

**GEORGIA'S 2014 CASE STUDY of CHILD
SUPPORT AWARDS:
A REVISIT**

June 27, 2017

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By R. Mark Rogers¹

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INTRODUCTION

To comply with federal regulations, each state as part of a four-year review of its child support guidelines must conduct a case study of child support awards. The case study is intended to review court practices regarding key factors affecting a child support award but are not a part of the child support guideline formula. These factors are known as deviations from the presumptive award. Federal requirements for the case study can be found in 45 CFR 302.56. However, this portion of the Code of Federal Regulations was revised recently with changes effective January 19, 2017. Georgia's most recent case study was in 2014 and was based on data from 2013. Applicable federal regulations were those in effect prior to January 19, 2017. A revisit to the case data used in the 2014 quadrennial review indicates that official findings fall short of reasonable efforts of data analysis.

Key findings now indicate that deviations are not being used significantly in cases where it would be appropriate to do so. Based on data comparisons, far too few deviations are occurring for low income, child care tax credit, parenting time. Additionally, there may be too few deviations for travel expenses but the case study data do not include sufficient information to determine this. That is, there is no information on how far apart the parents live. That leads to a key finding of this revisit—major improvements are needed in the items required to be collected from cases. A notable number of variables are available in court orders that would be helpful for case study analysis but are not included.

For individual deviation factors, the low-income deviation stands out in terms of implications for changes in guideline formulas. Georgia relies on general language for explaining how to apply this factor. There is no presumptive formula or suggested deviation formula. As discussed in detail below, a large percentage of cases in the study has court ordered awards that put the obligor in poverty situations. That is, the obligor is not left with sufficient income to meet basic needs much less have income to cover costs of visitation. This is an issue of importance for Georgia to receive federal child support funds as related to complying with new regulations—notably required for low-income situations.

The data suggest that the deviation approach is not working with parenting time or with child care tax benefits. From a legal perspective, the question arises as to whether the presumptions related to these three deviations (low income, child care tax credits, and parenting time) have risen to the level of being irrebuttable in operation. If so, a presumptive formula for each of these deviation factors would be a legal solution for removing a presumption that is irrebuttable in operation. This is discussed further below.

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To facilitate discussion, going over key ideas first is helpful—those of a presumptive award and a deviation.

WHAT IS THE PRESUMPTIVE AWARD?

Child support guidelines are legal formulas to help the court decide what a child support award should be in a given case. Federal regulations provide much of the foundation for the generalities of how state child support guidelines operate. The regulations mostly conform to the traditional legal concept of rebuttable presumption.

Each state (this includes Washington, D.C. and U.S. territories) is required to have a formula that presumptively determines what a child support award should be in a given case. It is mandatory that the formula be applied to every case to determine an initial calculation for the award. By presumptive, this means that the statutory formula results in a child support award amount that the court will put into the child support order unless one of the parties (parents) convinces the court that another amount is more appropriate based on case circumstances.

Generally, the presumptive award is based on the income of the noncustodial parent or both of the parents, the number of children, and the cost of medical insurance for the child. Federal law requires that the presumptive formula be based at least on the noncustodial parent's income and include the cost of medical insurance for the child if it is available to at least one parent at a reasonable cost. It is permitted to base the award on both parents' income instead of just the noncustodial parent's income. The vast majority of states use both parents' income.

Some states presumptively also include the cost of work-related day care, the noncustodial parent's share of parenting time, and government benefits for the child (an example is Social Security related to a child's disability). Each state's guidelines specifically say what is included presumptively.

In Georgia, the presumptive award is primarily based on:

- The number of children,
- Both parents' gross income (with specific adjustments, such as for pre-existing child support orders and self-employment taxes, if applicable),
- Health care insurance premiums, and
- Work-related child care expenses.

These factors must be included in the presumptive calculation if those factors exist for a case.

Any financial factor outside of these presumptive inputs is a deviation factor that the court has discretion to include or not. Presumptive factors are mandatory; deviation factors are discretionary.

WHAT IS A DEVIATION?

Child support law has developed some of its own specific language. In most legal situations where there is a presumption, the relevant concept is rebuttal and that is still true for child support cases. But for child support, instead of calling an alternative award (to the presumptive award) a rebuttal award, it is called a deviation award.

- A deviation is simply how much a specific case factor not already included in the presumptive calculation causes the court to change the dollar amount of the award.

For example, if the presumptive award is \$700 per month and the court determines that the noncustodial parent's travel expenses to exercise parenting time should result in a \$100 downward adjustment in the award, the deviation is \$100. A final child support award is the combination of the presumptive award and the deviations (which can be up or down or a combination of up or down factors)—which in this example is \$600 after the \$100 downward deviation for travel expenses.

The list of deviation factors included in child support guidelines varies by state but all states must allow any factor to be argued if based on case facts.

Georgia's list of deviation factors as found in statute are:²

- (A) High income;
- (B) Low income;
- (C) Other health related insurance;
- (D) Life insurance;
- (E) Child and dependent care tax credit;
- (F) Travel expenses;
- (G) Alimony;
- (H) Mortgage;
- (I) Permanency plan or foster care plan;
- (J) Extraordinary expenses;
- (K) Parenting time; and
- (L) Nonspecific deviations

The nonspecific deviation is for any factor not listed that is applicable. This inclusion indicates that there is wide discretion for what the court may consider as a deviation factor.

SUMMARY OF CASE STUDY DATA

This report's analysis is based on data as reported in *Georgia Commission on Child Support: Final Report 2014*, dated August 2014. Given that the same data were used by this report, the summary results (overall descriptive data) are essentially that same as in the official report. However, this report goes beyond description of the data and goes into analysis as required by federal regulations, covering implications on needed changes in the child support guidelines as suggested by the case study data.

According to the official report:

As with the previous reviews, twelve counties were chosen through scientific means with the assistance of Dr. Roger Tutterow, economist and Commission member. The counties included in the 2014 case sampling were: Atkinson, Banks, Barrow, Bartow, Cherokee, Columbia, Dougherty, Glynn, Peach, Pike, Taylor and Telfair – which represent a cross section of the socio-economic makeup of Georgia.

The official report's summary analysis is limited to the following:

- A. 235 orders were received in the case sampling and reviewed in the twelve counties.

In the previous case sampling, completed four years ago, 267 orders were reviewed in twelve counties. The counties used in the 2014 review have not been selected before.

² The list of deviation factors is part of Georgia statutes. See OCGA § 19-6-15(b)(8).

- B. Sixty-five (65) orders had one or more deviations noted. There were a total of 77 deviations for the 65 orders. This breaks down to twenty-six percent (26%) of the orders reviewed having a deviation noted.³

In the previous case sampling completed four years ago, 31% of the orders reviewed had a deviation noted.

- C. Eighty-eight percent (88%) or 57 of the orders with deviations reflected downward deviations. "Other – Nonspecific deviation" was used in 75% of the deviated cases and low-income deviations were granted in 5% of the deviated cases.

In the previous case sampling conducted four years ago, 83% were set as downward deviations. Forty-seven percent (47%) of those were listed as nonspecific deviations; 18% were low-income deviations.

Exhibit 1.

Case Count by Case Type by County			
County	DCSS Total	Private Total	Grand Total
Atkinson	1	3	4
Banks	4	4	8
Barrow	7	12	19
Bartow	13	26	39
Cherokee	4	35	39
Columbia	6	13	19
Dougherty	52	10	62
Glynn	13	13	26
Peach	6	1	7
Pike	2	4	6
Taylor	2	1	3
Telfair	2	1	3
Grand Total	112	123	235

The official report has no analysis of the case study data, only brief descriptions. However, the Commission’s overall summary, *Child Support Commission’s Recommendation*, notes that it recommended no change in the child cost schedule but that there were concerns about the impact of the presumptive award on low-income families.

While the Commission members still have concern about the impact of the obligation amount on low income families, the low income deviation was made more accessible through new legislation (SB 282), which will serve to alleviate that concern.⁴

³ *Georgia Commission on Child Support: Final Report 2014*, page 11. Note: The summary percentage in "B" for 26% is a typo in the report. Based on table numbers, the correct percentage is 28% as shown above.

⁴ *Georgia Commission on Child Support: Final Report 2014*, page 15. This report can be found on the web at: <http://csc.georgiacourts.gov/content/business-child-support-commission>

As discussed further below, more in-depth analysis indicates that such concern is warranted far more than indicated by such a modest change in the application of the low-income deviation. Additionally, recent changes in federal regulations define this change as inadequate for meeting federal requirements.

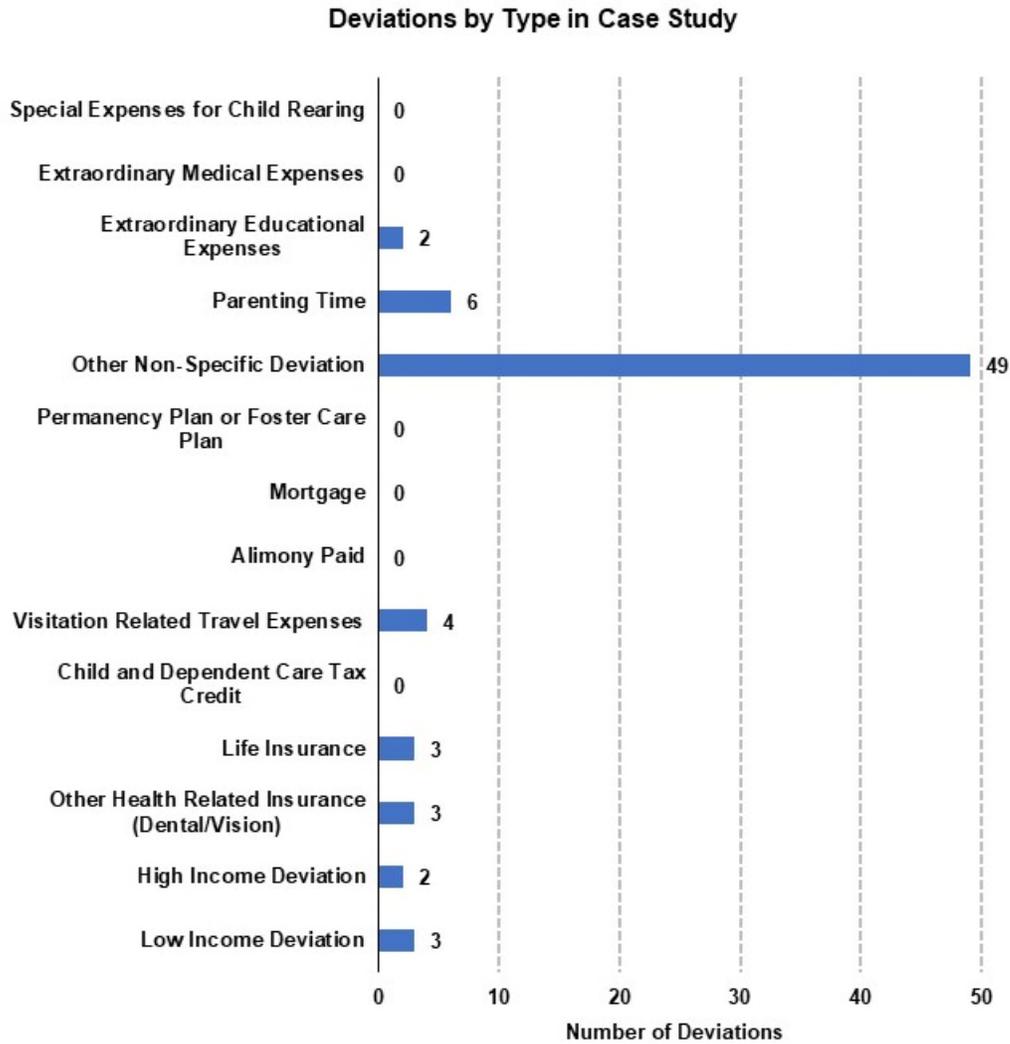
Exhibit 2.

Cases with Deviations by County			
County	Case Count	Count of Cases with Deviations	% of County Cases with Deviations
Atkinson	4	1	25%
Banks	8	4	50%
Barrow	19	3	16%
Bartow	39	12	31%
Cherokee	39	18	46%
Columbia	19	11	58%
Dougherty	62	7	11%
Glynn	26	7	27%
Peach	7	0	0%
Pike	6	1	17%
Taylor	3	1	33%
Telfair	3	0	0%
Grand Total	235	65	28%

SUMMARY OF DEVIATIONS BY TYPE OF DEVIATION

As noted above, 65 out of 235 cases had deviations. However, some cases had more than one deviation. There was a total of 72 deviations listed in the case file. By far, the most frequent deviation was "other non-specific" deviation with a count of 49. Second was parenting time at 6; third, visitation related travel expenses at 4; life insurance, other health related insurance, and low-income deviation each had 3; and extraordinary education expenses and high income each had 2 deviations. All other deviation factors posted at zero and were not used in the case sample.

Exhibit 3.



NON-SPECIFIC DEVIATIONS

Given that the vast majority of deviations fell in this category, one would think it would draw significant discussion in the official report. However, there was no discussion. Possibly, this was due to lack of detail available to the Commission—this issue also was not discussed.

At a minimum, the high frequency of non-specific deviations suggests that changes should be made for the next quadrennial guideline review for the case study. Data collected should be for what the non-specific deviation actually was—giving each a “name.” Could a non-specific deviation have been payment for an older child’s car? Could it have been for an existing child support order that was not pre-existing (only orders entered before the original entry or start of the case before the court can be a presumptive adjustment to income)? Listing non-specific deviations by individual name is the only way that the data can be used to evaluate potential improvement in the presumptive formula.

LOW-INCOME DEVIATION

Sometimes, it is not what occurred that matters but what does NOT occur that matters. Out of the 235 sample cases, there were only 3 deviations for low-income situations. At face value, this suggests that courts do not see the presumptive awards as imposing an undue burden in these situations. However, slightly detailed analysis suggests otherwise—that low-income obligors frequently are left with too little income to live on after deducting the child support award from income. A key question is why weren't there far more than 3 deviations for the low-income factor?

The intent of the low-income deviation is to ensure that a low-income obligor has sufficient income left over after paying an award to cover basic living needs.

Additionally, there is no built-in calculation in the child cost schedule to ensure that the child support award leaves the obligor with income to meet minimal needs. The child cost schedule is known by economists to overstate child costs at low income levels due to the Consumer Expenditure Survey's (the Bureau of Labor Statistics annual study of consumer spending that is the foundation of the child cost schedule) previous underreporting of income and overstatement of spending. More recently, the BLS has partially corrected these problems but these corrections were not taken into account with Georgia's cost schedule. Other factors lead to an overstatement of child costs in Georgia's schedule but that is beyond the current discussion.

What is a standard measure of minimal income needed to cover basic living needs? A frequently used measure is the U.S. Department of Health and Human Services' Poverty Guidelines. These guidelines provide measures of income needed for covering basic needs. The income level varies according to the number of persons (adults and children) in a household. Typically in many states, the single person measure is used as a benchmark for minimal needs income for evaluation of ability to pay child support in low-income situations.

This case study was conducted in 2014 and was based on cases with orders entered in 2013. Therefore, the 2013 Poverty Guideline income for one person is the appropriate benchmark amount. For 2013, this was \$11,490 in annual gross income or \$957.50 per month.⁵ This often is called the poverty threshold.

A simple calculation gives a good indication of whether the child support payor is left with income for basic needs. This would be the noncustodial parent's gross income minus the child support award (the basic amount and, if applicable, the portion for health insurance premiums and child care expenses) minus the poverty threshold income. The question is whether the calculation leaves the obligor with a positive amount of income (or at least zero after the deductions) or whether the result is negative. A negative figure shows that the presumptive award pushes the obligor below the poverty level.

Many states have guideline formulas to evaluate ability to pay of the obligor with the benchmark being exactly 100 percent of the poverty threshold. Other states use a benchmark that is somewhat higher than the 100 percent level—such as 110 percent or 120 percent. These modestly higher benchmarks are used so that available income is not left at purely "rock bottom" levels and also to take into account that the obligor has expenses for the child on a part-time basis when exercising visitation. The following table shows the dollar amounts for these alternative benchmark income levels for minimal income.

⁵ See on the web:

<https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references>

Exhibit 4.

U.S. HHS Poverty Guideline, 2013, One Person

	<u>100 Percent</u>	<u>110 Percent</u>	<u>120 Percent</u>
Annual	\$11,490.00	\$12,639.00	\$13,788.00
Monthly	\$957.50	\$1,053.25	\$1,149.00

This paper's analysis evaluates the number of cases in which the obligor is left with income below these three benchmarks. Cases with no income for either parent were deleted from this section of analysis. This reduced the number of cases to 230 from the full sample of 235.

Starting with the NCP's gross income and then subtracting the NCP's total obligation (cash award plus any NCP direct pay for the children's health insurance premium plus direct pay for child care covered by the NCP), 54 of the 230 cases had NCP's with obligations that pushed them below 100 percent of the poverty guideline. This is 23.5 percent of the sample.

Raising the bar for basic needs income to 110 percent and 120 percent of the poverty guideline, 90 cases and 106 cases, respectively, resulted in NCP's having income below these poverty benchmarks. Using the 120 percent benchmark, a whopping 46.1 percent of the 230 case sample had child support obligations imposed by the court that resulted in income less than needed to meet basic needs.

Remember, the poverty guideline is for one person—an adult. It does not take into account any costs for visitation that the NCP would be expected to incur.

Exhibit 5.

Cases with Income Less Obligation Below Benchmark Poverty Level

Total Cases	100 Percent	110 Percent	120 Percent
230	54	90	106
% of Total	23.5%	39.1%	46.1%

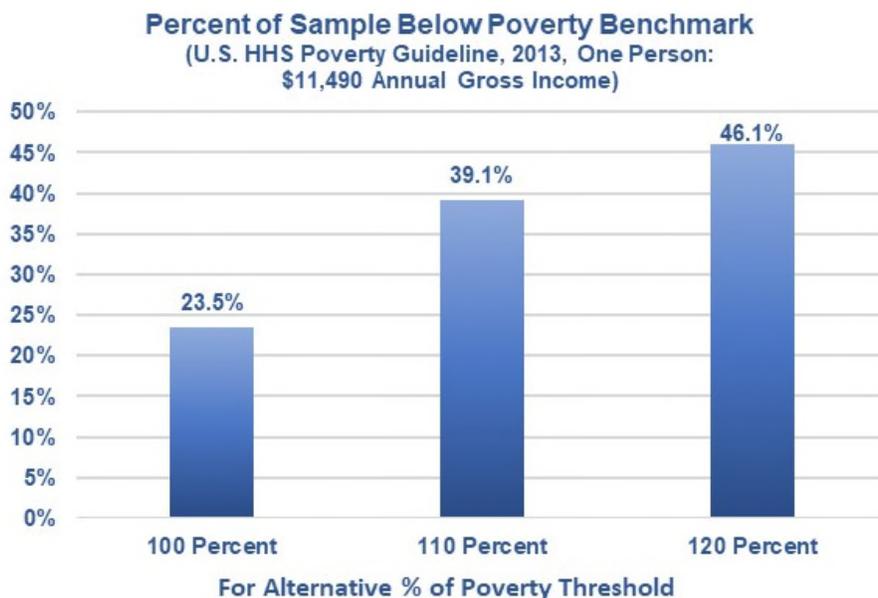
Comparing gross income less award obligations to poverty guidelines indicates that Georgia's approach to low-income deviations is not working. There were less than a handful of low-income deviations. In contrast, slightly more detailed numerical analysis shows a very significant percentage of obligors having negative available income after deducting awards and poverty threshold income from gross income. This means awards left a high number of obligors with less than poverty threshold income to meet basic needs expenses. This conclusion is far more alarming than merely noting that the study showed few low-income deviations. Clearly, merely noting few low-income deviations in the case study data missed the point of the case study data.

Why is there such a discrepancy between few low-income deviations and a showing of many obligors being pushed below the poverty level? A review of guidelines' methodology is strongly suggestive that the guidelines' approach falls well short of intent.

First, the method of addressing low-income situations is not presumptive, it is a deviation. This means the court does not automatically address low-income situations and evaluate whether the obligor has the ability to pay the presumptive award. The obligor must go through proper procedure

and request a deviation or the court must take the initiative on its own motion. Is it reasonable to expect a low-income obligor to have the resources (knowledge and money) to request a deviation that meets proper procedure? Based on the evidence from the case study, with so many obligors pushed below the poverty threshold, the answer is that using a deviation to address low-income situations and ensure ability to pay does not work. Georgia needs to adopt a presumptive formula to ensure ability to pay an award in all income situations—not just low-income situations. Even in moderate income situations, circumstances such as high premiums for health care insurance and child care expenses can result in awards that can leave moderate income obligors below the poverty level.

Exhibit 6.



Although the Commission recommended portions of Senate Bill 282 during the 2013-2014 which was enacted into law, the related changes merely simplified somewhat the process of deviating with the low-income factor. Addressing a low-income situation still requires properly applying a deviation—even if at the court’s own motion. No specific guidance was given on how to apply a low-income deviation. No numeric benchmark or formula was put into the child support guidelines. Senate Bill 282 likely is to have little impact on ensuring ability to pay in low-income situations. Also, this modest improvement in procedure falls short of new federal regulatory requirements.

What can Georgia change on this issue? For states using formulas to address low-income issues, two general approaches are used. For evaluation of ability to pay in low income situations, there are two primary approaches by states using a numeric adjustment:

- 1) bottom line calculation in the child support worksheet, and
- 2) a self-support reserve is built into the child cost table.

The bottom line approach is to compare an initial estimate of child support to be paid with net income needed for basic needs. The award cannot exceed an amount that pushes a parent’s available income below basic needs income. Rephrased, the child support award can only come out of income that is in excess of basic needs income. Ability to pay is income above the self-support level of income.

This ability to pay calculation does not specifically take into account expenses incurred for a noncustodial parent’s time with the children.

The approach using a built-in self-support reserve essentially makes the self-support calculation within the child cost table so that after a presumed minimum award, the child support award is only taken out of income above a self-support level of income for the noncustodial parent. However, this approach only evaluates self-support needs to the calculation basic child support—not presumptive expenses outside basic costs. Adjustments to the cost table do not reflect the impact of health care insurance or child care expenses.

CHILD CARE TAX CREDIT DEVIATION

Again, the big issue is what does not happen. Out of 235 cases overall, there were no deviations for the child care tax credit. Of course, the important comparison should be with the number of cases in which child care expenses were included in the award calculation. More notably, the cases should be narrowed to those in which the custodial parent covers day care expenses. Only the custodial parent can claim the federal child care tax credit. Otherwise, there is no cost offset to share with the noncustodial parent. Additionally, the case sample should be narrowed further to situations in which the custodial parent likely has enough income for the child care tax credit to make a difference after applying standard deductions, exemptions, and child tax credits (different from child care tax credits). This income figure varies by the number of children and for analysis purposes (rough estimate), an income figure that leaves some cost offset from the child care tax credit would be roughly \$2,000 gross income per month. This would be applicable for cases with two children incurring child care costs. For one child, the income threshold would be lower and for more than two children, the income threshold would be higher.

As seen below, from the case sample, 28 cases involved a custodial parent that covered work-related childcare. There were 88 cases in which the custodial parent had gross monthly income of \$2,000 or more. The overlap (CP covering childcare and had \$2,000 or more in income) was for 18 cases. For those 18 cases, the custodial parent likely qualified for childcare tax credits but none of those cases had a deviation for childcare tax credits that would have the noncustodial parent share in the cost offset.

The fact that the case study does not find one single deviation for the child care tax credit suggests that stronger language should be added to the guidelines on this issue. One consideration for legislative change might be to presumptively include the child care tax credits in the award calculation.

Exhibit 7.

Child Care Tax Credit Deviation

	Number of Cases
Cases, CP Covers Work-Related Childcare	28
CP Income Equal or Greater than \$2,000/Mo.	88
CP Covers WRC & Income = or > \$2,000/Mo.	18
Number of Cases with Child Care Tax Credit Deviation	0

First, it should be noted that the cost offset from child care tax credits can be significant. If the child care tax credit is not part of the award calculation then the net cost is not proportionally shared by both parents. Instead, the noncustodial parent overpays and the custodial parent underpays a share of after-tax costs.

The IRS form for calculating the childcare tax credit is IRS Form 2441. This form shows the percent credit that the custodial parent receives. The percentage varies by earned income. "Line 7" below typically is simply earned income of the custodial parent. From IRS Form 2441, calendar 2016, Line 8:

Enter on line 8 the decimal amount shown below that applies to the amount on line 7. ["Decimal amount" is the percentage credit applied to childcare expenses.]

Exhibit 8.

If line 7 is:			If line 7 is:		
Over	But not over	Decimal amount is	Over	But not over	Decimal amount is
	\$0—15,000	.35		\$29,000—31,000	.27
	15,000—17,000	.34		31,000—33,000	.26
	17,000—19,000	.33		33,000—35,000	.25
	19,000—21,000	.32		35,000—37,000	.24
	21,000—23,000	.31		37,000—39,000	.23
	23,000—25,000	.30		39,000—41,000	.22
	25,000—27,000	.29		41,000—43,000	.21
	27,000—29,000	.28		43,000—No limit	.20

The custodial parent can receive a credit as high as 35 percent of childcare expenses but no lower than 20 percent.

To find IRS Form 2441 and instructions at the IRS web site, go to irs.gov. Click the link for "Forms and Publications." Then, under "Download forms and publications by:," click "Form and Instruction number." Look for the form numerically with the year (i.e., 2016) as the leading information, followed by Form 2441.

Example of Deviation for Childcare Tax Credit

The math for this deviation is not complicated. It tracks IRS Form 2441. The "hardest" part of the calculation is knowing the custodial parent's earned income for the year. This is basically W2 income. If the custodial parent is married and files taxes jointly, the spouse's W2 income needs to be known. Neither is hard to get.

Example Case Facts:

- Custodial parent's W2 annual income: \$36,000 (or \$3,000 monthly)
- Custodial parent is unmarried.
- Two children qualify for childcare tax credits.
- Custodial parent pays \$500 per month for childcare or \$6,000 annually.
- For calculating how much to share the childcare tax credit, the noncustodial parent also earns \$36,000 annually.

The below exhibit shows the significance of the childcare tax credit in very moderate income situations. This exhibit essentially shows the calculations in the IRS Form 2441.

Exhibit 9.

Deviation Worksheet for Child Care Tax Credit	
For the Custodial Parent Only	
	Annual Data
1. Qualified child care expenses	\$6,000.00
2. Number of qualified children. Must be at least 1.	2
3. Ceiling amount of Qualified expenses for credit (\$3,000 for 1 child; \$6,000 for 2 or more)	\$6,000.00
4. Earned income (annual) of parent claiming child tax credit	\$36,000.00
5. If the parent files income taxes as married filing jointly, enter spouse's annual earned income. If not, enter parent's earned income.	\$36,000.00
6. Enter the smallest of lines 1, 3, 4, and 5.	\$6,000.00
7. Enter IRS adjusted gross income from Form 1040 Line 38 or Form 1040NR Line 36.	\$36,000.00
8. Enter the decimal amount from the percentage credit table that applies to the amount on Line 7.	0.24
9. Multiply Line 6 by the decimal amount on Line 8.	\$1,440.00
NOTE: Lines 10 and 11 are needed only for low income custodial parents or those not expected to pay income taxes. Can be skipped if income taxes exceed child care tax credits.	
10. Federal income taxes due, excluding foreign tax credits. IRS Form 1040, Line 46, minus amount on Form 1040, Line 47. Or Form 1040NR, Line 43, minus Form 1040NR, Line 44.	Omitted, not low income
11. Credit for child care expenses. Enter the smaller of Line 9 or Line 10.	\$1,440.00
Calculating the Deviation Adjustment Amount for Child Support Schedule E	Monthly Data
12. Child care tax credit, monthly (Line 9 divided by 12)	\$120.00
13. Non-custodial parent's share of combined adjusted income	50.00%
14. Non-custodial parent's share as a deviation amount	\$60.00
15. Enter in Line 5 of Schedule E for noncustodial parent:	-\$60.00

Without a deviation, the childcare expense is \$500 per month and the custodial parent would be paying 50 percent of this, or \$250.

The childcare tax credit is \$120 per month and the noncustodial parent should get 50 percent of this cost offset. The deviation is minus \$60.00 for the noncustodial parent. The noncustodial parent pays \$190 toward childcare per month. Of the remaining \$380, each of the two parents covers 50 percent.

Importantly, all childcare expenses are covered. The federal government pays for \$120 of the monthly \$500.

Exhibit 10.

Child Care Tax Credits (CCTC) Estimates from Case Study Sample										
CP Monthly Gross	CP Yearly Gross	# Children	CP Pays \$ WRC, Monthly	CP Pays \$ WRC, Yearly	CCTC If 1 Child in CC, Monthly	CCTC If 1 Child in CC, Yearly	% Reduction in Child Care Expense	CCTC If 2 Children in CC, Monthly	CCTC If 2 Children in CC, Yearly	% Reduction in Child Care Expense
\$5,267.00	\$63,204.00	1	\$300.00	\$3,600.00	\$50.00	\$600.00	16.7%			
\$3,200.00	\$38,400.00	1	\$125.00	\$1,500.00	\$28.75	\$345.00	23.0%			
\$3,333.00	\$39,996.00	1	\$176.00	\$2,112.00	\$38.72	\$464.64	22.0%			
\$2,080.00	\$24,960.00	1	\$243.75	\$2,925.00	\$73.13	\$877.56	30.0%			
\$3,166.67	\$38,000.04	1	\$522.00	\$6,264.00	\$57.50	\$690.00	11.0%			
\$4,347.72	\$52,172.64	1	\$287.50	\$3,450.00	\$50.00	\$600.00	17.4%			
\$2,666.67	\$32,000.04	1	\$138.33	\$1,659.96	\$35.97	\$431.64	26.0%			
\$2,090.00	\$25,080.00	1	\$275.00	\$3,300.00	\$72.50	\$870.00	26.4%			
\$2,338.15	\$28,057.80	1	\$120.00	\$1,440.00	\$33.60	\$403.20	28.0%			
\$3,158.57	\$37,902.84	1	\$671.67	\$8,060.04	\$57.50	\$690.00	8.6%			
\$3,348.35	\$40,180.20	2	\$150.00	\$1,800.00	\$33.00	\$396.00	22.0%	\$33.00	\$396.00	22.0%
\$2,750.00	\$33,000.00	2	\$307.67	\$3,692.04	\$62.50	\$750.00	20.3%	\$76.92	\$923.04	25.0%
\$2,169.30	\$26,031.60	2	\$283.33	\$3,399.96	\$72.50	\$870.00	25.6%	\$82.17	\$986.04	29.0%
\$6,045.00	\$72,540.00	2	\$1,192.83	\$14,313.96	\$50.00	\$600.00	4.2%	\$100.00	\$1,200.00	8.4%
\$2,166.67	\$26,000.04	2	\$137.50	\$1,650.00	\$39.88	\$478.56	29.0%	\$39.88	\$478.56	29.0%
\$6,796.00	\$81,552.00	2	\$1,126.00	\$13,512.00	\$50.00	\$600.00	4.4%	\$100.00	\$1,200.00	8.9%
\$3,804.67	\$45,656.04	3	\$79.17	\$950.04	\$15.83	\$189.96	20.0%	\$15.83	\$189.96	20.0%
\$4,607.34	\$55,288.08	3	\$107.50	\$1,290.00	\$21.50	\$258.00	20.0%	\$21.50	\$258.00	20.0%

Exhibit 11.

For 1-Child & 2 Children Cases			
	CCTC If 1 or 2 Children in CC, Monthly	CCTC If 1 or 2 Children in CC, Yearly	% Reduction in Child Care Expense
Average	\$46.83	\$561.92	19.7%
Median	\$50.00	\$600.00	21.2%

Exhibit 12.

For Just 1-Child Cases			
	CCTC If 1 Child in CC, Monthly	CCTC If 1 Child in CC, Yearly	% Reduction in Child Care Expense
Average	\$49.77	\$597.20	20.9%
Median	\$50.00	\$600.00	22.5%

Exhibit 13.

For Just 2-Children Cases			
	CCTC If 2 Children, Monthly	CCTC If 2 Children, Yearly	% Reduction in Child Care Expense
Average	\$58.66	\$703.95	20.3%
Median	\$58.40	\$700.80	21.0%

Approaches by States to Presumptively Include Childcare Tax Credits

There are two broad approaches by states that presumptively include child care tax credits as part of child care costs (with the credits being cost offsets). Some states have language that child care expenses are to be net of child care tax credits. A number of other states automatically reduce the gross amount by a fixed percentage (typically reducing by 25 percent) if the custodial parent's earned income is at least a threshold amount that increases with the number of children. This threshold amount takes into account that at modest incomes custodial parents will not have taxable income left over after deductions, exemptions, and child tax credits for the child care tax credit to apply. Still, these approaches to presumptively include child care tax credits are applied without much difficulty on a daily basis in other states.

PARENTING TIME DEVIATION

Again, what stood out with this deviation is that there were so few cases with this deviation. There were only 6 deviations for parenting time. Why does this stand out? The underlying fact of the child cost schedule is that it assumes that the noncustodial parent has no parenting time. If the underlying assumption is no parenting time and the noncustodial parent has a notable amount of parenting time, shouldn't there be a deviation for parenting time to ensure the child is supported in both households and to ensure that both parents share in the other parent's child expenses? Under these circumstances, shouldn't the parenting time deviation occur in a very high percentage of cases? Certainly, there are cases in which it is doubtful that the noncustodial parent is or will exercise parenting time. But for the large majority of noncustodial parents, a parenting time adjustment is equitable since the cost schedule assumes that the custodial parent incurs 100 percent of standard costs and the noncustodial parent incurs zero percent.

Some of the guidelines statute language is contradictory on explaining the actual underlying facts regarding parenting time costs in the cost schedule.

Additionally, this deviation factor is further elaborated in OCGA § 19-6-15(i)(2)(K)(i) and (ii):

(K) *Parenting time.*

(i) The child support obligation table is based upon expenditures for a child in intact households. The court may order or the jury may find by special interrogatory a deviation from the presumptive amount of child support when special circumstances make the presumptive amount of child support excessive or inadequate due to extended parenting time as set forth in the order of visitation or when the child resides with both parents equally.

(ii) If the court or the jury determines that a parenting time deviation is applicable, then such deviation shall be included with all other deviations and be treated as a deduction.

The parenting time deviation probably is the most controversial deviation listed in the child support guidelines. The code contains some implied misinformation regarding the underlying facts of the guidelines on assumed parenting time. Also, a pure and full parenting time adjustment has a far larger impact on an award than many expect. Probably the two biggest points regarding making a parenting time deviation argument is to provide the underlying facts as documented in studies and to provide flexibility to the court in terms of how much to deviate.

Examining specific code, one should note that this specific deviation factor is for "extended" parenting time or for equal parenting.

THE UNDERLYING FACTS FROM THE ECONOMIC STUDY AS A STARTING POINT FOR A PARENTING TIME DEVIATION

In order to make an economically sound deviation calculation for the noncustodial parent's parenting time, one needs to know the correct "starting point" for the deviation calculation. That is, it makes a difference how much the Child Support Obligation Table assumes for the noncustodial parent's parenting time.

The statute at face value indicates that parenting time is a specific deviation when there is extended parenting time (implicitly for the noncustodial parent) or when the child lives with both parents equally. The inference is that the Child Support Obligation Table assumes "standard" parenting time for the noncustodial parent.

One of the key issues in this “explanation” of this deviation factor is what “special circumstances” means and what extended parenting time means. According to traditional case law on rebutting presumptions, special circumstances would mean when case facts differ from presumed facts—such as the presumed facts of the underlying study. So, while the statutory language leans toward assuming that the parenting time deviation takes place only when there is extended parenting time or equal parenting, the true baseline would be a comparison of case facts to presumed facts as found in the underlying study.

Therefore, what are the true underlying facts of the guidelines based on the underlying study of Income Shares as related to parenting time?

UNDERLYING FACT FOR REBUTTING THE PRESUMPTIVE AWARD ON THE PARENTING TIME DEVIATION FACTOR: THE INCOME SHARES CHILD SUPPORT OBLIGATION TABLE ASSUMES ZERO PARENTING TIME FOR THE NONCUSTODIAL PARENT

The factual baseline for rebutting the presumptive award on the parenting time deviation factor is that the Income Shares child cost schedule assumes zero parenting time for the noncustodial parent. If the noncustodial parent has ANY parenting time at all, that case fact differs from the underlying presumed fact. This is documented below.

STUDIES UNDERLYING THE INCOME SHARES METHODOLOGY CONSISTENTLY STATE THAT NO CHILD COSTS OF THE NONCUSTODIAL PARENT ARE TAKEN INTO ACCOUNT IN THE INCOME SHARES PRESUMPTIVE CHILD COST SCHEDULE

Does Georgia’s presumptive child cost schedule include built in adjustments for a noncustodial parent’s standard parenting time?

What are the key characteristics of Income Shares cost tables? The developer of Income Shares, Robert G. Williams, specifically states in the original manual issued by the federal government for developing child support guidelines that the Income Shares costs tables are based on intact family data and are allocated between the parents according to intact family costs. That is, all of the child costs in the cost tables are assumed to be in one household—there are no built-in parenting time adjustments for a second household.

The Income Shares model calculates child support as the share of each parent’s income estimated to have been allocated to the child if the parents and child were living in an intact household. A basic child support obligation is computed based on the combined income of the parents (replicating total income in an intact household).⁶

The fact that the cost table is based on intact family data is stated in the guidelines themselves. This is seen in OCGA § 19-6-15(i)(2)(K)(i):

(K) *Parenting time.*

(i) The child support obligation table is based upon expenditures for a child in intact households. ...

The economic consultant that developed Georgia’s child cost schedule specifically states that Georgia’s child cost schedule does not take into account any parenting time costs of the custodial parent.

The schedules do not factor in an adjustment for the obligor’s direct expenditures on the

⁶ Robert G. Williams, *Development of Guidelines for Child Support Orders*, U.S. Department of Health and Human Services, Office of Child Support Enforcement, September 1987, p. II-68.

child in shared physical custody situations or during routine visitation.⁷

Policy Studies, Inc. (PSI), the consulting company that developed original Income Shares guidelines, documented that visitation costs of a noncustodial parent are not taken into account in Income Shares cost schedules. Examples are found in reports by PSI. From *Economic Basis for Updated Child Support Schedule, State of Oregon, Salem, Oregon, December 31, 2001*, submitted to Oregon Department of Justice, Division of Child Support; submitted by Policy Studies Inc., Denver, Colorado, p. 40:

Visitation costs are not factored into the schedule. Since the Schedule is based on expenditures for children in intact households, there is no consideration given for visitation costs. Taking such costs into account would be further complicated by the variability in actual visitation patterns and the duplicative nature of many costs incurred for visitation (e.g. housing, home furnishings).

**“Visitation costs are not factored into the schedule. Since the Schedule is based on expenditures for children in intact households, there is no consideration given for visitation costs.”
Policy Studies, Inc. on whether standard visitation is taken into account in the Income Shares child cost schedule.**

There is no built-in adjustment to the Child Support Obligation Table for any parenting time expenses incurred by a noncustodial parent. Also, there is no built-in adjustment for the custodial parent’s reduction in child costs when the noncustodial parent exercises parenting time. In fact, it is mathematically impossible to correctly build in a parenting time adjustment in the BCSO because an appropriate adjustment would be based on both the parents’ shares of parenting time and the parents’ shares of combined income. While the cost table would “know” combined income for a given case, it could not know in advance what the parents’ shares of combined income would be.

A recent update for the Income Shares child cost schedule for the state of Vermont corroborates that these cost tables, as used by Georgia, do not have built-in adjustments for a noncustodial parent’s parenting time.

The existing and updated Guideline Tables do not factor in an adjustment for the obligor’s direct expenditures on the child during periods of split and shared custody.⁸

⁷ *Economic Basis for Updating a Child Support Schedule for Georgia*, Submitted to: Georgia Administrative Office of the Courts, submitted by: Center for Policy Research, Denver, CO, Jane Venohr, April 11, 2011, p. 33.

⁸ *Economic Basis of Updated Child Support Tables for Vermont*, Prepared for: Office of Child Support Department for Children and Families Vermont Agency of Human Services, Jane Venohr, Center for Policy Research Denver, CO, February 27, 2015, p. 18.

COMPARISON OF CASE STUDY PARENTING TIME DEVIATIONS TO ONE STATE'S PRESUMPTIVE ADJUSTMENT

From the 2013 data used in the 2014 case study, only six of the 235 cases had a parenting time deviation. Certainly, from a statistical perspective, a sample of six cases that had parenting time deviations is a truly small sample. Nonetheless, some lessons might be learned from examining each case and comparing the parenting time deviation amount to a parenting time adjustment that is presumptive from another state.

Arizona is one state with a presumptive parenting time adjustment. In recent years, the Arizona formula has gained attention because its adjustment pattern is appealing to many. The adjustment starts with a low amount of parenting time but the adjustment is very gradual. The credit to the obligor only becomes sizeable after the noncustodial parent has a large share of parenting time. The Arizona primary table for parenting time credit follows—Arizona's Table A for parenting time credit. The Arizona child support guidelines give guidance on this issue.

As the number of parenting time days approaches equal time sharing (143 days and above), certain costs usually incurred only in the custodial household are assumed to be substantially or equally shared by both parents. These costs are for items such as the child's clothing and personal care items, entertainment and reading materials. If this assumption is rebutted by proof, for example, that such costs are not substantially or equally shared in each household, only Parenting Time Table B must be used to calculate the parenting time adjustment for this range of days.⁹

But Table A is generally used in Arizona. For Table A, there is a continuous and graduated increase in the size of the parenting time percentage, starting with as few as 4 parenting time days for the noncustodial parent. The adjustment percentage is applied to the total BCSO (Basic Child Support Obligation) application—standard child costs from the child cost schedule.

Exhibit 14.

PARENTING TIME, TABLE A	
Number of Parenting Time Days	Adjustment Percentage
0 - 3	0.0%
4 - 20	1.2%
21 - 38	3.1%
39 - 57	5.0%
58 - 72	8.5%
73 - 87	10.5%
88 - 115	16.1%
116 - 129	19.5%
130 - 142	25.3%
143 - 152	30.7%
153 - 162	36.2%
163 - 172	42.2%
173 - 182	48.6%

⁹ Arizona Child Support Guidelines, Adopted by the Arizona Supreme Court, effective July 1, 2015, p. 13.

A comparative table is constructed from the six cases. The parenting time deviation amount is shown along with how much it is a percent deviation down from the BCSO amount. One does not know from the case study what the NCP's parenting time percentage is although it should be in the court order. See OCGA § 19-6-15(c)(2)(F) for this required finding.¹⁰ But one can assume alternative percentage for NCP parenting time and compare would the reduction to the basic award would be if based on the Arizona parenting time formula.

The BCSO amount was calculated by using the state's Excel child support worksheet and entering each parent's adjusted gross income and the number of children. The BCSO amount was not found in the case study data.

Exhibit 15.

Six Cases: Parenting Deviation vs Deviations If Based on Arizona Formula Using Alternative % for NCP Parenting Time									
Case	PT Dev. As % BCSO	Child Support Obligation for NCP as Found in Order	PT Deviation	25%	30%	35%	40%	45%	50%
1	4.2%	\$568.00	-\$50.60	-\$194.00	-\$194.00	-\$235.00	-\$369.00	-\$508.00	-\$585.00
2	49.9%	\$150.00	-\$411.00	-\$133.00	-\$133.00	-\$161.00	-\$253.00	-\$348.00	-\$400.00
3	40.0%	\$0.00	-\$596.36	-\$240.00	-\$240.00	-\$291.00	-\$458.00	-\$629.00	-\$725.00
4	75.2%	\$0.00	-\$1,265.56	-\$271.00	-\$271.00	-\$328.00	-\$517.00	-\$710.00	-\$818.00
5	1.7%	\$1,000.00	-\$22.00	-\$215.00	-\$215.00	-\$260.00	-\$409.00	-\$562.00	-\$647.00
6	9.7%	\$1,753.00	-\$226.00	-\$373.00	-\$373.00	-\$452.00	-\$712.00	-\$978.00	-\$1,127.00

¹⁰ OCGA § 19-6-15(c)(2)(F):

(c) *Applicability and required findings.*

....

(2) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent authorized by subsection (e) of this Code section. In the final judgment or decree in a divorce case in which there are minor children, or in other cases which are governed by the provisions of this Code section, the court shall:

....

(F) Specify the amount of the noncustodial parent's parenting time as set forth in the order of visitation;

Exhibit 16.

Mother's Adjusted Income	Father's Adjusted Income	Combined Adjusted Income
\$4,509.42	\$5,000.00	\$9,509.42
\$1,256.00	\$3,053.84	\$4,309.84
\$4,214.34	\$2,806.92	\$7,021.26
\$2,846.60	\$3,938.80	\$6,785.40
\$1,247.00	\$4,178.00	\$5,425.00
\$1,556.00	\$11,000.00	\$12,556.00

Simple interpretations for each case can be made.

Case 1 has a very minor adjustment even though both parents' incomes are about equal. One can only assume that the NCP has a very small amount of parenting time or the court misunderstood the underlying facts with a standard parenting time award having about a \$194 downward deviation.

Case 2 has a parenting time deviation of essentially 50 percent. Likely, this was an equal parenting situation. The deviation was about right by the Arizona formula. The reduction still left some final award since incomes were not equal. The remainder was about two-thirds BCSO and the rest for health insurance.

Case 3 has a zero cash award with the PT deviation 40 percent of the BCSO. The NCP's share of combined income is 40 percent. This deviation appears to be consistent with a parenting time formula.

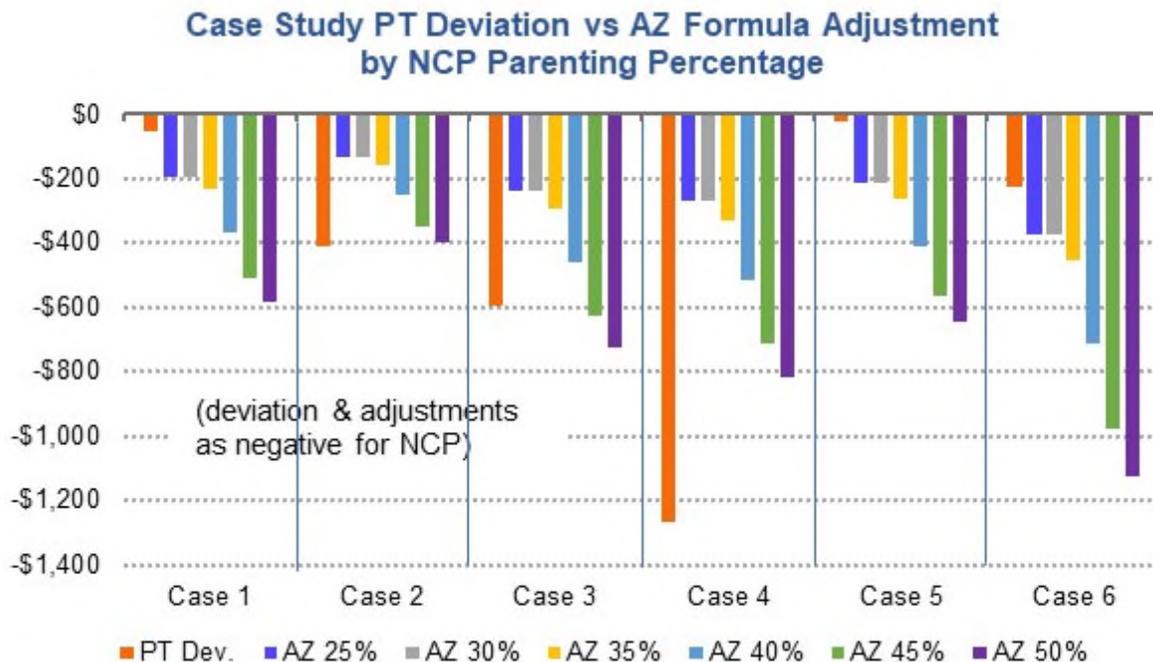
Case 4 has a zero cash award. But the father has somewhat higher income. What stands out is that the downward deviation of \$1,265.56 is huge. It is 75.2 percent of the BCSO and supposedly the parenting time deviation should never be more than 50 percent credit of the BCSO. At first glance, the court made a huge mistake in how it applied a parenting time deviation. A closer look, however, suggests court creativity and perhaps not a mistake. Both parents are listed as NCP. What is curious is that this frees up the Excel child support worksheet to have deviations in both parents' Schedule E entries. Recall that only deviations for the listed NCP actually flow through in the award calculations. Reading between the lines (and guessing and not actually having the worksheet in hand), the court could have entered a parenting time deviation of \$536.06 for the mother and \$729.50 for the father (combined PT deviation of \$1,265.56). With the father paying \$92.50 for health insurance, these deviations result in Final Monthly Child Support Amount of \$208.00 for the mother to pay the father and \$208.00 for the father to pay the mother—a zero cash award. While the deviation components may look odd, the use of both parents as NCP and how the numbers play out lead this report's author to nominate this case for this year's Most Creative Child Support Award Calculation award.

Case 5 has a negligible parenting time deviation. From the limited case information, we only know that the CP was low income as a notable fact. The deviation may have been an appropriate amount based on incomes and the parenting time shares. But the parenting time shares are not found in the case study.

Case 6 has a modest parenting time deviation but the father has a dramatically higher income than the mother. The deviation amount may or may not have been appropriate by formula.

Overall, from only six cases, it is apparent that the parenting time shares should be a part of the case study information. But the key question remains—why were there not dramatically more deviations for parenting time?

Exhibit 17.



Guideline code language may be adversely impacting a court’s willingness to consider a parenting time deviation. It would be appropriate that the Child Support Commission subcommittee on statutory language submit to the legislature a correction on statute text so that portions related to parenting time do not conflict with underlying facts and do not create hurdles to a fair opportunity at rebuttal. Or the Commission could recommend corrective language related to underlying facts and recommend to the legislature a presumptive parenting time adjustment.

CONCLUSIONS

The case study data clearly show that courts are not applying key deviation factors when case data indicate that they should be doing so. Deviations for low income, childcare tax credits, and parenting time are dramatic “no shows” in court orders.

Notably more attention needs to be given low income situations since new federal regulations focus on ensuring an obligor’s ability to pay. See 45 CFR 302.56. Implementation of a formula for ability to pay likely would help to ensure that Georgia complies with new federal regulations.

Has lack of application of these deviations become such that the guidelines are irrebuttable in operation on these issues? Irrebuttable in operation is just as much a due process violation as statutory text that is irrebuttable. See *Manley v. Georgia*, 279 U.S. 1, 49 S.Ct. 215 (1929). A presumption that is irrebuttable or denies a fair opportunity for rebuttal violates the due process clause of the Fourteenth Amendment of the U.S. Constitution.

A statute creating a presumption that is arbitrary or that operates to deny a fair opportunity to repel it violates the due process clause of the Fourteenth Amendment.

Does language in the guidelines deny a “fair opportunity” for rebuttal—especially for the parenting time issue? Denial of a fair opportunity for rebuttal also is a due process issue. Key issues in the guidelines are

operationally irrebuttable according to the case study data and statutory language denies a fair opportunity for rebuttal. If courts are unwilling to apply low income, childcare tax credits, and parenting time deviations, then the Commission should recommend statutory changes to make adjustment formulas presumptive for these issues. Guidelines' statutory language should be specifically reviewed for conflict with underlying facts of economic studies used for the child cost schedule and for when it acts as a hurdle for a fair opportunity for rebuttal. After such a review of statutory language, changes should be made to increase use of presumptive formulas for these factors and to remove language barriers to a fair opportunity for rebuttal.

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APPENDIX A

45 CFR 302.56

Amendment(s) published December 20, 2016, in 81 FR 93562

Effective Date: January 19, 2017

§302.56 Guidelines for setting child support orders.

(a) Within 1 year after completion of the State's next quadrennial review of its child support guidelines, that commences more than 1 year after publication of the final rule, in accordance with §302.56(e), as a condition of approval of its State plan, the State must establish one set of child support guidelines by law or by judicial or administrative action for setting and modifying child support order amounts within the State that meet the requirements in this section.

(b) The State must have procedures for making the guidelines available to all persons in the State.

(c) The child support guidelines established under paragraph (a) of this section must at a minimum:

(1) Provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:

(i) Takes into consideration all earnings and income of the noncustodial parent (and at the State's discretion, the custodial parent);

(ii) Takes into consideration the basic subsistence needs of the noncustodial parent (and at the State's discretion, the custodial parent and children) who has a limited ability to pay by incorporating a low-income adjustment, such as a self-support reserve or some other method determined by the State; and

(iii) If imputation of income is authorized, takes into consideration the specific circumstances of the noncustodial parent (and at the State's discretion, the custodial parent) to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.

(2) Address how the parents will provide for the child's health care needs through private or public health care coverage and/or through cash medical support;

(3) Provide that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders; and

(4) Be based on specific descriptive and numeric criteria and result in a computation of the child support obligation.

(d) The State must include a copy of the child support guidelines in its State plan.

(e) The State must review, and revise, if appropriate, the child support guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support order amounts. The State shall publish on the internet and make

accessible to the public all reports of the guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.

(f) The State must provide that there will be a rebuttable presumption, in any judicial or administrative proceeding for the establishment and modification of a child support order, that the amount of the order which would result from the application of the child support guidelines established under paragraph (a) of this section is the correct amount of child support to be ordered.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the establishment or modification of a child support order that the application of the child support guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case will be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the child support guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's child support guidelines required under paragraph (e) of this section, a State must:

(1) Consider economic data on the cost of raising children, labor market data (such as unemployment rates, employment rates, hours worked, and earnings) by occupation and skill-level for the State and local job markets, the impact of guidelines policies and amounts on custodial and noncustodial parents who have family incomes below 200 percent of the Federal poverty level, and factors that influence employment rates among noncustodial parents and compliance with child support orders;

(2) Analyze case data, gathered through sampling or other methods, on the application of and deviations from the child support guidelines, as well as the rates of default and imputed child support orders and orders determined using the low-income adjustment required under paragraph (c)(1)(ii) of this section. The analysis must also include a comparison of payments on child support orders by case characteristics, including whether the order was entered by default, based on imputed income, or determined using the low-income adjustment required under paragraph (c)(1)(ii). The analysis of the data must be used in the State's review of the child support guidelines to ensure that deviations from the guidelines are limited and guideline amounts are appropriate based on criteria established by the State under paragraph (g); and

(3) Provide a meaningful opportunity for public input, including input from low-income custodial and noncustodial parents and their representatives. The State must also obtain the views and advice of the State child support agency funded under title IV-D of the Act.

APPENDIX B

45 CFR 302.56

Effective Prior to January 19, 2017

Guidelines for setting child support awards.

(a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.

(b) The State shall have procedures for making the guidelines available to all persons in the State whose duty it is to set child support award amounts.

(c) The guidelines established under paragraph (a) of this section must at a minimum:

(1) Take into consideration all earnings and income of the noncustodial parent;

(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation; and

(3) Address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with § 303.31 of this chapter.

(d) The State must include a copy of the guidelines in its State plan.

(e) The State must review, and revise, if appropriate, the guidelines established under paragraph (a) of this section at least once every four years to ensure that their application results in the determination of appropriate child support award amounts.

(f) Effective October 13, 1989, the State must provide that there shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines established under paragraph (a) of this section is the correct amount of child support to be awarded.

(g) A written finding or specific finding on the record of a judicial or administrative proceeding for the award of child support that the application of the guidelines established under paragraph (a) of this section would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case, as determined under criteria established by the State. Such criteria must take into consideration the best interests of the child. Findings that rebut the guidelines shall state the amount of support that would have been required under the guidelines and include a justification of why the order varies from the guidelines.

(h) As part of the review of a State's guidelines required under paragraph (e) of this section, a State must consider economic data on the cost of raising children and analyze case data, gathered through sampling or other methods, on the application of, and deviations from, the guidelines. The analysis of the data must be used in the State's review of the guidelines to ensure that deviations from the guidelines are limited.

(Approved by the Office of Management and Budget under control number 0960-0385)

[50 FR 19649, May 9, 1985; 50 FR 23958, June 7, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 56 FR 22354, May 15, 1991; 73 FR 42441, July 21, 2008]

APPENDIX C

FOR THE NEXT CHILD SUPPORT CASE STUDY: SUGGESTED IMPROVEMENTS FOR ITEMS TO COLLECT DATA

- ❖ Presumptive award: The 2013 study only listed the final award.
- ❖ Day care: If both parents are listed as providing, separate dollar amounts for each parent should be shown.
- ❖ Day care: number of children incurring day care expenses. Affects the potential day care tax credit deviation.
- ❖ Health insurance premiums: If both parents listed as providing, separate dollar amounts for each parent.
- ❖ Parenting time: the noncustodial parent's share of parenting time as required by statute to be in the order.
- ❖ Travel expenses for parenting time: List mileage between parents or each parent's city.
- ❖ Special expenses for child rearing: Include total amount entered in Schedule E for each parent, not just the deviation amount.
- ❖ Non-specific deviation: List each by name and dollar amount. Do for each deviation item under this category.

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