. The net cost is then pro-rated between the parents according to each parent's share of combined income above self-support levels.

Charts 15 through 23 compare Minnesota presumptive awards with survey based data on total child expenditures, a cost shares award excluding the tax benefit cost offset, and a cost shares award including the tax benefit cost offset. These cost shares awards assume that the custodial parent incurs all of the child costs. This is essentially the same assumption as no visitation for the non-custodial parent.

First, Chart 15 is a comparison for a one-child case with the non-custodial parent having no visitation and with the custodial parent gross income half that of the non-custodial parent. For the low-income case in which the non-custodial parent grosses \$1,500 per month and the custodial parent grosses half of that, the guideline award ignores the self-support needs of the obligor.¹⁶ The cost shares award is lower because it is constrained to leave the obligor with income for basic living needs. For the \$3,000 per month gross income case and higher cases, the presumptive award exceeds the total cost of the child. That is, the obligor pays all of the child costs and then some. The custodial parent makes no contribution and actually pockets a profit. The presumptive award in all but low-income cases is typically double the cost shares award in cases in which the custodial parent grosses half the income of the non-custodial parent.

Moving to Chart 16, for the one-child case but the custodial parent has gross income equal to that of the non-custodial parent, one sees further evidence of extraordinary benefits and burdens. First, the rise in custodial parent income has no impact on the presumptive award. This is contrary to economic facts regarding rising personal saving rates and declining shares of after-tax income spent on children. Again, the presumptive award at middle and upper middle incomes exceeds total child costs. The custodial parent makes no contribution in these cases to child costs and makes a profit. When the custodial parent has gross income equal to the non-custodial parent, the presumptive award for one child is typically three times an appropriate economics based award.

¹⁶ It should be noted that the custodial parent in poverty situations qualifies for more government aid than does the non-custodial parent. Additional aid to the custodial parent includes U.S.D.A. food stamps and the W.I.C. (Women, Infants, and Children) Program. These factors are not considered in the comparative analysis but certainly are significant and are appropriate for additional study.

Chart 17 shows a comparison for a one-child case but in which the custodial parent grosses double the income of the non-custodial parent. Again, there is no impact on the presumptive award. The presumptive award typically is nearly equal to the total of child costs. The presumptive award is three to four times an appropriate economics based award.

Cost shares awards are not shown for situations in which the obligor has gross income of \$6,000 per month and the custodial parent has gross income that is double that. The cost shares child cost tables do not extend to combined income levels that high since child cost data are not available for those income levels.

Extending the analysis to two and three child cases as seen in Charts 18 through 23, the comparisons corroborate these earlier findings.

Chart 15.

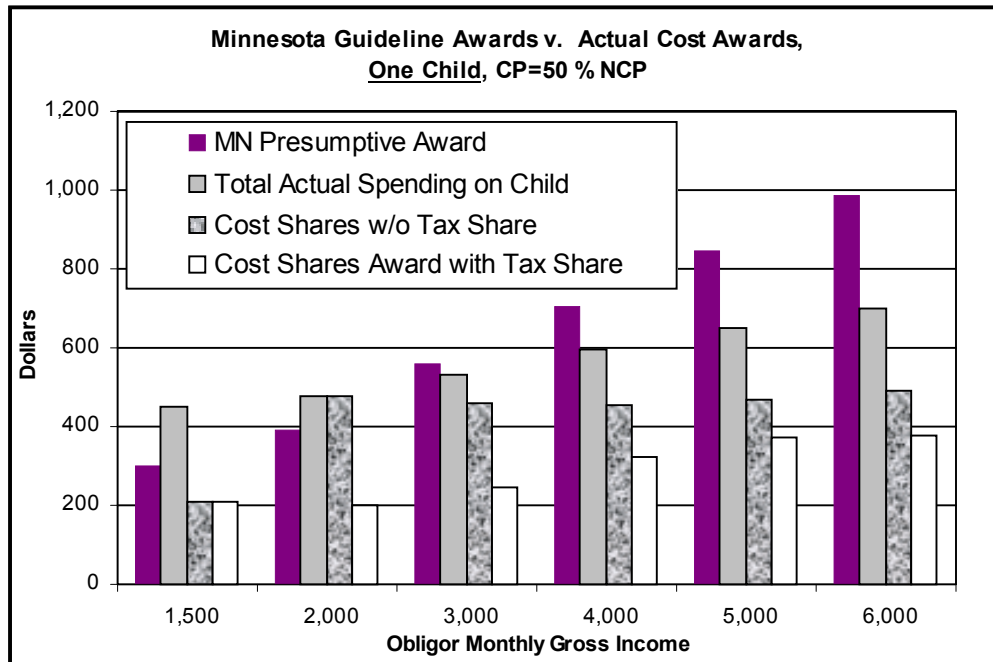


Chart 16.

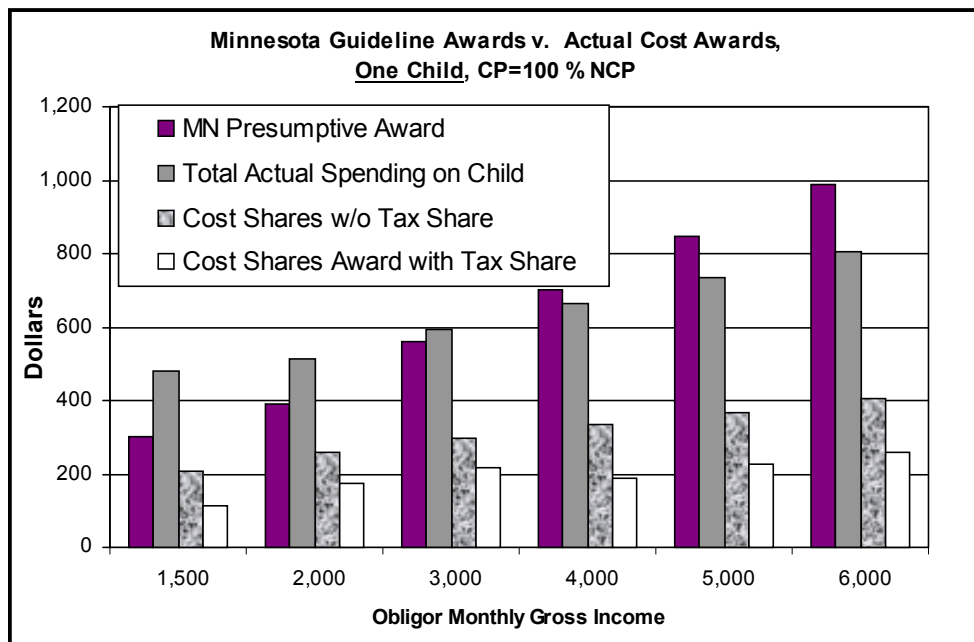


Chart 17.

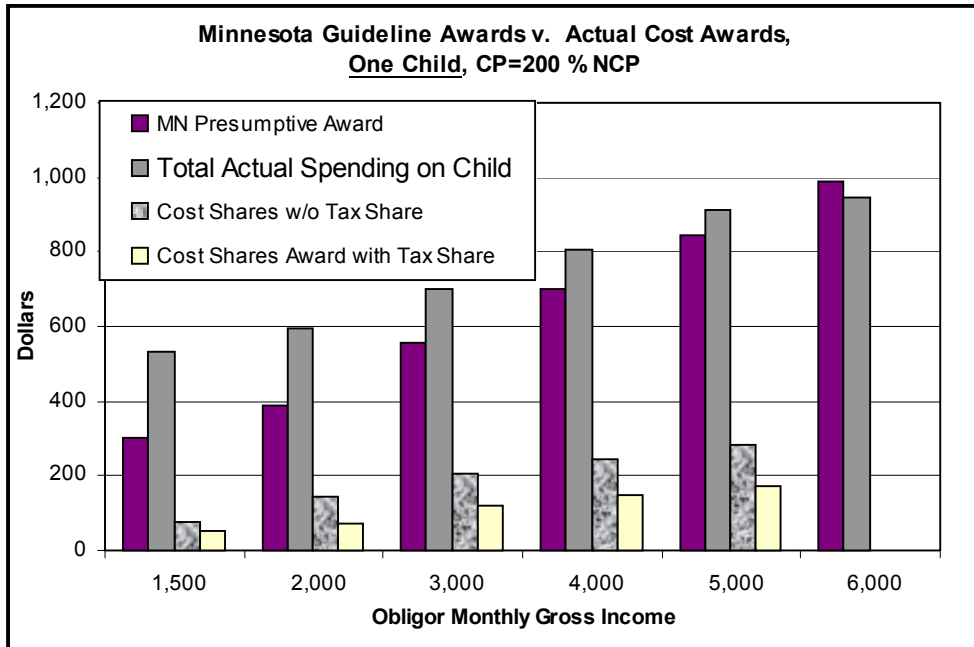


Chart 18.

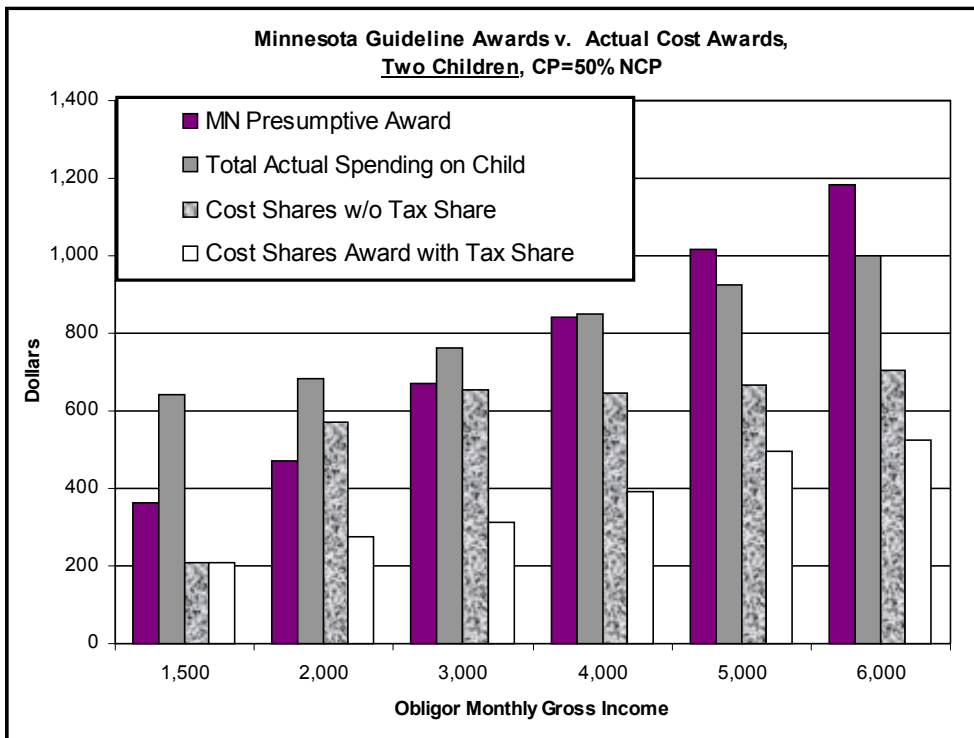


Chart 19.

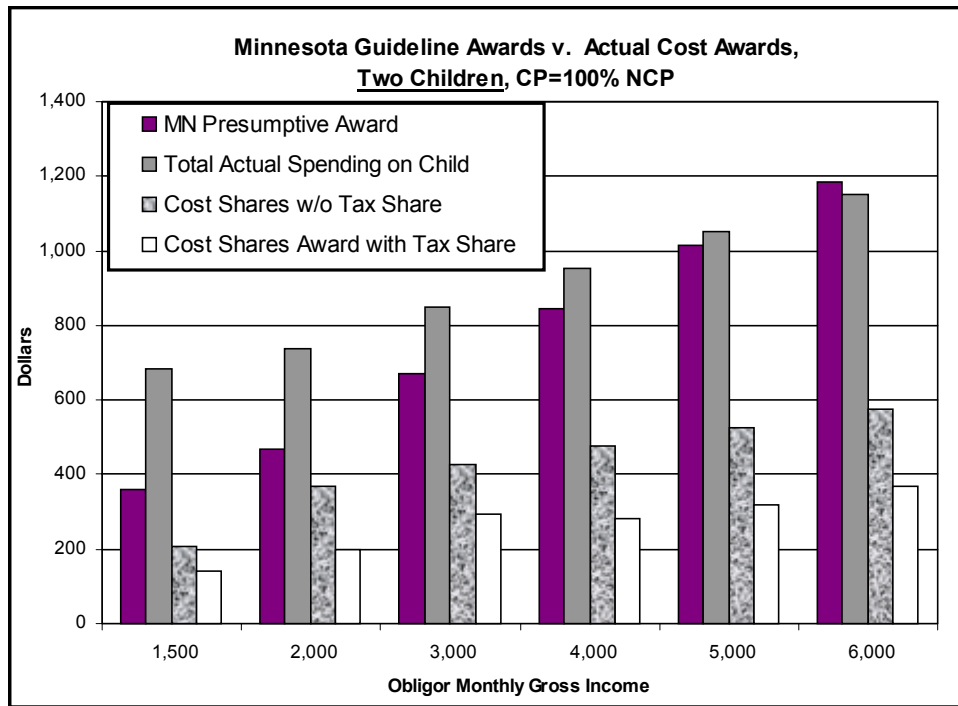


Chart 20.

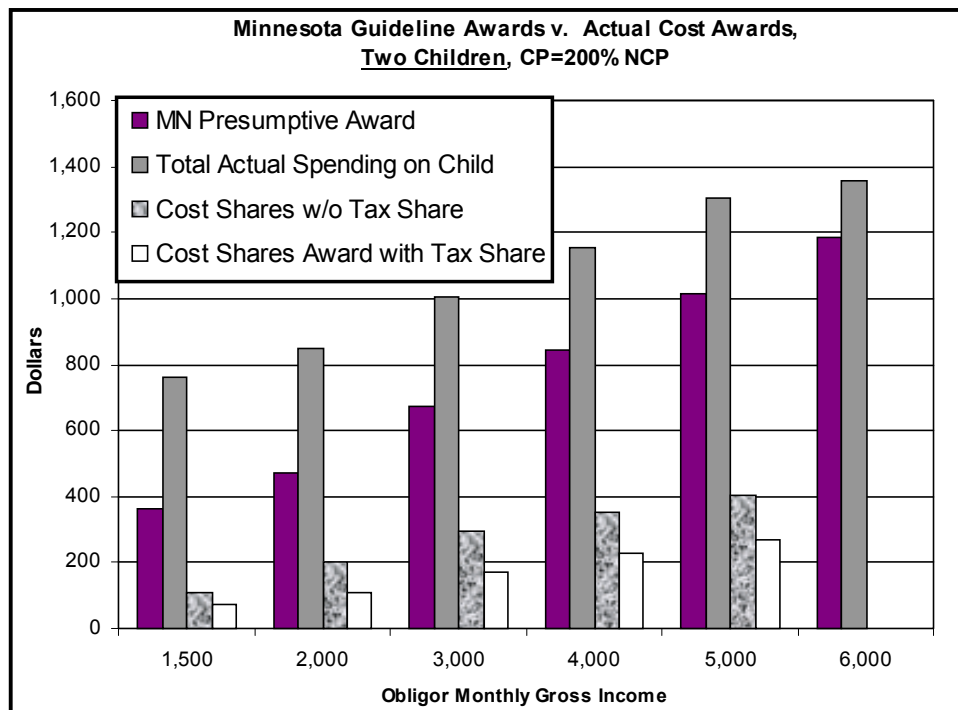


Chart 21.

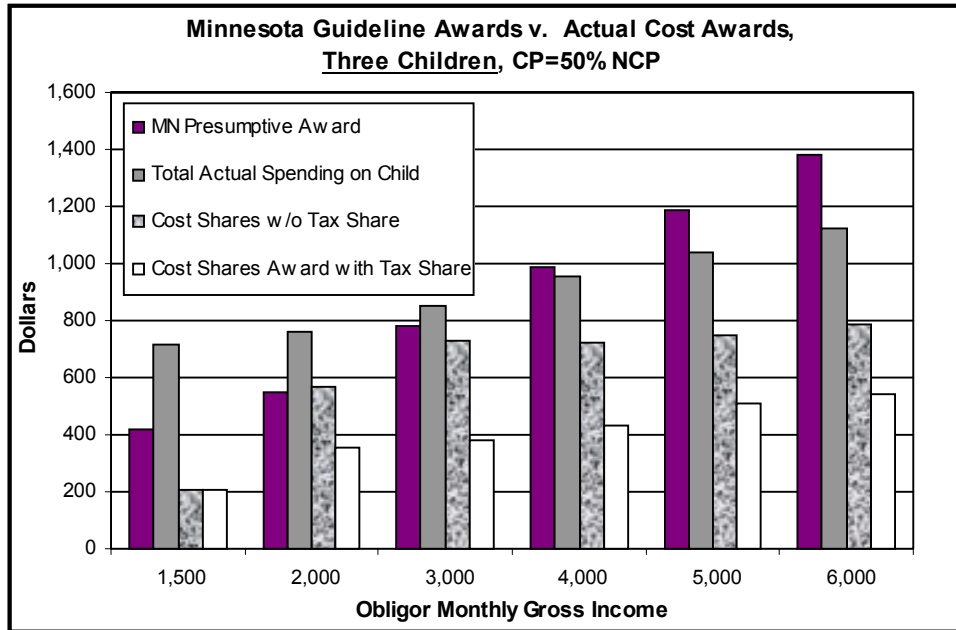


Chart 22.

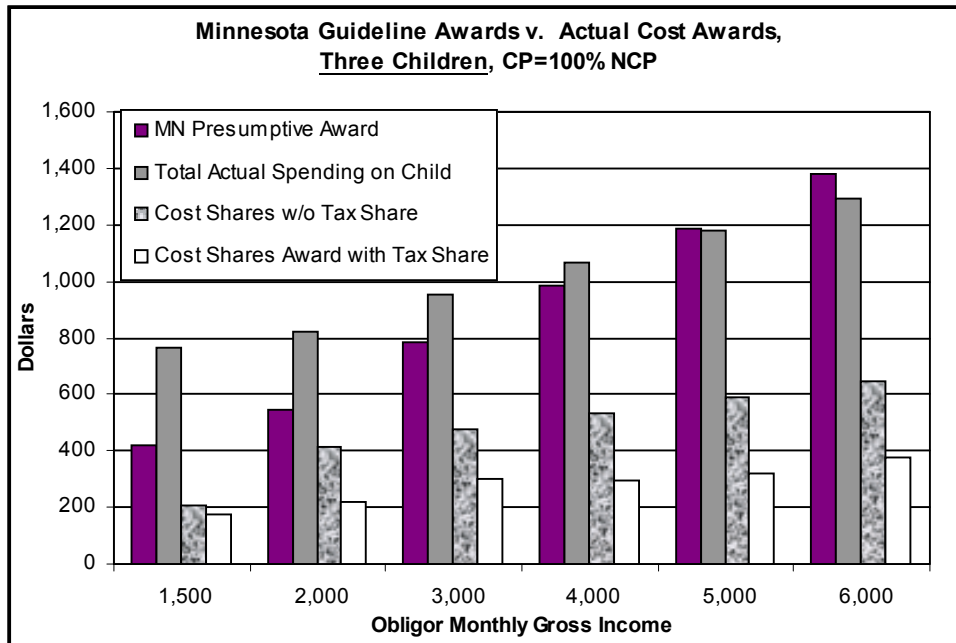
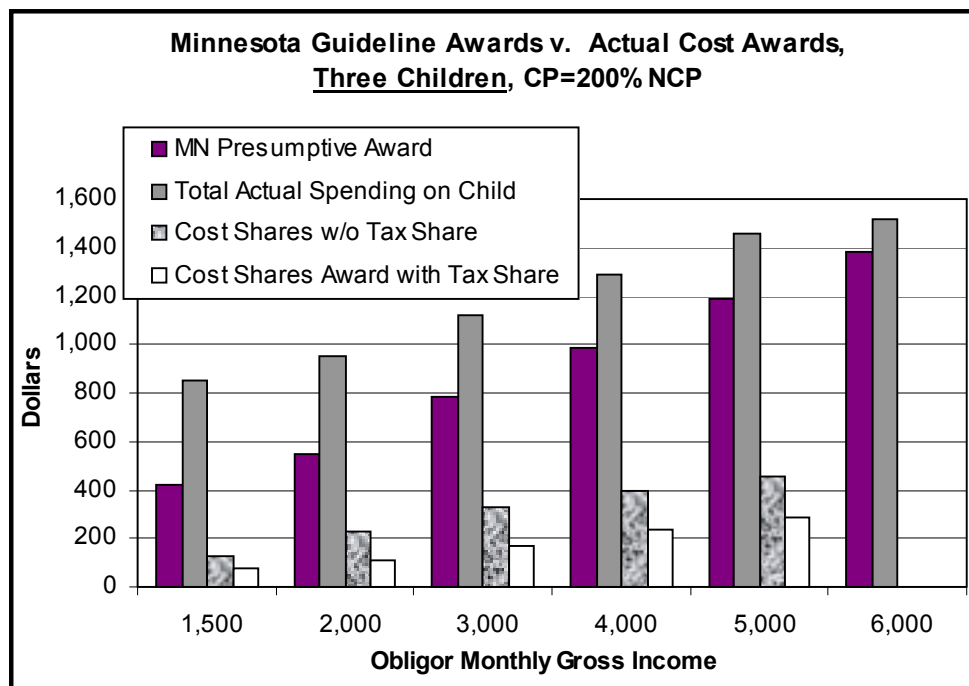


Chart 23.



Summary of Comparisons of Presumptive Awards to Typical Expenditure Based Awards:

- The presumptive awards ignore obligor self-support needs—creating an extraordinary burden for the obligor. The obligor is expected to pay the presumptive child support award while having less than enough income for basic living needs.
- The custodial parent income has no impact on the amount of the presumptive award. This conflicts with economic studies. There is no rational relationship between the presumptive award and family income (the custodial parent's income has no impact).
- Presumptive awards typically exceed total child costs and in the remainder of the cases are nearly equal to total child costs. This is an extraordinary burden on obligors and an extraordinary benefit for custodial parents.
- The presumptive award typically is two to four times an economics based award. This is an extraordinary burden on obligors and an extraordinary benefit for custodial parents. This is based on the tax benefit being treated as a cost offset and the remainder of total spending being shared between the parents in proportion to available income.
- The child support guidelines are arbitrary and bear no relationship to the intended federal purpose of the guidelines of determining an economically appropriate child support award.

- The child support guidelines bear no relationship to the constitutional standards for child support of requiring each parent to have an equal duty in supporting the child.
- Obligor and obligee classifications should be determined after examination of the relevant factors—not before. The classifications of obligor and obligee are not rationally related to the intended purpose of the guidelines of determining the economically appropriate award.

Background for Comparisons with Typical Expenditure Based Awards: Basic Steps in the Cost Shares Model

- The benchmark comparison of the presumptive award is an award based on typical expenditures on children. This is based on a "cost shares" methodology that was discussed in guideline literature in Donald J. Bieniewicz, "Child Support Guideline Developed by Children's Rights Council," Chapter 11, *Child Support Guidelines: the Next Generation*, U.S. Department of Health and Human Services, April 1994, pp. 104-125. More recently, the methodology was discussed in detail in "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," by R. Mark Rogers and Donald J. Bieniewicz. This latter paper gives a working version of a cost shares child support guideline. This paper was presented at the Southern Economic Association meeting in metro Washington, D.C., November 12, 2000 and is scheduled for publication in late 2001 for use by forensic economists.

The basic cost shares model makes the following simple calculations:

- 1) Determines basic child costs for a single-parent household using an average of both parents' income to establish the standard of living for the child. The basic child support table has child costs for a single-parent household according to gross income.
- 2) Adds other non-basic expenses when appropriate.
- 3) Deducts from total child costs the tax benefit that the custodial parent receives that is solely attributable to having custody of the child(ren).
- 4) Allocates the net child cost (net of tax benefits) between the two parents based on each parent's relative ability to support the child. This relative ability is determined by each parent's share of combined after-tax income that is above a recommended self-support level.¹⁷

¹⁷ A self-support reserve of 133 percent of the poverty threshold is the recommendation of an appointed panel on medical child support reporting to the U.S. Department of Health and Human Services and U.S. Department of Labor. See U.S. Department of Health and Human Services, "21 Million Children's Health: Our Shared Responsibility, The Medical Child Support Working Group's Report, Full Report," June 2000, p. 70. The poverty threshold for a one-adult only household in 2000 is \$8,959 annually or \$747 monthly.

The simple model assumes that the custodial parent incurs all of the child expenses. The full model takes into account child costs according to which parent incurs them and holds both parents equally responsible for the others' child costs.

The primary source of data for the cost shares child support model is 1999 Expenditures on Children by Families, published by the Family Economics Research Group (FERG), U.S. Department of Agriculture.¹⁸ Data used to estimate expenditures on children are from the 1990-92 Consumer Expenditure Survey—Interview portion. This survey is administered by the Bureau of Labor Statistics, U.S. Department of Labor. This survey is based on a sample of 12,850 husband-wife households and 3,395 single-parent households. The Bureau of Labor Statistics weights the survey data to reflect the composition of the overall U.S. population of interest. Econometric analysis was used to estimate household and child-specific expenditures. That is, statistical techniques were used to evaluate the expenditure data to control for family size, income, and other factors to determine expenditures on children by family size.

The FERG report provides estimates of family expenditures on children for separate cost categories. These are housing, food, transportation, clothing, health, child care & education, and "other." Each category is based on an average of the expenditures by category from survey data.

The FERG estimates are on a marginal cost basis, except for the housing, transportation, and other miscellaneous cost estimates, which are per capita (household costs are allocated equally to all household members, including children). Per capita estimation is known to yield much higher estimates of child costs than marginal cost estimation and should be viewed as an "upper limit" for child costs for these categories.

To obtain marginal housing costs for children, the housing costs in the cost shares tables originally were based on a housing survey by Dr. David Garrod of Purdue University (currently retired) instead of the unrealistically high per capita estimates from the FERG report. Adjustments were made to the data to add furniture and utilities costs. More recently, the cost shares model incorporated housing cost data from the latest U.S. Department of the Interior's "Regional Quarters Rental Survey Covering Government-Furnished Quarters Located in the Mid-North Survey Region," October 2000. This is an extensive survey of private housing to provide a basis for determining market rents to charge government employees for government-furnished housing. The current version (June 29, 2001) of the cost tables has an expanded definition for the housing component cost. The housing component includes not only the rental cost but also includes utilities, maintenance, and furnishings. These costs are derived from cost ratios (of these costs to rental costs) from the Bureau of Labor Statistics.

The cost shares model has the same components as the FERG estimates. However, for the cost shares model, child expenditure levels were interpolated at \$50 income increments using a regression based technique.

¹⁸ More detail on the source data can be found in Donald J. Bieniewicz, "Child Support Guideline Developed by Children's Rights Council," Chapter 11, *Child Support Guidelines: the Next Generation*, U.S. Department of Health and Human Services, April 1994, pp. 104-125.

Analysis of Presumptively Implied Total Child Costs as a Share of Custodial Parent Net Income Shows that the Presumptive Award Is Not Economically Rational, Creates Extraordinary Benefits for the Custodial Parent, and Creates Extraordinary Burdens for the Obligor

There are two ways that the implicit presumptive total child costs can be calculated. The first is based on simply applying the guideline percentage to each parent's after-tax income and adding the two amounts together. For this method, the non-custodial parent has single taxpayer status while the custodial parent has head of household status. This methodology is often referenced by those defending the current guideline. These defenders erroneously assert that the custodial parent contributes equally on an after-tax basis. This is an economically incorrect method since it does not treat the full amount of the custodial parent's child-related tax benefit as being entirely applied to covering child costs. As a result, the method of calculating the implicit child cost will underestimate the implicit child cost.

The second method assumes that each parent contributes equally on a single taxpayer basis and then the full amount of the custodial parent tax benefits is added. One adds together the following three components: (i) the obligor's net income times the guideline percent, (ii) the custodial parent's net income on a single taxpayer basis times the guideline percent, and (iii) the full amount of the custodial parent's child-related tax benefits. This definition of child costs is still economically incorrect relative to actual expenditures on children but it is consistent with the intended definition of child costs implicit within the guideline. This second definition is more appropriate for showing whether the implicit child cost makes sense or not economically.

Clearly there are flaws with the first method of calculating implicit child costs. The first method ignores the fact that the child-related tax benefits that the custodial parent receives are intended to be fully used as an offset to child costs. If the tax benefit is not assumed to be entirely applied to child costs not covered by other contributions by the parents, then the tax benefit is a windfall to the custodial parent and equal protection standards are violated. In reality the tax benefits indeed are windfalls to the custodial parent but the current issue is to show that the total implicit presumptive child costs make no economic sense.

Charts 24 through 29 show these two different definitions of implicit presumptive child costs as a share of custodial parent net income (before the child support transfer). These are compared to actual expenditures on children as a share of custodial parent income. These expenditures are based on the cost shares methodology discussed above. These expenditures are total spending on children—not costs net of tax benefits. They are not each parent's share but the total.

Chart 24 begins with the one-child case in which the custodial parent grosses half the income of the obligor. One sees that the actual expenditure amounts are quite large as a share of custodial parent net income. These shares for this case decline from 40 percent of custodial parent net income at obligor monthly gross income of \$3,000 to about 30 percent of custodial parent net income when obligor monthly gross income is \$6,000. Excluding the tax benefit offsets, one sees the implicit presumptive cost ranging from 55 percent to 65 percent. Including the tax benefits, the implicit total child costs for one child range from 70 percent to 85 percent of the custodial parent's net income. Essentially, the implicit presumptive child cost requires that the

custodial parent spend a substantially greater share of net income on the child than on the parent. This outcome conflicts with all economic studies on child costs. Because of adult overhead in household costs, adult costs always exceed the added cost per child (excluding extraordinary cases such that a child may have large medical expenses).

For the one-child case in which the custodial parent has gross income equal to that of the non-custodial parent (Chart 25), the full implicit presumptive child cost ranges from about 55 percent to 65 percent of the custodial parent's net income. Again, no economic study shows a greater share of net income being spent on one child than on the single parent. Additionally, the full implicit presumptive child cost is two to two-and-a-half times actual child costs.

Charts 26 and 27 compare implicit presumptive child costs for two children. Total implicit presumptive child costs are essentially 100 percent of the custodial parent's net income when the custodial parent grosses 50 percent of the non-custodial parent's income. No economic studies substantiate this. For two children when gross incomes of the parents are equal (Chart 27), the total implicit presumptive child cost ranges between roughly 65 percent and 80 percent of the custodial parent's net income. This implies that child costs are a per capita share or higher of the custodial parent's net income. No economic studies corroborate this. Implicit presumptive total child costs grossly exceed actual child expenditures.

For the three-child case with the custodial parent grossing 50 percent of the non-custodial parent income (Chart 28), total implicit presumptive child costs actually exceed the custodial parent's total net income (more than 100 percent) and, of course, grossly exceed actual child costs. In Chart 29 for the three child case with parental gross incomes being equal, the total implicit presumptive child cost exceeds 75 percent of the custodial parent's net income. This means that the implicit presumptive child cost is higher per child than income left over for the parent's expenses.

In summary, implicit presumptive child costs grossly exceed known upper limits to child costs. Minnesota's total implicit presumptive child costs generally exceed per capita shares of the custodial parent's net income. Total implicit presumptive child costs grossly exceed actual child costs. Minnesota's presumptive guideline child support awards are not on a rational economic basis. The guideline awards create extraordinary financial benefits for custodial parents and extraordinary burdens for obligor parents.

Chart 24.

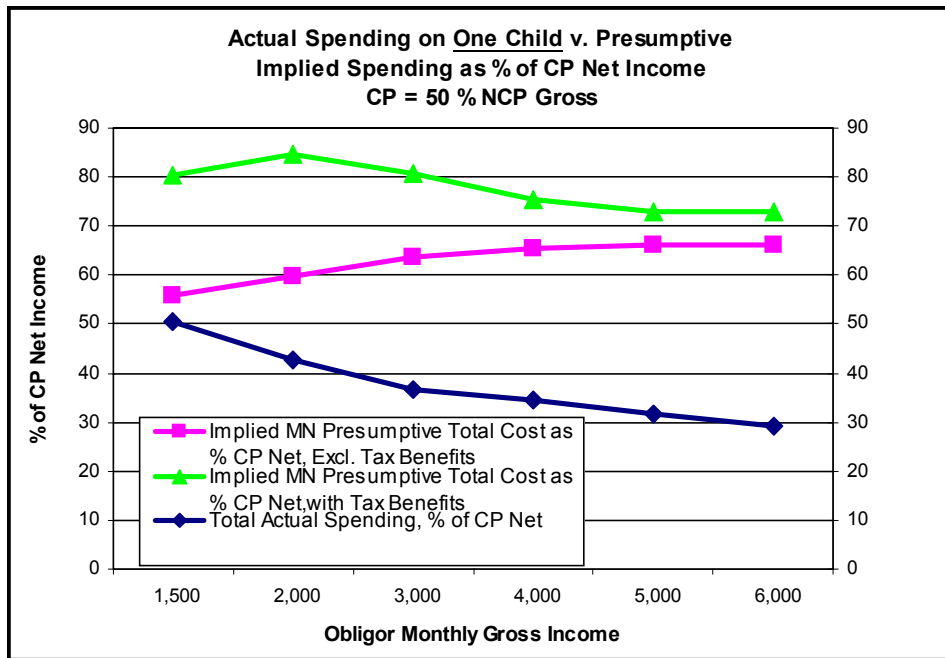


Chart 25.

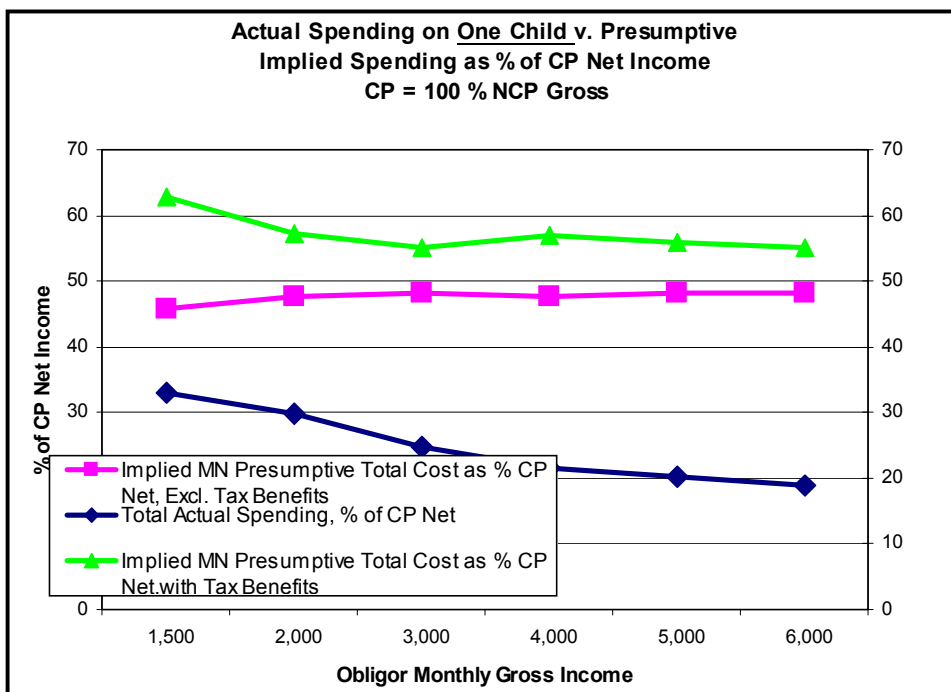


Chart 26.

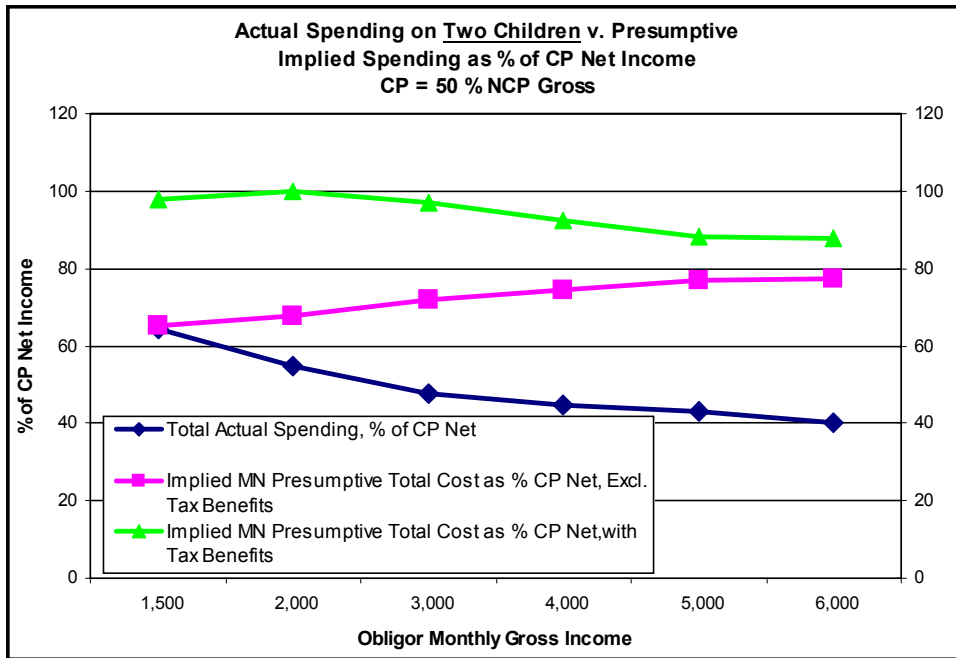


Chart 27.

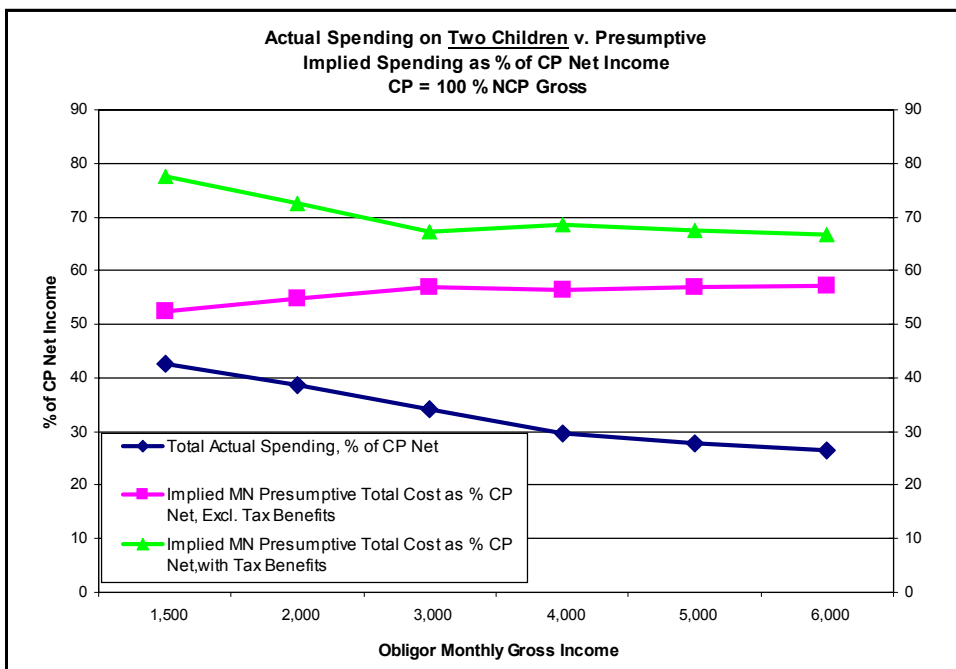


Chart 28.

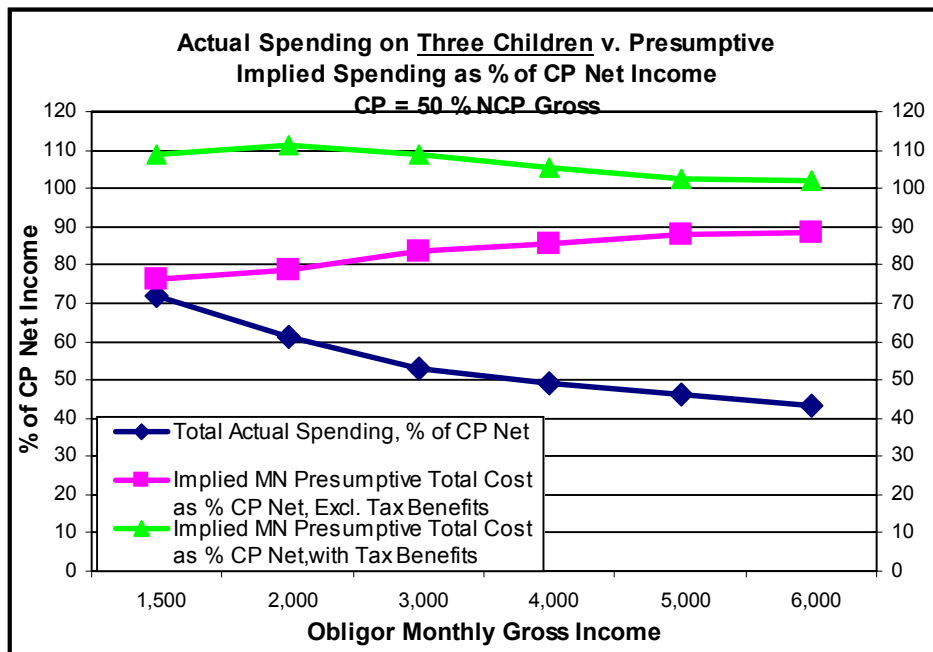
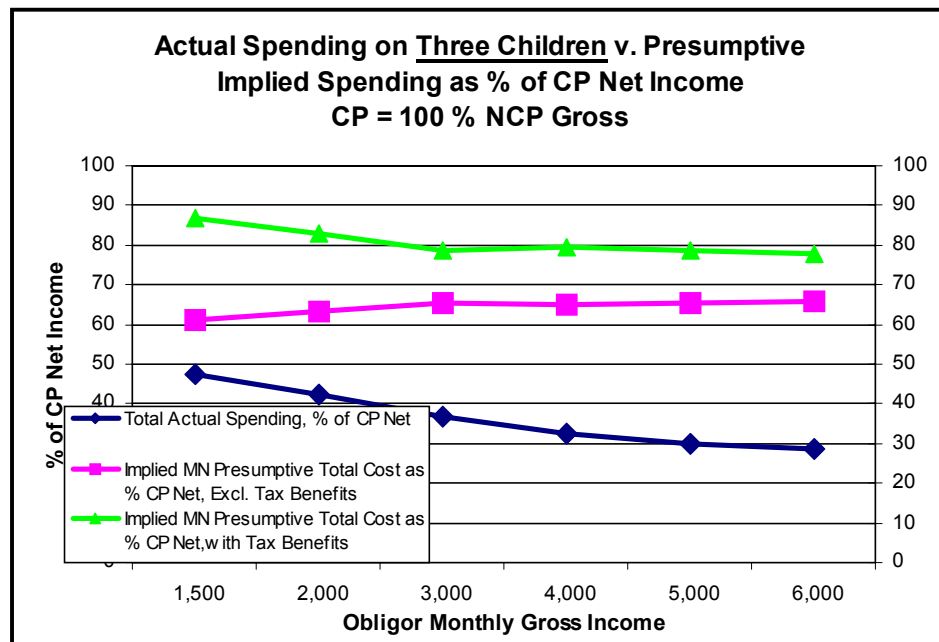


Chart 29.



Minnesota's Cost of Living Adjustment to Child Support Awards Is Not on a Rational Economic Basis and Violates Equal Protection Standards

Minnesota uses a consumer price index (CPI) to administratively modify child support awards in many situations subsequent to the original child support determination. This consumer price index is the Minneapolis-St. Paul CPI that is produced by the U.S. Department of Labor. The following tables show that using the Minneapolis-St. Paul consumer price index is not statistically related to changes in earnings for factory workers in Minneapolis-St. Paul, nor other cities such as Duluth and St. Cloud. Each table shows regression results of how well the annual percentage change in this CPI can "predict" or "explain" changes in earnings of factory production workers in each of these three cities. The key statistic is the "R-square, adjusted." This figure generally lies between 0 and 1 with higher numbers indicating that the explanatory variable (in this case, the percentage changes in this CPI) is statistically meaningful in explaining changes in the dependent variable (in this case, annual percentage changes in earnings for factory workers in Minneapolis-St. Paul, and in the other tables, Duluth, and St. Cloud.

Table 12.

Summary Statistics Comparing Annual % Change CPI, Minneapolis-St. Paul, to Annual % Changes in Factory Worker Earnings

City	R-Squared, Adjusted
Minneapolis-St. Paul	0.4702
Duluth	0.2111
St. Cloud	0.1367

For Minneapolis-St. Paul, there actually is moderate explanatory power between these two series. However, for Duluth and St. Cloud, the statistical results are abysmal. There is almost no relationship between annual changes in this CPI series and earnings series. Manufacturing earnings are volatile and these two series are merely representative of the fact that different industries and localities can fare very differently over the business cycle and over an extended period of years. This variability is even more of an issue for individual workers. There is no reason to believe that any individual worker's income varies along with changes in some local CPI series. There is no rational reason to believe that a CPI is an appropriate basis to modify child support orders.

As seen in Chart 30, there is only a moderately close relationship between the Minneapolis CPI and Minneapolis earnings for factory workers. But when one looks at the charts for Duluth (Chart 31) and St. Cloud (Chart 32), the relationship between changes in the Minneapolis CPI and changes in each city's factory workers' earnings, the relationships are almost random. In fact, Duluth earnings over the 1990s have generally lagged changes in the Minneapolis CPI while St. Cloud earnings mostly have exceeded increases in the Minneapolis CPI during the 1990s. Clearly, there is no rational relationship any given year and there is no economic basis for using the Minneapolis CPI as a substitute for actual earnings data.

Table 13.

Cumulative Change from 1993 through 2000

<u>Series</u>	<u>Percent</u>
CPI, Minneapolis-St. Paul	22.2
Factory Worker Weekly Earnings:	
Minneapolis-St. Paul	24.0
Duluth	14.2
St. Cloud	37.8

Table 14.

REGRESS : dependent variable is MINSTPMFG EARN
Using 1973-2000

Variable	Coefficient	Std Err	T-stat	Signf
^CONST	1.81749	.729989	2.48975	.020
CPIMINSTP	.576596	.115412	4.99600	.000

Equation Summary

No. of Observations =	28	R2=	.4898	(adj)=	.4702
Sum of Sq. Resid. =	107.792	Std. Error of Reg.=	2.03613		
Log(likelihood) =	-58.6022	Durbin-Watson =	1.04552		
Schwarz Criterion =	-61.9344	F (1, 26) =	24.9600		
Akaike Criterion =	-60.6022	Significance =	.000034		

Table 15.

REGRESS : dependent variable is DULMFG EARN
Using 1977-2000

Variable	Coefficient	Std Err	T-stat	Signf
^CONST	-.452830	2.13456	-.212142	.834
CPIMINSTP	.966422	.361304	2.67482	.014

Equation Summary

No. of Observations =	24	R2=	.2454	(adj)=	.2111
Sum of Sq. Resid. =	736.753	Std. Error of Reg.=	5.78695		
Log(likelihood) =	-75.1449	Durbin-Watson =	3.18346		
Schwarz Criterion =	-78.3230	F (1, 22) =	7.15465		
Akaike Criterion =	-77.1449	Significance =	.013838		

Table 16.

REGRESS : dependent variable is STCLMFGEARN
Using 1980-2000

Variable	Coefficient	Std Err	T-stat	Signf
^CONST	1.70621	2.10125	.811998	.427
CPIMINSTP	.820773	.402042	2.04151	.055

Equation Summary

No. of Observations =	21	R2=	.1799	(adj)=	.1367
Sum of Sq. Resid. =	563.913	Std. Error of Reg.=	5.44790		
Log(likelihood) =	-64.3467	Durbin-Watson =	1.61200		
Schwarz Criterion =	-67.3912	F (1, 19) =	4.16776		
Akaike Criterion =	-66.3467	Significance =	.055336		

Chart 30.

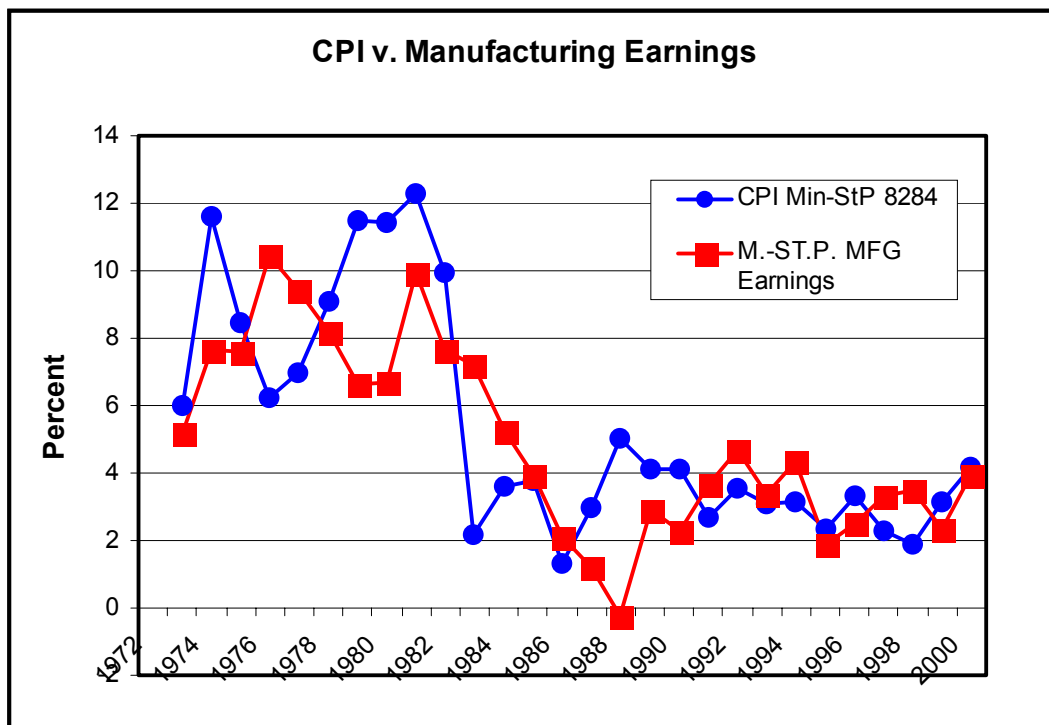


Chart 31.

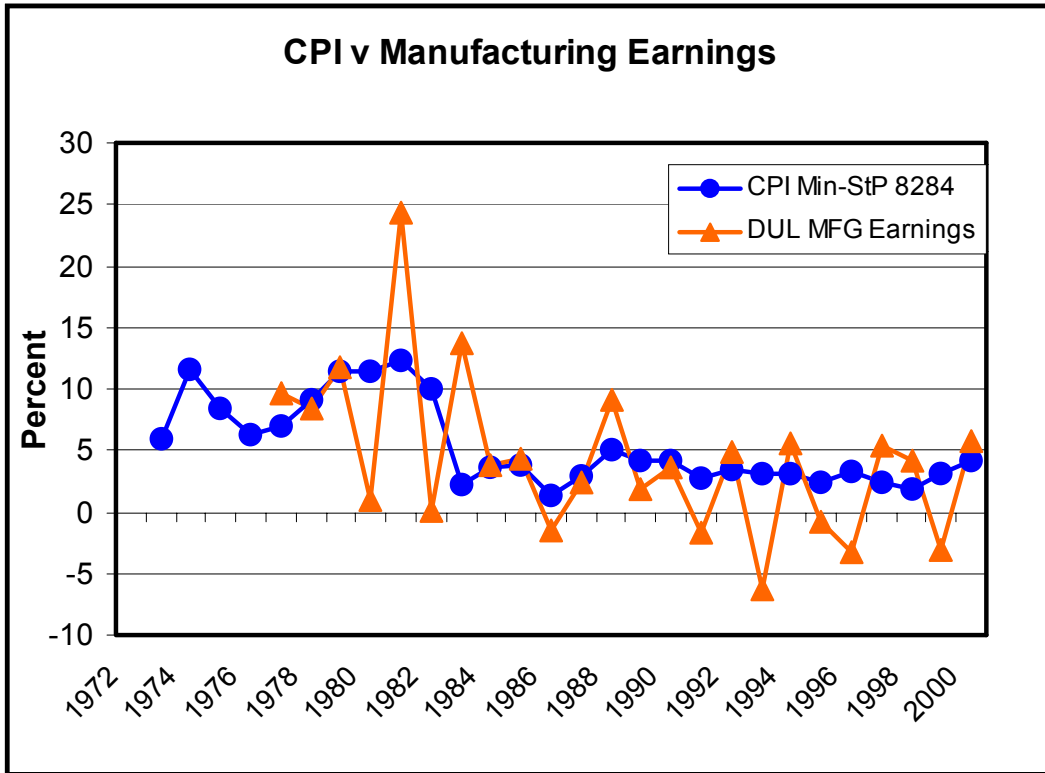
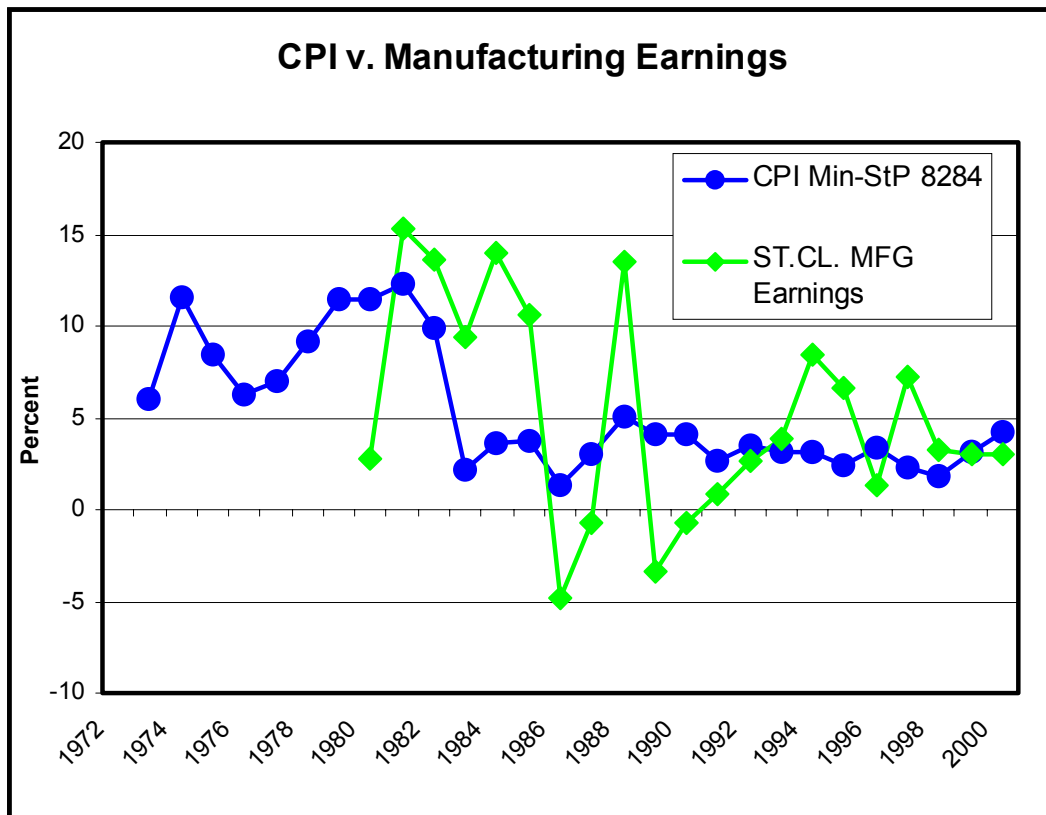


Chart 32.



An Example of the CPI-based Modification Violating Equal Protection Standards

Let us compare two factory workers over a several year time span. Initially, in 1993 Joe and Bob are each married with two children. Joe and Bob work for Standard Manufacturing in Duluth with the same job classification, with the same tenure, and on the exact, same job track. In 1994, they both net \$30,000 annually or \$2,500 monthly. However, Bob is divorced in 1994 and is ordered to pay \$625 per month—based on 25 percent of net income—in child support for the two children. Bob and Joe continue on the job track and have pay increases that exactly track Bureau of Labor Statistics data on factory earnings for factory workers in Duluth. In 1999, they both earn \$30,644 annually or \$2,554 monthly as factory worker earnings in Duluth over this time period only went up a cumulative 2.1 percent. However, in 1999, Joe is divorced and based on his net income is ordered to pay \$638 per month in child support for two children.

In 1999, Bob is informed that his child support obligation is being modified administratively based on changes in the Minneapolis CPI from 1994 through 1999. This CPI rose 13.72 percent from 1994 through 1999. Bob's new child support obligation is \$711 monthly. Because of the different methodology for determining child support, Bob is paying an award that is \$72 higher than if the award were based directly on net income. He is paying an obligation that is 11 percent higher than the income based award.

Clearly, similarly situated individuals do not receive equal treatment. Individual cases will vary even more dramatically than this example based on city averages for factory earnings in Duluth versus the Minneapolis CPI. There is no rational basis for creating a set of obligors that have child support based on changes in a CPI. Creating this class is arbitrary and without economic or other basis. The rational approach would be to simply have administrative modifications based on actual earnings after an administrative request for discovery on earnings. Numerous states have empowered child support agencies with the authority to request earnings information directly from employers. Given this alternative and the obvious dissimilar treatment of similar situated obligors, the CPI-based administrative modification appears to violate equal protection standards.

Minnesota's Child Support Guidelines Presumptively Push Minimum Wage Obligor Below the Poverty Level—Creating Extraordinary Burdens

Just using basic income calculations, it can readily be shown that Minnesota's presumptive child support awards push minimum wage obligors below the poverty level—creating an extraordinary burden. The minimum wage currently is \$5.15 an hour. One can assume a 40 hour work week and four weeks of work each month with actual pay. The monthly gross income is \$824 for this typical minimum wage obligor. This assumption for the work week over the month is a simplification. Indeed, there are 4.33 weeks on average each month. Given that minimum wage workers are paid hourly for hours worked, this is a reasonable assumption for unpaid vacation and sick days. Also, the 40 hour work week likely is too optimistic for the typical minimum wage worker but is a reasonable assumption to show the extraordinary burden the guideline award has on these workers.

The poverty threshold for a one adult (below age 65) household is \$8,959 annually (year 2000 data) or \$749 per month. Source: U.S. Department of Commerce, Bureau of the Census.

Table 17 shows how much the presumptive award pushes a minimum wage obligor below the poverty level, depending on how many children the non-custodial parent is obligated. For example, for one child, the presumptive child support award is \$137 at monthly gross income of \$824. This leaves \$687 dollars after child support. This is \$62 below the poverty threshold.

Table 17.

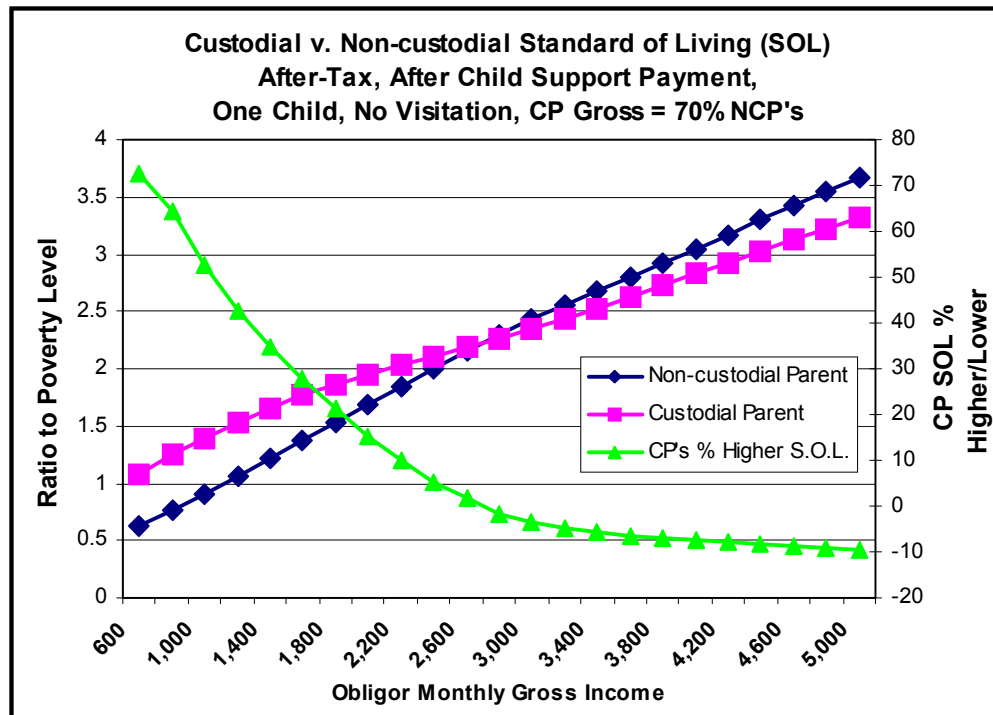
Minnesota's Presumptive Child Support Awards Push Minimum Wage Obligor Below the Poverty Level

# Children	Monthly Gross Income	Presumptive Child Support	Gross Less Award	Poverty Threshold	Amount Below Poverty Level
One	\$824	\$137	\$687	\$749	-\$62
Two	824	165	659	749	-90
Three	824	194	630	749	-119
Four	824	216	608	749	-141
Five	824	237	587	749	-162
Six	824	259	565	749	-184
Seven or more	824	273	551	749	-198

Chart 33 below shows an example of how presumptive awards push an obligor that starts out earning above the poverty level to below the poverty level while the custodial parent ends up notably above the poverty level—not even taking into account other benefits the custodial parent receives (such as food stamps and W.I.C.). For up to about \$1,200 in monthly gross income for one child the presumptive award pushes the obligor below the poverty level. Meanwhile, if the child support award is paid, the custodial parent has a significantly higher standard of living even though in this example the custodial parent has 30 percent less gross income than the non-custodial parent. While the non-custodial parent is just barely at the poverty threshold, the custodial parent has a presumptive standard of living that is 40 percent higher than that for the non-custodial parent.

The presumptive pushing of low-income obligors below the poverty level creates an extraordinary burden for obligors and violates obligor equal protection rights. Other states have ruled such a burden is inappropriate. See *Harris v. Harris*, 590 So. 2d 321 (Ala. Civ. App. 1991) and *Smith v. Smith*, 626 P.2d 342 (Or. 1980).

Chart 33.

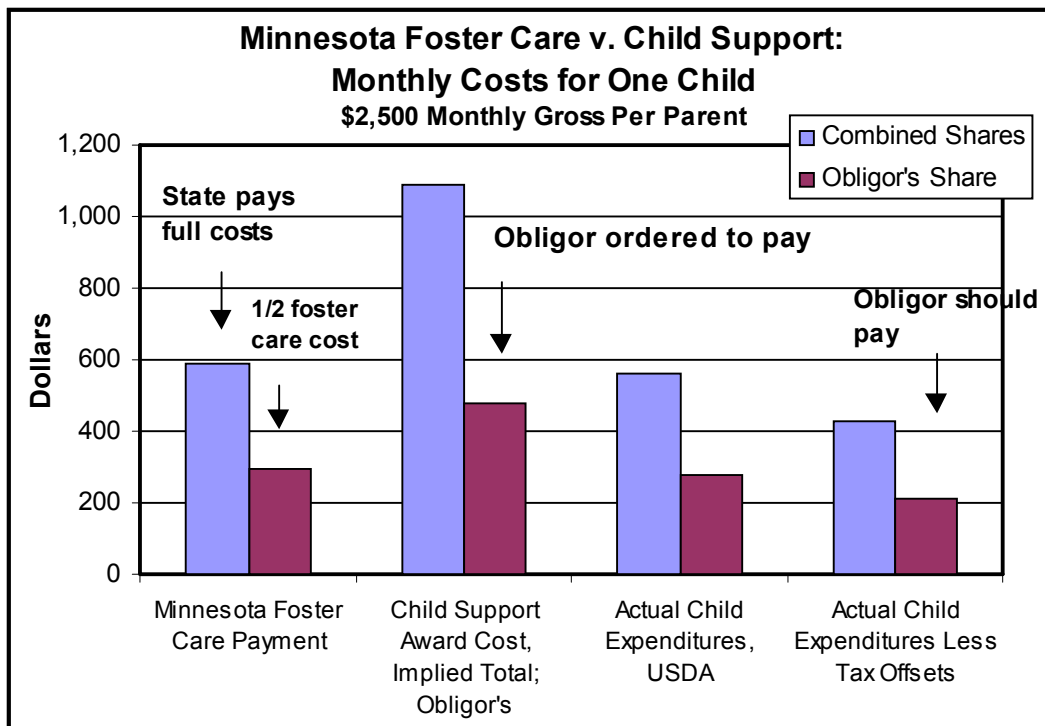


Minnesota's Double Standard: Foster Care Child Costs Versus Child Costs for Non-custodial Parents

- Minnesota presumptive child support guidelines result in awards based on total child costs that dramatically exceed equivalent costs for reimbursement under Minnesota's foster care program. This creates an equal protection violation for non-custodial parents that are required to pay child costs based on Minnesota's child support guideline.

Chart 34 shows that Minnesota has a double standard for child costs for foster care situations and for divorced and unwed child support situations. Chart 34 compares various measures of child costs. There are four "situations": 1) foster care, 2) presumptive child costs implied in Minnesota's child support guidelines, 3) actual expenditures on children, and the actual cost to the household for the expenditures on children; and 4) the net cost to the household for children. The fourth situation is simply the third with tax benefits to the custodial parent treated as a cost offset. Incidentally, foster care parents generally (most instances but not all) do not qualify for tax benefits related to child custody. For each situation, the total child cost is compared to the obligor parent's share.

Chart 34.



On the far left in Chart 34, the total foster care reimbursement rate in 2001 was \$586 per child per month (for a foster child without special needs).¹⁹ This is the entire amount paid for care of the child. As a proxy for an obligor parent's share, this cost is halved and is equal to \$293 per month. It is assumed that the foster care standard of living is equal to that provided by a moderate, middle class family.

The second situation--shown second from the left--shows the presumptive obligation for one child when the obligor has monthly gross income of \$2,500 (and only standard taxes for deductions against gross income). Since Minnesota has an obligor-only percentage of income (net) guideline, it is assumed that the custodial parent contributes to the child's cost in the same manner. If this were true, then the implied total child cost would be each parent's net income (single taxpayer basis) times the presumptive percentage for the net income equivalent of \$2,500 gross income monthly plus the custodial parent's tax benefit. It is assumed that the tax benefit is for the benefit of the child. The implied cost total for the presumptive award at \$2,500 gross income per month per parent for one child is \$990 per month while the obligor's share is equal to \$479 per month.

¹⁹ The basic rate for ages 12 through 14 is \$19.27 daily maintenance. The monthly figure is the daily number times 365 and then divided by 12. For ages 0 through 11, the daily care rate is \$16.13 and for ages 15 through 18, \$19.60. Source: Bulletin #00-32-15, Minnesota Department of Human Services, December 5, 2000.

The presumptive award implied child cost is 70 percent higher than the foster care reimbursement rate. Similarly, the presumptive child support award for this situation is 65 percent higher than the obligor share of the total foster care cost. However, in each situation child costs are similar and custodial parents have similar needs for covering those costs. The non-custodial parent is not treated in the same manner as the state chooses for itself when paying moderate, middle class child costs. Additionally, the state has determined that these foster care reimbursement rates for foster child without special needs is appropriate. Non-custodial parents' right to equal protection is violated by not being held to the same standard that the state chooses to impose on itself for child costs.

The third situation shows actual child costs for one child in a single-parent household but one in which the child is supported by each parent in a separate household. Each parent supports each household with \$2,500 gross income per month plus the exchange of cost based child support. Using this basis, U.S. Department of Agriculture and U.S. Department of Interior (for housing) data show the one-child expenditure to be \$559 per month (excluding child care). The obligor's share is \$280 monthly. These spending figures are similar to the foster care reimbursement rate by Minnesota for one child per month.

However, these are spending figures--not net costs. If tax benefits are treated as a partial cost offset to overall spending on a child--as in situation 3--then the results are what is seen in situation 4. Actual child expenditures less the tax benefit offset for one child with the given income figures in situation 3 are \$427 per month with the obligor's share at \$214 monthly. The economics based obligation (with tax offsets) is similar to that paid to foster parents. Yet, the guideline standard results in a child support obligation that is two-thirds higher than the foster care rate and double the economics based cost when tax offsets are included. Clearly, the state has done a reasonable job in determining the economically appropriate foster care reimbursement rate for one child (since the foster parents generally do not receive tax benefits related to child custody) and the dramatically higher standard imposed on divorced and unwed obligors by Minnesota's child support guidelines violate equal protection standards.

R. Mark Rogers' Credentials as Child Cost Expert

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

Expertise in child cost analysis has been recognized by:

- **American Bar Association:** "Wisconsin-Style and Income Shares Child Support Guidelines: Excessive Burdens and Flawed Economic Foundation," *Family Law Quarterly*, Spring 1999, pp.135-156. Economic impact studies based on methodologies used in court.
- **Georgia Bar Association:** "Georgia's Child Support Guidelines—No Economic Basis: Facts for a Constitutional Challenge?" State Bar of Georgia, *Family Law Section Newsletter*, July/August 2000, pp. 14-23. Specifically includes methodology of child cost analysis used in court.
- **National Association of Forensic Economics:** "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," with Donald J. Bieniewicz, co-author. Presented, Southern Economic Association, National Association of Forensic Economics section, November 12, 2000. Recognized methodology used in court for child cost analysis. Scheduled for publication in late 2001.
- **U.S. Congress:** Invited and testified as expert witness before Human Resources Subcommittee of U.S. House Ways & Means Committee, regarding Hyde-Woolsey Child Support bill, March 16, 2000, regarding technical issues on proposal to put child support enforcement under the IRS. Testimony published as part of Congressional record.

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