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Child Support Policy: Guidelines and Goals

MARSHA GARRISON*

The half or more of American children who will be eligible for child support at some point during their minority¹ are at serious risk. Close to 50 percent of families receiving federal welfare benefits become eligible for benefits as a result of marital separation or divorce.² More than half of children in mother-only households are poverty-stricken; in black and Hispanic mother-only households, more than two-thirds are poor.³ Children in single-parent households are also more likely to experience poor health, behavioral problems, delinquency, and low educational attainment than are their peers in intact families. As adults they have higher rates of poverty, early childbearing, and divorce.⁴

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1. Researchers currently estimate that half to three-quarters of children born in the late 1970s or 1980s will spend some portion of their childhood years in a single-parent household. For a critical review of the estimates, see DONALD J. HERNANDEZ, *AMERICA'S CHILDREN: RESOURCES FROM FAMILY, GOVERNMENT AND THE ECONOMY* 69-71 (1993). As many as 90% of African-American children will spend time in a single-parent family. See ROBERT H. HAVEMAN & BARBARA WOLFE, *SUCCEEDING GENERATIONS: ON THE EFFECTS OF INVESTMENTS IN CHILDREN* 19 n.2 (1994).

2. See *Welfare: Who Gets It? How Much Does It Cost?*, N.Y. TIMES, March 23, 1995, at A23 (reporting, based on 1994 GREENBOOK data, that 45% of families going on AFDC rolls did so as a result of divorce or separation, 30% as a result of the birth of a child to an unmarried woman); PETER J. LEAHY *et al.*, *Time on Welfare: Why Do People Enter and Leave the System*, 54 AM. J. ECON. & SOC. 33 (1995) (reporting change in family structure as the primary reason women enter welfare system).

3. U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES: 1993* 470-71 tbls. 737, 740 (1993) (showing that 55% of children in mother-only households were poor in 1991, and that 67.9% of black and 70.4% of Hispanic children age six in such households were poor).

4. For summaries of the research, see HERNANDEZ, *supra* note 1, at 58-64; S. Wayne Duncan, *Economic Impact of Divorce on Children's Development: Current Findings and Policy Implications*, 23 J. CLIN. CHILD PSYCH. 444 (1994); Sara McLanahan, *Intergenerational Consequences of Divorce: The United States Perspective*, in *ECONOMIC CONSEQUENCES OF DIVORCE: THE INTERNATIONAL PERSPECTIVE* 285 (Lenore

Inadequate child support greatly increases the risks associated with familial separation. While the poor outcomes associated with growing up in a single-parent household do not result solely from reduced economic status, this factor appears to be the most important of the identifiable causes.⁵ Support awards and payments also affect the comparative well-being of family members. Indeed, under traditional, discretionary support standards, researchers reported that divorce typically produced an *improvement* in the living standard of the nonresidential parent, while that of his child and the residential parent plummeted.⁶

Over the past twenty years, the federal and state governments have enacted a series of laws designed to raise the level of support awards and payments.⁷ While this law reform effort has altered many aspects of child support practice, the most sweeping shift has been in the determination of child support values. Traditional support laws required consideration of the child's needs, prior standard of living, and parental resources, but left to judicial discretion the task of translating these factors into a dollar value.⁸ Today, based on directives from Congress,⁹ each state has adopted numerical guidelines under which support awards are calculated.¹⁰

While Congress adopted the numerical guideline requirement with the primary aim of significantly increasing award levels,¹¹ the available

J. Weitzman & Mavis Maclean eds. 1992); Sara McLanahan et al., *The Role of Mother-Only Families in Reproducing Poverty*, in CHILDREN IN POVERTY: CHILD DEVELOPMENT AND PUBLIC POLICY 51-78 (Aletha C. Huston ed. 1991).

5. See SARA McLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS 3, 79-94 (1994) (describing research and concluding that "[l]ow income—and the sudden drop in income that often is associated with divorce—is the single most important factor in children's lower achievement in single-parent homes, accounting for about half of the disadvantage"); Sara McLanahan, *supra* note 4, at 292-93, 298 (summarizing studies).

6. For a description of the research findings under discretionary standards, see Marsha Garrison, *Good Intentions Gone Awry: The Impact of New York's Equitable Distribution Law on Divorce Outcomes*, 57 BROOKLYN L. REV. 621, 633 n. 43 (living standards) & 721 tbl. 56 (per capita income) (1991).

7. The trend is not unique to the United States. See J. Thomas Oldham, *Lessons from the New English and Australian Child Support Systems*, 29 VAND. J. TRANSNAT'L L. 691 (1996).

8. See HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES 488-98 (1968), for a description of traditional child support law.

9. Pub. L. No. 100-485, 102 Stat. 2343 (codified at 42 U.S.C. § 667(b)(1988)).

10. Pub. L. No. 100-485, § 103(f), 102 Stat. 2343, 2346 (codified as amended at 42 U.S.C. § 667(b)(2) (1991)). The guidelines need establish only a rebuttable presumption as to the value of support. For state-by-state descriptions of the guidelines, see DIANE DODSON & JOAN ENTMACHER, WOMEN'S LEGAL DEFENSE FUND, REPORT CARD ON STATE CHILD SUPPORT GUIDELINES (1994); CLAIRE B. GRIMM & JANICE MUNSTERMAN, NATIONAL CENTER FOR STATE COURTS, SUMMARY OF CHILD SUPPORT GUIDELINES (1991).

11. See Irwin Garfinkel & Marygold S. Melli, *The Use of Normative Standards in Family Law Decisions: Developing Mathematical Standards for Child Support*, 24

evidence suggests that this goal has not been met. Although the guidelines do appear to have modestly increased the value of new support awards,¹² increases reported to date fall far short of those predicted.¹³ In some states, award levels did not increase at all after guidelines were introduced; in others, award levels increased only within one or another income group.¹⁴ Many guidelines also fail to ensure that children are protected from poverty, even when parental income is adequate to meet that goal;¹⁵ typically they continue to produce awards that improve the living standard of the child support obligor, while that of his child significantly declines.¹⁶ Today's child support laws thus prefer the interests of the nonresident parent to those of the child, the other parent, and the public.

Because federal law requires each state to review its guidelines at least once every four years,¹⁷ a mechanism is already in place to improve current results. However, state policymakers need better information about why early guidelines have had so little effect and new models better designed to ensure that children do not bear the brunt

FAM. L.Q. 157, 160-62 (1990); Robert G. Williams, *An Overview of Child Support Guidelines in the United States*, in CHILD SUPPORT GUIDELINES: THE NEXT GENERATION 15 (Margaret Campbell Haynes ed., 1994) [hereinafter NEXT GENERATION].

12. The largest and most detailed study to date is described in Nancy Thoennes et al., *The Impact of Child Support Guidelines on Award Adequacy, Award Variability, and Case Processing Efficiency*, 25 FAM. L.Q. 325, 339-40, 343 (1991) (in only one which had the lowest pre-guideline award levels of three research states did all income groups experience significant increases in the level of child support attributable to the introduction of mandatory guidelines; in one state no income group did). See also Marsha Garrison, *Child Support and Children's Poverty—A Review of SMALL CHANGE: THE ECONOMICS OF CHILD SUPPORT AND AMERICA'S CHILDREN: RESOURCES FROM FAMILY, GOVERNMENT AND THE ECONOMY*, 28 FAM. L.Q. 475, 489-90 (1994) (describing and analyzing studies).

13. RON HASKINS ET AL., U.S. DEP'T OF HEALTH & HUMAN SERVICES, ESTIMATES OF NATIONAL CHILD SUPPORT COLLECTION POTENTIAL AND THE INCOME SECURITY OF FEMALE HEADED FAMILIES, 29 (1985) (predicting that application of either of two guideline models would increase value of average child support 350%); Irwin Garfinkel et al., *Child Support Guidelines: Will They Make a Difference?*, 12 J. FAM. ISSUES 404 (1991) (predicting that introduction of guidelines would raise award values by 44%).

14. Thoennes et al., *supra* note 12, at 336 (in Illinois, guidelines did not significantly increase award levels among any income group when differences in employment status of pre- and post-guideline samples were taken into account). A significant proportion of the increase in average child support values that researchers have noted may also be due to the imposition of token, rather than zero-dollar, awards in cases of unemployed or female noncustodial parents. P. BUSHARD, TIME SERIES IMPACT ASSESSMENT OF CHILD SUPPORT GUIDELINES: SUPPORT AWARDS IN SHARED CUSTODY DIVORCES (1988) (Ph.D. dissertation, Arizona State University) cited in Thoennes et al., *supra* note 12, at 343 (15% increase in support levels in shared custody cases after adoption of Arizona child support guidelines was entirely due to a reduction in zero-dollar awards).

15. See sources cited in notes 18-19 and accompanying text.

16. See DODSON & ENTMACHER, *supra* note 10, at 98.

17. 45 C.F.R. § 302.56(e).

of family dissolution. This article describes the reasons for the failure of early guidelines, examines the goals support guidelines might seek to achieve and the extent to which they are realizable, and then evaluates current guideline models in light of those goals and possibilities.

I. Why Have Efforts to Improve Child Support Outcomes Had So Little Effect?

A. The Guidelines' Basic Design

A major reason why the guidelines have not had more impact on award levels is simply that the formulae most states adopted fail to produce awards much higher than those achieved under discretionary standards; most of the formulae also fail to produce awards high enough to protect children from either poverty or a dramatic decline in living standard. One review, which evaluated all state guidelines in effect in 1989-90, concluded that none required lower-income obligors to provide enough child support to ensure a poverty-level or "minimum decent living" standard for two children.¹⁸ A significant number of states also failed to ensure that children in middle-income families enjoyed a minimum decent living.¹⁹ Moreover, awards calculated under the guidelines produced a dramatic decline in children's living standard as compared to that of the nonresidential parent. On average, awards under

18. DODSON & ENTMACHER, *supra* note 10, at 37. See also Ellen B. Zweibel & Richard Shillington, *Child Support Policy: Income Tax Treatment and Child Support Guidelines* (1994), in CARL E. SCHNEIDER & MARGARET F. BRINIG, AN INVITATION TO FAMILY LAW: PRINCIPLES, PROCESS AND PERSPECTIVES 972, 978, tbl. 4.1 (1996) (reporting that under both income shares and Melson formulas more than 75% of low-income custodial parents would have incomes below poverty line); Maureen A. Pirog-Good, *Child Support Guidelines and the Economic Well-Being of Children in the United States*, 42 FAM. REL. 453, 459 (1993) (using one estimate of family expenditure for low-income family, guidelines in 14 states failed to produce an adequate award; using another estimate all guidelines fell short); Donna Hendrickson Christensen & Kathryn D. Rettig, *Standards for Adequacy of Child Support Awards*, 16 J. DIVORCE & REMARRIAGE 19, 38 (1991) (reporting that application of Wisconsin guideline would have provided poverty level of living for only 42.3% of case sample).

19. DODSON & ENTMACHER, *supra* note 10, at 97-98 (reporting that 18 state guidelines failed to offer a minimum decent living standards in one middle-income scenario, 21 in another, 31 for a third, and 47 for a fourth; "minimum decent standard of living" was defined as 150% of the federal poverty level). See also Zweibel & Shillington, *supra* note 18, at tbl. 4.1 (reporting that 31% of low middle income custodial parents did not attain poverty level using both income shares and Melson formulae); Pirog-Good, *supra* note 18, at 459 (using one estimate of family expenditure for middle income family, guidelines in 10 states failed to produce an adequate award; using another estimate all guidelines fell short.)

the guidelines reviewed caused children's living standards to decline by 26 percent while nonresidential parents' improved by 34 percent.²⁰

Current guidelines fail to avert poverty and living standard loss largely because they were not designed with these goals in mind. Only four states utilize guidelines that take poverty prevention as an explicit aim.²¹ None aim to maintain the child's living standard, or even to equalize living standard loss.

What current guidelines do invariably seek is "continuity-of-parental-expenditure." This approach, under which support awards are calculated so as to replicate typical child-related outlay in an intact two-parent family, is expressed in two different guideline formulae, the "percentage-of-obligor-income" standard,²² developed in Wisconsin and utilized by thirteen states,²³ and the "income-shares" formula,²⁴ developed under contract with the U.S. Department of Health and Human Services, and utilized by more than thirty states.²⁵ Both of these formulae calculate child support by means of standard child-expense percentages, derived from one or another consumer expenditure survey, that vary by the number of children in the family.²⁶ In the four states that aim for poverty prevention as well as continuity-of-expenditure, a "primary support" value, designed to meet the minimum needs of one

20. DODSON & ENTMACHER, *supra* note 10, at 37.

21. As of 1994, Delaware, Hawaii, Montana, and West Virginia utilized guidelines based on the "Melson" formula aimed explicitly at poverty prevention. Williams, *supra* note 11, at 7.

22. For detailed accounts of this model and its development, see IRWIN GARFINKEL, ASSURING CHILD SUPPORT 88-101 (1999); Garfinkel & Melli, *supra* note 11.

23. Williams, *supra* note 11, at 1, 6 (categorizing state guidelines as of 1994).

24. For detailed accounts of this model and its development, see ROBERT G. WILLIAMS, U.S. DEP'T OF HEALTH & HUMAN SERVICES, DEVELOPMENT OF GUIDELINES FOR CHILD SUPPORT ORDERS: ADVISORY PANEL RECOMMENDATIONS AND FINAL REPORT II, 65-80 (1987); Robert J. Williams, *Guidelines for Setting Levels of Child Support Orders*, 21 FAM. L.Q. 281, 291-95 (1987).

25. Williams, *supra* note 11, at 6 (categorizing 32 state guidelines as income-shares type as of 1994).

26. The income shares percentages were based on the one study (THOMAS J. ESPENSHADE, INVESTING IN CHILDREN: NEW ESTIMATES OF PARENTAL EXPENDITURES (1984)) believed to be most reliable. For a description of how the Espenshade study was used to derive the percentages, see WILLIAMS, *supra* note 24, at 67-80, 129-40. Some income shares guidelines have since been updated to take account of more recent data developed by the federal Office of Child Support Enforcement (DAVID M. BETSON, ALTERNATIVE ESTIMATES OF THE COST OF CHILDREN FROM THE 1980-86 CONSUMER EXPENDITURE SURVEY (University of Wisconsin Institute for Research on Poverty Special Report No. 51, December 1990)). The percentages utilized in the percentage-of-obligor income formula were based on a review of the then current research (Jacques Van der Gaag, *On Measuring the Cost of Children*, 4 CHILDREN & YOUTH SERV. REV. 77 (1982)). But according to one of the authors of the formula, given the "enormous" range of estimates, this economic data provided "only a starting point for determining the percentages." GARFINKEL, *supra* note 22, at 89.

adult, is first subtracted from each parent's income; the remainder is then applied, in proportion to the parents' relative incomes, to the "basic child support obligation," designed to meet the minimum needs of one or more children.²⁷ If the support obligor still has available income, a fixed percentage of that income, based on the percentage-of-obligor-income model, is then added to the basic support obligation.²⁸

B. The Obligor's Self-Support Reserve

Among the guideline formulae, many give the parent's interest in poverty avoidance significantly more weight than the child's interest. Most of the income-shares formulae make use of a "self-support reserve" for the nonresidential parent, that establishes an income level (typically the federal poverty level for a one-person household) below which a lower award than the guidelines would otherwise require is permitted or presumptively required.²⁹ The self-support reserve feature of current guidelines is an important reason for their failure to protect children from poverty. When a self-support reserve is available only to the nonresidential parent, children are almost certain to bear the brunt of family dissolution. Yet only the few states which provide the support obligor with a self-support reserve also provide a comparable support reserve to the child's household.³⁰

The self-support reserve concept is hardly a necessary feature of current guidelines. Indeed, the concept is inconsistent with the goals of the continuity-of-expenditure approach: Some studies have found that parents spend approximately the same percentage of household income on their children at all income levels; others have found that poor parents spend more on their children than their wealthier counterparts;³¹

27. As of 1994, the primary support values were \$220 per month for the first child, \$165 per month for each of the second and third children, and \$110 per month for each additional child. Williams, *supra* note 11, at 6. The basic support obligation equals the sum of the children's primary support needs plus actual, work-related child-care expenses. Extraordinary medical expenses are similarly prorated. *Id.*

28. In 1994, the percentages used in Delaware were 18% for one child, 27% for two children, 35% for three, 40% for four, 45% for five, and 50% for 6 or more. *Id.* at 6.

29. Both the income shares and Melson formulae include a self-support reserve feature. See Williams, *Guidelines*, *supra* note 24, at 305, tbl. 4. The English and Australian child support formulae also grant the obligor a self-support reserve. Oldham, *supra* note 7.

30. See DODSON & ENTMACHER, *supra* note 10, at 49-55 (classifying states).

31. See GARFINKEL, *supra* note 22, at 134 ("No research suggests that . . . the poor spend a smaller proportion of income on their children than middle-income fathers. Indeed, the evidence suggests either that the proportions are about the same or that the poor actually spend a slightly higher percentage"); ESPENSHADE, *supra* note 26 (finding that poor parents spent 26% of their income on one child, while parents with significantly higher incomes spent 15.2%).

none have reported that poor parents spend less.³² Nor does the self-support reserve have any counterpart in traditional support law; empirical research has indeed shown that child support awards under discretionary standards were regressive, with low-income parents typically paying greater proportions of their incomes in child support than high-income parents.³³

C. *The Marginal Cost Approach*

Eliminating the self-support reserve or extending it to both halves of the divided family would improve current guidelines' capacities to avert poverty and a major decline in children's living standards. But even with this improvement, existing guidelines are incapable of ensuring income adequacy for children; this incapacity stems from the fact that the support values they contain are based on the marginal, or extra, costs associated with a new family member, not the per person allocation of family resources.

The marginal cost approach, which makes use of one or another "household equivalence scale," was devised by economists to permit living standard comparisons when households are not the same size.³⁴ Used in this way, the approach has merit; indeed, researchers could not have determined that children typically fare poorly in comparison with their noncustodial parents without use of such a scale. Household equivalence scales provide a way of determining poverty thresholds that vary by family size. They also offer a means of predicting how much more income a family will need in order to add a new member (a baby, for example) and maintain its current living standard.³⁵ No

32. It is for this reason that percentage-of-obligor income guidelines offer no "break" to low-income parents. See GARFINKEL, *supra* note 22, at 134.

33. See LENORE J. WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* 462-69 (1985) (reporting regressive child support awards in California divorce sample); Garrison, *supra* note 6, at 718 tbl. 53 (reporting significant negative relationship between percentage of obligor income awarded in combined child support and alimony and obligor's income in New York divorce sample); James B. McLindon, *Separate But Unequal: The Economic Disaster of Divorce for Women and Children*, 21 *FAM. L.Q.* 351, 371-72 (1987) (reporting regressive child support awards in Connecticut divorce sample).

34. For detailed discussions of the limitations of household equivalence scales, see Charles Blackorby & David Donaldson, *Adult-Equivalence Scales, Interpersonal Comparisons of Well-Being, and Applied Welfare Economics*, in *INTERPERSONAL COMPARISONS OF WELL-BEING* 164 (Jon Elster & J.E. Roemer eds., 1991); Angus S. Deaton & John Muellbauer, *On Measuring Child Costs: with Applications to Poor Countries*, 94 *J. POL. ECON.* 720 (1986); Arthur Lewbel, *Household Equivalence Scales and Welfare Comparisons*, 39 *J. PUB. ECON.* 377 (1989); Julie A. Nelson, *Household Equivalence Scales: Theory versus Policy?*, 11 *J. LAB. ECON.* 471 (1993).

35. See, e.g., David Betson et al., *Trade-Offs Implicit in Child-Support Guidelines*, 11 *J. POL'Y ANALYSIS & MGMT.* 1, 3 (1992); Blackorby & Donaldson, *supra* note 34, at 168; Nelson, *supra* note 34, at 473.

matter what their aims, any approach to child support that takes family size into account will almost certainly rely on a household equivalence scale.

While household equivalence scales are uncontroversial, continuity-of-expenditure guidelines make use of them in an unusual way: guideline drafters used such scales to determine how much more money a couple would need to add a child to their family and maintain their living standard. This figure—the “marginal cost” associated with a child—is assumed to be the parent’s *total* child-related outlay and is used as a basis for achieving “continuity” of parental expenditure.

There are a number of problems with this approach. First, because “the models . . . are concerned with the effect of children on the welfare of their parents, . . . [they] do not tell us anything about the welfare of the children themselves.”³⁶ The cost of adding a child to the family and maintaining the family’s living standard does not measure the resources available to the child; indeed, more than 90 percent of typical family expenditure represents goods such as housing, transportation, and utility payments that cannot easily be allocated to specific family members, but which nonetheless benefit each.³⁷ The child’s welfare is thus determined largely by the family’s *overall* level of expenditure, not the marginal cost of maintaining that standard when a child joins the family.

Second, because the model looks backward at a family situation that no longer exists (or, in the case of nonmarital children, that may never have been)³⁸ it fails to take account of the realities of family dissolution. Two households cannot live as cheaply as one; the federal poverty level for a family of three is approximately 50 percent less than that of a family of one and a family of two.³⁹ Family dissolution thus assures

36. Panos Tsakloglou, *Estimation and Comparison of Two Simple Models of Equivalence Scales for the Cost of Children*, 101 *ECON. J.* 343, 354 (1991).

37. BETSON, *supra* note 26, at 3 (based on 1980-81 Consumer Expenditure Survey, 90% of total expenditures in families with children represent commodities that could not be assigned to either children or adults based on the nature of the good).

38. In the United States, most mothers of nonmarital children do not cohabit with their children’s fathers. See Larry L. Bumpass & James A. Sweet, *Children’s Experience in Single-Parent Families: Implications of Cohabitation and Marital Transitions*, 21 *FAM. PLANNING PERSPECTIVES* 256 (1989) (estimating that in the late 1980s only one quarter of nonmarital children were born to cohabiting couples); Andrew J. Cherlin, *The Weakening Link Between Marriage and the Care of Children*, 20 *FAM. PLAN. PERSP.* 302, 303 (1988) (estimating that 22% of white and 12% of black children under six living with an unmarried mother have mother’s cohabitant in home).

39. U.S. DEP’T OF COMMERCE, BUREAU OF THE CENSUS, *STATISTICAL ABSTRACT OF THE UNITED STATES 1998*, 478, tbl. 758 [hereinafter 1998 *STATISTICAL ABSTRACT*] (reporting 1996 poverty threshold of \$8,163 for one individual under 65 and \$10,564 for two persons with a householder under 65.) See also Betson et al., *supra* note 35, at 4 (noting that, if family’s total income is unchanged by divorce, its overall standard of living must necessarily fall due to loss of economies of scale and shared goods).

that, given the same total income, one or both portions of the divided family will experience a living standard decline; for the family that had barely averted poverty when together, dissolution ensures that some, if not all, family members will thereafter be poor. While we lack recent estimates, one expert has estimated that 16 percent of whites and 28 percent of blacks who became poor during the early 1980s as a result of movement into a female-headed household did so simply because of the loss of economies of scale.⁴⁰ Perhaps because of lost economies of scale, single parents also appear to spend a considerably larger fraction of their incomes on children than do two-parent households.⁴¹ Support guidelines could, of course, take lost economies of scale and the greater child-related needs of single-parent households into account. But because of their exclusive focus on the past, continuity-of-expenditure guidelines are a poor vehicle for doing so.

Most continuity-of-expenditure guidelines could be revised to achieve higher awards than they currently produce. For example, one study revealed that nine continuity-of-expenditure guidelines produced awards providing children with less than 60 percent of what would be needed to achieve a living standard equal to that of the noncustodial parent while three—those of Connecticut, Massachusetts, and the District of Columbia—produced awards providing more than 85 percent of what would be needed.⁴² The relative success of the Connecticut, Massachusetts, and District of Columbia guidelines stems, in part, from the fact that they rely on estimates of child-related expenditure higher than those contained in most guidelines; two of the three also provide a fairly generous self-support reserve for the custodial parent.⁴³ But because of their exclusive focus on the past, no continuity-of-expenditure guideline is well-adapted to the changed needs of separated families. Unless supplemented with a basic needs component, they cannot ensure the child a minimally adequate income even if family income

40. Mary Jo Bane, *Household Composition and Poverty*, in *FIGHTING POVERTY: WHAT WORKS AND WHAT DOESN'T* 209, 230 (Sheldon H. Danziger & Daniel H. Weinberg eds., 1986).

41. See BETSON, *supra* note 26, at 55 (based on 1980-86 CPS data, proportion of total expenditure on two children was 35% in a two-parent and 53% in a one-parent family); EDWARD P. LAZEAR & ROBERT T. MICHAEL, *ALLOCATION OF INCOME WITHIN THE HOUSEHOLD* 90, 98 (1988) (based on 1972-73 data, proportion of income expended on children in a two-child family was 27% in a two-parent and 53% in a one-parent family). *But see* U.S. DEP'T OF AGRICULTURE, FAMILY ECONOMICS RESEARCH GROUP, *EXPENDITURES ON A CHILD BY FAMILIES* 10 (1992) (concluding that "expenses on a child in single-parent households are slightly higher than those in two-parent households, probably because of economies of scale.")

42. DODSON & ENTMACHER, *supra* note 10, at 22, tbl. 3-D.

43. *Id.* at 43, 54.

is sufficient to achieve that goal; if the nonresidential parent earns the lion's share of the family's income and is required to pay in child support only the marginal cost of maintaining the intact, two-parent family's standard of living, the almost certain result is an improvement in his standard of living, and a decline in that of the child. Continuity-of-expenditure type guidelines thus "severely penalize children for being in the custody of a parent who has less income, and reward them for living with the parent who has more."⁴⁴

II. What Goals Should Support Guidelines Seek to Achieve? What Can Guidelines Realistically Accomplish?

A. Continuity-of-Expenditure Guidelines: Their Goals and Their Adoption

When Congress mandated the development of numerical support guidelines in the mid-1980s, it did not specify a particular formula or model. Instead, each state was permitted to make its own decisions on the normative values that would guide the development of child support policy, how those values would be ordered, and how they would be implemented.

Child support experts also offered legislators a variety of policy options. Some, of course, advocated the "continuity-of-expenditure" approach.⁴⁵ Others urged an "equal outcomes" model that would aim at equal living standards for the child and nonresidential parent.⁴⁶ And others urged that the new guidelines seek, above all else, to ensure that the supported child did not become impoverished as a result of parental separation.⁴⁷ While these approaches garnered the most attention, leg-

44. Betson et al., *supra* note 35, at 19. See also Laurie J. Bassi & Burt S. Barnow, *Expenditures on Children and Child Support Guidelines*, 12 J. POL'Y ANALYSIS & MGMT. 478, 494 (1993) ("Requiring the noncustodial parent to maintain his or her rate of expenditure on the child is likely to result in the child having a lower standard of living and might still leave the noncustodial parent with a higher standard of living than he or she enjoyed prior to dissolution.").

45. Garfinkel & Melli, *supra* note 11; WILLIAMS, *supra* note 24.

46. Judith Cassetty & G.K. Sprinkle, *The ELS (Equal Living Standards) Model for Child Support Awards*, in WOMEN'S LEGAL DEFENSE FUND, ESSENTIALS OF CHILD SUPPORT GUIDELINES DEVELOPMENT: ECONOMIC ISSUES AND POLICY CONSIDERATIONS: PROCEEDINGS OF THE WOMEN'S LEGAL DEFENSE FUND NATIONAL CONFERENCE ON THE DEVELOPMENT OF CHILD SUPPORT GUIDELINES 329 (1987) [hereinafter ESSENTIALS OF CHILD SUPPORT]; Philip Eden et al., *In the Best Interests of Children: A Simplified Model for Equalizing the Living Standards of Parental Households*, in ESSENTIALS OF CHILD SUPPORT, *supra* at 353; Isabel V. Sawhill, *Developing Normative Standards for Child-Support Payments*, in THE PARENTAL CHILD-SUPPORT OBLIGATION: RESEARCH, PRACTICE, AND SOCIAL POLICY 79 (Judith Cassetty ed., 1982).

47. The Family Court of the State of Delaware, *Procedure in Deciding Child Support Cases*, reprinted in AMERICAN BAR ASSOCIATION, IMPROVING CHILD SUPPORT

islaters could also have opted for a utilitarian model or one that aimed at ensuring the child a minimally adequate income.⁴⁸

In comparing these policy options, it is apparent that they rely on very different conceptions of the support obligation and thus aim at altogether different policy goals.⁴⁹ Childhood poverty, for example, is strongly associated with public expenditure;⁵⁰ support models aimed exclusively or primarily at poverty prevention are thus focused on the support obligor's responsibility not to burden the public with his children. The other support models policymakers confronted focus primarily on the obligor's obligations to his child and the other parent, but vary widely in their assumptions about entitlement to parental income: the equal outcomes model, which seeks to achieve equality among family members, implicitly assumes that each individual is equally entitled to parental income; the utilitarian approach, which attempts to maximize the aggregate well-being of family members, similarly assumes that no family member has a stronger claim to family income than does any other. The continuity-of-expenditure model, on the other hand, assumes that a parent's income belongs to the individual earner rather than the family unit; parental obligation is thus measured by what the parent has implicitly, through past spending patterns, volunteered to devote to his child.⁵¹ Viewed from this perspective, the obligor's self-support reserve feature of many continuity-of-expenditure guidelines finally makes sense; it ensures that the income owner's needs come first. In adopting continuity-of-expenditure, legislators thus were also adopting a perspective which measures the child support obligation by what the parent has agreed to pay, rather than what he owes the public, his child, and the child's other parent.

Particularly in view of the deficiencies of the continuity-of-expenditure approach as a means of remedying the low support levels

PRACTICE (1986). See also AMERICAN BAR ASSOCIATION, *AMERICA'S CHILDREN AT RISK: A NATIONAL AGENDA FOR LEGAL ACTION* (1993) (urging adoption of poverty-focused (Melson type) child support guideline).

48. See, e.g., Betson et al., *supra* note 35, at 9 (describing utilitarian support formula); Sawhill, *supra* note 46, at 99-102 (describing two different minimum income formulae).

49. For a detailed discussion of the normative issues related to child support guidelines, see Marsha Garrison, *Autonomy or Community? An Evaluation of Two Models of Parental Obligation*, 86 CAL. L. REV. 41 (1998).

50. In addition to the costs associated with welfare dependence and other forms of direct public aid, the adverse consequences associated with childhood poverty trigger a wide range of costs borne by the public. For estimates of these costs, see NATIONAL COMMISSION ON CHILDREN, *BEYOND RHETORIC: A NEW AMERICAN AGENDA FOR CHILDREN AND FAMILIES* (1991); HAVEMAN & WOLFE, *supra* note 1.

51. For a more detailed discussion of the normative assumptions underlying the continuity-of-expenditure model, see Garrison, *supra* note 49, at 89-91.

that were the primary motivation behind the guidelines requirement—results that could have been predicted by anyone with a calculator in hand—one obvious question is why legislatures chose such a restrictive view of the support obligation. Traditional child support law, under which the support award is based on an assessment of needs, resources, and the child's prior living standard, clearly relied on a broader conception of the support obligation. Nor does the amount that a parent *did* spend on his or her children when the family was intact bear any obvious or necessary relation to what he *should* spend now that the family is separated. Indeed, for the rapidly growing segment of the support-eligible population born outside of marriage, there is no past.⁵² Most nonmarital children have never lived in an intact household.⁵³ For these children, replication of past expenditure patterns is pure fiction.

The choice of the continuity-of-expenditure model over its alternatives appears to have been influenced by a number of factors. One was the federal government, which both commissioned an economic analysis of child-rearing costs that produced the income-shares formula and gave states a relatively short period to meet the guideline requirement,⁵⁴ confronted with a federal mandate, very little time to meet it, and a federally "approved" model, it is hardly surprising that the majority of states simply fell in line with this approach.⁵⁵ The evidence also suggests that many policymakers were poorly informed about the goals and capabilities of the continuity-of-expenditure approach. A memorandum explaining New York's continuity-of-expenditure type guideline, for example, describes the primary purpose of child support as

52. In 1996, 32.4% of U.S. births were to unmarried mothers, as compared to 10.7% in 1970. 1998 STATISTICAL ABSTRACT, *supra* note 39, at 76, tbl. 93. As a result of this trend, the never-married percentage of child support-eligible mothers has risen rapidly. Compare U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, CHILD SUPPORT FOR CUSTODIAL MOTHERS AND FATHERS: 1991, at 3 tbl. A (Current Population Reports No. P60-187, 1993) (showing that 25.9% of custodial mothers were never-married in 1991) [hereinafter 1991 CHILD SUPPORT REPORT] with U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, CHILD SUPPORT AND ALIMONY: 1978, at 3 tbl. B (Current Population Reports, Series P- 23, No. 106, 1980) (showing that 19% of custodial mothers were never-married in 1978) [hereinafter 1978 CHILD SUPPORT REPORT].

53. See sources cited in note 38, *supra*.

54. Only a handful of states and localities utilized guidelines of any description before 1984 when Congress first required states to utilize advisory support guidelines; all states were required to adopt guidelines presumptively setting child support values by October 1989. See Williams, *supra* note 11, at 1.

55. See Nancy D. Polikoff, *Looking for Policy Choices Within an Economic Methodology: A Critique of the Income Shares Model*, in ESSENTIALS OF CHILD SUPPORT, *supra* note 46, at 27-28 (noting that the economic analysis commissioned by the federal Office of Child Support Enforcement (OCSE) "creates the appearance of scientific, objective 'truth'" and is "given heightened validity by virtue of OCSE's involvement").

“the maintenance of the child’s standard of living”—a goal, as we have seen, that this guideline type is simply not designed to meet.⁵⁶

Misunderstandings about the goals and capacity of continuity-of-expenditure guidelines were fueled both by false advertising and a relatively impoverished policy debate. Proponents of continuity-of-expenditure formulae argued that this approach would significantly raise support levels without taxing noncustodial parents beyond their prior child-related expenses. These claims, that offer benefits to children, parents, and the public, surely played a role in the model’s political success. Moreover, policy debate seldom focused on basic goals or specified the linkages between goals and specific guideline formulae. The principal author of the continuity-of-expenditure approach, for example, offered eight “soup-to-nuts” principles to guide the development of guidelines—but no evidence that those principles supported continuity-of-expenditure.⁵⁷

In sum, while we can be sure that adoption of the continuity-of-expenditure model reflected the influence of the federal government and the not uncommon legislative desire for a no-cost, pain-free solution, we cannot be sure that its selection was the product of careful reflection on basic goals and values. We can be sure, however, that continuity-of-expenditure guidelines cannot be faulted for failing to significantly raise support awards, avert poverty, ensure a minimum decent standard of living, or achieve equity among family members; they do not aim at attaining these goals. If policymakers believe any or all of these goals to be significant, guidelines must be designed to achieve them rather than continuity-of-expenditure. In redesigning guidelines, legislators must first decide what goals they wish to achieve.

B. At What Goals Should Child Support Policy Aim?

Child support policy raises fundamental issues of fairness: Support policies allocate the family’s most basic resource, its income. The distribution of that income will largely determine the level of well-being and opportunities available to each family member as well as the relative economic burden of child-rearing imposed on each parent; it will often determine the extent to which the public assumes some or all of parental support obligations. Support policy should thus be grounded

56. GOVERNOR’S APPROVAL MEMORANDUM: CHILD SUPPORT STANDARDS ACT (1989) *reprinted in* NEW YORK STATE LEGISLATIVE ANNUAL 1989, at 250.

57. WILLIAMS, *supra* note 24, at 6-8.

in contemporary views of parental obligation and fairness among family members.

While survey data make it clear that the American public views child support as a pressing public concern and strongly disapproves of support obligors who avoid their support responsibilities, there is little data on public attitudes toward the content of the support obligation. Information on this issue is available from only two public opinion polls, the 1985 Wisconsin Survey of Children, Incomes, and Program Participation (CHIPPS) and a 1992 Maryland survey. Neither of these polls directly investigated attitudes toward support policy goals;⁵⁸ instead, in both surveys, respondents were asked to come up with an appropriate child support award in different cases. The respondents' answers reveal something about their attitudes toward child support policy, but, because they were not asked the basis for their support awards, we cannot be sure about the goals and values the numbers reflect or whether respondents' initial thoughts on these subjects would have held constant had they been asked to consciously select among distributive goals and allocation methods.

Some trends do emerge from the survey results, however: Most respondents appeared to believe that the value of support should not be restricted to a minimum basic needs package; that the support obligation should be based on—and updated to take account of—the current incomes and circumstances of family members; that the support calculation should include a comparative element that takes into account the circumstances of both segments of the divided family; and that a parent should contribute something to his child's support even if he is worse-off than the child.⁵⁹ While these trends do not definitively point to any particular policy goal, they undeniably fail to support the continuity-of-expenditure approach, which ignores the current circumstances of family members altogether; they also fail to support an approach restricted to poverty prevention or a minimum needs package. They do support an approach that treats the divided family as *one* family, adjusting the support payment in a way that equitably balances the claims of all family members.

58. Barbara R. Bergmann & Sherry Wetchler, *Child Support Awards: State Guidelines vs. Public Opinion*, 29 FAM. L.Q. 483 (1995); Thomas Corbett et al., *Public Opinion About a Child Support Assurance System*, in CHILD SUPPORT ASSURANCE: DESIGN ISSUES, EXPECTED IMPACTS, AND POLITICAL BARRIERS AS SEEN FROM WISCONSIN 339 (Irwin Garfinkel et al. eds., 1992); Nora Cate Schaeffer, *Principles of Justice in Judgments About Child Support*, 69 SOC. FORCES 157, 163 (1990).

59. See Garrison, *supra* note 49, at 98-101 (describing surveys in detail and assessing what can be learned from them).

To supplement the published data on public attitudes toward child support, I recently surveyed a group of law students, who were asked to “[c]hoose the goal you believe most important in formulating a child support rule.”⁶⁰ Forty-two percent of the respondents indicated that the child support award should be set at a level that will “maintain the standard of living the child enjoyed prior to parental separation;” 58 percent indicated that the support amount should “equalize the living standard of the child and his or her noncustodial parent.” *None* of the respondents indicated that child support should be set at an amount that would “ensure that the child’s basic needs are met,” “maintain the noncustodial parent’s child-related expenditure at what it would be in an intact family,” or “ensure that the child does not burden the community by becoming a recipient of public assistance.” While a group of law students is not a representative cross-section of the general population⁶¹ and answers to specific questions about “factors that a legislature might require courts to take into account in making child support decisions” indicated some ambivalence about a “pure” equal living standards goal,⁶² the respondents’ complete rejection of both the continuity-of-expenditure and poverty-prevention/minimum income approaches is nonetheless striking and provides strong support for an approach that focuses on achieving income equity among family members.

This conclusion is bolstered by research examining public attitudes toward sharing and obligation within the nuclear family. Jennifer Hochschild, who studied American attitudes toward distributive justice in a wide range of institutions, has reported that within the nuclear family “strict equality and need predominate . . . as norms to which individuals profess allegiance.”⁶³ While parents often “leaven [their] focus on equality with discipline,”⁶⁴ they believe that “[all family] members deserve equal amounts of the good being divided” and should “sacrifice equal amounts of satisfaction when necessary.”⁶⁵ Americans also continue to rank family obligations as the most important obliga-

60. For a more detailed account of the survey, *see id.* at 101-02.

61. While the students were a fairly representative group in terms of gender (50.5% were male, 49.5% female (n=93)), 82% had never been married (n=95), and 91% had no children (n=96).

62. *See id.*

63. JENNIFER L. HOCHSCHILD, WHAT’S FAIR? AMERICAN BELIEFS ABOUT DISTRIBUTIVE JUSTICE 107 (1981).

64. *Id.*

65. *Id.* at 52, 107.

tions,⁶⁶ and view tougher child support laws as an effective means of strengthening families and family values.⁶⁷

C. Feasibility: What Goals Can Guidelines Accomplish?

The evidence suggests that many members of the public would voice support for a child support policy focused on maintaining the child's standard of living; indeed, boilerplate language in discretionary child support laws often urged this goal. Living standard equalization or some other approach aimed at achieving equity among family members also finds support in the survey data. But before pursuing a support goal or model, a policymaker must assess its feasibility: If child support policy is incapable of achieving a particular goal, a legislature should think twice about using it as a primary basis for guideline revision. In revising current guidelines, policymakers must keep in mind the limits—as well as the possibilities—of guideline design.

1. MAINTENANCE OF THE CHILD'S PRE-SEPARATION LIVING STANDARD

Support policy aside, children have typically suffered a major decline in living standard following family dissolution as a result of two complementary factors: Most children in divided families reside with their mothers,⁶⁸ mothers typically earn less than fathers.⁶⁹ The result is that the larger segment of the divided family—which needs the most income to maintain its living standard—is left with the least.

Child support, which transfers income from the nonresidential parent to the child's household, could theoretically be calculated so as to require transfers that would reverse this loss, imposing it entirely on the nonresidential parent. But our ability to transfer loss from one part of the family to the other is not, in fact, unlimited. Consider the case of

66. See MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* 105 (1991) (describing results of survey commissioned by Massachusetts Mutual Life Insurance Company in which most respondents ranked "Being responsible for your actions," and "Being able to provide emotional support to your family," as their most important personal values while "Being free of obligation so I can do whatever I want to do" came in last.)

67. See Hart & Teeter Research Companies National Telephone Survey of 1592 Adults for NBC News and Wall Street Journal, Question 59 (June 4, 1994) (reporting that, in response to question on effectiveness of "several actions the government might take to try to strengthen families and family values," 53% rated "tougher laws to help collect money from parents who do not make their child support payments" as "very effective," 31% "somewhat effective.").

68. 1998 STATISTICAL ABSTRACT, *supra* note 39, at 66, tbl. 79 (showing that in 1997 5% of U.S. children lived in a father-only household while 27% lived in a mother-only household).

69. In 1996 the median income of women working full-time outside the home was \$28,363, of men \$42,077. *Id.* at 476, tbl. 753.

Mr. and Mrs. A, who have six minor children and an annual income of \$30,000, all earned by Mr. A. If Mrs. A assumes sole custody of the children post-divorce and continues to earn no income, it would be necessary to transfer \$26,763, or 89 percent of Mr. A's income, to ensure that the children suffer no living standard loss; Mr. A is left with only \$3,237 to meet his own needs.⁷⁰

A law requiring transfers of this magnitude would produce several practical problems. One is enforcement. Researchers report, not surprisingly, that higher support obligations tend to produce a lower percentage of support paid.⁷¹ Even if Mr. A could somehow be forced to pay almost 90 percent of his income, his incentive to keep earning \$30,000 per year would be small; why should he work hard to retain such a small fraction of his earnings?

Another problem arises from the fact that, in order to avert living standard loss by the children, Mr. A is pushed well below the poverty line. At this income level, Mr. A's ability to continue earning may well be impaired. He may be unable to maintain his residence or to keep the car which he needs to get to and from work; he may even become eligible for one or another public benefit himself.

Finally, by ensuring (theoretically) that the A children will suffer no living standard loss, we have also ensured that Mrs. A has virtually no incentive to earn income herself. Even if the six A children are all in school and Mrs. A has the credentials to earn a substantial salary, it is unlikely that she will be highly motivated to do so if she is guaranteed that her former living standard will be maintained by Mr. A—and the better the support system is at extracting money from Mr. A, the lower her incentives will be.

In sum, support requirements that severely tax support obligors create significant enforcement problems and work disincentives for both the noncustodial and custodial parent. In cases like that of the As,

70. The support obligation necessary to maintain the child's living standard was calculated using the U.S. poverty thresholds for families of varying sizes. For a more detailed description of the methodology, see Table 1, *infra*.

71. See, e.g., ANDREA H. BELLER & JOHN W. GRAHAM, SMALL CHANGE: THE ECONOMICS OF CHILD SUPPORT 51 (1993) (concluding that when "fathers . . . less willing or less able to pay . . . [are] brought reluctantly into the system by reforms in the child support enforcement program[, the likely result is] . . . a decline in the proportion of awards collected"); Judi Bartfeld & Daniel R. Meyer, *Are There Really Deadbeat Dads? The Relationship between Ability to Pay, Enforcement, and Compliance in Nonmarital Child Support Cases*, 68 SOC. SERV. REV. 219, 230 (1994) (reporting significant inverse relationship in sample of paternity cases between percentage of income awarded in child support and likelihood of compliance); Sandra K. Danziger & Ann Nichols-Casebolt, *Child Support in Paternity Cases*, 64 SOC. SERV. REV. 458 (1990) (same).

maintenance of the children's standard of living may ultimately cost both the A children and the public more than is gained.

The case of the A's is, of course, extreme. Very few support obligors have six children; the vast majority have one or two.⁷² Nor does the typical single mother have no earned income whatsoever.⁷³ But even in the typical case, maintaining the children's standard of living will often create enforcement and work disincentives large enough to outweigh the benefits to be gained. Consider the case of the B's, who have one child. Mr. B earns \$20,000; Mrs. B \$10,000. In this far more typical case, maintenance of Child B's living standard would require a transfer of \$15,293, or 75 percent of Mr. B's income.⁷⁴ While work and payment disincentives are smaller here than in the case of the A's, they are still sizeable and would likely preclude living standard maintenance as a feasible policy goal.

2. EQUALIZATION OF LIVING STANDARD LOSS

Equalization of living standard loss, which ensures that both shares of the divided family bear the brunt of family dissolution to the same extent, is a more realistic policy goal. Reconsider the case of the B's. Equalization of living standard loss would require a child support transfer of \$6800, or 34 percent of Mr. B's income. While payment and work disincentives are not negligible, neither are they extreme; indeed, the maximum percentage (utilized for obligors with several children) contained in current guidelines is typically set at this level or higher.⁷⁵

Equalization might still be unrealistic in cases like that of the A family and in cases of extremely poor support obligors, who will need to retain sufficient funds to ensure their continued employment. In order to preserve work incentives for the residential parent, it will also be necessary to "impute" income to residential parents whose child care responsibilities permit employment and who have the capacity to contribute significantly to their children's support; some of these parents may still fail to work and thus prevent living standard equalization. But while we cannot realistically achieve income equalization in all cases, this is a feasible goal that we could meet much of the time—and far more often than we do now.

72. In 1994, only 10% of married couples, 5% of male householders, and 12% of female householders had three or more children under the age of eighteen living at home. 1995 STATISTICAL ABSTRACT, *supra* note 39, at 63, tbl. 74.

73. The mean total money income of custodial mothers surveyed for the 1991 Child Support Report, for example, was \$18,133 while the mean total child support received by this group was \$3,011. 1991 CHILD SUPPORT REPORT, *supra* note 52, at 19 tbl. 2.

74. Calculated by the same methodology used in the A case.

75. See Williams, *supra* note 11.

3. CONTINUITY-OF-EXPENDITURE

Continuity-of-expenditure, which ensures that the nonresidential parent continues to pay the marginal cost of childrearing in an intact household, is also a realistic policy goal. But realization of this aim will also be limited by work and payment disincentives. Although the combination of the obligor's self-support reserve and relatively low support percentages in early guidelines minimized those disincentives, guideline revision that maintains the continuity-of-expenditure methodology and nonetheless seeks to raise awards will, of necessity, increase them.

A number of commentators have noted, for example, that the marginal expenditure percentages contained in many guidelines lie near or even below the lowest plausible estimates of child-related expenditure.⁷⁶ If these percentages were revised to conform to the weight of the evidence and the obligor's self-support reserve were eliminated, work and payment disincentives would be greatly magnified, especially for low-income obligors with many children; for a three-child family, for example, plausible estimates suggest child-related expenditure in the 40-50 percent range.⁷⁷ Thus even continuity-of-expenditure—if based on realistic estimates of family expense patterns—may be unobtainable in cases, like that of the A family, where there are many children and large disproportion in parental income; it will also be difficult to realize in the case of extremely poor support obligors, who will need to retain sufficient funds to ensure their continued employment.

4. POVERTY AVOIDANCE AND A MINIMUM “DECENT STANDARD OF LIVING”

Child support policy can avert a child's poverty only if that poverty derives from an income loss associated with family dissolution or nonformation; if the child's parents did not have enough resources to avoid poverty when together, child support alone cannot remedy the problem. And, while there is a strong *correlation* between children's poverty and family break-up—the poverty rate of children in single-mother households is approximately five times that of children in married couple households⁷⁸—the evidence suggests that family dissolution is not, in

76. AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS 3.05A, Comment f (Council Draft No. 5, Oct. 6, 1998) [hereinafter ALI PRINCIPLES].

77. For example, most estimates suggest that 40-50% of family expenditure is child-related in a three child family. See ALI PRINCIPLES, *supra* note 76, at 59-62, 357-60 (reviewing estimates).

78. 1993 STATISTICAL ABSTRACT, *supra* note 3, at 470, tbl.737 (in 1991, poverty rate of children age six was 12.1% in married couple families and 59.0% in mother-only families).

fact, the most important *cause* of the current high rate of children's poverty. Indeed, even if the percentage of children living in mother-only households could be brought back to its 1959 low, experts estimate no more than a 10 to 20 percent reduction in the current children's poverty rate.⁷⁹

Family structure has so little impact on children's poverty because the fathers of children in mother-only households are disproportionately concentrated at the low end of the income spectrum.⁸⁰ Although the earnings of low-income fathers may rise substantially over time,⁸¹ divorce and nonmarital childbearing are both significantly linked with low socioeconomic status. Divorce is approximately twice as likely for couples below the poverty line as it is for the general pool of married couples,⁸² and nonmarital parenting is even more highly correlated with low income.⁸³ Many children in poor single-parent homes would thus remain poor even if their parents were (re)united.

If support guidelines are incapable of averting poverty among children of low-income parents, they are even less capable of ensuring that

79. HERNANDEZ, *supra* note 1, at 290, 325; (estimating that only 10-20% of children's poverty would be eradicated if rate of mother-only households were to fall to 1959 rate); Bane, *supra* note 40, at 231 (concluding from analysis of 1970s census data that "perhaps about 15 percent of all poverty could be alleviated by more attention to the allocation of resources after household splits"); Greg J. Duncan & Willard Rodgers, *Longitudinal Aspects of Children's Poverty*, 50 J. MARRIAGE & FAM. 1007, 1017 tbl. 5 (1988)(concluding from analysis of 1968-82 PSID data that 14.9% of children's descents into poverty resulted from loss of a parent from the home).

80. See HERNANDEZ, *supra* note 1, at 310-11 (summarizing studies).

81. See, e.g., Elizabeth Phillips & Irwin Garfinkel, *Income Growth Among Nonresident Fathers: Evidence from Wisconsin*, 30 DEMOGRAPHY 227, 236-37, tbl. 3 (1993) (for sample male child support obligors with incomes below 150% of the poverty line and for whom tax records were available, mean incomes of those with nonmarital children more than tripled and poverty rate declined by 58 percentage points after seven years; mean incomes of divorced fathers almost doubled and poverty rate declined by 36 percentage points).

82. See WILLIAM J. GOODE, *WORLD CHANGES IN DIVORCE PATTERNS* 152-57 (1993) (summarizing research on the relationship between socioeconomic class and divorce rates); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, *FAMILY DISRUPTION AND ECONOMIC HARDSHIP: THE SHORT-RUN PICTURE FOR CHILDREN 2* (Current Population Reports, Series P-70, No. 23, 1991) (reporting that among families with children, 21% of those that experienced the loss of the father from the household during a two-year survey period were already poor, a poverty rate double that of U.S. married couple households generally); U.S. DEP'T OF COMMERCE, BUREAU OF THE CENSUS, *WHEN HOUSEHOLDS CONTINUE, DISCONTINUE, AND FORM* 18-21, tbl. I (Current Population Reports, Series P- 23, No. 180, 1992) (reporting that divorce is approximately twice as likely among sample couples with incomes below the poverty line as compared to others); Rand D. Conger et al., *Linking Economic Hardship to Marital Quality and Instability*, 52 J. MARRIAGE & FAM. 643 (1990) (instability in husband's work, a drop in family income, and a low ratio of family income to family needs increases risk of divorce).

83. See, e.g., Phillips & Garfinkel, *supra* note 81, at 234, tbl.2 (showing that 41% of never-married nonresident fathers with tax records were poor in year before support action, as compared to 19% of divorced nonresident fathers).

these children enjoy a minimally adequate (sometimes defined as 150 percent of the poverty level) living standard. No child support policy can raise the income of a support obligor, nor can it recreate the economies of scale available to an intact household. Given the disproportionate number of low-income families among those that experience divorce or nonmarriage, it is unlikely that even the best child support guidelines will achieve a dramatic reduction in children's poverty or welfare dependence.⁸⁴ Child support policy will inevitably offer the most benefits to the least needy.⁸⁵

While support policy is thus unlikely to have a major impact on children's poverty, we could do much better at ensuring income adequacy than we do now. For example, among state guidelines in effect in 1989-90 the Massachusetts guideline did a significantly better job of ensuring a minimally adequate income than did others; the average income/poverty ratio under this guideline was approximately 10 percent higher than that achieved under any other guideline type and, in a range of "typical" family situations, the guideline provided a "minimum decent standard of living" in more cases than did any other.⁸⁶ The primary reason for this result was simply that the Massachusetts guideline explicitly seeks to ensure children a minimally adequate income and, in order to attain this goal, both grants the residential parent a self-support reserve and adds to the base, continuity-of-expenditure component of the support obligation a minimum income "supplement."

84. See Elaine Sorenson, *The Benefits of Increased Child Support Enforcement, in WELFARE REFORM: AN ANALYSIS OF THE ISSUES* 56-57 (Isabel V. Sawhill ed. 1995) (estimating that, even if all noncustodial parents paid child support based on current guidelines, the public assistance roles would be reduced by only 9% and the poverty rate by 5%).

85. Focusing on child support as an anti-poverty strategy may also increase the racial and marital status gap in children's poverty rates. One pair of researchers recently calculated that with "medium improvements in child support awards and collections" and award values set pursuant to the Wisconsin "percentage of income" child support formula white custodial parents would obtain annual gains more than two and a half times those of black custodial parents. When the net benefits and tax savings of this program were aggregated by ethnic group, white families obtained a \$481 million annual gain while both black and Hispanic families suffered more than a \$200 million dollar loss. Irwin Garfinkel et al., *The Effects of Alternative Child Support Systems on Blacks, Hispanics, and Non-Hispanic Whites*, 1992 SOC. SERV. REV. 505, 518, tbl. 3 (1992) (including any tax changes resulting from changes in earnings, any decreases in AFDC benefits received, and any increase or decrease in taxes resulting from aggregate cost or savings resulting from legal changes).

86. DODSON & ENTMACHER, *supra* note 10, at 31-32, tbl. 4-E. The Massachusetts guideline performed better overall and in medium- and high-income families; for low-income families, however, the Delaware guideline provided the highest income/poverty ratio for children. *Id.* at 32. This result may have been due to the fact that the self-support reserve utilized by the Massachusetts guideline for both parental households was higher than that of any other state. *Id.* at 54.

Thus, although income adequacy will be impossible to attain in many low-income families, the capacity of guidelines to ensure this goal could be substantially improved.

In sum, guidelines have real—but limited—potential as a means of curbing the risks to children in single-parent households. Non-economic factors are, of course, outside the reach of child support policy altogether and case processing deficiencies will limit the capacity of all guidelines to attain their goals.⁸⁷ Under any guideline, it will be necessary to ensure that awards are established, that they are paid, and that award variation introduced through the negotiation process is reduced.⁸⁸ Many parents currently fail to accomplish these tasks,⁸⁹ indeed, one researcher has recently estimated that as much as \$34 billion

87. For a more detailed account of case processing issues, see Marsha Garrison, *The Goals and Limit of Child Support Policy*, in CHILD SUPPORT: THE NEXT FRONTIER (J. Thomas Oldham & Marygold M. Melli eds., forthcoming 1999).

88. Because few divorce actions involve formal adjudication (see, e.g., ELEANOR E. MACCOBY & ROBERT H. MNOOKIN, *DIVIDING THE CHILD: SOCIAL AND LEGAL DILEMMAS OF CUSTODY* 159 (1992) (reporting that 1.5% of cases in California sample of divorce actions involving minor children were formally adjudicated); Margret F. Brinig & Michael V. Alexeev, *Trading at Divorce: Preferences, Legal Rules and Transaction Costs*, 8 OHIO ST. J. ON DISP. RESOL. 279, 294, tbl. II (1993) (reporting that 5.38% (Wisconsin) and 10.13% (Virginia) of sample divorce actions went to trial), award levels are typically determined by negotiation. But many parents who negotiate support awards appear to be poorly informed about the relevant legal standards. See, e.g., Howard S. Erlanger et al., *Participation and Flexibility in Informal Processes: Cautions from the Divorce Context*, 21 LAW & SOC'Y REV. 585, 600 (1987); Herbert Jacob, *The Elusive Shadow of the Law*, 26 LAW & SOC'Y REV. 565, 579-81, 584-86. In a large, and apparently growing, proportion of the cases, lawyer representation is available to only one—or neither—parent. See generally Jessica Pearson, *Ten Myths About Family Law*, 27 FAM. L.Q. 279, 281-82 (1993) (reviewing research); Jane C. Murphy, *Access to Legal Remedies: The Crisis in Family Law*, 8 B.Y.U. J. PUB. L. 123 (1994) (same). Under these circumstances, the resources and attitudes of each parent toward the divorce may play important roles in determining child support outcomes and produce results that bear little relationship to those lawmakers intended. See Marygold S. Melli et al., *The Process of Negotiation: An Exploratory Investigation in the Context of No-Fault Divorce*, 40 RUTGERS L. REV. 1133, 1155-56, 1168-71 (1988) (divorcing couples consistently express concern about legal fees and sometimes settle in order to avoid additional expense; custodial parents who were reluctant to end the marriage and/or whose spouses were impatient to do so obtained significantly better child support awards than the mean of the group); Thoennes et al., *supra* note 12, at 340-41, tbl. 10 (legal representation was significantly correlated with value of child support award at all income levels); Jay D. Teachman, *Socioeconomic Resources of Parents and Award of Child Support in the United States: Some Exploratory Models*, 52 J. MARRIAGE & FAM. 689, 697, tbl. 3 (1990) (reporting that “both the capacity to negotiate and motivation are at work determining the likelihood and size of [child support] awards”).

89. More than four out of ten mothers—and almost three-quarters of those never-married—have not obtained child support awards. 1991 Child Support Report, *supra* note 52, at tbl. 1. In 1991, 34.6% of custodial mothers who had not been awarded reported that they “did not pursue a child support award”; 13.9% reported that they “did not want child support”; while 20.5% reported that they were “unable to locate the other parent”; and 16.1% that the “other parent [was] unable to pay.” *Id.* at 11-12, tbl. F.

dollars in additional child support could be collected if all children had support orders and all were fully paid.⁹⁰

Work and payment disincentives will also impose limits on guidelines of all types and probably preclude maintenance of the child's standard of living as a realistic policy goal. Moreover, while guidelines' capacity for poverty avoidance and the assurance of a minimally adequate living standard could be improved, it will be severely limited by the disproportionate number of low-income parents among separated families. Both equalization of living standards and continuity of expenditure appear to be realistic policy goals, however. While the need to preserve work and payment incentives will preclude their attainment in all cases, these goals appear to be achievable in the majority of cases.

III. Assessing the Models

A. *Equal Outcomes vs. Continuity of Expenditure*

The continuity-of-expenditure approach, while a feasible policy goal, has had little impact on award levels, the problem that initially motivated congressional action. It also finds little support in survey data regarding parental obligation. Living standard equalization, or "equal outcomes," also appears to be feasible; moreover, this approach finds substantial support in the survey data.

In view of its feasibility and the extent to which it appears to comport with popular notions of fairness in assessing support, it is striking that no state has adopted an equal outcomes model. Rejection of equal outcomes may reflect the view that an individual income producer has a stronger claim to his assets than do other family members; some experts have also suggested that policymakers found it "culturally unacceptable" to define the child support obligation in a way that links a benefit to the child with an improvement in the economic circumstances of a former spouse.⁹¹ But some policymakers did endorse the equal outcome model's basic goals, rejecting it simply because of reservations about the payment and work disincentives that arise when the model is used

90. Elaine Sorensen, *A National Profile of Nonresident Fathers and Their Ability to Pay Child Support*, 59 J. MARRIAGE. & FAM. 785 (1997).

91. See Carol Bruch, *Problems Inherent in Designing Child Support Guidelines*, in ESSENTIALS OF CHILD SUPPORT, *supra* note 46, at 48 ("some policy makers . . . find the possibility of what they term "hidden alimony" onerous enough to justify abandoning efforts to protect fully the child's standard of living"); Bassi & Barnow, *supra* note 44, at 495 n. 33 ("We suspect the states reject the more generous equity concepts because the custodial parent would benefit significantly as well as the child . . . many state legislatures would consider such a result to be unfair in that it essentially provides the custodial parent with the equivalent of alimony as well as child support.").

in cases like that of the A family. The Massachusetts State Child Support commission, for example, declared its preference for equal outcomes "as the method that best addressed the [problem of] disparity of living standards," before rejecting it because of the concern that the model "would provide a disincentive for both parents to work."⁹²

The original proponents of the equal outcomes model did not address these disincentives, but it is certainly possible to do so. Table 1 compares the results of an income shares guideline incorporating a self-support reserve for both parents with those obtained under both a "pure" equal outcomes model and one modified to reduce work and payment disincentives. The modified equal outcomes model includes a self-support reserve feature identical to that contained in the income shares model; it also caps both the initial support percentage and the percentage of new income available for support at 40 percent. (In order to fully preserve the work incentives of both parents, the cap applies to the income of both and income is imputed to parents in appropriate cases.) The 40 percent cap is consistent with those contained in current guidelines and income tax rates, but further research would be needed to determine "optimal" rates.⁹³

The results displayed in Table 1 show, first of all, just how sensitive guideline models are to the assumptions used to generate a payment schedule. For example, under the equal outcomes models, remarriage by the residential parent has a far more dramatic impact on the support award in Case 1 than in Case 2. The reason is simply that, because the Case 1 family has less than 200 percent of the combined poverty thresholds for a one and three person family, the U.S. poverty standards were

92. Marilyn Ray Smith & John Laramore, *Massachusetts' Child Support Guidelines: Model for Development*, in *ESSENTIALS OF CHILD SUPPORT*, *supra* note 46, at 267, 273. See also Karen Czapanaskiy, *Foreward*, in *ESSENTIALS OF CHILD SUPPORT*, *supra* note 46, at 5-6 (noting that participants at national child support conference concluded that "the primary goal of child support is to serve the best interests of the child" and that "[m]any conferees agreed that the best method [of serving the child's interests] is to seek to equalize the standards of living of the households of the supported child's parents").

93. The proposed maxima are also consistent with those advocated by a distinguished English commentator. See John Eekelaar, *Third Thoughts on Child Support*, 24 *FAM. L.* 99, 100-01 (1994), *cited in* Oldham, *supra* note 7, at 706, 715 (suggesting that English maintenance requirement child support percentage be reduced from 50% to 40% to reduce work disincentives). But as we have very little data on the impact of child support rates on employment and earnings, a refined estimate of the optimal maximum support rate would require substantial empirical research. Using "plausible" labor supply elasticities, economist David Betson calculated the labor supply effect of switching from a continuity-of-expenditure child support formula to a "pure" equal outcomes model and concluded, for a family like the B's, that the net effect was a reduction in total income of about 11%. Betson et al., *supra* note 35, at 17. But Betson did not attempt to calculate the effect of nonpayment incentives nor did he offer an optimal formula.

Table 1
Results of Income Shares and Equal Outcomes Child Support Models
Applied to a One-Child Family
(\$ per Month Child Support & % of Obligor Income),
by Parental Income

TOTAL NET MONTHLY INCOME Nonresidential Parent's (N) & Residential parent's (R) Income NET HOUSEHOLD INCOME STATUS CHANGES	MODEL A* (Income Shares with Equal Self-Support Reserves) \$ mo./inc. %	MODEL B** (Pure Equal Outcomes) \$mo./inc. %	MODEL C† (Modified Equal Outcomes) \$ mo./inc. %
Case 1: \$ 1,200 N \$ 800; R \$ 400 N's income up 20% (\$960) R's income up 20% (\$480) N remarries (\$400 new income) R remarries (\$800 new income)	\$120/15% \$280/29% \$120/15% \$120/15% \$120/15%	\$272/34% \$362/45% \$228/29% \$800/67% \$ 20/ 3%	\$120/15% \$184/19% \$120/15% \$280/23% \$ 20/ 3%
Case 2: \$3,000 N \$2,000; R \$1,000 N's income up 20% (\$2,400) R's income up 20% (\$1,200) N remarries (\$1000 new income) R remarries (\$2000 new income)	\$480/24% \$576/24% \$480/24% \$480/16% \$480/24%	\$ 680/34% \$1074/45% \$ 592/30% \$1000/33% \$ 450/23%	\$ 680/34% \$ 840/35% \$ 600/30% \$1000/33% \$ 450/23%
Case 3: \$3,000 N \$1,000; R \$2,000 N's income up 20% (\$1,200) R's income up 20% (\$2,400) N remarries (\$2000 new income) R remarries (\$1000 new income)	\$240/24% \$288/24% \$240/24% \$240/ 8% \$240/24%	\$ 0/ 0% \$ 0/ 0% \$ 0/ 0% \$1050/35% \$ 0/ 0%	\$ 50/ 5% \$ 60/ 5% \$ 50/ 5% \$800/27% \$ 50/ 5%
Case 4: \$5,000 N \$2,500; R \$2, 500 N's income up 20% (\$3,000) R's income up 20% (\$3,000) N remarries (\$2,500 new income) R remarries (\$2,500 new income)	\$600/24% \$720/24% \$600/24% \$600/12% \$600/24%	\$ 550/22% \$ 855/29% \$ 355/14% \$1175/24% \$ 175/ 7%	\$ 550/22% \$ 750/25% \$ 355/14% \$1175/24% \$ 175/ 7%

***MODEL A**—For a one-child family, income shares guidelines require a child support award ranging from 18%–24% of net income; actual child care costs are typically added to the basic award. DODSON & ENTMACHER, *supra* note 10, at 96. To avoid individualized consideration of child care costs, child support was calculated here at 24% of net income instead of the midpoint of the percentage range. The self-support reserve was calculated using the 1996 poverty threshold for a one-person family, the most common calculation basis. See Marianne Takas, *Addressing Subsequent Families in Child Support Guidelines*, in *NEXT GENERATION*, *supra* note 11, at 37. Thus in Case 1 child support was initially calculated as .24 x \$1,200 = \$288. Because the residential parent has no income in excess of the self-support reserve, the nonresidential parent is required to pay 100% of that sum, up to his own self-support reserve. Because the nonresidential parent has only \$120 in excess of his self-support reserve, the initial support award is \$120. For obligors with incomes below the self-support reserve, the support percentage is 10%.

****MODEL B**—Child support was calculated to produce equal income-to-needs ratios for the custodial and noncustodial household using the 1996 poverty thresholds for nonfarm families with a householder under age 65 if combined income did not exceed 200% of the combined poverty thresholds for both segments of the divided family (in 1996, \$680 per month for one, \$901 for two, \$1,052 for three); for families with higher incomes, child support was calculated to achieve equal income-to-needs ratios using the Bureau of Labor Standards (BLS) moderate income budgets in \$1,993 (\$1,334 for one person, \$2,072 for two, \$2,915 for three). U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, REVISED EQUIVALENCE SCALE FOR ESTIMATING EQUIVALENT INCOMES OR BUDGET COSTS BY FAMILY TYPE (Bulletin No. 1570-2, 1968).

†**MODEL C**—Child support was calculated to produce equal income-to-needs ratios for the custodial and noncustodial household using the 1996 poverty thresholds for families with incomes up to 200% of the combined poverty thresholds for both segments of the divided family; for families with higher incomes, child support was calculated to achieve equal income-to-needs ratios using the Bureau of Labor Standards (BLS) moderate income budgets. Initial support awards were capped at 40% of net obligor income; modifications of the initial award were capped so as not to exceed 40% of new income triggering a modification claim. Each parent has a self-support reserve based on household size. Thus, while the obligor's initial self-support reserve is \$680 per month (a one person household), after his remarriage his self-support reserve increases to \$901 (a two-person family). Thus, in Case 1, the obligor's initial support award equals \$120 because this represents all he has available after subtracting the self-support reserve of \$680 from his total income, \$800. After his income increases to \$960, he has \$280 available, but because the support award may not be increased by more than 40% of new income, his support obligation increases only to \$184. After he remarries he has \$299 available (\$1,200 total household income—\$901 2-person self-support reserve), but because the support award may not be increased by more than 40% of new income, his support obligation increases to \$280.

utilized to generate income-to-needs ratios while in Case 2, because total family income exceeds 200 percent of poverty thresholds, the Bureau of Labor Standards (BLS) moderate income budgets were used. The BLS and poverty standards employ different underlying household equivalence scales and thus produce substantially different percentage-based outcomes.⁹⁴ A fully worked-out guideline should probably utilize transitional percentages instead of shifting abruptly from one to another scale. Similarly, because the modified income shares and equal outcomes models utilize similar self-support reserves, they achieve consistent awards for low-income obligors. The results also demonstrate that the equal outcomes models produce higher initial awards in the typical case where the nonresidential parent earns a disproportionate share of family income. But, in contrast to what one might suppose, an equal outcomes model does not *uniformly* disadvantage the nonresidential parent. All of the models produce fairly consistent initial awards when parents have relatively equal incomes and when the nonresident parent earns the smaller fraction of family income, the equal outcomes models produce substantially lower awards than does the continuity-of-expenditure approach. Because of its built-in sensitivity to shifts in family composition and income, the equal outcomes model also benefits the high-earning nonresidential parent in common circumstances such as the residential parent's remarriage to an income-producing spouse.

This built-in capacity for support modification consistent with the underlying goals and premises of the model is another, frequently over-

94. Household equivalence scales were generated for both the BLS and poverty threshold income standards using a two-parent, one-child family as a baseline. By comparing the budgets required for a one-person and two-person family with that baseline it is possible to determine the percentage of family income needed by the divided family to maintain the same standard of living. For example, using the poverty thresholds, a divided three-person family requires \$680 + \$901 per month (\$1,581), while an intact three-person family requires \$1,052; to maintain its living standard, the divided family would require 150% (\$1,581/\$1,052) of its former income. The nonresidential parent requires 65% (\$680/\$1052) of family income to maintain his living standard; the residential parent and child 85% (\$901/\$1052). Equal income-to-needs ratios can be calculated by dividing the percentage of family income each household requires to maintain its living standard by the total percentage of family income that the entire divided family would need to maintain its living standard. Thus, to achieve equal income-to-needs ratios, the child's household would require 56% (85%/150%) of total family income, the nonresidential household 44% (65%/150%). Using the same methodology, the BLS income standards require that 61% of family income go to the child's household in order to achieve equal income-to-needs ratios; the difference in percentages is based on the fact that the BLS budgets are moderate, rather than poverty-level. Use of a different baseline or different budget may produce substantially different results. See, e.g., DODSON & ENTMACHER, *supra* note 10, at 88-89 (describing similar methodology applied to two-parent, two-child family baseline under BLS and poverty threshold standards and reaching different results).

looked, advantage of the equal outcomes approach. The continuity-of-expenditure approach is focused on the past and thus provides little guidance to the issues that arise when both segments of the divided family go their own way, adding (or losing) members and income.⁹⁵ Such losses and gains are frequent. At least three-quarters of those who divorce remarry,⁹⁶ and many have additional children; on average, divorced wives who remarry regain their pre-divorce standard of living.⁹⁷ Current state guidelines evidence no consistency on post-divorce shifts in family composition and income, with the result that both father and mother often feel that the support law is unfair—and can point to cases in which the charge seems well-founded. By having the capacity to consistently take account of changes in family composition in a way that treats the needs of both parents equally, the equal outcomes model could enhance the perceived fairness of support law as well as improving its capacity to increase award levels and children's post-dissolution living standards.

A modified equal outcomes model is consistent with the evidence on public attitudes toward the support obligation. Its goals are realistic. It adapts easily to changing family circumstances. It is easy to understand and administer. Given its range of advantages, it appears to be the best approach to child support determination currently available.

B. The "Enhanced" Continuity-of-Expenditure Approach

Despite the various advantages of a modified equal outcomes model, the most recent evaluation of support guideline models, conducted under the auspices of the American Law Institute (ALI), rejects this model in favor of an "enhanced" continuity-of-expenditure formula ("enhanced model") based on the Massachusetts support guideline.⁹⁸ The ALI analysis is detailed and compendious, including worksheets, illus-

95. See, e.g., Marianne Takas, *Addressing Subsequent Families in Child Support Guidelines*, in NEXT GENERATION, *supra* note 11, at 37 (describing various approaches of current guidelines to acquisition of new dependents by the obligor and noting that current guidelines "work best in the least complicated cases.")

96. About five-sixths of divorced men and three-quarters of divorced women remarry; about half of remarriages take place within three years of divorce. ANDREW CHERLIN, MARRIAGE, DIVORCE, REMARRIAGE 29, 85 (1981); Barbara Foley Wilson & Sally Cunningham Clarke, *Remarriage: A Demographic Profile*, 13 J. FAM. ISSUES 123, 131 (1992). Younger women—the group most likely to be custodial mothers—remarry, on average, more quickly than older women. *Id.* (reporting that average period between divorce and remarriage was 1.5 years for women 20-24 and 2.4 years for women 25-29).

97. See Greg Duncan & Saul Hoffman, *A Reconsideration of the Economic Consequences of Marital Dissolution*, 22 DEMOGRAPHY 485 (1985).

98. ALI PRINCIPLES, *supra* note 76.

trations, and more than 300 pages of text; it undeniably deserves attention and undoubtedly will serve as an influential source book for policymakers revising current guidelines. Because of the care with which the ALI analysis was conducted, it is worth considering the enhanced model before rejecting the continuity-of-expenditure approach altogether.

The ALI enhanced model deviates from a typical continuity-of-expenditure guideline in two important respects: it provides a self-support reserve for the child's household and it includes a supplement explicitly designed to enhance the likelihood that the supported child will enjoy both a "minimum decent standard of living" and a living standard "not grossly inferior" to that of the nonresidential parent.⁹⁹ The supplement is expressed as an income percentage and added to the base, marginal expenditure percentage.¹⁰⁰ As the income of the residential parent rises, the supplement declines:

When the income of the residential parent exceeds the amount necessary to maintain that parent at a minimum decent standard of living (the income exemption), the preliminary assessment is reduced by the reduction mechanism. The reduction mechanism employs a fraction in which the numerator is the residential parent's excess income (income in excess of the income exemption) and the denominator is the sum of the excess income and the total income of the nonresidential parent. (As the residential parent's income increases as a percentage of this sum, so does the reduction in the preliminary assessment.) The resultant fraction is multiplied by the preliminary assessment, yielding the amount by which the preliminary assessment is reduced. The amount due is the preliminary assessment less the reduction.¹⁰¹

The ALI approach thus starts with a continuity-of-expenditure methodology, but incorporates supplements to "attain the dual objectives of [income] adequacy and avoidance of gross disproportion [of living standards]." ¹⁰² In fact, it achieves approximately equal living standards in many cases. For example, where the couple have one child, the nonresidential parent earns \$2,000 and the residential parent \$1,000, the support obligation is 36 percent of obligor income, or \$720. Using a poverty level equivalence scale, both parts of the divided family have almost equal—191 percent of poverty threshold for the obligor and 188 percent of poverty threshold for the child—living standards.¹⁰³

99. *Id.* at § 3.03.

100. *Id.* at § 3.05B, Comment b.

101. *Id.* at § 3.05B, Comment B.

102. *Id.* at 3.05B, Comment c.

103. *Id.* at § 3.05B, Comment d, Illustration 4.

However, for higher income families with a similar income gap, the ALI approach simply reduces the living-standard gap; with a one-child family in which the nonresidential parent earns \$3,000 and the residential parent \$1,500, for example, the living standard gap is approximately 25-30 percentage points, considerably lower than the 90-100 percentage points achieved under a typical continuity-of-expenditure guideline, but nonetheless significant.¹⁰⁴

C. The Enhanced Model vs. the Equal Outcomes Approach

The ALI report makes it clear that the equal outcomes approach is the one “most likely to protect children from poverty and to enable them to enjoy a relatively high standard of living”¹⁰⁵ and stresses that “in view of the importance of the child’s claims and the availability of an equal living standards measure that would fully satisfy those claims, the choice of a more modest measure [such as the one the principles propose] requires persuasive justification.”¹⁰⁶ Unfortunately, the report devotes little space to explaining what factors were found persuasive. In the few paragraphs allocated to the equal outcomes model, the report notes that

The equal living standards model, which would generally respond more amply to the interests of children, presents two difficulties. First, it gives no weight to the primacy of the earner’s claims to his own earnings. . . . Whether or not this treatment is ethically sound, it would seem culturally unacceptable and hence politically unrealizable. If this were the only objection to the equal living standards model, it might be appropriate to resist the objection. . . . Yet the equal living standards model suffers from a more serious defect: It would create substantial work disincentive for the residential parent. . . . An equal living standards, as compared to a marginal expenditure model, would reduce total family income by about 11%. Almost all of the reduction would be attributable to reduced residential parent labor force participation.¹⁰⁷

While the ALI rejection of equal outcomes thus appears to rest primarily on concerns about the model’s impact on work incentives and secondarily on the assumption that equal outcomes for parents and children is “culturally unacceptable,” neither of these objections make

104. *Id.* at § 3.05B, Comment d, Illustration 5.

105. *Id.* at § 3.04, Comment d(i).

106. *Id.* at § 3.03, Comment i.

107. *Id.* at § 3.05A, Comment j. The 11% figure is derived from the calculations of Betson *et al.*, described in note 35, *supra*.

much sense in light of the ALI's own recommendations. First, the drafters of the ALI recommendations clearly understood that any and all guidelines can be modified to take account of work disincentives; indeed, an important feature of the enhanced model is an "imputed" income" provision designed to do just that.¹⁰⁸ As we have seen, an equal outcomes approach—or any support model—can be similarly modified. Second, if equal outcomes are "culturally unacceptable," it would appear that the enhanced model proposed by the ALI should also be unacceptable. As Table 2 demonstrates, the enhanced model benefits the nonresidential parent who earns a disproportionate share of family income in a high-income family (Case 3), but for low- and moderate-income earners (Cases 1 and 2) and those cases in which parental income is relatively equal (Case 4), the two approaches produce remarkably similar initial awards. The enhanced model may aim only at eliminating "gross disproportion" in living standards, but for many low- and moderate-income families its results are almost identical to those that would be achieved by a formula that explicitly aims at elimination of living standard disparity.

The equal outcomes approach holds one clear advantage over the enhanced model, however: it is conceptually much simpler. As the ALI reporter herself put it, the enhanced model's "basic measure of child support is not as susceptible to easy definition as are [standard continuity of expenditure guidelines and the equal outcomes model]."¹⁰⁹ The enhanced model also prefers—perhaps unfairly—the interests of higher-income obligors to those of their low and moderate income counterparts. Of course, at very high income levels, expenditures are less likely to benefit children than they will at lower socioeconomic levels.¹¹⁰ Continuity-of-expenditure guidelines typically incorporate income maxima above which the guidelines do not apply in order to deal with this problem;¹¹¹ either the enhanced model or the modified equal outcomes model could (and at some income level probably should) incorporate some such feature. But this issue is not likely to arise within the \$24,000 to \$36,000 net annual income range described by Cases 2 and 3, with the result that the enhanced model comparatively disadvantages lower income obligors.

108. ALI PRINCIPLES, *supra* note 76, at § 3.06B.

109. AMERICAN LAW INSTITUTE, PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 3.04, Comment d(iii) (Preliminary Draft No. 7, June 1997).

110. See Burt S. Barnow, *Economic Studies of Expenditures on Children and Their Relationship to Child Support Guidelines*, in NEXT GENERATION, *supra* note 11, at 18, 26.

111. See *id.*

Table 2
Results of Modified Equal Outcomes and "Enhanced"
Continuity-of-Expenditure Child Support Models Applied to a
One-Child Family
(\$ per Month Child Support & % of Obligor Income),
by Parental Income

TOTAL NET MONTHLY INCOME NONRESIDENTIAL (N) & RESIDENTIAL PARENT'S (R) NET HOUSEHOLD INCOME STATUS CHANGES	MODEL A* (Enhanced Continuity of Expenditure) \$ mo./inc. %	MODEL B** (Modified Equal Outcomes) \$ mo./inc. %
Case 1: \$ 1,200 N \$ 800; R \$ 400	\$120/15%	\$120/15%
N's income up 20% (\$960)	\$280/29%	\$184/19%
R's income up 20% (\$480)	\$120/15%	\$120/15%
N remarries (\$400 new income)	\$120/15%	\$280/23%
R remarries (\$800 new income)	\$120/15%	\$ 40/ 5%
Case 2: \$3,000 N \$2000; R \$1,000	\$720/36%	\$680/34%
N's income up 20% (\$2,400)	\$864/36%	\$ 840/35%
R's income up 20% (\$1,200)	\$644/32%	\$ 600/30%
N remarries (\$1,000 new income)	\$720/24%	\$1000/33%
R remarries (\$2,000 new income)	\$443/22%	\$ 450/23%
Case 3: \$3,000 N \$2000; R \$1000	\$103/10%	\$ 50/ 5%
N's income up 20% (\$1,200)	\$155/13%	\$ 60/ 5%
R's income up 20% (\$2,400)	\$ 62/ 6%	\$ 50/ 5%
N remarries (\$2,000 new income)	\$103/<1%	\$800/27%
R remarries (\$1,000 new income)	\$ 0/ 0%	\$ 50/ 5%
Case 4: \$4,500 N \$3,000; R \$1,500	\$ 930/31%	\$1200/40%
N's income up 20% (\$3,600)	\$1145/32%	\$1440/40%
R's income up 20% (\$1,800)	\$ 859/29%	\$1128/38%
N remarries (\$1,500 new income)	\$ 930/21%	\$1500/33%
R remarries (\$3,000 new income)	\$ 930/31%	\$ 750/25%
	\$ 660/22%	\$ 675/23%
Case 5: \$5000 N \$5000; R \$2,500	\$551/22%	\$ 550/22%
N's income up 20% (\$6,000)	\$734/24%	\$ 750/25%
R's income up 20% (\$3,000)	\$490/20%	\$ 355/14%
N remarries (\$2,500 new income)	\$551/11%	\$1175/24%
R remarries (\$5,000 new income)	\$341/14%	\$ 175/ 7%

*MODEL A—Child support was calculated using the worksheets provided in the ALI PRINCIPLES, *supra* note 76, at § 3.05B Enhanced Marginal Expenditure Worksheet.

**MODEL B—Child support was calculated to produce equal income-to-needs ratios for the custodial and noncustodial household using the 1996 poverty thresholds for families with incomes up to 200% of the combined poverty thresholds for both segments of the divided family; for families with higher incomes, child support was calculated to achieve equal income-to-needs ratios using the Bureau of Labor Standards (BLS) moderate income budgets. Initial support awards were capped at 40% of net obligor income; modifications of the initial award were capped so as not to exceed 40% of new income triggering a modification claim. Each parent has a self-support reserve based on household size. Thus, while the obligor's initial self-support reserve is \$680 per month (a one person household), after his remarriage his self-support reserve increases to \$901 (a two-person family). Thus, in Case 1, the obligor's initial support award equals \$120 because this represents all he has available after subtracting the self-support reserve of \$680 from his total income, \$800. After his income increases to \$960, he has \$280 available, but because the support award may not be increased by more than 40% of new income, his support obligation increases only to \$184. After he remarries he has \$299 available (\$1,200 total household income—\$901 2-person self-support reserve), but because the support award may not be increased by more than 40% of new income, his support obligation increases to \$280.

Despite these negatives, the enhanced model marks a vast improvement over first-generation continuity-of-expenditure guidelines. For policymakers who wish to emphasize income adequacy instead of equity, it represents a viable alternative and deserves serious consideration.

Given that the results of the enhanced model are consistent with an equal outcomes approach in most cases, even policymakers primarily concerned with family equity might want to consider the recasting of the enhanced model as an alternative modified equal outcomes guideline. This would simply entail substituting an equal-outcomes calculation methodology for the more complex method contained in the enhanced model, up to the point at which the two models' results diverge. The resulting guideline would not be a "pure" equal outcomes, but neither is the one I have outlined; indeed, as we have seen, the need to preserve work and payment incentives will preclude the adoption of most "pure" support models. Moreover, while the public opinion evidence suggests that equal outcomes would probably garner considerable support as a basic guideline concept, that evidence also suggests modification of the basic concept in some instances; for example, the claim that all parents should pay some support even if the obligor is worse-off than their children appears to have broad public appeal.

Recasting the enhanced model as a modified equal-outcomes guideline would enable policymakers to test the limits of the equal outcomes concept and its applicability in specific fact situations. In many instances, policymakers have found it easier to reach consensus when they have moved back and forth between broad principles and real cases;¹¹² the extent to which the enhanced and modified equal outcomes model converge on results, even though motivated by different policy goals, is striking and offers the opportunity to test the level of consensus on the support obligation in a range of family situations. Ideally, both models—and other formulae that focus on family equity—should be compared in a wide variety of factual contexts before a specific guideline is adopted.

IV. Conclusion

Current guidelines have failed to have a major impact on award adequacy and living standard disparity because they were not designed

112. See ALBERT R. JONSON & STEPHEN TOULMIN, *THE ABUSE OF CASUISTRY: A HISTORY OF MORAL REASONING* 16-19 (1988) (describing deliberations of National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research); Stephen A. Breyer, *The Federal Sentencing Guidelines and the Key Compromises Upon Which They Rest*, 17 *HOFSTRA. L. REV.* 1, 14 (1988) (describing deliberations of Federal Sentencing Commission).

with those aims in mind. Revised guidelines must be formulated with the right goals in order to achieve the right results. Maintenance of the child's living standard, a goal frequently mentioned in traditional support laws, is probably an unrealistic aim given the need to preserve payment and work incentives. Nor can support guidelines substitute for an antipoverty program; as a result of lost economies of scale and the disproportionate number of low-income parents among the support-eligible population, support guidelines are unlikely to have more than a marginal impact on children's poverty or welfare dependence. Guidelines can, however, do better at ensuring income adequacy than they do now. Equalization of living standard loss is also a feasible policy goal.

With these goals in mind, it is time to improve current guidelines. A modified equal outcomes model would do a good job of ensuring income adequacy and family equity. While the ALI "enhanced" model is harder to understand, its results also represent a major improvement over current outcomes. By comparing the goals and results of these models—and others that aim explicitly at achieving equity among family members—policymakers are likely to produce workable formulae that come much closer to representing our considered judgments about parental obligation and fairness among family members.

