

## Cost Shares Child Cost Schedules, Underlying Issues, and Transitional Alternatives

Presentation to the  
Minnesota Child Support  
Task Force

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### Child Support Cost Schedules

- ❖ Child support cost schedules are a key part of child support guidelines in most states—including Minnesota.
- ❖ Cost schedules play a huge role in the size of child support awards. The schedule forms the starting point of the cost shared between parents.
- ❖ The impact is seen on the child, the custodial parent, and the noncustodial parent.
- ❖ Is more always better? Is there a “Laffer Curve” to child support awards? The analogy is from the 1980s when too high tax rates led to less revenue for government, not more.
- ❖ Some argue that when child support is too high, the receiving parent and child get less because the obligor cannot pay and finds ways to “leave the system” in whole or part.
- ❖ The argument continues—a reasonable and affordable child support award leads to the child actually receiving more money—not just being owed more money.

## Current Approaches to Child Cost Schedules

- ❖ The prevalent method of estimating child costs is generically called “Income Shares.”
- ❖ The economic meaning of Income Shares is that child costs are estimated indirectly using data from intact (married) households. The indirect measure is that child costs are the amount of money required to restore the parents’ standard of living after having a child as before having a child.
- ❖ The measure of well-being is the dollar level spent on adult clothes.
- ❖ There is disagreement over whether this methodology overestimates or underestimates actual child costs for intact families.
- ❖ There is no disagreement that spending on children in intact families is higher than based on two, single-parent households because the extra cost of a second house is not included. Higher overhead of two households leave less money for spending on the parents and the children.

## Current Approaches to Child Cost Schedules, Cont.

- ❖ Another approach to estimating child costs that is often discussed is the U.S. Dept. of Agriculture (USDA) approach.
- ❖ The USDA methodology does measure costs by major category (food, housing, clothing, etc.) which are then totaled.
- ❖ The two key shortcomings of USDA estimates as currently applied in child support guidelines are:
  - Estimates considered for child support guidelines are for intact families, and
  - Most components are not based on marginal or additional costs from child but are largely “per capita” costs. Family expenditures for a category are largely averaged between adults and child. This mixes adult costs with child costs.

## Current Approaches to Child Cost Schedules, Cont.

- ❖ A new method for estimating child cost is from a study by William Comanor and co-authors, Mark Sarro and Mark Rogers (CSR). Notably, the study measures “out of pocket” spending on children. This is a different definition of child costs from Rothbarth and USDA.
- ❖ The CSR approach is still experimental and under continued development.
- ❖ There are two key findings:
  - This measure of child costs is sharply lower than traditional measures, and
  - Unlike Income Shares, it recognizes that parents are limited by budget constraints. Specifically, it recognizes that parents shift spending between various items to pay for child costs. The budget constraint is alive and well in determining spending on children.

## The Cost Shares Approach to Estimating Child Costs

- ❖ Child costs should reflect the economic reality of divorce (or unwed situations). There are two households in which the parents and children reside.
- ❖ Child costs are based on the limitation of extra, second housing costs reducing discretionary income. Use of intact family data does not reflect case facts and is inappropriate.
- ❖ Both parents' self-support needs are addressed in the calculations.

## The Cost Shares Approach to Estimating Child Costs, Cont.

- ❖ The Cost Shares child cost schedule has been based on USDA data but heavily relying on single-parent household data.
- ❖ Adjustments have been made to estimate the marginal costs in expenditure categories (such as food, clothing).
- ❖ The lower estimated child costs are due both to using direct expenditures on a marginal cost basis and to not using intact family data.
- ❖ Minnesota can move to the Cost Shares approach in four steps:
  - 1) Add a second household adjustment to the current schedule or to a Rothbarth schedule,
  - 2) Incorporate a smoother parenting time adjustment,
  - 3) Retain consideration of sharing tax dependency exemptions or make presumptive, and
  - 4) Retain or improve self-support calculations.

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## First Step to Adapting to Cost Shares: Applying a 2<sup>nd</sup> Household Adjustment

- ❖ There are several economic deficiencies with the use of traditional Income Shares and USDA cost schedules.
- ❖ A large and easy to understand deficiency is the use of intact family data which assumes both parents live in the same house and split the costs of one set of utilities.
- ❖ Either MN's current USDA cost schedule can be adjusted to reflect the extra cost of maintaining two households instead of one. Or an Income Shares/Rothbarth table can be adjusted.
- ❖ Kansas already has a second household adjustment in its child cost schedule. While that state's concept is clear, its statistical methodology is hard to follow.
- ❖ A simple adjustment process is available (discussed below).

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## Why Should There Be a 2nd Household Adjustment?

- ❖ Child support should be based on actual ability to pay.
- ❖ Intact family data overstate true ability to pay.
- ❖ States traditionally have relied on the principle of “needs and ability to pay” for child support determination.
- ❖ An intact family standard for child costs does not pass the “common sense” test.
- ❖ Legal principles indicate that an intact family standard for child support is likely unconstitutional on a due process standard.

## Needs and Ability to Pay

- ❖ The case that most concisely states this standard may be *Scherberger v Scherberger*, 260 Ga. 635, 398 S.E.2d 363 (1990):

In all cases child support must be assessed by some calculation of the needs of the child and the ability of the parent to pay. *Clavin v. Clavin*, 238 Ga. 421 (233 S.E.2d 151) (1977). Any award, termination, or modification of child support without concern for those issues falls short of the mandate of the law.

- ❖ Pennsylvania statute bases child support determination on the needs of the child ability of the obligor to pay child support. See Pennsylvania Consolidated Statutes, 23 Pa.C.S.A. § 4322(a):

§ 4322. Support guideline.  
Statewide guideline--Child and spousal support shall be awarded pursuant to a Statewide guideline as established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly. The guideline shall be based upon the reasonable needs of the child or spouse seeking support and the ability of the obligor to provide support.

- ❖ Other states generally have such needs and ability to pay standards in either code or in appellate opinion.

## Intact Family Standard of Living for the Child: Passing the “Common Sense” Test or Not?

- ❖ Assume first that there are two parents that are married with one child.
- ❖ The mother and father each has a monthly gross income of \$4,000. The intact family standard of living for the parents and child is based on \$8,000 per month spent “under one roof.”
- ❖ Then assume that the parents divorce and set up two separate households. Each household has a standard of living based on \$4,000 per month in income. Each parent enjoys a standard of living based on \$4,000 in monthly income.
- ❖ However, the intact family standard of living presumption essentially states that the child has a legal right to an \$8,000 per month income standard of living.
- ❖ How does the child have a right to a standard of living that is based on twice the income that each parent bases their own standard of living? How does the child have a right to a higher standard of living than both parents can provide for themselves?

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## Legal Principles: Are Intact Family Child Cost Tables Unconstitutional for Child Support Determination?

- ❖ Intact family child cost tables presume that the parents and child live in the same household and have discretionary income based on living in one household.
- ❖ Traditional case law on legal presumptions indicates that when the underlying facts for a presumption do not exist in application in a particular case, then that is a basis for setting the presumption aside—or rebutting it. This is a due process issue. See *Leary*, for example:

A statute based upon a legislative declaration of facts is subject to constitutional attack on the ground that the facts no longer exist; in ruling upon such a challenge a court must, of course, be free to re-examine the factual declaration.

- ❖ *Leary v. United States*, 395 U.S. 6 at 32-37 (1969), footnote 68. See also *Block v Hirsh*, 256 US 135, 154-155, 65 L Ed 865, 870, 41 S Ct 458, 16 ALR 165 (1921); *Communist Party v SACB*, 367 US 1, 110-114, 6 L Ed 2d 625, 697, 699 (1961).

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## Due Process Says that a Presumption Should Not be Arbitrary

- ❖ Courts interpreting the Constitution have established that irrebuttable presumptions can violate the right to due process of law by denying persons subject to the statute or rule a reasonable opportunity to present specific circumstances to rebut the presumption. The United State Supreme Court articulated this principle in *Bandini Co. vs. Superior Court*, 284 U.S. 8 18-19 (1931):

The State...may provide that proof of a particular fact, or of several facts taken collectively, shall be prima facie evidence of another fact when there is some rational connection between the fact proved and the ultimate fact presumed. The legislative presumption is invalid when it is entirely arbitrary, or creates an invidious discrimination, or operates to deprive a party of a reasonable opportunity to present pertinent fact in his defense.

- ❖ **The use of intact family data is arbitrary and denies a reasonable opportunity to rebut with child costs in the actual circumstances of the child support case.**

## Solutions to the Presumption of Intact Family Costs Being Applied to Non-Intact Family Situations (Cont.)

- ❖ Regarding the second approach (applying a second household adjustment), the Income Shares (or USDA) intact family data on child costs can be at least partially corrected for the additional adult overhead of a second household to be maintained after divorce or in unwed situation.
- ❖ One can deduct the cost of a second mortgage (or rent) and utilities from combined net income.
- ❖ The same child cost study can be used but the net income used should be redefined for this adjustment.
- ❖ The lower adjusted net incomes are associated the same gross income amounts, resulting in lower child cost percentages associated with the various gross income brackets.

## Overview of Second Household Adjustment

- ❖ A second household adjustment to child cost tables using intact family data brings presumptive costs closer to economic reality of child support cases.
- ❖ Second household adjustments can be made to traditional “Rothbarth” Income Shares cost schedules or USDA based schedules such as in MN.
- ❖ Either would provide a familiar starting point for 2nd household adjustments.
- ❖ A cost table incorporating a second household adjustment is in line with the Cost Share principle of basing child costs on actual ability to pay.
- ❖ Kansas has built in such a calculation in its presumptive child cost schedule. Kansas uses a variation of the Income Shares methodology. As noted in the Kansas guidelines:

The [child cost] schedules also include a built-in reduction from average expenditures per child (**the dissolution burden**), because of the financial impact on the family of maintaining two households instead of one. See Kansas Judicial Branch, Rules Adopted by the Supreme Court, Rules Relating to District Court, Administrative Order 180, Re: 2003 Kansas Child Support Guidelines, Kansas Child Support Guidelines, II(C). [emphasis added]

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## Overview of Second Household Adjustment Continued

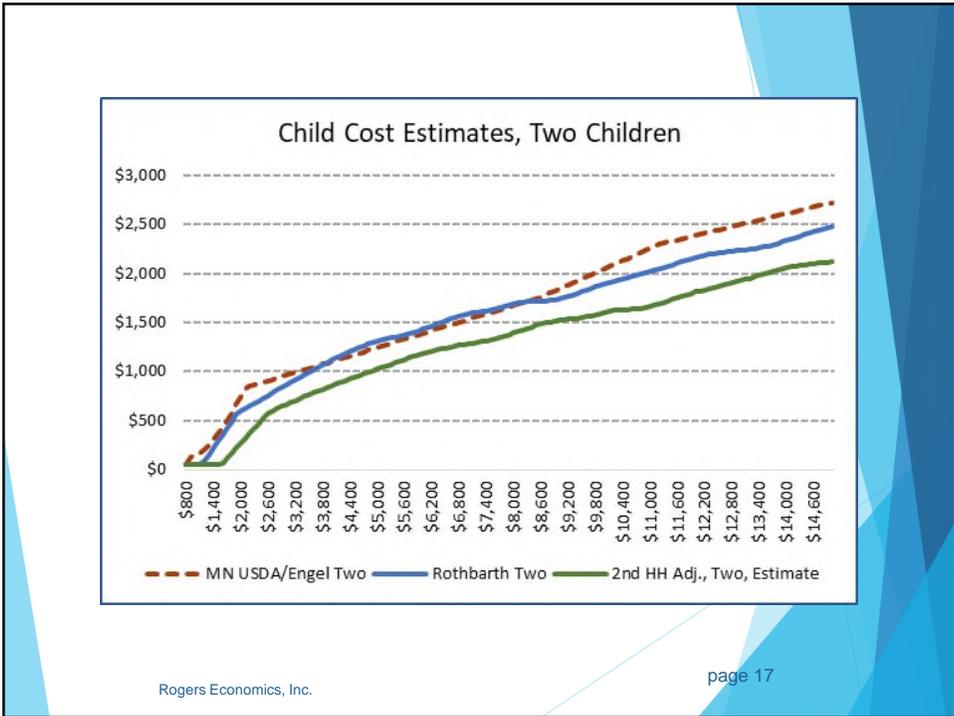
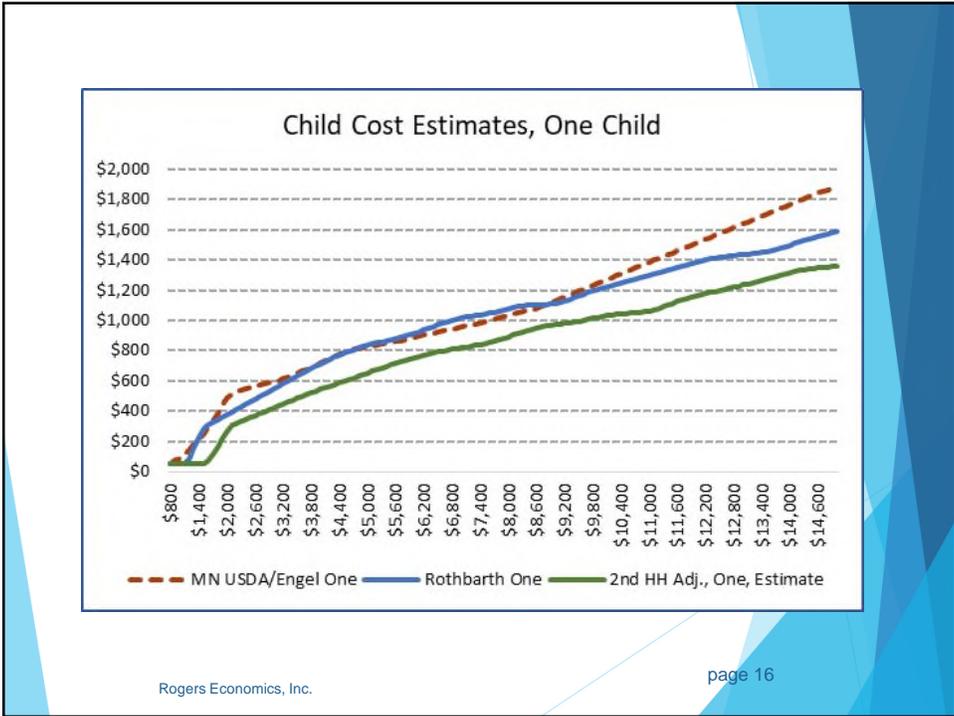
- ❖ The basic idea of second household adjustment starts with standard cost table spending on children is based on intact family child costs which are based on intact family net income. Household costs (only one house) limit the amount of discretionary income.
- ❖ First, adjust net income to reflect cost of maintaining a 2nd residence.
- ❖ Second household costs (rent/mortgage & utilities) are treated as if they were a tax, reducing net income.

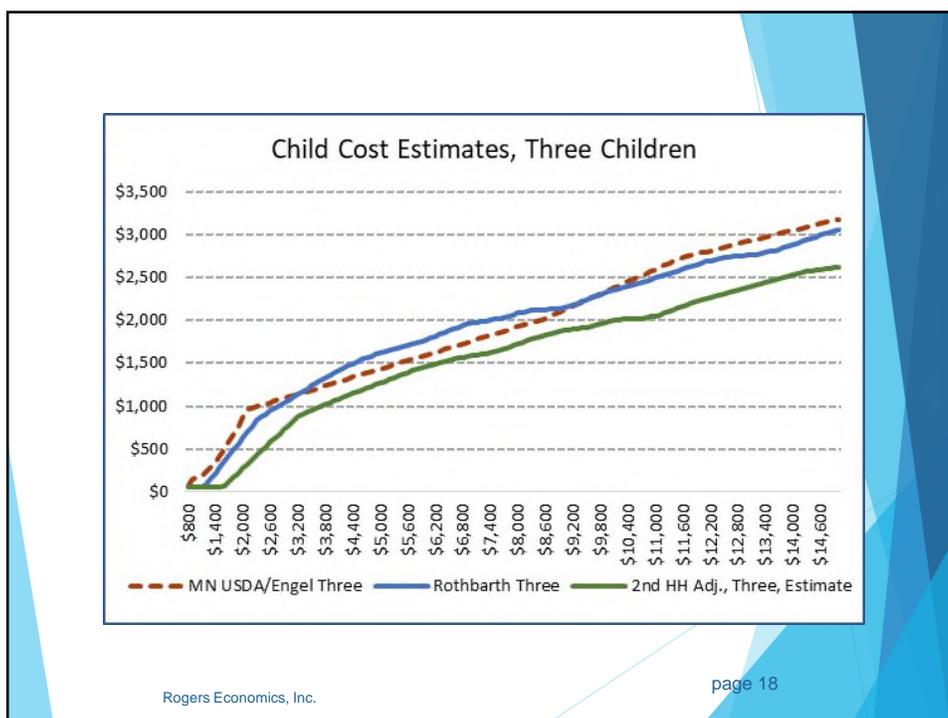
Adjusted Net Income = Gross Income – “Income Taxes” - 2nd HH Adj.

- ❖ Adjusted net income is used to calculate child costs based on the spending patterns from USDA or Rothbarth studies
- ❖ However, adjusted net income is less than net income for the same level of gross income.

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### Cost Shares Principles: Further Discussion

- ❖ Parenting Time Adjustments.
- ❖ Self-Support Calculations.
- ❖ Child-Related Tax Benefits as Cost Offsets.

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### Further Discussion: Parenting Time Adjustments

- ❖ The Cost Shares approach takes into account many facets of child support determination—not just the child cost schedule. Other issues can be addressed separately.
- ❖ Child cost tables do not incorporate built-in adjustments for the noncustodial parent’s costs of exercising parenting time. Since sharing child costs depends on both parenting time share and income share, it is mathematically impossible to correctly build in an adjustment to the table.
- ❖ The presumptive parent time adjustments getting attention currently are used in Arizona and Indiana. They are similar, start with low parenting share, and gradually increase with parenting time.
- ❖ These formulas are reasonable approximations to economic patterns of parenting time costs, are gradual and do not have large and abrupt thresholds creating jockeying for parenting time between parents.

### Further Discussion: Arizona’s Parenting Time Adjustment

- ❖ Arizona has a graduated credit percentage applied to the award paid by the obligor. The percentage applies to the total child cost from the schedule and is credited against the NCP’s obligation.
- ❖ There is a “Table B” for situations in which the NCP does not share all types of child costs.

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%

## Further Discussion: Self-Support Calculations

- ❖ New federal regulations on child support (effective January 19, 2017) require states to implement self-support calculations in a state's guidelines.
- ❖ Currently, some states merely have a low income deviation and not a presumptive formula.
- ❖ Minnesota has a self-support formula under Minnesota Statutes, Section 518A.42.
- ❖ Self support is based on 120 percent of the federal poverty guidelines for one adult but with a minimum presumptive award.
- ❖ Minnesota may want to revisit the adequacy of its self support provisions to ensure compliance with federal regulations.

## Further Discussion: Child-Related Tax Benefits

- ❖ States take a variety of approaches to applying child-related tax benefits in child support determination. These are:
  - 1) Not address the issue at all,
  - 2) Presumptively pro-rate child dependency exemptions,
  - 3) Reallocate the dependency exemptions on a deviation basis, or
  - 4) Treat the dependency exemptions on a case-by-case basis, calculate the value of the benefits to either parent, award the dependency exemptions to the parent with the greater benefit, and prorate the benefit dollar value and apply to the other parent's share of the presumptive award (raise the award if exemptions go to the NCP; lower the award if kept by the CP).
- ❖ Minnesota uses a variation of approach #3 under Minnesota Statutes, Section 518.145.