

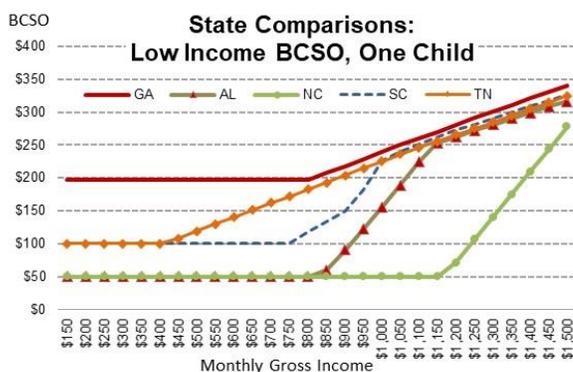
Why Is There Increased Discussion About Child Support and “Self-Support” Needs?

Introduction

Often, low-income child support payers are seen as creating their own problems. Instead and more often, it is due to little-understood Georgia law on child support as applied in low-income situations. Georgia’s child support laws have been found and documented to be notably excessive and unaffordable for low-income noncustodial parents. Not fixing this issue has far more pervasive adverse effects than many believe.

Low-Income Child Support Obligor in Georgia: What’s the Problem?

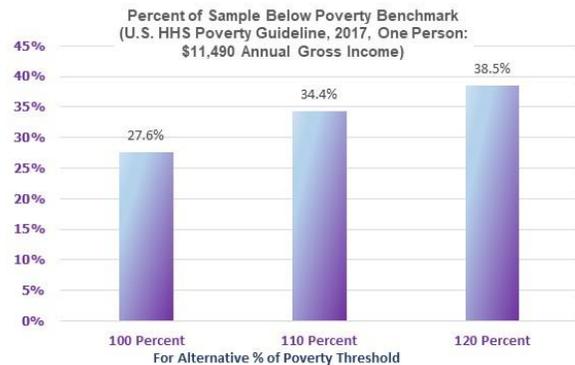
- ❖ As a starting point, it likely is appropriate to think about these issues as a choice between short-term “promises” by the state to custodial parents that they are entitled to high child support awards (high relative to income) or to the guideline choices that lead to better income outcomes (and child support) in the longer run (or even just somewhat down the road).
- ❖ Eliminating excessive child support turns out to give low-income child support payers a better chance at some type of respectable career in the job market and a better chance at being a good father. All eventually win (NCP, CP, the child, and even the community) with passing legislation that acknowledges that affordable is better than excessive—even if in the short-run, affordable seems low.
- ❖ Basically, Georgia’s child support awards for low-income noncustodial parents (NCPs) are unaffordable. Low-income NCPs frequently cannot pay both child support and cover their own basic needs for living.
- ❖ Georgia has one of the highest child cost tables in the Southeast and in the U.S. for low-income NCPs.



In this chart, “BCSO” is Basic Child Support Obligation—the main part of a child support award (all costs except day care and health insurance). It compares child support costs (vertical axis) to monthly gross income (horizontal). It is combined income of mother and father, but one can see the impact on the NCP father if all of the combined income comes from the father. Georgia is far higher at low incomes and the highest at moderately high segments of low income.

- ❖ Official Georgia studies show a huge percentage of low-income obligors being pushed below the poverty level if they pay the court ordered amount. They cannot keep enough income to meet basic self-support needs.

This chart shows the results from the data in the most recent study of child support cases by the Georgia Commission on Child Support. It shows that over one fourth of NCPs in the study were pushed below the poverty level by the award made by the court. When one looks at a slightly higher standard for basic needs (120 percent of the poverty level to pay payroll taxes), 38.5 percent are pushed below basic needs income by court-ordered child support.



- ❖ But to pay for basic needs, low-income NCPs cannot pay ordered child support and have a place to live, basic clothes, and simple food to eat. These NCPs fall behind and run up large arrears largely due to no fault of their own—because of excessive cost tables and no guideline guarantee of keeping income to live even at the poverty level.
- ❖ Most NCPs are fathers. When these fathers fall behind on child support, they have drivers' licenses and professional licenses suspended. They cannot work and fall further behind. Many NCPs with arrearages turn to a cash society and hide from the legal system. In turn, children lose their fathers, and also communities lose a key part of families and a source of stability for communities. Crime becomes prevalent from vast father absence in a community.
- ❖ Although perhaps well intended, excessive child support actually results in less support for mothers to help children. Communities lose out. Obviously, falling behind on child support makes it hard for the NCP father to participate in the work force.
- ❖ A related issue is that obligors that become incarcerated no longer have income to pay child support. Currently, there is no readily usable mechanism for incarcerated low-income NCPs to stop child support obligations when income ends due to incarceration. The federal government has recognized that it is in the child's best interest that the incarcerated father has a shot at a second chance when released.
- ❖ Most states have job training programs in prison. But child support arrears stand in the way as authorities arrest obligors with arrearages—even as they walk out of prison, believing they have a chance to start over. But child support arrearages often keep that second chance from happening. Georgia now must address this issue.
- ❖ The federal government has studied these issues and now federal regulations require states to correct these adverse and excessive child support award formulas to preclude many of these adverse outcomes on individuals, children, and communities. Georgia now must address making sure child support awards do not push NCPs below the poverty level.
- ❖ So, what are proposed answers?



Increased Discussion About Child Support and Low-Income Noncustodial Parents:

What Are Proposed Solutions?

The problems facing low-income child support obligors seem complex. Georgia is required by federal regulations to update child support guidelines to address self-support needs of noncustodial parents. Fortunately, some states have gotten a jump on many—but not all--of these issues and can offer some guidance on potential solutions for the legislature to enact. What are some of the solutions being proposed by The Georgia Affordable Child Support Project?

Addressing the Issue of Self Support for Noncustodial Parents and Related Issues

Saving detail to follow, the key solutions are:

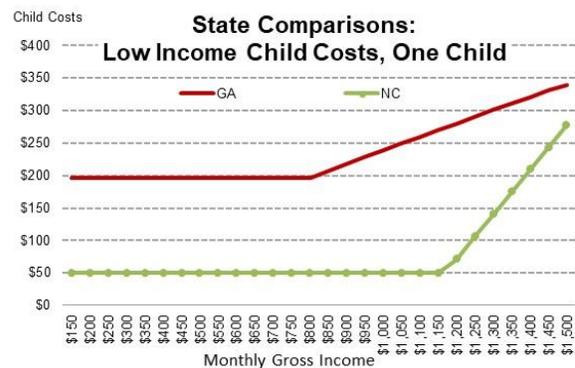
- ❖ Build a self-support section into the Georgia table of child costs.
- ❖ Expand self-support calculations to include day care, health insurance, and deviations.
- ❖ Require written findings on imputed income.
- ❖ Require automatic review and modification for incarcerated parents as part of Georgia's child support guidelines.
- ❖ Alternatively to automatic modification upon incarceration, Georgia could require that existing child support obligation established under Georgia law expires by operation of law upon the date of incarceration.

Here are moderately detailed highlights of proposed solutions.

- ❖ **Build a self-support section into the Georgia table of child costs.** This is the "BCSO" (Basic Child Support Obligation) schedule in the child support guidelines. The idea is to have costs to be paid at zero at very low incomes and then only turn positive once noncustodial income reaches self-support levels (the poverty level or just above it to also cover payroll taxes).

Georgia's child cost schedule is one of the worst in the country for low income noncustodial parents. It immediately pushes low income obligors below poverty after subtracting the court-ordered award from income.

The cost table should look more like the one used in North Carolina which was updated recently and has costs starting to be positive only after income approaches self-support levels. And then costs only rise gradually so as to not be burdensome as income slowly increases above the poverty level.



Let's look at one child costs. Note the NC's child costs are a minimum \$50 per month until income reaches \$1,200 per month. The goal for self support is to leave income about \$1,200 per month (about the poverty level) after subtracting the child support award. In contrast, GA immediately has its tables lowest cost of \$197 per month (which is high to income). The GA official table shows income starting at \$800 per month but the \$197 child cost applies to lower incomes also—which become nonsensical in its burden on the noncustodial parent at below \$800 levels of income.

So, NC has a somewhat reasonable minimum award of \$50 until income reaches self support. Meanwhile, GA has an unbelievably high starting cost of \$197 per month. Georgia's child costs remain very burdensome (notably higher than NC's costs which track below the poverty level, leaving enough income for self support. Georgia needs to revise its cost schedule so that after the child support award, there still is income to meet self-support needs.¹

- ❖ [Expand self-support calculations to include day care, health insurance, and deviations.](#) Building a self-support section into the child cost table only works for the basic (or standard) child costs in the child support award. If the noncustodial parent has to pay on child care and/or health insurance premium, then these added costs could push noncustodial parent with even moderate income below the poverty level. So, Georgia needs to follow some other states and enact a final calculation in the award process to take into account these add on expenses. [Legislation should limit the final child support award to available income of the noncustodial that is income above poverty level.](#) The final award would be basic costs, plus day care, plus health insurance premiums and any deviations.
- ❖ [Require written findings on imputed income.](#) Often, judges are uncertain about a noncustodial parent's earnings or believe the father should be earning more than he is. In turn, judges "impute" income to the noncustodial parent—income that the NCP does not actually get but is believed by the judge to be able to be obtained. This is income that often is just "made up" by the court without a detailed examination of whether the NCP likely could earn the imputed income.

Imputation of income is a key reason for noncustodial parents falling behind in child support. Not only is the cost table too high, but often the award is based on higher income that the NCP does not have.

Federal regulations have recognized this problem and now require judges to follow specific steps to be able to impute income. The idea is that if the court actually examines factors such as 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, and prevailing earnings level in the local community. But judges often ignore these required procedures and make a finding of higher imputed income just out of habit and regardless of actual circumstances of the noncustodial parent and the local economy.

¹ It has been suggested in the Georgia legal community that even if a self-support section were added to the child cost tables, that self-support is still an issue because the cost tables themselves are too high. Indeed, Georgia is the only state combined two different types of cost studies for all of its cost table. The higher of the two tables has been strongly discredited in the economics community. As a practical matter, the legislature could at least replace the one child portion of the cost table. A study recently was presented to the Georgia Commission on Child Support showed notably lower one child costs than the current but outdated cost table. Not already doing so, indicates that little attention was paid to the self-support issue even though the related federal regulation had already been implemented.

Federal Regulations and GA Code

To impute income:

1) Did the court go through a detailed examination of the noncustodial parent's personal works history, job skills, and job impediments to see if higher imputed income is justified,

2) Did the court examine the local job market to determine if the earnings potential currently exists for the noncustodial parent?

But, did the judge actually follow these procedures or just make income up? Only a required written finding of how procedure was followed will guarantee imputed income only when appropriate and not just made

How does the judge get by with not complying with federal regulations and Georgia law on following procedure to see if imputing income is appropriate? Georgia appellate courts have repeatedly stated that when the court imputes income, written findings are not required because Georgia law does not require written findings. But written findings would make it harder for judges to ignore the requirement to examine in detail the employment and earnings prospects of a noncustodial parent. This is a vastly important distinction in contrast to merely "making up" income out of simple habit. [To fix this problem of excessive use of imputed income, the legislature should make it mandatory for written findings of how procedure was followed for evaluating prospects for earnings—both the personal facts \(i.e., education, job history, criminal record\) and the status of the local job market before income can be imputed.](#) Reduction in the used of imputed income when not justified will lead to fewer cases of child support arrearages.

Here's an example of Georgia appellate opinion that written findings currently are not required when imputing income.

Neal v. Hibbard, 770 S.E.2d 600, 296 Ga. 882 (2015):

[H]e [appellant and noncustodial parent] also notes that the court did not make written findings regarding the imputation of income. However, "OCGA § 19-6-15(f)(4)(D) does not require a trial court to make written findings as to why it decided to impute income to a spouse."

- ❖ [Require automatic review and modification for incarcerated parents as part of Georgia's child support guidelines.](#) Already, federal regulations require state agencies to either (a) initiate automatic review and modification, without request, when a parent is incarcerated for more than 180 days; or (b) provide notice to the incarcerated parent that she or he has a right to apply for review and modification of their order. It is appropriate that all child support orders (not just agency cases) have the same or better procedures for modification when an obligor is incarcerated. The notice approach does not work—incarcerated fathers do not have the resources or skills to file modifications. Automatic review should apply to all cases—not just agency cases.
- ❖ [Require that existing child support obligation established under Georgia law expires by operation of law upon the date of incarceration.](#) But there may be a better approach than standard modification. North Dakota has enacted code that a monthly child support obligation automatically expires by operation of law upon incarceration of the obligor under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing. From North Dakota Century Code:

14-09-09.38. Child support obligation of incarcerated parents.

1. A monthly support obligation established under any provision of this code and in effect after December 31, 2017, expires by operation of law upon incarceration of the obligor under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing.

Federal regulations allow states to use operation of law as a method to comply with new requirements for updating child support orders for incarcerated parents.

Such an approach would be simpler than a full-blown modification—which involves extensive procedure. North Dakota’s code could be enacted in Georgia and even reasonably expanded to include not just a sentence of 180 days or longer but actual time served if the original sentence was less than 180 days. Or the threshold could be changed to perhaps 120 days. But use of sentence length allows the child support agency re-establish obligations after the parent is released, even if the actual period of incarceration is shorter than 180 days.

The impact of unaffordable child support awards for low-income noncustodial parents is far more pervasive and more negative than most imagine. Obligor’s chances for a better life ahead dwindle sharply. Children and custodial parents get less actual child support than if the order were affordable. Children lose much contact with their father. Communities suffer. And taxpayers have higher burdens from incarceration, higher crime, and increased spending on “fix it” social services.

But the solutions exist and largely have been tested in other states. Mostly, all that needs to be done is to tweak other states’ code and have the willingness to enact.

**The Georgia
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