

## PURSuing CHILD SUPPORT: MORE VIOLENCE?

By Paula Roberts

Victims of domestic violence often seek public assistance in order to escape from and/or remain free of this violence. However, in order to be eligible for public assistance, a mother must **assign** her child support rights to the state. Unless she can claim an exemption, she must also **cooperate** with the state in establishing paternity (if that is an issue), obtaining a support order, and enforcing that order. Unfortunately, the pursuit of child support can --and often does-- engender more violence.<sup>1</sup> Recently enacted federal legislation may help address this problem. The legislation also has the potential to make the problem worse.

The result will largely depend on what policies states adopt in the next year. To help advocates develop positions on the issues, this paper begins by describing the child support assignment and cooperation requirements that domestic violence victims had to face under the Aid for Families with Dependent Children (AFDC) program. Then it delineates the provisions contained in the recently enacted Personal Responsibility and Work Opportunity Reconciliation Act of 1996-- federal legislation which abolishes AFDC and creates a new program called Temporary Assistance for Needy Families (TANF). Finally, it offers some suggestions for how to approach the issues raised by the new law.

Before beginning, it is important to note that obtaining regular, adequate child support payments for every child is crucial to the well being of children and the elimination of poverty. The vast majority of children who live with only one of their parents live with their mother. Women still face a job market that offers lower wages and fewer opportunities than are available to men. The result is that most single parent families headed by women live below, at, or only slightly above the poverty line. These families **need** child support to supplement the mother's earnings. Indeed, recent research suggests that mothers with earnings have a much lower need for public assistance when their wages are supplemented by regular child support. The research also suggests that child support payments are frequently used to pay for child care, allowing children to be adequately supervised and nurtured while their mothers work.<sup>2</sup>

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<sup>1</sup>For example, a recent Massachusetts study found that 30 percent of abused women reported recent problems or arguments with a man about child support. Mary Ann Allard, Randy Albelda, Mary Ellen Colton, and Carol Cosenza, *In Harm's Way? Domestic Violence, AFDC Receipt, and Welfare Reform* (Boston: University of Massachusetts, Center for Social Policy Research, McCormick Institute, February 1997), p.20.

<sup>2</sup> See, e.g., Beller, Andrea H., and John W. Graham. "The Effect of Child Support Payments on the Labor Supply of Female Family Heads: An Econometric Analysis." *Journal of Human Resources*, Fall 1989; Grossman, Allyson Sherman and Howard Hayghe. "Labor Force Activity of Women Receiving Child Support or Alimony." *Monthly Labor Review*, November 1982; Nixon, Lucia A. "Child Support Enforcement and Welfare Reform." *Mathematica Policy Research, Inc.*, August 1996.

Moreover, as our country moves into a welfare system where help is available only on a time-limited basis, child support payments will become even more important. Mothers leaving welfare for low wage jobs will **need** child support payments to survive. Mothers wishing to avoid "using up" their eligibility for benefits by staying off of assistance as long as possible will also want to obtain support payments.<sup>3</sup> Mothers whose families have "used up" their eligibility for time-limited public assistance may have only child support to fall back on.

It should also be noted that failure to pursue child support rewards the perpetrator of the violence by relieving him of financial responsibility. Indeed, many women see fathers' refusal to meet their child support obligations as a form of economic violence which is part and parcel of the physical or mental violence they have already endured. These mothers want to pursue child support as part of the healing process: refusing to be abused and intimidated.<sup>4</sup>

The dilemma is how to pursue child support and still keep families safe. Unfortunately, to date, the current child support system has avoided establishing mechanisms in which support is pursued but domestic violence victims are protected from their abusers. As part of welfare reform, more thought needs to be given to the development of a system in which mothers can pursue child support **and** be free of retaliatory violence.

### **Assignment and Cooperation in the AFDC System**

To understand the decisions states will be making, it is helpful to start with the relationship between welfare and the pursuit of child support under the old federal law, specifically 42 USC Section 602(a)(26) and 45 CFR Sections 232.11-13 and 232.40-49. This analysis is helpful both as background and because it identifies potential problems that need to be addressed in implementing the new law. The old law contained three distinct concepts. The *first* pillar in the system, was assignment. As a condition of eligibility, a mother applying for or receiving AFDC had to assign her right to collect child support to the state. This was non-negotiable. The state then used the assignment as the basis of its claim to go after (or its refusal to pursue) child support.

The *second* important concept was cooperation. The mother was required to cooperate with

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<sup>3</sup>Again social science research suggest that mothers who leave welfare for employment who also have regular child support payments greatly reduce their future need for public assistance. See, e.g. Lutrell, Carol Ann, *Child Support and the Transition From Welfare to Work: Massachusetts Evidence*, Massachusetts Department of Revenue, Child Support Enforcement Division, April 1997 and *Child Support Collections and Labor Supply of Former Welfare Recipients*, Journal of Human Resources, June 1994.

<sup>4</sup>See, e.g. Jessica Pearson and Elaine Griswold, *Child Support Policies and Domestic Violence*, a paper presented at the Cooperation/Good cause Forum sponsored by the federal Office of Child Support Enforcement, February 12, 1997, p.11.

the state child support enforcement (IVD) agency in locating the father, establishing paternity, obtaining and periodically modifying the support order, and enforcing that order. This was also an eligibility condition for receiving AFDC. If a mother failed to cooperate, her needs were removed from the AFDC grant, and the assistance payment went (if possible) to a protective payee on behalf of the child(ren). Federal regulations defined “cooperation” to include: 1) providing whatever information the mother had or attesting to a lack of information; 2) attending conferences at the child support agency; 3) submitting herself and the child to genetic tests if such tests were ordered by a court or administrative agency; 4) appearing at any court/administrative agency hearings; and 5) turning over to the state any child support payments received directly from the father.

All of this was supposed to be explained to the mother at the time she applied for AFDC. At that time, the AFDC worker was also supposed to explain the *third* pillar of the system, the “good cause” exemption. The federal regulations provided four possible reasons why a mother might claim an exemption from cooperating with the state in pursuing support. They included 1) pursuing support was reasonably anticipated to result in physical or emotional harm to the mother or the child; 2) the child was conceived as the result of forcible rape or incest; 3) adoption proceedings were pending; or 4) the mother was working with a social worker to determine whether the child should be placed for adoption.

Another set of federal regulations set out what the mother had to prove in order to establish a “good cause” claim. Under these regulations, a domestic violence claim was not easy to prove. There had to be **official records** somewhere in the system in order to establish a case. If there were no law enforcement, court, medical, child protective services, or social services records, it was impossible to make a successful claim. Moreover, if the mother could not produce such documents, the state could contact the father and ask him to corroborate the mother’s claim of abuse! If the mother could produce sufficient evidence, however, the AFDC program would excuse her from cooperation and child support would not be pursued.<sup>5</sup>

Social science research and case law documented a number of problems with this system.<sup>6</sup> One was that the AFDC workers did a very poor job of interviewing mothers and getting information about the fathers. Another was that AFDC caseworkers did a poor job of/didn’t meet their obligation to explain either the “cooperation” requirement or the “good cause” exemption to their clients. This left mothers unclear about what their obligation was and unsure how to raise concerns about domestic violence. A third criticism of the old system was that the standards for proving a “good cause” claim

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<sup>5</sup>Technically, based on the assignment discussed above, the child support agency could decide to pursue support without her cooperation. However, this was rarely done.

<sup>6</sup>For further discussion and citations on this point see Paula Roberts, *Establishing Paternity for Children receiving AFDC: What's Right and What's Wrong with the System* (Washington: CLASP Publication 1994) and *Child Support Cooperation Issues* (Washington: CLASP Publications 1996).

were so high that few domestic violence victims could meet them.

In any case, there was a clear discrepancy between the number of domestic violence cases and the number of women who ever claimed a good cause exemption from the cooperation requirement. One possible explanation for this is that domestic violence victims who had legitimate fears about retaliation if they pursued child support may have been using the provision of the regulations which allowed them to attest to a lack of information about the father or his whereabouts in order to avoid pursuing support. AFDC workers-- faced with mothers with legitimate fears of domestic violence but no way to prove a case under the regulations-- may also have been implicitly or explicitly suggesting to their clients that the best thing for them to do was to simply say they didn't have much information. This allowed the mother to avoid the father's wrath and the risk of a breach of confidentiality about their whereabouts. It also allowed the AFDC worker to avoid putting the effort into establishing a "good cause" case. In the end, it thwarted the pursuit of support and denied mothers access to the very financial resources they may have needed in order to avoid returning to an abusive relationship. It also allowed the child support system to avoid figuring out how to set up a system which both collects the needed support and protects the client from violence.

### **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996**

In August 1996, Congress passed and the President signed, a bill which abolished the AFDC program and replaced it with a new program called Temporary Assistance for Needy Families (TANF). The new law is supposed to give states more flexibility in designing public assistance programs. For that reason, it contains some federal standards but lets the states make choices in a number of major areas. The new law retains a federal requirement that those receiving assistance assign their child support rights to the state. 42 USC Section 608(a)(3) It also retains some federal guidance on defining "cooperation" and in setting up "good cause and other exceptions" to the cooperation requirement. However, states are given new discretion in designing and implementing their state systems. 42 USC Section 654(29)

As to "cooperation":

- C the federal statute defines "cooperation" to include appearing at interviews, hearings, and legal proceedings and submitting to genetic tests.
- C states are free to supplement this definition with their own standards particularly in regard to how much information about the father the mother seeking public assistance must provide. The only federal guidance is that the standard must include a "good faith" effort to provide his name and other identifying information that the state decides is appropriate.

- C the federal statute requires that the child support agency-- not the public assistance agency-- be responsible for making the cooperation determination.
- C the penalty for failure to cooperate will be set by the state. At a minimum, the penalty must be a 25 percent reduction in the TANF grant.

As to "good cause":

- C states are free to develop their own ideas about and standards for proving any "good cause" exceptions to the cooperation requirement.
- C the state can decide which agency should make the "good cause" determination. This can be done by the TANF agency, the Medicaid agency, or the child support agency.

Thus, at a minimum, states must 1) define "cooperation in good faith"; 2) develop definitions and standards for granting "good cause" exceptions; and 3) decide which agency or agencies should be involved in the process.

Beyond this, states can also take advantage of a provision in the law which allows them to give special consideration to families in which there has been domestic violence. 42 USC Section 602(a)(7) This provision is often referred to as the Wellstone-Murray Amendment. Under it, in developing their TANF implementation plans, states can indicate that they will screen cases for domestic violence issues, and provide families with counseling and support services. In addition, if a state choose this route, it can waive TANF program requirements, including the requirement of child support cooperation if there is good cause to do so. To date, 11 states have chosen to take this option and 17 others have indicated that they plan to address domestic violence issues in some other way.

### **Possible Approaches to these Changes**

Victims of domestic violence and those concerned about them can use this time of change to improve the system in their state and make sure that domestic violence victims receive the help they need. A good starting place is advocating adoption of the Wellstone-Murray approach. In states where this is not possible--and in states needing help in fleshing out how to implement Wellstone-Murray-- there are several clusters of issues to consider: They include 1) informing women about the child support system and its cooperation requirements in a clear fashion; 2) developing and disseminating "good cause" and "other exceptions" to the cooperation requirement that encourage women to think through their options; 3) administering both "cooperation" and "good cause" in a humane and coherent way; and 4) creating protections within the child support system for those who wish to pursue child support but do not wish to endanger themselves or their children. Below is an outline of some of the issues to think about.

## *Informing Women About the Child Support System and Its Cooperation Requirements*

1. Simple, clear and coherent written materials need to be developed explaining what the child support enforcement system is and how it works. These materials should explain the "cooperation" obligation and "good cause" exceptions. They should also explain what protections the state can offer to women who have been abused but do wish to pursue support.
2. These materials should be widely disseminated with special attention to providers offering services to domestic violence victims and to battered women's shelters.
3. All TANF workers should receive basic training in identifying and discussing domestic violence issues with applicants and recipients. If possible, a private space should be available in TANF offices where mothers can speak freely and confidentially once the problem has been identified.
4. Mothers should receive new copies of these materials periodically or at any point in the process that it appears that there may be a domestic violence problem.

## *Developing "Good Cause" Standards and procedures*

1. A definition of "good cause" must be developed. The old federal regulations are a good starting place as they have worked fairly well over the years.
2. Standards for proving a "good cause" claim also need to be developed. Both should be done in conjunction with experts in domestic violence (including the mothers themselves) to reflect realistic requirements which can be met in typical domestic violence cases. Special attention needs to be paid to situations where the victim has no official documentation. Affidavits from the victim herself and from any witnesses should be acceptable when other proof is not available.
3. A basic standard of proof should be decided upon. The standard should be a "preponderance of the evidence" and there should be provisions for appeal when a claim is denied.
4. Case workers should have an affirmative obligation to assist domestic violence victims wishing to assert a "good cause" claim to obtain available evidence and fill out affidavits.

## *Implementing and Administering "Good Cause" Provisions in a Humane Way*

1. The public assistance intake form should be designed to contain a box for the client or caseworker to check off if the case involves a mother or child(ren) for whom domestic violence is an issue. This will simplify initial identification of cases in which there is a need for special protections and/or a "good cause" exemption from cooperation.

2. If, as a result of the box being checked on the TANF application form --or at any subsequent interview-- it appears that there are domestic violence issues, the case should be transferred to a specially trained worker or unit (depending on the size of the office). That worker should examine the situation with the mother and determine whether child support should be pursued, a protective order should be sought (if one is not already in place) or a "good cause" exemption claimed.

3. If a "good cause" exemption is to be pursued, there must be someone responsible for making the determination once evidence has been obtained. In states opting for Wellstone-Murray or some other TANF-based approach to protecting survivors of domestic violence, it probably makes sense to have the "good cause" determination made by specially trained workers within the TANF system since these workers will be administering related exemptions (e.g. from time limits, work requirements). In this case, there should be no referral to IVD until the "good cause" claim had been adjudicated and any appeals finalized.

In states where the TANF system has no structure for or commitment to special handling of cases in which there are domestic violence issues, it may be better to have the IVD agency (which will be handling "cooperation" issues) administer the exemption so that the mother only has to explain the situation to one worker and deal with only one system.

4. The caseworker (be it in TANF or IVD) should start with the premise that child support should be pursued whenever it is possible to do so and still protect the family. The importance of collecting support, what protections can be offered, and how the mother can help should be explored .

#### *Providing Protections to Those Who Wish to Proceed with the Collection of Support*

1. All cases in which there are domestic violence issues should be specially coded and computer flagged within the system. Information about the case, any available documentation, whether there is a protective order and what its terms and conditions are, etc should be entered into the file.

2. Information about the location of the mother and child(ren) should be protected from disclosure unless disclosure is ordered by a court. The protections offered by this system should be explained to the mother during the interview so she can assess whether they offer sufficient protection to make it feasible to pursue support. One model here is the Address Confidentiality Program (ACP) which operates in the State of Washington. In this program, the Secretary of State serves as the battered mother's legal agent for receipt of mail and service of process and she receives a substitute address. She then uses the substitute address--not her actual address-- in official documents. The program also prevents public access to information in voting and marriage records.

3. If the mother wishes to proceed, she should be informed every time a step is taken on the case (e.g., papers are served, an interview is scheduled). That way she can know that the batterer may be riled up and she should take special precautions.

4. If court or agency appearances are scheduled, the mother should be required to attend only if absolutely necessary. If this is the case, she should be afforded protection, she and the batterer should never be left alone, and each should leave the building at different times and from different exits.

5. At any point where it appears that the system cannot protect the family, prosecution of the support case should cease.

6. All cases in which “good cause” is claimed should be periodically reevaluated to determine whether the situation has changed and the mother now feels that it would be safe to proceed with a child support action.

While not perfect, this set of procedures recognizes the competing concerns of securing support for children and protecting families which have experienced physical or psychological violence. It attempts to balance those competing concerns within a system which focuses on creating the kinds of protections needed by victims of such violence so that they can obtain the financial resources they need to avoid returning to the batterer.