Recent Developments: Child Exclusion Provisions: The Harmful Impacts on Domestic Violence Survivors

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Recent Developments

Child Exclusion Provisions: 
*The Harmful Impacts on Domestic Violence Survivors*

Pranava Upadrashta†

ABSTRACT

Studies show that a majority of women who receive welfare are survivors of domestic violence. This Recent Developments piece argues that child exclusion provisions, which deny a family additional cash assistance if a child is born while the family is receiving cash aid, create unreasonably high barriers for domestic violence survivors receiving welfare to achieve safety. This piece also argues that in order to help domestic violence survivors achieve safety and heal from abuse, every state should implement the Family Violence Option, establish minimum standards for domestic violence training and screening in welfare offices, and specify program requirements that can be waived and identify protocols for waiver implementation. After examining policies and recent changes in California as a case study, this piece concludes by providing guidance and recommendations for welfare offices in making choices to promote safety for domestic violence survivors.

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INTRODUCTION

A young black mother enters a legal services organization in California with two small children: a baby in her arms and an older child walking behind her. Her face shows signs of distress as she sits down with the baby, anxiously awaiting her appointment with an attorney and hoping to receive help to negotiate with the social services agency. Her two children did not receive welfare cash assistance when they were born because she was already receiving cash aid for her oldest child, now an adult, at the time she became pregnant with each younger child. This circumstance made the younger children “maximum family grant” children. She is also ineligible for aid, having already received sixty months of assistance. As a result, she is raising her children with absolutely no cash assistance. Her situation is particularly heart-wrenching, as she is not only a mother struggling to make ends meet without any public assistance, but also a domestic violence survivor. She explains to advocates that without cash assistance, she does not have enough money to buy clothing for her children. Her eyes are sad as she describes how she needs help from her friends to provide for her family. Her now-incarcerated husband forced her to quit her job multiple times, and after years of abuse, her self-worth and confidence have dwindled away.

Sadly, the welfare system, originally designed to serve as a safety net for poor widows, is not helping this young mother. After unsuccessfully seeking

1. The Maximum Family Grant rule is California’s child exclusion provision. The Maximum Family Grant rule states that a family is ineligible for an increase in cash assistance after a child’s birth if a family has already received cash assistance for ten consecutive months prior to the birth of the child. CAL. DEP’T OF SOC. SERVS., THE MAXIMUM FAMILY GRANT (MFG) RULE FOR RECIPIENTS OF CASH AID (2000), available at http://www.dss.cahwnet.gov/Forms/English/CW2102.pdf. The MFG rule is discussed further infra at Section V.

2. In California, as of January 1, 1998, adults were eligible to receive a total of sixty months of cash assistance. However, this time limit was shortened to forty-eight months effective July 1, 2011 when Senate Bill 72 was signed into law on March 24, 2011. CAL. DEP’T OF SOC. SERVS., ALL COUNTY LETTER NO. 11-33, APR. 29, 2011, available at http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acl/2011/11-33.pdf; see also CAL. DEP’T OF SOC. SERVS., CALWORKS 48-MONTH TIME LIMIT, at 2 (2011), available at http://www.dss.cahwnet.gov/Forms/English/CW2184.PDF (explaining that the federal government has imposed a sixty-month maximum time limit on cash assistance, but that states have the discretion to implement shorter time limits).

3. Khiara Bridges, Wily Patients, Welfare Queens, and the Reiteration of Race in the US, 17 TEX. J. WOMEN & L. 1, 16-17 (2007) (explaining that the Aid to Dependent Children (ADC) program, later called the Aid to Families with Dependent Children (AFDC) program, was enacted in 1935 as part of Social Security legislation and included a provision to provide
help at the welfare office, she has turned to legal aid attorneys to help her apply for a domestic violence waiver\(^4\) that will allow her to receive cash assistance for herself and her children.\(^5\)

This story is one that is commonly heard by welfare advocates and attorneys who negotiate with Social Services Agencies across the country to obtain benefits for women\(^6\) who are domestic violence survivors\(^7\) and subject to the child exclusion provision, also referred to as the family cap.\(^8\) A domestic violence survivor may be afraid of asking for help because she feels ashamed of her situation, is worried that her benefits will be terminated, or fears that her children will be taken away.\(^9\) She may also be afraid to disclose abuse for fear that her caseworker will retaliate against her, or she may believe that her caseworker does not want to help her.\(^10\) County welfare offices are often

\(^4\) A domestic violence waiver allows survivors to receive an exemption from welfare program requirements that would unfairly penalize them or place them at risk for abuse. This is allowed under the Family Violence Option provision of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. 45 C.F.R. § 260.52 (2009). See infra section V for further discussion.

\(^5\) Interview with East Bay Cmty. Law Ctr. Client, in Berkeley, Cal. (Jul. 2009) (client not identified to protect confidentiality); Interviews with Luan Huynh & W. Edward Barnes, Attorneys, East Bay Cmty. Law Ctr., in Berkeley, Cal. (Sept. 28, 2011).

\(^6\) This piece will use the female pronoun to refer to domestic violence survivors because statistics indicate that the majority of survivors are women. Adele M. Morrison, Changing the Domestic Violence (Dis)Course: Moving from White Victim to Multi-Cultural Survivor, 39 U.C. DAVIS L. REV. 1061, 1064 n. 4 (2006).

\(^7\) This piece will use the term “survivor” to focus on empowerment of women who have faced abuse. See e.g., Domestic Violence: An Introduction, YMCA OF GREATER FLINT (Mar. 4, 2011), http://volunteermanual.wordpress.com/2011/03/04/domestic-violence-an-introduction/.

\(^8\) Interviews with Luan Huynh & W. Edward Barnes, Attorneys, East Bay Cmty. Law Ctr., in Berkeley, Cal. (Sept. 28, 2011) (noting that East Bay Community Law Center advocates prefer the term “child exclusion” to “family cap”); Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011). “Family cap” is the more commonly used term, although the two terms are often used interchangeably. However, “child exclusion” more appropriately describes the policy to exclude a child from receiving aid at birth, and “family cap” more appropriately describes a policy to deny a family additional aid after exceeding a specific size. Rebekah J. Smith, Family Caps in Welfare Reform: Their Coercive Effects and Damaging Consequences, 29 HARV. J.L. & GENDER 151, 152 n.2 (2006) (citing SHELLY STARK & JODIE LEVIN-EPSTEIN, CTR. FOR LAW & SOC. POLICY, EXCLUDED CHILDREN: FAMILY CAP IN A NEW ERA 3 (1999), available at http://www.clasp.org/admin/site/publications_archive/files/0030.pdf.) This piece will primarily use the term “child exclusion” for its more accurate description of the provision at issue.

\(^9\) U.S. GOV’T. ACCOUNTABILITY OFFICE, PUB. NO. GAO-05-701, TANF: STATE APPROACHES TO SCREENING FOR DOMESTIC VIOLENCE COULD BENEFIT FROM HHS GUIDANCE 8 (2005) [hereinafter STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING]; telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011) (explaining that it is not uncommon for a client to feel that her caseworker has the power to terminate her benefits, and that clients often worry that disclosing ongoing violence in the home to a caseworker at the Social Services Agency will mean that Child Protective Services will gain access to this information. For example, in San Francisco, California, this fear may be exacerbated by the fact that Child Protective Services and the Social Services Agency share the same building).

\(^10\) Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011).
unwelcoming spaces, with long lines and overworked staff. Many women who need help are simply not comfortable disclosing personal information when they are treated like numbers in a line. Consequently, it is hardly surprising that domestic violence survivors are afraid to request help from caseworkers and are often not notified of available supportive services and waivers.

As used in this piece, domestic violence is “assaultive or coercive behavior, which includes physical abuse, sexual abuse, psychological abuse, economic control, stalking, isolation, threats, or other types of coercive behaviors occurring within a domestic relationship.” Domestic relationships may be between adults and between minors, and encompass the following types of relationships: people who are currently or formerly married, engaged, cohabiting, dating, had or have a sexual relationship, are related by blood, adoption, or marriage, or individuals who have a child in common. When analyzing the effects of domestic violence, it is important to consider the broad range of scenarios in which domestic violence can occur. Domestic violence is present in communities across all economic classes, racial groups, and social categories. However, studies have shown that domestic violence disproportionately impacts poor women due to their lack of resources. In fact, a majority of women who receive welfare are survivors of abuse.

Child exclusion provisions deny families additional cash assistance if a child is conceived while the family is receiving cash aid. These provisions were introduced with the purpose of reducing the state’s welfare spending by encouraging women receiving cash assistance to have fewer children. However, economic studies show that child exclusion provisions have not

11. See State Approaches to Domestic Violence Screening, supra note 9, at 8 (stating that clients may be unlikely to disclose domestic violence to caseworkers because of a perceived lack of empathy and ineffective screening mechanism due to caseworkers’ heavy workload).


13. MPP § 42-701.2(d)(4).


17. Id.


deterred women from having additional children. As a result, these provisions create extreme financial hardship for families and penalize children by limiting their access to resources. Child exclusion provisions are especially damaging to low-income domestic violence survivors who lack the financial means to escape, because the provisions further limit access to resources. Although states may develop domestic violence waivers under the Family Violence Option (FVO) for any Temporary Assistance to Needy Families (TANF) program requirement, including waivers to the child exclusion provisions, only a small minority of eligible welfare recipients receive such waivers and supportive services.

This piece begins with a brief overview of the history and implementation of child exclusion provisions and the provisions’ economic ineffectiveness. The piece then makes the argument that child exclusion provisions create unreasonably high barriers for domestic violence survivors to achieve safety. Next, this piece examines the FVO in welfare reform, arguing that the federal government should mandate that every state implement the FVO, establish minimum standards for domestic violence training and screening in welfare offices, specify program requirements that can be waived, and identify protocols for waiver implementation. Subsequently, policies in California are discussed as a case study. This piece argues that in California, recent changes in policy interpretation, inconsistencies in policy implementation, and lack of training and accountability for social services staff prevent many battered women from receiving much-needed domestic violence waivers. Finally, this piece provides guidance and recommendations for welfare offices in making choices to promote safety for domestic violence survivors.

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20. See discussion infra Section III on the family size effects of the child exclusion provision; see also Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011).


23. Taryn Lindhorst, Marcia Meyers & Erin Casey, Screening for Domestic Violence in Public Welfare Offices: An Analysis of Case Manager and Client Interactions, 14 VIOLENCE AGAINST WOMEN 5, 6 (2008) (citing studies from Texas, Chicago, Maryland, and Georgia showing that only 0.5 to 3% of welfare recipients receive domestic violence waivers through the FVO, although rates of domestic violence ranged from 25% to 67%).
I. A SURVEY OF CHILD EXCLUSION PROVISIONS

The underlying stereotypes and assumptions about women who receive public assistance have contributed to the creation and implementation of child exclusion provisions.24 No similar policy exists for families who do not receive public assistance; on the contrary, the United States government provides a tax deduction for families with dependent children.25 Over the years, there has been a shift in the perception of mothers who receive public benefits from being worthy of assistance to being societal failures. When public assistance began in the 1930s, during the Great Depression, widows with children were perceived as deserving of societal help and in poverty through no fault of their own.26 However, beginning in the 1960s, the public began viewing welfare recipients as undeserving of public assistance.27

A. State Child Exclusion Provisions

In states without a child exclusion policy, welfare grants for families are determined based on the size of the family, because the size of the family is directly correlated to the amount of money needed to survive.28 Child exclusion provisions deny welfare recipients an increase in cash aid when a child is


25. Smith, supra note 8, at 160.


27. Id. at 17-18 (arguing that the shift in public perception starting in the 1960s is tied to a change in the racial demographics of aid recipients—specifically, to an increasing number of Black women receiving assistance). These value judgments manifested themselves in politics recently, when Louisiana Representative John LaBruzzo proposed offering one thousand dollars to women receiving welfare if they agreed to be sterilized. His plan also included increased tax benefits to higher income couples with college educations who choose to have additional children. LaBruzzo’s plan, which he called a “brainstorming exercise,” purported to improve the fiscal health of the state by increasing the taxpayer base and reducing the state’s welfare case load. He denied that his proposal had disproportionate racial impact, noting that there are a higher number of white people on welfare than black people. He also suggested male sterilization as an alternative to deny any gender disparity. Despite these suggestions, the racial and gender undertones of his proposal are evident. Even though such legislation was never formalized, its proposition by a prominent politician highlights the fact that the reproductive rights of welfare recipients are marginalized. Mark Waller, LaBruzzo: Sterilization plans fight poverty, Sept. 23, 2008, THE TIMES-PICAYUNE, available at http://www.nola.com/news/index.ssf/2008/09/labruzzo_ sterilization_plan_fi.html; see also INCITE! Women of Color Against Violence, An Intersectional, Reproductive Justice Feminist Response to LaBruzzo’s Sterilization Plan (Sept. 27, 2008), available at http://katrinareader.org/sites/katrinareader.org/files/whji.pdf.

28. Levin-Epstein, Lifting the Lid, supra note 18, at 1.
CHILD EXCLUSION PROVISIONS

conceived while the family is receiving cash assistance.  

Under TANF’s predecessor, Aid to Families with Dependent Children (AFDC), states were required to obtain waivers from the federal government prior to enacting a child exclusion provision. During welfare reform, the House of Representatives included a mandatory child exclusion provision in its bill, but the version passed by the Senate did not include the mandatory clause. The final version of the bill signed into law in 1996 by President Clinton did not include a mandatory child exclusion provision, leaving the decision to enact child exclusion provisions up to individual states.

As of 2009, twenty states had some form of child exclusion provision. However, there are many variations among these state provisions. Some states provide no additional cash benefits but allow the family to access non-cash resources, whereas other states do not provide the family with any additional resources for the excluded child. For example, while Arizona and Massachusetts do not provide cash benefits for excluded children, their programs do provide for additional earned income disregards, allowing the family to receive higher cash benefits if a parent is working, compared with the benefits they would receive with a smaller family size. Arizona, California, and Indiana allow child support money to go to the excluded child, as opposed to sending the money directly to the state. In South Carolina, the state does not provide cash

29. Id.
31. Id. at 373.
32. Id.
34. Family Cap Policies, supra note 33.
35. Id.
36. When a family receives welfare benefits, a certain amount of earned income is excluded from consideration in calculating welfare benefits to incentivize working outside of the home. This is referred to as an earned income disregard. When the disregard goes up, the family can earn more without having their benefits decrease. See CTR. ON BUDGET & POLICY PRIORITIES & CTR. FOR LAW & SOC. POLICY, IMPLEMENTING THE TANF CHANGES IN THE DEFICIT REDUCTION ACT 69 (2d ed. 2007), available at www.clasp.org/WinWin.
37. Levin-Epstein Lifting the Lid, supra note 18, at 4. Under TANF, welfare recipients are required to cooperate with the state’s efforts to obtain child support from a parent who does not live in the home, and any collected payments go directly to the state. Daniel L. Hatcher, Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State, 42 WAKE FOREST L. REV. 1029, 1030 (2007). This requirement can be
for the excluded child, but the family is eligible for third-party voucher payments that are redeemable in stores to purchase necessary items for the child. In New Jersey, the first state to enact a child exclusion provision, a family unit where at least one adult does any amount of work outside of the home is not subject to the provision. In contrast to the majority of states, Idaho and Wisconsin do not consider family size in determining cash grant amounts. In Idaho, cash grants are the same for families of all sizes, and in Wisconsin, flat grant amounts are based on the type of work the family does.

Over the past several years, four states have repealed child exclusion provisions. Maryland was the first state to repeal its child exclusion provision after every county opted out of implementing it by 2002 and the provision expired in 2004. Illinois eliminated its child exclusion provision in 2003. Nebraska followed in 2007, and most recently, Oklahoma eliminated its provision in November 2009 after complaints that its third-party voucher system was too cumbersome.

B. State Enactment of the Family Violence Option

In 1997, Congress established the Family Violence Option (FVO), which allowed participating states to waive TANF program requirements that “unfairly

waived if the mother is a domestic violence survivor, although such waivers are rarely utilized. Id. at 1047 nn. 84 & 89.

38. SHELLEY STARK & JODIE LEVIN-EPSTEIN, supra note 8, at 21 n. 16.

39. Id at 4.

40. Family Cap Policies, supra note 33.

41. Id. Although the amount of a flat grant does not increase with the birth of a child, the purpose behind the enactment of a flat grant may be related to administrative convenience. SHELLEY STARK & JODIE LEVIN-EPSTEIN, supra note 8, at 5. In Wisconsin, the amount of a family’s flat grant will be based upon work categories assigned to the grant recipient, for example “community service jobs” and “transitional placements.” Id.

42. Levin-Epstein, Lifting the Lid, supra note 18, at 4; see also Welfare Reform: Family Cap Policies, NAT’L CONFERENCE OF STATE LEGISLATURES (July 2009), http://www.ncsl.org/default.aspx?tabid=16306 (quoting Richard Larson, an official from the Maryland Department of Human Resources’ Family Investment Administration, explaining Maryland’s decision to opt out: “[the family cap] was a policy of uncertain effectiveness but heavy costs to administer”). Other states repealed their provisions for a variety of reasons. See Jennifer Friedlin, Minnesota’s Family Cap on Welfare Draws Fire, WOMEN’S ENEWS (Oct. 19, 2004), http://www.womensenews.org/story/economyeconomic-policy/041019/minnesotas-family-cap-welfare-draws-fire (last visited Nov. 17, 2010); Martha F. Davis, International Human Rights from the Ground Up, The Potential for Subnational, Human Rights-Based Reproductive Health Advocacy in the United States, in WHERE HUMAN RIGHTS BEGIN: HEALTH, SEXUALITY, AND WOMEN IN THE NEW MILLENNIUM 260 (Wendy Chavkin & Ellen Chesler eds., 2005) (noting that advocates involved in the repeal of the Illinois child exclusion provision explained that “convincing legislators that the repeal was the ‘right thing to do’ was critical to their success,” and that “[a] broad coalition, including the Catholic Conference, contributed to the repeal effort”).

43. Levin-Epstein, supra note 18, at 4.

44. Dinkel, supra note 30, at 374.


46. Table of States With Exclusion Policies, East Bay Cmty. Law Ctr. (on file with author).
penalize[d] or endanger[ed]” domestic violence survivors. The FVO, a voluntary provision, “obligates [participating] states to screen for domestic violence victims [and] requires them to offer services and referrals to local battered women’s organizations.”48 States that choose to adopt the FVO may be exempt from penalties for failure to meet welfare-to-work requirements and time limits on assistance when the failure to meet these standards is due to the state granting domestic violence waivers.49 States that choose not to adopt the FVO can either develop their own policies or “they can offer no [domestic violence] exemption at all.”50

At the federal level, however, the FVO falls short of meeting the needs of domestic violence survivors because states are not mandated to adopt the FVO. A stated goal of TANF is to increase state flexibility in operating public assistance programs,51 so states have broad discretion in FVO implementation.52 Since implementation of the FVO is optional and details of waivers are left up to the states, domestic violence screening protocols vary widely from state to state. For example, although the Department of Health and Human Services has conducted research on domestic violence screening, it has not given states “policy guidance or memoranda regarding best practices,” nor has it set forth “minimal acceptable standards.”53 Additionally, a state may choose the type of screening protocols it enacts, the breadth of supportive services it provides, and the program requirements that can be waived.54 However, domestic violence survivors and their children will be unfairly penalized in states that do not provide comprehensive screening procedures, supportive services such as counseling, and waivers for any program requirement including welfare-to-work and the child exclusion provision.

As of 2009, all fifty states had some form of domestic violence policy—

48. Id. at 144.
49. STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, at 6-7. Although TANF specifies a 60-month time limit on cash assistance, states are free to enact shorter time limits. If a state fails to comply with the sixty-month time limit, its federal grant may be reduced by five percent as a penalty. States have the option of using federal funds to extend assistance time for up to twenty percent of families receiving assistance “for reasons of hardship, as defined by the state.” However, a state that has enacted the Family Violence Option and grants waivers under the FVO will be eligible for a “reasonable cause penalty exception” if it issues waivers beyond twenty percent. U.S. GOV’T. ACCOUNTABILITY OFFICE, PUB. NO. GAO-02-501T, WELFARE REFORM: STATES ARE USING TANF FLEXIBILITY TO ADAPT WORK REQUIREMENTS AND TIME LIMITS TO MEET STATE AND LOCAL NEEDS 3-4 (2002), available at http://www.gao.gov/new.items/d02501t.pdf.
52. STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, at 7.
53. Id. at 19.
thirty-nine states signed a certification that they had adopted programs consistent with the guidelines set forth in the FVO, and eleven states chose not to sign the FVO certification but claimed to be addressing domestic violence within each of their TANF programs. 55 While it is encouraging that all states address the issue of domestic violence in their welfare programs in some form, a 2005 state-by-state study by the U.S. Government Accountability Office (GAO) shows that implementation of the FVO has been inconsistent.56

Specifically, the GAO found significant inadequacies in domestic violence screening procedures. Twenty-six states reported that they provide a mandatory domestic violence screening tool in welfare offices, while four states reported that they provide such a tool but its use is optional. 57 Furthermore, there are significant variations in the quality and depth of these materials. For example, while one state uses a nine-question screening questionnaire for workers to ask about various aspects of domestic violence, another state employs a self-administered general health survey with only one question “about sexual and physical violence.” 58 An even greater problem may be the lack of clear policies regarding the location in which the screening takes place within each office. For example, the GAO study found that many screenings took place in public areas, such as near the lobby. 59 It is likely that this lack of privacy deterred women from disclosing abuse to their worker.

Among the states that do not provide welfare offices with screening tools, eight states provide guidance through memoranda and similar writings, while five states do not require clients to be screened for domestic violence at all.60 Instead, these five states require welfare offices to provide clients with notification regarding domestic violence waivers. 61 In states without in-depth screening protocols, however, domestic violence survivors are unlikely to receive FVO waivers because survivors hesitate to self-identify and approach


56. See STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, (showing that states have applied inconsistent protocols and practices to their implementation of the FVO); see also Sargent Shriver Nat’l Ctr. on Poverty Law, Uneven Implementation of the Family Violence Option, 9 WOMAN VIEW 1, 1-2 (2005) available at http://www.ncdsv.org/images/UnevenImplementationFVOption.pdf (summarizing the findings of the GAO report) [hereinafter Uneven Implementation of the FVO].

57. STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, at 12; see also Uneven Implementation of the FVO, supra note 56, at 1.


59. STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, at 14; Uneven Implementation of the FVO, supra note 56, at 2.

60. STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, at 12; Uneven Implementation of the FVO, supra note 56, at 1.

61. STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, at 12; Uneven Implementation of the FVO, supra note 56, at 1.
welfare workers regarding abuse. 62

Another key inconsistency in the implementation of the FVO is the lack of uniform domestic violence training standards for welfare workers. 63 Fourteen states lack a training protocol to ensure that workers are qualified to screen and properly refer clients with concerns related to domestic violence. 64 In half of all states, such training is mandated only once in a welfare worker’s career, 65 even though it is critical for workers to receive “on-going” training to help them develop “rapport-building skills such as active, empathetic listening and nonjudgmental responses.” 66

Although the majority of states have adopted the FVO, not all states have enacted this provision, nor are they required to do so. 67 Even states that have enacted the FVO are not mandated to provide waivers for the child exclusion provision or any other program requirement. 68 Moreover, inconsistencies in policy implementation indicate that some states are failing to ensure basic domestic violence screening, training, and confidentiality protocols within welfare offices. The lack of clear guidance from the federal government may be contributing to these inconsistencies, and the Department of Health and Human Services should make stronger recommendations to the states with examples of how to implement policies and standards that help domestic violence survivors achieve safety and heal from abuse. Specifically, the federal government should mandate that every state implement the FVO, establish minimum standards for domestic violence training and screening in welfare offices, specify program requirements that can be waived, and identify protocols for waiver implementation. 69

II. A BRIEF ECONOMIC ANALYSIS OF CHILD EXCLUSION PROVISIONS

The economic theory of rational choice underlies the decision to implement child exclusion provisions. 70 This theory says that when women have access to “fewer resources at the margin,” they will have fewer children. 71 This economic model assumes that women forgo having additional children because, without

62. As discussed in Section VI, extensive research has shown that domestic violence survivors hesitate to disclose abuse to welfare workers for many reasons, including fear of retribution, uncertainty about the potential consequences, and shame.
63. STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, at 16; Uneven Implementation of the FVO, supra note 56, at 2.
64. STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, at 16.
65. Id.
66. Lindhorst et al., supra note 23, at 24
67. TANF ANN. REP., supra note 55, at XII-44-45.
68. FVO STATE BY STATE SUMMARY, supra note 54, at 2.
69. Interviews with Luan Huynh & W. Edward Barnes, Attorneys, East Bay Cmty. Law Ctr., in Berkeley, Cal. (Sept. 28, 2011).
71. Id.
more resources, the cost to raise another child would be too great.\textsuperscript{72} Empirical analysis, however, does not confirm such a theory.\textsuperscript{73}

After explaining the difficulty of predicting fertility behavior based on changes in welfare policies, Professor Melissa S. Kearney concludes that the child exclusion provision does not lead to any significant change in birth rates for women between the ages of fifteen and thirty-four.\textsuperscript{74} Multiple reasons affect a woman’s decision to have children, including “social, religious, economic, . . . demographic and personal factors,” and the question of whether child exclusion policies lead to fewer births requires isolation of the “economic” factor.\textsuperscript{75} Isolating one factor is difficult, and previous studies examining the issue have been methodologically flawed.\textsuperscript{76} Kearney’s research attempts to create a more accurate study by “control[ing] for state fixed effects” by using “state-level panel data.”\textsuperscript{77} Kearney also analyzes whether her findings “extend across age and race groups” by using “vital statistics data of births.”\textsuperscript{78} Ultimately, Kearney’s analysis showed that births did not significantly decline as a result of child exclusion provisions, a result which led her to characterize the adoption of child exclusion provisions as “ineffective at best and misguided at worst.”\textsuperscript{79}

III. CHILD EXCLUSION PROVISIONS CREATE UNREASONABLY HIGH BARRIERS FOR DOMESTIC VIOLENCE SURVIVORS TO ACHIEVE SAFETY

Although all families who are impacted by child exclusion provisions experience difficulties when raising a child without additional economic support, survivors of domestic violence face additional challenges. For example, women in abusive situations may have difficulty finding employment or their abusers may steal money. Such financial hardship may prevent a woman from leaving an abusive situation or cause her to return upon leaving.\textsuperscript{80} Additionally, abusers may control women’s reproductive choices, making it dangerous for women to

\textsuperscript{72} Id.
\textsuperscript{73} Id. at 318.
\textsuperscript{74} Id.
\textsuperscript{75} Id. at 296.
\textsuperscript{76} Id. at 299-301. For example, studies that examine reproductive behavior across states are likely to be “biased by unobserved differences across states,” where alternative explanations besides welfare policies explain inter-state variance in fertility behavior and grant levels. In 1997 and 1999, respectively, Arkansas and New Jersey released a study of their state family cap provisions analyzing the behavior of two groups of women—one subject to family cap and one control. Id. at 300. However, each of these studies was “contaminated,” since members of each group did not fully understand to which group they belonged to, and in New Jersey, the group assignments were not made randomly, but at the discretion of caseworkers. Id. at 300-01.
\textsuperscript{77} Id. at 300.
\textsuperscript{78} Id. “Data on births are from 1989 to 1998 Vital S Statistics Natality Data, Public-Use Data Files compiled by the U.S. National Center for Health Statistics (NCHS). The public-use data files include all births occurring within the United States.” Id. at 302.
\textsuperscript{79} Id. at 318.
use birth control and often leaving women with little choice but to have additional children.81

Even though domestic violence affects women from all economic backgrounds, “it has a devastating impact on poor women.”82 Therefore, a consideration of any welfare provision’s impact on domestic violence survivors is critical to gaining an understanding of the provision’s overall impact. This section will discuss how child exclusion provisions may render a woman’s efforts to leave her abuser practically impossible by creating unreasonably high economic and reproductive barriers.

A. Economic Barriers

Batterers frequently use economic control as a form of abuse, preventing a woman from leaving the relationship by undermining her economic autonomy.83 This may include behavior that prevents women from finding a job or sabotages their attempts to maintain employment once they attain work.84 For example, abusers may ruin their work clothing or prevent them from leaving the house, causing survivors to miss work or frequently be late.85 Furthermore, a batterer may force his partner to turn over her earnings and prevent her from accessing any economic assets.86 Therefore, a woman experiencing abuse may rely on welfare to provide her and her children with enough money to leave the abusive home.87 As explained by the National Coalition Against Domestic Violence, “[e]conomic self-sufficiency is frequently the difference between violence and safety for many victims.”88

Families receiving welfare endure extreme economic strain. Raising a family on such meager financial resources is challenging, even with food stamps and housing assistance. In 2001, the median nationwide cash grant for a family

81. Interviews with Luan Huynh & W. Edward Barnes, Attorneys, East Bay Cmty. Law Center, in Berkeley, Cal. (Sept. 28, 2011) (noting that abusers have placed pinholes in condoms to thwart a woman’s efforts to use birth control).
83. Moore, supra note 82, at 476.
84. Id.
86. Moore, supra note 82, at 476.
88. NCADV’s Financial Education Project, supra note 80.
of three without any additional income was only $379 per month and the median amount of additional cash a family on welfare received for a new child was a mere $71 per month.\textsuperscript{89} If the child was born after the family started receiving welfare, then the family would not receive any additional cash aid.\textsuperscript{90} In 2006, the average grant for a family of three only increased to $445 despite inflation.\textsuperscript{91} To make the situation worse, an abuser may prohibit a welfare recipient from accessing her cash grant in whole or in part.\textsuperscript{92} If a woman experiencing abuse has no other means of caring for the basic needs of her children and if her batterer is able to provide financial resources, she is likely to feel economically helpless and forced to remain with her abuser.\textsuperscript{93} However, if her abuser is unable to provide resources or withholds money, then a woman and her children are at risk for homelessness. Statistics show that as many as fifty percent of homeless women cite domestic violence as the cause of their homelessness.\textsuperscript{94} If a domestic violence survivor receives a welfare grant for herself and all of her children, she may be able to leave her batterer and achieve a minimum level of economic independence after leaving. However, the child exclusion provision may prevent her from achieving self-sufficiency by providing a grant amount that is simply too low for a woman with children to find safe housing and survive independent of her abuser.

Domestic abuse also places women at greater risk for homelessness because abusers may cause property damage or violent outbursts at the home, leading to trouble with neighbors and landlords and possible eviction.\textsuperscript{95} As a result of abuse, women are often unable to hold steady jobs or live in one place for an extended period of time. Sporadic income, poor credit, and lack of

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\textsuperscript{89} Smith, supra note 8, at 157-58.  
\textsuperscript{90} Id. at 151.  
\textsuperscript{92} If the batterer is part of the woman’s welfare “assistance unit,” a term used to describe the group of individuals living together and receiving cash assistance, the situation can become more complex. A batterer may live with a woman and her children but not want the Social Services Agency to know of this living arrangement, putting the woman at risk for violence if she discloses the living arrangement to her caseworker. If she does not disclose, the woman may be liable for overpayments and welfare fraud. Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011).  
\textsuperscript{93} See \textsc{Nat’l Women’s Law Ctr.}, \textit{If You Really Care About Intimate Partner Violence, You Should Care About Reproductive Justice} 2 [hereinafter NWLC], available at http://www.nwlc.org/sites/default/files/pdfs/FactSheetViolenceAgainstWomenAndReproJustice.pdf.  
landlord references all inhibit a woman’s ability to find future housing. Thus, the child exclusion provision may cripple a domestic violence survivor’s efforts to leave an abusive relationship by forcing a woman affected by the policy to spread already scarce resources even thinner, thereby placing her and her children at risk for homelessness.

B. Reproductive Barriers

In addition to economic abuse, batters use reproductive and sexual control to harm their partners. A batterer may assert control over a woman by “demanding unprotected sex, lying about ‘pulling out,’ hiding or destroying birth control, and preventing [or insisting on] abortion.” Furthermore, a woman’s attempts at discussing contraception may lead to increased violence, and consequently, domestic violence may result in increased rates of unwanted pregnancy. Domestic violence survivors may lack reproductive autonomy.

Child exclusion provisions not only assume that women receiving welfare have reproductive autonomy, but also that women receiving welfare choose to have more children in order to increase their cash grant. Because child exclusion provisions were enacted without considering the reproductive coercion that domestic violence survivors often face, these provisions further destroy the reproductive autonomy of battered women receiving welfare by sending them a message that their children are less worthy of support and will not receive assistance after birth. This message may influence some women to seek abortions, even when it may be unsafe or illegal for them to do so and may place them at risk for increased domestic violence.

IV. THE FAMILY VIOLENCE OPTION DOES NOT PROVIDE COMPREHENSIVE ASSISTANCE

Fueled by negative stereotypes of welfare recipients, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 was established under the Clinton administration. This Act replaced the Aid to

96. See id. at 9-10.
97. NWLC, supra note 94, at 2.
98. Id.
99. Id.
100. Id.
101. Ann M. Moore, Lori Frohwirth & Elizabeth Miller, Male reproductive control of women who have experienced intimate partner violence in the United States, 70 SOC. SCI. & MED., 1737, 1737 (2010).
103. Smith, supra note 8, at 159.
105. Id. at 195-96.
106. See Smith, supra note 8, at 195; see also NWLC, supra note 93, at 2.
107. Moore, supra note 82, at 478.
Families with Dependent Children (AFDC) program with TANF. TANF changed former welfare provisions by removing entitlement to benefits, establishing a sixty-month total benefit limit, and mandating work participation. Under TANF, states received block grants from the federal government to establish social services programs that furthered the following four goals:

1. Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
2. End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
3. Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
4. Encourage the formation and maintenance of two-parent families.

Congress’ fourth goal conveys a value judgment about family structure that conflicts with the decision that many domestic violence survivors must make—whether to leave an abusive relationship for their own safety and the safety of their children. Congressional prioritization of two-parent families and traditional marriage cannot be reconciled with the need for a domestic violence survivor and her children to be safe, which often means away from the batterer. It is well established that domestic violence survivors face immense difficulty in leaving abusive relationships, and it may take several attempts to leave successfully. Cultural, financial, and social pressures also increase the difficulties women face in leaving their abusers. Additional financial pressure and reproductive control from the welfare system in the form of a child exclusion provision may decrease any chance that a domestic violence survivor will be able to escape abuse.

Under TANF, public assistance was intended to be a stepping-stone to financial independence. One of the program’s key features is a work participation requirement, which states have discretion to design and
However, the sanctions that were enacted to enforce work participation requirements, ranging from a reduction to a complete termination of cash aid, are likely to have a disproportionately negative impact on domestic violence survivors, effectively making it more difficult for them to attain the very economic stability that welfare intends to provide. Domestic violence is one reason that welfare recipients have trouble meeting work requirements, since batterers often interfere with a woman’s ability to work, and the effects of abuse may also prevent a woman from maintaining employment. States have broad discretion in imposing monetary sanctions on welfare recipients who do not comply with welfare-to-work requirements, and these “punishments” often involve reducing a family’s monthly grant. As a result, domestic violence survivors are among the most at risk for having their welfare grant reduced, while they are also the most in need of the economic support to establish financial independence from their batterers.

In an attempt to address the barriers that domestic violence survivors face in achieving safety while meeting welfare program requirements, Congress included the Family Violence Option in the language of the PRWORA. The FVO provided that domestic violence survivors may be exempt from certain provisions “where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence.” Individual states have the choice to implement the FVO and if they do, they must create their own standards for defining the scope of exemptions. The provisions at 45 C.F.R. Sections 260.50 to 260.59 make states adopting the FVO responsible for implementing protocols to

a. Screen and identify individuals receiving TANF and MOE assistance with a history of domestic violence, while maintaining the confidentiality of such individuals;

b. Refer such individuals to counseling and supportive services; and

c. Provide waivers, pursuant to a determination of good cause, of normal program requirements to such individuals for so long as necessary in cases where compliance would make it more difficult for such individuals to escape domestic violence or unfairly penalize those who are or have been victimized by such violence or who are at risk of further domestic violence.

117. Id.
118. See Kintzel, supra note 22, at 596-97.
119. Id.; Moore, supra note 82, at 476.
120. Kintzel, supra note 22, at 596-97.
121. See id.
122. Moore, supra note 82, at 479.
125. MOE is an acronym for Maintenance of Effort, and is a program that is similar to TANF.
victimized by such violence or who are at risk of further domestic violence.126

Congress recognized the importance of domestic violence as it relates to welfare policy by including the FVO in its TANF legislation, but the impact of the FVO would be stronger if Congress mandated states to implement it. The FVO is a valuable tool to ensure that domestic violence survivors have the opportunity to leave their abusers and are not penalized for the abuse they have experienced. However, adoption of the FVO does not always lead to positive changes in domestic violence policy or in the lives of welfare recipients who are domestic violence survivors.127 As author Katie Scrivner explains, “it is the nature of adopted policies and the strategies . . . that determin[e] if victims’ lives will improve.”128

Although one of the goals of the FVO was to increase policy flexibility within each state, the absence of clear federal guidance in the form of memoranda or minimum standards leads to ambiguity at the state level.129 Specifically, states are not mandated to offer waivers for all program requirements and they have the discretion to develop their own standards for screening, referral, and exemption guidelines.130 As a result, states are given the option to waive child exclusion provisions for domestic violence survivors, but are not mandated to do so.131 As of July 2004, only 11 out of 23 states with a child exclusion provision provided that child exclusion provisions may be waived as a result of domestic violence.132 Although statistics indicate that a majority of welfare recipients are experiencing current abuse or have been in abusive situations in the past, only a small minority of clients receive supportive services or waivers—evidence that the FVO and comparable state policies are failing to meet the needs of most domestic violence survivors.133

Failure to offer a child exclusion provision waiver stands in direct contradiction to the language of the FVO, which states that program requirements should be waived “where compliance with such requirements would make it more difficult for individuals receiving assistance under this part

128. Id.
129. STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, at 19; see also Moore, supra note 82, at 479.
130. FVO STATE BY STATE SUMMARY, supra note 54, at 2.
131. STATE APPROACHES TO DOMESTIC VIOLENCE SCREENING, supra note 9, at 19; FVO STATE BY STATE SUMMARY, supra note 54, at 2.
132. These states are: California, Colorado, Delaware, Georgia, Massachusetts, Nebraska, New Jersey, North Carolina, Oregon, South Carolina, and Tennessee. FVO STATE BY STATE SUMMARY, supra note 54, at 4-29.
133. Lindhorst et al., supra note 23, at 6 (citing studies from Texas, Chicago, Maryland and Georgia showing that only 0.5 to 3% of welfare recipients receive domestic violence waivers through the FVO, although rates of domestic violence ranged from 25% to 67%).
to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.”134 As discussed above, compliance with the child exclusion provision unfairly penalizes a domestic violence survivor by creating an economic hardship that may destroy a domestic violence survivor’s efforts to gain financial independence, thereby exposing her and her children to abuse, trauma, and possibly death.

V. THE FAMILY VIOLENCE OPTION IN CALIFORNIA: A CASE STUDY

California’s legislature opted to enact the Family Violence Option in 1998, incorporating the FVO into California’s welfare system for families, the California Work Opportunity and Responsibility to Kids (CalWORKs) program.135 California’s FVO is codified in the state’s Welfare and Institutions Code at section 11495, and guidelines for domestic abuse protocols are also discussed in the California Department of Social Services Manual of Policies and Procedures (MPP).136 The excerpt below from the Welfare and Institutions Code discusses the California legislature’s intent to avoid unfairly penalizing individuals who have experienced abuse:

By adopting this provision, the Legislature recognizes that some individuals who may need public assistance have been or are victims of abuse, and intends to ensure that applicants and recipients who are past or present victims of abuse are not placed at further risk or unfairly penalized by CalWORKs requirements and procedures. The Legislature intends that, in implementing this article, program requirements not be created or applied in such a way as to encourage a victim to remain with the abuser. It is also the intent of the Legislature that CalWORKs recipients participate in welfare-to-work activities, to the full extent of their abilities, including participation in counseling and treatment programs, as appropriate, to enable the recipient to obtain unsubsidized employment and move towards self-sufficiency.137

One of the most notable components of this provision is the recognition by California’s legislature that participation in the work requirements of CalWORKs may place domestic violence survivors at greater risk for abuse and further penalize them.138 By recognizing counseling and treatment programs as qualifying welfare-to-work activities, the state takes an important step to help

135. DIANA SPATZ ET AL., LIFETIME, FAMILY VIOLENCE IS NOT AN OPTION: THE FAILURE OF CALWORKS TO PROTECT BATTERED WOMEN WITH CHILDREN 9 (2005), http://www.geds-to-phds.org/Approved%20to%20post%20on%20website/FVNO%20Final%2010.05.pdf [hereinafter FAMILY VIOLENCE IS NOT AN OPTION].
137. Cal. WELF. & INST. CODE § 11495 (West 2009).
138. See id.
domestic violence survivors the aid they need to help to heal abuse and its effects. Moreover, with the exception of four program requirements (income, assets, deprivation, and homeless assistance), MPP Section 42-715.511 allows a good cause waiver for any program requirement for a past or present survivor of domestic abuse, which includes the Maximum Family Grant (MFG) rule, California’s child exclusion provision. California has also issued language stating that domestic violence survivors may be entitled to a waiver of the MFG rule in its All County Information Notice I-02-06, which provides that

Counties may waive the MFG rule, on a case-by-case basis, when it is determined that compliance would put at further risk or unfairly penalize those who are or have been victimized by [domestic] abuse. The MFG rule could be waived permanently for a child even if the domestic abuse situation is resolved or no longer exists. However, the county must make a separate determination of eligibility for an exemption to the MFG rule or a domestic abuse waiver, for any subsequent child.

Until recently, this language assisted domestic violence survivors who were negatively impacted by the MFG rule by waiving the rule’s application. However, the California Department of Social Services announced a major policy change on March 25, 2011 by issuing a memorandum upholding Los Angeles County’s interpretation that domestic violence waivers of the MFG rule must be “specifically tied to either the individual’s inability to participate in Welfare-to-Work (WTW) or the inability to obtain employment due to the domestic violence situation.” Attorneys and advocates are working to discourage the state from adopting such an interpretation, which creates an additional procedural barrier for domestic violence survivors to receive aid.

139. See MPP § 42-711.712(c); FVO STATE BY STATE SUMMARY, supra note 54, at 5.
140. MPP § 42-715.511. Income, assets, and deprivation are used to calculate a person’s eligibility for CalWORKs aid, and consideration of these factors cannot be waived for a domestic abuse survivor. However, as Bay Area Legal Aid advocates have explained, there are special provisions for abuse survivors to receive additional homeless assistance. These exceptions are enumerated in the Manual of Policies and Procedures, but are not listed in the state statute. See ARIELLA HYMAN & MINOUCHE KANDEL, BAY AREA LEGAL AID, A GUIDE FOR ADVOCATES ON CALWORKS AND DOMESTIC VIOLENCE 3 (2009), available at http://www.lsnc.net/welfare_tools/guide_for_advocates_on_dv_and_calworks_01-05-09.pdf [hereinafter A GUIDE FOR ADVOCATES].
141. See CAL. WELF. & INST. CODE § 11450.04 (West 2009); MPP § 42-715.51.
143. Interviews with Luan Huynh & W. Edward Barnes, Attorneys, East Bay Cmty. Law Center, in Berkeley, Cal. (Sept. 28, 2011).
144. CalWORKs County Request for Regulation Interpretation, Cal. Dept. of Soc. Servs. Employment Bureau (Mar. 25, 2011) (explaining that the comprehensive language in MPP Section 42-715.511 is limited by 42-713.221, which restricts waivers only to situations where domestic violence hinders a survivor’s compliance with Welfare-to-Work activities or the ability to find work.)
145. Interview with Minouche Kandel, Staff Attorney, Bay Area Legal Aid (Sept. 7, 2011); Burnham & Desai, supra note21.
Another issue in California is caseworkers’ inconsistent policy implementation across the state. California grants broad discretion to individual counties to develop policies and procedures for program requirement waivers, so long as those waivers are consistent with state and federal regulations and are re-evaluated periodically. Although discretion may help counties establish policies that are unique and responsive to local needs, it also encourages inconsistency and lack of accountability. Specifically, studies show that welfare recipients across California are not consistently receiving domestic violence services and waivers. LIFETIME, a non-profit organization dedicated to improving educational access for women receiving CalWORKs, conducted a survey of welfare recipients in California starting in 2003. Of 1083 welfare recipients surveyed, nearly 30% of women who self-identified as domestic violence survivors stated they had never received information about domestic violence services or had been denied access to those services.

Many caseworkers are not screening and identifying domestic violence at the same prevalence that research has shown to exist among welfare recipients. Scholars estimate that given current data about domestic violence rates, greater than twenty percent of the population receiving public assistance should be eligible for some form of a waiver under the Family Violence Option; however, only a small percentage of welfare recipients presently receive waivers, indicating that workers must not be adequately screening welfare recipients. Taryn Lindhorst, Marcia Meyers, and Erin Casey state that “the foundation for the delivery of services through the FVO is the identification of domestic violence among welfare recipients.” They further explain that “screening is the practice of asking women about their safety, risk for, and history of domestic violence to identify women who have potentially been victims,” and that this process is especially critical because “research in health, mental health, and other settings indicates that survivors usually do not voluntarily disclose information about abuse to service providers.”

California’s Welfare and Institutions Code specifies that counties are supposed to develop protocols to identify welfare recipients who have experienced or are currently experiencing abuse. California policies mandate that counties provide training in domestic abuse to employees working with CalWORKs recipients, and the guidelines for training cover a comprehensive range of topics, including the following:

146. MPP § 42-715.52.
147. See FAMILY VIOLENCE IS NOT AN OPTION, supra note 135, at 19.
148. Id. at 11.
149. Id. at 11-12.
150. Id.
151. Lindhorst et al., supra note 23, at 6.
152. Id. at 6
153. Id. at 6-7
155. MPP § 42-715.61.

However, the lack of further guidance has made it difficult to determine whether or not this process is actually taking place at individual welfare offices. If caseworkers do not identify domestic violence, CalWORKs recipients who do not self-identify may never receive the supportive services and waivers they need. Common problems in the screening process may include the caseworker’s lack of awareness of waiver policies or referral procedures. Studies have also shown that women are more likely to disclose abuse to a caseworker who they perceive to be trustworthy, understanding, and compassionate. However, in a busy welfare office, it is very difficult to ensure that every caseworker makes an effort to exhibit these qualities. It is also critical that women receive information about why it may be beneficial or helpful to tell their worker about abuse, since women need to have all relevant information before making a personal decision about whether or not to disclose.

The problem of waiver access may also be increased by the fact that a large number of domestic violence survivors choose not to disclose for other reasons, such as fear of their children being removed from the home. For example, one Wisconsin study published in 1999 indicated that seventy percent of domestic violence survivors did not disclose abuse to their caseworkers. When asked why, women responded with the following reasons, in decreasing order of frequency: that it was not their worker’s business; that they were ashamed; that

156. MPP § 42-715.62(a)—(j).
159. See Lindhorst et al., supra note 23, at 8.
160. See id. at 10 (“For women engaged in the “dance of disclosure” related to domestic violence, it may take several screening attempts on the part of the professional before a woman is able to discuss her situation openly. When organizational practices limit discussion of domestic violence to intake interviews . . . many women who are in need of serves are likely to be missed”) (internal references omitted).
161. Id. at 9.
162. See A GUIDE FOR ADVOCATES, supra note 140, at III(B).
they thought the worker was too busy to provide any help; that the worker did not appear sensitive to their problems; and that they feared their benefits would be terminated.\footnote{Id. It is worth noting that none of the women interviewed in the Wisconsin study feared that their children would be taken away if they disclosed abuse.} Fear of disclosure is likely exacerbated by the fact that batterers often make domestic violence survivors feel guilty and responsible for their situation.\footnote{See Power and Control Wheel, supra note 14.} Another study, examining 744 interactions between welfare recipients and caseworkers in Georgia, Michigan, New York, and Texas from November 1999 to August 2000, compared the proportion of women who disclosed abuse to caseworkers against the approximate proportion of these women who were domestic violence survivors to show that welfare office screening procedures failed to identify as many as 86\% of survivors.\footnote{Lindhorst et al., supra note 23, at 13, 15.} Advocates have also commented on the fact that the majority of domestic violence waivers that are issued for the MFG rule are retroactive, meaning that they relate back to prior abuse.\footnote{Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011).} This may be further evidence that welfare recipients are hesitant to reporting ongoing abuse; women may feel safer in disclosing past abuse because they do not face immediate danger, or they do not fear that their children will be taken from them. This may also be another indication that screening procedures to identify ongoing abuse are insufficient. The provision allowing for a retroactive waiver is essential in recognizing the ongoing impact of prior abuse.\footnote{California currently allows for a domestic violence waiver to be retroactive; for example, if the MFG rule is applied at the birth of a child, and the application of the rule is deemed to be improper at a later time, the family is entitled to receive the amount owed by the state. See A GUIDE FOR ADVOCATES, supra note 140 at Appendix C, 3. A recently proposed All-County Letter in California would limit retroactive exemptions to extend back only to when the problem was first disclosed. Interviews with Luan Huynh & W. Edward Barnes, Attorneys, East Bay Cmty. Law Center, in Berkeley, Cal. (Sept. 28, 2011).} However, in the case of MFG misapplication, retroactive payments do not remedy a family’s deprivation of basic necessities in past years.\footnote{Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011).} Therefore, welfare offices should place increased emphasis on strengthening screening protocols and training staff on domestic violence issues to ensure that the MFG rule is not misapplied.

Discretion in policy implementation may also contribute to inconsistencies in waiver application, since a refusal to grant a domestic violence waiver may be disguised by counties as an exercise of discretion.\footnote{Interviews with Luan Huynh & W. Edward Barnes, Attorneys, East Bay Cmty. Law Center, in Berkeley, Cal. (Sept. 28, 2011).} Although every county is required to have written policies regarding each area in which it has discretion, those policies may not be implemented consistently by individual caseworkers.\footnote{See CAL. DEPT. OF SOC. SERVS., ALL COUNTY INFORMATION NOTICE I-02-06, DEC. 2005 available at http://www.dss.cahwnet.gov/lettersnotices/entres/getinfo/acin06/pdf/I-02_06.pdf (contained in attachment question 2); see also Family Violence Policy Brief, supra note 157,}
strongly demonstrate that caseworkers grant and deny domestic violence waivers for various aspects of the welfare program such as “welfare to work” and supportive services arbitrarily, even within the same welfare office.\textsuperscript{172} For example, in a study conducted by LIFETIME, three women receiving public assistance in Orange County had very different experiences in their requests for domestic violence waivers: the first woman was denied a waiver even though she was stabbed by her batterer and was facing imminent harm, the second woman received a waiver and supportive services for four years to help her overcome the long-term effects of abuse, and the third woman was told that the County was no longer giving domestic violence waivers.\textsuperscript{173}

At the East Bay Community Law Center in Alameda County, advocates have had similar experiences with inconsistent applications of the MFG rule. While some women receive MFG waivers retroactive to the birth of their children, other women under similar circumstances receive resistance from their workers for the same waiver, without supporting documentation from the worker giving reasons as to why such determinations were made.\textsuperscript{174} Evaluations by social workers employed by the Department of Social Services seldom provide guidance in this area, and inter-departmental communications are often sparse and unhelpful.\textsuperscript{175}

Therefore, although California policies mandate the training of caseworkers and implementation of standards consistent with state regulations, domestic violence policies are not being applied consistently across counties or within offices and there is not enough accountability to ensure that Social Services staff members are well-trained.\textsuperscript{176} Increased accountability for workers as well as trainings focusing on screening and consistency in waiver implementation may help more domestic violence survivors receive the MFG exemptions they need.

\textbf{VI. RECOMMENDATIONS}

Although the FVO attempts to provide safeguards for domestic violence survivors, only a small minority of welfare recipients are receiving waivers and
supportive services, resulting in the misapplication of welfare program requirements such as the child exclusion provision to domestic violence survivors. Significant gaps exist in domestic violence screening and training procedures, and it is not uncommon for domestic violence survivors to feel uncomfortable disclosing abuse to their caseworker. One way to remedy this widespread problem is to equalize the perceived power imbalance between the client and caseworker. Scholars have noted that in social work practice, “the quality of the relationship between the worker and the client has been axiomatically accepted as the cornerstone of effective practice.”

Because a welfare recipient relies on public assistance in order to meet basic needs, she may feel that her caseworker has power to exert control over her life. This power imbalance is systemic and society sends constant messages to welfare recipients that they are “less worthy” than those who do not receive public assistance.

Welfare advocates and domestic violence advocates play a much-needed balancing role for clients, interacting with the social services agency to assist clients in obtaining the resources they need from the agency. Because advocates have greater access to employees of the social services agency than clients do, negotiations between the advocate and agency are more likely to result in equitable outcomes for the clients. Recognizing this, social services agencies could implement a more direct link between advocates and clients within the agency itself. For example, when a client signs up for public assistance benefits, has a renewal meeting with her caseworker, is unable to meet any program requirement, or has trouble communicating with her caseworker, the worker could provide the client with a referral to an advocate. If the agency encourages workers to make referrals, more clients would be connected with advocates who can assist them in communicating with the agency. Ultimately, facilitating communications between workers, advocates, and clients leads to more disputes resolved outside of the adversarial hearing process, conserving valuable agency resources.

178. Interviews with Luan Huynh & W. Edward Barnes, Attorneys, East Bay Cmty. Law Center, in Berkeley, Cal. (Sept. 28, 2011).
179. Advocates have observed that this imbalance is increased when welfare recipients are immigrants from countries where people who work for the government are perceived to be in a position of power. Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011).
180. Hasenfeld, supra note 177, at 479-80.
181. See id.
182. This idea is based on the success of San Francisco’s welfare model, discussed infra, where multiple advocates are co-located in the welfare office, as well as Hasenfeld’s discussion of the ideal model of social work practice.
183. Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011) (explaining that advocates at the Riley Center in the San Francisco welfare office try to resolve matters at the lowest level possible, and that it costs money for the agency to go through the fair hearing process).
if a welfare recipient is subject to the child exclusion provision, she is not automatically directed to an advocate. A worker and client may disagree about the application of the provision, which could result in a hearing with an administrative law judge to resolve the dispute. There are multiple reasons why the provision may not apply to her, such as domestic violence, failure of contraception, or lack of notice of the provision. Before proceeding to a hearing, however, an advocate in the welfare office could discuss the rule, its exceptions, and its application to the current situation with both parties and determine the most appropriate way to proceed.

The county of San Francisco has made important strides in screening for domestic violence and offering supportive services by placing advocates directly at its CalWORKs office. Advocates working at the social services building from the Riley Center, a San Francisco-based organization focused on helping women in abusive relationships and their children, address domestic violence concerns specifically. Additionally, advocates from Bay Area Legal Aid assist clients with other areas of program compliance, including welfare-to-work requirements. This strong presence of advocates creates a support network for welfare recipients as well as caseworkers, both of which rely on advocates to bridge communication gaps and ensure program compliance.

Other offices should strive to follow San Francisco’s model. Both advocates and attorneys agree that San Francisco provides one of the most client-centered programs in the nation. Minouche Kandel, an attorney at Bay Area Legal Aid in San Francisco with extensive experience representing domestic violence survivors and women subject to California’s MFG rule, praised San Francisco’s commitment to domestic violence survivors and consistent application of MFG waivers. Ms. Kandel routinely conducts domestic violence training for workers at the welfare office, and she credits Bay Area Legal Aid’s persistent challenges of MFG misapplication on behalf of their clients in paving the way to a more fair and consistent application of the rule.

Ruthie Gordon, an advocate with Bay Area Legal Aid at the San Francisco CalWORKs office, notes that because of their unique role, advocates are

185. See A GUIDE FOR ADVOCATES, supra note 140 at Section II (A)(3).
186. Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011) (noting that the majority of MFG-related disputes between workers and clients are resolved by advocates). Often, simply discussing the rule with a worker or client who may be unclear about the rule is the most effective and efficient way to resolve disputes.
187. SHORTCHANGING SURVIVORS, supra note 87, at 8.
188. Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011).
189. Id.
190. Telephone Interview with Minouche Kandel, Staff Attorney, Bay Area Legal Aid (Sept. 7, 2011); see also Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011).
191. Telephone Interview with Minouche Kandel, Staff Attorney, Bay Area Legal Aid (Sept. 13, 2011).
CHILD EXCLUSION PROVISIONS

beneficial to both workers and clients. Specifically, clients feel more comfortable speaking with advocates than with workers about their case, since they feel that the advocate’s role is to support them while the worker’s role is to oppose their request. Advocates also help to educate clients about their rights, empowering the client to successfully advocate for herself. When clients have a more thorough understanding of their legal rights, they learn to manage their case in a proactive and timely manner. Ms. Gordon also commented that the number of women for whom the MFG rule has been misapplied in San Francisco has decreased due to awareness-building by advocates and attorneys. As awareness increases within the agency, clients become aware of the rule and its exceptions as well, resulting in more women approaching advocates regarding waivers. Therefore, despite inconsistencies in policies regarding implementation of the Family Violence Option, it appears that advocates are able to bridge these gaps and identify areas in which the county needs to provide support for a client.

By encouraging clients to view caseworkers not as figures of authority but as liaisons in the process of accessing public benefits and services, welfare departments might help recipients feel less fearful about disclosing abuse and other personal situations to their workers. Moreover, it is important for welfare departments to train caseworkers on how to communicate effectively with clients. The often-expressed sentiment that caseworkers are simply “too busy” to help could be reduced if the agency provides more support for workers, either by improving administrative efficiency or increasing the presence of advocates. However, under current financial conditions, many states are pushing to cut costs in as many areas as possible, and public assistance programs are particularly hard-hit. Given these limitations, the most important step for states to take so as not to regress is to maintain the funding needed to sustain and eventually increase the number of advocates in welfare offices.

Despite budget constraints, states have a compelling reason to continue to support public assistance programs, as these programs support the long-term

192. Telephone Interview with Ruthie Gordon, Advocate, Bay Area Legal Aid (Sept. 13, 2011).
193. Id.
194. Id.
195. Id.
196. Id.
197. Id.
198. Hasenfeld, supra note 177, at 471.
199. See Lyon, supra note 16, at 6.
200. See e.g., Francine Wunder, Majority of Michigan residents support move to graduated income tax, according to Wayne State University survey, WAYNE STATE UNIV. PUBLIC RELATIONS, Oct. 8, 2010, http://www.media.wayne.edu/2010/10/08/majority-of-michigan-residents-support-move-to (explaining that in a survey on how to address state budget problems, “less than half of those surveyed were opposed to budget cuts affecting public assistance” compared with majorities opposing cuts to education, roads and construction, mental health services, Medicaid, economic development and public safety).
201. See SHORTCHANGING SURVIVORS, supra note 87, at 7.
health and safety of the state’s residents. If the state dedicates additional funds to public assistance and domestic violence services, and even a few more women are able to escape or heal from abuse, it could save the lives of women and prevent children of survivors from the effects of witnessing domestic violence, including trauma, assault, post-traumatic stress disorder, and possibly death. It will also reduce strain on shelters and food banks, which are operating at maximum capacity and unable to house all homeless domestic violence survivors or those who would become homeless if they left their abuser.202

Advocates and attorneys have proposed to repeal California’s MFG rule through Assembly Bill 22, which was introduced in 2006.203 However, a recent article points out that it will be difficult to create legislative change with respect to California’s MFG rule due to the state’s bleak economic situation.204 Advocates suggest that policy change, as opposed to litigation, legislation, or administrative action, offers the most promising path to repeal child exclusion policies.205

In addition to examining the child exclusion provision’s impact on domestic violence survivors, it is important to examine the far-reaching effects of this policy on the very people it targets: excluded children. A 2006 study conducted by California’s Women of Color Resource Center found that families with excluded children “experienced higher levels of housing and food insecurity; were more likely to have problems paying for transportation and utilities; have a significantly harder time providing diapers and clothing for their children; and are more likely to have taken a child to the hospital in the preceding six months.”206 Over twenty percent of children in families subject to the provision had been to the hospital in the six months before the survey, compared with fifteen percent of children from families not affected by the provision.207 Moreover, forty-six percent of families with excluded children also stated that they did not have enough money each month to provide nutritious food for the whole family.208 Scientifically, the negative health effects of


204. Burnham & Desai, supra note 21 (noting the low chances of passing the bill in 2009).


207. Id.

208. Id.
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malnutrition in children are shown to be detrimental and long lasting. As a result, a “money saving” policy which exposes children to illness later in life will harm the health and well-being of children in the state.

CONCLUSION

Child exclusion provisions are rooted in false stereotypes about poor women and place domestic violence survivors who receive welfare at increased risk of abuse. One of the greatest hurdles that poor women face in escaping abuse is financial dependence on their batterers, and child exclusion provisions, by further limiting a woman’s resources, increase the likelihood that she and her children will remain in or return to an abusive situation.

With the Family Violence Option, Congress has recognized that domestic violence survivors may be in circumstances that make it difficult, if not impossible, to comply with welfare program requirements. However, the FVO’s impact is limited because states are not mandated to implement it. Although all states have addressed the issue of domestic violence in some form in their welfare programs, the quality of screening procedures varies widely, and not all states provide waivers for the child exclusion provision. Lack of guidance from the federal government is a primary reason for widespread inconsistency among state welfare offices. The federal government should mandate that every state implement the FVO, establish minimum standards for domestic violence training and screening in welfare offices, and specify program requirements that can be waived and identify protocols for waiver implementation.

Furthermore, an examination of policies in California shows that recent changes in policy interpretation, inconsistencies in implementation, and lack of training and accountability for social services staff preclude many survivors from obtaining domestic violence waivers. Therefore, to ensure the safety of welfare recipients and their children, it is critical that states conduct comprehensive ongoing domestic violence training for all staff and provide funding for advocates at welfare offices.