

The Family Violence Option of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996: Interpretation and Implementation

by Wendy Pollack and Martha F. Davis

I. Introduction

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA) creates a dramatically new framework within which states can craft widely disparate welfare programs.¹ One provision, the Family Violence Option, allows states to specify in their state plans the steps that they will take to address domestic violence affecting welfare recipients.² As described in part II below, this provision, if properly implemented, can significantly and constructively contribute to state flexibility in addressing the needs of poor battered women and their children and ultimately inure to the benefit of all low-income persons. Part III below discusses implementation issues raised by the Family Violence Option.

The option gives states the flexibility necessary to address the specific problems facing poor women who survive domestic violence.³ It is not intended to allow or force women to languish on welfare rolls. It is intended to extend to domestic violence survivors the flexibility, protections, and services necessary to begin or continue on the path away from abuse and toward safety, physical, mental, and financial recovery, and self-sustaining employment. Not all survivors of domestic violence will want or need any protections from the requirements of the PRA. But for those who do, the capacity of the system to respond to varying situations is essential. For too many survivors it could mean the difference between recovery and self-sustaining employment, and the cruel dilemma

¹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRA), Pub. L. No. 104-193, 110 Stat. 2105. Title I of the PRA replaces the Aid to Families with Dependent Children (AFDC) program with the Temporary Assistance for Needy Families (TANF) program. Wendy Pollack would like to thank Jody Raphael and all the members of the Taylor Institute Illinois Women, Welfare and Abuse Working Group for the golden opportunity to share her ideas and experiences with such knowledgeable and compassionate women—all experts on domestic violence and/or welfare-to-work issues—and to work with them to develop more fully all of their ideas on preventing, reducing, and recovering from domestic violence and the role of government in this mission. Both authors also thank all the members of the National Working Group on Domestic Violence and Welfare and its Implementation Work Group for all that fine-tuning and particularly Joan Meier for her comments and ideas.

² PRA, tit. I, § 402(a)(7), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2115 (to be codified at 42 U.S.C. § 602(a)(7)).

³ Since women who are currently being victimized by domestic violence and those who were victimized in the past are both survivors of domestic violence, the term “survivor(s)” is used to refer to members of both groups.

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of having to choose between remaining in an abusive relationship and facing complete destitution.

The Family Violence Option is in the PRA because women's rights, welfare, and domestic violence advocates worked together with compassionate and intelligent legislators to ensure its inclusion. Current recipients and their advocates are promoting and states are considering the creation of separate

state-funded programs for other populations of public assistance recipients who cannot comply, even if only temporarily, with PRA requirements including the work requirements and the 60-month lifetime limit on receipt of Temporary Assistance for Needy Families (TANF) benefits. These include families whose head of household is a person with a disability and is not eligible for Supplemental Security Income, families in which the adult must provide care for a disabled child or other family member, families in which multiple barriers preclude the head of household from attaining or maintaining employment, and immigrants. The Family Violence Option gives domestic violence survivors what these groups will receive under state-funded programs—protections from PRA requirements. The important difference is that states will be able to extend these protections to domestic violence survivors and pay for them with federal dollars. In their own interest, all persons in need of public assistance and their advocates should support the adoption and proper implementation of the Family Violence Option.

II. Overview and Interpretation of the Family Violence Option

The Family Violence Option contains three key provisions which invite states to (1) screen applicants for domestic violence while maintaining confidentiality, (2) make referrals to counseling and supportive services, and (3) grant good-cause waivers for certain welfare program requirements. These provisions can apply to any TANF applicant or recipient who has been "battered or subject to extreme cruelty," defined broadly to include acts of physical and sexual violence (including marital rape) and mental abuse as well as threats and attempts of physical and sexual violence, child sexual abuse, mental abuse, and deprivation of medical care.⁴ The screening and referral provisions of the Family Violence Option are designed to

⁴PRA, tit. I, § 408(a)(7)(C)(iii), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2138. Though denominated as "domestic violence," the definition of battering or extreme cruelty does not require, by its terms, an intimate relationship.

promote case-by-case consideration and increased access to services. As discussed further below, careful implementation to protect the safety and confidentiality of TANF recipients, as well as training for the workers who will be conducting the interviews and supplying information, is vital.⁵

The "good-cause waivers" under the Family Violence Option are available—for as long as necessary—when the requirements of the PRA would make it harder for welfare recipients to escape domestic violence or when they would unfairly penalize past, present, or potential victims of physical or sexual violence and mental abuse.⁶ Waivers can apply to the two-year time limit (before work is required), federal five-year time limit (capping lifetime aid), or shorter time limits implemented by states. The waivers also apply to the

residency requirements, child support cooperation requirements, and child exclusion provisions, among others.

Under the plain terms of the Family Violence Option and the other provisions of the PRA, states should be able to avoid financial penalties if they fail to meet mandatory participation rates, such as the work participation rates, as a result of granting these waivers. For example, under the PRA, a state's compliance with work participation rates is measured by (1) the number of TANF-recipient families that include a head of household who is engaged in work for the month, divided by (2) the amount by which (A) the number of families receiving TANF assistance during the month exceeds (B) the number of TANF-recipient families that are subject to a penalty (but have not been subject to such penalty for more than 3 months

⁵The policies and procedures advocated here also apply to the child support enforcement program and the Food Stamp Program in states that opt to require cooperation with paternity establishment and child support enforcement as a condition of eligibility for the receipt of food stamps. PRA, tit. I, § 408(a)(2), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2134 (reduction or elimination of assistance for noncooperation in establishing paternity or obtaining child support), tit. III, §§ 300 *et seq.*, 110 Stat. 2105, 2198 (amends the child-support program), and tit. VIII, § 822, *id.*, 110 Stat. 2105, 2321 (amends the Food Stamp Program). Federal law allows domestic violence victims and others to claim good cause for refusing to cooperate with the AFDC paternity establishment and child support enforcement requirement. 42 U.S.C. § 602(a)(26)(B); 45 C.F.R. § 232.40. Circumstances meriting approval of a good-cause claim include situations in which cooperation is expected to result in physical or emotional harm to the parent or the child for whom support is sought or where the child was born as a result of incest or forcible rape. 45 C.F.R. § 232.42. Lack of knowledge of the right to claim good cause and incorrect implementation of federal regulations in assessing claims are a nationwide problem. Good-cause claims are rarely requested, and even fewer are granted. In fiscal year 1993, of approximately five million AFDC cases nationwide, custodial parents claimed good cause for refusing to cooperate in establishing paternity and/or securing child support in only 6,585 cases, and only 4,230 of those claims were found valid. U.S. DEP'T OF HEALTH & HUMAN SERVICES, CHILD SUPPORT ENFORCEMENT: EIGHTEENTH ANNUAL REPORT TO CONGRESS FOR THE PERIOD ENDING SEPTEMBER 30, 1993 (1995). Under the PRA, the federal regulations governing paternity establishment and child support enforcement at 45 C.F.R. §§ 232 *et seq.* remain in effect until a state enacts its own provisions. States have until the first day of the first quarter after the close of their first legislative session after August 22, 1996, to make state law changes necessary to implement the PRA's child support provisions. Grace periods may be added, if necessary, to amend a state constitution. PRA, tit. III, § 395(a), Pub. L. No. 104-193, § 395(a), 110 Stat. 2105, 2259. States that are operating the AFDC-related provisions of their child support program under the terms and conditions of a U.S. Department of Health and Human Services (HHS) waiver of federal law may find some confusion as to what law is currently in effect. 42 U.S.C. § 1315(a). States that opt to continue to operate under the HHS-approved waiver in their TANF plan may find that they are in disagreement with HHS over whether they may do so under the waiver provision of the PRA. PRA, tit. I, § 415, Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2157.

⁶PRA, tit. I, § 402(a)(7)(A)(iii), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2115. The impact of specific provisions of welfare reform on domestic violence survivors and the need for relief are discussed in Wendy Pollack, *Twice Victimized—Domestic Violence and Welfare "Reform,"* 30 CLEARINGHOUSE REV. 329 (Special Issue 1996).

within the preceding 12-month period). Participation rate requirements for single parent families under TANF are 25 percent of the eligible population in 1997 and will gradually rise to 50 percent in 2002; work requirements for two-parent families will rise from 75 percent to 90 percent during the same period. Because the Family Violence Option explicitly permits states to grant temporary waivers of work participation requirements, individuals who have

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been granted such waivers should not be counted for purposes of making this calculation, that is, they should be excluded from the denominator, to ensure that states are not penalized for fully implementing the option.

In the alternative, the statute contains an explicit textual basis for excusing work participation penalties for reasonable cause.⁷ The language of this provision clearly contemplates that participation rate shortfalls may be excused. While specific textual exceptions to "reasonable cause" are in the statute, they do not include the work participation rates.⁸ Indeed, the PRA contains an explicit grant of authority to states under the Family Violence Option to modify the work requirements and time limits for battered women and their families. Exercising this authority and furthering the clear legislative intent to address obstacles to employment caused by domestic violence meet any commonsense definition of the term "reasonable cause."

The Family Violence Option also

provides an alternative to "hardship exceptions" from time limits for victims of domestic violence and thus frees those limited exemptions for other groups experiencing hardship. The hardship exception, Title I, Section 408(a)(7)(C), of the PRA, permits states to exempt up to 20 percent of their caseload from the operation of the five-year time limit for reason of hardship (which is undefined) or in the case of battering or extreme cruelty (which is defined in this section of the bill).⁹ Because the Family Violence Option and the hardship exception share a definition of battering and extreme cruelty, some have questioned whether waivers of the five-year time limit should count toward the 20-percent cap on exemptions. However, the text of the statute indicates otherwise.

When the Family Violence Option and the hardship exception are compared, the best reading, which gives full effect to both provisions, is that they create alternative mechanisms. For example, the Family Violence Option sets forth no numerical limit of any kind, no reference whatsoever to the 20-percent limit specified in Section 408(a)(7)(C)(ii), and no suggestion that any of the option's provisions may not be used to their full extent.¹⁰ Further, while the hardship exception creates long-term exemptions from the five-year time limit only, the Family Violence Option creates variable good-cause waivers, for a necessary period of time, of any program requirement. The best reading of the two provisions—one using nonlimited "exempt" language and the other using "waive . . . (for so long as necessary)"—is that the two mechanisms are different in scope and application.¹¹

In sum, the PRA gives states several ways to consider domestic violence when implementing their TANF programs. The state could choose to utilize

⁷ PRA, tit. I, § 409(b), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2147.

⁸ *Id.* § 409(b)(2), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2147.

⁹ *Id.* § 408(a)(7)(C), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2137.

¹⁰ *Id.* § 402(a)(7), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2115.

¹¹ Compare § 408(a)(7)(C)(i), Pub. L. No. 104-193, 110 Stat. 2105, 2137, with § 402(a)(7)(A)(iii), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2115.

the hardship exception, or the Family Violence Option, or both, or neither. Accordingly, because the hardship exception and the Family Violence Option operate independently, states should be able to continue to pay benefits out of federal funds for more than 60 months to individuals who have been granted good-cause waivers of the five-year time limit under the Family Violence Option, without a specific numerical limitation on the number of such waivers and without counting those individuals toward the 20-percent cap on hardship exceptions.

A. Legislative History

The legislative history supports these interpretations of the Family Violence Option. The option, an amendment to the Senate version of the PRA,¹² capped a year of legislative attempts in the 104th Congress to ensure that changes in federal welfare law would address the needs of women and families living with or fleeing from violence and living with the consequences of violence. Fueled by emerg-

ing research such as the Taylor Institute's 1995 report, *Domestic Violence: Telling the Untold Welfare to Work Story*,¹³ Sen. Paul D. Wellstone (D-Minn.), joined by Cong. Lucille Roybal-Allard (D-Cal.) and Sen. Patty Murray (D-Wash.), took a leadership role in sponsoring this legislation.

The Family Violence Option was intended to address the special hurdles that battered women face in successfully moving from welfare to work. In "Dear Colleague" letters and statements on the floor of Congress, the legislators supporting the measure emphasized that large numbers—from 50 percent to 80 percent—of women currently receiving Aid to Families with Dependent Children were current or past victims of abuse.¹⁴ The legislators further explained the ways in which it may be difficult and dangerous for battered women and victims of sexual assault to meet stringent welfare requirements.¹⁵ As described in their letters and statements, the physical and mental effects of domestic violence, as well as direct efforts by abusers to interfere with their victims' education

¹² H.R. 3734, 104th Cong., 2d Sess. (1996).

¹³ See, e.g., JODY RAPHAEL, DOMESTIC VIOLENCE: TELLING THE UNTOLD WELFARE-TO-WORK STORY (Taylor Institute 1995) [hereinafter 1995 TAYLOR INSTITUTE STUDY]; PRISONERS OF ABUSE: DOMESTIC VIOLENCE AND WELFARE RECEIPT (Taylor Institute 1996) [hereinafter 1996 TAYLOR INSTITUTE STUDY]; WASHINGTON STATE INST. FOR PUBLIC POLICY, OVER HALF OF THE WOMEN ON PUBLIC ASSISTANCE IN WASHINGTON STATE REPORTED PHYSICAL OR SEXUAL ABUSE AS ADULTS (Oct. 1993) [hereinafter WASHINGTON STATE STUDY]; Martha F. Davis & Susan J. Kraham, *Protecting Women's Welfare in the Face of Violence*, 22 FORDHAM URBAN L.J. 1141 (1995). The 1995 TAYLOR INSTITUTE STUDY (and subsequent 1996 study), the WASHINGTON STATE STUDY, and the research cited in *Protecting Women's Welfare* were all cited in the floor statements, Dear Colleague letters, and other legislative materials supporting legislative options, and in the findings of Sen. Paul D. Wellstone and Cong. Lucille Roybal-Allard's Sense of Congress Joint Resolution. Materials in the popular press brought these issues before the public. See, e.g., Barbara Ehrenreich, *Battered Welfare Syndrome*, TIME, Apr. 3, 1995, at 82; Carol Jouzaitis, *Abuse Traps Women in Welfare*, CHI. TRIB., Feb. 19, 1995, at 1; Martha F. Davis & Susan J. Kraham, *Beaten, Then Robbed*, N.Y. TIMES, Jan. 13, 1995.

¹⁴ See, e.g., 141 CONG. REC. S13525 (Sept. 13, 1995) (statement of Senator Wellstone in support of Family Violence Exemption discussing studies); 142 CONG. REC. S13525-26 (statement of Sen. Patty Murray in support of same discussing WASHINGTON STATE STUDY); *id.* at S5220 (May 17, 1996) (statement of Senator Wellstone in support of Joint Resolution discussing studies); *id.* at S8141 (July 18, 1996) (statement of Senator Wellstone in support of Family Violence Amendment discussing Taylor Institute research).

¹⁵ See, e.g., 141 CONG. REC. S13525 (Sept. 13, 1995) (statement of Senator Wellstone in support of Family Violence Exemption); *id.* at S13525-26 (statement of Senator Murray in support of same); 142 CONG. REC. S5220 (May 17, 1996) (statement of Senator Wellstone in support of Joint Resolution); *id.* at S8141 (July 18, 1996) (statement of Senator Wellstone in support of Family Violence Amendment); *id.* at H7747 (July 17, 1996) (statement of Cong. Roybal-Allard in opposition to House version of H.R. 3734); HOUSE COMMITTEE ON THE BUDGET, TRANSCRIPT OF MARKUP OF FY 1997 BUDGET RECONCILIATION BILL 265, 266 (May 9, 1996) (statement of Cong. Roybal-Allard in support of Joint Resolution) [hereinafter BUDGET COMMITTEE TRANSCRIPT].

and employment, have serious implications for welfare-to-work programs.¹⁶

The first legislative initiative addressing violence in the lives of welfare recipients was an amendment to H.R. 4, the welfare bill passed by the Senate in September 1995 and later vetoed by President Clinton. Senator Wellstone succeeded in gaining passage of Amendment 2584, the Family Violence Exemption, by unanimous consent in the Senate.¹⁷ That amendment, cosponsored by Senator Murray, had as its purpose "[t]o exempt women and children who have been battered or subjected to extreme cruelty from certain requirements of the bill."¹⁸ Senators Wellstone and Murray referred to new research documenting the connection between violence and poverty, and Senator Wellstone urged his fellow senators to enact "national level" standards for states because "[w]e do not want to force a woman and her children because of their economic circumstances back into a brutal situation, back into . . . a very dangerous home."¹⁹ Before the President's veto, however, the Conference Committee, without comment, dropped the amendment from the final version of H.R. 4.²⁰

Building on these legislative efforts, Senator Wellstone and Congresswoman Roybal-Allard in May 1996 proposed a Sense of Congress Joint Resolution.²¹ That resolution also addressed the correlation between violence and poverty and the need for more flexibility in

imposing time limits, work requirements, and other rules on battered women and their families. It listed detailed findings about the numbers of women affected by domestic violence and ways that violence interferes with their ability to become self-sufficient. It expressed the sense of the Congress that both federal and state welfare legislation should incorporate mechanisms to address these issues.²²

A shortened version of the Joint Resolution, which nevertheless included many of the congressional findings about the importance of addressing the impact of violence on poverty, was adopted by both the House and the Senate on the Budget Reconciliation Bill,²³ a nonbinding resolution setting out the budget priorities for the 1997 fiscal year.²⁴ Section 412 of that bill stated the sense of the Congress that, in enacting welfare reform measures, the Congress should consider whether the proposed legislation would increase dangers for battered women, make it more difficult to escape violence, or "unfairly punish women victimized by violence" and also stated the sense of Congress that welfare legislation "should *require* that any welfare to work, education, or job placement programs implemented by the states address the impact of domestic violence on welfare recipients."²⁵

Finally, in August 1996, during consideration of H.R. 3734, Senators Well-

¹⁶ See, e.g., 141 CONG. REC. S13527 (Sept. 13, 1995) (statement of Senator Wellstone in support of Family Violence Exemption); 142 CONG. REC. S5220 (May 17, 1996) (statement of Senator Wellstone in support of Joint Resolution); Dear Colleague Letter of June 18, 1996, from Senator Wellstone, Cong. Roybal-Allard, and cosponsors; Dear Colleague Letter of July 3, 1996, from Cong. Roybal-Allard and cosponsors; Dear Conferees Letter of July 25, 1996.

¹⁷ 141 CONG. REC. S13562 (Sept. 14, 1995).

¹⁸ Amendment 2584, *id.* at S13561.

¹⁹ *Id.* at S13525 (Sept. 13, 1995).

²⁰ *Id.* at H15391-92 (Dec. 21, 1995).

²¹ S. CON. RES. 66/H.CON. RES. 195, 104th Cong., 2d Sess. (1996).

²² In urging support for this measure, Senator Wellstone admonished that, because of the impact of violence, welfare reform could not be "one size fits all." See, e.g., 142 CONG. REC. S8141 (July 18, 1996) (statement of Senator Wellstone); *id.* at S5220 (May 17, 1996) (statement of Senator Wellstone).

²³ *Id.* at S5220 (May 17, 1996); BUDGET COMMITTEE TRANSCRIPT, *supra* note 15, at 265, 268.

²⁴ 142 CONG. REC. H6267 (June 12, 1996); *id.* at S6168 (June 13, 1996).

²⁵ *Id.* at H6016 (June 7, 1996).

stone and Murray sought to amend the welfare legislation to create flexibility for victims of domestic violence. Like the approach of the Joint Resolution, the Wellstone/Murray Family Violence Amendment includes flexible waivers of TANF program requirements, such as time limits, and increased services, such as confidential screening and referral.²⁶

When the Family Violence Amendment was introduced, the Senate welfare bill already contained a hardship exception to mandatory time limits which specifically referred to domestic violence.²⁷ The Family Violence Amendment cross-references the hardship exception's definition of battering or extreme cruelty.²⁸ However, as discussed above, the hardship exception, which also appears in the final bill,²⁹ operates quite differently from, and independently of, the Family Violence Amendment. As proposed by Senator Wellstone, and unanimously adopted by the Senate, the Family Violence Amendment mandated that states provide services and make flexible waivers.³⁰ The Conference Committee changed the Family Violence Amendment from a requirement to a state option, but made no other alterations to the provision.³¹ Thus, as adopted by Congress and signed by the President, the PRA contains two distinct mechanisms for state flexibility in cases of domestic violence: (1) Under the Family Violence Option, states may make flexible good-cause waivers of all TANF program requirements and may increase services in cases of domestic violence and sexual abuse;³² and (2), under the hardship

exception, states may exempt up to 20 percent of their caseload from the operation of the five-year time limit.³³

B. State Adoption

To date, a number of states, including Connecticut, Florida, Indiana, Kentucky, Maryland, Missouri, Montana, New Hampshire, North Carolina, South Dakota, and Tennessee, have adopted

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all or part of the Family Violence Option in their state plans filed with the U.S. Department of Health and Human Services (HHS).³⁴ However, the mechanisms through which they propose to address domestic violence vary greatly. For example, Montana's state plan tracks the federal legislative language of the option. Maryland, in contrast, simply indicates that it intends to exercise the state option "to screen and identify victims of domestic violence," without mention of the PRA's waiver provisions. Florida, Indiana, Missouri, and New Hampshire have likewise indicated only that they intend to make referrals to counseling and supportive services. On the other hand, Alabama's proposed state plan does not mention counseling but focuses on the waiver provision and

²⁶ PRA, tit. I, § 402(a)(7)(A)(i)–(ii), Pub. L. No. 104-193, § 103(a)(1), 111 Stat. 2105, 2115.

²⁷ *Id.* § 408(a)(7)(C), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2137.

²⁸ *Id.* § 402(a)(7)(B), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2115.

²⁹ H. Rep. No. 104-725, 104th Cong., 2d Sess., 288–89 (July 30, 1996).

³⁰ 142 CONG. REC. S8141–42 (July 18, 1996).

³¹ H. Rep. 104-725 at 267.

³² PRA, tit. I, § 402(a)(7), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2115.

³³ *Id.* § 408(a)(7)(C), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2137.

³⁴ Many states to date have filed preliminary state plans with HHS, with the intent of filing a more nearly complete plan once their legislatures complete work on welfare reform. Thus, a state's legislative package may include the Family Violence Option, even though it is not yet reflected in the state plan filed with HHS. In any event, state plans may be amended at any time.

states simply that “[d]omestic violence victims will be excused from a work activity when they are at risk of endangerment.” Connecticut’s, South Dakota’s, and Tennessee’s proposed state plans include a similar waiver provision.

Other states have not yet made any formal commitment in their state plan to use the Family Violence Option to address the impact of violence on welfare recipients, although legislation is pending in many states. Massachusetts’s state plan indicates that it intends to develop standards and procedures for implementing the PRA “in the future.” Similarly, Michigan’s state plan specifies that it will “determine whether to avail itself of the option at later date.” Finally, states such as Wyoming and South Carolina have filed state plans flatly stating that they do not elect the Family Violence Option and will not screen for domestic violence.

III. Implementation of the Family Violence Option

Good laws poorly executed can increase the risk of harm. The Family Violence Option is good law in need of thoughtful and sensitive policies and practices to ensure that no harm befalls survivors of domestic violence as a result of the adoption of this provision. Welfare and domestic violence advocates must collaborate with state and local governments and agencies responsible for operating the TANF and child support programs to ensure that their expertise guides the implementation of the Family Violence Option. First, we list six basic principles that should be reflected in all policies, programs, and procedures that seek to address the specific problems facing domestic violence survivors. Second, we discuss the essential elements of successful implementation of the Family Violence Option.

A. Basic Principles

Implementation of the Family Violence Option should be governed by these six basic policy principles:

First, domestic violence must be prevented and reduced.

Second, women must be trusted to tell the truth about the violence in their lives and to make the right decisions for themselves and their children. Their ability to evaluate their potential risk at the hands of an abusive partner must be given credence.

Third, safety is paramount. The safety of domestic violence survivors and their children must be the first consideration of all public assistance programs. Every interaction with a survivor and every decision about her case must consider whether that interaction or decision may result in actual harm or increase the risk of harm.

Fourth, disclosure of domestic violence must translate into survivors receiving the help and services they need. Disclosure is only the first step in helping domestic violence survivors. It is not an end in itself.

Fifth, the individual applicant, recipient, and program personnel must be in a position to make informed decisions. All applicants and recipients need accurate information about their rights, responsibilities, and options under TANF and all public assistance programs, including eligibility for waivers, extensions, or exemptions because of domestic violence, so that they make fully informed decisions about what is best for themselves and their children. This, in turn, will allow welfare agencies to make informed decisions about each person’s case.

Sixth, recognizing differing degrees of crisis, differing consequences of violence, and, therefore, differing needs to be addressed, all public assistance programs must have the flexibility to provide the amount of time and services needed by domestic violence survivors.

B. Essential Elements of Successful Implementation

The essential elements of successful implementation of the Family Violence Option are: educating applicants and recipients about domestic violence; universal notification of the rights, responsibilities, and options of receipt of public assistance; universal screening to identify survivors of domestic violence;

maintaining confidentiality; training for all personnel on domestic violence and its effect on victims and survivors; development of an integrated service delivery system for domestic violence survivors; a clear and efficient waiver process; and flexibility in developing employability plans.

1. Education of All Applicants and Recipients of Public Assistance About Domestic Violence

All women would benefit from information about domestic violence and current information on where to go for help if and when it is needed. Many women are or have been victims of domestic violence, but because they never had a black eye or a broken bone they do not identify themselves as such. Women must understand that one does not have to end up in a hospital emergency room for the abuse to be considered domestic violence. Some women have difficulty coming to terms with their reality. After all, no one wants to think of herself as a victim. For still other women, they know they are survivors all too well but are too ashamed to tell anyone or too depressed to take any action that may help themselves.

Educational and referral information about domestic violence should be available in the reception area of all public assistance, child support, and child protective service offices. This information should be in the form of videos (running continuously), posters on the walls, and pamphlets or palm cards that can be taken home.³⁵

The information should explain what domestic violence is and what services are available to survivors in the community, such as counseling, shel-

ters, substance abuse treatment programs and other health care, and legal services (with the name of contact persons and phone numbers). These educational and referral materials should also be given to education and training service providers, community colleges, food pantries, homeless shelters, criminal and civil courts, etc.

2. Universal, Comprehensive Notification of the Rights, Responsibilities, and Options Under Temporary Assistance for Needy Families

Universal, comprehensive notification of the rights, responsibilities, and options under the TANF program must be given. This notice must be presented in oral and written form before any questions are asked or forms completed at the interviews for initial screening, eligibility, assessment and employability plan, recertification, and paternity establishment and child support enforcement. The oral notice may be given in groups as long as there is an opportunity for questions in a confidential setting afterward.

The notice should also include information about the availability of waivers under the Family Violence Option, the right to claim good cause for refusal to cooperate with paternity establishment and child support enforcement, and other provisions to which waivers, extensions, or exemptions may be applied under the PRA, such as the teen live-at-home requirement,³⁶ the denial of assistance for minor children who are absent from the home for a significant period,³⁷ and state-imposed restrictions such as the child exclusion policy.³⁸

The notice should describe rights

³⁵ All oral and written information, whether videos, posters, notices, letters, etc., should be available in English and any other language spoken in the community the public assistance office serves. In addition, all written information must be clear and understandable and at a reading level appropriate for the targeted audience. We recommend that all written materials be reviewed before publication and distribution by literacy experts and welfare recipients for the appropriateness of the reading level and the clarity of content. Many good educational videos about domestic violence are available. Contact the National Resource Center on Domestic Violence at (800) 537-2238 for more information.

³⁶ PRA, tit. I, § 408(a)(5), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2136.

³⁷ *Id.* § 408(a)(10), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2139.

³⁸ The PRA does not prohibit the child exclusion provision. It is in effect in several states.

and options, how to apply for the options, appeal rights and procedures, and privacy rights. It should include a warning that if child abuse is disclosed, this information must be reported to child protective services. For states where witnessing spouse or partner abuse is considered a form of child abuse subject to mandatory reporting, the warning should state that witnessing adult abuse is a form of child abuse, so that if the information that domestic violence took place in the presence of children is disclosed, it must be reported to child protective services. A sample notice including some of the important points that should be covered is found at the end of this article.³⁹

In addition to a general notice as described above, written and oral notice that explains in depth the details of the paternity establishment and child support enforcement requirement must precede any requests for information for this purpose, including the name of the father. This may need to be a separate notice.

This notice must state clearly what constitutes cooperation, the right to claim good cause for refusal to cooperate, and the evidence required to support a claim so that the applicant or recipient can make a fully informed decision regarding cooperation with paternity establishment and/or child support enforcement.⁴⁰ The notice must list all the parental rights and responsibilities the father would gain by establishing paternity, including the right to petition for visitation and custody. A woman who is unaware of the legal exposure she is incurring in naming an abusive man as the father of her child may not understand the need to invoke a good-cause exception. The notice should serve these functions.

The notice should also list the questions that will be asked for paternity establishment purposes. These are highly personal questions with room for abuse by welfare and child support workers who may ask inappropriate questions. Teen parents are particularly vulnerable to this type of misconduct. The notice should inform applicants and recipients how to report if additional or inappropriate questions are asked.

3. Universal Screening for Domestic Violence

To encourage disclosure, opportunities to disclose domestic violence should be frequent, confidential, clearly voluntary, and easy for applicants and recipients to access. Survivors should have the opportunity and be encouraged to disclose domestic violence every time they interact with welfare workers or child support workers. At the time of screening, disclosure should be limited to the minimum necessary information to identify an applicant or recipient as someone for whom domestic violence may be relevant to her ability to meet TANF requirements. This can be done with just a few questions along with an explanation of the reason for asking, and oral and written notification that responding is voluntary, that not responding or changing a response at a later date is not penalized, and that the information disclosed is confidential and will not affect the applicant's or recipient's eligibility. The following is suggested language:

I am going to ask you some questions. We are asking these questions of all applicants and recipients of public assistance. Your responses are very important because, as you may know,

³⁹The written notice was developed by the Implementation Work Group of the National Working Group on Domestic Violence and Welfare. It was then rewritten by Jenny Wittner, Chicago literacy expert and director of the Chicago Commons West Humboldt Park Employment Training Center, to be more understandable to applicants and recipients with low basic skills.

⁴⁰A woman's confidential statement that she is a victim or survivor of domestic violence and fears her abuser should be sufficient to substantiate a good-cause claim. The presumption should be that she is telling the truth. Unless an independent, reasonable basis to doubt the veracity of her statement exists, good cause should be found. Documentation requirements may further endanger her.

there has been a change in the welfare laws and you will not be able to stay on welfare very long before you are required to go to work or participate in an activity that will help you get a job. Also, you will be required to help us in our efforts to establish paternity and collect child support from the father of your child(ren). Because you have to meet these requirements in order to receive cash assistance [and food stamps], it is important for us to find out if there are any reasons that your looking for a job, working, going to school, or job training, helping us establish paternity, or collect child support would put you or your child(ren) at risk of harm. If any of these actions would put you in danger of harm, we may be able to give you more time to get a job, or we may be able to excuse you from cooperating in a paternity or child-support action. We can also help you get the services you need to be safe and go to work, or to be safe while collecting child support.

If you disclose that you are in an intimate relationship with another person, your disclosure will not affect your eligibility for benefits. Anything you tell me about your relationship with your partner or former partner will be confidential and will not be shared with anyone outside this agency, with the exception of child abuse or neglect, as previously explained.

The purpose of these questions is to help you. You are free to answer them or not. You may,

if you wish, simply say "No comment." In asking you these questions we are looking only for a "Yes" or "No" answer. We do not need any specific information at this time.

1. Is there someone in your life with whom you have or had a relationship in which there has been physical, sexual or emotional abuse? For example, any of the following [read them all before getting an answer]:

Pushing, grabbing, shoving, slapping, hitting, restraining

Being kept away from family and friends, prevented from leaving your home or going where you wanted to

Being constantly put down or told you are worthless

Receiving threats to hurt you, your children, your pets, or other family or friends

Being stalked, monitored, or followed

2. Has anything like this happened in the past?

3. Are you afraid of your partner or ex-partner?

4. Is the abusive person the father of any of your children?

If your answers are "No" or "No comment" at this time, you may still let us know if your situation changes at any time."⁴¹

Many, perhaps most, domestic violence survivors will not feel comfortable disclosing their situation within a public

⁴¹ This language was initially developed by the Taylor Institute Illinois Women, Welfare and Abuse Working Group and further refined by the Implementation Work Group of the National Working Group on Domestic Violence and Welfare. Screening questions should also be developed specifically for teens. Domestic violence should be broadly defined so as not to limit the identification of survivors to extreme cases of abuse. Survivors experiencing infrequent or lesser forms of abuse may not need waivers but would benefit greatly from domestic violence services in the community. Therefore, states must screen so that all survivors receive referrals to the supportive services they need and states have a good assessment of the state caseload.

assistance office and will answer "No" or "No comment" to these questions. That is why all applicants and recipients must be given a pamphlet or palm card with information about domestic violence services within the community.

If any of the domestic violence screening questions are answered "Yes," the individual has "screened positive." She should then be asked if she is inter-

use or disclosure of information relating to proceedings or actions to establish paternity, or to establish or enforce support; (B) prohibitions against the release of information on the whereabouts of 1 party to another against whom a protective order with respect to the former party has been entered; and (C) prohibitions against the release of information on the whereabouts of 1 party to another if the State has reason to believe that the release of the information may result in physical or emotional harm to the former party.⁴³

Additional safeguards must also be in place both within a government agency and between agencies to prevent punitive or insensitive responses. These safeguards should include strong state legal protections and limits on access to computer data bases. All documents produced by the state should prominently display confidentiality protections and requirements. Applicants and recipients must be informed about mandatory reporting of child abuse and neglect.

At no time should an abuser be contacted for purposes of corroborating evidence of domestic violence unless the survivor gives informed, written permission to do so. If an abuser is contacted for any reason, such as securing child support, only the information necessary to accomplish the reason for the contact should be disclosed. The abuser should never be told that a good-cause claim or other waiver has been requested, that the survivor is afraid of him, or any information that may endanger the survivor, such as her location or other details about her life or children. This is true even if a good-cause claim or waiver is denied and regardless of the reason for the denial. A denial does not mean that the survivor's claim is untrue; it means only that the public assistance agency has determined that the claim does not meet its standards to merit approval.

At no time should an abuser be contacted for the purposes of corroborating evidence of domestic violence unless the survivor gives informed, written permission to do so.

ested in talking to someone in more depth about her situation and in exploring her eligibility for waivers of program requirements. If "Yes," then the survivor should be referred to a welfare worker who has received domestic violence counselor training.⁴² Whatever the procedure for screening and identifying domestic violence survivors, it must be integrated into the procedure for applying for benefits so that the initial contact date with the public assistance agency is the date of application for benefits.

4. Confidentiality

Privacy is key to safety. There must be a real commitment on the part of the state and all public assistance agencies to maintain confidentiality and protect privacy throughout the system. The child support section of the PRA has language on privacy safeguards that should be implemented for all public assistance programs, including TANF:

The State . . . will have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including (A) safeguards against unauthorized

⁴² See pt. III.B.5 for a discussion of training for program personnel.

⁴³ PRA, tit. III, § 303, Pub. L. No. 104-193, § 303, 110 Stat. 2105, 2204.

5. Trained and Educated Staff

Welfare agencies and workers are already overburdened with a complex system that is undergoing enormous change. Because it is difficult to keep up, welfare workers are often a source of misinformation. To compound the problem, welfare agencies and workers are generally not knowledgeable about domestic violence and its effect on survivors. This must be addressed through training for all persons involved in administering and implementing TANF and child support programs.

At least two types of training should occur, depending on the job responsibilities related to domestic violence survivors and issues. The first is a basic domestic violence training for all persons involved in running programs or administering assistance. A half-day session can educate staff on the basic principles regarding domestic violence and sensitize them to the issues so that they can identify problems more readily and respond appropriately. Specifically, training should cover

how safety issues may arise in the assistance program context; how to communicate effectively and sensitively with battered women; the state's procedures for implementing waivers, exemptions, or extensions for battered women; any state assistance programs designed specifically for battered women, programs and assistance available to immigrant battered women, privacy rights under the law, and the state's procedures for maintaining confidentiality; referral sources available to battered women; and how to make an effective referral.⁴⁴

A longer, more intensive domestic violence counselor training program should be given to staff working with survivors on dealing with domestic violence and related issues. For example, workers who conduct any assessment and in-depth eligibility interviews and make referrals for services after an individual has screened positive, workers, including hearing officers, who review and decide requests for waivers, good-cause claims, extensions or exemptions based on domestic violence, and workers who help a survivor develop her employability plan, all should receive the more extensive training.

In Illinois, a minimum of 40 hours of training in domestic violence advocacy, crisis intervention, and related areas is required for communication between the counselor and the survivor to be privileged communication.⁴⁵ This 40-hour requirement has evolved into the norm for training all domestic violence counselors and advocates in the state and should also extend to welfare workers working with domestic violence survivors. In addition to the topics listed above, the training should include sessions on counseling survivors (developing interview skills, learning how to do crisis intervention and safety planning, and how to deal with perpetrators), legal issues, child abuse, the effects of domestic violence on women and children, including mental health issues and substance abuse, specific issues affecting teens and immigrants, and safety for domestic violence workers.⁴⁶

We must understand that the purpose of this training is for welfare personnel to be educated about domestic violence issues, not to engage in domestic violence counseling. Welfare workers' responsibilities are limited to assess-

⁴⁴ JILL DAVIES, *THE NEW WELFARE LAW: STATE IMPLEMENTATION AND USE OF THE FAMILY VIOLENCE OPTION 14* (National Resource Center on Domestic Violence Dec. 1996).

⁴⁵ 750 ILCS 60/227(a)(2). Among domestic violence service providers, the job responsibilities of a counselor and advocate are often the same.

⁴⁶ See Chicago Metropolitan Battered Women's Network, Centralized Training Project, Basic Domestic Violence Training (Jan. 1997 draft). Only individuals experienced in serving survivors and training domestic violence counselors should conduct the training. It should not be done by government staff. Independent domestic violence advocates, such as the state or city coalition against domestic violence, should be contracted with to conduct this training.

ing if and what referrals should be made and how domestic violence interferes with an individual's ability to comply with program requirements. For example, for a survivor who needs to develop a safety plan, the welfare worker's

and contact person. This includes setting up appointments with referral agencies for the survivor, creating a tracking system to ensure referrals are appropriate and services provided are of high quality, and collecting data on the availability of needed services and identifying shortages.

States that do not adopt the Family Violence Option may see an even greater increase in the demand for domestic violence services because of the inflexible application of program rules.

responsibility is to identify this need, to make an appropriate referral, to apply the standard for granting waivers to program requirement(s), and approve waivers as needed. The welfare worker's responsibilities do not include developing the safety plan.

6. An Integrated Service Delivery System

The government has a responsibility to women who self-identify to ensure their safety and provide the services they need, whether or not a state adopts the Family Violence Option. States' commitment of financial and other resources both within public assistance and child support agencies and for independent, community-based domestic violence services is necessary to build the capacity to respond to survivors' particular needs. An integrated service delivery system must be developed to accomplish this.

a. System Components

An integrated service delivery system should include a referral system, procedures for immediate assessment after disclosure of domestic violence and, of course, the inclusion of local domestic violence advocates and service providers in the development and implementation of the service delivery system.

i. Referral System

A good referral system develops and maintains lists of referral agencies, the services they provide, their capacity,

ii. Immediate Assessment Following Disclosure of Domestic Violence

Procedures for an immediate assessment after disclosure of domestic violence (whether through the screening process or other means) are needed to determine if a survivor is in a crisis. This is necessary so that appropriate referrals and decisions about which program requirements need to be deferred, at least until the period of crisis has passed, can be made. The goal of this interview is to give basic orientation to the applicant or recipient, to make a basic safety assessment, to determine the level of sabotage presented by the past or current abuser, and to determine initially whether any temporary waivers of program requirements are needed. Putting an immediate halt to some activities, such as paternity establishment or child support administrative or judicial proceedings, may be necessary.

Whether in crisis or not, an appointment should be made to develop or reassess a survivor's employability plan to determine her capacity to comply with the terms and conditions of the TANF program. This appointment will most likely be for a later date. All workers who conduct the immediate assessment and develop the employability plan should have received domestic violence counselor training. Employability plan workers should either be independent, community-based domestic violence counselors or welfare agency workers in consultation with these independent domestic violence counselors.

iii. Participation by Community-Based Advocates and Service Providers

Finally, engagement of local domestic violence advocates and service providers in the development of the service

delivery system is essential. Community-based domestic violence organizations should be contracted with to set up shop in public assistance offices either to carry out these triage sessions themselves, and perhaps to carry out all case management off-site, or to mentor welfare workers who have received the domestic violence counselor training. Every state and many county and municipalities have coalitions against domestic violence. Choosing which method to use is a decision best left to local welfare and domestic violence advocates since they have the experience to assess their state's willingness and capacity to address survivors' needs.

b. Service Delivery Models

i. Mentoring Model

The mentoring model is preferred simply because the institutionalization of domestic violence services in public assistance agencies is an important step in increasing the capacity to serve all domestic violence survivors. Domestic violence services are drastically underfunded. As enforcement of the PRA work and other requirements and time limits on receipt of assistance take effect, the demand for domestic violence services is certain to increase substantially. If welfare workers and administrators could be trained to do good case management on public assistance issues for survivors, community-based domestic violence service providers would not need to spend so much of their time persuading welfare agencies to ensure proper treatment of clients' cases and would be allowed to spend more of their time and money on counseling and other services.

The increase in demand for domestic violence services should also highlight the need to increase funding for these services and the need for welfare agencies to work more closely with providers to determine what needs are unmet and how this interferes with sur-

vivors' ability to move from welfare to work. States that do not adopt the Family Violence Option may see an even greater increase in the demand for domestic violence services because of the inflexible application of program rules. Welfare and domestic violence advocates should document this development and use it to advocate adoption and an increase in funding for domestic violence services. In any event, government's role in serving survivors should supplement and complement, not substitute for, current community-based domestic violence services.

The mentoring model should work as follows. The public assistance agency would identify the positions in which workers' responsibilities would include directly addressing domestic violence issues, for example, workers who conduct the assessments after screening positive, development of employability plans, determinations on good-cause claims and waivers due to domestic violence. Separate domestic violence units may be established to foster good case management. Independent, community-based advocates should be consulted to help identify the workers with the most potential to make good domestic violence counselors. Once these welfare workers are trained, the independent advocates should be contracted with to serve as on-site mentors for one year, initially sitting in on interviews, responding to workers' questions, reviewing their work, etc. After the first year, the independent advocates may need to supply ongoing monitoring and consulting to the welfare workers. This model does not preclude contracting with independent domestic violence service providers for case management, including the development of the employability plan.

ii. North Lawndale Pilot Project

Another model, the North Lawndale Pilot Project, anticipates a more limited role for welfare workers in dealing with domestic violence issues.⁴⁷ The ele-

⁴⁷The North Lawndale Pilot Project is a joint project of the Taylor Institute, the Illinois Women, Welfare and Abuse Working Group, and the Illinois Department of Public Aid. Jody Raphael, Implementing the Wellstone/Murray Family Violence Amendment to TANF: The North Lawndale Model in Chicago (Feb. 1997 draft).

ments of this model include the creation of a community walk-in center where all survivors in the community, whether or not they are welfare recipients, can come for domestic violence services. This center will be in close proximity to the local public assistance office.

After an applicant or recipient screens positive, the welfare worker makes an appointment with the walk-in center staff member who is located within the welfare office. This staff person is an employee of the walk-in center and not the welfare agency. She conducts the triage session and gathers the more in-depth information relating to an individual's domestic violence situation. If she determines that any temporary waivers are needed, she communicates this information to the welfare worker.

Depending upon the facts of the case, the applicant or recipient may be referred to the walk-in center for case management services or basic domestic violence support services. The walk-in center staff person, a welfare worker, and the survivor draw up the employability plan. The plan details the services which are necessary to remove the domestic violence barrier and which the survivor is required to obtain. The welfare worker monitors whether the survivor is availing herself of these required services, which are necessary in order to continue any needed temporary exemptions.

Through two full-time staff members, the walk-in center provides the following basic services:

- case management services;
- weekly support groups for survivors;
- primary communication with the welfare office, informing welfare workers of survivors' needs when disclosure occurs at the walk-in center or another service provider rather than at the welfare office;
- ensuring that the welfare agency

works in partnership with community groups and organizations providing services to survivors on TANF; and

- working in cooperation with community groups and organizations to expand the amount of services available to domestic violence survivors by conducting training about domestic violence, its assessment and treatment, giving technical assistance in establishing assessment and supportive services within their own organizations, assessing those areas where few services or none exist, and attempting to advocate new resources.

Whether a domestic violence organization has a contract to carry out certain TANF implementation responsibilities or is acting only as a provider of domestic violence services required as a condition for granting the waiver, these independent domestic violence counselors should never be responsible for recommending or applying sanctions—this responsibility remains with the welfare agency.⁴⁸

7. A Clear and Efficient Waiver Determination Process

A clear and efficient process for requesting waivers under the Family Violence Option and claiming good cause for refusing to cooperate with paternity establishment and child support enforcement is needed so that survivors can gain and maintain safety, have the time needed to recover from the damage sustained, and receive the services that enable this to happen without delay and without the threat of sanctions or termination.

a. Interpretation of the Standard

The Family Violence Option states that a waiver may be granted if a requirement "would make it more difficult for individuals receiving assistance . . . to escape domestic violence or unfairly

⁴⁸ For a further discussion of what happens when a survivor fails to comply with the terms of a waiver, see pt. III.B.7.d.

penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.”⁴⁹

A requirement that would “make it more difficult . . . to escape domestic violence” refers to circumstances when compliance would reduce the survivor’s financial resources, impede her safety or employability plan, or result in retaliation against her.

Being forced to comply with one or more requirements that would “unfairly penalize” the individual refers to situations where a survivor is unable to meet the work requirement because she loses or leaves a job due to domestic violence or where compliance would increase risk of harm for the individual or any children in the individual’s care, force the individual to take actions that would jeopardize her safety or privacy, or hold her responsible for meeting a requirement that is not within her control.⁵⁰

b. Corroboration of Domestic Violence

An individual’s statement of abuse should be sufficient to substantiate her request for a waiver or good cause claim unless an independent, reasonable basis to doubt the veracity of the statement exists. Often seeking an order of protection or other “official” help may be unsafe for a woman.⁵¹ Lacking this type of proof by no means indicates that she is not a bona fide survivor. If a basis to doubt her veracity exists, then she should be required to present docu-

mentation such as a statement from a friend or relative who has knowledge of the violence or from a shelter worker, clergy, or other professional from whom she has sought assistance in dealing with domestic violence.

The issue of corroboration of an applicant’s or recipient’s statement about domestic violence, and the specter of

Waivers should function like a court order of protection: issued for a specific period of time with extensions allowed as needed.

fraud, should not be cause for concern. The expert opinion of the Illinois Women, Welfare and Abuse Working Group is that a woman who is not a survivor is unlikely regularly to attend supportive services for domestic violence survivors.⁵² Noncooperation without good cause will lead to the termination of any waivers that may have been granted, as discussed in (d) below.

c. How Waivers Work

Waivers should function like a court order of protection: issued for a specific period of time with extensions allowed as needed. In fact, they would be a relaxation or modification, depending on the case, of the requirements that would otherwise apply to the individual. And, depending on what optional provisions a state adopts (e.g., treatment of new residents; eligibility of immigrants)⁵³

⁴⁹ PRA, tit. I, § 402(a)(7)(A)(iii), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2115.

⁵⁰ E.g., requiring an individual to obtain, as opposed to “seek,” a protective order to avoid penalty. The legal system has the authority to make such an order; all the individual can do is petition the court for a protective order.

⁵¹ E.g., requiring a woman to seek an order of protection may put her at great risk. If she is trying to keep her residence hidden from the abuser but is obligated to be in court at a specific time and place, this may give the abuser the opportunity to cause further harm and to discover where she is living. To keep clients from being harmed and followed after court dates, Pollack drove clients home or to another safe location, escorted them home on public transportation, or brought them to her office to allow enough time to lapse until the clients felt safe that their abusers would no longer be waiting for them.

⁵² Indeed, the federal government’s experience with the battered-spouse waiver, an immigration provision providing special procedures through which battered women can obtain permanent resident status, is strong support for the proposition that women will rarely, if ever, fake abuse in order to obtain benefits. See, e.g., Martha F. Davis & Janet M. Calvo, *INS Interim Rule Diminishes Protection for Abused Spouses and Children*, 68 INTERPRETER RELEASES 665, 669 (June 3, 1991).

⁵³ PRA, tit. I, § 402(a)(1)(B)(i)–(ii), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2113.

and how these and other provisions are implemented, the need to grant waivers under the Family Violence Option may be avoided for some time. For example, a state may define "work" after 24 months of receipt of TANF to include domestic violence supportive services.⁵⁴

When a waiver is necessary, a recipient receiving a waiver generally has certain responsibilities depending upon her safety concerns and related needs and those of her children. These responsibilities may include domestic violence counseling, enrollment in a substance abuse treatment program, obtaining legal advice, or a combination of supportive services, education and training programs, employment, and other work-related activities.

The denial, termination, or change of a waiver, such as a reduction in the time period, should give rise to notice and a fair hearing on the issue. Hearing officers or other workers hearing and deciding the appeal should receive the domestic violence counselor training.

Many women will not disclose the existence of violence in their lives to a welfare worker. But many will disclose their abuse, or the existence of domestic violence will become evident to service providers (domestic violence service providers as well as job-search, job-training, and education providers and workfare sponsors) and employers. If waivers of programmatic requirements are needed, procedures and protocols must be established so that service providers and employers, with the permission of the recipient, may communicate this information to the public assistance agency.

The process of requesting, granting, and monitoring waivers should be incorporated into the assessment and

reassessment process and development of the employability plan, preferably all done by the same worker.

d. Failure to Comply with the Terms of a Waiver

When a survivor fails to comply with the terms of a waiver and, in the expert opinion of a domestic violence counselor, does not have good cause for doing so, the domestic violence counselor, whether she is a welfare worker or an independent domestic violence counselor, recommends that the waiver be canceled and the survivor's employability plan reviewed and altered to reflect this change in circumstances. No sanctions should be imposed. Only sanctions for any subsequent failure to comply with program requirements from which an individual is not exempt should trigger sanction proceedings.

The same standard for noncooperation with the terms of a waiver should apply as in the initial granting of a waiver. Therefore, if a survivor misses counseling sessions because she is afraid to leave her home for safety reasons, she would not be referred to the welfare agency. Community-based domestic violence counselors are experienced with these types of situations and maintain contact with clients through phone calls, etc. However, in the judgment of the independent domestic violence counselor, if a survivor is not showing up at counseling sessions without good reason, the counselor should refer her back to the welfare agency, not for sanctioning, but merely to end the waiver. The survivor should still be encouraged to attend counseling or other supportive services that had been required under the terms of the waiver but should be told that she must now participate in required work-

⁵⁴ *Id.* § 402(a)(1)(A)(ii), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2113. Mandatory work requirements under TANF consist of (1) a requirement that the state have high percentages of its caseload engaged in an intense level of tightly defined "work activities" or else suffer a significant federal financial penalty and (2) a requirement on individuals that they must engage in "work activities" after at most 24 months of receipt of assistance or be cut off. *Id.* §§ 402(a)(1)(A)(ii), 407, Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2113, 2129. For a discussion of the TANF work requirements see Mary R. Mannix, Henry A. Freedman, Marc Cohan & Chris Lamb, *Implementation of the Temporary Assistance for Needy Families Block Grant: An Overview*, 30 CLEARINGHOUSE REV. 868, 881-88 (Jan.-Feb. 1997).

related activities or face a sanction. The termination of a waiver for any reason should never act as a bar to reinstatement of that same waiver or approval of waivers of other program requirements based on domestic violence.

8. Flexibility in Developing Employability Plans

The Family Violence Option gives states an opportunity to integrate greater flexibility into their TANF program for recipients who are survivors of domestic violence. This allows states to create welfare-to-work strategies that are responsive to recipients' strengths and limitations not merely at the initial assessment and development of an employability plan but throughout recipients' transition from welfare to self-sustaining employment.

The Individual Responsibility Plan (IRP) should outline individualized strategies for each recipient, put each on a path toward economic independence, set realistic short- and long-term goals, establish appropriate benchmarks to measure progress, and incorporate any waivers granted pursuant to the Family Violence Option.⁵⁵ The IRP should be viewed as a fluid document, changing as a recipient's progress is assessed and reassessed over time, with each new activity building on the skills developed and barriers lessened from prior activities.

The IRP should be based on a comprehensive assessment of an individual's skills, work history, interests, and barriers to participation in activities or employment and developed with the participation of the recipient. Ideally, assessments, reassessments, and IRPs should be conducted and prepared by independent community-based domestic violence counselors in conjunction with experts in employment-related issues. In the alternative, these functions should be performed by welfare workers who are trained as domestic violence counselors in conjunction with

community-based domestic violence counselors. The assessment should never be used to bar survivors from desirable activities or to track them into lesser programs.

To assess progress or lack of progress so that no one gets "stuck" for long, the plan should be reviewed as often as once a month for some recipients, never less than once every six months, and always on an "as needed" basis.

The Individual Responsibility Plan should be viewed as a fluid document, changing as a recipient's progress is assessed and reassessed over time, with each new activity building on the skills developed and barriers lessened from prior activities.

Many survivors of domestic violence do not self-identify as such, either because they choose not to self-identify or they do not identify themselves as survivors. However, that domestic violence is contributing to a recipient's difficulty in complying with program requirements or maintaining employment may become apparent to others—welfare workers, service providers, or employers. Also, when confronted with the possibility of sanctions or termination of benefits, a recipient may realize she must self-identify. However and whenever a welfare agency learns that domestic violence is affecting a recipient's ability to cope with the provisions of the PRA, the IRP should be revised to address those problems to prevent sanctions and the termination of benefits.

A wide range of activities should be available and allowed in addition to those listed in the PRA for the first 20 hours of work activity per week,⁵⁶ including domestic violence and other mental health counseling; development of a safety plan and carrying out that plan; establishing a permanent residence

⁵⁵ PRA, tit. I, § 408(b), Pub. L. No. 104-193, 110 Stat. 2105, 2140. Individual Responsibility Plan is the name for the TANF employability plan.

⁵⁶ *Id.* § 407(c), (d), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2131, 2133.

Women and Family Law Publications

The NOW Legal Defense and Education Fund (NOW LDEF) is distributing the publications of the National Center on Women and Family Law (NCWFL), which has closed. Resources for lawyers, advocates, health professionals, and individuals in need, the publications represent a wealth of legal and policy research and analysis on several issues, including battered women, child custody and visitation, confidentiality, gender bias, interstate custody, and mediation. For a publications list, write to NOW LDEF, 99 Hudson St., New York, NY 10013. For NCWFL's child support publications, contact the Center for Law and Social Policy at (202) 328-5140.

if homeless; substance abuse treatment; classes in adult basic education, literacy, general equivalency diploma, and English as a second language; parenting classes; increased vocational training (quantity and duration);⁵⁷ and volunteer activities. That crises may arise unexpectedly, barriers may not dissipate as anticipated, and progress may be slower than hoped for, necessitating flexibility in the time allowed for any given activity, should also be recognized.⁵⁸ In addition, recipients must be allowed to com-

bine activities and to participate less than the 20 (or more) hours per week otherwise required under TANF. The Family Violence Option allows states the flexibility necessary to make an honest assessment and set realistic and attainable goals for domestic violence survivors. States should take full advantage of that flexibility.

IV. Conclusion

Without very thoughtful implementation, the PRA will put all poor persons who need public assistance in harm's way.⁵⁹ Survivors of domestic violence are particularly vulnerable to much of the negative impact the PRA will surely have. Welfare receipt plays a vital role in the lives of domestic violence survivors and substantially contributes to their ability to escape violence, to remain safe, and to allow time to recover from the physical, emotional, and financial ravages of domestic violence. The adoption and proper implementation of the Family Violence Option will ensure that receipt of TANF will contribute to the prevention and reduction of domestic violence in our society.

⁵⁷ Vocational education is limited to up to 12 months for an individual, and only 20 percent of individuals in all families may be treated as engaged in work and counted toward a state's work participation rate by virtue of participating in vocational education activities or being a teen head of household who maintains satisfactory school attendance. *Id.* § 407(c)(2)(D), (d)(8), Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2132-33.

⁵⁸ A range of welfare-to-work programs may be implemented depending on a state's willingness and/or capacity to integrate flexibility into its TANF program. Two examples are Utah's Single Parent Employment Demonstration program and Project Match and its "Incremental Ladder to Economic Independence." TOBY HERR ET AL., MAKING THE SHOE FIT: CREATING A WORK-PREP SYSTEM FOR A LARGE AND DIVERSE WELFARE POPULATION (Dec. 1996). See also CHICAGO JOBS COUNCIL, BUILDING AN EFFECTIVE WELFARE-TO-WORK STRATEGY FOR ILLINOIS: RECOMMENDATIONS FOR A STATE RESPONSE TO THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (Dec. 1996).

⁵⁹ The PRA is expected to reduce family incomes and increase poverty, with an estimated 2.6 million more persons placed at risk of falling below the poverty line, including 1.1 million children. SHEILA ZEDLEWSKI ET AL., POTENTIAL EFFECTS OF CONGRESSIONAL WELFARE REFORM LEGISLATION ON FAMILY INCOMES (Urban Inst. July 26, 1996).

NOTICE

In order to get the full amount of money your family is allowed on your public aid check you must go to work or participate in an activity that will help you get a job that is approved by this office after you have received public aid for 24 months. You must also cooperate with us to get child support from the father or fathers of your children. These are just some of the requirements for getting public aid.

WE MAY BE ABLE TO EXCUSE YOU FROM WORKING OR FROM GIVING INFORMATION ABOUT YOUR CHILDREN'S FATHER.

If working, looking for a job, or going to school or job training may put you or your family in danger of physical, emotional, or sexual abuse, we may be able to excuse you temporarily from doing these activities.

If giving information about the father or fathers of your children may put you or your family in danger of physical, emotional, or sexual abuse, you may not have to give us this information.

If your children were conceived because of rape or incest, we may be able to excuse you from giving information about child support or who is the father.

WE CAN ALSO TELL YOU ABOUT HELP.

We can tell you where you can get help in staying safe and recovering from abuse.

We can tell you about this even if you don't want to be excused from work or child support requirements.

continued

THIS INFORMATION IS CONFIDENTIAL AND VOLUNTARY.

You do not have to tell us about problems with domestic violence if you don't want to.

If you decide not to tell us, **you can change your mind later** at any time. You still may be able to be excused from public aid requirements at that time.

Telling us about a relationship with another person will not affect your public aid check. If you do tell us about abuse, it is only to help you to be excused from working or telling us about your children's father and to help you get the help you need to stop the abuse or deal with any problems you may have because of the abuse.

We will keep this information confidential within the public aid system and related employment and training programs or domestic violence programs. **BUT**

WARNING: IF YOU TELL US THAT ANY CHILDREN ARE BEING ABUSED WE MUST REPORT THAT INFORMATION TO THE DEPARTMENT OF CHILDREN AND FAMILY SERVICES.