
A Brief History and Description of the Wisconsin Percentage Standard for Child Support

Marygold S. Melli

Child support is the amount that a parent who does not live with a child should provide toward the child's support. Although child support is easy to define, it has proven extraordinarily difficult to determine standard amounts that fairly balance the interests of the child, both parents, and the state. Wisconsin has been a pioneer in developing child support standards that influenced enormously federal legislation and now form the basis for the guidelines in many states. A history of the development of the standards may be useful as child support continues to be an issue of public debate and legislative scrutiny.

Traditionally, child support amounts had been set on a case-by-case basis by a judge after both parents had the opportunity to present relevant evidence at a judicial hearing. This approach was thought necessary to allow the trial judge to tailor the order to the needs of a particular family. Because no two family situations were seen to be alike, flexibility was needed in the system; this enabled the judge to weigh the equities of each situation and arrive at the best solution for the family involved. In the 1980s, federal mandates reduced that flexibility; states were required to develop guidelines, specifically mathematical formulas, for courts to use in setting child support awards.

The traditional case-by-case approach was abandoned due to its failure to provide adequate support for children in single-parent households. Although problems with child support by absent parents can be traced back at least to the beginning of this century, little effectively was done until 1950. Congress then became concerned about expenditures under the Aid to Families of Dependent Children (AFDC) program. AFDC is the public assistance program established by the Social Security Act in 1935; as a joint state-federal effort, AFDC provides a minimal standard of living for children who have lost their primary supporting parent. The bulk of single mothers were widows when the Social Security Act was enacted; thus, its drafters did not envision the program backing up a system of divorce and paternity establishment that failed to provide sufficiently for children.

In 1950, Congress enacted the first federal child support legislation. Between 1950 and 1988, divorce, separation, and births to unwed mothers increased and the costs of the AFDC program escalated; in response, Congress enacted a series of bills to strengthen child support enforcement. In 1975, the child support enforcement program was added to the Social Security Act (Title IV-D). In 1984, amendments to Title IV-D mandated that the states develop mathematical formu-

las and provide enforcement services for all children—non-AFDC as well as AFDC recipients. The Family Support Act of 1988 required the courts to use the state’s guidelines or to give reasons on the record for not doing so.

This rather dramatic shift from letting judges decide to using uniform standards for establishing child support awards occurred for three reasons. First, the old system resulted in child support awards that were much too low. For example, the Census Bureau reported child support awards to resident mothers totaled nearly \$10 billion in 1983; if a mathematical formula had been applied in all cases, however, the total would have been \$28–\$30 billion or about two and one half times the amount of existing awards (Garfinkel & Oellerich, 1989). The problem of low awards may be due as much to the failure to update awards as to the size of initial awards. In Wisconsin, in almost all cases, low awards resulted from a failure to increase awards as the incomes of nonresident parents increased (Garfinkel, 1986). National data suggest, however, that low awards result from both initial low awards and failure to update awards (Garfinkel, Oellerich, & Robins, 1990).

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The second reason for the shift to uniform standards is that judicial discretion led to inequity in child support awards. Even within the same court, parents in similar circumstances were treated differently (White & Stone, 1976; Yee, 1979). When the number of divorces and births to unwed mothers was small, greater equity was perhaps achieved by the old individualized system. In small communities, the judge knew the parents and the circumstances, so justice was perhaps better served by taking account of all particulars. But when the number of cases is large and the system impersonal, this method breaks down. In practice, judges now do little to tailor child support to particular circumstances.

The third reason is that the public has a direct financial stake in the amount of private child support paid by nonresident parents whose children are potential recipients of public benefits if child support is insufficient. The lower the amount of support paid by nonresident parents, the greater the burden on taxpayers through public programs like AFDC. Balancing the sources of support of poor children among the resident parent, the nonresident parent, and the public is a public policy issue more appropriate to the legislative than the judicial branch of government.

Uniform Standards

Any uniform standard must be based on an attempt to balance the needs of the child, the nonresident parent, and the resident parent. The child is entitled to as good a standard of living as the parents can provide and to fair treatment by the nonresident parent. After divorce, the standard of living of the nonresident parent usually increases, whereas the living standard of the resident parent and children drops (Duncan & Hoffman, 1985; Weitzman, 1985). As a matter of public policy, this discrepancy should be minimized in the interest of fairness to the child.

The nonresident parent needs a decent standard of living and the right to pursue an independent life. The resident parent, who provides support for the child by sharing resources with the child, is entitled to help from the nonresident parent and to fair treatment; the resident parent, for example, should not be required to be the sole support for a child because the nonresident parent wishes to parent another family.

Choosing the Basic Approach

Child support awards are based on the belief that by parenting a child, a person takes on the responsibility to share income with the child. Two approaches for setting the amount of this share are cost sharing and income sharing (Cassettey, 1983). (For a thorough discussion of these approaches, see Garfinkel & Melli, 1990.)

Cost Sharing

Cost sharing was the traditional way of setting child support in the individualized, case-by-case system. The base for beginning calculations was the budget submitted by the resident parent. After reviewing and sometimes adjusting the budget for the child, the court examined the nonresident parent's living costs and income to determine how much the parent was able to pay.

Income Sharing

The other approach to setting the amount of child support is income sharing. Based on the assumption that the cost of raising a child is related to parents' income, this method focuses on the nonresident parent's income. The income-sharing approach is believed to reflect more accurately how parents treat children in two-parent families. Today almost all states use formulas based on the income-sharing approach.

The income sharing approach used by Wisconsin, the percentage-of-income standard, is quite simple. It is based on the principle that the two most important features determining a child support award are the nonresident parent's income and the number of children to be supported.

Choosing the Percentages

Determining how much income a nonresident parent should share with the child can be approached in two ways. One that has been proposed is to set the nonresident parent's share at a rate that would equalize income for the resident and nonresident households. The objective of this approach, known as income equalization, is to ensure that the children maintain the same living standard as the nonresident parent. Although income equalization has been advocated by some academics, it has not been implemented anywhere (Dodson, 1988). Critics contend that equalizing incomes in the nonresident and resident households would benefit the parent living with the children by raising that parent's standard of living along with that of the children. This approach would entail substantially greater child support obligations for most upper middle income and upper income nonresident parents than other standards.

The second approach to the issue of how much a parent ought to pay in child support is to base the amount on the proportion of the parents' income they would spend on their children if they were living together. A considerable body of economic literature examines the amount of money parents spend raising children. This research has been unable to specify the exact proportions, however, because so many expenses, such as food, housing, and transportation, are jointly consumed by parents and children. Determining how these common expenditures are allocated among individual members of a family of differing ages, needs, and decision-making capacity is the primary problem.

The Wisconsin percentage was chosen based on research by the Institute for Research on Poverty, which conducted a comprehensive review of the economics literature involving expenditures on children. Based on a dozen studies, the major conclusion was that the share of income that parents devote to their children varies enormously. Even after limiting the studies to those judged most reliable, the estimates of the proportion of income devoted to the first child ranged from 16% to 24%. Taking the midpoint of this range, 20% was chosen as the best estimate (Van der Gaag, 1982).

The study also found that the same proportions applied up to very high income levels. Moreover, the share of income devoted to the second and third child was about half that devoted to the first.

This economic analysis was only the starting point for setting the percentage used in the Wisconsin standard. Even if it were possible to determine the proportion of income spent on children in two-parent households, it did not necessarily mean that children should receive the same proportion of parental income when the parents live apart.

Ultimately, how much the nonresident parent should pay is based on balancing the conflicting objectives of providing well for the children, minimizing public costs, and retaining incentives to pay by allowing the nonresident parent a decent standard of living. Establishing a child support standard cannot be purely a scientific exercise; value judgments are involved.

The authors of the Wisconsin percentage-of-income standard weighed these conflicting objectives and considered the reasons for expecting nonresident parents to share more (or less) of their income with their children than if they lived with them. They determined that the support rates for nonresident parents should be 17% of gross income for one child and 25%, 29%, 31%, and 34% for two, three, four, and five or more children, respectively.

Notably, none of the studies used to set these percentages took into account some of the indirect costs of raising a child. For example, how much income is lost in a two-parent family when a parent—usually the mother—does not work or takes a job that pays less than she could command in the market in order to have time to care for the children? This indirect cost may be larger than the direct costs included in the studies of expenditures on children.

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Should the Percentages Vary With the Income of the Nonresident Parent?

In Wisconsin, the percentage of income the nonresident parent owes in child support is the same irrespective of income. In some other states, the percentage declines substantially as income increases. Both standards attempt to reproduce the pattern of income sharing when both parents live with the children; none of the studies on the costs of children, however, are concerned primarily with the issue of whether the percentage of earnings spent on children decreases with income.

In the absence of reliable scientific evidence on child expenditures by income, the Wisconsin flat percentage-of-income standard may have wider appeal than the declining percentages in other states. It is hard to justify a law that requires a working class nonresident parent to contribute a much larger proportion of income to children than a middle income nonresident parent; similarly, it is hard to explain why a middle income nonresident parent should contribute a much larger share of income than an upper middle income nonresident parent. Regressive taxes are widely perceived to be unfair. A regressive child support standard is unlikely to command public support. In contrast, a proportional child support standard, like the Wisconsin percentage-of-income standard, may be more likely to be perceived as equitable.

Should Child Support Depend on the Income of the Resident Parent?

The Wisconsin percentage-of-income standard does not take into account the income of the resident parent. This represents a complete break with past practice. Formerly, the more income the resident parent had, the more child's needs were being met with this income, and the less child support was needed from the nonresident parent.

The income-sharing approach to establishing child support obligations assumes that both parents have an obligation to share their income with their children. The percentage-of-income standard does not consider the income of the resident parent in setting the amount the nonresident parent should pay, for several reasons. First, income sharing is based on the principle that parenting a child brings an obligation to share income with the child. Conditioning the obligation on the income of the resident parent undermines this principle.

Second, the child is entitled to a share of both parents' incomes. When the parents live together, the child shares the benefits (and bears some of the costs as well) if both parents work. A child in a single-parent household with two income-producing parents should enjoy the advantages that situation brings, just as if the family lived as one unit.

Finally, the percentage-of-income standard assumes that resident parents share their income with the children with whom they live. Resident parents bear the burden of a multitude of hidden expenses associated with being a single parent. For example, child care must be provided because no parent is available to

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babysit while the resident parent goes shopping, to the dentist, or to a school conference for an older child (Bruch, 1987). These expenses are ignored in most considerations of the cost of caring for a child. Furthermore, the income of resident parents depends in large part upon how much they work; the more the resident parent works, however, the greater the child care costs will be.

Arguments can be made, of course, for taking resident-parent income into account when setting the amount of a child support award. Failure to consider the resident parent's income may lead to inequitable results, especially in extreme cases. For example, although it seems fair for a nonresident parent earning \$20,000 to pay \$3,400 in child support if the resident parent has no income, is it fair to expect the nonresident parent to pay the same amount if the resident parent earns \$60,000? Public policymakers must decide whether circumstances such as these overcome the income-sharing principle of child support. This principle suggests there is nothing inequitable about the nonresident parent paying a constant share of income irrespective of the resident parent's income; in this way, the child benefits from two income-producing parents.

Should Child Support Depend Upon Extraordinary Expenditures?

In some states, child support obligations depend upon actual child care expenditures and extraordinary medical care expenditures. These expenditures are irrelevant under the Wisconsin percentage-of-income standard.

Numerous objections may be raised to basing child support obligations on actual expenditures. As mentioned earlier, the practice is inconsistent with the income-sharing principle. Furthermore, simply adding a prorated share of these costs to the basic child support obligation violates a basic premise of the income-shares standard—the child support is designed to secure for the child the same portion of the nonresident parent's income as the child would enjoy if the parents lived together.

How much the resident parent spends on child care depends upon both the kind and amount of care purchased. The amount needed depends primarily upon how much the resident parent works. Is it fair to raise the child support paid by the nonresident parent in response to increases in work by the resident parent?

The argument for adjusting the child support obligation in response to extraordinary medical care expenditures is more convincing because such expenditures are presumably involuntary. Furthermore, in the rare cases when medical catastrophes occur, the average medical care cost incorporated in a child support payment is totally inadequate. On the one hand, it is difficult to make the case that the resident parent should bear the entire cost of a medical catastrophe. On the other hand, it is hard to make the case that any family should bear the entire cost.

Finally, basing the child support obligation upon actual child care and medical care expenditures complicates the determination of child support. As will be seen, every complication makes updating child support awards more difficult and costly.

The Benefits and Cost of Simplicity

The Wisconsin percentage-of-income standard is designed to maximize simplicity. The child support obligation is equal to a percentage of the nonresident parent's income. The percentage depends only upon the number of children owed support.

Simplicity itself may be a virtue because it enhances public understanding. Most people who have read or heard about the Wisconsin percentage-of-income standard understand that, in most cases, child support equals 17% of the nonresident parent's income. Parents who enter the Wisconsin court system have no difficulty assessing the dollar amount of their entitlements or obligations.

The simplicity of the percentage standard also eases the burden on the courts. The court needs only a limited amount of information (the income of the parent and the number of children); the amount of the award is determined simply by multiplying the income by the percentage set for the number of children entitled to support.

Whether simplicity promotes or sacrifices equity is a more complicated issue. Recall that one of the widely perceived problems with the old child support system was that child support awards were too low. A large part of the problem of low awards was attributable to the failure to update awards over time. One reason for this failure was that most state laws discouraged parents from updating child support orders. They required proof of a change of circumstances, usually expensive to the parties and costly in terms of court time. In essence, updating a child support award was equivalent to reopening and rehearing the case. If the average child support case had a 10-year life, annual updating would have increased the burden on the courts tenfold. The percentage-of-income standard streamlines this procedure. The amount of child support increases—or decreases—as the income of the parent changes.

Simplicity promotes public comprehension and facilitates updating of awards.

Summary

Child support begins with the philosophical premise of income sharing. Parenting a child brings with it a responsibility to share income with the child. One of the most attractive features of the Wisconsin percentage-of-income standard is its simplicity. Simplicity promotes public comprehension, is at least consistent with equity, and facilitates updating of awards. The latter function may be the most important single consideration for states in constructing mathematical child support standards. Failure to update awards is a major source of inadequate child support awards. A scheme to provide timely and efficient updating is an essential tool for child support enforcement.



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Marygold Melli is the Voss-Bascom Professor of Law Emerita at the University of Wisconsin-Madison. Marygold Melli's research interests center on child support issues with a particular focus on support in dual-residence cases, guideline reform and the relation between child support and visitation.