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# How Will Battered Women Fare Under the New Welfare Reform?

Sheryl L. Howell†

## I. BACKGROUND OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

On August 22, 1996 President Bill Clinton fulfilled his promise to "end welfare as we know it" by signing into law the euphemistically entitled Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Act").<sup>1</sup> This historic pen stroke followed an outcry of concern from victims' advocate groups who fear harsh and unanticipated repercussions against battered women<sup>2</sup> and their children.<sup>3</sup> How and to what extent this new legislation will negatively impact battered women remains to be seen, but a number of consequences are likely.

Unless victims of domestic violence are identified and exempted from certain of the Welfare Act's provisions, the violence they experience may be exacerbated. The lifetime limits of welfare reform may prolong abusive relationships by narrowing financial options for women who are economically dependent on their batterers. Moreover, mandatory work requirements may aggravate violence by batterers who resent their partners' efforts to become independent. Similarly, federal requirements mandating that women identify the paternity of their children may place them in danger by reintroducing batterers into their lives. Finally, restrictions on teenage mothers may encourage them to stay in households in which they are abused by parents or legal guardians in order to receive aid. This article briefly outlines the Welfare Act pro-

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1. Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.). Because the Welfare Act neither assists women in gaining "personal responsibility" nor provides mandated "work opportunity" the title is a misnomer.
2. I recognize that women in mixed-gender relationships are not the sole victims of domestic violence. Battering also occurs within same-gender relationships, and by women against male partners. However, 94-95% of domestic violence is committed by men, against women. See ANGELA BROWNE, WHEN BATTERED WOMEN KILL 8 (1989). In this article the term "battered woman" and the female pronoun will be used to refer to victims of domestic violence and the term "batterer" and the male pronoun will be used to refer to those who perpetrate violence.
3. See *Coalition Against Domestic Violence Opposes Welfare Reform Bill*, U.S. NEWSWIRE, Aug. 22, 1996 (press release from Rita Smith of the National Coalition Against Domestic Violence to national news assignment desks).

visions that have potential adverse consequences for domestic violence victims, and discusses measures to help mitigate their painful impact.

## II. THE RHETORIC OF WELFARE REFORM

The tenacious myth of the inter-generational, Black welfare queen—lazy, content to live on the government dole, and surrounded by numerous AFDC<sup>4</sup>-supported children—has been consistently disproved.<sup>5</sup> Yet, in political rhetoric and policy formulation, law makers and voters continue to apply this stereotype, unencumbered by the bevy of scholarly literature that deflates its underlying assumptions.

Implicit in the welfare debate is the presumed moral superiority of the traditional nuclear family. Family preservation and reunification are at the forefront of the reform agenda, as the Welfare Act makes explicit. In its prelude, Congress lists a number of “findings,” the first of which states that “marriage is the foundation of a successful society.”<sup>6</sup> Nearly every other finding emphasizes the dilemma of single-parent households, with no mention of the myriad of other social or economic forces that contribute to poverty.<sup>7</sup>

All too willingly, this rhetoric is used by policy makers to blame poor women for many of the nation’s social problems and therefore to absolve themselves of the moral obligation to alleviate conditions of poverty. Equally unnerving is what our leaders are *not* discussing. The welfare reform debate has occurred in an arena wherein the violence present in many women’s lives—along with other crucial issues<sup>8</sup>—is rarely recognized or addressed. Conveniently, the discussion takes place in a vacuum that is artificially removed from dialogue about battered women. Impervious to domestic violence, and riddled with faulty stereotypes, welfare reform will likely translate into unforgivingly harsh social policy.

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4. Aid to Families with Dependent Children (“AFDC”), 42 U.S.C. §§ 601-617 (1994).

5. Women on welfare are not more promiscuous or slothful than the general populace, and the largest racial group receiving welfare is whites. White families make up 38.3% of welfare recipients, Black families 36.6%, Hispanic families 18.5%, and Asians and Native Americans together account for 4.2%. See CENTER ON SOCIAL WELFARE POLICY AND LAW, WELFARE MYTHS: FACT OR FICTION? 27 (1996). Despite the myth of an inter-generational welfare phenomenon, fewer than half of recipients are on the rolls for more than thirty-six months overall, and most women on public aid did not receive welfare as children. See *id.* at 7. Moreover, the length of time on welfare did not strongly affect the probability that a family would eventually become self-sufficient. See *id.* at 9. Finally, only 10% of women on AFDC have more than three children, a birth rate similar to that of the general population. See *id.* at 19. The average annual welfare stipend is below the poverty line in every state—hardly an incentive for having more children. See *id.* at 11.

6. Welfare Act § 101, 110 Stat. at 2110.

7. See *id.* at 2110-12. Eighty-nine percent of single-parent households are headed by women. The female pronoun is used throughout this article to refer to welfare recipients.

8. Aside from domestic violence, issues such as rape, child sexual abuse, clinical depression, mental illness, chemical dependency, and issues facing immigrant women are conspicuously absent in the public debate framing welfare policy.

### III. WHEN POVERTY MEETS DOMESTIC VIOLENCE

Welfare reform's continued focus on preserving the traditional family structure poses particular dangers for victims of domestic violence. For any individual in poverty, removing welfare's marginal safety net can prove disastrous. For women and children in a violent home, the effect may be all the more devastating because without public assistance they may have no means of economic viability except continued reliance on their batterers.

Domestic violence is defined by a pattern of coercive physical, sexual, emotional, economic, and psychological abuse used to systematically isolate and control a victim.<sup>9</sup> While the phenomenon occurs with similar frequency in every socioeconomic class and across all racial lines,<sup>10</sup> there is an alarming relationship between battering and poverty. Simply put, domestic violence is a cause of indigence and homelessness among women.<sup>11</sup> To date, few scholars have considered how domestic violence may precipitate conditions of poverty.<sup>12</sup> Several reasons may contribute to this oversight. Activists fear that studying the relationship between violence and poverty will further stigmatize the poor and people of color by suggesting that domestic violence is more common among certain ethnicities and lower socio-economic classes.<sup>13</sup> This image could further distort stereotypes that depict poor women as weak, assume their dysfunctional relationship explains a disfunction in the socioeconomic sphere, and assume they choose to live in violence.<sup>14</sup> Despite the dearth of studies on a link between domestic violence and poverty, emerging data indicate that women are forced into poverty by violence.<sup>15</sup> In a recent survey of welfare-to-work programs throughout the country more than half of the women participants reported having been abused by their male partners.<sup>16</sup> Similarly, a Washing-

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9. See Karla M. Digirolamo, *Myths and Misconceptions About Domestic Violence*, 16 PACE L. REV. 41, 44 (1995); see also Mary Ann Dutton, *Understanding Women's Responses to Domestic Violence: A Redefinition of Battered Woman Syndrome*, 21 HOFSTRA L. REV. 1191, 1206-07 (1993) (listing the "eight categories of psychological abuse: coercion and threats; intimidation; emotional abuse; isolation; minimization, denial and blaming; use of the children to control the victim; use of 'male privilege'; and economic/resource abuse.").
  10. See Del Martin, *Scope of the Problem*, in BATTERED WOMEN: ISSUES OF PUBLIC POLICY 3, 4 (A Consultation Sponsored by the United States Commission on Civil Rights, 1978).
  11. See LENORE E. WALKER, THE BATTERED WOMAN SYNDROME 33-34 (1984). Walker found that many battered women take a long time to leave batterers because of the batterers' control over household economics, and the women's lack of resources; see also Joan Zorza, *Woman Battering: A Major Cause of Homelessness*, 25 CLEARINGHOUSE REV. 420, 421 (1991); Gretchen P. Mullins, *The Battered Woman and Homelessness*, 3 J.L. & POL'Y 237 (1994).
  12. See Peter Margulies, *Representation of Domestic Violence Survivors as a New Paradigm of Poverty Law: In Search of Access, Connection, and Voice*, 63 GEO. WASH. L. REV. 1071, 1082-83 (1995).
  13. See *id.* at 1082-84.
  14. See *id.*
  15. See Zorza, *supra* note 11, at 421-23.
  16. See Jody Raphael, *Domestic Violence and Welfare Receipt: Toward a New Feminist Theory of Welfare Dependency*, 19 HARV. WOMEN'S L. J. 201, 204-05 (1996) (citing Jody Raphael, *Report of the Taylor Institute, Domestic Violence: Telling the Untold Welfare to Work Story* (Jan. 30, 1995)).

ton state survey of women on public assistance revealed that 60% had been physically and/or sexually abused as adults.<sup>17</sup>

#### IV. UNWILLINGNESS OF BATTERED WOMEN TO SELF-IDENTIFY

Despite its prevalence and the increased public awareness surrounding the issue,<sup>18</sup> domestic violence incidents remain underreported.<sup>19</sup> Battered women have many strong incentives to keep their abuse secret. These include the social stigma of being abused, fear of triggering violence, perceived ineffectiveness of police and support services, and fear of losing child custody, among others.

Isolation from support networks and the social stigma of domestic violence work to shame battered women into not seeking help. Batterers tend to methodically demoralize and isolate their subjects.<sup>20</sup> Early in the relationship a woman's partner may object, sulk, or become violent when she spends time with family or friends. He may also impose restrictions on using the phone and receiving or sending letters, supervise her visitations with others, and monitor her movements at all times.<sup>21</sup> The woman may also become insulated from the support of others if, after battering incidents, she does not follow the advice of friends or family members, or if the batterer threatens or otherwise harasses friends and family, causing them to withdraw support.<sup>22</sup> Without a strong emotional support system, a woman has fewer resources on which to draw. She can become ashamed of the abuse and therefore be less inclined to seek help from strangers.

Alternatively, a woman may legitimately fear provoking violence by seeking support. A battered woman is most likely to be attacked when asserting her independence, such as in attempting to report abuse or to leave the relationship.<sup>23</sup> Calling the police, obtaining a restraining order, or leaving a shared household commonly precipitates dangerous, even deadly, attacks. A woman who leaves her batterer is seventy-five percent more likely to be seri-

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17. See Martha F. Davis & Susan J. Kraham, *Protecting Women's Welfare in the Face of Violence*, 22 *FORDHAM URB. L.J.* 1141, 1145 (citing WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, *OVER HALF OF WOMEN ON PUBLIC ASSISTANCE IN WASHINGTON STATE REPORTED PHYSICAL OR SEXUAL ABUSE AS ADULTS I* (1993)).

18. For example, media coverage of the O.J. Simpson trials brought domestic issues to the forefront of public consciousness.

19. See Susanne M. Browne, *Due Process and Equal Protection Challenges to the Inadequate Response of the Police in Domestic Violence Situations*, 68 *S. CAL. L. REV.* 1295, 1298 (1995) ("[T]he frequency of battering is buried in divorce, assault, and homicide statistics; diffused among police, court and hospital records; and often unreported by the battered woman for fear of retaliation by her batterer, the problems of domestic violence may be even more severe than estimated.").

20. See JENNIFER B. FLEMING, *STOPPING WIFE ABUSE* 87-88 (1979).

21. See Dutton, *supra* note 9, at 1206.

22. 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, 837 (1993) (discussing extending civil protection orders to persons who give aid and refuge to battered women).

23. See LENORE E. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* (1989); see also BROWNE, *supra* note 2, at 115-16.

ously harmed or killed than one who chooses to stay.<sup>24</sup> Moreover, an abuser may threaten to harm his victim's children or family members if she attempts to get help.<sup>25</sup> If she takes her children, leaving a batterer may trigger charges of parental kidnapping against a woman.<sup>26</sup> Or, she may risk retaliation from the batterer who may himself kidnap the child.<sup>27</sup> Faced with the very real prospect of any of these dangers, staying with the batterer may be the safest avenue for the victim of domestic violence and for her loved ones.

A battered mother may also be reluctant to report abuse because she fears she will lose custody of her children. In both civil and criminal contexts, nonviolent, battered women routinely lose children either to their male batterers or to the state.<sup>28</sup> Law and society frequently define women by their motherhood role.<sup>29</sup> Single mothers and women who choose not to become mothers are considered deviant or criminal.<sup>30</sup> While fathers who abandon children can easily escape criminal liability by leaving the child with his mother, mothers retain an affirmative duty of continued care in nearly all circumstances.<sup>31</sup>

Courts and society expect super-human feats of protectionism from mothers, and punish them even where attempts to protect would prove fruitless or would increase the danger to both the children and themselves. Hence, when harm befalls a child either because a batterer intentionally attacks the minor, or because the minor attempts to intervene in an attack on his mother, courts often treat both the violent and nonviolent parent as equally culpable.<sup>32</sup> "Failure to protect" doctrines, which often impose strict liability, punish mothers without regard for their actual ability to end or prevent harm.<sup>33</sup> In some cases, a non-violent mother will be punished as severely as the batterer who actually inflicted injury.<sup>34</sup>

Laws that punish a woman when her child is harmed are based on the assumption that a woman can and should protect her child by leaving a violent relationship. As discussed above, however, such an attempt can trigger escalated violence against both the mother and child, or the risk of kidnapping. Moreover, if a woman does leave but is financially unstable, civil courts

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24. See V. MICHAEL MCKENZIE, *DOMESTIC VIOLENCE IN AMERICA* 20-21 (1995).

25. See Naomi R. Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions*, 44 *VAND. L. REV.* 1041 (1991).

26. See V. Pualani Enos, *Prosecuting Battered Mothers: State Laws' Failure to Protect Battered Women and Abused Children*, 19 *HARV. WOMEN'S L. J.* 229, 245 (1996); see also Parental Kidnapping Prevention Act, 28 U.S.C. § 1738(A) (1995).

27. See Enos, *supra* note 26, at 245.

28. See *id.* at 245-46; see generally Dorothy E. Roberts, *Motherhood and Crime*, 79 *IOWA L. REV.* 95, 109-15 (1993) (discussing criminal prosecution for mothers failing to protect their children).

29. See generally, ADRIENNE RICH, *OF WOMAN BORN: MOTHERHOOD AS EXPERIENCE AND INSTITUTION* (1986).

30. See Roberts, *supra* note 28, at 97-98.

31. See *id.* at 99-100.

32. See Enos, *supra* note 26, at 260.

33. See *id.* at 229-30.

34. See *id.* at 260. Enos gives one example in which a woman was sentenced to seven years in prison because she was unable to stop her boyfriend from raping her daughter. Pursuant to a plea bargain, the boyfriend who committed the rape received ten and one-half years in jail.

may award custody to the father based upon his greater financial resources.<sup>35</sup> This intractable dilemma—leave and risk losing custody or stay and risk losing custody—has not yet been sufficiently examined under the law. Until corrected, this Hobson's Choice will continue to encourage fearful mothers to cover up evidence of abuse.

## V. THE LIKELY DELETERIOUS IMPACT OF SPECIFIC WELFARE ACT PROVISIONS ON BATTERED WOMEN

The burdens on poor victims of domestic violence, and the tendency to avoid self-identification, reveal a critical need to modify the Welfare Act provisions so as not to further injure battered women and their children. Several of the Welfare Act provisions pose danger when analyzed in the context of family violence. The sixty-month lifetime maximum,<sup>36</sup> mandatory work requirements,<sup>37</sup> limited benefits to unwed teenage mothers,<sup>38</sup> and heightened child support enforcement<sup>39</sup> pose formidable obstacles to domestic violence survivors trying to achieve economic independence and safety. Without accounting for the particular issues faced by battered women, the goals of welfare-to-work provisions are doomed to failure for the majority of women suffering under violence.

### A. Five-Year Ceiling

Whether poor or seemingly wealthy, a woman may be completely financially dependent on her batterer.<sup>40</sup> An abusive partner will often control even the most minute aspects of household finances, denying his victim access to cash, credit cards, or checking accounts.<sup>41</sup> Alternatively, a batterer may require his victim to account for every purchase made, whether for luxuries or necessities, or run up huge bills in her name that she is unable to pay herself.<sup>42</sup> Since many battered women have no familial or other support networks on which to fall, a woman may be completely thrust into poverty if she leaves her abusive partner.

Because of this financial abuse and isolation, public aid may be the sole lifeline on which a woman escaping violence can hold. However, leaving a violent partner is typically a long and dangerous process<sup>43</sup> which may

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35. See Cahn, *supra* at note 25, at 1059, n.102.

36. See Welfare Act § 103, 110 Stat. at 2137 (imposing a five-year lifetime maximum on receipt of welfare benefits).

37. See *id.* at 2129-34.

38. See *id.* at 2135-37.

39. See *id.* at 2135 (requiring state certification that a child support enforcement program will be operated as a precondition to block grants).

40. See Digirolamo, *supra* note 9, at 45; see also Walker, *supra* note 11, at 28.

41. See Digirolamo, *supra* note 9, at 45; see also Davis & Kraham, *supra* note 17, at 1150-51.

42. See Digirolamo, *supra* note 9, at 45.

43. See Enos, *supra* note 26, at 244-45.

require numerous attempts, development of workplace skills,<sup>44</sup> moving great distances,<sup>45</sup> psychological counseling,<sup>46</sup> housing assistance,<sup>47</sup> and legal aid.<sup>48</sup> Therefore, the five-year cap imposed by the Welfare Act will often be woefully inadequate to support the draconian life changes necessary to escape violence.

### B. Work Requirements

The Welfare Act requires that recipients participate in work or educational programs.<sup>49</sup> It further requires that, by the year 2002, fifty percent of single-parent households and ninety percent of two-parent households be engaged in work as defined by the Act.<sup>50</sup> States are required to impose penalties on individual recipients that do not comply with work requirements, unless granted an exemption.<sup>51</sup> Yet, domestic violence victims may have a hard time complying with work provisions for several reasons. First, unless welfare-to-work programs provide needed resources such as child care, counseling, or housing, assistance to all clients who need such efforts may be in vain. More devastating, batterers will often become so threatened by their victims' attempts at self-sufficiency that they will interfere to the point of ensuring failure.

In the most comprehensive published study to date, the Taylor Institute found a strong inverse relationship between domestic violence and successful completion of job training or high-school equivalency completion.<sup>52</sup> This is explainable in part by batterers' attempts to thwart the success of their partners' training efforts. For some women, work requirements may trigger or exacerbate abuse when they are required to begin working.<sup>53</sup> Examples of coercive behaviors used by batterers include the following:

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44. See Martin, *supra* note 10, at 10-11.

45. A woman may feel compelled to leave the state in order to escape her abuser, or to reunite with relatives. See Enos, *supra* note 26, at 244. The Welfare Act gives states the option of creating differing criteria for out-of-state residents coming into the state. See Welfare Act § 103, 110 Stat. at 2114.

46. See Melina L. Seymore, *Isn't It a Crime: Feminist Perspectives on Spousal Immunity and Spousal Violence*, 90 NW. U. L. REV. 1032, 1042-43 (1996) (noting that battered women may suffer severely crippled self-images due to systematic abuse). *But see* Martin, *supra* note 10, at 15 (asserting that traditional psychotherapy is anti-feminist in its misplaced mental health focus on the victim).

47. See Mullins, *supra* note 11, at 251.

48. See Louise G. Trubek, *The Worst of Times . . . And the Best of Times: Lawyering for Poor Clients Today*, 22 FORDHAM URB. L.J. 1123, 1124-25 (1995).

49. See Welfare Act § 103, 110 Stat. at 2129-34.

50. See *id.* at 2129.

51. The Welfare Act provides that states shall reduce the benefits, on at least a pro-rata basis (or at states' option terminate the benefit altogether), for each month the work requirement is not met. See *id.* at 2133. An exception is provided to single-parent households with a child under the age of six, provided the recipient can show unavailability of child care. See *id.*

52. See Raphael, *supra* note 16, at 203-04.

53. See *id.* at 220.



- Engaging their partners in all-night quarrels before interview or entrance examinations, leaving them physically tired and emotionally drained;
- Failing last-minute to provide promised transportation or child care;
- Hiding clothing or winter coats;
- Inflicting severe or visible injuries so that the victim is too injured or embarrassed to go outside;
- Making frequent, harassing phone calls to the victim's place of business; and
- Visiting the job site and threatening violence against the victim, job training staff, or work supervisors.<sup>54</sup>

Moreover, domestic violence survivors typically suffer from a form of post-traumatic stress disorder.<sup>55</sup> This syndrome manifests symptoms such as poor concentration, decreased interest in meaningful activities, fear of new challenges, suppression of creativity, distrust in individuals and social networks, sleep disorders, chronic anxiety, and a sense of foreshortened future.<sup>56</sup> Systematic verbal abuse, such as consistently telling a victim she is stupid, incompetent, or has poor skills, also takes its toll in affecting her ability to learn and adapt easily.<sup>57</sup> In this psychological context, strict timelines, attendance requirements, and one-chance rules work to ensure the failure of many battered women. To be effective for domestic violence victims, work training and educational programs will need to be flexible, open-ended, and offer appropriate accompanying services.

### C. Benefit Restrictions to Teenage Mothers

The Welfare Act attempts to discourage teenage pregnancy by requiring continued education and by sanctioning teenage mothers who do not live under adult supervision.<sup>58</sup> A parent who is under eighteen, is unmarried, has a child more than three months old, and has not obtained a high-school education (or equivalent) is not eligible for public assistance unless working towards a high-school diploma or participating in a state-sanctioned alternative education or training program.<sup>59</sup> This one-hundred percent participation requirement is much more stringent than that imposed on older parents, even though teenagers are less likely to have developed job skills and social support networks. Where a teen mother has been or is the victim of sexual or physical abuse, the requirement is particularly onerous. As discussed in the

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54. *See id.* at 205-06.

55. *See id.* at 215-16; *see also* Margulies, *supra* note 12, at 1077. For a discussion of the diagnostic criteria for Post Traumatic Stress Syndrome, *see* AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 424-29 (4th ed. 1994) [hereinafter DSM-IV]. While no one psychological profile can adequately describe all battered women's experiences, these symptoms are very common among victims.

56. *See* DSM-IV, *supra* note 55, at 424-29.

57. *See* Raphael, *supra* note 16, at 216-17.

58. *See* Welfare Act § 103, 110 Stat. at 2135-37.

59. *See id.* at 2135-36.

prior section, the trauma associated with domestic violence stalls many women in their job training and education efforts.

In addition, the Welfare Act mandates that teen mothers live with a parent, legal guardian, or other adult relative as a welfare condition.<sup>60</sup> This poses an obvious dilemma if the teen is subjected to abuse by the adult with whom she must reside. An exception is available if the teenage parent or her child is the victim of abuse by her parent or legal guardian in the residence, or where substantial evidence shows that she or her child will suffer serious harm if required to stay there.<sup>61</sup> However, the statute requires that an alternative appropriate living arrangement be made, with a strong preference for an adult-supervised living environment, before the exception may be granted.<sup>62</sup> So long as states create a reliable mechanism for identifying teen mothers in abusive homes, this waiver will be sufficient. However, since abused women may not self-identify and because states are not required to screen for domestic violence, this adult supervision requirement may force young mothers to stay in an abusive home.

#### **D. Mandated Child Support Enforcement**

In the same way, provisions which mandate child support may force a domestic violence survivor who has freed herself and her children from an abusive environment into contact with her persecutor. Prior to the Welfare Act, federal law required a mother on welfare to cooperate in establishing the paternity of her child, though the law permitted an exemption for battered women.<sup>63</sup> Yet, less than one percent of AFDC recipients have used this exemption nationally,<sup>64</sup> either because they do not know it exists, or because they fear the consequences of being labeled battered women. The Welfare Act essentially extends this requirement by mandating that each state operate a child support enforcement program.<sup>65</sup> A "good-cause" exemption, similar to that under existing law, may be adopted at the option of states, as discussed below. However, this exemption will only effectively protect a woman from contact with her batterer if there is a workable screening process in place to uncover family violence and if the woman is willing to disclose the violence.

### **VI. INADEQUACY OF THE WHITE HOUSE RESPONSE**

After proclaiming October 1996 National Domestic Violence Awareness Month, President Clinton acknowledged the vulnerability of low-

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60. *See id.* at 2136-37.

61. *See id.* at 2115.

62. *See id.*

63. *See* 42 U.S.C. § 602(a)(26)(B) (1994).

64. *See* Raphael, *supra* note 16, at 222.

65. *See* Welfare Act § 103, 110 Stat. at 2114.

income battered women under the new welfare regulation.<sup>66</sup> In a lukewarm attempt to rectify this dilemma, the President strongly encouraged states to implement the Wellstone/Murray Family Violence provisions of the Welfare Act.<sup>67</sup> In essence, these provisions suggest that states screen individuals who receive public assistance for a history of domestic violence, refer such persons to counseling and support services, and where warranted, permit a good cause waiver of program requirements such as time limits, residency requirements, and child support cooperation requirements.<sup>68</sup> Moreover, a specific hardship exception for families in which domestic violence occurs can waive the lifetime sixty-month cap for public aid.<sup>69</sup>

While these provisions are well-meaning, they are unlikely to correct for the Welfare Act's adverse impact on domestic violence victims. First, as discussed, battered women have powerful motives for concealing abuse. Consequently, even if adopted by states, the Wellstone/Murray provisions would likely fail to uncover domestic violence when a victim fears the consequences of revealing her abuse.

Second, as drafted, the Welfare Act provides a financial disincentive for states to enact the optional provisions. No additional money is allocated for domestic violence screening purposes, counseling, or other services needed by battered women.<sup>70</sup> Furthermore, states may not grant the hardship exception on lifetime caps for more than twenty percent of the average number of families on public assistance.<sup>71</sup> Yet both the Taylor Institute and Washington state studies indicate that significantly more than twenty percent of families receiving aid are experiencing violence in the home.<sup>72</sup> Therefore, even if states enact the Wellstone/Murray provisions, many battered women will not be covered. More likely, since these provisions are optional for states, and no financial support accompanies them, many states probably will not enact the provisions in the first place.

## VII. RECOMMENDATIONS

The Welfare Act evidences Congress's failure to consider carefully enough or understand the impact of certain provisions on battered women. As analyzed above, several of the terms under the Welfare Act have a particularly

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66. See Memorandum on Guidelines to States for Implementing the Family Violence Provisions, 32 WEEKLY COMP. PRES. DOC. 1958 (1996).

67. See *id.*

68. See Welfare Act § 103, 110 Stat. at 2115.

69. See *id.* at 2137-38.

70. As a condition for receipt of block grants, each state must submit a welfare plan integrating job training assistance, work requirements, confidentiality provisions, goals for decreasing out-of-wedlock pregnancies, and statutory rape education. See *id.* at 2113-14. States can choose to also integrate a domestic violence screening and service referral program into welfare plans, but no additional funds are provided for these services. Nor does the statute address the need for legal services, housing services, etc. See *id.* at 2115.

71. See *id.* at 2137-38.

72. See *supra* notes 16-17 and accompanying text.

harmful effect on welfare recipients who are victims of domestic violence. To remedy these policy failures the Welfare Act must be changed to better meet the unique needs of battered women receiving public assistance.

At a minimum, the Wellstone/Murray Family Violence provisions of the Welfare Act should be mandatory for all states. Furthermore, the provisions should be augmented with sufficient funds and technical support for proper implementation. Since many battered women fear negative repercussions if abuse is disclosed, domestic violence screening should be completely confidential. Results must not be available to other government agencies such as Child Protective Services, or for use in custody decisions. Welfare administrators and case managers who screen for violence should be trained on the dynamics of abuse and be given clear guidelines about when exemptions may be granted. If identifying paternity and attempting to collect child support might endanger a woman by reconnecting her with her batterer, the child support enforcement provision should be waived. Case managers should also be educated about existing community resources available to battered women such as legal aid, housing assistance, child care, psychological counseling, work training programs, and financial aid, and should provide referrals to those resources when appropriate.

Moreover, the current twenty percent limit for waivers is insufficient given that studies indicate that a higher percentage of women on welfare are victims of domestic violence. Therefore, this limit should be repealed. Exceptions to the five-year limit, work and education provisions, at-home living requirements for teenagers, and other Welfare Act provisions can then be made in every instance where such requirements would interfere with a battered woman's achievement of personal and economic independence and safety. Finally, the exemption to the heightened child support enforcement provisions should be used whenever it will help prevent a batterer from regaining access to a battered woman.

Because domestic violence increases poverty and homelessness among its victims and acts as a barrier to women's self-sufficiency, welfare reform that ignores these implications will harm many battered women. Therefore, effective mechanisms need to be set in place to identify victims of violence, and address their unique hardships without punishing them for their misfortune. Realistic, compassionate programs that anticipate the obstacles battered women face are the best method for accomplishing the primary goal of welfare reform—helping recipients toward independence—humanely and with dignity.