

# MODELS FOR SAFE CHILD SUPPORT ENFORCEMENT

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I. Introduction .....	658
II. Economic Resources, Child Support, and Domestic Violence.....	661
III. Welfare Reform and National Collaboration .....	667
IV. Safely Enforcing Child Support .....	671
A. <i>Informing Abused Women</i> .....	671
B. <i>Opting out of the System</i> .....	676
1. Cooperation and IV-D Good Cause Exceptions.....	677

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2. Good Cause Under The Family Violence Option .....	682
3. Good Cause Models .....	684
4. Other Good Cause Best Practices.....	691
C. "Yellow Light" Services .....	692
D. Confidentiality and Safety .....	695
1. Family Violence Indicator.....	695
2. Judicial Override.....	701
3. Address Confidentiality.....	703
4. UIFSA Section 312 .....	705
5. Other Safety and Confidentiality Best Practices .....	706
E. Cross-Training.....	708
V. Conclusion.....	710
Appendix 1 .....	710
Appendix 2 .....	712
Appendix 3 .....	713

## I. INTRODUCTION

Advocates have long been concerned about the risks involved in enforcing child support when the mother is a victim of domestic violence. They view the state child support ("IV-D") program as a system that mandates participation, yet sometimes places domestic violence victims in harm's way.<sup>1</sup> Understanding the potential risks involved in increasing contact, conflict, and retaliatory abuse by batterers, many advocates have focused on trying to make it easier for abused women to get out of the child support system.<sup>2</sup>

The traditional focus of many states is on "making mothers tell" by tightening child support cooperation policies.<sup>3</sup> Some agency staff view the "good cause" exemption to cooperation as a loophole for custodial parents to avoid cooperation.<sup>4</sup> While agency staff know that some non-custodial parents are abusive, they often fail to understand

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1. See JILL DAVIES, *THE NEW WELFARE LAW: CHILD SUPPORT ENFORCEMENT* (National Resource Center on Domestic Violence & National Network to End Domestic Violence, ed., 1997) (stating that obtaining child support should not increase risks for battered mothers or their children).

2. Because the overwhelming majority of domestic violence victims are abused by a male partner, and the vast majority of recipients of child support services are women, this article uses "she," "woman," and "abused women" when referring to victims, and "he" when referring to abusers. However, all victims deserve protection, support and responsive services, regardless of gender.

3. See DAVIES, *supra* note 1, at 3 (noting that if a woman is non-compliant, her family assistance may be completely withdrawn).

4. See DAVIES, *supra* note 1, at 6 (defining "good cause" to include risk of physical or emotional harm to the child or parent).

the prevalence, dynamics, or consequences of domestic violence.<sup>5</sup>

Yet, the reality of domestic violence is complex. Many domestic violence victims need child support in order to survive.<sup>6</sup> Economically, abused women do not want "good cause" exemptions; they want effective child support enforcement.<sup>7</sup> Women who have experienced domestic violence are forced to weigh the safety risks of domestic violence against the economic risks of poverty.<sup>8</sup> When combined with her earnings, the receipt of child support can be the deciding factor on whether a woman remains separated from an abusive partner or returns to him in order to support her child.<sup>9</sup> Many women will decide to actively pursue child support if they are convinced that their safety and confidentiality concerns will be adequately addressed by the system.<sup>10</sup>

Other women will conclude that it is too risky to establish paternity or pursue child support.<sup>11</sup> Many abused women change residences, move out of state, or stay in a battered women's shelter to escape their abuser.<sup>12</sup> Women are also threatened with violence against their children, retaliatory custody claims, or child kidnapping.<sup>13</sup> When faced with these risks, some women will do their best to avoid the child support system.<sup>14</sup>

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5. See Jessica Pearson & Esther Ann Griswold, *Child Support Policies and Domestic Violence*, PUB. WELFARE 26, 31 (Winter 1997) (quoting one social service administrator as saying "We can't protect everybody, and I am sure it is our responsibility to try to protect anyone.").

6. See Martha F. Davis, *The Economics of Abuse: How Violence Perpetuates Women's Poverty*, in BATTERED WOMEN, CHILDREN, AND WELFARE REFORM: THE TIES THAT BIND 17, 21 (Ruth A. Brandwein ed., 1999) (discussing the importance of economic support to battered mothers).

7. See Pearson & Griswold, *supra* note 5, at 27 (stating that only a small number of women claim "good cause" exemptions); see also Ruth A. Brandwein, *Family Violence and Social Policy: Welfare "Reform" and Beyond*, in BATTERED WOMEN, CHILDREN, AND WELFARE REFORM: THE TIES THAT BIND 147, 154 (Ruth A. Brandwein ed., 1999) (discussing the Family Violence Option which provides for the possibility of a waiver from child support reporting by domestic violence victims if doing so would put them at further risk).

8. See Davis, *supra* note 6, at 25 (stating that in a very real way, the victim of domestic violence is forced to choose between a known and an unknown risk).

9. See Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801, 991 (1993) (noting that when a battered woman leaves her abuser, there is a 50 percent chance that her standard of living will drop below the poverty level).

10. See Pearson & Griswold, *supra* note 5, at 32 (suggesting that social service agencies adopt more individualized treatment of domestic violence victims).

11. See Pearson & Griswold, *supra* note 5, at 32 (analyzing the reasons for poor reporting of domestic violence by battered women).

12. See Davis, *supra* note 6, at 18 (noting that violence against women has reached epidemic proportions in the United States, and that between three and four million women each year are battered by their husbands, partners, and boyfriends).

13. See Davis, *supra* note 6, at 24 and accompanying text.

14. See Pearson & Griswold, *supra* note 5, at 27 (stating that many victims of domestic violence have had bad prior experiences when they have cooperated with child support

In the past, the child support program offered domestic violence victims only two options: to forgo child support altogether or to enter the general caseload.<sup>15</sup> These options are referred in this article to as "red light" and "green light" responses to child support enforcement. What is usually missing is a set of "yellow light" responses. "Yellow light" responses are procedures that identify women with domestic violence concerns and allow them the opportunity to proceed cautiously.<sup>16</sup> Abused women who are afraid to pursue child support should be given every opportunity to stay out of the child support system, while those who want to pursue child support should be able to do so with greater safety and confidentiality.<sup>17</sup>

This article addresses approaches and issues faced by state child support programs in creating safer responses for child support enforcement.<sup>18</sup> Specifically, it argues that states should develop flexible "opt out" and "stay in" policies and procedures that recognize and support the safety and economic decisions that women faced with domestic violence issues must make. This article summarizes existing research about the role of economic resources and child support in the decisions made by victims of domestic violence. Next, it summarizes the provisions in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA").<sup>19</sup> PRWORA is of particular relevance to victims of domestic violence because it provides the impetus for the collaborative efforts by the Health and Human Services ("HHS") Office of Child Support Enforcement ("OCSE"), state groups, and advocates to focus on the intersection of domestic violence and child support.<sup>20</sup> Mainly, PRWORA is important because it ended AFDC for battered women and increased

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enforcement proceedings).

15. See Jill Davies, *Building Opportunities for Battered Women's Safety and Self-Sufficiency* (Practice Paper No. 1), in WELFARE AND DOMESTIC VIOLENCE TECHNICAL ASSISTANCE INITIATIVE 16 (National Resource Center on Domestic Violence ed., 1997) (describing the two options available to women who want to enforce child support as: "1) enforce the support and face the danger; or 2) do not enforce the child support.").

16. See *infra* notes 261-83, and accompanying text (discussing the various models that could be considered "yellow light" services).

17. See Davies, *supra* note 15, at 12 (explaining why safety options should be a program requirement for battered women); see also Pearson & Griswold, *supra* note 5, at 32 (listing possible child support collection safety guidelines).

18. Note that in-hospital paternity establishment procedures, an important area, are not covered in this paper.

19. Pub. L. No. 104-193, 110 Stat. 2105 (1996).

20. See office of Child Support Enforcement, *An Extraordinary First*, CHILD SUPPORT REPORT, Dec. 1996 [hereinafter *An Extraordinary First*] (describing the importance of partnership between constituent groups, in implementing welfare reform and in including domestic violence in welfare reform).

child support enforcement tools and effectiveness, making it more likely that battered women will get support, but also creates more results. Finally, this article discusses state administrative approaches to the safe enforcement of child support, including: (1) providing information to women; (2) exempting domestic violence victims from child support cooperation requirements, with a focus on "good cause" for non-cooperation under traditional child support standards, and the Family Violence Option; (3) individualizing enforcement strategies ("yellow light" approaches for pursuing support); (4) increasing safety and confidentiality, with a focus on the family violence indicator and address confidentiality programs; and (5) providing cross-training to Temporary Aid to Needy Families ("TANF")<sup>21</sup> and child support staff.

## II. ECONOMIC RESOURCES, CHILD SUPPORT, AND DOMESTIC VIOLENCE

Economic dependence is one of the main reasons that women remain with or return to an abusive partner.<sup>22</sup> Abused women are often subject to financial control and isolation by their abusers.<sup>23</sup> In one study, more than half of domestic violence victims surveyed stayed with their abusive partner because they did not feel they could support themselves and their children alone.<sup>24</sup> Another study of the exit plans of women leaving battered women's shelters found that access to an independent income, along with child care and transportation, were primary considerations in deciding whether to return to their abusive partners.<sup>25</sup>

Many abused women with children are employed in low-wage jobs.<sup>26</sup> Women who flee their abusive spouses may be entering the

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21. See 42 U.S.C.A. § 608 (West Supp. 1999) (limiting aid distribution to the state under 42 U.S.C. § 603 to those families with minor dependent children).

22. See Klein & Orloff, *supra* note 9, at 990 (noting that child support can be a determinative factor in whether a battered woman stays with her partner or not); see also TRACY COOLEY, ELIZABETH JONES, ANITA ST. ONGE, & LINDA WILCOX, SAFETY AND SELF-SUPPORT: THE CHALLENGE OF WELFARE REFORM FOR VICTIMS OF DOMESTIC ABUSE 1, 3 (Maine Coalition for Family Crisis Services ed., 1997) (stating that if battered women lose their benefits, they are more likely to return to their abusive partners); Davis, *supra* note 6, at 26 (noting that to afford to live safely and separately, from their abusive partners, battered women must have a "sound bridge out of poverty.").

23. See Davis, *supra* note 6, at 22 (stating that some batterers prohibit their partners from seeking outside employment).

24. See Davis, *supra* note 6, at 25 (stating that many women are trapped in abusive relationships due to their economic dependence).

25. See ELEANOR LYON, POVERTY, WELFARE AND BATTERED WOMEN: WHAT DOES THE RESEARCH TELL US? 1 (National Resource Center on Domestic Violence ed., 1997) (citing the same study which found that only 16percent of the women with their own income planned to return to their batterers).

26. See *id.* at 6-8 (summarizing results from various research studies).

job market for the first time.<sup>27</sup> For them, the problem may be the same as for other low-income mothers: that a minimum wage job is not enough to support themselves and their children.<sup>28</sup> Most single mothers live below or close to the poverty level.<sup>29</sup> In order to survive financially, they must attempt to combine income from a variety of private and public sources, including child support.<sup>30</sup>

For other women, domestic violence is a major welfare-to-work barrier. Abusive partners often feel threatened by the woman's efforts to become more financially independent, and actively sabotage the woman's job training, education, or employment activities.<sup>31</sup> Violence and threats may escalate when an abused woman enrolls in job search programs, obtains a job, or when child support enforcement actions are initiated.<sup>32</sup> Some women face difficulties maintaining and advancing in their jobs because of the short- and long-term effects of domestic violence on their physical and mental health.<sup>33</sup>

Many women use welfare benefits in their efforts to leave abusive situations.<sup>34</sup> Welfare provides a financial alternative to economic

27. See *id.* at 6 (citing a Massachusetts study that found 21.7 percent of the women sampled who reported abuse in the prior 12 months had partners who did not like them going to work and a Chicago study that indicated 8 percent of the women had been prevented from going to work).

28. See generally Brandwein, *supra* note 7, at 45, 55-56 (describing the general economic situation of women who have been abused).

29. See Brandwein, *supra* note 7, at 56 ("Nationally, women on welfare have an average of 1.8 children.").

30. See ROBERTA SPALTER-ROTH, BURR, HARTMAN & SHAW, *WELFARE THAT WORKS: THE WORKING LIVES OF AFDC RECIPIENTS 2* (Institute for Women's Policy Research ed., 1995) [hereinafter *WELFARE THAT WORKS*] (stating that many single mother households rely on a combination of resources for their economic survival); Paula Roberts, *The Potential of Child Support as an Income Source for Low-Income Families*, 31 *CLEARINGHOUSE REV.* 565, 565 (1998) (stating that those receiving child support and wages are in better economic situation than those not receiving child support).

31. See Jody Raphael, *Keeping Women Poor: How Domestic Violence Prevents Women from Leaving Welfare and Entering the World of Work*, in *BATTERED WOMEN, CHILDREN, AND WELFARE REFORM: THE TIES THAT BIND* 31, 32-39 (Ruth A. Brandwein ed., 1999) (describing patterns of sabotage and abuse).

32. See *id.* at 3-4 (describing individual cases where abusive partners battered sabotage a spouse or partner's attempts to improve her economic situation).

33. See U.S. GENERAL ACCOUNTING OFFICE, *DOMESTIC VIOLENCE: PREVALENCE AND IMPLICATIONS FOR EMPLOYMENT AMONG WELFARE RECIPIENTS* 7 (Nov. 1998) (noting that some abusive partners may try to keep women from participating in work-related activities by calling them frequently during the day, coming to the program or work site unannounced, or both); JODY RAPHAEL, *DOMESTIC VIOLENCE: TELLING THE UNTOLD WELFARE-TO-WORK STORY 2* (Taylor Institute ed., 1995) (describing batterer's methods of keeping their partners unemployed); JODY RAPHAEL & RICHARD M. TOLMAN, *TRAPPED BY POVERTY, TRAPPED BY ABUSE* 22 (Taylor Institute & University of Michigan, Research Development Center on Poverty, Risk and Mental Health eds., 1997) (summarizing several research studies that indicate abused women are less likely to maintain a job than non-abused women).

34. See LYON, *supra* note 25, at 3-4 (citing one research study which found that a lifetime

dependence on an abusive partner.<sup>35</sup> Recent studies confirm the high level of domestic violence among low-income families served by welfare programs.<sup>36</sup> The studies establish rough benchmarks concerning the prevalence of domestic violence in the welfare caseload. They show that approximately twenty percent of women who receive AFDC are current victims of domestic violence, while about forty to sixty percent have experienced domestic violence during their adult lives.<sup>37</sup>

Time limits on welfare qualification periods, mean that domestic violence victims will not necessarily be able to rely on receiving welfare. Women who have "used up" their TANF eligibility may only have child support on which to rely. Even when a woman has

history of violent victimization was a strong determinant of "welfare cycling" (i.e. more than one episode of welfare receipt)); *see also* Brandwein, *supra* note 7, at 46 (noting that with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and other welfare reform measures, victims of domestic violence may face increasing difficulties in securing public assistance when they leave an abusive spouse in the future); Davis, *supra* note 6, at 18 (noting that adequate financial assistance is often the key factor that enables battered women and their children not only to leave their abusers, but to remain separated from them); Jody Raphael, *Domestic Violence and Welfare Receipt: The Unexplored Barrier to Employment*, 3 GEO. J. ON FIGHTING POVERTY 29, 29 (1995) (discussing battered women's struggle to overcome their batterer's efforts to sabotage their employment possibilities); Amy Salomon, Shari S. Bassuk & Margaret G. Brooks, *Patterns of Welfare Use Among Poor and Homeless Women*, 66 AM. J. OF ORTHOPSYCHIATRY 510, 522-24 (1996) (suggesting that work-based initiatives will likely not be enough to solve the problems of abused women; their special needs will require more targeted programs and long-term policy initiatives).

35. *See* Brandwein, *supra* note 7, at 47 (noting that in many welfare-to-work programs, victims of domestic violence constitute more than half of the enrolled).

36. *See generally* LYON, *supra* note 25, at 1 (summarizing the research results as showing that a majority of women on welfare have experienced violence by intimate partners and in childhood).

37. Since these studies were published, the Temporary Assistance to Needy Families ("TANF") program has replaced AFDC. The proportion of domestic violence cases in the current TANF caseload could vary from AFDC, given the dramatic decline in TANF cases, and potential concentration of harder-to-serve families in the remaining TANF caseload. The welfare caseload declined by more than a third between 1994 and 1998. *See* RAPHAEL & TOLMAN, *supra* note 33, at 3 (showing that 57.3 percent of AFDC recipients have been the victims of physical domestic abuse at some point during their lives, and 66.8 percent have suffered from verbal or emotional abuse at some point during their lives); *see also* MARY ANN ALLARD, RANDY ALBELDA, MARY ELLEN COLTEN, & CAROL COSENZA, IN HARM'S WAY? DOMESTIC VIOLENCE, AFDC RECEIPT, AND WELFARE REFORM IN MASSACHUSETTS 1, 16 (University of Massachusetts, Center for Social Policy Research & McCormack Institute eds., Feb. 1997) [hereinafter IN HARM'S WAY?] (explaining the findings of a research study correlating domestic violence with TANF recipients); Ellen L. Bassuk, Linda F. Weinreb, John C. Buckner, Angela Browne, Amy Salomon, & Shari S. Bassuk, *The Characteristics and Needs of Sheltered Homeless and Low-Income Housed Mothers*, 276 J. OF THE AM. MED. ASS'N. 640, 643 (1996) (citing the results from a JAMA research study which showed that 91.6 percent of homeless women have suffered from physical and sexual assault during their lives); William Curcio, *The Passaic County Study of A.F.D.C. Recipients*, in A WELFARE TO WORK PROGRAM 16 (1997) (finding that over half the women sampled had experienced domestic violence in the past); Pearson & Griswold, *supra* note 5, at 27 (citing a Bureau of Justice Statistics report which found that women living in households with annual income below \$10,000 were four times more likely to be violently attacked, usually by intimidated, than were women whose income was higher).

earnings, child support income may be necessary in order for her to make ends meet.<sup>38</sup> In addition, many women are reluctant to allow their abusive partners to escape their financial obligations.<sup>39</sup>

On the other hand, child support enforcement can precipitate and escalate the violence.<sup>40</sup> If a woman has gone into hiding, enforcement activities can alert the abuser to her location. Child support enforcement can be a direct source of increased contact and conflict between the abuser and the abused and can also trigger visitation, custody disputes, or threats.<sup>41</sup> In one study, about a third of abused women reported problems or arguments with a man about child support within previous years,<sup>42</sup> a quarter reported problems or arguments about visitation,<sup>43</sup> and about fifteen percent reported problems or arguments about custody.<sup>44</sup> Other research indicates that many women requesting a "good cause" exemption from child support cooperation fear that the non-custodial parent will kidnap or pursue custody of the children.<sup>45</sup> Women also fear child protection agency involvement if they reveal family violence.<sup>46</sup>

Each domestic violence victim faces different risks and must balance her individual needs for safety and child support. There are no pat answers. Many abused women need and want to establish

38. See Paula Roberts, *Pursuing Child Support for Victims of Domestic Violence*, in BATTERED WOMEN, CHILDREN, AND WELFARE REFORM: THE TIES THAT BIND 59, 60 (Ruth A. Brandwein ed., 1999) (arguing that child support is very important to women on welfare).

39. See *id.* at 60 (stating that many women want to pursue their abusive partners for child support if they can do it without any harm resulting to them or their children).

40. See *id.* at 59 (stating that the pursuit of child support by battered mothers can increase the violence).

41. See *id.* at 64.

42. See IN HARM'S WAY?, *supra* note 37, at 19 (discussing the results from a study describing the types of conflicts battered women had with their abusive partners over child support).

43. See IN HARM'S WAY?, *supra* note 37, at 19 (stating that only 9.3 percent of non-abused women suffered from this problem).

44. See IN HARM'S WAY?, *supra* note 37, at 19 (noting that only 4.7 percent of non-abused women suffered from this problem).

45. See Pearson & Griswold, *supra* note 5, at 30 (describing cases where abusive partners retaliated by challenging custody or kidnapping the children); see also Jessica Pearson, Nancy Thoennes & Esther Ann Griswold, *Child Support and Domestic Violence: The Victims Speak Out*, in 5 VIOLENCE AGAINST WOMEN 427, 427-48 (1999) [hereinafter *Child Support and Domestic Violence*] (presenting research regarding domestic violence and child support policies and good cause exceptions to requirements to obtain child support from absent parents); Jody Raphael, *Prisoners of Abuse: Policy Implications of the Relationship Between Domestic Violence and Welfare Receipt*, 30 CLEARINGHOUSE REV. 193 (1996) (noting also that many abusers react to child support enforcement by beginning or reviving efforts for visitation and child custody).

46. See, e.g., Stephen E. Doynne, Janet M. Bowermaster, J. Reid Meloy, Donald Dutton, Peter Jaffe, Stephen Temko, & Paul Mones, *Custody Disputes Involving Domestic Violence: Making Children's Needs a Priority*, 50 JUV. & FAM. CT J. 1, 1-5 (Spring 1999) (proposing that the justice system be reorganized to provide for the needs of children exposed to domestic violence).



paternity and pursue child support.<sup>47</sup> Other women decide that they cannot risk child support enforcement.<sup>48</sup>

A series of Colorado Model Office studies conducted by Jessica Pearson and Esther Ann Griswold provide additional insight into the relationship between child support and domestic violence.<sup>49</sup> In these studies, custodial parents applying for AFDC in four counties were screened for domestic violence and asked whether they wanted to apply for a "good cause" exception from the requirement to cooperate with the child support program.<sup>50</sup> Victims of domestic violence were interviewed in depth, good cause procedures were modified, and the case files of women who had applied for a good cause exception were analyzed.<sup>51</sup>

Generally consistent with other prevalent studies, the Pearson and Griswold studies found that forty percent of AFDC applicants disclosed a history of domestic violence and twenty-four percent disclosed current abuse.<sup>52</sup> Nearly three-quarters of the mothers identified as domestic violence victims in the Colorado studies reported that their abusers were the fathers of one or more of their children.<sup>53</sup> Nearly half of these mothers reported that they were afraid of their children's father.<sup>54</sup>

Of the mothers reporting abuse by the father of her children, eight-one percent reported being hit or beat up, sixty-nine percent reported threats of injury or murder, fifty-eight percent reported being isolated from their children, fifty-seven percent reported being followed when attempting to leave, forty-four percent reported being prevented from working, and thirty-four percent reported being threatened with a weapon.<sup>55</sup> Half placed the last beating within the

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47. See Pearson & Griswold, *supra* note 5 and text accompanying note 10 (explaining how states can collect child support from all absent parents while simultaneously protecting women and children from violent men).

48. See Pearson & Griswold, *supra* note 5 and text accompanying note 14 (describing the view that welfare reform policies may increase the risk of abuse).

49. See Pearson & Griswold, *supra* note 5, at 26, (studying Colorado's collection of child support for abused women and their children); see also *Child Support and Domestic Violence*, *supra* note 45, at 427-47 (describing the results of a Colorado research project on the topic of domestic violence and child support policies). The Colorado Model Office Project, awarded to the Colorado Department of Human Services in 1994, was funded by HHS/OCSE under grant number 90-FF-0027.

50. *Child Support and Domestic Violence*, *supra* note 45, at 434-35.

51. *Child Support and Domestic Violence*, *supra* note 45, at 435-36.

52. *Child Support and Domestic Violence*, *supra* note 45, at 437.

53. *Child Support and Domestic Violence*, *supra* note 45, at 437.

54. *Child Support and Domestic Violence*, *supra* note 45, at 438.

55. *Child Support and Domestic Violence*, *supra* note 45, at 439.

last two years.<sup>56</sup> While most victims reported that they had called the police, only forty-five percent had obtained a restraining order.<sup>57</sup>

Only 6.7 percent of the mothers reporting domestic violence, and 2.7 percent of all AFDC applicants, said they would be interested in applying for a good cause exception.<sup>58</sup> When mothers identified as domestic violence victims were asked why they did not want to pursue a good cause exception, over ninety percent of the mothers said they wanted child support.<sup>59</sup> In addition, fifty-one percent said the father knew where she lived, forty-five percent said they already had a child support order for him, and forty percent said that there was no current danger.<sup>60</sup> More than a third of the mothers who did not want to pursue a good cause exception said they did not want to do the paperwork for good cause, and a third said they did not have documentation to prove harm.<sup>61</sup> Some women also reported that they received either an insufficient explanation or no explanation for the denial of their request for a good cause exception.<sup>62</sup>

On the other hand, when mothers identified as domestic violence victims were asked why they wanted to pursue a good cause exception, most of the mothers indicated a threat of harm.<sup>63</sup> Three-fourths of the mothers said the father was dangerous and that child support would make it worse, sixty-two percent said that the father wanted to harm her, fifty-five percent said he wanted to take the children, and thirty-four percent said the father wanted to harm the children.<sup>64</sup> Most of the mothers interested in pursuing a good cause exception also indicated that they had moved to avoid the father.<sup>65</sup> Three-fourths of the mothers said they had changed residences, fifty-five percent had moved out of state, and thirty-four percent had stayed at a shelter.<sup>66</sup> Ninety percent of mothers who wanted to claim good cause said they had documentation to support their claim of good cause.<sup>67</sup>

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56. *Child Support and Domestic Violence*, *supra* note 45, at 439.

57. *Child Support and Domestic Violence*, *supra* note 45, at 439-40.

58. *Child Support and Domestic Violence*, *supra* note 45, at 440.

59. *Child Support and Domestic Violence*, *supra* note 45, at 440.

60. *Child Support and Domestic Violence*, *supra* note 45, at 440.

61. *Child Support and Domestic Violence*, *supra* note 45, at 441.

62. *Child Support and Domestic Violence*, *supra* note 45, at 441.

63. *Child Support and Domestic Violence*, *supra* note 45, at 440.

64. *Child Support and Domestic Violence*, *supra* note 45, at 440.

65. *Child Support and Domestic Violence*, *supra* note 45, at 440.

66. *Child Support and Domestic Violence*, *supra* note 45, at 440.

67. *Child Support and Domestic Violence*, *supra* note 45, at 442.

According to the study, a number of factors helped predict whether a domestic violence victim would claim good cause.<sup>68</sup> The best predictor was whether the father threatened to harm the children.<sup>69</sup> Additional factors included whether the father threatened to harm her; tried to isolate her; hit or beat her up; monitored her telephone calls; prevented her from working; abused her within the past six months; or caused her to call the police.<sup>70</sup>

Despite the small number of women seeking a good cause exception from child support cooperation in the Colorado study, a disturbing number of women were rejected by the welfare agency.<sup>71</sup> Two-thirds of the women who applied for a good cause exception were denied.<sup>72</sup> Victims who apply for a good cause exception may have trouble producing the official records required to document a threat of harm.<sup>73</sup> Often a restraining order or medical report is not accepted by the agency as proof of good cause, particularly when the documents lack full detail.<sup>74</sup>

### III. WELFARE REFORM AND NATIONAL COLLABORATION

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996<sup>75</sup> ("PRWORA"), made sweeping changes to the laws governing the cash assistance program administered under Title IV-A of the Social Security Act.<sup>76</sup> Most importantly, the 1996 legislation replaced the AFDC<sup>77</sup> program with the TANF<sup>78</sup> program and imposed a lifetime eligibility limit on families receiving assistance.<sup>79</sup> Under the 1996 legislation, TANF assistance is limited to sixty months, or less at state option.<sup>80</sup> The new law also requires states to impose tougher

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68. *Child Support and Domestic Violence*, *supra* note 45, at 440-41.

69. *Child Support and Domestic Violence*, *supra* note 45, at 441.

70. *Child Support and Domestic Violence*, *supra* note 45, at 440.

71. *Child Support and Domestic Violence*, *supra* note 45, at 441.

72. *Child Support and Domestic Violence*, *supra* note 45, at 441.

73. *Child Support and Domestic Violence*, *supra* note 45, at 442.

74. *Child Support and Domestic Violence*, *supra* note 45, at 442.

75. Pub. L. No. 104-193, 110 Stat. 2105 (1996).

76. See Paul K. Legler, *The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act*, 30 Fam. L. Q. 519, 519 (1996) (stating that the PRWORA fundamentally redirected government support to families and included eliminating AFDC and replacing it with block grants to the states).

77. Pub. L. No. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C. § 601-17, 1935).

78. 42 U.S.C.A. § 608 (West Supp. 1999).

79. 42 U.S.C.A. § 608(a)(7)(A) (West Supp. 1999).

80. *Id.*

work requirements on TANF families,<sup>81</sup> and provides that states can choose to implement a "Family Violence Option"<sup>82</sup> that would allow them to waive work and other requirements if certain preconditions are met.<sup>83</sup>

At the same time, the new Act has made dramatic changes in the laws governing the child support enforcement program administered under Title IV-D of the Social Security Act. The Act requires the creation of new databases,<sup>84</sup> strengthens child support enforcement,<sup>85</sup> and pushes states to achieve a ninety percent paternity establishment standard or face financial penalties in the form of cuts to their TANF block grant funds.<sup>86</sup> The law also tightens the cooperation requirements for child support<sup>87</sup> and adds a new requirement that states flag individuals in their child support automated system when there is "reasonable evidence" of domestic violence or a protection order.<sup>88</sup>

The possible impact of new PRWORA requirements on domestic violence victims has raised concern. Published research shows a high incidence of domestic violence among welfare recipients, yet domestic violence victims have a high level of interest in pursuing child support.<sup>89</sup> This interest provides the impetus for OCSE to intensify its focus on domestic violence and its impact upon the lives of women attempting to obtain child support and become self-sufficient.<sup>90</sup> OCSE makes a concerted effort to engage important

81. 42 U.S.C.A. § 607 (West Supp. 1999).

82. 42 U.S.C.A. § 602(a)(7)(A) (West Supp. 1999) (providing that at the option of the state, an officer of the state may screen and identify individuals receiving assistance with a history of domestic violence, refer such individuals to counseling and supportive services, and have certain program requirements pursuant to a determination of good cause).

83. 42 U.S.C.A. § 602(a)(7)(A)(iii) (West Supp. 1999).

84. See Legler, *supra* note 76, at 548 (noting that liens can now be used to collect child support across state lines and states must accord full faith and credit to liens arising in another state).

85. See Legler, *supra* note 76, at 535-38 (describing the new rules and procedures regarding paternity determinations).

86. See Legler, *supra* note 76, at 533-35 (describing the number of state mandates which have been imposed by PRWORA to achieve this goal).

87. See Legler, *supra* note 76, at 538 (noting that the vision for child support enforcement that guided the development of PRWORA was that payment of child support should be "automatic and inescapable -- 'like death or taxes.'").

88. See 42 U.S.C.A. § 602(a)(7)(A)(i) (West Supp. 1999) (giving states the option to screen and identify individuals with a history of domestic violence).

89. See Roberts, *supra* note 39 and text accompanying note 39; WELFARE THAT WORKS, *supra* note 30.

90. See Susan Notar, *Welfare Reform: Domestic Violence Provisions*, in CHILD SUPPORT REPORT (visited Nov. 15, 1999) <<http://www.acf.dhhs.gov/programs/cse/new/csr9612.htm>> (describing the importance of including domestic violence in welfare reform).

constituencies in conversations about domestic violence and child support enforcement, such as state child support and TANF administrators, domestic violence coalitions, anti-poverty advocates, fathers' groups, judges, researchers, and child protective services staff, among others.<sup>91</sup>

In February 1997, OCSE held an expert forum to discuss issues surrounding child support cooperation and good cause.<sup>92</sup> OCSE invited the forum participants to share current successful practices on domestic violence, cooperation, good cause, and to specify areas where participants needed technical assistance, training, or policy guidance.<sup>93</sup> The forum participants identified a number of state innovations, which are discussed throughout the remaining portion of this article.<sup>94</sup> Participants also identified barriers related to the implementation of new PRWORA cooperation and good cause provisions, and identified a number of areas where technical assistance would be helpful.<sup>95</sup>

In addition to the forum on cooperation and good cause, OCSE has engaged in other domestic violence related activities. In 1996, it expanded the Colorado Model Office project to include an examination of intake policies regarding cooperation and good cause.<sup>96</sup> In fiscal year 1997, it awarded grants examining various aspects of cooperation and good cause, and domestic violence, to Massachusetts, Minnesota, Missouri, and New York.<sup>97</sup> In the spring of 1998, OCSE held a meeting with the grantees to discuss issues and concerns they had in beginning their projects, and to share information.<sup>98</sup> These projects are ongoing, and hopefully will provide information helpful to shaping child support enforcement responses to domestic violence.

In 1997 and 1998, OCSE and the National Child Support

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91. See *An Extraordinary First*, *supra* note 20 (describing New York's procedures).

92. See SUSAN NOTAR, OFFICE OF CHILD SUPPORT ENFORCEMENT, COOPERATION/GOOD CAUSE FORUM REPORT 1 (1997) (providing information regarding OCSE's forum).

93. See *id.* at 3-4 (summarizing findings and discussions of the OCSE forum held in February 1997).

94. See *id.* at 3-4. These areas of technical assistance are summarized in Appendix 1.

95. See *id.* at 3-4.

96. See Office of Child Support Enforcement, *Additional Grants Approved Under 1115 Authority*, CHILD SUPPORT REPORT, Jan. 1997, at 4 (describing the improved Colorado Model office project to include interview intervention, study of good cause exemption, on cooperation, and community outreach).

97. See Office of Child Support Enforcement, *Innovative Grant Awards*, in CHILD SUPPORT REPORT, Nov. 1997, at 7 (listing grant awards provided by various states).

98. See Susan Greenblatt, *Cooperation/Good Cause Grantees Meet*, in CHILD SUPPORT REPORT, May 1998, at 9 (discussing a meeting in which good cause grantees met to discuss strategies).

Enforcement Association ("NCSEA"), with assistance from the National Resource Center on Domestic Violence ("NRC DV"), organized two national conferences on child support and domestic violence, one in Austin, Texas, in December 1997, and the second in Boston, Massachusetts, in June 1998.<sup>99</sup> The planning group invited representatives from state child support and TANF agencies, domestic violence coalitions, advocacy groups, including advocates representing low-income fathers, law enforcement, and academics, to ensure that the participants had an opportunity to begin to learn each others' perspectives, languages, interests and concerns.<sup>100</sup> Domestic violence was also featured in a 1996 and 1997 series of OCSE-sponsored regional conferences on welfare reform attended by TANF, child support, childcare, Head Start, child welfare, Food Stamp, Medicaid, SSI, and developmental disabilities program administrators.<sup>101</sup> In the Fall of 1998, OCSE held a daylong meeting with a number of advocates to discuss the Federal Parent Locator Service ("FLPS") and Family Violence Indicator ("FVI").<sup>102</sup>

OCSE also issued a number of "Dear Colleague" letters and policy issuances to all of the state child support enforcement directors on a number of domestic violence related topics including cooperation and good cause;<sup>103</sup> the family violence indicator;<sup>104</sup> the National Resource Center on Domestic Violence practice papers developed through the Welfare and Domestic Violence Technical Assistance Initiative funded by HHS;<sup>105</sup> additional domestic violence resources,

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99. See Office of Child Support Enforcement, *1997 Training Calendar*, in CHILD SUPPORT REPORT (July 1997) (visited Nov. 14, 1999) <<http://www.acf.dhhs.gov/programs/cse/new/csr9709.htm>> (listing conferences held by OCSE during the 1997 calendar year); Office of Child Support Enforcement, *1998 Conference Calendar*, CHILD SUPPORT REPORT (Apr. 1998) (visited Nov. 14, 1999) <<http://www.acf.dhhs.gov/programs/cse/new/csr9804.htm>> (providing dates of conferences sponsored by OCSE during the 1998 calendar year).

100. See NOTAR, *supra* note 92, at 1 (describing participants at the forum to be federal, state, local child support agencies and advocates representing diverse constituents).

101. See John Doyle, *OCSE and Other ACF Programs Collaborate*, in CHILD SUPPORT REPORT (visited Nov. 14, 1999) <<http://www.acf.dhhs.gov/programs/cse/new/csr9702.htm>> (describing the collaboration of OCSE and ACF groups).

102. See OFFICE OF CHILD SUPPORT ENFORCEMENT, DEAR COLLEAGUE LETTER #98-122 Nov. 25, 1998 (visited Feb. 21, 2000) <<http://www.acf.dhhs.gov/programs/cse/pol/dc198122.htm>> (describing the relationship between the FLPS and the FVI).

103. See OFFICE OF CHILD SUPPORT ENFORCEMENT, DEAR COLLEAGUE LETTER 97-90 (including a chart on post-PRWORA State Cooperation and Good Cause Practices); see also Notar, *supra* note 90 (discussing cooperation and good cause in family anti-violence provisions of PRWORA).

104. See OFFICE OF CHILD SUPPORT ENFORCEMENT, DEAR COLLEAGUE LETTER 97-90 *supra* note 103 (describing the family violence indicator override process).

105. See OFFICE OF CHILD SUPPORT ENFORCEMENT, DEAR COLLEAGUE LETTER #98-84 Aug. 14, 1998 (visited Nov. 13, 1999) <<http://acf.dhhs.gov/programs/cse/pol/dcl9884.htm>> (providing information on what constitutes domestic violence safety strategies for battered

including the telephone numbers and addresses of domestic violence coalitions;<sup>106</sup> and the Washington State Address Confidentiality Program.<sup>107</sup>

#### IV. SAFELY ENFORCING CHILD SUPPORT

##### *A. Informing Abused Women*

Today, about a quarter of the cases in state child support programs involve families receiving TANF assistance, while the remaining three-quarters involve families who are not on welfare.<sup>108</sup> Custodial and non-custodial parents not receiving TANF may apply for, or withdraw from, child support services on a voluntary basis.<sup>109</sup> While about half of the non-TANF families receive another form of public assistance, such as Medicaid, Food Stamps, SSI, or public housing, they do not specifically interact with the TANF program.<sup>110</sup> As voluntary participants in the child support program, non-TANF families may have little opportunity to speak to a child support worker, little information about how the child support process works, and no information about their options to request address confidentiality or special case handling.<sup>111</sup>

On the other hand, custodial parents receiving TANF benefits are

women, development of domestic violence protocols, safety, and office staffing issues).

106. See OFFICE OF CHILD SUPPORT ENFORCEMENT, NATIONAL DOMESTIC VIOLENCE AWARENESS MONTH OCT. 25, 1996, DEAR COLLEAGUE LETTER #96-56 (visited Nov. 13, 1999) <<http://www.acf.dhhs.gov/programs/cse/pol/dcl9656.htm>> (describing the family anti-violence provisions of PRWORA and the work that the Department of Human Services, the Department of Justice, and OCSE are undertaking to implement them).

107. See OFFICE OF CHILD SUPPORT ENFORCEMENT, DEAR COLLEAGUE LETTER #98-39 April 24, 1998 (visited Nov. 13, 1999) <<http://www.acf.dhhs.gov/programs/cse/pol/dcl9839.htm>> (discussing a confidentiality program implemented in Washington state).

108. See Vicki Turetsky, *Income Levels of IV-D Families* (last modified Oct. 5, 1999) <<http://www.clasp.org/pubs/familyformation/fee8299.htm>> (stating that in 1995 77 percent of non-ADFC families had incomes below 300percent of the poverty level).

109. Families receiving Medicaid must cooperate with the child support program to obtain medical support from non-custodial parents and Medicaid reimbursement from liable third parties, but need not pursue cash child support. See 42 U.S.C.A. § 1396k(a)(1)(B) (West Supp. 1999) (requiring recipients to cooperate with the states by establishing paternity and obtaining support); see also 45 C.F.R. § 302.33 (1999) (allowing for the withdrawal from services on a voluntary basis). The underlying foster care statute does not include a child support cooperation requirement. See 42 U.S.C.A. § 670 (West 1991 & Supp. 1999) (excluding child support cooperation requirement). PRWORA includes State options to require cooperation from custodial and/or non-custodial parents. 7 U.S.C.A. § 2015(a) (West 1999).

110. See Turetsky, *supra* note 108 (citing OFFICE OF THE ASSISTANT SECRETARY FOR PLANNING AND EVALUATION AND ADMINISTRATION FOR CHILDREN AND FAMILIES, OFFICE OF CHILD SUPPORT ENFORCEMENT, DEP'T OF HEALTH & HUMAN SERV. CURRENT POPULATION SURVEY-CHILD SUPPORT SUPPLEMENT (1996)).

111. See *id.* (discussing the non-TANF families limited interaction with the child support program).

mandatory participants in the child support program.<sup>112</sup> As a condition of TANF eligibility, they must cooperate with the state child support program to establish their children's paternity obtain child support, and assign their rights to support to the state as reimbursement for assistance.<sup>113</sup> If a TANF recipient fails to cooperate without a "good cause" excuse, the family will be sanctioned.<sup>114</sup> In some states, the custodial parent's failure to cooperate results in the ineligibility of the entire family for TANF benefits.<sup>115</sup> In other states, the family's benefits will be cut by twenty-five percent or more.<sup>116</sup>

Women on TANF who are at risk of harm because of domestic violence may request a good cause exception to the cooperation requirement.<sup>117</sup> Under the old AFDC program, federal regulations required state AFDC programs to give each applicant a good cause written notice.<sup>118</sup> This standard notice used legal terms to advise applicants of the requirement to cooperate with the child support program, their right to claim a good cause exception to cooperation, and the need to provide evidence to support their good cause claim.<sup>119</sup>

Under the TANF program, states have the responsibility to determine how to inform women about the good cause exception. New federal TANF regulations do not prescribe specific notice requirements.<sup>120</sup> In practice, the responsibility for advising women about cooperation and good cause is often fragmented, with neither the TANF agency nor the child support agency doing a good enough

112. See U.S.C. § 608(a) (1999) (noting prohibitions and requirements for states to which a grant is made under § 603 of this title including the individual's responsibility to cooperate with the state in enforcing child support orders and assigning certain rights to the state).

113. See 42 U.S.C. § 608(a)(2)(3)(A) (1999) (describing situations resulting in non-eligibility of assistance).

114. See 42 U.S.C. § 608(a)(2) (1999) (indicating exceptions established by a state for the requirement to cooperate in establishing paternity and obtaining child support).

115. See 42 U.S.C. § 608(a)(2)(B) (1999) (conveying possible sanction for non-cooperation in establishing paternity or obtaining child support under a state program).

116. See 42 U.S.C. § 608(a)(2)(A) (1999) (conveying possible penalties for non-cooperation).

117. See 45 C.F.R. § 302.31(b) (1999) (providing guidance on cooperation and good cause but giving states more discretion).

118. See Roberts, *supra* note 30, at 62 (giving four reasons provided in federal regulations to claim good cause exception to cooperating in state pursuit of support and two ways a state could fulfill written notice before requiring cooperation).

119. See 42 C.F.R. § 232, App. A (1995) (providing sample notices of requirement to cooperate and right to refuse for good cause).

120. See Temporary Assistance for Needy Families Program, 64 Fed. Reg. 17,720, 17,850 (1999) (providing an analysis of the statutory provisions and addressing commentators' views and concerns).



job of informing women about the process.<sup>121</sup> Women typically receive notice only once, buried in a TANF application packet.<sup>122</sup> Often women do not get the full picture needed to make decisions about whether they can risk cooperating with the child support program or whether they need to seek a good cause exception.<sup>123</sup>

The setting in which women apply for TANF and receive a good cause exception also hampers effective information sharing about the options available to domestic violence victims.<sup>124</sup> Often, the intake process involves group orientations, extensive paperwork, and multiple interviews.<sup>125</sup> The interview cubicle may not be private. The caseworker may be overburdened, harried, and unskilled at working with domestic violence victims.<sup>126</sup> The woman may have her children with her. The abusive partner may have accompanied her to the interview room.<sup>127</sup>

In many states, the child support intake for TANF recipients is handled entirely by the TANF eligibility worker.<sup>128</sup> The woman's TANF worker may have only limited knowledge about the child support program.<sup>129</sup> Consequently, the woman may get very little information about what she can expect from the child support

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121. See VICKI TURETSKY, *POINTING THE FINGER AT MOMS: CHILD SUPPORT COOPERATION PROVISIONS IN THE CONFERENCE WELFARE BILL* (CLASP ed., 1996) (discussing the definitions of cooperation and the exception).

122. JODY RAPHAEL & SHEILA HAENNICKE, *KEEPING BATTERED WOMEN SAFE THROUGH THE WELFARE-TO-WORK JOURNEY: HOW ARE WE DOING? A REPORT ON THE IMPLEMENTATION OF POLICIES FOR BATTERED WOMEN IN STATE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) PROGRAMS 12* (1999) (explaining that one state's Family Violence Option Program had workers who were not regularly providing the brochure to their participants).

123. See RAPHAEL & HAENNICKE, *supra* note 122, at 11 (discussing the efficacy of state approaches to assessment of domestic violence).

124. See NOTAR, *supra* note 92, at 7-8 (relaying information obtained from advocates concerning the non-conductive atmosphere of the intake process).

125. See RAPHAEL & HAENNICKE, *supra* note 122, at 12-15 (describing screening tools used by states).

126. See NOTAR, *supra* note 92, at 7-8 (contending that whether an applicant is in fear of her safety as a result of cooperation is not identified during the intake process); RAPHAEL & HAENNICKE, *supra* note 122, at 17 (stating that twenty-nine states have not provided child support enforcement staff with basic domestic violence awareness training).

127. See Pearson and Griswold, *supra* note 5, at 29-31 (discussing the need for policies sensitive to the woman's needs and the connection between enforcement and the fear for safety); Brandwein, *supra* note 7, at 151-55 (discussing the implications of the PRA for victims of domestic violence); Roberts, *supra* note 38, at 72-74 (discussing the development of protections under the PRA for domestic violence victims).

128. Cf. VICKI TURETSKY, *STATE CHILD SUPPORT COOPERATION AND GOOD CAUSE: A PRELIMINARY LOOK AT STATE POLICIES 2* (CLASP, ed., 1998) (reporting that most states make good cause determinations within the TANF agency).

129. See NOTAR, *supra* note 92, at 5-6 (discussing the OCSE planning committee on the need for training/technical assistance).

process.<sup>130</sup> In many states, the child support worker may only have limited client contact and the TANF agency may not communicate domestic violence concerns to the child support agency.<sup>131</sup>

It is important that simple and clear materials be developed and disseminated that explain how the child support system works, in order to give women a better understanding of their alternatives and to give TANF and child support workers a better understanding of the risks and barriers facing women.<sup>132</sup> TANF should give recipients a direct and understandable statement of what they need to do in order to comply with child support cooperation requirements.<sup>133</sup> TANF agencies should inform women about their ability to disclose domestic violence and to apply for a good cause exception.<sup>134</sup> The information agencies provide to women should explain the steps in the child support process, the role of the courts, and that their personal information will be included in state and federal databases. Agencies should help women understand the benefits and risks of paternity and child support enforcement, including the implications for custody and visitation. Agencies should inform women about the safeguards available to them if they have been abused, but want to pursue support.

Agencies must adequately train caseworkers who will be discussing domestic violence.<sup>135</sup> If possible, agencies should make private space available where women can speak openly and confidentially about their domestic violence concerns. The interview should not take place in front of their partners or children. Some jurisdictions have specific strategies for providing increased opportunities for women to disclose abuse privately. For example, in Maryland, the caseworker asks the woman to meet separately with a social worker to discuss women's health issues, while in the state of Washington, the caseworker schedules a private appointment with a family planning

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130. See NOTAR, *supra* note 92, at 7 (explaining the necessity of experts and workers to understand the terminology so as to clearly convey the meaning and implications for participants).

131. See NOTAR, *supra* note 92, at 11 (voicing concerns that child support enforcement workers lack expertise and resources to make referrals).

132. See RAPHAEL & HAENNICKE, *supra* note 122, at 12-13 (explaining the problems with current methods of notice and screening); Jill Davies, *The New Welfare Law: Child Support Enforcement*, (Practice Paper No. 3) 10 (1997) (explaining the importance of notice to ensure understanding of battered women).

133. See RAPHAEL & HAENNICKE, *supra* note 122, at 15-18 (explaining how few states give complete instructions on how to fully comply with child support requirements).

134. See RAPHAEL & HAENNICKE, *supra* note 122, at 11-17 (describing the domestic violence waiver process).

135. See, e.g. NOTAR, *supra* note 92, at 17 (describing mandatory domestic violence training for the Department of Social Services workers in Anne Arundel County, Maryland).

worker.<sup>136</sup>

Agencies should offer information about good cause and safety options repeatedly: at TANF eligibility and re-determination reviews, before imposing non-cooperation sanctions, upon referral to work activities, when the child support agency interviews women, when TANF assistance is about to end, and when women apply for child support services voluntarily.<sup>137</sup> If the woman raises domestic violence as a concern, the child support worker should let the women know before instituting an enforcement action. Women should be able to stop child support enforcement as soon as the need arises.

Special care is needed in designing domestic violence notification, screening, assessment, and interviewing procedures. To ensure that disclosures of domestic violence are informed and voluntary, domestic violence advocates recommend agencies use either universal notification or "screening for voluntary disclosure."<sup>138</sup> If personnel ask women directly about domestic violence, they should not force women to answer, but instead should inform them about their right to not comment without adverse consequences to their TANF eligibility. Identification and assessment questions should be as non-invasive as possible.<sup>139</sup> Agencies should consult advocates in developing forms, scripts, and procedures.<sup>140</sup> The Colorado Model Office project,<sup>141</sup> Nevada, South Carolina, New York, Oregon, Rhode Island, the state of Washington, and other states have developed a number of universal notice, screening, and assessment instruments.<sup>142</sup> In addition, the Manpower Demonstration Research Corporation ("MDRC") has developed a computer domestic violence screening

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136. NOTAR, *supra* note 92, at 17-19 (providing examples of state practices in the assessment process).

137. See RAPHAEL & HAENNICKE, *supra* note 122, at 11 (recommending that agencies give repeated notice throughout the welfare to work process, not just during the initial application process when applicants are most apprehensive).

138. See Jill Davies, *Family Violence Protocol Development*, (Practice Paper No. 2, 4) 19 [hereinafter "Practice Paper No. 2"]; Davies, *supra* note 1, at 8 (stating that some battered women will disclose information about their domestic violence when informed about CSE cooperation).

139. See RAPHAEL AND HAENNICKE, *supra* note 122, at 12 (discussing the importance of notice within the context of difficulty discussing a personal issue).

140. See RAPHAEL AND HAENNICKE, *supra* note 122, at 12 (discussing problems with current screening tools); Practice Paper No. 2, *supra* note 138, at 13 (providing a training approach for the implementation of a family violence protocol).

141. See JESSICA PEARSON, NOTICES, SCREENING INSTRUCTIONS, AND DATA COLLECTION FORMS ON DOMESTIC VIOLENCE FOR PUBLIC ASSISTANCE CLIENTS (1997) (discussing the Colorado Model Office project).

142. See RAPHAEL & HAENNICKE, *supra* note 122, at 10-15 (describing notification and assessment methods from several states).

protocol.<sup>143</sup>

Agencies should also provide women with information about domestic violence resources within the community. New York developed a simple "palm card" that includes a hotline telephone number.<sup>144</sup> Other states post information in other discrete ways.<sup>145</sup> In addition, the child support agency should reach out to advocacy and maternal health organizations to inform women about child support and domestic violence procedures.

When sending mailings that contain domestic violence information, agencies should not target domestic violence victims, but should instead mail it to the general TANF or child support caseload with a check or other items. In New York, staff members discuss with domestic violence victims the safest way to provide information and whether mailing the information home might endanger them.<sup>146</sup> Agencies might mail notices and other information to an alternate address, post office box, or hold it at the agency.<sup>147</sup>

### *B. Opting out of the System*

PRWORA contains two separate provisions for claiming a good cause exception to child support cooperation based on domestic violence:

*IV-D good cause exceptions.* Title IV-D of the Social Security Act contains a provision, that specifically authorizes good cause and other exceptions from the TANF cooperation requirement.<sup>148</sup> Traditionally, Title IV-D provided good cause exceptions for domestic violence, rape, incest, and adoption, and the AFDC agency granted them for an indefinite time period.<sup>149</sup> PRWORA amended the IV-D good cause exceptions to give the states wide latitude in defining good cause and other exceptions, setting notice requirements, evidentiary standards and time periods, and deciding which agency determines good

143. See generally ADRIAN GALLUP-BLACK, USING AUDIO-CASI TO COLLECT DATA ON DOMESTIC VIOLENCE: THE MFIP SURVEY EXPERIENCE (MDRC ed., 1999).

144. See RAPHAEL & HAENNICKE, *supra* note 122, at 9-11 (reviewing best practices among states to notify TANF recipients).

145. See RAPHAEL & HAENNICKE, *supra* note 122, at 10-11 (describing how various states discretely provide information about domestic violence in the community).

146. RAPHAEL & HAENNICKE, *supra* note 122, at 10-11.

147. RAPHAEL & HAENNICKE, *supra* note 122, at 10-11.

148. See 42 U.S.C. § 654(4)(A)(i) & (29) (1999) (detailing the obligation of the state concerning a recipient and the cooperation requirement with its exceptions).

149. *Id.*

cause.<sup>150</sup>

**FVO good cause waiver.** The second provision is a new state option called the Family Violence Option (“FVO”) enacted under PRWORA and contained in Title IV-A of the Social Security Act. This provision authorizes states to implement a FVO procedure to identify domestic violence victims, refer them for services, and grant temporary good cause waivers from TANF requirements, including child support cooperation requirements.<sup>151</sup>

On April 12, 1999, HHS issued TANF regulations interpreting the IV-D good cause exceptions and the FVO good cause waiver provisions.<sup>152</sup> Under the final rule, states that have chosen the FVO may waive cooperation with child support enforcement using either good cause procedure.<sup>153</sup> States may decide either to (1) integrate their child support good cause procedure with their FVO waiver process; or (2) retain one good cause procedure for child support cooperation and another good cause procedure for all other TANF requirements, such as work requirements and time limits. The final rule allows, but does not require, treating child support cooperation differently from other TANF requirements. The next section describes these provisions in more detail.

### 1. Cooperation and IV-D Good Cause Exceptions

PRWORA made several important changes affecting the traditional child support cooperation and good cause determinations.<sup>154</sup> First, the law transferred the authority to make the cooperation determination from the TANF agency to the child support (“IV-D”) agency.<sup>155</sup> Under the former AFDC program, the AFDC agency decided whether a recipient was cooperating with the child support program.<sup>156</sup> Under PRWORA, the child support agency must make the cooperation decision and the TANF agency must sanction the

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150. Pub. L. No. 104-193, 110 Stat. 2105 (1996).

151. *Id.*

152. *See* Temporary Assistance for Children and Families, 64 Fed. Reg. 17,720 (1999) (governing key provisions of the 1996 welfare block grant program or TANF, which replaces other national welfare programs); *see also* <<http://www.acf.dhhs.gov/programs/ofa/finalrule.htm>> (offering these regulations on the internet).

153. *See* 42 U.S.C. § 654(29)(A)(i) & (ii) (1999) (establishing the two good cause procedures available).

154. *See* 42 U.S.C. § 654(29) (1999) (giving states more discretion in determining the standards for cooperation and good cause exceptions).

155. *See id.* (placing responsibility with the state agency administering the program).

156. *See* Roberts, *supra* note 38, at 61 (describing how cooperation under the old law was an eligibility requirement for receiving AFDC).

family if the child support agency decides that the woman is not cooperating.<sup>157</sup>

Second, while PRWORA tightened the definition of child support "cooperation," it still gave the state considerable leeway in deciding what constitutes "cooperation." The statute requires that TANF recipients "cooperat[e] in good faith. . . by providing the State [child support] agency with the name of, and such other information as the State agency may require with respect to, the non-custodial parent."<sup>158</sup> In addition to providing information about their children's father, PRWORA requires TANF recipients to appear at interviews, hearings and legal proceedings and to submit to genetic tests.<sup>159</sup>

Third, PRWORA allows the State to determine which agency will define and determine "good cause and other exceptions" for not cooperating with child support enforcement.<sup>160</sup> Under the old AFDC law, a good cause claim based on domestic violence was quite restrictive, requiring evidence of anticipated physical or emotional harm to a child or to the custodial parent if the harm was "of such nature or degree that it reduces such person's capacity to care for the child adequately."<sup>161</sup> Although this article concentrates on the good cause exceptions based on domestic violence, the old law allowed good cause claims for reasons other than domestic violence, including adoptions pending or under consideration, and when a child was conceived as a result of rape or incest.<sup>162</sup> Traditionally, the

157. See 42 U.S.C. § 608(a)(2) (1999) (stating that, if an individual fails to comply with child support enforcement provisions, the State shall deduct or deny assistance to that individual); 42 U.S.C. § 609(a)(5) (1999) (stating that, if state agencies fail to enforce penalties for failure to cooperate in establishing paternity and child support, the secretary will reduce the grant payable to the state).

158. See Roberts, *supra* note 38, at 66 (describing the absence of definitions of cooperation and good cause in the federal statute).

159. See 42 U.S.C. § 654(29)(A), (B) & (C) (1999) (providing the obligation of state administering agencies in the enforcement of cooperation).

160. See 42 U.S.C. § 654(29)(A) (1999) (providing two options for defining good cause and other exceptions dependent upon which program is applicable). More specifically, the state must decide whether the child support agency or the program agencies administering TANF, Medicaid, foster care, and Food Stamps will define and decide good cause.

161. See 42 U.S.C.A. § 608(a)(2) (West Supp. 1999) (stating the federal definition of good cause); see also 45 C.F.R. § 232.42(a)(1) (1995) (waiving cooperation requires a reasonable anticipation that cooperation would result in physical or emotional harm to the parent/custodian); 45 C.F.R. § 232.42(b) (1995) (requiring that the physical harm or emotional harm amount to a "serious nature . . . based upon a demonstration of an emotional impairment that substantially affects the individual's functioning"). Furthermore, with respect to emotional harm, the regulations require the state or local agency to consider the "emotional state" and "emotional health history of the child, parent or caretaker relative" as well as consider the "[i]ntegrity and probable duration of the emotional impairment," the "degree" to which cooperation was required, and the extent these individuals need be involved in the state's enforcement activities. 45 C.F.R. § 232.42(c) (1995).

162. See 45 C.F.R. § 232.42(a)(2) (1995) (listing valid reasons for non-cooperation in

AFDC agency made both the cooperation and good cause decisions. The AFDC program did not typically place a time limit on the good cause exceptions, so a woman granted good cause stayed out of the child support system indefinitely, even if her circumstances changed.<sup>163</sup>

Fourth, under PRWORA, if an individual does not cooperate with paternity establishment and child support enforcement, and does not have "good cause" for failing to cooperate, the state must deny the family at least twenty-five percent of its TANF block grant, and may deny the family any assistance.<sup>164</sup> Under the old AFDC law, the penalty for non-cooperation was loss of AFDC eligibility for the woman (but not the children) and corresponding reduction of the grant amount.<sup>165</sup>

OCSE and CLASP are conducting an ongoing review of state child support cooperation and good cause policies. This is a collaborative effort to identify state policy trends and best practices.<sup>166</sup> State-by-state charts are posted on the CLASP website and are in the process of being updated. The following trends in state policies and procedures have emerged:

**Absolute information requirement.** Most states have in place a general requirement to cooperate or to cooperate in good faith as a condition of TANF eligibility.<sup>167</sup> Very few states have adopted an absolute information requirement.<sup>168</sup> A state has an absolute

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establishing paternity, securing support, or providing helpful information to the state).

163. See generally 45 C.F.R. § 232.1-40 (1995) (lacking provisions setting forth time limits for qualifying for good cause exception, including a requirement to update the information submitted to the state or local agency).

164. See 42 U.S.C.A. § 608(a)(2) (West Supp. 1999) (describing the repercussions for failing to assist in establishing paternity or obtaining child support).

165. See 45 C.F.R. § 232.13(b) (1995) (indicating that assistance would be denied to the applicant or recipient with no consideration to other eligibility factors but assistance would continue to be provided to an eligible child – however, without consideration to the needs of the applicant or recipient).

166. See Vicki Turetsky, *State Child Support Cooperation and Good Cause: A Preliminary Look at State Policies*, CENTER FOR LAW AND SOCIAL POLICY, rev. Aug. 1998, at 2. For discussions about defining child support good cause, setting evidentiary standards, locating the good cause determination, and implementing other recommended good cause policies and procedures, see NOTAR, *supra* note 92, at 8-12; PAULA ROBERTS, CHILD SUPPORT COOPERATION ISSUES: IMPLEMENTING THE PROVISIONS OF THE "PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996," (CLASP ed., 1996) 9-14 (examining that TANF/child support cooperation requirements and good cause exceptions).

167. See Vicki Turetsky, *A Preliminary Look at State Child Support Cooperation Policies* (last modified Aug. 1, 1998) <<http://www.clasp.org/pubs/childsupprt/YYCOOP.html>> [hereinafter Turetsky, *State Cooperation Policies*] (providing a brief description of all fifty states' policies on child support cooperation).

168. See Turetsky, *State Cooperation Policies*, *supra* note 167 (indicating that only five states – Idaho, New Mexico, Oklahoma, South Carolina, and Virginia – have adopted an absolute information requirement).

information requirement if custodial parents automatically lose TANF benefits when they fail to provide specific information about the identity of their children's fathers.<sup>169</sup> In other words, if the custodial parent says she does not know the father's name, it is unclear whether the state will automatically sanction her for non-cooperation or give her an opportunity to establish that she does not know the father's name.

**Information checklist policy.** About one-fourth of the states have adopted an information checklist policy.<sup>170</sup> States adopting an information checklist policy require custodial parents to provide specified items of information about the noncustodial parent, such as name, social security number, employment, or relatives' names, if the custodial parent has the information or the state reasonably expects her to have it.<sup>171</sup> An information checklist policy requires the custodial parent to provide specific paternity information, but allows her to demonstrate lack of knowledge.<sup>172</sup> Some of these states permit the custodial parent to attest to the lack of information.<sup>173</sup> Others set up more specific criteria for determining whether she reasonably should have the information,<sup>174</sup> and still others require the custodial parent to explain their circumstances or otherwise allow the caseworker to determine whether the custodial parent has been diligent and forthcoming.<sup>175</sup>

**Sanctions for non-cooperation.** States have adopted a range of sanctions for non-cooperation. About one third of states have adopted a twenty-five percent penalty against the family's TANF benefits (with a handful of states adopting another fixed penalty).<sup>176</sup> Another third have adopted full-family sanctions, resulting in total ineligibility for TANF.<sup>177</sup> Another third have adopted progressive

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169. See, e.g., Turetsky, *State Cooperation Policies*, *supra* note 167 (stating that in Idaho, recipients automatically lose TANF eligibility if they fail to "provide the noncustodial parent's (1) name, and (2) two of the following items: birth date, Social Security Number, current address, current telephone number, employer, motor vehicle registration, parents' names, addresses, and phone numbers").

170. See Turetsky, *State Cooperation Policies*, *supra* note 167.

171. See Turetsky, *State Cooperation Policies*, *supra* note 167.

172. See Turetsky, *State Cooperation Policies*, *supra* note 167 (indicating that in Colorado, "[a] participant must make a 'good faith effort' to provide information that is 'reasonably obtainable.' An information checklist is used, but a participant can attest to the lack of information.").

173. See, e.g., Turetsky, *State Cooperation Policies*, *supra* note 167 and accompanying text.

174. See Turetsky, *State Cooperation Policies*, *supra* note 167 and accompanying text.

175. See, e.g., Turetsky, *State Cooperation Policies*, *supra* note 167 and accompanying text.

176. See Turetsky, *State Cooperation Policies*, *supra* note 167 and accompanying text.

177. See Turetsky, *State Cooperation Policies*, *supra* note 167 and accompanying text.



sanctions.<sup>178</sup> In adopting progressive sanctions, states have taken two basic approaches. The first approach is to increase the penalty amount with each occurrence of non-cooperation.<sup>179</sup> The second approach is to lengthen the penalty period.<sup>180</sup> A few states have integrated the cooperation requirement into a personal responsibility or self-sufficiency plan, which subjects custodial parents to combined progressive work and child support penalties.<sup>181</sup>

*Definition of good cause.* Most states have retained the old federal definition of the good cause exception to cooperation—physical or emotional harm to the custodial parent or child, incest, rape, or adoption pending or being considered.<sup>182</sup> Some states have dropped the federal caveat that the harm to the custodial parent be severe enough to impair her capacity to care for the child.<sup>183</sup> Some states have a more fully developed domestic violence exception. One state expressly includes retaliation as a basis for good cause,<sup>184</sup> while another state includes child kidnapping.<sup>185</sup> A few states include new exceptions “to cooperation, including mental impairment, lack of information,” and a deceitful non-custodial parent.<sup>186</sup> Other states address “no-show” issues by adopting exceptions for lack of transportation and childcare, out-of-state travel, and lack of notice due to address problems.”<sup>187</sup> Evidentiary standards vary among the states, with some requiring official records, some states allowing third-party statements,<sup>188</sup> and some states permitting client statements alone as sufficient corroboration of good cause.<sup>189</sup>

*Responsibility for deciding good cause.* Most states have kept “the good cause determination in the TANF agency.”<sup>190</sup> While a few states have assigned joint responsibility for good cause decisions to the

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178. See Turetsky, *supra* note 166.

179. See, e.g., Turetsky, *State Cooperation Policies*, *supra* note 167 and accompanying text.

180. See Turetsky, *State Cooperation Policies*, *supra* note 167 and accompanying text.

181. See Turetsky, *State Cooperation Policies*, *supra* note 167 and accompanying text.

182. See RAPHAEL & HAENNICKE, *supra* note 122, at 15 (asserting that although the 1996 Act authorized State to determine their own definition of good cause, most States have elected to maintain the federal definition).

183. See Turetsky, *supra* note 166, at 2.

184. See Turetsky, *supra* note 166, at 2.

185. See Turetsky, *supra* note 166, at 2.

186. See Turetsky, *supra* note 166, at 2.

187. See Turetsky, *supra* note 166, at 2.

188. See Turetsky, *supra* note 166, at 2.

189. See Turetsky, *supra* note 166, at 2.

190. See Turetsky, *supra* note 166, at 2.

TANF and child support agency,<sup>191</sup> others states have moved the responsibility for good cause decisions to the child support agency.<sup>192</sup>

## 2. Good Cause Under The Family Violence Option

PRWORA authorizes states to adopt procedures under a FVO<sup>193</sup> to screen and identify TANF recipients with a history of domestic violence, while maintaining their confidentiality, and refer them to counseling and supportive services.<sup>194</sup> The law permits states to waive TANF requirements for good cause, including time limits, work and residency requirements, family caps, and child support cooperation:<sup>195</sup> if compliance would make it more difficult for women to escape domestic violence, unfairly penalize her, or put her at risk of further domestic violence.<sup>196</sup>

Under rules promulgated by HHS, states have broad discretion to set standards and implement procedures for good cause waivers granted under the FVO.<sup>197</sup> However, special rules apply when states are seeking federal penalty relief under a "reasonable cause" exception for failing to meet TANF caseload work participation rates<sup>198</sup> or exceeding the twenty percent hardship exception to time

191. See NOTAR, *supra* note 92, at 9 (reporting that states like Minnesota, are considering placing the determination of cooperation within the child support agency and the TANF agency and in cases where a good cause finding is possible, those cases will be referred "to a decision making body within the agencies to determine whether good cause should be granted").

192. See NOTAR, *supra* note 92, at 9 (reporting that Ohio, through its "Ohio first" project, has elected to charge the child support enforcement agency with the responsibility of making good cause determinations).

193. See 42 U.S.C.A. § 602(A)(7) (West Supp. 1999) (incorporating Family Violence Option provisions set forth in § 402(a)(7)(1999)).

194. See RAPHAEL & HAENNICKE, *supra* note 122, at 4 (stating that the "welfare-to-work" process keeps women safe through domestic violence counseling, safety planning and other necessary services).

195. See RAPHAEL & HAENNICKE, *supra* note 122, at 4, 15-16, 19 (stating that generally benefits are limited to 60 months unless there are "hardship" exceptions).

196. See RAPHAEL & HAENNICKE, *supra* note 122, at 4, 15-16, 19 (stating that, for example, states may exempt battered women from working and that the benefits can be extended at the end of the benefits period).

197. See 45 C.F.R. § 260.54 (1999) (providing that States "may determine which program requirements to waive and decide how long each waiver might be necessary.").

198. See U.S.C.A. § 607 (West Supp. 1999) (setting forth mandatory work requirements under the TANF block grant program); RAPHAEL & HAENNICKE, *supra* note 122, at 4. The regulations provide that the Office of Family Assistance will find *reasonable cause* for a state's failure to meet work participation rates when the failure is attributable to providing federally recognized good cause domestic violence waivers, thereby relieving the state of penalties. 45 C.F.R. § 260.58 (1999). The state is required to produce evidence that it would have met work participation rates if those individuals who received federally recognized good cause waivers were not taken into account. *Id.* The agency "will reduce a state's penalty based on the degree of noncompliance to the extent that its failure to meet the work participation rates was attributable to federally recognized good cause for domestic violence waivers." *Id.* The state is also responsible for complying with information requirements set forth in 45 C.F.R.

limits.<sup>199</sup> States may ask HHS to take the good cause waivers into account only if they are “federally recognized.”<sup>200</sup> To be federally recognized:

- The waiver may be granted “for as long as necessary,” but must be reassessed at least every six months.<sup>201</sup> This is so the family gets periodic attention from the state agency, and is not left without services.
- The waiver may not be a blanket exemption from program requirements, but instead must identify the specific TANF requirements that are being waived based on an individualized assessment of need.<sup>202</sup>
- A person trained in domestic violence must conduct the individualized assessment.<sup>203</sup>
- The waiver must be accompanied by a service plan developed by a person trained in domestic violence and designed to “lead to work.”<sup>204</sup> However, the preamble to the rule makes clear that safety and fairness may require postponement of work in order to recover from injuries, secure housing, help children adjust, receive counseling, and attend to other personal and family needs.<sup>205</sup>

As of May 1, 1999, thirty U.S. states, Puerto Rico, and the District of Columbia have adopted the FVO and implemented its policies and

§265.9(b)(5) in order to receive federal penalty relief. *Id.*

199. See 42 U.S.C.A. § 608(a)(7)(C) (West Supp. 1999) (setting forth time limits for assistance and hardship exception). The regulations provide that the Office of Family Assistance will find *reasonable cause* for a state’s failure to comply with the five-year limit when the failure is attributable to providing federally recognized good cause domestic violence waivers, thereby relieving the state of penalties. 45 C.F.R. § 260.59 (1999). The state must demonstrate that waivers granted to extend time limits were “based on the need for continued assistance due to current or past domestic violence or the risk of further domestic violence” and when those individuals who were granted the waiver are subtracted from the calculation, the “percentage of families receiving federally funded assistance for more than 60 months did not exceed 20% of the total.” *Id.* The state is also responsible for complying with information requirements set forth in 45 C.F.R. § 265.9(b)(5) in order to receive federal penalty relief. *Id.*

200. 45 C.F.R. § 260.54 (1999).

201. See 45 C.F.R. § 260.55(b) (1999) (stating that the good cause domestic violence waiver must be “based on need, as determined by an individualized assessment by a person trained in domestic violence and redeterminations no less often than every six months”).

202. See 45 C.F.R. § 260.55(a) (1999) (stating that the good cause domestic violence waiver must “[i]dentify the specific program requirements that are being waived”).

203. See 45 C.F.R. § 260.55(b) (1999).

204. See 45 C.F.R. § 260.55(c) (1999) (stating specifically that the good cause domestic violence waiver must “[b]e accompanied by an appropriate services plan . . . developed by a person trained in domestic violence” that “[r]eflects the individualized assessment and any revisions indicated by the redetermination” and finally, “[t]o the extent consistent with § 260.52(c), is designed to lead to work”).

205. 64 Fed. Reg. 17,720, 17,744 (1999).

procedures.<sup>206</sup> Eighteen states had not yet finalized FVO policies or had some other discussion of family violence in their TANF plans.<sup>207</sup> Two states had no discussion of family violence in their TANF plans.<sup>208</sup>

### 3. Good Cause Models

Many states implementing the FVO have left their traditional IV-D good cause procedures in place.<sup>209</sup> This means that a state may operate with dual standards for granting a good cause exemption from child support cooperation, compared to exemptions from other TANF program requirements, such as work requirements.<sup>210</sup> In some states, a domestic violence victim receiving TANF can apply for good cause using either route.<sup>211</sup> In other states, a domestic violence specialist decides whether to grant a good cause waiver from every other TANF requirement except child support cooperation.<sup>212</sup> A good cause exception from child support cooperation is usually decided by someone with no expertise in domestic violence such as a TANF line worker or supervisor, child support staff, or committee.<sup>213</sup>

Unless states integrate, or at least coordinate, their separate good cause standards under the child support program and FVO, they run the risk of inconsistent good cause determinations, confused clients and workers, and duplicative efforts.<sup>214</sup> For example, domestic

206. See RAPHAEL & HAENNICKE, *supra* note 122, at 6-8 (listing states' progress in formally adopting the FVO and noting that Missouri, Nebraska, North Carolina and Pennsylvania have adopted the FVO, however, no final policies are in place).

207. See RAPHAEL & HAENNICKE, *supra* note 122, at 6-8 (noting that Wisconsin and Illinois are the sole two states without policies for domestic violence victims).

208. See RAPHAEL & HAENNICKE, *supra* note 122, at 6-8 (stating that Wisconsin and Illinois did not adopt the FVO but that battered women may obtain domestic violence services as a work activity).

209. See RAPHAEL & HAENNICKE, *supra* note 122, at 16 (stating that keeping the old standard and adopting the new one creates "two different domestic violence determinations and verifications to have to occur" and the new standard seems to have a higher burden of proof).

210. See RAPHAEL & HAENNICKE, *supra* note 122, at 16 (explaining that many states' retention of the federal good cause definition results in "a strict reading of 'good cause'" which "[m]eans that domestic violence victims and survivors cannot avoid child support enforcement unless the threat of domestic violence is so severe that it would reduce their ability to care for their child"). Furthermore, the "child-centered good cause definition" imposes a "higher burden of proof, than the definition of domestic violence in the [FVO]" resulting in "two different domestic violence determinations and verifications to have to occur." *Id.*

211. See RAPHAEL & HAENNICKE, *supra* note 122, at 16 (describing Rhode Island's ideal model of coordination of these determinations and verifications).

212. See RAPHAEL & HAENNICKE, *supra* note 122, at 17 (stating the recommendation that work waivers should be described by a FVO-adopting states in a notice).

213. See RAPHAEL & HAENNICKE, *supra* note 122, at 17 (finding that only seven states had provided basic domestic violence awareness training to all staff members, namely: Alaska, Connecticut, Delaware, Maryland, Massachusetts, New York, and Rhode Island).

214. See RAPHAEL & HAENNICKE, *supra* note 122, at 16 (arguing that separate notices with different definitions of who is eligible for exemptions serves only to confuse applicants and

violence victims may be granted good cause for child support non-cooperation under the family violence standard, but not the child support standard.<sup>215</sup> In the preamble to the TANF regulations, HHS encouraged states to coordinate their good cause procedures, stating:

Although a separate section of the Act authorizes waivers under the FVO for victims of domestic violence, the purpose of these waivers and the regular good cause exceptions from child support cooperation are similar, i.e., to protect families that face special risks from inappropriate requirements and sanctions. We encourage States to establish an administratively efficient process to coordinate these two determinations. Coordinating them should help States minimize duplication of effort, avoid confusion and jurisdictional problems, and treat families in similar circumstances consistently.<sup>216</sup>

At least five organizational models have begun to emerge as states decide how to structure and harmonize their good cause determinations under the child support program and FVO: (1) an integrated FVO model; (2) a self-contained child support model; (3) a TANF-child support team model; (4) an advocate contract model; and (5) a judicial-child support intake model.<sup>217</sup> While no state is fully representative of the organizational models described below, we list examples of states that have adopted elements of these models. HHS has funded five demonstration projects in Illinois, Massachusetts, Minnesota, Missouri, and New York, to test the different models of cooperation and good cause and child support intake procedures.<sup>218</sup>

Each model has its strengths and weaknesses.<sup>219</sup> The best way to structure the child support good cause decision-making process depends in large part on which agency has the most capacity in terms of client contact, vision, management commitment, staffing, training,

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further burden the workload of welfare workers).

215. See RAPHAEL & HAENNICKE, *supra* note 122, at 16 (giving as an example that "a state may accept a victim's statement alone as verification for [a Family Violence Option] waiver, but require the same recipient to produce specific medical, law enforcement, or other legal documentation of her domestic violence before she can be considered for a good cause exemption from child support").

216. 64 Fed. Reg. 17,720, 17,851 (1999).

217. See NOTAR, *supra* note 92 (describing several states' approach to reconciling good cause determinations under the child support program and FVO).

218. See Susan Greenbelt, *Cooperation/Good Cause Grantees Meet* (visited Nov. 14, 1999) <<http://www.acf.dhhs.gov/programs/cse/new/csr9805.htm>> (reporting on a meeting between the Office of Child Support Enforcement and representatives of the five state grantees to discuss the implementation of their respective projects).

219. See NOTAR, *supra* note 92, at 9 (explaining that while one model has the advantage of being simple to administer, others require a greater time commitment of the agencies).

and resource levels to take on the task of increasing protections for domestic violence victims.<sup>220</sup> In deciding how to proceed, it is crucial that state child support and TANF administrators form a working group with domestic violence advocates to sort out the complex implementation issues involved.<sup>221</sup>

(a) *Integrated Family Violence Option model.* States using this model have integrated their traditional child support good cause procedure with their new FVO process.<sup>222</sup> A TANF eligibility worker screens women for voluntary disclosure of domestic violence.<sup>223</sup> If a woman raises domestic violence concerns, she is referred for assessment by a domestic violence unit located within the TANF agency.<sup>224</sup> The domestic violence specialist evaluates the family's ability to participate in work activities, child support cooperation and other TANF requirements, and can grant temporary waivers.<sup>225</sup>

The main advantages of this approach are:

- Domestic violence resources are consolidated in one place;
- Women are assessed by a person trained in domestic violence;
- Women are assessed only once;
- The assessment can focus on a broader set of self-sufficiency needs;
- Decision-making is more consistent;
- If a woman is granted good cause, her case is not transmitted to the child support system.<sup>226</sup>

The main disadvantages include:

- Only women receiving TANF are assessed, while non-TANF and

220. See NOTAR, *supra* note 92, at 8-9 (describing ways cooperation/good cause determinations may be administered).

221. See Vicki Turetsky, *Implementing the Family Violence Option: Lessons From Child Support "Good Cause" Policies* (visited Feb. 24, 2000) <<http://www.clasp.org/pubs/childsupport/fvo.html>> (arguing that an effective implementation of the FVO requires integration of child support cooperation and good cause requirements with FVO procedures through the guidance of a group comprised of child support, TANF, and child protection staff and advocates from the domestic violence community).

222. See *e.g.*, RAPHAEL & HAENNICKE, *supra* note 122, at 26 (describing the Topeka, Kansas Orientation, Assessment, Referral, and Safety Project (OARS)).

223. See RAPHAEL & HAENNICKE, *supra* note 122, at 26 (describing face-to-face and self-test methods of screening).

224. See RAPHAEL & HAENNICKE, *supra* note 122, at 26 (stating that in Topeka, Kansas, a woman in need of protection from domestic assault, would be referred to "OARS" and that the OARS advocate would do further assessment and provide services).

225. See RAPHAEL & HAENNICKE, *supra* note 122, at 26 (stating that the project will track the progress of the employment status of these individuals after three months, and then again after six months).

226. See generally NOTAR, *supra* note 92, at 7-12 (discussing various opinions on intake and screening processes for good cause determinations).

former TANF clients in the child support program will not be reached;

- Women may not get the information they need about the child support process and the potential risks and benefits;
- The child support agency may be isolated from the domestic violence “conversation,” and therefore less responsive to policy developments.<sup>227</sup>

(b) *Self-contained child support model.* This model moves the entire child support intake process in-house.<sup>228</sup> Child support workers, not TANF workers, conduct the child support intake process and routinely interview custodial parents about paternity information and domestic violence concerns.<sup>229</sup> The child support agency has domestic violence specialists on staff to handle good cause exemptions from cooperation and may be better positioned to provide options for “yellow light” case handling.<sup>230</sup> Child support agencies that conduct the intake process in-house and decide good cause include New Jersey and Washington, D.C.<sup>231</sup>

The main advantages of this approach are:

- All child support clients, not just TANF recipients, have access to domestic violence services;
- Women receive better information about the child support process;
- Women are asked better questions about the location of the father and may be sanctioned less often for non-cooperation;
- The child support agency develops greater expertise in domestic violence issues.<sup>232</sup>

The main disadvantages include:

- No guarantee that women are assessed by a domestic violence

227. See NOTAR, *supra* note 92, at 7-12 (suggesting that increased communication between public assistance and child support enforcement staff and possibly some joint training might alleviate this problem).

228. See e.g. RAPHAEL & HAENNICKE, *supra* note 122, at 34-35 (describing the in-house case management services provided by specially trained staff).

229. See e.g. RAPHAEL & HAENNICKE, *supra* note 122, at 28 (explaining the on-site screening process of a pilot project in Illinois that brought in domestic violence specialists).

230. See *infra* notes 260-282 and accompanying text (discussing the use of “yellow light” services to provide a safe means of enforcing child support for victims of domestic violence).

231. See e.g. OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEPT. OF HEALTH & HUMAN SERVICES, THE FAMILY VIOLENCE INDICATOR: A GUIDE TO STATE PRACTICES, 36 [hereinafter STATE PRACTICES] (1999) (noting that for TANF cases in New Jersey, the child support agency makes the good cause determination).

232. See generally NOTAR, *supra* note 122, at 7-12 (discussing various opinions on intake and screening processes for good cause determinations).

specialist;

- Information reported to the TANF or employment agency may not reach the child support agency;
- Child support good cause decisions may be inconsistent with and possibly less individualized than TANF decisions;
- Domestic violence resources are duplicated or fragmented among different agencies;
- The child support agency may not have supervisors with social work training.<sup>233</sup>

(c) *TANF-child support team model.* This model works best when TANF and child support workers are co-located, use video-conferencing, or otherwise have an easy means to communicate. A TANF worker and a child support worker jointly conduct the initial intake interview.<sup>234</sup> If a domestic violence issue is raised, TANF and child support workers organize a joint case conference and make a joint good cause decision.<sup>235</sup> Oregon uses a team approach,<sup>236</sup> while Minnesota uses a joint good cause committee.<sup>237</sup> Massachusetts has domestic violence liaisons at each agency and is starting a “case conferencing” initiative, which includes joint staff follow-up on cases when there is not enough information for the child support agency to proceed with a case.

The main advantages to this approach include:

- A team approach may allow for more thorough interviews and decision-making;
- Women receive better information about TANF and child support;
- Women are asked better questions about the location of the father and may be sanctioned less often for non-cooperation;
- Women can address TANF and child support program requirements in a “one-stop shopping” setting;
- TANF and child support programs are better coordinated; and
- TANF and child support agencies develop joint expertise in

233. See NOTAR, *supra* note 92, at 7-12 (finding that the Administration for Children and Families held “New Visions” a training program designed to change the culture of the workers and make them cognizant of domestic violence issues).

234. See Turetsky, *supra* note 166 (stating that TANF and the child support agency have joint responsibility for making the good cause decision).

235. See Turetsky, *supra* note 166 (noting that in Alabama, a good cause review team consists of TANF and family service unit staff).

236. See Turetsky, *supra* note 166 (stating that TANF and IV-D agencies make good cause determinations jointly in Oregon).

237. See NOTAR, *supra* note 92, at 9 (explaining Minnesota’s process for a joint determination between the child support enforcement and public assistance agencies).



domestic violence issues.<sup>238</sup>

The main disadvantages are:

- Women are not assessed by a domestic violence specialist;
- A team approach involves some duplication of resources; and
- Women have to tell their story to more people.<sup>239</sup>

(d) *Advocate contract model.* This model relies on the purchase of outside domestic violence services.<sup>240</sup> The TANF and/or child support agency contracts with local domestic violence programs to assess women raising domestic violence concerns during intake.<sup>241</sup> Advocates can be housed in the public agency office.<sup>242</sup> Domestic violence advocates meet with the women, conduct an assessment for good cause under the FVO, the child support program, or both, make recommendations to the agency, and provide counseling and other services.<sup>243</sup> States that use this approach for child support good cause decisions include Rhode Island, Oregon, and Kansas.<sup>244</sup>

The main advantages of this model are:

- Women are assessed by expert advocates;
- Women are linked to comprehensive services;
- Women may get better information and advice; and
- Agency staff need less training and may have fewer misgivings about their ability to handle the issues.<sup>245</sup>

The main disadvantages are:

- Local domestic violence program resources may be further strained;
- Advocates may perceive a conflict between their responsibility to the woman and their obligation to the agency; and
- Women may get less accurate information about the child

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238. See NOTAR, *supra* note 92, at 7-12 (discussing various opinions on intake and screening processes for good cause determinations).

239. See NOTAR, *supra* note 92, at 7-12.

240. See RAPHAEL & HAENNICKE, *supra* note 122, at 14 (noting that 14 states involve outside domestic violence providers in the assessment of waiver process).

241. See RAPHAEL & HAENNICKE, *supra* note 122, at 14 (offering Massachusetts as an example of a state where TANF offices contract with local domestic violence advocates to carry out assessments).

242. See RAPHAEL & HAENNICKE, *supra* note 122, at 25 (noting that TANF district offices in Oregon have domestic violence advocates working on-site for varying amounts of time).

243. See Raphael & Haennicke, *supra* note 122, at 25.

244. See Raphael & Haennicke, *supra* note 122, at 24-29.

245. See NOTAR, *supra* note 92, at 7-12 (discussing opinions on intake and screening processes for good cause determinations).

support process.<sup>246</sup>

(e) *Judicial-child support intake model.* This model establishes a strong interface between the courts and child support offices.<sup>247</sup> While not strictly following a good cause model, the child support office can build on a judicial interface, offering yellow light services to clients referred by the court.<sup>248</sup> Such an approach must be combined with a TANF-child support procedure for establishing good cause.

Domestic violence victims who petition for a protective order, are party to a divorce, or are the subject of a criminal proceeding are routinely referred to an attorney or intake worker employed by the child support program.<sup>249</sup> The child support staff may be co-located with the court.<sup>250</sup> If the woman wants to pursue child support, a child support order is requested during the domestic violence proceeding.<sup>251</sup> The order is enforced by the child support agency, backed by judicial contempt proceedings.<sup>252</sup> The District of Columbia is an example of a jurisdiction with a strong judicial-child support interface.<sup>253</sup>

The main advantages of this model are:

- The child support case is handled in a domestic violence context;
- Women may or may not be assessed by a domestic violence specialist;
- Non-custodial parents appear at the hearing;
- The child support order is entered faster;
- The court addresses both the woman's safety and economic

246. See NOTAR, *supra* note 92, at 7-12.

247. See NOTAR, *supra* note 92, at 16 (describing the Unified Domestic Violence Court in the District of Columbia).

248. See STATE PRACTICES, *supra* note 231, at 11 (explaining how Florida's child support agency interfaces with the court).

249. See Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, and the Court System*, 11 YALE J.L. & FEMINISM 3, 29 (describing the District of Columbia's policy for referring the domestic violence victim to an attorney).

250. See *id.* at 29 (describing the District of Columbia's Domestic Violence intake center, which is located in the central courthouse).

251. See *id.* at 30 (noting that the District of Columbia Unified Domestic Violence Court system assists the victim by creating "one-stop shopping" in an effort to be efficient and to maintain a level of sensitivity toward her).

252. See *id.* at 30 (explaining that in the District of Columbia, the Office of Paternity and Child Support Enforcement assists the domestic violence victim in preparing for the child support enforcement proceedings).

253. See generally *District of Columbia Domestic Violence Coordinating Council*, THE DISTRICT OF COLUMBIA DOMESTIC VIOLENCE PLAN (1995) (indicating that the Superior Court of the District of Columbia (Superior Court) helped create a domestic violence intake center within its unified court system to coordinate criminal, civil protection, child support, and custody and visitation proceedings in a domestic violence case).

needs; and

- The child support order is entered as a permanent, guidelines-based order.

The main disadvantages include:

- Women may or may not be assessed by a domestic violence specialist;
- Women who are not involved in a domestic violence proceeding do not receive the services; and
- The needs of domestic violence victims who receive TANF and are required to cooperate with the child support program are not addressed.

#### 4. Other Good Cause Best Practices<sup>254</sup>

Research supports the conclusion that good cause requests should be granted with a minimal amount of documentation.<sup>255</sup> The woman's affidavit, if credible, should be sufficient to substantiate the request.<sup>256</sup>

- A non-custodial parent should only be contacted to substantiate a woman's good cause claim after the mother decides that it is safe to do so.<sup>257</sup>
- A good cause request should halt the child support process. Paternity and child support should not be pursued while a good cause request is pending or granted. If a good cause request is determined by the TANF agency, the case should not be referred to the child support agency until the request is resolved.<sup>258</sup>
- All cases in which good cause is granted should be periodically reviewed to determine if the woman now believes it would be safe to pursue child support due to changes in circumstances.<sup>259</sup>
- Even if the good cause request is denied, the child support agency should consult with the woman to determine whether an

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254. See Roberts, *supra* note 38, at 74 (setting forth suggestions for standards to be used for deciding whether a legitimate good cause claim has been presented).

255. See Pearson & Griswold, *supra* note 5, at 30-31 (detailing various factors that lead to inadequate documentation of domestic abuse).

256. See Roberts, *supra* note 38, at 75 (explaining that unless the state has independent evidence to the contrary, a woman's statement should be accepted as true).

257. See Roberts, *supra* note 38, at 74 (emphasizing that a woman should decide if it is safe to contact a non-custodial parent).

258. See Roberts, *supra* note 38, at 74 (noting the importance of "stalling" the child support process to protect the mother and her children).

259. See PAULA ROBERTS, CENTER FOR LAW & SOCIAL POLICY, CHILD SUPPORT COOPERATION ISSUES, 41 (1996) (explaining that the state should engage in a periodic reevaluation of the situation).

individualized enforcement plan should be developed.<sup>260</sup>

### C. "Yellow Light" Services

While it is critical that states develop procedures that allow women with domestic violence concerns to opt out of the child support system, it is also important that state child support programs develop safer and more confidential enforcement programs for domestic violence victims who want to proceed with child support enforcement.<sup>261</sup> Developing this capacity involves a real commitment on the part of the state. Individualized case management runs against the current grain of the child support program.<sup>262</sup> Child support programs are moving toward a highly automated, computer-driven model, with limited resources and caseworker involvement.<sup>263</sup> On average, a child support worker handles over 1000 cases at a time.<sup>264</sup>

Yet, a number of state child support programs have expressed an interest in how to provide better safeguards and options for domestic violence victims.<sup>265</sup> Key components of safer child support enforcement include: (1) specialized domestic violence staff; (2) individualized case management and enforcement plans; (3) client participation in decision-making; (4) notice to domestic violence victims before taking establishment and enforcement actions; (5) the ability to use enforcement tools selectively; (6) safety and confidentiality procedures; and (6) the ability to stop the enforcement process at any point.<sup>266</sup>

While the availability of yellow light options is still very limited, a number of states, (including Alaska, Colorado, Connecticut,

260. See *id.* (stating that regardless of whether a good cause exemption is found, the mother should be told what protections are available to her in order to determine whether pursuing support is feasible).

261. See Maria L. Imperial, *Self-Sufficiency and Safety: Welfare Reform for Victims of Domestic Violence*, 5 GEO. J. ON FIGHTING POVERTY 3, 20 (1997) (noting that because women must provide for themselves and their children while remaining invisible to their batterers, states must use caution when implementing the FVO).

262. See Legler, *supra* note 76, at 544 (stating that the handling of cases in volume using advanced technology is a key element of the future child support collection system).

263. See NOTAR, *supra* note 92, at 9 (stating that caseworkers are overwhelmed by huge caseloads and may not provide applicants with individual attention).

264. See Becky Sloane, *Can Statutes Regulate Support?* 16 FAM. ADVOC. 21, (1993) (citing statistics presented at the 1993 ABA Annual Meeting by Diane Dodson of the Women's Legal Defense Fund).

265. See NOTAR, *supra* note 92, at 7-12 (discussing safety concerns raised by several state representatives who attended a forum on good cause concerns).

266. See NOTAR, *supra* note 92, at 7-12 (noting several methods for improving safety in child support enforcement policies and practices).

Delaware, Florida, Hawaii, Idaho, Minnesota, Mississippi, Missouri, Montana, New Jersey, Oklahoma, Utah, and Vermont) reported that they heightened address confidentiality procedures to help protect women who are afraid that the batterer will track them down through the child support process.<sup>267</sup> Confidentiality and safety procedures are discussed in the next section.<sup>268</sup> Other states reported that they have special domestic violence protocols within their child support programs.<sup>269</sup> Still other states reported that they allow for greater caseworker discretion when safety issues are involved.<sup>270</sup>

A handful of states, including Connecticut, Delaware, Oregon, Washington, and Wisconsin reported that they offer some alternative case processing options to women.<sup>271</sup> For example, Oregon and Washington identify various family violence service options.<sup>272</sup> In Connecticut, a child support worker talks with the client and attempts to work out a safe plan for proceeding.<sup>273</sup> In Delaware, a child support worker “shepherds” the case through the system, and income withholding is the only enforcement mechanism used.<sup>274</sup> In Wisconsin, the worker is expected to select enforcement actions that factor in safety risks.<sup>275</sup> This Article includes an Appendix describing these state practices.<sup>276</sup>

There are no hard and fast rules about which enforcement tools should be used when domestic violence is an issue.<sup>277</sup> All

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267. See *State Policy Documentation Project* (last modified Jan. 24, 2000) <<http://www.spdp.org>> (reporting on survey data from state administrators, compiled through a joint project of the Center for Legal and Social Policy and the Center for Budget and Policy Priorities).

268. See *infra* Part IV.C.

269. See *id.* (referring to the states of Colorado, Florida, Kentucky, Minnesota, Nebraska, New Jersey, and Vermont).

270. See STATE PRACTICES, *supra* note 230, at 49, 53, 55 (exhibiting the emphasis that states such as Kansas, Ohio, and Texas place on safety).

271. See STATE PRACTICES, *supra* note 230, at 47-48, 54-56 (indicating that a family violence indicator on an individual impacts the handling of the case).

272. See STATE PRACTICES, *supra* note 230, at 53-56 (explaining different methods of promoting an individual's safety).

273. See STATE PRACTICES, *supra* note 230, at 47 (describing the treatment of cases when Connecticut places a family violence indicator on an individual).

274. See STATE PRACTICES, *supra* note 230, at 48 (explaining the impact of the family violence indicator in non-TANF cases in Delaware).

275. See *id.* (stating that the awareness of a family violence indicator allows a worker to factor in protection concerns when selecting an enforcement action).

276. See *infra* pp. 711-12.

277. See Margaret Wrenn Hickey, *Administrative Enforcement: A New Tool to Collect Support Arrears*, 71 WIS. L. REV. 14, 15 (1998) (listing the tools available to collect child support in Wisconsin as the “right to suspend, revoke, limit, or refuse to renew many licenses and the right to levy or take a lien against property held by the payer”).

enforcement strategies raise safety concerns.<sup>278</sup> Decisions about enforcement strategies involve trade-offs between effective enforcement and individual safety risks.<sup>279</sup> On-going communication with the woman and her direct participation in developing enforcement plans are extremely important in mitigating any safety concerns.<sup>280</sup>

However, some domestic violence experts believe that strategies involving routine enforcement may be relatively safer than strategies creating potential "flashpoints."<sup>281</sup> For example, income withholding may be safer than one-time asset seizures since the support payment is deducted from the abuser's paycheck, minimizing opportunities for the abuser to contact the victim and control the victim's life.<sup>282</sup> In addition, child support payment enforcement through withholding income results in fewer civil contempt hearings, which require both parties to appear.<sup>283</sup> Furthermore, the state disbursement unit will help reduce abuser contact and manipulation of child support payments by operating as a neutral intermediary that keeps accurate payment records and monitors late payments.<sup>284</sup>

Some tension may be created between individualized case strategies and federal policies that mandate across-the-board case enforcement activities.<sup>285</sup> For example, income withholding, federal tax offset, and credit bureau reporting are required enforcement activities in all eligible cases under current federal policy.<sup>286</sup> The issue of mandatory enforcement mechanisms would benefit from additional clarification and discussion.

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278. See JILL DAVIES, NATIONAL RESOURCE CENTER ON DOMESTIC VIOLENCE, FAMILY VIOLENCE PROTOCOL DEVELOPMENT 13-14 (outlining safety concerns involved in developing protocols for TANF offices and child support agencies dealing with battered women).

279. See Jessica Pearson, et al., *Child Support and Domestic Violence: The Victims Speak Out*, 5 Violence Against Women 355, 428 (1999) (stating that child support actions have the potential of renewing violence because it could provoke the ire of abusers).

280. See Imperial, *supra* note 261, at 23 (stating that individualized responses are necessary to address the complex problems of battered women).

281. See Samuel V. Schoonmaker, IV, *Consequences and Validity of Family Law Provisions in the "Welfare Reform Act,"* 14 J. AM. ACAD. MATRIM. LAW. 3, 27 (1997) (stating that income withholding is effective because it does not stigmatize the non-custodial parent).

282. See Klein & Orloff, *supra* note 9, at 1000 (noting the benefits of income withholding as a means of enforcing child support payments).

283. Klein & Orloff, *supra* note 9, at 1000 (identifying states where income withholding is used with regard to victims of domestic abuse).

284. See Legler, *supra* note 76, at 519, 548-550 (describing the advantages of a centralized disbursement unit).

285. This point was raised by Jens Feck, U.S. Dept. of Health of Human Svcs., Adm. for Children & Families, Region 2.

286. See Paul K. Legler, *Child Support Enforcement Reform*, 17 No. 6 FAIR 8, 9-10 (1997).

*D. Confidentiality and Safety*

For many years before welfare reform, federal statutory and regulatory provisions on safeguarding of information required states to implement provisions to prevent the release of information, except in specified situations.<sup>287</sup> PRWORA amended this safeguarding of information language to add a new prohibition on a state's release of information on the whereabouts of a party or child where there is a protective order in place against the inquiring individual, or where there is reason to believe that the release of the information could result in harm to the party or child.<sup>288</sup> In addition, states are required to notify HHS when there is reasonable evidence of domestic violence or child abuse by placing a family violence indicator placed on the individual's file.<sup>289</sup> When the indicator is placed on a file, information may not be released without a judicial order overriding the indicator.<sup>290</sup> In addition to these enhanced protections, a number of states are enacting address confidentiality programs and other safety and confidentiality measures to protect domestic violence victims.<sup>291</sup>

### 1. Family Violence Indicator

A key strategy in improving child support enforcement is the development of new and expanded federal and state databases.<sup>292</sup> PRWORA requires the creation of linked federal and state databases, which will match information on child support orders<sup>293</sup> with information on newly hired employees.<sup>294</sup> Database matching also

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287. See 42 U.S.C. § 654(26)(A) (Supp. II 1996) (mandating that state agency information regarding paternity and child support proceedings and actions must be kept confidential in order to protect the privacy of the parties).

288. See 42 U.S.C. § 654(26) (Supp. II 1996) (discussing safeguards designed to protect the rights of the parties involved).

289. See 42 U.S.C. § 654(26)(D) (Supp. III 1997) (discussing notification requirements when the State has reasonable evidence of child abuse or domestic violence).

290. See 42 U.S.C. § 653(b)(2)(A) (Supp. III 1997) (describing under what circumstances information may be released when there is reasonable evidence of domestic violence or child abuse).

291. See Turetsky, *supra* note 166 (reviewing states' child support and good cause policies).

292. See 42 U.S.C. § 653(i)(4) (Supp. II 1996) (regarding the maintenance of information from multi-state employers within the National Directory of New Hires).

293. The new law requires that by October 1, 2000, state child support programs establish centralized case registries of IV-D cases and all child support orders (whether IV-D or not) established or modified in the state after October 1, 1997. 42 U.S.C. §§ 654(c), 653(a)(2). For a more detailed discussion of child support data bases, See Vicki Turetsky, Center for Law and Social Policy, Child Support Administrative Processes: A Summary of Requirements in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (1997) (summarizing the provisions of the PRWORA).

294. See 42 U.S.C. §§ 653(i) (Supp. II 1996) (regarding information that should be entered

allows for automated enforcement of child support orders, such as seeking and attaching assets of delinquent obligors.<sup>295</sup>

Under the new law, states are required to exchange data with the Federal Parental Locator Services ("FPLS").<sup>296</sup> The FPLS, administered by the Office of Child Support Enforcement, matches state and federal case registry data, new hire data, and data from a variety of other sources for child support and custody purposes.<sup>297</sup> To the extent that automation helps enforce proper court orders, they will be of great benefit to families.<sup>298</sup> However, the challenge for the child support and domestic violence communities is to ensure that the databases are secure enough so that abusers are unable to penetrate their safeguards to locate abused women and children.<sup>299</sup>

Under PRWORA, states are required to have general safeguards against unauthorized use or disclosure of information relating to paternity, child support, and custody proceedings.<sup>300</sup> In addition, the law specifically prohibits states from releasing information on the whereabouts of an individual or child to the respondent of a protective order.<sup>301</sup> The new law also prohibits the release of information if the state has reason to believe that the release may result in harm to the individual or child.<sup>302</sup> As discussed in the "yellow

into a database referred to as the National Directory of New Hires).

295. See 42 U.S.C. § 653a(g)(1) (Supp. II 1996) (discussing the withholding of wages for the lack of child support).

296. See 42 U.S.C. § 653(j)(3) (Supp. II 1996) (explaining the requirement of the states to compare the information from the Federal Parent Locator Service with the National Directory of New Hires and Child Support Orders).

297. See 42 U.S.C. 653a(f) (Supp. II 1996) (discussing the information comparisons made in order to locate individuals required to provide support).

298. See 63 Fed. Reg. 44,795, 44,795 (1999) (describing the importance of automation to the nation's child support program).

299. See 42 U.S.C. 653(b) (Supp. II 1996) (stating that no information will be disclosed when the disclosure of such information may be detrimental to the custodial parent or the child of the parent).

300. See 42 U.S.C. § 654(26)(A) (Supp. II 1996) (discussing the safeguard requirements designed to protect the privacy rights of the parties).

301. See 42 U.S.C. § 654(26)(B) (Supp. II 1996) (discussing the non-disclosure of the location of individuals with respect to protective orders).

302. See 42 U.S.C. § 654(26)(C) (Supp. II 1996). State child support programs must have across-the-board confidentiality policies in place, including: (1) written policies that permit access to and use of data only to the extent necessary to carry out the child support program and that specify the data which may be used for particular program purposes; (2) written policies that specify the personnel permitted access to the data; (3) computer system controls (such as passwords or field blocking) to ensure strict adherence to confidentiality policies; (4) routine monitoring of access to and use of the computer system (such as audit trails and feedback mechanisms) to guard against and promptly identify unauthorized access or use of data; (5) staff trained in security requirements and procedures; and (6) administrative penalties (including dismissal from employment for unauthorized access to, disclosure of, or use of confidential data. See 42 U.S.C. § 654(26)(A) (Supp. II 1996); 42 U.S.C. §§ 654a(d)(1)-(5)



light" section, a number of states have adopted address confidentiality protocols for domestic violence victims.

Many states have protective order registries, but they are in various stages of development; for example, not all of them are kept up to date, and not all of them are currently automated.<sup>303</sup> According to data collected in 1995 by the Pennsylvania Coalition against Domestic Violence, at least seven states indicated that they had operational protective order databases.<sup>304</sup> Massachusetts requires a statewide computerized domestic violence record-keeping system.<sup>305</sup> Massachusetts also has established an automated interface to match the child support caseload against the protection order registry to provide the state with information about cases that require a family violence indicator.<sup>306</sup>

Several other states have authorized legislation and are in the process of implementing a protective order database.<sup>307</sup> Some states reported locating the database within the courts, while other states were locating the database within the law enforcement network.<sup>308</sup> In Pennsylvania, the database is operated by the state domestic violence coalition.<sup>309</sup>

PRWORA also imposes an additional layer of confidentiality on the disclosure of information at the federal level when domestic violence or child abuse is an issue. The law includes a provision creating the family violence indicator for data exchanged through the FPLS.<sup>310</sup> If a state has reasonable evidence of domestic violence or child abuse and disclosure of the information could be harmful, the state is required to place a family violence indicator (or "flag") on the

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(Supp. II 1996) (listing control procedures, systems controls, monitoring access, and penalties with regards to confidential information). See also 63 Fed. Reg. 44,795-802 (1998) (discussing circumstances in which information is prohibited from being released).

303. This is based on Philip Browning's research; contact the authors for further information.

304. See STATE PRACTICES, *supra* note 231, at 39-43 (detailing the implementation status of statewide protective order registries, discussing specifically: Florida, Kentucky, Maryland, Massachusetts, New Hampshire, Texas, and Utah).

305. See STATE PRACTICES, *supra* note 231, at 41.

306. See NOTAR, *supra* note 92, at 11 (indicating the efforts Massachusetts is making to ensure the safety of domestic violence victims).

307. See STATE PRACTICES, *supra* note 230, at 39-43 (describing various state laws requiring implementation of protective order registries).

308. See STATE PRACTICES, *supra* note 230 at 39-43.

309. See STATE PRACTICES, *supra* note 230, at 42 (noting that the Pennsylvania Coalition Against Domestic Violence is mandated to maintain a database of active and inactive orders as well as pending petitions for protective orders).

310. See 42 U.S.C. § 653(b) (Supp. II 1996) (describing a restriction on the disclosure of information based on reasonable evidence of domestic violence).

individual before submitting the information to the FPLS.<sup>311</sup> Flags are placed on the individual, not the case so that the domestic violence victim and the related children are protected.<sup>312</sup>

The new law specifically contemplates a judicial process to review and make the determination to disclose FPLS data concerning a victim of family violence.<sup>313</sup> Ordinarily, specified FPLS data may be disclosed only to authorized persons requesting the information for an "authorized purpose."<sup>314</sup> "Authorized purposes" are limited to: (1) establishing parentage, (2) establishing, setting the amount of, modifying, or enforcing child support obligations, and (3) making or enforcing child custody or visitation orders.<sup>315</sup> For child support purposes, "authorized persons" include the court with authority over child support, the child support program, a resident parent or child, and a state child welfare agency.<sup>316</sup> For child custody purposes, "authorized persons" include a court with jurisdiction to make or enforce child custody or visitation orders, a state attorney or agent with authority to enforce such an order, a U.S. or state attorney and an agent with the authority to investigate or prosecute a parental kidnapping charge.<sup>317</sup> Unlike child support information, custody information may not be released directly to a parent, a parent's attorney, or an agent.<sup>318</sup> It may only be released to an appropriate court or public employee.<sup>319</sup> The specific information that can be disclosed for each purpose differs.<sup>320</sup> However, when a state has

311. See 42 U.S.C. § 654(26)(D) (Supp. III 1997) (discussing notification of domestic violence or child abuse requirements when disclosing information to FPLS); 42 U.S.C. § 653(b)(2) (Supp. II 1996) (restricting the disclosure of information when there is reasonable evidence of domestic violence or child abuse).

312. See 42 U.S.C. §§ 654(26)(B)-(D) (implying that flags indicating domestic violence are person rather than case sensitive).

313. See *id.* at § 654(26)(E) (describing the safety of the parent or child as paramount and prohibiting disclosure of information if it could be harmful).

314. See 42 U.S.C. §§ 653(b)-(c) (Supp. II 1996) (describing the required purpose for obtaining information and who is authorized to request and receive this information). All requests for FPLS data are handled through the state IV-D office. *Id.*

315. See 42 U.S.C. § 653(a)(2)(3) (Supp. III 1997) (defining an "authorized purpose").

316. See 42 U.S.C. § 653(c)(1) (Supp. II 1996) (describing who are "authorized persons" for child support purposes); see also 42 U.S.C. § 653(b) (1994) (citing information regarding location, employment, income and asset information which may be released for child support purposes).

317. See 42 U.S.C. § 663(d)(2) (1994) (listing "authorized persons" for child custody purposes).

318. See 42 U.S.C. § 653(c) (Supp. III 1997) (listing persons who are authorized to receive information relating to child custody).

319. See *id.*

320. See 42 U.S.C. § 663(c) (1994) (noting that only location information may be released for child custody purposes).

reasonable evidence of domestic violence and places a family violence indicator on the individual or child, information about the individual or child may not be released by the FPLS for any purpose, unless the very specific procedures for a judicial override, described below, are followed.<sup>321</sup>

Sometimes a court issues mutual protection orders against both the abuser and the victim in a domestic violence proceeding. If the child support agency puts a flag on both parents, the FPLS may not release information about either parent.<sup>322</sup> The placement of mutual flags in the case will impair interstate enforcement activities, preventing the victim from pursuing support.<sup>323</sup>

OCSE recently examined state plans to use the family violence indicator, including: state criteria used for flagging cases, methods used to obtain family violence information, the impact of the indicator on state activity, time periods and removal of the indicator, and computer screen formats.<sup>324</sup> In addition, OCSE reviewed judicial override procedures, discussed in the next section.<sup>325</sup>

*Criteria used for flagging cases.*

Most responding states will place a flag on an individual if there is one or more of the following criteria: (1) a protective order; (2) a good cause claim; or (3) a self-report.<sup>326</sup> Some states, such as Iowa and Massachusetts, will flag individuals with out-of-state protective orders and good cause determinations.<sup>327</sup> A few states, such as Minnesota, will permit the flag to remain on the individual even if the good cause claim is denied.<sup>328</sup> Some States require corroborating evidence for a self-report, while others, such as Montana, permit an oral or written request from the victim.<sup>329</sup> Virginia accepts a simple

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321. See 42 U.S.C. § 653(b)(2)(B) (Supp. III 1997) (discussing how information may be disclosed by the court despite reasonable evidence of domestic violence or child abuse).

322. See generally 42 U.S.C. § 653(b)(2) (Supp. II 1996) (suggesting that disclosure restrictions prohibit the release of information that is potentially harmful to the parent or the child).

323. See generally 42 U.S.C. § 654(26)(A)-(E) (implying that absent any judicial overrides, potentially harmful information is safeguarded in judicial proceedings).

324. See STATE PRACTICES, *supra* note 230, at 9-21, 25-43, 47-56, 65-69, 73-79.

325. See STATE PRACTICES, *supra* note 230, at 59-62 (discussing judicial override procedures in Iowa and Massachusetts).

326. See STATE PRACTICES, *supra* note 230, at 9-21 (outlining the most common criteria states use to flag an individual with a family violence indicator).

327. See STATE PRACTICES, *supra* note 230, at 13, 15 (discussing family violence indicator criteria in Iowa and Massachusetts).

328. See STATE PRACTICES, *supra* note 230, at 16 (describing the three reasons why a family violence indicator would be placed on an individual in Minnesota).

329. See STATE PRACTICES, *supra* note 230, at 17 (explaining bases for which a family violence indicator may be placed on an individual in Montana).

affidavit from the victim.<sup>330</sup> Other state bases for flagging an individual include: (1) caseworker knowledge or threatening behavior known to the child support agency; (2) information reported by TANF case workers; (3) domestic violence waivers granted under the FVO; (4) court nondisclosure orders or orders dismissing disclosure requests; (5) domestic violence reported by clerks of court; (6) domestic violence information gathered by the courts in all divorce cases; (7) founded child protection reports; and (8) participation in address confidentiality programs.<sup>331</sup> At least two states decided the safest course was to place an indicator on all custodial parents in the initial data submission to the FPLS, and then conduct a case-by-case review to remove the indicator.<sup>332</sup>

*Obtaining information about domestic violence.*

Responding states said they obtained information about domestic violence primarily from self-reports.<sup>333</sup> Some states said they obtained information from the TANF agency, courts, protective order database, or that the child support intake form included questions about domestic violence, or child support caseworkers became aware of domestic violence in handling the case.<sup>334</sup>

*Impact of the FVI on State activity.*

Responding states use the family violence indicator for a number of different purposes. Some states use the flag as an indicator of good cause and stop case processing.<sup>335</sup> Other states use the flag to tell caseworkers that the custodial parent's address should be shielded or blocked on out-going documents.<sup>336</sup> Some states use the flag for internal security, restricting file access to the worker and supervisor. A few states refer individuals with flagged cases to domestic violence services.<sup>337</sup> As described in the "yellow light"

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330. See STATE PRACTICES, *supra* note 230, at 21 (stating that Virginia will accept self-reports that are supported by an affidavit).

331. See STATE PRACTICES, *supra* note 230, at 9-21 (discussing state family violence indicator criteria).

332. See STATE PRACTICES, *supra* note 230, at 28 (explaining that Minnesota has a policy to place a family violence indicator on all parties from the outset of the case and remove the indicator if a later review revealed that an individual was not a victim of domestic violence).

333. See STATE PRACTICES, *supra* note 230, at 25-43 (discussing information collecting methods of various states).

334. See STATE PRACTICES, *supra* note 230, at 25-43.

335. See STATE PRACTICES, *supra* note 230, at 49 (relaying the state of Kansas' treatment of TANF cases).

336. See STATE PRACTICES, *supra* note 230, at 51 (explaining the procedure for redacting the addresses of a victim upon placing a family violence indicator on a case participant).

337. See STATE PRACTICES, *supra* note 230, at 49 (describing Illinois' practice of referring flagged individuals to domestic violence counseling).

discussion above, a few states permit child support caseworker discretion when safety issues are involved, while a handful of other States offer additional case processing options.<sup>338</sup>

*Time periods and removal.*

Most states keep the flag on the case until removal is requested.<sup>339</sup> In several other states, the flag expires when the protective order, good cause status, or participation in address confidentiality programs ends.<sup>340</sup> In Massachusetts, the flag expires after two years, subject to renewal, while in Washington and Delaware, there are different time periods and/or levels of protection depending upon the circumstances.<sup>341</sup> In Texas, only a staff manager can remove the flag.<sup>342</sup>

*Computer screens.*

Alerts to warn caseworkers about case flags used by states (such as New Hampshire, Texas, Washington, and Wisconsin) include “yes-no” prompts, multiple screen codes, pop-up banners, and red print headers.<sup>343</sup>

## 2. Judicial Override

If the state has flagged an individual for family violence, the FPLS will not disclose the information when requested by an “authorized person.”<sup>344</sup> Instead, the new law requires states to develop and use a judicial override mechanism to disclose flagged FPLS data.<sup>345</sup> The judicial by-pass process works as follows.

When an “authorized person” requests information about an individual who is flagged with a family violence indicator, the FPLS will notify the State Parent Locator Service that there is reasonable

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338. See STATE PRACTICES, *supra* note 230, at 47-56 (describing the ways in which some states react when a family violence indicator is present).

339. See STATE PRACTICES, *supra* note 230, at 67-69 (including Montana, Oregon, Texas, Utah, and Washington as states where the flag is removed upon request of a protected person).

340. See STATE PRACTICES, *supra* note 230, at 66 (giving Illinois as an example of a state where the flag will be removed when there is no longer a valid good cause claim by TANF recipients).

341. See STATE PRACTICES, *supra* note 230, at 65, 69 (discussing removal procedures in Delaware and Washington).

342. See STATE PRACTICES, *supra* note 230, at 68.

343. See STATE PRACTICES, *supra* note 230, at 3-6 (describing contents of computer screens in various state registries).

344. See 42 U.S.C. § 653(b)(2) (Supp. III 1997) (explaining the circumstances under which information requested by “authorized persons” will not be released).

345. See 42 U.S.C. § 653(b)(2)(B) (Supp. III 1997) (describing how the court may obtain disclosure despite the reasonable evidence of domestic violence or child abuse that is present).

evidence of domestic violence or child abuse.<sup>346</sup> The State Parent Locator Service then notifies the “authorized person” that disclosure is prohibited and that the information can only be disclosed by a court with jurisdiction over child support or custody matters. Upon notification from the State Parent Locator Service that disclosure is prohibited, the “authorized person” may petition a proper state court to order release of the information. If the court determines that the information would not cause the individual any harm, it may release the information to the “authorized person.” However, if the court determines that “disclosure . . . could be harmful” to the individual, the court may not disclose the information to anyone.<sup>347</sup>

The FPLS procedure assumes a meaningful case-by-case judicial determination about the risk of harm before information can be disclosed regarding the whereabouts of the individual or child. However, a meaningful determination cannot be made unless the state puts mechanisms in place to ensure that the court has relevant information about the nature of the violence and the risk of harm. Implementation of the judicial override procedure requires careful coordination between the court, the child support agencies of the States involved, and the parties.<sup>348</sup>

According to the OCSE review conducted on the family violence indicator, states are still adopting policy or procedures governing the judicial override process.<sup>349</sup> Two states, Iowa and Massachusetts, are in the process of implementing judicial override procedures, while New York has legislation pending.<sup>350</sup> Iowa’s statute sets out a collaborative process between the child support agency and the courts to review requests for release of information protected by a

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346. See 42 U.S.C. § 653(b)(2)(A) (Supp. III 1997) (discussing the notification of domestic violence or child abuse by the FPLS).

347. 42 U.S.C. § 653(b)(2)(B)(ii) (Supp. III 1997).

348. For HHS policies and procedures related to the family violence indicator and judicial override requirements, see HHS action transmittal, “The Domestic Violence Indicator and Child Abuse Provisions of Title IV-D of the Social Security Act,” OCSE-AT-98-27 (undated), and Dear Colleague Letter, DCL-98-122 (November 25, 1998), both posted at [www.acf.dhhs.gov/programs/cse/pol](http://www.acf.dhhs.gov/programs/cse/pol); see also *The Family Violence Indicator, A Guide to State Practices* (1999 draft) (available on the Internet at [www.acf.dhhs.gov](http://www.acf.dhhs.gov)). A bench book on child support issues is forthcoming. At OCSE, contact Susan Notar, OCSE Domestic Violence Liaison at (202) 401-4606, or [snotar@acf.dhhs.gov](mailto:snotar@acf.dhhs.gov) for information and technical assistance about child support and domestic violence issues. Contact Jeff Johnson, FPLS Judicial Outreach Coordinator, at (202) 401-5567, or [jjohnson@acf.dhhs.gov](mailto:jjohnson@acf.dhhs.gov) about FPLS requirements. Contact June Melvin Mickens, Federal Case Registry Technical Assistance Family Violence Coordinator, at (301) 847-9495, or [jlmickens@aol.com](mailto:jlmickens@aol.com) about the Family Violence Indicator.

349. See STATE PRACTICES, *supra* note 230, at 59-61 (detailing Iowa and Massachusetts as the only states that have adopted a judicial override process).

350. See STATE PRACTICES, *supra* note 230, at 59-61.

family violence indicator.<sup>351</sup> While Iowa requires the child support agency to notify the protected individual, the Massachusetts statute places the responsibility on the court to notify the individual.<sup>352</sup>

### 3. Address Confidentiality

The Washington State Address Confidentiality Program ("ACP") began in 1991 and is operated out of the Secretary of State's office.<sup>353</sup> There is no fee for participating in the program and no corroborative evidence of domestic violence required by women wishing to participate. However, survivors of domestic violence must have left their abuser, and their abuser cannot be aware of the new location.<sup>354</sup> Prospective participants in ACP complete applications in person at community-based victims' assistance program locations.<sup>355</sup> They then meet with a victims' assistance counselor and receive an orientation on the ACP program.<sup>356</sup> The goal of the ACP is to help domestic violence victims who have permanently left their abusers to keep their new location secret.<sup>357</sup>

Participants in the ACP are provided substitute addresses with street address, an ACP identification code, a post office box number, a city in Washington and a zip code that have no correlation to their actual addresses.<sup>358</sup> The participants' first class mail is then forwarded

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351. IOWA CODE ANN. § 252B.9A. (1999).

352. MASS. ANN. LAWS CH. 119A, § 5 (1994 & Supp. 2000).

353. See WASH. REV. CODE § 40.24.030 (1991 & Supp. 2000) (stating that program applications are filed with the Office of the Secretary of State).

354. See WASH. REV. CODE § 40.24.010 (1991 & Supp. 2000) (asserting that the purpose of the statute is to provide address confidentiality to victims of domestic violence or sexual assault to prevent their assailants from locating them through public records); see also § 40.24.030 (noting that a program applicant must sign a sworn statement that the applicant fears for his or her safety before participating in the program).

355. See WASH. REV. CODE § 40.24.080 (1991 & Supp. 2000) (stating nonprofit agencies involved with domestic violence or sexual assault services may assist persons become program participants).

356. See Jeffrey T. Even, *Washington's Address Confidentiality Program: Relocation Assistance for Victims of Domestic Violence*, 31 GONZ. L. REV. 523, 531 (1995) (noting that specially trained nonprofit agency employees designated as "application assistants" provide orientation to prospective program participants).

357. See WASH. REV. CODE § 40.24.010 (asserting that the program's purpose is to prevent assailants or prospective assailants from tracking victims to their new addresses through public records); see also WASH. REV. CODE § 40.24.050(1) (1991 & Supp. 2000) (stating that disclosure of the program participant's new address in public records increases the risk of domestic violence or sexual assault).

358. See Even, *supra* note 355, at 529 (noting that all participants in the ACP receive an Olympia, Washington address, regardless of where they actually reside); see also WASH. REV. CODE § 40.24.050(1) (1991 & Supp. 2000) (stating that the secretary of state shall designate a new address for the program participant for all state and local agencies to use).

to the ACP post office box, which in turn forwards it to them.<sup>359</sup> For obvious safety reasons, ACP participants cannot receive packages through the ACP.<sup>360</sup> Participants are also provided with ACP identification cards that they use to apply for government services, including child support enforcement.<sup>361</sup>

The ACP has several limitations. First, it only operates intrastate and federal agencies and private companies do not have to accept the substitute address. Also, the ACP is generally prohibited from releasing information on participants, but can release information on participants who are also criminal parolees.<sup>362</sup> The program's director has indicated that she views the ACP as one tool to help battered women, but one that must be combined with others such as safety planning and counseling to be the most effective.<sup>363</sup>

In the last several years, a number of other states have enacted address confidentiality legislation replicating Washington's program. These states include: Arizona, California, Florida, Nevada, New Jersey, and Rhode Island.<sup>364</sup> Pennsylvania is considering address confidentiality legislation,<sup>365</sup> while Massachusetts has address confidentiality legislation pending.<sup>366</sup> Early in 1999, all of the states that have enacted address confidentiality legislation held a teleconference for the first time, to help resolve problems in the initial phases of their programs and share ideas for successful operation of their programs.<sup>367</sup>

359. See WASH. REV. CODE § 40.24.050(3) (requiring the secretary of state to forward all first class mail to the program participant).

360. See *Secretary of State's Office, Washington, Washington State Address Confidentiality Program Summary* 1991 (visited Aug. 26, 2000) <<http://www.secstate.wa.gov/acp/summary.htm>> [hereinafter *ACT Summary*] (explaining that Washington state has set up a substitute mailing address program for the ACP Program participants in order to keep their actual locations confident).

361. See *id.* (describing how participants may use their identification cards when applying for certain benefits and exemptions with state agencies); see also Notar, *supra* note 92, at 15 (stating that identification cards may be used in "applying for driver's licenses, or child support.").

362. See *ACP Summary*, *supra* note 360, (stating that ACP exemptions are made in the case of registering sexual predators in a given community).

363. See NOTAR, *supra* note 92, at 15; see also *ACP Summary*, *supra* note 359 (stating that "[t]he goal of the Address Confidentiality Program (ACP) has been to help survivors of sexual assault or domestic violence stay safe after they have left the abusive situation and have relocated").

364. Vicki Turetsky & Susan Notar, *Models for Safe Child Support Enforcement* (visited Aug. 26, 2000) <[http://www.clasp.org/pubs/childenforce/sn415.htm#\\_Toc464982604](http://www.clasp.org/pubs/childenforce/sn415.htm#_Toc464982604)>.

365. See *id.*

366. See *id.*

367. See *id.*



#### 4. UIFSA Section 312

In PRWORA, Congress mandated that all states enact the Uniform Interstate Family Support Act<sup>368</sup> ("UIFSA") as a way to help streamline and promote uniformity in interstate child support case processing.<sup>369</sup> UIFSA began as a model law that the National Conference of Commissioners on Uniform State Laws drafted to ameliorate some of the existing problems in interstate child support case processing, including multiple, inconsistent orders in a given case.<sup>370</sup> Because approximately twenty five percent of the nationwide child support cases are interstate cases, and because these cases are often the most difficult to enforce, UIFSA has particular resonance with State child support enforcement agencies.<sup>371</sup>

Section 312 of UIFSA is entitled "Nondisclosure of Information in Exceptional Circumstances."<sup>372</sup> The section acts as an exception to the general rule in UIFSA that requires the parties' addresses and other information on all documents<sup>373</sup> so that the interstate system can locate the correct individual in a "pool of millions."<sup>374</sup> There was also discussion among the UIFSA drafters that requiring such information put the parties on equal footing and helped to balance the equities: for example, if there are no safety concerns, the non-custodial parent has reasonable access rights to his children.<sup>375</sup> Section 312 allows a tribunal<sup>376</sup> to order that the address of a child or

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368. States were required to enact the version approved by the American Bar Association on February 9, 1993, together with any amendments officially adopted before January 1, 1998, by the National Conference of Commissioners on Uniform State Laws. See PRWORA, Pub. L. No. 104-193, § 321, 110 Stat. 2105, 2221 (1996) (noting that the adoption of the version approved by the ABA with amendments adopted by NCCUSL satisfies section 454(20)(A) of the Social Security Act).

369. See PRWORA, Pub. L. No. 104-193, § 101(4), 110 Stat. 2105, 2110 (1996) (stating in Congress' findings that only 54 percent of single-parent families had child support orders and only half of that 54 percent received the full amount due. Further, out of the child support cases enforced through the public system, "only 18 percent of the caseload has a collection").

370. See John J. Sampson & Paul M. Kurtz, *UIFSA: An Interstate Support Act for the 21<sup>st</sup> Century*, 27 FAM. L. Q. 85, 89 (1993) (discussing the benefits of adopting the UIFSA).

371. OCSE, TWENTY FIRST ANNUAL REPORT TO CONGRESS FOR THE PERIOD ENDING SEPTEMBER 30, 1996 5 (1996).

372. See John J. Sampson, *Uniform Interstate Family Support Act with Unofficial Annotations*, reprinted in 27 FAM. L. Q. 93, 137 (1993).

373. Section 311 of UIFSA requires that the petition or accompanying documents must provide, "so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and the date of birth of each child for whom support is sought." *Id.* at 136.

374. *Id.*

375. Conversation with Andrew Williams, participant at UIFSA drafting meetings.

376. See Unif. Interstate Family Support Act § 312, 9 U.L.A. 443 (1996) ("UIFSA") (defining "tribunal" as a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage).

other party in the case not be disclosed in a pleading or other document filed in a UIFSA proceeding, if a tribunal has made a finding that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of the information.<sup>377</sup>

Section 312 of UIFSA is important in its recognition of the need for address protection in some cases. However, the requirement that a tribunal order must be obtained before they can withhold a woman and child's address can be an onerous burden for child support workers.<sup>378</sup> Furthermore, it is not clear how this requirement accords with the state prohibition against releasing address information if the state has reason to believe that release may result in harm.<sup>379</sup> Anecdotal evidence indicates that some child support workers are withholding address information without getting a tribunal order or using the address of the child support agency as a substitute address when they are concerned about the safety of one of the parties in an interstate case.<sup>380</sup> Some have suggested that the child support agency should be defined as a "tribunal" for purposes of nondisclosure orders under section 312.<sup>381</sup>

##### 5. Other Safety and Confidentiality Best Practices<sup>382</sup>

- If a domestic violence victim wishes to proceed, she should be informed every time a step is taken on the case (e.g., papers are served, an interview is scheduled), which will help her design and implement an effective safety plan.<sup>383</sup>
- Child support enforcement should be halted quickly if the violence resumes or escalates.<sup>384</sup>
- The child support agency should flag information about all domestic violence victims at risk of harm if their location is

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377. See UIFSA § 312, 9 U.L.A. 443 (1996) (stating that the finding may be made *ex parte*, that is, without the parties present).

378. See e.g., Osler McCarthy, *Comyn, Mattox Pull No Punches: Candidates for Attorney General Square Off on Ads, Track Records in Debate*, AUSTIN AM.-STATESMAN, Oct. 28, 1998, at A1 (stating that in Texas, the caseload has grown 70 percent since 1993, and that 200 new child support workers would be needed to handle this growth); Lance Gay Scripps, *Child-Support Deadbeats Could Face Felony Charge*, THE COM. APPEAL MEMPHIS, TN, Apr. 12, 1998, at A5 (stating that in Tennessee child support workers have over 1000 cases each).

379. See UIFSA §312, 9 U.L.A. 443 (1996) (prohibiting the disclosure of identifying information when the safety of a child or party may be at risk).

380. See Roberts, *supra* note 38, at 64 (discussing instances in which case workers counseled mothers to withhold information).

381. See State PRACTICES, *supra* note 231.

382. See Roberts, *supra* note 38, at 72-75.

383. See Roberts *supra* note 38, at 73.

384. See Roberts, *supra* note 38, at 73.

disclosed. However, the agency needs to strike a balance. If the agency overuses the flags, the flags will likely lose their significance for the courts and judicial disclosures may become rote.<sup>385</sup>

- Available information about the conditions of protection orders should be entered into the file. Computer and paper files should be maintained securely. The victim's address should be blocked on all pleadings and correspondence.<sup>386</sup>
- States should adopt policies that minimize or eliminate any face-to-face contact between the domestic violence victim and her abuser. If court or agency appearances are scheduled, the victim should be required to attend only if absolutely necessary. Protection should be offered when face-to-face encounters are unavoidable. The victim and her abuser should not be left alone if she considers that to be dangerous, and she should be provided with the option of leaving the building at a different time and through a different exit.<sup>387</sup>
- States should enhance communication between child support offices and the courts, through co-location of staff, attendance of dedicated child support enforcement staff at domestic violence hearings, computer linkages, coordinated enforcement of orders, and joint work groups. The child support agency and courts should develop a referral relationship, so that domestic violence victims can be referred from the child support program to the courts if they want a protective order, and from the courts to the child support program for child support services.<sup>388</sup>
- Courts should explore mechanisms to address child support within the context of domestic violence proceedings, particularly protection order hearings, and other civil and criminal proceedings in which domestic violence or child abuse concerns have been raised (e.g., through the use of linked docket numbers, consolidation of dockets, unified court structures, or specialized courts). Courts should check existing databases to avoid the entry of inconsistent and duplicative child support orders.<sup>389</sup>
- If consent orders or mediation are used during any part of the child support process, safeguards should be in place to ensure the

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385. See Roberts, *supra* note 38, at 72-73.

386. See Roberts, *supra* note 38, at 72.

387. See Roberts, *supra* note 38, at 73.

388. See Roberts, *supra* note 38, at 72-73.

389. See Roberts, *supra* note 38, at 73.

safety of the domestic violence victim and to permit the parties to meet with the mediator separately if requested. The court and agency should guard against pressure to trade away a support order in exchange for other benefits.<sup>390</sup>

- If a visitation order is in place, arrangements should be made for safe drop-off and pick-up of children.<sup>391</sup>

### *E. Cross-Training*

State child support managers struggle with how to allocate their limited training resources. In considering where to put domestic violence training dollars, managers sometimes face a dilemma about whether to train "wide" or to train "deep" - that is, whether to train all staff less intensively or fewer staff more intensively.<sup>392</sup> The best advice is to do both.

Basic training should be mandated for the entire staff. All child support staff who come in contact with women who are domestic violence victims should receive training in identifying and discussing domestic violence issues with custodial parents. The training should be repeated regularly, given the high staff turnover of most child support offices.<sup>393</sup> To facilitate consistent implementation of domestic violence policies and procedures, basic training should include supervisors and managers. According to the Taylor Institute, state child support programs providing at least some basic domestic violence training to all staff include: Connecticut, Delaware, Maryland, Massachusetts, New York, and Rhode Island.<sup>394</sup>

However, basic training will not make experts out of the staff. Instead, the goal should be to increase awareness of domestic violence issues and resources, staff comfort levels about their specific role and responsibilities, and client interviewing skills. Training should be focused on policy, protocol, and job task. Basic training should be placed in context for workers, concretely focused on agency messages, procedures, and activities. Three well-regarded domestic violence training curricula include those used by Anne

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390. See Roberts, *supra* note 38, at 73.

391. See Roberts, *supra* note 38, at 73.

392. See OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEPT. OF HEALTH AND HUMAN SERVICES, COOPERATION/GOOD CAUSE FORUM REPORT 14 (1997) (listing proposals regarding the training of child support enforcement workers).

393. *Id.*

394. See Jody Raphael and Sheila Haennicke, *Keeping Battered Women Safe Through the Welfare to Work Journey: How Are We Doing?*, (last modified Sept. 1999) <http://www.ssw.umich.edu/trapped>.

Arundel County, Maryland, New York, and Rhode Island.<sup>395</sup>

Developing cross-agency training sessions—including child support staff, TANF staff, and domestic violence advocates—is particularly effective in helping staff raise issues for discussion, think through cross-agency interfaces, and develop cross-agency working relationships.<sup>396</sup> Two states that provide cross training to child support and TANF staff include Maine and Iowa.<sup>397</sup>

Staff managers should work with domestic violence advocates to make sure that the training content is appropriate. In addition, they should be prepared for workers who come forward and disclose personal experiences as domestic violence victims that could make the training session difficult for them to participate in, or could even impact their ability to handle cases involving domestic violence.

The child support program also should train “deep;” that is, programs should train or hire at least a few staff members with expertise in domestic violence—or contract out for domestic violence advocates—who can serve as “point persons” and help line workers deal with cases involving domestic violence. If the child support agency offers “yellow light” services, it should consider implementing a specially trained case management unit.<sup>398</sup>

OCSE is currently developing a computer-based training curriculum focusing on domestic violence and the family violence indicator process, which will be disseminated to all states and should help reduce the cost to states of providing periodic domestic violence training.<sup>399</sup>

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395. See Jody Raphael & Sheila Haennicke, *Keeping Battered Women Safe Through the Welfare-to-Work Journey: How Are We Doing?* (Sept. 1999) <[http://www.ssw.umich.edu/trapped/pubs\\_pvo1999.pdp](http://www.ssw.umich.edu/trapped/pubs_pvo1999.pdp)> (stating that in Rhode Island, three hours of training are provided to child support workers by domestic violence providers).

396. See *id.* (listing seven states that provide domestic violence awareness training to their child support enforcement staff: Alaska, Connecticut, Delaware, Maryland, Massachusetts, New York, and Rhode Island).

397. See *id.* (stating that all levels of staff in these two states receive at least four hours of training in child support and TANF).

398. For a discussion on specialized domestic violence staff, see Jill Davies, *Building Opportunities for Battered Women's Safety and Self-Sufficiency*, Practice Paper No. 1 National Resource Center on Domestic Violence 10-12 (1997).

399. See Dick Morton, *Technology Based Training, Child Support Report* (Office of Child Support Enforcement, ed., Dec. 1999) (explaining that the objection behind the Instruction Systems Design (ISD) for Technology-Based Training (TBT) course was to augment the efforts of OCSE and National Training Center to enable participants throughout the child support enforcement community to analyze, design, and develop course materials for internet and CD-ROM use).

## V. CONCLUSION

Each domestic violence victim faces different risks<sup>400</sup> and must balance her needs for safety and child support in different ways. Working with domestic violence victims can be complex. Options that may work for some women will increase danger for others. In some cases, determining what a domestic violence victim needs will be as simple as asking her. In other cases, women may need help exploring their risks and options.

This article recommends that state child support programs increase the child support service options made available to domestic violence victims. Specifically, states should provide (1) full information to women; (2) flexible opt-out procedures for women who need and want to claim a good cause exemption from child support cooperation; (3) individualized “yellow light” procedures for women who need and want to pursue child support; (4) enhanced safety and confidentiality procedures; and (5) cross-training on domestic violence for TANF and child support staff. By increasing the options for safely enforcing child support, domestic violence victims will be better able to balance their needs for safety and self-sufficiency.

## APPENDIX 1

## HHS COOPERATION/GOOD CAUSE FORUM SUMMARY

Summary of State Innovations or “Best Practices” from Cooperation/Good Cause Forum

- Washington State Address Confidentiality Program
- Washington State Two-Tier Case Processing Approach
- District of Columbia Unified Court System
- Maryland Domestic Violence Training and Co-Location of Services
- Massachusetts Domestic Violence Case Registry
- Illinois Child Support/Domestic Violence Case Assessment

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400. See Tina Moore, *Women Who Fear the Men They Love, Domestic Violence Victims Often Find Leaving Abusers Raises Their Risks of Harm*, THE SUNDAY PATRIOT-NEWS, Aug. 8, 1999, at A01 (stating that when women leave their abusers, they are often times subject to even more violence and sometimes even death).

### Summary of Barriers to Implementing New Cooperation/Good Cause Provisions

- Lack of Resources
- Communication Problems/Interfaces Among Agencies
- Ambiguous Terminology including “cooperation” and “good cause”
- Tension between mass processing of child support cases and the need for individualized case assessment to identify domestic violence cases
- Lack of knowledge/understanding about other cultures, including language barriers

### Summary of Technical Assistance that Forum Participants Requested

- **Information Sharing and Dissemination:** on existing statutory language, state innovative practices, curricula, and examples of other countries’ experiences;
- **Examination of Terminology “Cooperation,” and “Good Cause”:** possible development of new terms and review of alternative approaches to pursuing child support, even if good cause is determined;
- **Research on the incidence of domestic violence in the welfare caseload, and the reasons for “non-cooperation”;**
- **Training** on everything from basic information on domestic violence, to interviewing skills, to cross training between domestic violence and public assistance/child support enforcement organizations;
- **Policy guidance** on whether good cause determinations are counted in paternity establishment denominator; ensuring that an appeals process has a broad jurisdictional reach; possible “full faith and credit” for good cause determinations;
- **Fostering interface and better communication** among courts, domestic violence organizations, child support enforcement agencies, public assistance agencies, Medicaid, Food Stamps, childcare, and Head Start.

## APPENDIX 2

## MODEL STATE PRACTICES:

## “YELLOW LIGHT” SERVICES

**Connecticut**

In Connecticut, a family violence indicator triggers more cautious case handling by child support workers. Child support staff attempt to “work closely with the protected person to map out a safe and effective plan for proceeding.” Child support staff discuss the child support process at some length with domestic violence victims, including the steps involved in establishment and enforcement, possible outcomes of certain actions, the people with routine access to case information, and the potential risks posed by this access.<sup>401</sup>

**Delaware**

In Delaware, domestic violence victims with an active protective order receive additional information about the child support process, and are offered two options: (1) to close the case; or (2) to proceed with the highest level of safeguards available from the child support program. The child support worker “shepherds” the case through the system, and the enforcement procedure is restricted. Income withholding is the only enforcement mechanism used. Letters and documents are kept to a minimum. If the protective order expires, or a family violence indicator is placed on the case at caseworker discretion, the agency shields the family’s address, but uses normal enforcement mechanisms.<sup>402</sup>

**Washington State**

Washington uses a “two-tier” approach to process child support cases. Child support workers screen all the cases for domestic violence. When a custodial parent claims good cause and the agency determines, after discussing the issue with the woman, that it is not

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401. See Maria L. Imperial, *Self-Sufficiency and Safety: Welfare Reform for Victim of Domestic Violence*, 5 GEO. J. in FIGHTING POVERTY 3, 22 (1997) (noting that heightened enforcement of child support cooperation requirements may create new legal problem for domestic violence victims, such as defending child custody petition).

402. See *id.*



safe to proceed, the child support is not enforced. However, when the child support agency decides, after discussing the issue with the custodial parent, that child support can be pursued safely, it proceeds with caution.<sup>403</sup> A couple of things about this practice are unusual. First, the child support agency confers with the custodial parent before determining whether a case is safe to proceed. Second, the child support agency tries to meet the needs of battered women by not automatically suspending child support collection efforts when an individual has domestic violence concerns, but instead providing them with individualized case management.

### Wisconsin

When a family violence indicator has been placed on a domestic violence victim, the caseworker is expected to select enforcement actions that “factor in” safety risks. In addition, the child support agency contacts the protected person whenever an enforcement action is taken. Many counties have begun to stagger genetic test schedules, so that mothers and fathers do not appear at the same place at the same time. Finally, the family violence indicator automatically triggers an address block on documents printed in the case.<sup>404</sup>

## APPENDIX 3

### MODEL STATE PRACTICES:

### JUDICIAL OVERRIDE PROCEDURES

#### Iowa

1. An “authorized person”<sup>405</sup> may submit a written, sworn request to the child support agency for disclosure of confidential

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403. See Cooperation/Good Cause Forum Report *supra* note 392, at 20 (describing Washington state’s Address Confidentiality Program (ACP) in which domestic violence victims can keep their whereabouts unknown to batterers, but still receive child support payments through a mail sorting system which keeps victims actual addresses a secret by providing them with substitute public post office boxes).

404. See The Family Violence Indicator, *supra* note 231 and accompanying text.

405. See IOWA CODE § 252B.9A(1) (1998) (stating that an authorized person is someone who can receive specified confidential information).

information regarding a party in a child support case.<sup>406</sup> If the person who is the subject of the request carries a flag, the child support agency will deny the request.<sup>407</sup>

2. If the petitioner's request is denied under § 252B.9A(2)(a), he may petition an Iowa district court to release the information.<sup>408</sup>
3. If the person is not authorized to have the information under Federal law (such as a non-custodial parent or his attorney), the requester initiates the process by directly filing a petition with the court.<sup>409</sup>
4. The court will order the child support agency to release the information to the court within 30 days.<sup>410</sup>
5. The child support agency then will file a statement informing the court of the family violence issue and provide to the court all of the relevant information in its possession.<sup>411</sup> The agency will also notify the protected individual and provide an opportunity for her to respond.<sup>412</sup>
6. The court then will make a finding whether the requested disclosure could be harmful to the subject party or child, considering any information provided by the parent or child, any child support agency, the requester, and any other relevant information.<sup>413</sup>

#### **Massachusetts:**

1. When the child support agency or Federal Parent Locator Service ("FPLS") is prohibited from disclosing personal information because of the risk of harm, a person or agency to whom the child support agency or FPLS could otherwise

406. *See id.* (stating that the request shall comply with federal law and regulations and that information requested shall be used for confidential purposes only).

407. *See id.* § 252B.9A(2)(a)(1) (stating that a flag is a situation in which there is reasonable evidence of domestic violence or child abuse in a case).

408. *See id.* § 252B.9A(2)(b), § 252B.9A(3) (stating that the petitioner shall include a sworn statement with his request attesting to the intended use of the information).

409. *See id.* (stating that a petition includes a sworn statement certifying the proposed use of the information by the petitioner, which may include (1) verifying parentage or enforcing child support obligation; (2) making or executing a child custody or visitation order; or (3) allowing the petitioner to remedy the unlawful taking of a child).

410. *See IOWA CODE* § 252B.9A(3)(b)(1) (1998) (stating that the information would not be released by the agency to the court if there was evidence of domestic violence or child abuse).

411. *See id.* § 252B.9A(3)(c)(1) (stating that the agency has thirty days to file the statement).

412. *See id.* § 252B.9A(3)©(2) (noting that the court is required to consider any information provided by a parent or a child).

413. *See id.* § 252B.9A(3)(c)(2) (1998) (stating that if the court deems the information harmful, the court is directed to dismiss the petition and notify the agency that a flag should be placed on the file, whereas if the court deems the information innocuous, then the court should release the information and request that the agency remove the flag).

disclose information may file a petition seeking disclosure with the probate and family court.<sup>414</sup>

2. A court authorized to receive information from the FPLS may submit a written request for personal information to the child support agency.<sup>415</sup>
3. When a court makes a written request for information to the child support agency and the child support agency has received “reasonable evidence of a risk of harm,” the child support agency will release the personal information to the court, but must notify the court that before disclosing the information further, the court must determine whether the disclosure would be harmful to the parent or child.<sup>416</sup> Likewise, when a petition seeking disclosure is filed with the court, the court must determine whether disclosure to the petitioner could be harmful to the parent or child before making any disclosure.<sup>417</sup> The court must notify the child support agency when a petition seeking disclosure is filed, and the child support agency must provide the court with any evidence it has regarding potential risks of disclosure.<sup>418</sup>
4. Before determining whether disclosure could be harmful, the court will notify the protected parent about the request and provide a specific date by which the parent must object to the release with supporting information.<sup>419</sup> The parent may submit the objection in writing, and need not appear in person.<sup>420</sup>
5. In determining whether disclosure could be harmful, the court will consider any relevant information provided by the protected parent or any child support agency, whether the address is “impounded” under a domestic violence order, all information in the statewide domestic violence protection order registry, and any other relevant evidence.<sup>421</sup>

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414. See MASS. GEN. LAWS ch. 119A, § 5A(b), § 5B (1999) (stating that the petition should indicate the purposes for which the information is intended).

415. See *id.* § 5B (stating that in addition the court may receive information from the parent).

416. See *id.* § 5A(b) (stating that the personal information to be released may include address information and the social security number of the person).

417. *Id.* § 5B (stating that before making this determination, the court must first notify the parent that a request to release personal data has been received).

418. *Id.* (noting that despite the required disclosure, the agency shall not be made a party to the action).

419. MASS. GEN. LAWS ch. 119A § 5B.

420. *Id.* (noting that a parent’s failure to appear shall not result in an adverse inference).

421. See *id.* (stating that evidence provided by facsimile or other method that does not produce an original should not be excluded solely on the basis of transmission, and that a

6. The court may enter an order impounding the personal information, permitting disclosure by the court to specific persons, prohibiting disclosure to specific persons, permitting disclosure for the limited purpose of service, or removing all restrictions.<sup>422</sup> The court will notify the child support agency of any order.<sup>423</sup> A person or agency who violates the court order may be held in contempt of court, and may be subject to the same penalties imposed on child support agency employees who violate disclosure and confidentiality rules.<sup>424</sup> These penalties include fines and imprisonment.<sup>425</sup>

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person may testify by telephone or any electronic means).

422. *Id.*

423. *Id.*

424. MASS. GEN. LAWS ch. 119A § 5B (1999).

425. *See id.* (stating that each person could receive a fine of not more than \$1000.00 and that the violator could be disqualified from holding office in Massachusetts for a period of not more than three years).