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Welfare Reform's Inadequate Implementation of the Family Violence Option: Exploring Dual Oppression of Poor Domestic Violence Victims

Rachel J. Gallagher

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WELFARE REFORM’S INADEQUATE IMPLEMENTATION OF THE FAMILY VIOLENCE OPTION: EXPLORING THE DUAL OPPRESSION OF POOR DOMESTIC VIOLENCE VICTIMS

RACHEL J. GALLAGHER*

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* J.D., 2011, Rutgers University School of Law – Camden.

I. INTRODUCTION

Domestic violence is often a scar of poverty. Welfare reform legislation attempted to address the interplay between domestic violence and socio-economic status by adopting the Family Violence Option in the Temporary Assistance for Needy Families (TANF) program.¹ While the Family Violence Option of TANF might serve as Congressional recognition that domestic violence is an exacerbating issue for low-income women, the exception comes with little teeth for actual victims. The Family Violence Option provides states with the authority to voluntarily waive TANF benefit requirements (such as term limits and child support cooperation mandates) for screened domestic violence victims on their rolls, but despite its good intentions of loosening strict qualifications for victims, it is failing to achieve this result in reality.² Across the nation, states are under-utilizing the Family Violence Option. While all states have either formally adopted the Family Violence Option or claim to have adopted a comparable policy, utilization rates of domestic violence waivers are surprisingly low, suggesting that implementing the Family Violence Option has been ineffective.³ Yet, the welfare system continues to be characterized by strict, punitive requirements, making compliance and benefits impossible for many victims of domestic violence.

As set forth more fully below, crafting welfare subsidies for domestic violence victims requires acknowledging the dual oppression inherent in domestic violence specifically and in poverty generally. After thorough exploration of the punitive, racist, and sexist history of our nation's welfare laws, complicated by the closely-associated issue of domestic violence and reports of welfare legislation's continued failure, it becomes clear that a new policy approach is needed. This Article argues that without a more accommodating welfare policy approach towards poor domestic violence victims, we will continue to lessen their chances of escaping both their abusers and society's subordination of the poor, thus reinforcing poverty and abuse rather than eliminating it. Reforming TANF to properly address the practical complications of domestic violence will require providing more comprehensive benefits across the board, re-evaluating the

1. See 42 U.S.C. § 602(a)(7) (2006) (describing the components of the optional certification states can submit to the Secretary of Labor in order to waive TANF mandates for domestic violence victims).

2. See Laurie Pompa, *The Family Violence Option in Texas: Why Is It Failing to Aid Domestic Violence Victims on Welfare and What to Do About It*, 16 TEX. J. WOMEN & L. 241, 251 (2007) (citing a study of Temporary Assistance for Needy Families (TANF) benefit recipients in Houston and San Antonio, where less than fifteen percent of the victims state they could meet TANF requirements without interference from their partners, showing the disadvantages victims face when they did not use the waiver).

3. See *id.* at 250 (citing a study conducted in New York where only a third of all the individuals who were referred to domestic violence liaisons received waivers).

effectiveness of all of the restrictions that currently accompany receipt of TANF benefits, incorporating higher educational incentives, acknowledging realistic restraints on beneficiaries' income potential, and reinstating an enforceable right to benefits. Ultimately, future welfare reform efforts need to reflect the reality that comprehensive and accessible subsidies are imperative for many victims to escape both the dominion of domestic violence and poverty and we need to make sure our policymakers understand this is not optional.

II. THE HISTORY OF WELFARE—PUNITIVE, SEXIST, AND RACIST ROOTS

The tradition of inadequate poverty laws in the United States includes a narrative of charity, but it is also pervaded with racist and sexist stereotypes.⁴ The state and federal government aid programs we are most familiar with today (i.e., Social Security, unemployment compensation, etc.) were initially developed to support “white, male workers and the white women and children dependent upon their wages while they excluded a huge segment of poor women of color and their children.”⁵ From these aid programs' inception, the government has characterized relief as a temporary solution, and beneficiaries were expected to be capable of participating in society as wage earners.⁶ “Such persons might need aid because their wages were too low to survive on them; or they might need aid due to economic depression or other causes of unemployment that were beyond the individual's control.”⁷ However, “most able-bodied poor were believed, in the end to be morally responsible for their own poverty,” and thus benefits were “stingy” and requirements were “disciplinary” in nature “so as not to encourage dependency.”⁸ These themes have remained constant throughout the history of welfare initiatives.

A. Mothers' Pension State Initiatives

As welfare benefits developed, sexism became ingrained in the policy directives. What we have come to know as welfare was designed from its inception to target poor mothers and children without fathers.⁹ Mothers'

4. See Kaaryn Gustafson, *The Criminalization of Poverty*, 99 J. CRIM. L. & CRIMINOLOGY 643, 648 (2009) (arguing that these policies were infused with race, class, and gender bias).

5. *Id.* (detailing how the welfare system was influenced by race, class, and gender in a discriminatory manner).

6. WELFARE: A DOCUMENTARY HISTORY OF U.S. POLICY AND POLITICS 1 (Gwendolyn Mink & Rickie Solinger eds., 2003) [hereinafter WELFARE].

7. *Id.*

8. *Id.* at 1-2.

9. *Id.* at 1.

pensions were “enacted by state governments during the 1910s and were implemented by localities” affirming the view that the “mother-care of children was the best form of care.”¹⁰ These policies made it hypothetically possible for mothers to “meet their caregiving responsibilities by providing a surrogate for a husband’s income” but in practice could not support most families and excluded some mothers outright.¹¹ “Pensions provided economic support only to the ‘best’ mothers, even so regulating their dietary, kinship and other cultural conditions to ensure their continued worthiness as mothers.”¹² This early form of welfare “recognized the value of care only when mothers met certain cultural, racial, and moral standards.”¹³

Mothers’ pensions thus established two pervasive stereotypes with regard to women’s roles and managing stringent resources. First, mothers were expected to perform the work of caregiving, yet “the value of that work depended on the culture, race, and morality of the caregiver.”¹⁴ Secondly, “even mothers who enjoyed social approbation and support had to earn and defend it by submitting to social controls.”¹⁵ The Social Security Act of 1935, creating the Aid to Dependent Children program, also inherited these subordinating “legacies.”¹⁶

B. The Aid to Dependent Children Program (ADC) & Aid to Families with Dependent Children (AFDC)

ADC was “designed for poor mothers and their children and [was] originally intended to support the widows of working men.”¹⁷ However, post World War II, ADC rolls swelled from approximately 900,000 in 1945 to almost 3 million in 1960.¹⁸ At this time, the proportion of households that were made up of divorced or unmarried mothers started to increase, accompanied by a decrease in households headed by widows (likely due to the end of the War).¹⁹ In addition, the number of African-American families receiving welfare benefits increased, especially as poor blacks migrated north.²⁰

10. *Id.* at 2.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. Gustafson, *supra* note 4, at 648 (showing how the Social Security Act created a gender bias program).

18. *Id.*

19. *Id.*

20. *Id.* at 649 (stating that the number rose as more poor African-American

States continued to enforce gender and cultural norms though their implementation of ADC. Many states and locales adopted “suitable home” and “substitute parent” rules.²¹ These were essentially moral impositions, arbitrarily applied, often discriminating against women of color, especially in the South.²² Many welfare offices even engaged in midnight raids to police “man in the house” rules.²³ These welfare requirements represented a growing concern about unmarried women filling the welfare roles.²⁴

ADC was later renamed Aid to Families with Dependent Children (AFDC).²⁵ Under AFDC, anyone who met the threshold income level to receive benefits could do so without any time constraints and it encouraged the states to spend money underwriting welfare subsidies by providing matching grants.²⁶ In contrast to today’s welfare policy, AFDC appears extremely generous, but its implementation also faced sexist and racist obstacles. In 1965, Daniel Patrick Moynihan promoted the idea “that the problems of inner cities—poverty, joblessness, and crime—could be traced to a ‘tangle of pathology’ perpetuated by unmarried black mothers.”²⁷ The popular Moynihan study portrayed low-income African-American mothers as a social threat “because they gave birth to and raised sons who became the criminal, urban underclass.”²⁸ These stereotypes became closely associated with welfare recipients and induced morally focused state regulations, often culminating in racist and sexist policies.

Some progress was eventually made in combating the sexist implications of these welfare laws. In 1968, the United States Supreme Court struck down Alabama’s “substitute father” rule in *King v. Smith*, affirming the District Court’s holding that the regulation was inconsistent with the Social Security Act and the Equal Protection Clause.²⁹ The substitute father rule

families from the agricultural south were migrating North for economic opportunity in more industrialized cities).

21. *Id.*

22. *Id.*

23. *Id.*

24. *See id.* (stating that the reason for the raids was to catch men sleeping in the same home, meaning the woman was morally unfit to receive aid or there was another wage-earner living in the home).

25. *Id.* at 651; *see also* DANIEL PATRICK MOYNIHAN, U.S. DEP’T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965).

26. Timothy Casey et al., *TANF Reauthorization Round II—An Opportunity to Improve the Safety Net for Women and Children*, 14 *DOMESTIC VIOLENCE REP.* 65 (2009) [hereinafter Casey et al., *TANF Reauthorization*] (showing the difference between AFDC and TANF was largely the “block grant,” which was a fixed amount that was not dependent on the amount of state program expenditures).

27. Gustafson, *supra* note 4, at 650 (citing DANIEL PATRICK MOYNIHAN, U.S. DEP’T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* 30 (1965)).

28. *Id.* at 651.

29. *See King v. Smith*, 392 U.S. 309, 311-13 (1968) (citing *Smith v. King*, 277 F.

had previously “denie[d] aid to an otherwise eligible needy child on the basis that his substitute parent is not absent from the home.”³⁰ Under the statute, an “able-bodied man, married or single, [wa]s considered a substitute father of all the children of the [welfare] applicant” if (1) “he live[s] in the home with the . . . mother for the purposes of cohabitation”; (2) “he visits (the home) frequently for the purpose of cohabiting with the . . . mother”; or (3) he cohabited with the mother elsewhere.³¹ “Cohabitation” essentially was a proxy for sexual relations.³²

The Supreme Court, in its analysis, noted welfare’s history of preferring the “worthy poor.”³³ It specifically noted, “both the House and Senate Committee Reports on the Social Security Act of 1935 indicate that states participating in AFDC were free to impose eligibility requirements relating to the ‘moral character’ of applicants.”³⁴ However, in striking down the substitute father regulation the Court stated “that immorality and illegitimacy should be dealt with through rehabilitative measures rather than measures that punish dependent children, and that protection of such children is the paramount goal of AFDC.”³⁵ Thus began welfare’s paradigm shift; focusing on women receiving welfare, rather than the men involved in their lives. However, this shift in perspective also directed the punitive implications of welfare almost exclusively towards women.

In addition to sexism, racism also continued to remain present and prominent in welfare policies. In the 1970s, then California Governor Ronald Reagan used the symbol of the “welfare queen” to promote his platform of a smaller government while campaigning for President of the United States.³⁶ “Reagan used references to the welfare queen to portray an image of widespread depravity and criminality among low-income

Supp. 31 (D.C.M.D. Ala. 1967)) (failing to reach the constitutional question). *But see id.* at 334 (Douglas, J., concurring) (arguing that the Court follows a statutory path in order to reach the same result that should or could be reached on constitutional grounds).

30. *See id.* at 313-14 (majority opinion) (explaining that Alabama grants aid only when there is a continuous absence of “a parent” from the home).

31. *See id.* (citing the Alabama Manual for Administration of Public Assistance, pt. I, c. II, § VI).

32. *See id.* at 314 (quoting officials responsible for the administration of Alabama’s AFDC as establishing that this word typically refers to sexual relations).

33. *See id.* at 320 (internal quotation marks omitted) (explaining past limitations on public assistance for those considered incapable of reform).

34. *Id.* at 321.

35. *See id.* at 325 (inferring Congressional intent through its passage of statutes requiring state programs to improve housing, offer family planning services, and establish programs to determine paternity and secure financial support for illegitimate children).

36. Gustafson, *supra* note 4, at 653.

women of color.”³⁷ Despite this factual misrepresentation, the symbolic rhetoric of the “welfare queen” seduced public perception.³⁸ The welfare queen stereotype played a dominant role in both Reagan’s presidential campaigns as well as his administration’s policies. “In Reagan’s view, the poor, and not the welfare bureaucracies, were the sources of fraud and waste.”³⁹ Rather than treating the exceptional cases of welfare fraud and abuse “as the exceptions they were,” politicians like Reagan, the media, and the public adopted them as the archetype, typifying poor black mothers as the women on welfare.⁴⁰ They were described as the “perfect examples of what welfare recipients become over the course of years on the dole.”⁴¹

C. Contemporary Welfare Policy—Temporary Assistance to Needy Families (TANF)

Concerns about welfare abuse and debates as to whether or not it was wasteful spending grew in the 1990s. In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), which dramatically reformed the state of welfare.⁴² PRWORA replaced AFDC with TANF and implemented strict maximum time requirements and qualifications for subsidies as well as a block grant system, which does not fluctuate depending on how many people the state is serving.⁴³

Sexist and racist stereotypes continued to influence welfare reform. In the debates leading up to a vote on TANF, federal legislators employed these stereotypes to describe welfare recipients.⁴⁴ John Mica, a

37. *Id.*

38. *See id.* (analyzing that because welfare cheating has always been an issue in poverty politics, even with these “factual inaccuracies” Reagan’s descriptions resonated with the public).

39. *Id.* at 656.

40. *Id.* at 656-57.

41. *Id.* at 657 n.64 (showing how black mothers came to bear much of the stigma associated with welfare without poverty being exclusive to women of color).

42. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.).

43. Casey et al., *TANF Reauthorization*, *supra* note 26, at 1; *see also* R. KENT WEAVER, THE BROOKINGS INSTITUTION, *THE STRUCTURE OF THE TANF BLOCK GRANT 1* (Policy Brief No. 22, 2002) (describing federal expenditures under TANF as fixed at approximately \$16.5 billion per year with states’ shares based on the amount received under the AFDC program without providing for adjustments related to the size of the individual state’s caseload). *See generally* 42 U.S.C. § 601 (2006) (establishing provisions for TANF block grants under Title IV of the Social Security Act).

44. *See* Gustafson, *supra* note 4, at 660 n.81 (quoting Beverly Horsburgh, *Schrödinger’s Cat, Eugenics, and the Compulsory Sterilization of Welfare Mothers: Deconstructing an Old/New Rhetoric and Constructing the Reproductive Right to Natality for Low-Income Women of Color*, 17 CARDOZO L. REV. 531, 565-66 (1996)) (identifying lawmakers who used caged animals, wolves, and alligators as stereotypes

Congressman from Florida, “held up a sign during a congressional debate that read, ‘Don’t feed the alligators.’”⁴⁵ On the House floor, he then argued that “providing aid to poor women would do nothing but spur them to reproduce, entice them to return for more free handouts, and threaten the general public safety.”⁴⁶

The sexism written into PRWORA is astonishing. The factual findings for Congress explicitly found that marriage was not only an integral piece of the infrastructure for a stable society but an essential support that a society needs for the successful promotion of a child’s best interests.⁴⁷ The purpose of TANF grants was set forth as “end[ing] the dependence of needy parents on government benefits by promoting job preparation, work, and marriage”; “prevent[ing] and reduc[ing] the incidence of out-of-wedlock pregnancies”; and “encourage[ing] the formation . . . of two-parent families.”⁴⁸ This emphasis on marriage and devaluing single motherhood is significant. The statute explicitly aims to decrease single motherhood by making these women less dependent on the government and more dependent on men. Rather than incorporating programs and educational opportunities statistically proven to lead to economic self-sufficiency, TANF implementation limits these opportunities, encouraging women to turn to marriage instead and diverting precious federal resources to this purpose. “Under the new regulations promulgated under the Deficit Reduction Act of 2006, obtaining a bachelor’s or master’s degree is specifically excluded from the activities that constitute work for the purposes of TANF.”⁴⁹ Furthermore, many states then started to abandon programs that included offering post-secondary education for welfare recipients.⁵⁰ These intentions to exclude autonomous alternatives to marriage in order to achieve economic self-sufficiency are significant indicators of the sexism embedded in TANF.

Statistics also indicate that poverty laws affect more women in general due to the fact that women constitute the majority of our country’s poor.⁵¹

for welfare recipients).

45. *See id.* at 660.

46. *Id.* at 660-61.

47. Pub L. No. 104-193, § 101.

48. *Id.* § 404.

49. *See* Jasmin Sethi, *Lessons for Social Scientists and Politicians: An Analysis of Welfare Reform*, 17 *GEO. J. ON POVERTY L. & POL’Y* 5, 30 (2010) (arguing that under the new regulations under the Deficit Reduction Act of 2006, the most important determinant, higher education, which could most help welfare recipients leave the program, was not permitted under TANF).

50. *Id.*

51. Casey et al., *TANF Reauthorization*, *supra* note 26, at 2 (arguing that women constitute the majority of the poor for a multitude of reasons which include the statistics of TANF recipients, their pivotal importance to certain responsibilities, such

Women are disproportionately dependent on TANF and its subsidies. "Women are forty percent more likely to be poor than men."⁵² "Women are less likely to be employed than men," and they earn less on each dollar than similarly situated male colleagues.⁵³ Approximately ninety percent of adult TANF recipients are single mothers who are also more likely to be poor.⁵⁴ However, it is noteworthy to distinguish that, while single mothers have an exceptionally high poverty rate of over thirty-five percent, they are not the majority of our underclass, as our societal perceptions tend to assume.⁵⁵

Cultural norms of worthiness and animus toward the poor continue to be evident in contemporary welfare reform. "The federal economic stimulus legislation—the American Recovery and Reinvestment Act—increased benefits for Food Stamp, Social Security, SSI and Unemployment Compensation recipients, but did not increase benefits for TANF recipients"⁵⁶ This conscious exclusion was made despite the fact that these groups of people were most likely to spend benefit increases quickly, consistent with the Act's underlying economic stimulus intentions.⁵⁷

Accordingly, along with TANF came a slew of harsh requirements for welfare recipients to remain eligible for benefits. It purposefully omitted cash aid as a federal entitlement for qualified families and instead instituted mandatory work requirements, time limits, child support cooperation, and marriage promotion program participation.⁵⁸ TANF's changes greatly constrained serving impoverished American families in general, but also affected domestic violence victims in particular.

as family care responsibilities, that seem to fall to women disproportionately).

52. *Id.* at 2.

53. *Id.*

54. TIMOTHY CASEY ET AL., LEGAL MOMENTUM & NAT'L RES. CTR. ON DOMESTIC VIOLENCE, NOT ENOUGH: WHAT TANF OFFERS FAMILY VIOLENCE VICTIMS 2 (2010), <http://www.legalmomentum.org/assets/pdfs/not-enough-what-tanf-offers.pdf> [hereinafter CASEY ET AL., NOT ENOUGH] (reporting the high poverty rate of single mothers at over thirty-five percent).

55. *Id.*; see also Sara McLanahan & Irwin Garfinkel, *Single Mothers, the Underclass, and Social Policy*, 501 ANNALS AM. ACAD. POL. & SOC. SCI. 92, 99 (1989) (promoting universal programs that encourage economic independence among single mothers to counteract the growth of an underclass too dependent on welfare).

56. See Casey et al., *TANF Reauthorization*, *supra* note 26, at 1-2 (stating that this lack of increase in benefits flew in the face of the fact that no group was more needy or had such a higher rate of children).

57. *Id.* at 2.

58. *Id.* at 5-7, 9 (setting a sixty month time limit and requiring cooperation in establishing paternity and pursuing child support, as requirements for eligibility as well as providing funding for projects that promoted marriage and responsible fatherhood).

III. THE CORRELATION OF WELFARE AND VICTIMS OF DOMESTIC VIOLENCE

As noted above, welfare policy is ridden with sexist and racist oppression. Thus, it is even more significant that welfare and poverty also go hand in hand with domestic violence. “Domestic violence is, at its core, a system of power and control by the abuser over the victim.”⁵⁹ There is a critical role of women’s agency and autonomy that needs to drive legal remedies for domestic violence. Welfare reform policy, as an economic lifeline for escaping abuse, has to take this into account. If welfare reform serves to punish the “unworthy” poor women who are perceived to comprise its rolls, it also undermines the chances of domestic violence victims to achieve economic autonomy, central to their escape of abuse. It undermines these chances despite the fact that domestic violence victims arguably did not relegate themselves to a position of lazy government dependency, but rather are forced by their dominantly male abusers to seek assistance as a result of the need to escape violence.

Domestic violence is most often associated with physical abuse, but it has psychological and economic repercussions as well.⁶⁰ It ultimately makes economic self-sufficiency harder to achieve for its victims.⁶¹ Women are the vast majority of victims of domestic violence and sexual assault.⁶² Although domestic violence affects women from all different backgrounds, low-income women are even more likely to be abused.⁶³ “Studies show that 14% to 32% of welfare recipients are [currently] in abusive relationships, and more than half the women in a study who were welfare recipients had been the victims of violence at some time.”⁶⁴

Domestic violence exacerbates variables of poverty. It often forces a choice of staying in an abusive relationship or risking homelessness.⁶⁵ Women are often coerced to return to their abusers as a result of economic reality, which ironically often follows a period of escalated violence after separation in order to coerce reconciliation.⁶⁶ Domestic violence victims also suffer from interference with their employment. “Studies indicate that between 35% and 56% of employed abused women surveyed were harassed at work by their abusive partners, and that between one-fourth and

59. *Id.* at 2 (listing the most commonly associated types of violence as physical attacks, psychological abuse, and threats to various family members or property).

60. *Id.* at 1-2.

61. *Id.*

62. *Id.* at 2.

63. *Id.*

64. *Id.*

65. *Id.* at 3.

66. *Id.*

one-half of domestic violence victims reported losing a job at least in part to domestic violence.”⁶⁷ This interference can often result in destabilizing a victim’s economic self-sufficiency capabilities, driving many victims to resort to TANF benefits. These victims are particularly vulnerable to coercion by their abuser. For these victims, the availability of TANF is crucial for economic self-sufficiency. For many victims, employment is not a realistic source of income and support because of a lack of childcare, continued abuse, poor health, and poor employment history as a result of abuse.⁶⁸ For these victims, the availability of TANF is particularly critical for starting a new life free from abuse.

Including an opportunity for states to provide exceptions to TANF’s harsh requirements for cases that involve domestic violence shows some recognition that welfare may be a *necessary* solution for these families, and that achieving economic self-sufficiency can take some incalculable time. In 1994, Congress enacted the Violence Against Women Act (VAWA) in an effort to strengthen support services for victims of family violence.⁶⁹ However, victims still face overwhelming obstacles in leaving their abuser and it is “particularly difficult for low-income women to obtain economic self-sufficiency because they have fewer resources.”⁷⁰ Thus, TANF subsidies will continue playing an important role in making escape from abuse possible.

IV. TANF’S FAMILY VIOLENCE OPTION – AN ATTEMPT TO MITIGATE THE HARSH REQUIREMENTS OF WELFARE REFORM

Congress’s recognition of the importance of addressing how welfare shapes economic opportunity for domestic violence victims is a step in the right direction. Including the Family Violence Option in TANF was an explicit legal recognition that domestic violence and poverty are specially linked and that making welfare available to victims is imperative.⁷¹ However, what harsh requirements are even eligible to be waived for domestic violence victims varies from state to state.⁷² Thus, an in depth

67. *Id.*

68. *Id.*

69. *Id.* at 2.

70. *Id.*

71. 142 Cong. Rec. S8141 (daily ed. July 18, 1996) (statement of Sen. Paul Wellstone) (“I want to make sure that these women and these children throughout our country, for whom the welfare system has been sometimes the only alternative to these very dangerous homes, receive the kind of special services and assistance that they need. In the absence of the passing of this amendment, all too many women and children could find themselves forced back into these very dangerous homes.”).

72. LEGAL MOMENTUM, FAMILY VIOLENCE OPTION: STATE BY STATE SUMMARY (2004), http://www.legalmomentum.org/assets/pdfs/www6-6_appendix_d_family_violence_option.pdf.

analysis of the various requirements TANF recipients are required to comply with in order to receive benefits is valuable in analyzing why implementation of the Family Violence option is not working across the states.

A. Time Limits

Under TANF, no individual can receive benefits longer than an aggregate period of five years, consecutive or not.⁷³ This requirement, without some further exception, poses great threat for victims of domestic violence as it often takes decades to break the cycles of violence. Additionally, many states have enacted shorter periods of eligibility, making it even more difficult for victims to benefit for this public assistance.

B. Work Requirements

TANF also imposed strict work requirements, which could be devastating to domestic violence victims. While TANF imposes work requirements generally, the states enact their own specific rules. In Texas, an individual must work at least thirty hours a week or participate for twenty hours a week in an activity established under the job opportunities program.⁷⁴ Victims dealing with harassment or other conditions of domestic abuse may struggle to meet these requirements, for which the penalty for failing to adhere is loss of benefits entirely. According to Legal Momentum, forty-four percent of employed adults “have personally experienced the effects of domestic violence in their workplaces, and employees consider domestic violence as important a workplace issue as terrorism, job insecurity, and employee theft.”⁷⁵ These requirements are another example of how, without the Family Violence Option, TANF may strictly force victims to choose between their own well-being and continued financial support. Although education is a proven resource for increasing economic self-sufficiency, post-secondary education is not a legitimate work requirement substitute in many states.⁷⁶

73. 42 U.S.C. § 608(a)(7)(A) (2000) (“A State to which a grant is made under section 603 shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences . . .”).

74. Pompa, *supra* note 2, at 248.

75. Legal Momentum, *Statistics: Understanding the Effects of Domestic Violence, Sexual Assault & Stalking on Housing & the Workplace*, <http://www.legalmomentum.org/our-work/domestic-violence/statistics-understanding-the.html> (last visited Mar. 6, 2011).

76. Sethi, *supra* note 49, at 30.

C. Child Support Cooperation

Child support recovery cooperation requirements also have the potential to exclude domestic violence victims.⁷⁷ These requirements mandate a victim to disclose the name of her abuser and whether he is the father of her children and to participate in any state claims for child support against him. For domestic violence victims who have experienced the failure of the system when the system did not protect them (whether from violated restraining orders, victim arrests, etc.) time and time again, these requirements ask them to balance whether food on the table or their whereabouts being unknown to their abusers is more important.

D. Marriage Promotion

TANF also makes \$150 million a year in federal funding available to states that create projects promoting marriage and responsible fatherhood.⁷⁸ States can make participation in these programs mandatory, with the exception of domestic violence victims, but because screening can be so difficult in assessing whether a welfare recipient is a victim, the participation requirements still pose a detriment to victims.

E. Immigrant Restrictions

TANF also imposes requirements in immigrant eligibility. The 1996 TANF reform narrowed immigrant eligibility for welfare subsidies.⁷⁹ Legal immigrants cannot receive benefits unless they have resided in the United States for at least five years. This requirement ignores the fact that immigrant women experience poverty at a much higher rate than native-born women and are also more likely to be victims of domestic violence, sexual assault, and human trafficking.⁸⁰ Exceptions for battered immigrant victims do exist, and victims of domestic violence who are also immigrants may qualify for TANF once they have a pending or approved VAWA application or approved application for a family sponsored visa. However, qualifying for these exceptions can take lengthy amounts of time and involves navigating confusing bureaucracy.⁸¹ These challenges ultimately foreclose TANF benefits for many immigrant victims.

F. Family Caps

As of July 2007, fifteen states had child exclusion policies, capping a

77. Casey et al., *TANF Reauthorization*, *supra* note 26, at 6.

78. *Id.* at 7.

79. *Id.*

80. *Id.* at 8.

81. *Id.*

family's grant of welfare benefits at the number of children existing at the time of application for benefits.⁸² Thus, a child's needs are ignored if a child is born into a family receiving TANF benefits, even though the cost increment averages only an additional \$100 per month.⁸³ These policies are premised on the belief that "women have children to get higher TANF benefits."⁸⁴ Seeing as many abusers use sexual violence as abuse, this requirement may further harm domestic violence victims.

G. The Family Violence Option

Recognizing that many of these requirements often exclude domestic violence victims' practical eligibility, Congress included an exception in TANF for domestic violence victims. The Family Violence Option provides states with the opportunity to voluntarily waive some of the harsh program requirements associated with TANF. The statutory language sets forth the options as follows:

(7) Optional certification of standards and procedures to ensure that the State will screen for and identify domestic violence

(A) In general

At the option of the State, a certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to—

(i) screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;

(ii) refer such individuals to counseling and supportive services; and

(iii) waive, pursuant to a determination of good cause, other program requirements such as time limits (for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.⁸⁵

The legislation also included a Hardship Exception, specifically giving the states the opportunity to opt out domestic violence victims from the TANF's temporal caps. The statute sets forth the guidelines for granting

82. *Id.*

83. *Id.* at 9.

84. *Id.*

85. 42 U.S.C. § 602(a)(7) (2006).

specific hardship exceptions as follows:

(C) Hardship exception

(i) In general

The State may exempt a family from the application of subparagraph (A) by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

(ii) Limitation

The average monthly number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 20 percent of the average monthly number of families to which assistance is provided under the State program funded under this part during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect.

(iii) Battered or subject to extreme cruelty defined

For purposes of clause (i), an individual has been battered or subjected to extreme cruelty if the individual has been subjected to—

(I) physical acts that resulted in, or threatened to result in, physical injury to the individual;

(II) sexual abuse;

(III) sexual activity involving a dependent child;

(IV) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

(V) threats of, or attempts at, physical or sexual abuse;

(VI) mental abuse; or

(VII) neglect or deprivation of medical care.⁸⁶

Thus, the Family Violence Option makes it conceivably possible to exempt domestic violence victims from oppressive welfare requirements, such as the harsh time limit, forced child support, and strict work requirements. However, in practice the voluntary waiver on behalf of the states is not yielding results that support the idea that domestic violence victims are being afforded the exceptions they desperately need to survive and escape abuse. The Hardship Exception limits the number of exemptions each state can grant to no more than twenty percent of the average number of families receiving assistance. These limits exist despite the fact that statistics suggest thirty-two percent of welfare recipients are currently victims of domestic violence and half of recipients have been victims at some point in the past.⁸⁷ At a minimum, these limits statutorily exclude up to twelve percent of reporting victims who needed exemptions. Because domestic violence is highly underreported, these limits likely exclude even more victims than these statistics indicate.

86. *Id.* § 608(a)(7)(C)(iii).

87. Casey et al., *TANF Reauthorization*, *supra* note 26, at 5.

V. THE FAILED IMPLEMENTATION OF THE FAMILY VIOLENCE OPTION

As of 2010, “[a]ll states have either formally certified adoption of the Family Violence Option (41) or reported to the federal government adoption of a comparable policy.”⁸⁸ However, despite its relatively widespread adoption, the utilization rates of domestic violence waivers are surprising low.⁸⁹ Systematic information about Family Violence Option administration is virtually nonexistent. There is, however, substantial evidence that TANF case workers often fail to effectively screen for domestic violence and/or to offer waivers and service referrals when appropriate.⁹⁰

A post-TANF enactment survey of New York TANF applicants found that most were not being screened properly for indications of domestic violence and that those who did identify themselves as victims were not properly referred for services.⁹¹ The following case study and national survey illustrate further representative examples of how and why the Family Violence Option is failing low-income domestic violence victims.

A. Case Study: California

In 1998, California adopted the Family Violence Option in what they called the California Work Opportunity and Responsibility to Kids program (CalWORKS).⁹² LIFETIME, a California statewide membership organization of low-income parents in California which provides peer-based support and advocacy services to help hundreds of CalWORKS parents each year, produced a report in 2005 examining the efficacy of the Family Violence Option adopted in California.⁹³ The report’s key findings were clear in illustrating that the program was not effectively serving high percentages of domestic violence victims in the CalWORKS program.

Key findings indicated that one third of the mothers who participated in the survey reported that “they were victims of domestic violence but never received information about their eligibility for domestic violence counseling and services, and/or have been denied access to domestic violence counseling, and services, or waivers.”⁹⁴ On average, during any

88. CASEY ET AL., NOT ENOUGH, *supra* note 54, at 2.

89. Pompa, *supra* note 2, at 249.

90. Casey et al., *TANF Reauthorization*, *supra* note 26, at 8.

91. *Id.*

92. DIANA SPATZ & SHEILA KATZ, LIFETIME, FAMILY VIOLENCE IS NOT AN OPTION: THE FAILURE OF CALWORKS TO SERVE BATTERED WOMEN WITH CHILDREN 9 (2005) <http://www.geds-to-phds.org/Approved%20to%20post%20on%20website/FVNO%20Final%2010.05.pdf>.

93. *Id.* at 10.

94. *Id.* at 12.

given month in 2004, California state data indicated that only one percent of the state's welfare caseload received services for domestic violence. Even though Los Angeles County had the highest number of CalWORKs mothers receiving domestic violence services, as a percentage of the county's caseload, less than 1.6% of the county's caseload received services in 2004.⁹⁵ Of the thirteen counties analyzed from 1999 to 2004, twelve counties provided domestic violence services to less than four percent of their CalWORKs caseload.⁹⁶

Although mothers may benefit from domestic violence services, "state data indicated that waivers [from welfare to work requirements] were not being granted at all," demonstrating that the exceptions embodied in the federal Family Violence Option were not actually being extended.⁹⁷ Perhaps the saddest example of this was the finding that "during October 2004, [although] 1,763 mothers were referred to or receiving domestic violence services in Los Angeles County[,] . . . none were granted waivers from welfare to work activities."⁹⁸

While the Family Violence Option has been adopted in California, its intended protections are not being successfully implemented. California's failure is being mirrored across the country. Standing alone, domestic violence screening and proper referrals are difficult to manage, but it is clear that their implementation in California has not been successful either. Thus, the Family Violence Option is doing limited work for domestic violence victims, despite its good intentions.

B. National Indications of Failure—The Legal Momentum Report

Legal Momentum recently released a report on the effectiveness of TANF and the Family Violence Option. Legal Momentum and the National Resource Center on Domestic Violence conducted a qualitative national survey in the fall of 2009 of "nearly 600 staff from domestic violence programs and other agencies working with victims on TANF related issues."⁹⁹ Their findings indicated that the Family Violence Option is inadequately addressing victims' unique issues across the country.

According to the report, victims across the country are not consistently and effectively screened or notified of family violence specific responses, waivers, or protections.¹⁰⁰ Concerns identified by respondents included conducting interviews of applicants in the presence of abusive partners and

95. *Id.*

96. *Id.*

97. *Id.* at 15.

98. *Id.* at 16 (emphasis in original).

99. CASEY ET AL., NOT ENOUGH, *supra* note 54, at 2-3.

100. *Id.* at 3-10.

employing workers who were not trained in family violence or who sought to disqualify applicants from eligibility.¹⁰¹ Furthermore, those victims who did disclose domestic violence were not consistently receiving the appropriate waivers or necessary protections to be safe.¹⁰² Many respondents rated the Family Violence time limit extension and work requirement exemption policies as ineffective.¹⁰³ The Report indicates that professionals working with domestic violence victims across the nation view the implementation of the Family Violence Option in various states as inadequate. One respondent reported,

Victims can apply but access is very subjective. Unless a woman was recently beaten by her abuser she is not seen as a victim of domestic violence that should be waived from the employment requirements and she is told she must complete the 25 job searches. There is no consideration of the mental health aspect, ability to get a job, court dates, emotional confusion about the abuse and loss of being who she is. There will not be a waiver.¹⁰⁴

Another respondent commented on the effect of denying waivers for time limits noting, “any time limit to benefits for survivors is artificial as a victim’s ability to live free from domestic violence is more a result of her batterer’s behavior than it is anything she can do.”¹⁰⁵

These responses suggest that the system of exempting victims is not working. The system does not adequately account for the realistic experiences of domestic violence and thus is not resulting in its intended waiver of exemptions. As a result, welfare reform has to be revisited and restructured in order to make TANF a viable option for victims of violence.

VI. POLICY IMPLICATIONS OF FAILING TO PROVIDE FOR IMPOVERISHED VICTIMS OF DOMESTIC VIOLENCE

It is clear that the Family Violence Option is not successful in screening and exempting domestic violence victims seeking TANF from its harsh temporal and reporting restrictions. Because TANF is a lifeline for so many victims of abuse, its policy failure is particularly troublesome. Without effective access to welfare subsidies, many women are coerced to remain with, or return to, their abuser. Essentially, these victims are dually punished: first, by the physical and psychological abuse inflicted by their abusers, and second, by TANF, an economic lifeline that is practically foreclosed by the government due to the racist and sexist assumptions

101. *Id.* at 11.

102. *Id.*

103. *Id.* at 12.

104. *Id.* at 10.

105. *Id.* at 12.

which motivated welfare reform, despite social science research that refutes their accuracy, as well as unrealistic expectations that domestic violence is something we can effectively screen out. Domestic violence victims are thus subjected to two systems of oppression that are intimately intertwined. Because violence and poverty will continue to intersect, welfare policies must address both issues simultaneously in order to be effective. Although many policy changes have been suggested, the system needs comprehensive reform. The Legal Momentum Report referenced above suggests that multiple reforms are needed to more appropriately address the needs of low-income victims of family violence. Their policy suggestions include increasing the following: minimum wage to a living wage, access to childcare, training for TANF and welfare caseworkers regarding domestic and sexual violence, transportation service, emergency relocation and other related assistance to victims fleeing domestic violence, screening for family violence, TANF benefit levels, and general access to subsidies and opportunities for victims to pursue higher education.¹⁰⁶ Other advocates of reform echo these concerns.¹⁰⁷

The opportunity to make substantial reform to our nation's welfare policies is quickly approaching as TANF must be reauthorized again by September 30, 2011.¹⁰⁸ As a result, policymakers need to take into account case studies like California's and national surveys indicating widespread policy failures for domestic violence victims; they are clear indications that an overhaul of the current welfare system is needed.

VII. CONCLUSION AND RECOMMENDATIONS

Because TANF does not adequately take into account the realities of both poverty and domestic violence, our welfare reform policies have to change. It is critical to note that while welfare workers can be trained on better approaches, screening efforts are inherently compromised by the reality of domestic violence. Domestic violence is often experienced privately and victims are reluctant to come forward. If they do come forward and their abusers find out, they are often subjected to further violence. Compounding this problem, if they come forward to authorities,

106. *Id.* at 15-17.

107. Casey et al., *TANF Reauthorization*, *supra* note 26, at 9.

108. TANF has to undergo Reauthorization periodically in order to maintain funding and continuation of its programs. The TANF block grant program was scheduled for reauthorization in 2010. However, Congress did not work on legislation to reauthorize the program. Congress extended the TANF block grant through September 30, 2011 as part of the Claims Resolution Act. PUB.L. 111-291, December 8, 2010, 124 Stat 3064. As a result, this Fall poses a powerful opportunity address the legislation's shortcomings.

their concerns are often either ignored or improperly handled.¹⁰⁹ Additionally, timing is critical for victims escaping their abusers, but harsh time requirements and bureaucratic mazes can prevent access to these benefits. Welfare policy should not subject these victims to further abuse by providing government assistance rife with harsh requirements and foreclosing access to assistance, as TANF essentially does today. If we do not succeed in comprehensive reform of TANF, which acknowledges that screening out all victims is practically impossible, domestic violence victims will continue to be suffocated by two worlds of oppression.

The history of welfare indicates that welfare policies have been crafted in accordance with the stereotypes that poor women are lazy, dependent minorities who want to take advantage of the system. However, the stereotype of the welfare queen is not the norm. As a result, we need to carefully scrutinize our welfare policies for mistaken attempts to address this stereotype, rather than the realities of crippling poverty. In particular, victims of domestic violence are illustrative of the fact that the lazy desires of the welfare queen are not driving women to seek government assistance. It is rather an attempt made in desperation as a last resort for most survivors. As one caseworker noted in Legal Momentum's report, "[TANF] is often the difference between a survivor jumping from shelter to shelter, living in unsafe conditions, or returning to their abuser and actually gaining their own safety, stability, and self-sufficiency."¹¹⁰

The failed implementation of the Family Violence Option is due in large part to screening difficulties and other inherent realities of domestic violence. Because we cannot assure detection of all welfare applicants who should trigger its provisions, its intention to aid domestic violence victims is not manifesting itself as reality, and must be reformed. Reform requires replacing the inadequate, voluntary system of state discretion encapsulated in the Family Violence Option, with comprehensive and accessible benefits to address the exacerbating issue of domestic violence for welfare applicants. While some victims have managed to navigate the nearly impossible bureaucracy, we still need an accommodating policy approach so as not to leave others behind. This approach is consistent with many legal principles geared towards eradicating sex discrimination, emphasizing that even if some generalizations are true, we have to create policies that judge people as individuals and not as members of a group.

Ultimately, without purging the particularly harsh welfare requirements of TANF across the board, domestic violence victims will continue to slip

109. See *State v. Norman*, 378 S.E.2d 8, 9-11 (N.C. 1989) (documenting a situation where a domestic violence victim ultimately kills her husband after years of abuse and no assistance from authorities when approached).

110. CASEY ET AL., NOT ENOUGH, *supra* note 54, at 4.

through the cracks, reinforcing poverty and abuse rather than eliminating it. Thus an across the board approach is optimal. We have to increase the benefits for everyone if we are committed to not sacrificing any innocent victims. Factoring in the complications of domestic violence, my suggestions for comprehensive reform include: 1) broadly incorporating higher education incentives because education is statistically proven to lift these victims out of poverty; 2) acknowledging realistic restraints on beneficiaries' income potential for various factors that are often temporary and suffocate domestic violence victims by eliminating the unrealistic work requirements, time limits, family caps, immigrant restrictions, etc. (accompanied by an in-depth analysis of any other restrictions that are not proving to be effective); and 3) reinstating an enforceable right to benefits for all recipients, similar to that of AFDC. Comprehensive welfare subsidies are imperative for victims to escape the dominion of both violence and poverty; thus, our welfare policies have to reflect this understanding.

Realistically, however, welfare reform is a contentious issue, and our public perceptions continue to be tainted by our sexist and racist history. At a minimum, reauthorization must implement federal standards for waivers and give states only the discretion to provide more leniency, not more discipline. Because states now have the opportunity to pick and choose how they exempt victims, waivers vary drastically across the country, not only in frequency, but in substance. In some states, work and child support requirements may be waived; in others almost all of TANF's strictest requirements can be waived. If we achieve nothing else, we need to prioritize creating mandatory waivers of time limits, work requirements, and child support cooperation initiatives for screened victims, removing the "option" from the Family Violence Option for these measures, but also leaving the door open and encouraging states to use their discretion for lifting all other restrictions when appropriate. The Hardship Exemption should be amended, enabling states to provide waivers to all eligible domestic violence victims, not just a portion. Finally, welfare caseworkers need more sensitivity training to help promote more accurate identification of probable domestic violence victims, including developing a broad definition of "domestic violence victim" recognizing and addressing the realities of the cycle of violence in hopes that the purposes of including the Family Violence Option in TANF will be better served. Without these changes, victims of domestic violence will continue to be victimized not only at home, but also by society in general.