

The New Welfare Law: State Implementation and Use of the Family Violence Option

**Developed for Battered Women's Advocates
by the National Resource Center on Domestic Violence
and the National Network to End Domestic Violence**

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Introduction

The purpose of this paper is to provide accurate information about the *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* [“the Act”] and the issues likely to surround its implementation. However, the Act is very new and there are differing views about what the law actually means, about implementation, and the best strategies to help battered women. We encourage advocates to learn as much as they can from multiple sources and analyze the issues from the unique perspective of their state. We continue to welcome your feedback and suggestions for future papers.

This paper is the second in the series and focuses on implementation of the law, and the use of Wellstone/Murray Amendment (Family Violence Option) in particular. Working Paper #1 provided a basic introduction to the new welfare law. The National Resource Center on Domestic Violence (NRC) and the National Network to End Domestic Violence (NNEDV) are working closely with the Battered Women's Justice Project—Civil Component (BWJP), Ayuda, The Taylor Institute, NOW/LDEF, NCADV, the Women's Legal Defense Fund, and other groups to ensure that ongoing technical assistance is available to advocates. In the interim, the NRC [800-537-2238] will serve as a clearinghouse.

This paper has five sections:

- I. Interpreting and implementing the Act
- II. The effects of the Act on battered women and their children
- III. Policy and program responses
- IV. Explanation of domestic violence references in the TANF section of the Act
 - ▼ Hardship exception to the 60 month limit on assistance
 - ▼ Family Violence Option [also known as the Wellstone/Murray Amendment]
- V. Discussion of the Family Violence Option
 - ▼ Recommendations

A brief list of frequently-used terms is also included at the end of this paper.

I. Interpreting and Implementing the Act

The new welfare law¹ (“the Act”) reduces the federal funding available for assistance programs, removes many federal protections for recipients, and gives each state enormous flexibility to spend the money that is available. An understanding of the political backdrop for the passage of the Act will help advocates analyze the likely impact on battered women and children. The purposes of the law as stated in the Act itself provide some insight into the political context.

The stated goals of the Temporary Assistance to Needy Families (TANF is the name of the federal block grant program that replaces Aid to Families with Dependent Children, “AFDC”) part of the Act are to:

- increase flexibility to the states;
- provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- prevent and reduce the incidence of out-of-wedlock pregnancies and establish numerical goals for preventing and reducing the incidence of these pregnancies;
- encourage the formation and maintenance of two-parent families; and
- clearly establish that no part of the Act should be interpreted to entitle any family or individual to assistance under any State program funded under this part.²

Because state flexibility is a key aspect of the Act, the politics in your state will have an enormous impact on the implementation of the Act and its effects on battered women and their children. At this point, it is hard to know just what this will look like from state to state. Some of the questions to keep in mind are:

- What will happen to battered women (and others receiving assistance) if the money runs out?
- How will women live if meager benefits are further reduced, if there are no jobs, if they can not work or meet other requirements?
- What will happen to women and their children if the family is no longer eligible for any benefits?
- How might public policy developed under the Act conflict with or compromise other federal and state public policy initiatives designed to protect women from domestic violence and other forms of violence against women?

These questions will be answered at a state level. States have flexibility to lessen some of the harsher aspects of the federal law. This provides an opportunity for advocates to raise the particular issues faced by battered women. There are two broad advocacy approaches to this: one is to work for all people who may need assistance to enhance their rights and opportunities; the other is to define battered women as a special group with particular rights and opportunities within the general welfare program.

As advocates for battered women analyze the impact of this law on battered women, they should keep in mind that there are people who need assistance who are not battered. These individuals and families may also have compelling reasons to receive assistance, services and exemptions from requirements they cannot meet. Even if advocates pursue the particular options and resources that battered women need, advocates can work to ensure that those resources do not come at the expense of others who need assistance. Considering all the people who need assistance will help advocates build the coalitions they will need to effect change.

Another reason to advocate broadly is that some battered women will not be able to meet the eligibility requirements for specialized responses to family violence, others will be unaware that they exist, and others will be unable to successfully navigate the procedures established for qualification. Therefore, building programs that respond to all people in need will help the battered women who will end up in the "generic" category of people receiving assistance.

The upheaval and change caused by welfare "reform" on a state and federal level is likely to continue for the next several years. Advocates will need to keep an informed and watchful eye on policies and programs being developed and their effects on battered women and their children.

II. The Effects on Battered Women

Like all people needing assistance, battered women will be affected by some of the potentially harsh aspects of the Act. In addition, **some** battered women may face particular challenges as they try to meet various state requirements or conditions for receiving assistance. Some of the requirements or conditions are part of the federal Act and some will be developed at a state level. Due to the uniqueness of each state's program, advocates will need to analyze their state's program to determine its overall effects.

A. Some effects of the act on all recipients:

❑ **Makes less money available**

Overall, the Act reduces and “caps” the amount of federal funding available for programs. However, some states will receive more money under the Act and some will receive less. The Act provides states an incentive to maintain their “historic” level of state funding.³ However, since the Act ends any federal right or entitlement to assistance, a state may significantly reduce the amount of money available for certain programs. This could result in fewer people getting help and/or people getting less help.

❑ **Ends the right to federal assistance and makes some current recipients ineligible**

The Act ends the right to federally funded assistance and makes some people ineligible for assistance that they are currently receiving. For example, the Act will reduce the number of children eligible for Supplemental Security Income.⁴ In addition, the Act prohibits states from using Federal TANF money for a variety of persons, including:

- ▼ families who have received assistance for 60 months. States can develop exceptions to the 60-month limit, but these exceptions cannot exceed 20% of the state's welfare caseload. These exceptions can be based on hardships or that the family has an individual who has been battered or subjected to extreme cruelty.
- ▼ a family without a child or pregnant individual;
- ▼ minor parents unless they are attending school and living at home or in an adult supervised living arrangement (with certain exceptions);
- ▼ fugitive felons or certain parole/probation violators;
- ▼ individuals convicted of certain drug felonies (unless the state opts out of this prohibition).

Note: These prohibitions are for TANF funds. In some circumstances, states may elect to use state funds where TANF funds can not be used. This is an important strategy for advocates to consider as they try to lessen the potentially harsh effects of this law.

❑ **Establishes significant work requirements for states**

TANF creates several possible work requirements for states to meet. The requirements placed on states will lead to significant work requirements for recipients and the aggressive enforcement of those requirements. Federal requirements on states include:

- ▼ A certain percentage of adults from families receiving assistance must work, in order for the state to avoid a financial penalty. The percentage for single parent families who must work is 25 % in FY 97 increasing to 50 % in FY 2002. The rate for two parent families is 75 % in FY 97 and FY 98 and 90 % in FY 99 and thereafter. There are complicated rules about what is defined as “work.” A state may avoid the penalty if it has a good cause reason for failing to meet the percentage required.
- ▼ A state must outline how it will require parents or caretakers to work by the time recipients have received 24 months of assistance.
- ▼ If a state does not “opt out” (choose not to meet this requirement), it must require parents or caretakers receiving assistance to participate in community service after they have received two months of assistance, unless the parents are working or exempt for some other reason.

Note: A state may not reduce or end a single parent's assistance for failing to comply with work requirements if the parent has a child under six and refuses to work because she cannot get needed child care.

❑ **Establishes requirements regarding child support and paternity establishment**

The Act includes numerous changes that will lead to aggressive child support collection. These include changes that will make it easier to find and track parents and their assets, although certain privacy protections are also included in the Act. The Act includes some privacy protections specifically for battered women. Although enhanced child support enforcement may help some battered women, it may also raise significant safety concerns for other women and their children.

Note: This is a very important area for domestic violence advocates to understand and will be the topic of working paper #3.

Of particular concern is the mandatory penalty for failure to cooperate with child support enforcement without good cause. States are **required** to reduce or eliminate assistance to a family if an individual does not cooperate with child support enforcement unless they have a good cause reason not to cooperate.⁵ Each state will define “cooperation.” It is important that state programs ensure that battered women are aware of the good cause exception and what they will need to do to successfully qualify for it. Part of the child support enforcement process is establishing the paternity (“legal” father) of the child. The Act places greater demands on a state's efforts to establish paternity. This too may help some battered women and endanger others and their children.

❑ **Provides no guarantee of living wage or jobs**

Despite the limit on federally funded benefits to 60 months and the state and federal work requirements, the Act does not guarantee there will be jobs available nor does it guarantee that families who work will be able to afford basic human needs, such as food, housing, utilities and health care.

❑ **Creates too much change in too little time**

The Act will lead to significant change in each state's assistance programs. The extent and pace of the change—all by itself—will cause confusion among state welfare officials, advocates, applicants, and recipients. Therefore, battered women may get incorrect information or be subject to incorrect implementation of the Act. Misinformation or misapplication may lead battered women to make decisions that do NOT enhance their safety.

❑ **The new Act may not be “all bad.” Flexibility could benefit some recipients**

Since each state is free to design its own assistance programs and eligibility requirements, a state could design programs that actually provide people with the help they need. For example, a state could:

- ▼ provide training/education that will help a person get a job that will provide a living wage and medical benefits;
- ▼ develop a program that provides battered women with the support, information, and resources they need to be safe and work;
- ▼ provide on site child care;
- ▼ provide transportation;
- ▼ allow flexibility in work requirements to respond to the variety of life situations that may arise, such as illness or family emergencies;
- ▼ allow recipients to keep more of the money they earn while working and receiving assistance to give them a real chance to “get ahead.”
- ▼ allow recipients to have a reliable car without being penalized for having too many assets.

The ability of advocates to educate legislators and other decision makers about the needs of poor people and poor battered women may determine if these types of programs will be implemented.

B. The particular effects of the Act on some battered women:

- ❑ **State programs may establish requirements or place conditions on recipients and the amount of time a person can receive assistance.**

Some battered women may not meet requirements or become economically self-sufficient before the time limit expires because:

- ▼ their abusive partner or ex-partner will prevent them from meeting the requirements or establishing self-sufficiency in order to further his control; and/or
- ▼ they may experience mental or physical health issues that have the same effect.

- ❑ **Depending on the state's program, if a woman fails to meet the requirements, her benefits may be reduced or she may become ineligible to receive any benefits.**

Some battered women may experience temporary or long-term health issues. These issues may be caused by violence, family violence, poverty, substandard living conditions, or a combination of factors. The cause may be current or historical. A mental health issue may keep a battered woman from meeting program requirements and prevent her from achieving economic self-sufficiency.

Note: Battered women who are disabled and unable to work may be eligible for a wider range of assistance programs, such as Social Security Disability (SSD) if they have a work history or Supplemental Security Income (SSI).

- ❑ **Some battered women move to another state to try to escape the violence. Since each state could have very different assistance programs, eligibility requirements, and responses to family violence, this could cause significant hardships on battered women.**

For example, what if a woman moves from a state where she had a time limit extension due to domestic violence to a state that has no such extension?

Another concern is that some states give fewer benefits to people who have just moved to that state. The rationale for this policy is the belief that a family will move to a state that provides higher benefits; therefore, lower benefits to “new” residents will remove any motivation for families to move to a state for its benefits. However, it also unfairly penalizes a battered woman who moves to a new state to enhance her safety and the safety of her children.

C. The effects of the Act on immigrant⁶ battered women:

The Act and recent changes made to immigration laws add new concerns to the already complex issues that some poor immigrant battered women face. Batterers of immigrant women often use their partner's immigration status to further their control. In addition, immigrant battered women may face cultural and language barriers that can keep them from accessing the help available.

Generally, the Act narrows immigrant eligibility for federal and state public benefits and makes it more complicated to understand what assistance is available and how an immigrant battered woman can access it. States may opt to provide TANF benefits to certain categories of immigrants. The outright denial of some benefits and the current confusion will limit immigrant battered women's safety options.

In order to comprehend the full effect of the immigration changes on immigrant battered women, advocates should seek information from agencies, programs, lawyers, and individuals currently working on immigration issues.

Note: Welfare and immigrant battered women will be the topic of an upcoming working paper in this series.

D. The effects of the Act on Indian tribes:

This section provides a very brief overview of the TANF aspects of the Act that specifically refer to Indian tribes.

Note: Welfare, Indian tribes, and Native American battered women will be the topic of an upcoming working paper in this series.

Key TANF provisions⁷ regarding Indian tribes include:

- ▼ Under the Act, each “Indian tribe that has an approved tribal family assistance plan” will receive a direct tribal family assistance grant. The amount of the grant will be the amount the state received in FY 94 for Indian families residing in the service area identified in the tribal family assistance plan. The state's TANF grant will be reduced by the same amount.
- ▼ Indian tribes that received JOBS funds will continue to receive the FY 94 amount through FY 2002.
- ▼ Any Indian tribe that desires to receive a tribal family assistance grant must submit a three year tribal assistance plan to DHHS.
- ▼ DHHS, with the participation of Indian tribes, shall establish for each Indian tribe receiving a grant, minimum work participation requirements, appropriate time limits for receipt of welfare-related services under the grant, and penalties against individuals.

III. Considerations for Policy and Program Responses

The following section provides a discussion of implementation considerations for battered women and lists strategies that may address these concerns and initiate more responsive programs. Additional considerations and strategies are included in Section V of this paper, which specifically discusses the Family Violence Option. If properly implemented, the Family Violence Option may create more options for battered women's safety and self-sufficiency.

Due to the uniqueness of each state's program, a strategy that may help poor battered women and other poor people in one state may not help in another. Therefore, advocates should analyze each strategy in the context of their own state's programs, laws and politics. Collaboration with other advocacy groups, like poverty law programs and welfare rights coalitions, and government agencies involved in implementing the program will provide advocates with more accurate information on which to base their analysis.

This paper provides general information. NRC/NNEDV will forward information about current programs initiatives regarding domestic violence and welfare as they become available. Please call NRC if you are currently involved in such a program.

A. General implementation issues of concern to advocates:

- ❑ **Over-generalization or characterization of battered women receiving assistance can have unintended negative consequences**

In order to get the specialized programs that *some* battered women need, advocates will have to explain what battered women need and why. In doing so, we should avoid stereotyping battered women. For example, an advocate might say, "Battered women may not be able to meet work requirements because their partners or ex-partners may sabotage or hurt them if they work." This explanation could then lead to the generalized assumption that battered women can not work or would be a liability to employers. Inaccurate generalizations can lead to policy positions that hurt battered women. For example, a state might take the misinformed position that "since battered women can't work, we won't waste money on giving them job training, job placement, child care, or transportation to work or training programs."

In addition, the identification of battered women's problems or needs does not guarantee a helpful response. The Act makes clear that there is no longer a federal entitlement to assistance. The title and overall tone of the Act suggests that individual recipients—including battered women— will be held responsible for fixing the problems they face. [The title of the Act emphasizes this point — *The Personal Responsibility and Work Opportunity Act of 1996*.] In this context, the identification of the problems faced by some battered women could lead to battered women being held responsible for "solving" the violence in their lives before receiving assistance. (For example, requiring a battered woman to stop her partner's interference with her work or face sanction.)

These concerns can place advocates in a difficult position. How do advocates inform policy makers about the need while insuring that the response helps, not hurts, battered women? Should advocates remain silent about a particular need if they believe publicly identifying it will only lead to harm? Advocates should carefully consider the characterizations of battered women they will employ, and the likely response given the current political climate in their state, before they take action.

Initial research about domestic violence and welfare indicates that a substantial number of welfare recipients are past or current victims of family violence.⁸ However, research about domestic violence and welfare is at a preliminary stage. Until there are more studies and information available, advocates should be cautious in the use of research to make policy arguments and to characterize poor battered women. Before using research findings, advocates should fully understand what the findings **do and do not** say and how to fairly and accurately report those findings. Current research in this area shows there is still a lot to learn. For example, we need to know more about the following:

- ▼ how battered women use assistance programs and work to further their safety plans;
 - ▼ the effects of work requirements on safety;
 - ▼ batterers' responses to their partners' strategies;
 - ▼ how a battered woman's immigration status affects her safety and need for assistance;
 - ▼ what resources battered women need to be safe and able to support themselves and their children;
 - ▼ the role of other systems in battered women's search for independence; and
 - ▼ the impact of disclosure of violence on an individual woman's safety and access to services.
- **Identification of domestic violence in individual women's lives does not mean they will be safe or get the help they need.**

It seems reasonable to assume that a first step in helping battered women is to find out who they are. However, the practical reality is that sometimes battered women are better off not disclosing their current or past experience with an abusive partner. Some of the reasons a woman would be better off **not** disclosing include:

- ▼ there is no apparent or real benefit to disclosing;
- ▼ her abusive partner may retaliate;
- ▼ a report to child protective services will be made and they could unnecessarily take her children from her;
- ▼ disclosure may cause a fight over custody and visitation;
- ▼ the system she discloses to may respond punitively or insensitively;

- ▼ the system's response may further her partner's control of her life;
- ▼ she may be excluded from certain programs and/or tracked to less desirable programs;
- ▼ she may be assigned to programs with greater requirements;
- ▼ disclosure may lead to inaccurate and negative assumptions about her and her children, (e.g. she can't work or it would be dangerous to employ her); or
- ▼ she may face discrimination in employment, housing and access to services.

Advocates should be careful to fully analyze policies that call for disclosure of domestic violence and how they will be implemented. The decision to disclose domestic violence should be the battered woman's. In addition, the decision should be an informed one, allowing a woman to consider both short and long-term implications for her and her children. Each battered woman should know why she is disclosing, who will get the information, how it will be used, and what will happen if she does not disclose.

- **The current welfare system is complex and constantly changing. The federal Act increases the potential for conflicts of interest between the interests of the state and those of the individuals receiving assistance.**

Numerous changes are underway in every state's welfare system. The federal Act made significant changes which in turn are leading to extensive state level upheaval. For example, a particular state may have changes in eligibility for programs, the amount of assistance available, work and other requirements, penalties, time limits, child support enforcement, availability of child care. Some education and training programs may be eliminated completely. These changes are typically accompanied by modifications to laws, regulations, procedures, forms, and current practices. It is difficult for welfare workers and administrators to keep up and it is perhaps impossible for individual families or battered women to keep up.

In addition, the federal Act creates financial penalties for states which fail to meet certain work percentage or other requirements and financial incentives for states who meet other goals, such as reducing the number of out of wedlock births.⁹ A state will design its programs and procedures to avoid these potential penalties and strive for the incentives. This could place individual workers in the position of implementing programs that conflict with a recipient's best interests. For example, a worker implements a program designed to meet work participation rates. The program requires participants to work or have their assistance amount reduced. Policies and practices allow for very few exceptions to the requirements and workers are discouraged from granting them. A particular battered woman's best interest may be to get an exception from the work requirement and the reduction of benefits — placing her interests in direct conflict with the goals of the program.

Overburdened systems and workers in those systems sometimes try to find ways to reduce the work load. If responding to battered women will cause “more work” then there is a disincentive to inform recipients of programs/responses that lead to more work. For example, a state may allow for extensions of time limits for battered women. In order for a woman to get an extension the worker has to fill out forms, confirm information and do other tasks. If the extension is granted the woman stays on the worker's caseload— if there is no extension the worker's caseload is automatically reduced. Strategies to help battered women must address these practical realities or they will fail.

B. Key elements of a response that addresses safety and support needs of battered women:

There are several approaches a state can take to respond to the needs of battered women as it develops a state plan, revises statutes and regulations, and designs assistance programs. A state may choose to include the Family Violence Option in its state plan and establish programs, exemptions, waivers or other assistance-related responses to battered women. It is important to identify and thoroughly consider the implementation issues raised by the Family Violence Option before it becomes part of a state plan. Properly implemented, the Option and other state-specific strategies may create an opportunity for many battered women to self-identify and secure the necessary protections, services, and support they need to achieve both safety and self-sufficiency. Whether these strategies actually provide the flexibility and options battered women need will be determined by their implementation.

In addition, some states will continue current welfare program responses to battered women. For example, a state may continue a program which exempts battered women from certain time limits or work requirements. Establishing a state entitlement to assistance will assist not only battered women but all poor women and their families. The state may also choose to assure that certain immigrant victims of domestic violence are eligible for assistance. See Sections IV & V for a detailed discussion of the Family Violence Option and its implementation.

Key elements of approaches that address the needs of battered women include:

□ Access to confidential and independent advocacy

As do all recipients, battered women need accurate information about their rights, responsibilities and options under current complex welfare programs. The current system is overburdened, generally uninformed regarding the particular needs of domestic violence victims, and may be pursuing goals that put battered women and other recipients at risk.

Confidential and independent advocacy provides the framework for candid and effective safety planning. If a battered woman believes an advocate will report what she says to the welfare worker, then the woman will not be able to tell the advocate all she needs to know in order to present information and options that will enhance her independence and safety. Advocates who are independent from the system will be free from the potential conflicts of interest that may arise between a battered woman's safety goals and the state's goals. Ultimately, access to confidential and independent advocacy will enhance battered women's safety and chances for self-sufficiency.

❑ **Training for all persons involved in running programs or administering assistance**

Anyone involved in administering TANF assistance or in providing programs to individuals receiving assistance should have training about:

- ▼ 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.

Anyone providing services/information to battered women should also know about the state's welfare program and any particular responses available to battered women.

❑ **In general, there should be laws and procedures that protect all recipients from improper, inaccurate, or unfair implementation of a state's program.**

This might include hearings, rights to information or notice of program changes, notice of penalties to be assessed and a chance to ask for a review of that penalty, etc.

❑ **All participants must be informed of their rights and options under the program, including eligibility for waivers, extensions, or exemptions because of family violence.**

This provides battered women with the opportunity to access additional help, while maintaining their privacy and safety. With universal notification of their rights and options, battered women can make an informed decision about disclosing information. [See related discussion in Section V.]

Information should be provided in written materials and verbally. Written materials should be available in multiple languages and disseminated through a variety of sources. The information should include: a description of the particular rights and options, how to apply for the options, where participants can get help or ask questions, and participant's privacy rights if they do disclose information.

□ **Battered women need assistance programs that respond to their unique circumstances and safety needs.**

Like all people, battered women have basic needs for housing, food, health care, and physical safety. Like all people, they also need the basics of human dignity— privacy, opportunity and self-determination. Advocates should analyze the TANF program in their state to determine if it jeopardizes women's access to these basic needs.

With the broader needs in mind, advocates might then consider the more specific needs of battered women who need assistance. These will vary widely. For example, an individual battered woman may:

- ▼ simply need a job that pays a living wage and provides health insurance for her and her children;
- ▼ need job training or other educational opportunities to obtain employment;
- ▼ need all the things any person receiving assistance might need, such as: transportation, child care, health care, employment opportunities (which are not precluded or limited by racial, gender, ethnic or other bias/discrimination, including bias against battered women);
- ▼ need a flexible schedule because her abusive partner cannot be counted on to regularly provide child care;
- ▼ need to go into a shelter or hide from her abuser;
- ▼ need effective enforcement of criminal laws or other court orders to help free her from her abusive partner's control, which might include harassment at her job;
- ▼ need court orders or other protection so her partner cannot kidnap her children from child care;
- ▼ need help establishing an immigration status that is independent of her partner; or
- ▼ need specialized support to cope with mental health issues (perhaps caused or exacerbated by domestic violence).

It will be a challenge to develop a system where the particular needs of each battered woman can be identified and met while maintaining women's privacy and safety.

❑ **Assistance program laws, regulations, procedures and practices should seek to protect battered women's privacy**

For battered women hiding from their abusive partner or ex-partner, privacy is the key to safety. It is essential that laws, procedures and practices prevent the disclosure of battered women's location.

Legislating confidentiality is relatively easy. Keeping information confidential can be very difficult. Assistance program offices may not be private. Records may be left open on desks. People in the waiting room may be able to overhear conversations. People “trying to help” may actually divulge information that will hurt a battered woman. [See Section V. for further discussion and recommendations regarding confidentiality.]

❑ **Flexibility for battered women participants**

Battered women have partners who try to control their lives. This can take many forms. An abusive partner may: physically prevent her from going to work, beat her up so she physically cannot work or is too bruised to go out in public, make her late for work, call her repeatedly at work, stalk her at work, or take some other action that will cause her to lose a job, prevent her from studying if she is in school, make her miss an exam or other deadline in order to sabotage her education efforts. Battered women should not be penalized for failing to meet certain requirements if their abusive partner is preventing them from doing so.

For those unfamiliar with the realities of domestic violence, this will bring up the question: — If he is preventing her from meeting the requirements, then why doesn't she leave him? It is essential for all persons working with battered women to understand that leaving will not necessarily reduce the physical violence or other batterer-generated risks that women face. In addition, for some women, leaving may actually increase their risks. Getting out from under the control of an abusive partner is a complex and challenging undertaking for battered women — and one which is all the more difficult for women with few financial resources.

Flexibility might include:

- ▼ temporary waivers for work requirements;
- ▼ waivers, exemptions, extensions for time limits;
- ▼ defining good cause exception to child support/paternity “cooperation” requirements to include fear of family violence; and
- ▼ customizing programs and resources to meet the individual needs of battered women.

Advocates must be careful that flexibility does not lead to the exclusion of battered women from work programs, job placement, or education/training programs.

❑ **Resource commitment to the referral sources**

Referral information provided by welfare programs about services available to battered women will not help them if the service does not have the capacity to respond. A state should commit the resources necessary for local domestic violence programs and other related agencies to provide battered women with the help they need to be safe and economically secure.

❑ **Expansive interpretation of the types and sources of information a battered woman may use as evidence to meet the eligibility requirements for waivers, extensions, exemptions or programs**

[See discussion on page 33 of this paper.]

❑ **Documentation and evaluation of the effects of the state's program on battered women and their children**

Much of the welfare policy changes have been described as an “experiment.” Many involved in welfare work say they simply do not know what will happen to battered women, families and children under the changes. It is essential to document programs that work so they can be continued and expanded. It is also essential to determine which programs or requirements are not working and/or increasing risks to battered women and their children so they can be modified or terminated.

❑ **Consider starting model programs in manageable, well-resourced sites with evaluation components**

Model programs provide advocates and welfare administrators with a chance to assess what works and what does not for women in different circumstances. In addition, such programs will identify implementation issues, the staff needed, and how much money the program will cost. Smaller more manageable initiatives allow advocates to more closely monitor the effects on battered women and the opportunity to intervene if the program is not working.

❑ **Assistance programs should respond to the needs of immigrant battered women**

Although the Act limits the eligibility of some legal immigrants to certain programs, there will be immigrants who are eligible for help under exceptions to the limitations or under state programs that choose to provide assistance to immigrants. Advocates' priority should be to educate decision-makers in their state about the importance of providing benefits to battered immigrants and their children.

Strategies to allow immigrant battered women the opportunity to access the assistance and services they need should include:

- ▼ Culturally and linguistically appropriate outreach to inform immigrants of their eligibility for certain assistance and services. Immigrants must be informed of assistance programs that are available, the eligibility requirements for those programs, and the best approach to apply. In addition, all immigrants, including undocumented immigrants, are eligible for:

- ▼ state and federal emergency medical services, short-term, non-cash emergency relief;
- ▼ immunizations and treatment for communicable diseases; and
- ▼ programs, services, or assistance specified by the Attorney General which:
 - deliver in-kind services at the community level, including through public or private non-profit agencies;
 - do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and
 - are necessary for the protection of life or safety.
(This might include soup kitchens, crisis counseling and intervention, and short-term shelter)¹⁰

Note: The Attorney General has issued “provisional specifications” which state what will be considered “necessary for the protection of life and safety.”¹¹ Among the list are the following two specifications related directly to domestic violence victims:

- Crisis counseling and intervention programs, services and assistance relating to child protection, adult protective services, violence and abuse prevention, victims of domestic violence or other criminal activity, or treatment of mental illness or substance abuse; and
 - Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused or abandoned children.
- ▼ Advocacy that will help immigrant battered women navigate the complex legal and programmatic issues they face. For example, an immigrant battered woman may need to prove that she is a “qualified alien”¹² in order to be eligible for assistance. There are a number of categories of immigrants that can be considered “qualified aliens.” One category includes certain domestic violence victims. A battered woman may need advocacy and legal representation to help her meet that legal standard. In addition, many immigrant battered women are not “qualified aliens” and will need an advocate's help to pursue other options.
 - ▼ Commitment to provide necessary services and assistance to immigrants and immigrant battered women.

Note: Further strategies will be explored in the upcoming working paper in the series on immigrant battered women. Advocates should collaborate with agencies, programs, lawyers and individuals currently working on immigration issues.

Principles to guide implementation of TANF and other Welfare Act provisions

- ▼ States should provide assurances that families meeting established eligibility requirements are guaranteed cash benefits under TANF.
- ▼ Safety for women and children should be the principle consideration in the implementation of any welfare provision, consistent with other public policy establishing our ongoing interest in protecting women and children from family and intimate violence (such as the federal Violence Against Women Act, state domestic violence and sexual assault statutes, and child abuse legislation.)

State agencies administering TANF should understand and respond to the impact of battering on a woman's ability to meet TANF requirements. Nothing in welfare policy or practice should increase an applicant's or recipient's risk of abuse or place barriers to her attempts to leave an abusive relationship. No applicant or recipient should be forced to disclose that she is a victim of domestic violence until such time as she is able to make an informed choice to do so, it is in her interests to disclose, and she can do so safely. Nothing in policy or practice should keep an otherwise eligible recipient who has self-identified as a victim of domestic violence from participation in employment, education, support or other services that would assist her achieve self-sufficiency.

- ▼ States should continue the guarantee of benefits for families for whom work and other TANF requirements are not reasonable due to physical, mental health and other barriers to employability or eligibility. This includes, for example, an applicant or recipient who is needed at home to care for a disabled child, a woman who is disabled herself, whether as a result of battering or other circumstances, but not SSI eligible, and those unable to meet the work requirements.

Key elements of welfare programs' responsiveness to the needs of battered women

As with all assistance programs, programs for battered women should be responsive, empowering, supportive and minimally provide the resources that battered women need to be safe and secure. This means providing for basic human needs and the resources necessary for individuals to find work that pays a living wage.

Recommended strategies include:

- ▼ independent and confidential advocacy;
- ▼ training for welfare workers and administrators about the particular safety and privacy concerns faced by some battered women;
- ▼ training for domestic violence advocates on assistance programs, requirements and options for battered women;
- ▼ procedures to ensure that battered women are able to make an informed decision to disclose information about family violence;
- ▼ procedures and practices to ensure that confidential information is not disclosed;
- ▼ flexibility to respond to the variety of needs, including waivers, exemptions and extensions;
- ▼ procedures to ensure that battered women are not held accountable for their abusive partner's or ex-partner's violence. Response should not assume that a battered woman will be safe if she leaves or has left her abusive partner;
- ▼ all participants must be informed of their rights and options under the program, including eligibility for waivers, extensions, or exemptions because of family violence;
- ▼ ongoing evaluation of the effects of current programs on battered women and their children;
- ▼ the development of adequately resourced model/demonstration programs that are able to evaluate impact prior to state-wide implementation;
- ▼ assistance programs should respond to the needs of battered women with disabilities and battered women with other special needs; and
- ▼ assistance programs should respond to the needs of immigrant battered women.

IV. Explanation of Domestic Violence References in the TANF Section of the Act¹³

There are two specific references to domestic violence in the Act. One includes the “hardship” exception to the 60-month limit on assistance, and the other is known as the Family Violence Option, also called the Wellstone/Murray Amendment, which will be referred to in this paper as “the Option.”

A. Hardship exception to the 60month limit on assistance

States cannot use Temporary Assistance for Needy Families (TANF) funds to assist families who have received assistance for 60 months (whether or not the months are consecutive). The 60month count begins when the state program funded under TANF begins.¹⁴ If only a minor child is receiving assistance and not the head of a household or spouse of the head of the household, then that month does not count towards the 60month limit. For example, a minor child may be living with her grandmother and the state is providing TANF assistance to the child, but the grandmother has another source of income to support her own needs.

States can develop exceptions to the 60month limit, but these exceptions cannot exceed 20 % of the state's caseload funded by TANF.¹⁵ A state may exempt a family from the 60 month limit if the limit would create a hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.¹⁶ The Act defines an individual to have been “**battered or subjected to extreme cruelty** if the individual has been subjected to:

- (I) physical acts that resulted in, or threatened to result in, physical injury to the individual;
- (II) sexual abuse;
- (III) sexual activity involving a dependent child; (IV) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;
- (V) threats of, or attempts at, physical or sexual abuse;
- (VI) mental abuse; or
- (VII) neglect or deprivation of medical care.”¹⁷

B. The Family Violence Option¹⁸

States can “opt in” (choose) to include a certification about victims of domestic violence in their state plans. This option says states can waive certain requirements for *certain* domestic violence victims. It also provides advocates with the opportunity to raise concerns about the effects of the Act on battered women and their children. There are ongoing discussions regarding the meaning and implementation of this option. President Clinton has directed the Secretary of the Department of Health and Human Services and the Attorney General to develop guidance for states to assist and facilitate the implementation of the family violence provisions of the Act.¹⁹ Some of the possible implementation issues are discussed later in this paper.

Note: Because the Act gives each state the power to develop its own unique programs, a state does not have to include the certification in its state plan in order to provide battered women with particular programs, resources, services or flexibility about time limits or other requirements of the state program.

The following chart provides the text of the Family Violence Amendment:

Family Violence Option (also called the Wellstone/Murray Amendment) sec. 402(a)(7)	
(a)	In General. As used in this part, the term "eligible State" means, with respect to a fiscal year, a State that, during the two-year period immediately preceding the fiscal year, has submitted to the Secretary ²⁰ a plan that the Secretary has found includes the following:[this text omits sections (a)(1)- (a)(6) which describe other aspects of state plan requirements]
	(7) Optional certification of standards and procedures to ensure that the state will screen for and identify domestic violence.
	(A) In general. At the option of the State, a certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to
	(i) screen and identify individuals receiving assistance under this part with a history of domestic violence while maintaining the confidentiality of such individuals;
	(ii) refer such individuals to counseling and supportive services; and
	(iii) waive, pursuant to a determination of good cause, other program requirements such as time limits(for so long as necessary) for individuals receiving assistance, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence, or individuals who are at risk of further domestic violence.
	(B) Domestic violence defined. For purposes of this paragraph, the term "domestic violence" has the same meaning as the term "battered or subjected to extreme cruelty," as defined in section 408(a)(7)(C)(iii). [see page 21 of this paper for text]

V. Discussion of the Family Violence Option — Implementation Issues

Interpreting the Family Violence Option

The Option is found in the state plan section of the Act. It simply says that a state has the option to certify in its “state plan” that it is implementing the Option.

There are a number of implementation and legal questions raised when a state includes such a certification in its plan, such as:

A. Legal:

- ▼ What effect will an amendment waiver have on TANF requirements placed on the state, such as “work requirement percentages” and the 20 % limit on hardship exceptions to the 60 – month limit?
- ▼ What are the consequences if the state fails to do the things it certifies it is doing?

B. Procedural:

- ▼ What process will a state use to screen applicants or participants?
- ▼ What referrals will be made?
- ▼ How will confidentiality be maintained?
- ▼ What requirements will the state decide to “waive?”
- ▼ How will a state determine if a requirement “would make it more difficult...to escape domestic violence?”
- ▼ How will a state determine if a requirement would “unfairly penalize such individuals who are or have been victimized by such [domestic] violence or ...who are at risk of further domestic violence?”
- ▼ What documentation or proof will the state require a battered woman to provide?

Note: The recommendations included in this section must be considered in the context of each state's assistance program, resources and overall commitment to responding to victims of domestic violence. It is impossible to anticipate all the ways in which implementation of this Act will affect battered women. Therefore, the current recommendations will continue to evolve as advocates gain experience with the Act. Please share your thoughts and experience with us so we can incorporate that information into our ongoing work. Future papers will include more specific recommendations regarding child support enforcement, development of responsive programs, and other implementation issues.

A. Legal issues related to implementation of the Family Violence

Option:

- **What effect will an option waiver have on TANF requirements placed on the state, such as “work requirement percentages” and the 20 % limit on hardship exceptions to the 60month limit?**

- ▼ **Work requirements:**

If a state fails to meet the work percentages required by TANF it is penalized by a reduction in its TANF grant. The legal interpretation question is: Does the family violence option allow states to avoid the financial penalty if the reason it failed to meet the required percentage is granting work requirement waivers to domestic violence victims?

This question has not yet been answered definitively by the Department of Health and Human Services, the federal agency which will be determining the level of TANF grants and any penalties to be levied against states. Obviously, if the answer is “YES” it would provide a significant incentive to states to opt into the amendment, because it would give them a “reasonable cause”²¹ for failing to meet the required work percentage, and therefore protection against penalties.

- ▼ **20 % limit hardship exceptions:**

If a state fails to comply with the rule limiting assistance to 60 months, it will be penalized by a reduction in its TANF grant. Advocates have raised the following legal interpretation question: Does the family violence option allow states to give exceptions to more than 20 % of its caseload and not face the penalty?

A more detailed and complete version of the question is: Can a state exceed the 20 % cap on hardship exceptions without penalty by not counting battered women who get a waiver of the 60month limit under the family violence option as part of the 20 %? If the answer to the question is “YES” then the state could use TANF funds to provide assistance to more than 20 % of the caseload for more than 60 months without a penalty. Part of the basis that the answer should be “yes,” is that waivers under the family violence option are different than exceptions under the 60month rule.²²

- **What are the consequences if the state fails to meet the amendment requirements that it certifies it is implementing?**

The short answer is probably not much under the federal law. Under the Act there are certain financial penalties to a state that fails to comply with particular aspects of the Act. Failure to comply with the amendment is not one of the aspects subject to financial penalty. However, depending on how your state authorizes the implementation of the amendment, there may be state-level enforcement authority.

Resolution of legal interpretation issues

Typically, legal interpretation questions about new legislation are resolved when the relevant administrative agency produces regulations. However, this Act specifically prohibits the federal government from producing regulations, “except to the extent expressly provided in this part.”²³ Even this section will be subject to different interpretations. In the above questions, DHHS is the relevant agency. DHHS may provide guidance about what the Act means, including its interpretation of the amendment. Ultimately it may be left to the courts to decide. Advocates should carefully assess the consequences before pursuing any litigation. For example, litigation regarding the amendment may just lead to a state removing the certification from its state plan.

B. Procedural issues related to implementation of the Family Violence Option

This section reviews a number of key implementation issues. Some of these issues flow from the need to carefully define terms used in the family violence option (such as screening, refer, unfairly penalize); other issues relate to how a state will implement a particular requirement of TANF or the family violence option itself. Under each issue, there are three parts:

1. A brief discussion of the specific issue;
2. Recommendations for formal language that could be used in regulations, protocols, or legislation to implement the Option; and
3. Recommendations to ensure proper implementation.

□ What process will a state use to screen applicants or participants?

1. Discussion:

As with other aspects of the Act, a state has flexibility to decide how to implement the screening and identification of individuals with a history of domestic violence. Some implementation procedures may endanger battered women, invade their privacy, lead to negative consequences and/or offer no benefit to a recipient or applicant.

Examples:

- ▼ A woman's abusive partner may find out about her disclosure of domestic violence and he might retaliate.
- ▼ A woman's disclosure may lead to unnecessary and unhelpful child protective service involvement.
- ▼ An untrained TANF program worker may ask questions in a way that is threatening, harmful, victim-blaming and/or disempowering. A woman may choose not to disclose.
- ▼ Screening might require a woman to make a statement under oath. If she chooses not to disclose because of safety or other considerations she may face a criminal perjury charge and/or punishment for making an incomplete statement.
- ▼ Screening and identification might result in a woman being placed in a less desirable program. e.g. one that provides job search information but no job training or placement services.
- ▼ Screening and identification alone do not qualify the woman for a "waiver" under the amendment, because there are additional requirements she must meet. Also, there may be few meaningful referrals available. Therefore, she may disclose and receive no benefit.

Definitions and procedures should be developed that require workers to provide important information to battered women while maintaining each applicant's or recipient's privacy and safety. If a state took a universal notification approach to screening, battered women would have access to information, waivers, and other potential benefits of the state's TANF programs without as much risk. Universal notification means that every applicant or recipient is given information about potential waivers or other programs available to domestic violence victims and how to qualify. Then, a battered woman could disclose at any time she chooses in order to request the waiver. Ideally, a woman would also have access to an advocate who could help her analyze her options. This type of informed disclosure is most likely to benefit battered women and their children.

2. Formal language recommendation about screening:

Define “Screening” as: Universal notification of all individuals of their potential eligibility for waiver or exemptions of requirements with the opportunity for individuals to voluntarily and confidentially identify, at any time during their participation, the reason for their eligibility for such waiver or exemption for the sole purpose of receiving the waiver or exemption.

Comment: This language does not specifically refer to “domestic violence waivers” because notification of *any and all* available waivers would be most beneficial to battered women. For example, a woman may qualify more easily under another category of waiver established by a state, and therefore choose not to pursue a waiver based on domestic violence.

3. Implementation recommendations regarding screening:

As used in the Family Violence Option, screening should be understood to mean universal notification of all applicants and recipients of their potential eligibility for waiver or exemption of requirements with the opportunity for applicants and recipients to voluntarily and confidentially self-identify, at any time during their participation, the reason for their eligibility for such waiver or exemption for the purpose of receiving the waiver or exemption.

Such notification should be universal, consistently and clearly articulated, repeated, and make use of both oral and written communication strategies in a language understood by the applicant or recipient. Such notification should be provided prior to any questions of applicants and recipients about paternity or child support.²⁴ Opportunities to self-disclose should be frequent, confidential, clearly voluntary, and easy for applicants or recipients to access. They should be accompanied by explanation of confidentiality procedures. Only that information necessary to refer to services and to determine

eligibility for waivers or exemptions shall be required of the applicant or recipient at the time of disclosure.

Information that an applicant or recipient is a past or current victim of domestic violence should be used solely for the purpose of referring such applicant or recipient to appropriate domestic violence or other appropriate services, or for the purpose of determining eligibility for waivers or exemptions under the Family Violence Option or other provisions of TANF.

In addition, anyone involved in universal notification should receive the training and supervision necessary to sensitively, effectively, and safely meet the goals of notification. It is also important to establish a process that will document the effects of current notification and screening practices on battered women

❑ **What referrals will be made?**

1. Discussion:

Referrals can mean that battered women will be connected to the help they need. However, this requires that the referral matches the need. Workers involved in administering TANF programs may not currently have the skill or knowledge to make referrals safely and effectively. In addition, in order for referrals to be helpful, the particular service that is needed must exist, be accessible, and respond in culturally sensitive ways.

2. Formal language recommendation about referrals:

Define “Refer” as: Provide domestic violence victims who self-identify with information about how to contact programs that provide appropriate supportive and educative counseling (providing information, resources, advocacy, and education) and other protection and services, such as safety planning, legal advocacy, shelter, or legal representation.

3. Implementation recommendations regarding referrals:

- ▼ Develop and maintain current list of referrals, the services they provide and their resource capacity to meet the needs of those referred.
- ▼ Develop a procedure to ensure that referrals are relevant to the applicant/participant's needs and provides the information the woman needs to access the referral.
- ▼ Provide training and supervision to ensure effective referrals.
- ▼ Document the effects of current referral practices on battered women.

□ **How will confidentiality be maintained?**

1. Discussion:

Whether administered by a large urban bureaucracy or a small rural county, maintaining confidentiality is a challenge. If records are computerized, then numerous people may have access to the database. In a smaller rural program, it may be possible that the worker may personally know a battered women seeking assistance and may know her abusive partner as well. The woman may then believe any information she gives will “be spread all over town.”

The Act requires states to outline in their state plans how they intend to “take such reasonable steps as necessary to restrict the use and disclosure of information about individuals and families receiving assistance under the program attributable to funds provided by the Federal Government.”²⁵ It is likely that a great deal of personal information will be gathered by a state's TANF and child support enforcement systems. Therefore, all applicants and participants have significant interests in keeping such information confidential. In addition, some battered women are hiding from their abusive partners in order to be safe. Therefore, any information that would allow a batterer to locate his partner must be kept from him.

2. Formal language recommendation:

The following language is found in Title III - Child Support section of the Act, but should be implemented for all programs under the Act, 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: ... (B) prohibitions against the release of information on the whereabouts of one party to another party against who a protective order with respect to the former party has been entered; and (C) prohibitions against the release of information on the whereabouts of one party to another party if the State has reason to believe that the release of the information may result in physical or emotional harm to the former party.”²⁶

Comment: A batterer could use a wide variety of information to locate his current or former partner. For example, he might find her through her current address, phone number, post office box location, training site, job placement site, employment address, health care address, children's school, etc.. Therefore, a wide variety of information must be protected.

Confidentiality, safety and contact with a batterer

If the state has any indication or reason to believe that an applicant or recipient may be a victim of family violence, the state should NOT contact the person believed to be the perpetrator of such violence for the purposes of corroborating evidence (trying to confirm the battered woman's statement or documentation of abuse) **UNLESS** the applicant or recipient gives her informed written permission to do so.

Any time a person believed to be the abusive partner/ex-partner of an applicant or recipient is contacted for any reason, such as securing child support, the state shall only disclose such information as is necessary to accomplish the reason for such contact and shall not disclose any information about the applicant or recipient or any information that may endanger the applicant or recipient. Such information might include information that she is afraid of him, her location, or other details about her life or children.

Any documentation produced by the state should prominently display confidentiality protections.

3. Implementation recommendations regarding confidentiality:

States can strengthen privacy and confidentiality by:

- ▼ Establishing strong state legal protections;
- ▼ Establishing systems, procedures, and practices that implement those protections;
- ▼ Providing training and supervision for all staff about state and federal legal protections, systems, and procedures;
- ▼ Limiting access to computer databases; and
- ▼ Communicating the commitment to maintaining privacy throughout the system.

What requirements will the state decide to “waive?”

1. Discussion:

The Option specifically lists the following as examples of requirements that can be waived:

- ▼ time limits (for so long as necessary) for individuals receiving assistance;
- ▼ residency requirements;
- ▼ child support cooperation requirements; and
- ▼ family cap [no increase in assistance for a new child born into the family] provisions.

Some states may not have family cap provisions or particular residency requirements. The Act places time limits and child support cooperation requirements on all individuals receiving assistance. Child support requirements will be the topic of a future paper. A particular state may add other requirements or limits and advocates need to consider if battered women might need a waiver. Then advocates will need to work to ensure that the amendment waiver is authorized and actually available to the women who need it.

2. Formal language recommendation to implement the “waiver” section of the option:

The waiver section of the amendment should be interpreted to mean: Implementation of the “waive, pursuant to a determination of good cause...”[section 402(a)(7)(iii) should not:

- ▼ penalize individuals victimized by domestic violence or at risk of further domestic violence for *not* disclosing information about their victimization or risk;
- ▼ preclude victims from participating in any work, training, or other program that is part of the state plan and for which they would otherwise be eligible.

3. Implementation recommendations regarding waivers:

- ▼ Identify all the requirements (not just the examples listed in the Option) that battered women may need waived.
- ▼ Establish those waivers in your state (This may be done in a legislative, regulatory and/or procedural process.)
- ▼ When establishing the waivers, include language to ensure battered women are not precluded from participating in any work, training or other program.
- ▼ Provide training and supervision to ensure effective implementation of waivers.
- ▼ Document the effects of current practices on battered women.

- **How will a state determine if a requirement “would make it more difficult...to escape domestic violence?” or “unfairly penalize such individuals who are or have been victimized by such [domestic] violence or ...who are at risk of further domestic violence? ”**

1. Discussion:

These standards require a battered woman to prove one of two things:

- ▼ Her compliance with a requirement is making it more difficult for her to escape domestic violence; OR
- ▼ That she is a victim of domestic violence, was a victim of domestic violence, or is at risk of further domestic violence AND her compliance would unfairly penalize her.

Proving the existence of domestic violence alone does not meet the standard. Key questions are:

- ▼ How the state will define key terms, including “domestic violence,” “unfairly penalize,” and “more difficult for her to escape?”

Battered women experience a wide range of controlling and violent behavior from their partners and each has unique circumstances and safety plans. Therefore, these phrases should be defined broadly.

- ▼ What type of evidence or documentation will battered women have to provide to prove their eligibility?

Battered women experience different types of violence and control and develop unique responses to those risks. For example, one battered woman may call the police and another may have turned to her family instead of the police. Some battered women may need medical treatment for their injuries and others may not have physical injuries. A battered woman may tell many people about her partner's violence or tell no one. In addition, there are often no “witnesses” to the violence. Therefore, programs should accept a wide variety of sources for the “evidence” or “documentation” of family violence, including the woman's sworn statement.

2. Formal language recommendations:

The Family Violence Option defines "domestic violence" as having the same meaning as the term "battered or subjected to extreme cruelty" used in section 408 (a)(7)(C)(iii) of the Act. [See page 23 of this paper for the text.] The following language can be used in states which have "domestic violence provisions, but have **not** opted into the Family Violence Option and in circumstances where the law does **not** define "domestic violence:"

▼ Define “domestic violence” as:

- (1) physical acts resulting in, or threatening to result in, physical injury;
- (2) sexual abuse, sexual activity involving dependent children, or threats of or attempts at sexual abuse;
- (3) mental abuse, including threats, intimidation, acts designed to induce terror, or restraints on liberty; or
- (4) deprivation of medical care, housing, food or other necessities of life.

▼ Define “compliance with such requirements would make it more difficult... to escape domestic violence,” as

compliance would reduce financial resources, impede the individual's safety plan, or result in retaliation against the individual.

▼ Define “compliance with such requirements would unfairly penalize” as:

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 the individual's safety or privacy, impede the individual's safety plan or hold the individual responsible for meeting a requirement that is not within the individual's control. (e.g. Requiring an individual to obtain a protection order to avoid penalty. The legal system has the authority to make such an order, not the individual applying.)

▼ Evidentiary standard recommended:

An individual's affidavit shall meet the burden of proof unless there is an independent, reasonable basis to doubt the veracity of the statement.

Often it is unsafe for a woman to seek an order of protection or other “official” help. Lacking this type of proof by no means indicates that an applicant or recipient is not a bona fide victim or survivor. As a rule, unless there is substantial evidence that the applicant or recipient is untrustworthy, simple attestation is sufficient.

▼ **Alternative, evidentiary standard:**

Evidence may also include, but is not limited to, police or court records, or documentation from a shelter worker, attorney, clergy, medical or other professional from whom the applicant or recipient has sought assistance in dealing with domestic violence; or other corroborating evidence, such as a statement from any other individual with knowledge of the circumstances which provide the basis for the claim, or physical evidence of domestic violence, or any other evidence that supports the statement.

3. Implementation recommendations:

- ▼ Train and supervise anyone involved in making eligibility determinations.
- ▼ Inform individuals of their right to appeal denials of waivers.
- ▼ Establish procedure/regulation that the state is prohibited from seeking any verification or information from a battered woman's abusive partner or ex-partner.
- ▼ Maintain confidentiality of waiver application and determination.
- ▼ Document the effects of the waiver application process and determinations on battered women and their children.

Checklist for Family Violence Option Considerations

If advocates seek inclusion of the Family Violence Option as part of their state's TANF program, they should make an informed analysis of the potential effect on battered women. These considerations will be unique to each state and perhaps even to particular regions or offices involved in administering TANF programs. Proper implementation may require the development of agency protocol, promulgation of regulations, or even legislation.

The following may make it more likely that the purpose of the amendment — to help battered women — will be fulfilled:

- ▼ How can key language in the option be interpreted in a way that enhances the safety of battered women?
- ▼ How will the state ensure that universal notice is effective?
- ▼ How will notice be given to people who do not read English or are unable to read?
- ▼ What information will be included in the notice?
- ▼ How will the confidentiality and privacy of applicants and recipients be maintained?
- ▼ How will the state ensure it provides effective referrals?
- ▼ What referral information will be provided and how?
- ▼ How will the state ensure that battered women are not penalized if they choose not to disclose information about past or current violence or risks?
- ▼ How will the state ensure that battered women are not excluded from any work, training, or other program because they have disclosed information about past or current violence or risks?
- ▼ How will the state ensure battered woman needing a waiver of requirements are able to meet the eligibility and evidence standards established by the state?

Note: Paper # 3 in the series on welfare and domestic violence will focus on child support enforcement issues and will include sample notification protocol and ideas for assessment strategies.

Terms

Block Grants: provide a certain sum of money to the state and provide the state with flexibility to decide how to spend the money. Block grants can be distinguished from funding that comes to a state for a specific program and must be spent on that program.

Family Cap: means a family does not get additional assistance for a child conceived while the family is on welfare. Some states have a modified cap—the family gets a reduced amount of additional assistance.

Immigrant: generally refers to a person who lives in the United States who is not a citizen nor a person here for a temporary period of time for a specific purpose (e.g. a student or tourist). Immigrants can be persons living in the U.S. with the authorization of the Immigration and Nationalization Service (documented) or without such authorization (undocumented, also discourteously called “illegal aliens.”)

Residency requirements:

are placed on people moving into a state and seeking assistance. For example, a state may require that a person live in the state for six months before they receive the same amount of assistance as a person already living in the state.

State Plan: is required for states to receive a TANF block grant. The Act requires certain information to be in the plan and for a 45 day comment period for “local governments and private sector organizations.” ²⁷

Temporary Assistance to Needy Families (TANF):

is the name of the Federal program that replaces AFDC(Aid to Families with Dependent Children).

Waiver: gives a state permission to develop an assistance program that differs from programs established by Federal rules and regulations. Waivers may also place additional requirements on states, such as the responsibility to do research and provide an independent evaluation of their waived program.

Terms (continued)

Welfare: Typically, the word “welfare” describes the AFDC(Aid to Families with Dependent Children) program that provided support to poor families. The new law replaces the AFDC program with the Temporary Assistance to Needy Families(TANF) block grant program. However, “welfare” is sometimes used to describe some or all of the broad array of government programs that provide support, housing, food assistance, or medical care. These include unemployment benefits, food stamps, housing subsidies, supplemental security income (SSI), general assistance, social security for the elderly or disabled, Medicaid, and Medicare.

Family Violence Amendment:

also known as the Wellstone/Murray Amendment: allows states to “opt in” (choose) to include a certification about victims of domestic violence in their state plans. This amendment allows states to waive certain requirements for certain domestic violence victims. Depending on how a state would choose to implement this section of the Act, it may result in additional help and/or requirements for victims as well. This section of the Act is known as the “Wellstone/Murray Amendment” because Senators Wellstone and Murray sponsored it.²⁸ HHS will provide guidance to states about its interpretation and use.

Endnotes

- (1) Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.
- (2) Sec. 401
- (3) Sec. 409(a)(7) & (10)
- (4) Title II, Sec. 211(a)(2)
- (5) §408(a)(2)
- (6) The word “immigrant” generally refers to a person who lives in the United States who is not a citizen nor a person here for a temporary period of time for a specific purpose (e.g. a student or tourist). Immigrants can be persons living in the U.S. with the authorization of the Immigration and Nationalization Service (documented) or without such authorization (undocumented, also discourteously called “illegal aliens”).
- (7) Sec. 412
- (8) See for example: *Prisoners of Abuse: Domestic Violence and Welfare Receipt*, by Jody Raphael, Taylor Institute, April 1996.
See also: “In 1992, the Better Homes Fund, a nonprofit organization based in Massachusetts, began a study of 216 women in low-income housing and 220 homeless women, along with 627 of their dependent children. All these women in Worcester, Mass., were raising their families single-handedly, and the majority were receiving cash assistance,” from *Single Mothers and Welfare*, by Ellen L. Bassuk, Angela Browne, John C. Buckner, *Scientific American* (October 1996, Vol. 275, No. 4).
- (9) Sec. 403(a)(2)
- (10) Title IV, Secs. 401(b)(1)(D), 403(c)(2)(G), 411(b)(4), 423(d)(7)
- (11) Specification of Community Programs Necessary for Protection of Life or Safety under Welfare Reform Legislation, Department of Justice, Attorney General Order, 61 FR 45985-86.
- (12) Sec. 501 of the Illegal Immigration Reform and Immigrant Responsibility Act.
- (13) The focus of this paper is on the Temporary Assistance to Needy Families (TANF) block grant. Other aspects of the Act (such as child support) and domestic violence issues will be the topic of future papers.

Endnotes (continued)

- (14) Sec. 408(a)(7)(A)
- (15) Sec. 408(a)(7)(C)
- (16) Sec. 408(a)(7)(C)(I)
- (17) Sec. 408(a)(7)(C)(iii)
- (18) Sec. 402(a)(7)
- (19) Memorandum from President Clinton for the Secretary of Health and Human Services and the Attorney General regarding Guidelines to States for Implementing the Family Violence Provisions dated October 3, 1996.
- (20) Of the Department of Health and Human Services (HHS)
- (21) Sec. 409(b)
- (22) For a more detailed analysis of the legal questions raised by the Family Violence Option, contact Now Legal Defense and Education Fund: Martha Davis at (212) 925-6635 or Pam Coukos at (202) 544-4470.
- (23) Sec. 417
- (24) The Act requires that TANF program participants “cooperate” with child support enforcement and paternity establishment, unless they have a “good cause” for not cooperating. This recommendation assumes that domestic violence will continue to be viewed as “good cause” not to cooperate. Therefore, it is important that all applicants/participants are given universal notification before answering child support paternity establishment questions.
- (25) Sec. 402(a)(1)(iv)
- (26) Sec. 303(a)(3)(26)
- (27) Sec. 402(a)(4)
- (28) Sec. 402(a)(7)