

Appendix A

Rational Basis is the Key Focus in Emerging 'Third Generation' Child Support Technology

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This presentation will provide a follow-up from last year's progress report on the development of a prototype child support guideline for states to consider as an alternative to the second generation technology now in use

First generation: First generation child support "guidelines" were developed in local courts and counties to provide "normative" factual information about actual and reasonable child rearing costs or award levels. "Guidelines" were applied with discretion in the context of principles and detailed considerations provided in statute. *First generation technology was not designed for presumptive use.*

Second generation: The Family Support Act of 1988 mandated presumptive use of state-wide guidelines. Second generation technology is much like the first with some very important exceptions. Among them; higher numbers are used, *in-kind contributions* are mostly ignored, and in many states the fundamental principles and detailed considerations (rational basis) upon which child support decisions had been based have been eliminated from statutes.

Third generation: The proposed 'third generation' design approach focuses on the need to reinstate fundamental principle in child support law and to provide a 'reality based' framework in which to compare model circumstances with those in an individual case.

Last year, four separate presentations were given on existing technology, child support policy, studies of the "economic cost" of raising children, and guideline design method. The goal this year has been to follow that discussion with a product. A prototype guideline will be presented and a draft report will be provided as a hand-out. Version 1 of the final report is expected within six months of the conference.

Child support guidelines are technology used to assist courts in the application of law; specifically that of awarding child support. It is a matter of first principle that this technology can never meet Constitutional requirements without being firmly grounded in *rational principles* that are clearly pronounced in statute and in which any detailed considerations correspond in some rational way to the reality that must be considered in decision-making.

It follows that it can only be appropriate to apply a child support guideline when (if and only if) it has been shown to correspond to the principles of law that it is expected to uphold. It is also necessary to be able to make a comparison between individual circumstances impacting an award decision and the *model circumstances* corresponding to the routine output of the guideline. The limits to the application of any guideline rule must be understandable to the practitioner.

The *iron triangle* of proper design and use of child support guidelines includes consideration of the circumstances of the family members involved, comparison with the model circumstances on which the routine outcome of the guideline has been based, and the fundamental principles that rule the award decision. An *efficient design* is one in which the routine output of the guideline is carefully matched to the principles that must be applied. A *rational design* is one in which model circumstances are easily comparable to real circumstances.

The following outline provides 10 steps that can lead to development of better child support guidelines.

1. **Decide on the general principles that are used to decide a child support award** (including the purpose and goal of awarding support). For example; meeting children's physical needs, with each parent contributing in cash and kind in proportion to their relative ability to meet those needs, and each parent has an equal duty to the financial support of their children.
2. **Decide upon the factors that are relevant in the decision process.** For example; net income of the parents, marital property and its division, amount of time children spend with each parent, basic needs such as food, clothing and shelter, education and day-care, medical expenses, debts, tax law, children of second families, new spouses, etc.
3. **Explain in general terms how the guideline is applied.** For example; as the first presumption, challengeable by statute and fact.
4. **Write a first draft child support statute which explains the purpose and goal of awarding support, the general principles upon which the award decision should ultimately rest, the factors to be considered, and how the guideline fits into the decision process.**
5. **Restate all the conceptual information in the statute using a more precise language.** The new statements must be precise in order to translate them accurately into mathematical expressions. These precise statements are the design criteria that must be met by guideline engineers.
6. **Formulate the mathematical and logical steps of the guideline.** These steps must be validated in comparison to the design requirements. (For a more detailed explanation of the validation process, see the Pilot Study.)
7. **Decide the precise need for numerical information from what has already been completed.** No data base in the world contains sufficient information to define child support policy. Before you got this far, you had no basis for answering questions about the specific need for numbers. Now you should.
8. **Decide on appropriate modifications to the numbers available from various numerical studies.** Don't be surprised if data is not available to answer all your questions. In conceptual terms, what is the difference between existing numeric information and what was asked for?
9. **Test your model against a broad range of synthetic circumstances.** This is a very important step which should be much easier if the guideline was designed carefully. Remember that in practice; litigants, lawyers and judges must repeat this step at every hearing. *Every child support hearing is a field test.* How will they be able to adjust the outcome to account for relevant factors that your committee did and did not explicitly include? Consider the "iron triangle" to judge the quality of the design.
10. **Revisit all previous results (repeating any step as appropriate) applying any new knowledge gained from the experience of working through these steps the first time.** (Known as the learning cycle.)

What child support doctrine should we use? The prototype presented at the conference will be based on child support statutes and case law that was in effect prior to their replacement in the late 1980s by child support technology. The choice to use the doctrine actually decided upon by state legislatures, as interpreted by state courts, is appropriate for several reasons. Among them is the fact that no one has presented genuine and convincing evidence demonstrating that we should have deviated from those standards.

As a practical matter, it is also far better to transform the child support system one piece at a time in order to avoid chaos. A more competent use of new technology would most likely result if designs are based on laws already understood by family lawyers and judges. By virtue of the same understanding, a more fruitful discussion about proposed changes to child support doctrine should also result. Basing guidelines on rational and widely-understood child support principles should make application of guidelines much simpler, even while supporting a more sophisticated decision process.

The final report, which should be available within six months of the conference, will contain examples developed from alternative policy choices. The examples will demonstrate the flexibility and power of the design process described above.

See Also (list updated to include follow up reports, 1993-94);

Gay, Roger F., *New Equations for Calculating Child Support and Spousal Maintenance With Discussion on Child Support Guidelines*, Final Report of the Project for Improvement of Child Support Litigation Technology, 1994.

Gay, Roger F., *An Alternative Child Support Guideline for State's to Consider, Preliminary Report*, Presented at the Seventh Annual Conference of the Children's Rights Council, Holiday Inn, Bethesda, MD, April 28 - May 2, 1993.

Gay, Roger F., *The Alimony Hidden in Child Support, New Scientific Proof that Many Child Support Awards are Too High*, *The Children's Advocate* (NJCCR, Box 316, Pluckemin, NJ 07978-0316), January, 1995, Vol. 7 No. 5.

Gay, Roger F., *Time Limiting Cash Assistance in President Clinton's Welfare Reform Proposal*, submitted for the record to the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, August 16, 1994

Gay, Roger F., *Transitional Assistance, Work, The Role of States in Welfare Reform, and Financing Issues*, submitted for the record to the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, August 9, 1994

Gay, Roger F., *Welfare Reform and Parental Responsibility*, submitted for the record to the Subcommittee on Human Resources, Committee on Ways and Means, U.S. House of Representatives, July 26-29, 1994

Gay, Roger F., *Settling the Debate Once and For All, An Essay on the Nature of 'Child Cost Estimates' and their Application in Child Support Award Calculations*, A table-top paper available to attendees at the conference book store, at the Eighth National Conference of the Children's Rights Council, held at the Holiday Inn, Bethesda, Maryland, April 13-17, 1994

Children's Rights Council (Washington, DC), *Model Child Support Guideline*, Donald J. Bieniewicz, et al. (As Consultant) Published in a book on alternative child support guidelines by the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement.