

ALI CHILD SUPPORT PRINCIPLES: A LESSON IN PUBLIC POLICY AND TRUTH-TELLING

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I. INTRODUCTION

Much has been said about the impact of child support guidelines on middle-income families. Less has been said about the effect of child support on poor families. The issue is important, however, because the rate of poverty among children was still 16.9% in 1999, even after a record economic expansion.¹ Half of children under six who live in a female-headed household live in poverty.²

Welfare reform is a critical place to consider the issues of child support and impoverished families, because reliance on child support figured heavily in the development of welfare reform. The claim was that the mother's wages, when combined with child support paid by the child's father, would be enough to ensure that children would survive after their families stopped receiving cash from the government.

Chapter 3 of the American Law Institute's *Principles of the Law of Family Dissolution* proposes a new child support guideline. Both the guideline and the analysis provided by the Reporters, principally Grace Ganz Blumberg, help in determining whether the claim will prove correct. The guideline proposed by the ALI is a "second generation" guideline that can be compared to the "first generation" guidelines followed in most states currently. Different outcomes and the reasons for them can be examined to determine whether first or second generation guidelines are more likely to work as a substitute for government assistance for families in poverty. This comparison makes it possible to test the plausibility of welfare reform's claims about the capacities of parents to provide all the economic support their children need.

In this commentary, I examine outcomes under first and second-generation guidelines in several scenarios. These scenarios represent common experiences of families where a mother with one child leaves welfare and takes an average-wage job. The scenarios are oversimplified because they omit consideration of subsequent families, day care, shared custody, unusual medical expenses, and

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1. UNITED STATES CENSUS BUREAU, POVERTY 1999 tbl. 5 (Sept. 26, 2000), available at <http://www.census.gov/hhes/poverty/poverty99/table5.html>.

2. *Id.* Further, "the average poor child fell farther below the poverty line in 1998 and 1999 than in any year since 1979." CENTER ON BUDGET AND POLICY PRIORITIES, POVERTY RATE HITS LOWEST LEVEL SINCE 1979 AS UNEMPLOYMENT REACHES A 30-YEAR LOW (Oct. 10, 2000), available at <http://www.cbpp.org/9-26-00pov.htm>.

the like. But working through these scenarios helps to answer the question of whether a child who is living with a low-wage mother still needs government assistance and, if so, why the parents' efforts to support the child are not enough.

II. FILLING THE GAP BETWEEN EARNINGS AND SELF-SUFFICIENCY

Maryland's policy is used in this commentary as the first-generation example because my work in welfare reform and in family law has been done in Maryland—and because Maryland has a fairly typical first generation guideline. Nationally, the average earnings of women who have left welfare in recent years are estimated to be between \$666 and \$1,000 a month.³ Studies in Maryland suggest that the average falls closer to \$800 a month, so that is the figure I use in my scenarios.⁴

Under the theory of welfare reform, the gap between the mother's earnings and the household's economic needs should be filled by child support transfers. Therefore, before it is possible to know how much child support is needed, one must know how much a self-sufficient household of a mother and a child needs. At the low-end extreme, a family can be said to have achieved self-sufficiency when it has too much income to qualify for cash assistance (formerly known as welfare). In Maryland, the cash benefit paid in 2000 was \$328 a month for a family of two.⁵ If that is the standard, the family needs no child support because the mother's earnings of \$800 a month are enough to achieve self-sufficiency.

A more common measure of self-sufficiency (although not without its critics) is the federal poverty line. For a family of two, the poverty line is \$938.⁶ If this figure is the accepted definition of self-sufficiency, a family of two with a mother who earns \$800 needs only \$138 a month in child support to be self-sufficient.

Most analysts agree that a family experiences costs associated with working which comprise about 30% of total income.⁷ In other words, a family of two with \$800 in unearned income enjoys approximately the same standard of living as a wage-earning family of two with 30% more income, or \$1040 a month in earned income. If that is the case, a family of two with a mother who earns \$800 a month needs child support of \$419 a month to live at a standard of living equivalent to the poverty line.

3. Julie Strawn et al., *Improving Employment Outcomes under TANF* (Feb. 2001), at <http://www.clasp.org/pubs/jobseducation/BlankHaskinsFebruaryFinal.htm>; see also Maria Cancian et al., *Before and After TANF: The Economic Well-Being of Women Leaving Welfare* (May 2000), at <http://www.ssc.wisc.edu/irp/pubs/sv77.pdf>; PAMELA LOPREST, *FAMILIES WHO LEFT WELFARE: WHO ARE THEY AND HOW ARE THEY DOING?* 12-14 (1999), available at <http://newfederalism.urban.org/pdf/discussion99-02.pdf>;

4. WELFARE AND CHILD SUPPORT RESEARCH AND TRAINING GROUP, SCHOOL OF SOCIAL WORK, UNIVERSITY OF MARYLAND-BALTIMORE, *LIFE AFTER WELFARE: FIFTH REPORT* 37 (2000).

5. C.M.R. § 07.03.03.14, amended by F.I.A. Action Transmittal 01-11 (2000).

6. 26 C.F.R. § 31.02 (2000), available at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

7. See KATHERINE EDIN & LAURA LEIN, *MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK* (1997).

Many analysts argue that the outmoded standards used to determine the poverty line fail to consider nationwide cost of living changes over the past forty years, leading to an unrealistically low determination of the poverty line.⁸ In many communities, twice the poverty line is approximately the point at which families experience a sense of economic security and can afford safe and decent housing, as well as adequate nutrition and clothing. Twice the poverty line for a two-person family is \$1875 a month. A family of two with a mother who earns \$800 a month needs child support of \$1075 to achieve self-sufficiency at that level.

At the high-end extreme, self-sufficiency could be defined as the amount of money a family needs to meet all of its expenses without relying on any means-tested government assistance, such as food stamps, subsidized daycare, or housing assistance. According to detailed budget studies, that amount is approximately \$3541 a month for a family of three.⁹ Extrapolating from this measure, a family of two with a mother earning \$800 a month needs child support in the range of \$1700-2000 a month to achieve self-sufficiency.

It is fair to say that most observers do not use either the high or low-end measures of self-sufficiency. More common measures are the poverty line or a multiple of the poverty line up to 200%. There is no denying that an income of 200% of the poverty line does not create a comfortable level of economic security for single-parent families. This figure is used in concert with an assumption that there will continue to be long-term public support for providing very low-earning families with means-tested benefits other than cash assistance, such as Medicaid, the earned income tax credit, food stamps, childcare subsidies and housing assistance.

If self-sufficiency is defined as the family living between 100% and 200% of the poverty line, the child support required to fill the gap between the mother's earnings and self-sufficiency ranges from \$138 to \$1075 a month. The questions then become: Does either a first-generation or a second generation guideline provide support at these levels? If it does, how does meeting the obligation impact the obligor parent's standard of living? And if it does not, is the guideline's outcome appropriate?

Under Maryland's first-generation guideline, the child's expenses are allocated based on the proportion of the total income each parent produces.¹⁰ Therefore, the amount of child support that an obligor parent pays depends on the income of both parents. In my scenario, the mother earns \$800 a month. Where the father's earnings are also \$800 a month, the Maryland guideline calls for him

8. See, e.g., NATIONAL RESEARCH COUNCIL, MEASURING POVERTY: A NEW APPROACH, Executive Summary (1996), available at <http://www.nap.edu/readingroom/books/poverty/summary.html>; Constance F. Citro and Robert T. Michael, *Measuring Poverty—A New Approach*, available at http://www.jcpr.org/policybriefs/voll_num6.html (providing an executive summary of working papers published by the Northwestern University and University of Chicago Joint Center for Poverty Research); Maryland Budget & Tax Policy Institute, *Frequently Asked Questions About Poverty In Maryland*, at <http://www.marylandpolicy.org/povertyfaq00.htm>; Kathryn Porter, *Proposed Changes in the Official Measure of Poverty* (Nov. 15, 1999), at <http://www.cbpp.org/11-15-99wel.htm>.

9. DIANA PEARCE & JENNIFER BROOKS, WIDER OPPORTUNITY FOR WOMEN, THE SELF-SUFFICIENCY STANDARD FOR THE WASHINGTON, DC METROPOLITAN AREA 5-10 (1999).

10. MD. CODE ANN. § 12-201 (1997).

to pay child support in the amount of \$141 a month. Assuming the child support is paid, the child's household enjoys a total income of \$941 a month, which is 100% of the poverty line.

The ALI guideline comes to a slightly different result. The obligor father is required to pay \$160 a month, which brings the child's household to 102% of the poverty line. Under neither guideline does the child's household achieve 130% (reflecting the costs of working) or 200% of the poverty line. Under both guidelines, the father's remaining income after paying child support puts him between 90-95% of the poverty line.

Similar results are found when the father's income is \$1200 a month. Under Maryland's first-generation guideline, the father would pay \$199 a month. The child's household would achieve a standard of living equivalent to 107% of the poverty line. The ALI guideline requires the father to pay \$224 a month in child support, bringing the child's household to 109% of the poverty line. The father, after paying child support, has a standard of living between 140-145% of the poverty line.

The Maryland and ALI guidelines begin to diverge when the obligor father is earning \$1600 a month, or \$19,200 a year. Under the Maryland guideline, the father would pay \$226 a month, leaving the child's household with a total income of \$1026 a month. This is 109% of the poverty line, still below the 130% that a family of two needs to sustain a poverty-line standard of living when the mother is working. The ALI guideline calls for the father making \$1600 a month to pay \$544 a month in child support. That amount, if paid, brings the child's household to 143% of the poverty line, or slightly more than the household requires to sustain a poverty line standard of living. Under the Maryland guideline, the father's remaining income puts him at 198% of the poverty line, while the ALI guideline puts him at 152% of the poverty line.

Even when the father is earning \$2400 a month, or \$28,800 a year, the child's household remains below 200% of the poverty line under both guidelines. The child's household does better under the ALI guideline, which requires the father to pay \$816 a month in child support. After receiving the child support, the child's household achieves a standard of living of 172% of the poverty line. Under the Maryland guideline, however, the father pays only \$347 a month, and the child's household lives at 122% of the poverty line. The ALI guideline leaves the father at 228% of poverty after paying child support. The Maryland guideline leaves the father at 295% of the poverty line.

III. WHAT DO THESE NUMBERS MEAN?

A. The Promise of Welfare Reform

An initial conclusion that should be drawn from these numbers is that child support transfers, no matter how generous, do not bring the child's household to a reasonable standard of living when the mother's earnings are low. Under the Maryland guideline, which is similar to the guidelines used in most states, the best the child's household achieves is 122% of the poverty line, and that occurs only when the father is earning \$2400 a month. Even if the ALI guideline is adopted, the child's household remains below the 200% mark by 28%.

The promise of welfare reform, in other words, is a limited promise. If taken seriously under the guideline regimes used in most states, it means that self-sufficiency is defined as the child's household income improving only a small degree relative to receiving welfare. Adopting the ALI guideline would improve the situation, but would still leave most children living with low-income mothers in bad financial shape. Households of children with low-paid mothers, therefore, will continue to be dependent on government benefits of other kinds, such as food stamps, childcare vouchers, housing assistance and the earned income tax credit.

This may turn out to be a satisfactory outcome from the purely economic point of view in the sense that, when added together, the family's earned income, child support and government benefits may provide the child with a reasonable standard of living. The problem is that the mother is left with three jobs, each of which is time-consuming and demanding: caring for her child, working at her job, and satisfying multiple government agencies of her household's eligibility for this or that public benefits program. Rarely will a mother have the time and resources to get her family all the benefits it needs.

When the child support outcomes are taken seriously, the ALI guideline teaches an important lesson. Although the ALI guideline results in higher child support awards, it does not solve the problem of children's impoverishment in families where mothers have low earnings. One response to this dilemma is to say that the ALI guideline is not good enough and that fathers must pay still more. Another possible response is to help the mothers earn more. A third possible response is to reconsider the benefit levels and delivery of public benefits, including cash assistance.

Helping mothers earn more is an ongoing project that will benefit some families but not all. As I will show in the rest of this commentary, a comparison of the ALI guideline with the Maryland guideline demonstrates that it is not reasonable to believe that child support awards can be higher than what the ALI guideline proposes. The bottom line, therefore, is that most children living with low-income mothers will continue to need government assistance throughout their childhoods. Those who care about children's wellbeing need to focus, therefore, on making sure that the government assistance is available to them in amounts and under conditions that work.

B. Should Obligor Pay More?

Under both first and second generation guidelines, there comes a point when the nonresidential parent has a standard of living that is higher than the standard of living the parents would achieve if living in a joint household with the child. It is possible to view that point as a "separation bonus." In other words, when that point is reached, a higher-earning parent has an economic incentive to leave the combined household because his standard of living will improve. Obviously, people stay in families for reasons other than economic ones. However, when the economic incentive is combined with other reasons to separate, it may undermine a person's willingness to remain in a family.

Under the Maryland first generation guideline, the separation bonus occurs at a fairly low level of income. When the mother and the father are each earning \$800 a month, the combined household standard of living is 136% of the poverty

line. In a separated household with the father paying child support to the mother and child's household, both households experience a decline in their standard of living of about a third. When the mother's income remains \$800 but the father's income increases to \$2,000 a month, the Maryland guideline gives the father a modest separation bonus. The combined standard of living is 237% of poverty. After paying child support, his standard of living rises to 244% of poverty. If his earnings are \$2400 a month, the bonus is greater. The combined standard is 271% of poverty, but his post-separation standard of living, after paying child support, is 295% of poverty.

The ALI guideline, by way of contrast, provides no separation bonus for a father to leave a household where the mother is earning \$800 a month. Even when the father is earning \$2400 a month, his standard of living after paying child support is 228% of poverty. A good argument can be made, therefore, that a first generation guideline like Maryland's, at least when compared with a second generation guideline like the ALI's, is worse for a child both before and after parental separation. Because it deprives obligor parents of a separation bonus, the ALI guideline might discourage some obligors from leaving a child's household in search of a better economic situation. If the obligor leaves the household anyway, the child's household suffers somewhat less economic harm than it would under a first generation guideline like Maryland's.

C. Should Some Obligor Parents Pay Less?

A key question for child support guidelines is how much of the income of a nonresidential parent should be paid in child support. If an obligor is expected to pay too little, the cost of raising the child falls disproportionately on the obligee parent or perhaps on taxpayers more generally. On the other hand, if an obligor is expected to pay too much, he may be discouraged from working or may conclude that it is better to cut off all connection with the child.

Since many children living with low-income mothers also have low-income fathers, it is important to focus on how much low-income fathers can pay. If they pay too little, they will be seen as irresponsibly shifting their parental responsibilities to the obligee parent and to the taxpayers. Further, their embarrassment at failing to provide financial support to their children may imperil their parent-child relationship.

Alternatively, obligor parents who pay too much may experience extreme poverty. Few public benefits are available to childless adults, so their poverty will not be ameliorated through government assistance. If complying with the child support order seems impossible, or if complying means that they get little benefit from their earnings, they may be discouraged from working or seeking training or pay raises. Finally, if the obligee parent has sufficient income to support the child without the payment of child support, paying child support imposes costs on the obligor parent without providing a proportional benefit to the child's standard of living.¹¹

11. Sometimes, low-income obligors earn less than the parent with whom the child lives. Under both the ALI and the Maryland guidelines, the child support burden of an obligor declines, at least to some extent, as the earnings of the obligee increase. Therefore, child support has less of a negative impact on the living standard of a low-income obligor when the obligee has a high income.

Despite the fact that good arguments can be made for imposing lower child support obligations on lower-earning obligors, first generation guidelines like Maryland's can be criticized for overtaxing low-income obligors relative to other obligors. The best evidence for this assessment is an examination of the percentage of income that obligors are expected to pay as child support. It turns out that the lower one's income, the higher one's child support obligation. Where the obligee's income is \$1,000 a month or less, an obligor earning between \$400 and \$800 a month pays between 18% and 21% of his income in child support. An obligor earning \$2,000 a month, on the other hand, pays between 15% and 17% of his income in child support. (The variation in the percentage of the obligee's income derives from the fact that the obligee and obligor share the child support obligation in proportion to their incomes under the Maryland first generation guideline.)

The ALI second generation guideline takes a somewhat different approach. It assumes that lower-income obligors have less capacity to pay child support than higher-income obligors. An obligor with \$400 a month in income pays no more than \$48 a month in child support, or 12% of his income. An obligor with \$800 a month in income pays no more than 20% of his income in child support. The basic assessment of 34% begins when an obligor's income reaches approximately \$1600 a month. The obligor with \$1600 a month in income pays \$544 a month, or 34%. In all cases, the obligation declines only when the obligee earns more than \$1,000 a month.

The ALI guideline bases its approach to low-income obligors in part on an examination of relative standards of living. After paying child support to my prototype household where the mother earns \$800 a month, a father making \$800 a month in Maryland is left at 95% of the poverty line under the Maryland guideline and 92% of poverty under the ALI guideline. The child's household, similarly, is at about 100% of poverty. The two households, if living together, would experience a standard of living of 136% of the poverty line, so both households experience a similar decline when the incomes are split. If the father's income declines to \$400 a month, the Maryland guideline increases the percentage of his income dedicated to child support, from 18% to 19%, while the ALI guideline decreases the percentage from 20% to 12%. After paying child support, the Maryland guideline leaves the father below 50% of the poverty line, while bringing the child's household up to 93% of the poverty line. The ALI guideline leaves the father slightly above 50% of the poverty line, and the child's household at 90% of the poverty line.

By adopting lower payment schedules for lower-income obligors, the ALI guideline can be viewed as more realistic about the capacity of parents to pay child support. At the same time, the ALI guideline may be criticized for dis-

Thus, where the obligor earns \$2,000 a month and the obligee \$3,000, the obligor's child support is \$268 under the Maryland guideline, or only 13 percent of his income. Similarly, under the ALI, the obligor's child support is \$261, which is also 13 percent.

Where the obligor and obligee are both low-earners, however, the situation is quite different. If the obligor earns \$800 a month and the obligee earns \$1200, the Maryland guidelines impose an obligation of \$75 a month, or 19 percent of the obligor's income. Under the ALI guidelines, because of the different approach taken to all low-income obligors, the obligor owes only \$48 a month, or 12 percent.

couraging obligors from increasing their earnings because their child support obligations rise to 34% when they earn only \$1600 a month, or \$19,200 a year, an amount substantially below the median earning level. By way of contrast, under the Maryland guideline, the percentage of the obligor's income dedicated to child support declines as the income rises. The obligor with \$1600 a month in income pays approximately 14% of his income while an obligor with \$800 a month in income pays 18% of his income, when the obligee is earning \$800. The child support obligor might see this structure as an incentive to work harder.

The balance is not easy, but the ALI approach seems to get it right regarding low-income obligors. Saddling parents with unpayable orders will not result in the child's household getting the money. The better incentive structure would reduce the child support obligation until obligor earnings increase.

When examined closely, it also turns out that reducing the child support obligations of low-income obligors may not degrade the standard of living enjoyed by the child's household. Child support assignment explains this result. A key feature of the current welfare system is that recipients must assign their right to child support to the state.¹² As a result, the state is entitled to collect the child support payable to the child's family. The assignment is described as a reimbursement to the government. States are allowed to pass through a large portion of their child support collections to the families.¹³ However, few states do so.¹⁴ If a family receiving \$350 in welfare benefits is entitled to \$170 a month in child support, the state collects and keeps (along with the federal government) the \$170, and the family receives only \$350.

Child support assignment helps explain why, under first generation guidelines, low-income obligors are required to pay a higher percentage of their incomes in child support than high-income obligors. The reason derives from the probably accurate assumption that the absent fathers of most welfare recipient children are low earners. Crudely put, if their child support obligation is raised, the state can collect more reimbursement for money paid to welfare families.

The ALI guideline is less helpful to states that rely on reimbursements than first-generation guidelines like Maryland's. It recognizes that low-income obligor parents simply cannot pay the kinds of child support orders that the Maryland guideline imposes.

IV. THE BOTTOM LINE: WILL THE ALI GUIDELINES MAKE WELFARE GO AWAY?

The essential question for child support in low-income families is whether the parents can provide enough money for the child's household to enjoy some level of economic sufficiency and security. The preceding scenarios demonstrate that the answer is no for most children living with mothers who have left welfare for work in the last few years. Even at the high levels of child support contemplated under the ALI's guideline, a child living with a mother who earns the

12. 42 U.S.C. § 608(a)(3) (West 2001).

13. See CENTER ON BUDGET AND POLICY PRIORITIES, TREATMENT OF CURRENT CHILD SUPPORT PAYMENTS (Dec. 1998), available at <http://www.spdp.org/tanf/financial/childsupport.pdf>.

14. Thirty-one states retain all child support that is collected. See *id.* Sixteen pass through \$40 or \$50. Two states pass through \$75 or \$100. *Id.* The remaining two states pass through all support collected for some groups and none for others. *Id.*

average of \$800 a month will not enjoy a standard of living equivalent to 200% of the poverty line. The child's household will need some government support to achieve that level.

The ALI guideline reveals that child support could fill more of the gap between the mother's income and a self-sufficient standard of living than it does, because it would be fair to increase child support obligations of obligors making \$1600 a month or more. If the ALI guideline were adopted, some children would need fewer public benefits. Almost no child would live in a household needing no public benefits.

At the same time, many children would see no benefit from child support under the ALI guideline, because both parents are low earners. The ALI guideline is clear and persuasive that raising the child support obligations of low-earning parents is inadvisable. Relying on these obligors to pay sufficient child support to significantly raise their children's standards of living is a fiction. Unfortunately, it is a fiction that underpins welfare reform.

Welfare reform comes back to Congress for reauthorization in 2002. Hopefully, reauthorization will be an opportunity to re-examine the claim relied on in 1996—that children would no longer need cash assistance from the government once their mothers got a job and their fathers paid child support. If Congress takes its job seriously, the rich analysis provided by the ALI Reporters will contribute significantly to that re-evaluation.