The New ALI Child Support Principles

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"Child support law has been characterized, on the one hand, by pious principles and empty platitudes that exalt the child's interests and, on the other, by often inadequate awards that may leave children in poverty while their nonresidential parent enjoys a comfortable standard of living. This is not to say that there are not other operative objectives; the results bespeak them. But they generally operate sub silentio, and the gap between the principles and operative reality has resulted in normless decision making and rule making. Child support doctrine and legal scholarship have failed to recognize explicitly that the interests of the parties are conflicting and competing, and that a just law of child support must identify and balance those competing interests."  

The 1998 American Law Institute Child Support Principles, which deal with the substance of child support guidelines rather than enforcement techniques, do not merely restate existing law. Instead, they set out to correct two major problems of most American child support guidelines. First, most guidelines today are unprincipled in the sense that they do not expressly acknowledge the competing interests of parents and children, much less provide a mechanism that coherently balances these interests. The second problem flows from the first; in many cases existing formulas produce child support awards that are unacceptably low.
If the ALI Principles were adopted, in most states, including Oregon, the amount of child support awards would go up in many cases, particularly those involving small families of modest means in which the residential parent, usually the mother, has a lower income than the father. This change is quite deliberate and at the heart of why the ALI Principles will probably meet political resistance. This article explains the theory and operation of the ALI Principles, compares them to the current Oregon child support formula, which is similar to many others in the U.S., and discusses the consequences of and barriers to replacing existing formulas with formulas based on the ALI Principles. To establish a foundation for this discussion, the first section of the article reviews the development of child support formulas over the last two decades and criticism of these "first generation policies." The second section describes and analyzes the core of the ALI Principles, which begin with an extended discussion of the principles that should underlie a child support guideline and then develop specific provisions that implement these principles. The next section compares essential aspects of the Oregon child support guidelines to the ALI Principles. The conclusion considers political barriers to adoption of the Principles and alternate solutions to the economic problems of poor children.

I. Child support guidelines today

Until quite recently, the law of all states provided that the amount of a child support award was largely within the discretion of the trial judge. Statutes typically called for judges to set a just and reasonable amount of support, taking into account the child's needs and the obligor parent's ability to pay.\(^3\)

\(^3\) See, e.g., Uniform Marriage and Divorce Act § 309.
During the 1970s and early 1980s, two social phenomena -- increasing poverty among single-parent families and rising welfare rolls -- were attributed in significant part to inadequacies in child support law and practice. The "just and reasonable" standard was criticized on the basis of evidence that many judges did not use their discretion to make fair and consistent child support awards. Formulas, intended to limit judges' discretion and to raise child support awards to adequate levels, increasingly were seen as the solution.

This part first reviews the development of child support guidelines that are used in most states today and then discusses the criticisms of them that have emerged in the recent years.

A. The development of child support guidelines

The 1984 federal Child Support Enforcement Amendments required states to adopt guidelines and provide them to child support decision makers, but not that decision makers adhere to them. Oregon's response to this requirement was typical. The Support Enforcement Division of the Oregon Attorney General's office (SED) promulgated guidelines which provided for payment of 22 per cent of an obligor's net income for one child, 33 per cent for two children, 40 per cent for three children, and 46 per cent for four or more children. In

4 See, e.g., S. Rep. No. 387, 98th Cong. 2D Sess. 40, reprinted at 1984 U.S. Code Cong. 7 Admin. News 2397, 2436. See also Reporter's Memorandum to the Members of the Institute, supra note 1, PRINCIPLES at xxvi.

5 Pub.L. 98-378, ___ Stat. ___.

Oregon these guidelines were used in welfare recovery cases but not in other cases.

The federal Family Support Act of 1988\(^7\) went the next step, requiring states to adopt guidelines applicable to all judicially and administratively established child support orders. Before this requirement was even enacted though, Oregon, unlike many other states, already had a child support formula applicable to non-welfare cases. In 1981 the Oregon Supreme Court in Smith v. Smith\(^8\) rejected a custodial mother's argument that the SED formula should be extended to all cases, but the Court agreed that unguided judicial discretion over the amount of child support was not producing satisfactory results.\(^9\) The Court, therefore, ruled that in non-welfare cases, judges should decide the amount of child support according to a formula under which the parents shared responsibility for the child's "needs" in proportion to their incomes.

In principle the Smith formula seems to get it exactly right -- parents should provide for the child's needs consistently with their relative ability to pay. The problem with this formula is quantifying the child's needs, since the amount of a child's "needs" above subsistence level varies with the income and values of the parents.\(^10\) For this reason, Oregon did not continue to adhere to the Smith

\(^7\) Pub.L. 100-485, 102 Stat. 2343, codified as amended in scattered sections of 42 U.S.C.
\(^8\) 290 Or. 175, 626 P.2d 342 (1981).
\(^9\) Smith v. Smith, 290 Or. 175, 626 P.2d 342, 346 (1981), criticizing the case-by-case method as creating lack of uniformity, making settlements more difficult, and appeals more common.
formula. Instead, it adopted a variation of another formula, developed at the national level in response to the federal requirement that all states have child support formulas of general applicability.

1. The marginal expenditure model for child support formulas

While federal law does not prescribe any particular child support formula, all child support formulas used in the U.S. today, including Oregon's, are based on the "marginal expenditure" model. The fundamental premise of this model is that parents who are not living in the same household as their children should pay as child support the amount of money they would have spent if they were living in a household consisting of themselves, the children, and the children's other parent, in other words, in what is commonly called an intact household.  

11 The current federal requirement is very general, with no prescription of formula. 45 C.F. R. § 302.56 provides in relevant part that guidelines must:  
(1) Take into consideration all earnings and income of the absent parent;  
(2) Be based on specific descriptive and numeric criteria and result in a computation of the support obligation  
(3) Provide that there shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the guidelines is the correct amount of child support.  
12 For ease of discussion, I will call this amount the amount spent in an "intact" family, even though in many cases such a family never existed because the parents and children never lived together as a family, as in many cases of unmarried parents.
The essential question under the marginal expenditures model, then, is how to determine this "typical" expenditure on children. The model relies on economic studies, first done in the 1970s, of how much couples at various income levels who live together spend on their children. The original study was conducted by the demographer Thomas Espenshade. To estimate how much parents in intact families actually spend to raise children, he asked, What would it cost for a couple to add a child to their household without lowering their standard of living? The answer, expressed as a percentage of total family expenditure, is the additional amount that the parents would have to spend to add a child to their household without suffering any decline in the household's standard of living. This is the marginal cost of one child. Similarly, the marginal cost of a second child is the additional amount that the parents would have to spend to maintain their household at the same standard of living they enjoyed when they had only one child.  

A number of other studies have been done since Espenshade published his work, coming to different conclusions about how much it costs to add children to households with varying incomes while maintaining the same standard of living. There is no consensus about which set of estimates is the best, for all

13 PRINCIPLES, Appendix, § 3.05A, comment c at 174.

have limitations and biases. A widely used study, commissioned by the United States Department of Health and Human Services and conducted by Professor David Betson, "reaches two-parent family figures similar to but somewhat lower than those developed by Espenshade a decade earlier." Both the ALI Principles and the Oregon guidelines are derived in part from estimators. To determine child rearing expenses, it uses data from USDA food plans to allocate food expenses among family members and the national medical Expenditure Survey to allocate health-care expenses. For housing, transportation and other miscellaneous goods and services, it uses the per capita method because it thinks the assumptions behind the marginal expenditure model are questionable.

The ALI Principles use estimates on the low end of the scale. See infra at text accompanying notes _________.


16 Principles, Appendix, § 3.05A, comment c at 175-76. Betson's study used the Rothbarth methodology discussed in note ___ supra. Policy Studies Report, supra note ___ at 9.
Betson's study. The following chart compares the Espenshade and Betson estimates of how much of a two-parent family's expenditures are spent on children.

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<th>1 Child</th>
<th>2 children</th>
<th>3 children</th>
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<tbody>
<tr>
<td>Espenshade:</td>
<td>30%</td>
<td>40-45%</td>
<td>50%</td>
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<tr>
<td>Betson</td>
<td>25%</td>
<td>35%</td>
<td>40%</td>
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The fundamental premise of the marginal expenditures model is that these fractions should also be used to determine the child support obligations of nonresidential parents. Marginal expenditures child support take two forms -- the percentage-of-obligor's-income model and the Income Shares model, which was developed by the federally-funded Child Support Guidelines Project. Under the percentage-of-obligor's-income model, a child support award is calculated as a percentage of the obligor's net or gross income, depending on

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the state.\textsuperscript{20} In an Income Shares state, the obligor's obligation is determined by multiplying the amount of the combined child support obligation of both parents by a fraction, the numerator of which is the obligor's income and the denominator of which is the combined income of both parents.\textsuperscript{21} Proponents of the Income Shares model argue that because it takes into account the income of both parents, it is superior to the percentage-of-obligor's-income model. However, as a practical matter, under a pure marginal expenditures approach, the amount of the residential parent's income does not significantly affect the amount of the nonresidential parent's child support obligation. The Income Shares model simply provides for each parent to spend the same fractional share of his or her income to support the child, with the nonresidential parent actually paying money and the nonresidential parent constructively paying her share.\textsuperscript{22} As those who have worked with Oregon's Income-Shares-based guidelines have discovered, in most cases, rises and falls

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\textsuperscript{20} See \textsc{Principles}, Glossary at 153.
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\textsuperscript{21} The Income Shares model is similar to the model developed by the Oregon Supreme Court in \textit{Smith v. Smith}, 290 Or. 175, 626 P.2d 342 (1981), discussed \textit{supra} at text accompanying notes \ldots. The critical difference is that under the Income Shares model, the amount that the parents share is not some measure of the child's need determined on the facts of the particular case, but rather the amount that parents of similar income would ordinarily spend on the child if the family were intact.
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\textsuperscript{22} Reporter's memorandum to the members of the Institute, \textit{supra} note 1, \textsc{Principles} at xxix, n 5.
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in the income of the residential parent do not substantially affect the obligation of the nonresidential parent.\footnote{For example, under the Oregon child support guidelines, if the residential parent has a gross income of $2,000 per month and the nonresidential parent has a gross income of $3,000 per month, the nonresidential parent's child support obligation for one child is $398. If the residential parent's income rises to $3,000 per month, while the nonresidential parent's income remains the same, the nonresidential parent's child support obligation is $377, a decline of less than $20. (Calculations done by the author, based on the Oregon child support formula, OAR 137-050-0320 et seq.)}

Thus, the child support formulas used in the U.S. today, based on the marginal expenditures model, determine the nonresidential parent's obligation by reference to a hypothetical situation -- how much would the two parents together spend on their child or children if all lived together in the same household. The marginal expenditures model does not significantly vary the obligation of the nonresidential parent based on the income of the residential parent, nor does the obligation vary with the actual living standard in the household of the residential parent.

2. The rejected alternative -- the equal living standards model

The major alternative to the marginal expenditure model is the equal living standards model.\footnote{This model was proposed in Judith Cassetty, G.K. Sprinkle, Ralph White & Bill Douglass, \textit{The ELS (Equal Living Standards) Model for Child Support Awards}, in}
child support to equalize the living standards in the households of the child's two parents, clearly links the nonresidential parent's obligation both to the income of the residential parent and to the living standard in the residential parent's household. While the equal living standards model has been widely discussed and is widely preferred by commentators who focus on children's welfare, it has been adopted in no state.

The model has failed to gain political support mostly because it collapses child support with support for the residential parent, necessarily requiring the nonresidential parent to share fully his income with his former partner as well as the child or children. In addition, the model is perceived as deterring the residential parent from participating in the paid labor force.

Instead, the marginal expenditures model, particularly the Income Shares variation, has been widely adopted, in significant part because it seems to express the right policy: The income of both parents should be considered in


26 See, e.g., Marsha Garrison, supra note ____. 86 Cal. L. Rev. at 70. Garrison also argues that the marginal expenditure model prevailed because of "false advertising;" proponents claimed that it would significantly raise support levels without requiring noncustodial parents to pay more than they had before. And some people simply did not figure out that the marginal expenditure model would not provide the child with a standard of living equal to that of an intact household. Id. at 70-71.

27 Principles, § 3.03, comment k(iii).
calculating child support, not just the obligor parent, and the parents should to spend as much money on the child as they would if they lived with the child. However, as we have gained experience with the actual operation of this model, criticism of it for failure to protect the interests of children adequately has grown.

B. Criticism of the "first generation" of child support guidelines

Existing guidelines have been criticized on empirical and theoretical grounds. Empirical evidence shows that the guidelines produce child support awards that leave many children with living standards much lower than those of their nonresidential parents. As the ALI Principles point out, the marginal expenditures model, which bases the amount of child support on theoretical levels of spending in an intact family, could be expected to produce this result because it is not related to the actual standard of living in the child's one-parent household.

1. The relationship between children's poverty and child support

Child support is essential to the economic well-being of most children who do not live with both their parents. In addition, child support is critical to the educational opportunities of children living with single parents. However, child support has not increased as much as expected under the guidelines adopted since the 1980s.28

In Oregon, as in the rest of the U.S., single mothers are generally not able to support their children at an adequate level alone.\textsuperscript{29} The same is true

\___\. See also Jessica Pearson, Nancy Thoennes, & Patricia Tjaden, \textit{Legislating Adequacy; the Impact of Child Support Guidelines}, 23 \textit{Law & Society Review} 569, 585 (1989)(study of child support awards before and after guidelines in three states, found "a modest post-guidelines increase of 15 per cent"); Nancy Thoennes et al., \textit{The Impact of Child Support Guidelines on Award Adequacy, Award Variability and Case Processing Efficiency}, 25 \textit{Fam. L. Q.} 325, 342-345 (1991) (the average monthly award increased 5 per cent in Colorado, 28 per cent in Hawaii and 16 per cent in Illinois. Combining data from all the states, low-income, single-child maternal custody families experienced a 19 per cent increase in award levels following adoption of the guidelines, while middle- and upper-income families experienced a 7 per cent and a 13 per cent increase respectively).

\textsuperscript{29} In Oregon more than 15 per cent of all children under 18 are poor, while about 30 per cent of families headed by single mothers are poor. Kanhaiya L. Vaidya, 1998 \textit{Oregon Population Survey Summary of Findings} 2, Office of Economic Analysis, Department of Administrative Services, State of Oregon 1999, available online at:

\texttt{<http://www.osl.state.or.us/csimages/census/1998pops/1998pops2.pdf>}


Nationally, about 20 per cent of children under 18 are poor and almost 22 per cent of children under 6 are poor, using the federal poverty standard. Children under six living with a single parent had a poverty rate of about 60 per
throughout the first world.\textsuperscript{30} Moreover, children living with a single parent generally have a lower standard of living than their nonresidential parent.\textsuperscript{31}

\textsuperscript{30} PRINCIPLES § 3.03, comment g ("The risk of poverty is comparably high for children in one-parent households in all first-world countries. When private resources alone are considered, cross national studies of first-world countries show notable similarity in the economic circumstances of one-parent families.")

While most single mothers work, they are not able to earn enough to provide adequately for their children.\textsuperscript{32} One reason is that women generally earn less than men,\textsuperscript{33} and a different but partly related reason is that taking care of children simply decreases the amount of time and energy that a single parent can devote to building a career. Further, the economic position of low-wage earners has declined significantly in the last thirty years. Today a person working full time at the minimum wage cannot support a family of three above the federal poverty line,\textsuperscript{34} though 30 years ago, a minimum wage job supported a three-person family at 118 per cent of the federal poverty level.\textsuperscript{35}

Assistant Secretary for Planning and Evaluation) (Lewin/ICF 1990), Ch. 5. ("At a practical level, there is ample evidence that the standard of living for the custodial parent and child usually fall, and that the custodial parent household typically has a lower standard of living than the noncustodial parent.")

\textsuperscript{32} Jay D. Teachman & Kathleen M. Paasch, \textit{Financial Impact of Divorce on Children and Their Families}, 4 - 1 \textsc{The Future of Children -- Children and Divorce} 63, 69 (Center for the future of Children, The David and Lucile Packard Foundation, Spring 1994).

\textsuperscript{33} Nationwide, in every field except Architecture and Environmental Design, men earn more than women with the same level of education. Deirdre B. Molander, \textit{Oregon Update: Oregon Women: A Summary of Changes in the Workplace by Gender 1990-1997} 5 (April 1998), In Oregon men’s median earnings are almost $10,000 higher than women’s. Institute for Women’s Policy Research, \textsc{The Status of Women in Oregon} 13 (1998).

\textsuperscript{34} Paula Roberts, \textit{The Potential of Child Support as an Income Source for Low Income Families}, 31 \textsc{Clearinghouse Rev.} 565, 566 (1998) and sources cited therein (A minimum wage job earns $10,920 per year, $2,410 less than
Though some poor children have poor nonresidential parents who are not able to help them much, a significant number of parents can afford to provide for their children who do not live with them. For these children, adequate child support is essential to their economic well-being. Further, for many children child support is essential to obtaining education beyond high school, which is central to their future economic well-being.

poverty level for a family of three). Even the Oregon minimum wage of $6.50 per hour does not produce income sufficient to support a family of three above the poverty level.


37 See Paula Roberts, THE POTENTIAL OF CHILD SUPPORT AS AN INCOME SOURCE FOR LOW INCOME FAMILIES, 31 CLEARINGHOUSE REV. 565, 567, n. 13 (1998) (Nationwide, two-thirds of absent fathers have incomes substantially above poverty, 14 percent have incomes below the poverty line, and 18 percent have incomes between the poverty line and 130 percent of poverty, citing Elaine Sorenson, PRELIMINARY FINDINGS FROM AN URBAN INSTITUTE ANALYSIS OF LOW-INCOME FATHERS AND INCOME SECURITY POLICY (Urban Inst. 1996)).

38 Nationwide, in 1979 a college graduate earned 38 percent more than the average high school graduate. In 1996 the difference had grown to 71 percent. For those with advanced degrees, the difference in income grew from 52 percent in 1979 to 106 percent in 1996. Oregon Employment Department,
Empirical studies have shown that substantial numbers of parents who did not live with their children during the children's minority will not voluntarily help the children finance advanced education, even though the children want to and are capable of continuing in school.39

2. Theoretical objections to the marginal expenditures model

In a memorandum introducing the ALI Principles, the reporter explained that the existing child support guidelines, "unlike the earlier need-based discretionary


The economic advantage of education is also reflected in Oregon's unemployment statistics. Almost two-thirds of those who are unemployed and registered with the State Employment Department had a high school education or less, while only 15.5 per cent of the unemployed had three years of college or more. Oregon Employment Department, 1998 REGIONAL ECONOMIC PROFILE, STATE OF OREGON 21 (December 1997).

39 See, e.g., JUDITH S. WALLERSTEIN & SANDRA BLAKESLEE, SECOND CHANCES: MEN, WOMEN & CHILDREN A DECADE AFTER DIVORCE 157-160 (1989). The ALI Principles give factfinders discretion to order continued child support for postsecondary education. PRINCIPLES § 3.16. Details of this proposal are beyond the scope of this paper. For a discussion of the difficulties of ordering support for children older than the age of majority, see Leslie Harris, Dennis Waldrop & Lori Waldrop, Making and Breaking Connections Between Parents’ Duty to Support and Right to Control Their Children, 1990 OREGON L. REV. 689.
rubric, .. are neither intended nor designed to register and reflect the need of the child in the residential household. They do not, in any meaningful manner, consider the resources independently available to the residential household." Therefore, the combined amount that the parents spent or would spend on the child if all lived in the same household has little directly to do with how much should be spent on the child living with only one parent.

Perhaps the most essential fact that the marginal expenditures model fails to take into account is that the costs of the two households together are greater than one household alone because of loss of economies of scale. How this economic burden should be distributed, particularly with regard to its impact on the child, is a critical question that is simply not addressed by the marginal expenditures model.

As it turns out, if the child's parents have equal amounts of income before child support is paid, the marginal expenditures model does spread the loss of economies of scale equally between the households. However, when the parents' incomes are unequal, child support guidelines based on the marginal expenditures model at best perpetuate and can exacerbate the difference in the standards of living of the two households.

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40 Reporter's memorandum to the members of the Institute, supra note 1, PRINCIPLES at xxix.
41 PRINCIPLES § 3.03, comment c, recognizing this fact and using it as a reason not to advocate protecting the child against all economic harm resulting from the parents not living together.
42 Reporter's memorandum to the members of the Institute, supra note 1, PRINCIPLES at xxix -xxx.
Some argue, therefore, that child support guidelines should be revised to conform with the equal outcomes model, notwithstanding its problems. The ALI Principles do not do this. Instead, they modify the marginal expenditure model, minimizing but not eliminating these effects of the marginal expenditures model. The reporter explained:

"The proposed ALI guideline combines the conceptual virtues of the old need-based discretionary rubric with the conceptual and practical virtues of the first generation child support guidelines. Like a first generation guideline, the ALI guidelines can be efficiently administered in a mass system of child support. Yet the ALI guidelines, like the need-based discretionary rubric, is sensitive to the relative and absolute needs of the parents and their children. The ALI guideline requires no more information than that already employed by the first generation guidelines used in a majority of state, the so-called Income Shares formula. Yet, unlike first generation guidelines, the ALI guideline processes that information in a formula that takes into account the economic circumstances of the residential household as well as those of the nonresidential parent. It registers absolute need for both parents and factors the relative economic circumstances of the parents, adjusting the child support obligation accordingly, both upward and downward."43

43 Reporter's memorandum to the members of the Institute, supra note 1, PRINCIPLES at xxxi. The memorandum notes that a prior draft of the Principles proposed that the ALI should recommend a marginal expenditures formula with modifications to "ameliorate obvious shortcomings." However, the ALI Council and reporters of the project ultimately rejected this proposal because in too
III. The basics of the ALI Child Support Principles

The ALI Principles are not themselves a child support guideline but rather are addressed to those who construct a state's child support guideline. The Principles apply to all child support cases, not just those following the divorce of a child's parents, though much of the commentary and discussion speaks in terms of the parents' marriage and divorce. Like Oregon's child support guideline and that of many other states, the ALI Principles treat as a "standard case" one in which the child lives with one parent at least 65 per cent of the time and makes adaptations for "dual residence" cases. This article focuses on the ALI treatment of "single residence" cases.

many cases it did not correct problems and because it made the child support guidelines too complex. The prior proposal is included as an appendix to the recommended guidelines. Id. at xxix-xxxi.

44 Reporter's memorandum to the members of the Institute, supra note 1, PRINCIPLES at xxvii.

45 PRINCIPLES § 3.01. Federal law requires that state child support guidelines be of general applicability and apply to all cases. Family Support Act of 1988, Pub.L. 100-485, 42 U.S.C. § ______.

46 PRINCIPLES, § 3.14, Reporter's Note to Comment b. For dual residence cases, those in which time is divided between the parents more equally than 65 per cent-35 per cent, the ALI Principles call for dividing the amount of support according to the amount of time the child spends with each parent. PRINCIPLES § 3.14. The total amount due for support is increased, in recognition of the increased costs of dual residences, and the amount to be paid is calculated in a
Like "first generation" child support formulas, the ALI Principles provide for parents to share income with their child or children. Unlike many "first generation" formulas, the ALI version explicitly acknowledges that the interests of each parent sometimes diverge from those of the child, as well as from each other's, and it seeks a balance among these interests that can be defended on principle. The Principles evaluate the need for and adequacy of child support awards by comparing the economic standard of living in the households of the parents, rather than looking only at the relative income of the parents. Where the household of the residential parent has a lower standard of living, the Principles call for increased child support to narrow the gap; where the residential parent's household has a higher standard of living, child support is lower. This section first surveys the interests identified in the ALI guidelines and then explains how the balance struck among them plays out in practice.

A. The theoretical framework of the ALI guidelines -- interests balanced and interests ignored

The most important goal of the ALI formula is to strike a defensible balance among the sometimes conflicting interests of the child, the residential parent and the nonresidential parent. The accommodation proposed by the Principles sometimes appears in practice to protect the child much more than way that preserves the idea of supplementing the basic child support award to insure that the child's basic needs are met and that the child has an income not grossly disproportionate to that of either parent. Id. Cf. text accompanying notes _______ infra.

47 PRINCIPLES §3.03
guidelines in use in most states today, but the commentary repeatedly argues that in fact the child's interests are significantly compromised to accommodate those of the nonresidential parent.

1. The interests of the child

A common aspiration expressed in judicial opinions and popular discussions concerning child support is that the child should not suffer economically because the parents are not living together.\(^\text{48}\) However, the ALI Principles do not attempt to achieve this goal because it would infringe upon the rights of nonresidential parent too much.\(^\text{49}\) For the same reason, the Principles do not adopt the modest-sounding goal that the child should not suffer disproportionately as compared to other family members.\(^\text{50}\) The Principles argue that to achieve even this goal, it would be necessary to use an equal living standards child formula. The Principles reject this formula because of its intrusion on the nonresidential parent's interests:

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\(^\text{48}\) For example, Trombley v. Trombley, 225 Or. 209, 211, 357 P.2d 283 (1960), says that support should be ordered to provide the comforts and luxuries of life that the child would have had if the parents were not living apart. \textit{Compare} Harris v. Harris, -- A.2d --, 1998 WL 226766 (Vt. 1998), requiring a noncustodial parent to pay high child support so that the child's standard of living would more closely approximate what it would be if the parents were together, year round rather than just when the child was with the father.

\(^\text{49}\) \textit{PRINCIPLES} § 3.03, comment c.

\(^\text{50}\) The leading pre-child support guidelines case in Oregon, Smith v. Smith, 626 P.2d 342, 345 (1981), calls for a standard like this.
“By requiring that the standard of living of the residential parent's household be no lower than that of the nonresidential parent's, an equal living standards measure would effectuate the child's interest not to bear disproportionately the adverse economic effects of family dissolution. However, it not only would require that the nonresidential parent share income with the child, but would also often require that the nonresidential parent equally share income with the residential parent.”

To avoid this, the Principles compromise the child's interests and provide instead that the goals of the child support formula should be to:

a) allow the child to "enjoy a minimum decent standard of living when the resources of both parens together are sufficient to achieve such result without impoverishing either parent;"

b) allow the child to "enjoy a standard of living not grossly inferior to that of the child's higher income parent;"

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51 PRINCIPLES § 3.03, comment e.

52 See PRINCIPLES § 3.03, comment c(l): "the child's maximum economic interest is not to suffer disproportionately, as compared to other family members. Yet even this interest may be compromised in order to accommodate other objectives and interests."

53 PRINCIPLES §3.03(1)(a). The Principles use the concept of "minimum decent standard of living" for various purposes and define this as 150% of the poverty threshold. Id., Glossary at 165.

54 PRINCIPLES §3.03(1)(b)
c) prevent the child from suffering "loss of important life opportunities that the parents are economically able to provide without undue hardship to themselves or their other dependents." 55

2. The interests of the residential parent

The most fundamental interest of the residential parent recognized by the Principles is not to bear disproportionately the direct and indirect costs of child rearing. 56 For purposes of interpreting this goal, the commentary to the Principles discusses how the residential parent's contribution of child-rearing

55 PRINCIPLES § 3.03(2). This goal concerns primarily educational opportunities. Id., comment c(ii).

“The articulation of this objective implicitly poses two questions. It asks whether the child would likely have experienced the life opportunity but for the dissolution of his parents' relationship and, if so, whether the parents can, in their current circumstances, provide the opportunity without undue hardship to themselves or their other dependents.

"The objective responds to concern that many parents may underinvest in the education of children with whom they do not share a household."

Id. comment. i.

56 PRINCIPLES, § 3.03, comment d.
services should be treated. It acknowledges that, of necessity, this parent contributes most of this kind of service and that doing so

"may constrain the residential parent's labor market opportunities and, in conjunction with substantial labor force participation, severely limit the residential parent's leisure. . . . The Principles do not attempt a complete accounting of all costs and benefits, but instead recognize only financial costs. Thus, the Child Support Chapter recognizes a residential parent's disproportionate provision of child care only insofar as it may be understood to limit the residential parent's market earnings."\(^5\)

3. The interests of the nonresidential parent

The Principles argue that the marginal expenditure principle, which, as discussed above, is the basis for most child support formulas today, fundamentally expresses a principle of justice for the nonresidential parent: to contribute no more to the support of the children than if the parent were living with the children in a two-parent household.\(^5\)\(^8\) The ALI Principles accept this measure as a starting place, but do not allow it to prevail in all situations.

\(^{57}\) Principles, § 3.03, comment d. The commentary argues that it is necessary to account for the economic costs of child rearing because today "universal adult labor force participation is both the empirical norm and the norm generally assumed by these Principles. The issue therefore is not whether the residential parent's disproportionate provision of child care should be considered, but how it should be taken into account." Id.

\(^{58}\) Principles, § 3.03, comment e.
"At bottom, the marginal expenditure principle reflects a strong cultural belief in the primacy of the earner's claim to his earnings. . . . It is true than any transfer of income to the child's residential household amy also be enjoyed by other members of the household, including the residential parent. This is an inevitable and unavoidable effect of any child support transfer, and is not itself an adequate reason for limiting or disapproving child support. Nevertheless, the payor parent has an interest in limiting the measure of his child support obligation to his relationship to the child, rather than to the residential household."59

"[T]his notion of justice arguably overstates the nonresidential parent's claim. The continuity of marginal expenditure measure may be understood to be predicated on the notion that, insofar as he is the dominant earner, the nonresidential parent should be held harmless by divorce, that is, he should be no worse off economically after divorce than he was during marriage. Yet, being no worse off suggests, in the alternative, that he should not be heard to complain so long as he does not suffer a decline in his standard of living. To the extent that he will not suffer a decline in his standard of living (using household equivalency measures), there is no persuasive reason he should not pay more than what he would have spent on the children were he living with him. This does not imply equalization of household standards of living. In view of the lost economies of scale, the standard of living in the child's residential household will necessarily drop well below the preseparation standard if

59 Principles, §3.03, comment e.
the standard of living of the higher income nonresidential parent is held constant."

Although the Principles do not use "maintenance of the support obligor's marital standard of living" as the basis for any part of the child support obligation, they use this standard as a touchstone for determining whether the obligor is being treated fairly in particular circumstances. Indeed, to evaluate the fairness of proposed orders, the Principles consistently compare the standard of living of each household following payment of child support to the standard of living that the parties would enjoy if they all lived in the same household.

4. Other interests which the ALI Principles ignore or account for

The most important arguments affecting the amount of child support which the Principles reject are the residential parent's claim for more support based on loss of leisure and the nonresidential parent's argument for lower child support to compensate for loss of the child's companionship. The Principles acknowledge the existence of such claims but treat them as not objectively quantifiable and recommend treating them as canceling each other out.

On the other hand, the Principles do acknowledge as valid and attempt to accommodate some ancillary principles. These include not discouraging the

60 PRINCIPLES, § 3.03, Reporter's Notes to comment e
61 PRINCIPLES § 3.03, Reporter's Notes to comment e.
62 See notes __________ and accompanying text infra for examples.
63 PRINCIPLES § 3.03, comments d, f.
labor force participation or vocational training of either parent, promoting acceptance of child support rules by making them understandable and 

64 PRINCIPLES §3.03(5). The commentaries to this section treat work incentives of payors and payees differently. They argue that child support has two, contradictory effects on payors. Higher support "may discourage work because the earner gets to keep less of his earnings. On the other hand, it may encourage work because the earner has to work more to teach a desired level of income. These effects tend to cancel each other out." PRINCIPLES, § 3.03, comment k(ii). Moreover, the commentary argues that high child support obligations will not cause obligors to duck their obligations.

“There is no empirical support for the proposition that nonresidential parents have a higher compliance rate when child support orders are low. On the contrary, the states with the highest compliance rates have guidelines that generate relatively high support orders. What does distinguish high compliance jurisdictions is aggressive enforcement, not support order levels.”

Id.

Regarding recipients of child support, the commentaries also reject as unsubstantiated the concern that any child support payment will deter the residential parent from working. "Residential parents do not appear to substitute child support for gainful earnings. Residential parents who receive child support work longer hours and earn higher wages than those who do not." PRINCIPLES, § 3.03, comment k(iii). See also ANDREA H. BELLER & JOHN W. GRAHAM,
The commentaries say, however, that

“[R]esidential parent labor force participation is sensitive to the structure of child support guidelines. If the formula provides for equal living standards, the residential parent can diminish her work effort and receive an augmented child support transfer, or she can increase her work effort and receive a diminished child support transfer. (Effectively, she imposes upon the nonresidential parent a portion of the burden of her decreased gainful employment, and she shares with the nonresidential parent a portion of the benefit of her increased employment.) In contrast if the formula is based solely upon marginal expenditure, the child support transfer is largely unaffected by her increased or decreased work effort, because child support is calculated as a percentage of total parent earnings and, effectively, or each parent's earnings. The residential household alone bears the gains and losses of increases and decreases in the residential parent's gainful earnings.”

PRINCIPLES, § 3.03, comment k(iii).
consistent with popular understandings of the obligations of parents to a child,\textsuperscript{65} making child support awards easily enforceable and modifiable,\textsuperscript{66} and fostering cooperation and minimizing conflict between the parents.\textsuperscript{67}

These goals are, however, secondary to achieving an appropriate balanced among the interests of the child and the parents. The next section will discuss the specifics of the ALI's proposed child support guidelines and how they are affected by these guiding principles.

C. The core of the ALI child support guidelines

The child support guidelines recommended by the ALI Principles are an adaptation of the dominant marginal expenditure formula. The ALI guidelines begin by establishing a "base amount" of child support owed, which is the amount that would be required under a well-constructed marginal expenditure formula.

However, a central thesis of the ALI Principles is that in most cases this formula does not produce a child support award which appropriately balances the child's and the parents' interests. Only when the parents have the same incomes are the interests in balance, the Principles argue. When the residential parent's income is lower than the nonresidential parent's, as is generally true, the marginal expenditures formula typically does not produce an award large enough to allow the child to "enjoy a standard of living not grossly inferior to

\textsuperscript{65} PRINCIPLES § 3.03(6)  
\textsuperscript{66} PRINCIPLES § 3.03(7)  
\textsuperscript{67} PRINCIPLES § 3.03(8)
that of the child's higher income parent;"68 and to prevent the child from suffering "loss of important life opportunities that the parents are economically able to provide without undue hardship to themselves or their other dependents."69 Sometimes the marginal expenditures award does not even provide the child with a "minimum decent standard of living" even though the nonresidential parent's income may be high enough to provide this.70

Therefore, the Principles provide that an additional sum, called the "supplement" should be calculated and added to the "base amount" to produce an award that achieves a better balance. The sum of the "base" and the "supplement" is the "preliminary assessment," which is the highest amount that a nonresidential parent at that parent's income level would ordinarily be expected to pay. The most common situation in which the nonresidential parent would be ordered to pay the full preliminary assessment is when the residential parent's income is at or below 150 per cent of the federal poverty threshold, which the Principles generally call the "minimum decent standard of living" and in this context call the "self support reserve."71

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68 PRINCIPLES §3.03(1)(b)
69 PRINCIPLES § 3.03(2). This goal concerns primarily educational opportunities. Id., comment c(ii).
70 PRINCIPLES §3.03(1)(a). The Principles use the concept of "minimum decent standard of living" for various purposes and define this as 150% of the poverty threshold. PRINCIPLES, Glossary at 165.
71 For further discussion of the self-support reserve, see Appendix, comment m to § 3.05A, PRINCIPLES at 195. Self-support reserves are also used in the Income Shares formula. For a discussion in the context of the Oregon child support guidelines, see POLICY STUDIES REPORT, supra note __, Appendix 1-16.
Many residential parents have incomes above this minimum decent standard of living, or self-support reserve, and, therefore, the ALI Principles provide that when the residential parent's income rises above this level, a "reduction factor" should kick in to reduce the preliminary assessment, so as to strike an appropriate balance of income between the two households.

The rest of this section explains calculation of the preliminary assessment in more detail and then discusses some of the most important circumstances in which this assessment will be adjusted to reach the final child support award.

1. The preliminary assessment

The "preliminary assessment" consists of the base plus a supplement. The base is "the percentage of obligor income that, if paid as child support, will ensure all parties the same standard of living when, before payment of child support, the parents have equal incomes."\(^7\)\(^2\) For illustrative purposes, the ALI Principles use 22 percent of net (after-tax) obligor income for one child; 36 percent for two children; and 46 percent for three or more children.\(^7\)\(^3\) The Principles then decrease these percentages by small amounts to account for the costs that the nonresidential parent incurs when the children are visiting. Again for illustrative purposes, the Principles estimate that these costs add about 10

\(^7\)\(^2\) PRINCIPLES § 3.05(3)(a)

\(^7\)\(^3\) PRINCIPLES, § 3.05, comment e. According to the comment, these base percentages are derived from Bureau of Labor Statistics household equivalence scale, "which estimates the percentages of income required by households of different size and composition to achieve the same standard of living." \(id.\)
per cent to the total amount that the parents together spend on the children. The effect is to reduce the base percentages to 20 percent for one child, 32 percent for two children and 41 percent for three or more children. These percentages are slightly less than the Espenshade and Betson estimates discussed above.

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<td>ALI Principles</td>
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However, because the base percentage produces an adequate award only when the parents have about the same income, the ALI Principles recommend that the base systematically be supplemented by "an additional percentage of obligor income that, when added to the base percentage, will tend to ensure that the child enjoys: (i) a minimum decent standard of living when the resources of both parents are sufficient to achieve such result without

74 PRINCIPLES § 3.05, comment f. Cf. Karen Czpanskiy, Child Support, Visitation, Shared Custody and Split Custody, in CHILD SUPPORT GUIDELINES: THE NEXT GENERATION, supra note ____ at 43, 44 (Standard child support guidelines have embedded in them the presumption that the court will order standard visitation of 20 percent of the overnights.)

75 PRINCIPLES, Appendix at 176.
impoverishing either parent; and (ii) a standard of living not grossly inferior to that of the child's higher income parent.  

The supplement compensates for the disparity in standards of living that the disparities between parents' incomes create. It also provides some supplement to the residential parent of very young children who remains out of the workforce to care for them and in some circumstances includes the nonresidential parent's contribution to the costs of child care.  

For purposes of illustration, the ALI Principles use supplements of 14 per cent of the obligor's income for one child, 10 per cent for two children, and seven per cent for three children. The upper limit on the supplement is that the support obligor always retains more than half his net income. When the base and supplement are added, the exemplary preliminary assessments are 34 per cent of the obligor's net income for one child, 42 per cent for two children, and 48 per cent for three children.

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76 PRINCIPLES § 3.05(3)(b). The first take on the ALI Principles, which started with the base and added supplements in some circumstances would have allowed a low-income residential parent a Minimum Decent Standard of Living Supplement, which was the difference between the residential parent's income and 150 per cent of the poverty threshold. PRINCIPLES, § 3.05, comment h at 43, discussing Appendix, § 3.07A.

77 For more on the treatment of child care costs see text accompanying notes ______ infra.

78 PRINCIPLES § 3.05, comment g.

79 PRINCIPLES § 3.05, comment g.

80 PRINCIPLES, § 3.05, comment g.
2. The reduction mechanism

Since a basic premise underlying the ALI Principles is that if the parents have equal incomes, the amount calculated by using a marginal expenditures formula appropriately balances the interests of the child and the parents, the preliminary assessment must be reduced to eliminate the supplement when the parents' incomes are equal. Further, since the full amount of the supplement is intended for families in which the residential parent’s income is very low, the supplement needs to be gradually reduced as the residential parent’s income rises. The “reduction mechanism” accomplishes these purposes.\(^{81}\) Indeed it goes further; for cases in which the residential parent’s income is greater than the nonresidential parent’s, the reduction mechanism continues to operate, reducing the child support award below what a marginal expenditures formula would produce.\(^{82}\)

The reduction factor does not operate until the residential parent's income is more than enough to insure the residential parent a "minimally decent standard of living,"\(^{83}\) which the commentary to the ALI Principles approximates at $1,000, 150 per cent of the federal poverty level income for one person in 1996.\(^{84}\) The factor is technical and calculated so that when the parents' incomes are equal, the supplement is $0.\(^{85}\) The Principles provide:

\(^{81}\) PRINCIPLES § 3.05(4).

\(^{82}\) PRINCIPLES § 3.05(5).

\(^{83}\) PRINCIPLES, § 3.05(4).

\(^{84}\) PRINCIPLES § 3.05, comment b at 25.

\(^{85}\) “The reduction mechanism employs a fraction in which the numerator is the residential parent’s excess income (income in
excess of the income exemption) [this in turn is defined as the amount necessary to maintain a minimum decent standard of living and is treated as $1,000 based on $1,020 being 150% of the poverty threshold for one adult in 1996] and the denominator is the sum of that excess income and the total income of the nonresidential parent. The resultant fraction is multiplied by the obligor’s preliminary assessment, to yield the amount by which the preliminary assessment is reduced.”

PRINCIPLES, §3.03, comment b at 25.

“If a `reduction factor’ (a decimal greater or less than `1’) is not applied to (multiplied by) the reduction amount, the child support obligation produced by the formula will generally, at best, only approximate the base amount when the parents have equal incomes before payment of child support. The error is likely to be relatively small in the case of one child, but great in the case of two or more children. The reduction factor used in any given case is a function of the income of the support obligor and the ratio between the base and the supplement percentages payable as child support. “Reduction factors are derived by (a) running the formula with the assumption that both parents have the income of the obligor parent and (b) comparing the resulting reduction
“The child support work sheets of an ALI formula jurisdiction may include a reduction factor table that gives the correct reduction factor at any income level and for any number of children....Instead of applying a numerical factor, the same result may be reached by constructing a child support computer program that uses the income of the obligor parent to establish the equal income “break even’ point, at which the result should be the jurisdiction’s base percentage alone, and then evenly spreads the other results along a continuum from full preliminary assessment (when the income of the residential parent does not exceed the exemption) to the point at which only nominal support is assessed because the nonresidential parent’s income is relatively or absolutely very low. Or, the jurisdiction may simply incorporate its work sheets factor table into a computer program.”86

3. Examples of basic child support calculations using the ALI Principles

In all of the examples that follow, the parents have only one child, and, for the sake of simplicity, it will be assumed that the child will live with the mother.

under the formula with the ideal reduction, which is that amount necessary to yield a support obligation equal to the base amount.”

PRINCIPLES §3.03, comment c at 26-27.

86 PRINCIPLES § 3.05, comment c.
These examples are adapted from examples in the commentaries to the ALI Principles.

EXAMPLE 1 -- Modest income family, mother’s income is half as much as father’s\(^{87}\)

Mother’s income is $1,500, Father’s income is $3,000.

Preliminary assessment: \(0.34 \times 3,000 = 1,020\)

Amount by which Mother’s income exceeds $1,000, the income exemption: \$500\\

Apply reduction factor to $500 = $150

Father’s child support obligation: $1,020 - $150 = $870.

After child support, the income of the household of the mother and child is $2,370, 25 per cent less than that the 3- person intact family would have using the Bureau of Labor Statistics household equivalence tables. The household’s income is 263 per cent of the poverty threshold. The father’s income is $2,130, 1 per cent more than the three-person intact family’s standard of living. His household’s income is 303 per cent of the poverty threshold.

In comparison, under a first-generation guideline using the same percentage as the base, 20 percent of obligor income, the father would pay 20 per cent of $3,000 or $600. The mother and child’s household would have income of $2,100 and would experience a 33 per cent decline\(^{87}\)  

\[^{87}\] Example based on Example 8, PRINCIPLES § 3.05, comment g at 38-39.
in standard of living (using the BLS household equivalence scale) and would have income at 233 per cent of poverty. The father would have income of $2,400 and would experience a 13 per cent increase in standard of living, using the BLS standard, and would have income 342 per cent of the poverty threshold.

EXAMPLE 2 -- Modest income family, parents have the same income

Mother and father each have income of $2,000.

Preliminary assessment: \[0.34 \times $2,000 = $680.\]

Mother's income exemption is $1,000, and her income exceeds this by $1,000.

Apply reduction factor to $1,000 = $280.

Father's child support obligation: $680 - $280 = $400.

This is the same as applying the base percentage of 20 percent to $4,000.

After child support, the mother and child's household has and income of $2,400, and father has $1,600. The standards of living of both households decline by 15 per cent, compared to the standard if all three lived in the same household.

\[88\] Example derived from Example 5, Principles § 3.05, comment f at. 34-35.

Note, however, that in Example 5 a base percentage of 22 percent, rather than 20 percent, is used because it does not provide for the adjustment to reflect the custodial expenses of the nonresidential parent.
EXAMPLE 3 -- Lower income family, mother’s income is half that of father’s.

Mother’s income is $1,000, Father's is $2,000.
Preliminary assessment: .34 x $2,000 = $680.
Mother's income does not exceed the income exemption, and so there is no reduction of child support.
Father's child support obligation is $680.

After child support, the mother and child have household income of $1,680, a 20 per cent reduction from the intact family standard of living, using the BLS table, which is 86 per cent of the poverty threshold.
Father has $1,320, a 6 per cent decline from the standard of living of the intact household and 188 per cent of the poverty threshold.

Under a first generation guideline, Father would pay 20 per cent of his income (.2 x $2,000), or $400. Mother and child would then have an income of $1,400, which would be 33 per cent below the standard of living of the intact family and 155 per cent of the poverty threshold. Father would have $1,600, a 13 per cent increase over the standard of the three-person household or 228 per cent of poverty.

EXAMPLE 4  An obligor with income lower than the residential parent.

Mother's income is $4,000 and Father's is $2,000.

89 Example based on Example 7, PRINCIPLES § 3.05, comment g at 37-38.
90 Example based on Example 16, PRINCIPLES § 3.05, comment I at 50.
Preliminary assessment: \[.34 \times 2000 = 680.\]
Mother's income exceeds the income exemption by $3,000.
Apply reduction factor to $3,000 = $503
Father owes child support of $680 - $503 = $177. This is less than the base amount. Father is paying 9 per cent of his income, slightly less than half the percentage he would pay if the parents had equal incomes.

After child support, the mother’s household’s income is $4,177, a 1 per cent decline from the three-person household standard of living, and father’s income is $1,823, a 35 per cent decline from that standard.

In contrast, under a first generation formula applying the base percentage of 20 percent, Father would pay \[.2 \times 2000 = 400.\] His income would be $1,600, a 43 per cent decline in standard of living, and mother and child’s household income would be $4,400, a five per cent increase.

4. Treatment of unemployed and underemployed parents

Any complete child support guideline must deal with the problem of a parent who is unemployed or underemployed, though solutions must vary depending on whether the parent is able to be more fully employed. This section first discusses the circumstance in which parents are able to earn more and then the treatment of parents with low incomes who cannot make more.

a. Low income parents who can reasonably be expected to earn more
When parents are voluntarily under- or unemployed and could reasonably be expected to earn more, the Oregon guidelines, like those of many other states, provide that a factfinder should treat such a parent as having the income he or she could earn, based on prior employment history, or at least as much as he or she could earn working full time at the minimum wage. The ALI Principles contain a similar provision, which explicitly says, however, that earnings

91 OAR 137-050-0340, 137-050-0360. For motions to modify child support, Glithero and Glithero, 326 Or. 259, 951 P.2d 682 (1998), holds that an obligor who seeks modification of child support order on the basis of voluntarily reduced income only has to show that the reduction was in good faith to get into court, applying Or. Rev. Stat. § 107.135(3). Dominguez and Dominguez, 154 Or. App. 430, 1998), holds that once in court, the court is to use the child support guidelines to determine the amount. Thus, § 107.135 is not a basis for arguing that if the obligor is unemployed or underemployed in good faith, the amount of support must be based on actual income rather than earning capacity. “See also Harper and Harper, 122 Or. App. 9, 856 P.2d 334, rev. denied 318 Or. 246 (1993), cert. denied 511 U.S. 1108 (1994):

“[I]n calculating a parent’s income for determination of child support, the court must base the child support calculation on potential income if a parent is unemployed or employed less than full time. [OAR 137-050-0360.] Nothing requires the court to find that the parent became underemployed in bad faith.”
“should not be imputed to an unemployed or underemployed parent to
the extent that such unemployment or underemployment is attributable
to: (a) a parent’s pursuit of education, training, or retraining, in order to
improve employment skills so long as the pursuit is not unreasonable in
light of the circumstances and the parent’s responsibility for dependents;
(b) a parent’s change of occupation so long as the child support award
based upon the parent’s employment in the new occupation does not
unreasonably reduce the child’s standard of living taking into account the
child’s total economic circumstances; or (c) a parent’s residential
responsibility for a child of the parties.”\textsuperscript{92}

Subsection (c) thus contemplates that income may be imputed to the
residential parent as well as the nonresidential parent. While child support
guidelines based on the marginal expenditures approach sometimes allow
imputing income to the residential parent,\textsuperscript{93} it is especially important to allow
this when using the ALI Principles because of the supplement which is added to
the base amount to correct for a gross disparity between the incomes of the
two parents’ households. If the reason for the disparity is the residential
parent’s unemployment or underemployment, under some circumstances the
nonresidential parent may justly argue that child support should not be

\textsuperscript{92} \textit{Principles} § 3.12(5).

\textsuperscript{93} \textit{See}, e.g., OAR 137-050-0340(3). Which provides for imputing income to
underemployed or unemployed parents and provides that if the unemployed
parent is the custodial parent and that parent received public assistance, she is
treated as earning the minimum wage for purposes of the guidelines.
augmented because the residential parent can reasonably be expected to work instead.\textsuperscript{94}

Thus, the issue implicitly raised by subsection (c) is under what circumstances the residential parent should be expected to take a job. The ALI Principles say first that if the child is younger than six years old, the residential parent should be able to remain out of the workforce without having income imputed.\textsuperscript{95} For older children, the ALI Principles generally presume that it is appropriate for the residential parent to work,\textsuperscript{96} though the trier of fact has

\textsuperscript{94} PRINCIPLES § 3.06, comment a at 69.

\textsuperscript{95} The ALI Principles do not call for imputing earnings to the residential parent if the child has not yet reached primary school age. It “does not second guess the hard choices facing parents with residential responsibility for preschool children. This abstention acknowledges the difficulties of securing adequate day care and meeting employer expectations while serving as the residential parent of a young child. “Although these difficulties do not entirely disappear when a child enters school, they lessen substantially at that point.” PRINCIPLES § 3.06, comment b at 69-70.

\textsuperscript{96} PRINCIPLES,§ 3.06(1) provides,

“the child support rules should provide that the trier of fact may impute income to the residential parent in either or both of the following circumstances:

“(a) When the residential parent is not caring for a child of the parties under the age of six and is earning less than the parent could reasonably earn considering the parent’s residential responsibility for the children of the parties. . .”
discretion to find that some of these parents should not be expected to work full time or even to work at all. 97

The Principles provide that if income is imputed to a residential parent, the maximum amount that should be imputed is “an amount that, in combination with the residential parent’s actual income, does not exceed the income of the nonresidential parent.”98 Thus, the maximum effect of imputing income to the residential parent is to treat her as having income equal to that of the nonresidential parent, which eliminates the supplement but does not cut into the base amount of child support. The rationale for the limitation, apparently, is that the purpose of imputing income to the residential parent is to insure that the supplement is not claimed when the assumptions upon which it is based are absent.99 However, even this cap can be waived when the factfinder thinks it is equitable. 100

Finally, the ALI Principles caution that in deciding whether to impute income to the residential parent, the fact finder “should take into account the relative economic situations of the parties. In exercising its discretion to impute . . . income [to the residential parent], the trier of fact should additionally consider the benefit, if any, accruing to the children of the parties from the

See also § 3.0, comment b at 69.

97 “The trier of fact may also find, in other circumstances, that a parent’s unemployment or underemployment is attributable to a parent’s residential responsibility for a child of the parties.” PRINCIPLES § 3.12(5).

98 PRINCIPLES § 3.06(4).

99 PRINCIPLES, § 3.06, comment d at 75.

100 PRINCIPLES § 3.06(4).
residential parent's underemployment.” While imputing income to the residential parent looks like imputing income to the nonresidential parent, there are significant differences.

“The support obligor’s “shirking” may reflect an intent to avoid parental obligations; the residential parent’s “shirking” may be motivated instead by desire to provide the parties’ children with personal care. Imputation of earnings to the support obligor serves to increase child support available in the residential household, while imputation of earnings to the residential parent may merely decrease that support. While both forms of imputation should be approached with caution, imputation of earnings to the residential parent should be approached with even more circumspection.”

b. Low income obligors who cannot earn more

An issue superficially related to but distinct from imputing income is how the child support guideline should treat low income obligors who are not able to earn more. As already explained, the ALI Principles provide some protection to lower-income obligors through the reduction factor, which can reduce child support below the base amount so long as the residential parent’s income is greater than the nonresidential parent’s. In addition, the Principles protect obligors with incomes below 150 per cent of the

101 Principles § 3.06(5).
102 Principles § 3.06, comment b at 70. See also § 3.12, comment e at 94-96.
103 See text accompanying notes _______ supra.
federal poverty level through use of a self-support reserve. Other child support formulas also use self-support reserves; child support obligations cannot be large enough to cut into this reserve.104

The ALI Principles provide that if the obligor’s income is below the poverty level, a nominal amount of child support should be ordered.105 The Principles further recommend that for obligors with incomes above the federal poverty level, the child support obligation should be gradually increased, until the full formula amount is owed by obligors with income at or above 150 percent of the poverty level.106 However, unlike some jurisdictions, which always provide for a reduced award when the obligor’s income falls below a certain level, the Principles recommend that the judge be given discretion to award the amount that would otherwise be due under the formula because there are some obligors who can justly be expected to pay the formula amount.107 The

104 For discussion of the Oregon self support reserve, see text accompanying notes ________ infra.
105 PRINCIPLES § 310(2)(c).
107 PRINCIPLES § 3.10(2)(c). The approach of the Principles to obligors with very high incomes is similar. Section 3.10(2)(a) says that while the amount established by the formula is presumptively correction, the presumption could be rebutted by showing that the amount established by the formula would be unjust or inappropriate because
example given in the commentary to the Principles is the nonresidential parent who is married and earns very little but does not rely on his or her own

“(a) the support obligor has extraordinarily high income and the amount determined under the formula exceeds an amount necessary to insure that (i) the child enjoys a standard of living that is both adequate and not grossly inferior to that of the support obligor and (ii) the child's §3.16 life opportunities re adequately secured.”

The ALI takes the view that the exception for high income support obligors should be treated as a rebuttal factor rather than as a general limitation on the amount of income subject to the formula. Comment c to § 3.10 says,

“Some states have unwisely taken the latter path, often cutting off application of the formula at inappropriately low limits of obligor or total parent income. That a nonresidential parent enjoys a high income does not imply that a child support obligation expressed as a percentage of this income will provide similarly or even adequately for the child. It is only when the income of an obligor is extraordinarily high that this result is certain to occur. With the illustrative ALI formula, such cases are likely to involve only support obligors whose annual net income exceeds $200,000 and such cases are in any event likely to require individualized treatment by the trier of fact.”
income. The commentary further cautions that the factfinder should remember that the residential parent may also have a very low income and that the award should be fashioned so as to share the suffering evenly between the households.

6. Adjustments for costs of child care and medical care

The final issues that must be resolved in any child support case is who should pay for the child’s medical expenses and for child care necessary to enable the residential parent to work. In many states, responsibility for these expenses is apportioned between the parents and added on to the basic child

108 PRINCIPLES § 3.10, comment e. More particularly, the Principles recommend that the obligor’s low income be a circumstances justifying a downward deviation from the presumptive amount of child support calculated by the formula. Cf. Marriage of Gilbert, 88 Wash. App. 362, 945 P.2d 238 (1997), which held that a Washington state rule which provided for a minimum monthly child support order of $25 per child was an irrebuttable presumption which conflicted with the federal requirement that child support guidelines operate as rebuttable presumptions. The court ordered that the minimum amount be treated as a rebuttable presumption henceforth.

In Oregon there is a rebuttable presumption that a noncustodial parent will be ordered to pay at least $50 per month. OAR 137-050-0470.

109 PRINCIPLES § 3.09, comment b
support amount. This is how the Principles recommend treating medical costs. Under the ALI Principles, however, child care is treated differently.

Embedded in the ALI Principles is the usual rule that the parents contribute to the costs of child care in proportion to their incomes. However, the ALI Principles’ “preliminary assessment,” consisting of the base plus the full supplement, includes the nonresidential parent’s fair contribution to child care costs. Thus, a support obligor paying the full preliminary assessment does not pay more for child care, and the residential parent pays the full cost.

However, if the residential parent’s income is high enough that the reduction mechanism is operating to reduce the preliminary assessment, the situation is more complicated. At this point, the ALI Principles provide that the nonresidential parent’s share of child care costs should be offset against the reduction of the preliminary assessment. The Principles cap the

110 See, e.g., OAR 137-050-0420 (child care) and 137-050-0430 (medical expenses).

111 PRINCIPLES § 3.05(7). The Principles also give the factfinder discretion to apportion extraordinary costs such as long-distance travel to exercise visitation rights and children’s expenses such as special tutoring for a learning disability or private music lessons. PRINCIPLES § 3.05(8) and § 3.05, comment l. Cf. OAR 137-050-0300(2)(a), which allows the factfinder to deviate from the formula amount of child support because of a parent’s “special hardships.”

112 See text accompanying note ______ supra.

113 PRINCIPLES § 3.05, comment j at 53.

114 See text accompanying note ______ supra.

115 PRINCIPLES § 3.05, comment j.
nonresidential parent’s contribution to child care costs at the maximum amount of the reduction figure.116

The commentary to the ALI Principles give examples which make these calculations clear, and the following illustrations are taken from them. In all these examples, the parents have only one child, who lives with the mother.

EXAMPLE 5 -- Lower income family, mother’s income is half of father’s117

Mother has income of $1,000, and father has income of $2,000. Child care cost of $200 per month for after school child care.
Preliminary assessment is 34 per cent of father’s income or $680.
Mother’s income does not exceed the income exemption, and so the reduction factor does not operate.
Mother pays the entire cost of child care.

EXAMPLE 6 -- Modest income family, parents have the same income118

Mother and father each has income of $2,000. Mother has child care cost of $200 per month for after-school child care.
Preliminary assessment is again 34 per cent of father’s income, or $680.

116 PRINCIPLES § 3.05(6). “This cap is likely to operate only when the income of the residential parent is relatively low and child care expenditure is relatively great, circumstances usually involving a very young child.” PRINCIPLES § 3.05, comment j at 54.
117 Based on example 13, PRINCIPLES § 3.05, comment h at 47-48.
118 Based on Example 19, PRINCIPLES §3.05, comment j at 53.
Mother’s income is $1,000 over the exemption, and when the reduction factor is applied, the child support is to be reduced by $280. However, mother and father are to contribute to child care in proportion to their incomes, which are equal. Thus, father must contribute half of $200, or $100. This $100 is offset against the reduction ($280-$100 = $180).
$180 is subtracted from the preliminary assessment of $680 to get the child support obligation of $500.

7. Recap of the basics of calculating child support under the ALI Principles

The ALI Principles on child support begin as a refinement of the dominant approach to child support, which bases obligations on the principle that parents should contribute the same amount to their children’s needs whether the family is living together or apart. However, this measure fails to account for the fact that two households cannot live as cheaply as one and tends to put the burden of this loss of economies of scale on the child’s household. As a partial solution to this problem, the Principles provide for a supplement which systematically increases the amount of child support except when the residential parent’s income is equal to or greater than the nonresidential parent’s. The result in many cases would apparently be to increase the size of child support awards over the amounts that would be ordered under the first generation child support formulas widely in use today. However, because child care costs are subsumed in the supplement, in some cases the total amount of the child support award under the ALI Principles may not be much greater than an award under a first generation principle which tacks child care costs on to the basic award.
The next section of this paper looks at the current Oregon child support formula and compares actual awards under it to the awards under the ALI Principles discussed above. This comparison allows a more concrete assessment of the likely impact of adopting the ALI Principles, which will affect the chances that the Principles will prove to be politically viable.

III. Oregon child support guidelines compared to the ALI Principles

The first version of the Oregon child support guidelines, which are based on the Income Shares model, was adopted in 1986.\textsuperscript{119} The state contracted with Policy Studies, Inc., the organization which developed the Income Shares model, to help write the first set of guidelines and to update them periodically. The most recent changes to the Oregon Schedule of Basic Child Support Obligations, the core of the guidelines, went into effect on March 1, 1999.\textsuperscript{120} They are based on a February 1998 report from Policy Studies.\textsuperscript{121} The state government committee which adopted the final changes deviated from the PSI Report, generally lowering child support obligations of nonresidential parents at low and middle income ranges.

\textsuperscript{119} See \textsc{Policy Studies Report}, \textit{supra} note ___ at 1.

\textsuperscript{120} Certificate and Order for Filing Permanent Administrative Rules with the Secretary of State, January 15, 1999. The child support rules are found in chapter 137 of the Oregon Administrative Rules at OAR 137-050-0320 et seq.

[Note to law review editors: I have no idea how to cite this certificate of filing and have done the best I can. I hope you can help.]

\textsuperscript{121} \textsc{Policy Studies Report}, \textit{supra} note ____.
Oregon uses a marginal expenditures formula, fundamentally based on the estimates of child rearing costs that are the same as those used in the Betson study discussed above. The PSI report notes that while a few states have developed their own estimates of how much it costs to raise a child at the subsistence level, no state has developed estimates across all income ranges; instead, all states use national data. The 1998-99 changes to the Schedule of Basic Child Support Obligations are technical and reflect updated information on child rearing expenditures and the federal poverty level, as well as tax changes and inflation.

The process of converting estimates of families’ marginal expenditures on children into a child support schedule has several steps, and critical assumptions which can significantly affect the final child support schedule are made along the way. In developing the recommended Basic Schedule of Child Support obligations, PSI deducted from the original estimates of expenditures on children amounts attributable to child care and the child’s medical expenses, since these costs are treated as add-ons. Then the remaining estimated expenditures on children were converted to proportions of net income at

122 Policy Studies Report, supra note ___ at 3-4, 14; see text accompanying note ____ supra. The obligation for high-income parents with one child is based on estimates of expenditures made by Espenshade. Id. at 4.
123 Policy Studies Report, supra note ___ at 2, 15-16. The report also notes that there is little reason to believe that state-specific estimates would differ sufficiently from the national estimates to justify the expense of gathering and analyzing the data. Id.
124 Policy Studies Report, supra note ___ at 1.
125 Policy Studies Report, supra note ___ at 22-23.
various income levels. Finally, estimates based on smaller numbers of children were extrapolated to large families, and a method for gradually increasing the amount of child support in small increments as income rose was developed. The resulting net income figures were then converted so that actual calculations could be based on gross incomes, and obligations for lower-income obligors, which include a self-support reserve, were calculated.

Besides the choice of the basic data, which clearly affect the level of child support, the PSI Report made other assumptions, which mostly reduced child support awards. For example, in converting net income figures to gross income figures, the tax assumptions tended to reduce the level of child support. As the PSI report indicates, if child support were adjusted to account for actual tax impacts, this would generally “increase the total net income available for support, increase the total support obligation, and, except in unusual circumstances (e.g., all income is earned by the custodial parent), increase the noncustodial parent’s share of that obligation.”

The report also makes

126 POLICY STUDIES REPORT, supra note __ at 23-24.
127 POLICY STUDIES REPORT, supra note __ at 24-28.
128 Child support calculations are based on gross, rather than net incomes, because this is simpler, “avoids noncomparable deductions that may arise in making the gross to net calculation in individual cases,” and prevents the parent’s level of income from varying with the number of other dependents that he or she claims. POLICY STUDIES REPORT, supra note __ at 41. See also John Ellis, UNOFFICIAL COMMENTARY -- CHANGES TO THE CHILD SUPPORT GUIDELINES EFFECTIVE OCTOBER 15, 1994, at 5.
129 POLICY STUDIES REPORT, supra note __ at 28.
130 POLICY STUDIES REPORT, supra note __ at 29 (emphasis in original).
“downward adjustments” in the estimates of childrearing expenses for medium-low income families. On the other hand, the report uses amounts for the obligor’s self-support reserve which are a lower than those used in the ALI Principles.

The Oregon advisory committee which decided the final form of the new child support schedule further lowered the amount of the child support obligation for one-child families with combined gross incomes between $950 per month and $5,500 per month. At the low end of this range, the difference is only a few dollars a month, but at some levels the difference is more than $100 per month. For example, at a combined gross income of $1,600, PSI recommended a total obligation of $298, but the Oregon scale requires only $195. For a combined gross income of $2,600 per month, PSI recommended $455 and Oregon adopted a requirement of $335. There are similar disparities between the PSI recommendation and the actual amount required for larger families as well. (For a chart comparing the PSI recommendations and the actual Oregon scale for families of one to three children at all income levels, see the Appendix to this article.)

For purposes of this article, an important question is how the child support obligations proposed by PSI and those actually adopted by Oregon

131 POLICY STUDIES REPORT, supra note ___ at 46.
132 POLICY STUDIES REPORT, supra note ___ at 29-30.
133 Compare POLICY STUDIES REPORT, supra note ___ at 32-40 to Oregon Scale of Basic Child Support Obligations, OAR 137-050-0490.
134 Id.
135 Id.
136 Id.
compare to the support obligations that would be imposed under the ALI Principles. The following examples show this comparison, using the fact patterns in Examples 1 through 4 above.\textsuperscript{137} To make these comparisons, I had to convert the net income figures used in the ALI examples to gross income, since the PSI report and the actual Oregon child support scale use gross income. I used the same table that Policy Studies used when it converted net income to gross income.\textsuperscript{138}

EXAMPLE 1A -- Modest income family, mother’s income is half as much as father’s.

Mother’s income is $1,500, Father’s income is $3,000.

Father’s child support obligation under the ALI Principles: $870.\textsuperscript{139}
Father’s obligation using PSI-recommended scale (assuming that mother’s gross income is $2,000 and father’s is $4,550): $561
Father’s actual obligation using Oregon scale: $561

EXAMPLE 2A -- Modest income family, parents have the same income

Mother and father each have income of $2,000.

Father’s child support obligation under the ALI Principles: $400.\textsuperscript{140}

\textsuperscript{137} See text accompanying notes ______ supra.
\textsuperscript{138} See POLICY STUDIES REPORT, supra note __, Appendix II.
\textsuperscript{139} See text accompanying notes ______ supra.
\textsuperscript{140} See text accompanying notes ______ supra.
Father’s obligation using PSI-recommended scale (assuming that mother’s and father’s gross incomes are each $2,749): $357
Father’s actual obligation using Oregon scale: $357

EXAMPLE 3A -- Lower income family, mother’s income is half that of father’s

Mother’s income is $1,000, Father's is $2,000.

Father’s child support obligation under the ALI Principles: $680.\textsuperscript{141}
Father’s obligation using PSI-recommended scale (assuming that mother’s gross income is $1,300 and father’s is $2,749): $430
Father’s actual obligation using Oregon scale: $376

EXAMPLE 4A -- An obligor with income lower than the residential parent

Mother's income is $4,000 and Father's is $2,000.

Father’s child support obligation under the ALI Principles: $177.\textsuperscript{142}
Father’s obligation using PSI-recommended scale (assuming that mother’s gross income is $6,329 and father’s is $2,749): $307
Father’s actual obligation using Oregon scale: $307.

As these examples show, the amount of child support owing at the levels recommended in the Policy Studies report, as well as the amount actually due

\textsuperscript{141} See text accompanying notes ________ supra.
\textsuperscript{142} See text accompanying notes ________ supra.
under the Oregon formula, is close to the ALI amount when the parents have equal incomes. This is to be expected, since when the parents have equal incomes, the ALI Principles do not supplement the base amount, and the base amount is based on a marginal expenditures formula. The difference of $43 per month reflects the differences between marginal expenditure models used by the ALI and the Policy Studies report. The results in the other examples are also what one would predict. When the residential mother’s income is lower than the obligor father’s, the amounts called for by the ALI Principles are substantially greater than the Policy Studies and actual amounts by several hundred dollars. Finally, when the residential parent’s income is higher than the obligor’s, the child support obligation under the ALI Principles is lower by $130 per month than what it would be under the Policy Studies proposal or the actual Oregon formula.

To complete the comparison, it is necessary to consider the effect of child care costs on the final child support obligations. I will again use examples from earlier in the article to assess these impacts.

EXAMPLE 5A -- Lower income family, mother’s income is half of father’s

Mother has income of $1,000, and father has income of $2,000. Mother spends $200 per month for after-school child care.

Father’s child support obligation under the ALI Principles: $680.143
Father’s obligation using PSI-recommended scale (assuming that mother’s gross income is $1,300 and father’s is $2,749): $430 plus $136 = $566

143 See text accompanying notes _______ supra.
Father’s actual obligation using Oregon scale: $376 plus $136 = $512.

EXAMPLE 6A -- Modest income family, parents have the same income

Mother and father each has income of $2,000. Mother spends $200 per month for after-school child care.

Father’s child support obligation under the ALI Principles: $500.144
Father’s obligation using PSI-recommended scale (assuming that mother’s and father’s gross incomes are each $2,749): $357 plus $100 = $457.
Father’s actual obligation using Oregon scale: $357 plus $100 = $457.

When child care costs are taken into account, as they must be, comparing the effect of the ALI Principles to outcomes under the Policy Studies Report and the Oregon guidelines is more complicated, but generally the amounts under the ALI Principles will still be higher, as is intended.

IV. Do the ALI Principles solve the child support dilemma?

The ALI Principles on child support are a compromise, and, as such, they do not fully satisfy any of the drafters’ goals. Whether their compromise between the interests of children and nonresidential parents will be accepted will determine their impact. Based on experience in Oregon and nationally, I believe that opposition from nonresidential parents will be substantial. However, if something like the ALI approach to child support is not adopted,

144 See text accompanying notes _______ supra.
more drastic social and legal changes will be required to alleviate substantial amounts of childhood poverty and economic distress. The ultimate issue will be whether society is willing to make any kind of major change to protect the interests of children.

Besides balancing the interests of children and parents, the ALI Principles have other announced goals. One is to support workforce participation of both parents. The structure of the ALI Principles supports this goal more than other possible formulas, though nonresidential parents who want to oppose the ALI's higher award levels can argue that the Principles allow custodial parents to stay home with young children too long. At the level of mechanics, the Principles do not require more information than is necessary to implement an Income Shares formula, but the calculations involving the “supplement” and the “reduction factor” are complex and obscure. The amount of the supplement cannot be objectively determined and is, therefore, subject to political manipulation. The reduction factor is technical and should, in theory, be the subject of less contention, though its very obscurity also makes it vulnerable to manipulation. These features, which are designed to make it easy to implement the child support formula, undermine popular support for the formula and may not promote cooperation between parents if they do not understand the formula’s basis.

Ultimately, though, these issues are secondary to the question of whether the amounts of child support that the formula would produce would be

145 PRINCIPLES § 3.03(5); see text accompanying notes ______ supra.
146 See text accompanying notes ______ supra.
147 PRINCIPLES § 3.03(6); see text accompanying note ______ supra.
148 PRINCIPLES §3.03(8); see text accompanying note ______ supra.
popularly acceptable. The ALI Principles do strike a principled balance among
the interests of the child and parents, but in some situations they still leave
children significantly worse off financially than their nonresidential parents,
which will probably evoke criticism from some child advocates. Further,
noncustodial parents already resist the level of child support awards that
marginal expenditure formulas produce and are very likely to object strongly to
the ALI effort to increase the size of awards. Whether drafters of child
support formulas will be willing and able to withstand the pressure from
nonresidential parents is highly uncertain. The experience with child support
formulas in Oregon discussed above is not encouraging. Over the years, the
committees which have promulgated the rules setting out the Oregon formula
have consistently deviated from the proposals of Policy Studies to lower the
amounts due to children. When I presented the ALI proposal to a group of
Oregon family lawyers at a conference in 1999, their universal reaction was that
they could never "sell" the higher ALI amounts to their clients. Even though
half the clients -- the residential parents -- would presumably support higher
amounts, the lawyers told me that they rarely got complaints from these

149 See, e.g., Marsha Garrison, An Evaluation of Two Models of Parental
150 See, e.g, Robert G. Williams, An Overview of Child Support Guidelines in the
United States, Child Support Guidelines: The Next Generation, supra note _____ at
8-9 (generally the concept of guidelines is accepted, but it is common for
noncustodial parents to object that the award levels under existing guidelines
are too high.)
151 See text accompanying notes ______ supra. See also Principles Appendix,
§3.05A, comment g at 181.
parents about child support awards being too low. In contrast, nonresidential parents complained to their lawyers about too-high awards all the time.

To assess whether nonresidential parents and their advocates can be persuaded to support the approach of the ALI Principles, we must understand why higher child support is resisted. One likely reason is that most people still do not know how much it really costs to raise children, since the great majority of expenses are attributable to shared expenses, such as food and housing, that cannot readily be associated with any individual family member.\footnote{Burt S. Barnow, Economic Studies of Expenditures on Children and Their Relationships to Child Support Guidelines in Child Support Guidelines: The Next Generation, supra note ____ at 19 (over 90 per cent of family expenditures are made either on shared goods, such as housing, or privately consumed goods, such as food, that are not easily attributed to a given family member, citing David M. Betson, Alternative Estimates of the Cost of Children from the 1980-86 Consumer Expenditure Survey (Final Report to the u.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, September, 1990).}

Psychological and social factors are even more important causes of many nonresidential parents' unwillingness to pay much child support. First, child support money is paid to the child's other parent, who is the former partner of the payor, whom the payor often does not like or trust. Second, most payors go on to form new families and take on new dependents.\footnote{See Constance R. Ahrons & Lynn Wallisch, Parenting in the Binuclear Family: Relationships Between Biological and Stepparents, in Remarriage and Stepparenting: Current Research and Theory 225, 232-33 (Kay Pasley & Marilyn Ihinger-Tallman eds. 1987) (noting that three years after divorce, at}
families compete with the children from the former relationship, and for many people the obligations to the family with whom they live are much more compelling.\textsuperscript{154}

Our collective reluctance to support children with whom we do not live as well as we willingly support children with whom we do live, combines with another fundamental social premise to create the climate in which so many children living with single mothers are poor. Unlike much of western Europe, in the U.S. we consider child support to be basically a private obligation. We expect that ordinarily parents will support their children and only reluctantly offer public assistance to poor children and their families. In other western countries, as in the U.S., single parents have difficulty supporting their children on their salaries alone, but their rates of child poverty are much lower because they use government subsidies to support children.\textsuperscript{155} During the 1990s, several serious proposals to introduce a national child support assurance program were made.\textsuperscript{156} All of them would have guaranteed all children a

least one parent of 89 per cent of children studied was remarried or living with another person).

\textsuperscript{154}For development of these and related ideas see Leslie Harris, \textit{Reconsidering the Criteria for Legal Fatherhood}, 1996 \textsc{Utah L. Rev.} 461; Leslie Harris, Dennis Waldrop & Lori Waldrop, \textit{Making and Breaking Connections Between Parents’ Duty to Support and Right to Control Their Children}, 1990 \textsc{Oregon L. Rev.} 689.


\textsuperscript{156} See, \textit{e.g.}, National Commission on Children, \textit{Beyond Rhetoric: A New American Agenda for Children and Families} 93-94 (1991); Irwin Garfinkel, \textit{Assuring Child
minimally adequate level of support, higher welfare provides, regardless of their parents’ financial status or willingness to comply with child support orders. Instead, Congress passed and the President signed the 1996 federal welfare reform law which moves in the opposite direction, expressing as a norm that virtually all parents, including those with infants, will work, and the expectation that single parents through work and receipt of child support will be able to support their children without public assistance.157

We thus find ourselves in a political dilemma: Can we change our mores and political assumptions for the sake of reducing childhood poverty and deprivation? The ALI Principles advocate for changing our collective view of the extent to which nonresidential parents can be expected to support their children and the families in which those children live. On one hand, resistance to generous child support orders is high, but on the other, child support formulas, which are less than 15 years old in most places, have had some success. Therefore, perhaps this private approach to the alleviation of poverty among children will be more successful than efforts to increase general public support for all children, even though only the latter approach provides a universal solution to the problem.