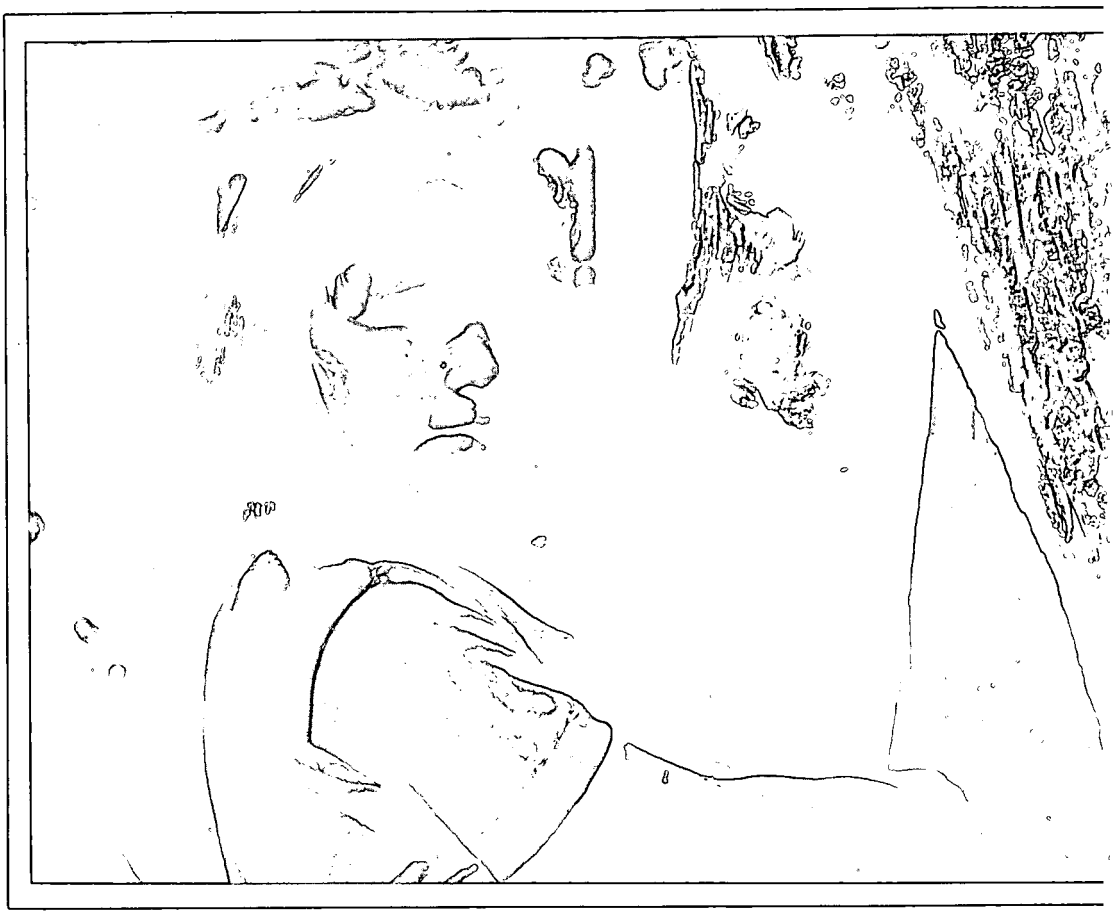
Development of Guidelines for Child Support Orders



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DEVELOPMENT OF GUIDELINES FOR CHILD SUPPORT ORDERS: ADVISORY PANEL RECOMMENDATIONS AND FINAL REPORT

NON-CIRCULATING

Part I: Advisory Panel Recommendations
Part II: Final Project Report
Part III: Implementation Materials

September 1987

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TABLE OF CONTENTS

PREFACE

ACKNOWLEDGMENTS

PART I: ADVISORY PANEL RECOMMENDATIONS 1-1

PART II: DEVELOPMENT OF GUIDELINES FOR CHILD SUPPORT ORDERS: FINAL REPORT

Executive Summary . . . . . II-i

Chapter I: Introduction II-1

Chapter II: Economic Evidence On Child Rearing Expenditures. II-13

Chapter III: Factors To Be Considered In The Development Of Guidelines II-41

Chapter IV: Description Of Selected Child Support Guidelines. II-65

Chapter V: Levels Of Orders Yielded By Guidelines II-97

Chapter VI: Use of Guidelines For Updating Orders. II-113

Chapter VII: Conclusion. II-123

Appendix I: Technical Computations. II-129

Appendix II: Economic Evidence On Child Rearing II-141

Appendix III: Levels Of Orders By Obligor Net Income. II-155

PART III: IMPLEMENTATION MATERIALS

Colorado Child Support Guideline
New Jersey Child Support Guidelines
Delaware (Melson) Child Support Formula
Wisconsin Percentage Of Income Standard
Washington State Uniform Child Support Guidelines
Cassetty Model

PREFACE

This report is divided into three parts.

Part I: Advisory Panel Recommendations. Part I consists of recommendations of the national Advisory Panel on Child Support Guidelines. This Advisory Panel was established by the U.S. Office of Child Support Enforcement in early 1984 at the request of the House Ways and Means Committee. The Congressional request specified a balanced composition for the Advisory Panel consisting of judicial, legislative, and child support enforcement officials; representatives of custodial and non-custodial parents; a legal scholar; and an economist. The Advisory Panel recommendations are divided into three parts. Part I constitutes recommendations to Congress for new legislation on the subject of child support awards. Part II consists of recommendations to states for their development of guidelines. Part III includes recommendations to the U.S. Office of Child Support Enforcement concerning needed further research on child support guidelines.

Part II: Development of Guidelines for Child Support Orders (Final Report). This report is an updated, final version of the project Interim Report published in June 1985.[1] Although the basic structures of the Interim Report and Final Report are similar, there have been numerous substantive changes in the most recent version. Some changes reflect additional research performed under the project. Other changes address comments and concerns arising from technical assistance activities and presentations to professional organizations performed under the project during the past eighteen months.

Part III: Implementation Materials. This part consists of selected operational guidelines to assist states in their developmental efforts. These guidelines are preceded by a brief discussion of implementation options for the Income Shares model and the Melson formula, the two guidelines recommended for implementation by the Advisory Panel. This part concludes with a listing of other operational guidelines which have come to the attention of the project staff.

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[1] Robert G. Williams, Development of Guidelines for Establishing and Updating Child Support Orders, Report to U.S. Office of Child Support Enforcement, (National Center for State Courts: Williamsburg, June 1985).

ACKNOWLEDGMENTS

To an unusual extent, this report has benefited from the comments, questions, and suggestions from a broad audience. Since publication of the project's Interim Report in 1985, project staff have provided technical assistance to numerous states in their efforts to develop child support guidelines and have made presentations to many professional groups. In an informal but nevertheless tangible way, the reactions expressed in these many sessions have provided a valuable and intensive review of the analyses presented in the earlier report. Every effort has been made in the preparation of this Final Report to address the issues raised in this process: to strengthen its technical base, to expand and clarify its discussion of key issues, and to provide more documentation for its economic analyses. We owe a great debt to the many individuals who knowingly or unknowingly contributed to this revision through their questions and comments.

We would like to express our special appreciation to members of the national Advisory Panel on Child Support Guidelines whose individual and collective deliberations have greatly enriched this report. The Advisory Panel has developed specific recommendations concerning Child Support Guidelines which are presented in Part I. The Panel has also critically evaluated earlier project reports as well as a preliminary draft of this Final Report. The Panel's evaluations have significantly strengthened both the Interim Report and this Final Report.

Development of this report, and indeed, conduct of the entire project, has benefited from the direction and support provided by Dr. David B. Smith, Director of Policy and Planning and Dr. J. Richard Allen, Federal Project Officer, for the U.S. Office of Child Support Enforcement. The content of this report reflects their ongoing and active involvement in the conduct of the project as well as specific comments on earlier drafts of the Final Report.

The grantee for this project is the National Center for State Courts. We are grateful to Richard Van Duizend, former Project Director, for his thoughtful project direction and careful review of an earlier draft of this report. We also appreciate the recent counsel and support provided by Thomas A. Henderson, current Project Director.

Dr. David A. Price, Senior Researcher at Policy Studies Inc., contributed substantially to the analysis and preparation of the report. Dr. Price collaborated on the re-estimation of the expenditures on children in Chapter II, the re-estimation of the Income Shares model in Chapter IV, and the modeling and case examples in Chapter V. He also prepared the technical appendix (Appendix I). We were capably assisted in preparation of the report by Angela Case and Nancy Starling, Research Analysts. Ongoing production support for multiple drafts was provided by Katherine

Wegner, Administrative Assistant. The development of this report was made possible by their active collaboration and unstinting efforts.

The cover was designed by Elizabeth Hickler of Hickler Graphics, Denver, Colorado. The cover photograph was taken by Jim Johnson, also of Denver.

As with any other research document, final responsibility for the contents of this report, especially any errors or omissions, rests with the author. In particular, as noted on the cover page, the report does not necessarily represent the views of the U.S. Office of Child Support Enforcement. However, the value of the report and its utility to its audience have been greatly enhanced by the many contributions of the above individuals.

Robert G. Williams
Principal Investigator
Child Support Guidelines Project
March 10, 1987

PART I
ADVISORY PANEL RECOMMENDATIONS

Advisory Panel on
Child Support Guidelines

March 1987

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PREFACE

The U.S. Office of Child Support Enforcement (OCSE) initiated the Child Support Guidelines Project in October 1983. The project is intended to accomplish the following objectives:

(1) Analyze the economic and legal factors that relate to development of guidelines;

(2) Identify alternative approaches to child support guidelines and perform a comparative analysis of their features;

(3) Develop one or more new approaches to child support guidelines;

(4) Assess the effects of alternative guidelines on levels of orders and on various sub-groups (e.g. custodial parents with child care expenses);

(5) Provide technical assistance to states in their development of guidelines; and

(6) Analyze issues and develop new approaches relating to modification of child support orders.

In November 1983, the House Ways and Means Committee requested that OCSE establish a national Advisory Panel on Child Support Guidelines and that the project report "...include a full and complete summary of the [Advisory Panel's] opinions and recommendations." The Congressional request specified a balanced composition for the Advisory Panel consisting of judicial, legislative, and child support enforcement officials; representatives of custodial and non-custodial parents; a legal scholar; and an economist.[1]

OCSE appointed the Advisory Panel in early 1984. The Panel has met four times. As requested by the House Ways and Means Committee, the Advisory Panel has prepared recommendations for the development of child support guidelines. These recommendations are consistent with a set of basic principles for development of child support guidelines which has also been specified by the Advisory Panel. These principles are as follows:

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[1]Committee On Ways and Means, Report to Accompany H.R. 4325: Child Support Enforcement Amendments of 1983, Report No. 98-527, 98th Congress, 1st Session, p. 48.

(1) Both parents share legal responsibility for supporting their children. The economic responsibility should be divided in proportion to their available income.

(2) The subsistence needs of each parent should be taken into account in setting child support, but in virtually no event should the child support obligation be set at zero.

(3) Child support must cover a child's basic needs as a first priority, but, to the extent either parent enjoys a higher than subsistence level standard of living, the child is entitled to share the benefit of that improved standard.

(4) Each child of a given parent has an equal right to share in that parent's income, subject to factors such as age of the child, income of each parent, income of current spouses, and the presence of other dependents.

(5) Each child is entitled to determination of support without respect to the marital status of the parents at the time of the child's birth. Consequently, any guideline should be equally applicable to determining child support related to paternity determinations, separations, and divorces.

(6) Application of a guideline should be sexually non-discriminatory. Specifically, it should be applied without regard to the gender of the custodial parent.

(7) A guideline should not create extraneous negative effects on the major life decisions of either parent. In particular, the guideline should avoid creating economic disincentives for remarriage or labor force participation.

(8) A guideline should encourage the involvement of both parents in the child's upbringing. It should take into account the financial support provided directly by parents in shared physical custody or extended visitation arrangements, recognizing that even a fifty percent sharing of physical custody does not necessarily obviate the child support obligation.

The Advisory Panel recommends that states follow these general principles in their development of guidelines, as well as the specific recommendations presented below.

As an additional function, the Advisory Panel has critically reviewed analyses and reports prepared by project staff. The results of these reviews have been incorporated into project reports. The Advisory Panel has recently reviewed the project's Final Report, which is entitled Devel-

opment of Guidelines for Child Support Orders (hereafter referenced as Final Report). The Advisory Panel endorses that report. The recommendations presented here should be considered in the context of that document.

The Advisory Panel recommendations are divided into three parts. Part I constitutes recommendations to Congress for new legislation on the subject of child support awards. Part II consists of recommendations to states in developing child support guidelines. Part III includes recommendations to the U.S. Office of Child Support Enforcement concerning needed further research on child support guidelines.

PART I

RECOMMENDATIONS TO CONGRESS

RECOMMENDATION #1
MANDATE IMPLEMENTATION OF GUIDELINES AS REBUTTABLE PRESUMPTIONS

The Advisory Panel recommends that Congress enact legislation requiring that each state implement a child support guideline as a rebuttable presumption.

Under the Child Support Enforcement Amendments of 1984 (P.L. 98-378) and its implementing regulations (45 CFR 302.56), states are required to develop guidelines for setting amounts of child support awards. The guidelines must be established by law or by judicial or administrative action, but the guidelines "...need not be binding..." on the judges and other officials responsible for adjudicating awards. Under this requirement, states have the latitude to determine how a guideline will be used: as a mandatory basis for setting amounts (an option that no state has chosen), as a rebuttable presumption, or as an advisory reference for use at the option of the judge or hearing officer.

The Advisory Panel has concluded that properly developed guidelines can have substantial benefits if parents, attorneys, and agencies know that guidelines will be applied in each case, except when the court or hearing officer determines that exceptional circumstances warrant deviation. These benefits cannot be assured if guidelines only have advisory status. Research conducted under the project provides convincing evidence that guidelines can materially improve the adequacy of orders, enhance consistent and equitable treatment of litigants, and facilitate more efficient adjudication of cases.

Recent data demonstrates that economic standards for child support incorporated in guidelines can substantially improve the adequacy of child support awards. Evidence compiled under the project suggests that the inadequacy of child support awards is a much more serious issue than was previously understood. As discussed further in the Final Report (pp. 2-3), a 1985 study performed for the U.S. Office of Child Support Enforcement estimated that $25.5 billion in child support would have been due in 1983 if child support were set based on one of the guidelines recommended by the Advisory Panel (the Delaware Melson Formula). Similar results could be expected from other guidelines producing comparable levels of support. By comparison, a Census Bureau study on child support found that $10.1 billion in child support was reported to be due in 1983 and $7.1 billion was actually collected. It can be seen from these figures that there was a "compliance gap" of $3.0 billion in 1983, but an "adequacy gap" of more than $15 billion. Although the Child Support Enforcement Amendments of

1984 were focused primarily on improving compliance with child support orders, these findings pose the need to remedy the dramatic shortfall in levels of awards. One element causing this shortfall is deficient initial child support orders. This element can be addressed through a mandate that states make the application of guidelines binding absent a judicial or administrative finding of exceptional circumstances.

Guidelines can increase the equity of awards by providing comparable orders for cases with similar circumstances. Guidelines can also improve the efficiency of adjudicating awards by increasing voluntary settlements as well as by reducing judicial time required to reach an equitable determination in contested cases.[2]

To obtain these benefits, guidelines must be used consistently within a state. The Advisory Panel has concluded that one appropriate mechanism for obtaining consistent use is the requirement that guidelines be applied as a rebuttable presumption.[3] Under such a requirement, judges and hearing officers would be mandated to enter an order in the amount indicated by the guidelines in setting the amounts of awards except where their use would create an inequitable result. In such cases, on-the-record judicial or administrative findings of fact should accompany the award. The findings should specify factors which require the deviation.[4] Examples might include a seriously ill parent with substantial personal medical expenses, a child with exceptional education requirements, or a divorce agreement in which a property settlement was structured to substitute in part for child support. On-the-record court findings should be required to preserve the integrity of guidelines, to facilitate equitable determinations in subsequent modification hearings on a given case, to document patterns that might justify future revisions of the guidelines, and to ensure an adequate record for appellate review.

Rebuttable presumption status as a matter of state law or Supreme Court rule enables trial court judges to use guidelines. In states where guidelines are advisory only, trial judges will have to comply with applic-

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[2] For statistics on adequacy, see Project Report, p. II-2. For evidence from other states on improvements in adequacy, equity, and efficiency see R. Williams and S. Campbell, Review of Selected State Practice in Establishing and Updating Child Support Awards, report to U. S. Office of Child Support Enforcement, June 1984.

[3] Many states have implemented guidelines as rebuttable presumptions, but other legal mechanisms for achieving consistent use of guidelines are acceptable.

[4] Such findings should normally be written, but oral findings can be sufficient if a record is kept of the proceedings.

able statutory provisions and case law and thus may be unable to apply advisory guidelines in setting amounts of child support awards.

The Advisory Panel recommends that Congress require states to accord rebuttable presumption status to guidelines. If guidelines are given only advisory status as is permitted under current legislation, there is no assurance that they will be used consistently. Although states have not yet reached the current deadline for implementing guidelines, the recent evidence concerning the benefits obtainable from guidelines justifies strengthening existing law.

RECOMMENDATION #2
MANDATE REDUCED BARRIERS TO MODIFICATION

The Advisory Panel recommends that Congress enact legislation which requires states to make a change in circumstance the sole standard for considering modification of a child support order and, further, that adoption of a guideline be deemed a change in circumstance for purposes of modification.

Because there are substantial legal and procedural barriers to updating child support amounts, there is a large stock of unmodified orders that has eroded in value and equity. The difficulty in obtaining modifications is probably the most significant contributing factor to the $15 billion "adequacy gap" cited above (Recommendation #1). It also contributes to inequitable payment obligations where there have been significant changes in the financial resources of the parents or the needs of the children.

Once child support orders are established, there is no routine, self-starting process for getting them modified to account for changing circumstances of the parties or evolving needs of the children (Final Report, Chapter VI). On the contrary, in the great majority of states, a parent must not only petition a court for a modification, but also has the burden of proof to demonstrate that a modification is justified. The most frequent criterion requires the petitioner to show that there has been a change in circumstance that is continuing and so substantial that it renders the original award inequitable. Two states have even required a showing that the original order be "unconscionable", following the wording of the Uniform Marriage and Divorce Act. These types of legal barriers, in conjunction with the need to retain attorneys and confront a court process, pose major deterrents to obtaining needed updates of orders.

We recommend that Congress require states to ameliorate the current barriers to modification by requiring that a change in circumstance be the sole criterion for modification. This step will make it significantly easier for obligors and obligees to obtain adjustments which restore the value of awards relative to parents' ability to pay and financial requirements of children. In making this recommendation, we are cognizant of concerns that courts will be overburdened if barriers are reduced. However, two states with minimal criteria for obtaining a review, Delaware and Michigan, have been able to accommodate the demand for modifications without interfering with the routine functioning of the courts. Moreover, the effects of infrequent modifications are so serious that a more accessible system for modifications is well warranted.

We also recommend that Congress require states to consider adoption of a guideline to be a change in circumstance for the purpose of obtaining a modification in child support amount. One state (California) has enacted such a provision in conjunction with a guideline. In contrast, most states

permit parties to use a guideline to determine modifications under a pre-guideline order, but only if the normal criterion for modification (e.g. substantial and continuing change) is met. Because a guideline establishes a state policy for the adequacy of child support awards, denying access to the guideline for cases resolved prior to its adoption has the effect of creating an arbitrary and inequitable distinction. Just as guidelines should be mandated with rebuttable presumption status, so should their availability for application to all child support cases be mandated.

RECOMMENDATION #3: DEMONSTRATION PROJECTS FOR SYSTEMATIC UPDATING PROCESSES

The Advisory Panel recommends that Congress allocate funds for demonstration projects intended to develop suitable models of systematic updating processes and to evaluate their effects.

The most equitable and efficient approach to updating child support orders is to reapply guidelines periodically. This approach takes into account changes in all factors considered in setting the initial award. It thereby meets the objections to more narrowly based updating methods raised in court decisions. It specifically avoids the deficiencies of a cost-of-living indexing provision, which is based only on a single factor not directly related to the circumstances of the parties or the children (Final Report, Chapter VI).

The need for a systematic updating process is becoming more apparent, but no state has a routine process for regular updates of child support orders even though all courts retain continuing jurisdiction over child support. Several states with guidelines encourage parties to reapply the guidelines voluntarily on a periodic basis, but none has taken the additional step of requiring a regular redetermination of the support amount. New Jersey has carried out a pilot upward modification program with promising results. In this program, New Jersey reviewed 1,514 cases more than two years old and held modification hearings on those cases. As a result, New Jersey found that the average order increased from $116 to $259 per month and that one-fourth of all welfare-related cases had their eligibility terminated because of the consequent increase in child support. This pilot program amply demonstrates the potential for improving the adequacy of child support through periodic modifications.

Courts and child support agencies resist implementing systematic modification programs because of the absence of available models and the lack of information on costs and benefits. For a systematic updating process to be efficiently operated, a high degree of automation and the development of innovative new processes would be required. While the concept for a systematic updating mechanism is outlined in the Final Report (pp. 95-97), considerable development and careful testing would be needed for implementation and evaluation of a prototype.

Because the potential benefits are so great, we recommend that Congress appropriate funds for a series of demonstration projects for development and evaluation of systematic updating processes. Through a set of projects, effective prototypes could be developed and credible data collected on the costs and benefits of structured, periodic modifications to child support. It is essential that the demonstration projects be applied to modifications of interstate as well as intrastate orders. The difficulties of obtaining modifications are compounded when multiple

jurisdictions are involved. With the high incidence of parents living in different states, any models for systematic updating must be extended to interstate cases so that a large and significant class of child support orders is not left out of this important process.

A series of projects is needed to permit alternative approaches to be tested and to assess results obtained in a range of organizational structures. It would be desirable for the demonstrations to develop a number of models, including the potential use of a system administered under contract by a private sector entity. Under such a model, a private sector organization would develop and administer the procedures and computer systems needed for periodic updating and prepare the modified orders for approval by the appropriate court or administrative agency. This approach should be tested because of the potential for improved operating efficiency and effectiveness relative to a public sector administered system.

Moreover, since the organizational roles and structures of agencies charged with adjudicating and enforcing child support vary so widely, conducting tests under different structural types is particularly important. States differ in having state and county-administered child support enforcement systems; in having or not having central clearinghouses for child support payments; and in the varying roles of courts, prosecuting attorneys, and child support enforcement agencies. To be assured of representative and transferrable results, it is important to test a systematic updating process under several of these administrative arrangements.

PART II

RECOMMENDATIONS TO STATES

RECOMMENDATION #4
ESTABLISHMENT AND USE OF GUIDELINES

The Advisory Panel recommends that each state adopt a child support guideline for use as a rebuttable presumption by the courts and child support enforcement agencies.

Under the federal requirement that states develop child support guidelines by October 1, 1987, states are permitted to determine how the guidelines are implemented: whether the guidelines are simply advisory or whether they are given the status of a rebuttable presumption. As discussed under Recommendation #1, the Advisory Panel has concluded that guidelines can have substantial benefits. Consistent application of guidelines is required, however, for a state to achieve a uniform standard of adequacy and equity in the establishment of child support orders and to realize the potential improvements in efficiency that other states have obtained. If usage of guidelines is optional, judges and hearing officers can choose to ignore them. Even if some judicial personnel follow advisory guidelines routinely, inconsistent or lack of use by others defeats the basic objectives for guidelines.

Implementation of guidelines as a rebuttable presumption is the mechanism many states have chosen for gaining their consistent use.[5] As a rebuttable presumption, judges and hearing officers are required to base child support determinations on guidelines unless the result would be inequitable to the parties or children, in which instance, reasons for the deviations must be stated on the record. This mechanism strikes the appropriate balance between uniform treatment and judicial discretion. As stated under #1, above, the Advisory Panel recommends that Congress enact legislation mandating that states accord rebuttable presumption status to their guidelines. Independently of action by Congress, however, states should exercise their option of implementing guidelines as a rebuttable presumption.

An issue that has been raised in the context of the application of guidelines is the latitude that should be given the parties to deviate from by agreement. The Advisory Panel recommends that parents should be permitted to make voluntary agreements that depart from the guidelines if such agreements represent restructuring of a total financial package that preserves the specified value of child support. In negotiating divorce

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[5] Colorado, California, Delaware, Illinois, Hawaii, Minnesota, New Jersey, Vermont, and Wisconsin are examples of such states.

agreements, for example, parents may initially determine the amount of child support provided under the guidelines and then make trade-offs in the property component of the agreement, or alter the amounts specified as child support to reduce their total tax burdens. Such trade-offs represent an appropriate departure from the guidelines if the total value of child support is maintained or even enhanced (albeit in other forms).

The Advisory Panel further recommends, however, that negotiated child support settlements be reviewed against the state's guidelines. In child support negotiations, the interests of the child may not coincide with those of either parent. Except in those rare instances where the child has independent counsel, negotiated settlements pose the risk that they may be inimical to the best interests of the child even though the parents' interests are protected. An agreement that significantly departs from guidelines should be questioned if the reasons are not sufficiently documented or the agreement is contrary to the child's best interests.

RECOMMENDATION #5: SELECTION OF GUIDELINES

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

The Income Shares Model was developed by the Child Support Guidelines project staff as an approach that is consistent with the best available economic evidence on child-rearing expenditures.[6] It is also designed to be consistent with the basic principles for child support guidelines specified by this Advisory Panel.[7] It is based on the precept that the child should receive the same proportion of parental income that he or she would have received if the parents lived together.

The Delaware Melson Formula was developed by Judge Elwood F. Melson, Jr. and is used statewide in Delaware under rule of the Family Court. The Melson Formula defines levels of basic, or subsistence, needs for the parents and children. It provides that parents are entitled to support themselves at a basic level before having the formula applied. Any additional income beyond the basic level for parents must be applied first in the form of child support to meet any of the childrens' basic needs. Included in the children's basic needs are child care costs and extraordinary medical expenses. Where income is sufficient to cover the basic needs of the parents and all dependents, a portion of remaining parental income is allocated to additional child support (15 percent for the first child, 10 percent for each of the second and third, 5 percent for the fourth, fifth, and sixth).[8]

There are several factors that the Advisory Panel has taken into account in making the recommendation that states base their guidelines on the Income Shares model or Melson formula. First, both approaches ultimately base child support obligations on the parents' ability to pay, which ensures that the child shares in both the parents' standard of living. To the extent that either parent has a higher than subsistence level of

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[6]Final Report, pp. II-13-40.

[7]Final Report, pp. I-4.

[8]For a description of the Income Shares Model and the Melson Formula, see the Final Report pp. II-67-80 and pp. II-80-85 respectively. See also the Delaware (Melson) Formula; the Colorado Child Support Commission, Colorado Child Support Guideline, September, 1986; and the New Jersey Supreme Court, New Jersey Child Support Guidelines, all reprinted in Appendix I. The latter two publications are operational versions of Income Shares guidelines, with the Colorado guidelines based on gross income and the New Jersey Guideline based on net income.

income, the child benefits from that higher standard. In the case of the Income Shares model, child support levels are based on observed proportions of family income allocated to children in intact households. As parental income increases, the amount of child support also increases. In the case of the Melson formula, the children receive a "standard of living allowance" (after their basic needs are first met) based on predetermined proportions of parental income. Thus, as levels of parental income increase, child support also increases.

Second, unlike some approaches, both the Income Shares model and Melson formula count income of both parents in determining the amount of child support awards. In the Advisory Panel's view, income of the custodial parent as well as the non-custodial parent should be taken into account in setting the amount of the award.[9] In this way, children benefit from both parents' ability to pay. Factoring in custodial parent income is consistent with statutes in many states that require courts to consider income of both parents. Counting income of both parents also avoids a perception by the non-custodial parent that he or she is bearing the entire burden of child support. Both the Income Shares and Melson approaches follow through with the concept of joint parental responsibility by imputing income to either parent if that person is voluntarily under- or unemployed. This assures that child support is based on earnings capacity of both parents.

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. The Income Shares model provides that its formula percentages are abated below a one-person subsistence level, which is set at poverty level for one adult (currently $447 per month). Similarly, the Melson formula is not calculated below subsistence level for each parent, set at $450 per month in most cases. Under both approaches, however, a minimum order is set based on a case-by-case review of obligor living expenses. The minimum order establishes the principle of a child support obligation and allows for tracking of the obligor so that the order can be modified to a higher level if income increases in later years.

Fourth, both the Income Shares model and Melson formula encourage continued involvement of both parents in the child's upbringing by means of adjustments for joint or extensively shared physical custody.[10] These two formulas both provide for adjustments in the child support obligation when the second parent has physical custody for a substantial proportion of time (at least twenty percent for Melson, twenty-five percent for

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[9]See principle #1, Final Report, p.6.

[10]Principle #7, Final Report, p. 7.

Income Shares). However, in neither approach is the child support obligation obviated even in fifty-fifty shared physical custody situations, unless both parents have equal incomes.

Fifth, neither the Income Shares model nor the Melson formula create substantial negative effects on major life decisions of the parents, such as re-marriage or labor force participation. In neither approach does income of a new spouse affect the child support obligation (except in limited circumstances).[11] In both approaches, a decision by a custodial parent to work, or to increase earnings, does have the effect of potentially reducing the child support obligation because income of both parents is counted in determining the child support obligation. But, the marginal impact of an increase in custodial parent income is relatively low and would most likely have a minimal impact on decisions to participate in the labor force or increase work hours. Consequently, unlike other approaches that have been proposed, neither guideline would be expected to have a significant effect on labor force participation decisions.

Sixth, the Income Shares and Melson models provide for separate treatment of work-related child care and extraordinary medical expenses. Under both approaches, actual child care and extraordinary medical expenses are added to a basic child support obligation and pro-rated between the parents based on their respective incomes. Under most other approaches, no special consideration is given to these costs. Failure to give these costs special treatment places a disproportionate burden on the custodial parent. If child care costs are not treated separately, there can also be a disincentive for the custodial parent to work. If medical costs are not covered separately, a child's extraordinary medical needs may be unmet if the custodial parent has inadequate income.

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[11]See Final Report, p. II-80 and II-85, for a discussion of this issue.

RECOMMENDATION #6: HEALTH INSURANCE COVERAGE

The Advisory Panel recommends that guidelines include a provision specifying parental responsibility for the child's health insurance coverage. In applying a guideline to determine the level of child support, financial credit should be given to the parent that is carrying the insurance policy.

Under current federal regulations (45 CFR 306.51), obligors are required to provide insurance for a child due support if coverage can be obtained through an employer at reasonable cost. Because availability of health care services is a critical component of child support, a child support award should include provision for insurance coverage as well as monetary support. Appropriate financial consideration should be given to a parent providing the insurance, however, provided that the expense is reasonable.

Such consideration could take several forms, but the Advisory Panel recommends that the cost of health care coverage be deducted from gross or net income. The deduction can include the parent's portion if the child's coverage is provided through a family insurance policy. The Advisory Panel considered other means of implementing an adjustment for health care premiums. Technically it would be more appropriate in terms of the recommended guidelines to deduct only the child's portion of the premium. However, given the complex and diverse forms of health insurance arrangements, separating out the cost of the child(ren)'s coverage poses a formidable administrative task at best and may not even be possible in cases where an obligor has a spouse or other dependents.

RECOMMENDATION #7
TREATMENT OF SECOND OR MULTIPLE FAMILIES

The Advisory Panel recommends that guidelines address the treatment of multiple child support responsibilities.

The Advisory Panel agreed that the following principles should be applied in setting support obligations when multiple child support responsibilities exist.

(1) When a parent has multiple child support responsibilities, each child entitled to support from that parent should share equally in that parent's resources, subject to the variations required by the needs of the individual child and the amount of support due that child from the child's other parent.

(2) Whenever possible, a support award should consider all support responsibilities of a parent when support is set for any child of that parent.

(3) When a parent is under an order to provide support for children whose support is not subject to modification in the instant proceeding, funds the obligated parent is required by law to provide for those children, and actually pays, should be considered unavailable for calculating support in the instant proceeding.

The Advisory Panel notes that provisions for second or multiple families are particularly crucial if states follow the Panel's recommendation for periodic updating of awards by reapplication of guidelines. However, complex fact situations may at times require departure from guidelines, particularly in cases of multiple child support responsibilities.

RECOMMENDATION #8: UPDATING CHILD SUPPORT ORDERS

States should address the need for periodically updating child support orders. Updating should take into account changes in the income of both parents as well as changes in the needs of the child. The most appropriate updating mechanism is reapplication of a child support guideline.

While implementation of child support guidelines can be expected to improve the adequacy of initial awards, the value of initial awards can erode rapidly with the passage of time. The effects of inflation, changes in personal income of the parents, and evolving requirements of children can render an award inequitable even if it was appropriate when established. The panel recommends that states address this issue in their guidelines. The guidelines should specify that each child support order include provision for periodic updating. While courts may not be able to impose an updating process for existing orders in the absence of such a provision, they normally can enforce an updating provision that is placed in an original or modified order.[12]

With implementation of a child support guideline in a state, reapplication of the guideline becomes the preferred device for periodically updating orders. The guideline is a mechanism that is familiar to the parties if it was used for setting the original order. Its use for updating has the advantage of taking the same factors into account in updating an order that were used as the basis for the original order. Courts in some states have objected to use of a more limited formula for updating, such as a Consumer Price Index based inflator.[13]

Given the need for updating, it is essential that states eliminate statutory and procedural barriers to modification, and make a simple change in circumstances the basis for a change. In addition, the Advisory Panel recommends that states provide that adoption of a guideline be a change in circumstance for purposes of considering cases for modifications. The Advisory Panel recommends that Congress mandate such measures (Recommendation #2), but that states act while federal legislative deliberation is pending.

The most desirable process for updating child support orders would be based on a periodic required submission of information to the courts or child support enforcement agency by the parties to the order. This information would then be reviewed for validity and consistency and a

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[12]R. Williams and S. Campbell, Review of Literature and Statutory Provisions Relating to the Establishment and Updating of Child Support Awards, pp. 39-44.

[13]R. Williams and S. Campbell, ibid.

new amount calculated based on the guideline. A new order would then be issued with opportunity for a hearing if the factual basis is contested. Compliance with the requirement to submit information could be enforced by imposing a substantial increase or decrease in the order (e.g. 10 or 15 percent) upon the parent failing to provide the required information based on an inquiry mailed to the last reported address. An alternative approach would require the parties to exchange information and reapply the guideline. The new agreement would be filed with the court and a hearing would be required only if the parties failed to agree on an appropriate amount.

The Advisory Panel recognizes that routine periodic updating of orders poses significant administrative issues for courts and child support enforcement agencies. Development and implementation of a routine updating process will require careful planning and additional administrative resources. Accordingly, we have recommended that Congress fund a series of demonstration projects for the purpose of developing suitable models (Recommendation #3). However, the need for periodic updating is compelling because the value of orders can decline quickly relative to increasing parental incomes, changing needs of children, and the effects of even moderate inflation rates. Consequently, the Advisory Panel urges that states give serious consideration to this issue and develop appropriate means to carry out a periodic updating process.

RECOMMENDATION #9
DEVELOPMENTAL PROCESS AND IMPLEMENTING AUTHORITY

The Advisory Panel recommends that guidelines be implemented by means of court rule of statewide applicability, where feasible. A state's development of guidelines should include active participation by a broadly comprised group, preferably including representatives of the courts, executive branch, the legislature, and relevant professional and advocate groups.

Under federal regulations, guidelines can be implemented "...by law or by judicial or administrative action...." (45 CFR 302.56) The Advisory Panel considers a court rule to be the preferable means of implementation. Compared with a statute, development of a court rule lends itself more readily to the technical issues and detailed content encountered in a guideline's provisions. A court rule is more flexible than a statute and can be more easily modified in light of new economic data or legal findings, or adjusted to reflect experience gained from application of guidelines. In some states, a broad statutory mandate for development of a court rule may be required to legitimize the promulgation of guidelines under this mechanism. Even with a broad statutory authorization, however, the technical substance of a guideline is reserved for the contents of the court rule.

Constitutional provisions in some states may preclude implementation of guidelines under court rule, even if there is specific legislative authorization. In such cases, legislative enactment of guidelines can be a viable approach. Alternatively, in states where most child support awards are established through administrative process in the executive branch, implementation of guidelines through administrative regulation may be necessary. If possible, however, implementation of guidelines through administrative regulation limited to IV-D cases should be supplemented by a comparable court rule for cases heard outside the administrative process.

Guidelines should be developed with the advice and participation of broadly constituted groups. Ideally, such groups should include representatives of the courts, executive branch, and the legislature. They should also obtain active involvement by relevant professional and advocate groups such as the bar, child support enforcement administrators, and representatives of custodial and non-custodial parents and children's advocates. Since state child support commissions generally have a balanced composition and were mandated under P.L. 98-378 to establish "...appropriate objective standards for support...", their recommendations should be given due weight. Involvement of all groups with a stake in collections helps assure that the guidelines will gain maximum possible acceptance. It will also help avoid unanticipated adverse consequences in the application of guidelines.

PART III

RECOMMENDATIONS TO THE U.S. OFFICE OF CHILD SUPPORT ENFORCEMENT

RECOMMENDATION #10: FURTHER RESEARCH ON ISSUES RELATING TO CHILD SUPPORT GUIDELINES

The Advisory Panel recommends that the Office of Child Support Enforcement sponsor additional research in the following areas relating to guidelines: 1) definition of income; 2) treatment of health care expenses; 3) periodic updating of orders; 4) continued review and assessment of economic evidence relating to household expenditures on children; and 5) situations involving multiple support responsibilities.

Child support guidelines all presume a determination of parental income as a starting point. In their development of guidelines, it is essential that states be precise in their definitions of income. However, the definition of income, whether gross or net, is a complex issue. It is particularly so for parents with self-employment or business income. The specification of countable income should be reviewed with special care when the source is self-employment, proprietorships or partnerships, or closely held corporations. In such instances, the definition of income for child support purposes might well deviate from the definition used by the Internal Revenue Service for income tax purposes. Issues relating to the definition of income warrant further research.

As noted above under Recommendation #6, the treatment of medical expenses in the context of a child support guideline would also benefit from further analysis. There is a complex relationship between the various components of health care costs (health insurance premiums, routine medical expenses, and extraordinary medical expenses) and the monetary child support obligation computed using a guideline. The great variation in health insurance policies and cost-sharing arrangements between employers and employees makes it difficult to develop a uniform and equitable rule. Further research could help clarify whether other ways of treating health care costs would be more consistent and practical than the approaches currently used.

Additional research is also needed on updating methods. In Recommendation #8 we describe administrative mechanisms that can be used for periodic updating of child support orders. Additional work is needed to develop and test the most efficient and effective means of implementing routine updates.

Considerations raised by multiple families pose difficult issues for states implementing guidelines. Further analysis and modeling of situations involving multiple support responsibilities is needed to assist states in de-

signing guidelines which yield the most equitable results for the children involved and their parents.

Continuing research is also warranted on the economic evidence relating to expenditures on children, including spending patterns in single-parent households. The project report provides an analysis of economic research that is currently available. Findings of that analysis provide the basis for the Income Shares model and for assessing the adequacy of other approaches. Relevant research in the field is continuing, however, and new results may provide useful guidance for subsequent modifications of the Income Shares model and other formulas as they are reviewed in the future.

PART II

DEVELOPMENT OF GUIDELINES FOR CHILD SUPPORT ORDERS

FINAL REPORT

TABLE OF CONTENTS
Part II

EXECUTIVE SUMMARY i

CHAPTER I: INTRODUCTION 1
Federal Requirement 1
Need for Guidelines 1
Principles for Development of Guidelines 6
Use of Guidelines 7
Implementing Authority 9
Summary of Report 10

CHAPTER II: ECONOMIC EVIDENCE ON CHILD REARING EXPENDITURES 13
Minimum Standards for the Cost of Rearing Children 14
Economic Estimates of Child Rearing Expenditures Above Subsistence Levels of Income 17
Expenditures by Number of Children 30
Expenditures by Age of Children 35

CHAPTER III: FACTORS TO BE CONSIDERED IN THE DEVELOPMENT OF GUIDELINES 41
Income Base 41
Specification of Gross Income 44
Specification of Net Income 45
Attributed Income 45
Custodial Parent Income 47
Age of Children 48
Child Care Expenses 50
Support Obligations for Other Dependents 51
Income of Current Spouses 54
Shared Physical Custody 55
Split Custody 60
Obligor Self-Support Reserve 60
Medical Expenses 61
Geographic Variation 62

CHAPTER IV: DESCRIPTION OF SELECTED CHILD SUPPORT GUIDELINES 65
Income Shares Model 67
Melson Formula 80
Wisconsin Percentage of Income Standard 85
Washington Uniform Child Support Guidelines 87
Cassetty Model 88
Summary: Consideration of Specific Factors By the Five Approaches to Guidelines 90

CHAPTER V: LEVELS OF ORDERS YIELDED BY GUIDELINES . . . 97
Comparison of Payment Levels by Obligor Net Income 97
Selected Fact Patterns 105

CHAPTER VI: USE OF GUIDELINES FOR UPDATING ORDERS . . . 113
Need for Updating 113
Modification Criteria 114
Use of Cost of Living Indexes for Updating. 117
Use of a Guideline to Update Child Support Orders. 119
Systematic Updating Process 120
Updating Guidelines 121

CHAPTER VII: CONCLUSION 123

APPENDIX I: TECHNICAL COMPUTATIONS: Estimated Expenditures on Children As Proportions of Parental Income And Parameters of Income Shares Model 129
Parental Expenditures on Children 131
Income and Consumption Estimates at Various Levels of Household Gross Income 131
Adjustments for the Number of Children 136
Adjustments for a Child's Age 137
Estimating Proportions 138
Summary of Differences from the Interim Report Calculations. . . 139

APPENDIX II: ECONOMIC EVIDENCE ON CHILD REARING: COMPARISON OF MAJOR STUDIES 141
Expenditures on Children 144
Expenditures on Children as a Proportion of Income 144
Expenditures and the Number of Children 147
Expenditures by Age of Children 151

APPENDIX III: LEVELS OF ORDERS BY OBLIGOR NET INCOME. . . 155

TABLES

Table 1	1986 U. S. Poverty Guideline	15
Table 2	Minimum Child Rearing Costs Based On BLS Lower Level Living Standard	16
Table 3	Estimates Of Expenditures On Children: Birth To Eighteenth Birthday	23
Table 4	Estimated Monthly Expenditures On Children: Birth To Eighteenth Birthday	25
Table 5	Proportion Of Gross Income Spent On Children By Income Level	29
Table 6	Proportion Of Net Income Spent On Children By Income Level	29
Table 7	Estimated Expenditures On Children As A Proportion Of Household Consumption	32
Table 8	Marginal Increments In Proportion Of Household Expenditures Allocated To Successive Children	32
Table 9	Estimated Expenditures On Children By Age Group	36
Table 10	Effects Of Household Split Estimated From BLS Data	39
Table 11	Summary Of Factors To Be Considered In The Development Of Formulas	42
Table 12	Income Shares Model: Child Support As A Proportion Of Net Income	70
Table 13	Child Support Guideline: Schedule Of Monthly Basic Child Support Obligations	71
Table 14	Income Shares Model: Child Support As A Proportion Of Gross Income	74
Table 15	Income Shares Gross Income Formula: Case Example	76
Table 16	Income Shares Model: Age-Adjusted Child Support As A Proportion Of Net Income	78
Table 17	Cassetty Child Support Model	89
Table 18	Consideration Of Factors By Child Support Guidelines	91

Table 19	Summary Of Fact Patterns	112
Table I-1	Types And Sources Of Information	132
Table I-2	Proportion Of Current Consumption Spent For Child Care And Extraordinary Medical Expenses	135
Table I-3	Multipliers Used To Extend Proportions To Families With Different Numbers Of Children	137
Table I-4	Variables Necessary To Estimate Child Support Proportions For Household Net Income	138
Table II-1	Estimates Of Expenditures On Children: Birth To Eighteenth Birthday	145
Table II-2	Estimated Monthly Expenditures On Children: Birth To Eighteenth Birthday	146
Table II-3	Estimates Of Expenditures On Children As A Proportion Of Gross Income	148
Table II-4	Equivalence Estimates For Expenditures On Children	150
Table II-5	Estimates Of Expenditures On A Child By Age	153
Table II-6	Estimated Costs of A Child By Age Group	154

EXECUTIVE SUMMARY

I. INTRODUCTION

Under the Child Support Enforcement Amendments of 1984 (P.L. 98-378), states are required to develop numeric guidelines by October 1, 1987. States can establish such guidelines "...by law or by judicial or administrative action." (45 CFR 302.56) This report provides an analysis of issues pertinent to the development and use of guidelines to set the amounts of child support awards. It is intended to guide states in meeting the federal statutory requirement. It is also intended to inform practitioners of the considerations affecting development of guidelines, as well as the appropriate application of guidelines to individual cases.

Need for Guidelines. The congressional mandate for development of guidelines was intended to address several deficiencies in the traditional case-by-case method for setting amounts of child support orders. First, guidelines are intended to remedy a shortfall in the levels of awards, relative to economic estimates of the costs of rearing children. In 1983 child support obligations were estimated to average only 80 percent of poverty level and only 25 percent of the best available economic estimates of average expenditures on children. In that year, total national child support obligations would have increased from $10 billion to $25.6 billion if all current and past orders had been based on guidelines which reflected the costs of raising children.

Second, guidelines are intended to improve the consistency, and therefore the equity, of child support awards. Third, guidelines are intended to improve the efficiency of court processes for adjudicating child support, particularly in conjunction with the new requirement for expedited processes.

Use of Guidelines. Most states implementing guidelines in recent years have mandated their use as rebuttable presumptions: guidelines must be applied to set the amount of child support unless findings are made to justify a deviation. No state has made guidelines mandatory, but several states have implemented advisory guidelines. Many states have also required that guidelines be used for review of voluntary settlements to ensure that interests of the child are protected.

II. ECONOMIC EVIDENCE ON CHILD REARING EXPENDITURES

In developing child support guidelines, states are inevitably confronted with the question: How much does it cost to rear a child? The difficulty in answering this question derives from the fact that many costs are incurred in common with those of other household members. It is therefore not possible to observe directly the portion of the total household budget that is spent on any individual, in particular that portion spent on a given child.

This task of estimating shares of household expenditures attributable to household members has occupied economists for more than a century. Here we summarize the best available evidence in connection with four specific questions.

(1) What is the cost of rearing a child at subsistence level, meeting only the most basic requirements for nutrition, shelter, transportation, and other necessities? The most prominent standard for the minimum costs of rearing children at subsistence level is the poverty income guideline published annually by the Department of Health and Human Services. The poverty guideline for 1986 is $447 per month for the first household member and $157 per month for each additional member, including children. The figure of $157 per month is a useful benchmark for the minimum costs of rearing a child.

(2) What is the cost of rearing a child in households with incomes above the subsistence level? At the higher income levels, there is no absolute standard for the "cost" of rearing a child. Rather, economic studies are able to infer the "cost" of rearing a child at a given income level only by observing the actual expenditures allocated to a child in existing households.

There is a substantial body of economic literature on child rearing costs. Virtually all of these studies base their findings on detailed surveys of household expenditures. For development of child support guidelines, Thomas Espenshade's work entitled Investing in Children seems to provide the most credible economic foundation. Espenshade estimates expenditures on children in low, medium, and high socioeconomic status households. His estimates for middle socioeconomic status households approximate average U.S. expenditures. Adjusted to 1986 price levels, these estimates are $589 per month for one child, $914 for two, and $1,145 for three. Like the poverty level guideline, these estimates are a good benchmark for child support levels.

Espenshade also finds that expenditures on children seem to represent virtually a constant proportion of family current consumption expenditures throughout much of the income range. Using Espenshade's estimates of

child-rearing expenditures as a proportion of current household consumption, we can directly calculate estimates of child-rearing expenditures as proportions of gross or net household income. Expenditures for one child as a proportion of household gross income are estimated to decrease from 26.0 percent at low income levels to 15.2 percent of gross at high income levels. Similarly, expenditures for two children decrease from 40.4 percent at low income levels to 23.5 percent at high income levels.

(3) How does the cost of rearing a child differ as the number of children in a household increases? Evidence on this issue can be derived from Espenshade and from the Bureau of Labor Statistics' Revised Equivalence Scale. Espenshade finds that a household spends 1.55 times as much on two children as on one, and 1.25 times as much on three as on two. Projecting further, the BLS Equivalence Scale implies that a household spends 1.13 times more on four children than on three. These figures do not mean that there are substantial economies of scale associated with children. Rather, these figures suggest that some income that would otherwise be spent on adults is redistributed toward the children, but that less is spent on all other children in the household as a result of a child being added.

(4) How does the cost of rearing a child change as the child becomes older? Under the age of 12, evidence is inconclusive on whether expenditures increase, and if so by how much, as children become older. For children above the age of 12, however, Espenshade and the U.S. Department of Agriculture both estimate that expenditures are approximately 23 percent higher than for children aged 0 through 11.

Use of intact family spending patterns to determine child support payable to single parent households. The economic data on child rearing expenditures are derived from studies of two parent households, while guidelines would determine the amount of child support allocated to single parent households. There is, unfortunately, a dearth of data concerning expenditure patterns in single parent households. Notwithstanding this deficiency, a careful analysis using older data demonstrates that use of estimates from intact households is a conservative assumption from the child's point of view. As discussed in Chapter II, such an analysis would result in higher awards than would be the case if support were based on spending estimates from single parent households.

III. FACTORS TO BE CONSIDERED IN THE DEVELOPMENT OF GUIDELINES

The effects of child support guidelines on obligors, obligees, and their children are determined in part by the treatment of certain key factors. Developing guidelines to account adequately for these factors can extend their equitable applicability to a wider range of situations than would otherwise be possible.

Income Base. The first factor to be considered is specification of an income base: gross (before taxes) income or net (after taxes and mandatory deductions) income. The traditional justification for using net income is that it is considered to represent ability to pay more closely. However, selection of gross income as the starting point for a guideline greatly simplifies its application. In addition, as discussed in Chapter III, use of gross income to determine child support may be at least as equitable as use of net income.

Specification of Gross Income. Gross income should include all available income, even from non-earned sources. For obligors with income from self-employment, a partnership, or a closely held business, gross income should be defined as business income net of allowable business expenses.

Specification of Net Income. Where used by a guideline, net income is most commonly defined as gross income minus mandatory payroll deductions and deductions for medical insurance covering the child. Other items which reduce take-home pay and do not represent mandatory deductions must be included in net income (e.g. excessive tax withholding, credit union payments).

Attributed Income. In general, voluntary unemployment or underemployment is not considered an adequate reason to diminish child support levels. If either parent is deemed to be voluntarily unemployed or underemployed, income is commonly attributed to that parent based on his or her earnings history and employment potential.

Custodial Parent Income. Some guidelines, such as the Wisconsin Percentage of Income Standard, do not explicitly count custodial parent income, while other approaches do. (Wisconsin presumes that the custodial parent spends the same percentage directly on the child as the non-custodial parent is assessed for child support.) States differ in their perceptions of the need to count custodial parent income explicitly to emphasize both parents obligation to support the children. There also exists disagreement concerning the proper interpretation of economic evidence on child-related expenditures as it affects treatment of custodial parent income.

Age of Children. As noted above, economic research suggests that expenditures on children increase during the teenage years. Despite the economic evidence, though, few states have incorporated age adjustments into their guidelines because of the greater complexity engendered by such an approach.

Child Care Expenses. In some guidelines, work-related child care expenses are added to basic calculations of child support obligations and

divided in proportion to both parties' income. There are three justifications for this approach: (1) child care costs represent a large variable expenditure incurred only in specified circumstances; (2) when incurred, child care costs can represent an inordinate proportion of the costs of rearing a child at a particular point in time; and (3) treating child care costs separately maximizes the marginal benefits of working for the custodial spouse.

Support Obligations for Other Dependents. Neither the courts nor legal scholars have reached a consensus on the proper priority that should be given support obligations for other dependents. There are three possible approaches to this issue: (1) a first mortgage approach, which gives priority to children born first; (2) an equal treatment approach, which weighs the interests of each dependent child equally in determining child support obligations; and (3) a last in, first out (LIFO) approach, which under some circumstances gives priority to children in the obligor's current household.

Income of Current Spouses. Current spouses are usually not required to contribute support to stepchildren because such a requirement would tend to discourage remarriage. Few guidelines take into account income of current spouses except in limited and carefully prescribed circumstances.

Shared Physical Custody. Most guidelines incorporate adjustments for joint custody and shared physical custody arrangements. These adjustments give credit for direct expenditures in the proportion of time each parent cares for the child (at least beyond some threshold level). Initial experience with shared physical custody adjustments suggests that states may wish to give additional consideration to duplicate costs incurred because of shared custody. Taking such costs into account can mitigate otherwise excessive declines in child support determined under shared physical custody adjustments.

Split Custody. Split custody refers to a situation where there are multiple children and each parent has physical custody of at least one. As with shared physical custody, each parent incurs significant costs in rearing the children. Consequently, many states also provide a split custody adjustment to take into account the division of these costs.

Visitation Abatement. Some states have added provisions for visitation adjustments for increased expenditures by the non-custodial parent during periods of extended visitation. Where visitation adjustments exist, they reduce only part of the obligation in recognition of fixed costs, such as housing and utilities, that must continue to be paid by the custodial parent.

Obligor Self-Support Reserve. Many guidelines incorporate a provision for the obligor to retain a self-support reserve below which more than minimal child support is not calculated. Nonetheless, minimum orders are

set to establish the principle of child support and to facilitate tracking the obligor so that the support award can be increased if earnings increase later.

Medical Expenses. Two elements of a child's medical expenses warrant special treatment in guidelines. First, if the obligor incurs a cost for medical insurance on behalf of the child being supported, that should be reflected in the level of child support that is awarded. Second, significant uninsured medical expenses incurred on behalf of the child should be considered for separate treatment.

Geographic Variation. None of the guidelines implemented thus far include adjustments for location. Most of the guidelines set child support amounts based on proportions of income. Although absolute costs of living vary by area, there appears to be no credible economic evidence of systematic geographic variation in child rearing expenditures as a proportion of income.

IV. DESCRIPTION OF SELECTED CHILD SUPPORT GUIDELINES

Several approaches to child support guidelines have been implemented or proposed for implementation by states. A description and analysis of five approaches illustrate how differing values, varying treatment of special factors, and use of different underlying economic data can yield major variations in end results. The five approaches exemplify a range of approaches in terms of operational simplicity versus comprehensiveness in the number of factors directly addressed.

Income Shares Model. The Income Shares model has been developed by the Child Support Guidelines project staff based on the best available economic evidence on child rearing expenditures, which is discussed in Chapter II. It is also intended to be consistent with the basic principles for child support guidelines enunciated by the national Advisory Panel on Child Support Guidelines. It has been adopted in Colorado, Maine, Michigan (in modified form), Nebraska, New Jersey, and Vermont and is under active consideration in several other states.

The Income Shares model is based on the concept that the child should receive the same proportion of parental income he or she would have received if the parents lived together. Under this model, a basic child support obligation is computed based on the combined income of the parents (replicating total income in an intact household). This basic obligation is then pro-rated in proportion to each parent's income. Pro-rated shares of child care and extraordinary medical expenses are added to each parent's basic obligation.

The Income Shares model has been specified in both net income and gross income versions. The percentages for net income are shown in Table 12 and for gross income in Table 14. The Colorado and New Jersey versions of the Income Shares model are shown in Part III, Implementation Materials. The Income Shares model incorporates a self-support reserve for the obligor. It can be age-adjusted, and has provision for shared custody and split custody adjustments.

Melson Formula. The Delaware Melson formula has been used statewide in the Delaware Family Court since 1979. Variations of the Melson formula have been adopted in Hawaii and recommended for adoption in Maryland. It is the most comprehensive of any approach in the number of factors directly addressed.

The Melson formula is based on the following principles. First, after determining net income, a self-support reserve is subtracted from each parent's income. This self-support reserve is usually set at $450 per month, or less if living with others. Only income above this reserve is deemed available for child support under the formula (although a minimum order is set).

Second, above the self-support reserve, all parental income is next allocated to the primary support needs of the children. In most cases this is set at $180 per month for the first child, $135 per month for each of the second and third, and $90 per month for each of the fourth, fifth, and sixth. Added to primary support needs are actual child care and extraordinary medical expenses. These primary support needs are pro-rated between the parents based on their available income, (after deduction of the self-support reserve).

Third, after deduction of the self-support reserve and payment of the pro-rata share of children's primary support needs, 15 percent of each parent's remaining income is allocated to additional child support for the first child, 10 percent more for each of the second and third, and 5 percent more for each of the fourth, fifth, and sixth.

The Melson formula makes special provision for joint and split custody. It is also adjusted to account for obligations to dependents living with the obligor.

Wisconsin Percentage of Income Standard. The Wisconsin standard is the simplest of the five approaches. It is meant to replicate a tax and to be used in the context of immediate, mandatory income withholding for all child support orders. The Wisconsin standard allocates child support based on the following percentages of obligor income: 17 percent for one child, 25 percent for two children, 29 percent for three, 31 percent for four, and 34 percent for five or more. It does not explicitly consider custodial parent income. There is no self-support reserve and no provision

for adding child care and extraordinary medical expenses as incurred. Adjustments have recently been added to the Standard for shared physical custody and additional dependents.

Washington Uniform Child Support Guidelines. The Washington guidelines are based on the net income of the parents and the number and ages of the children. Since many concepts of the Income Shares model were derived from the Washington guideline, the Washington guidelines are functionally similar. The guideline allocates a percentage of both parents' net income to child support based on level of income, number of children, and age category of each child. This combined obligation is divided between the parents in proportion to their net incomes.

The Washington guidelines are the only formula implemented to date with age adjustments. The guidelines have separate payment schedules for children aged 0-6, 7-15, and 16-17. The guidelines also treat child care expenses separately, prorating them between the parents based on income. There is no separate treatment for medical expenses. There is an adjustment for shared physical custody.

Cassetty Model. The Cassetty model is a standard of living equalization approach developed by Dr. Judith Cassetty of the Texas Attorney General's Office. To date, the Cassetty model has not been implemented in any jurisdiction, but it has gained considerable attention because of its different underlying assumptions.

The first step in applying the Cassetty model is to exempt from net income a poverty level of support for each member of the two households. Remaining income is then redistributed between the two households in proportion to the number of persons in each family unit. For joint custody cases, an adjustment is made to the model to account for time-sharing.

V. LEVELS OF ORDERS YIELDED BY GUIDELINES

Comparison of Payment Levels by Obligor Net Income. One standard for evaluating alternative guidelines is to compare the payment levels yielded by each for different levels of obligor net income. We have modeled this comparative result by constructing twelve simplified split household situations. We have calculated guideline amounts based on obligor income ranging from $500 to $5,000 per month for each situation and computed the child support obligation as a percentage of obligor net income. The results of this exercise are shown in graphic form in Chapter V, Figure 2 for three situations with two children: an obligee with zero earnings, an obligee with earnings at one-half the level of the obligor (e.g. the obligor with $3,000 per month and the obligee with $1,500 per month), and the obligee with earnings equal to the obligor.

The Income Shares, Melson, and Washington guidelines follow similar tracks above obligor income of $1,000 per month. The Income Shares and Melson models tend to set support at only around 10 percent of obligor income at $500 per month and increase rapidly to 36 - 40 percent at $1,000 per month. From that point, all three gradually decline to levels between 19 and 27 percent at $5,000 per month. This pattern varies slightly when the obligor has equal income: the Melson formula is a flat 26 or 25 percent above $700 per month and the Washington guideline declines more steeply to 14 percent of obligor income at $5,000 per month.

The Wisconsin standard is set at 25 percent of gross income for two children. But transformed to net income, it starts at 31 percent of net income at $500 per month obligor income and climbs to 44 percent at $5,000 per month. These levels are unaffected by obligee income.

In contrast, the Cassetty model is most dramatically affected by the altered income position of the obligee. With no obligee income, it allocates 9 percent of obligor income to child support at $500 per month, increases to 42 percent at $1,000, 59 percent at $2,000, 64 percent at $3,000, and 68 percent at $5,000. With equal obligee income, however, it peaks at 28 percent of obligor net income at $800 per month and thereafter steadily declines to 11 percent at $2,000 per month, and ultimately to 5 percent at $5,000 per month.

Selected Fact Patterns. The simplified situations used in the modeling exclude possible impacts from the more complex factors discussed in the previous section. Effects of child care expenses, extraordinary medical costs, shared physical custody, income from current spouses, and obligations for other dependents are not included in the modeling exercise and would significantly alter the results presented. To take into account some of these more complex factors and show specific outcomes for certain types of situations, we apply the five approaches to five separate fact patterns.

The results demonstrate that the ranking of these five approaches by level of awards depends almost entirely on the nature of the situation to which they are applied. A review of the wide variation in results obtained from these few examples illustrates why it is essential that states review proposed guidelines against large and diverse samples of cases before selecting a final version for implementation.

VI. USE OF GUIDELINES FOR UPDATING ORDERS

There are three factors that have been identified as predictably eroding the value of child support orders. (1) Inflation: In the last ten years, the real value of a support award originally set at $500 per month has declined to $261. (2) Income increases: Individual workers generally receive higher incomes over time as they mature in the work force and

increase their productivity and responsibility on the job. (3) Higher costs of older children: As discussed above, Espenshade calculates that expenditures are 23 percent higher for children in the 12-17 age group than for children at younger ages.

Modification Criteria. Currently the only mechanism for updating orders is a modification process in which one of the parties must petition the court (or administrative hearing officer) for a change in the amount of child support. Criteria for modifications range from any change that would result in a different award (Delaware) to a showing of changed circumstances so substantial and continuing as to make the terms unconscionable (Montana). The modification criteria set forth in statutes and case law constitute significant barriers to updating child support orders.

Use of Cost of Living Indexes for Updating. Several mechanisms have been suggested which index orders to inflation, or the lesser of the inflation rate or increases in obligor earnings.

Use of a Guideline to Update Child Support Orders. A more comprehensive approach to updating child support is to re-apply a guideline, preferably the same one that is used for setting initial awards. This takes into account changes in all factors considered by the guideline rather than focusing only on one or two variables. In states that have implemented guidelines, reapplication of the guidelines is the mechanism used for modifications of child support. Colorado and Vermont have set quantitative standards for approving modifications based on reapplication of the guidelines. The availability of guidelines also encourages at least some parties to implement their own updating provisions in negotiated agreements.

Systematic Updating Process. New Jersey has recently gone beyond reapplication of guidelines for petitioned modifications by instituting an upward modification program for AFDC related IV-D cases. Through December 1986, 1,514 cases had been processed under this program and the average order increased by 2.23 times, from $116 to $259 per month.

Other than New Jersey's program, administrative processes for routine updating of child support orders appear to be virtually non-existent at this point. Many potential benefits could be gained from a routine administrative process for updating orders. Such a process would have several components: (1) information collection; (2) computation of modified support award; and (3) notice and opportunity for hearing.

Updating Guidelines. In addition to updating orders, there is a need for periodically revising child support guidelines themselves so that their economic parameters reflect the most recent economic data as well as the most current findings from economic research on child rearing expenditures.

VII. CONCLUSION

Impetus for developing child support guidelines derives from the Child Support Enforcement Amendments of 1984 (P.L. 98-378). Experience of states that have previously adopted guidelines has demonstrated that they can substantially improve the adequacy and equity of orders, as well as the efficiency of the adjudication process.

As suggested by the analyses in this report, it is important for states initiating the developmental process to establish objectives for a desirable pattern of results to be obtained from the guideline. These objectives should reflect the state's social values for the proper role of child support. States should then select a basic conceptual model for child support that most closely matches those objectives. Once a conceptual approach is specified, it is necessary to review the economic evidence carefully (as discussed in Chapter II), and to consider the appropriate treatment for the full range of factors to be considered (Chapter III). As should be clear from the analysis in Chapter V, it is also essential to evaluate the impact of alternative guidelines under a wide range of circumstances. Consideration of an appropriate updating mechanism (as discussed in Chapter VI) can also extend the benefits of a guideline substantially by systematic application to past child support orders.

CHAPTER I
INTRODUCTION

Under the Child Support Enforcement Amendments of 1984 (P.L. 98-378), states are required to develop guidelines for setting levels of child support awards. States are given until October 1, 1987 to comply with this mandate. This report provides an analysis of issues pertinent to development and use of child support guidelines. It is intended to guide states in meeting the federal statutory requirement. It is also intended to inform practitioners -- judges, referees, attorneys, and child support enforcement staff -- of the considerations affecting development of guidelines as well as the appropriate application of guidelines to individual cases.

Federal Requirement

The federal requirement for development of child support guidelines gives states broad latitude in the type of guideline adopted, the implementing authority, and use of the guideline in setting child support orders. As specified in federal regulations (45 CFR 302.56), the guidelines developed under this requirement "...must be based on specific descriptive and numeric criteria and result in a computation of the support obligation." This means that the guidelines must be quantitative in nature, rather than simply listing the factors that must be taken into consideration. States are to establish guidelines "...for setting child support award amounts within the state." This provision implies that a guideline will be used for all cases, not just IV-D cases.

The regulations state that guidelines shall be established "...by law or by judicial or administrative action." This provision implies that a guideline must have official standing, but that a statute, court rule, or administrative regulation are all acceptable implementation mechanisms. States are required to have procedures for making the guideline available to all judges and other officials with the authority to set child support, but the guidelines "...need not be binding upon those persons". Thus, as we discuss further, states can choose to make a guideline mandatory (although no state has done so), use it as a rebuttable presumption, or issue it as an advisory standard.

Need for Guidelines

Prior to the passage of the Child Support Enforcement Amendments of 1984, only a handful of states had implemented child support guidelines. The congressional mandate for development of guidelines was intended to

address several deficiencies in the traditional case-by-case method of setting amounts for child support orders. These deficiencies can be described generally as: (1) a shortfall in the adequacy of orders, when compared with the true costs of rearing children as measured by economic studies; (2) inconsistent orders causing inequitable treatment of parties in similarly situated cases; and (3) inefficient adjudication of child support amounts in the absence of uniform standards. These issues are described in more detail in the following section.

Shortfalls in Levels of Awards: The Adequacy Gap. Although the Child Support Enforcement Amendments of 1984 were focused primarily on improving compliance with child support orders, recent studies have shown that child support awards are critically deficient when measured against the economic costs of child rearing. A 1985 study performed for the U.S. Office of Child Support Enforcement estimated that $26.6 billion in child support would have been due in 1984 if child support were set based on either of two alternative guidelines: the Delaware Melson formula or the Wisconsin Percentage of Income Standard.[1] By comparison, a Census Bureau study on child support found that $10.1 billion in child support was reported to be due in 1983 and $7.1 billion was actually collected.[2] It can be seen from these figures that there was a "compliance gap" of $3.0 billion in 1983, but an "adequacy gap" of more than $15 billion.[3]

Moreover, according to the most recent U.S. Census Bureau study of child support, the mean court-ordered child support obligation in effect during 1983 was reported to be $2,290 per year, or $191 per month. This obligation covered, on average, approximately one and seven-tenths children.[4] It is apparent from economic evidence discussed in Chapter II that this amount provides only a fraction of the normal cost incurred in

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[1] Ron Haskins, et al., Estimates of National Child Support Collections Potential and the Income Security of Female-Headed Families, Report to Office of Child Support Enforcement, Bush Institute for Child and Family Policy, University of North Carolina at Chapel Hill (April 1985).

[2] U.S. Bureau of the Census, Child Support and Alimony: 1983, Current Population Reports, Special Studies, Series P-23, No. 141 (July 1985).

[3] Assuming that the estimated child support collections (per Haskins et al.) grow approximately at the rate of inflation, the total amount due in 1983 would have been $25.5 billion, compared with the Haskins estimate of $26.6 billion for 1984. The $25.5 billion can be compared with the Census figure of $10.0 billion due in 1983 to derive an estimated "adequacy gap" of $15.5 billion.

[4] U.S. Bureau of the Census, Child Support and Alimony: 1983, op.cit.

rearing that number of children. As estimated in an authoritative study by Thomas Espenshade, an order for $191 is equivalent to only twenty-five percent of the average expenditures on children in a middle income household.[5] Assuming that the expenses for children should be borne in proportion to parental income, Espenshade's figures suggest that court-ordered child support should be two and one-half times as high as the reported levels in 1983.[6] Although this estimate is derived from different data sources, it corresponds almost exactly to the estimate of Haskins et al. that guideline-based support would be two and one-half times higher than court-ordered support in 1983.

These figures demonstrate a dramatic shortfall in court-ordered child support relative to estimates of normal child rearing expenditures, but other figures show that court-ordered support falls well short of even the most minimal standards for costs of children. Based on the U.S. poverty guideline, the average court order would have provided support only at 80 percent of the poverty level for 1983.[7] Since the poverty guideline represents the lowest acceptable living standard in this country, court-ordered support levels appear to be gravely deficient even by this subsistence level standard.

The statistics on child support levels for 1983 refer to those orders in effect in 1983 and therefore include many orders set earlier as well as those newly established in that year. Consequently, this "adequacy gap" in child support orders has two components. It partially results from inadequate initial child support orders. Probably to a larger degree, however, it results from the absence of systematic updating procedures for child support awards. Since the value of child support orders erodes with inflation and increasing obligor income, orders that are more than a few years old can be seriously inadequate even if they were initially established according to a reasonable standard. To close the "adequacy gap", then, requires attention to both adequate guidelines for initial awards and development of procedures for regular updating.

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[5]Extrapolated to one and seven-tenths children. See Thomas J. Espenshade, Investing in Children: New Estimates of Parental Expenditures (Urban Institute Press: Washington, 1984).

[6] In Child Support and Alimony: 1983, the Census Bureau reported that mean income of women due child support in 1983, net of child support received, was $10,226. Although the income of men owing child support was not known, the mean income of all men, which can be used as a proxy, was $18,110. If the $749 per month cost estimated by Espenshade was divided in proportion to income, the obligor share would be $479 per month, or two and one-half times the average court-ordered level of $191.

[7] Federal Register, Vol. 48, No. 34, 2/17/83, pp. 7010-7011.

Equity of Child Support Orders. There is considerable evidence that guidelines can improve the equity of child support awards. In an earlier project report, we documented the apparently unsystematic variation in awards made in the absence of guidelines.[8] A study of child support awards in Orange County, Florida, found that each of the nine circuit court judges appeared to have his own set of standards for setting support levels. The authors found that each judge showed a relatively high degree of consistency in his own decisions, but that there was little consistency between the judges in defining the level of child support orders in relation to the nine objective factors examined in the study.[9]

A study of child support orders in the Denver District Court in Colorado found that awards varied widely, based on the number of children and obligor's ability to pay, even when comparing orders made by the same judge. The author found that fathers (the obligor in all cases selected for the study) were ordered to make payments ranging from 6 percent to 33.3 percent of their incomes to support one child and from 5.6 percent to 40 percent of their incomes to support two children. In examining the data from these support orders, the author suggested that factors such as the presence of an attorney, ability of the attorney, whether an award was contested, and the season of the year all had strong effects on the amount of the award. Yet, even after all of these factors were considered, there appeared to be a large component of unexplained variation in the level of individual awards.[10]

Research in at least one state using schedules at the county level suggests the presence of considerably less dispersion in awards than observed in the Florida and Colorado studies. In a review of approximately 400 child support orders entered in Genesee County, Michigan, Chambers found that the mean percentages of fathers' income by number of children were very close to the court schedule in use at the time.

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[8] Robert G. Williams and Stephen G. Campbell, Review of Literature and Statutory Provisions Relating to the Establishment and Updating of Child Support Awards, Report to U.S. Office of Child Support Enforcement (National Institute for Socioeconomic Research: Denver, January 1984), pp. 1-3.

[9] Kenneth R. White and R. Thomas Stone, Jr., "A Study of Alimony and Child Support Rulings with Some Recommendations," Family Law Quarterly, Vol. X, No. 1 (Spring 1976), p. 83.

[10] Lucy Marsh Yee, "What Really Happens in Child Support Award Cases: An Empirical Study of Establishment and Enforcement of Child Support Orders in the Denver District Court," Denver Law Journal, Vol. 57, No. 1 (1979), pp. 38-42.

This finding, suggesting a substantial degree of consistency in the establishment of amounts to be paid in one county, was reinforced by interviews with judges and Friends of the Court in twenty-eight counties. In more than two-thirds of the twenty-eight counties, the judges or Friends of the Court believed that orders were made on a basis consistent with the child support schedules at least 80 percent of the time.[11] A more recent survey by the State Court Administrator's Office, however, indicates that even in Michigan there may exist significant variations in levels of orders between counties. After sending two hypothetical cases to Friends of the Court in Michigan counties, the responses from forty-nine jurisdictions yielded findings ranging from $0 to $70 per week for one of the cases.[12]

These studies indicate that the traditional methods of setting child support awards, though having the advantage of permitting a case-by-case review of circumstances, can lead to the imposition of markedly different child support awards for obligors even if they have the same number of children and identical income levels. Even the appearance of inequity created by the inconsistent orders inherent in the case-by-case approach can cause resentment and frustration for obligors and obligees alike. Obligors' perceptions of inequitable treatment may be a factor contributing to existing compliance problems with child support as well.

Efficiency of Court Processes. Experience of states with guidelines has shown that they can improve the efficiency of adjudication processes for child support awards. Guidelines can increase the number of voluntary settlements and reduce court or administrative agency time required to resolve those cases that are still disputed. In an earlier project report, for example, we described the impact of the Delaware Melson formula, the statewide guideline with the longest history, as follows:

> The Melson formula has had the overall effect of substantially routinizing the process of determining child support. Attorneys describe the formula as a "wonderful settlement tool" which lends predictability to the outcome of the process. In dissolution cases involving attorneys, they frequently stipulate first to

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[11] David L. Chambers, Making Fathers Pay: The Enforcement of Child Support (Chicago: University of Chicago Press, 1979), pp. 38-42.

[12] Proposed Child Support Guideline for the State of Michigan, Friend of the Court Bureau, State Court Administrative Office (Lansing: draft dated January 9, 1985), pp. 4-5.

decide child support based on the Melson formula and then move to negotiate the other issues.[13]

Guidelines tend to increase settlements because they provide parties with the knowledge of expected child support levels. Parties find it worthwhile to contest the amount of child support only if the amounts of income are in dispute or if either is seeking an exception. Even if the case is disputed, courts can usually adjudicate cases more quickly because a guideline provides the framework for considering the issue, even if a deviation is requested.

Implementation of guidelines can also facilitate the use of an expedited case processing procedure, as required under the Child Support Enforcement Amendments of 1984. As specified in federal regulations (45 CFR 303.101), states must adopt expedited judicial or administrative processes to establish and enforce child support awards. Guidelines provide a framework for quasi-judicial or administrative hearing officers to use in setting amounts of child support awards. Although hearings officers are presumably less experienced than judges and may have less legal training, states can nonetheless delegate authority to set awards and still be assured that outcomes will fall within a predictable range.

Principles for Development of Guidelines

Guidelines are intended to determine an equitable share of parental income and resources to be allocated to a child when the child's parents are separated, divorced, or unmarried. Guidelines should be suitable for establishing initial awards and also for updating those awards to reflect changes in circumstances of the parents, the effects of inflation, and the increased costs of raising older children.

The effort to develop guidelines should be guided by several underlying principles. The following principles have been enunciated by the national Advisory Panel on Child Support Guidelines. These principles emerged from consideration of federal model and state statutes, court decisions, and economic and social concepts of equity. These principles are as follows:

(1) Both parents share legal responsibility for supporting their children. The economic responsibility should be divided in proportion to their available income.

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[13] Robert G. Williams and Stephen G. Campbell, Review of Selected State Practices in Establishing and Updating Child Support Awards, Report to U.S. Office of Child Support Enforcement (National Institute for Socio-economic Research: Denver, June 1984), p. 23.

(2) The subsistence needs of each parent should be taken into account in setting child support, but in virtually no event should the child support obligation be set at zero.

(3) Child support must cover a child's basic needs as a first priority, but, to the extent either parent enjoys a higher than subsistence level standard of living, the child is entitled to share the benefit of that improved standard.

(4) Each child of a given parent has an equal right to share in that parent's income, subject to factors such as age of the child, income of each parent, income of current spouses, and the presence of other dependents.

(5) Each child is entitled to determination of support without respect to the marital status of the parents at the time of the child's birth. Consequently, any guideline should be equally applicable to determining child support related to paternity determinations, separations, and divorces.

(6) Application of a guideline should be sexually non-discriminatory. Specifically, it should be applied without regard to the gender of the custodial parent.

(7) A guideline should not create extraneous negative effects on the major life decisions of either parent. In particular, the guideline should avoid creating economic disincentives for remarriage or labor force participation.

(8) A guideline should encourage the involvement of both parents in the child's upbringing. It should take into account the financial support provided directly by parents in shared physical custody or extended visitation arrangements, recognizing that even a fifty percent sharing of physical custody does not necessarily obviate the child support obligation.

Use of Guidelines

A properly developed guideline should be applicable to a broad range of circumstances. It should yield equitable results across a large part of the income spectrum and should address a variety of special cases, such as non-traditional custody arrangements and additional dependents. It is generally recognized, however, that there are individual cases in which the rigid application of a formula would create inequitable results. Examples of such cases might include a terminally ill obligor, a child with unusual educational or social needs, or an emancipated seventeen year old child. In addition, experience in several states has suggested that application of

guidelines is most difficult at both extremes of the income range. At very low levels of obligor income, ability to pay must be carefully scrutinized in relation to obligor subsistence needs. At high parental income levels (e.g. $75,000 per year or more), child support levels are significantly affected by tax considerations and trade-offs between other elements of an overall divorce settlement, such as property division and spousal maintenance.

Because no guideline, no matter how carefully developed, can anticipate all of the special circumstances that might arise, no state has yet adopted a mandatory guideline. Rather, states have chosen to implement their guidelines as rebuttable presumptions or as advisory standards. Used as a rebuttable presumption, a guideline must be applied to set the amount of child support unless one party demonstrates an inequitable outcome would result, or unless the court or administrative agency so determines. In either case, a departure from the guideline must be accompanied by findings which give the reasons for deviating from it. In contrast, if used as an advisory standard, the guideline is made available to judges and hearing officers as the recommended level for orders, but judges and hearing officers are free to deviate from that level at will.

Most states enacting or implementing guidelines in recent years have mandated their use as rebuttable presumptions. Examples are California, Colorado, Delaware, Hawaii, Illinois, Minnesota, Missouri (administrative hearings only), New Jersey, Vermont, and Wisconsin. Several other states, including Nebraska and Washington have adopted advisory guidelines. In these two states, guidelines were developed by judges' committees and recommended to all judges for their use. Generally, implementation of guidelines with rebuttable presumption status has become the option of choice for most states, even though rebuttable presumption status is not required under federal rule. This type of use yields the most benefits in terms of adequacy, equity, and efficiency, while preserving the ultimate flexibility of judges and hearing officers to deviate in extraordinary circumstances.

Although the primary use of a guideline is to guide the parties and hearing officers in establishing the level of child support awards, a guideline can be used to review the levels of negotiated child support amounts as well. Negotiated settlements are currently given only cursory review by most courts and administrative agencies. But such practices do not always adequately protect the interests of the child, which are not directly represented in the adversary proceeding between the parents. Thus, an additional use of a guideline is to review the adequacy of negotiated child support settlements in providing for the economic needs of children. A recent Colorado statute addresses this issue by specifically requiring approval of stipulations by the court. The statute also requires

that any deviation from the guideline be accompanied by written or oral findings.[14]

Implementing Authority

As noted above, federal regulations provide that states can implement guidelines "...by law or by judicial or administrative action." To date, states have used all of these options by implementing guidelines variously under authority of statute, court rule, and administrative regulation.

Statute. Colorado, Illinois, and Minnesota have enacted statutes mandating use of specified guidelines as rebuttable presumptions.[15] This mode of implementation has the advantage of providing universal authority to guidelines. In all three states, the guidelines are applied to IV-D and non-IV-D cases alike. They are binding upon the judiciary unless findings of fact are made to justify exceptions.

There are two disadvantages of incorporating guidelines into statute. The first is that the technical nature of guidelines does not readily lend itself to the legislative process of development. The Illinois and Minnesota guidelines are among the simplest guidelines in design. The Colorado guideline is more comprehensive, but it was developed initially by the Child Support Commission and modified only slightly by the Legislature. The second disadvantage is that statutes are less flexible and more difficult to change than judicial or administrative rules. Guidelines need to be revised periodically in light of experience gained in their use and in light of new economic findings. It is usually more difficult to revise a statute than non-statutory rules.

Court Rule. New Jersey adopted guidelines by means of a Supreme Court Rule (Rule 5:6A, 5/9/86). Delaware implemented the Melson formula by means of a Family Court Rule. The court rule approach has several advantages. First, the courts are unusually well situated to develop guidelines because they are neutral parties and are therefore in a better position to balance the competing interests involved in designing guidelines. Second, court rules normally have as much force with the judiciary as a statute. Third, a court rule is more easily changed than a statute. The most significant disadvantage of court rules is that some courts lack the legal authority to use that mechanism for child support guidelines. The Supreme Courts of Colorado and Vermont, for example, indicated that the

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[14] Colorado House Bill 1275, 1986, to be codified as Colorado Revised Statutes, Sec. 14-10-115 (3)(b).

[15] Colorado House Bill 1275, 1986; 23 Illinois Revised Statutes 1983, Sec. 10-10; Minnesota Statutes 1983, Sec. 518.551.

substantive nature of guidelines exceeded their procedural rule-making authority.

Administrative Regulation. Many states have implemented guidelines by administrative rule emanating from the child support enforcement agency. Missouri and Utah are two examples of states using this approach. In states using administrative process to establish child support orders for IV-D cases (including Missouri and Utah), administrative rule is the most expeditious method of implementing a guideline. An administrative rule issued by an executive agency cannot bind courts in their determination of child support awards, however, unless there is specific statutory authorization. Consequently, application of an administrative rule does not normally extend to non IV-D cases. This limits the usefulness of an administrative rule, especially in the large majority of states lacking administrative processes for establishing child support awards.

Other states have used hybrids of these three basic approaches in their implementation of child support guidelines. Nebraska has enacted legislation requiring the Supreme Court to develop child support guidelines for use as a rebuttable presumption (L.B. 7, 1985). California implemented the "Agnos guideline" by statute which establishes a minimum standard for child support awards. However, the statute delegates authority to establish guidelines for higher income households to individual counties, or to the state Judicial Council for those counties lacking a guideline (Ca. Civ. Code Secs. 4720-4732 (West Supp. 1985)). Vermont enacted the basic principles of a guideline, but delegated responsibility to the Agency for Human Services to specify the numerical formula (15 V.S.A. Secs. 653-662).

It can be seen from these examples that states have followed divergent paths in their determination of the most appropriate authority for implementing guidelines. Implementation by court rule is preferable in many ways because it provides applicability to all child support cases, but preserves the flexibility to modify the guideline based on experience and changing economic data. But courts in many states lack the authority to establish guidelines by this method. Moreover, in states with broad administrative processes for establishing child support awards on behalf of IV-D cases, issuance by administrative rule is generally the fastest means of implementation. As with a court rule, implementation by administrative rule also preserves the flexibility to change the guideline more readily than by altering a statute.

Summary of Report

In the remainder of this report, we review and analyze the available economic data concerning expenditures on children, discuss the factors that should be considered in developing guidelines, describe five approaches to

guidelines, and evaluate the effects of different guidelines on child support orders under a range of circumstances. We also address the issue of updating child support orders.

Specifically, in Chapter II we describe and evaluate current economic evidence on child rearing expenditures, and evaluate the implications of this evidence for the development of child support guidelines. In Chapter III, we describe the potential treatment of various factors that should be considered in designing guidelines, including income, child care expenses, support obligations for other dependents, income of current spouses, custody arrangements, obligor living allowance, medical costs, and geographic variation. In Chapter IV, we describe five current and proposed approaches to guidelines. The five approaches represent a range of underlying concepts and varying assumptions about the economic nature of expenditures on children. In Chapter V, we analyze the effects of these five approaches in terms of their incidence on obligor net income and their impact on child support payment patterns. In Chapter VI, we discuss the need for systematic updating of child support awards and describe alternative mechanisms for periodic modification of child support orders, in addition to the establishment of initial awards. In Chapter VII, we offer several concluding observations and discuss the process of development for guidelines.

CHAPTER II
ECONOMIC EVIDENCE ON CHILD REARING EXPENDITURES

In developing child support guidelines, states are inevitably confronted with the question: How much does it cost to rear a child? Although this question is seemingly simple, it has complex ramifications, both for courts trying to determine child support in individual cases, and for economists seeking to estimate average costs of child rearing across population groups. The difficulty in determining the costs of a child arises because many such costs are incurred in common with those of other household members. Indeed, the largest categories of household expenditures (food, housing, transportation, and household furnishings) are made on behalf of all family members. It is therefore not possible to observe directly the portion of the total household budget that is spent on any individual, in particular that portion spent on a given child who is the subject of a child support action.

Given this problem, it would be tempting to allocate household expenditures among members by assigning proportionate shares: e.g. one-fourth the cost of housing to each person in a household of four. This simplistic approach has obvious limitations, however, with respect to estimating expenditures on children. First, it ignores the obvious fact that adults normally consume more of the pooled commodities than children. Adults generally require more space, consume more food, and require more transportation than children. Second, the costs of a child are generally considered to be marginal, or additive to those incurred by adults. That is, adults without children require their own food, housing, and transportation. The question most frequently raised in determining child support is: What are the extra expenses incurred by a household unit in rearing a child? These "extra" costs can be expected to be less than pro rata shares: for example, the additional cost of another room for a dwelling unit, or the extra cost of child-related automobile mileage. Third, economies of scale exist in which unit prices decrease as quantities increase. As one example, larger households would be expected to experience smaller per-person costs for food than smaller families. Fourth, members of a household share common goods such as furniture, space (e.g. a living room), heat and lighting, and automobiles. This sharing lowers the cost of using that good for each individual member. These four factors suggest that determining child-rearing costs requires a more sophisticated analytical approach than dividing pooled categories of family expenditures equally among household members.[16]

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[16] Notwithstanding these factors, at least one economic analysis based on pro-rata shares of household spending has been circulated. In conjunction with the Kansas Child Support Commission, William T. Terrill of Wichita State University has analyzed data from the 1982-83 Consumer Expenditure Survey based on the assumption that expenditures are divided

The task of estimating the shares of household expenditures attributable to each member of a household has occupied economists for more than a century. As a result, there is a large volume of pertinent government and economic studies relating to the issue of the costs of rearing a child within a household. In this chapter, we summarize the best available evidence on this issue in connection with four more specific questions:

- What is the cost of rearing a child at subsistence level, meeting only the most basic requirements for nutrition, shelter, transportation and other necessities?
- What is the cost of rearing a child in households with incomes above the subsistence level?
- How does the cost of rearing a child differ as the number of children in a household increases?
- How does the cost of rearing a child change as the child becomes older?

Following the discussion of this evidence, we assess the implications of using data from two parent households to estimate child-related expenditures in single parent households and the effects of using such data for developing child support guidelines.

Minimum Standards for the Cost of Rearing Children

There are several sources of information on the minimum costs of rearing children at subsistence standards of living. The most prominent of these standards is the poverty income guideline, initially devised by the Social Security Administration and updated annually by the Department of Health and Human Services.

The original poverty income guideline was developed in the mid-1960's for the purpose of providing an objective measure of the number of persons living in sub-standard conditions. The poverty guideline is defined as an attempt to "...specify the minimum money income that could support an average family of given composition at the lowest level consistent with the standards of living prevailing in this country. It is based on the amount needed by families of different sizes and types to purchase a nutritionally adequate diet on the assumption that no more than a third of the family

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equally between adults and children. See William T. Terrill, "Child Expenditure Estimates for Child Support Guidelines", unpublished draft, December 1986.

income is used for food."[17] Table 1 shows the 1986 poverty guideline by family size, expressed in monthly dollar amounts. It also shows that the incremental cost of each child in the household, at a minimum subsistence level, is $157 per month.

Additional information on minimum costs of children can be obtained from figures on expenditures for children in a household living at a specified lower income standard, as prepared and updated through 1981 by the Bureau of Labor Statistics. Like the poverty guideline, the BLS lower budget level living standard uses a USDA low-cost food plan (comparable to the economy plan used for the poverty guideline) as the basis for determining the appropriate level of food expenditures for a low income household. For consumption categories other than food, however, construction of the lower level budget is more complex than the poverty guideline. In general, it is based on patterns of actual expenditures at lower income levels observed in the 1960-61 Survey of Consumer Expenditures (SCE).

Table 1

1986 U. S. POVERTY GUIDELINE

	Family Size (including adults)				
	1	2	3	4	5
Monthly $	447	603	760	917	1073
Incremental Amounts for Children			157	157	157

Source: Federal Register, Vol. 51, No. 28 (2/11/86), pp. 5105-5106.

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[17] Mollie Orshansky, "Measuring Poverty," The Social Welfare Forum, 1965.

The characteristics of the lower budget level living standard makes it potentially useful as a benchmark for a minimum, or subsistence, cost standard for a child. Because of its different methodology, the lower budget level amounts given for children are significantly higher than the poverty guideline. These amounts, expressed in 1981 dollars, can be derived from the BLS Urban Family Budgets in conjunction with the Revised Equivalence Scale (described in a subsequent section).[18] As shown in Table 2, the 1981 lower level budget amount for one child is estimated to be $188 per month, increasing to $350 per month for two children, and $513 per month for three children. These amounts differ from the poverty guideline in being higher (the poverty guideline was $140 per month per child in 1981) and in decreasing at the margin as the number of children increases.

Table 2

MINIMUM CHILD REARING COSTS BASED ON BLS LOWER LEVEL LIVING STANDARD
1981 Dollars

	Monthly	Annual
One Child	$188	$2,253
Two Children	$350	$4,198
Three Children	$513	$6,155

Sources: BLS, "Revised Equivalence Scale," Table 1.
BLS, "Autumn 1981 Urban Family Budgets," Table C.

Although the BLS figures have several positive features, they also have two serious drawbacks that preclude their routine use for child support formulas. First, the BLS lower level budget is limited to urban households and does not factor in the lower living costs of rural areas. Second, the BLS living standards are no longer updated, having received their last revision based on autumn 1981 figures.

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[18] Bureau of Labor Statistics, "Autumn 1981 Urban Family Budgets and Comparative Indexes for Selected Urban Areas", news release dated April 16, 1982, USDL 82-139. Also, Bureau of Labor Statistics, "Revised Equivalence Scale for Estimating Equivalent Incomes or Budget Costs by Family Type," U.S. Department of Labor, Bulletin No. 1570-2, November 1968.

For developing a child support guideline, then, the poverty guideline seems to be the most appropriate indicator of subsistence level support required for a child. Even though the BLS figures suggest that the poverty guideline may underestimate minimum child-rearing costs, the poverty guideline has the advantage of being widely recognized and regularly adjusted to account for the effects of inflation.

Economic Estimates of Child Rearing Expenditures Above Subsistence Levels of Income

Although a subsistence level standard for supporting children is a useful benchmark, child support guidelines must be applied to the preponderant number of households with incomes above the subsistence level. At these higher income levels, there is no absolute standard for the "cost" of rearing a child. Rather, economic studies are able to infer the "cost" of rearing a child at a given income level only by observing the actual expenditures allocated to a child in families with that income.

Economic studies based on observations of actual household expenditure patterns concur that the "costs" of rearing a child are inextricably dependent on the level of total household expenditures. As overall household spending increases, some of that additional spending is allocated to children as well as adults. Thus, it "costs" more to rear a child in a middle income household than in a poverty level household. Since economic estimates of "costs" are actually based on observed expenditure patterns, however, it is more accurate to refer to their findings in terms of "expenditures" on children rather than in terms of "costs".

Studies of Family Expenditure Patterns. There is a substantial body of economic literature on child rearing costs. Virtually all of these studies base their findings on detailed surveys of household expenditures. The relevant research includes numerous academic studies on this topic. It also includes findings from two federal agencies that have published estimates of expenditures on children.

Until recently, the latest available data source used for economic studies has been the 1961-62 Survey of Consumer Expenditures (SCE), administered by the federal Bureau of Labor Statistics and the U.S. Department of Agriculture. The survey, retitled Consumer Expenditure Survey (CES), was repeated in 1972-73. Because family composition and patterns of expenditures were changing rapidly in the period between the two consumer expenditure surveys, studies based on the 1972-73 CES are

of particular interest.[19] Fortuitously, five major studies of expenditures on children based on the 1972-73 CES were funded by the National Institutes for Child Health and Human Development.[20] These studies, all published within the past four years (except for one that is forthcoming), potentially provide a more accurate foundation for estimates of current family expenditures on children than those based on the earlier survey.

These five studies all address the difficult issue discussed above: they must establish a method for disentangling the child's portion of pooled household expenditures such as food, housing, and transportation. As with earlier economic research, these studies address this issue by using data from a detailed consumer expenditure survey to estimate patterns of household expenditures. These studies have had a common objective of estimating incremental expenditures of additional household members (particularly children) by comparing spending patterns of families with similar economic and occupational characteristics, but different household compositions. If two families can be determined to be equally well off economically, but one has more children and more income, then the additional income spent by that larger family can be deemed the

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[19] A more recent Consumer Expenditure Survey has been conducted by the Bureau of Labor Statistics in 1980-81 and subsequently repeated. See Consumer Expenditure Survey: Interview Survey, 1980-81, U.S. Department of Labor, Bureau of Labor Statistics, Bulletin 2225 (April 1985). Thus far, no studies on household expenditure patterns using a marginal cost methodology have been published using the newer data source. The above-cited study by William T. Terrill, "Child Expenditure Estimates for Child Support Guidelines", presents estimates of child expenditures based on the 1982-83 Consumer Expenditure Survey. However, these estimates are based on the simplifying assumption that a child incurs a proportionate share of household expenditures (e.g. one child incurs one third of expenditures in a one-child, two-adult household). Unlike the studies discussed using the 1972-73 Consumer Expenditure Survey, Terrill makes no attempt to estimate incremental expenditures on children.

[20] Jerome T. Bentley, et al., The Cost of Children: A Household Expenditures Approach, final report from Mathtech Inc. to the National Institute of Child Health and Human Development under Contract No. N01-HD-92823, October 1981; Thomas J. Espenshade, Investing in Children, op. cit.; Lawrence Olson, Costs of Children, (Lexington/D.C. Heath: Lexington, MA, 1983); Boone A. Turchi, Estimating the Cost of Children in the United States, final report to the National Institute of Child Health and Human Development under Contract No. N01-HD-92824, Carolina Population Center of the University of North Carolina, June 1983; Edward P. Lazear and Robert T. Michael, Allocation of Income Within the Household, Report to the National Institute of Child Health and Human Development (forthcoming).

incremental expenditure (and therefore the "cost") associated with those children. For example, if a family with annual expenditures of $20,000 and no children is equally well off as a family with annual expenditures of $30,000 and two children, then expenditures on those two children are estimated to be $10,000. Moreover, it follows that the children are estimated to account for one-third ($10,000 as a proportion of $30,000) of the household's expenditures.

Of these five studies, Thomas Espenshade's work seems to provide the most credible economic foundation for development of child support guidelines. Although the other four studies based on the 1972-73 CES share the same source of raw data, Espenshade uses the most traditional, straightforward, and apparently reliable methodology. Espenshade bases his estimates on a model which assumes that families spending the same proportion of their total expenditures on food at home are, on average, equally well off. This assumption, in turn, follows from a time-honored economic finding that the proportion of expenditures devoted to food decreases as income increases. Many previous studies have used this standard to develop estimates of household expenditure patterns. Development of the original federal poverty guideline rests on this standard, for example. Similarly, use of observed proportions of spending on food to establish economic comparability among disparate households also underlies development of the Revised Equivalence Scale by the Bureau of Labor Statistics.

In contrast, Olson, Turchi, and Lazear and Michael use the proportion of consumption allocated to adult goods as their indicators of economic well-being, with adult goods being defined in all three studies as the observed expenditures on adult clothing, tobacco, and alcohol combined. The food standard has the advantage of representing a larger, more stable fraction of household spending than do the adult goods categories, which tend to be more volatile. Moreover, there is evidence from other studies that reporting of adult goods tends to be unreliable, and particularly that there can be considerable under-reporting of expenditures on alcohol and tobacco. These considerations support use of the food standard as a more credible measure of equivalency. [21]

Another significant consideration reinforcing the plausibility of Espenshade's estimates is that they occupy the middle ground between those of Turchi and Olson, with Turchi's being substantially lower and Olson's substantially higher (results from Lazear and Michael have not yet been

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[21] The fifth study using the 1972-73 CES data, by Bentley et al. encountered several difficulties in estimation procedures that compromised the consistency and plausibility of their results. Although the study utilized an innovative approach to modeling household expenditures, the difficulties are sufficient for us to exclude this study from further discussion.

reported). The Espenshade figures are also in the same range as those developed earlier by USDA, which are discussed below. For all these reasons, as evidenced by the more detailed discussion that follows, we have used Espenshade's work as the primary reference for analysis of expenditures on children. However, a more detailed comparison between findings of the published studies based on the 1972-72 CES is shown in Appendix II.

In addition to the economic studies based on the 1972-73 CES, there are two governmental sources of data on child rearing that warrant review. The most widely known estimate has been produced and regularly updated by the Family Economics Research Group of the U. S. Department of Agriculture (USDA).[22] The USDA estimates for non-farm children are based on data from the 1960-61 Survey of Consumer Expenditures (SCE), a detailed national survey of family spending patterns in approximately 14,000 households. The USDA also prepares estimates for farm children based on its 1973 Farm Family Living Expenditure Survey. The original estimates based on these earlier studies have been periodically updated using Consumer Price Index (CPI) data. The USDA estimates are the most widely cited figures relating to expenditures on children. The USDA figures were used in part to develop the Washington State Uniform Child Support Guidelines and they provided the data for Eden's development of a proposed child support model.[23] They have also been used for the development of foster care reimbursement standards.[24]

Despite their widespread recognition, the USDA estimates have several deficiencies as the basis for development of child support guidelines. First, although regularly updated using the CPI, the USDA figures ultimately rely on a database (the 1960-61 SCE) that is now twenty-five years old. Although the 1972-73 Consumer Expenditure Survey used by Espenshade and others for their findings is older than would be desirable, there were significant changes in household composition and household expenditure patterns between those two surveys. As one example, the USDA notes that: "Most families whose expenditure patterns formed the basis of

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22 See, for example, Carolyn S. Edwards, USDA Estimates of the Cost of Raising a Child: A Guide to Their Use and Interpretation, U.S. Department of Agriculture, Misc. Pub. 1411, October 1981.

23 "Uniform Child Support Guidelines," Washington State Association of Superior Court Judges, July 1982. Philip Eden, Estimating Child and Spousal Support (Western Book Journal Press: San Mateo, CA, 1977).

24 Barbara H. Settles, et al. How to Measure the Cost of Foster Family Care, DHEW Publication No. (OHDS) 78-30126, 1978.

these estimates using the 1960-61 SCE had three or four children."[25] In contrast, there was an average of slightly more than two children in the 1972-73 CES. Given these changes, it is apparent that estimates based on newer data would give more reliable results than estimates based on an older source.

Second, the USDA figures are partially based on a proportionate shares approach of allocating household expenditures to children. Apportionment of food expenditures is based on USDA food plans, but housing, fuel and utilities, home furnishings, and transportation costs are all divided on a per capita share basis.[26] As discussed above, a per capita allocation is likely to distort estimates of child rearing costs. Espenshade (and other economists) use a marginal cost estimation methodology which provides a more appropriate measure of expenditures associated with children. In addition, a marginal cost approach is more suitable for determining child support amounts since it provides estimates of additional expenditures on children, relative to those made on behalf of adults.

Third, the USDA estimates do not differentiate by number of children in the household. Whereas Espenshade estimates expenditures separately for households with one, two, and three children, the USDA figures provide findings for the average expenditure level on a child across all households of all sizes. As discussed below, expenditure levels on children do vary considerably depending on the number of children in the family unit. The size-specific information provided by Espenshade's study is important in the development of guidelines for child support.

Another governmental source of data on child rearing expenditures was formerly compiled by the Bureau of Labor Statistics (BLS) of the U.S. Department of Labor. Until 1982, the BLS published urban family budgets at three levels of living for various family sizes. The BLS estimates represent the costs of three hypothetical lists of goods and services that were specified in the mid-1960's to portray three relative standards of living -- described as lower, intermediate, and higher. The standards relate to a precisely defined four person urban household with a 38 year old husband employed full time, a non-working wife, a boy of 13, and a girl of 8. The budgets were updated annually for urban areas by applying price changes for individual consumption categories. The BLS estimates differ from the USDA estimates in that they reflect the expenditures

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25 USDA Estimates of the Cost of Raising a Child, op. cit., p. 26.

26 USDA Estimates of the Cost of Raising a Child, op. cit., pp. 23-24.

required for a specified list of goods and services, rather than the spending patterns of actual families at specified cost levels.[27]

The BLS estimates share with the USDA figures their reliance on the older 1960-61 SCE data source. In addition, the BLS figures do not purport to be estimates of actual expenditure levels on children. Rather, as hypothetical budgets, they have interest as guides to spending patterns on children, but they do not seem to be suitable as a direct base for a child support guideline.

While Espenshade's study appears to be the single most credible source of economic data for development of child support guidelines, the USDA and BLS figures serve as useful corroborating evidence. For certain issues, they also serve as sources of supplementary data. The alternate economic studies based on the 1972-73 CES data can be used in a similar manner: to review the reasonableness of the Espenshade findings and to provide selected additional information in particular areas. In the remaining sections of this chapter, Espenshade's study is used as the primary reference, but other sources are used when needed to supplement or substantiate those findings.

Dollar expenditures on children. Most studies of expenditures on children begin with estimates of the dollar amount of such expenditures, usually classified by income or socioeconomic level. In Table 3, we show the findings on dollar expenditures from Espenshade, with estimates from USDA shown for comparison. Both estimates show average costs of raising children from birth through the eighteenth birthday and both are given in 1981 dollars.[28] Espenshade's figures are shown for households with one, two, and three children and for low, medium, and high socioeconomic status levels. These socioeconomic status levels correspond roughly to income levels, but are based primarily on the educational attainment of the household head.[29]

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[27] Bureau of Labor Statistics, "Autumn 1981 Urban Family Budgets," op. cit.; Bureau of Labor Statistics, "Revised Equivalence Scale," op. cit.

[28] The dollar figures shown are undiscounted. See Appendix II for a detailed comparison between these estimates and those of Turchi and Olson.

[29] Because socioeconomic status (SES) is based on education level of the household head, the SES categories encompass broad income ranges. Simulated income values shown in Espenshade's Table A-12 range from $7,285 to $15,224 for low SES households, $8,782 to $18,657 for middle SES households, and $9,389 to $28,911 for high SES households, depending on age of the family head and work status of the wife. These income levels represent actual dollar figures as reported in 1972 and 1973.

Table 3

ESTIMATES OF EXPENDITURES ON CHILDREN BIRTH TO EIGHTEENTH BIRTHDAY

(1981 Dollars)

	Low Socioeconomic Status	Middle Socioeconomic Status	High Socioeconomic Status
Espenshade			
One child	$ 96,600	$106,200	$126,300
Two children	$149,900	$164,800	$196,600
Three children	$187,900	$206,400	$246,400
Average Child (approximate)		$ 82,400	
USDA			
Average urban child		$ 80,400	

Sources:

Espenshade, Investing in Children, Table 3. Figures given are for a household with wife employed part-time for full year. For average child estimate, see p. 3.

U.S. Department of Agriculture, "Updated Estimates of the Cost of Raising a Child", Family Economics Review, (Winter 1982) pp. 30-31. Figures vary by geographic region - mean is calculated from regional estimates.

Espenshade's figures are based on two-parent households where the wife is employed part-time. The USDA estimates are given for an average urban child without regard to family size.

Espenshade's estimates range from $96,600 to $126,300 for expenditures on one child, from $149,900 to $196,600 for expenditures on two, and from $187,900 to $246,400 for expenditures on three. Espenshade notes that a reasonable approximation to an average per-child estimate, based on his figures, would be $82,400.[30]

Shown in Table 4 are the Espenshade and USDA estimates converted to monthly amounts and inflated to 1986 dollars using the Consumer Price Index. Espenshade's monthly expenditure estimates range from $535 to $701 for one child, from $831 to $1,000 for two children, and from $1,042 to $1,367 for three children. These estimates compare with the USDA average per-child estimate of $446 per month.

Although these estimates are not directly usable for a guideline, they can be used as a benchmark for the average level of child support orders, just as the poverty guideline can be used as a benchmark for a minimum level. For example, Espenshade's middle SES estimate for expenditures on two children (which he considers to be close to a national average) is estimated to be $914 per month. If parents are deemed responsible for child support in proportion to their income, obligors would be charged with slightly less than two-thirds (64 percent) of total responsibility for support, by one estimate.[31] On this basis, a reasonable benchmark for a child support order covering two children would be $585 per month. Comparable benchmarks would be $377 per month for one child and $733 per month for three children.[32]

Expenditures as a proportion of income. As noted above, economic studies suggest a strong relationship between income of the parents and expenditures on children. As might be expected, expenditures on children increase with increases in family income as parents use some of their discretionary income to enhance the childrens' standard of living.

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[30]Espenshade, Investing in Children, op. cit., p. 3.

[31] Derived from Child Support and Alimony: 1983, U.S. Bureau of the Census, Current Population Reports, Series P-23, No. 141 (1985). While the income of obligors is not known, the estimate is based on the mean annual income of all men: $18,110 in 1983. Mean annual income of women with children and an absent father was $10,226 prior to receipt of child support payments.

[32] In Chapter I, we compare Espenshade's estimates of average expenditures with statistics on actual orders.

Table 4

ESTIMATED MONTHLY EXPENDITURES ON CHILDREN BIRTH TO EIGHTEENTH BIRTHDAY

	Low Socioeconomic Status	Middle Socioeconomic Status	High Socioeconomic Status
Espenshade (1986 Dollars)			
One Child	$ 535	$ 589	$ 701
Two Children	$ 831	$. 914	$ 1,090
Three Children	$ 1,042	$ 1,145	$ 1,367
Average Child (approximate)		$ 457	
USDA			
(1986 Dollars)			
Average Urban Child		$ 446	

Sources:

Espenshade, Investing in Children, Table 3. Figures given are for a household with wife employed part-time for full year. Approximate average from p. 3.

U.S. Department of Agriculture, "Updated Estimates of the Cost of Raising a Child", Family Economics Review, (Winter 1982) pp. 30-31. Figures vary by geographic region - mean is calculated from regional estimates.

Espenshade finds that increases in expenditures on children appear to be proportionate with increases in family consumption. That is, expenditures on children seem to represent a relatively constant proportion of family current consumption expenditures through much of the income range. Espenshade estimates, for example, that expenditures on children as a fraction of total household current consumption varies by less than a percentage point between low, medium, and high socioeconomic status households. He estimates expenditures in a two-child household to be approximately 41 percent of total household consumption. Specifically, he finds that two-child expenditures are 40.4 percent in low SES households, 40.7 percent in medium SES households, and 41.3 percent in high SES households.[33]

A distinction must be made, however, between current consumption spending and household income. As income increases, total family current consumption declines as a proportion of net (after-tax) income because non-current consumption spending increases with the level of household income. Non-current consumption spending includes savings (broadly defined), gifts, contributions, and personal insurance.[34] Moreover, family current consumption declines even more as a proportion of gross (before tax) income because of the progressive federal and state income tax structure. Consequently, as household income increases, expenditures on children can be expected to decline as a proportion of family income even though such expenditures are virtually constant as a proportion of family current consumption.

Use of household current consumption spending as a base for estimating expenditures on children has been criticized with the argument that children "benefit" from household savings and that savings should therefore be included in the base. However, this argument fails to consider how altered savings patterns might be relevant to child support. There are three ways that family savings might subsequently benefit children: (1) parents might save money when the children are younger (for example, under six) and spend the money when they are older (e.g. teenagers); (2) parents might save money for college expenses; and (3) parents might save money on children's behalf for later distribution, such as when the parents die.

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[33] Espenshade, Investing in Children, op. cit., Table 20.

[34] Also included are credit or installment payments on goods already acquired. But interest payments are not included. The costs of goods bought on credit are included at their full purchase price. Spending on mortgage principal is classified as savings because it accumulates and increases the household's net worth.

To the extent parents save when children are younger and spend that amount when the children are older, the subsequent spending would be identified and included in Espenshade's analysis. It would show up as a higher rate of spending relative to family income for older children. Thus, in the first possibility, savings are not ignored to the extent they are converted into spending on behalf of children prior to their eighteenth birthday.

Savings for college expenses would not be identified using this methodology, but this omission should not affect determination of the appropriate amount of child support. In many states, parents are obligated under statute or case law to contribute to college expenses of the children. Such an obligation is usually ordered if justified by the educational background of the parents and/or the academic potential of the children. Payment of college expenses is a separate obligation from payment of child support for minor children, however. In states where such payment can be ordered, it is made in addition to child support payments made up to the age of eighteen. Thus, given that the analysis of expenditures on children is primarily relevant to the determination of child support amounts for minor children, the absence of a savings component relating to college expenses is not a deficiency.

Savings on behalf of the children for later distribution (past the attainment of the age of majority) are not relevant to determination of expenditure patterns on minor children. Only to the degree that expenditures are made on behalf of children when they are minors are such expenditures relevant to child support.

It can be seen from this discussion that use of current consumption as the base of household spending used to estimate expenditures on children is appropriate for this analysis. Expenditures on children under eighteen financed by earlier savings would be identified in Espenshade's analysis. The children may benefit from savings when they are minors to the extent that savings are used in part for college education, but this is an issue that receives separate treatment in states that mandate an obligation for higher education support. To the extent that children benefit from savings after they become adults, such savings are not an appropriate category for consideration in determining expenditure patterns relevant to provision of child support.

The following analyses, then, are consistent with the traditional economic approach of focusing on household current consumption spending in estimating expenditures on children. The concept of current consumption used by Espenshade is consistent with the base of household expenditures used in other studies such as the BLS family budget series, the USDA study, and the published studies based on the 1972-73 Consumer Expenditure Survey.

Espenshade reports findings on child-rearing expenditures as a proportion of gross income. He estimates, for example, that expenditures on two children vary from 34.8 percent of gross income for low SES households, to 29.9 percent in medium SES households, and 23.2 percent in high SES households.[35] The applicability of these estimates for child support guidelines is limited, since -- as noted above -- the SES categories do not directly correspond to income categories. However, child-rearing expenditures as a proportion of both gross and net income can be derived by applying Espenshade's findings on proportions of consumption to data reported directly in the 1972-73 Consumer Expenditure Survey (CES).

From the 1972-73 CES data, we can determine current household consumption as a proportion of either gross or net income at various income ranges. Using Espenshade's estimates of child-rearing expenditures as a proportion of current household consumption, we can directly calculate an estimate of child-rearing expenditures as a proportion of gross or net household income. This calculation simply multiplies Espenshade's estimated proportions by the ratios of current household consumption to income at the various income levels. This calculation provides us with estimates of child-rearing expenditures as a proportion of gross or net income for 1972-73 family income levels.

The results of this series of calculations, estimates of child-rearing expenditures as proportions of gross and net income, are shown in Tables 5 and 6, respectively.[36] These estimates have been adjusted to the most recently reported (1984) national income distribution by mapping the 1972-73 income levels onto 1984 income levels. This adjustment is based on the presumption that a household's rate of consumption depends on its place in the income distribution. The estimates have been further updated to 1986 levels by means of a CPI adjustment.

As shown in Tables 5 and 6, average expenditures on children decline as income increases. Table 5 shows that expenditures for one child decrease from 26.0 percent of gross income at low income levels to 15.2 percent of gross income at high income levels. Similarly, expenditures for two children decrease from 40.4 percent at low income levels to 23.5 percent at high income levels. As should be expected, the declines are somewhat smaller for net income. Table 6 shows that expenditures for one child decrease from 26 percent at low income levels to 19.2 percent at high income levels. Expenditures for two children decrease from 40.4 percent at low income levels to 29.7 percent at high income levels. These decreases reflect the declining levels of current consumption as a

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35 Espenshade, Investing in Children, op. cit., Table 20.

36 A technical explanation of the derivation of these tables is provided in Appendix I.

Table 5

PROPORTION OF GROSS INCOME SPENT ON CHILDREN BY INCOME LEVEL
(1986 Dollars)

	0-5,975	5,976-11,800	11,801-19,925	19,926-34,350	34,351-49,025	49,026-64,250	Over 64,250
One Child	26.0	26.0	21.7	19.6	18.6	17.6	15.2
Two Children	40.4	40.4	33.7	30.4	28.9	27.3	23.5
Three Children	50.6	50.6	42.2	38.0	36.2	34.1	29.5

Sources: Figures were derived from Espenshade, Investing in Children, Tables 20 and A12; 1972-73 Consumer Expenditure Survey, Table 5; and Current Population Reports, "Money Income of Households, Families and Persons in the United States: 1984," Series P-60, No. 151 (Table 18).

Table 6

PROPORTION OF NET INCOME SPENT ON CHILDREN BY INCOME LEVEL
(1986 Dollars)

	0-5,600	5,600-10,650	10,651-16,725	16,726-28,200	28,201-39,975	39,976-51,875	Over 51,875
One Child	26.0	26.0	25.6	23.8	22.9	21.8	19.2
Two Children	40.4	40.4	39.8	36.9	35.5	33.9	29.7
Three Children	50.6	50.6	49.8	46.2	44.5	42.4	37.2

Sources: See Table 5. Derivation of net income from gross income is based on average FICA, federal and state income tax rates in effect during 1972 and 1973.

proportion of income. For the gross income estimates, the estimates also reflect the impact of the progressive federal and state income tax systems.

These estimates suggest that expenditures on children can be validly described as proportions of household income, although the proportions expended on children decrease as income rises. These findings are particularly relevant to the development of child support guidelines because they provide guidance concerning the average levels of expenditures across a broad spectrum of household income.

Expenditures by Number of Children

An important issue for development of child support formulas is the extent to which expenditures on children vary by number of children in the family. The precise question to be addressed is: with constant income, how is the proportion of household income allocated to children affected by the addition of successive children? Evidence on this issue can be derived from Espenshade. Additional evidence is provided by data from the Bureau of Labor Statistics' (BLS) Revised Equivalence Scale.[37] Corroborating data can be obtained from the Poverty Guideline and USDA findings.

The BLS Revised Equivalence Scale (RES) is a widely used measure of equivalent levels of expenditure by family size. An equivalence scale estimates the relative levels of spending required to maintain families of different size and composition at equal levels of economic well-being. From an equivalence scale, the effect of increasing numbers of children on family consumption can be calculated. The derivation of an equivalence scale can be understood by reviewing the development of the Revised Equivalence Scale.

The RES is based on an analysis of household expenditures in the 1960-61 Survey of Consumer Expenditures. The measure used to determine equivalent income in the RES is the proportion of after tax income spent on food. The RES is based on the assumption that families spending an equal proportion of income on food have attained an equivalent level of total consumption. As noted in the BLS description of the RES:

> Formulation of the equations used for the ... BLS equivalence scales was preceded by extensive research showing that essentially the same form of relationship between food expenditures and income was observed in eight major consumer expenditure

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[37]Bureau of Labor Statistics Revised Equivalence Scale for Estimating Equivalent Incomes or Budget Costs by Family Type, U.S. Department of Labor, Bulletin No. 1570-2 (November 1968).

surveys conducted by the BLS between 1888 and 1950. Before adopting the 1950 method for the present revision, similar research on the income elasticity of food expenditures was conducted with data from the Survey of Consumer Expenditures, 1960-61.[38]

By comparing families of different size and income levels spending the same proportion of their incomes on food, the BLS estimated the additional income needed to support additional family members.

Based on this research, the BLS constructed the Revised Equivalence Scale. Starting with estimated expenditures for the prototypical four person household described above, the scale can be used to estimate equivalent expenditures for urban families of different sizes (one to six persons), different ages of household heads and children, and various combinations of household size and age groupings. According to the Revised Equivalence Scale, then, a household with a husband between the ages of 35-54 and a wife is estimated to expend 60 percent as much for consumption to maintain an equivalent standard of living as a household with a husband between the ages of 35-54, a wife, and two children, of which the oldest is between the ages of six and fifteen. This implies further, by means of a simple arithmetic calculation, that the proportion of household income devoted to two children is 40 percent.

In Table 7 are shown estimated expenditures on children as a proportion of household consumption as reported in Espenshade and as calculated from the BLS Revised Equivalence Scale and the poverty guideline. Espenshade provides figures only through three children. As can be seen, however, his estimates for the proportion of household spending on one, two, and three children are quite close to the BLS estimates (26.2 versus 26.5 for one child, 40.7 versus 39.0 for two children, and 51.0 versus 47.1 for three children). The poverty guideline figures are derived by calculating the proportion of each child's requirements to the total requirements for the household. Estimates based on the poverty guideline vary more, for reasons we discuss below.

The figures in Table 8 are derived from Table 7 and show the marginal increases in the proportion of household expenditures allocated to successive children. Thus, based on Espenshade's findings, a household spends 1.55 as much on two children as on one, and 1.25 times as much on three as on two. Projecting higher, the BLS Equivalence Scale implies that a household spends 1.13 times as much on four children as on three.

These figures seem to imply that there are substantial economies of scale associated with children, that it "costs" only slightly more than half

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[38] Ibid., p.1.

Table 7

ESTIMATED EXPENDITURES ON CHILDREN AS A PROPORTION OF HOUSEHOLD CONSUMPTION

	Number of Children			
	1	2	3	4
Espenshade	26.2	40.7	51.0	
BLS Revised Equivalence Scale	26.5	39.0	47.1	53.1
Poverty Guideline	20.3	33.8	43.4	50.5

Sources:

Espenshade, Investing in Children, Tables 3 and 20.
BLS, Revised Equivalence Scale, Table 1.
Federal Register, Vol. 51, No. 28 (2/11/86), pp. 5105-5106.

Table 8

MARGINAL INCREMENTS IN PROPORTION OF HOUSEHOLD EXPENDITURES ALLOCATED TO SUCCESSIVE CHILDREN

Proportion of Expenditures Relative to Spending for Previous Number of Children

	Number of Children			
	1	2	3	4
Espenshade	1.00	1.55	1.25	NA
BLS Revised Equivalence Scale	1.00	1.49	1.21	1.13
Poverty Guideline	1.00	1.67	1.28	1.16

Source: Calculated from Table 7.

(55 percent by Espenshade's estimates) as much to raise the second child relative to the first. Although there are economies of scale, these do not explain the large drop in the marginal proportion of spending allocated to successive children. Rather, these figures suggest that the addition of children to a household brings about a reallocation of spending in two ways. First, some income that would otherwise be spent on the adults is redistributed to the children. Second, less is spent on all other children in the household as a result of a child being added. To explain most simply, if total household income is compared to a fixed pie, then some of the pieces must get smaller as an additional piece is cut from the whole. These figures imply that all additional pieces get smaller (for adults and previous children alike) as one is cut for another child.

To illustrate, Espenshade estimates that spending on a second child evidences only limited economies of scale relative to the first child within the same household (a reduction of about six percent).[39] As shown in Table 8, however, he also estimates that a household spends only 55 percent more on two children than on one. This does not mean that marginal spending on the second child is only 55 percent of the spending on the first. Rather, these findings imply that spending on the first child is reduced as the second is added. The total amount spent on two children is 55 percent more (and the amount spent on adults is commensurately less), but the amount spent on each child is only 75 to 80 percent of spending on one alone.

These data are relevant to the development of child support guidelines because they provide evidence on the proper ratios to use in determining child support for varying numbers of children. But these data are also significant for the determination of child support orders on a case-by-case basis. It is common practice for courts to establish child support orders on a per-child basis, with equal amounts being allocated to each child. When the number of children due child support decreases, as when a child reaches the age of majority, child support is frequently reduced on a pro-rata basis. Based on these findings, such per-capita reductions are excessive and may deprive remaining children of sufficient support. As can be calculated from Table 8, for example, expenditures on one child represent 65 percent of spending on two children (1.0 divided by 1.55). Thus, if child support were reduced by 50 percent, the remaining child in that situation would receive considerably less than it would have been expected to receive following the departure of a child in an intact household.

Though most of the marginal reduction in household expenditures with successive children results from a reduction in per-child spending, there are some limited economies of scale. These result from two factors: (1) some

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39 Espenshade, Investing in Children, op. cit., pp. 28-30.

goods, such as food, are proportionately less expensive in quantity; and (2) housing space, household goods, and certain other goods and services can be at least partially shared by multiple family members. As noted above, Espenshade estimates that economies of scale result in a six percent expenditure reduction for the second child relative to the first. Additional evidence is provided by USDA research. Although the regular updates of the USDA estimates of household expenditures do not address the variation in expenditures by family size, an earlier USDA special study did review the issue. Based on this study, the USDA estimates that per-child expenditures for three children or four children decline by seven to twelve percent relative to two children, and by an additional four or five percent for five children.

The USDA study notes that food costs decrease less than other costs when family size increases:

> Requirements increase in almost direct ratio to the number of children, although there are some savings in buying and cooking for a large family.... Housing and transportation costs show the greatest decreases when family size increases. Much space is used in common and many trips of the automobile serve more than one child. In these categories costs per child in a five-child family may be as much as a third less than in a two-child family.[40]

The incremental per-child figures shown in Tables 7 and 8 for the poverty guideline differ somewhat from those shown for Espenshade and the Revised Equivalence Scale. As shown in Table 1, the poverty guideline is based on a constant dollar amount for each child, which implies a constant marginal dollar cost for subsequent children. This variance results from the derivation and intended application of the poverty guideline, which represents the estimated cost of raising children at a subsistence level rather than across a broad income range.

The poverty guideline is constructed by multiplying by three the amount deemed necessary for subsistence food costs for a low-income household, as calculated in USDA's Economy Food Budget. The economy food budget itself is based on a combination of professionally defined nutritional requirements and observations of food consumption patterns. Since the poverty guideline ultimately flows from a specifically defined quantity of food, it is not surprising that its underlying equivalence scale implies a constant marginal dollar cost for additional children. It suggests that at subsistence levels there is little or no ability to reallocate expenditures from other household members to a new child. By definition at the

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[40] Jean L. Pennock, "Child-Rearing Costs at Two Levels of Living, By Family Size", Family Economics Review (December 1970), p. 18.

poverty level, there is only enough income to support each family member at the most basic levels. Thus, there is no "surplus" that can be given to a new member without driving the entire household below that basic standard.

Expenditures by Age of Children

Espenshade and USDA provide information on variation in expenditures by age of the child. In Table 9 are shown estimates of expenditures on children by three age groupings. For each grouping, Espenshade shows a steadily increasing level of expenditures. The 0-5 age group accounts for 25.6 percent of the expenditures, compared with 36.2 percent for the 6-11 group and 38.2 percent for the 12-17 group. The USDA estimates are quite close to Espenshade for the oldest age group, but are higher for the youngest (as a proportion of the total) and are lower for the middle group. Espenshade's relatively higher estimates for the 6-11 group also diverge somewhat from other estimates based on the 1972-73 Consumer Expenditure Survey. Turchi estimates that expenditures for the 6-11 group are actually lower than for the 0-5 group and only slightly more than half of expenditures for the 12-17 category. Olson estimates that expenditures for children aged 6-11 are higher than for younger children, but only slightly, and that they are barely more than half of expenditures for older children.[41]

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[41] Turchi, Estimating the Cost of Children in the United States, op. cit., Table 29; also, Olson, Costs of Children, op. cit., Table 4-1.

Table 9

ESTIMATED EXPENDITURES ON CHILDREN BY AGE GROUP
Estimated Costs And Percent Of Total

	Espenshade 1981 Dollars		USDA 1980 Dollars	
Age of Child	Dollars	Percent	Dollars	Percent
0 - 5	$21,094	25.6	$20,285	29.3
6 - 11	29,829	36.2	22,564	32.6
12 - 17	31,477	38.2	26,383	38.1
Increase for 12 - 17 Age Group (Relative to 0 - 11)	23.6%		23.1%	

Sources: Espenshade, Investing in Children, pp. 30 - 31.
USDA, "Updated Estimates of the Costs of Raising a Child," Table 8.

Taken together, the evidence on the pattern of expenditures for children under age 12 is somewhat inconclusive. All studies suggest, however, that spending on teenagers (children aged 12 and over) is considerably higher than spending on younger children. This result is intuitively appealing given the obviously higher expenses associated with older children for more food, higher cost clothing, and more transportation. Also in Table 9 is shown the estimated average percent increment in expenditures for children in the 12-17 age category relative to younger children. This increment was calculated for the two data sources by dividing the average estimated expenditure for children aged 12-17 by the average estimated expenditure for children aged 0-11. As shown in the table, Espenshade's findings imply a 23.6 percent "premium" for older children, while USDA's estimates imply a 23.1 percent "premium". These estimates are quite close and suggest that average expenditures on children in their teenage years are almost one-fourth higher than expenditures on younger children.

Use Of Intact Family Spending Patterns To Determine Child Support Payable To Single-Parent Households

The data in this chapter relate to child rearing expenditures in two parent households. By implication, these data are considered relevant to the determination of appropriate child support amounts for single parent households. There is, unfortunately, a dearth of data concerning expenditure patterns in single-parent households. Espenshade publishes no

estimates of child rearing expenditures for single parent families. There are no current and credible alternative sources of information on single parent household expenditure patterns. Notwithstanding this deficiency, a careful analysis using older BLS data demonstrates that use of estimates from intact households is a conservative assumption from the child's point of view. Thus, use of such data for development of child support awards would result in higher awards than if support were based on spending estimates from single parent households.

When the parents of a child either separate or do not form a household (in the case of an out-of-wedlock birth), the living expenses incurred for the two households are higher than if the parents lived together. The consequence of a family split, then, is a reduction in the overall standard of living, assuming income is constant. One of the only data sources available to estimate the magnitude and distribution of this reduction is the Bureau of Labor Statistics' Revised Equivalence Scale. Although somewhat dated, the BLS source is sufficient to provide a reasonable approximation for purposes of this discussion.

As can be calculated from the Revised Equivalence Scale, a three person household that splits into separate one-person and two-person households incurs an overall living standard decline of seventeen percent. Similarly, a four-person household that splits into one-person and three-person households experiences an aggregate living standard decline of fifteen percent.[42] These estimates do not address the issue that the overall drop in living standard is often distributed inequitably across the two households. (In fact, the noncustodial unit frequently experiences an increase in living standard while the custodial unit usually experiences a sharp decrease.) Moreover, it is likely that the Revised Equivalence Scale may understate the impact of household dissolutions on living standards of the separate units.[43]

The drop in living standards comes about because it costs more to maintain two separate household units than a single unit at the same living standard. From the BLS equivalence figures, however, it is apparent that many of the additional costs are incurred on behalf of the two adults. Given a fixed pie, namely the combined income of the adults, the children's

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[42] Revised Equivalence Scale for Estimating Equivalent Incomes or Budget Costs By Family Type. op. cit., Table A-1.

[43] The Revised Equivalence Scale is primarily based on the 1960-61 Survey of Consumer Expenditures, yet housing and transportation expenses have risen sharply since 1960-61. Since these costs are the most significant categories affected by family dissolution or non-formation, the Revised Equivalence Scale likely underestimates the cost increase associated with household splits.

share of that pie decreases. We can calculate, from the BLS equivalence data, that one child's estimated share of spending in a two adult household is 26.5 percent. But, if the household splits into two units, the child's share of the two adults' combined spending drops to 21.6 percent. Similarly, as is shown in Table 10, the derived estimate of two children's share of total household expenditures in an intact household is 39.0 percent. If the household splits, however, the children's share of combined parental expenditures drops to 34.0 percent.

These figures indicate that child support calculated based on spending patterns in the intact household would provide higher child support levels than child support calculated based on spending patterns in single parent households. For example, assume that the obligor has $2,000 in monthly income and the obligee has $1,000 in monthly income, for a total of $3,000. If child support is pro-rated based on parental income, and if it is based on 39 percent of total income using the BLS estimate for the spending proportion in an intact household, the obligor owes $780 per month in child support (39 percent times $3,000 = $1,170; two-thirds of $1,170 = $780). By comparison, if child support is based on the spending proportion in a split household situation, the obligor owes $680, or $100 less than the amount computed on the basis of an intact household (34.0 percent times $3,000 = $1,020; two-thirds of $1,020 = $680).

In addition, although proportionate shares of spending on children are higher in single-parent households, basing the child support on intact family percentages would nevertheless provide sufficient resources to accommodate those higher proportions. To return to the example of two children, we have calculated above that the children's proportionate share of spending in an intact household is 39 percent, based on the BLS figures. From the BLS scale, we can also derive the estimate that spending on two children accounts for 50.6 percent of income in a single parent household. With the example described above, if child support obligations for both parents are determined based on the intact family percentage, then total resources available to support the children are the obligor's payment of $780 and the obligee's calculated obligation of $390, for a total of $1,170 (39 percent times combined income of $3,000). With the child support payment, the obligee's total income is $1,780 ($1,000 plus $780). The children's resources, determined based on intact family spending patterns, thus account for 65.7 percent of the obligee's total income (including child support), which is higher than the 50.6 percent estimate of spending on two children in a single parent household.

This analysis suggests that the absence of credible data on spending patterns in single parent households is unfortunate, but does not preclude use of economic data for developing guidelines. Rather, use of data from two parent households provides a conservative (higher) estimate of child rearing expenditures for a given level of combined parental income than if data from single parent families were used. If usable data on household

Table 10

EFFECTS OF HOUSEHOLD SPLIT ESTIMATED FROM BLS DATA

Percentage Shares of Total Spending
(Assumes Unchanged Income)

	Each Family Member's Share	
	Intact Household	Split Household[1]
Adult A	30.5	33.0
Adult B	30.5	33.0
Adult Total	61.0	66.0
Child A	19.5	17.0
Child B	19.5	17.0
Children Total	39.0	34.0

[1] Adult A living alone; Adult B with both children.

expenditures patterns were available from single parent households, such data would provide evidence on spending shifts relative to a two parent structure. However, the utility of such data as the basis for setting child support amounts would be severely limited by another factor. Spending levels on children in single parent families are constrained by the inadequate levels of single parent income, due in part to historically low levels of child support (as discussed in Chapter I). If child support awards to single parent families were based on currently observed spending patterns, awards would be artificially depressed relative to awards determined on the basis of child-related expenditures observed in two parent households.

CHAPTER III
FACTORS TO BE CONSIDERED IN THE DEVELOPMENT OF GUIDELINES

The effects of child support guidelines on obligors, obligees, and their children are determined in part by the treatment of certain key factors. Developing guidelines to account adequately for these factors can extend their equitable applicability to a wider range of situations than would otherwise be possible. In this chapter, we review the treatment of income, imputed income, custodial parent income, child's age, child care expenses, support obligations for other dependents, income of current spouse, custody arrangements, obligor living allowance, medical costs, and geographic variation. For each factor, we consider options for treatment under child support guidelines. In Chapter V, we discuss how these factors are considered under current and proposed child support guidelines. A summary of these factors is shown in Table II.

Income Base

The first factor to be considered in the development of guidelines is specification of an income base: gross (before tax) income or net (after tax) income. The primary justification for using net income is that it is considered to represent ability to pay more closely since it constitutes the amount of income available to the obligor for payment of personal obligations and living expenses. By this argument, two persons with the same net income can be considered to have the same number of dollars available to divide between personal consumption and child support. In contrast, two persons with the same gross income could have different levels of discretionary income available because of different tax deductions and mandatory payroll withholdings. Another reason for using net income as the starting point is that, in some jurisdictions, such as New York State, the existence of different levels of local income taxes would introduce differences in the relative incidence of a given child support award level for obligors with the same gross incomes.

Selection of gross income as the starting point for a guideline, however, greatly simplifies its application. Use of gross income substantially reduces the need for computations (and potential for error) by court personnel, attorneys, and parties and can be applied even if available information is limited. This simplicity is a strong argument for use of gross income as a base for a formula.

Moreover, it is questionable whether the use of net income is in fact more equitable than gross income. If two persons have different net incomes but the same gross, that difference must arise from one of two factors. Either one person has more tax deductions than the other or

Table 11
SUMMARY OF FACTORS TO BE CONSIDERED IN THE DEVELOPMENT OF FORMULAS

- Income Base. Gross income versus net income.
- Specification of Gross Income. Types of income included; income from self-employment or business income; deviations from IRS definitions; income from assets; non-performing assets.
- Specification of Net Income. Allowable number of exemptions; pension deductions; garnishments/wage withholdings; medical insurance deductions; life insurance deductions.
- Attributed Income. Criteria for imputing income to underemployed or unemployed obligor.
- Custodial Parent Income. Whether custodial parent income is considered in determining the non-custodial parent's obligation.
- Day Care Expenses. Effect of child care costs incurred by custodial parent(s): include in base amount or treat separately?
- Other Natural/Adopted Children. Impact of other natural or adopted children living in the same household as the obligor; also, treatment of pre-existing child support orders for other dependents of the obligor.
- Income of Current Spouse. Effect of income received by current spouse of obligor or obligee on amount payable by obligor.
- Custody and Visitation Arrangements. Effects of shared physical custody, extended visitation, and split custody on levels of child support.
- Obligor Self-Support Reserve. Provision for a minimum subsistence level reserve for the obligor below which child support is not assessed, or is assessed at minimal levels.
- Medical Expenses. Effect of medical insurance premiums and other medical expenses: include estimated average in base amount or treat separately?
- Geographic Variation. Effect of intra-state cost of living differentials on determination of child support, particularly for any formulas incorporating fixed dollar amounts.

one has a mandatory payroll deduction, such as retirement, that the other does not. In the first instance, a person with more deductions (e.g. because of home ownership or more dependents) would have a higher net income and would, therefore, pay more child support. States may consider it unreasonable to require someone to pay more child support simply because they have more tax deductions. Such a result may contradict the notion that use of net income is more equitable than use of gross income.

Another difference can arise because of different mandatory payroll deductions. Other than income and social security taxes, which can be taken into account in developing guidelines on a base of gross income, the largest mandatory deduction is usually a retirement contribution. Allowance for this type of deduction can create another inequity with net income based guidelines. If two obligors have the same gross income, but one has a mandatory retirement deduction while the other works for an employer with no pension plan, the second pays more child support. This results from the second obligor's larger net income even though that person has to make separate provision for retirement income. This also seems to be an inequitable result for the obligor with lesser deductions. Despite initial expectations, then, it appears that gross income may be generally more equitable than net income as a starting point for application of a guideline.

An additional issue raised by use of gross income, however, is that if a formula allocates a constant percentage of gross income to child support, as does the Wisconsin Percentage of Income Standard, the progressiveness of the federal and state income tax systems causes the percentage of net income paid as child support to increase at higher income levels.[44] States wishing to use gross income as the base for a formula should therefore consider reducing the percentages applied to gross income as obligor income increases. Such reductions, as incorporated into the Income Shares model for example, are consistent with the economic evidence on decreasing proportions of household income allocated to children at higher income levels, as discussed in Chapter II.

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[44] The child support guidelines referenced in this chapter, including the Wisconsin Percentage of Income Standard, are all described in Chapter IV. The relationship between gross income, as used in the Wisconsin formula, and net income of the obligor, is analyzed in Chapter V. As shown in that analysis, the Wisconsin percentage of income formula allocates an increasing proportion of obligor net income to child support as obligor income increases, even though the child support is set as a constant percentage of gross income.

Specification of Gross Income

Whether gross or net income is used as the base, the starting point for calculating child support is the determination of gross income. Gross income should include all available income, even from non-earned sources. Gross income can include interest, dividends, profit from a business, alimony, and payments from non-means-tested government programs.[45] Payments are generally excluded if received from means-tested welfare programs such as Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), and Food Stamps. Income from such programs is "last resort" income intended to provide a minimum floor for support of the recipients. Other income received, including child support, either reduces the level of such payments (as with Food Stamps) or is used to reimburse the agency for payment of the benefits (as with AFDC). In either case, it is inappropriate to count such income for child support.

In some situations, obligors possess non-performing assets, primarily vacation homes or idle land, which could yield a significant income stream if the assets were sold and the proceeds re-invested. In such cases, the child is entitled to benefit from the potential income stream represented by the non-performing assets. Consequently, for all non-performing assets other than a primary residence or personal property of the obligor, earnings should be imputed at current market interest rates (e.g. Treasury bill yields).

For obligors with income from self-employment, a partnership, or a closely held business, gross income should be defined as business income net of allowable business expenses. This is a comparable starting point as for obligors with income from wages or salaries since personal taxes are paid on business income after deducting actual business expenses. However, the definition of allowable business expenses for child support purposes should be more restrictive than the IRS definition. In particular, investment credits, allowances for the accelerated component of depreciation, and entertainment expenses should be disallowed in determining child support. Courts and IV-D agencies should be given broad discretion to disallow other business expenses as well.

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[45] The Colorado Child Support Guideline has the following definition of gross income: " 'Gross Income' includes income from any sources, and includes, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workmen's compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and alimony received." Colorado Revised Statutes, Section 14-10-115 (7)(I)(A).

A particular problem exists for obligors who are in a position to receive benefits (e.g. reimbursed meals or a company car) through their employment or the operation of a business, since those benefits effectively constitute additional income. In determining gross income, such in-kind income should also be included in the calculation if it is significant and reduces personal living expenses.

Sources of gross income should be verified through pay stubs, business receipts, 1040 forms, interest or dividend statements, and other appropriate documentation. It is advisable to review income statements from at least the most recent month in addition to tax returns from the most recent year to obtain a complete accounting of income.

Specification of Net Income

For formulas starting from a net income base, net income should be carefully specified. Net income is most commonly defined as gross income minus mandatory payroll deductions and deductions for medical insurance covering the child. Mandatory deductions typically include:

(1) Payroll taxes, as adjusted to reflect the maximum number of allowable exemptions;

(2) Payments required as a condition of employment, such as union dues or mandatory pension plans;

(3) Deductions required under a wage withholding order for pre-existing child support obligations; and

(4) Deductions for medical insurance which provides a direct benefit to the child for whom support is being sought.

Other items which reduce take-home pay and do not represent mandatory deductions must be included in net income. Examples include excessive tax withholding, credit union payments, and contributions to voluntary pension plans. Deductions from gross income should be verified with pay stubs, or other appropriate documentation.

Attributed Income

Several state statutes and a number of court decisions provide that earnings capacity, as well as actual earnings, should be taken into account

in setting child support.[46] In general, voluntary unemployment is not considered an adequate reason to be excused from the obligation to make child support payments.

One method for imputing net income is currently used by the Delaware Family Court. In cases where a parent is not employed, the Court inquires into the reason for the lack of work. The test for imputing income is as follows:

> A parent will be excused from making a financial contribution only if he or she is physically or mentally incapacitated or is caring for a very young child for whom the parents owe a joint legal responsibility. Thus, where a parent is caring for a young child of a relationship other than that between the parents in question, the obligation to secure employment will generally not be waived.[47]

Where the lack of employment is considered to be voluntary, one of two approaches can be used to impute income. The first alternative is to determine employment potential and probable earnings level based on the obligor's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. This approach is most useful when the obligor has a relatively stable and recent work history. The approach can also be used, however, when a parent has minimal skills and no work history by ascribing earnings based on a minimum wage for a full work week.

A second approach can be used where a parent is remarried or living with another person in a relationship akin to husband and wife. In such a situation, up to fifty percent of the net household income can be attributed to the non-working parent. This approach can be justified on the grounds that the income of the current spouse makes it possible for the parent to be unemployed and that the parent is providing household services to the current spouse. Accordingly, as the new spouse (or cohabitee) has assumed responsibility for the support of the parent, that obligation must extend to meeting the parent's child support responsibility as well as his or her other basic living expenses.

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[46] Williams and Campbell, Review of Literature and Statutory Provisions, op. cit., pp. 25 and 26. Also, see Barton L. Gebhart, "Family Law -- Child Support Modification -- Voluntary Reduction in Income Held Inadequate Reason to Deny Child Support Modification Absent Bad Faith," Wayne L.R. 25 (1979): 951.

[47] The Delaware Child Support Formula: Study and Evaluation. Report to the 132nd General Assembly, Family Court of the State of Delaware, April 1984, pp. 4-5.

Custodial Parent Income

A basic design issue in developing guidelines relates to the treatment of custodial parent income. Some guidelines, such as the Wisconsin Percentage of Income Standard, do not count custodial parent income. Other approaches, such as the Income Shares model and the Delaware Melson Formula, incorporate custodial parent income into the determination of the non-custodial parent's obligation.

There are three policy issues that relate to treatment of custodial parent income. First, states differ in their perceptions of the need to count custodial parent income to emphasize both parents' obligation to support the children. In virtually all states, a legal duty exists for both parents to support the children. Indeed, some commentators have taken the position that a joint parental duty to support seems to be constitutionally mandated.[48] If custodial parent income is not counted in the guideline, it gives the appearance that the support obligation is borne only by the non-custodial parent. At minimum, inclusion of custodial parent income in the guideline can have strong symbolic value and ameliorate non-custodial parent resistance to payment of child support. In addition, in some states, it may be necessary for a guideline to include an explicit treatment of custodial parent income for consistency with prevailing interpretations of state law requiring a joint parental duty of support.

Second, there exists disagreement concerning the proper interpretation of economic evidence on child-related expenditures as it affects treatment of custodial parent income. As discussed in Chapter II, expenditures on children increase with parental income. Further, based on our review of the best available economic evidence, we have concluded that the proportion of parental income expended on children declines as income increases. Given this conclusion, the addition of custodial parent income to a non-custodial parent's income would lower the percentage of income that each parent is considered to allocate to the children. It would be consistent with this conclusion, then, to build consideration of custodial parent income into the guideline.

An alternate interpretation of economic evidence underlies the rationale for the Wisconsin Percentage of Income Standard, which does not explicitly count custodial parent income. The Wisconsin Standard presumes that the proportion of income devoted to children does not decline, at least over the range for which guidelines are relevant. Under this presumption, custodial parent income is not included in the formula application, but it is implicitly counted because the children are considered

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[48] Doris Freed and Timothy Walker, "Family Law in the Fifty States: An Overview", Family Law Quarterly, Vol. XIX, No. 4 (Winter 1986), p. 411.

to benefit from the same proportion of custodial as non-custodial parent income. This presumption is based on older and different economic evidence than that presented in Chapter II, but Wisconsin has apparently not found recent studies to be compelling. The important point is that the Wisconsin Standard does not purport to ignore custodial parent income. Rather, based on an alternate interpretation of economic evidence, it counts custodial parent income implicitly under the presumption that the custodial parent allocates the same percentage to the children as the non-custodial parent.

Third, if a decision is made to count custodial parent income explicitly, then an appropriate method must be determined for building it into the calculation. Existing guidelines use several different approaches to consider custodial parent income. As described more fully in Chapter IV, the Income Shares model is based on the precept that child support should be determined based on economic estimates of the amounts that both parents spend jointly on the children in intact households. Based on the evidence that these amounts are declining proportions of parental income, addition of custodial parent income decreases the percentage that both parents allocate to the children, as discussed above. This declining percentage is the mechanism that the Income Shares model uses to count custodial parent income. The Delaware Melson formula achieves a similar result through different means, by explicitly counting both parents' income in each step of the calculation. Responsibility for the children's primary support needs, for example, is divided between the parents in proportion to their respective incomes (after providing for their own basic self-support requirements). The Allegheny County (Pennsylvania) guideline provides for reductions in non-custodial percentages allocated to support based on the relative level of custodial parent income.[49] The method used to count custodial parent income is a fundamental design issue for a guideline. Thus, it is integral to the particular conceptual model that is chosen for adoption by a state.

Age of Children

As discussed in the previous chapter, economic research suggests that expenditures on children increase during the teenage years. Findings of both Espenshade and the USDA suggest that expenditures on children in the 12-17 age group are approximately 23 percent higher than expenditures on children in the 0-11 age group.[50] Given that child-rearing expenditures

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[49] "Allegheny County Support Guidelines", Common Pleas Court of Allegheny County, May 1985.

[50] Espenshade, Investing in Children, op. cit., pp. 30-31; USDA, Updated Estimates of the Costs of Raising a Child, op. cit., Table 8.

are higher for older children, one issue for development of child support guidelines is whether there should be age adjustments; that is, whether the guidelines should incorporate separate scales by age of the children. The Washington State Uniform Child Support Guideline, for example, has three separate child support scales, one each for the 0-6, 7-15, and 16-17 age brackets. The amount of child support increases with each successive bracket.

An alternative to use of three scales would be to make provision for only two age brackets: 0-11 and 12-17. Although there is disagreement concerning the pattern of expenditures for children under the age of twelve, there is a consensus among researchers that expenditures increase markedly for children in the 12-17 range. In this approach, a state would provide a "teenage premium" for children aged 12 and above, recognizing the higher expenditures in that age bracket but avoiding the increased complexity of three income brackets.

Despite the evidence that child-rearing expenditures are higher for older children, few states have incorporated age adjustments into their guidelines because of the greater complexity engendered by such an approach. Even with separate scales for pre-teen and teenage children, for example, two scales are still required rather than one. If the support order must cover children in separate age brackets, two separate calculations must be made and averaged together. Moreover, passage of a child into a higher age bracket raises the issue of whether the child's maturation constitutes a change in circumstances for purposes of granting a modification.

Building an age adjustment into a guideline is appropriate from a theoretical point of view, then, but it poses significant increases in complexity of a guideline's application. In addition, averaged across the eighteen years of a child's upbringing, an age adjustment has no theoretical net effect on child support received. Guidelines are normally based on economic data relating to family expenditures on child rearing. Without an age adjustment, a child support amount is usually set on the basis of average child rearing expenditures to the age of majority.

An age adjustment usually increases child support above this average for older children and decreases it below this average for younger children. This accounts for the lower expenditures observed on behalf of the younger children. Thus, though an age adjustment implies an increase in child support for older children, this increase would be offset by a decrease in child support for younger children. If a child receives child support from birth, there should be no loss of child support over time due to the absence of an age-adjusted support order. To the extent that child support starts later in a child's life, however, there would be less child support paid in the absence of an adjustment.

In addition, income of the parents usually increases as children mature. As a practical matter, then, there is generally more income available from both parents to support children when they are older. Among states developing percentage-based or Income Shares guidelines, some have concluded that this factor tends to mitigate the impact of the absence of an age adjustment for older children.

Child Care Expenses

In some guidelines, work-related child care expenses incurred by a custodial parent are added to basic calculations of the child support obligations for both parents, and divided in proportion to income. There are several reasons for separate treatment of child care expenses. First, they represent a large variable expenditure incurred only in specified circumstances: i.e., a working custodial parent with one or more young children. The levels of costs incurred are related to the age of the child (pre-school children incur the highest costs) and to the type of child care obtained. Because child care costs can vary so widely, it may be more equitable to divide them between parents as incurred (in proportion to income), rather than incorporating an average figure for child care costs into the base formula.

Second, when incurred, child care costs can represent an inordinate proportion of the costs of rearing a child at a particular point in time. Based on data from the 1972-73 Consumer Expenditure Survey, the U.S. Department of Agriculture estimates that employed single parents with at least one child under 6 spend $1,026, or eight percent of their total household expenditures, for child care (expressed in 1980 prices).[51] Child care costs in families with only pre-school children would likely represent an even higher proportion of household consumption if such costs could be broken out. This suggests that it may be more equitable to include child care costs directly in a formula to ease the financial burden on the single parent household.

Third, treating child care costs separately maximizes the custodial parent's marginal benefits of working. If child care costs are not treated separately, the economic return from employment is reduced substantially, by the amount of these costs in addition to taxes and work expenses. An important principle of child support formulas, as expressed in Chapter I, is economic neutrality with respect to employment decisions. If it would be otherwise beneficial for the custodial parent to work, the decision to participate in the labor force should not be unnecessarily deterred by the structure of a child support formula.

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[51] Carolyn S. Edwards, USDA Estimates of the Cost of Raising a Child, op. cit., pp. 33-35.

An issue that has been raised in this context is the impact of the federal tax credit for child care expenses. This credit is provided for up to thirty percent of actual costs, to a maximum value of $720 for the first dependent, or $1,440 for two qualifying dependents. If the value of the credit can be predictably calculated in individual situations, it may be appropriate to reduce allocated child care costs by that amount when determining the level of child support.

Support Obligations for Other Dependents

A difficult issue for development of child support guidelines is how to treat support obligations for other dependents of each parent. Court findings have been divided on the question: Does the support obligation toward existing children have priority over support responsibilities toward new children? Many courts determined that creation of a new family is a voluntary act and that the absent parent should decide whether he or she can meet existing support responsibilities and provide for new ones before taking that step. As summarized by Krause:

> Traditionally, the courts have taken the position that the father's prior child support obligations take absolute precedence over the needs of the new family. They have disregarded the father's plea that his new responsibilities are a "change in circumstance" justifying a reduction in a prior child support award or at least averting an increase.[52]

The approach of according priority to first children was incorporated into the child support guidelines approved by the Dallas County (Texas) family district court judges that took effect January 1984. These guidelines appear to prevent equalizing the child support obligation between earlier children and new children. The guideline provides: "New family obligations, be they spousal or in relationship to minor children, will not serve as a basis for reduction of support."[53]

But the position of the courts on this issue has varied, according to some scholars, with certain courts considering the interests of both households and attempting to divide available income of the absent parent equitably. In her analysis of the issue, for example, Bruch states: "In determining whether children from prior relationships have superior claims

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[52] Harry D. Krause. Child Support in America: The Legal Perspective (Michie: Charlottesville, VA., 1981), p. 20.

[53] State Bar of Texas, Family Law: 1984 Special Child Support and Visitation Issue, Family Law Section Report, p. 29.

to their parents' resources, constitutional law limits the degree to which the state may discriminate between groups of children."[54]

Following a review of the issue, Cartwright concludes that "...a parent has a duty to support all children, regardless of their time of birth.... If the noncustodial parent establishes his inability to provide the same standard of living for his second family that he is providing for his children from his first marriage, he should be granted a reduction in support."[55]

Krause goes beyond this position and points out that there may be occasions where children born to the father's current family should be given priority for support:

> More recently, however, some courts have considered the interests of both families and have attempted a fair apportionment. This approach seems more realistic. Arguably, the balance of social interest (though not necessarily individual equity) might even weigh in favor of the father's current family because that family might founder if earlier obligations were enforced beyond the father's reasonably available means -- with the possible result of two families drawing welfare payments rather than one.

Krause continues, with the following statement:

> Whatever the policy, current equal protection reasoning makes it difficult to defend blanket discrimination in favor of or against the children of one or the other marriage or, for that matter, non-marital children. In competition with each other for their father's support, all children should stand on an equal footing and have equal legal claims.[56]

Bruch agrees that: "Constitutional law limits the degree to which the state may discriminate between groups of children or may impinge on reproductive freedom." In contrast to Krause, however, she argues that it may nevertheless be appropriate to give priority to children from an earlier

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[54] Carol S. Bruch, "Developing Standards for Child Support Payments: A Critique of Current Practice." Univ. of California-Davis Law Review, Vol 16, No. 1 (Fall 1982), pp. 49-64.

[55] J. Keith Cartwright, "Modification of Child Support Decrees in the 1980's: A Jurisprudential Model," Journal of Family Law 21 (January 1983): pp. 327, 336-37, citing Evans v. Evans, 84 So. 337 (Ala. 1955).

[56] Krause, Child Support in America, op. cit., pp. 20-21.

marriage (or relationship) in assessing the extent to which children born subsequently may reduce the pre-existing child support obligation of the parent. She continues with this summary of the issue:

> However, because the classification in this case is not entitled to heightened scrutiny of the kind applied to discrimination based on legitimacy or illegitimacy, some latitude is clearly available to make reasonable policy-based distinctions. And recent Supreme Court opinions suggest that certain burdens may be placed on a person's reproductive choices. It remains to be seen whether this language applies only to impede a woman's decision not to bear children or whether it would also sustain financial disincentives for fathers who are considering more children. Reason and economic theory both suggest that the problems of inadequate support for children of multiple relationships would be alleviated if parents were discouraged from having more children unless they were capable of contributing adequately to the needs of all their offspring. Legal theory has embraced this view, although, once again, theory and practice frequently diverge.[57]

As can be seen from this discussion, neither the courts nor legal scholars have reached a consensus on the proper priority that should be given support obligations for other dependents. There are three possible approaches to this issue:

(1) A first mortgage, second mortgage approach, which gives priority to children born first, particularly those covered under preexisting child support obligations;

(2) An equal treatment approach, which weighs the interests of each dependent child equally in determining support obligations; and

(3) A last in, first out (LIFO) approach, which under some circumstances gives priority to children in the current household of the obligor.

The policy choice from among these three options has significant implications for the design of a guideline's provisions for consideration of the needs of other dependents. The choice should be made after a review of constitutional law, case law, and current practice in the state developing a guideline.

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[57] Bruch, "Developing Standards for Child Support Payments," op. cit., pp. 60-61.

As a practical matter, however, where one obligor's dependents live in more than one household and are covered by multiple court orders, it is difficult to establish such orders jointly. On the contrary, the orders are usually determined years apart and often times in different jurisdictions. As a result, the most administratively viable approach to taking other support obligations into account is to subtract pre-existing child support obligations from income prior to establishing the amount of a new order. The effect of this mechanism is to give economic preference to pre-existing obligations because the order for such obligations would have been made without taking into account the obligor's financial responsibility for subsequent children. However, for lack of a practical alternative, subtracting pre-existing orders from obligor income is a procedure that can be used to compensate for other legal obligations to provide child support.

Income of Current Spouses

Current spouses are usually not required to contribute support to stepchildren. As Bruch states: "Stepparents and other adult household members are generally not held accountable for child support, to avoid creating disincentives to remarriage of females with children, a 'negative dowry' effect."[58] Some courts have made an exception to this rule when the stepparent exercises an in loco parentis relationship with the stepchildren.[59]

Another, more practical, reason for ignoring stepparent income is that if it were taken into account, it would also be necessary on grounds of equity to take into account stepparents' financial responsibilities for their own children. This would add an undesirable layer of additional complexity in applying a guideline. For these reasons, then, stepparent income is not usually considered in establishing the level of child support payments.

Some states have made provision for taking into account the effect of shared expenses, thereby increasing the child support obligation of the parent who has remarried or is cohabiting. Authority to consider the presence (but not amount) of a new spouse's income when determining the parent's expense needs is provided by application of the Melson formula in the Delaware Family Court and is provided by statute in Missouri.[60] In Delaware, however, the dollar impact of this provision is

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[58] Carol S. Bruch, "Developing Standards for Child Support Payments," op. cit., pp. 60-61.

[59] Kelley v. Iowa Dept. of Social Services, 197 N.W. 2d 192 (Iowa 1972). But see Klein v. Sarubin, 471 A. 2d 881 (Pa. Super. 1984).

[60] Mo. Ann. Stat., 452. 370(1).

usually low as a proportion of total child support due. Because of the additional complexity that would be caused by inclusion of this factor, and the small financial impact, few operational formulas take into account income of current spouses.

Shared Physical Custody

The usual application of a child support guideline is to a traditional custody arrangement in which, conceptually, the income transfer substitutes for direct expenditures presumed to have been made if the child lived in an intact household. In a traditional custody arrangement, one parent (usually the mother) has sole legal and physical custody of the child. The other parent has limited visitation rights, a frequently used schedule being two days every other weekend. Under such an arrangement, a non-custodial parent normally bears responsibility for few direct expenditures on behalf of the child. Child support paid by the non-custodial parent assists the custodial parent in providing for food, housing, clothing, transportation, and other expenditures.

In recent years, joint custody and shared physical custody arrangements have become more common as policy-makers and parents have sought to mitigate adverse psychological effects of divorce on children. Thirty states have statutory provisions authorizing joint custody.[61] When parents have shared physical custody arrangements, both parents assume responsibility for a portion of direct expenditures made on behalf of the child. In fact, in many joint custody arrangements, there is no longer a basis for distinguishing between "custodial" and "non-custodial" parents.

A distinction must be made between legal custody and physical custody arrangements, however. Legal custody provisions refer to decision making authority with respect to the child. For instance, a parent with legal custody has the right to make major life decisions in such areas as religion, education, discipline, and medical care. Joint legal custody provides that both parents share such decision making authority but it does not ipso facto imply that there is any significant sharing of physical custody. Indeed, parents can exercise joint legal custody even though they live at opposite ends of the country, with the child visiting one parent only occasionally. It is the physical custody arrangements which determine how much time the child spends with each parent. Parents can have a fifty-fifty split for physical custody even in the context of sole legal custody (although we would expect such an arrangement to be uncommon in states with joint legal custody).

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[61] Doris Freed and Timothy Walker, "Family Law in the Fifty States," op. cit., pp. 331-442.

Some states which permit shared physical custody have implemented an adjustment to their guidelines which is intended to encourage this form of joint parental involvement in the children's upbringing. Such an adjustment is designed to take into account the direct contributions of each parent to the child's support. Under an arrangement with substantial sharing of physical custody, certain expenditures, such as food, recreation, and transportation are incurred in almost direct relationship to the amount of time with the parent. Significant spending in other categories, such as housing and home furnishings, is also triggered when the level of a parent's physical custody exceeds a certain threshold. Expenditures such as clothing, medical care, child care, and educational expenses have a less direct relationship with physical custody arrangements and are subject to specific agreements by the parents on how they will be handled.

Shared custody provisions adjust child support obligations in cases of significant sharing of physical custody. Such provisions seek to allocate child support according to the proportion of time spent by the child with each parent, as well as other factors included in guidelines (e.g. income of the parents). There are two components in shared custody adjustments: (1) determination of eligibility for the adjustment and (2) calculation of respective shares of direct expenditures based on proportions of physical time sharing.

Eligibility for adjustment. An adjustment for shared physical custody is made only when physical custody by the obligor exceeds a "traditional" level of visitation. States with shared physical custody adjustments do not generally grant eligibility for the adjustment unless physical custody exceeds a specified threshold (normally defined as a proportion of overnights spent with the parent). The lowest threshold is an informal twenty percent set by Delaware in its application of the Melson formula, but Delaware is considering an increase in that level. Colorado has set a threshold of twenty-five percent and Wisconsin has set a threshold of thirty percent. A threshold is set because the non-custodial parent is not likely to incur substantial costs in major expenditure categories (e.g. housing, home furnishings, clothing, transportation) until the parent spends more than a nominal amount of time caring for the child. Costs incurred by the obligor in exercising traditional levels of visitation are considered to be incidental expenditures which have been factored into development of the basic guideline.

The only shared custody adjustment without a qualifying threshold is contained in the Washington Uniform Child Support Guidelines. The Washington guidelines require instead that the parties have joint legal custody before applying the adjustment, with no specific sharing level that must be met. Delaware also requires that the parties have joint legal custody, but that the obligor meet the time-sharing threshold as well.

Calculation of adjustment. The objective of a shared custody adjustment is to credit each parent for the appropriate share of direct expenditures made on behalf of the child. States have implemented this objective in different ways. Shared custody adjustments all provide credit for the direct expenditures that each parent makes for the child. Under the most common approach, each parent theoretically owes support to the other, based on the proportion of time the child spends with the other parent. The theoretical support amounts thus calculated are then offset ("cross-credited"), with the parent owing the higher amount paying a net obligation. This approach is used in the Colorado Child Support Guideline, the Delaware Melson Formula, and the Washington Uniform Child Support Guidelines.

This adjustment can be summarized in the following computation:

Step One. Calculate each parent's potential support obligation as if the child were in the other household one hundred percent of the time.

Step Two. Calculate the proportion of time (i.e. overnights) spent by the child in each household.

Step Three. Multiply each parent's potential support obligation (Step One) by the proportion of time the child spends in the other parent's household.

Step Four. Offset the two support amounts owed and pro-rate over twelve months, or fifty-two weeks, depending on how frequently the child support is paid.

This computation is performed only for cases that exceed the time sharing threshold, be it 20, 25, or 30 percent.

An alternative shared custody adjustment has been incorporated into the Wisconsin Percentage of Income Standard. First, combined child support obligations are calculated for both parents. Second, the proportion of time the "secondary custodian" cares for the child between the thresholds (from 30 percent up to 70 percent) is determined. For example, if the secondary custodian has physical custody 40 percent of the time, he or she has custody one-fourth of the time between the thresholds (30 to 70 percent). Third, a credit is determined by multiplying the proportion of physical custody exercised above the threshold by the combined child support obligation, then subtracting this result from the obligor's order. To extend the example, if the calculated obligations in the absence of shared physical custody are $510 per month for the secondary custodian and $205 for the primary custodian (for a total of $765), the secondary custodian receives a credit for 25 percent of the combined amount, or

$191.25. This amount is subtracted from the $510 per month sole custody order to derive an amount payable of $318.75.

A third adjustment has been designed by Michigan and incorporated into the Friend of the Court Child Support Guidelines. The basic principles are similar to the first approach described above, but Michigan adds a quadratic formula (squared terms) which has the effect of giving relatively less credit to shared custody just above the 30 percent threshold and relatively more credit close to a 50 percent time split.[62]

It is important to note that, under these adjustments, a fifty-fifty split in physical custody does not eliminate the requirement for child support unless two conditions are satisfied: (1) the parents have equal incomes, and (2) the parents share the costs of all direct expenditures (including clothing, medical care, child care and educational costs) equally. If the parents do not have equal incomes, a child support obligation will be established for the parent with the higher income. In this way, the child will benefit from that parent's living standard even while in the physical custody of the other parent. Since the obligor receives credit for direct expenditures, however, he or she will owe considerably less child support than under a traditional sole physical custody arrangement.

Issues relating to shared custody adjustments. Two problems have been identified with shared custody adjustments based on initial experience. First, in many situations, use of the adjustment at the threshold results in a substantial drop in child support relative to the amount that would have been awarded under sole custody. In Colorado, for example, the Child Support Commission determined that it was not unusual for child support to decrease by 30 - 45 percent at the threshold relative to the amount that would have been payable in a sole custody arrangement. The steep drop comes from the effect of cross-crediting. At and above the threshold, the obligor not only receives credit for his or her own direct expenditures, but also for the theoretical child support obligation imposed on the other parent. At least in Colorado, this "notch" at the threshold was reported to cause increased contention between divorcing parents concerning the level of visitation or custody sharing.

Second, many practitioners express the opinion that the amounts yielded by guidelines in shared physical custody situations are inequitable because they are too low. The perception is that such orders do not provide adequate compensation to the lower income parent for actual child rearing expenditures.

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62 Michigan Child Support Guideline Manual, State Court Administrative Office (Lansing, Michigan), February 1987, pp. 24-26.

Although the adjustments have valid objectives, the problems seem to result from a failure to recognize additional child rearing costs entailed in shared custody arrangements. Housing, fuel and utilities, and household goods costs are often duplicated by the parents when there is substantial sharing. Additional transportation costs are also incurred in shifting children between parents and to activities in different areas. If we presume that these expenditure components are fully duplicated by the parents, Espenshade's findings suggest that costs of rearing children in a shared custody situation may increase by as much as 50 percent.[63]

This analysis suggests that shared custody adjustments should be reviewed to determine whether it would be appropriate to add a factor to compensate for these duplicated costs. Legislation has been recommended by the Colorado Child Support Commission which would augment the basic child support obligation by 50 percent in shared custody situations under the state's Income Shares model.[64] This proposal would have the effect of increasing basic awards under shared custody (but not the child care or extraordinary medical expense components) by 50 percent relative to their levels under the current version of the Colorado Child Support Guideline. In most cases, except where parents have equal or near equal incomes, this proposed revision will also significantly reduce or eliminate the "notch" at the threshold. It will also provide for higher awards in shared custody cases in recognition of the duplicated costs.

An additional issue to be taken into account in application of shared custody adjustments is that they all presume that child rearing expenditures are actually incurred by the parents more or less proportionately to the amount of time each parent cares for the child. Although this appears to be a valid general rule, it is essential that the specific arrangements be reviewed to determine whether responsibility for child-related costs deviates from this pattern in specific cases. Guidelines should specify that in cases where one parent bears a disproportionate share of expenditures in a shared custody situation, the judge or hearing officer should make an exception to the guideline which compensates the parent with greater financial responsibility.

Visitation Abatement

Some states have added provisions for visitation adjustments into their guidelines which account for increased expenditures by non-custodial parents during periods of extended visitation. The Washington Uniform

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63 Espenshade, Investing in Children, op. cit., pp. 44-58.

64 The recommended change is incorporated into House Bill 1263 (1987).

Child Support Guidelines specify that support payments may be abated by 50 percent during visitation periods lasting longer than four to six weeks. The Michigan Friend of the Court Guideline also provides a 50 percent abatement during visitation periods of eight days or longer. Where visitation adjustments exist, they reduce only part of the obligation in recognition of the fixed costs, such as housing and utilities, that must continue to be paid by the custodial parent.

Split Custody

Split custody refers to a situation where there are multiple children and each parent has physical custody of at least one. As with shared physical custody, each parent incurs significant costs in rearing the children. Consequently, some states also provide a split custody adjustment to take into account the division of these costs. In the Colorado, Delaware, and Washington guidelines, for example, separate obligations are calculated for the children in the physical custody of each parent. These obligations are then offset, with the parent owing the greater amount paying the difference.

The separate obligations are determined in much the same manner as if there were independent sole custody situations. An exception is that both the Colorado and Washington guidelines pro-rate the separate obligations based on the total number of children. That is, if there is one child with one parent and two children with another, the obligation for the one child is based on one-third of the schedule amount for three children rather than the schedule amount for one child. This approach treats the three children as a group and takes into account the economic evidence that spending on children increases less than proportionately with the number of children.

Obligor Self-Support Reserve

In an earlier project report, we summarized research supporting the notion that the obligor should be allowed to retain a self-support reserve below which more than minimal child support is not calculated.[65] Such a reserve would protect the ability of the obligor to meet his or her basic subsistence needs and sustain employment. Only when obligor income exceeded the threshold of the reserve would some share of remaining income be allocated to the child.

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65 Williams and Campbell, Review of Literature and Statutory Provisions, op. cit., pp. 20-22.

In various types of guidelines, the concept of obligor self-support reserve can be incorporated differently. In the Melson approach, a "primary support allowance" is established through the primary support level for the obligor, which is decreased if the obligor is living with another working adult. The obligor living allowance is set at the level determined to represent subsistence level for a working adult, with income above that level assigned to meet the child's primary support needs first. Only after primary support needs are met for both the obligor and the child is additional income retained by the obligor.

The Melson formula per se does not mandate quantified formula amounts below the primary support allowance level. However, the Delaware Family Court currently sets minimum orders for virtually all low-income obligors despite the Melson formula provision for the self-support reserve ("primary support allowance"). These orders are based on individual circumstances and normally range from $10 to $15 per week. Setting a minimum order can establish the concept of an obligation and a pattern of regular payment. Moreover, a minimum order allows the enforcement agency to keep better track of the obligor. Thus, when an increase in obligor's earnings warrants a change in the support level, the agency will have less difficulty locating the obligor and obtaining payment.

Under the Washington State guideline, the formula is not applied for obligors with net earnings less than $500 per month. Below that level, orders are set on a case-by-case basis following a review of obligor income and expenses. As with the Melson formula, however, a minimum order is always set unless there is clear-cut justification otherwise. Above that level, the formula can be fully applied without tapping into the self-support reserve.

Under the Colorado Guideline, obligors with less than $500 monthly gross income have child support established on a discretionary basis. The guideline provides that the discretionary amount should be more than $20 and less than $50 per month. Above the $500 monthly gross income level, the percentages of parental income allocated to child support are phased in, with lower percentages applied just above the $500 self-support reserve. In this way, the guideline is designed to set child support awards that never reduce obligor gross income below the $500 self-support level.

Medical Expenses

There are two elements of the child's medical expenses that may warrant special treatment in guidelines. First, under recent federal regulations (45 CFR 306.51), the obligor is required to carry health insurance benefits covering the child if available through the employer at a reasonable cost. If the obligor does carry medical insurance for the child being supported, that should be reflected in the level of child support

that is awarded. Credit for carrying the medical insurance can be given either by deducting the dollar cost from the order due, by deducting the cost of medical insurance from obligor income, or by making an adjustment to the base formula to remove an amount that would have otherwise represented the component for costs of medical insurance.

Deducting the children's portion of the health insurance costs from the parent's income base is least accurate because it provides only partial offset for the medical insurance costs (a deduction instead of a credit). Deducting the dollar amount of the child's portion from the child support obligation is conceptually appropriate. This option may be difficult to administer, however, since the precise share of insurance costs ascribable to the child cannot always be identified. Adjusting the base formula is a valid option if medical insurance costs are broken out of the formula and treated separately.

Second, special medical expenses incurred on behalf of the child that substantially exceed insurance reimbursement should be considered for separate treatment. These might include costs related to orthodontic treatment, psychiatric therapy, asthma treatments, extended physical therapy, or other similar costs that can be considered extraordinary. Like child care costs, extraordinary medical expenses can constitute a large fraction of expenses associated with a child. They can vary substantially from case to case and consequently do not lend themselves to inclusion on an average expenditure basis. If they are not accorded separate treatment, application of a guideline can result in inadequate support awards for children with special medical problems.

Geographic Variation

Research on family expenditure patterns has documented considerable variation in the costs of children by geographic area. The USDA studies examine costs by four national regions and find that for a nonfarm child the estimated costs for the West (the highest cost region) exceed those for the North Central region (the lowest cost area) by almost 30 percent.[66] Similarly, the BLS urban family budget study estimates almost a thirty percent difference in the 1981 family cost of living between the most expensive metropolitan area (New York city) and the least expensive (Dallas). The BLS study also estimates that 1981 consumer costs ranged

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[66] Edwards, USDA Estimates of the Cost of Raising a Child, op. cit., p. 4.

from 5.9 percent to 17.3 higher in metropolitan than non-metropolitan urban areas, depending on budget level.[67]

Despite the variation in living costs by geographic area, none of the guidelines thus far implemented by states includes adjustments for location. With the exception of the Melson formula, which is a hybrid cost sharing/ income sharing type of guideline, most of the guidelines set child support amounts based on proportions of income. Although there is evidence that the costs of raising a child for a given living standard vary by geographic area, there appears to be no credible economic evidence of systematic geographic variation in child rearing expenditures as a proportion of income. Moreover, though living costs are dependent on location, income levels are correlated with living costs to a substantial degree. Consequently, except for jurisdictions considering cost sharing approaches, geographic adjustments can normally be ignored without creating serious inequities.

An additional problem for jurisdictions considering implementation of a regional cost of living adjustment is the lack of current federal data on differences in minimum living standards by geographic area. The most widely recognized source of information on minimum adequate subsistence standards is the federal poverty guideline. Although the poverty guideline was originally determined separately by region and by urban/rural areas, the distinction between farm families and nonfarm families was eliminated by the federal government in 1981.[68] The only regional distinctions currently maintained in the poverty guideline are for Alaska and Hawaii. It might be theoretically desirable to compensate for urban/rural variation in certain guidelines incorporating a provision for a minimum level of support. However, practical limitations of available data make that option difficult, if not impossible, to implement.

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[67] BLS, "Autumn 1981 Urban Family Budgets and Comparative Indexes for Selected Urban Areas." op. cit.

[68] Federal Register, Vol 46, p. 62674 (December 28, 1981).

CHAPTER IV
DESCRIPTION OF SELECTED CHILD SUPPORT GUIDELINES

As described in an earlier report, there are three basic conceptual models for development of child support formulas, as follows:[69]

- o Cost sharing. In this approach, the needs of the child are specified first, based on a minimum standard of living, or based on a review of actual household expenses. The dollar amount so determined is apportioned between the parents, usually based on their respective incomes.

- o Income sharing. A proportion of parental income is allocated to the child. The specific proportion usually varies with the number of children and sometimes varies with the level of parental income. This type of guideline can be based on either gross or net parental income.

- o Income equalization. Under this model, the economic burden of the household dissolution, or non-formation, is distributed equivalently between the parents. To equalize standards of living between the separate households, income of each parent is allocated between the households based on the number of persons in each.

There is no cost sharing model in general use within a state, although some IV-D agency formulas base child support on the level of their state AFDC payments.[70] Moreover, California has designated the AFDC payment level as the minimum child support award level within the state.[71] The Delaware Melson formula is an example of a hybrid cost sharing/income sharing approach.

Most guidelines being implemented fall under the broad rubric of income sharing models. Examples of income sharing formulas in use for several years include the Washington State Uniform Child Support Guidelines, the Wisconsin Percentage of Income Standard, the Minnesota Child

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69 Williams and Campbell, Review of Literature and Statutory Provisions, op. cit., pp. 5-11.

70 Williams and Campbell, Review of Selected State Practices, op. cit., pp. 6-14.

71 Cal. Civil Code, Sec. 4722. However, low income obligors are not required to apply more than certain percentages of their income toward the minimum standard.

Support Guidelines,[72] and the Illinois Child Support Guidelines.[73] Examples of more recently implemented income sharing guidelines are the Colorado Child Support Guideline and the New Jersey Child Support Guidelines.[74] Although no income equalization formulas have been implemented, models proposed by Isabel Sawhill and Judith Cassetty have received considerable attention.[75]

In this chapter, we describe and analyze five approaches to guidelines that have received substantial attention by states. We first describe the Income Shares model, developed by project staff as an approach that is consistent with the best available economic evidence, underlying objectives and principles, and treatment of particular factors discussed in this report. We then briefly describe the Melson, Washington, and Wisconsin guidelines that were discussed more fully in a previous project report.[76] We conclude by describing the Cassetty model, which is the most thoroughly developed version of an income equalization guideline.

These guidelines are presented as examples of alternative approaches to the development of child support guidelines. They illustrate how differing values, varying treatment of special factors, and use of different underlying economic data can yield major variations in end results. They also exemplify a range of approaches in terms of operational simplicity versus comprehensiveness in the number of factors directly addressed. In Chapter V, we present a comparative analysis of the effects of these approaches, in terms of levels of child support by obligor net income and their calculated values for selected case examples. These analyses provide

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[72] Minn. Stat. Sec. 518.17, subd. 5, as amended by 1983 Minn. Laws ch. 308, sec. 15.

[73] Ill. Rev. Stat., ch. 23, Sec. 10-10.

[74] The Colorado Child Support Guideline is to be codified in Colorado Revised Statutes 14-10-115, Sec. (3)(b); see House Bill 1275 (1986 Session) and Colorado Child Support Guideline, issued by Colorado Child Support Commission (June 1986). The New Jersey Child Support Guidelines are presented in Supreme Court Rule 5:6A (May 9, 1986).

[75] Isabel V. Sawhill, "Developing Normative Standards for Child Support Payments," in The Parental Child - Support Obligation, Judith Cassety, ed. (Lexington/D.C. Heath & Co.: Lexington, MA, 1983). Judith Cassetty and Frank Douthitt, "The Economics of Setting Adequate and Equitable Child Support Payment Awards," in State Bar Section Report: Family Law, 1984 Special Child Support and Visitation Issue, State Bar of Texas, pp. 8-14.

[76] Williams and Campbell, Review of Selected State Practices, op. cit.

specific data on the consequences of selecting a particular model for determining the level of child support.

Income Shares Model

The Income Shares model has been developed by the Child Support Guidelines project staff as an approach that is based on the best available economic evidence on child rearing expenditures. It is also intended to be consistent with the basic principles for child support guidelines enunciated in Chapter I.[77] The Income Shares model is one of two types of guidelines recommended by the project's national Advisory Panel for adoption by states.[78] So far, the Income Shares model has been adopted in Colorado, Maine, Michigan (in modified form), Nebraska, New Jersey, and Vermont. It is under consideration in several other states.

The Income Shares model utilizes several concepts from The Washington Uniform Child Support Guidelines. It diverges in basing its numerical parameters on a different and more recent body of economic analysis. It also differs in several less significant respects, such as the precise treatment of shared physical custody, consideration of medical expenses, and options for taking into account the existence of subsequent dependents. Moreover, the Income Shares model is more general in its form. It is designed to allow a range of optional implementation methods by states for particular characteristics of the model: e.g. net versus gross income base, age adjustments, treatment of additional dependents. Thus, we use the term "model" (instead of formula) for the Income Shares approach in recognition of its more general form and because states have incorporated the core parameters into a variety of specific structures.

The Income Shares model is based on the concept that the child should receive the same proportion of parental income that he or she would have received if the parents lived together. In an intact household, the income of both parents is generally pooled and spent for the benefit of all household members, including any children. A child's portion of such expenditures includes spending for goods used only by the child, such as clothing, and also a share of goods used in common by the family, such as housing, food, household furnishings, and recreation.

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[77] The name, "Income Shares", is derived in part from its classification as an income sharing type of formula. The term "shares", however, connotes a child's rightful claim on parental income, as in shares of stock, or shares of ownership in an income-producing real estate unit.

[78] The other type of recommended guideline is the Delaware Melson formula, discussed below.

Because household spending on behalf of children is commingled with spending on behalf of adults for the largest expenditure categories (e.g. food, housing, and transportation), the proportion allocated to children cannot be directly observed even if the specific spending patterns are examined. This commingling of household expenditures is the most important reason that equitable child support awards are so difficult to set on a case-by-case basis. However, as discussed in Chapter II, a body of economic research provides estimates of the average amount of household expenditures on children. In particular, a recent and credible study has found that expenditures on children amount to a consistent proportion of household consumption. Further, our extensions of that study's results indicate that the proportion spent on children varies systematically with the level of household income and with the number and ages of children.

The Income Shares model calculates child support as the share of each parent's income estimated to have been allocated to the child if the parents and child were living in an intact household. A basic child support obligation is computed based on the combined income of the parents (replicating total income in an intact household). This basic obligation is then pro-rated in proportion to the income of each parent. Pro-rated shares of child care and extraordinary medical expenses are added to each parent's basic obligation. If one parent has custody, the amount calculated for that parent is presumed to be spent directly on the child. For the non-custodial parent, the calculated amount establishes the level of child support.

The Income Shares approach is consistent with legal principles enunciated in the Uniform Marriage and Divorce Act (9A U.L.A. s. 309) that have been embodied in many state statutes. These principles require that child support be based in part on the financial resources of both parents and in part on the standard of living the child would have enjoyed had the marriage not been dissolved.[79] In Chapter II, we discuss use of economic data from intact families for determining child support in single-parent households. Because the Income Shares model attributes support to the child on the basis of the spending rate in an intact household, the child is insulated from the lowered living standard resulting from the dissolution (or non-formation). Rather, the overall impact of increased living requirements for multiple households are absorbed by the parents as they allocate shares of their income to children at the same rate as if the household were intact.

It is important to note, however, that no approach can assure that the child will not suffer some reduction in its standard of living. Since the child shares living situations with the parents, who suffer an unavoidable

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[79] Williams and Campbell, Review of Literature and Statutory Provisions, op. cit., pp. 13-17.

overall decline in living standards (in the absence of increased income), the child shares in that decline. In addition, living standards in the two households are not likely to be equivalent since the child support allocation, without reference to spousal maintenance, does not equalize the relative incomes of the two households. However, the Income Shares approach helps ensure that a child benefits from the living standards of both parents. It also considerably mitigates the impact of the household dissolution or non-formation by reserving the proportions of parental income for that child that would have been spent in the intact unit.

The Income Shares model has been specified in both net income and gross income versions. The percentages underlying the net income model are shown in Table 12. Net income is defined as gross income minus federal and state taxes, FICA, and union dues. The figures in this table are derived directly from the economic data discussed in Chapter II. Specifically, Table 12 is developed using the economic data on average expenditures for children by net income shown in Table 6, except that average amounts for child care expenditures and extraordinary medical expenditures have been deducted from the Table 12 amounts (see Appendix I for details of these adjustments and other calculations). In addition, since Espenshade estimates expenditures only for one to three children, the formula amounts for four children have been calculated using an equivalency ratio from the BLS Revised Equivalence Scale. Figures for five and six children have been derived using ratios extrapolated from the BLS Revised Equivalence Scale. From these percentages, a table is constructed showing the amount of a basic child support obligation determined by the number of children and the combined income of the parents.[80]

An Income Shares schedule of basic child support obligations for monthly gross income is shown in Table 13. The schedule reflects three modifications to the percentages in Table 12. First, this schedule converts to gross income percentages by using the net income percentages in Table 12 as a base and adjusting for withholdings for federal and state income taxes and FICA. In this way, the obligor can be expected to pay the same proportion of net income for child support as he or she would have been estimated to spend if the household were intact.[81] This table is

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[80] This version has been derived from the gross income model using figures on average federal and state taxes and union dues drawn from the 1972-73 CES, Table 5. We recommend that states considering a net income version of the Income Shares model start with the gross income version shown in Table 11 and apply a state-specific tax schedule along with figures on federal taxes and other eligible mandatory deductions (if available).

[81] This conversion assumes that the obligor will have standard withholdings based on a single person in the household and a standard deduction. For a high proportion of obligors, this is likely to be an accurate

Table 12

INCOME SHARES MODEL
CHILD SUPPORT AS A PROPORTION OF NET INCOME

	0-5,600	5,601-10,650	10,651-16,725	16,726-28,200	28,201-39,975	39,976-51,875	Over 51,875
One Child	23.8	23.7	23.3	21.6	21.0	20.1	17.8
Two Children	37.0	36.7	36.1	33.5	32.7	31.2	27.7
Three Children	46.3	46.0	45.2	42.0	40.9	39.0	34.7
Four Children	52.2	51.8	51.0	47.3	46.1	44.0	39.1
Five Children	57.0	56.5	55.6	51.6	50.3	48.0	42.6
Six Children	60.9	60.4	59.5	55.2	53.8	51.3	45.6

(1) Excludes child care costs and extraordinary medical expenses, which are divided between parents in proportion to income and added to child support determined above.

(2) Minimum support only would be provided in lowest income category, due to self-support reserve. See text for explanation.

Table 13

CHILD SUPPORT GUIDELINE
SCHEDULE OF MONTHLY BASIC CHILD SUPPORT OBLIGATIONS

COMBINED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
100	$20 - $75 PER MONTH, BASED ON RESOURCES AND LIVING EXPENSES OF OBLIGOR AND NUMBER OF CHILDREN DUE SUPPORT					
200						
300						
400						
500						
600	97	98	99	100	101	102
700	153	156	158	159	161	163
800	167	214	216	219	221	223
900	181	269	272	275	278	281
1000	195	303	329	333	337	340
1100	209	324	384	388	392	397
1200	223	346	433	446	451	456
1300	237	367	460	504	510	515
1400	253	392	491	554	576	582
1500	269	417	522	588	642	650
1600	282	437	548	618	674	717
1700	296	458	574	647	706	755
1800	308	478	599	675	736	788
1900	319	495	620	699	763	816
2000	330	512	642	723	789	844
2100	341	529	663	747	815	872
2200	352	546	684	771	841	900
2300	363	563	706	795	868	928
2400	374	580	727	819	894	956
2500	385	597	749	843	920	984
2600	396	614	770	867	946	1012
2700	406	630	790	889	970	1038
2800	416	646	809	911	994	1064
2900	426	662	829	934	1019	1090
3000	436	677	849	956	1043	1116
3100	446	693	868	978	1067	1142
3200	456	709	888	1001	1092	1168
3300	466	725	908	1023	1116	1194
3400	477	741	928	1045	1140	1220
3500	487	757	947	1067	1164	1246
3600	497	773	967	1090	1189	1272
3700	507	790	988	1113	1215	1299
3800	519	808	1011	1139	1243	1329
3900	530	826	1033	1164	1270	1359
4000	542	844	1056	1190	1298	1388
4100	553	862	1078	1215	1326	1418
4200	565	880	1101	1240	1353	1448
4300	576	898	1123	1266	1381	1477
4400	588	916	1146	1291	1409	1507
4500	599	933	1161	1316	1435	1535
4600	609	949	1181	1338	1459	1561
4700	620	964	1200	1360	1483	1586
4800	630	980	1220	1381	1507	1612
4900	640	995	1239	1403	1531	1637

CHILD SUPPORT GUIDELINE
SCHEDULE OF MONTHLY BASIC CHILD SUPPORT OBLIGATIONS

COMBINED GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
5000	649	1010	1257	1424	1554	1661
5100	659	1025	1275	1444	1576	1685
5200	668	1039	1294	1465	1599	1709
5300	678	1054	1312	1486	1621	1733
5400	687	1069	1330	1506	1644	1757
5500	697	1083	1348	1527	1666	1781
5600	706	1098	1367	1548	1689	1805
5700	716	1113	1385	1568	1712	1829
5800	726	1127	1403	1589	1734	1853
5900	735	1142	1421	1610	1757	1877
6000	745	1157	1440	1630	1779	1901
6100	754	1171	1458	1651	1802	1926
6200	764	1186	1476	1672	1824	1950
6300	772	1198	1498	1690	1844	1970
6400	779	1209	1511	1705	1860	1988
6500	786	1219	1524	1720	1876	2005
6600	793	1230	1538	1735	1893	2023
6700	800	1240	1551	1750	1909	2040
6800	807	1251	1564	1764	1925	2058
6900	814	1261	1577	1779	1942	2075
7000	821	1272	1591	1794	1958	2093
7100	828	1282	1604	1809	1975	2110
7200	835	1293	1617	1824	1991	2127
7300	842	1303	1630	1839	2007	2145
7400	849	1313	1644	1854	2024	2162
7500	855	1324	1657	1869	2040	2179
7600	861	1333	1668	1881	2053	2194
7700	866	1342	1679	1893	2066	2208
7800	871	1350	1691	1905	2079	2223
7900	877	1359	1702	1917	2093	2238
8000	882	1368	1713	1929	2106	2252
8100	887	1377	1724	1941	2119	2267
8200	892	1386	1736	1953	2133	2281
8300	898	1395	1747	1965	2146	2296
8400	903	1404	1758	1977	2159	2311
8500	908	1413	1769	1989	2173	2325
8600	914	1421	1780	2002	2186	2340
8700	919	1430	1792	2014	2199	2354
8800	924	1437	1800	2024	2210	2366
8900	928	1444	1809	2033	2220	2376
9000	932	1450	1817	2042	2230	2387
9100	936	1457	1825	2052	2241	2398
9200	941	1463	1833	2061	2251	2408
9300	945	1470	1842	2070	2261	2419
9400	949	1476	1850	2079	2271	2430
9500	953	1483	1858	2089	2281	2440
9600	958	1489	1866	2098	2291	2451
9700	962	1496	1874	2107	2301	2461
9800	966	1502	1883	2117	2311	2472
9900	970	1508	1891	2126	2321	2483
10000	975	1515	1899	2135	2331	2493

specific to a given state since it incorporates state income tax rates (if any). This particular table is computed using a South Carolina tax schedule, which is in the mid-range of state personal income tax rates. The percentages underlying this particular schedule are shown in Table 14.

In converting from a net to gross income base, several recent changes to federal tax law are relevant. After 1984, the Deficit Reduction Act (DEFRA) made it very difficult for the non-custodial parent to claim exemptions for the children receiving support. For separation or divorce agreements effective after January 1, 1985, the custodial parent is entitled to the exemption unless that parent waives the claim in writing each year. Further, this same legislation all but ended a previously common practice of restructuring child support as family maintenance for tax purposes (a process sometimes referred to as 'Lesterizing' after the IRS Lester decision, as specified in Section 152(e) of the Internal Revenue Service Code). This former practice of restructuring made child support deductible for the payor and taxable to the payee. In another relevant change, the Tax Equity Act of 1986 substantially increased the federal exemptions to $1,900 per dependent in 1987, $1,950 in 1988, and $2,000 in 1989. Due to these changes in tax law, dependents exemptions are much more valuable than previously and they almost always inure to the benefit of the custodial parent. These tax law changes should be taken into account in developing a gross income based guideline.

Second, this schedule incorporates a self-support reserve for the obligor. Based on the poverty standard of $447 per month for one adult, the self-support reserve in this table is set at $500 per month gross income (the poverty level actually implies a slightly lower gross income self-support reserve, but this is a close approximation).[82] The percentages for the Income Shares model are not applied below this level. Rather, child support at poverty level and below is set at a minimum level which takes into account expenses of the obligor (whether the obligor is living alone or with parents, for example).[83]

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representation, particularly for those who are recently divorced. However, this method of conversion does understate a child support obligation for obligors with substantial tax deductions. See Appendix I for a more detailed discussion of this issue.

[82] In 1986, poverty for 1 = $5,360 (or $447 monthly). If $447 is net income, gross = $474, based on federal and Colorado (as one example) withholding tables and earned income tax credit computation.

[83] In Colorado, that minimum amount ranges from $20 to $50 per month. Establishing a minimum support order maintains the principle of child support and facilitates continued tracking of the obligor so that the order can be modified upward if income increases in the future.

Table 14

INCOME SHARES MODEL
CHILD SUPPORT AS A PROPORTION OF GROSS INCOME

	0- 5,975	5,976- 11,800	11,801- 19,925	19,926- 34,350	34,351- 49,025	49,026- 64,250	Over 64,250
One Child	0.0	21.5	18.2	15.9	14.1	13.2	11.8
Two Children	0.0	24.2	28.2	24.6	21.9	20.5	18.3
Three Children	0.0	24.5	35.3	30.8	27.4	25.5	22.9
Four Children	0.0	24.7	39.2	34.7	30.9	28.9	25.9
Five Children	0.0	25.0	39.7	37.9	33.7	31.5	28.2
Six Children	0.0	25.2	40.1	40.6	36.0	33.7	30.2

(1) As noted in text, table reflects South Carolina income tax rates.

(2) Because the Income Shares model allows a self support reserve of $500 per month ($6000 per year), obligors whose income falls within the lowest income range do not have the guideline applied. Yet, in order to establish a principle of payment, it is expected that the courts will set some minimum level of support based on the circumstances of the obligor (e.g. $20-$50 per month in Colorado). In the next higher income range ($5,976-$11,800), the Income Shares percentages are phased in to protect the self-support reserve. Thus, average percentages vary little by number of children until the obligor has income which exceeds this transition range (see text for additional explanation).

In addition, above the self-support reserve, the percentages in Table 12 are phased in at income levels just above the self-support reserve to ensure that the self-support reserve is protected. If the percentages were not phased in, their direct application just above the self-support reserve would reduce remaining obligor income below the reserve. For example, a child support order for two children based on $600 gross monthly income would leave the obligor only $387 for self support, which is less than the poverty standard. The percentages are phased in so that the obligor always retains at least the amount of the self-support reserve.

Third, Table 14 incorporates the exact percentages in Table 12 (adjusted for tax withholding) only at the midpoints of the income brackets. The amounts in Table 14 are based on percentages extrapolated in small increments between the midpoints. This adjustment eliminates notches in application of the percentages to determine child support. In the absence of this smoothing, for instance, an obligor with two children and $28,200 in net income would be liable for $9,447 in annual child support, which would be $225 more than the $9,222 annual liability incurred by the obligor with $28,201 in annual income.

To apply the model, the income of both parents is added and their proportionate shares of combined income are computed. Combined income is used to determine the basic child support obligation from the Schedule of Basic Child Support Obligations shown in Table 13. The combined basic obligation is divided between the parents in proportion to their respective incomes. The support obligation derived for the obligor is payable to the obligee as child support. A simplified case example demonstrating this procedure is shown in Table 15. Work-related child care and extraordinary medical expenses would be added to the amounts shown in this example and divided between the parents in proportion to their relative incomes.

Table 15

INCOME SHARES GROSS INCOME FORMULA
CASE EXAMPLE
(Two Children Living with Parent B)

	Parent A	Parent B	Combined
(1) Annual Gross Income	$18,000	$12,000	$30,000
(2) Monthly Gross Income	1,500	1,000	2,500
(3) Parental Income as Proportion of Combined	60%	40%	
(4) Basic Child Support Obligation (from Table 13)			$597
(5) Parental Shares of Obligation (Line 4 times line 3)	$358	$239	
(6) Base Child Support	$358 (Paid to Parent B)	$239 (Retained by Parent B)	

In addition to these base amounts, child care expenses and extraordinary medical expenses are divided between the parents based on their net incomes.

Age-adjustment. As discussed in Chapter II, studies of household expenditure patterns have found that spending levels for children are related to their age. Accordingly, the Income Shares model can be adjusted to vary the child support amounts for different age groups of children. One possibility is to provide for three different age brackets, as does the Washington guideline: e.g., 0-6, 7-15, and 16-17. Under this approach, separate tables would be developed for each age bracket.

An alternative approach would be to make provision for only two age brackets: 0-11 and 12-17. Although there is disagreement concerning the pattern of expenditures for children under the age of twelve, there is a consensus that expenditures increase markedly for children in the twelve to seventeen year age range. Accordingly, a state could limit the age groups to two, providing a "teenage premium" for children aged twelve and above. This approach would be materially simpler to administer than

adjusting for three age groups, requiring only two tables instead of three. It has the additional advantage of concentrating the higher child support amounts during the teen years when the need for augmentation is greatest.

An adjustment to the Income Shares net income formula incorporating this "teenage premium" is shown in Table 16. This reflects an increase of 23.6 percent in expenditures for children in the twelve to seventeen year age group relative to the average level for children at younger ages. This figure is derived from Espenshade, as shown above in Chapter II, Table 9.

Child care expenses. Consideration should be given to treating work-related child care expenses separately under the Income Shares model. Average amounts for child care expenses have been subtracted from the base of Table 12. If child care expenses are not treated separately, the average figure for child care expenses should be added back in (see Appendix I). As discussed in the previous chapter, separate treatment avoids inequities engendered by the great variation in child care expenses among households. It also mitigates potential strains on income of custodial parents with large child care expenses relative to their earnings. If treated separately, child care expenses should be apportioned between the parents based on their respective levels of income.

The income tax credit for child care expenses should be subtracted out of the total before the apportionment is made. As an example, if the non-custodial parent has net earnings of $1,000 per month and the custodial parent has net earnings of $500 per month, the non-custodial parent incurs an obligation for two-thirds of the after-credit child care expense, in addition to the base obligation determined under the formula.

Medical expenses. Under U.S. Office of Child Support Enforcement regulations (45 CFR 306.51), the obligor is required to obtain medical insurance on a child if such insurance is available through the employer at reasonable cost. If health insurance on behalf of the child is carried by the obligor, the employee cost of the premium should be allowed as a deduction from income.[84]

Like child care costs, consideration should be given to treating a child's extraordinary medical expenses separately. This avoids potential inequities otherwise created by the need for exceptionally large expenditures in individual cases. Under the Income Shares model, extraordinary

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[84] The custodial parent should have the option to carry the health insurance if he or she believes this would provide more consistent or comprehensive coverage. In such case, the custodial parent should receive the deduction, not the non-custodial parent.

Table 16

INCOME SHARES MODEL
AGE-ADJUSTED CHILD SUPPORT AS A PROPORTION OF NET INCOME

	Age	0-5,600	5,601-10,650	10,651-16,725	16,726-28,200	28,201-39,975	39,976-51,875	Over 51,875
One Child	0-11	22.1	21.9	21.6	20.0	19.5	18.6	16.5
	12-17	27.3	27.1	26.7	24.7	24.1	23.0	20.4
Two Children	0-11	34.3	34.0	33.5	31.1	30.3	28.9	25.7
	12-17	42.4	42.1	41.4	38.4	37.4	35.7	31.7
Three Children	0-11	43.0	42.6	41.9	38.9	37.9	36.2	32.1
	12-17	53.1	52.7	51.8	48.1	46.9	44.7	39.7
Four Children	0-11	48.4	48.0	47.3	43.9	42.7	40.8	36.2
	12-17	59.9	59.4	58.4	54.2	52.8	50.4	44.8
Five Children	0-11	52.8	52.4	51.6	47.8	46.6	44.5	39.5
	12-17	65.3	64.8	63.7	59.1	57.6	55.0	48.8
Six Children	0-11	56.5	56.0	55.1	51.1	49.8	47.6	42.2
	12-17	69.8	69.2	68.1	63.2	61.6	58.8	52.2

See notes for Table 12. For children in different age categories, pro-rate based on the total number of children. Example: for one child age 7, one age 14, annual income of $18,000; use percentages for two children divided by two

$$\frac{(31.9)}{2} + \frac{(39.5)}{2} = 35.7$$

medical expenses should be pro-rated between the parents based on income of each.

Custody arrangements. Consideration should be given to treating non-traditional custody arrangements in the manner suggested in the previous chapter. Under the Income Shares model, a total child support obligation is calculated separately for each parent. For cases involving non-traditional physical custody arrangements (e.g., physical custody greater than twenty-five or thirty percent of the time for the parent with secondary physical custody), the model presumes that direct expenses are incurred in approximate proportion to the duration of physical custody. This presumption should be reviewed carefully in the application of the model since some expenses may not be borne proportionately (e.g. clothing or educational expenses). For shared physical custody, an adjustment should also be made, as described in Chapter III, to increase basic support in recognition of duplicated expenses. Once the proportion of direct expenses borne by each parent is determined, the amounts can be cross-credited to determine how much the net obligor should pay.

Other dependents. The treatment of other dependents under the Income Shares model raises policy issues that should be addressed by states during the development process. As discussed in Chapter III, there are several options concerning the relative priority of dependents.

Under a "first mortgage" approach, in which children of prior marriages (or relationships) are given precedence, the Income Shares model would be applied to children due support without regard to the needs of dependents currently residing with the obligor. If support is sought for children of a subsequent relationship where there is a pre-existing order for a child born from a previous relationship, priority would be given to the earlier born children by subtracting the amount of the order from the obligor's gross or net income base. This diminishes the amount of obligor resources available to support children from the subsequent relationship without reducing the pre-existing order.

Under an "equal treatment" approach, if either parent has other dependent natural or adopted children not subject to court order, an adjustment should be made to reflect these additional responsibilities. Under one approach, a basic child support obligation could be first calculated for the additional children using the Schedule of Basic Support Obligations, but based only on the separate income of the particular parent. That basic obligation could then be subtracted from that parent's income before application of the guideline to the child due support. Thus, if support is being determined for two children and the parent has another child from a second marriage, a basic support obligation would be determined from the Schedule based on one child. This basic obligation would then be subtracted from that parent's income prior to determining

support for the one child due support. This approach would provide some credit for other dependents.

Even under the "equal treatment" option, if there are one or more pre-existing orders for other children of the parents, the dollar amounts of any such orders should be subtracted from the parent's income (assuming payment is being made), prior to applying the formula. This procedure gives implicit priority to earlier born children, but it is the most practical way to take such obligations into account.

Current spouse's income. A current spouse's income is not relevant to the Income Shares model except in two limited situations. In the first, a current spouse's income can be used to impute income for voluntarily unemployed or underemployed parents. In the second, for low income obligors, a current spouse's income might be counted as reducing obligor living expenses and might therefore increase the amount of child support ordered on a case-by-case basis.

Melson Formula

Initially developed by Judge Elwood F. Melson, Jr., the Delaware Melson formula has been used statewide in the Delaware Family Court since 1979. Like the Income Shares model, the project's national Advisory Panel has recommended the Melson formula for possible adoption by states. In addition to statewide use in Delaware, a variation of the Melson formula has been implemented in Hawaii and another version has been recommended for adoption in Maryland. A version of the Melson formula is used in Wisconsin as an alternative to that state's Percentage of Income Standard.[85]

As stated in a recent report of the Delaware Family Court, the basic principles of the Melson child support formula are as follows:

- Parents are entitled to keep sufficient income for their most basic needs to facilitate continued employment.
- Until the basic needs of children are met, parents should not be permitted to retain any more income than that required to provide the bare necessities for their own self-support.
- Where income is sufficient to cover the basic needs of the parents and all dependents, children are entitled to share in any additional

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[85] Child Support Guidelines for the Determination of Child Support Obligations, Wisconsin Department of Health and Social Services, Division of Economic Assistance, February 1982.

income so that they can benefit from the absent parent's higher standard of living.[86]

The Melson Formula as described here has evolved from these basic principles to a considerable degree of sophistication during its application to thousands of cases during the past seven years in Delaware.

A calculation sheet for the Melson formula, as completed for a specific case example, is shown in Figure 1. A more detailed description of the formula, published by the Delaware Family Court, is shown in Part III. Below we summarize the main features of the formula, although the more detailed material should be consulted for a fuller explanation and a description of additional factors taken into account.

The basic application of the Melson formula can be described as follows:

Step 1: Determine Available Income of Each Parent. The Melson formula starts with net income. After determining net income for each parent, a self-support reserve ("primary support allowance") is subtracted from each parent's income. This reserve represents the minimum amount required for an adult to meet his or her own subsistence requirements. For a parent living alone, the reserve is currently set at $450 per month (the amount is periodically updated). If a parent is married or cohabiting with another working adult, the self-support reserve is reduced to one-half the primary support level for two persons to account for economies of scale in living expenses. The primary support level for two persons is currently $630 per month and another $100 is allowed for work expenses. Thus, if a parent is living with a new spouse, the self-support reserve would be $365 per month (one-half of $730, $630 plus $100). Income remaining after subtracting the self-support reserve is deemed available for payment of child support.

Step 2: Determine Childrens' Primary Support Needs. The next step in applying the formula is to compute the primary support amount for each dependent. Like the self-support reserve, the primary support amount represents the minimum amount required to maintain a child at a subsistence level. Primary support is currently set at $180 per month for the second member of the household (a second adult or first child in a single adult family), $135 per month for the third and fourth members and $90 for each member thereafter. Work-related child care expenses are added to primary support as are extraordinary medical expenses.

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[86] The Delaware Child Support Formula: Study and Evaluation, op. cit., pp. 1-2. See also, Delaware Child Support (Melson) Formula, Family Court of the State of Delaware, revised May 1984.

FORM 509
Rev. 6/83
☐ FORM 465
SCHEDULE J

Figure 1
MELSON FORMULA CALCULATION SHEET

The Family Court of the State of Delaware

FOR ___ NEW CASTLE ___ KENT ___ SUSSEX COUNTY
CHILD SUPPORT CALCULATION
(_) PETITIONER (_) RESPONDENT

CASE NAME: DATE:

FILE NUMBER:

PART I. PRIMARY CHILD SUPPORT

STEP A	FATHER	MOTHER	TOTAL
Monthly Net Income	$ 1200.00	$ 800.00	
Less Self Support	- 450.00	- 450.00	
Sub-totals	$ 750.00	$ 350.00	
= AVAILABLE NET FOR PRIMARY SUPPORT			$1100.00

STEP B

Kelly, as 2nd person in Mother's household			$ 180.00
+ David, as 3rd person in Mother's household			+ 135.00
+ _____, as _____ person in _____'s household			+
		Sub-total	$ 315.00
+ MONTHLY CHILD CARE EXPENSES OF WORKING CUSTODIAL PARENT			+ 100.00
+ EXTRAORDINARY MEDICAL EXPENSES			+
Less EARNINGS OF A DEPENDENT CHILD			-
= TOTAL PRIMARY CHILD SUPPORT NEED			$ 415.00 TOTAL

STEP C	FATHER	MOTHER
Individual Available net	$ 750.00	$ 350.00
÷ Total Available Net	÷ 1100.00	÷ 1100.00
= Share of Primary Support	68 %	32 %
x Primary Child Support Need	x 415.00	x 415.00
= PRIMARY SUPPORT OBLIGATION	$ 282.20	$ 132.80

PART II. STANDARD OF LIVING ADJUSTMENT (SOLA) CHILD SUPPORT

STEP A	FATHER	MOTHER
Available Net for Primary Support	$ 750.00	$ 350.00
Less Primary Support Obligations	- 282.20	- 132.80
Sub-totals	$ 467.80	$ 217.20

STEP B	FATHER	MOTHER
Available Net for SOLA Support	$ 467.80	$ 217.20
x Total SOLA Support Percentage	x 25 %	x 25 %
Sub-totals (Products)	$ 116.95	$ 54.30
= SOLA SUPPORT OBLIGATION		$ 171.25

STEP C

PER-CHILD SHARE OF SOLA SUPPORT . . . . . $ 85.63

(CHILD SUPPORT CALCULATION, Continued) Page 2

PART III. TOTAL MONTHLY SUPPORT OBLIGATIONS

	FATHER	MOTHER
Primary Support	$ 282.20	$ 132.80
+ SOLA Support	+ 116.95	+ 54.30
= Total Monthly Child Support Obligation Sub-totals	$ 399.15	$ 187.10
Less Amount Retained by Custodial Parent	- 0	- 187.10
= TOTAL MONTHLY ORDERED CHILD SUPPORT	$ 399.15	$ 0

PART IV. OPTIONAL SUPPLEMENTAL QUARTERLY CHILD SUPPORT

The Family Court has the authority to order a parent to pay quarterly child support directly to a child and custodial parent jointly. These payments are designed to relieve the custodial parent of periodic child-related expenses and to make the child aware of support received for his/her benefit from the other parent. Such payments may be awarded by the Court where the amount of monthly child support derived in accordance with the Child Support Calculation is inequitable in light of the relative financial standings of the parties at bar.

September 1 $_____ December 1 $_____ March 1 $_____ June 1 $_____

= TOTAL ANNUAL SUPPLEMENTAL CHILD SUPPORT $_____ TOTAL

RULE 271. PROPOSED FINDINGS, CONCLUSIONS, AND REASONS

(__) PETITIONER (__) RESPONDENT

The Child Support Calculation completed above shall be the party's proposed Order.

If a party is requesting the Court either to modify the normal formula or to find the formula inequitable in light of 13 Del.C. § 505 (b) and/or 13 Del.C. § 514, detail below:

(a) Proposed Findings;

(b) Proposed Conclusions;

(c) Proposed Reasons;

(d) Proposed Order;

The child's primary support needs are pro-rated between the parents based on available net income as determined in Step 1. Thus, if the non-custodial parent has net income of $1,600 after deducting the self-support reserve and the custodial parent has net income of $800 after deducting the reserve, the non-custodial parent is responsible for two-thirds of the primary support, including child care and extraordinary medical expenses.

Step 3: Determine Standard of Living Allowance (SOLA). After primary support obligations of each parent are calculated in Step 2, including obligations for child care expenses and extraordinary medical expenses, a percentage of remaining income is also allocated to support of the child. This standard of living allowance enables the child to benefit from the higher living standard of a parent. The percentages used for the standard of living allowance are currently set at the following levels:

One child	15 percent
Two children	25 percent
Three children	35 percent
Four children	40 percent
Five children	45 percent
Six children	50 percent

If a parent has dependents other than the child for whom support is being sought, and such other dependents are not covered by a court order, primary support amounts for such dependents are deducted from obligor income available for the Standard of Living Allowance. Thus, if a non-custodial parent has two other natural or adopted children living in the same household, and support is being calculated for one child living with the custodial parent, income available for SOLA would be reduced by the obligor's share of the primary support amount for those two children (up to $270).

Custody arrangements. Non-traditional custody arrangements are recognized to the extent that "a parent establishes visitation or has physical joint custody significantly beyond the norm."[87] "Beyond the norm" is informally established as twenty percent of overnights, although Delaware is considering raising this threshold. Above the threshold, the obligor's child support is reduced by the percentage of time spend caring for the child above the threshold. If there is a fifty-fifty physical custody split, a separate child support obligation is calculated for each parent. The obligation is pro-rated based on the proportion of total time spent by the child in the physical custody of the other parent. Obligations

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[87] Susan F. Paikin and Jay James, Effective Case Management of Support, Custody, and Ancillary Divorce Matters Under The Delaware Family Court System, Family Court of the State of Delaware, August 1984, p. E-23.

for each of the parents are netted out, with the remainder specified as the support amount for the parent with the greater obligation.

Other dependents. The Melson formula compensates for a parent's other dependents by subtracting their primary support requirements from income available for SOLA, as discussed above. An exception is made for dependents covered under pre-existing court orders. Court-ordered support obligations are subtracted from income before deriving a net income figure to be used in the calculation of the support obligation.

Current spouse's income. The Melson formula considers income of a spouse or cohabitee in two situations: (1) for purposes of imputing income in case of voluntary unemployment, where a parent has chosen to function in a homemaking capacity, and (2) for the purpose of reducing the self-support reserve to take into account economies of scale in living expenses.

Wisconsin Percentage of Income Standard

The Wisconsin Percentage of Income Standard has statutory basis for use as a rebuttable presumption (Wisconsin Stats, s. 767.25. In determining a child support obligation, the court is required to use the Percentage of Income Standard, as published by the Wisconsin Department of Health and Social Services. The court may deviate from the standard if it finds application of the standard would be unfair to the requesting party or the child. The court must apply the standard to consideration of stipulations, as well as contested cases. A final rule by the Department of Health and Social Services implementing the Percentage of Income Standard is shown in Part III, Implementation Materials.

The Wisconsin Percentage of Income Standard has been adopted by Mecklenburg County (Charlotte), North Carolina and several other counties in that state. It has been given serious consideration by other jurisdictions as well.

Wisconsin's Percentage of Income Standard is based on gross income. Child support orders are established based on the obligor's gross income and the number of children to be supported. The percentages of obligor gross income allocated to child support are:

17 percent for one child
25 percent for two children
29 percent for three children
31 percent for four children
34 percent for five or more children

The payment obligation is not adjusted for the income of the custodial parent. The standard assumes that each parent will expend the appropriate proportion of income on the child or children and that the custodial parent's share is spent directly on the child. If custody of the child or children is reversed, the same formula is applied to the new non-custodial parent.

In determining gross income, the standard provides for imputation of income to unemployed obligors and obligors with fluctuating incomes. It also includes a provision for imputing income to non-income producing assets based on the current yield of six-month U.S. Treasury Bills. For self-employed obligors, or those with income from closely held businesses, gross income is defined as income after business expenses, except that deductions for depreciation and wages paid to dependent household members are disallowed. Thus, in determining income from a farm, for example, the standard provides that deductions for all depreciation expenses for equipment and any wages paid to dependent children are added back into the income tax figure for net business income.

There is no self support reserve in the Wisconsin Percentage of Income Standard. Theoretically it applies even to obligors with very low income. Unlike some other guidelines, there is no separate treatment for child care expenses or extraordinary medical expenses.

Unlike previous versions of the standard, the most recent administrative rule permits an adjustment for shared physical custody in cases where the secondary custodial parent has physical custody for at least thirty percent of the time. The secondary custodian is defined as the parent having physical custody less than half the time, or otherwise designated in the court order. Physical custody is defined in terms of overnights. The Wisconsin adjustment for shared physical custody works differently than the cross-crediting adjustments used in the Income Shares model. As discussed in Chapter III, under the Wisconsin standard, the secondary custodian is credited with a reduction in the total child support obligation based on the proportion of physical custody exercised above the 30 percent threshold.

The standard includes adjustments to compensate for obligations to support other children. Pre-existing support orders are deducted from obligor gross income. Similarly, if the obligor has dependent children in a current household, a support obligation is determined for those children under the standard. This theoretical support obligation is then deducted from gross income before determining child support due under the order. For example, if an obligor has two children in an existing household and is before the court under a paternity action, a support obligation is determined for pre-existing children based on 25 percent of gross income. This obligation is then subtracted from obligor gross income and the remaining 75 percent of income is used as the base for determining child

support for the child born out-of-wedlock. This provision incorporates a preference for children based on order of birth, a "first mortgage" approach as described in Chapter III, above.

Washington Uniform Child Support Guidelines

The Washington Uniform Child Support Guidelines are based on the net income of the parents and the number and ages of the children. Since many concepts of the Income Shares model were derived from the Washington guidelines, the Washington guidelines are functionally similar. The guidelines allocate a percentage of both parents' net income to child support based on level of income, number of children, and age category of each child. This combined obligation is divided between the parents based on their net income. A copy of the guidelines is shown in Part III, Implementation Materials.[88]

Like the Income Shares model, the required payment under the Washington guidelines decreases as a percentage of income with increasing obligor income. Because the proportion of income apportioned to child support decreases as income increases, this procedure has the effect of lowering the percentage paid by the obligor if the obligee has sufficient income. The percentage "steps" in the Washington formula are much like income tax brackets, but with the percentages declining as income increases. Thus, if the custodial parent has enough income, adding that income to non-custodial parent income can push the latter into a lower "bracket".

The Washington guidelines adjust child support orders based on the age of the children. Different payment schedules are provided for children in the 0-6, 7-15, and 16-17 age categories. The guidelines also treat child care expenses separately, pro-rating them between the parents based on income. There is no separate treatment for medical expenses.

The guidelines are not applied below monthly net income of $500; obligors in that category have orders set on a case-by-case basis. The guidelines recently added an adjustment for shared physical custody cases. This adjustment essentially calculates separate support obligations for each parent and pro-rates that obligation in proportion to the amount of time

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[88] For a description of the guidelines, see "Uniform Child Support Guidelines," Washington State Association of Superior Court Judges, December 26, 1984. This document is included in Part III. A more detailed discussion of the development of the guidelines and their rationale is presented in William E. Hewitt, "Uniform Child Support Guidelines for Washington," unpublished internship paper for the Institute for Court Management, Denver, Colorado, undated.

the child spends with the other parent. It then offsets the cross-obligations so that a net amount is calculated for the parent with the highest obligation. Factors such as the income of a current spouse, a non-working remarried obligee/obligor, and the presence of stepchildren in the obligor's household are not addressed by the guidelines.

Cassetty Model

The Cassetty model is an income equalization standard. Developed by Dr. Judith Cassetty of the Texas Attorney General's Office, the model is intended to ensure "...that the children of divorced parents suffer the least economic hardship possible and continue to enjoy a standard of living which is as close to the original pre-divorce level as possible."[89] To date, the Cassetty model has not been implemented in any jurisdiction, but it has gained considerable attention for its alternative conceptual approach to determining child support.

As shown in Table 17, the first step in applying the Cassetty model is to exempt from net income a poverty level of support for each member of the two households. Remaining income is then redistributed between the two households in proportion to the number of persons in each family unit. Thus, if a four person household splits into two units, a single father with $1,247 net monthly income, and a mother with $960 net monthly income and two children, the formula calculates a child support obligation of $450 per month. This amount is reached by subtracting a poverty level subsistence amount ($447) from the father's net monthly income and $760 from the mother's net monthly income. After subtracting the poverty level amounts, $1,000 remains ($800 from the father and $200 from the mother). A $600 "surplus" figure is determined by subtracting the mother's "surplus" $200 from the father's "surplus" $800. The $600 is then redistributed in proportion to the number of persons in each family unit (with three-fourths, or $450, going to the unit headed by the mother).

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[89] Cassetty and Douthitt, "The Economics of Setting...Child Support Awards," op. cit., p. 12. This article is reproduced in Part III, Implementation Materials. Cassetty has recently initiated development of a revised version of the income equalization model. Thus far, the revised version is conceptually similar to, and less detailed than, the version discussed here. It permits use of alternative equivalency standards than the poverty guideline, however, and provides a different computational mechanism for redistributing income between households. See Judith Cassetty, G. K. Sprinkle, Ralph White, and Bill Douglass, "The ELS (Equal Living Standards) Model for Child Support Awards", unpublished document prepared for consideration by the Child Support Guidelines Committee of the Supreme Court of Texas.

Table 17

CASSETTY CHILD SUPPORT MODEL

Example Shown: Non-custodial parent living alone, with net monthly income of $1,247. Custodial parent with two children, net monthly income of $960.

$$\text{Child Support} = \frac{\text{Income of Parent B} - \text{Poverty Level for 1} - \text{Income of Parent A} - \text{Poverty Level for 3}}{4}$$

(1/4 share of "surplus" income for each individual)

$$\text{Child Support} = \frac{[\,1247 - 447\,] - [\,960 - 760\,]}{4}$$

$$\text{Child Support} = \frac{800 - 200}{4} = \frac{600}{4} = \$150 \text{ (per person share of "surplus" income)}$$

Child Support = $450 per month (3 shares of "surplus" income)

SOURCE: Cassetty and Douthitt, Exhibit B, p. 12.

For non-traditional custody cases, application of the model is based on the amount of time the child is in the physical custody of each parent. This adjustment is made by varying the family size in each unit according to the amount of physical custody. Thus, in the example given above, with a fifty-fifty shared physical custody arrangement, the child support would be calculated based on two persons in each household (one adult plus one-half of the two children), rather than a single person in the non-custodial unit and three persons in the custodial unit. Child support would be calculated at $144 per month with the fifty-fifty split in physical custody, rather than $450 under the sole physical custody arrangement.[90]

It is important to note that the total net income of each household unit is used in the model, rather than just the income of the parents. Thus, a current spouse of either parent is counted in the model for purposes of applying the poverty level exclusion, and income of that spouse is also counted into the total income of that unit. Similarly, if a parent has other dependents, they are included in the calculation. The presence of other dependents of the obligor tends to reduce the child support obligation (often significantly), while the presence of other dependents of the obligee tends to increase the obligor's calculated child support (again, often significantly).

There is no separate treatment for child care expenses or children's medical costs. If this model were developed into an operational formula, however, it would likely deduct child care costs from the net income of the parent incurring the expense. This is the approach followed in Sawhill's income equalization model.[91]

Summary: Consideration of Specific Factors By the Five Approaches to Guidelines

In the description of the five approaches to guidelines presented above, we reference treatment of the particular factors discussed in Chapter III. In this section, we briefly describe consideration of these factors. Shown in Table 18 is a summary. This section does not address the definition of gross or net income because the operational guidelines address these elements in a similar fashion, with minor exceptions. This section also excludes a discussion of geographic variation because none of the five guidelines takes that factor into account.

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90 Ibid., p. 12.

91 Sawhill, "Developing Normative Standards for Child Support Payments," op. cit., pp. 84-86.

The Wisconsin guideline does not make separate provision for child care costs. The Cassetty model does not address this element of child support, but it would be consistent with the model's conceptual framework to deduct child care expenses from the net income of the parent incurring the cost.

Extraordinary medical expenses. Extraordinary medical expenses are treated separately only in the Melson formula and Income Shares model. Like child care expenses, they are divided in proportion to available income in the Melson formula, and in proportion to gross or net income in the Income Shares model. Amounts so determined are added to the child support obligation calculated under the base formula.

Shared physical custody. All of the five approaches adjust for shared or joint physical custody. The Melson formula makes the adjustment for cases with substantial physical custody or visitation. The parent with secondary physical custody (if any) must have physical custody for at least twenty percent of the time (defined in terms of overnights). However, consideration is being given to raising the twenty percent threshold. The Washington formula also permits this adjustment to be used only in cases with joint physical custody. For sole physical custody cases with extensive visitation, it specifies an alternative adjustment: an abatement of fifty percent of the support obligation during visitation periods of four to six weeks or longer. The Wisconsin standard does not require joint legal custody, but it sets a 30 percent physical custody threshold (defined in terms of overnights). The Cassetty model does not restrict application of the shared physical custody adjustment.

The Washington and Income Shares approaches make the adjustment in a similar manner. They compute full support obligations for each parent, pro-rate this calculated amount based on the percentage of time spent by the child with the <u>other</u> parent, and offset the cross-flowing obligations. The net amount owed by the parent with the larger obligation is allocated as child support. In at least one state with the Income Shares model (Colorado), this adjustment is being modified to recognize the duplicated costs incurred in shared physical custody situations. The base child support amount is being augmented by 50 percent prior to calculating the remainder of the adjustment. With the Cassetty model, the adjustment mechanism is somewhat different, but the effect is similar. The model compensates for shared physical custody by counting the child in both households for purposes of pro-rating "surplus" income.

The Wisconsin standard has a slightly different adjustment mechanism. It determines the secondary custodian's proportion of overnights as a proportion of total overnights above the 30 percent threshold (with the threshold applied to each parent). Thus, if a secondary custodian has the child for 35 percent of all overnights, this amounts to one-eighth of all overnights above the 30 percent threshold for each parent (100 percent

minus 30 percent threshold for primary custodian minus 30 percent threshold for secondary custodian equals 40 percent; 35 percent minus 30 percent equals 5 percent of overnights above secondary custodian's threshold; 5 percent equals one-eighth of 40 percent total overnights above both parents' thresholds). Under this adjustment, then, one-eighth of both parents' total child support obligation would be subtracted from the secondary parent's obligation (see the Wisconsin Percentage of Income Standard in Part III for an example of this computation).

Income of current spouse. Issues raised by remarriage of one or both parents can be difficult for courts to address equitably. Only two approaches take into account income of a parent's current spouse. The Melson formula considers such income to the extent that it decreases the basic living expenses of the parent. This has the effect of potentially lowering the self support reserve ("primary support allowance") from $450 to $365 per month. This adjustment can increase the support obligation by as much as $85 monthly, but the effect is usually smaller.

In the Cassetty model, child support is based on income of each household, rather than each parent. Consequently, income of a current spouse has as much effect on the child support obligation as income from a parent.

Income of a current spouse is not taken into account by the Wisconsin, Washington, or Income Shares approaches. There is a caveat to this generalization for the Income Shares model, however: as with the Melson formula, income of a current spouse can be used as the basis for attributing income to a voluntarily unemployed or underemployed parent.

Other dependents. Each of the five approaches takes a different tack to treatment of other dependents. The only common element is that all approaches except Cassetty permit pre-existing support orders (where payment is being made) to be subtracted from the income base. The Cassetty model is silent on this issue. After this point, all of the approaches treat other dependents differently.

The Melson formula implicitly gives priority to children born first, normally those due support, instead of children living in the obligor's current household. The formula calculates primary needs of children due support before taking into account the needs of other children, thus giving the children due support a higher claim on parental income.

As noted above, the Wisconsin standard subtracts pre-existing support orders from gross income. It gives consideration to other previous dependents by subtracting a theoretical child support obligation from gross income before computing the obligation for the child due actual child support. The Washington guideline also provides for deduction of pre-existing child support orders from obligor income (to the extent paid).

It makes no additional provision for other dependents at the time of a divorce, but it considers the existence of other dependents to be a presumptive basis for adjustment at the time of a subsequent modification.

Because it is based on the household as its reference unit, the Cassetty model gives as much weight to other dependents as the children due support. The addition of dependents by either parent has a substantial effect on the child support calculation.

The Income Shares model provides for options in considering the effect of other dependents. Other than subtracting pre-existing child support payments from gross income, implementations of the Income Shares model to date have not addressed the issue. Should any state incorporate the Income Shares "equal treatment" option, it would accord each dependent a theoretically equal claim on parental resources, whether being considered for support or not. Such a provision would have the effect of lowering the amount paid to the children due support in recognition of the financial needs of the children in the current household.

CHAPTER V
LEVELS OF ORDERS YIELDED BY GUIDELINES

In this chapter, we compare the effects of five approaches to guidelines with respect to their impact on payment levels by obligor net income and their results for certain fact patterns. These analyses are intended to show the patterns of results obtained over a broad range of obligor incomes and demonstrate the differences arising from alternative approaches to specific combinations of circumstances.

Comparison of Payment Levels by Obligor Net Income

One standard for evaluating alternative guidelines is to compare the payment levels yielded by each based on obligor net income. The level of net income allocated under each guideline can then be compared with economic studies of household expenditure patterns. This permits us to assess how closely the amounts determined by the guidelines compare with the levels of expenditures on children in intact households. Given that income of the non-custodial parent is one criterion for setting the amount of child support in most states, this analysis also provides useful information on the proportion of obligor net income allocated to child support across a wide range of income levels.

We have modeled the payment levels yielded by guidelines at different levels of obligor net income by constructing twelve simplified split household situations, calculating guideline amounts based on obligor income ranging from $500 to $5,000 per month for each situation, and computing the child support obligation as a percentage of obligor net income. For example, the first situation is an obligor living alone in one household, and an obligee with sole custody of one child in the other. The obligee in this situation is further assumed to have no income. In the modeling, child support is computed under each guideline at levels of obligor net income starting at $500 per month, increasing at increments of $100 through $2,000 per month, then increasing in increments of $500 through $5,000 per month.

It is important to note that the simplified situations used in the modeling exclude possible impacts from the more complex factors discussed in the previous section. Effects of child care expenses, extraordinary medical costs, shared physical custody, income from current spouses, and obligations for other dependents are not included in the modeling exercise and would significantly alter the results presented.[92] Most significantly,

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[92] A comparative analysis of the effects of these factors is being performed in ongoing research for this project. Using a database of more than 1500 child support records extracted from the Delaware Family Court,

any case with work-related expenses would have higher child support amounts than shown on these graphs for the Income Shares, Delaware Melson, and Washington guidelines. Similarly, any case with extraordinary medical expenses would have high child support amounts under the Income Shares model and Delaware Melson formula. In the following section, a comparison of results obtained from five different fact patterns gives an indication of the variations in outcomes yielded when such factors are included.

The results of this modeling exercise are shown in graphic form in Figure 2 for three situations:

- Two children, obligee with zero earnings;
- Two children, obligee with earnings at one-half obligor level; and
- Two children, obligee with earnings at same level as obligor.

Results for the same combinations of circumstances, only for one child, three children and four children, are shown in Appendix III.

Two children, zero obligee income. Comparing first the results for two children, no obligee income, the five approaches come close to convergence in the $800 to $1,000 monthly net income range. Below and above those levels, however, there are substantial differences in results. The Income Shares model starts at 11 percent at $500 per month, climbs to 36 percent at $900 and $1,000 per month, and declines to 28 percent at $5,000. The Melson formula follows a remarkably similar, but slightly ~~higher track~~. ~~It starts at 10 percent at $500 per month~~, peaks at 40 percent at $800 per month, and decreases to 27 percent at $5,000 per month. Although these two approaches have very different underlying conceptual bases, they yield similar results. The structure of the Melson formula, like Income Shares, provides for decreasing percentages of child support above the lower income levels. Incorporation of a self-support reserve into the Income Shares model gives a pattern at the lower income ranges which is similar to the Melson formula.

Above the lower income levels ($800 per month), the Washington guideline is quite similar to the Income Shares model and the Melson

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an analysis is being performed of the effects of alternative formulas on child support payment patterns.

Figure 2

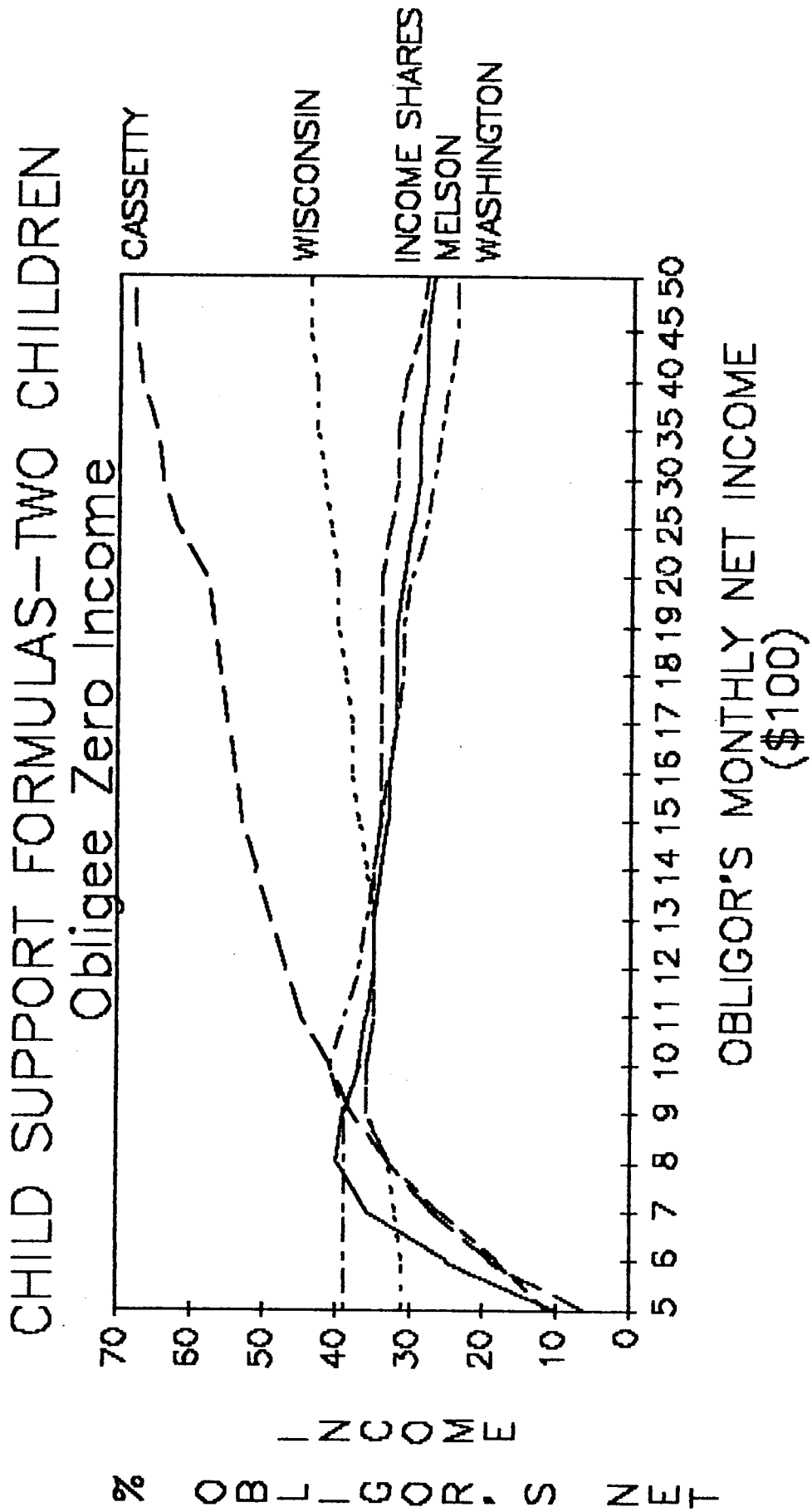

CHILD SUPPORT FORMULAS—TWO CHILDREN
Obligee Zero Income
CASSETTY
WISCONSIN
INCOME SHARES
MELSON
WASHINGTON
% OBLIGOR'S NET INCOME
70
60
50
40
30
20
10
0
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 25 30 35 40 45 50
OBLIGOR'S MONTHLY NET INCOME
($100)

Figure 2 (cont.)

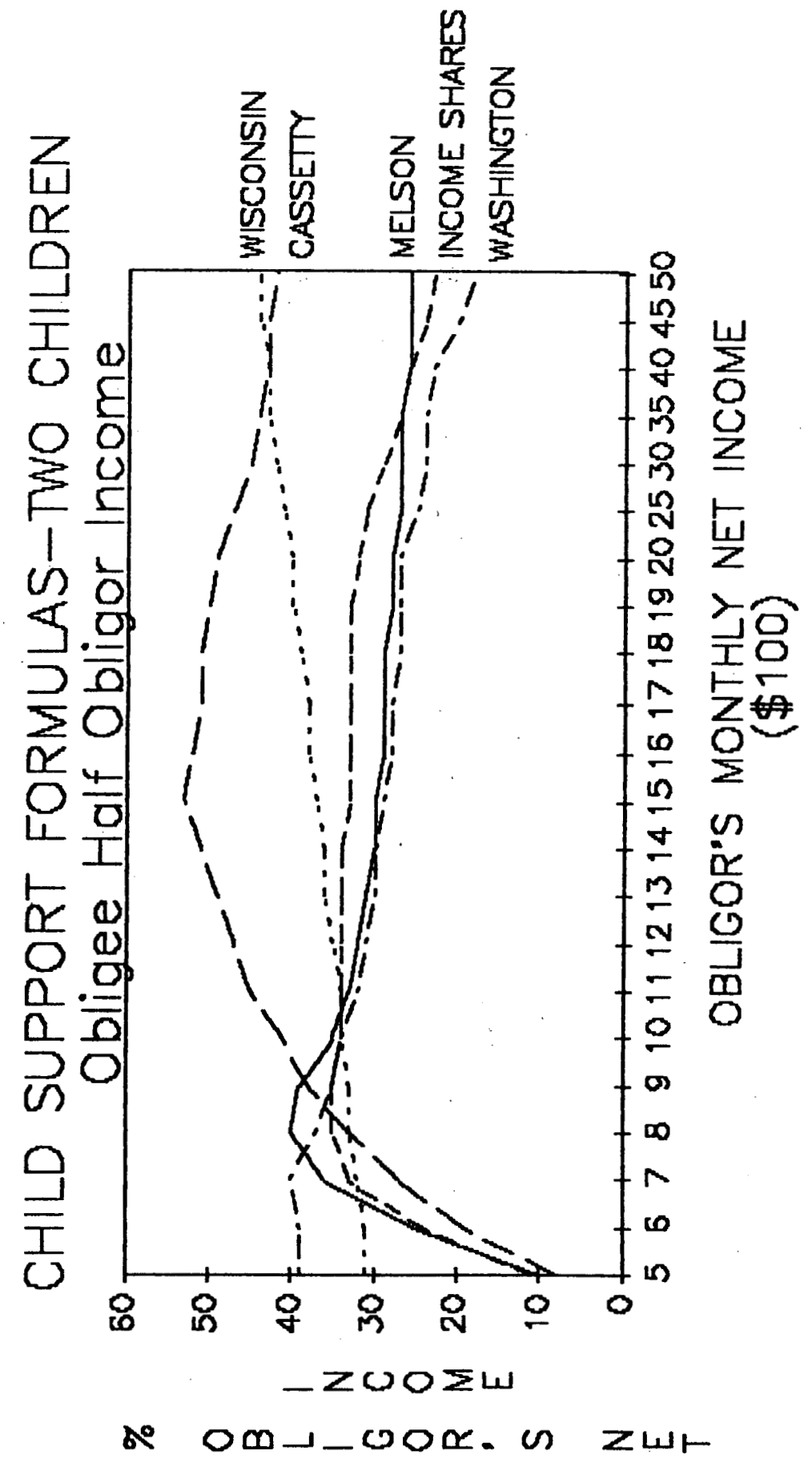
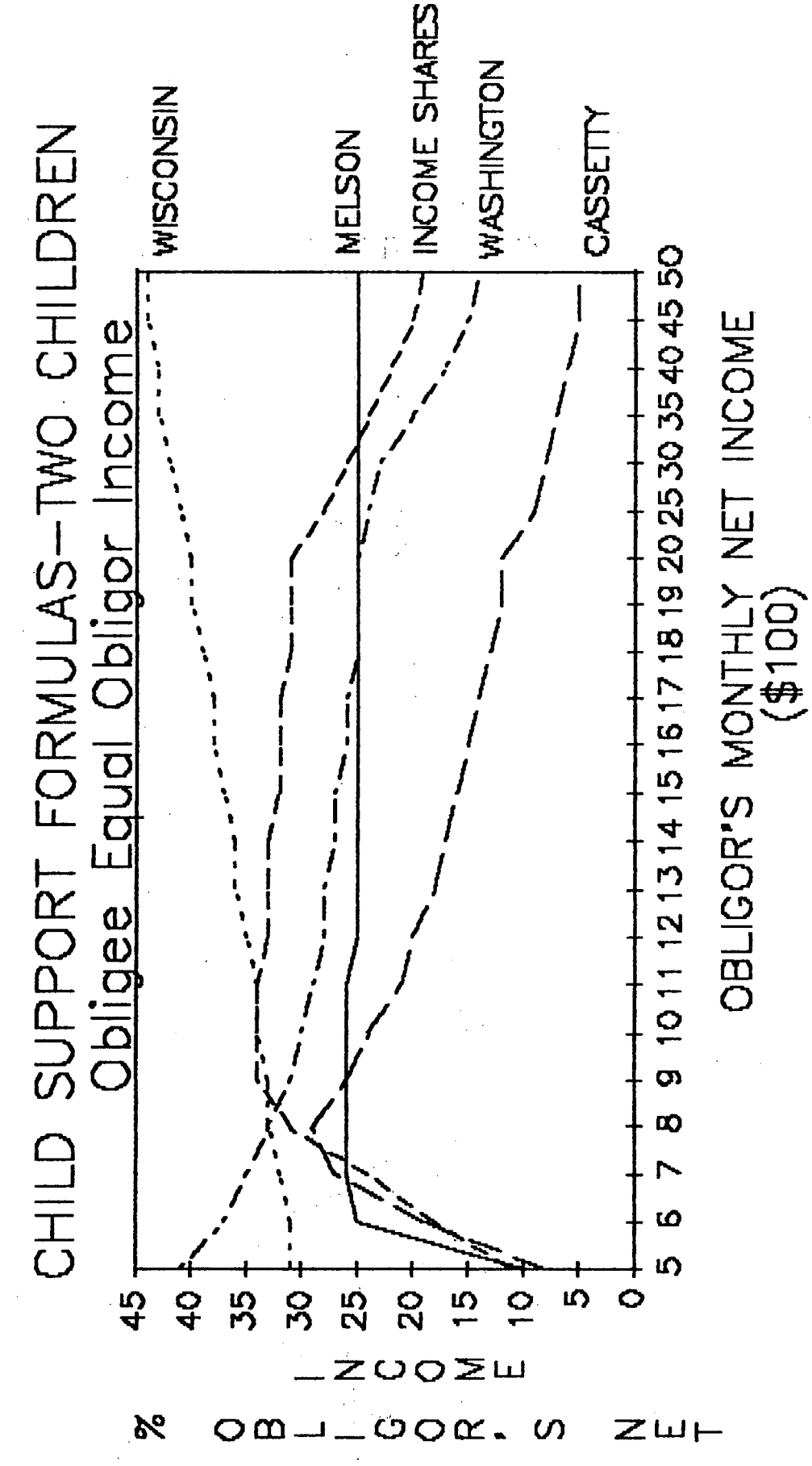


Figure 2 (cont.)



formula. It tracks at 39 percent between $500 and $1,100 per month, then gradually declines to 24 percent at $5,000 per month.[93]

In contrast, the Wisconsin guideline starts at 31 percent of net income and increases steadily to 44 percent of net income (based on a formula amount of 25 percent of gross). This increasing percentage calculated on net income reflects the progressiveness of the federal and state income tax systems.[94] As income increases, federal and state taxes consume increasing percentages of gross income, lowering the ratio of net income to gross. Thus, at higher income levels, increasing percentages of net income are required for child support to maintain the constant percentage of gross income set in the Wisconsin guideline.

The greatest difference, however, is shown by the Cassetty model. It allocates 8 percent of obligor income at $500 per month, increases to 41 percent at $1,000 per month, and steadily climbs to 58 percent at $2,000, 64 percent at $3,000, and 68 percent at $5,000. In this situation, the Cassetty model is distributing three-fourths of "surplus" obligor income to the obligee and children. The lower percentages at low obligor incomes reflect the impact of the poverty level self-support exemption for the obligor.

Two children, obligor with one-half obligor income. The results obtained from the five approaches shift when the obligee's income is one-half that of the obligor. This situation is particularly interesting because evidence suggests that this approximates the average ratio between income levels for obligees and obligors.[95]

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[93] The plotted amounts for Washington are based on the published schedule for children aged 6-15. However, a separate provision of the guideline caps child support obligations at fifty percent of net income for the non-custodial parent.

[94] The calculation for Wisconsin is based on published federal, FICA, earned income tax credit, and state withholding schedules. It assumes one exemption and a standard deduction for the obligor. If the obligor has more than one exemption (new dependents, for example) or itemized deductions, calculated child support as a percentage of net income would be lower than shown here. This effect is likely to be especially pronounced at higher income levels.

[95] U.S. Bureau of the Census, Child Support and Alimony: 1983, Current Population Reports, Special Studies, Series P-23, No. 141 (July 1985). The mean total 1983 income, before child support payments, of women with children from an absent father was $10,226 (derived from Table 2). This compares with men's average income (used as a proxy in

For this case, results from the Wisconsin percentage of income standard are unchanged, given that it does not take into account custodial parent income. As with the preceding zero obligee income case, it starts at 31 percent of obligor income and steadily increases to 44 percent at $5,000 per month net income.

The Income Shares model starts at the same 11 percent level as in the previous case, climbs to 35 percent at $900 per month, and gradually declines to 23 percent at the upper end of the income range. The Melson formula still starts at 10 percent of income at $500 per month and climbs to 40 percent at $800 per month, but then declines more sharply to 30 percent at $1,400 per month and ultimately to 26 percent at $4,000 per month and higher. The Washington guideline starts at the same level, 39 percent, but declines more sharply than in the preceding case. It decreases to 34 percent of obligor net income at $1,000 per month, 24 percent at $3,000 per month, and 18 percent at $5,000 per month.

The Cassetty model shows a marked change for this case at the higher income levels. It still starts at 8 percent of obligor net income at $500 per month and climbs to 53 percent of obligor net income at $1,500 per month. Rather than continuing to increase, however, it gradually declines thereafter to 49 percent at $2,000 per month, 45 percent at $3,000 per month, and 42 percent at $5,000 per month.

Two children, obligee income equals obligor income. Except for the Wisconsin standard, the impact of the guidelines changes markedly for the situation in which the obligee has the same level of income as the obligor. As with the one-half income situation, the Wisconsin standard is unaffected by the obligee's income and allocates the same proportion of obligor income to child support as in the zero income situation.

In contrast, the Income Shares model starts at 11 percent of net income and increases to a high of 34 percent at $900 per month. The proportion gradually declines to 31 percent at $2,000 per month, and to 19 percent at $5,000 per month. As in the previous two cases, the Melson formula starts at 10 percent at $500 per month, peaks at 26 percent at $1,100 per month, declines to 25 percent at $1,200 per month and remains at that level through $5,000 per month. The Washington guideline follows a similar pattern as in the preceding situation, but declines somewhat more rapidly as obligor income increases. It sets child support at 41 percent of obligor income at $500 per month, but declines to 30 percent at $1,000 per month, 23 percent at $3,000 per month, and 14 percent at $5,000 per month.

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the absence of actual data on obligors) of $18,110.

The Cassetty model is the most dramatically affected by the altered income position of the obligee. It starts at 8 percent for obligor monthly income of $500, peaks at 29 percent of obligor net income at $800 per month, and thereafter steadily declines to 24 percent at $1,000 per month, 12 percent at $2,000 per month, and ultimately to 5 percent at $5,000 per month. This pattern reflects the proportioning principle of the Cassetty model. With obligor and obligee having equal incomes, the only amounts being redistributed are the relative differences in the poverty standards for the two households. Consequently, for $800 monthly obligor income and up, the Cassetty formula yields the same child support amount of $225 per month, no matter what the level of obligor income.

Effects of number of children. By comparing across the tables for all income ratios, as well as those for different numbers of children in Appendix III, we can assess the impact of increasing numbers of children on child support levels. Above the low income levels (at $1,000 per month and higher), the Income Shares model varies from 23.5 to 14.7 percent for one child, 36.5 to 22.8 percent for two children, 45.7 to 28.0 percent for three children, and 51.5 to 32.2 percent for four children. Similarly, above $1,000 per month, the Melson formula ranges from 24 percent down to 16 percent for one child, 45 percent to 27 percent for two, 50 to 38 percent for three, and 55 to 47 percent for four. The Washington formula has a similar, but somewhat wider range: 25 to 14 percent for one, 39 to 24 percent for two, 48 to 29 percent for three, and 55 to 36 percent for four.

The Wisconsin formula starts at 21 percent of net income for one child and increases to 30 percent of net income; it starts at 31 percent for two and increases to 44 percent; it starts at 36 percent for three and increases to 51 percent; and it starts at 38 percent for four and increases to 55 percent. The Cassetty model covers a very wide range. Although it yields a lower support obligation than Delaware Melson and Washington at low income levels (e.g. at $800 per month and below for two children), it sharply climbs toward limit values of 67 percent of obligor net income for one child, 75 percent for two children, 80 percent for three children, and 83 percent for four children.

Effect on work incentive. By comparing computed orders for the same number of children and different relative obligee income levels, we can also evaluate the impact of increased work by the obligee on receipt of child support. To the extent that child support decreases substantially with increased obligee income, we would anticipate that a guideline could adversely affect the incentive of the obligee to work. As noted above, all of the approaches except Wisconsin's reduce the obligor's child support computation as obligee income increases (above minimum levels).

Other than for the Cassetty model the reduction in child support is relatively modest. With two children due support and the obligor having net income of $2,000 per month, an obligee increasing earnings from $0 to $2,000 has the child support payment decreased by $128 under Income Shares, by $118 under Melson, and by $106 under the Washington guideline (all of these examples assume no child care expenses). These decreases are minimal as a percentage of increased work income and can therefore be expected to cause no significant disincentive to work. Under the Cassetty formula, however, child support would decrease by $947, from $1,172 per month to $225 per month. When normal work expenses are taken into account, this result implies that the obligee's additional income gained from employment would be less than 50 percent of net earnings. In contrast to the effects of the other formulas, this magnitude of child support reduction could pose a substantial disincentive to work.

Treatment of child care expenses further affect a custodial parent's margin of financial gain from employment. Under the Income Shares, Delaware Melson, and Washington guidelines, any child care expenses incurred for purposes of employment are divided between the parents in proportion to the income. In this particular example, then, such expenses would be divided evenly between the obligor and obligee. Since child care costs can significantly reduce the net return from employment, treatment of child care expenses separately, as in the Income Shares, Delaware Melson, and Washington guidelines, can further alleviate any economic disincentive to work for the custodial parent.

Selected Fact Patterns

In this section, we apply the five approaches to five separate fact patterns, selected to demonstrate the variation in outcomes obtained from different combinations of elements.[96] This contrasts with the modeling exercise described in the previous section which yields payment levels for cases involving no special factors. The case examples depicted below show calculations for five specific situations: (1) basic case with child care expenses; (2) low income case; (3) high income case; (4) joint custody case; and (5) case involving second families.

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[96] Fact patterns one, three, four, and five were prepared by Susan Paikin, Director of Support, Family Court of the State of Delaware. We gratefully acknowledge her contribution.

Fact Pattern #1
Basic Case With Child Care Expenses

Situation. Mother and Father are divorced. Father lives alone; Mother and the parties' two children, aged three and five, live together.

Father has a gross monthly income of $1,600 and a net monthly income of $1,307 (based on single filing status with two exemptions per 1987 W-4 instructions for single adult).[97] Father also pays union dues of $30 per month and provides health insurance for the children at $25 per month.

Mother has a gross monthly income of $1,200; monthly net of $1,043. Mother incurs employment-related child care expense of $150 per month.

Child Support Orders

	Dollars Per Month	Percent Obligor's Net Income
Income Shares	$454.58	38.6
Delaware Melson	$379.21	32.2
Wisconsin	$400.00	34.0
Washington	$374.14	29.9
Cassetty	$362.76	30.8

Commentary. For the situation presented in this basic example, the Delaware Melson, Wisconsin, Washington and Cassetty approaches yield very similar results, with a range of only $37 between the lowest and highest support order. The Income Shares model yields the highest order, however, which is $55 per month higher than the next highest.

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[97] The net income figures do not include deductions for state income taxes. Examples for Income Shares, Delaware Melson, and Cassetty are calculated using Delaware state taxes. Washington has no state income tax, so no state taxes were deducted from net. Wisconsin was calculated using Wisconsin's taxes.

Fact Pattern #2
Low Income Case

Situation. Father has gross monthly income of $900, net monthly income of $762 net of federal taxes. The two children, aged two and four, live with the mother. Mother does not work and receives an AFDC grant of $272 for herself and the two children, plus a Food Stamp allotment of an additional $117 per month.

Child Support Orders

	Dollars Per Month	Percent Obligor's Net Income
Income Shares	$268.55	36.6
Delaware Melson	$284.40	38.7
Wisconsin	$225.00	30.5
Washington	$250.70	32.9
Cassetty	$215.55	29.4

Commentary. There is a considerable difference here in the level of support ordered, particularly when evaluated as a percentage of obligor net income. The Melson formula yields the highest result because of its basic premise that any parental income above the self-support reserve should be allocated exclusively to the primary support needs of the child, before the parent is entitled to retain any for discretionary purposes. This design feature generally results in higher orders in the $500 to $1,000 monthly income range than are obtained from other approaches.

Fact Pattern #3
High Income Case

Situation. Father and Mother are divorced. Father lives alone; Mother and the parties' two children, aged 12 and 14, live together. Father has monthly gross income of $4,583; monthly net of $3,193 after federal taxes. Mother has a monthly gross of $1,500; monthly net of $1,277. Neither party has remarried.

Child Support Orders

	Dollars Per Month	Percent Obligor's Net Income
Income Shares	$870.98	30.4
Delaware Melson	$781.73	27.3
Wisconsin	$1,145.75	40.0
Washington	$773.30	24.2
Cassetty	$1,465.17	51.2

Commentary. As is evident from this example, there are major differences in outcomes of the formulas for high income cases, with the highest award being almost double the lowest. The result obtained from the Cassetty model is not surprising since its basic objective is equalization of living standards between the two households. The Wisconsin percentage of income standard is second highest and also yields an outcome well above the other three since it does not account for income of the custodial parent. Although the Wisconsin standard is based on constant proportions of gross income, the impact of taxes causes the proportion of net income allocated under the formula to increase as income rises.

Fact Pattern #4
Joint Custody

Situation. Mother and Father share joint legal custody of their 14 year-old child. They also share physical custody on a fifty-fifty rotating basis. Neither parent is remarried or cohabiting with an individual in the relation of husband and wife.

Mother has monthly gross income of $2,200; monthly net of $1,763. (The parents have agreed that Mother will take the tax exemption for the child.) Father has monthly gross income of $900; monthly net of $762.

Child Support Orders

	Dollars Per Month	Percent Obligor's Net Income
Income Shares[98]	$147.33	8.9
Delaware Melson	$115.90	7.0
Wisconsin	$110.50	6.7
Washington	$ 82.31	4.7
Cassetty	$305.67	18.5

Commentary. In all cases, the mother is the obligor and makes a payment to the father. The Cassetty model yields the highest award because of the significant gap in income between the parties, even though it does take joint custody into account in setting the award. The Melson, Washington, Income Shares, and Wisconsin approaches give results that are fairly close. The first three adjust for joint custody in a similar manner, although the Income Shares model increases the basic obligation to reflect duplicated costs. Wisconsin uses a different adjustment, but it has a similar effect relative to the unadjusted obligation in a case with a fifty-fifty split in physical custody.

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[98]Calculated using proposed revision to Colorado shared custody adjustment. See Chapter III.

Fact Pattern #5
Second Families

Situation. Mother and Father, now divorced, have two children from their former marriage, aged 7 and 11, who reside with Mother. Both parents are now remarried. Father has a child, age 5, by his present wife.

Father has gross monthly income of $1,400; net monthly income of $1,194 (based on a filing status of married with three exemptions). His wife earns $900 per month gross, $758 net. Father and his wife spend $100 per month for child care so that she can work.

Mother has gross monthly income of $800; monthly net of $742 (based on a filing status of married with four exemptions). Her husband has a monthly gross income of $1,500 and a net of $1,225.

Child Support Orders

	Dollars Per Month	Percent Obligor's Net Income
Income Shares	$387.53	33.9
Delaware Melson	$355.53	31.1
Wisconsin	$350.00	30.1
Washington[99]	$363.65	30.4
Cassetty	$ 62.64	5.5

Commentary. The Cassetty model is very sensitive to the income of current spouses and the presence of additional dependents. It yields the lowest result in this fact pattern because it gives the same weight to income of spouses as to income of the parents, and because it includes

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[99]This amount was computed based solely on income and number of children due support. The Washington guidelines state that income of new spouses may not be considered at time of divorce, but may be considered at time of subsequent modification. They also state a presumption that other dependents can reduce support obligations. Since there is no guidance on how to consider income of spouses or presence of additional dependents, this calculation did not account for these factors. The award might have been lower in an actual court decision, however, particularly since this case is clearly a modification, not an initial order.

additional dependents for consideration on the same basis as the children due support. The other four approaches have outcomes in a more narrow range for this particular fact pattern, despite their different approaches to second family factors.

Summary of fact patterns. A summary of the results obtained from these five fact patterns is shown in Table 19. Of the five fact patterns, the Melson formula yielded the highest order for one, while the Cassetty and Income Shares models each gave the highest orders twice. The Washington guideline gave the lowest outcome twice, with the Cassetty model ranking lowest in the other examples.

These results demonstrate that the ranking of these five approaches by level of awards depends almost entirely on the nature of the situation to which they are applied. None gives either the consistently highest or consistently lowest results. A review of the wide variation in results obtained from these few examples illustrates why it is so important to evaluate guidelines carefully. It is essential that a state review a proposed guideline against a large and diverse sample of cases before selecting a final version for implementation in a live adjudicatory setting. This type of analysis will help avoid the kinds of unanticipated results that can otherwise occur when circumstances are encountered that were not considered by the guideline's designers.

Table 19

SUMMARY OF FACT PATTERNS

Case Example	Income Shares	Melson	Wisconsin	Washington	Cassetty	Lowest	Highest
1. Basic	$ 455	$ 379	$ 400	$ 374	$ 363	Cassetty	Income Shares
2. Low Income	$ 269	$ 284	$ 225	$ 251	$ 216	Cassetty	Melson
3. High Income	$ 871	$ 782	$1,146	$ 773	$1,465	Washing-ton	Cassetty
4. Joint Custody	$ 147	$ 116	$ 111	$ 82	$ 306	Washing-ton	Cassetty
5. Second Families	$ 388	$ 356	$ 350	$ 364	$ 63	Cassetty	Income Shares

CHAPTER VI
USE OF GUIDELINES FOR UPDATING ORDERS

The discussion of child support guidelines in the preceding chapters has focused on establishment of initial orders. In this chapter, we (1) analyze the need for a more systematic process for updating child support orders, (2) review the range of criteria used by states for approving modifications to original orders, (3) describe the use of guidelines by states to determine whether modifications should be granted, (4) explore the need for systematic modification procedures in states, and finally (5) assess the need for periodic updating of guidelines themselves.

Need for Updating

In Chapter I, we describe the "adequacy gap", the more than $15 billion shortfall between guideline-based child support compared with the amount currently due under existing orders. While one component of that "adequacy gap" results from inadequate initial orders, another component results from erosion of orders in the absence of modification. Although the census study on existing levels of child support does not distinguish between new orders and previously established orders, the study is based on orders in effect in 1983. Consequently, most of the orders were in place before 1983, and many are five, ten, or even fifteen years old. The effects of inflation, as well as changing circumstances of the parties, would have rendered many of these older orders inadequate.

Thus, even if a support order accurately reflects the needs of the child and the resources of the parents when it is initially set, changes in circumstances that inevitably occur with the passage of time can seriously diminish its value and reduce its equity for the parties. There are three factors that have been identified as predictably eroding the value of child support orders:

- Inflation. In the ten years prior to 1986, the real value of a support award originally set at $500 per month would have declined to $261. Even at the lower rates of inflation experienced more recently, there is a substantial reduction in the real value of a fixed dollar order over time. Thus, an order set at $500 in 1981 would have decreased to a real value of $417 by 1986. Conversely, to re-establish their original values, the 1976 order would have to be modified to $957 per month, and the 1981 order would have to be modified to $599 per month.

- Income increases. Individual workers generally receive higher incomes over time as they mature in the work force and increase

their productivity and responsibility on the job. Parents are typically in their years of most rapidly increasing earnings (21 to 45) as their children grow up. Without an updating process, the child support award does not reflect this increase in parental ability to pay.

- o Higher costs of older children. As discussed in Chapter IV, above, expenditures on children increase as the children grow older, especially in the teenage years. In one such estimate, Espenshade calculates that expenditures are 23 percent higher for children in the 12-17 age group than for children at younger ages.[100] Special costs, such as extraordinary medical expenses, can also increase.

In addition to these factors, other circumstances frequently change which can substantially alter the needs of the child or the ability of one of the parents to provide child support. Such changes might include remarriage of one of the parents, addition of one or more new dependents, illness of the child, or a major career improvement by one of the parties. These factors all suggest the need to update child support orders systematically to preserve their initial adequacy and equity.

Modification Criteria

Currently, the only mechanism for updating orders is a modification process in which one of the parties must petition the court (or administrative hearing officer) for a change in the amount of child support. As noted in a previous project report, the courts of all states maintain continuing jurisdiction over matters of child custody and support. States permit the parties or the children of a dissolution case to apply to the court for a modification of awards.[101] The states vary considerably in the established criteria for approving a modification, however. These differences greatly affect the difficulties faced by parties in obtaining a change in child support.

All state provisions for modifying support awards include a requirement of changed circumstances since the initial award. This places the burden of proof on the petitioner to demonstrate that circumstances have changed sufficiently to warrant a modification to the grant amount. States' criteria for the extent of change in circumstances vary according to statute, case law, and court practice. One state, Delaware, requires

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100 Espenshade, Investing in Children, op. cit., pp. 30-31.

101 R. Williams and S. Campbell, Review of Literature and Statutory Provisions, op. cit., pp. 17-19 and 39-45.

only a change of circumstances, operationally defined by the Family Court as any change that would result in a different support amount as calculated by the Melson formula. All other states, however, require, either by statute or case law, that the change be more than slight.[102] Examples of language which distinguish those changes appropriate for review from those which are not include: "substantial and continuing"; "substantial and material"; and "real, substantial, and unanticipated."[103]

The Uniform Marriage and Divorce Act suggests a standard for modification which is extremely restrictive:

> ...the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable.[104]

The Commissioners' Note to this section of the Uniform Act suggests that this "...strict standard is intended to discourage repeated or insubstantial motions for modification." Only two states -- Colorado and Montana-- have adopted the unconscionability standards for modification of awards.[105] Two other states -- Indiana and Missouri -- have substituted the slightly less restrictive term "unreasonable" for "unconscionable".

Case law elaborates upon the statutory modification criteria. The various tests applied by courts in determining whether an increase in child support is warranted are described by Cartwright.[106] The most rigid test awards an increase only when: (1) The evidence establishes that the needs of the child have increased, and (2) the means of the non-custodial parent have also increased so as to enable him or her to contribute additional

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[102] 24 Am.Jur.2d s.847.

[103] Arizona Revised Statutes Annotated, Section 25-327; Idaho Code, Section 706; Vermont Statutes Annotated, Chapter 11, Section 651.

[104] Uniform Marriage and Divorce Act, Sec. 316 (1973).

[105] Colorado recently revised its modification standard to a "substantial and continuing" change in circumstances, but the new standard applies only to obligations arising after November 1, 1986. Colorado Revised Statutes, Sec. 14-10-122 (1)(a). Legislation has been introduced in 1987 to apply the new standard to all child support orders (House Bill 1263).

[106] J. Keith Cartwright, "Modification of Child Support Decrees in the 1980's: A Jurisprudential Model." Journal of Family Law, Vol. 21 (January 1983), pp. 327-344.

sums to the children's support. This test was applied to modifying child support in Daniels v. Daniels (38 Ill.App. 2d 697, 348 N.E.2d 259, 1976). The test was subsequently changed by the rule in Swanson v. Swanson, which considers whether the means of each spouse have changed absolutely, relative to each other, and relative to the children's needs (51 Ill.App.3d 999, 367 N.E.2d 512, 1977). Cartwright argues that the Swanson test improperly conditions a child support increase on an increase in the needs of the children. Some courts have applied a broader test that conditions an increase in child support upon an increase in the non-custodial parent's income even though there is no showing that the children's needs have increased specifically (Legan v. Legan, 69 Ill.App.3d 304,387 N.E.2d 413, 1979).

These modification criteria set forth in statutes and case law constitute significant barriers to updating child support orders. At minimum, the obligor or obligee must file a petition and prove the case prior to obtaining approval for a change in the level of child support. For either party to file such a petition requires some understanding of the statutory basis and court procedures for a modification. In modification actions, both parties must usually retain attorneys. The statutory criteria also imply that the burden of proof is on the petitioner, e.g. to prove a substantial and continuing change. An obligee or obligor needing a change in level of child support, then, must have the sophistication to know that a modification can be obtained, must normally have the means to retain an attorney, and must meet the burden of proof requirement to meet the criteria specified in statute and case law.

The modification criteria themselves have a considerable influence on the ability of either party to prove their case. In the case of Delaware, the minimal requirement that a party only show a change in circumstances, combined with an accessible Family Court system minimizes the barriers to obtaining modifications. The Family Court refers cases to mandatory mediation initially, and subsequently to Court Masters for hearings of matters that are not successfully mediated. The hearings are frequently conducted with pro se representation by the parties. Michigan has a statutory provision intended to ease modifications. It permits any party to request a review of a child support order every two years. The Friend of the Court (Michigan's local child support enforcement agency) is then required to conduct an investigation to determine whether the child support amount should be changed. A petition is still required for a modification, however, and the party must meet Michigan's modification criterion of changed circumstances.[107] In other states, parties must meet more stringent standards for modification.

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[107] Michigan Statutes Annotated, Sec. 25.176(17).

It is apparent that these barriers have been established to minimize the number of hearings that must be conducted by courts and administrative agencies. The effect of these barriers, however, is to deny parties access to courts for needed adjustments to child support orders. Even in Delaware, with the least restrictive criterion and an unusually accessible court system, the Family Court received only 58 percent as many modification petitions in fiscal year 1985 as petitions for new support orders. In contrast, if petitions were filed to modify all outstanding orders every two or three years, the number of modification petitions would greatly exceed the number of petitions for original orders. This suggests that, even in the state with the fewest barriers to modification, there are nevertheless substantial obstacles to updating child support awards. Because of their more restrictive modification criteria and less accessible courts, these obstacles are even more daunting in other states.

Use of Cost of Living Indexes for Updating

Although the need for updating is becoming more widely recognized, the nature of a desirable updating process remains an issue. Several mechanisms have been suggested which index orders to inflation, or the lesser of the inflation rate or increases in obligor earnings.[108] Minnesota has implemented an indexing procedure for child support orders. Under Minnesota law, each order for child support "...shall provide for a biennial adjustment in the amount to be paid based on a change in the cost-of-living."[109] The law provides that courts may use the Minneapolis-St. Paul Consumer Price Index (CPI) for all urban consumers. It further specifies that the adjustment provision can be waived upon a finding that the obligor's occupation does not provide for a cost of living adjustment, or that the order has some other type of updating clause.

The Minnesota statute appears to lay the foundation for an automatic updating process, but other provisions limit applicability of this adjustment. The statute provides that the obligee (or child support enforcement agency) must serve notice of its application for adjustment to the obligor by mail at least 20 days before the effective date. The effective date must be the first of May. The obligor can request a hearing to contest the adjustment. The adjustment can be denied if the obligor demonstrates

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[108] Robert D. Wilson, "Inflation-Proof Child Support Decrees: Trajectory to a Polestar." Iowa Law Review, Vol. 66, No. 13 (1980), pp. 131-152; Michael E. Gossler, "Escalation Clauses in Washington Child Support Awards," Washington Law Review, vol. 55 (1980), pp. 405-418; Cynthia C. George, "Combatting the Effects of Inflation on Alimony and Child Support Orders," Connecticut Bar Journal, Vol. 57 (1983), pp. 223-231.

[109] Minnesota Laws of 1983, chapter 308, sec. 24.

that his or her income did not increase as much as the CPI. Thus, the statute clearly facilitates CPI adjustments to orders, but it still poses a barrier in the form of an initiating action required of the obligee. It further specifies that the effective date of the adjustments can be only a single date in the year. These barriers may limit the impact of the statute, perhaps to a significant degree.

The Minnesota statute and other indexing proposals have considerable merit, but there are several drawbacks to the cost-of-living index approach. First, as discussed in a previous report, a number of court decisions have rejected escalation provisions that fail to consider all relevant factors. Such decisions note that any modification of orders must take into account the full range of factors used in determining the amount of the initial order.[110] Court decisions have diverged on this point, with some courts setting a less stringent standard, but an updating mechanism that relies only on inflation and/or obligor income would not be acceptable in some jurisdictions.

Second, proposals to index orders to the lesser of cost-of-living or increases in obligor income are unnecessarily restrictive. An essential principle underlying determination of child support levels in most states is parental ability to pay. This principle is intended to permit the child to benefit from a parent's higher standard of living. Accordingly, if a parent has an increase in earnings that exceeds the rate of inflation, it is appropriate to re-evaluate the child support order in terms of the new income level. To limit the increase arbitrarily to the inflation rate would unfairly deny the child access to the increased potential for support by that parent.

To the extent that the inflation rate is a proxy for increased ability to pay in individual cases, indexing is considerably better than not updating orders at all. But the inflation rate is not otherwise a particularly relevant factor in the determination of an equitable modification to an existing child support order. If the inflation rate exceeds the increase in obligor earnings, use of the inflation rate is inequitable to the obligor. If obligor earnings increase faster than inflation, limiting the increase to the inflation rate results in an inadequate order for the child. If there have been significant changes in other circumstances of a parent or the child, the changes generally have greater relevance for the level of a new order than the overall inflation rate experienced in the economy.

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110 Williams and Campbell, Review of Literature and Statutory Provisions, op. cit., pp. 39-44.

Use of a Guideline to Update Child Support Orders

A more comprehensive approach to updating child support is to reapply a guideline, preferably the same one that is used for setting initial awards. This takes into account changes in all factors considered by the guideline rather than focusing only on one or two variables. In states that have implemented guidelines, reapplication of the guidelines is the mechanism used for modifications of child support. The Delaware Family Court, for example, recalculates support using the Melson formula when a modification to an existing order is requested. Under its Uniform Child Support Guidelines, Washington state recommends that annual adjustment provisions be included in all orders of child support. In Wisconsin, legislation permits orders to be set as a percentage of obligor gross income. Since the required payment varies with increases and decreases in income, no special adjustment formula is needed.[111]

Colorado and Vermont use their guidelines to set quantitative standards for modification of awards. Under Colorado statute, the parties are deemed not to have a substantial and continuing change of circumstances if reapplication of the guideline would change the award by less than 10 percent (C. R. S. Sec. 14-10-122). By implication, and as the statute is being commonly interpreted, any change in circumstance that would result in more than a ten percent adjustment to child support with reapplication of the guideline, is considered to meet the criterion of substantial and continuing change. Vermont has a similar, but affirmative, provision which provides that any child support order which varies more than 15 percent from the amounts required to be paid under the support guideline is considered to meet the state's modification criterion of real, substantial and unanticipated change in circumstances (15 V. S. A. Sec. 660). These two provisions are noteworthy in substituting an objective standard for previously qualitative modification criteria which were applied on a discretionary case-by-case basis.

The experience of states with guidelines demonstrates that their availability sometimes encourages parties to implement their own updating provisions to negotiated agreements. In Delaware many agreements developed by attorneys make provision for annual exchanges of information between the parties and reapplication of the Melson formula to arrive at a new child support amount. Stipulated agreements in Wisconsin often

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[111] Williams and Campbell, Review of Literature and Statutory Provisions, op. cit., pp. 43-44; also, Williams and Campbell, Review of Selected State Practices, op. cit., pp. 31-40.

have similar provisions.[112] Legislation pending in Colorado would also encourage use of the guideline for voluntary updating processes.

Systematic Updating Process

New Jersey has recently gone beyond reapplication of guidelines for petitioned modifications by instituting an administrative upward modification program for IV-D cases. Cases with orders that are more than two years old are reviewed to determine whether current circumstances would yield significantly higher orders under the state's new guideline (Supreme Court Rule 5:6A, May 9, 1986). If so, cases are brought before hearing officers for modifications. Through December 1986, 1,514 cases had been reviewed under this program. As a result of the modification hearings, the average order in affected cases increased by 2.23 times, from $116 to $259 per month. This initial evidence confirms the potential for improving the adequacy of orders by implementing a modification program.

Other than New Jersey's recent program, administrative processes for routine updating of child support orders appear to be virtually non-existent at this point. There appears to be considerable resistance by courts and child support enforcement agencies to a routine updating requirement because of the substantial workload that would be imposed. As a result, we have not been able to identify any courts that review all orders on a periodic basis. Moreover, despite the federal requirement that child support enforcement agencies review all child support orders once each year, we have not been able to identify any jurisdictions where this requirement is used for routine updates of award levels.

An administrative process for updating awards would have several components.

- **Information collection.** An agency would need to notify parents of the updating requirement and obtain income and other information relevant to re-application of the guideline. The agency would need to monitor compliance with the request and take appropriate enforcement action for non-cooperative parties.

- **Computation of modified support award.** The agency would recalculate the support award based on information submitted by the parents. The child support guideline would be used for determining the amount of the modified order.

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[112] Williams and Campbell, Review of Selected State Practices, op. cit., pp. 28 and 37.

- **Notice and opportunity for hearing.** The court or agency would send notice to the parties of the new award. Opportunity for hearing would be granted to either party to contest facts or to apply the formula to the particular situation.

Neither courts nor child support enforcement agencies seem to be well prepared to administer this type of process. There is a need to develop this additional capability, however, if the value and equity of initial awards is to be preserved.

To provide the proper structure for systematic updating, initial child support orders should incorporate a provision requiring a periodic redetermination of the child support amount. As discussed in a previous report, many courts have been reluctant to impose an updating requirement on existing awards, but courts have rarely refused to honor an updating provision written into an agreement.[113]

An unresolved issue relevant to updating concerns the length of time that should elapse between periodic reviews of orders. Annual updating would be ideal, given the potential for significant changes in parental income and other relevant circumstances, particularly during periods of high inflation. The administrative burden of an annual updating process, however, would be considerable. Consequently, an intermediate solution would be to review orders every two or three years. An extended interval would mitigate the processing requirements, but would still provide the systematic adjustment that is currently lacking.

Updating Guidelines

This discussion has focused on updating orders based upon changes in parental circumstances. There is also a need, however, for periodically revising the parameters used in guidelines. Several examples of the types of revisions that need to be made can be provided from the five approaches described in Chapter IV. In the Melson formula, the primary support and self-support parameters are expressed in fixed dollar amounts that are updated periodically to account for inflation. The Cassetty and Income Shares models use the federal poverty guideline to set the level of the self-support reserve. These values need to be revised annually, based on new guidelines published in the Federal Register early each year.

Revisions that are less obvious include the income brackets for income sharing formulas such as the Washington guidelines and the Income Shares model. The income brackets for these approaches need to be updated

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[113] Williams and Campbell, Review of Literature and Statutory Provisions, op. cit., pp. 39-43.

periodically using the most current household income data (usually obtained from the Current Population Survey), to adjust for changes in the income distribution. The Wisconsin standard, with its fixed percentage parameters and absence of income categories is seemingly immune to the need for updating. Even that guideline, however, along with the others, should have its basic parameters reviewed against published economic literature every few years. Such a review would assure that the research underpinnings for the guideline remain up-to-date.

CHAPTER VII
CONCLUSION

In this report, we have discussed the considerations that should guide the development of guidelines for establishing the levels of child support awards. Analysis and evaluation of these considerations have been guided by a broad review of relevant economic studies, state statutory provisions, child support case law, and the experience of states in implementing guidelines. Impetus for developing child support guidelines stems from the requirements of the Child Support Enforcement Amendments of 1984 (P.L. 98-378). Experience of states that have previously adopted guidelines has demonstrated that they can substantially improve the adequacy and equity of orders, as well as the efficiency of the adjudication process.

Those responsible for developing guidelines are invariably confronted with the deceptively simple question: How much does it cost to rear a child? As discussed in Chapter II, this question has complex ramifications, but there are available findings that can provide a sound basis for development of guidelines. A minimum cost of rearing a child can be specified which represents a subsistence level of expenditure. The best source of guidance concerning this level appears to be the U.S. poverty standard. Above the subsistence level, economists agree that the "cost" of rearing a child depends on the level of household income; as income increases, additional expenditures are made for the benefit of all family members, including children as well as adults. Recent work by Thomas Espenshade, based on the 1972-73 Consumer Expenditure Survey, offers strong evidence that current consumption expenditures on children represent a virtually constant proportion of total household current consumption expenditures, regardless of observed family income. This central finding provides the foundation for estimates of expenditures on children by income level of the parents.

As noted in Chapter I, a comparison can be drawn between existing levels of court ordered support and economic findings on child rearing expenditures. This comparison demonstrates that the implementation of guidelines based on credible research should have the effect of significantly increasing the adequacy of child support awards. The levels of court-ordered support currently in effect apparently fall short of even the subsistence costs of child rearing, as measured by the poverty guideline. Average court-ordered support awards thus constitute only a fraction of average observed levels of expenditures on children.

The major difficulty in identifying child-related costs in a household, either for hearing officers seeking to set child support in individual cases or for economists seeking to estimate average expenditures in large groups of families, is the pooled nature of most household expenditures.

Since the most significant expenditures on children are commingled with expenditures for the total household in such categories as food, housing, and transportation, many of the normal costs of children are effectively hidden from judges and parents alike. This might explain why parents' own estimates of child related expenditures are systematically lower than the estimates of economists using marginal cost methodology.[114]

The equity of child support orders can be significantly enhanced by the use of a carefully designed guideline. Such a guideline should not only build on credible economic research, but should also be based on a critical selection of the types of elements to include and the manner in which those elements are treated. As discussed in Chapter III, it is necessary for states to consider the appropriate role of a broad range of factors, in addition to the basic components of obligor income and the number of children. Whether elements such as custodial parent income, child care, extraordinary medical expenses, shared physical custody, and additional dependents are incorporated into a guideline, and, if so, how they are used, are important policy decisions. In making these decisions, states must balance the additional equity that might be gained from a more complex guideline against the administrative advantages of a simplified approach.

The gains in adequacy and equity from using guidelines to establish initial orders will be eroded over time if states fail to develop improved updating processes. As discussed in Chapter VI, the experience of states has shown that implementation of guidelines can facilitate more frequent updating. Guidelines can be used as the basis for periodic reviews by the parties as well as for modifications determined by petition. Several states have developed innovative approaches to updating. New Jersey has initiated a review of all AFDC-related orders two years or more old and is submitting modification petitions for those cases where application of the guideline would significantly increase the order. Minnesota has legislative provision for cost-of-living updates upon petition of the obligee. Delaware provides minimal legal barriers to modification and maintains an accessible family court system. Wisconsin has yet a different approach. Under state statute, orders in Wisconsin can be set as a percentage of obligor income based on the Percentage of Income Standard, rather than as a fixed dollar amount. Dollars yielded by orders specified in that form automatically change as obligor income goes up or down.

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[114] For example, survey responses of urban middle-class parents in a value of children study in Hawaii indicated that parents own estimates of total expenditures on children constituted only 15 percent of total family income. This is significantly less than the economic estimates presented in Chapter II. See Fred Arnold and James T. Fawcett, The Value of Children: A Cross-National Study, Vol. III: Hawaii (University Press of Hawaii: Honolulu, undated), pp. 8-9.

Use of guidelines for updating overcomes objections to adjustment clauses by some courts based on the failure of simple indexing approaches to consider all appropriate factors relevant to an award. Development of a guideline should thus explicitly address its use for updating as well as determination of initial orders. In order to counter the erosion in child support orders over time, however, states will need to go beyond development of a guideline and initiate a structured process for systematic, periodic review of child support orders. This is the only effective means of curing the inequities that inevitably arise as circumstances of the parties change with the passage of time.

The description and comparative analysis of five approaches to guidelines in Chapters IV and V show that the structure and features of a given child support guideline implicitly reflect a jurisdiction's basic values concerning the nature of financial support that should be provided its children. Specifically, a review of outcomes yielded by the five approaches discussed in this report demonstrates how these results flow from the guidelines' theoretical underpinnings. These fundamental precepts, which serve as essential organizing principles for their design, are summarized below, together with the resulting implications for the patterns of orders that are yielded by the approaches:

- **Income Shares and Washington Guidelines.** The Income Shares and Washington guidelines are based on the concept that children should receive the same proportion of parental incomes that they would have received in the absence of a household dissolution (or non-formation). This tenet provides a consistent basis for treatment of a range of additional factors, such as income of current spouse, presence of other dependents, and child care expenses. Neither the Income Shares nor Washington guidelines incorporate as many factors as the Melson formula or require so little information as the Wisconsin formula. Rather, both occupy a middle ground in the trade-off between completeness and ease of application.

- **Melson Formula.** Orders derived from the Melson formula reflect the basic premise that adults should retain a minimum reserve for their subsistence level self-support, but should then devote all income to meeting their childrens' subsistence needs before being permitted to engage in any discretionary spending for their own benefit. From this basic premise, and the additional precept that children are entitled to benefit from their parents' higher standard of living, a comprehensive formula has been constructed that can be applied to an unusually broad set of circumstances.

As shown in Chapter V, a consequence of the premise underlying the Melson formula is that it sometimes results in higher orders than other formulas for obligors with income between $500 and $1,000 per month. At higher income levels, however, outcomes are more similar to those obtained under other guidelines. Whether this pattern is a positive or negative result constitutes a value judgment about the appropriate function of child support. It is the type of issue that should receive early attention by states developing guidelines.

- **Wisconsin Percentage of Income Standard.** 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. Although this effect is contrary to the economic evidence on actual child rearing expenditures presented in Chapter II, the Wisconsin standard is based on an earlier and different interpretation of economic evidence.

- **The Cassetty Model.** The Cassetty model is grounded in the concept that the proper role for child support is to equalize standards of living between households of the parents. It is intended to address disparities in living standards that frequently occur between non-custodial and custodial parent households. The income equalization approach is generally considered to include an implicit spousal maintenance (alimony) component.

  One characteristic of this approach is that the reference unit for child support calculations is the parents' households, rather than the parents themselves. This means that income of current spouses gets equal weight with income of the parents, and that additional dependents are granted the same priority as children due support. Because of the equalization concept as well as the use of a household as the primary reference unit, the Cassetty model is unusually sensitive to changes in parental income, remarriage, or addition of new dependents.

As suggested by this summary review of the five approaches, it is important for states, in initiating the developmental process, to establish objectives for a desirable pattern of results to be obtained from a guideline. These

objectives should reflect the state's social values for the proper role of child support. States should then select a basic conceptual model for child support that most closely matches those objectives.

Once a conceptual approach is specified, it is necessary to review the economic evidence carefully (as discussed in Chapter II) and to consider the appropriate treatment for the full range of factors to be considered (Chapter III). As should be clear from the analysis in Chapter V, it is also essential during the development process to evaluate the impact of alternative formulas under a wide range of circumstances. Guidelines can be complex. The interaction of that complexity with the various factors encountered in determining child support amounts can create unexpected and undesired results. Hence, it is critical for a state to evaluate a prospective guideline thoroughly before placing it into general use.

Consideration of an appropriate updating mechanism (as discussed in Chapter VI) can also extend the benefits of a guideline by application to past child support orders. Development of a systematic procedure for review and modification appears to have particularly strong potential for remedying the serious inadequacies in current levels of child support orders.

APPENDIX I

TECHNICAL COMPUTATIONS:
Estimated Expenditures on Children
As Proportions of Parental Income
And Parameters of Income Shares Model

The purpose of this technical appendix is to explain how the estimated proportions of parental spending on children were derived, as well as the parameters of the Income Shares model. Development of the Income Shares model makes use of several data sources, requires numerous intermediate calculations, and makes use of certain assumptions that need to be understood to replicate the tabular data shown in Chapters II and IV.

The sources of information used to develop the tabular data are listed in Table I-1. Of these, three are most crucial to the calculation of parental income shares allocated to child support. They include Espenshade's Investing in Children and two BLS publications; the 1972-73 Consumer Expenditure Survey (CES) and Revised Equivalence Scale. These three sources are the base upon which the tabular data for the Income Shares model are built.

Parental Expenditures on Children

For reasons discussed in Chapter II, this report utilizes Espenshade's estimates as its primary source of data on the costs of rearing children. These are stated in the tables that follow as "Espenshade's costs" (EC) and are generally shown as a proportion of household current consumption expenditures (C). For an intact family of four with two children, costs of children average 40.7 percent of household expenditures. A somewhat lower proportion (40.4 percent) is spent by families in the lowest socioeconomic status (SES) categories while a higher proportion is spent (41.3 percent) in the highest SES groupings. Using as his data source income and consumption data from the 1972-73 Consumer Expenditure Survey (CES), Espenshade develops estimates for households with different numbers of children and for children of different ages. The methodology used to develop these estimates is carefully detailed in Investing in Children. Interested readers are encouraged to review that publication for a description of those methods and calculations.

Income and Consumption Estimates at Various Levels of Household Gross Income

In order to refine and extend Espenshade's proportions, it was necessary to use the published 1972-73 CES data. The most important calculations and adjustments using this source are described below.

Gross/Net Income. Gross income (GI), defined as family income before taxes, is provided in the 1972-73 Consumer Expenditure Survey for 4-person families at twelve levels of family income. Net income (NI) is derived

Table I-1
TYPES AND SOURCES OF INFORMATION

Type of Information	Source of Information
o 1972/73 Income distribution, 4-person families; gross/net income; and consumption expenses, including those for child care and extraordinary medical care.	Bureau of Labor Statistics, Consumer Espenditure Survey: Interview Survey, 1972-73 Bulletin 1997, Vol. 1 (U.S. Dept. of Labor: 1978), Table 5.
o 1984 income distribution, 4-person families	Bureau of the Census, Money Income of Households, Families, and Persons in the U.S.: 1984 Series P-60, No. 151 (U.S. Dept. of Commerce: April 1986).
o Proportion of household consumption spent on children by family size, socioeconomic status and age of children	Thomas J. Espenshade, Investing in Children: New Estimates of Parental Expenditures (Urban Institute: Washington, D.C. 1984).
o Revised Equivalence Scale	Bureau of Labor Statistics, "Revised Equivalence Scale for Estimating Equivalent Incomes or Budget Costs by Family Type" U.S. Dept. of Labor, Bulletin No. 1570-2, Nov. 1968.
o Consumer Price Index (CPI) statistics	Bureau of Labor Statistics
o Distribution of FICA payments across retirement, disability, and medicare categories.	Social Security Administration
o 1986 Poverty Income Guidelines	Federal Register Vol. 51, No. 28 February 11, 1986.

from gross income using the following relationship:

NI = GI - Taxes - FICA - Union dues, where

- o Taxes include (1) federal, state and local income taxes, (2) personal property taxes, and (3) other taxes

- o Average Social Security (FICA) taxes for 1972-73

Year	Rate	Income Ceiling
1972	5.2 %	$ 9,004
1973	5.85%	$10,800
Mean	5.525%	$ 9,902

The average FICA proportion was applied to income from wages and salaries in estimating FICA costs

- o Union dues are considered mandatory employment expenses

Consumption. In this report, total household expenditures (TE) is defined as

TE = CC + PI&P + G + Change in Net Worth + X,
where

CC = Current Consumption, a line item in the 1972-73 CES, excluding the portion of FICA that is included in the costs of health insurance (0.8 percent of wages and salaries),

PI&P = Personal insurance and pensions, excluding the portion of Social Security taxes that is attributable to the retirement and disability portion of FICA (4.725 percent of wages and salaries in 1972-73)

G = Gifts and Contributions

Change in Net Worth = Net change in assets - net change in liabilities

X = adjustment factor.

The CES states that about 95 percent of current consumption expenditures are counted in the interview survey, the data source used for these calculations. The exclusions are nonprescription drugs, household supplies, and personal care items. Thus, for those income categories where net income was greater than total expenditures we increased current consumption by five percent; that is,

Current consumption x 1.05 = Revised current consumption

If net income was still greater than total expenditures after this adjustment, we apportioned the difference between current consumption and the other items that are included in total expenditures in proportion to their reported levels. These adjustments are required only for the four highest income groupings.

Updating Gross/Net Income to 1986 Dollar Levels. Detailed income and expenditure information was estimated from 1972-73 data. The income categories shown in the report, however, are based on 1986 dollar levels. Updating the 1972-73 information to 1986 involved two procedures. First, 1972-73 income distribution data were plotted against the cumulative relative frequency of 4-person families in each income category. A similar plot was prepared using 1984 data, the most recent available for 4-person families. Using cumulative relative frequency distributions, i.e. ogives, the 1984 income categories that corresponded to the 1972-73 categories were determined. This procedure allows us to determine the income class boundary in terms of 1984 income that corresponds to the same income boundary in 1972-73 income. That is, income levels for a given point on the 1972-73 income distribution were related to the income levels for the same point on the 1984 income distribution. These income categories were then updated to 1986 dollar levels using CPI data from May 1986.

The 1986 net income categories were calculated from the gross income figures by assuming that the 1972-73 net income/gross income ratio held for 1986 income as well.

Once all income categories were updated, we regrouped some of the lower income ranges. Regrouping was done on the basis of the consumption/net income ratios. The lowest five income ranges for example, all had ratios exceeding 1.0 and appear as two income ranges in Tables 11 and 13. The ratios for the next two income groups were nearly identical as were the ratios for the subsequent two groups. Each was reclassified as a single income range. In the absence of this reconfiguration the Espenshade proportions would have been identical across some income ranges. After adjustments then, the original 12 income categories existing in the 72-73 CES, were reduced to 7 categories for 1986 income.

Adjustments for Child Care and Extraordinary Medical Expenses. The Income Shares model excludes costs of child care and extraordinary medical needs from the calculation of child support. These costs are treated separately for reasons discussed in Chapters III and IV. This exclusion reduces the share of each parent's income in the model that is paid directly as base support. The following methods were used to recompute the proportion of parental income paid as child support assuming that child care and extraordinary medical costs would be allocated between the parents based on actual expenses. The estimated costs are shown in Table I-2 for each of the income categories in the 1972-73 CES.

Table I-2
PROPORTION OF CURRENT CONSUMPTION SPENT FOR CHILD CARE AND EXTRAORDINARY MEDICAL EXPENSES

Gross Income Categories (72/73)	Current Consumption	Child Care Costs(1)	Extra Med. Costs(2)	Proportion of Gross Income
$0-2,999	$5,278	$17.54	$48.98	3.82
$3,000-3,999	$5,094	$23.43	$65.06	2.51
$4,000-4,999	$5,213	$57.43	$99.32	3.50
$5,000-5,999	$5,869	$64.86	$160.47	4.67
$6,000-6,999	$6,227	$45.73	$130.34	2.71
$7,000-7,999	$6,436	$90.50	$142.11	3.10
$8,000-9,999	$7,451	$101.74	$178.38	3.11
$10,000-11,999	$8,192	$53.66	$295.31	3.20
$12,000-14,999	$9,348	$85.96	$254.24	2.53
$15,000-19,999	$11,220	$100.57	$302.75	2.33
$20,000-24,999	$13,225	$92.84	$352.22	2.01
$25,000 or more	$17,341	$98.95	$458.49	1.57

1. Prorated based on the proportion of children in the family
2. All health care expenses not covered by insurance less a $200 deductible per family ($79.16 in 1972-73)

Child Care (CCare). The costs of child care are grouped with care for the elderly in the 1972-73 CES. In order to derive a figure for child care costs alone, the total costs of care for both children and the elderly were apportioned based on the average number of children and elderly in four person households at each income level. For example, the costs of child care and care for the elderly in four person households with gross annual incomes between $12,000 and $15,000 were $91.02 according to the 1972-73 CES. The average number of children in these households was 1.7 and the average number of elderly was 0.1. Based on these averages and assuming that the costs of care are no greater for children than for elderly, the relative costs of child care for this set of households is $85.96. Similar calculations were made for each income category in the 1972-73 CES.

Extraordinary Medical (M). It is difficult to define costs of extraordinary medical care. Should any expenses not covered by insurance be classified as extraordinary, or only a portion of those expenses? This report adopts the latter definition since several states, e.g. Colorado, Ohio, have adopted definitions of extraordinary medical expenses that incorporate "deductibles". In this report, extraordinary medical expenses include all medical costs not covered by insurance less a "deductible" of $200 (1986 dollars) per four person family. Two hundred dollars is equivalent to $79.16 in 1972-73. This definition was applied to each income grouping to estimate extraordinary costs.

Adjustments for the Number of Children

Espenshade's proportion of 40.7 percent (EC/C) applies to a family with two children. However, Espenshade also provides sufficient information to compute the costs of rearing one child and three children. As calculated from that information, the costs of rearing one child are about two-thirds (0.6444) the cost of raising two children. For three children the costs are about 25 percent higher than for two children, the appropriate multiplier being 1.2524.

Espenshade does not estimate costs for families with more than three children. Thus, the extension of the proportions to four-child families uses the BLS Revised Equivalence Scale (1968). Although this scale only estimates consumption for families up to four children, the BLS estimates are graduated and provide estimates of equivalent consumption levels for different family sizes. The use of the BLS scale to project consumption levels to families with five and six children assumes that the scale increases at a constant, decreasing rate. From that assumption, it is possible to derive ratios to apply to families with increasing numbers of children.

The ratios, both those calculated from available data and projections, are shown in Table I-3. They are used as multipliers across all income levels to estimate the proportions of income allocated to child support for families with different numbers of children. Thus, the proportions for three child families are achieved by multiplying the two child family proportions by 1.2524. The proportions for three child families are then used as a base to extend the data to larger families. Therefore, the five child family proportion is simply the portion for three child families multiplied by 1.2293, while for six it is the three child family multiplied by 1.3142.

Table I-3
MULTIPLIERS USED TO EXTEND PROPORTIONS TO FAMILIES WITH DIFFERENT NUMBERS OF CHILDREN

Number of Children	Ratios to Three Children (1)	Ratios to Six Children (2)
1	0.6444	
2	1.0000	
3	1.2524	1.0000
4		1.1274
5		1.2293
6		1.3142

(1) Calculated from Espenshade, two child family is base
(2) Projections using the Revised Equivalence Scale, three child family as base

Adjustments for a Child's Age

Studies that examine the costs of rearing children generally agree that those costs are greater for the 12 to 17 year age group. Therefore, the proportions in the tables are adjusted for the age(s) of the child(ren). Espenshade's cost estimates for the age groups 0-5 years, 6-11 years, and 12-17 years show an average expense of $27,467. The average cost of rearing a child from birth to 11 years of age is $25,462 and from 12 to 17 years is $31,477. Thus, for children under 12, the relative costs associated with children are 0.927 ($25,462/$27,467) of the average. On the other hand, there is a premium associated with children aged 12 to 17 of 1.146 ($31,477/$27,467) above the average. Espenshade's proportions (average

costs associated with children/household expenditures) are adjusted to reflect these differentials related to age.

Estimating Proportions

The previous information is background to building the proportions in the report's tables. Table I-4 displays the components necessary to calculate the child support proportions in the net income tables throughout this report. The costs of raising children as a proportion of gross income are calculated similarly but applying different ratios: C/GI instead of C/NI, and (CCare+M)/GI instead of (CCare+M)/NI. The adjustments for number and age of children remain the same.

Table I-4
VARIABLES NECESSARY TO ESTIMATE CHILD SUPPORT PROPORTIONS FOR HOUSEHOLD NET INCOME
(Two Child Family)

Net Income Categories (1986 $)	Espenshade Proportions (EC/C)	Consumption Net Income (C/NI)	CCare+Med Net Income (CCare+M)/NI	Income Shares Proportions (EC/NI) (2)
$0-5,600	40.4	More than 1.0 (1)	3.40	37.0
$5601-10,650	40.4	More than 1.0 (2)	3.69	36.7
~~$10,651-16,725~~	~~40.4~~	~~0.985~~	~~3.66~~	~~36.1~~
$16,726-28,200	40.7	0.907	3.40	33.5
$28,201-39,975	41.3	0.860	2.86	32.7
$39,976-51,875	41.3	0.815	2.49	31.2
$51,875 or more	41.3	0.718	1.97	27.7

(1) Where C/NI exceeds 1.0, the appropriate multiplier to use in adjusting the Espenshade proportions is 1.0.

(2) Proportions (for two child families) are calculated in the following fashion:

$$(EC/C \times C/NI) - ((CCare+M)/NI) = EC^*/NI$$

In order to calculate similar proportions for families with one, three, four, five and six children, the multipliers shown in Table I-3 are applied.

In order to adjust the proportions for a child's age, the Income Shares proportions are multiplied by 0.927 for a child under age 12 and by 1.146 for a child 12-17 years of age.

Espenshade's proportions are adjusted for C/NI and (CCare+M)/NI at each income level. At very low income levels, however, C/NI exceeds 1.0. In these situations, the C/NI ratio is assigned a value of 1.0 and the only adjustment to the Espenshade proportions is for child care and extraordinary medical expenses.

The EC*/NI proportions were used to build the income shares net income table in the text (Table 12). The proportions in that table were subsequently used to build a comparable table for gross income (Table 14, text) through a few simple steps. First, the income ranges for the table were developed using procedures outlined earlier in this appendix. We then translated the midpoint of each gross income range to net income. Next, we used the EC*/NI proportions to determine the amount of child support for each midpoint and at various numbers of children. Using those child support amounts, we calculated proportions (i.e. child support/gross income) for the gross income table.

Summary of Differences from the Interim Report Calculations

The calculations in this report are somewhat different from those shown in the 1985 Interim Report. The differences can be attributed to two factors: (1) more accurate, detailed information is available now than was available earlier and (2) recommendations and positive criticism from individuals who reviewed the earlier report. As a result of these factors, the Income Shares model departs from the estimates in the Interim Report in four areas.

Database. The database used to derive estimates for household income and expenditures has changed. The Interim Report used 1972-73 CES data for families of two or more persons. Data from a more representative group, families of four or more persons, is used in this report.

Updating Gross and Net Income. The most current available information on income distribution by family size is from 1984 (published April 1986). The distribution of families in various income ranges (1972-73) was plotted and matched to the 1984 data to determine comparable income class boundaries. These boundaries were updated to 1986 using the most recent CPI statistics (May 1986).

Adjusting for Gap Between NI and TE. The CES accounts for most, but not all household expenditures. For the highest income groupings in particular, there is a substantial gap between total household expenditures and estimated net income. For the highest income class in the 1972-73 CES for example, there is a 13 percent gap between TE and NI. The calculations in this report make adjustments for that gap, as discussed above.

Child Care and Extraordinary Medical Expenses. The Interim Report accepted estimates from other sources that child care expenses average approximately 3.9 percent of household expenditures. This estimate was used to develop the proportions in the Income Shares model. There were no adjustments in the model, however, for extraordinary medical expenses. The calculations in this report apply a more appropriate procedure by using actual costs for child care and extraordinary medical expenses reported in the 1972-73 CES.

APPENDIX II

ECONOMIC EVIDENCE ON CHILD REARING: COMPARISON OF MAJOR STUDIES

A substantial body of studies has accumulated on patterns of household expenditures, beginning with a pioneering work by Ernst Engel in 1883.[1] Chapter II discussed the studies of most relevance to this report, but did not describe related studies in detail. This appendix presents a more comprehensive assessment of those studies and compares some of the alternative findings in them.

Using data from consumer expenditure surveys, the common objective of economic studies has been to estimate the allocation of household spending among the various members. This is usually accomplished by comparing spending patterns of families with similar economic and occupational characteristics, but different household compositions. For example, if two families are equally well off economically, but have different numbers of children, then the additional income spent by the larger family can be considered the "cost" associated with the additional child(ren). Other allocation methods are used by certain governmental studies, however. The USDA divides some costs, such as housing, based on pro rata shares. The BLS figures are constructed from market basket studies.

Although the tasks required to estimate these "costs" seem straightforward, empirical studies yield a considerable range of estimates on critical questions, such as:

- Average expenditures on children,
- Relationship between spending and income levels, and
- Variation in spending by age of children.

These differences can be attributed to the following factors: (1) differences in the questions that form the basis of the studies; (2) different data sources; (3) varying methodological approaches used to estimate household expenditures; and (4) changing patterns of family composition and household expenditures over time.

In this appendix, we present the range of results obtained from three studies based on the 1972-73 Consumer Expenditure Survey (CES), plus additional results from the U.S. Department of Agriculture (USDA) findings on expenditures for children and figures constructed from Bureau of Labor Statistics (BLS) studies. As discussed in Chapter II, we believe that Espenshade's work provides the most credible foundation for development of guidelines, as selectively augmented by findings from other studies. We present findings from the broad group of studies, however, to show how differences in objectives, methodologies, and data sources can affect estimates of expenditures on children.

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[1]Ernst Engel, "Der Kostenwert des Menschen," Volkswirtsch Zeitfragen H. 37/38, 1883, Berlin. As cited in Thomas J. Espenshade, Investing in Children: op. cit.

Expenditures on Children

The usual starting point of most economic studies is a dollar estimate of the cost of raising a child. Table II-1 displays the total costs from five studies, while Table II-2 shows the same figures converted to monthly amounts, which is how most child support orders are expressed.

It is readily evident from the data that all five studies are not strictly comparable. The lack of comparability is due to (1) different definitions of expenditures, (2) varying degrees of specificity relating to multiple children, and (3) different methods to classify income and socioeconomic status. For example, the BLS figures in the table differ from the others in that they represent the expenditures associated with a pre-specified living standard, rather than observed expenditures for households in a given income/socioeconomic range.

As may be expected from these differences, there is considerable variation in the figures presented in the two tables. The BLS estimates are the lowest: $61,290 for one child at a middle income standard, or $57,091 for one of two children. The latter figure is the one most comparable to Turchi's estimate of $62,474, since the mean number of children in his sample is 2.0.

At the opposite extreme are Olson's estimates: $131,277 for a single child and $110,774 for the first child in a two-child family at the medium socioeconomic level. The estimates of Espenshade and the USDA fall in the middle. Espenshade calculates expenditures of $106,200 for a single child and $82,400 for the first child in a two-child household at a medium income /socioeconomic level. The USDA estimate is very similar at $80,400 for an average urban child.

In the Turchi, Olson and Espenshade studies the low, middle and high socioeconomic levels are not associated with specific income levels. Rather, they represent groupings of families by estimated potential income, determined from educational, occupational and other characteristics. In comparing expenditures across households, it is likely that the overall level of household income is affected by the presence of children. If actual income were used as the measure of economic status, a bias would be introduced by that effect, which can be avoided by the use of broader measures of socioeconomic status.

Expenditures on Children as a Proportion of Income

It is not surprising that all studies show expenditures on children rising as family income increases. However, as a proportion of gross income total household expenditures, and hence expenditures on children, decline as parents dedicate a greater portion of their discretionary income

Table II-1

ESTIMATES OF EXPENDITURES ON CHILDREN BIRTH TO EIGHTEENTH BIRTHDAY

	Low Income/ Socioeconomic Status	Medium Income/ Socioeconomic Status	High Income/ Socioeconomic Status
Turchi (1983)			
1981 dollars			
Average male child		$ 62,474	
Espenshade (1984)			
1981 Dollars			
One child	$ 96,600	$106,200	$126,300
Two children	149,900	164,800	196,600
Three children	187,900	206,400	246,600
Olson (1983)			
1982 Dollars			
One male child	$ 58,527	$131,277	$199,670
Two children	156,525	221,548	281,300
BLS (1982)			
1981 Dollars			
One child	$ 40,556	$ 61,290	$110,794
Two children	75,558	114,182	156,544
Three children	110,794	167,440	229,588
USDA (1982)			
1981 Dollars			
Average urban child		$ 80,400	

Sources: Turchi, Estimating The Cost of Children in the United States, Tables 29 and 30. Figures refer to average child in an average-sized household.

Espenshade, Investing in Children, Table 3. Figures given are for a household with wife employed part-time for a full year.

Olson, Costs of Children, Tables 5-1, 5-6, 5-7, B-4, and B-10.

Bureau of Labor Statistics, "Revised Equivalence Scale", Table 1; "Autumn 1981 Urban Family Budgets", Table C.

U.S. Department of Agriculture, "Updated Estimates of the Cost of Raising a Child", Family Economics Review, (Winter 1982) pp. 30-31. Figures vary by geographic region--mean is calculated from regional estimates.

Table II-2

ESTIMATED MONTHLY EXPENDITURES ON CHILDREN BIRTH TO EIGHTEENTH BIRTHDAY

	Low Income/ Socioeconomic Status	Medium Income/ Socioeconomic Status	High Income/ Socioeconomic Status
Turchi (1983)			
1981 Dollars			
Average male child		$ 289.23	
Espenshade (1984)			
1981 Dollars			
One child	$ 447.22	$ 491.67	$ 584.72
Two children	693.98	762.96	910.19
Three children	869.90	955.56	1,140.74
Olson (1983)			
1982 Dollars			
One male child	$ 270.96	$ 607.76	$ 924.40
Two children	724.65	1,025.69	1,302.31
BLS (1982)			
1981 Dollars			
One child	$ 187.76	$ 283.75	$ 512.94
Two children	349.81	528.62	724.74
Three children	512.94	775.19	1,062.90
USDA (1982)			
1981 Dollars			
Average urban child		$ 372.22	

Sources: Turchi, Estimating The Cost of Children in the United States, Tables 29 and 30. Figures refer to average child in an average-sized household.

Espenshade, Investing in Children, Table 3. Figures given are for a household with wife employed part-time for full year.

Olson, Costs of Children, Tables 5-1, 5-6, 5-7, B-4, and B-10.

Bureau of Labor Statistics, "Revised Equivalence Scale", Table 1; "Autumn 1981 Urban Family Budgets", Table C.

U.S. Department of Agriculture, "Updated Estimates of the Cost of Raising a Child", pp. 30-31. Figures vary by geographic region - mean is calculated from regional estimates.

to savings. Table II-3 compares the child expenditure estimates of Espenshade, Olson and Turchi with respect to gross household income. Turchi does not estimate expenditures as a proportion of income for different income levels and only estimates the proportion of after-tax income spent on children. Thus, the figure in Table II-3 is projected from other information in his study. Olson's figures are also difficult to interpret because he does not specifically define the family income variable as he uses it in the study. Still, the estimates do illustrate how great a difference can be achieved despite using the same data base for analysis.

As evidenced in the table, Espenshade's per-child estimates (about 15 percent of gross income) are about 28 percent higher than Turchi's, based on a mean number of two children in the Turchi database. Similarly, Olson's estimates are approximately 25 percent higher than Espenshade's and more than 60 percent higher than Turchi's.

Only Espenshade and Olson give estimates for high and low income/socioeconomic status groups. Espenshade finds that expenditures on children drop markedly as a proportion of gross income the higher the income/socioeconomic status. By contrast, Olson estimates almost constant proportions across the three income/socioeconomic groups.

Espenshade has calculated that the USDA estimates correspond to 21.5 percent of disposable family income per child. Assuming that disposable income represents 79.5 percent of gross income (the same adjustment used for the Turchi figures), the USDA estimate would correspond to 17.1 percent of gross income. This figure is slightly higher than Espenshade's estimates (average 15 percent per child), substantially higher than Turchi's, and considerably lower than Olson's.

A priori, we would expect the USDA estimates to be as high or higher than the estimates drawn from the three studies, if those studies had been derived from the same data source. Based on our expectation that the marginal "cost" of children is less than the average "cost", the average cost methodology utilized by the USDA study for several major consumption categories should yield estimates that exceed those derived from studies using a marginal cost methodology. The fact that the USDA estimates are in fact slightly higher than Espenshade's may be due as much to this methodological difference as to the difference in the data sources.

Expenditures and the Number of Children

A key variable in estimating the proportion of income that should be allotted to child support is how expenditures on children vary as the number of children increases. Aside from Espenshade, there are three studies that can be used to estimate the incremental expenses based on the number of children in a family. The results of these studies are

Table II-3

ESTIMATES OF EXPENDITURES ON CHILDREN AS A PROPORTION OF GROSS INCOME

	Low Income/ Socioeconomic Status	Medium Income/ Socioeconomic Status	High Income/ Socioeconomic Status
Turchi (1983)			
Average Male or Female Child Birth order unspecified		11.7%[1]	
Espenshade (1984)			
Two children	34.8%	29.9%	23.2%
Olson (1983)[2]			
One male child	22.8%	21.9%	21.7%
Two male children		37.3%	
Three male children		51.5%	

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1 Turchi gives a figure of 14.3% of after-tax income. The figure in the table has been adjusted to gross income by inflating after-tax income by the weighted average of personal taxes and FICA paid by households greater than 2, based on data from the 1972-73 Consumer Expenditure Survey.

2 Low income is defined as the 20th percentile of the income distribution; high income is defined as the 80th percentile. Income definition is unspecified, but presumed to be gross income.

Sources: Turchi, Estimating the Cost of Children in the United States, pp. 80-83. Figure refers to average child in average-sized household.

Espenshade, Investing in Children, Table 20.

Olson, Costs of Children, Tables 5-1, 5-6, 5-7, B-4, and B-10.

shown in Table II-4. The first row shows figures from the BLS Revised Equivalence Scale. The second row shows figures calculated from the current poverty guideline. Finally, the third row shows estimates developed by Edward Lazear and Robert Michael in a 1980 study.[2]

The formula for the poverty guideline is not normally shown as an equivalence scale. Yet, it can be expressed as a consistent relationship between expenditures for households of different sizes and is shown here for reference purposes. The Lazear-Michael scale is comparable to the BLS index and both are based on the 1960-61 BLS Survey of Consumer Expenditures. The methodology used for the Lazear-Michael scale estimates, however, is quite different from that used by the BLS or any of the other economic studies discussed in this report. The Lazear-Michael approach is unique in explicitly considering the time or "service" interactions in a household which affect the relative prices and values of goods between households of different size. For example, a given dollar of expenditure for food cooked at home might have less cost in a larger household relative to a dollar expenditure for food purchased in a restaurant. This follows because the time involved in cooking a meal for four people is much less than four times the time required to cook the same meal for one person. Under this argument, the in-home "service" interactions with the costs of market goods systematically vary systematically across household size. The service interactions therefore affect the relative prices faced by households of different size for various combinations of market goods. In contrast, the approach of other economic studies has assumed that relative prices for food at home and food away from home, for instance, do not vary systematically by household size. By using a less restricted methodological approach, Lazear and Michael derive estimates that differ from the BLS and poverty guideline estimates.

The equivalence estimates in Table II-4 show the incremental cost of one or more children for a household with two adults. The poverty guideline suggests a constant incremental expenditure for one to three children of slightly over 25 percent each. This suggests that a given child costs about one-half as much as an adult in a two-adult household. The BLS figures are considerably higher, estimating an incremental cost of 36 percent for the first child, or 72 percent of one adult in a two-adult household. The Lazear-Michael estimates, however, are considerably lower than either of the other two. The estimated incremental expenditure for the first child is slightly more than 20 percent, or slightly more than 40 percent of the average cost of an adult in a two-adult family.

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[2]Edward Lazear and Robert Michael, "Family Size and the Distribution of Real Per Capita Income," American Economic Review, Vol. 70, No. 1 (March 1980), pp. 91-107.

Table II-4

EQUIVALENCE ESTIMATES FOR EXPENDITURES ON CHILDREN:

Additional Dollar Expenditures on Children Relative To Household Expenditures for Two Adults

	Number of Children			
	1	2	3	4
BLS Revised Equivalence Scale	36	64	89	113
Poverty Guideline	25.5	51.1	76.6	102.1
Lazear and Michael	20.8	38.7	59.4	

Sources: BLS, "Revised Equivalence Scale," Table A-1.

Federal Register, Vol. 50, No. 46 (3/8/85), PP. 9517-9518.

Lazear and Michael, "Family Size and the Distribution of Real Per Capita Income," Table 4.

The variances in these estimates result from the different approaches used for their development. The poverty guideline is constructed by multiplying by three the amount deemed necessary for subsistence food costs for a low-income household, as calculated in the Economy Food Budget of USDA. The economy food budget itself is based on a combination of professionally defined nutritional requirements and observations of food consumption patterns. Since the poverty guideline ultimately flows from a specifically defined quantity of food, it is not surprising that its underlying equivalence scale implied a constant marginal dollar cost for additional children. By comparison, the BLS Revised Equivalence Scale is based on observed patterns of household consumption, where equivalence is defined based on expenditure of constant proportions of household income on food. In yet another approach, the Lazear-Michael scale does not assume that households of different size spending the same proportions of their income on food are equally well off. Rather, other methods are used to establish equivalence and lower estimates presumably result from the impact of the in-home service interactions with the dollar value of purchased goods.

Expenditures by Age of Children

The BLS Revised Equivalence Scale, the USDA study, and the three studies based on the 1972-73 CES provide information on how expenditures on children vary by age. Only Olson and Turchi, however, provide that information on a yearly basis from birth through age 17. These latter estimates are displayed in Table II-5, while Table II-6 shows comparative data by age group for the five major studies.

From Table II-5, it is clear that the Olson and Turchi per year estimates are sharply different. Yet, the pattern of results is very similar. That is, both studies show expenditures declining from the birth year through year five (Olson) or year six (Turchi) at which point they rise steadily through year 17. Both authors explain the high birth year costs as resulting from unreimbursed medical expenses relating to the child's delivery, costs of new furniture and other household goods for the new child, and major housing adjustments that are often made after the birth of a child. These incremental costs for a new child ease after the first few years and reach their low point just prior to the time the child starts school. Thereafter, the annual expenditures steadily increase so that during the teenage years they are estimated to be more than twice the level of expenditures on a five year old.

Comparing the age group estimates in Table II-6 shows little agreement among the studies. Espenshade shows a steadily increasing level of expenditures across the three age groups. Turchi, on the other hand, shows a slight decline from the 0-5 and 6-11 age groups (from 26.9 to 25.3 percent of the total) and a sharp increase for the 12-17 age group

(to 47.7 percent of the total). Olson estimates that expenditures increase between the 0-5 and 6-11 age groups, but only slightly, and then, consistent with Turchi, increase sharply for the 12-17 age group (to 47.9 percent of the total). The USDA estimates are very close to Espenshade for the oldest age group, but are higher for the youngest (as a proportion of the total) and are lower for the middle group. Finally, the BLS estimates indicate sharply lower costs increasing slightly for older children in the 12-17 age range.

The only consistent finding across all studies, then, is that expenditures are highest for the 12-17 age group. For this reason, estimates by age in the report are calculated only for two age groupings: 0-11 and 12-17 years.

Table II-5

ESTIMATES OF EXPENDITURES ON A CHILD BY AGE

Age of Child	Turchi (1983)[1] (1981 $)	Olson (1983) (1982 $)
0	$3,754	$ 7,118
1	3,225	6,216
2	2,812	5,325
3	2,510	4,747
4	2,311	4,437
5	2,210	4,357
6	2,201	4,441
7	2,276	4,645
8	2,431	4,994
9	2,658	5,473
10	2,951	7,870
11	3,305	8,530
12	3,712	9,227
13	4,167	10,519
14	4,663	11,073
15	5,195	11,541
16	5,755	11,882
17	6,338	12,062

[1] Male child, smoothed annual totals.

Sources: Turchi, Estimating The Cost of Children in the United States, Table 29.

Olson, Costs of Children, Table 4-1.

Table II-6

ESTIMATED COSTS OF A CHILD BY AGE GROUP

Estimated Costs and Percent of Total

Age of Child	Turchi 1981 $		Espenshade [1] 1981 $		Olson 1982 $		USDA [2] 1980 $		BLS [3] 1981 $	
	Dollars	%	Dollars	%	Dollars	%	Dollars	%	Dollars	%
0-5	$16,822	26.9	$21,094	25.6	$32,200	24.3	$20,285	29.3	$ 9,852	16.1
6-11	15,822	25.3	29,829	36.2	35,953	27.2	22,564	32.6	24,078	39.3
12-17	29,830	47.7	31,477	38.2	64,125	48.5	26,383	38.1	27,360	44.6
0-17	$62,474	99.9	$82,400	100.0	$132,278	100.0	$69,232	100.0	$61,290	100.0

1 One child household, mother employed part-time, full year.

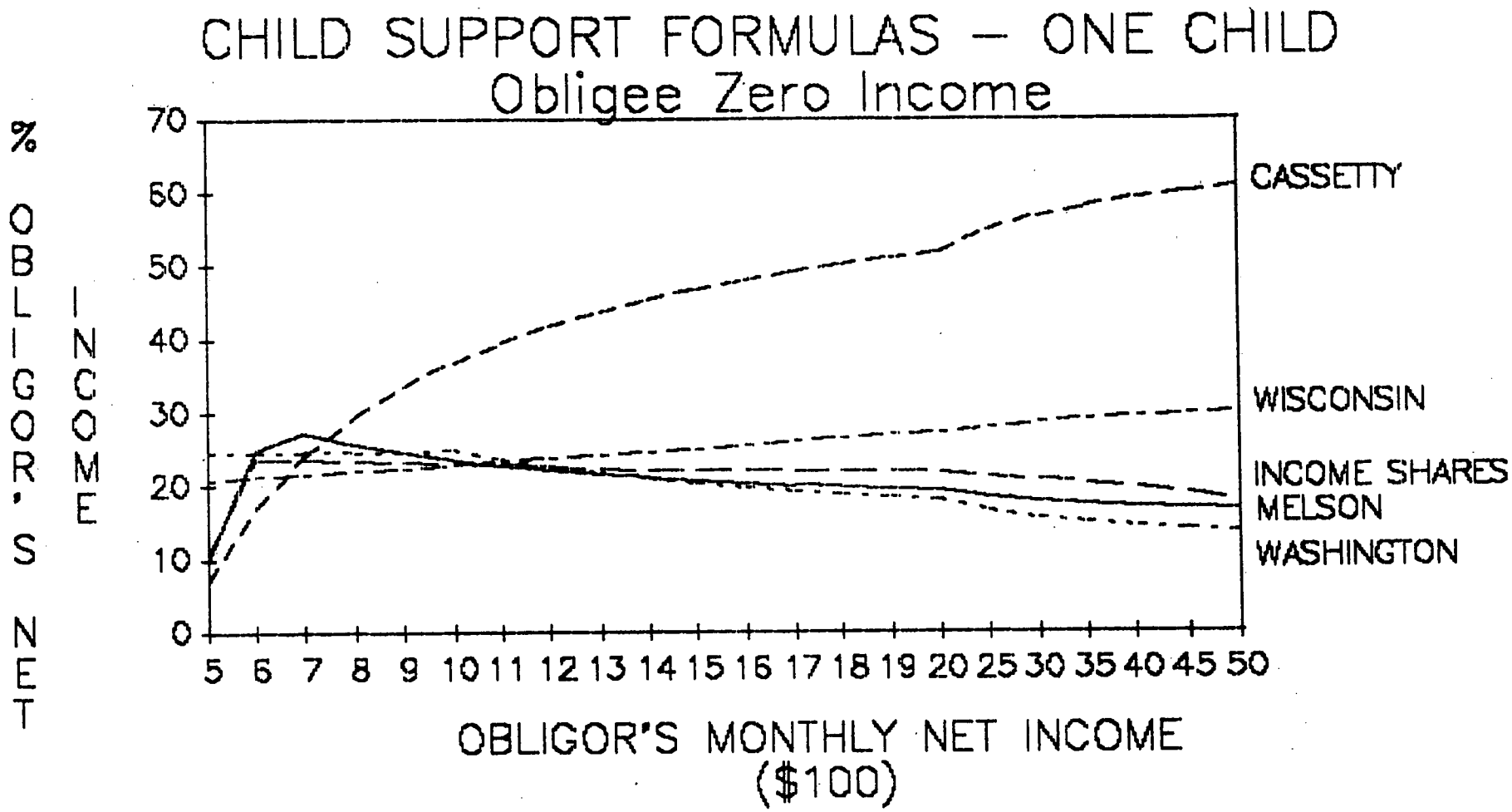
2 Moderate cost level, north central region.

3 Intermediate budget level.

Sources: Turchi, Estimating the Cost of Children in the United States, Table 29.
Espenshade, Investing in Children, pp. 30-31.
USDA, "Updated Estimates of the Costs of Raising a Child," Table 8.
BLS, "Revised Equivalence Scale," Table 1 and "Autumn 1981 Family Budgets," Table C.

APPENDIX III

LEVELS OF ORDERS BY OBLIGOR NET INCOME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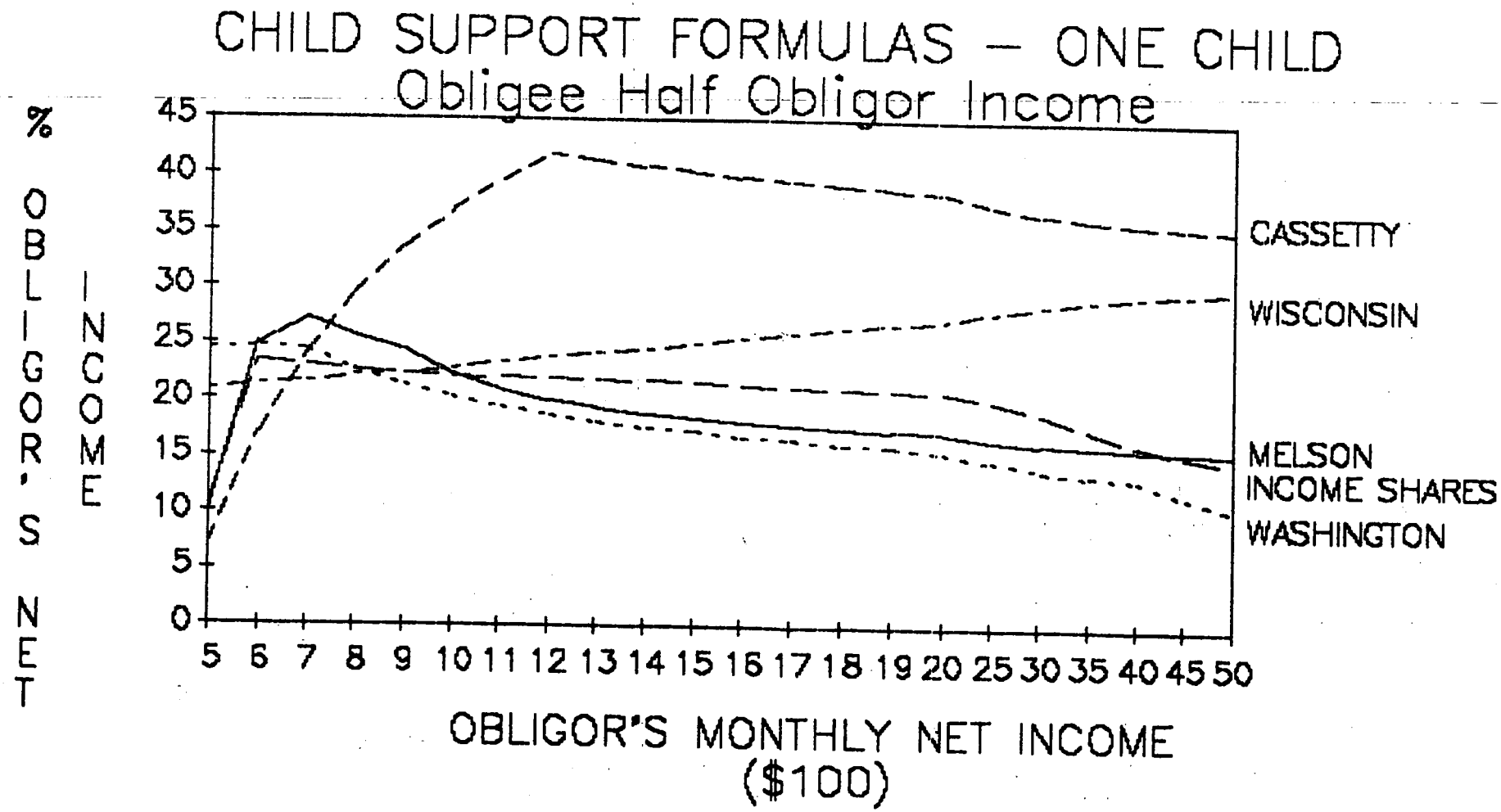
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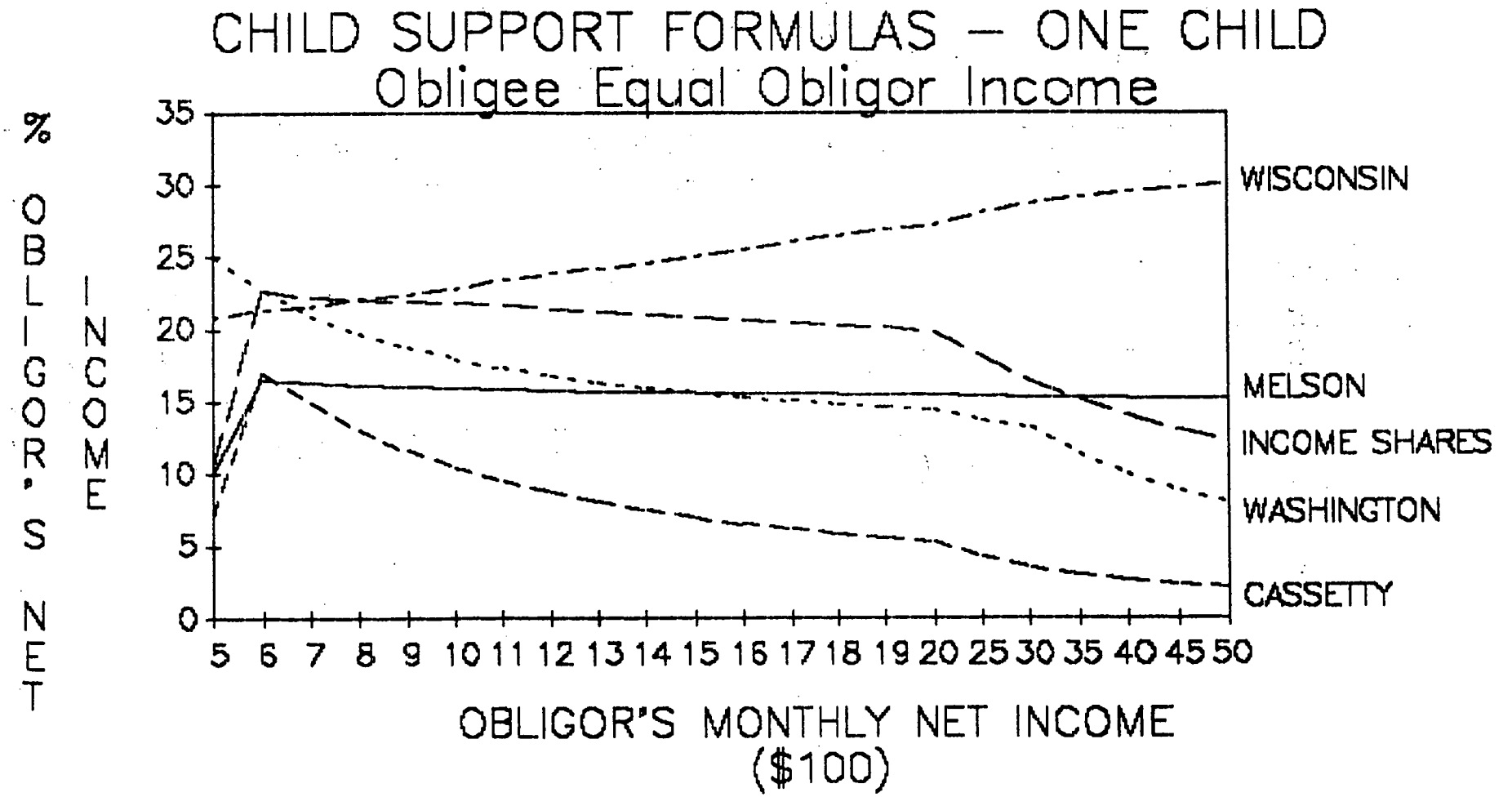
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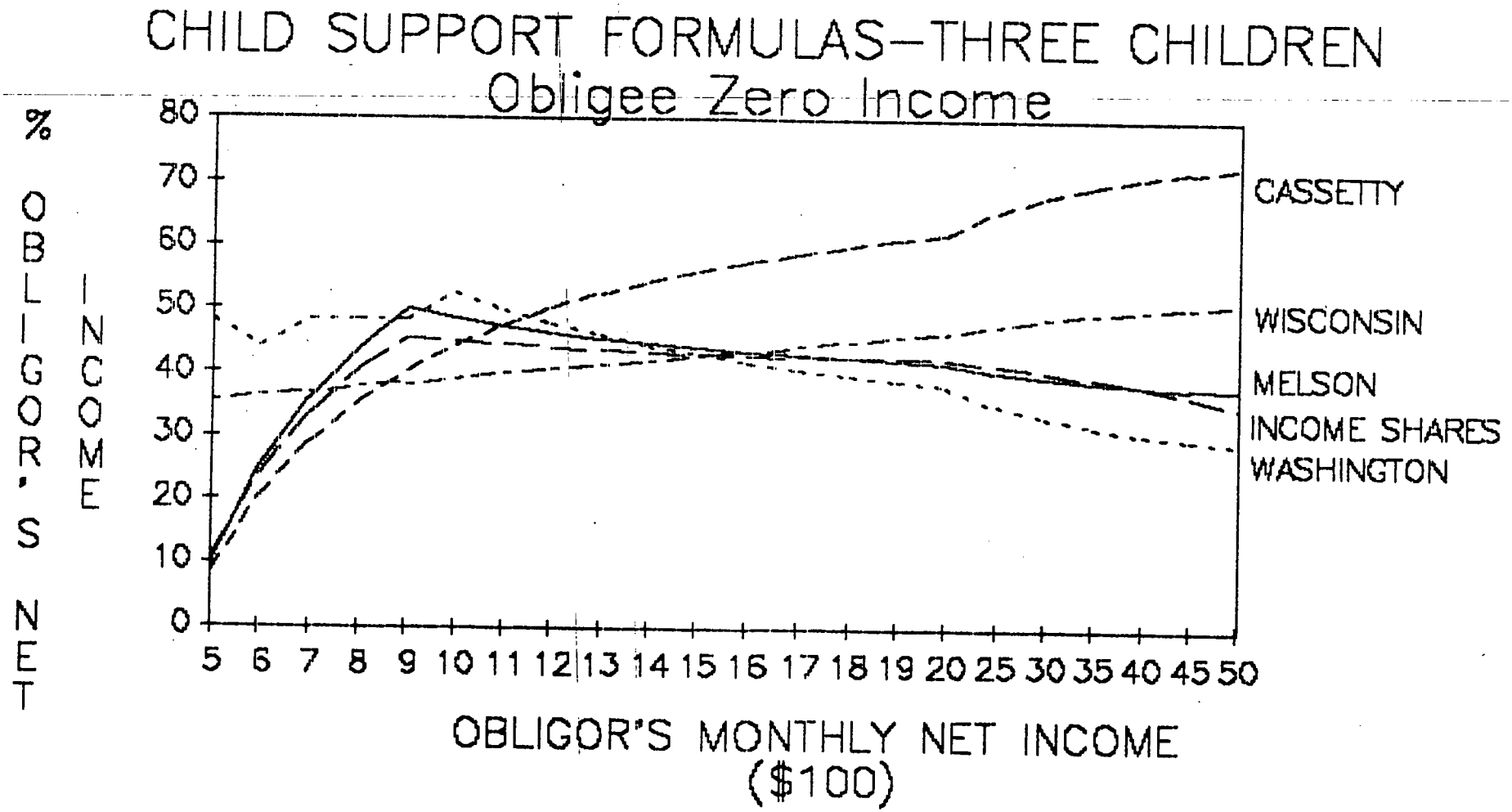
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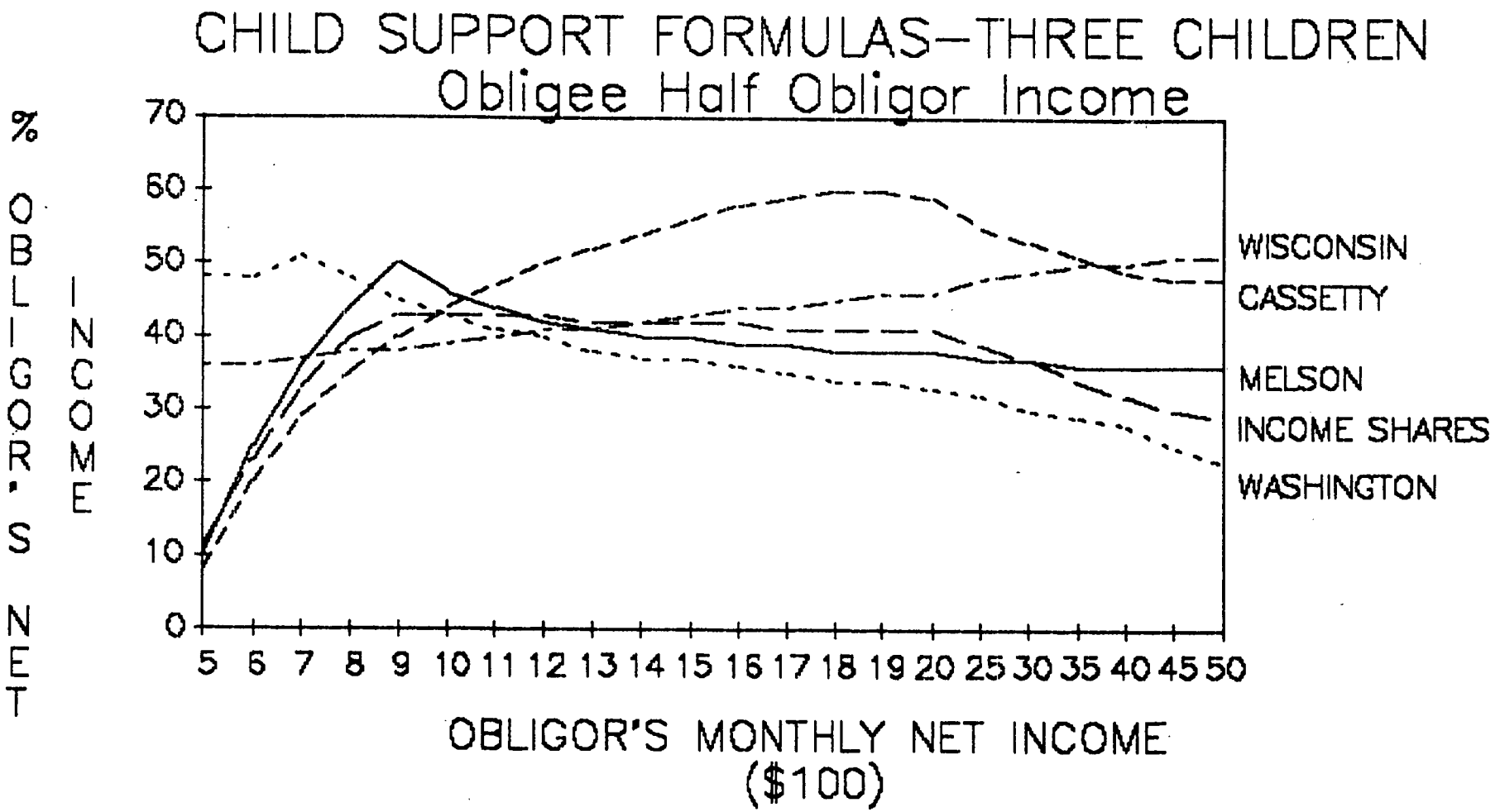
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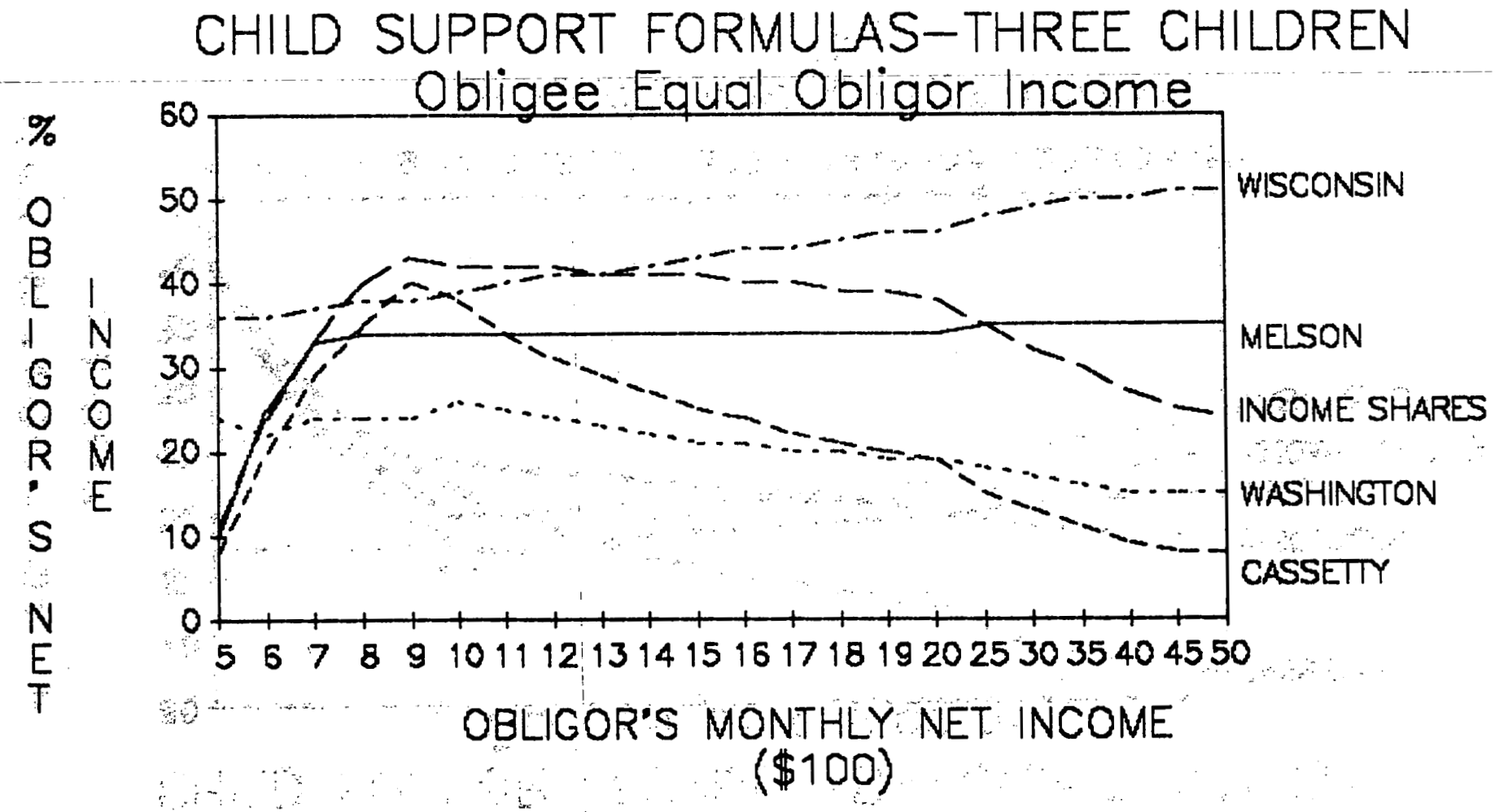
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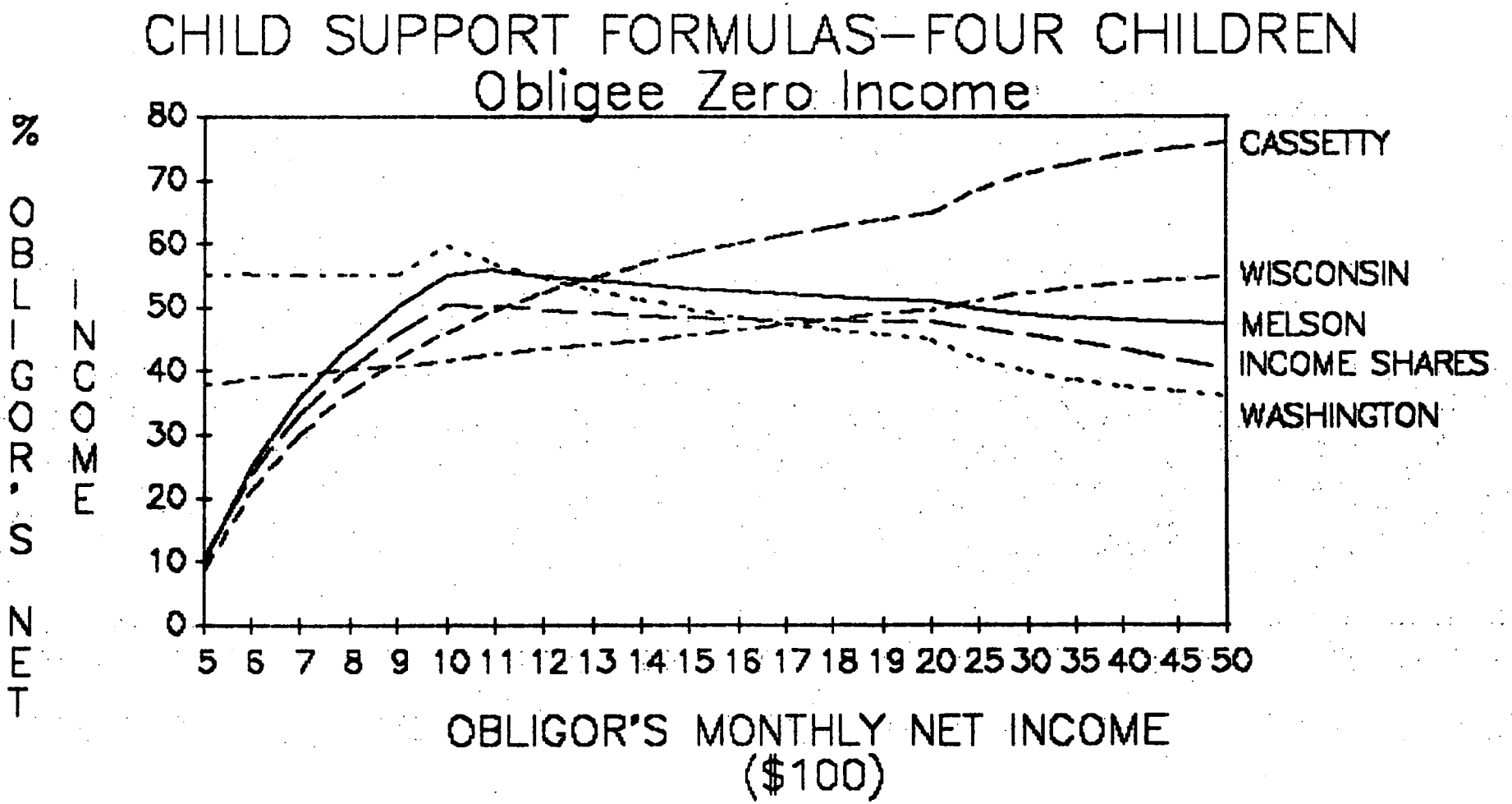
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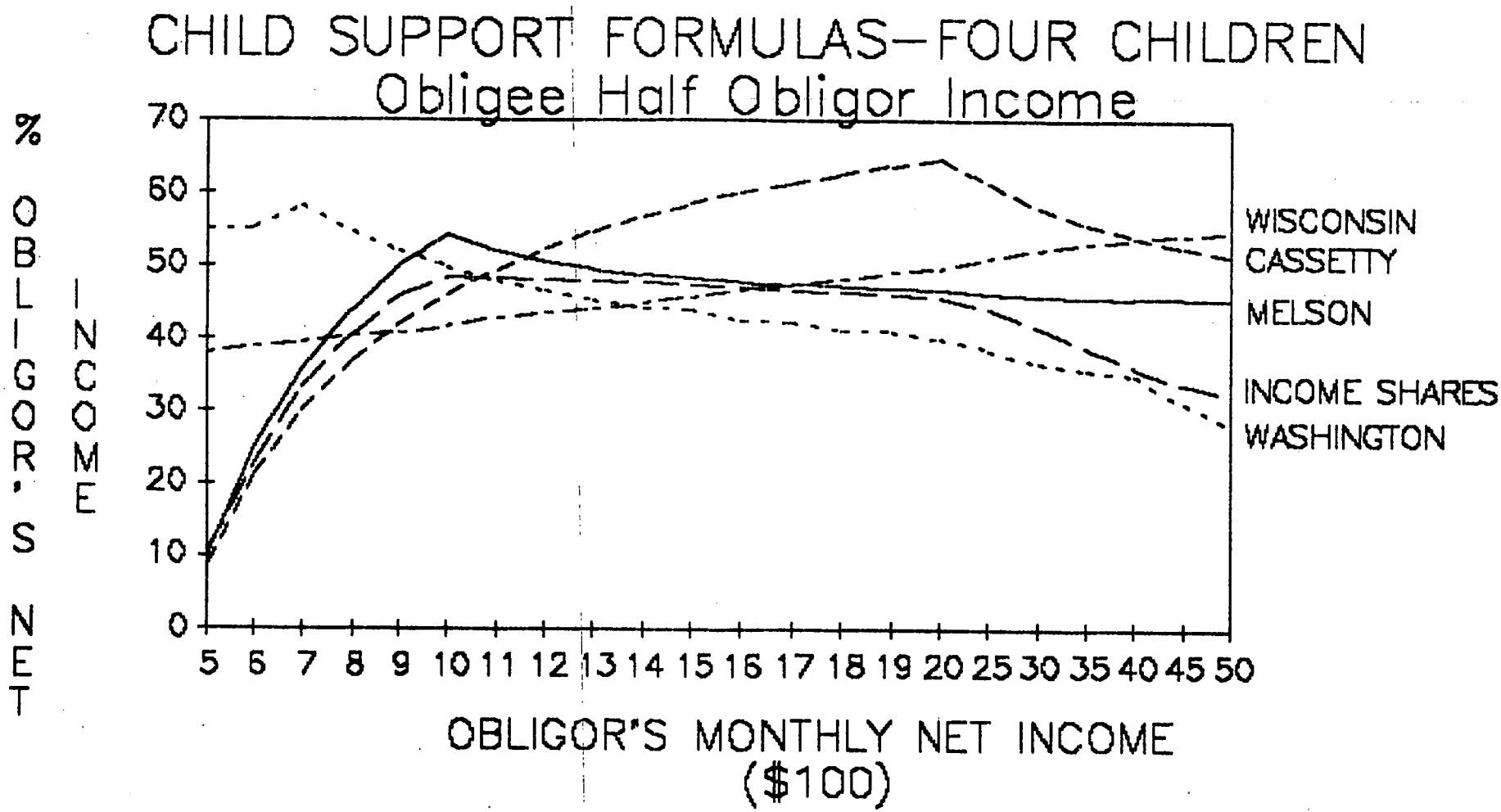
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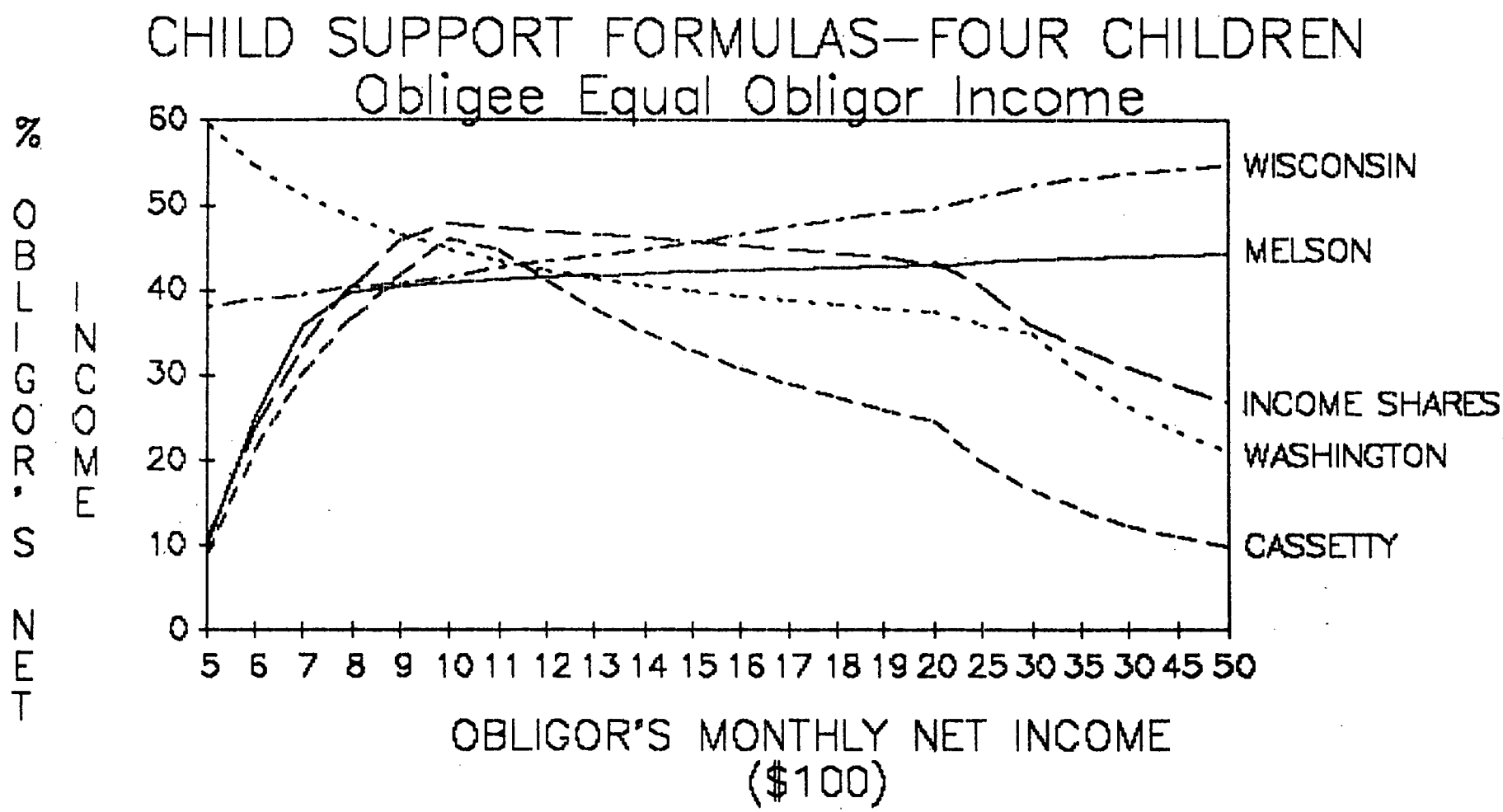
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The materials in this part are intended to provide examples to states of operational child support guidelines. Included in this Part are examples of five types of child support guidelines discussed in the Part II of this report and a selected list of other guidelines that may be of interest to states. These materials complement the Advisory Panel recommendations in Part I and the analyses of guidelines in Part II.

Implementation Options

States may wish to review a range of implementation materials for practical guidance in developing guidelines. States may choose whether to implement a guideline through statute, court rule, administrative rule, or a combination of these mechanisms (e.g. authorizing statute plus court or administrative rule). The considerations influencing the selection of one of these mechanisms are reviewed in Part II, Chapter I.

In reviewing these materials, states should consider the possibilities for selecting one of the approaches described in this report as a basic model and then making separate decisions about specific features. The Income Shares model, for example, can be implemented in many different ways. States can adopt the basic model, but make independent decisions about the income base (gross or net), an age adjustment, provision for shared custody and split custody adjustments, provision for separate treatment of child care and extraordinary medical expenses, and treatment of obligations for other dependents.

Perhaps less obvious are the implementation options under the Delaware Melson formula. The Melson formula is the most comprehensive of any of the operational guidelines. However, this comprehensiveness creates a higher level of complexity than is characteristic of other approaches. Many states have been rebuffed by this complexity even while they have been attracted by the formula's basic principles. States interested in the Melson formula might wish to consider implementing a simplified version. One provision that might be simplified, for instance, is design of the self support reserve: rather than retaining adjustments for living with others and for employment status, a single amount for the reserve could be used. Another possibility would entail elimination of the provision for a special quarterly supplement. The Melson formula could also be modified in other ways, such as changing the percentages for the Standard of Living Allowance, or altering the treatment of other dependents.

The key point is that a state should not reject an approach just because of disagreement with a single provision. Rather, these approaches can be viewed as models and the specific provisions can be tailored to the particular requirements of a state. In developing a specific guideline, the

Advisory Panel recommendations in Part I and the analyses in Part II can be instructive.

Five Child Support Guidelines

Included in this group are materials describing the five approaches to guidelines described in Part II. There are several versions of the Income Shares model that have been implemented. In this section, we show two versions. First is the Colorado Child Support Guideline, which has the most detailed description and has adjustments for shared physical custody and split custody. Second is the New Jersey Child Support Guidelines, which is another noteworthy example of the Income Shares model. The Colorado guideline is based on combined gross income of the parents while the New Jersey guideline is based on combined net income.

A description of the specific material follows.

- Income Shares model. The Colorado Child Support Guideline, as prepared by the Child Support Commission, is the most comprehensive description of the guideline. The guideline is authorized by statute (C.R.S. 14-10-115). The New Jersey Child Support Guidelines are implemented by Supreme Court Rules 5:6A which mandates their use as a rebuttable presumption. The guidelines are issued under the Supreme Court's general rule-making authority.

- Melson formula. A description of the formula is extracted from a report by the Delaware Family Court to the Delaware Legislature. The calculation instructions and case examples are reproduced from materials prepared by the Delaware Family Court.[1]

- Wisconsin Percentage of Income Standard. Shown is the statute mandating use of the Standard as a rebuttable presumptions. Also shown is the rule published by the Wisconsin Department of Health and Social Services to implement the state. The rule is notable for including new adjustments to account for shared physical custody arrangements and obligations to pre-existing dependents.

- Washington Uniform Child Support Guidelines. The guidelines are included here as distributed by the Association of Superior Court Judges for use on an advisory basis. Despite their advisory nature, however, the guidelines are routinely used in courts that process 85-90 percent of child support cases.

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[1] Delaware Child Support (Melson) Formula, Family Court of the State of Delaware, July 1984.

- Cassetty model. Although the Cassetty model has not yet been implemented in any jurisdiction, it has attracted considerable interest. Consequently, it is shown here in the form originally proposed by Dr. Cassetty. Any implementation of this model would require further development in such areas as definition of income, treatment of child care expenses, and definitions of the household units of each of the parents.

Other Guidelines

States may wish to refer to guidelines other than those reproduced here for additional guidance. A partial list of other guidelines that have been implemented include the following:

- Allegheny County, Pennsylvania. The Allegheny County Support Guidelines were developed by the Family Division of the Common Pleas Court of Allegheny County. They have been in use by the Family Division since 1980.

- California Agnos Guideline. This guideline is codified in CAL. CIV. CODE secs. 4720-4732 (West Supp. 1985). Legislated as the Agnos Child Support Standards Act of 1984, the guideline sets a minimum standard for child support tied to the level of assistance received under the Aid to Families with Dependent Children program. As a minimum standard, the guideline is mostly applicable to lower and lower-middle income obligors. The law also provides that county guidelines be applied above the level of the Agnos standard if they exist and that the California Judicial Council publish a statewide guideline by July 1, 1986 for those counties without any.

- Connecticut. Special Act 84-74 (An Act Concerning Mediation in Dissolution Proceedings) established pilot programs of mediation and conciliation in the Fairfield and Litchfield Districts. One provision mandated development of an inter-agency commission to develop child support guidelines. The guidelines developed by the commission are used in the test districts and have been made available on an advisory basis statewide.

- Illinois. The Illinois Marriage and Dissolution of Marriage Act (Sec. 505, 1984 Ill. Legis. Serv. (West)) specifies a guideline which is based on flat percentages of net income: 20 percent for one child, 25 percent for two; 32 percent for three; 40 percent for four.

- Minnesota. Minnesota Statutes, Sec. 69.62 specifies a child support guideline based on percentages of net income. The percentages vary with level of obligor income.

- Utah. The legislature enacted H.B. No. 14 in 1984 which amended Section 78-45-7 of Utah Code Annotated to provide for use of a statewide guideline by the courts for all ex parte or other temporary motions for support. The guideline is established by the Utah Department of Social Services and is also used to determine levels of awards for all orders established under administrative process in the state, which is a large proportion of the total.

- Vermont. The legislature enacted S. 286 in 1986 which specifies the principles of an Income Shares guideline patterned on the Colorado Child Support Guideline (15 V.S.A. 653-662). A noteworthy element of this statute is a provision for supplemental child support intended to reduce disparities in living standards between custodial and non-custodial households.

INCOME SHARES MODEL

Colorado Child Support Guideline
New Jersey Child Support Guidelines

COLORADO CHILD SUPPORT GUIDELINE

Prepared by
Colorado Child Support Commission
September 1986

I. PREFACE

H. B. 1275, recently enacted into law, established a Child Support Guideline for Colorado.[1] The Guideline enacted by the Legislature was developed by the Colorado Child Support Commission. As specified in the statute, the Guideline has three objectives:

(1) To establish as state policy an adequate standard of support for children, subject to the ability of parents to pay;

(2) To make awards more equitable by ensuring more consistent treatment of persons in similar circumstances; and

(3) To improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in setting the levels of awards.

The Guideline amends Colorado Revised Statutes, Sec. 14-10-115, and is consistent with other provisions of that section which place a duty for child support upon either or both parents based on their respective financial resources, the financial resources of the child, the needs of the custodial parent, the physical and emotional condition of the child, and the standard of living the child would have enjoyed had the marriage not been dissolved.

The Colorado Child Support Guideline is based on the Income Shares Model, developed by the Child Support Guidelines Project of the National Center for State Courts, under a grant from the U.S. Office of Child Support Enforcement. The Income Shares Model is predicated on the concept that the child should receive the same proportion of parental income that he or she would have received if the parents lived together.

The Income Shares Model provides an objective basis for determining the average costs of children in households across a wide range of incomes. Because household spending on behalf of children is intertwined with spending on behalf of adults for most expenditure categories, it is difficult to determine the proportion allocated to children in individual cases, even with exhaustive financial affidavits. However, a number of authoritative economic studies provide estimates of the average amount of household expenditures on children in intact households. These studies have found that the proportion of household spending devoted to children is systematically related to the level of household income and to the number and ages of children.

Based on this economic evidence, the Colorado Child Support Guideline calculates child support as the share of *each* parent's income estimated to have been spent on the child if the parents and child were living in an intact household.[2] If one parent has custody, the amount calculated for that parent is presumed to be spent directly on the child. For the non-custodial parent, the calculated amount establishes the level of child support. For cases with split custody, third party custody, or extensive sharing of physical custody, each parent's calculated share of child support becomes the basis for determining his or her legal child support obligation.

II. USE OF THE GUIDELINE

The Colorado Child Support Guideline applies as a rebuttable presumption to all child support orders in Colorado, except as discussed below. The Guideline must be used for temporary and permanent orders, and for separations, dissolutions, and support decrees arising despite non-marriage of the parties. The Guideline must be used by the Court as the basis for reviewing the adequacy of child support levels in non-contested cases as well as contested hearings. The Court may exercise broad discretion in deviating from the Guideline in cases where application would be inequitable to one of the parties or to the child. In cases where the award deviates from the Guideline, however, the Court must provide written or oral findings of fact to substantiate the deviation.

For obligors with a combined adjusted gross income of less than $500 per month, the Guideline provides for case-by-case determination of child support, normally within a range of $20-$50 monthly. In such cases, the Court should carefully review obligor income and living expenses to determine the maximum amount of child support that can reasonably be ordered without denying the obligor the means for self-support at a minimum subsistence level. A specific amount of child support should always be ordered, however, no matter how minimal, to establish the principle of that parent's obligation to provide monetary support to the child.

The Guideline provides calculated amounts of child support to a combined adjusted gross income level of $10,000 per month ($120,000 per year). For cases with higher combined monthly adjusted gross income, child support should be determined on a case-by-case basis.

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[1]H.B. 1275 was passed unanimously by the legislature and signed into law on May 19, 1986. The effective date is November 1, 1986.

[2]For a detailed explanation of the Income Shares Model and the underlying economic evidence used as the basis for the Colorado Child Support Guideline, see Robert G. Williams, *Development of Guidelines for Establishing and Updating Child Support Orders* (National Center for State Courts: Denver, June 1985).

III. DETERMINATION OF CHILD SUPPORT AMOUNT

(A) Income

(1) Definition. For purposes of this Guideline, "income" is defined as actual gross income of the parent, if employed to full capacity, or potential income if unemployed or underemployed. Gross income of each parent should be determined as specified below and entered on Line 1, Worksheet A.

(2) Gross income. Gross income includes income from any source, except as excluded below, and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and alimony or maintenance received.

Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Food Stamps, and General Assistance.

(3) Income from self-employment or operation of a business. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses for purposes of this Guideline are amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes.

Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. Such payments might include a company car, free housing, or reimbursed meals.

(4) Potential income. If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income should *not* be made for a parent that is physically or mentally incapacitated or is caring for a very young child (age two and younger) for whom the parents owe a joint legal responsibility. For purposes of this determination, a parent shall not be deemed underemployed if gainfully employed on a full-time basis.

Determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. If there is no recent work history and no higher education or vocational training, it is suggested that income be set at least at the minimum wage level.

(5) Income verification. Income statements of the parents should be verified with documentation of both current and past income. Suitable documentation of current earnings (at least one full month) includes paystubs, employer statements, or receipts and expenses if self-employed. Documentation of current income must be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period.

(B) Alimony, Maintenance, and Pre-existing Child Support Obligations

The amount of alimony or maintenance actually paid should be deducted from gross income (Line 1c, Worksheet A).

The amount(s) of any pre-existing court order(s) for child support should be deducted from gross income to the extent payment is actually made under such order(s) (Line 1a, Worksheet A).

(C) Health Insurance

For each child support order, consideration should be given to provision of adequate health insurance coverage for the child. Such health insurance should normally be provided by the parent that can obtain the most comprehensive coverage through an employer at least cost.

If either parent does carry health insurance for the child(ren) due support, the cost of that coverage should be deducted from gross income (Line 1b, Worksheet A). If coverage is provided through an employer, only the employee portion should be deducted. Note that the cost of the parent's coverage is included in this deduction if the parent is jointly covered with the children under a family policy.

(D) Basic Child Support Obligation

The basic child support obligation should be determined using the attached Schedule of Basic Child Support Obligations. For combined monthly adjusted gross income amounts falling between amounts shown in the schedule, basic child support amounts should be extrapolated.

The number of children refers to children for whom the parents share joint legal responsibility and for whom support is being sought.

(E) Child Care Costs

Child care costs incurred due to employment or job search of either parent, net of the federal income tax credit, should be added to the basic obligation on Line 4a, Worksheet A. Such child care costs must be reasonable; that is, such costs should not exceed the level required to provide quality care for the child(ren) from a licensed source. The value of the federal income tax credit for child care should be subtracted from actual costs to arrive at a figure for net child care costs (refer to IRS Form 2441). Child care costs required for active job search are allowable on the same basis as costs required in connection with employment.

(F) Extraordinary Medical Expenses

Any extraordinary medical expenses should be entered on Line 4b, Worksheet A and added to the basic child support obligation. Extraordinary medical expenses are uninsured expenses in excess of $100 for a single illness or condition. Extraordinary medical expenses shall include, but not be limited to, such costs as are reasonably necessary for orthodonture, dental treatment, asthma treatments, physical therapy, and any uninsured chronic health problem. At the discretion of the Court, professional counseling or psychiatric therapy for diagnosed mental disorders may also be considered as an extraordinary medical expense.

(G) Extraordinary Education Expenses

Any extraordinary education expenses incurred on behalf of the children may be added to the basic child support obligation. Extraordinary education expenses are any reasonable and necessary expenses for attending private or special schools, for attending any institution of higher education, or necessary to meet particular education needs of a child, when such expenses are incurred or paid by agreement of both parents and approved by the court.

(H) Computation of Child Support

A total child support obligation is determined on Worksheet A, Line 5 by adding the basic child support obligation (Line 4), work-related net child care costs (Line 4a), extraordinary medical expenses (Line 4b), and extraordinary educational expenses (Line 4c).

The total child support obligation is divided between the parents in proportion to their income. On Line 3, each parent's proportionate share of combined monthly adjusted gross income is calculated. On Line 6, the obligation of each parent is computed by multiplying each parent's share of income (Line 3) by the total child support obligation (Line 5).

Any portion of the calculated total child support obligation not retained by either parent is payable as a child support order and entered on Line 7. Although a monetary obligation is computed for each parent, the custodial parent share is not entered on Line 7 because it is not payable to the other parent as child support. Instead, the custodial parent share is presumed to be spent directly on the child. In cases of split custody or shared physical custody where both parents have physical custody of a child for a substantial portion of the total time, each parent may retain part of the computed total child support obligation (see section on Adjustments). For cases of shared physical custody or split custody, Worksheet B or Worksheet C, respectively, should be used to determine the net payable child support obligation.

IV. ADJUSTMENTS

(A) Shared Physical Custody

Where each parent exercises extensive physical custody, the Guideline provides that a child support obligation be computed for *each* parent by multiplying that parent's child support obligation by the percentage of time the child spends with the other parent. The respective child support obligations are then offset, with the parent owing more child support paying the difference between the two amounts.

Child support for cases with shared physical custody is calculated using Worksheet B. An adjustment for shared physical custody is made *only* when each parent has the child for more than twenty-five percent of the time, defined as more than twenty-five percent of all overnights during the year. The proportion of time with each parent is computed on Lines 1 and 2, Worksheet B. On Line 1 is entered the number of overnights spent with each parent. These must total 365. If the child spends part of the time in the physical custody of another person (e.g. a grandparent), that time should be ascribed to the parent responsible for the child during that time. If neither parent or both parents have responsibility, the time should be divided between the parents. On Line 2, the percentage of time with each parent is calculated, based on the proportion of overnights.

On Line 3, each parent's child support obligation is entered directly from Line 6, Worksheet A. On Line 4, each parent's obligation to the other parent is determined by multiplying each parent's child support obligation by the time spent with the *other* parent (as directed by the arrows). This results in a theoretical child support obligation due by each parent to the other. The child support order is determined by subtracting the lesser amount on Line 4 from the greater, and entering the result in the same column as the greater amount on Line 5. This amount constitutes the child support order.

Note that this shared physical custody adjustment is an *annual* adjustment only and should not be used when the proportion of overnights exceeds twenty-five percent for a shorter period, e.g., a month. For example, child support is not abated during a month-long summer visitation.

This adjustment presumes a true sharing, not just extended visitation to take advantage of the twenty-five percent threshold. To be a true sharing of custody, costs for the child should be divided between the parents based on the proportion of time that each parent has physical custody. To the extent that this presumption is not accurate because one parent assumes a disproportionate share of costs (buys all clothes, for example), the adjustment should be modified accordingly, or not applied at all.

This adjustment should be applied without regard to legal custody of the child. Legal custody refers to decision-making authority with respect to the child. If the twenty-five percent threshold is reached for shared physical custody, this adjustment should be applied even if one parent has sole legal custody.

(B) Split Custody

Split custody refers to a situation where there is more than one child and where each parent has physical custody of at least one of the children. In a split custody situation, Worksheet C is used to calculate an adjustment based on the circumstance that each parent will incur direct expenses for rearing one or more of the children. The first step is to determine which children are in the physical custody of each parent. The numbers of children with the Petitioner and Respondent, respectively, are entered on Line 1, Worksheet C. The combined monthly adjusted gross income of the parents (from Line 2, Worksheet A) is then entered on Line 2, Worksheet C. A combined basic child support obligation for *all* of the children counted on Line 1 is determined from the Schedule of Basic Child Support Obligations, based on the combined monthly adjusted gross income of the parents (Line 2).

On Line 5, Worksheet C, the combined basic child support obligation (from Line 3) is divided in proportion to the number of children with each parent. For example, if the petitioner has physical custody of one child and the respondent has physical custody of three children, one-fourth of the combined child support obligation is entered in the petitioner column and three-fourths in the respondent column. Added to the prorated basic obligation on Line 5, Worksheet C, are child care, extraordinary medical, and extraordinary educational expenses on Lines 5a, 5b, and 5c, respectively (see Section III (F) and (G)). The totals from Lines 5, 5a, 5b, and 5c, Worksheet C, are entered on Line 6, Worksheet C.

On Line 7, Worksheet C, a theoretical support payment is determined for each parent for the child(ren) in the custody of the other. On Line 7a, the percentage shares of parental income are entered from Line 3, Worksheet A. On Line 7b, Worksheet C, the petitioner's obligation to the respondent is determined by multiplying the *petitioner's* percentage share of income (from Line 7a, Worksheet C) times the total child support obligation for the children with the *respondent* (Line 6, Worksheet C, Respondent column). Similarly, on Line 7c, Worksheet C, the respondent's obligation to the petitioner is determined by multiplying the *respondent's* percentage share of income (from Line 7a, Worksheet C) times the total child support obligation for the children with the *petitioner* (Line 6, Worksheet C, Petitioner column). The obligations are then offset, with the lesser amount on Line 7b or Line 7c, Worksheet C, being subtracted from the greater amount. The difference is entered in the same column as the greater obligation (in the Petitioner column, for example, if the petitioner's obligation on Line 7b is greater than the Respondent's obligation on Line 7c). The other column on Line 8, Worksheet C is left blank. Thus, the parent owing the larger amount pays the difference between the two amounts.

V. MODIFICATION

The provisions of a child support order may be modified only if there is a substantial and continuing change of circumstances. If application of the Guideline would result in a new order that is less than ten percent different, then the circumstances are considered not to be a substantial and continuing change.[3]

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[3]This provision replaces a provision that required a showing of changed circumstances "so substantial and continuing as to make the terms unconscionable."

SCHEDULE OF BASIC CHILD SUPPORT OBLIGATIONS

Combined Monthly Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
$ 100	$20-$50 Per Month, Based on Resources and Living Expenses of Obligor and Number of Children Due Support					
200						
300						
400						
500	$ 20	$ 31	$ 39	$ 44	$ 48	$ 51
600	89	109	119	134	138	141
700	157	187	199	224	228	232
800	171	265	279	314	318	323
900	184	286	359	404	408	414
1000	198	307	385	434	473	505
1100	210	327	410	463	504	538
1200	223	346	434	490	534	570
1300	235	366	459	517	563	602
1400	248	385	483	544	593	634
1500	260	404	506	570	622	665
1600	271	422	528	595	649	695
1700	282	440	550	620	676	724
1800	293	457	572	645	704	753
1900	305	475	595	671	731	782
2000	318	494	619	698	761	814
2100	330	513	642	725	790	845
2200	343	531	666	752	819	876
2300	355	550	690	779	849	907
2400	368	569	714	806	878	939
2500	380	588	738	833	908	970
2600	392	606	761	859	936	1001
2700	404	625	784	885	965	1031
2800	415	644	808	911	994	1062
2900	427	662	831	937	1023	1092
3000	439	681	855	964	1052	1123
3100	451	700	878	990	1080	1154
3200	463	718	901	1016	1109	1184
3300	474	737	925	1042	1138	1215
3400	486	756	948	1068	1167	1245
3500	498	775	972	1095	1196	1276
3600	508	790	990	1115	1219	1301
3700	516	802	1005	1132	1237	1320
3800	524	814	1020	1149	1255	1340
3900	532	826	1035	1166	1274	1360
4000	540	838	1050	1183	1292	1380
4100	548	850	1065	1201	1310	1399
4200	556	862	1080	1218	1329	1419
4300	564	875	1096	1235	1347	1439
4400	572	887	1111	1252	1366	1458
4500	580	899	1126	1269	1384	1478
4600	588	911	1141	1286	1402	1498
4700	596	923	1156	1303	1421	1517
4800	604	935	1171	1320	1439	1537
4900	612	947	1186	1337	1458	1557
5000	620	959	1201	1354	1476	1577
5100	628	971	1216	1372	1494	1596
5200	636	983	1231	1389	1513	1616
5300	644	996	1247	1406	1531	1636

SCHEDULE OF BASIC CHILD SUPPORT OBLIGATIONS

(Continued)

Combined Monthly Adjusted Gross Income	One Child	Two Children	Three Children	Four Children	Five Children	Six or More Children
$ 5400	$ 652	$ 1008	$ 1262	$ 1423	$ 1550	$ 1655
5500	660	1020	1277	1440	1568	1675
5600	668	1032	1292	1457	1586	1695
5700	676	1044	1307	1474	1605	1714
5800	684	1056	1322	1491	1623	1734
5900	692	1068	1337	1508	1642	1754
6000	700	1080	1352	1525	1660	1774
6100	707	1092	1366	1543	1677	1793
6200	713	1101	1378	1556	1692	1808
6300	719	1110	1389	1569	1706	1824
6400	724	1119	1401	1582	1721	1839
6500	730	1128	1413	1595	1735	1854
6600	735	1137	1424	1608	1750	1869
6700	741	1146	1436	1621	1764	1884
6800	747	1155	1447	1634	1779	1900
6900	752	1164	1459	1647	1793	1915
7000	758	1173	1471	1660	1808	1930
7100	763	1182	1482	1673	1822	1945
7200	769	1191	1494	1686	1837	1960
7300	775	1200	1505	1699	1851	1976
7400	780	1209	1517	1712	1866	1991
7500	786	1218	1529	1725	1880	2006
7600	791	1227	1540	1738	1895	2021
7700	797	1236	1552	1751	1909	2036
7800	803	1245	1563	1764	1924	2052
7900	808	1254	1575	1777	1938	2067
8000	814	1263	1587	1790	1953	2082
8100	819	1272	1598	1803	1967	2097
8200	825	1281	1610	1816	1982	2112
8300	831	1290	1621	1829	1996	2128
8400	840	1302	1638	1848	2008	2150
8500	850	1318	1658	1870	2032	2176
8600	860	1333	1677	1892	2055	2202
8700	870	1349	1697	1914	2079	2227
8800	880	1364	1716	1936	2103	2253
8900	890	1380	1736	1958	2127	2278
9000	900	1395	1755	1980	2151	2304
9100	910	1411	1775	2002	2175	2330
9200	920	1426	1794	2024	2199	2355
9300	930	1442	1814	2046	2223	2381
9400	940	1457	1833	2068	2247	2406
9500	950	1473	1853	2090	2271	2432
9600	960	1488	1872	2112	2294	2458
9700	970	1504	1892	2134	2318	2483
9800	980	1519	1911	2156	2342	2509
9900	990	1535	1931	2178	2366	2534
10000	1000	1550	1950	2200	2390	2560

DISTRICT COURT, _____ COUNTY _____, COLORADO
CASE NO. _____ Div/CtRm _____

WORKSHEET A — CHILD SUPPORT OBLIGATION

In re the Marriage of: _____ and _____

Petitioner Respondent

Children	Date of Birth	Children	Date of Birth

	Petitioner	Respondent	Combined
1. MONTHLY GROSS INCOME	$	$	
a. Minus Preexisting Child Support Payment	–	–	
b. Minus Health Insurance Premium (if Child included)	–	–	
c. Minus Maintenance Paid	–	–	
2. MONTHLY ADJUSTED GROSS INCOME	$	$	$
3. PERCENTAGE SHARE OF INCOME (Line 2. Each parent's income divided by Combined Income)	%	%	
IF THERE IS A SPLIT CUSTODY ADJUSTMENT, STOP HERE (Go to Worksheet C)			
4. BASIC CHILD SUPPORT OBLIGATION (Apply Line 2 Combined to Child Support Schedule)			$
a. Plus Work-Related Child Care Costs (Actual costs minus Federal Tax Credit)			+
b. Plus Extraordinary Medical Expenses [Uninsured only. See CRS 14-10-115(12)]			+
c. Plus Extraordinary Education Expense (Agreed to and approved by Court only)			+
5. TOTAL CHILD SUPPORT OBLIGATION (Add lines 4, 4a, 4b, and 4c)			$
6. EACH PARENT'S CHILD SUPPORT OBLIGATION (Multiply Line 3 times Line 5 for each parent)	$	$	
IF THERE IS A SHARED CUSTODY ADJUSTMENT, STOP HERE (Go to Worksheet B)			
7. If there are no custody adjustments, enter RECOMMENDED CHILD SUPPORT ORDER (Bring down amount from line 6 for the non-custodial parent only. Leave custodial parent column blank.)	$	$	

Comments, Calculations, or Rebuttals to Schedule:

PREPARED BY:	DATE:

DISTRICT COURT, _____ COUNTY _____, COLORADO
CASE NO. _____ Div/CtRm _____

WORKSHEET B — ADJUSTMENT FOR SHARED PHYSICAL CUSTODY

In re the Marriage of:

and

Petitioner | Respondent

	Petitioner	Respondent	Combined
1. OVERNIGHTS with each parent per year (must total 365)			365
2. PERCENTAGE with each parent (Line 1 Divided by 365)	%	%	
STOP HERE IF LINE 2 IS LESS THAN 25% FOR EITHER PARENT — ADJUSTMENT DOES NOT APPLY.	X	X	
3. EACH PARENT'S CHILD SUPPORT OBLIGATION (from Line 6 — Worksheet A)	$	$	
4. OBLIGATION FOR TIME WITH OTHER PARENT (Line 2 times Line 3 in diagonal as arrows direct)	$	$	
5. RECOMMENDED CHILD SUPPORT ORDER (Subtract lesser amount from greater amount in Line 4 and place under greater)	$	$	

Comments, Calculations, or Rebuttals (including in-kind responsibility because of sharing):

PREPARED BY:	DATE:

DISTRICT COURT, _____ COUNTY _____, COLORADO
CASE NO. _____ Div/CtRm _____

WORKSHEET C — ADJUSTMENT FOR SPLIT CUSTODY

In re the Marriage of: _____ and _____

Petitioner Respondent

Children with Petitioner	Date of Birth	Children with Respondent	Date of Birth
1. TOTAL With Petitioner		With Respondent	

	Petitioner	Respondent	Combined
2. COMBINED MONTHLY ADJUSTED GROSS INCOME (From Line 2. Worksheet A)			$
3. COMBINED CHILD SUPPORT OBLIGATION (Apply Line 2 to Schedule)			$
4. PRORATED PERCENTAGE (Number of children with each parent divided by total number of children)	%	%	
5. PRORATED BASIC OBLIGATION FOR CHILDREN WITH EACH PARENT (Multiply Line 4 by Line 3 for each parent)	$	$	
a. Plus Work-Related Child Care Costs (Actual costs minus Federal Tax Credit)	+	+	
b. Plus Extraordinary Medical Expenses [Uninsured only. See CRS 14-10-115(12)]	+	+	
c. Plus Extraordinary Education Expense (Agreed to and approved by Court only)	+	+	
6. TOTAL PRORATED OBLIGATIONS (Lines 5, 5a, 5b, and 5c)	$	$	
7. ALLOCATION TO PARTIES			
a. Percentage Share of Income (From Line 3, Worksheet A)	%	%	
b. Petitioner's Obligation to Respondent (Line 7a times Line 6 as arrows direct)	$		
c. Respondent's Obligation to Petitioner (Line 7a times Line 6 as arrows direct)		$	
8. RECOMMENDED CHILD SUPPORT ORDER (Subtract lesser amount from greater amount in Lines 7b and 7c and place result under greater amount)	$	$	

Comments, Calculations, or Rebuttals (Including any additional adjustments for sharing):

PREPARED BY:	DATE:

SUPREME COURT OF NEW JERSEY

ORDERED that the attached Rule 5:6A and accompanying child support guidelines are hereby adopted, to be effective immediately.

C.J.

For the Court

DATED: May 9 , 1986.

5:6A. CHILD SUPPORT GUIDELINES

The guidelines set forth in Appendix IX of these Rules shall be applied when an application for support, made pursuant to any section of these Rules, is considered by the court. The guidelines may be modified or disregarded by the court only where good cause is shown. Good cause shall consist of a) the considerations set forth in Appendix IX-A, or the presence of other relevant factors which may make the guidelines inapplicable or subject to modification, and b) the fact that injustice would result from the application of the guidelines. In all cases, the determination of good cause shall be within the sound discretion of the court.

APPENDIX IX

IX-A Considerations in the Use of Child Support Guidelines

IX-B Percentages Used in Developing the Child Support Guidelines

IX-C Child Support Guidelines Chart

IX-D Child Support Guidelines Worksheet

IX-E Child Support Guidelines Worksheet Instructions

COMMENTS

1. These support guidelines were developed based upon an income shares concept(1) which allocates the proportion of disposable income that would normally have been spent on the child(ren) of an intact family. These guidelines assure that the child(ren) will benefit from the living standards of both parents who each have a shared obligation to support their child(ren). These guidelines are to be used in determining child support obligations only and do not relate to spousal support or maintenance.

2. The percentages used to develop the Child Support Guidelines Chart (Appendix IX-C) were derived from economic studies on the proportion of household expenditures which relate to raising a child. Such expenditures include: spending for goods used only by the child, such as clothing, and also a share of goods used in common by the family, such as housing, food, household furnishings, and recreation.

3. The data base used to develop the child support guidelines will be reviewed by the Administrative Office of the Courts annually from the effective date of the adoption of this Rule to determine if modification of the guidelines is necessary either by legislation or Rule amendment.

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(1) For a detailed discussion of support guidelines and supporting data see: Williams, Robt. G., Development of Formulas for Establishing and Updating Child Support Orders: Interim Report, report submitted to the Office of Child Support Enforcement, U.S. Department of Health and Human Services (Institute for Court Management of the National Center for State Courts, June 1985).

APPENDIX IX-A

CONSIDERATIONS IN THE USE OF CHILD SUPPORT GUIDELINES

The guidelines set forth in this Rule shall be applied by first determining the available family income using the Child Support Guidelines Worksheet (Appendix IX-D) and then determining the amount of the child support obligation from the Child Support Guidelines Chart (Appendix IX-C). The child support obligation is then divided proportionately between the parents based upon their contribution to the family income. If necessary, an order shall be entered to supplement the calculated child support amount to include each parent's share of work-related child care expenses and extraordinary medical/dental expenses for the child. Such expenses will be distributed based on the percent contribution of each parent to the combined family income.

These child support guidelines assume that the custodial parent is spending his/her calculated share directly on the child. For the non-custodial parent, the calculated share establishes the child support order.

Considerations which may make these child support guidelines inapplicable or cause the child support amount to be adjusted are:

1. These tables and procedures are not generally intended to apply to parents with a combined net income which is below the poverty level (as set forth in the Federal Register) or in excess of $42,000 per year. Parents at these extreme income levels should be subject to child support orders based upon individual case review. However, obligor parents earning less than the poverty level shall be ordered to pay a nominal child support amount to establish the principle of payment and lay the basis for increased orders if income increases in the future (See Appendices IX-B and IX-C).

2. These child support guidelines are based upon traditional custody and visitation arrangements.

3. These child support guidelines do not take into account the economic impact of the following factors:

   (a) spousal support;
   (b) equitable distribution of property;
   (c) tax consequences;
   (d) fixed direct payments;
   (e) unreimbursed extraordinary medical/dental expenses for the obligor parent;
   (f) educational expenses for the child(ren) or the spouse (i.e., those incurred for private, parochial, or trade schools, other secondary schools, or post-secondary education where there is tuition or other costs beyond state/local tax contributions);
   (g) verified non-court ordered support needs of children from other relationships;
   (h) families having more than six [6] children.

4. In determining gross income, these guidelines do not take into account the following factors:

   (a) unreported cash income;
   (b) underemployment;
   (c) income derived by other household members; and/or
   (d) in-kind income.

The above enumerated considerations should not limit the Court from taking into account other significant factors which may cause these child support guidelines to be inapplicable or cause the child support amount to be adjusted.

APPENDIX IX-B

INCOME SHARE FORMULA

CHILD SUPPORT AWARDS AS A PERCENTAGE OF COMBINED WEEKLY AVAILABLE INCOME

COMBINED WEEKLY AVAILABLE INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
116*	12.4%	12.4%	12.4%	12.4%	12.4%	12.4%
140	23.3%	27.0%	27.0%	27.0%	27.0%	27.0%
163	23.3%	36.0%	37.4%	37.4%	37.4%	37.4%
186	23.1%	35.9%	44.9%	45.3%	45.3%	45.3%
209	22.9%	35.4%	44.3%	50.0%	51.3%	51.3%
233	22.2%	34.5%	43.2%	48.7%	53.1%	56.2%
256	21.7%	33.7%	42.3%	47.6%	52.0%	55.5%
279	21.3%	33.1%	41.5%	46.8%	51.0%	54.5%
302	20.6%	32.0%	40.2%	45.3%	49.4%	52.8%
326	20.0%	31.1%	39.1%	44.0%	48.0%	51.3%
349	19.5%	30.3%	38.1%	42.9%	46.8%	50.1%
372	19.3%	30.0%	37.6%	42.4%	46.3%	49.4%
395	19.1%	29.8%	37.3%	42.1%	45.8%	49.0%
419	19.0%	29.6%	37.0%	41.7%	45.5%	48.6%
442	18.9%	29.4%	36.7%	41.4%	45.2%	48.3%
465	18.8%	29.2%	36.5%	41.2%	44.9%	48.0%
488	18.6%	28.9%	36.1%	40.8%	44.4%	47.5%
512	18.4%	28.6%	35.8%	40.4%	44.0%	47.0%
535	18.3%	28.3%	35.5%	40.0%	43.6%	46.6%
558	18.1%	28.1%	35.2%	39.7%	43.3%	46.2%
581	18.0%	27.9%	34.9%	39.4%	42.9%	45.9%
605	17.8%	27.7%	34.7%	39.0%	42.6%	45.5%
628	17.7%	27.5%	34.4%	38.8%	42.3%	45.2%
651	17.6%	27.3%	34.2%	38.5%	42.0%	44.9%
674	17.4%	27.0%	33.8%	38.0%	41.5%	44.4%
698	17.2%	26.8%	33.4%	37.6%	41.0%	43.8%
721	17.0%	26.3%	32.9%	37.1%	40.5%	43.3%
744	16.8%	26.0%	32.6%	36.7%	40.0%	42.8%
767	16.6%	25.7%	32.2%	36.3%	39.6%	42.3%
791	16.4%	25.4%	31.9%	35.9%	39.2%	41.9%
814	16.2%	25.2%	31.5%	35.5%	38.8%	41.5%

*For combined weekly available income less than this amount, the obligor parent should be ordered to pay a nominal child support amount to establish the principle of payment and lay the basis for increased orders should obligor income increase in the future.

APPENDIX IX-C

CHILD SUPPORT GUIDELINES CHART
WEEKLY CHART SUPPORT AMOUNT ±5%

COMBINED WEEKLY AVAILABLE INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
116	14-15	14-15	14-15	14-15	14-15	14-15
140	31-34	36-40	36-40	36-40	36-40	36-40
163	36-40	52-62	58-64	58-64	58-64	58-64
186	41-45	63-70	79-88	80-88	80-88	80-88
209	46-50	70-78	88-97	99-110	102-113	102-113
223	49-54	76-84	95-105	108-119	117-130	124-137
256	53-58	82-91	103-114	116-128	126-140	135-149
279	56-62	88-97	110-122	124-137	135-149	144-160
302	59-65	92-102	115-127	130-144	142-157	152-168
326	62-68	96-106	121-134	136-150	148-164	159-175
349	65-72	101-111	126-139	142-157	155-171	166-183
372	68-75	106-117	133-147	150-166	163-181	175-193
395	72-79	112-124	140-155	158-175	172-190	184-203
419	76-84	118-130	147-163	166-183	181-200	193-214
442	79-88	123-136	154-170	174-192	190-210	203-224
465	83-92	129-143	161-178	182-210	198-219	212-234
488	86-95	134-148	168-185	189-209	206-228	220-243
512	89-99	139-154	174-192	196-217	214-236	229-253
535	93-103	144-159	180-199	203-225	222-245	237-262
558	96-106	149-165	186-206	210-232	229-253	245-271
581	99-110	154-170	193-213	217-240	237-262	253-280
605	103-113	159-176	199-220	224-248	245-270	262-289
628	106-117	164-181	205-227	231-256	252-279	270-298
651	109-120	169-187	212-234	238-263	260-287	278-307
674	111-123	173-191	217-230	244-269	266-294	284-314
698	114-126	177-195	221-244	249-275	272-300	290-321
721	116-128	180-199	226-249	254-281	277-306	296-328
744	118-131	184-203	230-254	259-287	283-313	302-334
767	121-134	187-207	235-260	264-292	289-319	308-341
791	123-136	191-211	239-265	270-298	294-325	315-348
814	125-139	195-215	244-270	275-304	300-332	321-354

*For combined weekly available income less than this amount, the obligor parent should be ordered to pay a nominal child support amount to establish the principle of payment and lay the basis for increased order, should obligor income increase in the future.

APPENDIX IX-D

CHILD SUPPORT GUIDELINES WORKSHEET

Case Name: _____ Oblig____ vs. _____ Oblig___

County _____ Docket No:_____

Case Type: Non-dissolution___ Dissolution____ D,V.____No. Child____

Complaint Filed_____ Conf./Hearing Date_____

	Mother	Father
1. Weekly Earned and Unearned Gross Income From All Sources (excluding AFDC grants)	_____	_____
2. Weekly Mandatory Deductions		
a. Federal, State, and Local Income Taxes	_____	_____
b. FICA (Social Security)	_____	_____
c. Mandatory Union Dues	_____	_____
d. Mandatory Retirement	_____	_____
e. TOTAL MANDATORY DEDUCTIONS	_____	_____
3. Weekly Net Income (Line 1 minus Line 2e)	_____	_____
4. Weekly Allowable Exemptions		
a. Medical/Dental Insurance for Family (unreimbursed premium)	_____	_____
b. Child Support and/or Alimony Orders In Other Support Cases	_____	_____
c. TOTAL ALLOWABLE EXEMPTIONS	_____	_____
5. Weekly Available Income (Line 3 minus Line 4c)	_____	_____
6. COMBINED TOTAL WEEKLY AVAILABLE INCOME	[ ]	
7. Percent Contribution of Each Parent (Line 5, each parent, divided by line 6)	_____%	_____%
8. WEEKLY CHILD SUPPORT AMOUNT (From Chart)	[ ]	
9. TOTAL WEEKLY CHILD SUPPORT AMOUNT EACH PARENT (percent line 7 each parent, times line 8)	[ ]	[ ]
10. Percent Contribution of Each Parent Toward Extraordinary Medical/Dental Expenses for Child(ren) and Work Related Child Care Expenses (from line 7)	_____%	_____%

APPENDIX IX-E

INSTRUCTIONS TO CHILD SUPPORT GUIDELINES WORKSHEET

A. General

(1) A child support guidelines worksheet should be completed and made part of the permanent case file for each child support order which is established by expedited or judicial process using the guidelines set forth in the Rule.

(2) All income information presented on the worksheet should be based upon weekly amounts. For persons paid monthly, the pay should be divided by 4.3. For persons with an annual salary figure, divide by 52.

B. Completion of the Worksheet

(1) Enter on Line 1, for each parent, the weekly earned or unearned gross income from all sources.

(a) **Gross income(1)** means all income from whatever source derived, including (but not limited to) the following items: [1] Compensation for services, including wages, fees, commissions, and similar items, [2] Gross income derived from business, [3] Gains derived from dealings in property, [4] Interests, [5] Rents, [6] Royalties, [7] Dividends, [8] Alimony and separate maintenance payments, [9] Annuities, [10] Income from life insurance and endowment contracts, [11] Income from discharge of indebtedness, [12] Pensions, [13] Income in respect of a decedent, and [14] Income from an interest in an estate or trust.

(b) Aid to Families With Dependent Children (AFDC) grants should be <u>excluded</u> in the determination of gross income.

(c) Prior to June 30 of the current year, use the IRS/State income tax return and/or W-2 statement(s) of the preceding year to obtain each parent's gross income (Line 1). If tax documentation is unavailable, use any other available evidence of current earnings (i.e., paystubs, employer statements, or receipts and expenses, if self-employed) to determine gross income. Divide the annual gross income by 52 to obtain the weekly gross income.

After June 30, use the year-to-date income figure from all documented sources (i.e. check stubs). Divide the total gross income from all sources by the number of elapsed weeks to calculate the weekly gross income.

(2) For each parent, enter all mandatory payroll deductions as itemized on Lines 2a through 2d. Enter the sum of the mandatory deduction on Line 2e.

---

(1) See Internal Revenue Code at Section 61-1

(a) Weekly deductions for taxes should be based upon the weekly gross income (Line 1) and the number of exemptions provided by law. Care should be taken to recognize any possible change in filing status or right to tax exemptions pursuant to a pending dissolution or property settlement.

(b) Once the weekly gross income is calculated, determine the Federal income tax withholding from the Single Persons Weekly Wage Bracket Withholding Table (attached).

The general rule in determining the number of dependency deductions, for use with the wage bracket withholding table is that the non-custodial parent may claim the exemption only if the custodial parent waives his or her right to the exemption on a written declaration that must be attached to the non-custodial parent's tax return each year that the non-custodial parent claims the exemption. However, a decree of divorce or separate maintenance or a written agreement executed prior to 1985 that grants the non-custodial parent the exemption is to be given effect if the non-custodial parent provides at least $600 for the support of the dependent child during the calendar year and the child received more than one half of his/her support from both parents during the calendar year.(2)

Calculate the State income tax by multiplying the weekly gross income by the current State tax rate (2.0% up to $20,000; 2.5% from $20,000 to $50,000).

Determine any local income tax by dividing the total year-to-date local tax by the number elapsed weeks.

(c) For W-2 wage earners, determine the FICA tax (Line 2b) by multiplying the gross income by 7.05% (the employee's contribution for 1985). For self-employed individuals, multiply the gross income by 11.8% (1985 self-employment tax). The maximum taxable amount in 1985 for both categories is $39,600.

(d) Determine mandatory union dues and retirement by dividing the year-to-date contributions by the number of elapsed weeks.

(3) Calculate the "Weekly Net Income" (Line 3) for each parent by subtracting "Total Deductions" (Line 2e) from "Earned and Unearned Income From All Sources" (Line 1).

(4) List the "Weekly Allowable Exemptions" as itemized on Lines 4a and 4b. Enter the sum of the weekly allowable exemptions on Line 4c. All exemptions listed in this section should be verified.

---

(2) See Internal Revenue Code Sections 151 and 152(e), as amended by the Tax Reform Act of 1984, Section 423

(a) Enter on Line 4a the parent's share of the unreimbursed premium which they must contribute for their family's medical or dental insurance.

(b) Enter on Line 4b the weekly amount of all previously ordered child support and/or alimony payments for any other child(ren) or other spouses (i.e., obligated spouse is paying child support and alimony to the custodial parent of a prior marriage).

(5) Calculate the "Weekly Available Income" (Line 5) for each parent by subtracting the "Total Allowable Exemptions" (Line 4c) from the "Weekly Net Income" (Line 3).

(6) Add the "Weekly Available Income" (Line 5) of both parents and enter the sum at "Combined Total Weekly Available Income" (Line 6).

(7) Calculate the "Percent Contribution of Each Parent" (Line 7) by dividing each parent's "Weekly Available Income" (Line 5) by the "Combined Total Weekly Available Income" (Line 6).

(8) Using the "Combined Total Weekly Available Income" (Line 6), determine the appropriate "Weekly Child Support Amount" (Line 8) from the Child Support Guidelines Chart (Appendix IX-C).

(9) Calculate the "Total Weekly Child Support Amount Each Parent" (Line 9) by multiplying the "Weekly Child Support Amount" (Line 8) by the "Percent Contribution of Each Parent" (Line 7).

(10) If there are work-related child care or extraordinary medical/dental expenses for the children, an order should be entered to supplement the base child support amount. Each parent should to share in those expenses based on their proportionate contribution to the family income found on Line 10 (This figure is the same as the "Percent Contribution of Each Parent" found on Line 7).

(a) Work-related child care costs are those incurred due to employment or job search of custodial parent. Such costs should be reasonable; that is, such cost should not exceed the level required to provide high quality care for the child(ren) from a licensed source.

(b) Extraordinary medical/dental expenses are those which are incurred on behalf of the child(ren) which exceed insurance reimbursement by $100. These may include (but are not limited to): orthodontic treatment, psychiatric therapy, asthma treatments, or extended physical therapy.

SINGLE Persons-WEEKLY Payroll Period

(For Wages Paid After December 1984)

And the wages are—		And the number of withholding allowances claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10
		The amount of income tax to be withheld shall be—										
$0	$30	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
30	32	1	0	0	0	0	0	0	0	0	0	0
32	34	1	0	0	0	0	0	0	0	0	0	0
34	36	1	0	0	0	0	0	0	0	0	0	0
36	38	1	0	0	0	0	0	0	0	0	0	0
38	40	1	0	0	0	0	0	0	0	0	0	0
40	42	2	0	0	0	0	0	0	0	0	0	0
42	44	2	0	0	0	0	0	0	0	0	0	0
44	46	2	0	0	0	0	0	0	0	0	0	0
46	48	2	0	0	0	0	0	0	0	0	0	0
48	50	3	0	0	0	0	0	0	0	0	0	0
50	52	3	1	0	0	0	0	0	0	0	0	0
52	54	3	1	0	0	0	0	0	0	0	0	0
54	56	3	1	0	0	0	0	0	0	0	0	0
56	58	4	1	0	0	0	0	0	0	0	0	0
58	60	4	1	0	0	0	0	0	0	0	0	0
60	62	4	2	0	0	0	0	0	0	0	0	0
62	64	4	2	0	0	0	0	0	0	0	0	0
64	66	4	2	0	0	0	0	0	0	0	0	0
66	68	5	2	0	0	0	0	0	0	0	0	0
68	70	5	3	0	0	0	0	0	0	0	0	0
70	72	5	3	1	0	0	0	0	0	0	0	0
72	74	6	3	1	0	0	0	0	0	0	0	0
74	76	6	3	1	0	0	0	0	0	0	0	0
76	78	6	4	1	0	0	0	0	0	0	0	0
78	80	6	4	1	0	0	0	0	0	0	0	0
80	82	7	4	2	0	0	0	0	0	0	0	0
82	84	7	4	2	0	0	0	0	0	0	0	0
84	86	7	4	2	0	0	0	0	0	0	0	0
86	88	7	5	2	0	0	0	0	0	0	0	0
88	90	8	5	3	0	0	0	0	0	0	0	0
90	92	8	5	3	1	0	0	0	0	0	0	0
92	94	8	6	3	1	0	0	0	0	0	0	0
94	96	9	6	3	1	0	0	0	0	0	0	0
96	98	9	6	4	1	0	0	0	0	0	0	0
98	100	9	6	4	1	0	0	0	0	0	0	0
100	105	10	7	4	2	0	0	0	0	0	0	0
105	110	10	8	5	2	0	0	0	0	0	0	0
110	115	11	8	5	3	1	0	0	0	0	0	0
115	120	12	9	6	4	1	0	0	0	0	0	0
120	125	13	10	7	4	2	0	0	0	0	0	0
125	130	13	10	8	5	2	0	0	0	0	0	0
130	135	14	11	8	5	3	1	0	0	0	0	0
135	140	15	12	9	6	4	1	0	0	0	0	0
140	145	16	13	10	7	4	2	0	0	0	0	0
145	150	16	13	10	8	5	2	0	0	0	0	0
150	160	18	14	11	9	6	3	1	0	0	0	0
160	170	19	16	13	10	7	4	2	0	0	0	0
170	180	21	18	14	11	9	6	3	1	0	0	0
180	190	22	19	16	13	10	7	4	2	0	0	0
190	200	24	21	18	14	11	9	6	3	1	0	0
200	210	26	22	19	16	13	10	7	4	2	0	0
210	220	27	24	21	18	14	11	9	6	3	1	0
220	230	29	26	22	19	16	13	10	7	4	2	0
230	240	31	27	24	21	17	14	11	9	6	3	1
240	250	33	29	26	22	19	16	13	10	7	4	2
250	260	35	31	27	24	21	18	14	11	9	6	3
260	270	37	33	29	26	22	19	16	13	10	7	4
270	280	39	35	31	27	24	21	18	14	11	9	6
280	290	41	37	33	29	26	22	19	16	13	10	7
290	300	43	39	35	31	27	24	21	18	14	11	9
300	310	46	41	37	33	29	26	22	19	16	13	10
310	320	48	43	39	35	31	27	24	21	18	14	11
320	330	50	46	41	37	33	29	26	22	19	16	13
330	340	53	48	43	39	35	31	27	24	21	18	14
340	350	55	50	46	41	37	33	29	26	22	19	16
350	360	58	53	48	43	39	35	31	27	24	21	18
360	370	60	55	50	46	41	37	33	29	26	22	19
370	380	63	58	53	48	43	39	35	31	27	24	21

(Continued on next page)

SINGLE Persons-**WEEKLY** Payroll Period

(For Wages Paid After December 1984)

And the wages are—		And the number of withholding allowances claimed is—										
At least	But less than	0	1	2	3	4	5	6	7	8	9	10
		The amount of income tax to be withheld shall be—										
$380	$390	$65	$60	$55	$50	$46	$41	$37	$33	$29	$26	$22
390	400	68	63	58	53	48	43	39	35	31	27	24
400	410	71	65	60	55	50	46	41	37	33	29	26
410	420	73	68	63	58	53	48	43	39	35	31	27
420	430	76	71	65	60	55	50	46	41	37	33	29
430	440	78	73	68	63	58	53	48	43	39	35	31
440	450	81	76	71	65	60	55	50	46	41	37	33
450	460	84	78	73	68	63	58	53	48	43	39	35
460	470	87	81	76	71	65	60	55	50	46	41	37
470	480	90	84	78	73	68	63	58	53	48	43	39
480	490	93	87	81	76	71	65	60	55	50	46	41
490	500	96	90	84	78	73	68	63	58	53	48	43
500	510	99	93	87	81	76	71	65	60	55	50	46
510	520	102	96	90	84	78	73	68	63	58	53	48
520	530	105	99	93	87	81	76	71	65	60	55	50
530	540	108	102	96	90	84	78	73	68	63	58	53
540	550	111	105	99	93	87	81	76	71	65	60	55
550	560	114	108	102	96	90	84	78	73	68	63	58
560	570	117	111	105	99	93	87	81	76	71	65	60
570	580	121	114	108	102	96	90	84	78	73	68	63
580	590	124	117	111	105	99	93	87	81	76	71	65
590	600	127	121	114	108	102	96	90	84	78	73	68
600	610	131	124	117	111	105	99	93	87	81	76	71
610	620	134	127	121	114	108	102	96	90	84	78	73
620	630	138	131	124	117	111	105	99	93	87	81	76
630	640	141	134	127	121	114	108	102	96	90	84	78
640	650	144	138	131	124	117	111	105	99	93	87	81
650	660	148	141	134	127	121	114	108	102	96	90	84
660	670	151	144	138	131	124	117	111	105	99	93	87
670	680	155	148	141	134	127	121	114	108	102	96	90
680	690	159	151	144	138	131	124	117	111	105	99	93
690	700	162	155	148	141	134	127	121	114	108	102	96
700	710	166	159	151	144	138	131	124	117	111	105	99
710	720	170	162	155	148	141	134	127	121	114	108	102
720	730	173	166	159	151	144	138	131	124	117	111	105
730	740	177	170	162	155	148	141	134	127	121	114	108
740	750	181	173	166	159	151	144	138	131	124	117	111
750	760	184	177	170	162	155	148	141	134	127	121	114
760	770	188	181	173	166	159	151	144	138	131	124	117
770	780	192	184	177	170	162	155	148	141	134	127	121
780	790	196	188	181	173	166	159	151	144	138	131	124
790	800	199	192	184	177	170	162	155	148	141	134	127
800	810	203	196	188	181	173	166	159	151	144	138	131
810	820	207	199	192	184	177	170	162	155	148	141	134
820	830	210	203	196	188	181	173	166	159	151	144	138
830	840	214	207	199	192	184	177	170	162	155	148	141
840	850	218	210	203	196	188	181	173	166	159	151	144
850	860	221	214	207	199	192	184	177	170	162	155	148
860	870	225	218	210	203	196	188	181	173	166	159	151
870	880	229	221	214	207	199	192	184	177	170	162	155
880	890	233	225	218	210	203	196	188	181	173	166	159
890	900	236	229	221	214	207	199	192	184	177	170	162
900	910	240	233	225	218	210	203	196	188	181	173	166
910	920	244	236	229	221	214	207	199	192	184	177	170
920	930	247	240	233	225	218	210	203	196	188	181	173
930	940	251	244	236	229	221	214	207	199	192	184	177
940	950	255	247	240	233	225	218	210	203	196	188	181
950	960	258	251	244	236	229	221	214	207	199	192	184
960	970	262	255	247	240	233	225	218	210	203	196	188
970	980	266	258	251	244	236	229	221	214	207	199	192
980	990	270	262	255	247	240	233	225	218	210	203	196
990	1,000	273	266	258	251	244	236	229	221	214	207	199
1,000	1,010	277	270	262	255	247	240	233	225	218	210	203
1,010	1,020	281	273	266	258	251	244	236	229	221	214	207
1,020	1,030	284	277	270	262	255	247	240	233	225	218	210
$1,030 and over		37 percent of the excess over $1,030 plus—										
		286	279	271	264	257	249	242	234	227	220	212

Source: Internal Revenue Service, Publication 15, Circular E, Employer's Tax Guide (Rev. Jan. 1985)

DELAWARE (MELSON) CHILD SUPPORT FORMULA

THE DELAWARE CHILD SUPPORT FORMULA

REPORT TO THE 132ND GENERAL ASSEMBLY

STUDY AND EVALUATION

April 15, 1984

THE FAMILY COURT OF THE STATE OF DELAWARE

The Honorable Robert D. Thompson, Chief Judge

State Office • 900 King Street

Wilmington, Delaware 19801

SECTION I. CALCULATION OF AND RATIONALE FOR THE DELAWARE CHILD SUPPORT FORMULA

Introduction

One of the greatest socio-legal problems in the State today is the failure of absent parents to meet their moral and legal obligation to adequately support their children. There are approximately 30,000 active Court-ordered child support cases in Family Court, with an average of 4,000 cases being filed each year. The estimate of current gross support deficiencies (arrears) in our State totals 10.4 million dollars. This problem has a devastating social impact on many children and has caused a heavy burden on the public welfare system and the Delaware taxpayer.

All children have the right to receive support from their parents and the task of the Family Court is to enforce this right in a manner that balances the equitable interests of both children and parents. Parents with similar economic circumstances should not be subjected to dissimilar child support orders. In 1978, the Family Court judiciary became concerned over the apparent absence of equal justice perceived in such disparate orders and adopted guidelines developed and used by Judge Elwood F. Melson, Jr. The resulting Delaware Child Support Formula, also known as the Melson Formula, was placed into use by the Court on January 26, 1979. The following report to the 132nd General Assembly is a study and evaluation of this formula, as requested by H.C.R. 116.

The basic principles underlying the formula can be summarized as follows:

- Parents are entitled to keep sufficient income to meet their most basic needs in order to encourage continued employment.
- Until the basic needs of children are met, parents should not be permitted to retain any more income than that required to provide the bare necessities for their own self-support.
- Where income is sufficient to cover the basic needs of the parents and all dependents, children are entitled to share in any additional income so that they can benefit from the absent parent's higher standard of living.

These principles were formulated into a guideline that serves as the method under which the Court presumes that a fair and equitable amount of child support will be derived. This presumption is rebuttable in that it will be applied unless and until a parent presents facts that persuade the Court that an application of the formula would be inequitable to either the absent parent, the custodial parent, or the child. By this mechanism all persons are ensured equal treatment, without restricting the authority of the Court to establish an order outside of the scope of the formula when the unique facts of a particular case so warrant.

Since 1979, the Delaware Child Support Formula has been recognized by appellate courts, used in countless privately negotiated settlements, and discussed extensively in Delaware and throughout the country. The judiciary has also developed a body of case law implementing the formula and establishing uniform policy for common fact-patterns that were not originally addressed. Early decisions refined the formula in such areas as:

- establishing net income by attribution;
- determining the proper self-support deduction where the parent is remarried or cohabiting in the relationship of husband and wife;
- defining extraordinary medical and allowable child care expenses;
- calculating child support when parents share joint or split custody;
- modifying the support amount during periods of extended visitation; and
- enunciating circumstances under which an application of the formula may be inequitable.

Most of these cases have since been incorporated into the formula as described in this section. Rather than citing case law within the body of this report, a copy of a booklet entitled The Delaware Child Support Formula can be made available upon request.

Following is a report on the legal and equitable considerations that make up this guideline for resolving the majority of child support cases in a manner consistent with the letter and the spirit of Delaware law.

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*This material was first made available in 1980 at the Family Law Seminar of the Delaware State Bar Association and has been updated regularly ever since. Copies have been provided to the public libraries, the county law libraries, and the Family Court law libraries in all three counties in order to give the general public access to Court decisions. Many of these cases are also cited in the "Procedure in Deciding Child Support Cases," a document also made available to the public at Family Court.

Part I. Primary Child Support

A. Determining each parent's monthly net income

The formula starts by determining each parent's net income. In ascertaining the amount of income that is available to provide child support, the judiciary restricts those items which may be deducted from a party's earnings. These deductions are generally limited to three areas:

(1) items mandated by law, such as taxes, wage attachments, or support payments required under a court order or separation agreement;

(2) payments required as a condition of employment, such as union dues or mandatory pension plans; and

(3) deductions for items such as medical insurance which provide a direct benefit to the child for whom support is being sought.

Other items which reduce take-home pay--credit union payments, charitable deductions, savings or thrift plans, and voluntary pension plans--are added back into a parent's income, since the needs of children must have a higher priority than voluntary savings or indebtedness.

Delaware law has long recognized that a parent may not obviate this obligation by voluntary unemployment. See, e.g., Husband (K) v. Wife (K), Del.Supr., 343 A.2d 597 (1975). Accordingly, the formula directs that the Court impute income to a parent if that parent is failing to realize his or her earning capacity. Thus, where a parent is not employed, the formula demands an inquiry into the reason for the lack of work. A parent will be excused from making a financial contribution only if he or she is physically or mentally incapacitated or is caring for a very young child for whom the parents owe a joint legal

responsibility. Thus, where a parent is caring for a young child of a relationship other than that between the parents in question, the obligation to secure employment will generally not be waived.

Where the decision to be unemployed is considered voluntary under the above criteria, the formula employs one of three alternative approaches in attributing income to that parent in order to calculate child support, regardless of whether the person is a custodial or non-custodial parent. The first alternative is for the Court to make a factual determination of the parent's earning capacity in the local job market. This method is obviously preferable where a parent has chosen to quit a job or has been fired for cause, and thus his or her "earnings" can be ascertained with reasonable certainty. This approach is used also where a parent has minimal skills and no work history. In those cases, the judiciary has found it most appropriate to attribute such a parent with an earning capacity based upon the minimum wage for a full work week.

A second alternative used is to determine a parent's value as a housewife or househusband. Frankly, this method is less preferable, because of the obvious difficulty in determining the realistic economic value of these services.

The third method is applied where a parent is remarried or cohabiting with another person in the relationship of husband and wife. In such a situation, the Court may attribute to the parent up to 50 percent of the net household income. The rationale for this attribution is twofold. First, it is because of the income of such a "spouse" that the parent has the option to remain unemployed. Accordingly, as the "spouse" has assumed responsibility for the support of the parent, that obligation must extend to meeting the parent's child support responsibility as well as his or her other basic living expenses. Second, Delaware law imposes a legal obligation to support a stepchild or the child of a person with whom

someone cohabits in the relationship of husband and wife. 13 Del.C. § 501(b). The normal 50 percent attribution is made under the theory that, as equal partners in a household, the obligor and "spouse" have entitlement to an equal share of the household income.

Ascertaining both parents' net income is undoubtedly the most difficult part of the formula. Two situations in particular cause the most significant factual disputes. The first area is determining the net income of a person who is self-employed. In these cases the Court must examine business records (where available) to ascertain not only the declared take-home pay of the obligor, but also the value of those personal items--such as automobiles, gasoline, retirement plan--for which the business pays on the obligor's behalf. These cases sometimes involve claims by one party that the business records do not reflect all of the income of the other party; in other words, that there are cash transactions that have not been recorded.

A second area is determining whether a parent's continuing unemployment is willful and whether he or she is actually making every effort to secure work. This latter category of cases also often involves allegations of unreported income in the form of cash transactions.

Nevertheless, complaints that focus on these issues will not be assuaged either by changing the formula or by abandoning it. As was stated on pages 9 and 10 of the March 15, 1984,"Report of the Blue Ribbon Task Force on Divorce Law Reform to the 132nd General Assembly":

> . . .[the Task Force] supports in principle the establishment and use of a formula by Family Court. . . which is primarily based upon the actual net after-tax income of each parent or his or her earning capacity. . . . The Task Force further believes that the primary consideration in any formula should be the net after-tax income of both parents. (Emphasis added.)

Thus, no matter what method the Court adopts to establish the parent's obligation to support their children, proof of income will always be the first step. Accordingly, these types of cases will generally necessitate a ruling by the Court establishing net income based on the relevant evidence presented by the parties. It should be noted that to assist in this process the Court has, by means of Family Court Rules 151 and 465, mandated disclosure under oath of detailed income information.

B. Determining the self-support exemption

Once net income is established, the formula, under Part I, Step A, provides for an exemption of an absolute minimum amount of income to be retained by a parent to meet his or her basic needs. It is important to understand that this self-support allowance is not determined on the basis of what he or she actually expends, since most people tend to spend whatever income is available to them. Rather, the figure was established on the basis of what a reasonable, prudent, responsible and caring person in the parent's position might be expected to spend in self-support in light of his or her obligation to meet the needs of his or her child. This figure is most aptly compared to the personal exemption allowed in determining one's tax obligation.

In establishing this figure, the Court considered only the cost of food, clothing, shelter, medical care, and job-related transportation. The decision was purposefully made not to connect this amount to either the actual expenditures or to the income levels of the parents. When Judge Melson was creating his "uniform approach," he looked in newspapers and visited boarding houses and restaurants, and came up with a figure that represented the absolute minimum that an individual would need to fulfill the basic requirements of life. The

self-support allowance was originally set at $300 per month and later adjusted, first to $325 and then to $350.

In the process of adopting the formula statewide, the Court reviewed numerous cases, examined U.S. Department of Labor statistics, and then--with an eye toward establishing some stability in these figures for a period of time after adoption--established $400 a month net income as the amount that a working father or mother, as the first person in the household, would be allocated to meet his or her respective minimum support needs. This figure is presumptively adjusted to $325 if a parent is working and married to or cohabiting with an individual who is likewise employed. The latter amount was derived when the judiciary concluded that it would be discriminatory to treat the wage earner with the greater income as the first person in the household and the wage earner with the lesser income as the second person. Accordingly, an obligor and "spouse" are treated as a unit. Their combined mimimum needs are established as follows: $400 for a first person plus $160 for a second person plus $90 in additional work-related expenses incurred as a result of having two adult wage earners in the household. This total minimum need of $650 was then divided equally.

A similar rationale was applied to the situation where a non-working parent was attributed 50 perecent of the income of a "spouse." Under the circumstances, the combined needs of the two adults totaled $560 ($400 for the first person plus $160 for the second person), and, as with income, 50 percent of the minimum basic needs of the two parties was assigned to the parent, for a resulting self-support deduction of $280 per month.

The appropriateness of these figures to meet the stated purpose is confirmed by the fact that the 1983 Poverty Guidelines established $4,860 yearly <u>gross</u> income ($405 per month) as the poverty level for one person.

These guidelines also established $6,540 per year as poverty level for a family unit of two, or $545 per month.* The appropriate exemption is subtracted from the countable net income of each parent to establish the amount of "available net income" out of which child support may be paid.

C. Determining the primary support needs of the children

The third step of the formula, under Part I, Step B, is to ascertain the minimum primary support needs of the children for whom an order is being established. As previously discussed under Part B, the first person in a household has a presumed primary support need of $400. The formula further presumes that a second person in the household brings increased costs of about 40 percent. Each additional member added to the household thereafter is presumed to increase minimum costs by 30 percent. Thus, the primary support allowances adopted were $160 per month for a second person in the household and $120 per month for each person thereafter.

A child's primary support allowance is established based upon rank (by age) in the household in which he or she resides. The Court also made a policy decision that two expenditures not accounted for in the above figures should be included as part of the child's primary support need: extraordinary medical expenses and child care costs required to enable the custodial parent to work. As the statute requires the Court to consider the earnings of the child, the regular earnings of a child for whom support is being sought are also dealt with in the framework of establishing that child's primary support need.

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*The implications of adjusting these primary support allowances are set forth under Section III of this report. As described in that section, the judiciary has adjusted the support allowances for all members of the household effective June 1, 1984.

D. Calculating the primary support obligation of each parent

Under Part I, Step C of the formula, the primary support needs of the children are allocated to each parent based on their proportions of net income available after subtracting their self-support exemptions.

Part II. Standard of Living Adjustment (SOLA) Child Support

If parents have net income available after satisfying all of their primary support obligations, a proportion of that remaining income is applied to additional child support. The purpose of SOLA is to ensure that the child enjoys, as nearly as possible, the standard of living to which he or she would have been accustomed were the parties residing under the same roof. This section is critically important because it ensures that the decision as to custody is removed from the realm of a battle over which parent can provide the more affluent lifestyle.

Before any SOLA is ordered, the Court provides for the primary support needs of all the parent's dependents, including a later spouse or children. Again, it is the minimum needs of these dependents that are ascertained and deducted from an obligor's available net income. A determination of the primary support obligation owed to all dependents is made in the same manner as that described above.

Once the Court determines that there is discretionary income available, then the Court allocates 15 percent of this income for the first child and 10 percent for each additional child for whom support is being sought.*

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*As with primary support, the judiciary has recently adjusted SOLA percentages in the amounts and for the reasons detailed under Section III of this report.

Part III. Calculating the Total Monthly Child Support Obligation of Both Parents

The last step in most cases, under Part III, is to ascertain the parties' total support obligation by adding their primary and SOLA support. The amount of support owed to a child for whom a party has custody is then subtracted from the custodial parent's established obligation. The non-custodial parent is ordered to pay the calculated amount to the custodial parent.

One advantage of both the formula and the calculation sheet is that the parents understand that both are required to contribute financially to the support of their children. Thus, even though the custodial parent will retain support owed to the child in his or her custody, the legal obligation is clearly established. It is the belief of the Family Court judiciary that such a direct acknowledgement of the financial contribution of the custodial as well as the non-custodial parent is valuable. This procedure compares favorably with the mechanism used in many states where the non-custodial parent's obligation is established but the contribution made by the custodial parent is either ignored or vaguely presumed.

The completeness of the formula allows its application not only in situations where one parent has sole physical custody of all children but also allows the resolution of those child support disputes where there is split physical custody, with each parent having one or more children of the marriage, or a shared (joint) custody arrangement, where the child resides with parents on a rotating basis. As both parents have obligations established, they will also be able to readily adjust the support amounts without returning to Court, should the custodial arrangement shift.

Part IV. Optional Supplemental Quarterly Child Support

The procedure described above encompasses the normal child support calculation. In adopting the formula, however, the judiciary determined that there would be certain situations where, due to the affluence of the non-custodial parent or the nature of a parent's income, the primary and SOLA support payments would be insufficient to allow the child to enjoy the standard of living of the more affluent parent. Under these circumstances, the formula provides for Optional Supplemental Quarterly Child Support. Such supplemental payments are ordered on a quarterly basis as the equities of a particular case demand. Unlike a person's basic support obligation, these monies are paid jointly to the child and to the custodial parent. Thus, there is an added benefit in having the child made aware that the non-custodial parent is providing the financial support that allows for some of these extras.

Conclusion

Again, this entire procedure is established as a rebuttable presumption. The Court acknowledges that there are probably 10 percent of the cases for which the formula, if strictly applied, would produce an inequitable result. In these cases, either part or all of the formula is modified to produce a support order that is appropriate under the facts of the particular situation. However, over the past five and a half years since the adoption of the formula, the Court has found that the overwhelming majority of cases can be decided equitably in accordance with the standards set down in the Delaware Child Support Formula.

A further clear benefit of having an enunciated standard is that members of the public and the bar are advised in advance of the method which

the Court will use in resolving cases, and thus settlement is encouraged and litigation--with its resulting expense--is reduced.

Again, for those cases which do come before the Court, the parties are ensured equal treatment. Indeed, a recent Superior Court decision held that, where the Delaware Child Support Formula was not used, the parties were entitled to a clear explanation of the specific reason for the variance, to ensure equality of treatment. See, e.g., Cheryl L.E. v. Roger A.E., Del.Super., No. 82A-AU-13, Balick, J. (unreported opinion, May 13, 1983).

FORM 509
Rev. 5/84

THE FAMILY COURT OF THE STATE OF DELAWARE

PROCEDURE IN DECIDING CHILD SUPPORT CASES

Delaware law provides that in determining a parent's child support obligation the Court shall consider, among other things:

"1. The health, relative economic condition, financial circumstance, income, including wages, and earning capacity of the parties, including the children;

2. The manner of living to which the parties have been accustomed when they were living under the same roof;

3. The general equities inherent in the situation." 13 Del.C. § 514.

IN ORDER TO PROVIDE A UNIFORM EQUITABLE APPROACH IN APPLYING DELAWARE LAW TO ALL CHILD SUPPORT CASES, THE FAMILY COURT OF DELAWARE HAS ADOPTED, AS A REBUTTABLE PRESUMPTION, THE FOLLOWING PROCEDURE.

PART I. PRIMARY CHILD SUPPORT

STEP A

1. DETERMINE EACH SUPPORT OBLIGOR'S NET INCOME.

Add:

a. Income from employment, as well as all other sources (such as pensions, dividends, interest, etc.); and
b. Business expense accounts to the extent that they provide the support obligor with something he would otherwise have to provide (such as automobile, lunches, etc.).

Subtract:

a. Income taxes figured on the basis of the maximum allowable exemptions;
b. Other deductions required by law, including attachments and child support payments made pursuant to Court order or written separation agreement;
c. Deductions required by the employer, or the union, except credit union payments;
d. Legitimate business expenses;
e. Benefits such as hospitalization insurance which are maintained for the obligor's dependents.

Deductions for payments on credit union debts will not be recognized except to the extent that such debts were incurred for indispensable items in use by the dependents or necessary health care. Support obligors will not be allowed to reduce the child support obligation by incurring debts other than for necessities of life.

Where a support obligor has inadequate income to meet his support obligation but owns assets, he will be required to convert all or some portion of said assets to cash for payment of support. See, e.g., Rayias v. Rayias, Del.Fam., Civil No. C-6146, James, J. (July 11, 1979).

Where a support obligor is not working full time or is working below full earning capacity, the Court will examine the reasons for such a limitation on earnings. If the reason is a matter of choice by the obligor or is due to factors other than care required by the children to whom the parties have a joint legal responsibility for support, the Court may then consider evidence establishing the obligor's earning capacity in the local job market. See, e.g., Mayew v. Mayew, Del.Fam., Civil No. 5-7313, Wakefield, J. (April 23, 1979); Dempsey v. Blevins, Del.Fam., Civil No. 2-6717, Arsht, J. (August 10, 1979); Halsey v. Halsey, Del.Fam., Civil No. B-2342, James, J. (January 10, 1980). Alternatively, the Court may consider the value of the services of the stay-at-home support obligor as a homemaker and set a dollar value which shall be considered as that obligor's "income."

Once the reason for the support obligor's limited earnings has been determined, the Court may consider evidence relating to the total monthly net income of the support obligor and "spouse" where the support obligor is remarried or cohabitating with another person in the relation of husband and wife, attributing to the support obligor up to 50% of the household income. See, e.g., O'Malley v. Shavico, Del.Fam., Civil No. 3-7582, Poppiti, J. (May 29, 1979); McCarthy v. Butler, Del.Fam., Civil No. 5-5277, Arsht, J. (June 20, 1979); Swedenhelm v. McNair,

"Amended effective June 1, 1984".

Del.Fam., Civil No. C-5643, Poppiti, J. (August 28, 1979). Earning capacity or income so established will then be used by the Court to determine the obligor's monthly net income for the purpose of calculating child support.

ALL INFORMATION PRESENTED TO THE COURT IN THESE CALCULATIONS SHOULD BE BASED ON MONTHLY AMOUNTS. WHERE A PARTY IS PAID WEEKLY, THE PAY SHOULD BE MULTIPLIED BY 52 AND DIVIDED BY 12 TO ARRIVE AT A CORRECT MONTHLY AMOUNT. LIKEWISE, IN ORDER TO BE CONSIDERED, ALL CHILD CARE EXPENSES, EXTRAORDINARY MEDICAL EXPENSES, MEDICAL INSURANCE PAYMENTS, ETC., MUST BE PRESENTED TO THE COURT IN ACCURATE MONTHLY AMOUNTS.

2. DETERMINE THE ABSOLUTE MINIMUM AMOUNT OF INCOME THAT EACH SUPPORT OBLIGOR MUST RETAIN TO FUNCTION AT MAXIMUM PRODUCTIVITY.

In determining what a support obligor needs (not what he spends), the Court will consider only expenses for food, clothing, shelter, medical care, and job-required transportation.

Four hundred fifty dollars ($450) a month is established as a base figure for an income producing adult head-of-household. Where a support obligor is remarried or cohabitating with another person in the relation of husband and wife and both the support obligor and his/her present "spouse" are fully employed, the minimum self-support need of the couple is $730 ($450 as first person + $180 as second person in the same household + $100 additional work-related expense of a second employed "spouse"). The support obligor will be allowed 50% of this amount, $365, as the minimum self-support deduction. See, e.g., McCarthy v. Butler, supra; Guthrie v. Guthrie, Del.Fam., Civil No. C-4403, Poppiti, J. (August 2, 1979); Dempsey v. Blevins, supra.

Where the Court has attributed 50% of the household income to a non-working support obligor who is remarried or cohabitating with another person in the relation of husband and wife, the minimum self-support deduction for such an obligor is established at $315, this amount being equal to 50% of the minimum support needs of the obligor and "spouse" ($450 + $180). No additional work-related expenses will be allowed since the obligor is not employed outside the home. See, e.g., O'Malley v. Shavico, supra.

Any variance from these amounts must be supported by convincing evidence. See, e.g., Moore v. Moore, Del.Fam., Civil No. A-9447, Horgan, J. (November 26, 1979).

STEP B PRIMARY CHILD SUPPORT NEED

The minimum needs of the several members of a household are established below. The order of household members is ranked on the basis of age.

First member (usually a parent)	$450 a month
Second member, 40% thereof, or	$180 a month
Third & Fourth members, 30% thereof, or	$135 a month
Each additional member, 20% thereof, or	$ 90 a month

The primary child support need of each child in question will be considered by first determining that child's rank in the custodial parent's household and then using the appropriate figure shown above.

Add to the total primary needs of all the children in question the cost of extraordinary medical expenses and the cost of child care needed to allow a custodial parent to work. Other expenses incurred because of the special needs of a child may be allowed if found by the Court to be necessary. See, e.g., Swedenhjelm v. McNair, supra. Subtract from the minimum needs of any child such child's earnings or income.

STEP C DETERMINE THE PRIMARY SUPPORT OBLIGATION OF EACH OBLIGOR

Divide each support obligor's available net income for child support by the total available net income for child support. The resulting percentage (%) establishes the burden each obligor should carry with respect to their children's primary support. This percentage should then be multiplied by the total primary child support need in order to arrive at the primary support obligation of each obligor.

PART II. STANDARD OF LIVING ADJUSTMENT (SOLA) CHILD SUPPORT

STEP A DETERIMINE THE AVAILABLE NET INCOME FOR SOLA SUPPORT

SOLA is designed to apportion, as equitable considerations require, the income available to a support obligor after he has met his own primary needs and those of

his dependents. See, e.g., I.B. v. R.S.W.B., Del.Fam., Civil No. A-3000, Melson, J. (November 10, 1977); Flaherty v. Fidance, Del.Fam., Civil No. B-2900, James, J. (January 8, 1980). Therefore, from the AVAILABLE NET FOR PRIMARY SUPPORT established in PART 1, STEP A, of the Child Support Calculation,

Subtract:

a. The primary support obligation calculated in PART 1, STEP C;
b. Other primary support obligations owed to children of the support obligor not of the union between the parents in this case;
c. Where the support obligor is remarried, or has other dependents as specified in 13 Del.C. § 505*, the support obligor may be entitled to a deduction for such a dependent before calculating the SOLA obligation.

STEP B CALCULATE SOLA SUPPORT OBLIGATION

Where income is available, both support obligors shall be required to pay 15% for the first child, 10% each for the second and third child, 5% each for the fourth, fifth, and sixth child, of the AVAILABLE NET FOR SOLA SUPPORT established in PART II, STEP A, of the Child Support Calculation. See, e.g., Flaherty v. Fidance, supra. Total SOLA ordered shall not exceed 50% of the discretionary income unless there is a prior finding of a specific need.

STEP C CALCULATE THE PER-CHILD SHARE OF SOLA SUPPORT

PART III. TOTAL MONTHLY SUPPORT OBLIGATIONS

Where a support obligor is also a custodial parent, the obligor retains that share of the support obligation owed to the child in his custody and pays the difference, if any, to the other custodial parent for the benefit of other children.

This formula contemplates normal visitation arrangements. Where a parent establishes visitation or has physical joint custody significantly beyond the norm, then some adjustment in the amount derived from a formula calculation may result. This adjustment is allowable regardless of how the custodial arrangements are titled.

Where parties share physical joint custody on an equal basis, each will be considered to have the child for six months during the course of a year. To avoid unnecessary transfers of funds, the "pay out" of each parent for the year should be determined by multiplying the monthly support obligation times six months. If one parent's yearly obligation is greater than that owed by the other, the excess amount shall be divided by 12 and paid monthly over the course of the year, unless the parties agree otherwise. See, e.g., Long v. Long, Del.Fam., Civil No. A-4228, Poppiti, J. (October 23, 1981).

PART IV. OPTIONAL SUPPLEMENTAL QUARTERLY CHILD SUPPORT

The Court may order a parent to pay supplemental quarterly child support directly to the child and custodial parent jointly. These payments are designed to relieve the custodial parent of periodic child-related expenses and to make the child aware of the support received for his benefit from the other parent. See, e.g., Alexander v. Alexander, Del.Fam., Civil No. 16860, Buckson, J. (April 6, 1978). Where there is a substantial discrepancy in the respective incomes of the custodial and non-custodial parent after primary and SOLA child support have been determined, the Court may consider a supplemental award to enable the children to live at the higher standard of living enjoyed by the more affluent parent. See, e.g., Flaherty v. Fidance, supra. Any payments so ordered will be due on September 1, December 1, March 1, and June 1, unless a variance is warranted by convincing evidence.

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*13 Del.C. § 505 states:

"(a) The duties of support specified in § 501 and § 504 of this title shall be performed according to the following order or priority:
(1) Duty to support one's own minor child;
(2) Duty to support a spouse;
(3) Duty to support a woman pregnant with child conceived out of wedlock;
(4) Duty to support a step-child or the child of a person with whom the obligor cohabits in the relationship of husband and wife;
(5) Duty to support a poor person."

EXAMPLES OF HOW THE SYSTEM WORKS

(A) Father and Mother are divorced. Father lives alone; Mother and the parties' two children live together. Father nets $1,200/month; Mother nets $800/month. Both Mother and Father are income-producing obligors; therefore, each parent's minimum self-support need is $450/month. After deducting their own minimum need, Father has $750/month available net income for primary support; Mother has $350/month available for the same purpose.

The primary support need of the two children is $315/month ($180 plus $135). Mother's child care expense encumbered to enable her to work is $100/month. Thus, total primary support need equals $415/month. Father would be responsible for 68% ($750 ÷ $1,100) of the primary support need of $415, or $282.20/month, and Mother would be responsible for 32% ($350 ÷ $1,100) of that need, or $132.80/month.

After deducting the primary child support obligation from the available net income, Father has $467.80/month, and Mother has $217.20/month available net income for SOLA support. Of this sum, Father should pay 25%, or $116.95/month; Mother should pay $54.30/month. As Mother is the custodial parent, she retains all her support obligation for the benefit of the two children; and Father pays Mother $399.15/month for child support ($282.20 plus $116.95 SOLA = $399.15/month).

(B) Father and Mother share both joint custody and physical custody of their one child on a 50/50 basis. Father earns $1,500/month; Mother earns $800/month. Neither is remarried; thus, the child is the second person in each household. Each parent's primary support need is $450/month, and the child's primary support need, regardless of which household wherein the child resides, is $180/month.

After deducting their own primary support needs, Father has $1,050/month, and Mother has $350/month available for the support of the child. Thus, Father would be responsible for 75% ($1,050 ÷ $1,400) of the primary support need of $180, or $135/month, and Mother would be responsible for 25% ($350 ÷ $1,400) of that need, or $45.00.

The SOLA support obligation of the parents is 15% of the funds remaining after they meet their own and the child's primary support needs. Thus, the Father owes $137.25 ($1,050 - $135 = $915 x 15%), and Mother owes $45.75 ($350 - $45 = $305.00 x 15%).

According to the above figures, Father's total monthly obligation is $272.25 and Mother's total monthly obligation is $90.75. Because they share custody 50/50 over the course of a year, Father would retain the support he owes for the child during the six months he has custody and pay to Mother support during the other six months. Mother would likewise pay support to Father during the six months he has custody and retain her support obligation during the six months in which she has custody. Thus, over a year, Father would pay to Mother $272.25 times six months, or $1,633.50; and Mother would pay to Father $90.75 times six months, or $544.50. Accordingly, Father owes $1,089 per year more than Mother owes to Father; thus, Father should pay $90.75/month to Mother to meet this obligation ($1,089 divided by 12 months).

Rev. 6/83
☐ FORM 665
SCHEDULE J

The Family Court of the State of Delaware

FOR ___ NEW CASTLE ___ KENT ___ SUSSEX COUNTY

CHILD SUPPORT CALCULATION

(_) PETITIONER (_) RESPONDENT

DATE:

CASE NAME:

FILE NUMBER:

PART I. PRIMARY CHILD SUPPORT

STEP A	FATHER	MOTHER	TOTAL
Monthly Net Income	$_____	$_____	
Less Self Support	-_____	-_____	
Sub-totals	$_____	$_____	
= AVAILABLE NET FOR PRIMARY SUPPORT			$_____

STEP B

_____, as _____ person in _____'s household $_____

\+ _____, as _____ person in _____'s household +_____

\+ _____, as _____ person in _____'s household +_____

Sub-total $_____

\+ MONTHLY CHILD CARE EXPENSES OF WORKING CUSTODIAL PARENT . . . . . +_____

\+ EXTRAORDINARY MEDICAL EXPENSES . . . . . +_____

Less EARNINGS OF A DEPENDENT CHILD . . . . . -_____

= TOTAL PRIMARY CHILD SUPPORT NEED . . . . . $_____ TOTAL

STEP C	FATHER	MOTHER
Individual Available net	$_____	$_____
+ Total Available Net	+_____	+_____
= Share of Primary Support	_____%	_____%
x Primary Child Support Need	x_____	x_____
= PRIMARY SUPPORT OBLIGATION	$_____	$_____

PART II. STANDARD OF LIVING ADJUSTMENT (SOLA) CHILD SUPPORT

STEP A	FATHER	MOTHER
Available Net for Primary Support	$_____	$_____
Less Primary Support Obligations	-_____	-_____
Sub-totals	$_____	$_____

STEP B	FATHER	MOTHER
Available Net for SOLA Support	$_____	$_____
x Total SOLA Support Percentage	x_____%	x_____%
Sub-totals (Products)	$_____	$_____

= SOLA SUPPORT OBLIGATION . . . . . $_____

STEP C

PER-CHILD SHARE OF SOLA SUPPORT . . . . . $_____

PART III. TOTAL MONTHLY SUPPORT OBLIGATIONS

	FATHER	MOTHER
Primary Support	$_____	$_____
+ SOLA Support	+_____	+_____
= Total Monthly Child Support Obligation Sub-totals	$_____	$_____
Less Amount Retained by Custodial Parent	-_____	-_____
= TOTAL MONTHLY ORDERED CHILD SUPPORT	$_____	$_____

PART IV. OPTIONAL SUPPLEMENTAL QUARTERLY CHILD SUPPORT

The Family Court has the authority to order a parent to pay quarterly child support directly to a child and custodial parent jointly. These payments are designed to relieve the custodial parent of periodic child-related expenses and to make the child aware of support received for his/her benefit from the other parent. Such payments may be awarded by the Court where the amount of monthly child support derived in accordance with the Child Support Calculation is inequitable in light of the relative financial standings of the parties at bar.

September 1 $_____ December 1 $_____ March 1 $_____ June 1 $_____

= TOTAL ANNUAL SUPPLEMENTAL CHILD SUPPORT $_____ TOTAL

RULE 271. PROPOSED FINDINGS, CONCLUSIONS, AND REASONS

(__) PETITIONER (__) RESPONDENT

The Child Support Calculation completed above shall be the party's proposed Order.

If a party is requesting the Court either to modify the normal formula or to find the formula inequitable in light of 13 Del.C. § 505 (b) and/or 13 Del.C. § 514, detail below:

(a) Proposed Findings;

(b) Proposed Conclusions;

(c) Proposed Reasons;

(d) Proposed Order;

§ 505. Priority among dependents.

(a) The duties of support specified in § 501 and § 504 of this title shall be performed according to the following order of priority:

(1) Duty to support one's own minor child;

(2) Duty to support a spouse;

(3) Duty to support a woman pregnant with child conceived out of wedlock;

(4) Duty to support a stepchild or the child of a person with whom the obligor cohabits in the relationship of husband and wife;

(5) Duty to support a poor person.

(b) Where a support obligor is unable to provide support adequate to the needs of 2 or more dependents of the same order of priority, he shall apportion the amount available for support as equally as possible between or among said dependents according to their respective needs.

(c) This section shall not repeal the rights of the parties as established by § 1532 of this title.

§ 514. Determination of amount of support.

In determining the amount of support due to one to whom the duty of support has been found to be owing, the Court, among other things, shall consider:

(1) The health, relative economic condition, financial circumstance, income, including the wages, and earning capacity of the parties, including the children;

(2) the manner of living to which the parties have been accustomed when they were living under the same roof;

(3) The general equities inherent in the situation.

Rule 271. Guidelines and Standards in Deciding Property Distribution, Alimony and Child Support Cases; Proposed Findings, Conclusions and Reasons.

(a) Property Distribution Cases. In all property distribution cases, the Court shall:

(1) Act upon the request of either party.

(2) After the necessary factual record has been made, make findings as to the value of all marital property, including the identity and value of each significant item of property, and the nature of title thereto.

(3) Determine how the marital property shall be apportioned or assigned to each spouse.

(i) In making such determination, the Court shall require the party making the request to prove by a preponderance of the evidence the reasons why it should be so awarded, to whom, and the value to be assigned.

(ii) In making such determination (particularly when the grant of a request will result in a transfer of title to property from one spouse to the other), the Court shall apply the statutory factors in 13 Del. C. § 1513.

(4) After making the determination required by subparagraph (3) above, make such order as is necessary to implement its conclusions, regardless of how title is held.

(5) Award property as titled if the party making the request does not meet the requisite burden of proof.

(6) Consider relevant factors as outlined in 13 Del. C. § 1513, found to be applicable under identified evidence.

(b) Alimony Cases. The Court shall include in any decision:

(1) The facts supporting a determination of dependency.

(2) The amount of each payment.

(3) The frequency of each payment.

(4) The length of time such payments shall continue.

(5) The relevant factors as outlined in 13 Del. C. § 1512(c), found to be applicable under identified evidence.

(c) Child Support Cases. The Court, in order to provide a uniform, equitable approach in applying Delaware law to all child support cases, shall consider the following:

(1) Each support obligor's monthly net income.

(2) The absolute minimum amount of income each support obligor must retain to function at maximum productivity.

(3) The number of support obligor's dependents in an effort to apportion the amount available for support as equally as possible between or among said dependents according to their respective needs.

(4) The primary child support needs and the primary support obligation of each obligor.

(5) The available net income for a standard of living adjustment (SOLA) to be paid by each support obligor after he has met his own primary needs and those of his dependents.

(6) A consideration of the factors set forth in 13 Del. C. § 514.

(d) Submission of Proposed Findings and Conclusions. At least 7 days prior to trial in any ancillary or child support hearing, each party, or his or her attorney, shall submit to the Court proposed findings and conclusions, including supporting reasons therefor concerning all material elements of the case. Each proposed finding of fact shall contain a brief reference to the evidence to be offered in support of that finding. The submission shall include a proposed form or order.

(e) Failure to File Proper Submission. Failure to file a proper submission under paragraph (d) above may result in the Court's sua sponte continuing the hearing; in the adoption of the findings, conclusions and order submitted by the other party as the decision and order of the Court; in the imposition of counsel fees and costs on the offending party; in the preclusion of the presentation of a claim or defense or the introduction of evidence by the offending party; or such other sanctions or orders as the Court deems just.

(f) Sections Required in Filings. All filings made pursuant to this rule shall contain 4 separate sections denominated "Proposed Findings", "Proposed Conclusions", "Proposed Reasons", and "Proposed Order", respectively.
(Added, effective Sept. 1, 1982.)

WISCONSIN PERCENTAGE OF INCOME STANDARD

Chapter HSS 80

CHILD SUPPORT PERCENTAGE OF INCOME STANDARD

HSS 80.01 Introduction
HSS 80.02 Definitions
HSS 80.03 Support orders
HSS 80.04 Determining the child support obligation in special cases
HSS 80.05 Determining imputed income for child support

PREFACE

Section 46.25 (9) (a), Stats., requires the department to adopt and publish a standard to be used by courts in determining child support obligations. The standard is to be based on a percentage of the gross income and assets of either or both parents.

The percentage standard established in this chapter is based on an analysis of national studies, including a study done by Jacques Van der Gaag as part of the Child Support Project of the Institute for Research on Poverty, University of Wisconsin, Madison, entitled "On Measuring the Cost of Children," which disclose the amount of income and disposable assets that parents use to raise their children. The standard is based on the principle that a child's standard of living should, to the degree possible, not be adversely affected because his or her parents are not living together. It determines the percentage of a parent's income and potential income from assets that parents should contribute toward the support of children if the family does not remain together. The standard determines the minimum amount each parent is expected to contribute to the support of their children. It expects that the custodial parent shares his or her income directly with their children. It also presumes that the basic needs of the children are being met. This latter presumption may be rebutted by clear and convincing evidence that the needs of the children are not being met.

The rules also prescribe procedures for determining equitable child support obligations under a variety of financial and family circumstances.

HSS 80.01 Introduction. (1) AUTHORITY AND PURPOSE. This chapter is promulgated under the authority of s. 46.25 (9) (a), Stats., for the purpose of establishing a standard to be used in determining child support under ss. 767.02, 767.08, 767.10, 767.23, 767.25, and 767.51, Stats.

(2) APPLICABILITY. (a) This chapter applies to the party that petitions for and the party that responds to a petition for a temporary or final order for child support of a marital or nonmarital child in an action affecting a family under s. 767.02, Stats., and includes stipulated child support settlements under s. 767.10, Stats. At the court's discretion, upon a finding of a substantial change of circumstances, this chapter may also apply to revisions of judgment under s. 767.32, Stats.

(b) Pursuant to s. 767.25 (lm), Stats., the court may determine that the standard under s. HSS 80.03 (1) should not be applied to establish a support obligation if the court, upon request of one of the parties and after considering the factors set out in s. 767.25 (lm), Stats., finds by clear and convincing evidence that application of the standard would be unfair for the child or one of the parties.

(c) The court may determine that the standard under s. HSS 80.03 (1) should not be applied to establish a support obligation to the payer's income if that income falls below the statutory standard of need set by the legislature in s. 49.19 (11) (a), Stats., and the payer's standard of living is below that of the child or children.

(d) The court may elect not to apply the standard under s. HSS 80.03 (1) to establish a support obligation to the extent that the amount

awarded exceeds the amount necessary to maintain the child or children at the economic level they would enjoy if they and their parents were all living together, except that the court may order, pursuant to s. 767.25 (2) and ch. 701, Stats., payment of any excess amount that it deems just and reasonable for the post-majority support, education, or welfare of the child or children.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

HSS 80.02 Definitions. In this chapter:

(1) "Adjusted base" means the monthly income at which the child support obligation is determined for serial family payers, which is the payer's base less the amount of any existing child support obligation.

(2) "Assets" means all real and personal property, including automobiles and other vehicles, real estate, profit-sharing, pension and retirement accounts, life insurance, cash and deposit accounts, stocks and bonds and business interests.

(3) "Base" means the monthly income at which the child support obligation is determined, which is calculated by adding together the payer's gross income adjusted for child support and the payer's imputed income for child support, and dividing by 12.

(4) "Child" means the natural or adopted child of the payer.

(5) "Child support" or "child support obligation" means an amount of money that a person is legally obligated to pay toward the expense of raising a child or children in an intact family or pursuant to the order of a Wisconsin court under ch. 767, Stats., or the order of a court of competent jurisdiction in another state.

(6) "Court" means a circuit court judge or family court commissioner.

(7) "Current 6-month treasury bill rate" means the yield of a U.S. government security with a term of 6 months.

(8) "Department" means the Wisconsin department of health and social services.

(9) "Dependent household member" means a person for whom a taxpayer is entitled to an exemption for the taxable year under 26 USC 151 ~~(e)~~.

(10) "Family support" means an amount which a person is legally obligated to pay pursuant to an order under s. 767.261, Stats., as a substitute for child support under s. 767.25, Stats., and maintenance payments under s. 767.26, Stats.

(11) "Federal dependency exemption" means the deduction allowed in computing taxable income pursuant to 26 USC 151 (e) for a child of the taxpayer who has not attained the age of 19 or who is a student.

(12) "Gross income" means all income derived from any source and realized in any form, as defined under 26 CFR 1.61-1 and disclosed to the court pursuant to s. 767.27, Stats.

(13) "Gross income adjusted for child support" means gross income adjusted by adding wages paid to dependent household members and depreciation and subtracting the cost of goods sold, the cost of opera-

tions, public assistance received, and child support received from prior marriages.

(14) "Imputed income for child support" means the amount of income ascribed to assets, as determined on the attached worksheet, which exceeds the actual earnings of the assets and which the court determines, at its discretion, to include in the base for determining child support.

(15) "Marital child" means a child determined to be a marital child under s. 767.60, Stats.

(16) "Parent" means the natural or adopted parent of the child.

(17) "Payee" means the parent who is the recipient of child support as a result of a court order.

(18) "Payer" means the parent who incurs a child support obligation as a result of a court order.

(19) "Primary custodian" means the parent having physical custody of the child more than 182 days a year or the parent designated by the court as primary custodian when the parents share the child-caring responsibility equally.

(20) "Self-employed payer" means a payer determined by the court to be self-employed for the purpose of determining child support.

(21) "Serial family payer" means a payer with an existing child support obligation who incurs an additional child support obligation in a subsequent family or as a result of a paternity judgment.

(22) "Shared-time payer" means a payer who is not the primary custodian but who provides overnight child care beyond the threshold and assumes all variable child care costs in proportion to the number of days he or she cares for the child under the shared-time arrangement.

(23) "Split custody payer" means a payer who has 2 or more children and who has physical custody of one or mnore but not all of the children.

(24) "Standard" or "percentage standard" means the percentage of income standard under s. HSS 80.03 (1) which, multiplied by the payer's base or adjusted base, results in the payer's child support obligation.

Note: The standard is based on national studies of the percentage of income used to support a child or children with adjustment downward of those percentages to reflect costs incurred by the payer for visitation and to maintain health insurance for the child or children.

(25) "Threshold" means 30% of a year or 109.5 out of every 365 days.

Note: The threshold was derived by taking 30% of a 365 day year.

(26) "Unemployed payer" means a payer not employed at the time child support is ordered, but who may be employed in the future.

(27) "Variable costs" means costs that include payment for food, clothing, school, extracurricular activities and recreation.

(28) "Worksheet" means the department's percentage standard worksheet, printed as Appendix B to this chapter, or any other instrument or

method adopted by the court to calculate a child support obligation that is consistent with this chapter.

Note: Copies of the "Percentage Standard Worksheet" (Form DCS-3144) can be obtained by writing: Office of Child Support, Division of Community Services, P.O. Box 7851, Madison, WI 53707.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

HSS 80.03 Support orders (1) DETERMINING CHILD SUPPORT USING THE PERCENTAGE STANDARD. The payer's base or adjusted base shall be determined by completing the worksheet. The percentage of the payer's base or adjusted base that constitutes the child support obligation shall be:

(a) 17% for one child;

(b) 25% for 2 children;

(c) 29% for 3 children;

(d) 31% for 4 children; and

(e) 34% for 5 or more children.

Note: See Appendix A which indicates the amount of child support at various levels of income using the percentage standard.

(2) CALCULATION OF FAMILY SUPPORT. When the standard under sub. (1) is used to calculate support under s. 767.261, Stats., the amount determined shall be increased by the amount necessary to provide a net family support payment, after state and federal income taxes are paid, of at least the amount of a child support payment under the standard.

(3) EXPRESSION OF ORDERED SUPPORT. In temporary and final support orders, the ordered support may be expressed either as a percentage of the base or adjusted base, or as a fixed sum, as permitted under ss. 767.23 (1), 767.25 (1) and 767.51 (4), Stats.

(4) DEPENDENCY EXEMPTION. The court may order the payee to waive the federal dependency exemption provided that the payee's execution of the exemption waiver is made contingent on the receipt of child support payments.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

HSS 80.04 Determining the child support obligation in special circumstances. Child support may be determined under special circumstances as follows:

(1) DETERMINING THE CHILD SUPPORT OBLIGATION OF A SERIAL FAMILY PAYER. For a serial family payer the child support obligation may be determined as follows:

(a) Complete section I of the worksheet to determine the payer's base;

(b) Complete section II of the worksheet to determine the payer's adjusted base by applying one of the following methods, as appropriate:

1. When the payer is subject to an existing support order, subtract the amount of the court-ordered support from the base to get the adjusted base; or

2. When the payer has other children legally under his or her care who are not subject to a court order, multiply the appropriate percentage for

the number of children legally under the payer's care by the base as determined on the worksheet. Subtract this amount from the base to determine the adjusted base; and

(c) Multiply the appropriate percentage for the number of children subject to the new order by the adjusted base determined in either par. (b) 1 or 2 to determine the child support obligation.

Note 1: The following example shows how the child support obligation is determined for a serial family payer whose additional child support obligation has been incurred for a subsequent family:

Assumptions:

The payer's base is $2,000;

The payer's existing monthly support order for 2 children is $500; and

The payer is getting divorced from her second husband with whom she has one child.

Calculation:

Base		$2,000
Existing court order	–	500
Adjusting base for determining child support		1,500
Percentage standard for 1 child	×	.17
Monthly child support order		$ 255

Note 2: The following example shows how the child support obligation is determined for a serial family payer whose additional child support obligation has been incurred as a result of a paternity judgment.

Assumptions

The payer's base is $2,000;

The payer and his wife have 2 children of their own; and

The payer has been adjudicated the father of another child in a paternity judgment.

Calculation:

Base		$2,000
Standard for 2 children under the payer's care (25% × $2,000)	–	500
Adjusted base		$1,500
Standard for one child as a result of paternity judgment	×	.17
Monthly child support order		$ 255

(2) DETERMINING THE CHILD SUPPORT OBLIGATION OF A SHARED-TIME PAYER. (a) The child support obligation for a parent who the court determines is a shared-time payer may be determined through a method of calculation under par. (b) or through the use of shared-time tables under par. (c).

(b) To calculate the amount of shared-time child support:

1. Complete section I of the worksheet to determine the payer's base;

2. Multiply the appropriate percentage under s. HSS 80.03 (1) by the payer's base to establish the payer's original level of child support;

Assumptions:

The payer is divorced and has 3 children;

The payer has custody of one child;

The payer's monthly gross income is $3,000;

The payee has custody of 2 children; and

The payee's monthly gross income is $1,500.

Calculation:

The payer's base $3,000	
The payer's original child support obligation (25% x $3,000)	750
The payee's base	1,500
The payee's original child support obligation (17% x $1500)	255
The payer owes the payee (750 - 255)	$495

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

HSS 80.05 Determining imputed income for child support. For a payer with assets, the reasonable earning potential of the available assets shall be determined as follows:

(1) Complete section I, part A of the worksheet to determine the payer's gross income; and

(2) Complete section I, part B of the worksheet to identify the payer's real and personal property assets and then impute income to those assets by multiplying the total net value of all assets by the current 6-month treasury bill rate or any other rate that the court determines is reasonable. If the imputed income exceeds the actual earnings of the assets, the court may elect, in its discretion, to include some, none, or all of the amount by which the imputed income exceeds the actual earnings of the assets.

Note: The following example shows how income is imputed to assets:

Assumptions:

The payer owns stocks and bonds with a net value of $25,000 and actual earnings of $2,000/year;

The payer owns art work valued at $5,000; and

The current 6-month treasury bill rate is 8.65%

Calculation:

Total net value of all assets		$30,000
Current 6-month treasury bill rate	x	8.65
Imputed income from all assets		2,595
Actual earnings of all assets		(2,000)
Amount by which imputed income exceeds actual earnings		$ 595

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87.

Appendix A

CHILD SUPPORT PERCENTAGE CONVERSION TABLE

BASE	ONE CHILD 0.17	TWO CHILDREN 0.25	THREE CHILDREN 0.29	FOUR CHILDREN 0.31	FIVE OR MORE CHILDREN 0.34
10.00	2.00	3.00	3.00	3.00	3.00
20.00	3.00	5.00	6.00	6.00	7.00
30.00	5.00	8.00	9.00	9.00	10.00
40.00	7.00	10.00	12.00	12.00	14.00
50.00	9.00	13.00	15.00	16.00	17.00
60.00	10.00	15.00	17.00	19.00	20.00
70.00	12.00	18.00	20.00	22.00	24.00
80.00	14.00	20.00	23.00	25.00	27.00
90.00	15.00	23.00	26.00	28.00	31.00
100.00	17.00	25.00	29.00	31.00	34.00
110.00	19.00	28.00	32.00	34.00	37.00
120.00	20.00	30.00	35.00	37.00	41.00
130.00	22.00	33.00	38.00	40.00	44.00
140.00	24.00	35.00	41.00	43.00	48.00
150.00	26.00	38.00	44.00	47.00	51.00
160.00	27.00	40.00	46.00	50.00	54.00
170.00	29.00	43.00	49.00	53.00	58.00
180.00	31.00	45.00	52.00	56.00	61.00
190.00	32.00	48.00	55.00	59.00	65.00
200.00	34.00	50.00	58.00	62.00	68.00
210.00	36.00	53.00	61.00	65.00	71.00
220.00	37.00	55.00	64.00	68.00	75.00
230.00	39.00	58.00	67.00	71.00	78.00
240.00	41.00	60.00	70.00	74.00	82.00
250.00	43.00	63.00	73.00	78.00	85.00
260.00	44.00	65.00	75.00	81.00	88.00
270.00	46.00	68.00	78.00	84.00	92.00
280.00	48.00	70.00	81.00	87.00	95.00
290.00	49.00	73.00	84.00	90.00	99.00
300.00	51.00	75.00	87.00	93.00	102.00
310.00	53.00	78.00	90.00	96.00	105.00
320.00	54.00	80.00	93.00	99.00	109.00
330.00	56.00	83.00	96.00	102.00	112.00
340.00	58.00	85.00	99.00	105.00	116.00
350.00	60.00	88.00	102.00	109.00	119.00
360.00	61.00	90.00	104.00	112.00	122.00
370.00	63.00	93.00	107.00	115.00	126.00
380.00	65.00	95.00	110.00	118.00	129.00
390.00	66.00	98.00	113.00	121.00	133.00
400.00	68.00	100.00	116.00	124.00	136.00
410.00	70.00	103.00	119.00	127.00	139.00
420.00	71.00	105.00	122.00	130.00	143.00
430.00	73.00	108.00	125.00	133.00	146.00
440.00	75.00	110.00	128.00	136.00	150.00
450.00	77.00	113.00	131.00	140.00	153.00
460.00	78.00	115.00	133.00	143.00	156.00
470.00	80.00	118.00	136.00	146.00	160.00
480.00	82.00	120.00	139.00	149.00	163.00
490.00	83.00	123.00	142.00	152.00	167.00
500.00	85.00	125.00	145.00	155.00	170.00
510.00	87.00	128.00	148.00	158.00	173.00
520.00	88.00	130.00	151.00	161.00	177.00
530.00	90.00	133.00	154.00	164.00	180.00
540.00	92.00	135.00	157.00	167.00	184.00
550.00	94.00	138.00	160.00	171.00	187.00
560.00	95.00	140.00	162.00	174.00	190.00
570.00	97.00	143.00	165.00	177.00	194.00
580.00	99.00	145.00	168.00	180.00	197.00
590.00	100.00	148.00	171.00	183.00	201.00
600.00	102.00	150.00	174.00	186.00	204.00
610.00	104.00	153.00	177.00	189.00	207.00
620.00	105.00	155.00	180.00	192.00	211.00

HSS 80

BASE	ONE CHILD 0.17	TWO CHILDREN 0.25	THREE CHILDREN 0.29	FOUR CHILDREN 0.31	FIVE OR MORE CHILDREN 0.34
630.00	107.00	158.00	183.00	195.00	214.00
640.00	109.00	160.00	186.00	198.00	218.00
650.00	111.00	163.00	189.00	202.00	221.00
660.00	112.00	165.00	191.00	205.00	224.00
670.00	114.00	168.00	194.00	208.00	228.00
680.00	116.00	170.00	197.00	211.00	231.00
690.00	117.00	173.00	200.00	214.00	235.00
700.00	119.00	175.00	203.00	217.00	238.00
710.00	121.00	178.00	206.00	220.00	241.00
720.00	122.00	180.00	209.00	223.00	245.00
730.00	124.00	183.00	212.00	226.00	248.00
740.00	126.00	185.00	215.00	229.00	252.00
750.00	128.00	188.00	218.00	233.00	255.00
760.00	128.00	188.00	218.00	233.00	255.00
760.00	129.00	190.00	220.00	236.00	258.00
770.00	131.00	193.00	223.00	239.00	262.00
780.00	133.00	195.00	226.00	242.00	265.00
790.00	134.00	198.00	229.00	245.00	269.00
800.00	136.00	200.00	232.00	248.00	272.00
810.00	138.00	203.00	235.00	251.00	275.00
820.00	139.00	205.00	238.00	254.00	279.00
830.00	141.00	208.00	241.00	257.00	282.00
840.00	143.00	210.00	244.00	260.00	286.00
850.00	145.00	213.00	247.00	264.00	289.00
860.00	146.00	215.00	249.00	267.00	292.00
870.00	148.00	218.00	252.00	270.00	296.00
880.00	150.00	220.00	255.00	273.00	299.00
890.00	151.00	223.00	258.00	276.00	303.00
900.00	153.00	225.00	261.00	279.00	306.00
910.00	155.00	228.00	264.00	282.00	309.00
920.00	156.00	230.00	267.00	285.00	313.00
930.00	158.00	233.00	270.00	288.00	316.00
940.00	162.00	238.00	276.00	295.00	323.00
960.00	163.00	240.00	278.00	298.00	326.00
970.00	165.00	243.00	281.00	301.00	330.00
980.00	167.00	245.00	284.00	304.00	333.00
990.00	168.00	248.00	287.00	307.00	337.00
1000.00	170.00	250.00	290.00	310.00	340.00
1010.00	172.00	253.00	293.00	313.00	343.00
1020.00	173.00	255.00	196.00	316.00	347.00
1030.00	175.00	258.00	299.00	319.00	350.00
1040.00	177.00	260.00	302.00	322.00	354.00
1050.00	179.00	263.00	305.00	326.00	357.00
1060.00	180.00	265.00	307.00	329.00	360.00
1070.00	182.00	268.00	310.00	332.00	364.00
1080.00	184.00	270.00	313.00	335.00	367.00
1090.00	185.00	273.00	316.00	338.00	371.00
1100.00	187.00	275.00	319.00	341.00	374.00
1110.00	189.00	278.00	322.00	344.00	377.00
1120.00	190.00	280.00	325.00	347.00	381.00
1130.00	192.00	283.00	328.00	350.00	384.00
1140.00	194.00	285.00	331.00	353.00	388.00
1150.00	196.00	288.00	334.00	357.00	391.00
1160.00	197.00	290.00	336.00	360.00	394.00
1170.00	199.00	293.00	339.00	363.00	398.00
1180.00	201.00	295.00	342.00	366.00	401.00
1190.00	202.00	298.00	345.00	369.00	405.00
1200.00	204.00	300.00	348.00	372.00	408.00
1210.00	206.00	303.00	351.00	375.00	411.00
1220.00	207.00	305.00	354.00	378.00	415.00
1230.00	209.00	308.00	357.00	381.00	418.00
1240.00	211.00	310.00	360.00	384.00	422.00
1250.00	213.00	313.00	363.00	388.00	425.00
1260.00	214.00	315.00	365.00	391.00	428.00
1270.00	216.00	318.00	368.00	394.00	432.00
1280.00	218.00	320.00	371.00	397.00	435.00

BASE	ONE CHILD 0.17	TWO CHILDREN 0.25	THREE CHILDREN 0.29	FOUR CHILDREN 0.31	FIVE OR MORE CHILDREN 0.34
1290.00	219.00	323.00	374.00	400.00	439.00
1300.00	221.00	325.00	377.00	403.00	442.00
1310.00	223.00	328.00	380.00	406.00	445.00
1320.00	224.00	330.00	383.00	409.00	449.00
1330.00	226.00	333.00	386.00	412.00	452.00
1340.00	228.00	335.00	389.00	415.00	456.00
1350.00	230.00	338.00	392.00	419.00	459.00
1360.00	231.00	340.00	394.00	422.00	462.00
1370.00	233.00	343.00	397.00	425.00	466.00
1380.00	235.00	345.00	400.00	428.00	469.00
1390.00	236.00	348.00	403.00	431.00	473.00
1400.00	238.00	350.00	406.00	434.00	476.00
1410.00	240.00	353.00	409.00	437.00	479.00
1420.00	241.00	355.00	412.00	440.00	483.00
1430.00	243.00	358.00	415.00	443.00	486.00
1440.00	245.00	360.00	418.00	446.00	490.00
1450.00	247.00	363.00	421.00	450.00	493.00
1460.00	248.00	365.00	423.00	453.00	496.00
1470.00	250.00	368.00	426.00	456.00	500.00
1480.00	252.00	370.00	429.00	459.00	503.00
1490.00	253.00	373.00	432.00	462.00	507.00
1500.00	255.00	375.00	435.00	465.00	510.00
1510.00	257.00	378.00	438.00	468.00	513.00
1520.00	258.00	380.00	441.00	471.00	517.00
1530.00	260.00	383.00	444.00	474.00	520.00
1540.00	262.00	385.00	447.00	477.00	524.00
1550.00	264.00	388.00	450.00	481.00	527.00
1560.00	265.00	390.00	452.00	484.00	530.00
1570.00	267.00	393.00	455.00	487.00	534.00
1580.00	269.00	395.00	458.00	490.00	537.00
1590.00	270.00	398.00	461.00	493.00	541.00
1600.00	272.00	400.00	464.00	496.00	544.00
1610.00	274.00	403.00	467.00	499.00	547.00
1620.00	275.00	405.00	470.00	502.00	551.00
1630.00	277.00	408.00	473.00	505.00	554.00
1640.00	279.00	410.00	476.00	508.00	558.00
1650.00	281.00	413.00	479.00	512.00	561.00
1660.00	282.00	415.00	481.00	515.00	564.00
1670.00	284.00	418.00	484.00	518.00	568.00
1680.00	286.00	420.00	487.00	521.00	571.00
1690.00	287.00	423.00	490.00	524.00	575.00
1700.00	289.00	425.00	493.00	527.00	578.00
1710.00	291.00	428.00	496.00	530.00	581.00
1720.00	292.00	430.00	499.00	533.00	585.00
1730.00	294.00	433.00	502.00	536.00	588.00
1740.00	296.00	435.00	505.00	539.00	592.00
1750.00	298.00	438.00	508.00	543.00	595.00
1760.00	299.00	440.00	510.00	546.00	598.00
1770.00	301.00	443.00	513.00	549.00	602.00
1780.00	303.00	445.00	516.00	552.00	605.00
1790.00	304.00	448.00	519.00	555.00	609.00
1800.00	306.00	450.00	522.00	558.00	612.00
1810.00	308.00	453.00	525.00	561.00	615.00
1820.00	309.00	455.00	528.00	564.00	619.00
1830.00	311.00	458.00	531.00	567.00	622.00
1840.00	313.00	460.00	534.00	570.00	626.00
1850.00	315.00	463.00	537.00	574.00	629.00
1860.00	316.00	465.00	539.00	577.00	632.00
1870.00	318.00	468.00	542.00	580.00	636.00
1880.00	320.00	470.00	545.00	583.00	639.00
1890.00	321.00	473.00	548.00	586.00	543.00
1900.00	323.00	475.00	551.00	589.00	646.00
1910.00	325.00	478.00	554.00	592.00	649.00

HSS 80

BASE	ONE CHILD 0.17	TWO CHILDREN 0.25	THREE CHILDREN 0.29	FOUR CHILDREN 0.31	FIVE OR MORE CHILDREN 0.34
1920.00	326.00	480.00	557.00	595.00	653.00
1930.00	328.00	483.00	560.00	598.00	656.00
1940.00	330.00	485.00	563.00	601.00	660.00
1950.00	332.00	488.00	566.00	605.00	663.00
1960.00	333.00	490.00	568.00	608.00	666.00
1970.00	335.00	493.00	571.00	611.00	670.00
1980.00	337.00	495.00	574.00	614.00	673.00
1990.00	338.00	498.00	577.00	617.00	677.00
2000.00	340.00	500.00	580.00	620.00	680.00

Wisconsin-DHSS
Division of Community Services
DCS-3144 (Issued 1/87)

APPENDIX B

CHILD SUPPORT

Check one
☐ Temporary
☐ Final

Judge

Branch

CHILD SUPPORT PERCENTAGE STANDARD WORKSHEET

Completion of this form meets the requirements of Wisconsin Administrative Code, Chapter HSS 80

Case name	☐ Mother ☐ Father	Case number

This worksheet makes use of the financial information provided to the court under Wisconsin Statutes, S. 767.27. Calculation of child support on this form requires, at a minimum, the payer's gross income. Net value of any assets disclosed to the court is used to calculate imputed income to compare to the actual earnings of those assets. If the imputed income exceeds the actual earnings of the assets, the court may include, at its discretion, some, none, or all of the amount by which the imputed income exceeds the actual earnings of the assets in the payer's total annual income for computing child support.

SECTION I - COMPUTATION OF THE BASE AMOUNT FOR CALCULATING SUPPORT

A. Calculation of gross income adjusted for child support

INSTRUCTIONS: Determine the payer's annual total gross income using the total disclosed to the court on the standard financial disclosure form.

1. Annual total gross income from all sources _____

INSTRUCTIONS: Add the following amounts to total gross income:

2. Wages paid to dependent household members ----------

3. Depreciation (IRS Schedule C, Part II, Line 12) ----------

4. SUBTOTAL _____

INSTRUCTIONS: Subtract the following amounts from total gross income:

5. Cost of goods sold and/or operations (from IRS Schedule C, Part III, Line 8) ----------

6. Public assistance (annual) ----------

7. Child support received from previous marriages ----------

8. SUBTOTAL _____

INSTRUCTIONS: Add the amounts in lines 1 and 4, and subtract the amount in line 8 to determine the payer's gross income adjusted for child support.

9. Line 1 ----------

10. Line 4 ----------

11. Line 8 ----------

12. Gross income adjusted for child support _____

8. Calculation of imputed income for child support
INSTRUCTIONS: In each category indicate the net value of each asset from the financial disclosure form (Wisconsin Statutes, S. 767.27) and the actual earnings of each asset.

Property description	Net value	Actual earnings
1. Real estate	----------	$----------
2. Profit sharing/pension/retirement accounts (includes Keogh PLan, IRA accounts, employee stock option plans, stock options)	----------	----------
3. Life insurance	----------	----------
4. Automobiles and other vehicles	----------	----------
5. Cash and deposit accounts	----------	----------
6. Stocks and bonds	----------	----------
7. Business interests	----------	----------
8. Household items and personal effects	----------	----------
9. Other personal property and assets	----------	----------
10. TOTAL	----------	----------

INSTRUCTIONS: Multiply the total net value of assets (line 10) by the current six (6) month Treasury bill rate to determine the imputed income from assets and compare the result to the total actual earnings of assets (line 10).

11. _____ x _____ = _____
(total net value of all assets) (current 6 month Treasury Bill rate) (imputed income from assets)

INSTRUCTIONS: If the actual earnings from assets are less than the imputed income from assets, the court may, at its discretion, include in the imputed income for child support, some, none or all of the amount by which the imputed income exceeds the actual earnings of the assets. Subtract from the imputed income in line 11, above, the amount the court determines should not be included in the determination of child support.

12. _____ _____ = _____
(imputed income from assets) (amount of imputed income not included) (imputed income for child support)

C. Determination of total monthly support obligation
INSTRUCTIONS: Add the amount in Part A, line 12 and final amount in Part B, line 12, to determine the total annual income for child support.

1. Part A, line 12 (gross income adjusted for child support) _____

2. Part B, line 12 (imputed income for child support) _____

3. TOTAL ANNUAL INCOME FOR COMPUTING CHILD SUPPORT _____

INSTRUCTIONS: Divide the amount in line 3 by 12 to determine the BASE for calculating support.

5. _____ -- 12 = _____
(total annual income for child support) (BASE)

INSTRUCTIONS: Multiply BASE (Part C, line 5) by the appropriate percentage.

6. a. One child.....17%
b. Two children.....25%
c. Three children.....29%
d. Four children.....31%
e. Five children or more children.....34%

x BASE = _____
(TOTAL MONTHLY SUPPORT OBLIGATION)

SECTION II - COMPUTATION OF THE ADJUSTED MONTHLY SUPPORT OBLIGATION FOR SERIAL FAMILY PAYERS

A. When the payer is subject to an existing support order:

1. Determine the BASE under SECTION I, C. 5 _____

2. Adjust the BASE by subtracting the amount(s) of any existing support order(s) _____

3. Adjusted BASE _____

4. Multiply adjusted BASE by the percentage for the appropriate family size (I, C. 6) to determine the Adjusted Monthly Support Obligation _____

B. When the payee has other children legally under his/her care, not subject to an existing support order:

1. Determine the BASE under Section I, C. 5. _____

2. Apply the standard (___%) (I, C.) for the appropriate family size to the children legally under the payer's care _____

3. Subtract line 2 from line 1 to determine the Adjusted BASE _____

4. Determine appropriate percentage (I, C.) for children to be covered under new order _____

5. Multiply line 3 (Adjusted BASE) by line 4 to determine ADJUSTED MONTHLY SUPPORT OBLIGATION _____

WASHINGTON STATE UNIFORM CHILD SUPPORT GUIDELINES

WASHINGTON STATE

ASSOCIATION OF SUPERIOR COURT JUDGES

UNIFORM CHILD SUPPORT GUIDELINES

REVISED EFFECTIVE JANUARY 1, 1985

FAMILY LAW COMMITTEE

AND

OFFICE OF THE ADMINISTRATOR FOR THE COURTS

TABLE OF CONTENTS

	Page
Preface to 1984 Revisions	ii
Guidelines	
Relationship Between Temporary and Permanent Support	1
Income	1
Income from New Spouses or Cohabitants	2
Disposable Income	2
Pro-Rata Share of Schedule Amount	2
Schedule Amount	2
Ages of Children	3
Child Care Costs	3
Limit on Maximum Support to be Ordered	3
Visitation Adjustments	3
Split Custody	4
Joint Physical Custody	4
Spousal Support	4
Periodic Adjustment Clauses	4
Children Over 17	4
Suggested Worksheets	
#1. Basic Disposable Income and Support Calculation	5
#2. Calculation Sheet for Obligor's Share of Child Care Costs	6
#3. Split Custody Computation	7
#4. Calculation of Support for Joint Physical Custody (Reserved)	8
#5. Worksheet for Spousal Support	9
Child Support Guidelines Schedule	10
Children in Different Age Groups: Example Calculation	11
How the Schedules were Derived	12
Bibliography	20

Revised 8/29/84

Preface to 1984 Revision

The Juvenile and Family Law Committee of the Washington Association of Superior Court Judges is pleased to make available this revision of the Uniform Child Support Guidelines (UCSG). As of June, 1984, the vast majority of all the domestic relations cases heard in Washington State were heard in courts which have adopted the UCSG as official policy (81.8%) and most of the remaining judicial districts are in the process of adopting the UCSG as policy.

Summary of Changes

Acceptance of and familiarity with the UCSG has made possible the development of enhancements in the revision such as the worksheets for calculating support in split and joint custody cases and a refinement of the procedure for calculating child care cost supplements. A major change in the 1984 revisions is the deletion of the "ranges of support" which characterized the schedule in its original form.

Many comments and suggestions were received asking for a standardized approach to applying the UCSG when parties remarry and enjoy new household income from new spouses and, perhaps, assume support responsibilities for new dependents. In the opinion of the committee, given current Washington statutes and case law, attempts to develop standardized policies for such circumstances were beyond the scope of this revision of the UCSG and constitute a subject for considerably more far-reaching policy review. The committee extends its thanks to those who have wrestled with this problem and submitted letters to staff. The subject will undoubtedly be pursued in other forms.

GUIDELINES FOR USE OF ASCJ UNIFORM CHILD SUPPORT SCHEDULE

THE CHILD SUPPORT SCHEDULE IS DESIGNED TO PROVIDE GUIDELINES FOR JUDGES, ATTORNEYS AND LITIGANTS TO ESTABLISH CHILD SUPPORT LEVELS. USERS ARE CAUTIONED TO REMEMBER THAT THE SCHEDULES SHOW AVERAGES DERIVED FROM ECONOMIC DATA AND ARE GUIDELINES ONLY. INDIVIDUAL CASES IN CONTROVERSY SHOULD BE DECIDED ON THE FACTS OF EACH CASE.

Introduction

A major purpose of these guidelines is to promote settlement of child support disputes by providing flexible and realistic measures of predictability regarding judicial standards for child support determinations. It is anticipated that these will be helpful for attorneys working with clients in the office and in settlement conferences with the court.

The overriding principle of these guidelines is to maximize the attention paid by the parties and the court to the rights of the children with respect to support. The guidelines recognize the equal duty of both parents to contribute toward the support of their children in proportion to their respective incomes. The child support schedule establishes dollar amounts for a reasonable and necessary level of support at different income levels and family sizes. These dollar amounts reflect expenditure norms derived by the analysis of economic data described on pages 12 through 19 of this document. The amount of support actually to be paid by the non-custodial spouse to the custodial spouse will be a fraction of the schedule amount equal to the percentage of the total net income earned by the non-custodial spouse. Thus, these guidelines recognize that the "needs" of the child are in general determined by the income level of the parents; and the ability of each parent to contribute to support is recognized as proportional to his or her contribution to that income level.

RELATIONSHIP BETWEEN TEMPORARY & PERMANENT SUPPORT: The schedule is intended to be used for both temporary and permanent support awards. This is consistent with the intent of the guidelines to separate issues related to rights of children and duties of parents from issues related to spousal support and/or rehabilitation. Temporary or permanent spousal support needs which may require additional financial obligations on the non-custodial spouse are dealt with separately in these guidelines.

INCOME: This is income of both parties from all sources except Aid to Dependent Children payments. It is recommended that

all income be annualized and that copies of the last two years' tax returns accompany financial statements, as well as current wage stubs. Such annualization and examination of a two year period provides a normalized pattern of the income producing abilities and proportional contributions of the parents.

Income from new spouses or cohabitants: These guidelines do not take into account income from other adults who may reside with either of the separated spouses at the time of divorce. For purposes of subsequent modification of initial support awards, a court shall give due consideration to additional income from all sources as well as any additional obligations as established by case law in determining such modification.

OUTSIDE INCOME OF OLDER CHILDREN IS A FACTOR RECOGNIZED AS APPROPRIATE FOR THE COURT TO CONSIDER IN DETERMINING SUPPORT

DISPOSABLE INCOME: (See Worksheet #1) The schedule applies to the total disposable income of both parties. The following deductions from total income should be made to arrive at disposable income:

(All income and deductions should be annualized)

a. Taxes. The standard deductions applicable to the number of exemptions provided by law will be used to establish the amount of taxes.
b. Social Security (FICA)
c. State Industrial Insurance
d. Union Dues
e. Mandatory retirement deductions
f. Support payments for children of prior marriage(s) (where there is proof of the annual amount actually being paid)

PRO-RATA SHARE OF SCHEDULE AMOUNT: After the basic support level is determined, the pro-rata share of both parents will be determined from worksheet #1 or by any appropriate percentage arithmetic display. Example: If total net income is $1,800 and if the custodial spouse contributes $600 and the non-custodial $1,200, the non-custodial spouse will be expected to pay 66.6% of the schedule amount to the custodial spouse.

SCHEDULE AMOUNT: The child support schedule is found on page 10. The schedule establishes the total dollar amount which will meet the needs of children at varying income levels. These amounts are based on observed spending patterns of different size families at different income levels.

AGES OF CHILDREN: Economic data shows that as children get older the percentage of family consumption budgets spent on children increases significantly enough to warrant the different age-specific columns included in the schedule. There are separate columns for children 0-6, 7-15 and 16-17 years of age.

Where the ages of the children require use of more than one column, calculate the per-child amounts from the correct family size grouping and add them together. The same family size heading will always be the reference; for example, if there are two children, the per-child amount must always be a fraction of the "two-children" grouping on the schedule, if three children, always a fraction of the "three children" grouping, etc. See p. 11 of this booklet for examples of how to calculate per-child amounts.

CHILD CARE COSTS: Reasonable child care expenses actually being incurred shall be considered by the court as a mutual responsibility of both parents. Orders establishing the dollar contribution of the support obligor toward child care costs shall set this amount as a separate item in the order which shall be a supplement to ongoing child support. The court should specify the particulars governing the length of time such a supplement shall remain in effect and any other particulars regarding evidence of child care expense.

Although child-care costs in effect reduce the available disposable income of the parties, calculation of ongoing child support occurs without consideration of child care costs. In order to adjust for this, Worksheet #2 for calculating the obligor's proportional responsibility for child care costs includes a credit factor which makes an allowance for the difference in child support calculated at two different disposable income levels, without child care costs and with child care costs. Worksheet #2 is not helpful unless child care costs are annualized and averaged based on history of receipted expenses for child care or unless the parties re-calculate the child care cost supplement periodically based on actual receipted expenses for that period.

LIMIT ON MAXIMUM SUPPORT TO BE ORDERED: The guidelines presume that as a rule the disposable income of the support obligor will not be reduced below 50%, regardless of the presumptive support level derived from the schedules. The rationale for this proviso is that reduction below 50% may have the effect of undermining an obligor's incentive to remain employed.

VISITATION ADJUSTMENTS: During visitation periods of four to six weeks or longer, support payments by the obligor may ordinarily be abated by 50%. Consideration of visitation-related or other direct cost-sharing by the obligor should be effected at the time of the decree and so specified in the order.

Revised 8/29/84

SPLIT CUSTODY: For purposes of these guidelines, "split custody" is defined as each parent having physical custody of one or more of the children. Application of the guidelines in these circumstances merely requires additional arithmetical steps. Worksheet #3 shows how to do this calculation.

JOINT PHYSICAL CUSTODY: For purposes of these guidelines, when a specific provision for joint physical custody has been set forth in a custody order, support may be calculated using worksheet #4. Worksheet #4 is not intended for use with sole physical custody with visitation. In such cases, any adjustment to support for substantial continuous visitation periods shall be provided for as a visitation adjustment.

SPOUSAL SUPPORT: These guidelines intend that spousal support determinations occur within the context of the marginal income available to the parties after child support obligations are established and with the proviso that the disposable income of the non-custodial spouse in no case be reduced below 50% for any combination of child support and spousal support.

PERIODIC ADJUSTMENT CLAUSES: The guidelines recommend that periodic adjustment provisions be included in all orders of child support. The guidelines do not recommend a specific adjustment formula, but do recommend that orders specify the basic income and deductions information which must be exchanged between the parties for adjustment purposes.

EFFECT OF NEW CHILDREN ON SUPPORT OBLIGATIONS: A parent's obligations for support of his or her children may extend to all of that parent's natural, adopted, or stepchildren. Presumptively, the percentage-of-income obligation of a support obligor for children of a first marriage (or paternity determination) will decrease if there are new children born to the support obligor, and he or she does actually provide support for all the children.

CHILDREN 18 YEARS OF AGE OR OLDER: These schedules and guidelines are not intended to apply to children who have reached the age of majority.

Revised 12/8/84

WORKSHEET 1

BASIC DISPOSABLE INCOME AND SUPPORT CALCULATION

		Mother	Combined	Father
1.	Total income from all sources (except payments received for children of previous marriages or AFDC grants)*			
2.	Deductions**			
	a. Taxes***			
	b. FICA			
	c. Ind. Ins.			
	d. Union dues			
	e. Mandatory retirement			
	f. Support obligation for children of prior marriage			
	g. TOTAL			
3.	Disposable Income (Line 1 minus line 2g)			
4.	COMBINED TOTAL DISPOSABLE INCOME			
5.	Percent contribution of each parent (Line 3, each parent, divided by line 4)			
6.	CHILD SUPPORT FROM SCHEDULE			
7.	EACH PARENT'S SHARE (Percent line 5, each parent, times line 6)			

*Court will require copies of last two years' tax returns to verify "total income" figures and copies of present wage stubs to verify the pattern of and present wage earnings.
**All claimed deductions should be annualized and divided by 12 to arrive at monthly amounts.
***Deductions for taxes will be based on the annualized income and the number of exemptions provided by law.

Revised 8/29/84

CALCULATION SHEET FOR OBLIGOR'S SHARE OF CHILD CARE COSTS

	Mother	Combined	Father
8. ACTUAL COSTS OF CHILD CARE*		_____	
9. % from Line 5, Worksheet #1, each parent, times line 8	_____		_____
10. REDUCED DISPOSABLE INCOME (Line 3, Worksheet #1, MINUS line 9)	_____		_____
11. COMBINED REDUCED TOTAL		_____	
12. Child Support from Schedule based on line 11		_____	
13. Each Parent's Share (% Line 9 times line 12)	_____		_____
14. DIFFERENCE BETWEEN line 7, Worksheet #1 and line 13	_____		_____
15. OBLIGOR'S CHILD CARE COSTS: For whichever parent is the obligor, subtract line 14 from line 9	_____		_____

*Child care costs should be annualized and averaged for a twelve month period based on receipted past costs or other agreed estimating method.

SPLIT CUSTODY COMPUTATION

16.

Child's Name	Age	Custody (M or F)	Show schedule amount from correct age and family size column, divided by total # of children	Show each parent's share (apply % from line 5, Worksheet #1)	
				Father	Mother

17. Total Amount Owed to Father by Mother (Mother's share from Step 16 for children in father's custody.) _____

18. Total Amount Owed to Mother by Father (Father's share from Step 16 for children in mother's custody.) _____

19. SUPPORT TO BE PAID BY OBLIGOR TO OBLIGEE (Difference between 17 and line 18) _____

Revised 8/29/84

Worksheet #4

CALCULATION OF SUPPORT FOR JOINT PHYSICAL CUSTODY

		Mother	Father
20.	Proportional obligation from schedule (from line 7, Worksheet #1)	_____	_____
21.	Number of days annually child(ren) is in custody of each parent	_____	_____
22.	Percentage of year child(ren) is in custody of each parent (line 21 ÷ 365)	_____	_____
23.	Mother's "theoretical" obligation to father (% line 22, father column, times line 20)	_____	
24.	Father's "theoretical" obligation to mother (% line 22, mother column, times line 20)		_____
25.	Obligor's responsibility for support (difference between lines 23 and 24)	_____	

Revised 12/8/84

WORKSHEET FOR SPOUSAL SUPPORT

NON-CUSTODIAL SPOUSE INCOME AND SUPPORT PAID

A. Non-Custodial Spouse Net Income: (From worksheet #1, line 2g) _____

B. Child Support (From worksheet #1, line F) _____

C. Marginal Income, After Support (A minus B) _____

D. 50% of Non-Custodial Spouse Net Income _____

E. Income Available for Spousal Support, Special Needs, etc. (C minus D) _____

CUSTODIAL SPOUSE INCOME AND SUPPORT RECEIVED

F. Custodial Spouse Net Income (From worksheet #1, line 2g) _____

G. Child Support from Non-Custodial (From line B) _____

H. Total Income for Family of ____, without spousal support (F + G) [ ]

SPOUSAL SUPPORT DISPLAY

I. Income of Non-Custodial Spouse Available for Spousal Support (Based on no more than 50% reduction) (From line E) _____

J. Spousal Support Proposed _____

REVISED INCOME OF PARTIES IF SPOUSAL SUPPORT ORDERED

K. Non-Custodial (C minus J) [ ]

L. Custodial Family, ____ persons (H + J) [ ]

Revised 8/29/84

WASHINGTON STATE ASSOCIATION OF SUPERIOR COURT JUDGES
CHILD SUPPORT GUIDELINE SCHEDULE

KEY: A = AGE 0-6; B = AGE 7-15; C = AGE 16-17

TOTAL DISP. INCOME (M&W)	ONE CHILD -----SCHEDULE---- A	B	C	TWO CHILDREN -----SCHEDULE---- A	B	C	THREE CHILDREN -----SCHEDULE---- A	B	C	FOUR CHILDREN -----SCHEDULE---- A	B	C
500	105	123	142	166	195	225	205	241	278	235	275	316
550	116	135	156	183	215	247	226	265	305	257	303	349
600	126	148	170	200	235	270	246	290	333	281	331	380
650	136	160	184	216	255	292	266	314	361	305	358	411
700	147	173	198	233	274	315	288	338	389	328	386	444
750	157	184	213	249	293	337	308	362	416	351	413	475
800	167	197	227	266	313	360	328	387	444	375	441	506
850	179	209	241	283	333	382	349	411	472	398	468	539
900	189	222	255	300	352	405	369	435	500	422	496	570
950	199	234	269	316	372	427	390	459	527	446	523	601
1000	213	250	287	346	407	468	447	525	604	507	596	685
1050	218	256	294	355	417	479	457	537	618	520	611	702
1100	222	261	300	363	427	490	467	549	631	533	626	720
1150	226	266	306	371	436	501	477	561	645	545	641	737
1200	231	272	313	379	445	512	487	573	659	558	656	754
1250	235	277	319	387	455	524	497	585	672	571	672	771
1300	241	283	325	396	465	535	507	597	685	583	686	788
1350	245	288	332	404	475	546	517	609	699	597	701	807
1400	250	293	337	412	485	557	527	620	713	609	716	824
1450	254	299	343	420	494	569	537	632	726	622	731	841
1500	259	304	350	429	504	580	548	644	740	635	747	858
1550	264	310	356	437	514	591	558	656	754	648	762	875
1600	269	315	363	445	524	602	568	667	767	660	776	893
1650	273	320	369	454	534	613	577	679	781	674	791	910
1700	277	326	375	462	544	625	587	691	795	686	807	927
1750	282	332	382	471	553	635	598	703	808	699	822	944
1800	286	337	388	479	562	647	608	715	821	712	837	962
1850	292	343	394	487	572	658	618	726	835	725	852	979
1900	296	349	400	495	582	670	628	738	848	737	866	997
1950	301	354	406	503	592	680	638	750	862	750	882	1014
2000	305	359	413	512	602	692	648	762	876	763	897	1031
2100	315	370	425	528	621	714	668	785	903	788	927	1066
2200	324	381	438	544	641	736	688	809	930	814	958	1100
2300	333	392	451	562	661	759	709	833	957	840	987	1135
2400	343	403	462	578	679	781	728	857	984	865	1017	1169
2500	352	413	475	595	699	804	748	880	1012	891	1048	1204
2600	361	424	488	611	719	826	769	904	1039	917	1077	1239
2700	370	435	501	628	738	849	789	927	1066	942	1108	1273
2800	379	446	513	644	758	871	808	951	1093	968	1138	1308
2900	388	457	525	661	778	894	829	975	1120	994	1168	1342
3000	398	468	538	678	796	916	849	998	1147	1018	1198	1377
3100	407	479	551	694	816	938	870	1022	1175	1044	1228	1412
3200	417	490	563	711	835	960	889	1045	1202	1070	1258	1446
3300	426	501	575	727	855	983	909	1069	1229	1095	1288	1481
3400	435	512	588	744	875	1005	930	1092	1256	1121	1319	1515
3500	445	523	601	760	894	1028	949	1116	1283	1147	1348	1550
3600	454	533	613	777	913	1050	969	1140	1311	1172	1378	1585
3700	463	544	626	794	933	1073	990	1164	1338	1198	1409	1619
3800	472	555	638	810	952	1095	1010	1187	1364	1224	1438	1654
3900	481	566	651	827	972	1118	1030	1211	1392	1249	1469	1688
4000	490	577	663	843	992	1139	1050	1235	1419	1275	1499	1723
4250	514	604	694	885	1040	1196	1100	1293	1487	1339	1574	1810
4500	537	632	726	926	1089	1252	1151	1352	1555	1403	1649	1896
4750	560	659	757	967	1138	1308	1201	1412	1622	1467	1724	1983
5000	583	686	789	1009	1186	1363	1251	1471	1691	1530	1800	2069
5250	607	713	819	1050	1235	1420	1301	1530	1758	1595	1875	2156
5500	630	740	851	1092	1284	1476	1351	1589	1827	1659	1950	2242
5750	653	768	882	1133	1333	1532	1401	1648	1894	1722	2025	2328
6000	676	795	914	1174	1381	1588	1452	1708	1962	1787	2100	2415

SUPPORT OBLIGOR PAYS A PERCENTAGE OF THE SCHEDULE AMOUNT BASED ON PERCENTAGE OF TOTAL INCOME: IF THE OBLIGOR EARNS 65% OF THE TOTAL INCOME, SUPPORT TO BE PAID IS 65% OF THE SCHEDULE AMOUNT. SEE WORKSHEET #2.

CHILDREN IN DIFFERENT AGE GROUPS

EXAMPLE CALCULATIONS

EXAMPLE: Income = 2,000/mo. Two children ages 5 & 8

Amount from Schedule, Column A, Two children = $\frac{569}{2}$ = 285

Amount from Schedule, Column B, Two children = $\frac{669}{2}$ =+335

Schedule Amount = **620**

EXAMPLE: Income = 2,000/mo. Three children ages 4, 5 & 9

Amount from Schedule, Column A, Three children = $\frac{700}{3}$ = 233
+233
466

Amount from Schedule, Column B, Three children = $\frac{824}{3}$ =+277

Schedule Amount = **743**

II. SUPPORT AND VISITATION SCHEDULES, GUIDELINES and FORMULAS

The Economics of Setting Adequate and Equitable Child Support Payment Awards

Judith Cassetty* & Frank Douthitt**

Increasing attention recently has been directed at estimating and measuring the economic consequences of divorce because:

1. There has been very substantial growth in the absolute number and percentage of all children who experience marital disruption;
2. Ever-younger children are being involved in divorce, thereby remaining as members of single-parent households for an increasing number of years;
3. The gender-gap in earnings of men and women of equivalent educational attainment and of all races and ethnic backgrounds has failed to show improvement since at least the mid-sixties, thereby imparing the ability of women to support their children alone;
4. Social science research suggests that it is the *economic* consequences of divorce—not the social and psychological consequences as previously believed—that have the greatest impact upon children's academic and occupational achievement; and
5. The social phenomenon of the female-headed household remains the fastest growing of any type of household with children in spite of the widely publicized popularity of father-custody and "joint" custody.

To further complicate the situation, the incidence of non-marital birth, especially among adolescents, continues without appreciable reduction. These children are at even greater risk of spending their early years in poverty and their adult years in less productive occupational pursuits. The combined effect of all this is to condemn a growing proportion of our children to economic conditions which worsen each year that they spend as members of female-headed households.

There is very little that can be done to reverse the basic social conditions and demographic trends discussed above. But adoption and implementation of appropriate child support policies can significantly alter the outcome in terms of children's opportunities. To the greatest extent possible within the framework of the law, children should be guaranteed that they will not be economically disadvantaged or handicapped by the voluntary actions of their parents.

Child Support Awards and Compliance Rates

Review of child support awards, actual compliance rates, and the real costs of raising a child reveals that most child support awards and payments are inadequate, and that a disproportionate share of the costs of raising children is borne by the mother-custodian after divorce. According to a recently released report from the U.S. Bureau of the Census, as of Spring, 1982 only 47 percent of the 4 million women who had been awarded support for the children in their care received the full amount due them in 1981. Further, even if these families had received the full amounts by the courts, each still would have received an average of only $2,050 per year ($171 monthly). In fact, on average, for 1981 only about $1,120, (or 55 percent of the amount ordered), was received. This constitutes a decrease of 16 percent in real dollars since 1978, the date of the last child support survey by the Bureau.

Interestingly, women who were due child support payments as a consequence of voluntary, written agreements received a significantly higher percentage (78%) of the amount due. Moreover, the support was also significantly higher, $2,870, than court-ordered support. At least two possible explanations occur:

(1) The "type" of obligor who voluntarily agrees about support is more likely to also be the "type" who abides by the terms of the agreement. Perhaps fathers who are, by nature, more reasonable and concerned about the welfare of their children are less inclined to become embroiled in an adversarial contest;

(2) The process of negotiating a child support payment obligation affords the obligor greater information about the real costs of providing a home for his child, and to perceive that a compromise position is preferable for all.

Ability-to-Pay and the Costs of Children

Although average, aggregate child support payments, adjusted for inflation, decreased by 16 percent between 1978 and 1981, child support as a percentage of average male earnings (also adjusted) remained constant at 13 percent over that same period. In order to reach some

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tentative conclusions as to the "appropriateness" or "fairness", this figure should be compared to the percentage of *custodial* parents' average income that goes for direct and indirect child support and the relative shares of child support borne by each parent while married. Unfortunately, such measures are not available. However, economists have estimated the costs of raising children in homes in which both parents are present. These studies indicate that the costs of children rise over time, due to both inflation and to the increasing age of a child. If the proportion of an obligor's income which goes toward payment of child support does *not* increase over time, it is reasonable to assume that the increase in the costs of children which is attributable to both factors is shifted to their primary caretakers.

Indirect Measures of the Costs of Children

A number of governmental agencies have developed various methods of computing "family consumption budgets" and other schedules which reflect the "costs" of families of various size, composition, and geographic location. Average expenditures for such basic necessities as food, shelter, clothing, medical care, transportation, education, etc. may be compared for families with different compositions. By making such comparisons, it is possible to estimate the "cost" of adding an additional child to a family. However, such an approach has the obvious problem created by the necessity of adjusting the figures yearly in order to capture the effects of changes in prices. To minimize this problem, economists often prefer to report these "costs" of children in terms of *percentages* of family income that are attributable to expenditures of various types. These percentages have been found to be fairly consistant over time. A further refinement involves comparing the percentage of consumption income which is attributable to food and other necessary expenditures for families of different composition, but at the same income level. This approach is generally sound because the costs of most necessities, especially food, decline as a *proportion* of income as income rises.

In spite of the general agreement among economists as to *how* to measure the "cost" of a child, (*i.e.*, percentage of income that is directly and indirectly attributable to adding a child to a household), there still is widespread disagreement as to *what* measures should be included. Those measures generating the greatest disagreement include:

1. Foregone wages or "opportunity costs" incurred by a parent—usually the mother—as a consequence of caring for a child on a full-time basis. (For example, all other things being equal [education, marital status, etc.] women employed full-time outside the home, who have children earn signifantly less than those without children. This wage-gap increases with the number of children. The wages of men, on the other hand, do not vary by presence or number of children.);
2. The effects on savings, *e.g.*, "dissavings." (Some economists suggest that the economic cost of a child includes the lost interest on "would-have-been savings" used to meet the day-to-day costs of providing food, shelter, clothing, health care, or education of a child);

Among the cost measures about which there is the greatest amount of agreement among economists are the following:

1. The "real" costs of children are not fixed. Rather, these costs can only be measured within the context of the economic resources available;
2. With very few exceptions, "costs" increase as children age. Most studies record an increase of between 2-3% per year attributable to the "aging" of a child;
3. The first child in a family incurs the greatest cost, the second and third children each cost about half that of the first, and the marginal costs of additional children decline even further; and
4. As family income increases, the *percentage* of costs attributable to the presence of children decreases. However, a few studies have found the contrary, *i.e.* that the costs of children increase as a percentage of income as that income increases.

Direct Measures of the Costs of Children

Economists and other social scientists have devised direct means of measurement involving surveys and questionnaires of various types in order to estimate the costs of a child. An obvious shortcoming of this approach is that respondents are asked to judge the economic well-being of a hypothetical household. The repondents' own current situation may differ both in economic well-being and in household composition.

Interestingly, it has been observed that the *results* of various studies do appear to differ greatly no matter what techniques are employed. In fact, both direct and indirect estimation methods lead to large ranges of estimated costs of a child. But, if the actual costs of a child *independent of* the family income in the home of which she or he is a part cannot be measured, allocating the shares of those costs between the child's parents when they reside in two different households presents our greater problem. Though the legal literature has, especially of late, included a number of "formulas, schedules, and guidelines" that purport to be based upon some "scientifically" determined, absolute measure of the real cost of providing a home for a child, there is no such number. The best we can do, under these circumstances, is to accept the *general* findings of economists, develop some guiding principles as to what *should* be the approach to allocating economic responsibility between two parents who maintain separate households, and choose that approach which seems to be most consistant with both.

There appear to be three basic approaches to allocating economic responsibility for children between two parents who no longer reside together in the same household:

- The *cost-sharing* approach;
- The *income-sharing* approach; and
- The *taxation* approach.

Some schedules and guidelines claim to be based upon the "real" costs of a child. Ordinarily there is no empirically based research rationale for the schedules. At best

these schedules are the author's *personal* "yardstick", against which the court may compare its own notion of fairness. But no underlying rationale can be presented to the parties immediately involved, nor one which would bear up under scientific scrutiny. Finally, on occasion a child support schedule is based upon some widely used schedule, such as an AFDC or foster care payment standard. Perhaps some may harbor a naive belief that such figures were derived through a rational decision-making process by policy makers who had knowledge of the actual costs of maintaining a home for a child. In reality, of course, AFDC and foster care payment levels are merely reflective of the economic and political climate of the state.

In sum, there is no absolute, or "real," cost of providing a home for a child. That is, the measurement of costs is inherently endogenous, or "circular." "Cost" is a function of what people (usually the natural or adoptive parents) are able and willing to spend on the child. A child who receives AFDC costs the taxpayers in a state one amount in direct and indirect benefits, while a child of the governor costs them quite another. It makes no logical sense to assert that one of these amounts is more representative of the "real" costs of "a child."

The Cost-Sharing Approach to Setting Support Awards

This section describes a cost-sharing approach to setting support awards based upon shares of the costs of children as estimated by an economist using data from the U.S. Department of Agriculture. Although little data exists regarding the costs of children in one-parent families, there is every reason to believe that the average cost of such children may be significantly higher than the average cost of children in two-parent households, principally because the costs of child care are more apt to be incurred by single-parent families. To the extent that the estimates in Tables 1-6 do not include these higher costs of child care, they may be considered to be underestimates of the actual costs of children in single-parent homes at equivalent income levels.

Upon the dissolution of a family unit, courts routinely face a dilemma when they are compelled to evaluate an obligor's ability to pay support *after* the fact of separation and the establishment of two households by divorcing (or divorced) parties. For example, one judge has noted that:

> ". . . upon separation, in one case a marital partner will leave the family home and move into an apartment costing $150 per month and in the other case the move will be to an apartment renting for $250 per month. . . .The result is that sometimes men working side by side at the same job and with substantially the same responsibilities have discovered that they are subject to disparate support orders."

Thus, the rationale for developing and adopting guidelines, "formulas," or schedules for child support awards, includes that of promoting equity between *families*, in addition to the promotion of equity between the two households that will share responsibility for a child after divorce. Philip Eden, an economist, has estimated the costs of children, based largely upon economic research findings reported by the U.S. Department of Agriculture and the U.S. Department of Labor. These estimates are used as the bases for tables (1-6), appended to this article, *infra*. Briefly summarized, the figures derived from Eden's basic calculations vary by age, the number of children in a family unit, residence, and family income. Generally speaking, the low income range should be viewed as above poverty levels (see Exhibit D) but below about $18,000 for a family of four. A moderate-level income, then, might be viewed as between $18,000 and $28,000 per year. An income above $28,000 for a family of four would be considered above average and an income above $40,000 would place the family well above average. (In 1982, the median income for a family of four in the U.S. was $27,619.)

The basic issue remains to allocate the costs of raising children and the "costs" of the loss of the economies of scale when one household is divided into two. Doing this in a manner that is equitable to both parents in relation to their abilities-to-pay remains a significant challenge. Tables 1-6, are responsive to changes in the costs of children as they age and to the different level of costs incurred by families whose incomes are in the lower and moderate ranges, and may be used as the bases for such an allocation of the costs. Unfortunately, nothing remains static in this context. The amounts specified in these tables should be adjusted annually, according to Consumer Price Index changes reported by the Bureau of Labor Statistics,* in order to reflect changes in the costs of a child which are attributable to inflation, rather than to increasing age. While Eden suggests a more precise (and complicated) strategy for allocating these costs between the two parents, a simplified approach, similar to that used by many Washington State courts, allocates to each parent in proportion to their incomes a share of the costs of raising their children, as follows.

Exhibit A (Moderate Income Level)

A Proportional Cost-Sharing Approach to Setting Awards Based Upon Eden Estimates of the Cost of Children

	Earnings	% of Total
Parent A's Earnings	$12,000	40% ($1000 per mo.)
Parent B's Earnings	$18,000	60% ($1500 per mo.)
Total	$30,000	($2500 per mo.)
2 - year old child	$ 376	
4 - year old child	$ 393	
Total	$ 769 (per month)	
Parent A's Obligation		.40 X $769 = $307.60
Parent B's Obligation		.60 X $769 = $461.40
Total		$769.00

If either parent maintains the primary residence for the children, meets the day-to-day personal needs of the children, and holds a full- or part-time job outside the home, it is quite safe to assume that this parent's share of the needs of the children is being met. Thus, the non-custodial parent should be held responsible to contribute his or her economic share to the primary-care household, while the custodial parent's share is assumed to make up the difference between the non-custodial parent's contribution and the actual costs. This cost-sharing approach to setting support awards is based upon an assumption that parents should share the costs of a child in a manner that is proportional to their relative abilities to contribute. It also assumes that each parent has an income. Note that such a definition of cost does not refer to out-of-pocket costs measured *after* they are incurred. Rather, these costs of children are used in an *elastic* sense, to wit, children cost as much as both parents can afford to spend on them. More importantly, children are entitled to fully share the benefits of their parents' resources on a continuing basis. In sum, this approach presumes that there is no absolute, fixed ceiling on the costs of raising a child, nor is there any economic or moral justification for reallocating the parental shares of these costs after divorce.

The Income-Sharing Approach to Setting Child Support Awards

The philosophical basis for the "income-sharing" approach to setting support award levels is roughly equivalent to that of sharing custody. If parents continue to share fully with one another in a day-to-day caretaking role, this should *not* be an excuse for minimizing economic responsibility to the children. This result appears to be the case all too often. Rather, fully sharing the responsibility to meet a child's health, nutritional, educational, physical, and psychological needs should also *imply* sharing resources on a continuing basis. Unless both parents are willing to continue sharing the economic functions of parenting, it seems unrealistic to expect them to share amicably and equitably the other functions of parenting on a day-to-day basis.

The basic formula for income-sharing after divorce may be applied irrespective of decisions involving custody, and need not be viewed as applicable only in shared-custody cases. This approach may be more appropriate in cases in which one parent has no income from employment outside the home, but rather provides full-time care for the child(ren). In the example below, both parents are assumed to have incomes, and custody of the two children has been awarded to parent A.

[1]The allocation of three shares of "surplus income" to the household which contains the two children may represent, to some readers, an implicit form of alimony. While it is difficult to avoid this implication, it must be recognized that it is altogether impossible to improve the standard of living for children without improving that of the caretaker with whom they reside, no matter what strategy is used for setting support awards. Even the most niggardly, out-of-pocket, cost-based approach, (involving calculations of the proportions of housing, transportation, and food costs that are strictly attributable to the children's consumption, for instance), will have the effect of subsidizing a standard of living that is higher than that which the custodial parent would enjoy if no child sup-

*These tables were prepared prior to the end of 1983. Thus, to adjust to early 1984 prices, multiply all figures in Tables 1-6 by the 1983 rate of inflation, 3.8%.

port at all were forth-coming. A subsidy to the household in order to improve children's standard of living is, after all, the legitimate purpose of child support. Income-sharing, as opposed to cost-sharing, incorporates economies of scale in the calculations and, in order to meet this objective, must take cognizance of the reality of the caretaker's presence in the household with the children. In order to maintain the internal integrity of the income-sharing approach, one would have to delete the income of the custodial parent from the numerator if one wished to delete the needs, as reflected in the denominator. One can't have it both ways. If the non-custodial parent were to remarry and have another child by the newer union, the income of the spouse and the needs of the spouse and child would be reflected in the formula as well. But their inclusion in the formula for the purpose of sharing in the "surplus" income between the two households would not represent "alimony" any more than it does on the custodial parent's portion of the equation.

Exhibit B

Income-Sharing Approach to Setting Child Support Awards Based Upon Cassetty Formula

$$\text{Child Support} = \frac{\left(\begin{array}{c}\text{Income of}\\ \text{Parent B}\end{array}\right) - \left(\begin{array}{c}\text{Poverty Level}\\ \text{for 1}\end{array}\right) - \left(\begin{array}{c}\text{Income of}\\ \text{Parent A}\end{array}\right) - \left(\begin{array}{c}\text{Poverty Level}\\ \text{for 3}\end{array}\right)}{4\ (1/4 = \text{share of 'surplus' income for each individual})}$$

$$\text{Child Support} = \frac{(1500 \cdot 405) - (1000 \cdot 685)}{4}$$

$$\text{Child Support} = \frac{1095 - 315}{4} = \frac{780}{4} = \$195 \text{ (per person share of "surplus" income)}$$

Child Support = $585 per month (3 shares of "surplus" income)[1]

This income-sharing approach is consistant with the theoretical family law "tradition" of ensuring that the children of divorced parents suffer the least economic hardship possible and continue to enjoy a standard of living that is as close to the original pre-divorce level as possible. Further, in terms of on-going support and modification, the income sharing approach goes farther toward ensuring that the children continue to enjoy the standard of living that they would have enjoyed had the marriage continued. This is the only approach, also, which automatically adjusts for economies of scale and changes in them which result from the formation of two households where formerly there was one.

Exhibit C, below, illustrates the modification of the formula for use in cases in which custody is fully shared. Assume that parent A has an income of $12,000 per year and parent B has an income of $18,000 per year. (For the sake of simplification, appropriate figures for family size of 2, will be used, as if each parent had "custody" of one child rather than each having "half-custody" of both children. This is consistant with Federal income taxation practices.)

A major advantage of the income-sharing approach is that it automatically adjusts to changes in wages and the cost of living over time when applied on an annual or otherwise regular basis, and, as previously noted, adjusts for economies of scale. This may be a more reasonable adjustment to make than those made on the basis of changes in the cost-of-living alone, as is done by the cost-sharing approach.

Exhibit C

Income-Sharing Approach to Setting Child Support Awards When Parents Share Custody on an Equal Basis

$$\text{Child Support} = \frac{\left(\begin{array}{c}\text{Income of}\\ \text{Parent B}\end{array}\right) - \left(\begin{array}{c}\text{Poverty Level}\\ \text{for 2}\end{array}\right) - \left(\begin{array}{c}\text{Income of}\\ \text{Parent A}\end{array}\right) - \left(\begin{array}{c}\text{Poverty Level}\\ \text{for 2}\end{array}\right)}{4}$$

$$\text{Child Support} = \frac{(1500 \cdot 545) - (1000 \cdot 545)}{4}$$

$$\text{Child Support} = \frac{955 \cdot 455}{4} = \frac{500}{4} = \$125$$

Child Support = $250 (2 shares of "surplus" income from Parent B's household to household A to be transferred to Parent A, the parent with lesser income, in order to equalize the standards of living between the two households.

The Taxation Approach to Setting Child Support Awards

A wholly untried, untested, and presently theoretical method for setting support awards is the "taxation" approach. This is a modification of the cost-sharing and income-sharing plans, incorporating the principles of marginal costs together with rough ideas of ability-to-pay. For example, it has been proposed to implement child support collection through utilization of the state income "tax" structure. Child support "tax rates" of 17%, 25%, and 29% would be applied to the gross personal incomes of obligors. (For one, two, and three child[ren]). Such an experimental design has yet to be implemented.

The idea that children may be treated as "tax liabilities" has some potential advantages: (1) annual adjustments in child support according to changes in obligors' earnings or taxable income are automatic, therefore by-passing expensive and time-consuming modification procedures; (2) obligors are on notice that consumer debts and additional family responsibilities must be met with after-"tax" income; and (3) the child support obligation may be institutionalized in a way that the present adversarial model has failed to do.

The possible drawbacks of the taxation approach are: (1) the rates may come to represent the *maximum* ceilings on the extent of child support obligations, not as minimal thresholds of support liability; (2) the tax will become an additional, burdensome governmental intrusion—especially at tax-rate levels that approximate the true costs of raising a child; and (3) if codified, as California and Wisconsin are considering, the tax-rate levels are apt to become politicized.

Assessing the Equity of Child Support Awards

What is needed to resolve the problem is a simple technique for assessing the relative economic positions of the two households involved in a child support decision. First, a standardized base on which to compare incomes of the two households must be selected. A starting point of reference is the official Federal Poverty Income Guidelines as published in the *Federal Register* in February 1983, (based upon 1982 cost of living figures). (Note that these figures were previously used to standardize the parents' incomes in Exhibits B and C.) Calculating income-poverty ratios allow for an assessment of the income-in-relation-to-need of the two separate households.

If the appropriate figures above are used as the denominator of a ratio, it is possible to better conceptualize how well-off a person or household is relative to some standard measure. (Parenthetically, *any* standard may be used, including the Bureau of Labor Statistics Family Budget standards, so long as it is applied consistantly.) The ratios may be used to compare families' relative "well-offness" with reference to one another. Thus, Parent A in our previous examples, with an income of $12,000, will produce the following calculation: income divided by the poverty line for a family of three, (one parent, two children) equals

$$\frac{12{,}000}{\$\ 8{,}220} = 1.46$$

Roughly speaking, this family has an income that constitutes about 150% percent of the official poverty line for a family of three.

Similarly, Parent B—a single person living alone with an income of $18,000, results in the following:

$$\frac{18{,}000}{\$\ 4{,}860} = 3.70$$

Parent B, therefore, can be said to have an income which is equivalent to three hundred and seventy percent of the poverty level for a one-person household. *Before* child support payments are taken into account, Parent B can be said to enjoy an economic position that is more than twice as high as that of Parent A and the children. Note that this method allows for incorporating the income and needs of subsequent spouses and dependents as well.

EXHIBIT D

1983 Poverty Income Guidelines for All States Except Alaska and Hawaii*

Size of Family Unit	Poverty Guideline
1	$ 4,860
2	6,540
3	8,220
4	9,900
5	11,580
6	13,260
7	14,940
8	16,620

*1984 Poverty Level Guidelines, based upon 1983 costs, should be available in April of 1984.

(For family units with more than 8 members, add $1,880 for each additional member.)

Use of this simple technique can be an invaluable aid to making comparisons between the "apples and oranges" situations that arise as a consequence of claims that child support awards are "too high" or "too low." By making "before and after" comparisons, a court can better evaluate the results of a particular child support order, Exhibit E, *infra* uses this technique to compare the effects of the three approaches to setting child support payments on the relative economic status of our "typical" divorced parents and children.

EXHIBIT E

Comparisons of Relative Economic Status of "Typical Family" Before and After Child Support Payments

Approach to Setting Award	Relative Economic Status of Parents A & B			
	Monthly Income After Child Support		Income-Poverty Ratio After Child Support	
	Parent A	Parent B	Parent A	Parent B
Cost-Sharing Approach				
Cost Allocation by Relative Incomes (Based on Eden) C.S. = $461.40	1,461.40	1,038.60	2.1	2.6
Income-Sharing Approach (Based on Cassetty Formula)				
Sole Custody C.S. = $585	1,585	915	2.3	2.3
Joint Custody C.S. = $250	1,250	1,250	2.3	2.3
(Poverty level for family of two used in both parents' denominators)				
Taxation Approach (Based on tentative Wisconsin child support tax rates i.e., 25% for two children.) C.S. = $375	1,375	1,125	2.0	2.8

From the above, one can see that different strategies to setting child support awards obviously yield very different results in terms of fostering economic equity between the two households. Depending upon the philosophy adopted, or the objectives to be achieved in an individual case, one approach or another may be more appropriate. The income-sharing approach produces the highest child support payment when the custodial parent has the lesser income and the lowest award when parents share parenting responsibilities. Neither the cost-sharing and taxation approaches involve assumptions about custody; the former comes closer to promoting economic equity between the two households.