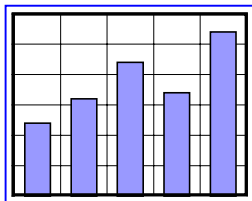


Why Georgia's Child Support Guidelines Are Unconstitutional: Economic Exhibits[©]

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I. Introduction

Georgia's child support guidelines originally began as guidelines 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 in use during the 1980s for welfare cases involving child support and handled by the Georgia Department of Human Resources. These guidelines—except for the range of percentages—were in general use for welfare cases by the Georgia Department of Human Resources as indicated in grant applications to the U.S. Department of Health and Human Services for child support incentive funds. In 1989, the Georgia Department of Human Resources asked that the welfare case child support guidelines be enacted for overall child support cases. But are Georgia'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 Georgia'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 follows no known child cost pattern cannot result in appropriate child support awards.¹

¹Federal 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 Eighth 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.

Two basic questions for evaluating Georgia's guidelines to determine if they meet the intended purpose is whether basic living needs of the non-custodial parent are part of the guidelines and 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 parent receives 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 Georgia'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.
 - The guidelines ignore which parent actually incurs the child costs. Without examining which parent incurs what costs, an economically appropriate award cannot be determined.
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- 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.

Georgia'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 costs implied by the guidelines in many cases result 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 non-custodial parent is required to contribute to child costs on a before-tax basis while the custodial parent contributes on an after-tax basis.
- 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.

Background: Georgia's Child Support Guideline

The percent-of-obligor-income guidelines enacted by the State of Georgia are as follows, based on 2001 Official Code of Georgia, Section 19-6-15:

- (b) The child support award shall be computed as provided in this subsection:
- (1) Computation of child support shall be based upon gross income;
 - (2) For the purpose of determining the obligor's child support obligation, gross income shall include 100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income, and all other income, except need-based public assistance;
 - (3) The earning capacity of an asset of a party available for child support may be used in determining gross income. The reasonable earning potential of an asset may be determined by multiplying its equity by a reasonable rate of interest. The amount generated by that calculation should be added to the obligor's gross monthly income;
 - (4) Allowable expenses deducted to calculate self-employment income that personally benefit the obligor, or economic in-kind benefits received by an employed obligor, may be included in calculating the obligor's gross monthly income; and
 - (5) The amount of the obligor's child support obligation shall be determined by multiplying the obligor's gross income per pay period by a percentage based on the number of children for whom child support is being determined. The applicable percentages of gross income to be considered by the trier of fact are:

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

5 or more

31 percent to 37 percent.

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

Georgia code, as noted in O.C.G. Section 19-6-15 does allow for deviations from the presumptive award based on the following factors when the trier of fact determines that deviation is appropriate:

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

However, courts rarely deviate and the statute gives no guidance on how to deviate in a consistent manner for similarly situated parties. Key factors should be part of the formula to ensure that the presumptive award is economically appropriate. These key factors at a minimum should be both parents' income, both parents' incurred child costs, and which parent or parents receive child-related tax benefits as child cost offsets.

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

Georgia's presumptive child support awards are based on obligor-only percentages that are applied to the obligor's before-tax income. These percentages are fixed across income levels

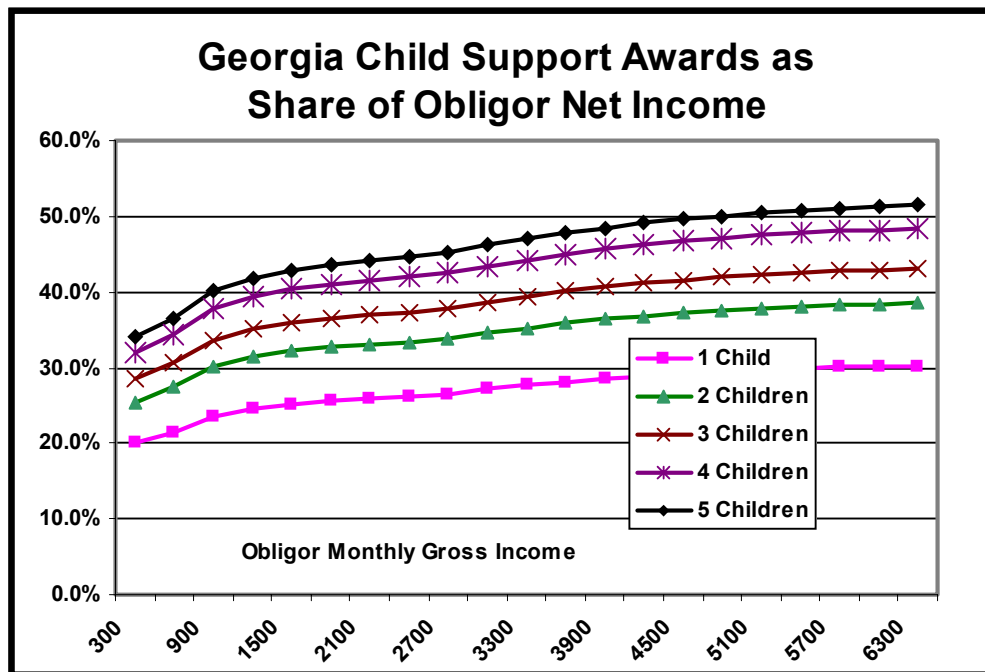
(but rise with the number of children). However, Federal and Georgia personal tax code combined are progressive—primarily at the Federal level. Federal marginal personal income tax rates rise sharply within the range covered by Georgia's child support guidelines. Using year 2000 tax code, for single taxpayers (the non-custodial parents or NCPs), marginal tax rates start at 15 percent for taxable income but jump to 28 percent at \$26,250 in taxable income, and to 31 percent at \$63,550 and then rise further. Additionally, earned income credits disappear at moderate income levels. The overall effect is that a fixed, before-tax percentage of obligor income for child support results in presumptive child support awards rising sharply as a share of obligor net income. Chart 1 shows Georgia presumptive awards (midpoints) as a rising share of obligor income. This chart also takes into account Social Security and Medicare taxes. The presumptive awards shown do not include "add-ons"—such as child care and medical insurance—which can add several hundred more dollars to the award each month.

Not counting add-ons, the presumptive award becomes quite large on an after-tax basis for even moderate-income obligors. For an obligor paying support for one child, the mid-point presumption rises from 20 percent of net income at below poverty level income to 30 percent for monthly net income of \$4,000 (\$6,000 monthly gross). For the frequently occurring case (for divorce-related rather than unwed situations) of a two-child obligation, the presumptive mid-point obligation rises from about 25 percent of net income at minimal income levels to just under 40 percent for just \$4,000 monthly net income (\$6,000 monthly gross). These figures do not include "add-ons."

Statutorily allowed "add-ons" boost the after-tax presumptive obligation significantly. For example, for an obligor making \$3,000 gross monthly with an add-on of \$75 per month for medical insurance (a cost figure highly subsidized by private employers), the two-child (mid-point) support obligation would rise from \$765 to \$840 per month and the net income obligation would rise from 34.1 percent without medical insurance to 37.4 percent. For \$5,000 in monthly gross income, the same respective net income percentage would rise from 37.4 percent to 39.6 percent. Should child care costs be added at a rate of \$400 per month, then the child cost share of net income for monthly gross income levels of \$3,000 and \$5,000 reaches 55.3 percent and 51.3 percent, respectively. Other add-ons, such as unreimbursed medical expenses, would boost these percentages further. At lower income levels, these add-ons take a bigger share of net income.

It will be shown further below that Georgia's guideline awards conflict with all studies on family spending patterns and on child cost patterns.

Chart 1.



- **Georgia's child support guideline presumptive awards rise as a share of obligor net income—conflicting with all economic studies which show child costs declining as a share of net income.**

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, Georgia'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 Georgia'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 Georgia child support guidelines do not meet that standard.

Whether Georgia's child support guidelines meet their intended purpose is an important constitutional issue. Georgia'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.

Georgia'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, Georgia'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 statutory guidelines, a family court must always make findings to justify a proper amount of child support. 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.

Georgia's child support guidelines are arbitrary and without any economic foundation for application in general child support cases. Georgia's child support guidelines were picked arbitrarily by the Georgia Department of Human Resources due to financial incentives for the state.

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).

Georgia'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. A federal advisory panel in 1984 recommended against using obligor-only guidelines as Georgia had put into use.³ However, federal regulations enacted in mid-1988 required adoption of guidelines as a rebuttable presumption by the end of 1989 in order to not be penalized in the amount of funds received. This was part of the Family Support Act of 1988, amending the federal Social Security Act. With the Georgia legislature meeting only for one session prior to the deadline, the legislature was in a hurry to enact some type of guidelines in an attempt to comply with these new federal regulations so as to avoid losing \$25 million in federal monies. The legislature only had 40 legislative days starting in mid-January 1989 to enact child support guideline legislation.

The Georgia State University *Law Review*, Volume 6:227, specifically states that the reason Georgia's child support guidelines were enacted was to preclude loss of significant amounts of federal funds.

The Child Support Enforcement Amendments of 1984 and the Family Support Act of 1988 require states to comply with federal guidelines to improve the enforcement of child support payments. States that do not implement the federal provisions risk losing federal funds for aid in the enforcement of child support orders and collection of payments.

End quote.

This quote is then footnoted with commentary that a telephone interview with Robert Swain, Deputy Director, Office of Child Support Recovery, State of Georgia, showed the motivation for the guideline enactment as being purely monetary. The footnote quotes Mr. Swain, "Georgia would have risked losing approximately \$25,000,000 in federal funds if the state had not enacted revised child support legislation during the 1989 session."

The Department of Human Resources picked the guideline formula that would bring in the most federal incentive monies—the federal government paid the state more incentive payments as the state brought in more child support payments. For qualifying cases, Georgia received 10 cents from the federal government for every dollar in child support collected.⁴

Because of financial motivations, the Georgia Department of Human Resources (DHR) asked the legislature to enact guidelines that were economically inappropriate. The fact that these guidelines were inappropriate were already documented but ignored by Georgia DHR.

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.

⁴ See U.S. House of Representatives Ways and Means Committee. *Committee Prints #104-14*—"House Ways and Means 'Greenbook,'" 1996, Chapter 9, pp. 529-624.

In fact, the Georgia legislature enacted the one type of guidelines that a federal report recommended not to enact. A federal Advisory Panel on Child Support reviewed several types of guidelines. This panel recommended that states enact either (1) the income shares model or (2) the Delaware-Melson model. Both the income shares model and Delaware-Melson models received favorable recommendations since they more closely followed family spending patterns on child costs and generally took into account the self-sufficiency needs of low-income obligors.

The Federal Advisory Panel specifically recommended against states enacting percent-of-obligor-income or Wisconsin-style child support guidelines—the very type that Georgia enacted in a rush in the 1989 Georgia Legislative Session. From the 1987 *Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report* manual:

The Advisory Panel recommends that states use either the Income Shares model or Delaware-Melson formula as the basis for their child support guidelines. [page I-15].

Second, unlike some approaches [such as percent of obligor models], both the Income Shares and Melson formula count income of both parents in determining the amount of child support awards. [page I-16].

Third, both the Income Shares model and the Melson formula allow for the subsistence needs of each parent. It is neither realistic nor appropriate to expect that a parent can or should pay substantial amounts of child support until providing for his or her own basic needs. [page I-16].

The Wisconsin standard is designed to replicate an income tax. With only two primary parameters, gross income and number of children, the Wisconsin standard is ultimately intended to be applied automatically by employers under a universal (statewide) withholding system. However, the administrative benefit of simplicity may be obtained at the price of some loss of equity because it does not provide special treatment for certain key factors (e.g. custodial parent income, child care expenses). Because the Wisconsin standard is designed as a constant percentage of gross income, it also has the effect of setting orders as an increasing percentage of net income, as obligor income rises. ... This effect is contrary to the economic evidence on actual child rearing expenditures. [Page II-126 of 1987 *Development of Guidelines.*]

This document—*Development of Guidelines*—is the one key document that DHR clearly would have reviewed prior to recommending a guideline to the legislature. DHR clearly made an arbitrary decision to propose guideline legislation that conflicted with recommendations from this federal report.

In summary, the implementation of Georgia's current child support guidelines 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 a welfare situations only guideline for general use. A review of the economic assumptions of the welfare

situation guidelines helps to explain how the enactment of these guidelines can be characterized as arbitrary.

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

Georgia'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 1982.⁵ These 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.⁶ 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.

⁵ 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.

⁶ 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.

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 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 most 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 1, showing Schedule X and Schedule Z, 2000 1040, Forms and Instructions, Department of the Treasury, page 71.

Table 1.

<u>Schedule X—Use if your filing status is Single</u>			
If the amount On Form 1040, Line 39, is” Over --	But not over--	Enter on Form 1040, line 40	of the amount over--
\$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” Over --	But not over--	Enter on Form 1040, line 40	of the amount over--
\$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

risers 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.

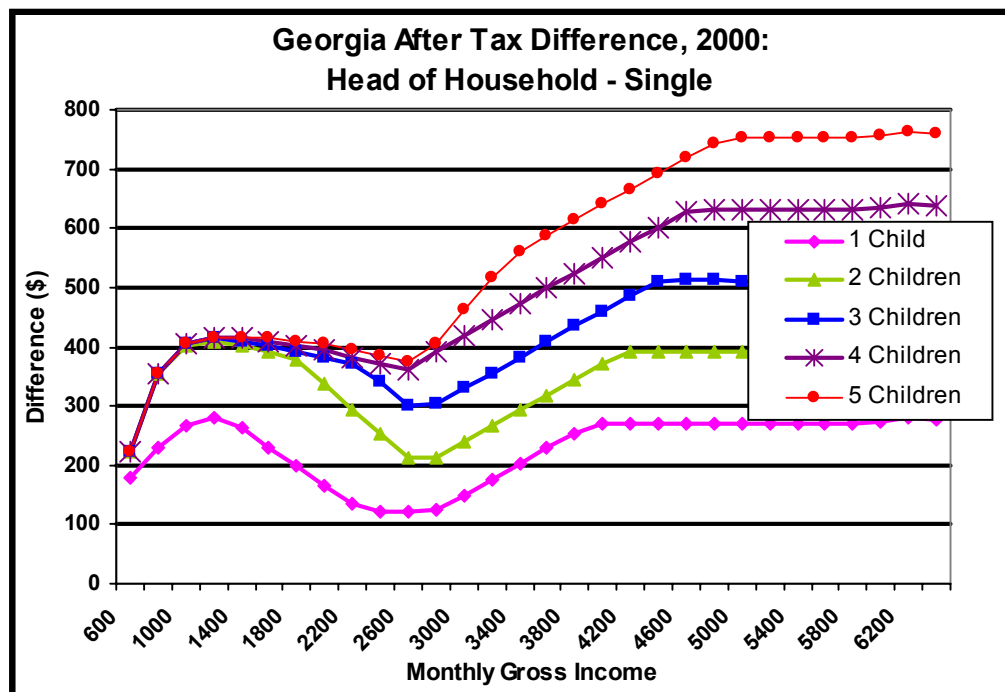
Custodial Parent Tax Benefits as Child Cost Offsets Under Georgia Income Tax Code

Georgia income tax code gives custodial parents (filing as head of household) additional tax benefits that partially offset the costs of spending on children. These benefits include child tax exemptions of \$2,700 per child and higher marginal tax rates take effect at higher income levels for heads of household than for single taxpayers. Source: 2000 Georgia Form 500 for individual income tax.

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 Georgia personal income taxes, Medicare, and Social Security taxes (year 2000 tax code). Earned income credits are added. Standard deductions are used. Chart 2 shows a dramatic after-tax advantage for the custodial parent.

Chart 2.



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 \$370 more net income monthly than the non-custodial parent to support the children (\$4,440 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.

The Argument that the Custodial Parent Implicitly Contributes in the Same Manner as the Obligor Is Not Economically Valid and Does Not "Save" the Guidelines from Violating Equal Protection Standards.

It is incorrect economically to state that the custodial parent contributes to child costs implicitly on an equal basis as the obligor that pays child support based on before-tax guideline percentages. The obligor must pay on a before-tax basis while the custodial parent makes spending decisions on an after-tax basis. Additionally, the custodial parent receives the above-discussed child-related tax benefits that the obligor does not. A more detailed comparison of each parent's implicit contributions explains the guideline violations of 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 Georgia guidelines meet equal protection standards because the custodial parent's contribution is implicitly equal to the obligor's 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).⁷ That the marginal propensity to consume for any one member of the household out of total household

⁷ For example, see also Paul A. Samuelson, *Economics, 9th Edition*, McGraw-Hill Book Company (New York) 1973, pp. 208-215.

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.

Table 2.

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

- **Under Georgia 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 gross income times
guideline percentage**

Implied:

**CP obligation = single taxpayer gross 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.

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 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.

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.⁸ 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.⁹

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

⁸ 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.

⁹ U.S. Department of the Treasury, Internal Revenue Service, Form 1040, 1988, p. 17.

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 \$5,566.¹⁰

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 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.¹¹

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

¹⁰ 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.

¹¹ 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.

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.

Georgia's child support guidelines—as fixed percentages—conflict with the well-established economic fact that personal saving rates rise as net income rises, thereby reducing spending rates—including on children. Georgia's child support guidelines are not on a rational economic basis.

In order to conform to professionally accepted economic facts, Georgia's child support guideline percentages should decline as net income rises. Georgia'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.¹²

¹² Gardner Ackley, *Macroeconomic Theory*, The Macmillan Company, New York, Collier-Macmillan International Edition, Third Printing, 1973, p. 221.

Table 3.

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

Table 3 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. Georgia'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 guidelines.

Academic Studies Show Child Costs Declining as a Share of Both Rising Gross Income and Net Income

As noted, the underlying economic study noted that child costs decline as a share of rising income.

- Van der Gaag, Jacques. "On Measuring the Cost of Children," Child Support: Technical Papers, Volume III, SR32C, Institute for Research on Poverty, Special Report Series, University of Wisconsin, 1982, pp. 1-44.

Recent studies showing declining shares of income spent on children as income rises include:

- Thomas Espenshade, *Investing in Children: New Estimates of Parental Expenditures*, the Urban Institute Press, 1984.
- David Betson working with Policy Studies, Inc., Denver, CO. See Robert G. Williams, "Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches," *Improving Child Support Practice, Volume One*, The American Bar Association, 1986, p. I-8.
- Mark Lino, "Expenditures on Children by Families, 2000 Annual Report, U.S. Department of Agriculture, May 2001.
- R. Mark Rogers and Donald J. Bieniewicz, "Child Cost Economics and Litigation Issues: An Introduction to Applying Cost Shares Child Support Guidelines," presented to Southern Economic Association, National Association of Forensic Economics section, November 12, 2000.
- Virginia General Assembly. See "Technical Report: The Costs of Raising Children," Virginia General Assembly, November 7, 2000, the Joint Legislative Audit and Review Commission (JLARC).
- For other types of child cost cases (non-child support), courts have accepted a completely different standard from the pattern in the child support guideline. 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.

Georgia's Guidelines Conflict with Economic Facts on Child Costs Leads to Inappropriate Child Support Awards

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

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

Details of the magnitude of the extraordinary benefits that the guidelines bestow on custodial parents and the extraordinary burdens bestowed on non-custodial parents are shown further below.

Examples of Georgia 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 4 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 presumptive award is \$400 monthly or \$4,800 annually.

In the lower half of the table, one sees the after-tax income of each parent: \$18,687 annually for the non-custodial parent and \$16,694 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 \$4,800 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 \$13,887 and \$21,494 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 1.55 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 17 percent higher standard of living than the non-custodial parent. Oddly, the higher earning parent ends up with the lower standard of living.

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.

Table 5 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 39 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 5 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 (\$18,687 in annual net income divided by the poverty threshold of \$8,959). For one child with no visitation adjustments, Table 5 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 1.55. 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 3.79. After the child support transfer, the custodial parent's standard of living ratio goes up one percent to 3.84 while the non-custodial parent's standard of living ratio drops 28 percent to 2.71. These examples exclude add-ons—which if included would widen the custodial parent standard of living advantage even further.

Table 6 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 63 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 case 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 7 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 7 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 35 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 8 shows that the custodial parent ends up with a 60 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 guideline gives 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 8 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 (\$18,687 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 8 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 1.43. 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 38 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 3.79. After the child support transfer, the custodial

parent's standard of living ratio goes up 11 percent to 4.20 while the non-custodial parent's standard of living ratio drops 34 percent to 2.51. These examples exclude add-ons—which if included would widen the custodial parent standard of living advantage even further.

Table 9 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 9 shows that the tax benefits and child support award boosts the custodial parent household's standard of living to 88 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 guidelines boost 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 4.

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.

GEORGIA PRESUMPTIVE AWARD CALCULATION, ONE CHILD

"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,	18,687	16,694
Presumptive child support, annualized	-4,800	+4,800
After Tax, After Presumptive Child Support, One Child	13,887	21,494
Poverty Thresholds, Single Adult; Adult with 1 Child, Year 2000 Data.	8,959	11,869
Multiple of Poverty Level	1.55	1.81
Percentage Higher Standard of Living for CP Household than NCP Household		+17%

- The custodial parent has only 70 percent of the non-custodial parent's gross income yet ends up with a 17 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.

Table 5.**Example with CP having gross income equal to that of the NCP's gross income:**

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

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

	<u>NCP</u>	<u>CP</u>
<u>Annual</u> Gross Salary (Fed.Adj.)	24,000	24,000
After Tax Income, Annual,	18,687	20,682
Presumptive child support, annualized	-4,800	+4,800
After Tax, After Presumptive Child Support, One Child	13,887	25,482
Poverty Thresholds, Single Adult; Adult with 1 Child, Year 2000 Data.	8,959	11,869
Multiple of Poverty Level	1.55	2.15
Percentage Higher Standard of Living for CP Household than NCP Household		+39%

- The custodial parent has equal the non-custodial parent's gross income yet ends up with a 39 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.

Table 6.**Example with CP having gross income 130 % of the NCP's gross income:****"BEFORE AND AFTER" WITH PRESUMPTIVE AWARD**

	<u>NCP</u>	<u>CP</u>
<u>Annual</u> Gross Salary (Fed.Adj.)	24,000	31,200
After Tax Income, Annual,	18,687	25,284
Presumptive child support, annualized	-4,800	+4,800
After Tax, After Presumptive Child Support, One Child	13,887	30,084
Poverty Thresholds, Single Adult; Adult with 1 Child, Year 2000 Data.	8,959	11,869
Multiple of Poverty Level	1.55	2.53
Percentage Higher Standard of Living for CP Household than NCP Household		+63%

- The custodial parent has 30 percent more gross income than the non-custodial parent's gross income yet ends up with a 63 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.
- Clearly, the presumptive award does not shift the child support burden toward the parent with the higher income when the custodial parent is the parent with the higher income. If such sharing and shift had occurred, the standard of living gap would have narrowed instead of having widened.

**Examples of Georgia's 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 7.

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.

"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,	18,687	16,694
Presumptive child support, annualized	-4,800	+4,800
After Tax, After Presumptive Child Support, One Child	13,887	21,494
Poverty Thresholds, <u>Adjusted for 25% Parenting Time for</u> <u>NCP</u> , Year 2000 Data.	9,687	11,142
Multiple of Poverty Level	1.43	1.93
Percentage Higher Standard of Living for CP Household than NCP Household		+35%

Table 8.

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</u> Gross Salary (Fed.Adj.)	24,000	24,000
After Tax Income, Annual,	18,687	20,682
Presumptive child support, annualized	-4,800	+4,800
After Tax, After Presumptive Child Support, One Child	13,887	25,482
Poverty Thresholds, <u>Adjusted for 25% Parenting Time for NCP</u> , Year 2000 Data.	9,687	11,142
Multiple of Poverty Level	1.43	2.29
Percentage Higher Standard of Living for CP Household than NCP Household		+60%

Table 9.**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,	18,687	25,284
Presumptive child support, annualized	-4,800	+4,800
After Tax, After Presumptive Child Support, One Child	13,887	30,084
Poverty Thresholds, <u>Adjusted for 25% Parenting Time for NCP,</u> Year 2000 Data.	9,687	11,142
Multiple of Poverty Level	1.43	2.70
Percentage Higher Standard of Living for CP Household than NCP Household		+88%

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

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 in which 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 4 through 6 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 entire income range examined.

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 120 percent higher (more than double) than the non-custodial parent's standard of living and never less than 10 percent higher. 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 160 percent higher (more than double) standard of living to a minimum of 40 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 190 percent to 65 percent higher standard of living than the non-custodial parent.

Chart 3.

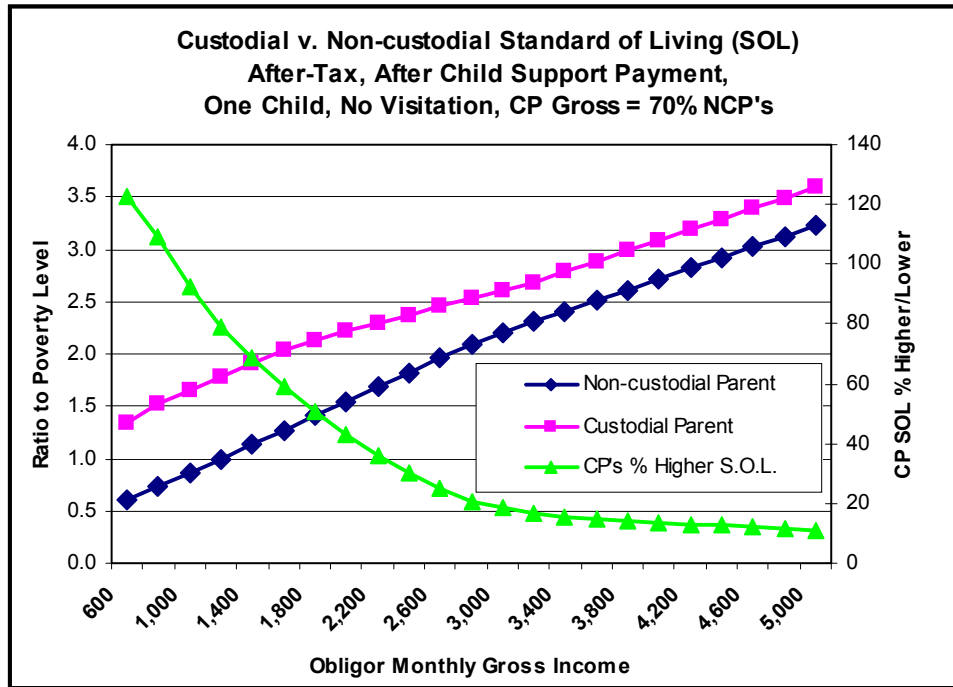


Chart 4.

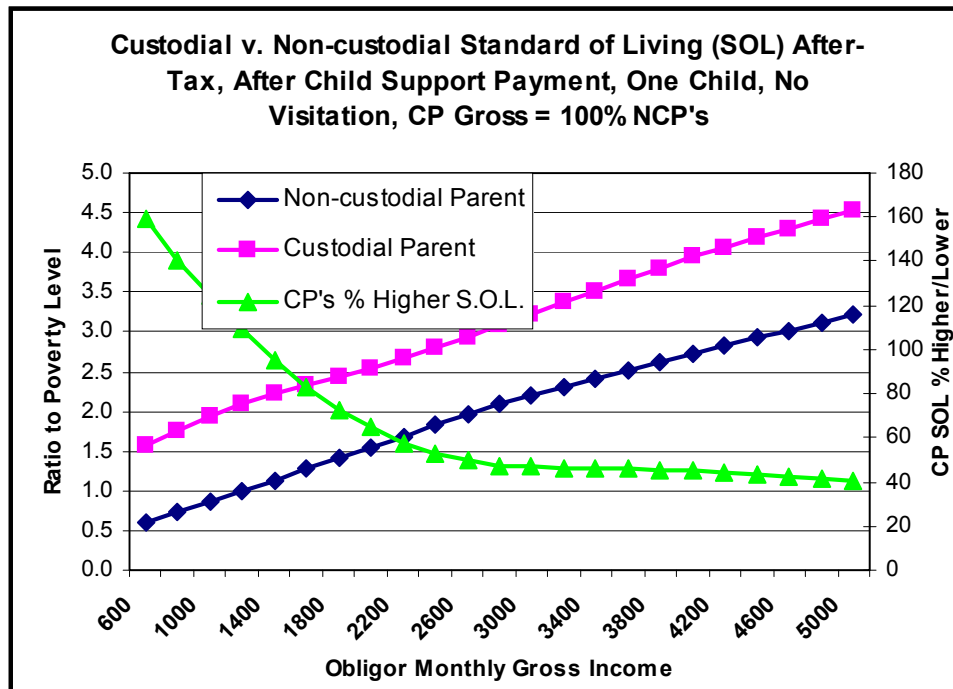


Chart 5.

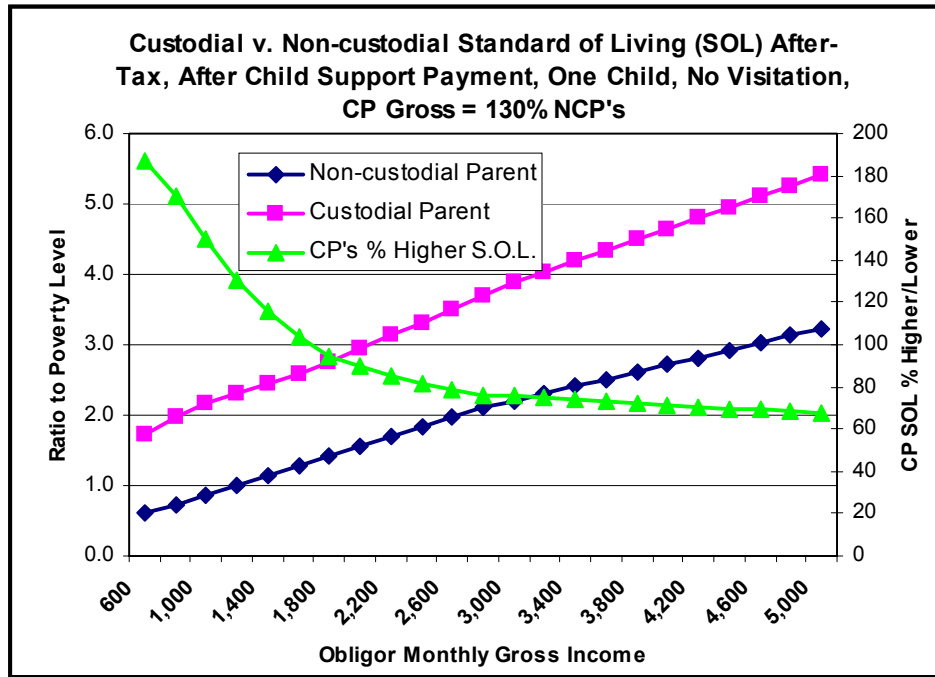


Chart 6.

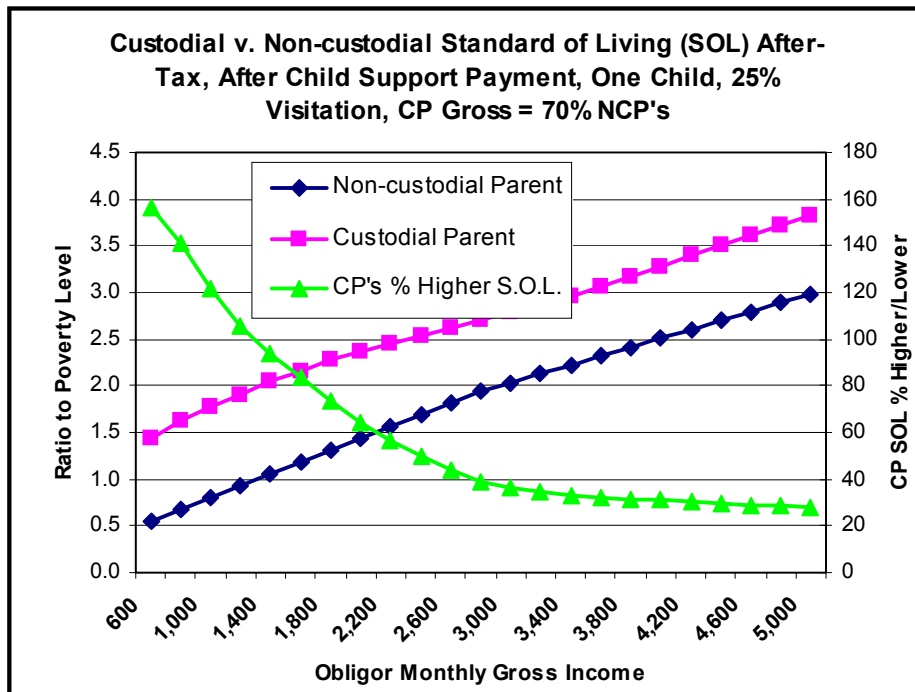


Chart 7.

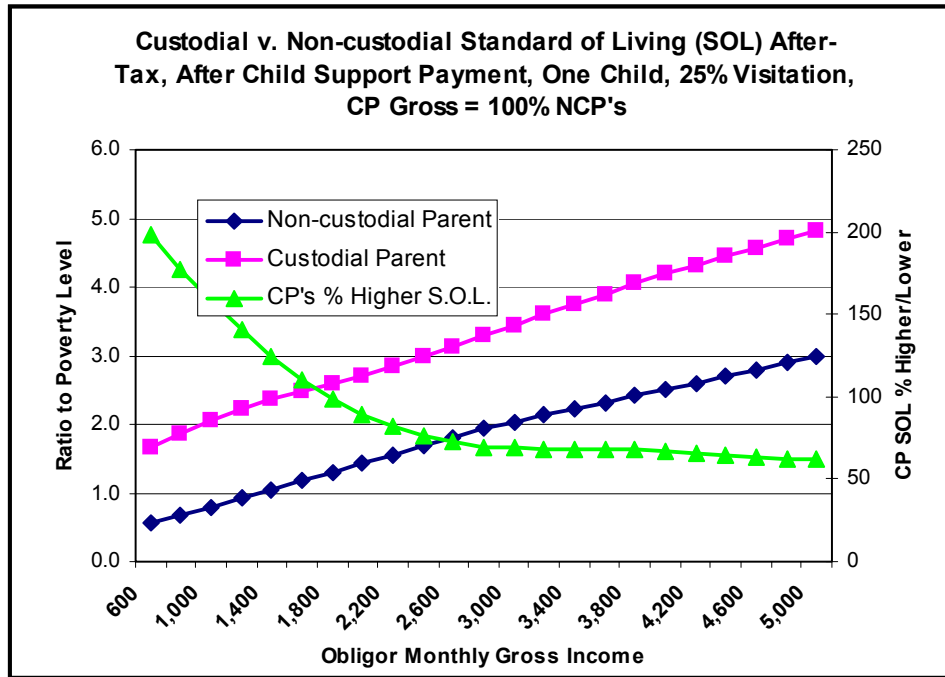


Chart 8.

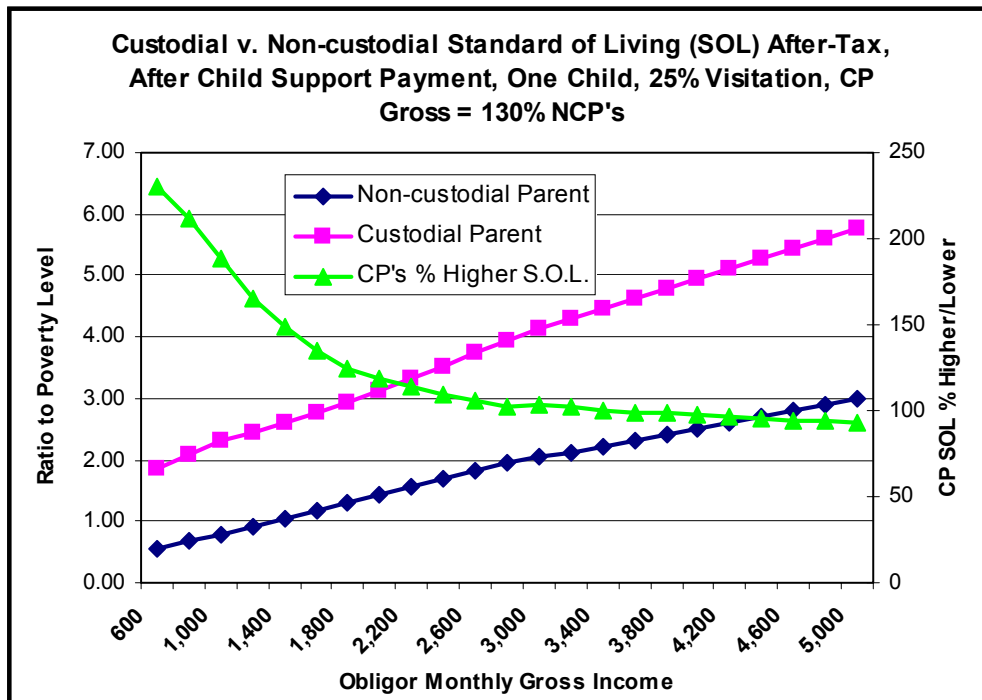


Chart 9.

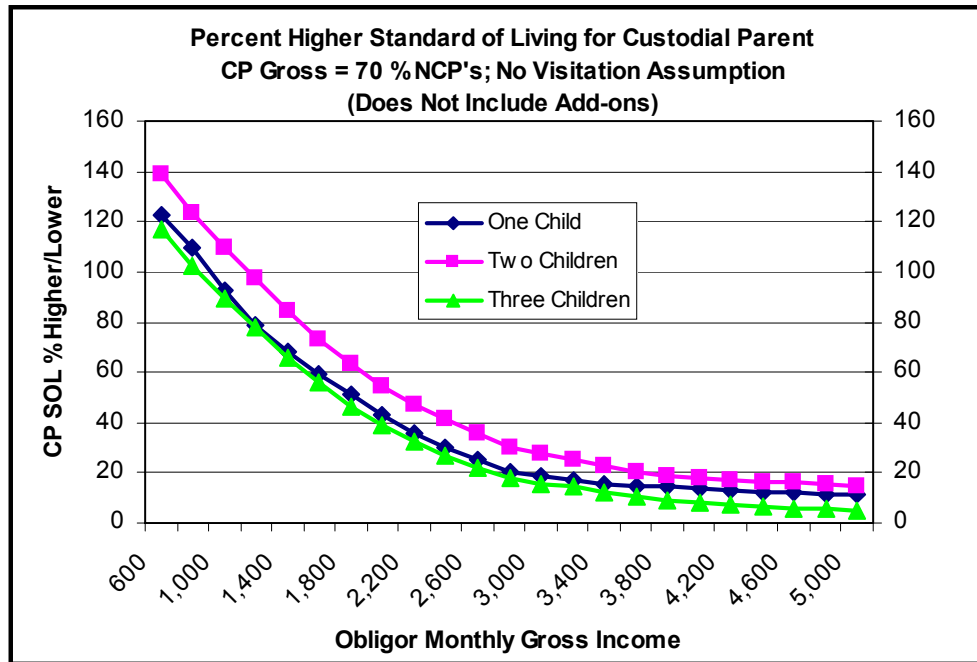


Chart 10.

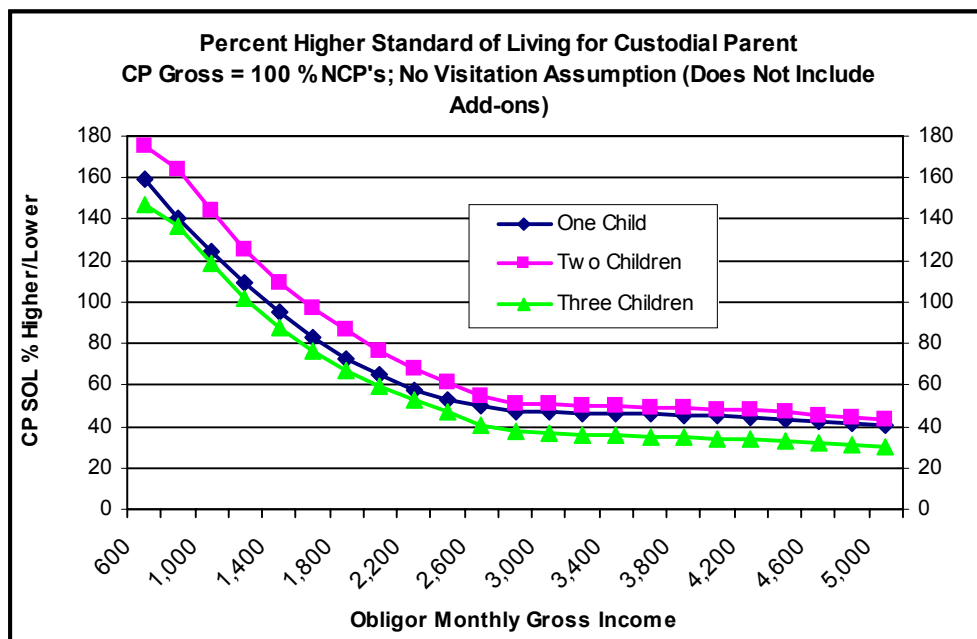
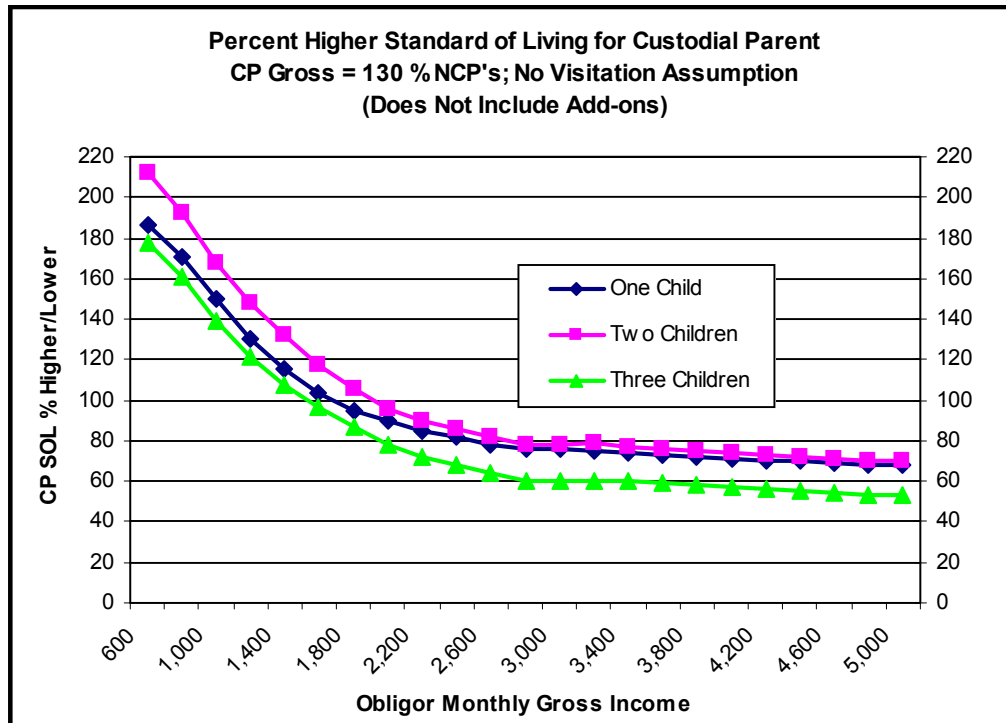


Chart 11.



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 7 through 9 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 160 percent (more than double) to 25 percent higher standard of living than the higher grossing non-custodial parent. When gross incomes are equal (Chart 7), the custodial parent has a 200 percent (triple the non-custodial parent's level) to 60 percent higher standard of living. When the custodial parent has a 30 percent higher gross income than the non-custodial parent (Chart 8), 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 230 to 90 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 adjustments¹⁵:

- 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 9), the guideline award and tax benefits always boost the custodial parent's standard of living. This occurs to such an extent that at low-income, middle-income, and upper middle-income levels for the non-custodial parent that the higher grossing non-custodial parent ends up with a significantly 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 10), 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-income, middle-income, and upper middle-income levels.
- 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 11), the guideline and tax benefit effects always widen the custodial parent's relative standards of living for one, two, and three child cases over the examined income range. 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.

¹⁵ It should be noted that 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.

Chart 12.

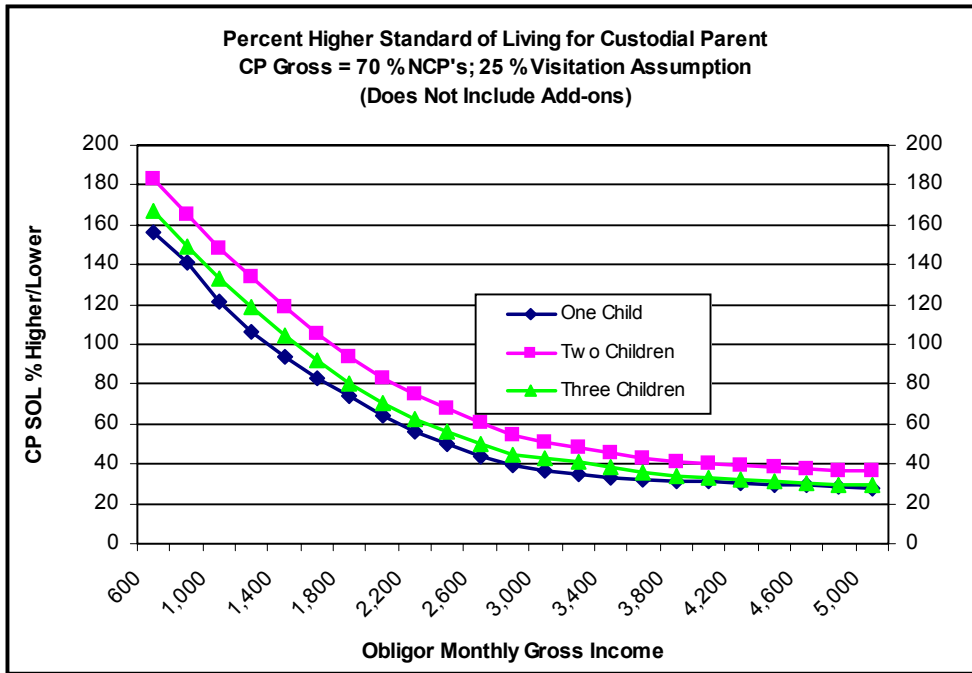


Chart 13.

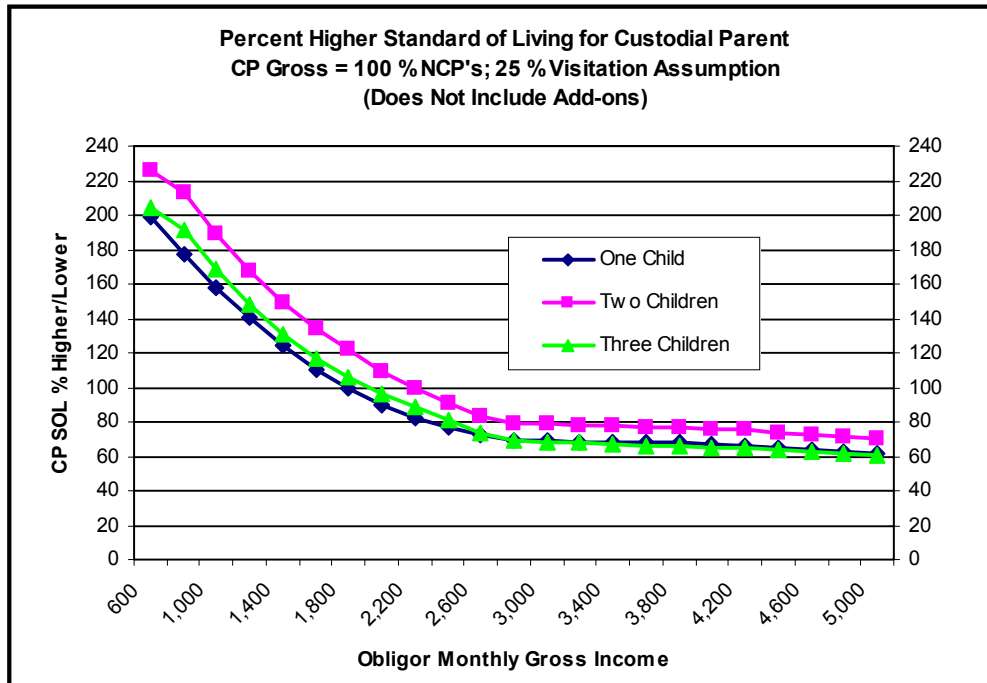
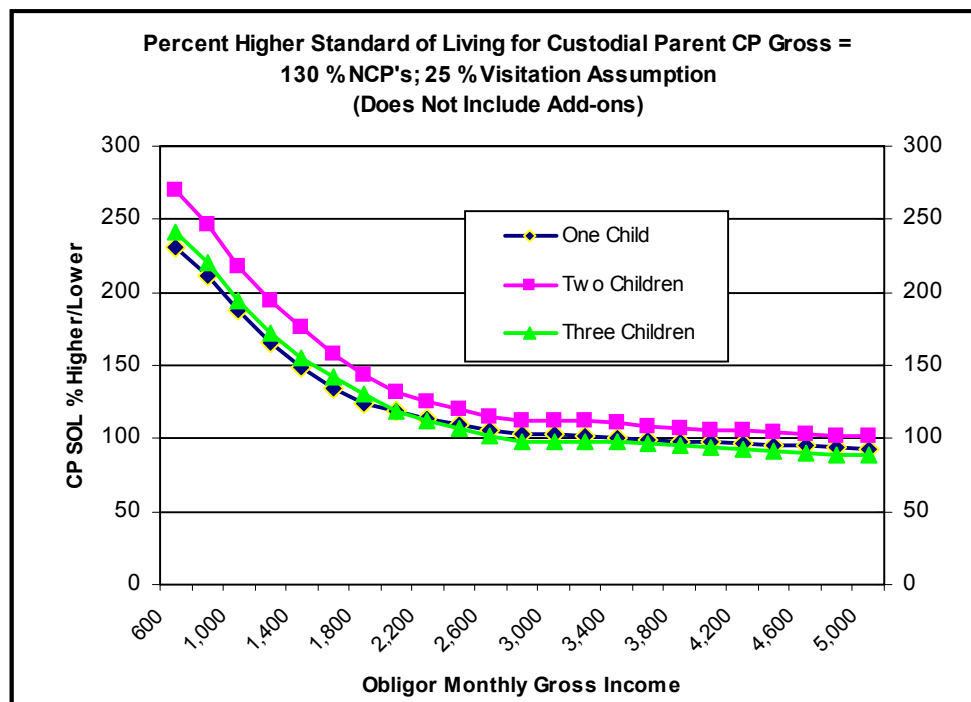


Chart 14.



Summary Findings from Standard of Living Analysis Regarding Guideline Equity

- The Georgia presumptive award does 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.
- Georgia's child support guidelines do not explicitly provide for financial support of a child when in the care of the non-custodial parent.
- Georgia'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 guidelines boost 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.

Georgia's Child Support Guidelines Did Not and Could Not Have Take into Account the Option for Joint Physical Custody

Georgia's guidelines were enacted in early 1989 and became effective July 1, 1989 when Georgia code did not even authorize courts to award joint custody. The 1990 General Assembly passed Senate Bill 477 which defined and created "joint custody, joint legal custody, joint physical custody and sole custody" as equal and specific options for the court. Georgia's child support guidelines not only were enacted in 1989 which was prior to the availability of joint custody but the guidelines were designed in the late 1970s and early 1980s when joint custody was not even considered in designing the guidelines.

Extraordinary Benefits and Burdens: the 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 Georgia 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. The guideline award is less than total spending on the child for situations in which the obligor grosses \$1,500 and \$2,000 monthly. But the guideline award does not address the issue of the custodial parent's share nor the cost offset from tax benefits. 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—especially after taking into account tax benefits. 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 to four times an appropriate economics based award.

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 or exceeds total spending on the children. The presumptive award is four to five times an appropriate economics based award. 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.

¹⁶ It should be noted that the custodial parent in poverty situations qualifies for more government aid than 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.

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.

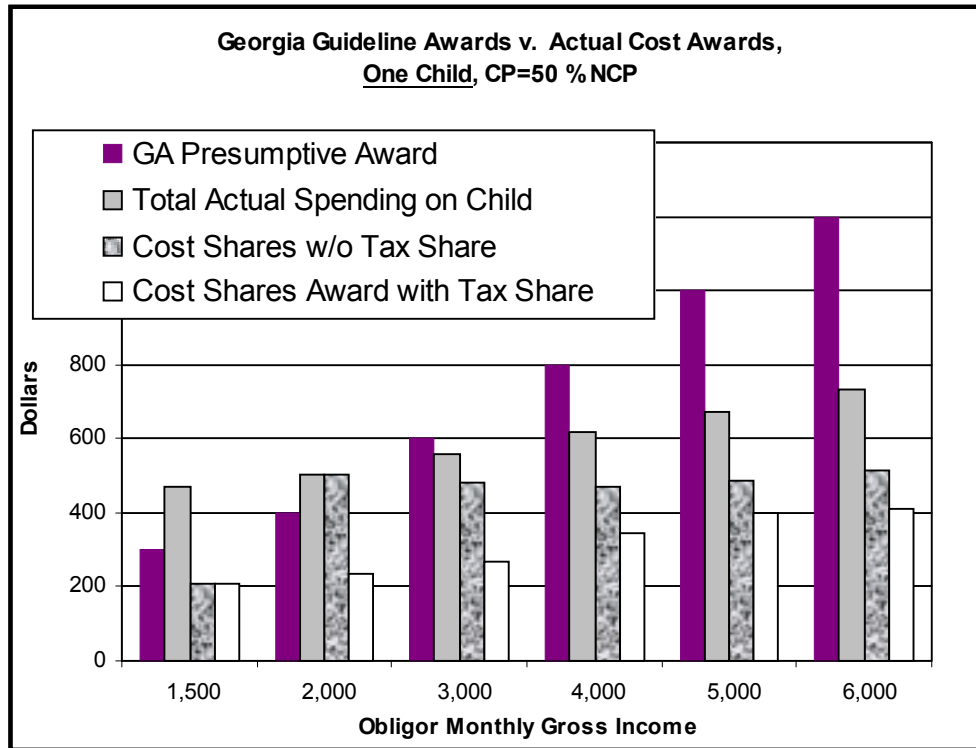


Chart 16.

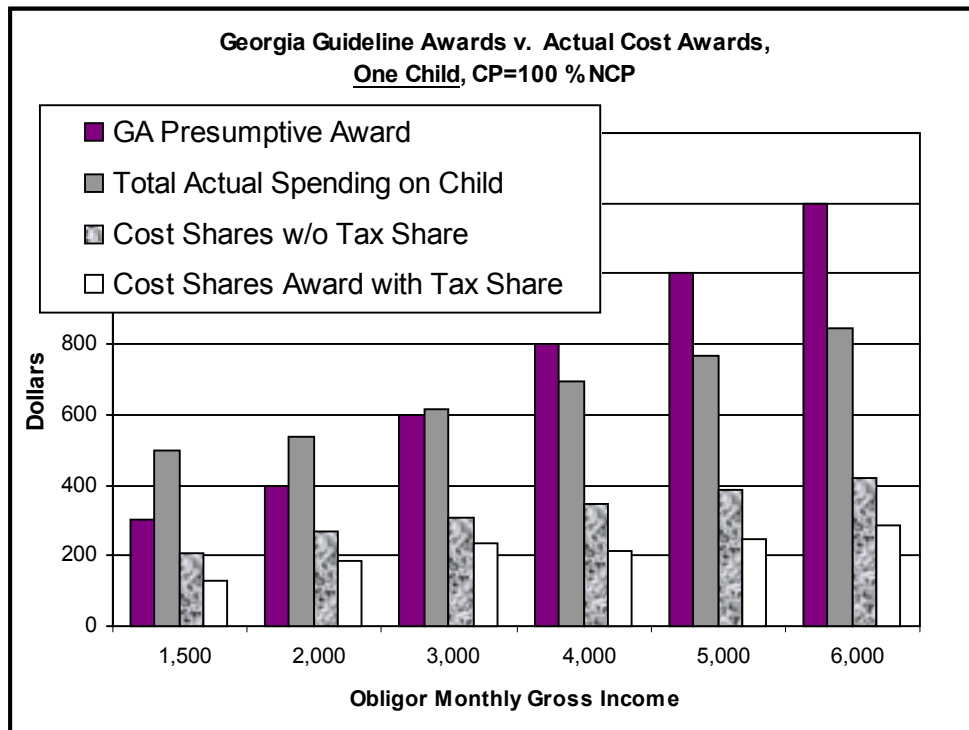


Chart 17.

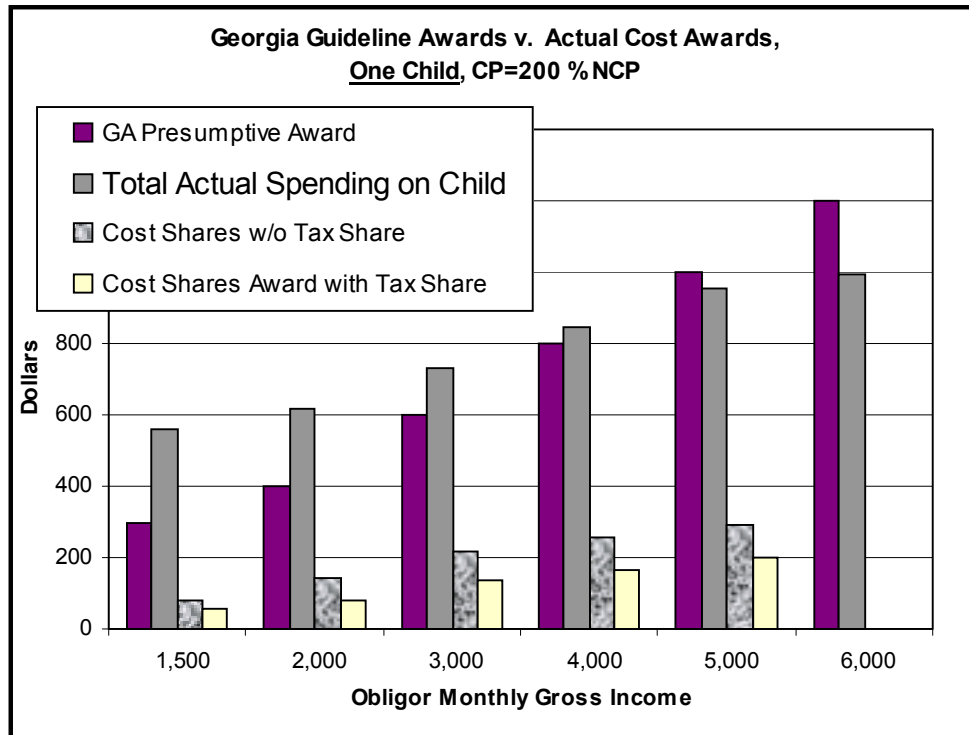


Chart 18.

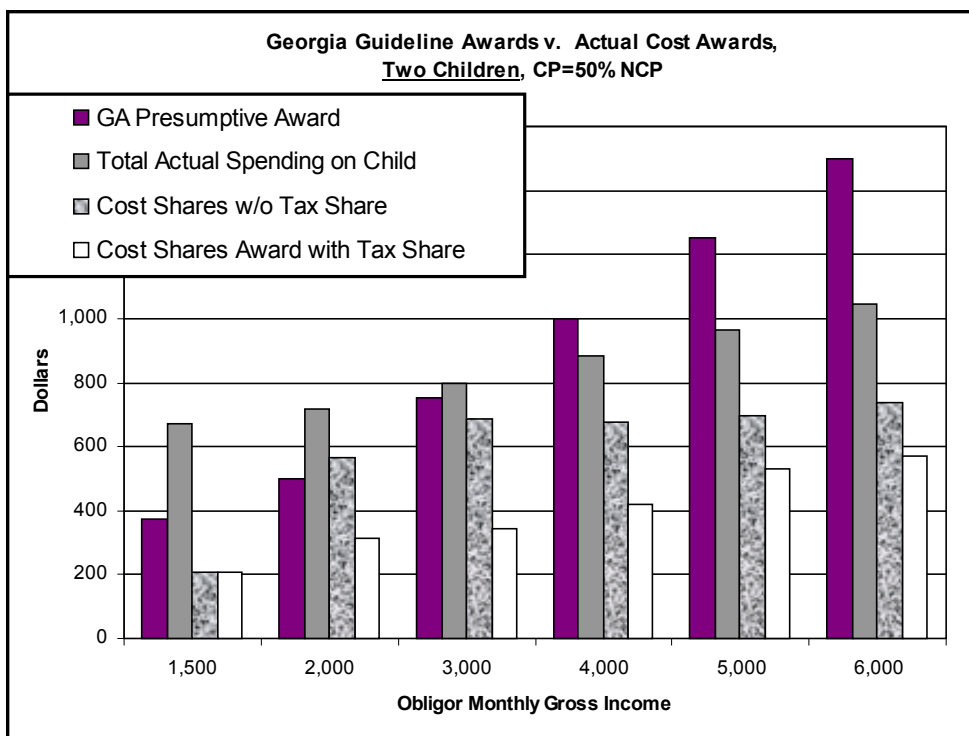


Chart 19.

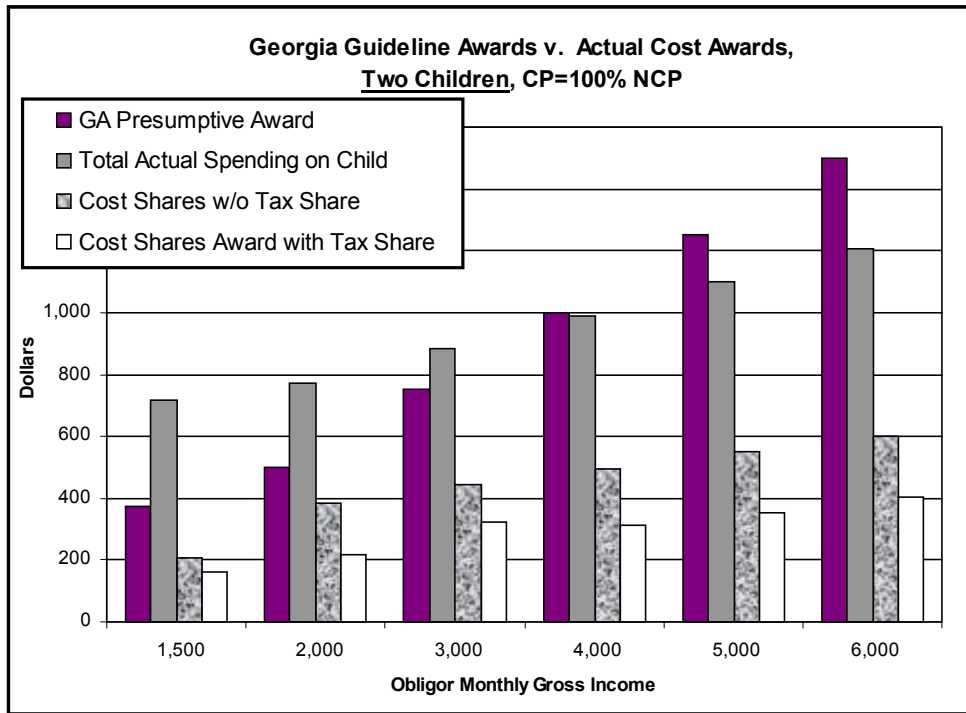


Chart 20.

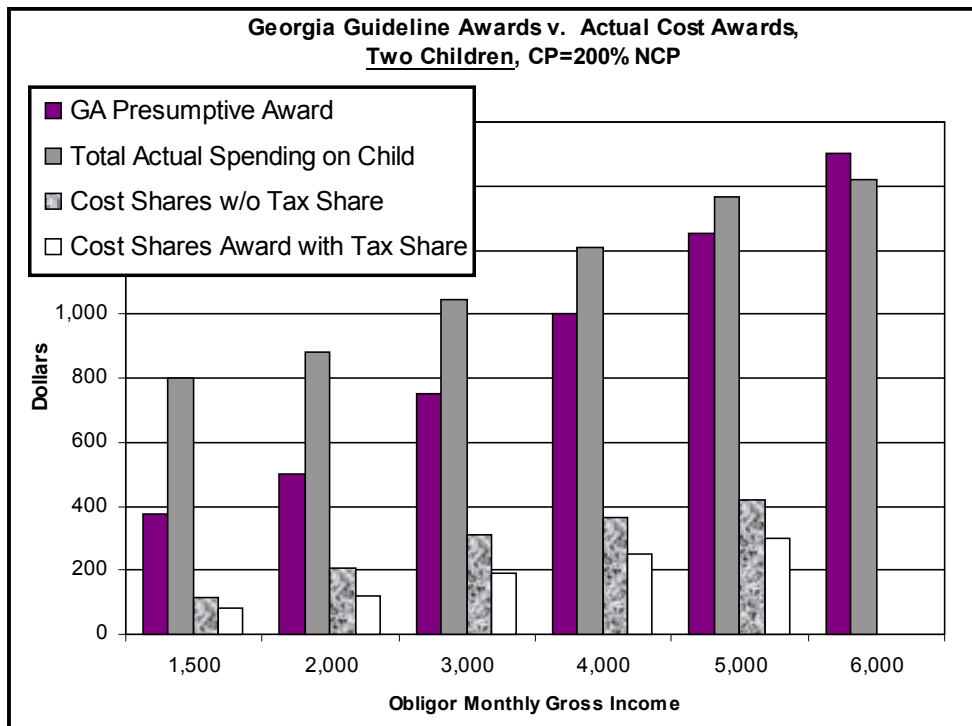


Chart 21.

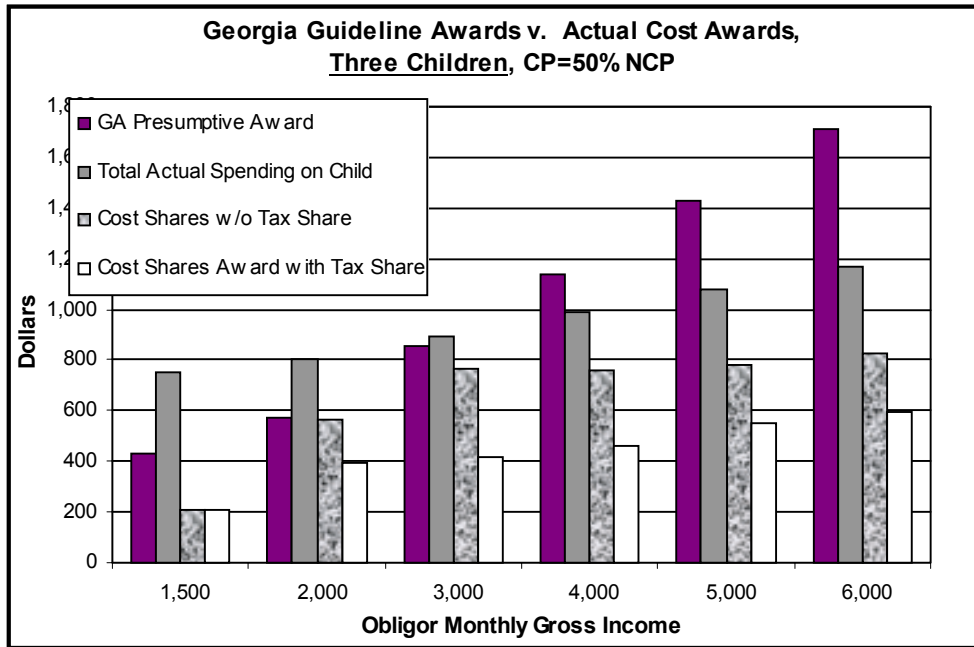


Chart 22.

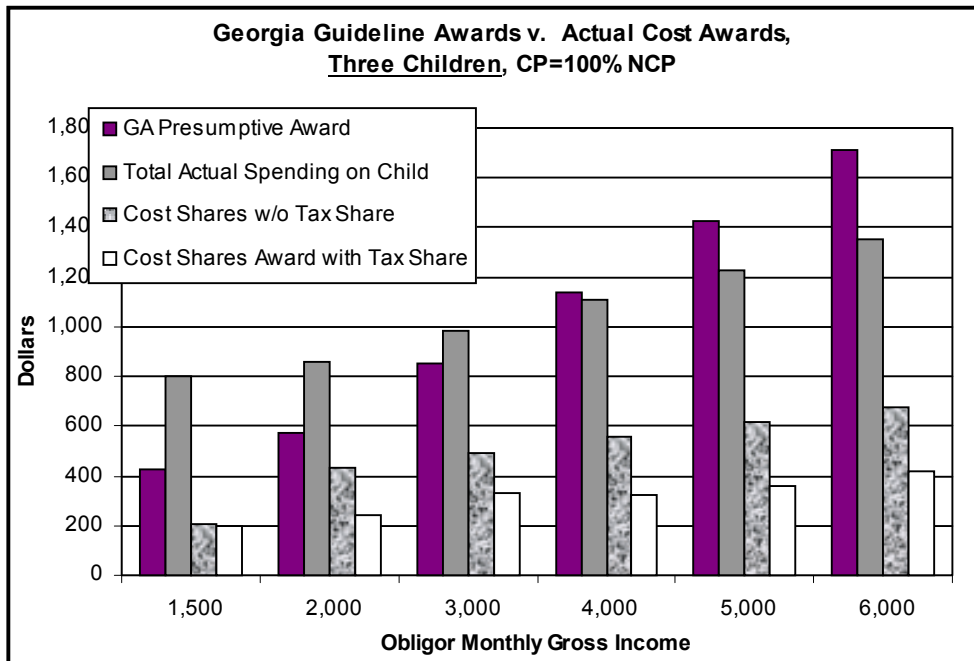
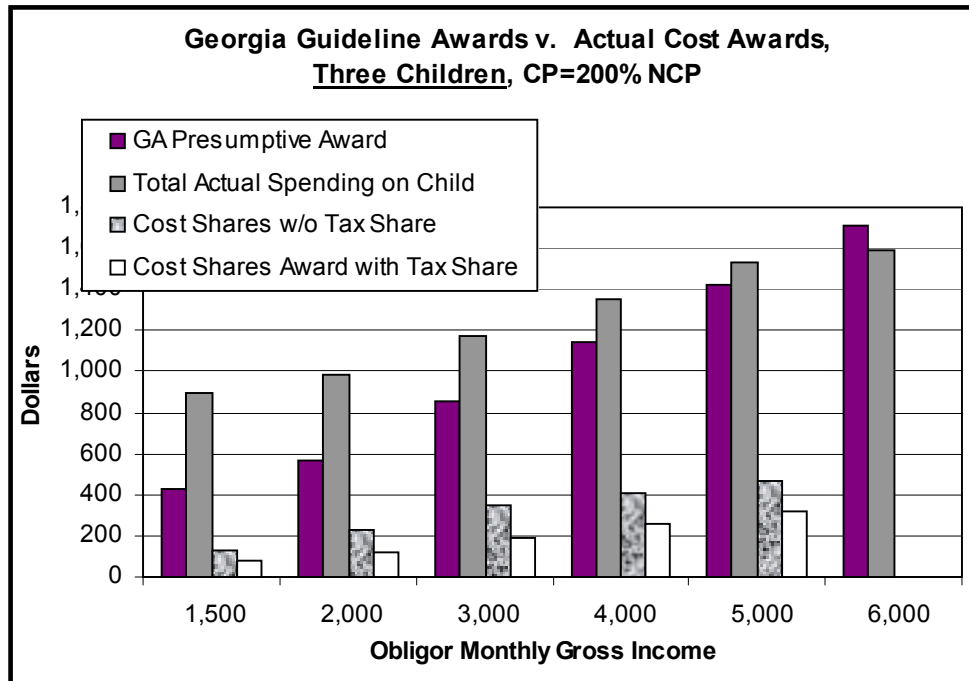


Chart 23.



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

- The presumptive award ignores 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 three to five 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 Southeast Survey Region," February, 1997. 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.

1) The first is based on simply applying the guideline percentage to each parent's gross income and adding the two amounts together. This methodology is often referenced by those defending the current guideline. These defenders erroneously assert that the custodial parent contributes equally. 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.

2) The second method assumes that each parent contributes equally on a gross income 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 gross income times the guideline percent,
- (ii) the custodial parent's gross income 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 75 percent. Including the tax benefits, the implicit total child costs for one child range from 75 percent to 80 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 at or just below 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 70 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 runs 80 to 90 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. Georgia'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. Georgia'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.

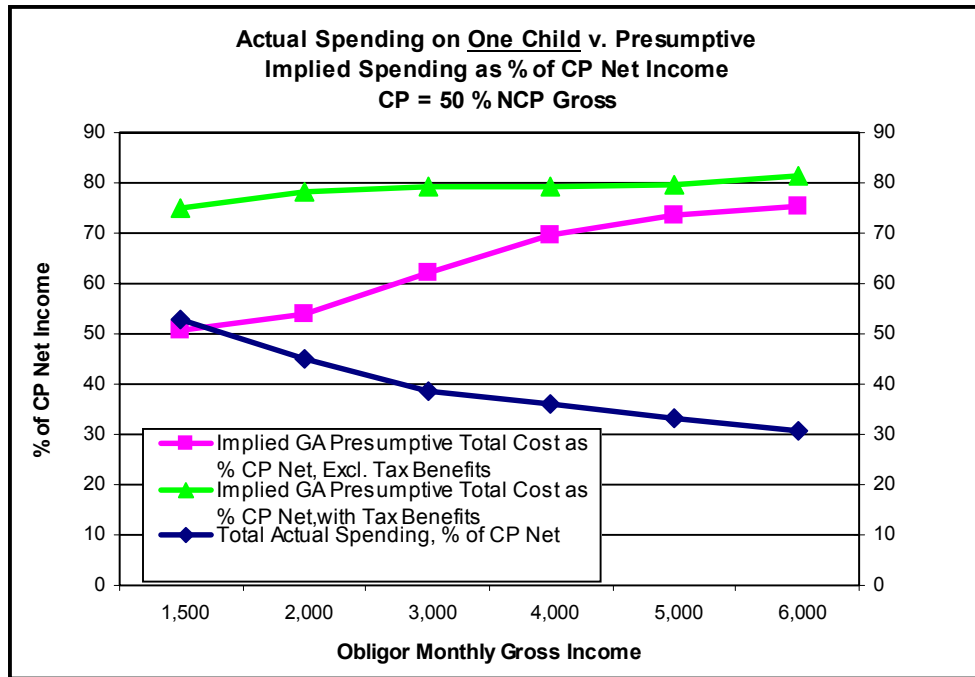


Chart 25.

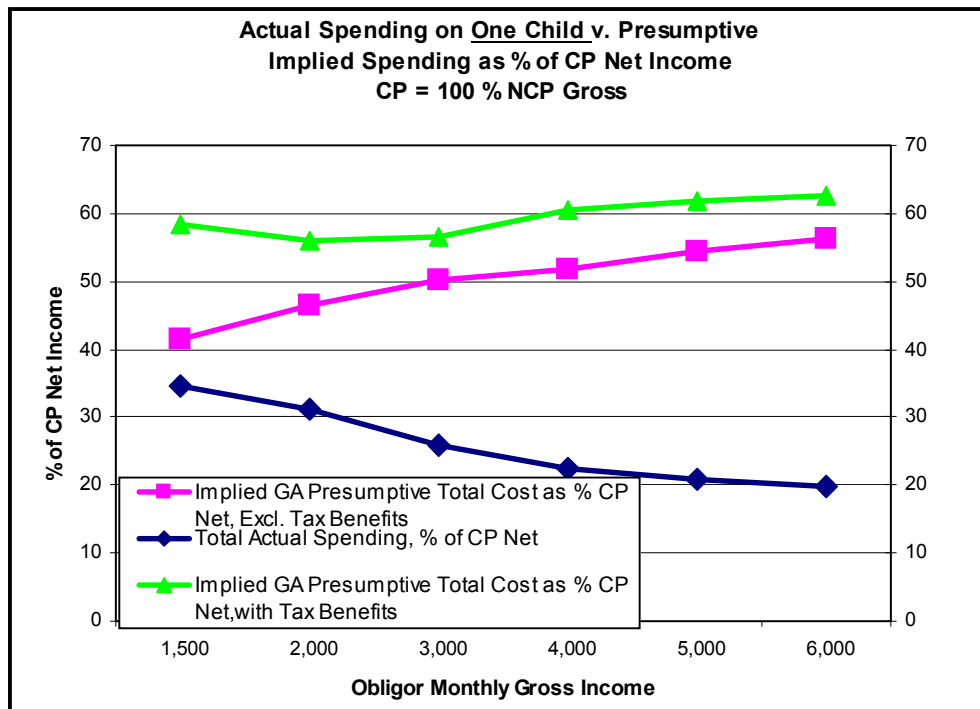


Chart 26.

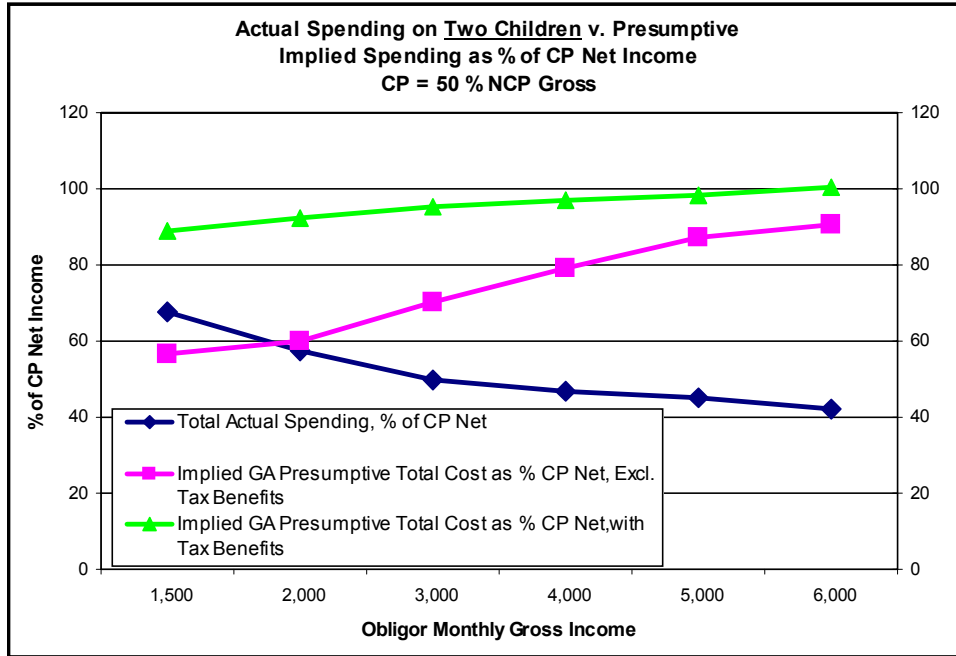


Chart 27.

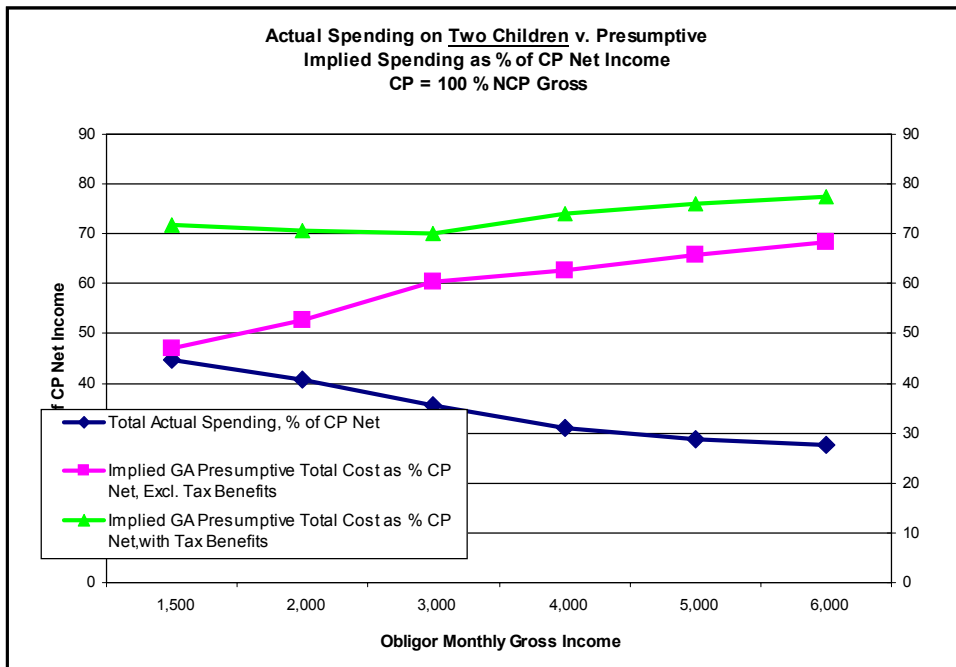


Chart 28.

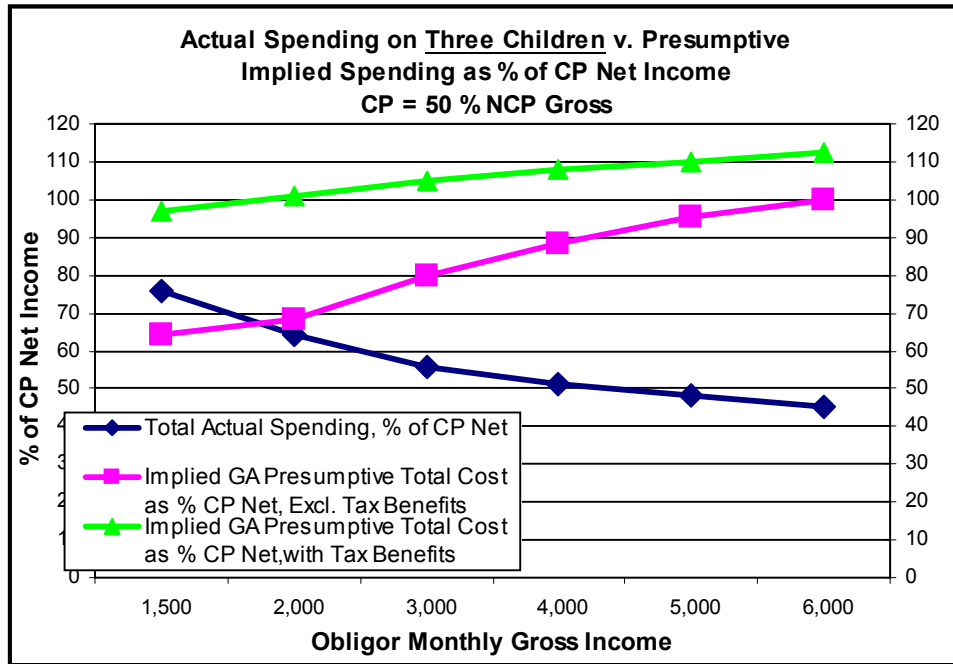
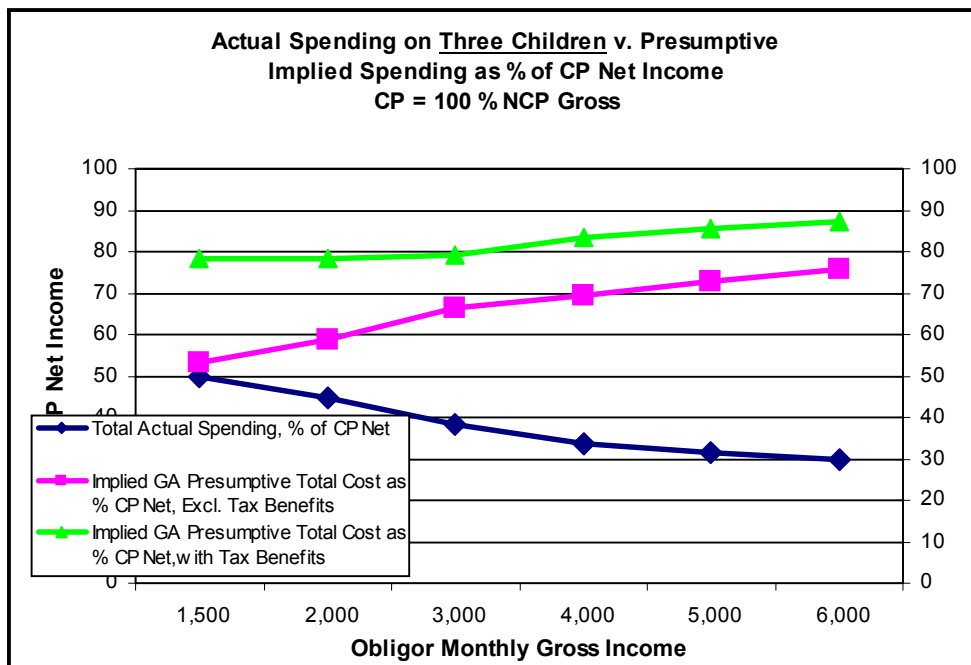


Chart 29.



In Conflict with Economic Studies, Using Georgia's Child Support Guidelines, the Custodial Parent's Income Has No Impact on the Non-custodial Parent's Presumptive Child Support Obligation; the Presumptive Award Does Not Vary with Family Income.

For the one-child case, Table 10 shows how the presumptive guidelines are in conflict with economic data and facts that show that child cost percentages and dollar levels vary with family income. The first column on the left shows the obligor income; the second column, the custodial parent income; the third column shows their combined income; and the fourth column shows the presumptive award based on the given income levels for both the obligor and obligee. Awards are stated for the lower bound of the presumptive range, the mid-point, and the upper bound.

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

Tables 11 through 14 show that the presumptive awards for two-children through five-children cases do not vary with family income—only with obligor income. This is in conflict with economic studies on child costs. Because the presumptive award does not vary with family income—only obligor income—the guidelines conflict with all economic studies on family spending on children and are not an a rational economic basis.

Table 10.**GEORGIA CHILD SUPPORT PRESUMPTIVE AWARDS:
LACK OF IMPACT OF CUSTODIAL PARENT INCOME****ONE CHILD**

(Excluding "Add-ons")

<u>Obligor Monthly Gross Income</u>	<u>Obligee Monthly Gross Income</u>	<u>Combined Monthly Gross Income</u>	<u>Presumptive Award Lower, Mid, Upper</u>	<u>Difference Between Lower and Upper:</u>	
				<u>Dollars</u>	<u>Percent</u>
\$825	\$0	\$825	\$140, \$165, \$190	\$50	35%
\$825	\$825	\$1,650	\$140, \$165, \$190	\$50	35%
\$825	\$2,500	\$3,325	\$140, \$165, \$190	\$50	35%
\$825	\$3,333	\$4,158	\$140, \$165, \$190	\$50	35%
\$825	\$5,833	\$6,658	\$140, \$165, \$190	\$50	35%
\$2,500	\$0	\$2,500	\$425, \$500, \$575	\$150	35%
\$2,500	\$825	\$3,325	\$425, \$500, \$575	\$150	35%
\$2,500	\$2500	\$5,000	\$425, \$500, \$575	\$150	35%
\$2,500	\$3,333	\$5,833	\$425, \$500, \$575	\$150	35%
\$2,500	\$5,833	\$8,833	\$425, \$500, \$575	\$150	35%
\$5,833	\$0	\$5,833	\$992, \$1,167, \$1,342	\$350	35%
\$5,833	\$825	\$6,658	\$992, \$1,167, \$1,342	\$350	35%
\$5,833	\$2500	\$8,333	\$992, \$1,167, \$1,342	\$350	35%
\$5,833	\$3,333	\$9,166	\$992, \$1,167, \$1,342	\$350	35%
\$5,833	\$5,833	\$11,666	\$992, \$1,167, \$1,342	\$350	35%

One Child Presumptive Guidelines: Percentage range of obligor gross income: 17 to 23 percent [O.C.G. §19-6-15(b)(5)]. \$825=\$9,900 annualized. \$2,500=\$30,000 annualized. \$3,333=\$40,000 annualized. \$5,833=\$70,000 annualized. Minimum wage: \$5.15. \$5.15 @ 40 hours @ 4 weeks = \$824 (rounded to \$825).

Table 11.

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

TWO CHILDREN
(Excluding "Add-ons")

<u>Obligor Monthly Gross Income</u>	<u>Obligee Monthly Gross Income</u>	<u>Combined Monthly Gross Income</u>	<u>Presumptive Award Lower, Mid, Upper</u>	<u>Difference Between Lower and Upper:</u>	
				<u>Dollars</u>	<u>Percent</u>
\$825	\$0	\$825	\$190, \$210, \$231	\$41	22%
\$825	\$825	\$1,650	\$190, \$210, \$231	\$41	22%
\$825	\$2,500	\$3,325	\$190, \$210, \$231	\$41	22%
\$825	\$3,333	\$4,158	\$190, \$210, \$231	\$41	22%
\$825	\$5,833	\$6,658	\$190, \$210, \$231	\$41	22%
\$2,500	\$0	\$2,500	\$575, \$638, \$700	\$125	22%
\$2,500	\$825	\$3,325	\$575, \$638, \$700	\$125	22%
\$2,500	\$2500	\$5,000	\$575, \$638, \$700	\$125	22%
\$2,500	\$3,333	\$5,833	\$575, \$638, \$700	\$125	22%
\$2,500	\$5,833	\$8,833	\$575, \$638, \$700	\$125	22%
\$5,833	\$0	\$5,833	\$1,342, \$1,487, \$1,633	\$291	22%
\$5,833	\$825	\$6,658	\$1,342, \$1,487, \$1,633	\$291	22%
\$5,833	\$2500	\$8,333	\$1,342, \$1,487, \$1,633	\$291	22%
\$5,833	\$3,333	\$9,166	\$1,342, \$1,487, \$1,633	\$291	22%
\$5,833	\$5,833	\$11,666	\$1,342, \$1,487, \$1,633	\$291	22%

Two Children Presumptive Guidelines: Percentage range of obligor gross income: 23 to 28 percent [O.C.G. §19-6-15(b)(5)]. \$825=\$9,900 annualized. \$2,500=\$30,000 annualized. \$3,333= \$40,000 annualized. \$5,833=\$70,000 annualized. Minimum wage: \$5.15. \$5.15 @ 40 hours @ 4 weeks = \$824 (rounded to \$825).

Table 12.**GEORGIA CHILD SUPPORT PRESUMPTIVE AWARDS:
LACK OF IMPACT OF CUSTODIAL PARENT INCOME****THREE CHILDREN**
(Excluding "Add-ons")

<u>Obligor Monthly Gross Income</u>	<u>Obligee Monthly Gross Income</u>	<u>Combined Monthly Gross Income</u>	<u>Presumptive Award Lower, Mid, Upper</u>	<u>Difference Between Lower and Upper:</u>	
				<u>Dollars</u>	<u>Percent</u>
\$825	\$0	\$825	\$206, \$235, \$264	\$58	28%
\$825	\$825	\$1,650	\$206, \$235, \$264	\$58	28%
\$825	\$2,500	\$3,325	\$206, \$235, \$264	\$58	28%
\$825	\$3,333	\$4,158	\$206, \$235, \$264	\$58	28%
\$825	\$5,833	\$6,658	\$206, \$235, \$264	\$58	28%
\$2,500	\$0	\$2,500	\$625, \$713, \$800	\$175	28%
\$2,500	\$825	\$3,325	\$625, \$713, \$800	\$175	28%
\$2,500	\$2,500	\$5,000	\$625, \$713, \$800	\$175	28%
\$2,500	\$3,333	\$5,833	\$625, \$713, \$800	\$175	28%
\$2,500	\$5,833	\$8,833	\$625, \$713, \$800	\$175	28%
\$5,833	\$0	\$5,833	\$1,458, \$1,662, \$1,867	\$409	28%
\$5,833	\$825	\$6,658	\$1,458, \$1,662, \$1,867	\$409	28%
\$5,833	\$2,500	\$8,333	\$1,458, \$1,662, \$1,867	\$409	28%
\$5,833	\$3,333	\$9,166	\$1,458, \$1,662, \$1,867	\$409	28%
\$5,833	\$5,833	\$11,666	\$1,458, \$1,662, \$1,867	\$409	28%

Three Children Presumptive Guidelines: Percentage range of obligor gross income: 25 to 32 percent [O.C.G. §19-6-15(b)(5)]. \$825=\$9,900 annualized. \$2,500=\$30,000 annualized. \$3,333=\$40,000 annualized. \$5,833=\$70,000 annualized. Minimum wage: \$5.15. \$5.15 @ 40 hours @ 4 weeks = \$824 (rounded to \$825).

Table 13.**GEORGIA CHILD SUPPORT PRESUMPTIVE AWARDS:
LACK OF IMPACT OF CUSTODIAL PARENT INCOME****FOUR CHILDREN**

(Excluding "Add-ons")

<u>Obligor Monthly Gross Income</u>	<u>Obligee Monthly Gross Income</u>	<u>Combined Monthly Gross Income</u>	<u>Presumptive Award Lower, Mid, Upper</u>	<u>Difference Between Lower and Upper:</u>	
				<u>Dollars</u>	<u>Percent</u>
\$825	\$0	\$825	\$239, \$264, \$289	\$50	21%
\$825	\$825	\$1,650	\$239, \$264, \$289	\$50	21%
\$825	\$2,500	\$3,325	\$239, \$264, \$289	\$50	21%
\$825	\$3,333	\$4,158	\$239, \$264, \$289	\$50	21%
\$825	\$5,833	\$6,658	\$239, \$264, \$289	\$50	21%
\$2,500	\$0	\$2,500	\$725, \$800, \$875	\$150	21%
\$2,500	\$825	\$3,325	\$725, \$800, \$875	\$150	21%
\$2,500	\$2,500	\$5,000	\$725, \$800, \$875	\$150	21%
\$2,500	\$3,333	\$5,833	\$725, \$800, \$875	\$150	21%
\$2,500	\$5,833	\$8,833	\$725, \$800, \$875	\$150	21%
\$5,833	\$0	\$5,833	\$1,692, \$1,867, \$2,042	\$350	21%
\$5,833	\$825	\$6,658	\$1,692, \$1,867, \$2,042	\$350	21%
\$5,833	\$2,500	\$8,333	\$1,692, \$1,867, \$2,042	\$350	21%
\$5,833	\$3,333	\$9,166	\$1,692, \$1,867, \$2,042	\$350	21%
\$5,833	\$5,833	\$11,666	\$1,692, \$1,867, \$2,042	\$350	21%

Four Children Presumptive Guidelines: Percentage range of obligor gross income: 29 to 35 percent [O.C.G. §19-6-15(b)(5)]. \$825=\$9,900 annualized. \$2,500=\$30,000 annualized. \$3,333=\$40,000 annualized. \$5,833=\$70,000 annualized. Minimum wage: \$5.15. \$5.15 @ 40 hours @ 4 weeks = \$824 (rounded to \$825).

Table 14.**GEORGIA CHILD SUPPORT PRESUMPTIVE AWARDS:
LACK OF IMPACT OF CUSTODIAL PARENT INCOME****FIVE CHILDREN**

(Excluding "Add-ons")

<u>Obligor Monthly Gross Income</u>	<u>Obligee Monthly Gross Income</u>	<u>Combined Monthly Gross Income</u>	<u>Presumptive Award Lower, Mid, Upper</u>	<u>Difference Between Lower and Upper:</u>	
				<u>Dollars</u>	<u>Percent</u>
\$825	\$0	\$825	\$256, \$281, \$305	\$49	19%
\$825	\$825	\$1,650	\$256, \$281, \$305	\$49	19%
\$825	\$2,500	\$3,325	\$256, \$281, \$305	\$49	19%
\$825	\$3,333	\$4,158	\$256, \$281, \$305	\$49	19%
\$825	\$5,833	\$6,658	\$256, \$281, \$305	\$49	19%
\$2,500	\$0	\$2,500	\$775, \$850, \$925	\$150	19%
\$2,500	\$825	\$3,325	\$775, \$850, \$925	\$150	19%
\$2,500	\$2,500	\$5,000	\$775, \$850, \$925	\$150	19%
\$2,500	\$3,333	\$5,833	\$775, \$850, \$925	\$150	19%
\$2,500	\$5,833	\$8,833	\$775, \$850, \$925	\$150	19%
\$5,833	\$0	\$5,833	\$1,808, \$1,983, \$2,158	\$350	19%
\$5,833	\$825	\$6,658	\$1,692, \$1,867, \$2,042	\$350	19%
\$5,833	\$2,500	\$8,333	\$1,692, \$1,867, \$2,042	\$350	19%
\$5,833	\$3,333	\$9,166	\$1,692, \$1,867, \$2,042	\$350	19%
\$5,833	\$5,833	\$11,666	\$1,692, \$1,867, \$2,042	\$350	19%

Five Children Presumptive Guidelines: Percentage range of obligor gross income: 31 to 37 percent [O.C.G. §19-6-15(b)(5)]. \$825=\$9,900 annualized. \$2,500=\$30,000 annualized.

\$3,333= \$40,000 annualized. \$5,833=\$70,000 annualized. Minimum wage: \$5.15. \$5.15 @ 40 hours @ 4 weeks = \$824 (rounded to \$825).

Georgia's Use of a Range of Percentages Instead of Single Values Violates Equal Protection Standards Significantly and Conflicts with Federal Regulations

Table 10 also shows the significance of Georgia's range of percentages for presumptive awards and potential unequal treatment of obligors. In Table 1, column 5 from the left shows both the dollar difference between the presumptive upper bound and lower bound. This difference is shown for two children situations and the difference can be substantial—almost \$300 per month different when the obligor has a monthly income of \$5,833 (\$70,000 annualized). Table 2 summarizes the percentage differences between upper and lower bound presumptive awards. Similarly situated individuals can be given very different presumptive awards. These differences clearly go beyond mere mathematical imprecision.

Table 15 summarizes the difference between upper and lower range guideline awards in percentage terms. These differences are dramatic with the presumptive upper bound award being as high as 35.3 percent above the lower bound presumptive award and as low as 19.4 percent—a still very large difference. The guidelines' use of a range of percentages clearly presents frequent opportunities for similarly situated individuals to receive dramatically different treatment.

The difference between the upper and lower presumptive percentage is substantial, going beyond mere mathematical imprecision. The guidelines give no guidance on how to choose upper or lower percentages.

Table 15.

Georgia's Child Support Guidelines: Difference Between Upper and Lower Bounds For Presumptive Awards

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

Georgia's Presumptive Child Support Award Pushes Minimum Wage Obligor Below the Poverty Level

Table 16 demonstrates how far a presumptive award pushes a minimum wage obligor working a 40 hour week below the poverty level. This table shows data for lower bound, mid-point, and upper bound awards. The obligor is assumed to earn \$5.15 an hour for 40 hours per week for 4 weeks per month. This equals \$824 monthly but is rounded to \$825 in the table. For 2000, the official poverty level threshold income for a one individual household (under 65 years of age)

was \$8,959 annually or \$747 monthly. Column 4 shows the result of taking gross income monthly and then subtracting the presumptive child support award and then subtracting the poverty threshold. At minimum wage, the presumptive award clearly pushes the obligor below the poverty level. The obligor cannot pay child support and meet basic living needs. For the one-child case, the presumptive award pushes the obligor with these same earnings below the poverty level by \$62, \$87, and \$112 for the lower bound, mid-point, and upper bound awards, respectively. The presumptive awards push the minimum wage obligor even further below the poverty level as the number of children determining the award increases. For the five-children case, the presumptive award pushes the obligor with these same earnings below the poverty level by \$178, \$203, and \$227 for the lower bound, mid-point, and upper bound awards, respectively. The presumptive award for low-income obligors clearly creates an extraordinary burden of presuming an obligation that leaves the obligor less than enough for basic living needs. If child care and medical insurance are added, then the NCP is pushed below the poverty level further. This can easily be \$100 to \$200 further below the poverty level. Courts may deviate for low-income obligors but there is no guideline requirement to do so and no instructions on how to do so in a rational and consistent manner. The guidelines clearly create presumptive awards that are extraordinary burdens for low-income obligors.

Table 16.

**GEORGIA CHILD SUPPORT PRESUMPTIVE AWARDS:
OBLIGOR POVERTY LEVEL BURDENS
(Excluding "Add-ons")**

<u>Number of Children</u>	<u>Obligor Monthly Gross Income</u>	<u>Presumptive Award Lower, Mid, Upper</u>	<u>After CS Poverty Level Difference Lower, Mid, Upper</u>
One	\$825	\$140, \$165, \$190	-\$62, -\$87, -\$112
Two	\$825	\$190, \$210, \$231	-\$112, -\$132, -\$153
Three	\$825	\$206, \$235, \$264	-\$128, -\$157, -\$186
Four	\$825	\$239, \$264, \$289	-\$161, -\$186, -\$211
Five or more	\$825	\$256, \$281, \$305	-\$178, -\$203, -\$227

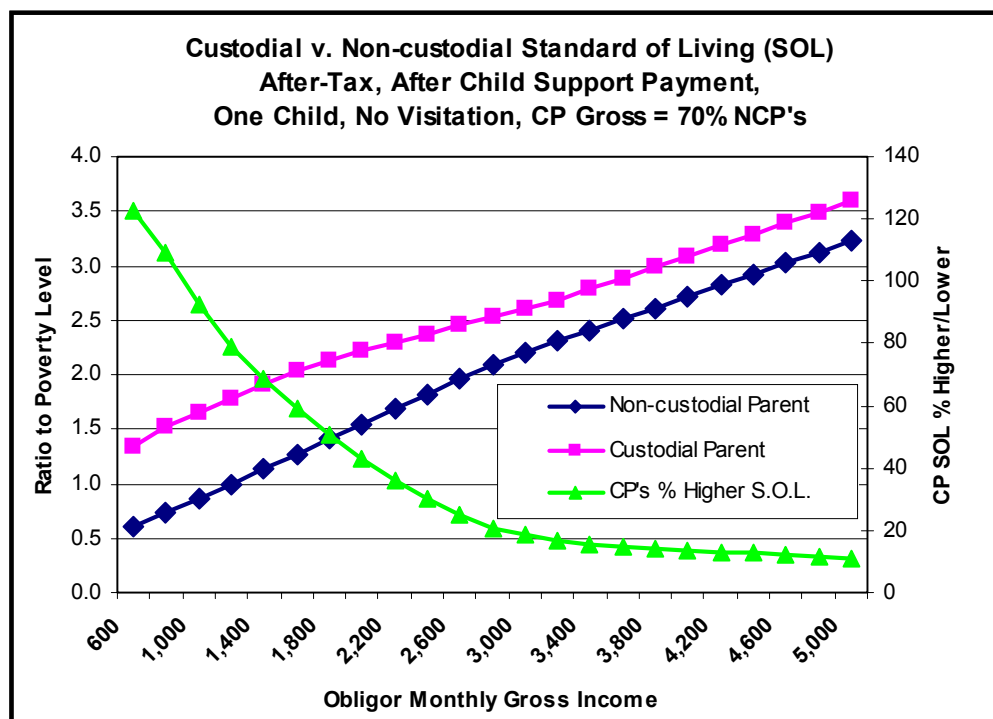
Poverty level, one person under 65 years, for year 2000: \$8,959 (\$747 monthly). Source: U.S. Department of Agriculture.

These extraordinary burdens for low-income obligors can be seen graphically in a chart that compares after-tax, after-child support incomes for obligors and custodial parents. Chart 30 shows an example of how the presumptive award pushes 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 \$1,400 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 70 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 30.



In the case of *Georgia Department of Human Resources, et al., v. Michelle Sweat, et al.*, in the Superior Court of Atkinson County, Civil Action File No. 2000 C 127, the Attorney General's "Petitioner's Response to Respondent's Motion to Declare Georgia's Child Support Guidelines Unconstitutional" uses case citations based on foreign child support guidelines that are economically unrelated to the constitutional issues presented by respondent.

The attorney general's case law citations are not relevant to the economic basis for challenging the constitutionality of Georgia's child support guidelines. The key cases cited by the attorney general address constitutional issues regarding child support guidelines in other states that have economic characteristics that are vastly different from Georgia's guidelines. These key cases are *P.O.P.S. v. Gardner*, 998 F.3d 764 (9th Cir. 1993), *Coghill v. Coghill*, 836 P.2d 921 (Alaska S.Ct. 1992), and *Boris v. Blaisdell*, 142 Ill. App. 3d 1034, 492 N.E.2d 622 (1986).

P.O.P.S. v. Gardner is a case involving the child support guidelines of Washington State. That state's child support guidelines are of the income shares model. See Washington State RCW 26.19. These guidelines base the child support award on both parents' incomes and the guideline child cost table values decline as a share of gross income and net income as these income levels rise. In addition, the Washington State guideline presumptive awards are limited to a ceiling of combined net income of \$5,000 monthly. Georgia's child support guidelines diverge from the economic circumstances that the *P.O.P.S.* decision addressed. Georgia's child support guideline percentages are applied to gross income, the obligee parent's income is not part of the presumptive formula, and the presumptive award has no income ceiling whereas the Washington State guidelines have a moderate presumptive ceiling. Georgia's statutes allow a deviation based on high income but it is not a presumption. Clearly the *P.O.P.S. v. Gardner* decision is not applicable for addressing constitutional issues related to economic equal protection under Georgia's guidelines.

Coghill v. Coghill is a case involving the child support guidelines of Alaska. That state's child support guidelines are obligor only in which the percentages are applied to net income. See Alaska Civil Rule 90.3. This is a very different model from Georgia's gross income model. Any case addressing constitutional issues regarding Alaska's child support guidelines could not have addressed and did not address the equal protection issues of the custodial parent receiving very large child-related tax benefits that should be shared with the non-custodial parent but are not under Georgia law. The Alaska case could not have addressed the issue that Georgia's presumptive awards rise as a share of obligor net income as income rises and that this pattern conflicts with all economics studies on child costs. The Alaska case could not have addressed the issue of the extraordinary benefits and burdens that flow from using gross income percentages as used in Georgia. The percentages are substantially lower in Alaska on a net income basis. The percentages in use in Georgia are not comparable to those under review in Alaska with the *Coghill* case.

Additionally, the Alaska presumptive awards deviate when the obligor has gross income below the federal poverty level. Georgia's presumptive awards have no such consideration. Alaska's presumptive award is presumptively lowered by the dollar amount that an obligor pays for health insurance coverage for the children. Georgia's presumptive award has no such consideration and, in fact, forces the obligor to double pay for health insurance for the children when such payment is treated as an add-on. Alaska's child support guidelines have specific formula for shared custody arrangement cost offsets. Georgia's guidelines have no formula offsets for shared custody arrangements. In addition to the basic guideline in Alaska being dramatically different from Georgia's, the Alaska guidelines have a number of economic factors as part of the guideline that Georgia does not. Clearly the *Coghill* decision is not applicable for addressing constitutional issues related to economic equal protection under Georgia's guidelines.

On a final note specifically related to the *Coghill* decision, the Alaska Supreme Court placed heavy emphasis on its decision to reject the arguments of constitutional deficiency of the guidelines because of the lack of evidence produced. For the case regarding Georgia's child support guidelines, the above economic exhibits are in glaring contrast—providing extensive

documentation that economic analysis supports the arguments that Georgia's child support guidelines are constitutionally deficient.

Boris v. Blaisdell is a case involving the child support guidelines of Illinois. See 750 ILCS 5. That state's child support guidelines are obligor only in which the percentages are applied to net income. This is a very different model from Georgia's gross income model. Any case addressing constitutional issues regarding Illinois' child support guidelines could not have addressed and did not address the equal protection issues of the custodial parent receiving very large child-related tax benefits that should be shared with the non-custodial parent but are not under Georgia law. The Illinois case could not have addressed the issue that Georgia's presumptive awards rise as a share of obligor net income as income rises and that this pattern conflicts with all economics studies on child costs. The Illinois case could not have addressed the issue of the extraordinary benefits and burdens that flow from using gross income percentages as used in Georgia. The percentages are substantially lower in Illinois on a net income basis. The percentages in use in Georgia are not comparable to those under review in Illinois with the *Boris v. Blaisdell* case. Clearly the *Boris v. Blaisdell* decision is not applicable for addressing constitutional issues related to economic equal protection under Georgia's guidelines.

Additionally, for Illinois there is a formula deduction for other dependents (such as for other child support orders). Georgia's presumptive guideline has no formula for this issue.

There is a wide range of issues brought before this court regarding the constitutionality of Georgia's guidelines that were not addressed by any of these above decisions. In short form, these include:

- Georgia's current child support guidelines were intended only for welfare situations—the current use for all situations was not the intended purpose. The underlying facts of the presumptions—their application only in welfare situations and with constraints such as a low ceiling award—no longer exist.
- Georgia's guideline percentages are for gross income and the presumptive awards rise as a share of obligor after-tax income. No child cost studies show child costs rising as a share of after-tax income. The guidelines are not on a rational basis.
- There are no components to the guidelines. It is not clear what is being rebutted—a due process violation.
- The guidelines do not take into account the large tax-related child cost offsets the custodial parent receives—frequently several hundred dollars a month in after-tax income. Not sharing the child-related tax benefit violates equal protection. This is an extraordinary benefit for the custodial parent.
- The presumptive award results in the custodial parent receiving a huge financial windfall—or profit—in excess of child costs. For many typical income situations, the custodial parent ends up with a higher standard of living than the non-custodial parent—even when the non-custodial parent earns significantly more than the custodial parent.

- The use of a range of percentages allows substantial opportunity for similarly situated individuals to receive dissimilar treatment—which violates equal protection. That is, different obligors with the same income can end up with presumptive obligations that differ by hundreds of dollars per month. No other state uses a range of percentages and no other state could have case law addressing this issue in constitutional terms.
- The presumptive award for low-income obligors (for example, minimum wage workers) pushes low-income obligors below the poverty level. A presumptive award that leaves the obligor with less income than needed for basic living needs creates an extraordinary burden for the obligor. This violates equal protection.
- Medical insurance costs are not treated the same for all obligors. It is not clear whether medical insurance costs are included in the presumptive award or not. Additionally, there is different treatment for obligors depending on insurance availability through employers.
- The guideline reasons allowed for deviation do not give any guidance on how to apply the deviations in a consistent manner. This is unconstitutionally vague.
- 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.
- Georgia's child support guidelines interfere with a non-custodial parent's constitutional right to raise one's children without "unnecessary" government interference.

The attorney general argues that the Majority Report of the 1998 Georgia Commission on Child Support must have considered economic data in confirming the appropriateness of Georgia's child support guidelines. The opinion of the Majority does not relieve the Court's responsibility of evaluating the issues before it. Importantly, the court should recognize that this commission consisted of political appointees that generally did not have the expertise to properly evaluate the guidelines. Only one member was an economist. Over one-half of the commission consisted of members with financial interests in maintaining high child support awards—including numerous members working for Child Support Enforcement or under contract to Child Support Enforcement.

Given that the commission did not have the appropriate financial expertise, it can be argued that the commission did not meet the standards of *Kumho Tire v. Carmichael* (U.S Supreme Court, No. 97-1709, March 1999) *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, regarding acceptance in court of expert testimony. If the commission members do not qualify as experts, then their recommendations cannot qualify as expert testimony nor as evidence to support economic arguments.

To underscore the political intent of the commission (rather than any hoped for scientific analysis and recommendations), it should be noted that all economists presenting to the commission (and before all of these Georgia commissions) have stated that there is no economic basis for using Georgia's guidelines outside of welfare cases and up to recovering welfare payments to the

custodial parent. All economists presenting to these Georgia commissions have stated that there are no economic studies that show child costs rising as a share of net income. Even prior to enactment of the guidelines in 1989, a federal advisory panel recommended against using obligor only guidelines because they were economically inappropriate. The child support commissions have acted as political agents rather than as economic experts and have acted arbitrarily to endorse continued use of guidelines that have no economic basis. For every single review, Georgia's politically appointed commissioners made recommendations directly contrary to the expert opinion of economists. There is no economic basis for accepting this political body's recommendations as economic expertise in court. For example, neither the commission nor the attorney general can produce a single, professional economic study to show child costs rising as a share of net income. Georgia's presumptive child support guidelines conflict with all economic studies on child costs regardless of any reports by this commission indicating that the guidelines are appropriate.

The attorney general alleges that there are clear distinctions between obligor and obligee based on *Boris v. Blaisdell*, 142 Ill. App. 3d 1034, 492 N.E.2d 622 (1986). However, the attorney general does not acknowledge key economic facets of his case that render it inapplicable to the constitutional issues before the Georgia court. The 1986 Illinois case cited states one of the key economic factors behind the decision:

Both custodial and non-custodial parents are not "similarly situated" since, after divorce, the custodial parents' responsibility for the child support as well as care is general and plenary, while the noncustodial parents' responsibility is usually limited to the requirements of the support order. [*Boris v. Blaisdell*, 142 Ill. App. 3d 1034, 492 N.E.2d 622 (1986), at 1046-1047].

This is a 1986 decision that applied to welfare case guidelines. The guidelines were not applied outside of welfare cases. The obligor is assumed to have no child costs beyond the child support order. The case did not address the classification issue for situations in which there are shared parenting arrangements. The Illinois case certainly did not address the classification issue in which there is joint physical custody as now occurs with some frequency in Georgia. Additionally, if this case is interpreted beyond welfare case application in which the obligor incurs child costs in addition to the child support order, then any such interpretation would be in conflict with the underlying studies from Wisconsin and in conflict with the principles established in *Meltzer v. Witsberger*, 480 A.2d 991 (Pa. 1984), *Conway v. Dana*, 318 A.2d 324 (Pa. 1985), and *Smith v. Smith*, 626 P.2d 342 (Or. 1980). All of these cases that addressed constitutionally sound sharing of child costs indicated that the costs of each parent should be treated alike and that each parent had an equal duty for child support to the other. The *Boris* decision is economically and constitutionally sound only if limited to situations in which the obligor incurs no child costs beyond the payment of the child support award (along with various assumptions such as the obligee having no income).

Basis for Constitutional Challenge to Georgia's Child Support Guidelines

- Federal regulations require the intended purpose of each state's child support guidelines be the computation of the economically appropriate child support award. Georgia's guidelines do not result in economically appropriate awards—the intended purpose of the guidelines.
- Georgia's current child support guidelines were intended only for welfare situations—the current use for all situations was not the intended purpose. The underlying facts of the presumptions—their application only in welfare situations and with constraints such as a low ceiling award—no longer exist. The presumptive percentages were based only on data for low-income cases and were extended without the benefit of data for non-welfare cases.
- Georgia's presumptive awards rise as a share of obligor after-tax income. No child cost studies show child costs rising as a share of after-tax income. The guidelines are not on a rational basis. All child cost studies show child costs declining as a share of after-tax income.
- There are no components to the guidelines. It is not clear what is being rebutted—a due process violation.
- The guidelines do not take into account the large tax-related child cost offsets the custodial parent receives—frequently several hundred dollars a month in after-tax income. Not sharing the child-related tax benefit violates equal protection. This is an extraordinary benefit for the custodial parent.
- The presumptive award results in the custodial parent receiving a huge financial windfall—or profit—in excess of child costs. For many typical income situations, the custodial parent ends up with a higher standard of living than the non-custodial parent—even when the non-custodial parent earns significantly more than the custodial parent. This is an extraordinary benefit for the custodial parent and extraordinary burden for the obligor.
- The use of a range of percentages allows substantial opportunity for similarly situated individuals to receive dissimilar treatment—which violates equal protection. That is, different obligors with the same income can end up with presumptive obligations that differ by hundreds of dollars per month.
- The presumptive award for low-income obligors (for example, minimum wage workers) pushes low-income obligors below the poverty level. A presumptive award that leaves the obligor with less income than needed for basic living needs creates an extraordinary burden for the obligor. This violates equal protection.
- The guidelines do not take into account custodial parent income. The presumptive child support award does not vary with family income—only obligor income. This is not rational

and violates equal protection. The custodial parent is not held to the same standard for contributing to child costs.

- Child costs of only the custodial parent are covered by the guideline. Similar costs incurred when the child is with the non-custodial parent do not receive similar consideration. This violates equal protection.
- Medical insurance costs are not treated the same for all obligors. It is not clear whether medical insurance costs are included in the presumptive award or not. Additionally, there is different treatment for obligors depending on insurance availability through employers.
- The guideline reasons allowed for deviation do not give any guidance on how to apply the deviations in a consistent manner. This is unconstitutionally vague.
- 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.
- Which parent is the obligor and which is the obligee should be determined only after examination of the relevant factors—not before. The financial circumstances should determine which parent is obligor. The guidelines arbitrarily presume that the obligor is always the non-custodial parent when the financial circumstance may indicate just the opposite. Importantly, mere classification before-hand of the obligor does not provide sufficient information to determine the economically appropriate award. The classifications of obligor and obligee are not rationally related to the intended purpose of the guidelines of determining the economically appropriate award.
- Georgia's child support guidelines interfere with a non-custodial parent's constitutional right to raise one's children without "unnecessary" government interference. The guidelines are so excessive as to force non-custodial parents to frequently work extra jobs for basic needs—detracting from parenting without state justification. Low-income obligors are frequently forced to work in a cash economy to survive as a result of child support obligations that if paid push the obligor below the poverty level. This is the result of automatic withholding of child support with payroll jobs and guidelines that presumptively push minimum wage obligors below the poverty level. As these workers are forced to "disappear" into unofficial society, these obligors are deprived of the constitutional right to raise their children without unnecessary government intrusion.

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 for 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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