Submitted to the Child Support Work Group by David Spring, August 14, 2008

Whether the Economic Table should be extended beyond $5,000 combined monthly net income: The current economic table is presumptive to $5,000 combined monthly income (about $900 per month for one child) and advisory to $7,000 combined monthly income (total maximum obligation of about $1200 per month for one child). By contrast, the minimum cost for raising one child was concluded to be about $400 per month in the Spring 2008 Analysis of Child Support Issues. Thus, the current maximum obligation is about three times the minimum cost for raising one child. This fits very well with old English common law that while each child needs one pony, no child needs more than three ponies (the three pony rule). I have therefore proposed that the presumptive amount be raised from $5,000 per month to $7,000 per month provided that a presumptive cap is placed at $7,000 combined monthly income (which equates to $84,000 net combined annual income).

Some on the Work Group have advocated for a dramatic increase in the upper end of the table (ranging up to $12,000 per month). They argue that many people going through divorce with children have incomes exceeding this number. I disagree with this assertion. A net income of $12,000 per month translates into an annual net income of $144,000 per year or an annual gross income of almost $200,000 per year. In fact, numerous studies show that the median income of divorced couples is much lower than the median income of non-divorced couples. For example, Sterling (2003) reported median incomes for obliges in Washington State of only $15,000 per year and for obligors of only $18,000 per year. Even adjusted for inflation, current median combined income is likely to be not much more than $36,000 per year. Therefore only a very small percentage of affected couples exceeds $84,000 combined net annual income. (which translates into over $100,000 gross annual income). This conclusion is supported by the Florida State Child Support study which provided a detailed breakdown of cases in Florida in 2001 which mirrored the income distribution reported by Sterling for Washington State in 2003. The following chart was taken from page 6 of the 2004 Florida State study:

Table 1-1.2 Breakdown of Cases by Combined Net Income		
Net Combined Income	**Title IV-D Cases**	**Private Cases**
500-1000	5	5
1001-1500	42	10
1501-2000	222	44
2001-2500	99	51
2501-3000	44	42
3001-3500	30	49
3501-4000	17	24
4001-4500	5	24
4501-5000	3	11
5001-5500	1	8
5501-6000	1	6
Under $6,000 per month subtotal	469	274

6001-6500	2	1
6501-7000	0	3
7001-7500	0	1
7501-8000	0	2
8001-8500	0	3
8501-9000	0	0
9001-9500	0	0
9501-10000	0	2
$6000 + per month Sub-total	2	12
Total	471	286

The median combined monthly net income of the IV-D cases was in the range $1501-2000. The median combined monthly income of the private cases was in the range $2501-3000. Thus, the median range in Florida in 2001 was similar to the median combined income in Washington State in 2003 in that it was less than $3,000 per month. Only 2.5 percent of the Title IV-D cases and 21 percent of the private cases have combined monthly net incomes above $4000. Only 14 of 757 cases (about 2%) exceeded $6,000 per month in combined income. Even assuming $6,000 in 2003 dollars equates to about $7,000 in current dollars, we can conclude that only a very small percent of cases is beyond the current $7,000 maximum limit in Washington State.

Nor would it be reasonable to assume that the Higher Time parent is penniless in these few high combined income cases. Instead, the Florida State study confirmed that in high income cases, the CP also typically earns a relatively high salary:

Table 1-1.6b Typical Private Cases			
Group	Combined Net Income	Noncustodial Parent Share	Children
Low	$1,868.00	52.00%	1
Mid	$2,858.00	56.00%	1
High	$4,178.00	59.00%	2

Put in plain English, in the typical high income case, when the total net income was $4,200, the lower time parent's share was $2,400 per month and the higher time parent's share was $1, 800 per month. In lower income cases, the two parents had nearly equal incomes.

But even if there were a lot of couples who exceeded the maximum combined net income of $7,000 in the current table, there is still the question of whether raising the upper end of the table can scientifically be justified in terms of being beneficial to children. As the following studies confirm, **there is virtually no benefit to children of having excessively high child support rates**. Instead, of child support amounts that exceed $1,000 per month well over 90% is simply a hidden form of alimony.

For example, the Florida State authors, using a similar CEX sample to Dr. Betson, and using the Engel estimation method, concluded that for a combined monthly net income of $7,000, the amount spent by an intact couple on one child was $900 per month.

The reason the Florida Engel Table (($900) is about $300 per month less than the current table ($1218) and about $500 per month less than the Betson Engel Table ($1453) at a combined income of $7,000 is that the current Table and the Betson Table are based upon the "per capita" assumption that children cost as much as adults. To my knowledge, Dr. Betson and Mark Lino with the USDA are the only economists in the world still basing their calculations on the "per capita" assumption. The Florida State authors based their Engel estimate on a "marginal" assumption.

But the point is that at $7,000 per month, or at a per month child expense of $900 per month, an intact couple only spends about 12% of their income on one child. This drops to about 10% at $1,000 per month. Thus, for child support payments above $1,000 per month to the higher time parent (viewed as an increase in the higher time parent's income) only about 10% of the child support payment is actually spent on the child. The remaining 90% is simply hidden alimony which is contrary to the expressed intentions of the Washington State child Support Act.

I therefore strongly oppose raising the economic table above $7,000 per month, having a total obligation in excess of $1,200 per month as it would result in a huge financial incentive for divorce and therefore be extremely harmful to children. The only groups who could possibly benefit from raising the economic table are extremely wealthy moms (such as the million dollar mom described in the February Addendum) and Family Law attorneys who make very large fees from litigation between very wealthy parents.

Judge Krabill has proposed a compromise in which the Economic Table would go all the way up to $12,000 per month but the child support obligation would rise very slowly (essentially mirroring the 2004 Florida State Table). (For example, the highest enter for the Florida Table for $12,500 per month is $1,190.00 per month for one child). There is some scientific basis to Judge Krabill's compromise proposal since the Florida State study is a highly credible study.

However, the sample size for this "top end" estimate is so small that it is difficult for me to place much faith in the result. I think it is much more honest to simply establish a maximum cap that is directly tied to a minimum amount (at 3 times the minimum) and/or is directly tied to minimum wage and/or the SSR (at about 20% less than minimum wage or same the Self Support Reserve). The bottom line is that very few if any children require more than three ponies.

The following is my cap argument from the January Analysis, pages 120-122.
A proposed cap: Whether the economic table for calculating child support should include combined income greater than five thousand dollars.
The "basic needs" cost of raising a child in terms of food, clothing and shelter does not increase indefinitely. In fact, the costs eventually reaches a maximum level once the child has all the toys they could ever use. Just as there is a floor, or minimum cost necessary to meet a child's basic needs, there is also a maximum cost beyond which the State has no further interest in insuring the child's needs have been met.

This basic principal has been called the Three Pony Rule," which states that "**no child needs to be provided with more than three ponies."** The idea behind this rule is that a child can only ride on one pony at a time. Updating this rule to the current century, the maximum amount that can be even remotely related to meeting the basic needs of the child is about three times the minimum amount. Thus, if the minimum total cost is $360 exclusive of child care and health care, then the maximum amount would be 3 x $360 = $$1080.

This number is also the proposed Self Support Reserve for one person based upon the SSR set at 125% of the federal poverty guideline. It should be obvious that **if $1080 per month is adequate to support an adult, it should also be adequate to support a child.**

Assuming the Economic Table uses a flat rate of 15% and a maximum cap is set at $7,000 combined monthly net income, the maximum Table amount would be $1050. However, if the Economic Table used the current rate for $7,000, Even using the current Economic Table, but averaging the two age columns, the maximum Table amount would be $1080.

As child care and health care could be added to these amounts, the total maximum could rise as high as $2,000 per month for full medical coverage and an excellent day care facility. It is hard to image a child's needs exceeding this amount under any conceivable circumstances. But as the Table Amount is merely a rebuttable assumption, any wealthy parent would be free to present evidence to a judge if they feel for any reason that their child needs more than $2,000 per month.

The fact that CPs can completely live off child support without having to work themselves to support the same children is prima facie evidence that child support is too high for high wage earners. For additional reasons why indefinitely extending child support is not in the best interest of the child, see Frasca, R. (2002) *Economic Issues and Arguments in High Income Child Support Cases,* Journal of Forensic Economics 15 (1) 31-44.

Other states have, by policy, carefully decided that the state's legitimate interest is in assuring a basic standard of living for children, and not going beyond that. Thus, these States cap income considered and cap child support. For example, <u>Nevada has an $800 cap, inclusive of health insurance and childcare, per child</u>. (See Nevada Presumptive Maximum Amount Table below). This provides a balance between the state's legitimate interest in protecting children, and parents' legitimate interest in raising children without State interference.

The following Tables compares the existing Nevada Cap to the proposed Washington State Cap.

NEVADA PRESUMPTIVE MAXIMUM AMOUNT ECONOMIC TABLE

INCOME RANGE If the Parent's Gross Monthly Income Is at Least		But Less Than	The Presumptive Maximum Amount Parent May Be Required to Pay per Month per Child Pursuant to Paragraph (b) of Subsection 1 Is
$0	-	$4,168	$500
4,168	-	6,251	550
6,251	-	8,334	600
8,334	-	10,418	650
10,418	-	12,501	700
12,501	-	14,583	750

If a parent's gross monthly income is equal to or greater than $14,583, the presumptive maximum amount the parent may be required to pay pursuant to paragraph (b) of subsection 1 is $800.

Comparison of Nevada Economic Table to Washington Table
(converting NCP gross to net and adding CP minimum net monthly wage ($1250) for the first row and CP median net monthly wage ($1800) for the subsequent rows)

Nevada NCP Monthly Gross	Nevada NCP Monthly Net(1)	Plus CP monthly net	Combined monthly net	Current Nevada Table	Current Washington Table NCP OBL*
4000	3600	1250	4850	500	713
$6000	5400	1800	7200	550	1000
$8000	7200	1800	9000	600	1200 (CAP?)
$10,000	9000	1800	9800	650	?? (1428)
$12,000	10, 800	1800	11,600	700	??(1535)
$14,000	12,600	1800	14,400	750	??(?)
> $14,583	13,000+	1800	14,800+	800 max	??(?)

(1) A flat rate of 10% was used to change gross into net. While it is generally assumed that higher tax rates apply to higher incomes, according to the Congressional Budget Office (CBO), the effective average federal income tax rate, under the 2000 tax law, for families with children with a mean income of $83,100 is 7.1 %. See Table G-2a. Effective Tax Rate for Households with children. Thus tax rates for nearly all families are fairly close to 10%.
* Washington child support NCP Obligation estimated by deducting 20% custodial obligation from the total obligation
?? = Incomes beyond Washington Tables. (from Betson-Rothbarth Tables)
??? Note: Betson Rothbarth Table ends at $12,000.

DISCUSSION
The current Washington presumptive limit is nearly identical to the Nevada presumptive limit ($800). However, the Nevada maximum payment applies to monthly gross of $14,583 which is equal to an annual gross of $175,000. The current Washington presumptive limit is reached at half that amount.

This compares with a maximum monthly net income cap of $7000 proposed for the Washington Table which equates to a combined annual net income of $84,000 and an annual gross combined income of about $100,000.

More important than who is affected, the maximum cap proposed about ($1000) is 20% greater than the Nevada maximum and does not include either child care or medical care. If the Betson-Rothbarth maximum is used, **the Washington high income parent could end up paying over 100% more than the same high income parent in Nevada**. Given that the Washington Economic table is already 20% too high, there is no justification for doubling the maximum presumptive limit here in Washington State.

This analysis has chosen a "compromise solution" to this problem. A maximum cap was placed at about $1,000 for one child for families earning more than $100,000 gross. This equates to a child expense that is about three times the basic child need of $360 and about double the median parent obligation here in Washington and about double the maximum allowable child support payment permitted in Nevada.

Thus, the Betson-Rothbarth proposal for high income parents is as unjustified as the Betson-Rothbarth proposed total obligation for the other income groups. The maximum limit we have proposed should apply to no more than 20% of all parents and their children.

This does not mean that the lower time parent will only spend $1,000 per month on their child. It merely means this would be the maximum transferred to the other parent. It is highly likely that the lower time parent would provide additional funds for the child. But the funds would be provided in a cooperative fashion involving joint decision making just as funds are allotted to the child during marriage in this same manner.

As with all the other policies recommended in this analysis, the intention is to reduce or eliminate the current economic incentives for divorce. The government's interest in family expenditures on children, whether that family exists before or after the dissolution of marriage, or even in the absence of marriage, is limited to insuring that the children's basic needs are met. Not extravagances, not luxuries, but needs. Once that occurs, government intrusion must cease. Thus, the purpose of child support should be limited to supporting children, not as a source of hidden alimony from one parent to the other.

The following is from the March Addendum, pages 43 to 45:
Child support should be about supporting the child. All too often, excessive child support winds up becoming "hidden alimony." However, RCW 26.09.001 expressly limits child support to the needs of the child, not the hidden support of the custodial parent. However, even if we believe that one child represents 20% of total family spending, then in the vast majority of cases where spending equals income, every increase of $1000 in income (such as raising the "cap" on child support payments of $1000 per month as has been proposed for very high wage earners) would result in only $200 actually going to the child. The remaining $800 per month would wind up being spent by the custodial parent on the custodial parent.

Thus, raising child support payments to the point that they are way beyond the needs of the child (in other words more than $1000 per month beyond the needs of the child) is a clear violation of RCW 26.09.001. Even if the $800 transfer from the NCP to the CP does not entirely support the CP, this is not the point. The NCP should only be expected to pay for their fair share of costs to support the child. They should not be expected to pay any of the expenses used solely for the CP and not at all related to the child. Anything beyond the expense of the child is a financial incentive for divorce even if it is not the primary reason for divorce.

Thus, my position (and Washington State law) is that child support payments should not be too low or too high. Instead, the total combined obligation should reflect what the parents likely spent on the child before divorce and also take into consideration the current financial circumstance of both parents after divorce.

As Kuhn and Guidubaldi concluded (FROM ANALYSIS, page 56-58):
Providing benefits to majority parents after divorce they do not have in marriage (high child support rates, guaranteed child care payments, guarantees health insurance payments, no need to consult with the other parent on financial decisions) may encourage divorces.

There is substantial evidence that increasing child support awards in fact increases divorces. First there has been a rise in the rate of divorces since child support awards were dramatically increased in the 1980's.

Second, States that have adopted Shared Parenting laws, including credits for shared parenting and associated reductions in child support, have seen dramatic decreases in divorce rates. States with high levels of joint physical custody have significantly lower divorce rates on average than other states. States that favored sole custody had more divorces involving children. These findings indicate that public policies promoting sole custody may be contributing to the high divorce rate. (Kuhn & Guidubaldi, 1997).

Third, it is known that mothers are twice as likely to file for divorce as fathers. In the present gender-biased judicial system, mothers receive "custody" of the child nearly 90% of the time despite the fact that numerous studies have shown that both parents are equally capable of raising the child.

If judges awarded custody equally between parents, and if parents shared equally in raising the child and if the burden fell equally on both parents, one would expect that both parents would be equally likely to file for divorce. Clearly the fact that mothers file for divorce twice as often as dads is strong evidence that our current system is extremely biased in favor of mothers.

The Income shares model promotes divorce in that it requires that the level of spending and standard of living be maintained in the mother's household, but not in the father's household. The Income shares model underlines take into account the income of both parents after divorce, but fails to consider the expenses of both parents after divorce. Thus, fathers are financially penalized for divorce and mothers are not.

The doubling in child support rates in the late 1980's resulted in "windfalls to the custodial parents" (Christensen, 2001, page 66), many of whom are middle-class and upper-middle class divorcing women. Excessively high child support rates created an incentive to create more fatherless children, through either divorce or unwed childbearing. Current child support rates are so high that, according to a study by Robert Willis (2004), **less than one third of child support payments are actually spent on children;** the rest is profit for the custodial parent. Willis concluded that support levels **that greatly exceed the actual cost of child rearing have created** *"an incentive for divorce by the custodial mother"* **(page 42).**

As an example, let's suppose that extensive research confirms that the actual child cost in a median income intact family is $360 per month excluding child care and health care. Let's also assume that the family cannot afford child care during marriage and therefore each parent cares for the child while the other parent is at work. Let's also assume that the father's income is 20% greater than the mother's income Sterling (2003) confirmed that the median fathers income was $1800 per month and the median mother's income was just above minimum wage at $1500 per month..

Thus this example is pretty typical. Before the divorce costs are shared between parents according to their net incomes. Thus, the mother pays about $160 of the child cost each month and the dad pays about $200 of the $360 child cost.

Then after divorce, the mother insists on taking the child to the maternal grandmother's house for child care and demands $500 a month for child care while at the same time depriving the father of the right he used to have to care for the child while the mother was at work. Also, as the current economic table is set at doubled the actual cost of the child, the Table lists an estimated cost of $708 per month exclusive of child care. (As is explained in the February Addendum, the cost for the child over the age of 12 (Column B in the current Washington State Economic Table) is set almost entirely on the Eden 1977 per capita estimate which is double the marginal estimate for that time period). The total "estimated child expense listed on the mother's work sheet is $708 for the basic obligation plus $500 child care equals $1208. The father's share is 55% of this amount or about $665 per month. This is $465 more per month than the father paid before divorce on child rearing expenses. Meanwhile, the mother no longer pays anything for child rearing expenses as the dad is now forced to cover the full cost of the child. Adding tax benefits, the current financial incentive for divorce is over $600 per month for the typical mother.

Under the Betson Rothbarth model, the financial incentive for divorce would be even greater. The combined obligation would rise to $804 per month. The total support award would rise to $1304 per month. The dad's transfer payment would rise to $717 per month. Thus, the dad would be paying over $500 per month more in child costs per month than he paid while he was married. His remaining income would fall to $1100 per month, while the mom's income would rise to $1500 plus $717 = $2200 per month. Thus, the mom would now make twice what the dad made. Assuming the grandmother kicks back the $500 per month in child care payments, the mother's financial incentive to divorce equals $717 - $160 (what she used to pay for child costs)= $557 per month. Adding the tax credit pushes her financial incentive for divorce to over $700 per month. Of the father's $717 monthly payments, only $200 or 28% is actually spent on the child.

According to PHD Economist, Robert McNeely and legal scholar, Cynthia McNeely, *"This recent entitlement has led to the destruction of families by creating financial incentives to divorce"* (2004, page 170).

Kimberly Folse and Hugo Varela-Alvarez, also concluded that even if child support rates were set at an atypically low percentage of 17%, there would be an *"economic incentive for middle class women to seek divorce"* and thereby *"increasing the likelihood of divorce".* (2002, page 283 & 284).

Baskerville summarizes this incentive by stating *"A mother can simply escape the uncertainties, vicissitudes, and compromises inherent to a life shared with a working husband, by divorcing, whereupon the police function as a private collection agency who will force him, at gun point if necessary, to pay her the family income that she alone then controls"* (2008, page 413-414).

References

Baskerville, S. (2008) From Welfare State to Police State, *The Independent Review*, 12 (3) 401-422.

Folse, K. & Varela-Alvarez, H. (2002) Long Run Economic Consequences of Child Support Enforcement for the Middle Class. Journal of Socio-Economics 31 (3) 273-286

Frasca, R. (2002) *Economic Issues and Arguments in High Income Child Support Cases,* Journal of Forensic Economics 15 (1) 31-44.

Kuhn, R. & Guidubaldi, (1997) "Child Custody Policies and Divorce Rates in the United States", Paper presented at the 11th National Conference of the Children's Rights Council, Washington, D.C.

McCaleb, T.S., Macpherson, D.A., & Norrbin, S.C., (2004) *Review and Update of Florida's Child Support Guidelines*, Report to the Florida State Legislature, Florida State University Department of Economics, Tallahassee, Florida.

McNeely, R.A. & McNeely, C.A. (2004) Hopelessly Defective: An Examination of the Assumptions Underlying Current Child Support Guidelines. In The Law and Economics of Child Support Payments, edited by W.S. Comanor, 166-177. Cheltenham, U.K.: Edward Elgar.

Willis, R.J. (2004) Child Support and the Problem of Economic Incentives. In The Law and Economics of Child Support Payments, edited by W. S. Comanor, 31-59, Cheltenham, U.K.: Edward Elgar.