NLWJC - Kagan
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Welfare - Domestic Violence [4]

Withdrawal/Redaction Sheet
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. memo	Phone No. (Partial) (1 page)	08/23/1996	P6/b(6)

COLLECTION:
Clinton Presidential Records
Domestic Policy Council
Elena Kagan
OA/Box Number: 14371

FOLDER TITLE:
Welfare - Domestic Violence [4]

2009-1006-F
jm22

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

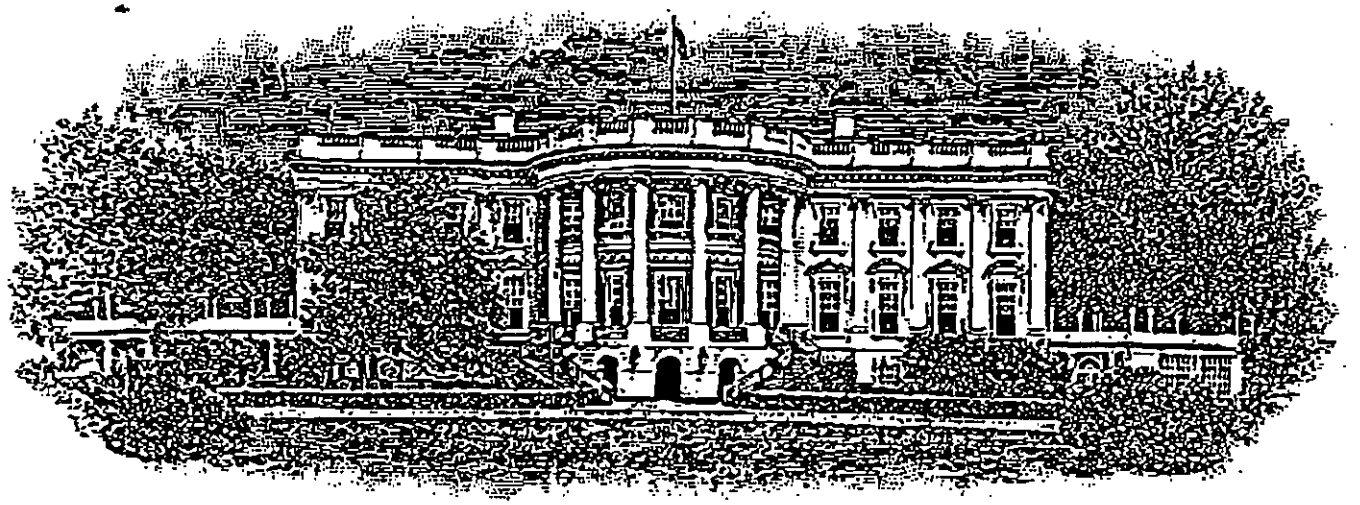
C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

File - WR - domestic violence

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Elena Kagan

FAX NUMBER: 61647

TELEPHONE NUMBER:

FROM: Lyn Hogan

TELEPHONE NUMBER:

PAGES (INCLUDING COVER): 7

COMMENTS:

Last fax —
welfare language on work
requirements.

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E WELFARE PROGRAMS.

"(1) IN GENERAL.—The Secretary shall make loans to any loan-eligible State, for a period to maturity of not more than 3 years.

"(2) LOAN-ELIGIBLE STATE.—As used in paragraph (1), the term 'loan-eligible State' means a State against which a penalty has not been imposed under section 409(a)(1).

"(b) RATE OF INTEREST.—The Secretary shall charge and collect interest on any loan made under this section at a rate equal to the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the period to maturity of the loan.

"(c) USE OF LOAN.—A State shall use a loan made to the State under this section only for any purpose for which grant amounts received by the State under section 403(a) may be used, including—

"(1) welfare anti-fraud activities; and

"(2) the provision of assistance under the State program to Indian families that have moved from the service area of an Indian tribe with a tribal family assistance plan approved under section 412.

"(d) LIMITATION ON TOTAL AMOUNT OF LOANS TO A STATE.—The cumulative dollar amount of all loans made to a State under this section during fiscal years 1997 through 2002 shall not exceed 10 percent of the State family assistance grant.

"(e) LIMITATION ON TOTAL AMOUNT OF OUTSTANDING LOANS.—The total dollar amount of loans outstanding under this section may not exceed $1,700,000,000.

"(f) APPROPRIATION.—Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated such sums as may be necessary for the cost of loans under this section.

"SEC. 407. MANDATORY WORK REQUIREMENTS. 42 USC 607.

"(a) PARTICIPATION RATE REQUIREMENTS.—

"(1) ALL FAMILIES.—A State to which a grant is made under section 403 for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to all families receiving assistance under the State program funded under this part:

"If the fiscal year is:	The minimum participation rate is:
1997	25
1998	30
1999	35
2000	40
2001	45
2002 or thereafter	50.

"(2) 2-PARENT FAMILIES.—A State to which a grant is made under section 403 for a fiscal year shall achieve the minimum participation rate specified in the following table for the fiscal year with respect to 2-parent families receiving assistance under the State program funded under this part:

"If the fiscal year is:	The minimum participation rate is:
1997	75
1998	75
1999 or thereafter	90.

"(b) CALCULATION OF PARTICIPATION RATES.—

"(1) ALL FAMILIES.—

"(A) AVERAGE MONTHLY RATE.—For purposes of subsection (a)(1), the participation rate for all families of a State for a fiscal year is the average of the participation rates for all families of the State for each month in the fiscal year.

"(B) MONTHLY PARTICIPATION RATES.—The participation rate of a State for all families of the State for a month, expressed as a percentage, is—

"(i) the number of families receiving assistance under the State program funded under this part that include an adult or a minor child head of household who is engaged in work for the month; divided by

"(ii) the amount by which—

"(I) the number of families receiving such assistance during the month that include an adult or a minor child head of household receiving such assistance; exceeds

"(II) the number of families receiving such assistance that are subject in such month to a penalty described in subsection (e)(1) but have not been subject to such penalty for more than 3 months within the preceding 12-month period (whether or not consecutive).

"(2) 2-PARENT FAMILIES.—

"(A) AVERAGE MONTHLY RATE.—For purposes of subsection (a)(2), the participation rate for 2-parent families of a State for a fiscal year is the average of the participation rates for 2-parent families of the State for each month in the fiscal year.

"(B) MONTHLY PARTICIPATION RATES.—The participation rate of a State for 2-parent families of the State for a month shall be calculated by use of the formula set forth in paragraph (1)(B), except that in the formula the term 'number of 2-parent families' shall be substituted for the term 'number of families' each place such latter term appears.

"(3) PRO RATA REDUCTION OF PARTICIPATION RATE DUE TO CASELOAD REDUCTIONS NOT REQUIRED BY FEDERAL LAW.—

Regulations.

"(A) IN GENERAL.—The Secretary shall prescribe regulations for reducing the minimum participation rate otherwise required by this section for a fiscal year by the number of percentage points equal to the number of percentage points (if any) by which—

"(i) the average monthly number of families receiving assistance during the immediately preceding fiscal year under the State program funded under this part is less than

"(ii) the average monthly number of families that received aid under the State plan approved under part A (as in effect on September 30, 1995) during fiscal year 1995.

The minimum participation rate shall not be reduced to the extent that the Secretary determines that the reduction in the number of families receiving such assistance is required by Federal law.

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"(B) ELIGIBILITY CHANGES NOT COUNTED.—The regulations required by subparagraph (A) shall not take into account families that are diverted from a State program funded under this part as a result of differences in eligibility criteria under a State program funded under this part and eligibility criteria under the State program operated under the State plan approved under part A (as such plan and such part were in effect on September 30, 1995). Such regulations shall place the burden on the Secretary to prove that such families were diverted as a direct result of differences in such eligibility criteria.

"(4) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL FAMILY ASSISTANCE PLAN.—For purposes of paragraphs (1)(B) and (2)(B), a State may, at its option, include families in the State that are receiving assistance under a tribal family assistance plan approved under section 412.

"(5) STATE OPTION FOR PARTICIPATION REQUIREMENT EXEMPTIONS.—For any fiscal year, a State may, at its option, not require an individual who is a single custodial parent caring for a child who has not attained 12 months of age to engage in work, and may disregard such an individual in determining the participation rates under subsection (a) for not more than 12 months.

"(c) ENGAGED IN WORK.—

"(1) GENERAL RULES.—

"(A) ALL FAMILIES.—For purposes of subsection (b)(1)(B)(i), a recipient is engaged in work for a month in a fiscal year if the recipient is participating in work activities for at least the minimum average number of hours per week specified in the following table during the month, not fewer than 20 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection:

"If the month is in fiscal year:	The minimum average number of hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30.

"(B) 2-PARENT FAMILIES.—For purposes of subsection (b)(2)(B), an individual is engaged in work for a month in a fiscal year if—

"(i) the individual is making progress in work activities for at least 35 hours per week during the month, not fewer than 30 hours per week of which are attributable to an activity described in paragraph (1), (2), (3), (4), (5), (6), (7), (8), or (12) of subsection (d), subject to this subsection; and

"(ii) if the family of the individual receives federally-funded child care assistance and an adult in the family is not disabled or caring for a severely disabled child, the individual's spouse is making progress in work activities during the month, not fewer than 20 hours per week of which are attributable to an activity

described in paragraph (1), (2), (3), (4), (5), or (7) of subsection (d).

"(2) LIMITATIONS AND SPECIAL RULES.—

"(A) NUMBER OF WEEKS FOR WHICH JOB SEARCH COUNTS AS WORK.—

"(i) LIMITATION.—Notwithstanding paragraph (1) of this subsection, an individual shall not be considered to be engaged in work by virtue of participation in an activity described in subsection (d)(6) of a State program funded under this part, after the individual has participated in such an activity for 6 weeks (or, if the unemployment rate of the State is at least 50 percent greater than the unemployment rate of the United States, 12 weeks), or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.

"(ii) LIMITED AUTHORITY TO COUNT LESS THAN FULL WEEK OF PARTICIPATION.—For purposes of clause (i) of this subparagraph, on not more than 1 occasion per individual, the State shall consider participation of the individual in an activity described in subsection (d)(6) for 3 or 4 days during a week as a week of participation in the activity by the individual.

"(B) SINGLE PARENT WITH CHILD UNDER AGE 6 DEEMED TO BE MEETING WORK PARTICIPATION REQUIREMENTS IF PARENT IS ENGAGED IN WORK FOR 20 HOURS PER WEEK.—For purposes of determining monthly participation rates under subsection (b)(1)(B)(i), a recipient in a 1-parent family who is the parent of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.

"(C) TEEN HEAD OF HOUSEHOLD WHO MAINTAINS SATISFACTORY SCHOOL ATTENDANCE DEEMED TO BE MEETING WORK PARTICIPATION REQUIREMENTS.—For purposes of determining monthly participation rates under subsection (b)(1)(B)(i), a recipient who is a single head of household and has not attained 20 years of age is deemed, subject to subparagraph (D) of this paragraph, to be engaged in work for a month in a fiscal year if the recipient—

"(i) maintains satisfactory attendance at secondary school or the equivalent during the month; or

"(ii) participates in education directly related to employment for at least the minimum average number of hours per week specified in the table set forth in paragraph (1)(A) of this subsection.

"(D) NUMBER OF PERSONS THAT MAY BE TREATED AS ENGAGED IN WORK BY VIRTUE OF PARTICIPATION IN VOCATIONAL EDUCATION ACTIVITIES OR BEING A TEEN HEAD OF HOUSEHOLD WHO MAINTAINS SATISFACTORY SCHOOL ATTENDANCE.—For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), not more than 20 percent of individuals in all families and in 2-parent families may be determined to be engaged in work in the State for a month by reason of participation

ragraph (1), (2), (3), (4), (5), or (7) of

) SPECIAL RULES.—
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in vocational educational training or deemed to be engaged in work by reason of subparagraph (C) of this paragraph.

"(d) WORK ACTIVITIES DEFINED.—As used in this section, the term 'work activities' means—

"(1) unsubsidized employment;

"(2) subsidized private sector employment;

"(3) subsidized public sector employment;

"(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

"(5) on-the-job training;

"(6) job search and job readiness assistance;

"(7) community service programs;

"(8) vocational educational training (not to exceed 12 months with respect to any individual);

"(9) job skills training directly related to employment;

"(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

"(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

"(12) the provision of child care services to an individual who is participating in a community service program.

"(e) PENALTIES AGAINST INDIVIDUALS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if an individual in a family receiving assistance under the State program funded under this part refuses to engage in work required in accordance with this section, the State shall—

"(A) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the individual so refuses; or

"(B) terminate such assistance,

subject to such good cause and other exceptions as the State may establish.

"(2) EXCEPTION.—Notwithstanding paragraph (1), a State may not reduce or terminate assistance under the State program funded under this part based on a refusal of an individual to work if the individual is a single custodial parent caring for a child who has not attained 6 years of age, and the individual proves that the individual has a demonstrated inability (as determined by the State) to obtain needed child care, for 1 or more of the following reasons:

"(A) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site.

"(B) Unavailability or unsuitability of informal child care by a relative or under other arrangements.

"(C) Unavailability of appropriate and affordable formal child care arrangements.

"(f) NONDISPLACEMENT IN WORK ACTIVITIES.—

"(1) IN GENERAL.—Subject to paragraph (2), an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal

Government may fill a vacant employment position in order to engage in a work activity described in subsection (d).

"(2) NO FILLING OF CERTAIN VACANCIES.—No adult in a work activity described in subsection (d) which is funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned—

"(A) when any other individual is on layoff from the same or any substantially equivalent job; or

"(B) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult described in paragraph (1).

"(3) GRIEVANCE PROCEDURE.—A State with a program funded under this part shall establish and maintain a grievance procedure for resolving complaints of alleged violations of paragraph (2).

"(4) NO PREEMPTION.—Nothing in this subsection shall preempt or supersede any provision of State or local law that provides greater protection for employees from displacement.

"(g) SENSE OF THE CONGRESS.—It is the sense of the Congress that in complying with this section, each State that operates a program funded under this part is encouraged to assign the highest priority to requiring adults in 2-parent families and adults in single-parent families that include older preschool or school-age children to be engaged in work activities.

"(h) SENSE OF THE CONGRESS THAT STATES SHOULD IMPOSE CERTAIN REQUIREMENTS ON NONCUSTODIAL, NONSUPPORTING MINOR PARENTS.—It is the sense of the Congress that the States should require noncustodial, nonsupporting parents who have not attained 18 years of age to fulfill community work obligations and attend appropriate parenting or money management classes after school.

"(i) REVIEW OF IMPLEMENTATION OF STATE WORK PROGRAMS.—During fiscal year 1999, the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate shall hold hearings and engage in other appropriate activities to review the implementation of this section by the States, and shall invite the Governors of the States to testify before them regarding such implementation. Based on such hearings, such Committees may introduce such legislation as may be appropriate to remedy any problems with the State programs operated pursuant to this section.

42 USC 608. "SEC. 408. PROHIBITIONS; REQUIREMENTS.

"(a) IN GENERAL.—

"(1) NO ASSISTANCE FOR FAMILIES WITHOUT A MINOR CHILD.—A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to a family—

"(A) unless the family includes—

"(i) a minor child who resides with a custodial parent or other adult caretaker relative of the child; or

"(ii) a pregnant individual; and

"(B) if the family includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after

Lyn Hogan –

Read on:
w-M lang:

1. whether it allows the add'nal exemption to the 20% handship exemption

2. whether ~~State~~ states can be penalized for missing alt requirements if they exempt dem. vid. vics from alt reqs.

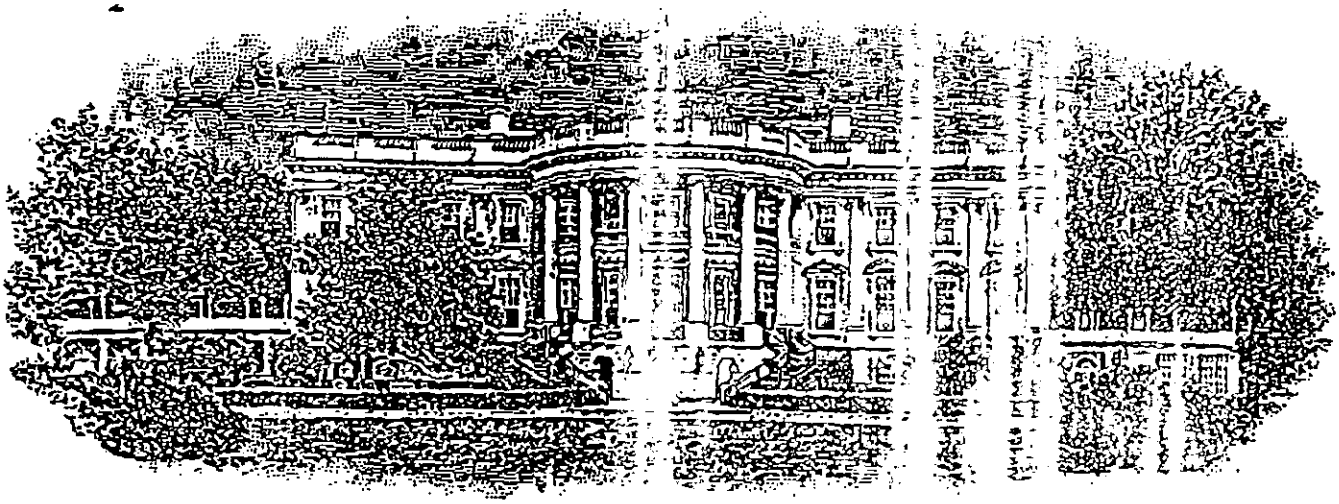
Bruce – formal read.

HHS wants to:
allow exemps in addn to 20%
" states to impose cert & pen. for alt reqs
if bec. of exemptions.

We think opp. on both counts.

DOT – informal read – both ways on both. (AD thinks so too)
HHS thinks easier legally to do the alt req/pen issue
DOT thinks opposite

The White House



DOMESTIC POLICY

FACSIMILE TRANSMISSION COVER SHEET

TO: Elena Kagan

FAX NUMBER:

TELEPHONE NUMBER:

FROM: Lyn Hogan

TELEPHONE NUMBER:

PAGES (INCLUDING COVER): 4

COMMENTS:

Attached is the Wellstone language in the [illegible] we're waiting for a cut from NE on their interpretation. We'll fax as soon as it comes.

Public Law 104–193
104th Congress

An Act

To provide for reconciliation pursuant to section 201(a)(1) of the concurrent resolution on the budget for fiscal year 1997.

Aug. 22, 1996
[H.R. 3734]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Personal Responsibility and Work Opportunity Reconciliation Act of 1996.
42 USC 1305 note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

20-139 O - 96 (130)

ce (as defined in section 403(a)(2)(B))
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VISIONS.—
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"(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

"(B) have had at least 45 days to submit comments on the plan and the design of such services.

"(5) CERTIFICATION THAT THE STATE WILL PROVIDE INDIANS WITH EQUITABLE ACCESS TO ASSISTANCE.—A certification by the chief executive officer of the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 412, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

"(6) CERTIFICATION OF STANDARDS AND PROCEDURES TO ENSURE AGAINST PROGRAM FRAUD AND ABUSE.—A certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

"(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' is defined in section 408(a)(7)(C)(iii).

"(b) PUBLIC AVAILABILITY OF STATE PLAN SUMMARY.—The State shall make available to the public a summary of any plan submitted by the State under this section.

"SEC. 403. GRANTS TO STATES. 42 USC 603.

"(a) GRANTS.—

of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

"(ii) LIMITATION.—The number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 20 percent of the average monthly number of families to which assistance is provided under the State program funded under this part.

"(iii) BATTERED OR SUBJECT TO EXTREME CRUELTY DEFINED.—For purposes of clause (i), an individual has 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.

"(D) DISREGARD OF MONTHS OF ASSISTANCE RECEIVED BY ADULT WHILE LIVING ON AN INDIAN RESERVATION OR IN AN ALASKAN NATIVE VILLAGE WITH 50 PERCENT UNEMPLOYMENT.—In determining the number of months for which an adult has received assistance under the State program funded under this part, the State shall disregard any month during which the adult lived on an Indian reservation or in an Alaskan Native village if, during the month—

"(i) at least 1,000 individuals were living on the reservation or in the village; and

"(ii) at least 50 percent of the adults living on the reservation or in the village were unemployed.

"(E) RULE OF INTERPRETATION.—Subparagraph (A) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.

"(F) RULE OF INTERPRETATION.—This part shall not be interpreted to prohibit any State from expending State funds not originating with the Federal Government on benefits for children or families that have become ineligible for assistance under the State program funded under this part by reason of subparagraph (A).

"(8) DENIAL OF ASSISTANCE FOR 10 YEARS TO A PERSON FOUND TO HAVE FRAUDULENTLY MISREPRESENTED RESIDENCE IN ORDER TO OBTAIN ASSISTANCE IN 2 OR MORE STATES.—A State to which a grant is made under section 403 shall not use any part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under pro-

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ANALYSIS OF CERTAIN STATUTORY INTERPRETATION QUESTIONS CONCERNING THE FAMILY VIOLENCE AMENDMENT TO THE PRWORA AND ITS RELATIONSHIP TO OTHER LEGISLATIVE PROVISIONS

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October 7, 1996

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INTRODUCTION

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, contains the Wellstone/Murray Family Violence Amendment, an important provision to allow states to address domestic violence in crafting state welfare programs. Sec. 402(a)(7) (attached at Tab 1).[1] There are three areas where the legislation should be correctly interpreted in order to carry out Congressional intent and allow states the flexibility to give the maximum effect to the Family Violence Amendment. These interpretative questions are:

- **Does the 20% cap on hardship exemptions from the five-year time limit, Sec. 408(a)(7)(C)(ii), restrict in any way the ability of states to make temporary good cause waivers of time limits under the Family Violence Amendment, Sec. 402(a)(7)(A)(iii)?**

- **Will a financial penalty apply to states that fail to meet mandatory monthly work participation rates required by Sec. 407 because they have granted flexible good cause waivers in cases of domestic violence?**

- **May states choose to grant flexible good cause waivers of any program requirements, not just the specific examples listed in Sec. 402(a)(7)(A)(iii), where compliance would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence?**

After reviewing the history of the adoption of the Family Violence Amendment, as well as prior legislation in the 104th Congress to make welfare rules more flexible for battered women and their families, this analysis examines the statutory text, legislative history and other relevant factors to answer these questions.

LEGISLATIVE HISTORY

The Wellstone/Murray Family Violence Amendment, an amendment to the Senate version of H.R. 3734, the PRWORA, culminated a year of legislative attempts in the 104th Congress to ensure that changes in federal welfare law address the needs of women and families living with or fleeing from violence. Fueled by emerging research, such as the Taylor Institute's 1995 report, *Domestic Violence: Telling the Untold Welfare-to-Work Story*, advocates, legislators and the public became educated about the additional hurdles battered women face in

[1] Section references in H.R. 3734, and in P.L. 104-193, are to subsections under 103(a)(1) "Part A -- Block Grants to States for Temporary Assistance for Needy Families."

successfully transitioning from welfare to work.[2] Senator Paul Wellstone (D-MN) took a leadership role, joined by Representative Lucille Roybal-Allard (D-CA) and Senator Patty Murray (D-WA), in forging public policy solutions.

These legislators made clear in letters to their colleagues and statements on the floor citing this research and supporting legislative solutions that violence makes and keeps women poor. They continually emphasized how emerging research documented that large numbers -- from 50 to 80 percent -- of women currently receiving AFDC were current or past victims of abuse.[3] The legislators repeatedly explained how it may be difficult and dangerous for battered women and victims of sexual assault to meet stringent welfare requirements.[4]

As described in their letters and statements urging support for legislative provisions addressing violence and poverty, the physical and mental effects of domestic violence, as well as direct efforts by abusers to interfere with their victims' education and employment, have serious implications for welfare-to-work programs.[5] Thus, certain proposed rules and requirements for

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[2] *See, e.g.*, Jody Raphael, *Domestic Violence: Telling the Untold Welfare-to-Work Story* (Taylor Institute 1995) (hereinafter "1995 Taylor Institute Study"); Jody Raphael, *Prisoners of Abuse: Domestic Violence and Welfare Receipt* (Taylor Institute 1996) (hereinafter "1996 Taylor Institute Study"); Washington State Institute for Public Policy, *Over Half of the Women on Public Assistance in Washington State Reported Physical or Sexual Abuse As Adults* (Oct. 1993) (hereinafter "Washington State Study"); Martha F. Davis and Susan J. Kraham, *Protecting Women's Welfare in the Face of Violence*, 22 FORDHAM URBAN L.J. 1141 (1995). The 1995 Taylor Institute Study (and subsequent 1996 study), the Washington State Study, and the research cited in *Protecting Women's Welfare* were all cited in the floor statements, Dear Colleague letters and other legislative materials supporting legislative options, and in the findings of Sen. Wellstone and Rep. Roybal-Allard's Sense of Congress Joint Resolution. *See* nn. 3-5, 8-9, *infra*. Materials in the popular press brought these issues before the public. *See, e.g.*, Barbara Ehrenreich, *Battered Welfare Syndrome*, TIME MAGAZINE at 82 (April 3, 1995); Carol Jouzaitis, *Abuse Traps Women in Welfare*, CHICAGO TRIBUNE at 1 (February 19, 1995); Martha F. Davis & Susan J. Kraham, *Beaten, Then Robbed*, NEW YORK TIMES (January 13, 1995).

[3] *See, e.g., Cong. Rec.* S13525 (Sept. 13, 1995) (statement of Sen. Wellstone in support of Family Violence Exemption discussing studies) (attached at Tab 3); *id.* at S13525-26 (statement of Sen. Murray in support of same discussing Washington State study) (attached at Tab 3); *Cong. Rec.* S5220 (May 17, 1996) (statement of Sen. Wellstone in support of Joint Resolution discussing studies) (attached at Tab 2); *Cong. Rec.* S8141 (July 18, 1996) (statement of Sen. Wellstone in support of Family Violence Amendment discussing Taylor Institute research) (attached at Tab 1).

[4] *See, e.g., Cong. Rec.* S13525 (Sept. 13, 1995) (statement of Sen. Wellstone in support of Family Violence Exemption) (Tab 3); *id.* at S13525-26 (statement of Sen. Murray in support of same) (Tab 3); *Cong. Rec.* S5220 (May 17, 1996) (statement of Sen. Wellstone in support of Joint Resolution) (Tab 2); *Cong. Rec.* S8141 (July 18, 1996) (statement of Sen. Wellstone in support of Family Violence Amendment) (Tab 1); *Cong. Rec.* H7747 (July 17, 1996) (statement of Rep. Roybal-Allard in opposition to House version of H.R. 3734) (attached at Tab 1); House of Representatives, Committee on the Budget, Transcript of Markup of FY 1997 Budget Reconciliation Bill 265, 266 (May 9, 1996) (statement of Rep. Roybal-Allard in support of Joint Resolution) (attached at Tab 2).

[5] *See, e.g., Cong. Rec.* S13527 (Sept. 13, 1995) (statement of Sen. Wellstone in support of Family Violence Exemption) (Tab 3); *Cong. Rec.* S5220 (May 17, 1996) (statement of Sen. Wellstone in support of Joint

welfare programs could endanger or unfairly penalize battered women. Legislators tailored their legislative proposals to address these concerns, particularly that arbitrary and inflexible time limits may need to be modified where violence prevents a woman from working.[6] These legislators also responded to other issues, *e.g.*, that child support cooperation requirements may subject women to retaliatory abuse, or that residency requirements may harm women crossing state lines to flee a dangerous living situation.[7]

The first legislative initiative addressing violence in the lives of welfare recipients was an amendment in the Senate to H.R. 4, the welfare bill passed by the Senate in September 1995 and later vetoed by President Clinton. Senator Wellstone succeeding in passing Amendment 2584, the Family Violence Exemption, by unanimous consent in the Senate. *Cong. Rec.* S13562 (Sept. 14, 1995) (attached at Tab 3). That Amendment, co-sponsored by Senator Murray, had as its purpose "[t]o exempt women and children who have been battered or subjected to extreme cruelty from certain requirements of the bill." Amendment 2584, *id.* at S13561 (attached at Tab 3). It gave states the option to "exempt from (or modify) the application" of time limits, work requirements and other provisions specified in the amendment. *Id.* Senators Wellstone and Murray referred to new research documenting the connection between violence and poverty, and Senator Wellstone urged his fellow Senators to enact "national leadership" standards for states because "[w]e do not want to force a woman and her children because of their economic circumstances back into a brutal situation, back into. . . a very dangerous home." *Cong. Rec.* S13525 (Sept. 13, 1995) (attached at Tab 3). The Conference Committee dropped the amendment from the final version of H.R. 4, without comment. *Cong. Rec.* H15391-92 (Dec. 21, 1995) (attached at Tab 3).

Building on these legislative efforts, and spurred by subsequent, more comprehensive report by the Taylor Institute incorporating new research, *Prisoners of Abuse: Domestic Violence and Welfare Receipt*, Sen. Wellstone and Rep. Roybal-Allard in May 1996 proposed a Sense of Congress Joint Resolution. S. Con. Res. 66/H.Con. Res. 195 (attached at Tab 2).[8] That

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Resolution) (Tab 2); Dear Colleague Letter of June 18, 1996 from Sen. Wellstone, Rep. Roybal-Allard and co-sponsors (attached at Tab 2); Dear Colleague Letter of July 3, 1996 from Rep. Roybal-Allard and co-sponsors (attached at Tab 2); Dear Conferees Letter of July 25 (attached at Tab 1).

[6] All of the proposals include time limits as a provision that could be exempted, waived or tolled. *Cong. Rec.* S13561 (Sept. 14, 1995) (text of Family Violence Exemption) (attached at Tab 3); *Cong. Rec.* S7191 (June 27, 1996) (text of Joint Resolution) (attached at Tab 2); *Cong. Rec.* S8141 (text of Family Violence Amendment) (attached at Tab 1).

[7] These requirements were specifically mentioned as provisions that could be waived in the two most recent legislative proposals. *Cong. Rec.* S7191 (June 27, 1996) (Tab 2); *Cong. Rec.* S8141 (July 18, 1996) (Tab 1).

[8] Senator Wellstone and Representative Roybal-Allard held a press conference to release the 1996 Taylor Institute study, and then referenced the press conference in the Dear Colleague letter they circulated urging support for the joint resolution. Senate Dear Colleague Letter of June 18, 1996 from Sen. Wellstone, Rep. Roybal-Allard and co-sponsors (Tab 2); *see also* Dear Colleague Letter of June 18, 1996 from Rep. Roybal-Allard and co-sponsors

resolution also addressed the correlation between violence and poverty, and the need for more flexibility in imposing time limits, work requirements and other rules on battered women and their families. It listed detailed findings about the numbers of women affected by domestic violence, and ways that violence interferes with their ability to become self-sufficient. *Id.* It expressed the sense of Congress that both federal and state welfare legislation should incorporate mechanisms to address these issues. *Id.*

However, the substance of the Joint Resolution differed from the Family Violence Exemption in several important aspects. Following the President's veto of H.R. 4, advocates suggested to members of Congress that pure exemptions could prove detrimental in some cases to battered women seeking self-sufficiency. Permanent exemptions might lead to exclusions from job training and placement opportunities. Based on this input from advocates, the legislators concluded that "stopping the clock" for a period of time would be preferable to an outright exemption, and would meet the goals of case-by-case consideration repeatedly emphasized by Senator Wellstone.[9] While some women would need little or no extra time, others would need longer periods. In addition, states could provide more than just relief from the operation of some statutory rules, but could also offer supportive services to help ensure both physical and subsequent economic security. S. Con. Res. 67; H. Con. Res. 195. Accordingly, the Joint Resolution called for *tolling* time limits, rather than permanently exempting individuals, *Id.* at §4(C), and for providing referrals to "counseling and supportive services." *Id.* at §4(B).

A shortened version of that Joint Resolution, but a version including many of the Congressional findings about the importance of addressing the impact of violence on poverty, was adopted by both the House and the Senate on the Budget Reconciliation Bill. *Cong. Rec.* S5220 (May 17, 1996) (attached at Tab 2); House of Representatives, Committee on the Budget, Transcript of Markup of Fiscal Year 1997 Budget Reconciliation Bill at 265, 268 (May 9, 1996) (hereinafter "Budget Committee Transcript") (attached at Tab 2). The Budget Reconciliation Bill, H. Con. Res. 178, a non-binding resolution setting out the budget priorities for the 1997 fiscal year, passed both houses of Congress. *Cong. Rec.* H6267 (June 12, 1996); *Cong. Rec.* S6168 (June 13, 1996). As passed, Section 412 of the resolution stated the sense of Congress that, in enacting welfare reform provisions, Congress should consider whether the proposed legislation would increase dangers for battered women, make it more difficult to escape violence, or "unfairly punish women victimized by violence," and also stated the sense of Congress that welfare legislation should *require* that any welfare to work, education, or job placement programs implemented by the States address the impact of domestic violence on welfare recipients." *Cong. Rec.* H6016 (June 7, 1996) (attached at Tab 2).

(discussing 1996 Taylor Institute study) (Tab 2).

[9] He urged that because of the impact of violence, welfare reform could not be "one size fits all." See, e.g. *Cong. Rec.* S8141 (July 18, 1996) (statement of Sen. Wellstone) (Tab 2); *Cong. Rec.* S5220 (May 17, 1996) (statement of Sen. Wellstone) (Tab 2).

Finally, in August 1996, during consideration of H.R. 3734, Senators Wellstone and Murray implemented the directive of the Joint Resolution, and sought an amendment to welfare legislation creating flexibility for victims of domestic violence. Like the approach of the Joint Resolution, and in contrast to the H.R. 4 amendment, the Wellstone/Murray Family Violence Amendment included flexible waivers of Temporary Assistance to Needy Families (TANF) program requirements, including time limits. Under the Family Violence Amendment, good cause waivers may be granted -- for so long as necessary -- where the requirements would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence. Sec 402(a)(7)(A)(iii). The Family Violence Amendment also provides for increased services, including confidential screening and referral. Sec. 402(a)(7)(A)(i)&(ii).

The Family Violence Amendment was introduced on July 18, 1996. At that time, the Senate welfare bill under consideration already contained one provision -- a hardship exemption -- specifically addressing domestic violence. The Family Violence Amendment cross-references the hardship exemption's definition of battering or extreme cruelty. Sec. 402(a)(7)(B) However, the hardship exemption, which also appeared in the House passed version and in the final bill, H. Rep. No. 104-725, 104th Cong., 2d Sess., 288-89 (July 29, 1996) (attached at Tab 4), operates quite differently from the Family Violence Amendment. The hardship exemption, Sec. 408(a)(7)(C) (attached at Tab 4), permits states to exempt up to 15% of their caseloads from the operation of the five-year time limit, for reason of hardship (which is undefined) or in the case of battering or extreme cruelty, defined in Sec. 408(a)(7)(C)(iii) [10] Unlike the Family Violence Amendment, which states that waivers are for "so long as necessary," the hardship exemption has no language limiting the time that an exemption will last. The hardship exemption also does not contain the "good cause" language of the Family Violence Amendment. Sec. 408(a)(7)(C).

As proposed by Senator Wellstone, and unanimously adopted by the Senate, the Family Violence Amendment mandated that states provide services and make flexible waivers. *Cong. Rec.* S. 8141-8142 (July 18, 1996) (attached at Tab 1). The Conference Committee changed the Family Violence Amendment to a state option, but made no other alterations to the provision. H. Rep. 104-725 at 267 (Tab 1). Thus, as adopted by Congress and signed by the President, the PRWORA contains two distinct mechanisms for state flexibility in cases of domestic violence: (1) under the Family Violence Amendment, states may make flexible good cause waivers of all TANF program requirements and may increase services in cases of domestic violence and sexual abuse, P.L. 104-193, §103(a)(1), Sec. 402(a)(7); and (2) under the hardship exemption, states may exempt up to 20% of their caseload from the operation of the five-year time limit *Id.* at Sec. 408(a)(7)(C).

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[10] H.R. 4 contained a 15% exemption from the operation of the five-year time limit. The Conference Committee that dropped the Family Violence Exemption from H.R. 4 also added battering or extreme cruelty as a specific ground for a hardship exemption, while clarifying that states did not have to provide such exemptions. *Cong. Rec.* H15324, H15402 (December 21, 1995) (attached at Tab 4).

ISSUE (1): Does the 20% cap on hardship exemptions from the five-year time limit, Sec. 408(a)(7)(C)(ii), restrict in any way the ability of states to make temporary good cause waivers of time limits under the Family Violence Amendment, Sec. 402(a)(7)(A)(iii)?

The Family Violence Amendment allows states to waive for good cause numerous JOBS/ANF requirements, according to need and without a numerical ceiling on the number of cases. Sec. 402(a)(7)(A)(iii). Only one requirement that states may waive under the Family Violence Amendment -- the state's lifetime limit on assistance -- is also covered by another exception in the statute. That exception, the hardship exemption, does have a 20% numerical limitation on how many cases may be exempted. Sec. 408(a)(7)(C)(ii). Comparing the explicit text of the Family Violence Amendment and the hardship exemption, the best and most consistent reading, giving full effect to both provisions, is that they create alternate mechanisms. Thus states making good cause waivers would not be bound by the 20% limitation in Sec. 408(a)(7)(C).

Consequently, states retain the option to continue to pay benefits out of federal funds for more than 60 months to individuals who have been granted good cause waivers under the Family Violence Amendment from the operation of the five-year time limit, without a specific numerical limitation on the number of waivers and without counting those individuals subject to waivers toward the 20% cap on hardship exemptions. Clearly no other provisions of the Family Violence Amendment are even arguably subject to any numerical limitation.

The legislative history, while not explicit on this point, fully supports the interpretation that the Family Violence Amendment provides states the option of creating a separate alternate track to deal with cases of battering or extreme cruelty. Further, a reading that transports the limitations of the hardship exemption into the Family Violence Amendment is strained in light of the Amendment's text and, in fact, nullifies the clear statutory language.

(a) The text of the two provisions create different mechanics -- waivers vs. exemptions. The statutory language is the clearest distinction between the Family Violence Amendment and the hardship exemption. While the hardship exemption creates long-term exemptions from the five-year time limit, the Family Violence Amendment creates variable good cause waivers, for a necessary period of time, of any program requirement. Black letter principles of statutory interpretation dictate that in interpreting any legislative provision, one looks first to the actual language for guidance. *Marshall v. El Paso Natural Gas Co.*, 874 F.2d 1373, 1383 (10th Cir. 1989). Words are to be given their ordinary or common meaning, and a "common sense," reasonable construction. *See, e.g. First United Methodist Church v. United States Gypsum Co.*, 882 F.2d 862, 868 (4th Cir. 1989), *cert. denied* 493 U.S. 1070 (1990), *Caminetti v. United States*, 242 U.S. 470, 485 (1917). The best reading of the two provisions, one using non-limited "exempt" language and the other using "waive . . . (for so long as necessary)" is that the two mechanisms are different in scope and application. *Compare* Sec. 408(a)(7)(C)(i) *with* 402(a)(7)(A)(iii).

The fact that the language used in an amendment is different than that used by the

existing text of the bill being amended is particularly significant. Where language is the same in an amendment as in the existing bill, they are considered to have the same meaning, but a amendment using a change in language indicates a change in meanin. *See* Norman J. Singer, *Statutes and Statutory Construction* §§ 22.29, 22.35 (5th ed. 1994); c. *Aetna Casualty & Surety Co. v. Buck*, 594 So.2d 280, 283 (Fla. 1992); *see also Marshall*, 874 .2d at 1500 (construction that renders some words surplusage to be avoided). Indeed any amendment is presumed to have as its purpose to change some aspect of the existing statute, and by looking to the language used and changes made one can discern that purpose. *See In re Marriage of Hawking*, 608 N.E.2d 327, 330 (Ill. App., 1st Dist. 1992), *appeal denied*, 612 N.E.2d 513 (1993).

Other aspects of the text of the two provisions show that they are conceptually and operationally distinct. For example, there is no numerical limit of any kind in the text of the Family Violence Amendment, no reference whatsoever to the 20% limit specified in Sec. 408(a)(7)(C)(ii), and no suggestion that any of its provisions cannot be used to its full extent. Sec. 402(a)(7). Significantly, the hardship exemption is not specifically a domestic violence provision; it allows the states to define hardships that may include battering or extreme cruelty under other possibilities, but it does not encompass the other mechanisms established in the Family Violence Amendment for addressing domestic violence, such as screening and referrals, and relief from other welfare requirements. *Compare* Sec. 408(a)(7)(C) *with* Sec. 402(a)(7). Moreover, the hardship exemption contains no reference to the definitions or waivers the state may have adopted under Sec. 402(a)(7), indicating that whether the state considers domestic violence in its definition of hardship and how it does so has nothing to do with whether or how the state adopted the Family Violence Amendment. *Id.*

The sole point of comparison between these provisions, the fact that they both rely on the same definition to create flexibility in the operation of welfare rules, is not enough to overcome the vast differences in language and structure between the two provisions. *See, e.g., Sanchez v. Alexis*, 131 Cal. App. 3d 709, 715 (Ct. App., 4th Dist. 1982) (language to be construed in context and with respect to entire statute, and conforming to apparent legislative purposes). The statute gives states many ways to consider domestic violence when implementing its TANF program. One way is to adopt the option in the Family Violence Amendment to implement a program that deals with domestic violence and allows waivers of whatever program requirements the state believes should be waived to help victims of domestic violence. Another approach would be for states to include domestic violence as a one of the criteria under Sec. 408(a)(7)(C) for determining who will be exempt from the durational limitation on assistance. Like the Family Violence Amendment, the hardship exemption is permissive. Sec. 408(a)(7)(C). A state could choose to utilize one, both or neither. Reading these provisions as giving states the option of a separate track for domestic violence gives the fullest effect to both provisions. *See, e.g., Marshall*, 874 F.2d at 1501 (reasonable construction harmonizing different statutory sections).

(b) The legislative history supports the clear textual evidence that Congress intended to create a new, separate system for cases of domestic violence. The legislative history, although not explicit on this point, is fully consistent with a legislative intent to distinguish between long-

term exemptions and flexible waivers. The change in language from the Family Violence Exemption adopted in H.R. 4, to the tolling/waiver language used in the Joint Resolution and the Family Violence Amendment, demonstrates a change in intent. Senator Wellstone's floor statements emphasize the need for flexible, case-by-case consideration. As he stated in proposing the Family Violence Exemption, "we cannot have 'one size fits all.'" *Cong. Rec.* S8141 (July 18, 1996) (Tab 1). The fact that the Family Violence Amendment was adopted after the hardship exemption further emphasizes that Congress did not intend to be limited by the terms of the existing hardship exemption, for when an amendment and an existing provision are in potential conflict, it is the last statement of legislative will that governs. Singer at § 22.15.

As explained above, this choice of the term "waiver" rather than "exemption" was deliberate. Waivers are responsive to the policy goal of making welfare-to-work programs *work* for battered women, rather than considering them universally presumptively unemployable. While in some cases, long-term physical or mental disabilities may require permanent exemptions, in many cases a temporary waiver will be the best solution. The waiver can enable an individual sufficient time to recover from the effects of violence, to move to a place of safety, or can ensure that no unfair penalty results when fears, threats or actual reprisals from an abuser make a woman unable to meet a requirement.

It is noteworthy that a letter sent to the welfare Conferees by the co-sponsor of the Joint Resolution, Rep. Roybal-Allard, and co-signed by Rep. Sue Myrick (R-NC) stressed that "because circumstances differ, the amount of time battered women need to rebuild their lives varies," and that women covered by the Family Violence Amendment "are not permanently disabled and should not be included in the 20% permanent exemption." Dear Conferee Letter of July 25, 1996 (attached at Tab 1).

Finally, Congress knew the numbers of women who may have need of some form of waiver provision. As Senator Wellstone stated in introducing the amendment, "the Taylor Institute in Chicago . . . documented that between 50 and 80 percent of women receiving AFDC are current or past victims of domestic abuse." *Cong. Rec.* S. 141 (daily ed. July 18, 1996) (Tab 1). Given such evidence, it is much more consistent to read Congress' intent to provide sufficient, temporary waivers for all, rather than to allow an insufficient number of permanent exemptions. The presence of a good cause requirement, Sec. 402(a)(7)(A)(iii), means that Congress' grant is not completely open-ended, but responsive to the need.

Since "the primary goal of statutory construction is to ascertain and follow the intent of the legislature," *Marshall*, 874 F.2d at 1383, reading the provisions separately is the most consistent with both the statutory language and intent of Congress. *See also Hawking*, 538 N.E.2d at 329.

(c) The policies underlying the welfare bill and the Family Violence Exemption, as explicitly expressed by Congress, would be undermined by a contrary interpretation

Interpreting family violence waivers as distinct from the terms of the hardship exemption will

advance the policies expressed in the welfare bill of promoting state [illegible]y and individual self-sufficiency. It will also more fully address the concerns specific[illegible]y detailed in the Joint Resolution that led Congress to adopt the Family Violence Amendm[illegible].

As the welfare legislation specifically states, the purpose of the TANF program is to "increase the flexibility of states" and for states to adopt programs promoting job preparation and work. P.L. 104-193, §103(a)(1), Sec. 401 (attached at Tab 4). Allowing states to choose between utilizing either or both of these differing mechanisms, depending on the need, is the most consistent with increasing the flexibility of states. It also promotes job preparation and work, by encouraging states to look to temporary waivers, along with services to move battered women to self-sufficiency at an appropriate pace. Since presumably the purpose of limiting the number of hardship exemptions was to ensure that states did not simply abandon a large percentage of difficult cases and pay benefits indefinitely and since the Family Violence Amendment specifically rejected exemptions in favor of temporary waivers, there is no reason to numerically limit the number of temporary waivers and every reason to encourage them.

Finally, this interpretation best serves the underlying purpose of the Family Violence Amendment, as stated explicitly by the 104th Congress in the Joint Resolution, and as reflected by the floor statements of Senator Wellstone, and by Congress' ongoing commitment to end violence against women expressed by passage of the Violence Against Women Act. An interpretation that favors increased safety and self-sufficiency for battered women and their families, and that encourages states to design welfare programs to address domestic violence and sexual abuse if they so choose, without capping to the numbers of women who may need waivers of time limits on receiving assistance, is the interpretation that best serves Congress' purpose in passing the legislation.

Issue (2): Will a financial penalty apply to states that fail to meet mandatory monthly work participation rates required by Sec. 407 because they have granted flexible good cause waivers in cases of domestic violence?

States adopting the Family Violence Amendment may make good use waivers of that state's work requirements, including the mandatory federal two-year time limit before work is required, for individuals in cases of domestic violence. However, a state chooses to address the needs of battered women by adjusting work requirements, a state could fear incurring a financial penalty under Sec. 409(a)(3) for failing to meet mandatory monthly work participation rates. Reviewing the existing evidence of legislative intent and the relevant language, the best reading of how these two provisions interact is that the adoption of the Family Violence Amendment option constitutes reasonable cause for failing to meet the participation rates mandated by Sec. 407 of the TANF program. Thus no financial penalty for failing to meet monthly work participation rates would apply to states in such a case. Indeed, an alternate reading that financially penalized states for carrying out the dictates of the Family Violence Amendment would essentially nullify its effectiveness.

The text of the Family Violence Amendment does not state that good cause waiver will count against a state. In the absence of a clear statutory directive, or [illegible] evidence of Congressional intent for the best interpretation. *First Unit. Meth[illegible]rch*, 892 F.[illegible] 868. However, the statute does contain an explicit textual basis for [illegible] penalties for reasonable cause, Sec. 409(b) (attached at Tab 4). The language clearly contemplates that participation rate failures may be excused. While there are specific [illegible] exceptions to "reasonable cause," they do not include the work participation rates [illegible] 409(b)(3). Further, the PRWORA contains an explicit grant of authority to states to modify [illegible] requirements and time limits for battered women and their families. Exercising this [illegible] and furthering the clear legislative intent to address obstacles to employment caused by domestic violence meets any common sense definition of the term "reasonable cause." *See [illegible]rch*, 874 F.2d at 1500.

As discussed above, the Family Violence Amendment is a [illegible] of Congress's serious commitment to addressing all forms of violence against women, and particularly responds to research showing that violence hinders successful welfare-to-work transitions. As Rep. Roybal-Allard stated to her colleagues on the House Budget Committee in [illegible] them to adopt the Joint Resolution, "[t]hese are not women who are lazy or don't want a job. These women want to work but . . . their efforts of self-improvement are often sabotaged. [illegible] the challenges that we in Congress face is to reform the welfare system in a way that helps women who are victims of abuse, not punishes them." Budget Comm. Transcript 267 (Tab 2). Similarly, Congress was concerned particularly with the ability of battered women to quickly [illegible] self-sufficiency and built in a mechanism, the Family Violence Amendment, to resolve that problem.

The findings in the Joint Resolution expressly documented the correlation between violence and difficulties with employment. *Cong. Rec.* H6[illegible]-15 (June 7, 1996). (Tab 2). These findings included: one quarter of battered women surveyed lost a job due at least in part to domestic violence, over half reported harassment by their abusers at work, over fifty percent of women in welfare to work programs have been or are current victims of domestic violence, and batterers often sabotage women's efforts at self-improvement. *Id.* at 6015. This resolution was passed by both houses of Congress only a few weeks after the Senate passed the Family Violence Amendment, and is a clear statement of legislative intent with the enactment on work. Senator Wellstone's statement in introducing the Family Violence Amendment used the illustrative example of Monica Seles, and her difficulties in returning to work after a violent assault, as support for the proposition that "one size" does not "fit [illegible]." *Cong. Rec.* S. 8141 (July 18, 1996) (Tab 1).

The 104th Congress also had knowledge that participation [illegible]ties could create an impediment to the successful implementation of any form of work [illegible]ement waiver or exemption. In offering the Family Violence Exemption attached to [illegible] Senator Wellstone stated that "it is extremely important that States be allowed to [provide exemptions]. Otherwise they will be penalized for not reaching their employment goal." *Cong. Rec.* S. 11525 (Sept. 13, 1995) (Tab 3). The Senator's statement refers to the fact that, where [illegible] prevents women from working, the state may, as a practical result, face a penalty because [illegible] will unable to move

that individual as quickly into the workforce. Unless the state has a y void including that individual in determining participation rates, the net effect of the in[illegible] of violence in the lives of welfare recipients will be the failure of state programs to m[illegible] employment goals.[11]

Giving effect to Congress' intent to allow states to make case[illegible] determinations rather than "one size fits all" requirements in situations of domestic [illegible] requires waiving penalties for failing to meet participation rates as a result of implem[illegible] Family Violence Amendment. The ability of states to grant waivers will be seriously [illegible]mised if that waiver counts against the state when calculating mandatory participation ra[illegible]ed, these waivers will become, as a practical matter, unavailable. It w[illegible] one of [illegible]s of increased state flexibility, successful transition to self-sufficiency, or protection of [illegible] women, if states are punished for granting waivers.

Since statutes should be construed "to effectuate their intent [illegible]fficial purpose[illegible] not to defeat them," *Colorado Health Care v. Colorado Dept. of Social [illegible]*, 842 F.2d 1158, 1171 (10th Cir. 1988), the Department should refrain from penalizing a state's failure to meet mandatory monthly participation rates, when that failure results from a state's program for addressing domestic violence. This construction best comports with legislative intent and best carries out the beneficial purpose of the Family Violence Amendment. *See also Esto Cater Charters, Inc. v. Ignacio*, 875 F.2d 234, 238-39 (9th Cir. 1989) (avoiding construction that causes injustice or exacerbates harsh consequences).

ISSUE (3): May states choose to grant flexible good cause waivers of program requirements, not just the specific examples listed in [illegible] 402(a)[illegible](i), where compliance would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence?

Based on the explicit text of the Family Violence Amendment, states may choose to waive any program requirements that fit the definition contained in the Amendment. The evidence of the legislature's intent further supports this reading.

The amendment's text states that a state may "waive pursuant to a determination of good cause, other program requirements such as" and then lists several examples. Sec 402(7)(A)(iii). Under tenets of statutory interpretation, the phrase "such as" makes clear that the listed programs are exemplary and not exhaustive. *See, e.g., Pacific Mut.* [illegible] F.2d at 1503, *Caminetti*, 242 U.S. at 485. Determining what requirements qualify for waiver requires applying the principle contained in the amendment itself. The waiver must be in a case where

[11] That state option amendment, in fact, explicitly stated that waived [illegible] would not be counted towards calculation of participation rates. *Cong. Rec.* S13561 (September 13, 1[illegible]).

compliance would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who have been victimized by such violence, or individuals who are at risk of further domestic violence." Sec 402(7)(A)(iii). Thus, the list is not completely open-ended, but limits the application of this principle.

This interpretation gives full effect to the policies and purposes behind the amendment. As described above, Congress was concerned with the serious barriers that domestic violence poses for economic self-sufficiency, and with encouraging states to ensure that new welfare requirements did not jeopardize the safety of battered women. Congress had knowledge about how a wide range of requirements could be difficult or dangerous to work an unfair penalty. However, the freedom and flexibility in the block grant system means that requirements will vary widely from state to state. Thus, an exhaustive list of covered programs is not as effective as a general principle against which any requirement may be evaluated. Permitting states to grant waivers in any cases where compliance with any program requirement would make it difficult or dangerous or works an unfair penalty is the only interpretation consistent with legislative intent and policy.

ADDITIONAL ISSUES FOR FURTHER CONSIDERATION

In addition to answering these questions, our recommendations have addressed other aspects of the PRWORA where interpretations of the statute could benefit battered women moving to self-sufficiency, and assist states in addressing their needs. These are addressed here briefly. We and other advocates are available to discuss these issues further. The Department views them as promising avenues of exploration.

In addition to the interpretations discussed under Issues I & [illegible] HHS should consider defining reasonable cause for exceeding the 20% limit on [illegible] exemptions to include state programs providing services to address domestic violence in welfare-to-work transition. Thus, in states that do not adopt the Wellstone/Murray Family Violence Exemption, where the state is providing assistance in the form of both benefits and services to battered women who may need additional time to successfully retain employment, no financial penalty would apply under Sec. 409(a)(9), because of reasonable cause for failure to comply under Sec. 409(b).

Another area for further consideration is the flexibility of the definition of work activities. States may need guidance from HHS in interpreting "work activities." Take a broad definition to assist battered women who may need to pursue legal, medical, psychological or other forms of assistance in order to successfully retain employment would benefit both individuals involved and advance the long-term policy goals of the statute.

Finally, we look forward to continuing to work with the Department on implementation

issues, such as fashioning appropriate guidelines for screening and referral and determination of good cause for granting waivers.

CONCLUSION

After considering the text of the legislation, the documented legislative history, and the expressed intent of Congress, and applying basic principles of statutory interpretation, the following are the most supportable interpretations:

(1) The 20% cap on continuous hardship exemptions from the five-year time limit, Sec. 408(a)(7)(C)(ii), does not restrict in any way the ability of states to make temporary good cause waivers of time limits under the Family Violence Amendment, Sec. 402(a)(7)(A)(iii).

(2) A financial penalty should not apply to states that fail to meet mandatory participation rates required under Sec. 407 because they make flexible good cause waivers in cases of domestic violence.

(3) States may choose to grant flexible good cause waivers of any program requirements, not just the examples listed in Sec. 402(a)(7)(A)(iii), where compliance would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence.

We urge the Department to adopt these interpretations in any relevant regulations or guidance documents issued to the states, as well as taking steps to promote the successful implementation of the Family Violence Amendment by state governments.

APPENDIX CONTENTS

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 0601
CONNECTION TEL 912036983076
CONNECTION ID
ST. TIME 12/15 18:00
USAGE T 01'06
PGS. 1
RESULT OK

HEALTH INSURANCE

Health insurance <u>terminates</u> at the end of the pay period in which you sepa[illegible] There is an automatic 31-day grace period beyond that date.

A separating employee who is not entitled to continue enrollment into retireme[illegible] s two options regarding health insurance upon separation:

- Conversion to an individual policy with you[illegible] current health carrier. [illegible] coverage cont[illegible]ues as long as you and the carrier have an agree[illegible] upon contract. Conve[illegible] must be accomplished within the 31-day grace period and informa[illegible]n should be requeste[illegible] [illegible]ctly from the insurance carrier.
- Re-enrollment in the Federal Employees Health Benefits (FEHB) pro[illegible]n under the Temporary Continuation of Coverage authority for up to [illegible]8 months. You will rec[illegible] a letter explai[illegible]ing the process when you separate.
  - Your election is effective on the day after the automatic 3[illegible] / grace period ends;
  - You may elect any plan;
  - You are entitled to all of the opportu[illegible]ities to change enroll[illegible] as federal employees; and,
  - You pay 102 percent of the cost of the plan (employee cont[illegible]n, agency contribution and a 2 percent administrative fee).

Employees applying for an immediate retirement annuity may continue enrollm[illegible] the FEHB provided:

- the employee is currently enrolled in FEHB; and,
- the employee has been continuously enrolled or covered [illegible] family member for at least five years immediately preced[illegible] retirement, or if fewer [illegible] five years, has been enrolled since the fir[illegible] opportunity

If you have any questions regarding the health insura[illegible] program, call 395-5[illegible]

David Ogden 12/3/96

Wellstone/Murray report due on Jan 3 (by Pres directive)
Our role – address the q. – whether hardship cap / wk
– partic rate applies

HHS would prefer to wait until regs issued in Spring.
Campbell thinks window is closing – states now choosing.

OLC's view – the 20% cap does not apply
wk partic rate does apply [redacted] unless
HHS removes by regulation.

Jeremy thinks it makes sense to do it.
Bruce Reed thinks we shouldn't.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES
THE ATTORNEY GENERAL

SUBJECT: Guidelines to States for Implementing the Family Violence Provisions

Domestic violence has a devastating impact on families and communities. Each year, hundreds of thousands of Americans are subjected to assault, rape, or murder at the hands of an intimate family member. Our children's futures are severely threatened by the fact that they live in homes with domestic violence. We know that children who grow up with such violence are more likely to become victims or batterers themselves. The violence in our homes is self-perpetuating and eventually it spills into our schools, our communities, and our workplaces.

Domestic violence can be particularly damaging to women and children in low-income families. The profound mental and physical effects of domestic violence can often interfere with victims' efforts to pursue education or employment -- to become self-sufficient and independent. Moreover, it is often the case that the abusers themselves fight to keep their victims from becoming independent.

As we reform our Nation's welfare system, we must make sure that welfare-to-work programs across the country have the tools and the training necessary to help battered women move successfully into the work force and become self-sufficient.

For these reasons, I strongly encourage States to implement the ~~attached~~ Wellstone/Murray Family Violence provisions of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193, section 402(a)(7)). These provisions invite States to increase services for battered women through welfare programs and help these women move successfully and permanently into the workplace. The Family Violence provisions are critical in responding to the unique needs faced by women and families subjected to domestic violence.

As we move forward on our historical mission to reform the welfare system, this Administration is committed to offering States assistance in their efforts to implement the Family Violence provisions.

Accordingly, I direct the Secretary of the Department of Health and Human Services and the Attorney General to develop guidance ~~to~~ for States to assist and facilitate the implementation of the Family Violence provisions. In crafting this guidance, the Departments of Health and Human Services and Justice should work with States, domestic violence experts, victims' services programs, law enforcement, medical professionals, and others involved in fighting domestic violence. ~~This guidance~~ These agencies should recommend standards and procedures that will help make transitional assistance programs fully responsive to the needs of battered women.

The Secretary of Health and Human Services is further directed to provide States with technical assistance as they work to implement the Family Violence provisions.

Finally, to more accurately study the scope of the problem, we should examine statutory rape, domestic violence, and sexual assault as threats to safety and barriers to self-sufficiency. I therefore direct the Attorney General and the Secretary of Health and Human Services to make it a priority to understand the incidence of statutory rape, domestic violence, and sexual assault in the lives of poor families, and to recommend the best assessment, referral, and delivery models to improve safety and self-sufficiency for poor families who are victims of domestic violence.

I ask the Secretary of Health and Human Services and the Attorney General to report to me in writing 90 days from the date of this memorandum on the specific progress that has been made toward these goals.

THE WHITE HOUSE

WASHINGTON

October 3, 1996

MEMORANDUM FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES
THE ATTORNEY GENERAL

SUBJECT: Guidelines to States for Implementing the Family Violence Provisions

Domestic violence has a devastating impact on families and communities. Each year, hundreds of thousands of Americans are subjected to assault, rape, or murder at the hands of an intimate family member. Our children's futures are severely threatened by the fact that they live in homes with domestic violence. We know that children who grow up with such violence are more likely to become victims or batterers themselves. The violence in our homes is self-perpetuating and eventually it spills into our schools, our communities, and our workplaces.

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I ask the Secretary of Health and Human Services and the Attorney General to report to me in writing 90 days from the date of this memorandum on the specific progress that has been made toward these goals.

William J. Clinton

NATIONAL DOMESTIC VIOLENCE AWARENESS MONTH, 1996

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BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Domestic violence threatens the very core of what we hold dear. Millions of women and children throughout our nation are plagued by the terror of family violence each year, and approximately 20 percent of all hospital emergency room visits by women result from such violence. Family violence is a crime that transcends race, religion, ethnicity, and economic stature, and one of its greatest tragedies is its effect on our young people: as many as 3 million children witness violence in their homes each year.

We must never give up in our efforts to transform despair into hope for the women and families across this country who suffer violence at home. We must encourage all Americans to increase public awareness and understanding of domestic abuse as well as the needs of its victims. My Administration is fully engaged in this struggle, coordinating our efforts through the Violence Against Women Office at the Department of Justice and through the Department of Health and Human Services.

Legislation enacted during the past several years is also helping to overcome the scourge of domestic violence. The Violence Against Women Act that I signed into law has given law enforcement critical new tools with which to prosecute and punish criminals who intentionally prey upon women and children. The Interstate Stalking Punishment and Prevention Act of 1996, enacted just last month, makes it a Federal crime for any stalker to cross State lines to pursue a victim, whether or not there is a protection order in effect, whether or not an actual act of violence has been committed, and whether or not the stalker is the victim's spouse. And I am pleased that the Congress has just taken action to keep guns out of the hands of people with a history of domestic violence.

My Administration has also worked to increase the support available for battered women and other victims of domestic violence, including the elderly. In February, I announced the creation of a 24-hour, toll-free National Domestic Violence Hotline, 1-800-799-SAFE. The response to this service has been overwhelming, and the hotline has already received over 50,000 calls -- the majority from women and men who have never before reached out for assistance. This year, we will also provide increased and unprecedented resources for battered women's shelters, domestic violence prevention efforts, and children's counseling services.

There is still much more to do, however. The welfare reform legislation that I recently signed recognizes the special needs of domestic violence victims, and I urge all States to accept the option of implementing the new law's Family Violence provisions. I have also directed the Department of Health and Human Services and the Department of Justice to develop guidance for States and assist them in implementing the provisions. As we help families move from welfare to work, we must ensure that they remain safe from violence in their homes and are given the support they need to achieve independence.

As a result of these and other efforts at the national, State, and local levels, we are one step closer to eliminating domestic violence and building in its place a brighter, more secure future for our families and loved ones. I salute all those whose efforts are helping us in this endeavor and pay special tribute to the survivors of domestic violence whose courage is an inspiration to us all. I urge all Americans to join me in working toward the day when no person raises a hand in violence against a family member.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 1996 as National Domestic Violence Awareness Month. I call upon all Americans to observe this month by

demonstrating their respect and gratitude for all those individuals who unselfishly share their experiences, skills, and talents with those affected by domestic violence.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of October, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

NOW LEGAL DEFENSE
AND EDUCATION FUND 119 CONSTITUTION AVENUE, N.E., WASHINGTON, D.C. 20002 (202) 544-4470 FAX (202) 546-8605

MEMORANDUM

To: Donna Shalala, Secretary, Dept. of Health and Human Services
Harriet Rabb, General Counsel
Anna Durand, Deputy General Counsel

From: Martha F. Davis, Legal Director, NOW LDEF
Pamela Coukos, Staff Attorney

Date: October 7, 1996

Re: Analysis of the Wellstone/Murray Family Violence Amendment

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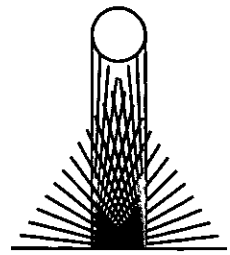
Following our discussions in person and by telephone with staff of the Department of Health and Human Services, we are forwarding the attached legal analysis of certain interpretative questions regarding the Wellstone/Murray Family Violence Amendment to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). P.L. 104-193, Sec. 402(a)(7) of Sec. 103(a)(1).

As advocates deeply involved in the drafting and passage of the Family Violence Amendment, as well as its two legislative precursors, we have valuable legislative history materials to contribute to these questions. We also have conducted a thorough analysis of the scope of the Amendment and its interaction with certain other provisions of the welfare law. Although in some cases, our conversations demonstrate considerable agreement on certain issues, we have fully addressed the issues discussed to provide you with a complete analysis.

We are available to discuss this analysis and these conclusions with the General Counsel's office or any others in the Department. Martha Davis may be reached at the NOW LDEF office in New York, (212) 925-6635, and Pam Coukos may be reached at the Washington office, (202) 544-4470. Please contact us if you have any further questions.

cc: Jack Ebeler, Acting Assistant Secretary for Planning and Evaluation, DHHS
Ann Rosewater, Deputy Assistant Secretary for Human Services Policy, DHHS
Irene Bueno, Deputy Assistant Secretary for Legislation, DHHS
Bonnie Campbell, Violence Against Women Office, Department of Justice
Betsy Myers, White House Office for Women's Initiatives and Outreach
Elena Kagan, White House Office of the Legal Counsel
The Hon. Paul Wellstone, United States Senate
The Hon. Patty Murray, United States Senate
The Hon. Lucille Roybal-Allard, United States House of Representatives



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ANALYSIS OF CERTAIN STATUTORY INTERPRETATION QUESTIONS CONCERNING THE FAMILY VIOLENCE AMENDMENT TO THE PRWORA AND ITS RELATIONSHIP TO OTHER LEGISLATIVE PROVISIONS

Prepared By:

Martha F. Davis, Legal Director
Pamela Coukos, Staff Attorney

NOW Legal Defense and Education Fund

October 7, 1996

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INTRODUCTION

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, contains the Wellstone/Murray Family Violence Amendment, an important provision to allow states to address domestic violence in crafting state welfare programs. Sec. 402(a)(7) (attached at Tab 1).[1] There are three areas where the legislation should be correctly interpreted in order to carry out Congressional intent and allow states the flexibility to give the maximum effect to the Family Violence Amendment. These interpretative questions are:

- **Does the 20% cap on hardship exemptions from the five-year time limit, Sec. 408(a)(7)(C)(ii), restrict in any way the ability of states to make temporary good cause waivers of time limits under the Family Violence Amendment, Sec. 402(a)(7)(A)(iii)?**

- **Will a financial penalty apply to states that fail to meet mandatory monthly work participation rates required by Sec. 407 because they have granted flexible good cause waivers in cases of domestic violence?**

- **May states choose to grant flexible good cause waivers of any program requirements, not just the specific examples listed in Sec. 402(a)(7)(A)(iii), where compliance would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence?**

After reviewing the history of the adoption of the Family Violence Amendment, as well as prior legislation in the 104th Congress to make welfare rules more flexible for battered women and their families, this analysis examines the statutory text, legislative history and other relevant factors to answer these questions.

LEGISLATIVE HISTORY

The Wellstone/Murray Family Violence Amendment, an amendment to the Senate version of H.R. 3734, the PRWORA, culminated a year of legislative attempts in the 104th Congress to ensure that changes in federal welfare law address the needs of women and families living with or fleeing from violence. Fueled by emerging research, such as the Taylor Institute's 1995 report, *Domestic Violence: Telling the Untold Welfare-to-Work Story*, advocates, legislators and the public became educated about the additional hurdles battered women face in

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[1]Section references in H.R. 3734, and in P.L. 104-193, are to subsections under 103(a)(1) "Part A -- Block Grants to States for Temporary Assistance for Needy Families."

successfully transitioning from welfare to work.[2] Senator Paul Wellstone (D-MN) took a leadership role, joined by Representative Lucille Roybal-Allard (D-CA) and Senator Patty Murray (D-WA), in forging public policy solutions.

These legislators made clear in letters to their colleagues and statements on the floor citing this research and supporting legislative solutions that violence makes and keeps women poor. They continually emphasized how emerging research documented that large numbers -- from 50 to 80 percent -- of women currently receiving AFDC were current or past victims of abuse.[3] The legislators repeatedly explained how it may be difficult and dangerous for battered women and victims of sexual assault to meet stringent welfare requirements.[4]

As described in their letters and statements urging support for legislative provisions addressing violence and poverty, the physical and mental effects of domestic violence, as well as direct efforts by abusers to interfere with their victims' education and employment, have serious implications for welfare-to-work programs.[5] Thus, certain proposed rules and requirements for

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[2] *See, e.g.*, Jody Raphael, *Domestic Violence: Telling the Untold Welfare-to-Work Story* (Taylor Institute 1995) (hereinafter "1995 Taylor Institute Study"); Jody Raphael, *Prisoners of Abuse: Domestic Violence and Welfare Receipt* (Taylor Institute 1996) (hereinafter "1996 Taylor Institute Study"); Washington State Institute for Public Policy, *Over Half of the Women on Public Assistance in Washington State Reported Physical or Sexual Abuse As Adults* (Oct. 1993) (hereinafter "Washington State Study"); Martha F. Davis and Susan J. Kraham, *Protecting Women's Welfare in the Face of Violence*, 22 FORDHAM URBAN L.J. 1141 (1995). The 1995 Taylor Institute Study (and subsequent 1996 study), the Washington State Study, and the research cited in *Protecting Women's Welfare* were all cited in the floor statements, Dear Colleague letters and other legislative materials supporting legislative options, and in the findings of Sen. Wellstone and Rep. Roybal-Allard's Sense of Congress Joint Resolution. *See* nn. 3-5, 8-9, *infra.* Materials in the popular press brought these issues before the public. *See, e.g.*, Barbara Ehrenreich, *Battered Welfare Syndrome*, TIME MAGAZINE at 82 (April 3, 1995); Carol Jouzaitis, *Abuse Traps Women in Welfare*, CHICAGO TRIBUNE at 1 (February 19, 1995); Martha F. Davis & Susan J. Kraham, *Beaten, Then Robbed*, NEW YORK TIMES (January 13, 1995).

[3] *See, e.g., Cong. Rec.* S13525 (Sept. 13, 1995) (statement of Sen. Wellstone in support of Family Violence Exemption discussing studies) (attached at Tab 3); *id.* at S13525-26 (statement of Sen. Murray in support of same discussing Washington State study) (attached at Tab 3); *Cong. Rec.* S5220 (May 17, 1996) (statement of Sen. Wellstone in support of Joint Resolution discussing studies) (attached at Tab 2); *Cong. Rec.* S8141 (July 18, 1996) (statement of Sen. Wellstone in support of Family Violence Amendment discussing Taylor Institute research) (attached at Tab 1).

[4] *See, e.g., Cong. Rec.* S13525 (Sept. 13, 1995) (statement of Sen. Wellstone in support of Family Violence Exemption) (Tab 3); *id.* at S13525-26 (statement of Sen. Murray in support of same) (Tab 3); *Cong. Rec.* S5220 (May 17, 1996) (statement of Sen. Wellstone in support of Joint Resolution) (Tab 2); *Cong. Rec.* S8141 (July 18, 1996) (statement of Sen. Wellstone in support of Family Violence Amendment) (Tab 1); *Cong. Rec.* H7747 (July 17, 1996) (statement of Rep. Roybal-Allard in opposition to House version of H.R. 3734) (attached at Tab 1); House of Representatives, Committee on the Budget, Transcript of Markup of FY 1997 Budget Reconciliation Bill 265, 266 (May 9, 1996) (statement of Rep. Roybal-Allard in support of Joint Resolution) (attached at Tab 2).

[5] *See, e.g., Cong. Rec.* S13527 (Sept. 13, 1995) (statement of Sen. Wellstone in support of Family Violence Exemption) (Tab 3); *Cong. Rec.* S5220 (May 17, 1996) (statement of Sen. Wellstone in support of Joint

welfare programs could endanger or unfairly penalize battered women. Legislators tailored their legislative proposals to address these concerns, particularly that arbitrary and inflexible time limits may need to be modified where violence prevents a woman from working.[6] These legislators also responded to other issues, *e.g.*, that child support cooperation requirements may subject women to retaliatory abuse, or that residency requirements may harm women crossing state lines to flee a dangerous living situation.[7]

The first legislative initiative addressing violence in the lives of welfare recipients was an amendment in the Senate to H.R. 4, the welfare bill passed by the Senate in September 1995 and later vetoed by President Clinton. Senator Wellstone succeeding in passing Amendment 2584, the Family Violence Exemption, by unanimous consent in the Senate. *Cong. Rec.* S13562 (Sept. 14, 1995) (attached at Tab 3). That Amendment, co-sponsored by Senator Murray, had as its purpose "[t]o exempt women and children who have been battered or subjected to extreme cruelty from certain requirements of the bill." Amendment 2584, *id.* at S13561 (attached at Tab 3). It gave states the option to "exempt from (or modify) the application" of time limits, work requirements and other provisions specified in the amendment. *Id.* Senators Wellstone and Murray referred to new research documenting the connection between violence and poverty, and Senator Wellstone urged his fellow Senators to enact "national level" standards for states because "[w]e do not want to force a woman and her children because of their economic circumstances back into a brutal situation, back into. . . a very dangerous home." *Cong. Rec.* S13525 (Sept. 13, 1995) (attached at Tab 3). The Conference Committee dropped that amendment from the final version of H.R. 4, without comment. *Cong. Rec.* H15391-92 (Dec. 21, 1995) (attached at Tab 3).

Building on these legislative efforts, and spurred by a subsequent, more comprehensive report by the Taylor Institute incorporating new research, *Prisoners of Abuse: Domestic Violence and Welfare Receipt*, Sen. Wellstone and Rep. Roybal-Allard in May 1996 proposed a Sense of Congress Joint Resolution. S. Con. Res. 66/H.Con. Res. 195 (attached at Tab 2).[8] That

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Resolution) (Tab 2); Dear Colleague Letter of June 18, 1996 from Sen. Wellstone, Rep. Roybal-Allard and co-sponsors (attached at Tab 2); Dear Colleague Letter of July 3, 1996 from Rep. Roybal-Allard and co-sponsors (attached at Tab 2); Dear Conferees Letter of July 25 (attached at Tab 1).

[6] All of the proposals include time limits as a provision that could be exempted, waived or tolled. *Cong. Rec.* S13561 (Sept. 14, 1995) (text of Family Violence Exemption) (attached at Tab 3); *Cong. Rec.* S7191 (June 27, 1996) (text of Joint Resolution) (attached at Tab 2); *Cong. Rec.* S8141 (text of Family Violence Amendment) (attached at Tab 1).

[7] These requirements were specifically mentioned as provisions that could be waived in the two most recent legislative proposals. *Cong. Rec.* S7191 (June 27, 1996) (Tab 2); *Cong. Rec.* S8141 (July 18, 1996) (Tab 1).

[8] Senator Wellstone and Representative Roybal-Allard held a press conference to release the 1996 Taylor Institute study, and then referenced the press conference in the Dear Colleague letter they circulated urging support for the joint resolution. Senate Dear Colleague Letter of June 18, 1996 from Sen. Wellstone, Rep. Roybal-Allard and co-sponsors (Tab 2); *see also* Dear Colleague Letter of June 18, 1996 from Rep. Roybal-Allard and co-sponsors

resolution also addressed the correlation between violence and poverty, and the need for more flexibility in imposing time limits, work requirements and other rules on battered women and their families. It listed detailed findings about the numbers of women affected by domestic violence, and ways that violence interferes with their ability to become self-sufficient. *Id.* It expressed the sense of Congress that both federal and state welfare legislation should incorporate mechanisms to address these issues. *Id.*

However, the substance of the Joint Resolution differed from the Family Violence Exemption in several important aspects. Following the President's veto of H.R. 4, advocates suggested to members of Congress that pure exemptions could prove detrimental in some cases to battered women seeking self-sufficiency. Permanent exemptions might lead to exclusions from job training and placement opportunities. Based on this input from advocates, the legislators concluded that "stopping the clock" for a period of time would be preferable to an outright exemption, and would meet the goals of case-by-case consideration repeatedly emphasized by Senator Wellstone.[9] While some women would need little or no extra time, others would need longer periods. In addition, states could provide more than just relief from the operation of some statutory rules, but could also offer supportive services to help ensure both physical and subsequent economic security. S. Con. Res. 66/H. Con. Res. 195. Accordingly, the Joint Resolution called for *tolling* time limits, rather than permanently exempting individuals, *id.* at §4(C), and for providing referrals to "counseling and supportive services." *Id.* at §4(B).

A shortened version of that Joint Resolution, but a version including many of the Congressional findings about the importance of addressing the impact of violence on poverty, was adopted by both the House and the Senate on the Budget Reconciliation Bill. *Cong. Rec.* S5220 (May 17, 1996) (attached at Tab 2); House of Representatives, Committee on the Budget, Transcript of Markup of Fiscal Year 1997 Budget Reconciliation Bill at 265, 268 (May 9, 1996) (hereinafter "Budget Committee Transcript") (attached at Tab 2). The Budget Reconciliation Bill, H. Con. Res. 178, a non-binding resolution setting out the budget priorities for the 1997 fiscal year, passed both houses of Congress. *Cong. Rec.* H6267 (June 12, 1996); *Cong. Rec.* S6168 (June 13, 1996). As passed, Section 412 of that resolution stated the sense of Congress that, in enacting welfare reform provisions, Congress should consider whether the proposed legislation would increase dangers for battered women, make it more difficult to escape violence, or "unfairly punish women victimized by violence," and also stated the sense of Congress that welfare legislation should *require* that any welfare to work, education, or job placement programs implemented by the States address the impact of domestic violence on welfare recipients." *Cong. Rec.* H6016 (June 7, 1996) (attached at Tab 2).

(discussing 1996 Taylor Institute study) (Tab 2).

[9] He urged that because of the impact of violence, welfare reform could not be "one size fits all." *See, e.g. Cong. Rec.* S8141 (July 18, 1996) (statement of Sen. Wellstone) (Tab 1); *Cong. Rec.* S5220 (May 17, 1996) (statement of Sen. Wellstone) (Tab 2).

Finally, in August 1996, during consideration of H.R. 3734, Senators Wellstone and Murray implemented the directive of the Joint Resolution, and sought an amendment to welfare legislation creating flexibility for victims of domestic violence. Like the approach of the Joint Resolution, and in contrast to the H.R. 4 amendment, the Wellstone/Murray Family Violence Amendment included flexible waivers of Temporary Assistance to Needy Families (TANF) program requirements, including time limits. Under the Family Violence Amendment, good cause waivers may be granted -- for so long as necessary -- where the requirements would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence. Sec. 402(a)(7)(A)(iii). The Family Violence Amendment also provides for increased services, including confidential screening and referral. Sec. 402(a)(7)(A)(i)&(ii).

The Family Violence Amendment was introduced on July 18, 1996. At that time, the Senate welfare bill under consideration already contained one provision -- a hardship exemption -- specifically addressing domestic violence. The Family Violence Amendment cross-references the hardship exemption's definition of battering or extreme cruelty. Sec. 402(a)(7)(B). However, the hardship exemption, which also appeared in the House-passed version and in the final bill, H. Rep. No. 104-725, 104th Cong., 2d Sess., 288-89 (July 30, 1996) (attached at Tab 4), operates quite differently from the Family Violence Amendment. The hardship exemption, Sec. 408(a)(7)(C) (attached at Tab 4), permits states to exempt up to 20% of their caseload from the operation of the five-year time limit, for reason of hardship (which is undefined) or in the case of battering or extreme cruelty, defined in Sec. 408(a)(7)(C)(iii).[10] Unlike the Family Violence Amendment, which states that waivers are for "so long as necessary," the hardship exemption has no language limiting the time that an exemption will last. The hardship exemption also does not contain the "good cause" language of the Family Violence Amendment. Sec. 408(a)(7)(C).

As proposed by Senator Wellstone, and unanimously adopted by the Senate, the Family Violence Amendment mandated that states provide services and make flexible waivers. *Cong. Rec.* S. 8141-8142 (July 18, 1996) (attached at Tab 1). The Conference Committee changed the Family Violence Amendment to a state option, but made no other alterations to the provision. H. Rep. 104-725 at 267 (Tab 1). Thus, as adopted by Congress and signed by the President, the PRWORA contains two distinct mechanisms for state flexibility in cases of domestic violence: (1) under the Family Violence Amendment, states may make flexible good cause waivers of all TANF program requirements and may increase services in cases of domestic violence and sexual abuse, P.L. 104-193, §103(a)(1), Sec. 402(a)(7); and (2) under the hardship exemption, states may exempt up to 20% of their caseload from the operation of the five year time limit. *Id.* at Sec. 408(a)(7)(C).

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[10] H.R. 4 contained a 15% exemption from the operation of the five-year time limit. The Conference Committee that dropped the Family Violence Exemption from H.R. 4 also added battering or extreme cruelty as a specific ground for a hardship exemption, while clarifying that states did not have to provide such exemptions. *Cong. Rec.* H15324, H15402 (December 21, 1995) (attached at Tab 4).

ISSUE (1): Does the 20% cap on hardship exemptions from the five-year time limit, Sec. 408(a)(7)(C)(ii), restrict in any way the ability of states to make temporary good cause waivers of time limits under the Family Violence Amendment, Sec. 402(a)(7)(A)(iii)?

The Family Violence Amendment allows states to waive for good cause numerous TANF requirements, according to need and without a numerical ceiling on the number of cases. Sec. 402(a)(7)(A)(iii). Only one requirement that states may waive under the Family Violence Amendment -- the state's lifetime limit on assistance -- is also covered by another exception in the statute. That exception, the hardship exemption, does have a 20% numerical limitation on how many cases may be exempted. Sec. 408(a)(7)(C)(ii). Comparing the explicit text of the Family Violence Amendment and the hardship exemption, the best and most consistent reading, giving full effect to both provisions, is that they create alternate mechanisms. Thus states making good cause waivers would not be bound by the 20% limitation in Sec. 408(a)(7)(C).

Consequently, states retain the option to continue to pay benefits out of federal funds for more than 60 months to individuals who have been granted good cause waivers under the Family Violence Amendment from the operation of the five-year time limit, without a specific numerical limitation on the number of waivers and without counting those individuals subject to waivers toward the 20% cap on hardship exemptions. Clearly no other provisions of the Family Violence Amendment are even arguably subject to any numerical limitation.

The legislative history, while not explicit on this point, fully supports the interpretation that the Family Violence Amendment provides states the option of creating a separate, alternate track to deal with cases of battering or extreme cruelty. Further, a reading that transports the limitations of the hardship exemption into the Family Violence Amendment is strained in light of the Amendment's text and, in fact, nullifies the clear statutory language.

(a) The text of the two provisions create different mechanisms – waivers vs. exemptions. The statutory language is the clearest distinction between the Family Violence Amendment and the hardship exemption. While the hardship exemption creates long-term exemptions from the five-year time limit, the Family Violence Amendment creates variable good cause waivers, for a necessary period of time, of any program requirement. Black letter principles of statutory interpretation dictate that in interpreting any legislative provision, one looks first to the actual language for guidance. *Marshall v. El Paso Natural Gas Co.*, 874 F.2d 1373, 1383 (10th Cir. 1989). Words are to be given their ordinary and common meanings, and a "common sense," reasonable construction. *See, e.g., First United Methodist Church v. United States Gypsum Co.*, 882 F.2d 862, 868 (4th Cir. 1989), *cert. denied*, 493 U.S. 1070 (1990); *Caminetti v. United States*, 242 U.S. 470, 485 (1917). The best reading of the two provisions, one using non-limited "exempt" language and the other using "waive. . . (for so long as necessary)" is that the two mechanisms are different in scope and application. *Compare* Sec. 408(a)(7)(C)(i) *with* 402(a)(7)(A)(iii).

The fact that the language used in an amendment is different than that used by the

existing text of the bill being amended is particularly significant. Where language is the same in an amendment as in the existing bill, they are considered to have the same meaning, but an amendment using a change in language indicates a change in meaning. *See* Norman J. Singer, *Statutes and Statutory Construction* §§ 22.29, 22.35 (5th ed. 1994); *cf. Aetna Casualty & Surety Co. v. Buck*, 594 So.2d 280, 283 (Fla. 1992); *see also Marshall*, 874 F.2d at 1500 (construction that renders some words surplusage to be avoided). Indeed, any amendment is presumed to have as its purpose to change some aspect of the existing statute, and by looking to the language used and changes made one can discern that purpose. *See In re Marriage of Hawking*, 608 N.E.2d 327, 330 (Ill. App., 1st Dist. 1992), *appeal denied*, 612 N.E.2d 513 (1993).

Other aspects of the text of the two provisions show that they are conceptually and operationally distinct. For example, there is no numerical limit of any kind in the text of the Family Violence Amendment, no reference whatsoever to the 20% limit specified in Sec. 408(a)(7)(C)(ii), and no suggestion that any of its provisions cannot be used to its full extent. Sec. 402(a)(7). Significantly, the hardship exemption is not specifically a domestic violence provision; it allows the states to define hardships that may include battering or extreme cruelty under other possibilities, but it does not encompass the other mechanisms established in the Family Violence Amendment for addressing domestic violence, such as screening and referrals, and relief from other welfare requirements. *Compare* Sec. 408(a)(7)(C) *with* Sec. 402(a)(7). Moreover, the hardship exemption contains no reference to the definitions or waivers the state may have adopted under Sec. 402(a)(7), indicating that whether the state considers domestic violence in its definition of hardship and how it does so has nothing to do with whether or how the state adopted the Family Violence Amendment. *Id.*

The sole point of comparison between these provisions, the fact that they both rely on the same definition to create flexibility in the operation of welfare rules, is not enough to overcome the vast differences in language and structure between these two provisions. *See, e.g., Sanchez v. Alexis*, 131 Cal. App. 3d 709, 715 (Ct. App., 4th Dist. 1982) (language to be construed in context and with respect to entire statute, and conforming to apparent legislative purposes). The statute gives states many ways to consider domestic violence when implementing its TANF program. One way is to adopt the option in the Family Violence Amendment to implement a program that deals with domestic violence and allows waivers of whatever program requirements the state believes should be waived to help victims of domestic violence. Another approach would be for states to include domestic violence as a one of the criteria under Sec. 408(a)(7)(C) for determining who will be exempt from the durational limitation on assistance. Like the Family Violence Amendment, the hardship exemption is permissive. Sec. 408(a)(7)(C). A state could choose to utilize one, both or neither. Reading these provisions as giving states the option of a separate track for domestic violence gives the fullest effect to both provisions. *See, e.g., Marshall*, 874 F.2d at 1501 (reasonable construction harmonizing disparate statutory sections).

(b) The legislative history supports the clear textual evidence that Congress intended to create a new, separate system for cases of domestic violence. The legislative history, although not explicit on this point, is fully consistent with a legislative intent to distinguish between long-

term exemptions and flexible waivers. The change in language from the Family Violence Exemption adopted in H.R. 4, to the tolling/waiver language used in the Joint Resolution and the Family Violence Amendment, demonstrates a change in intent. Senator Wellstone's floor statements emphasize the need for flexible, case-by-case consideration. As he stated in proposing the Family Violence Exemption, "we cannot have 'one size fit all.'" *Cong. Rec.* S8141 (July 18, 1996) (Tab 1). The fact that the Family Violence Amendment was adopted after the hardship exemption further emphasizes that Congress did not intend to be limited by the terms of the existing hardship exemption, for when an amendment and an existing provision are in potential conflict, it is the last statement of legislative will that governs. Singer at § 22.35.

As explained above, this choice of the term "waiver" rather than "exemption" was deliberate. Waivers are responsive to the policy goal of making welfare-to-work programs *work* for battered women, rather than considering them universally permanently unemployable. While in some cases, long-term physical or mental disabilities may require permanent exemptions, in many cases a temporary waiver will be the best solution. The waiver can enable an individual sufficient time to recover from the effects of violence, or to move to a place of safety, or can ensure that no unfair penalty results when fears, threats or actual reprisals from an abuser make a woman unable to meet a requirement.

It is noteworthy that a letter sent to the welfare Conferees by the co-sponsor of the Joint Resolution, Rep. Roybal-Allard, and co-signed by Rep. Sue Myrick (R-NC) stressed that "because circumstances differ, the amount of time battered women need to rebuild their lives varies," and that women covered by the Family Violence Amendment "are not permanently disabled and should not be included in the 20% permanent exemption." Dear Conferees Letter of July 25, 1996 (attached at Tab 1).

Finally, Congress knew the numbers of women who may have need of some form of waiver provision. As Senator Wellstone stated in introducing the amendment, "the Taylor Institute in Chicago . . . documented that between 50 and 80 percent of women receiving AFDC are current or past victims of domestic abuse." *Cong. Rec.* S8141 (July 18, 1996) (Tab 1). Given such evidence, it is much more consistent to read Congress' intent to provide sufficient, temporary waivers for all, rather than to allow an insufficient number of permanent exemptions. The presence of a good cause requirement, Sec. 402(a)(7)(A)(iii), means that Congress' grant is not completely open-ended, but responsive to the need.

Since "the primary goal of statutory construction is to ascertain and follow the intent of the legislature," *Marshall*, 874 F.2d at 1383, reading the provisions as separable is the most consistent with both the statutory language and intent of Congress. *See also Hawking*, 608 N.E.2d at 329.

(c) The policies underlying the welfare bill and the Family Violence Exemption, as explicitly expressed by Congress, would be undermined by a contrary interpretation. Interpreting family violence waivers as distinct from the terms of the hardship exemption will

advance the policies expressed in the welfare bill of promoting state flexibility and individual self-sufficiency. It will also more fully address the concerns specifically detailed in the Joint Resolution that led Congress to adopt the Family Violence Amendment.

As the welfare legislation specifically states, the purpose of the TANF program is to "increase the flexibility of states" and for states to adopt programs promoting job preparation and work. P.L. 104-193, §103(a)(1), Sec. 401 (attached at Tab 4). Allowing states to choose between utilizing either or both of these differing mechanisms, depending on the need, is the most consistent with increasing the flexibility of states. It also promotes job preparation and work, by encouraging states to look to temporary waivers, along with services to move battered women to self-sufficiency at an appropriate pace. Since presumably the purpose of limiting the number of hardship exemptions was to ensure that states did not simply abandon a large percentage of difficult cases and pay benefits indefinitely, and since the Family Violence Amendment specifically rejected exemptions in favor of temporary waivers, there is no reason to numerically limit the number of temporary waivers and every reason to encourage them.

Finally, this interpretation best serves the underlying purposes of the Family Violence Amendment, as stated explicitly by the 104th Congress in the Joint Resolution, and as reflected by the floor statements of Senator Wellstone, and by Congress' ongoing commitment to end violence against women expressed by passage of the Violence Against Women Act. An interpretation that favors increased safety and self-sufficiency for battered women and their families, and that encourages states to design welfare programs to address domestic violence and sexual abuse if they so choose, without capping to the numbers of women who may need waivers of time limits on receiving assistance, is the interpretation that best serves Congress' purpose in passing the legislation.

Issue (2): Will a financial penalty apply to states that fail to meet mandatory monthly work participation rates required by Sec. 407 because they have granted flexible good cause waivers in cases of domestic violence?

States adopting the Family Violence Amendment may make good cause waivers of that state's work requirements, including the mandatory federal two-year time limit before work is required, for individuals in cases of domestic violence. However, when a state chooses to address the needs of battered women by adjusting work requirements, a state could fear incurring a financial penalty under Sec. 409(a)(3) for failing to meet mandatory monthly work participation rates. Reviewing the existing evidence of legislative intent, and the relevant language, the best reading of how these two provisions interact is that the adoption of the Family Violence Amendment option constitutes reasonable cause for failing to meet the participation rates mandated by Sec. 407 of the TANF program. Thus, no financial penalty for failing to meet monthly work participation rates would apply to states in such a case. Indeed, an alternate reading that financially penalized states for carrying out the dictates of the Family Violence Amendment would essentially nullify its effectiveness.

The text of the Family Violence Amendment does not state that good cause waivers will count against a state. In the absence of a clear statutory directive, one looks to evidence of Congressional intent for the best interpretation. *First United Methodist Church*, 882 F.2d at 868. However, the statute does contain an explicit textual basis for excusing penalties for reasonable cause, Sec. 409(b) (attached at Tab 4). The language clearly contemplates that participation rate failures may be excused. While there are specific textual exceptions to "reasonable cause," they do not include the work participation rates. Sec. 409(b)(2). Further, the PRWORA contains an explicit grant of authority to states to modify the work requirements and time limits for battered women and their families. Exercising this authority and furthering the clear legislative intent to address obstacles to employment caused by domestic violence meets any common sense definition of the term "reasonable cause." *See Marshall*, 874 F.2d at 1500.

As discussed above, the Family Violence Amendment is a reflection of Congress' serious commitment to addressing all forms of violence against women, and particularly responds to research showing that violence hinders successful welfare-to-work transitions. As Rep. Roybal-Allard stated to her colleagues on the House Budget Committee in urging them to adopt the Joint Resolution, "[t]hese are not women who are lazy or don't want a job. These women want to work but. . . their efforts of self-improvement are often sabotaged. . . .One of the challenges that we in Congress face is to reform the welfare system in a way that helps women who are victims of abuse, not punishes them." Budget Comm. Trans. at 267 (Tab 2). Clearly, Congress was concerned particularly with the ability of battered women to quickly move to self-sufficiency, and built in a mechanism, the Family Violence Amendment, to respond to that problem.

The findings in the Joint Resolution expressly documented facts on the correlation between violence and difficulties with employment. *Cong. Rec.* H6015-16 (June 7, 1996) (Tab 2). These findings included: one quarter of battered women surveyed lost a job due at least in part to domestic violence, over half reported harassment by their abuser at work, over fifty percent of women in welfare to work programs have been or are currently victims of domestic violence, and batterers often sabotage women's efforts at self-improvement. *Id.* at 6015. This resolution was passed by both houses of Congress only a few weeks before the Senate passed the Family Violence Amendment, and is a clear statement of legislative concern with the effect on work. Senator Wellstone's statement in introducing the Family Violence Amendment used the illustrative example of Monica Seles, and her difficulties in returning to work after a violent assault, as support for the proposition that "one size" does not "fit all." *Cong. Rec.* S. 8141 (July 18, 1996) (Tab 1).

The 104th Congress also had knowledge that participation rate penalties could be an impediment to the successful implementation of any form of work requirement waiver or exemption. In offering the Family Violence Exemption attached to H.R. 4, Senator Wellstone stated that "it is extremely important that States be allowed to [provide exemptions]. Otherwise they will be penalized for not reaching their employment goal." *Cong. Rec.* S. 13525 (Sept. 13, 1995) (Tab 3). The Senator's statement refers to the fact that, when abuse prevents women from working, the state may, as a practical result, face a penalty because the state will unable to move

that individual as quickly into the workforce. Unless the state has a way to avoid including that individual in determining participation rates, the net effect of the incidence of violence in the lives of welfare recipients will be the failure of state programs to meet their employment goals.[11]

Giving effect to Congress' intent to allow states to make case-by-case determinations rather than "one size fits all" requirements in situations of domestic violence, requires waiving penalties for failing to meet participation rates as a result of implementing the Family Violence Amendment. The ability of states to grant waivers will be seriously compromised if that waiver counts against the state when calculating mandatory participation rates. Indeed, these waivers will become, as a practical matter, unavailable. It will serve none of the goals of increased state flexibility, successful transition to self-sufficiency, or protection of battered women, if states are punished for granting waivers.

Since statutes should be construed "to effectuate their intent and beneficial purposes, not to defeat them," *Colorado Health Care v. Colorado Dept. of Social Services*, 842 F.2d 1158, 1171 (10th Cir. 1988), the Department should refrain from penalizing a state's failure to meet mandatory monthly participation rates, when that failure results from the state's program for addressing domestic violence. This construction best comports with the legislative intent, and best carries out the beneficial purpose of the Family Violence Amendment. *See also Esta Cater Charters, Inc. v. Ignacio*, 875 F.2d 234, 238-39 (9th Cir. 1989) (avoid construction that causes injustice or exacerbates harsh consequences).

ISSUE (3): May states choose to grant flexible good cause waivers of any program requirements, not just the specific examples listed in Sec. 402(a)(7)(A)(iii), where compliance would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence?

Based on the explicit text of the Family Violence Amendment, states may choose to waive any program requirements that fit the definition contained in the Amendment. The evidence of the legislature's intent further supports this reading.

The amendment's text states that a state may "waive pursuant to a determination of good cause, other program requirements such as" and then lists several examples. Sec. 402(7)(A)(iii). Under tenets of statutory interpretation, the phrase "such as" clearly means that the listed programs are exemplary and not exhaustive. *See, e.g., Pacific Mutual*, 722 F.2d at 1500; *Caminetti*, 242 U.S. at 485. Determining what requirements qualify for a waiver requires applying the principle contained in the amendment itself. The waiver must be in a case "where

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[11] That state option amendment, in fact, explicitly stated that waived individuals would not be counted towards calculation of participation rates. *Cong. Rec.* S13561 (September 13, 1995) (Tab 3).

compliance 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." Sec. 402(7)(A)(iii). Thus, the list is not completely open-ended, but limited by the application of this principle.

This interpretation gives full effect to the policies and purposes behind the amendment. As described above, Congress was concerned with the serious barriers that domestic violence poses for economic self-sufficiency, and with encouraging states to ensure that new welfare requirements did not jeopardize the safety of battered women. Congress had knowledge about how a wide range of requirements could be difficult or dangerous to meet or work an unfair penalty. However, the freedom and flexibility of a block grant system means that requirements will vary widely from state to state. Thus, an exhaustive list of covered programs is not as effective as a general principle against which any requirement may be measured. Permitting states to grant waivers in any cases where compliance with any program requirement would make it difficult or dangerous or works an unfair penalty is the only interpretation consistent with legislative intent and policy.

ADDITIONAL ISSUES FOR FURTHER CONSIDERATION

In addition to answering these questions, our conversations have addressed other aspects of the PRWORA where interpretations of the statute could benefit battered women moving to self-sufficiency, and assist states in addressing their needs. These are noted here briefly. We and other advocates are available to discuss these issues further if the Department views them as promising avenues of exploration.

In addition to the interpretations discussed under Issues I & II above, HHS should consider defining reasonable cause for exceeding the 20% limit on hardship exemptions to include state programs providing services to address domestic violence in the welfare-to-work transition. Thus, in states that do not adopt the Wellstone/Murray Family Violence Exemption, where the state is providing assistance in the form of both benefits and services to battered women who may need additional time to successfully retain employment, no financial penalty would apply under Sec. 409(a)(9), because of reasonable cause for failure to comply under Sec. 409(b).

Another area for further consideration is the flexibility of the definition of work. States may need guidance from HHS in interpreting "work activities." Tailoring that definition to assist battered women who may need to pursue legal, medical, psychological, and other forms of assistance in order to successfully retain employment would benefit both the individuals involved and advance the long-term policy goals of the statute.

Finally, we look forward to continuing to work with the Department on implementation

issues, such as fashioning appropriate guidelines for screening and referrals and determination of good cause for granting waivers.

CONCLUSION

After considering the text of the legislation, the documented legislative history, and the expressed intent of Congress, and applying basic principles of statutory interpretation, the following are the most supportable interpretations:

(1) The 20% cap on continuous hardship exemptions from the five-year time limit, Sec. 408(a)(7)(C)(ii), does not restrict in any way the ability of states to make temporary good cause waivers of time limits under the Family Violence Amendment, Sec. 402(a)(7)(A)(iii).

(2) A financial penalty should not apply to states that fail to meet mandatory participation rates required under Sec. 407 because they make flexible good cause waivers in cases of domestic violence.

(3) States may choose to grant flexible good cause waivers of any program requirements, not just the examples listed in Sec. 402(a)(7)(A)(iii), where compliance would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence.

We urge the Department to adopt these interpretations in any relevant regulations or guidance documents issued to the states, as well as taking steps to promote the successful implementation of the Family Violence Amendment by state governments.

APPENDIX CONTENTS

"(A) have been consulted regarding the plan and design of welfare services in the State so that services are provided in a manner appropriate to local populations; and

"(B) have had at least 45 days to submit comments on the plan and the design of such services.

"(5) CERTIFICATION THAT THE STATE WILL PROVIDE INDIANS WITH EQUITABLE ACCESS TO ASSISTANCE.—A certification by the chief executive officer of the State that, during the fiscal year, the State will provide each member of an Indian tribe, who is domiciled in the State and is not eligible for assistance under a tribal family assistance plan approved under section 412, with equitable access to assistance under the State program funded under this part attributable to funds provided by the Federal Government.

"(6) CERTIFICATION OF STANDARDS AND PROCEDURES TO ENSURE AGAINST PROGRAM FRAUD AND ABUSE.—A certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to ensure against program fraud and abuse, including standards and procedures concerning nepotism, conflicts of interest among individuals responsible for the administration and supervision of the State program, kickbacks, and the use of political patronage.

"(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).

"(b) PUBLIC AVAILABILITY OF STATE PLAN SUMMARY.—The State shall make available to the public a summary of any plan submitted by the State under this section.

"SEC. 403. GRANTS TO STATES. 42 USC 603.

"(a) GRANTS.—

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programs are. We all want that information. That is the reason it is contained in this bill.

However, we do object to the expedited procedure, whereby the Secretary of Health makes recommendations and they are put on an accelerated track to be considered by the Congress. I know of no instance where this kind of procedure has been used. Yes, we have had accelerated procedures in certain limited circumstances, such as trade bills. But the recommendations come from the President of the United States. I, for one, think that it is appropriate for the recommendations of these studies to go through the regular process of Congress.

My distinguished friend and colleague from Minnesota talks about the timeframe. Just let me point out that the present program has been in effect for about 30 years, and we have studies and recommendations from the CBO that show that if we do not do something about reform, that another 3 million children will be on welfare in the next 9 years. So do not talk to me about the timeframe. Let us all agree that we do want the studies, and we do want the independent analyses as to how these programs are working. But let us use the Congress and its normal processes, including its committees, to determine what is appropriate, rather than to give this kind of authority to a nonelected Member of the Cabinet.

Mr. WELLSTONE. Mr. President, I have just a quick response, and we will move on. First of all, I say to my friend from Delaware that to talk in general terms about studies and evaluations and not to connect it specifically to the issue that I raised in this amendment, as to whether or not we will in fact be willing to look at the very real and important questions as to whether this legislation or provisions in this legislation have impoverished more children, and then take corrective action, again, it misses the point. It is not a response to that very real concern.

Second of all, this it is not an agency that takes the action. Health and Human Services reports back to this body, and we are the ones that correct the problem. We are the ones that correct the problem. So, again, I do not really believe that the comments of my colleague are responsive to what this amendment speaks to.

Finally, on welfare—I cannot resist—and then we can move on. But this reference to the CBO study. With all due respect, when I hear my colleagues talk about welfare and how welfare caused poverty, it is tantamount to making the argument that Social Security caused people to grow old. You have the cause and effect mixed up. Every 30 seconds, a child is born into poverty in this country. We are getting close to one out of every four children. That is true. There are a whole host of reasons why we have this poverty. Welfare is a response to it. To argue that the welfare system causes the poverty is like saying the Social Security system causes people to be aged. You just have the cause and effect mixed up.

I yield the floor.

Mr. SANTORUM. Mr. President, I yield back all our time on the amendment.

The amendment is not germane to the provisions of the reconciliation bill pursuant to 305(b)(2) of the Budget Act. I raise a point of order against the pending amendment.

Mr. WELLSTONE. Mr. President, pursuant to section 904 of the Congressional Budget Act of 1974, I move to waive the applicable section of that Act for the consideration of the pending amendment.

Mr. SANTORUM. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 4919

(Purpose: To ensure that States which receive block grants under Part A of title IV of the Social Security Act establish standards and procedures regarding individuals receiving assistance under such part who have a history of domestic abuse, who have been victimized by domestic abuse, and who have been battered or subjected to extreme cruelty)

Mr. WELLSTONE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE], for himself and Mrs. MURRAY, proposes an amendment numbered 4919.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of section 402(a) of the Social Security Act, as added by section 2103(a)(1), add the following:

"(7) CERTIFICATION OF STANDARDS AND PROCEDURES TO ENSURE THAT THE STATE WILL SCREEN FOR AND IDENTIFY DOMESTIC VIOLENCE.—

"(A) IN GENERAL.—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)(8)(C)(iii).

"(8) CERTIFICATION REGARDING ELIGIBILITY OF INDIVIDUAL WHO HAS BEEN BATTERED OR SUBJECTED TO EXTREME CRUELTY.—A certification by the chief executive officer of the State that the State has established and is enforcing standards and procedures to ensure that in the case of an individual who has been battered or subjected to extreme cruelty, as determined under section 408(a)(8)(C)(iii), the State will determine the eligibility of such individual for assistance under this part based solely on such individual's income.

Mr. WELLSTONE. Mr. President, I will try to be brief. This amendment speaks to an issue that we, as the Senate, have really, I think, taken some important steps and major strides forward in addressing, and that is domestic violence in our country, violence within families that effect women, children, and sometimes men—usually women and children.

Mr. President, this amendment would ensure that States that receive the block grant under part A of title IV of the Social Security Act establish standards and procedures regarding individuals receiving assistance who have a history of domestic abuse, who have been victimized by domestic abuse and have been battered or subjected to extreme cruelty.

There was a study done by the Taylor Institute in Chicago that documented that between 50 to 80 percent of women receiving AFDC are current or past victims of domestic abuse. In other words, for all too many of these women and children welfare, imperfections and all, is the only alternative to a very dangerous home.

So what this amendment would say is that States would be required to screen and identify individuals receiving assistance with a history of domestic violence, refer such individuals to counseling and supportive services, and waive for good cause other program requirements for so long as necessary.

This is what the States would essentially end up doing. It would all be done at the State level.

Mr. President, we cannot have "one size fit all," as I have heard many of my colleagues so say. It took Monica Seles 2 years to play tennis again. Can you imagine what it would be like as a result of her stabbing—to be beaten up over and over and over again; can you imagine what it would be like to be a small child and see that happen in your home over and over again?

I want to make sure that these women and these children throughout our country, for whom the welfare system has been sometimes the only alternative to these very dangerous homes, receive the kind of special services and assistance that they need. In the absence of the passing of this amendment, all too many women and children could find themselves forced back into these very dangerous homes.

So it is a reasonable amendment. It is one that speaks to the very real problem of violence within homes in

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our country. It would be an extremely important, I think, modification of this welfare bill that would provide assistance that is really needed by many women, many children, and many families in our country.

I hope that this amendment would be agreed to and would receive strong support, bipartisan support.

Mr. SANTORUM. Mr. President, there is no objection to this amendment on this side. We are willing to accept the amendment.

Mr. WELLSTONE. Mr. President, I thank the Senator from Pennsylvania.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Minnesota.

The amendment (No. 4919) was agreed to.

Mr. SANTORUM. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WELLSTONE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I have a unanimous consent agreement to propound to dispose of two amendments which have been agreed to on both sides of the aisle. They are Senator FAIRCLOTH's amendment to clarify that a welfare recipient may provide child care services to satisfy the bill's work requirements.

The second one is Senator COATS' amendment allowing welfare recipients to establish individual development accounts.

Mr. President, I ask unanimous consent that it be in order for me to offer these two amendments which I now send to the desk.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM. Mr. President, reserving the right to object, has this amendment been cleared?

Mr. ROTH. Yes. Both have been cleared.

Mr. GRAHAM. Mr. President, I have been informed that the first amendment has not been cleared on this side.

Mr. ROTH. I understand that, although they have been cleared, a question has been raised.

So I withdraw my request until clarified.

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

AMENDMENT NO. 4920, WITHDRAWN

(Purpose: To amend the Social Security Act to clarify that the reasonable efforts requirement includes consideration of the health and safety of the child)

Mr. DEWINE. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Ohio [Mr. DEWINE] proposes an amendment numbered 4920.

Mr. DEWINE. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of chapter 7 of subtitle A of title II, add the following:

SECTION 2703. CLARIFICATION OF REASONABLE EFFORTS REQUIREMENT BEFORE PLACEMENT IN FOSTER CARE.

(a) IN GENERAL.—Section 471(a)(15) of the Social Security Act (42 U.S.C. 671(a)(15)) is amended to read as follows:

"(15) provides that, in each case—

"(A) reasonable efforts will be made—

"(i) prior to the placement of the child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

"(ii) to make it possible for the child to return home; and

"(B) in determining reasonable efforts, the best interests of the child, including the child's health and safety, shall be of primary concern;".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall be effective on the date of the enactment of this Act.

(2) EXCEPTION.—In the case of a State plan for foster care and adoption assistance under part E of title IV of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), such plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Mr. DEWINE. Mr. President, I intend to talk for approximately 10 minutes about this amendment, and then, for reasons which I am going to discuss in just a moment, withdraw the amendment. But I want to discuss it. I inform my colleagues that it will take approximately 10 minutes.

Mr. President, my amendment deals with the issue of foster care. It is my understanding that because the Senate bill has no language in this bill on the issue of foster care that my amendment would be considered not to be germane. The House bill does deal with foster care. Therefore, if we had a House bill before us it obviously would be germane. Because of this, after a few brief remarks, I am going to withdraw this amendment.

But I would like to discuss tonight what I consider to be a very important issue. It is the issue that my amendment addresses. It is the subject of a freestanding bill that I have just a few moments ago introduced. I believe that the idea contained in the bill, the idea contained in my amendment, must be acted upon; if not in this bill then in a subsequent bill. And I have previously discussed this issue at length on the Senate floor. I want to take just a few moments now to revisit the issue, and to talk to my colleagues about it.

In 1980, Congress passed the Adoption Assistance and Child Welfare Act, known as CWA. That 1980 act has done a great deal of good. It increased the resources available to struggling families. It increased the supervision of children in the foster care system, and it gave financial support to people to encourage them to adopt children with special needs.

Mr. President, while the law has done a great deal of good, many experts are coming to believe that this law has actually had some bad unintended consequences. The bad unintended consequences were not because of the way the law was written and not because of the way the lawmakers intended in 1980 that it happen, but, frankly, because the law has been grossly misinterpreted.

Under the 1980 act, for a State to be eligible for Federal matching funds for foster care expenditures, the State must have a plan for the provision of child welfare services. And that plan must be approved by the Secretary of HHS. This plan must provide, and I quote. Here is the pertinent language, referring now to foster care:

In each case reasonable efforts will be made, (A), prior to the placement of a child in foster care to prevent or eliminate the need for removal of the child from his home; and, (B), to make it possible for the child to return to his home.

In other words, Mr. President, the law very correctly says we should try family reunification. The law put money behind that. That is the right thing to do. But, Mr. President, this law has been misinterpreted. In other words, Mr. President, no matter what the particular circumstances of the household may be, the State must make reasonable efforts to keep it together and to put it back together, if it falls apart.

What constitutes reasonable efforts? Here is where the rub comes. How far does the State have to go? This has not been defined by Congress nor has it been defined by HHS. This failure to define what constitutes reasonable efforts has had a very important and very damaging practical result. There is strong evidence to suggest that in the absence of a definition reasonable efforts have become in some cases extraordinary efforts, unreasonable efforts; efforts to keep families together at all costs. These are families, Mr. President, that many times are families in name only and parents that are parents in name only.

In the last few months I have traveled extensively throughout the State of Ohio talking to social work professionals; talking to people who are in the field every day dealing with this issue.

In these discussions, I have found that there is great disparity in how the law is being interpreted by judges and by social workers. In my home State of

Michigan, under the leadership of Gov. John Engler, and other States, have made tremendous strides in moving people from welfare to work. These accomplishments, however, have come in spite of the Federal Government and the current welfare laws.

For too long the Federal Government has maintained policies which have created a culture of poverty, dependence and despair. This bill brings control of welfare back to the people where it belongs.

It is important to remember what the Government's role in promoting independence should be. While legislators can design programs to help those struggling to gain financial security, the Government cannot make them succeed. Changing one's attitude is something that can only be accomplished by that individual.

Personal responsibility is the focus of this legislation. Individuals must accept responsibility for their actions and work with Government programs to improve their lives.

The current Washington-based welfare system demands no responsibility, no work ethic, no learning, no commitment and, in the end, no pride. Instead, it promotes illegitimacy, rewards irresponsibility and discourages self-esteem. Our families and our children deserve better.

I urge my colleagues to support the bill.

MS. ROYBAL-ALLARD. Madam Chairman, I yield myself 1½ minutes.

Madam Chairman, I, like other Members of this body, am in strong support of welfare reform. But I am not for reform regardless of the consequences. For that reason, I rise in strong opposition to H.R. 3734.

This bill will have many unintended consequences to women, children and families in this country. One of those consequences is its impact on victims of domestic violence. Current studies reveal that 25 to 60 percent of participants in welfare-to-work programs are victims of domestic abuse. For these women, the welfare system is often the only hope they have for escape and survival. This bill will effectively shred that safety net.

By eliminating the guarantee status of AFDC and imposing inflexible time limits and work requirements, H.R. 3734 will force many battered women to stay with their batterers or return to them for financial support.

With the passage of the Violence Against Women Act, Congress has taken a strong stance against domestic violence. Let us not turn our backs on the victims of this deplorable crime. The lives of battered women and their children depend on it.

I hope that my colleagues will vote no on H.R. 3734.

Mr. ROBERTS. Madam Chairman, I yield 2 minutes to the distinguished gentleman from Tennessee [Mr. WAMP].

Mr. WAMP. Madam Chairman, I thank the gentleman for yielding the time.

I want to just speak a moment to the separation of policy versus politics in this debate, because we know it is sound policy to address the welfare system in this country, replacing welfare with a working populous of able-bodied people. But there is also a political equation here. There has been for many months. We know that welfare reform has been passed twice by this Congress and vetoed both times. But our President, Bill Clinton, came into these chambers and delivered the State of the Union address in January, and he challenged us to send a clean welfare reform bill back to him.

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There were some politics associated with whether or not he might sign it, take the credit and all of that. I want to say that as a freshman Member of this body, many of us have been very unfortunately blamed for some of the misfires of the last few months. We have been called unreasonable, radical, extremist. We, many of us, went to the leadership of our side, our party, Members like the gentleman from Nevada [Mr. ENSIGN] myself, and said let us disconnect Medicaid, health care for the poor, from welfare and do what the President asked us to do and send a clean welfare reform bill, and as the gentleman from Ohio [Mr. KASICH] articulated, the President is expected to sign this bill because we are sending him substantive welfare reform, effective and efficient welfare reform, but we are sending him the clean bill that he asked for. We did make that decision on this side of the aisle to disconnect the two so that he could not say I do not want Medicaid attached to this.

This comprehensive bill provides the job training, the child care, the career education, those components that we all believe should accompany a comprehensive welfare reform bill. This is going to be one of the greatest successes of this Congress. Yes, he will get credit, but we will get credit. We are doing the people's business.

Ms. ROYBAL-ALLARD. Madam Chairman, I yield 2 minutes to the gentlewoman from California [Ms. LOFGREN].

Ms. LOFGREN. Madam Chairman, I, until this Congress, was a member of the local government that had responsibility for administering the welfare program, and I felt, coming here, that there were a lot changes I want to make. There is no doubt that a lot of things need to be fixed in welfare programs in this country. We need to put people back to work, we need to have expectations for work, we need to pay attention to child care, we need to change the whole system. But what concerns me is that once again the bill that we will deal with goes too far.

As you know, I think, and I want to talk about legal immigrants, not illegal immigrants because they are eligible for nothing and should be eligible for nothing, but I want to talk about what is fair to taxpayers, and I will give my colleagues a couple of examples.

In my district there are large numbers of Vietnamese freedom fighters, people who fought communism who came to this country as originally refugees, ultimately became residents, and under the bill before us, if after paying taxes for years and years and years, 14 years, they get a stroke, they cannot get nursing home coverage.

Let me talk about another example. An immigrant who comes in with her husband, and her husband works for 50 years and dies, and then as she is an old person, she is 65, she has a stroke, and she is not eligible to get the kind of nursing home care that the widow of every other taxpayer in America can look to get.

Now, I do not think that is fair. There are some abuses among immigrant groups, and there are necessary steps that need to be taken, and in fact the Deal bill earlier this year did deal with those. But this is unfair. I think when we look at our taxpayers, if they are legal residents or citizens, we ought to make sure that people who have worked hard and paid their taxes are treated fairly, and this so-called reform bill falls in that regard.

Mr. ROBERTS. Madam Chairman, I yield 3½ minutes to the distinguished gentleman from Virginia [Mr. GOODLATTE] and take the House's time to thank him for his contributions in increasing the trafficking penalties and bringing integrity to the food stamp reforms that we have passed in the Committee on Agriculture and hope to pass on the House floor.

Mr. GOODLATTE. Madam Chairman, I thank the chairman of the Committee on Agriculture for his kind words.

Madam Chairman, I rise in support of the welfare reform bill under consideration today, especially the reforms to the Food Stamp Program. The Food Stamp Program provides benefits to more than 27 million people each month at a cost this year of more than $26 billion. It is growing out of control and badly in need of reform.

The Committee on Agriculture held eight hearings during the 104th Congress to review the Food Stamp Program, and many of the reforms included in this bill are based on the testimony received in these hearings. Witnesses appearing before the committee and the subcommittee on department operations, nutrition and foreign agriculture represented a wide variety of organizations. They included the administration, the General Accounting Office, the U.S. Department of Agriculture Office of Inspector General, the United States Secret Service, Governors, State and local welfare administrators. Representatives from organizations providing direct food assistance to needy families testified. Testimony was also received from grocers, agricultural organizations, churches and advocacy groups.

The following principles guided the committee in formulating the reforms

Congress of the United States
Washington, DC 20515

July 25, 1996

Dear Conferees:

We are writing to urge you to include the Wellstone amendment, which was passed by the Senate, in the final version of the welfare reform bill. This crucial amendment ensures that states will establish standards and procedures for individuals receiving assistance who have been victimized by domestic violence.

Recent research indicates that 25% to 60% of women who receive AFDC are victims of domestic violence. For these women and children, the welfare system may be the only alternative to a violent and very dangerous home. Without this safety net, many women would be forced to stay with or return to their batterers in order to support themselves and their children.

The Wellstone amendment helps protect battered women and their children by ensuring that they receive the assistance and special services they need. It requires states to screen and identify individuals on public assistance who are victims of domestic violence, refer these individuals to counseling and supportive services, and to waive, for good cause, other program requirements for as long as necessary.

This amendment gives states the flexibility to determine the amount of time battered women need to leave their batterer, seek safety, and become self-sufficient. Because circumstances differ, the amount of time battered women need to rebuild their lives varies. These women are not permanently disabled and should not be included in the 20% permanent exemption.

If Congress passes welfare reform without acknowledging the link between domestic violence and welfare assistance, thousands of women and children will be forced to remain in a violent environment. On their behalf, we respectfully ask you to include the Wellstone amendment in the conference report.

Sincerely,

Lucille Roybal-Allard
Member of Congress

Sue Myrick
Member of Congress

104TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
104–725

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

CONFERENCE REPORT

TO ACCOMPANY

H.R. 3734

JULY 30, 1996.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1996

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goals for reducing the proportion of births out of wedlock for calendar years 1996 through 2005.

Further, the document must:

6. Same.

7. Same.

8. outline how the State intends to determine, on an objective and equitable basis, the needs of and amount of aid to be provided to needy families, and, except as allowed for incoming families and noncitizens (items 6 and 7) to treat families of similar needs and circumstances similarly.

9. outline how it will grant opportunity for a fair hearing to anyone adversely affected or whose application is not acted on promptly.

10. require, not later than 1 year after enactment, a parent or caretaker is not engaged in work or exempt from work requirements and who has received assistance for more than 2 months to participate in community service. States may opt out of this requirement by notifying the Secretary.

11. outline how the State will conduct a program, designed to reach States and local law enforcement officials, the education system, and relevant counseling services, that provides education and training on the problem of statutory rape so that teenage pregnancy prevention programs may be expanded to include men.

Conference agreement

In general, the conference agreement follows the Senate amendment, except that the Senate recedes on requirements 2, 8, and 9. Requirement 10 is modified to provide that a State may opt out of this requirement by submitting a letter from the Governor to the Secretary.

5. ELIGIBLE STATES—CERTIFICATIONS

Present law

States must have in effect an approved child support program. States must also have an approved plan for foster care and adoption assistance. States must have an income and verification system covering AFDC, Medicaid, unemployment compensation, food stamps, and—in outlying areas—adult cash aid.

House bill

State plans must include the following certifications:

1. that the State will operate a child support enforcement program;

2. that the State will operate a child protection program under Title IV–B (child welfare services and family preservation);

3. specifying which State agency or agencies will administer and supervise the State plan, and assurances that local governments and private sector organizations have been consulted and have had an opportunity to submit comments on the plan; and

4. that the State will provide Indians with equitable access to assistance.

5. no provision.

6. no provision.

Senate amendment

1. Same.

2. that the State will operate a foster care and adoption assistance program under Title IV–E and ensure medical assistance for the children;

3. Same.

4. Same.

5. that the State has established standards to ensure against fraud and abuse.

6. that the State has established and is enforcing standards and procedures to screen for and identify recipients with a history of domestic violence, will refer them to counseling and supportive services, and will waive program requirements that would make it more difficult for these persons to escape violence.

Conference agreement

The conference agreement generally follows the Senate amendment, except that the certification that the State establish and enforce standards and special procedures regarding recipients with a history of domestic violence is made a State option.

6. ELIGIBLE STATES—PUBLIC AVAILABILITY OF STATE PLAN SUMMARY

Present law

Federal regulations require that State program manuals and other policy issuances, which reflect the State plan, be maintained in the State office and in each local and district office for examination on regular workdays.

House bill

The State shall make available to the public a summary of the State plan.

Senate amendment

Same.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

7. GRANTS TO STATES—FAMILY ASSISTANCE GRANT

Present law

AFDC entitles States to Federal matching funds. Current law provides permanent authority for appropriations without limit for grants to States for AFDC benefits, administration, and AFDC-related child care. Over the years, because of court rulings, AFDC has evolved into an entitlement for qualified individuals to receive cash benefits. In general, States must give AFDC to all persons whose income and resources are below State-set limits if they are in a class or category eligible under Federal rules.

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for the Armed Forces, and for other purposes.

SENATE CONCURRENT RESOLUTION 66—RELATIVE TO WELFARE REFORM

Mr. WELLSTONE (for himself, Mr. KENNEDY, Mrs. MURRAY, Mr. WYDEN, Mr. FEINGOLD, Mr. AKAKA, Mr. SIMON, and Mr. SARBANES) submitted the following concurrent resolution; which was referred to the Committee on Finance.

S. CON. RES. 66

Whereas, in enacting the Violence Against Women Act, the Congress recognized the epidemic of violence that affects all aspects of women's lives;

Whereas violence against women is the leading cause of physical injury to women, and the Department of Justice estimates that every year more than 1,000,00 violent crimes against women, including assault, rape, and murder, are committed by intimate partners of the women;

Whereas the American Psychological Association has reported that violence against women is usually witnessed by the children of the direct victims, and that such child witnesses suffer severe psychological, cognitive, and physical damage, and studies have shown that children residing in battered mothers' homes are 15 times more likely to be physically abused or neglected, and male children residing in such homes are 3 times more likely to be violent with their female partners when they reach adulthood,

Whereas violence against women dramatically affects women's workforce participation, insofar as ¼ of battered women surveyed reported that they had lost a job due, at least in part, to the effects of domestic violence, and that over ½ of battered women reported that they had been harassed by their abuser at work;

Whereas violence against women is often exacerbated as women seek to gain economic independence, and often increases when women attend school or training programs, and batterers often prevent women from attending such programs, and often sabotage their efforts at self-improvement;

Whereas numerous studies have shown that at least 60 percent of battered women suffer from some or all of the following symptoms: terrifying flashbacks, sleep disorders, inability to concentrate, as well as other symptoms, all of which can impair a victim's ability to obtain and retain employment;

Whereas several recent studies indicate that over 50 percent of women in welfare-to-work programs have been or currently are victims of domestic violence, and a study by the State of Washington indicates that over 50 percent of recipients of Aid to Families with Dependent Children (AFDC) in that State have been so victimized;

Whereas the availability of economic support is a critical factor in a woman's ability to leave abusive situations that threaten themselves and their children, and over ½ of battered women surveyed reported that they stayed with their batterers because they lacked resources to support themselves and their children;

Whereas proposals to restructure the AFDC program may impact the availability of the economic support and the safety net necessary to enable poor women to flee abuse without risking homelessness and starvation for their families; and

Whereas proposals to restructure the AFDC program by imposing time limits and increasing emphasis on work and job training should be evaluated in light of data demonstrating the extent to which domestic violence affects women's participation in such programs, and in light of the Congress' commitment to seriously address the issue of violence against women as evidenced by the enactment of the Violence Against Women Act: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That—

(1) when the Congress considers proposed welfare legislation, it should seriously evaluate whether such welfare measure would exacerbate violence against women, make it more difficult for women and children to escape domestic violence, or would unfairly penalize women and children victimized by or at risk of violence;

(2) any welfare legislation enacted by the Congress should require that any welfare-to-work, education, or job placement program implemented by the States should take domestic violence into account, by providing, among other things, mechanisms for—

(A) screening and identifying recipients with a history of domestic violence;

(B) referring such recipients to counseling and supportive services;

(C) tolling time limits for recipients victimized by domestic violence; and

(D) waiving, pursuant to a determination of good cause, other program requirements such as residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for the recipients to escape domestic violence or unfairly penalize recipients victimized by or at risk of further violence;

(3) any welfare legislation enacted by the Congress should include a provision requiring that the Comptroller General should develop and implement a comprehensive study of the incidence and effect of domestic violence on AFDC recipients, including a study of the extent to which domestic violence both precipitates and prolongs women's and children's poverty and the need for AFDC; and

(4) any welfare reform legislation adopted by the States that contains a welfare-to-work, education, or job placement program should take domestic violence into account, by providing, among other things, mechanisms for—

(A) screening and identifying recipients with a history of domestic violence;

(B) referring such recipients to counseling and supportive services;

(C) tolling time limits for recipients victimized by domestic violence; and

(D) waiving other program requirements, pursuant to a determination of good cause, such as residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for the recipients and their children to escape domestic violence or unfairly penalize recipients victimized by or at risk of further violence.

SENATE RESOLUTION 273—CONDEMNING TERROR ATTACKS IN SAUDI ARABIA

Mr. HELMS (for himself, Mr. PELL, Mr. LOTT, Mr. DASCHLE, Mr. BROWN, Mrs. FEINSTEIN, Mr. REID, Ms. MOSELEY-BRAUN, Mr. BRYAN, Mr. COATS, Mr. BAUCUS, Mr. MOYNIHAN, Mr. DOMENICI, Mr. GRAMM, and Mr. COVERDELL) submitted the following resolution; which was considered and agreed to:

S. RES. 273

Whereas on June 25, 1996, a massive truck bomb exploded at the King Abdul Aziz Air Base near Dhahran, in the Kingdom of Saudi Arabia.

Whereas this horrific attack killed at least nineteen Americans and injured at least three hundred more;

Whereas the bombing also resulted in 147 Saudi casualties;

Whereas the apparent target of the attack was an apartment building housing United States service personnel;

Whereas on November 13, 1995, a terror attack in Saudi Arabia, also directed against U.S. service personnel, killed five Americans, and two others;

Whereas individuals with ties to Islamic extremist organizations were tried, found guilty and executed for having participated in the November 13 attack;

Whereas United States Armed Forces personnel are deployed in Saudi Arabia to protect the peace and freedom secured in Operations Desert Shield and Desert Storm;

Whereas the relationship between the United States and the Kingdom of Saudi Arabia has been built with bipartisan support and has served the interest of both countries over the last five decades and;

Whereas this terrorist outrage underscores the need for a strong and ready military able to defend American interests.

Resolved, That the Senate—

(1) condemns in the strongest terms the attacks of June 25, 1996, and November 13, 1995 in Saudi Arabia;

(2) extends condolences and sympathy to the families of all those United States service personnel killed and wounded, and to the Government and people of the Kingdom of Saudi Arabia;

(3) honors the United States military personnel killed and wounded for their sacrifice in service to the nation;

(4) expresses its gratitude to the Government and the people of the Kingdom of Saudi Arabia for their heroic rescue efforts at the scene of the attack and their determination to find and punish those responsible for this outrage;

(5) reaffirms its steadfast support for the Government of the Kingdom of Saudi Arabia and for continuing good relations between the United States and Saudi Arabia;

(6) determines that such terror attacks present a clear threat to United States interests in the Persian Gulf;

(7) calls upon the United States Government to continue to assist the Government of Saudi Arabia in its efforts to identify those responsible for this contemptible attack;

(8) urges the United States Government to use all reasonable means available to the Government of the United States to punish the parties responsible for this cowardly bombing; and

(9) reaffirms its commitment to provide all necessary support for the men and women of our Armed Forces who volunteer to stand in harm's way.

SENATE RESOLUTION 274—RELATIVE TO NETDAY96

Mrs. FEINSTEIN (for herself and Mrs. BOXER) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 274

Whereas the children of the United States deserve the finest preparation possible to face the demands of this Nation's changing information-based economy;

Whereas on March 9, 1996, California's NetDay96 succeeded in bringing together

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, SECOND SESSION

Vol. 142 WASHINGTON, FRIDAY, JUNE 7, 1996 No. 83

House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore [Ms. GREENE of Utah].

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
June 7, 1996.

I hereby designate the Honorable ENID GREENE to act as Speaker pro tempore on this day.

NEWT GINGRICH,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Remind each person, O gracious God, of the blessedness of giving rather than receiving, of the exhilaration of service to others and the fulfillment that comes with contributions to noble causes, of the joy that comes when there is hope for the day and peace at the end. As there is no other gift that so truly makes us human, we acknowledge you, O God, with the gifts of thankfulness and gratitude. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House her approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from California [Mr. HERGER] come forward and lead the House in the Pledge of Allegiance.

Mr. HERGER led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

CONFERENCE REPORT ON HOUSE CONCURRENT RESOLUTION 178, CONCURRENT RESOLUTION ON THE BUDGET, FISCAL YEAR 1997

Mr. HERGER submitted the following conference report and statement on the concurrent resolution (H. Con. Res. 178) establishing the congressional budget for the United States Government for fiscal year 1997 and setting forth appropriate budgetary levels for fiscal years 1998, 1999, 2000, 2001, and 2002:

CONFERENCE REPORT (H. CON. RES. 178)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the concurrent resolution (H. Con. Res. 178) establishing the congressional budget for the United States Government for fiscal year 1997 and setting forth appropriate budgetary levels for fiscal years 1998, 1999, 2000, 2001, and 2002, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. CONCURRENT RESOLUTION ON THE BUDGET FOR FISCAL YEAR 1997.

The Congress determines and declares that the concurrent resolution on the budget for fiscal year 1997 is hereby established and that the appropriate budgetary levels for fiscal years 1998 through 2002 are hereby set forth.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this concurrent resolution is as follows:

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enact any legislation that will increase the number of children who are hungry, homeless, poor, or medically uninsured.

(b) LEGISLATIVE ACCOUNTABILITY FOR IMPACT ON CHILDREN.—In the event legislation enacted to comply with this resolution results in an increase in the number of hungry, homeless, poor, or medically uninsured by the end of fiscal year 1997, Congress shall revisit the provisions of such legislation which caused such increase and shall, as soon as practicable thereafter, adopt legislation which would halt any continuation of such increase.

SEC. 406. SENSE OF CONGRESS ON DEBT REPAYMENT.

It is the sense of Congress that—

(1) Congress has a basic moral and ethical responsibility to future generations to repay the Federal debt;

(2) Congress should enact a plan that balances the budget and also develop a regimen for paying off the Federal debt;

(3) after the budget is balanced, a surplus should be created which can be used to begin paying off the debt; and

(4) such a plan should be formulated and implemented so that this generation can save future generations from the crushing burdens of the Federal debt.

SEC. 406. SENSE OF CONGRESS ON COMMITMENT TO A BALANCED BUDGET BY FISCAL YEAR 2002.

It is the sense of Congress that the President and Congress should continue to adhere to the statutory commitment made by both parties on November 20, 1995, to enact legislation to achieve a balanced budget not later than fiscal year 2002 as estimated by the Congressional Budget Office.

SEC. 407. SENSE OF CONGRESS THAT TAX REDUCTIONS SHOULD BENEFIT WORKING FAMILIES.

It is the sense of Congress that this concurrent resolution on the budget assumes any reductions in taxes should be structured to benefit working families by providing family tax relief and incentives to stimulate savings, investment, job creation, and economic growth.

SEC. 408. SENSE OF CONGRESS ON A BIPARTISAN COMMISSION ON THE SOLVENCY OF MEDICARE.

(a) FINDINGS.—Congress finds that—

(1) the Trustees of medicare have concluded that "the medicare program is clearly unsustainable in its present form";

(2) the Trustees of medicare concluded in 1995 that "the Hospital Insurance Trust Fund, which pays inpatient hospital expenses, will be able to pay benefits for only about 7 years and is severely out of financial balance in the long range";

(3) preliminary data made available to Congress indicate that the Hospital Insurance Trust Fund will go bankrupt in the year 2001, rather than the year 2002, as predicted last year;

(4) the Public Trustees of medicare have concluded that "the Supplementary Medical Insurance Trust Fund shows a rate of growth of costs which is clearly unsustainable";

(5) the Bipartisan Commission on Entitlement and Tax Reform concluded that, absent long-term changes in medicare, projected medicare outlays will increase from about 4 percent of the payroll tax base today to over 15 percent of the payroll tax base by the year 2030;

(6) the Bipartisan Commission on Entitlement and Tax Reform recommended, by a vote of 30 to 1, that spending and revenues available for medicare must be brought into long-term balance; and

(7) in the most recent Trustees' report, the Public Trustees of medicare "strongly recommend that the crisis presented by the financial condition of the medicare trust funds be urgently addressed on a comprehensive basis, including a review of the program's financing methods, benefit provisions, and delivery mechanisms."

(b) SENSE OF CONGRESS.—It is the sense of Congress that in order to meet the aggregates and levels in this budget resolution—

(1) a special bipartisan commission should be established immediately to make recommendations concerning the most appropriate response to the short-term solvency and long-term sustainability issues facing the medicare program which do not include tax increases in any form, including transfers of spending from the medicare part A program to the part B program; and

(2) the commission should report to Congress its recommendations prior to the adoption of a concurrent budget resolution for fiscal year 1998 in order that the committees of jurisdiction may consider these recommendations in fashioning an appropriate congressional response.

SEC. 409. SENSE OF CONGRESS ON MEDICARE TRANSFERS.

(a) FINDINGS.—Congress finds that—

(1) home health care provides a broad spectrum of health and social services to approximately 3,500,000 medicare beneficiaries in the comfort of their homes;

(2) the President has proposed reimbursing the first 100 home health care visits after a hospital stay through medicare part A and reimbursing all other visits through medicare part B, shifting responsibility for $55,000,000,000 of spending from the Hospital Insurance Trust Fund to the general revenues that pay for medicare part B;

(3) such a transfer does nothing to control medicare spending, and is merely a bookkeeping change which artificially extends the solvency of the Hospital Insurance Trust Fund;

(4) this transfer of funds camouflages the need to make changes in the medicare program to ensure the long-term solvency of the Hospital Insurance Trust Fund, which the Congressional Budget Office now states will become bankrupt in the year 2001, a year earlier than projected in the 1995 report by the Trustees of the Social Security and Medicare Trust Funds;

(5) Congress will be breaking a commitment to the American people if it does not act to ensure the solvency of the entire medicare program in both the short- and long-term;

(6) the President's proposal would force those in need of chronic care services to rely upon the availability of general revenues to provide financing for these services, making them more vulnerable to benefits changes than under current law; and

(7) according to the National Association of Home Care, shifting medicare home care payments from part A to part B would deemphasize the importance of home care by eliminating its status as part of the Hospital Insurance Trust Fund, thereby undermining access to the less costly form of care.

(b) SENSE OF CONGRESS.—It is the sense of Congress that in meeting the spending targets specified in the budget resolution, Congress should not accept the President's proposal to transfer spending from one part of medicare to another in its efforts to preserve, protect, and improve the medicare program.

SEC. 410. SENSE OF CONGRESS REGARDING CHANGES IN THE MEDICARE PROGRAM.

(a) FINDINGS.—Congress finds that, in achieving the spending levels specified in this resolution—

(1) the public trustees of medicare have concluded that "the medicare program is clearly unsustainable in its present form";

(2) the President has said his goal is to keep the medicare hospital insurance trust fund solvent for more than a decade, but his budget transfers $55,000,000,000 of home health spending from medicare part A to medicare part B;

(3) the transfer of home health spending threatens the delivery of home health services to 3.5 million medicare beneficiaries;

(4) such a transfer increases the burden on general revenues, including income taxes paid by working Americans, by $55,000,000,000;

(5) such a transfer artificially inflates the solvency of the medicare hospital insurance trust fund, misleading Congress, medicare beneficiaries, and working taxpayers;

(6) the Director of the Congressional Budget Office has certified that, without such a transfer, the President's budget extends the solvency of the hospital insurance trust fund for only one additional year; and

(7) without misleading transfers, the President's budget therefore fails to achieve his own stated goal for the medicare hospital insurance trust fund.

(b) SENSE OF CONGRESS.—It is the sense of Congress that, in achieving the spending levels specified in this resolution, Congress assumes that Congress would—

(1) keep the medicare hospital insurance trust fund solvent for more than a decade, as recommended by the President; and

(2) accept the President's proposed level of medicare part B savings over the period 1997 through 2002; but would

(3) reject the President's proposal to transfer home health spending from one part of medicare to another, which threatens the delivery of home health care services to 3.5 million medicare beneficiaries, artificially inflates the solvency of the medicare hospital insurance trust fund, and increases the burden on general revenues, including income taxes paid by working Americans, by $55,000,000,000.

SEC. 411. SENSE OF CONGRESS REGARDING REVENUE ASSUMPTIONS.

(a) FINDINGS.—Congress finds the following:

(1) Corporations and individuals have clear responsibility to adhere to environmental laws. When they do not, and environmental damage results, the Federal and State governments may impose fines and penalties, and assess polluters for the cost of remediation.

(2) Assessment of these costs is important in the enforcement process. They appropriately penalize wrongdoing. They discourage future environmental damage. They ensure that taxpayers do not bear the financial brunt of cleaning up after damages done by polluters.

(3) In the case of the Exxon Valdez oil spill disaster in Prince William Sound, Alaska, for example, the corporate settlement with the Federal Government totaled $900,000,000.

(b) SENSE OF CONGRESS.—It is the sense of Congress that assumptions in this resolution assume an appropriate amount of revenues per year through legislation that will not allow deductions for fines and penalties arising from a failure to comply with Federal or State environmental or health protection laws.

SEC. 412. SENSE OF CONGRESS REGARDING DOMESTIC VIOLENCE.

The assumptions underlying functional totals in this budget resolution include:

(1) FINDINGS.—The Senate finds that:

(A) Violence against women is the leading cause of physical injury to women. The Department of Justice estimates that over 1 million violent crimes against women are committed by domestic partners annually.

(B) Domestic violence dramatically affects the victim's ability to participate in the workforce. A University of Minnesota survey reported that one-quarter of battered women surveyed had lost a job partly because of being abused and that over half of these women had been harassed by their abuser at work.

(C) Domestic violence is often intensified as women seek to gain economic independence through attending school or job training programs. Batterers have been reported to prevent women from attending such programs or sabotage their efforts at self-improvement.

(D) Nationwide surveys of service providers prepared by the Taylor Institute of Chicago, document, for the first time, the interrelationship between domestic violence and welfare by showing that between 50 percent and 80 percent of women in welfare to work programs are current or past victims of domestic violence.

(E) The American Psychological Association has reported that violence against women is

usually witnessed by their children, who as a result can suffer severe psychological, cognitive and physical damage and some studies have found that children who witness violence in their homes have a greater propensity to commit violent acts in their homes and communities when they become adults.

(F) Over half of the women surveyed by the Taylor Institute stayed with their batterers because they lacked the resources to support themselves and their children. The surveys also found that the availability of economic support is a critical factor in women's ability to leave abusive situations that threaten themselves and their children.

(G) Proposals to restructure the welfare programs may impact the availability of the economic support and the safety net necessary to enable poor women to flee abuse without risking homelessness and starvation for their families.

(2) SENSE OF CONGRESS.—It is the sense of Congress that:

(A) No welfare reform provision should be enacted by Congress unless and until Congress considers whether such welfare reform provisions would exacerbate violence against women and their children, further endanger women's lives, make it more difficult for women to escape domestic violence, or further punish women victimized by violence.

(B) Any welfare reform measure enacted by Congress should require that any welfare to work, education, or job placement programs implemented by the States address the impact of domestic violence on welfare recipients.

SEC. 413. SENSE OF CONGRESS REGARDING STUDENT LOANS.

(a) FINDINGS.—Congress finds that--

(1) over the last 60 years, education and advancements in knowledge have accounted for 37 percent of our nation's economic growth;

(2) a college degree significantly increases job stability, resulting in an unemployment rate among college graduates less than half that of those with high school diplomas;

(3) a person with a bachelor's degree will average 50–55 percent more in lifetime earnings than a person with a high school diploma;

(4) education is a key to providing alternatives to crime and violence, and is a cost-effective strategy for breaking cycles of poverty and moving welfare recipients to work;

(5) a highly educated populace is necessary to the effective functioning of democracy and to a growing economy, and the opportunity to gain a college education helps advance the American ideals of progress and social equality;

(6) a highly educated and flexible work force is an essential component of economic growth and competitiveness;

(7) for many families, Federal Student Aid Programs make the difference in the ability of students to attend college;

(8) in 1994, nearly 6 million postsecondary students received some kind of financial assistance to help them pay for the costs of schooling;

(9) since 1988, college costs have risen by 54 percent, and student borrowing has increased by 219 percent;

(10) in fiscal year 1996, the Balanced Budget Act achieved savings without reducing student loan limits or increasing fees to students or parents; and

(11) under this budget resolution student loans will increase from $26.6 billion today to $37.4 billion in 2002; the Congressional Budget Office projects that these are the exact same levels that would occur under President Clinton's student loan policies.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the aggregates and functional levels included in this budget resolution assume that savings in student loans can be achieved without any program change that would increase costs to students and parents or decrease accessibility to student loans.

SEC. 414. SENSE OF CONGRESS REGARDING ADDITIONAL CHARGES UNDER THE MEDICARE PROGRAM.

(a) FINDINGS.—Congress finds that—

(1) senior citizens must spend more than 1 dollar in 5 of their limited incomes to purchase the health care they need;

(2) ⅔ of spending under the medicare program under title XVIII of the Social Security Act is for senior citizens with annual incomes of less than $15,000;

(3) fee for service cost increases have forced higher out-of-pocket costs for seniors; and

(4) the current medicare managed care experience has demonstrated that medicare HMO enrollees face lower out-of-pocket costs when they join HMO's in competitive markets; also, over one half of these enrollees pay no medicare premiums and receive extra benefits free of charge, such as prescription drugs and eye glasses, due to competitive market forces.

(b) SENSE OF CONGRESS.—It is the sense of Congress that any reconciliation bill considered during the second session of the 104th Congress should maintain Medicare beneficiaries right to remain in the current Medicare fee-for-service program and also should maintain the existing prohibitions against additional charges by providers under the Medicare fee-for-service program under title XVIII of the Social Security Act ("balance billing"), and that Medicare beneficiaries should be offered the greatest opportunity possible to choose private plans that will offer lower out-of-pocket costs than what they currently pay in the Medicare fee-for-service program, and to choose a health care delivery option that best meets their needs.

SEC. 415. SENSE OF CONGRESS REGARDING REQUIREMENTS THAT WELFARE RECIPIENTS BE DRUG-FREE.

In recognition of the fact that American workers are required to be drug-free in the workplace, it is the sense of Congress that this concurrent resolution on the budget assumes that the States may require welfare recipients to be drug-free as a condition for receiving such benefits and that random drug testing may be used to enforce such requirements.

SEC. 416. SENSE OF CONGRESS ON AN ACCURATE INDEX FOR INFLATION.

(a) FINDINGS.—Congress finds that—

(1) a significant portion of Federal expenditures and revenues are indexed to measurements of inflation; and

(2) a variety of inflation indices exist which vary according to the accuracy with which such indices measure increases in the cost of living; and

(3) Federal Government usage of inflation indices which overstate true inflation has the demonstrated effect of accelerating Federal spending, increasing the Federal budget deficit, increasing Federal borrowing, and thereby enlarging the projected burden on future American taxpayers.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the assumptions underlying this budget resolution include that all Federal spending and revenues which are indexed for inflation should be calibrated by the most accurate inflation indices which are available to the Federal Government.

SEC. 417. SENSE OF CONGRESS THAT THE 1993 INCOME TAX INCREASE ON SOCIAL SECURITY BENEFITS SHOULD BE REPEALED.

(a) FINDINGS.—Congress finds that—

(1) the fiscal year 1994 budget proposal of President Clinton to raise Federal income taxes on the Social Security benefits of senior citizens with income as low as $25,000, and those provisions of the fiscal year 1994 recommendations of the Budget Resolution and the 1993 Omnibus Budget Reconciliation Act in which the One Hundred Third Congress voted to raise Federal income taxes on the Social Security benefits of senior citizens with income as low as $34,000 should be repealed;

(2) President Clinton has stated that he believes he raised Federal taxes too much in 1993; and

(3) the budget resolution should react to President Clinton's fiscal year 1997 budget which documents the fact that in the history of the United States, the total tax burden has never been greater than it is today.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the assumptions underlying this resolution include—

(1) that raising Federal income taxes in 1993 on the Social Security benefits of middle-class individuals with income as low as $34,000 was a mistake;

(2) that the Federal income tax hike on Social Security benefits imposed in 1993 by the One Hundred Third Congress and signed into law by President Clinton should be repealed; and

(3) President Clinton should work with Congress to repeal the 1993 Federal income tax hike on Social Security benefits in a manner that would not adversely affect the Social Security Trust Fund or the Medicare Part A Trust Fund, and should ensure that such repeal is coupled with offsetting reductions in Federal spending.

SEC. 418. SENSE OF CONGRESS REGARDING THE ADMINISTRATION'S PRACTICE REGARDING THE PROSECUTION OF DRUG SMUGGLERS.

(a) FINDINGS.—Congress finds that—

(1) drug use is devastating to the Nation, particularly among juveniles, and has led juveniles to become involved in interstate gangs and to participate in violent crime;

(2) drug use has experienced a dramatic resurgence among our youth;

(3) the number of youths aged 12–17 using marijuana has increased from 1.6 million in 1992 to 2.9 million in 1994, and the category of "recent marijuana use" increased a staggering 200 percent among 14- to 15-year-olds over the same period;

(4) since 1992, there has been a 52 percent jump in the number of high school seniors using drugs on a monthly basis, even as worrisome declines are noted in peer disapproval of drug use;

(5) 1 in 3 high school students uses marijuana;

(6) 12- to 17-year-olds who use marijuana are 85 percent more likely to graduate to cocaine than those who abstain from marijuana;

(7) juveniles who reach 21 without ever having used drugs almost never try them later in life;

(8) the latest results from the Drug Abuse Warning Network show that marijuana-related episodes jumped 39 percent and are running at 155 percent above the 1990 level, and that methamphetamine cases have risen 256 percent over the 1991 level;

(9) between February 1993 and February 1995 the retail price of a gram of cocaine fell from $172 to $137, and that of a gram of heroin also fell from $2,032 to $1,278;

(10) it has been reported that the Department of Justice, through the United States Attorney for the Southern District of California, has adopted a policy of allowing certain foreign drug smugglers to avoid prosecution altogether by being released to Mexico;

(11) it has been reported that in the past year approximately 2,300 suspected narcotics traffickers were taken into custody for bringing illegal drugs across the border, but approximately one in four were returned to their country of origin without being prosecuted;

(12) it has been reported that the United States Customs Service is operating under guidelines limiting any prosecution in marijuana cases to cases involving 125 pounds of marijuana or more;

(13) it has been reported that suspects possessing as much as 32 pounds of methamphetamine and 57,000 Quaalude tablets were not prosecuted but were, instead, allowed to return to their countries of origin after their drugs and vehicles were confiscated;

(14) it has been reported that after a seizure of 158 pounds of cocaine, one defendant was cited and released because there was no room at the Federal jail and charges against her were dropped;

(15) it has been reported that some smugglers have been caught two or more times—even in the same week—yet still were not prosecuted;

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The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 3989

Mr. WELLSTONE. Mr. President, this next amendment that I am about to send to the desk I send on behalf of myself, Senator MURRAY and Senator WYDEN. It says that it is the sense of the Senate that no welfare reform provision should be enacted by Congress unless until Congress considers whether such welfare reform provisions would exacerbate violence against women and their children, further endanger women's lives, make it more difficult for women to escape domestic violence, or further punish women victimized by violence. Any welfare reform measure enacted by the Congress should require that any welfare-to-work education or job placement programs being implemented by States address this impact of domestic violence on welfare recipients.

One word of explanation, Mr. President. We have some fairly dramatic data that shows, in many cases, as many as 50 percent of women on welfare or in workfare programs have been or are victims of domestic violence. They have been battered.

I suggest to my colleagues that any welfare reform provision that we enact must take into account these circumstances. It cannot be "one size fits all." It took Monica Seles 2 years to play tennis again. Imagine what it is like for a woman and her children who have been beaten over and over and over again.

We cannot pass a piece of legislation without any special allowance for these families that have gone through this violence, because we must not force these women and children back into very dangerous homes. That is what this amendment says.

This Congress and this country have become much more focused, thank goodness, on the problems of domestic violence. When we consider welfare reform, we must take this interest into account.

I repeat this. You cannot force a mother and her children, even if she is low income, back into a dangerous home where she could end up being murdered.

I will repeat that once more. We cannot pass legislation without taking into allowance the problems of domestic violence, the problems of women who have been battered, the problems of children who have been battered. We cannot pass this legislation without understanding that one size does not fit all, because if we do, in the case of many families—and in the relatively short period of time I have next week, I will have some data to bring out—we will force many women and children back into dangerous homes. We are going to force many women and children into situations where they could lose their lives.

Mr. President, that is not melodramatic, that is the case. So I hope there will be overwhelming support for this amendment.

Mr. President, I send this amendment to the desk.

The PRESIDING OFFICER (Mr. KYL). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE], for himself, Mrs. MURRAY and Mr. WYDEN, proposes an amendment numbered 3989.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At an appropriate place insert the following:

SEC. . SENSE OF THE SENATE.—The assumptions underlying functional totals and reconciliation instructions in this budget resolution include:

(a) FINDINGS.—The Senate finds that:

(1) Violence against women is the leading cause of physical injury to women. The Department of Justice estimates that over 1 million violent crimes against women are committed by domestic partners annually.

(2) Domestic violence dramatically affects the victim's ability to participate in the workforce. A University of Minnesota survey reported that one-quarter of battered women surveyed had lost a job partly because of being abused and that over half of these women had been harassed by their abuser at work.

(3) Domestic violence is often intensified as women seek to gain economic independence through attending school or job training programs. Batterers have been reported to prevent women from attending such programs or sabotage their efforts at self-improvement.

(4) Nationwide surveys of service providers prepared by the Taylor Institute of Chicago, document, for the first time, the interrelationship between domestic violence and welfare by showing that between 50 and 80 percent of women in welfare to work programs are current or past victims of domestic violence.

(5) The American Psychiological Association has reported that violence against women is actually witnessed by their children, who as a result can suffer severe psychological, cognitive, and physical damage and some studies have found that children who witness violence in their homes have a greater propensity to commit violent acts in their homes and communities when they become adults.

(6) Over half of the women surveyed by the Taylor Institute stayed with their batterers because they lacked the resources to support themselves and their children. The surveys also found that the availability of economic support is a critical factor in women's ability to leave abusive situations that threaten themselves and their children.

(7) Proposals to restructure the welfare programs may impact the availability of the economic support and the safety net necessary to enable poor women to flee abuse without risking homelessness and starvation for their families.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that:

(1) No welfare reform provision should be enacted by Congress unless and until Congress considers whether such welfare reform provisions would exacerbate violence against women and their children, further endanger women's lives, make it more difficult for women to escape domestic violence or further punish women victimized by violence.

(2) Any welfare reform measure enacted by Congress should require that any welfare to work, education, or job placement programs implemented by the States address the impact of domestic violence on welfare recipients.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the amendment be laid aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WELLSTONE. I ask unanimous-consent that we go back to the higher education tuition tax deduction amendment.

The PRESIDING OFFICER. Is there objection to the last unanimous-consent request? Without objection, it is so ordered.

Several Senators addressed the Chair.

Mr. THOMAS. Mr. President, simply, on behalf of the manager, I want to make it clear that the majority has not yielded back time on the Wellstone amendments, nor have we given up the right to second-degree these amendments.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I inquire what the order is at this point in time, if there is an order, and, if there is not, I want to keep the floor.

The PRESIDING OFFICER. At this point, Senators are obtaining unanimous consent to set aside previous amendments.

Mr. KERRY. Mr. President, I was originally scheduled to go at a later time. Because we were fogged in, I ask unanimous consent that I be permitted to proceed with two amendments, which I was going to do later, at this moment in time and reserve such time on those amendments as is set aside for other colleagues on our side to be able to speak at a later time.

The PRESIDING OFFICER. Is there objection to the request? Without objection, it is so ordered.

Mr. KERRY. I thank the Chair.

Mr. President, I will be introducing two amendments on behalf of the leadership, one with respect to the environment and one with respect to education. I am joined on the education amendment by the distinguished Senator from Washington, Senator MURRAY. I will just proceed very rapidly on the environment one in order to dispose of it, and then we will spend a few minutes on the education one.

AMENDMENT NO. 3990

(Purpose: To help protect the quality of our water and air, to clean up toxic waste, to protect our national parks and other natural resources, and to ensure adequate enforcement of environmental laws, by restoring proposed cuts in the environment and natural resources, to be offset by the extension of expired tax provisions or corporate and business tax reforms)

Mr. KERRY. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

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MARKUP OF FISCAL YEAR 1997 BUDGET

RECONCILIATION BILL

THURSDAY, MAY 9, 1996

House of Representatives,

Committee on the Budget,

Washington, D.C.

The committee met, pursuant to notice, at 1:

Committee Hearings

of the

U.S. HOUSE OF REPRESENTATIVES

OFFICE OF THE CLERK
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Ms. RIVERS. Aye.

The CLERK. Ms. Rivers votes aye. Mr. Doggett?

Mr. DOGGETT. Aye.

The CLERK. Mr. Doggett votes aye. Mr. Levin?

Mr. LEVIN. Aye.

The CLERK. Mr. Levin votes aye. Mr. Thompson?

Mr. THOMPSON. Aye.

The CLERK. Mr. Thompson votes aye. Mr. Kasich?

Chairman KASICH. No.

The CLERK. Mr. Kasich votes no.

Chairman KASICH. The Clerk will report.

The CLERK. On that vote, Mr. Chairman, the ayes are 18 and the noes are 23.

Chairman KASICH. The amendment is defeated.

The gentlelady from California is recognized for an amendment. Does the Clerk have the amendment at the desk?

The CLERK. Yes, Mr. Chairman.

Chairman KASICH. If the gentlelady would explain the amendment, I am prepared to accept this amendment. Why doesn't the gentlelady explain what her amendment does?

Ms. ROYBAL-ALLARD. Thank you, Mr. Chairman.

Most of us are aware of the fact that domestic violence is the leading cause of physical injury to women. The Department of Justice estimates that over 1 million violent crimes against women are committed by intimate partners

annually. What has not been clear until recently, however, is the connection between domestic violence, welfare dependency, and the victim's ability to participate in the work force.

A University of Minnesota survey has reported that one-quarter of battered women surveyed lost a job partly because of being abused, and that over half of these women had been harassed by their abuser at work. And the most recent nationwide survey of service providers prepared by the Taylor Institute of Chicago documents for the first time the interrelationship between domestic violence and welfare by showing that between 50 and 80 percent of AFDC recipients are current or past victims of domestic violence.

This research offers us new insights as to why so many women become trapped in the cycle of dependency and illustrates how difficult, in fact almost impossible, it is for women to break the cycle of welfare dependency, when in addition to traditional obstacles to self-sufficiency such as lack of child care, inadequate health coverage, and low wages, they are also victims of domestic abuse.

These are not women who are lazy or don't want a job. These women want to work but can't because they are prisoners of abuse. As many survivors will tell you, their efforts of self-improvement are often sabotaged and violence often intensified as women seek to gain economic independence

through school and training programs.

Last week three survivors of domestic violence spoke at a press conference releasing the Taylor Institute study. They spoke about the critical role that welfare programs played in helping them escape their abusive situations. According to one woman, the welfare system was her only hope for freedom from an abusive relationship which had spanned more than 12 years. Another survivor who had been a victim of domestic violence since the age of 16 stated that public assistance enabled her to finish high school and realize her dream to attend Howard University. The women unanimously agreed that without welfare they would have been forced to live with their batterers, and that they and their children undoubtedly would have been severely injured or killed by their batterers.

In light of this new information, one of the challenges that we in Congress face is to reform the welfare system in a way that helps women who are victims of abuse, not punishes them. The Taylor study gives us new insights and perspectives that must be considered as Congress addresses issues in welfare reform, such as time limits, that make it more difficult for battered women to support their children and force them to stay or return to their batterer for financial support.

My amendment will express the sense of Congress that any

welfare reform legislation will not further penalize women victimized by domestic violence or endanger their lives or their children's by denying them assistance, and that any welfare measure enacted by Congress shall include safeguards to address the impact of domestic violence on poor women. That is the essence of my amendment, and I urge my colleagues on the Budget Committee to adopt it.

Thank you, Mr. Chairman.

Chairman KASICH. I appreciate the gentlelady's amendment. My view is the amendment ought to be accepted.

Does the gentlelady from North Carolina want to make any comment, or just indicate her support?

Mrs. MYRICK. I do support that, also.

Chairman KASICH. All those in favor of the amendment by the gentlelady from California, signify by saying aye.

All those opposed.

With no opposed, the amendment is adopted.

Any additional amendments to the Chairman's mark?

The gentleman from West Virginia.

Mr. MOLLOHAN. Mr. Chairman, I have an amendment.

Chairman KASICH. Do we have the amendment at the desk? We do?

The gentleman may proceed to explain his amendment.

Mr. MOLLOHAN. Mr. Chairman, this is an amendment to Function 750.

Congress of the United States
Washington, DC 20515

June 18, 1996

SUPPORT BATTERED WOMEN AND THEIR CHILDREN COSPONSOR THE WELLSTONE/ROYBAL-ALLARD CONCURRENT RESOLUTION

Dear Colleague:

On May 1, 1996, we held a press conference to release Prisoners of Abuse, an important new study conducted by the Taylor Institute, which documents the prevalence of domestic violence among welfare recipients.

This study illustrates, for the first time, the interrelationship of domestic abuse and dependence on public assistance. Based on statistical evidence from 20 states, the study documents that between 50% and 80% of women receiving AFDC are current or past victims of domestic abuse. This abuse often hinders their ability to become self-sufficient and retain employment. While we all know that domestic violence exists regardless of economic status, poor women's options are further limited by this abuse. As this research illustrates, it is much more difficult for battered women who are poor to become self-sufficient when, in addition to recognized obstacles such as lack of child care and health coverage, they are also victims of domestic violence.

The findings of this study have significant implications for the welfare debate and our efforts to eradicate family violence. As Congress considers welfare reform legislation, we must recognize that proposals which impose arbitrary time limits and deny benefits to battered women and their children may result in further harm for these families. If enacted, these provisions will make it more difficult, if not impossible, for battered women to support their children, forcing them to stay with, or return to, their batterers for financial support.

In an effort to avoid these consequences, we are introducing concurrent resolutions in the Senate and House expressing the sense of Congress that any welfare reform legislation should not further penalize women victimized by domestic violence, or endanger their lives or their children's by denying them assistance. Further, any welfare measure enacted by the Congress should include safeguards to address the impact of domestic violence on poor women.

I urge you to support battered women and children by joining the **bipartisan group of Senators and Representatives** (see list below) who are original cosponsors of the Wellstone/Roybal-Allard concurrent resolution. Please contact Kirsten Jennings in Senator Wellstone's office (4-5641) or Ellen Riddleberger in Congresswoman Roybal-Allard's office (5-1766), if you would like to become a cosponsor, have questions, or would like additional information.

Sincerely,

Paul D. Wellstone
Senator Paul Wellstone

Lucille Roybal-Allard
Representative Lucille Roybal-Allard

Senate original cosponsors:

Senator Murray
Senator Wyden
Senator Kennedy

House original cosponsors

Representative Matsui (CA)
Representative Myrick (NC)
Representative Woolsey (CA)
Representative Morella (MD)
Representative Clayton (NC)
Representative Lowey (NY)
Representative Lofgren (CA)
Representative Hilliard (AL)
Representative Kildee (MI)
Representative Green (TX)
Representative Kennelly (CT)
Representative C. Brown (FL)
Representative Frank (MA)
Representative LaFalce (NY)
Representative Farr (CA)
Representative McDermott (WA)
Representative Slaughter (NY)
Representative Ackerman (NY)
Representative Oberstar (MN)
Representative Gonzalez (TX)
Delegate Romero-Barcelo (PR)
Representative Olver (MA)
Delegate Frazer (Virgin Islands)
Representative Sanders (VT)
Representative Abercrombie (HI)
Representative G. Miller (CA)
Representative G. Brown (CA)
Representative Hinchey (NY)
Representative Stark (CA)
Representative Owens (NY)

Congress of the United States
Washington, DC 20515

****** SECOND NOTICE ******

July 3, 1996

SUPPORT BATTERED WOMEN AND THEIR CHILDREN
COSPONSOR THE ROYBAL-ALLARD \ WELLSTONE CONCURRENT RESOLUTION, H. Con. Res. 195

Dear Colleague:

On June 27, 1996, Senator Wellstone and I introduced a Concurrent Resolution in the House and Senate which highlights the nexus between domestic abuse and poverty, particularly in the context of the current debate on welfare reform. The Resolution is based on information contained in a ground-breaking new study conducted by the Taylor Institute of Chicago, entitled "Prisoners of Abuse".

Based on statistical evidence from 20 states, the Taylor Institute study documents that between 50% and 80% of women receiving AFDC are current or past victims of domestic abuse. This abuse often hinders their ability to become self-sufficient and retain employment. While we all know that domestic violence exists regardless of economic status, poor women's options are further limited by this abuse. As this research illustrates, it is much more difficult for battered women who are poor to become self-sufficient when, in addition to overcoming obstacles such as lack of child care and health coverage, they are also living with domestic abuse.

The findings of this study have significant implications for the welfare debate and our efforts to eradicate family violence. As Congress considers welfare reform legislation, we must recognize that proposals which impose arbitrary time limits and deny benefits to battered women and their children may result in further harm for these families. If enacted, these provisions will make it more difficult, if not impossible, for battered women to support their children, forcing them to stay with, or return to, their batterers for financial support.

Our Resolution expresses the sense of Congress that any welfare reform legislation should not further penalize women victimized by domestic violence, or endanger their lives or the lives of their children by denying them assistance. Further, any welfare measure enacted by the Congress should include safeguards to address the impact of domestic violence on poor women. Both Senator Wellstone and I were successful in getting similar language included in the House and Senate Budget Resolutions through Sense of Congress Amendments.

It is not too late to support battered women and children by joining the **bipartisan group of Senators and Representatives** (see list below) who are cosponsors of the Wellstone/Roybal-Allard Concu rrent Resolution. Please contact Ellen Riddleberger in Congresswoman Roybal-Allard's office (5-1766), if you would like to become a cosponsor, have questions, or would like additional information.

Sincerely,

Lucille Roybal-Allard
Chair, Violence Against Women Task Force of the Women's Caucus

Senate cosponsors:

Senator Wellstone
Senator Wyden
Senator Kennedy
Senator Murray
Senator Akaka
Senator Feingold
Senator Simon
Senator Sarbanes

House cosponsors:

Representative Matsui (CA)
Representative Myrick (NC)
Representative Woolsey (CA)
Representative Morella (MD)
Representative Clayton (SC)
Representative Lowey (NY)
Representative Lofgren (CA)
Representative Hilliard (IL)
Representative Kildee (MI)
Representative Green (TX)
Representative Kennelly (CT)
Representative Corrine Brown (FL)
Representative B. Frank (MA)
Representative LaFalce (NY)
Representative Farr (CA)
Representative McDermott (WA)
Representative Slaughter (NY)
Representative Ackerman (NY)
Representative Oberstar (MN)
Representative Barrett (WI)
Representative Gonzales (TX)
Representative Romero-Barcelo (PR)
Representative Olver (MA)
Representative Frazer (VI)
Representative Sanders (VT)
Representative Abercrombie (HI)
Representative George Miller (CA)
Representative G. Brown (CA)
Representative Hinchy (NY)
Representative Stark (CA)
Representative Owens (NY)
Representative Filner (CA)
Representative Waters (CA)
Representative Velazquez (NY)
Representative Maloney (NY)
Representative Guiterrez (IL)
Representative Slaughter (NY)
Representative Flake (NY)
Representative Torres (CA)
Representative Paine (NJ)
Representative Yates (IL)

with the lowest benefits tend to have families with more children. The lowest benefit States have the highest rates of illegitimate children.

So, Mr. President, I think that we are being very reckless with the lives of children. I think what the Senate is about to do over the next couple of days, barring major changes for the better, is very reckless with the lives of children. And in many ways I think it is amounting to nothing more than just bashing because, as I have said before, these mothers do not have the resources to get on NBC, CBS, and ABC and fight some of these stereotypes.

We want reform. But I have heard precious little discussion about the whole issue of job training, jobs, affordable child care, and moving forward on health care reform, not just for welfare mothers but other families as well. I have heard precious little of that.

So, Mr. President, for me the bottom line is—and I understand the climate. It has been just a one-sided flow of information. I said, earlier, I say to my colleague, I was at the Minnesota State Fair. I love to be at the State fair. Almost half of the State's population is there in 12 days. I like interacting with people. It is my nature to like people. I had lots of people come up to me and talk about welfare. And people really do believe we have to drive all these cheaters off the rolls and slackers back to work. People do not necessarily realize that 9 million of those 15 million on welfare are children. But I think when you talk to people they will say to you we are for the reform but we do not want you to punish children.

The direction we are going in is going to punish children. It will—and I do not exaggerate—end up taking food out of the mouths of hungry children. It is not what we should be about. And if there ever was a moment for the President to show leadership, it is now. If there ever was a moment for the President of the United States of America to show leadership—and leadership to me is calling on people to be their own best selves, not appeal to the fears and to the frustrations of people—and spell out for people the facts and provide an education for people in the United States of America about what real reform would be which would benefit children as opposed to hurting children, it is now. The silence of the White House on this question is deafening.

As a Senator from Minnesota, I feel that I owe a lot to the Senator from New York for his courage, his wisdom, his eloquence, and his power.

I yield the floor.

Mr. MOYNIHAN. Mr. President, I do not want to keep the floor further than to say no one has given more of his career to this subject than the Senator from Minnesota. He has been at the barricades and in the lecture halls and the State fairs on the subject. He is an authority on this subject. He speaks with profound conviction.

I thank him for his courtesy to me, and I plead. There is no one in the White House to hear what he has said. Before the day is ending, we will perhaps know more. But we began the day on the right track.

Mr. President, I see my friend from Pennsylvania has arrived. I do believe our procedures can commence.

I yield the floor.

Mr. SANTORUM. Mr. President, not to disappoint the Senator from New York, but I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2584, AS MODIFIED

Mr. WELLSTONE. Mr. President, I ask unanimous consent to send a modified amendment to the desk.

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment is so modified.

The amendment (No. 2584), as modified, is as follows:

At the end of the amendment, insert the following new title:

TITLE —PROTECTION OF BATTERED INDIVIDUALS

SEC. 01. EXEMPTION OF BATTERED INDIVIDUALS FROM CERTAIN REQUIREMENTS.

(a) IN GENERAL.—Notwithstanding any other provision of, or amendment made by, this Act, the applicable administering authority of any specified provision may exempt from (or modify) the application of such provision to any individual who was battered or subjected to extreme cruelty if the physical, mental, or emotional well-being of the individual would be endangered by the application of such provision to such individual. The applicable administering authority may take into consideration the family circumstances and the counseling and other supportive service needs of the individual.

(b) SPECIFIED PROVISIONS.—For purposes of this section, the term "specified provision" means any requirement, limitation, or penalty under any of the following:

(1) Sections 404, 405 (a) and (b), 406 (b), (c), and (d), 414(d), 453(c), 469A, and 1614(a)(1) of the Social Security Act.

(2) Sections 5(i) and 6 (d), (j), and (n) of the Food Stamp Act of 1977.

(3) Sections 501(a) and 502 of this Act.

(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) BATTERED OR SUBJECTED TO EXTREME CRUELTY.—The term "battered or subjected to extreme cruelty" includes, but is not limited to—

(A) physical acts resulting in, or threatening to result in, physical injury;

(B) sexual abuse, sexual activity involving a dependent child, forcing the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities, or threats of or attempts at physical or sexual abuse;

(C) mental abuse; and

(D) neglect or deprivation of medical care.

(2) CALCULATION OF PARTICIPATION RATES.—An individual exempted from the work requirements under section 404 of the Social Security Act by reason of subsection (a) shall not be included for purposes of calculating the State's participation rate under such section.

The PRESIDING OFFICER. Under the previous order, there will be now 10 minutes of debate equally divided on the Wellstone amendment, as modified, to be followed by a vote on or in relation to the amendment.

Mr. WELLSTONE. Mr. President, I thank the Chair.

Mr. President, I shall be brief because I believe we have now worked this out and that this amendment will be accepted. I am in fact very pleased about it.

Mr. President, let me just for a moment kind of spell out for my colleagues what this amendment does. Every 15 seconds a woman is beaten by a husband or a boyfriend in the United States of America. That is a horrible statistic. But unfortunately, it is a fact. Over 4,000 women are killed every year by their abuser and every 6 minutes a woman is forcibly raped.

My concern, when I introduced this amendment last night with Senator MURRAY, was that with our various requirements we would not unwittingly put States in a position where they essentially end up forcing women back into very dangerous homes.

In other words, the way to summarize it, it took Monica Seles 2 years to get back on the tennis court. Imagine what it would be like if you were beaten over and over and over again. When would you be able to get into a job program? When would you be able to get back on your own two feet? Quite often children are also severely affected by this.

My amendment allows States to exempt people who have been battered or subjected to extreme cruelty from some of these rules that we now have within the welfare system without being penalized for not meeting their participation rate. In other words, if States want to make an exemption for a woman, or sometimes a man, who has come from a very violent home and has been battered, a State will be able to do so and a State will be penalized in no way.

Mr. President, this is extremely important because I believe that in order for us to make sure that we do not send battered women back into violent homes, States absolutely have to be able to do this without being penalized in any way, shape, or form.

I also believe this amendment being passed will enable our States to put a focus on this question for not only battered women shelters and the advocates, but I think increasingly the larger number of citizens.

So I thank my colleagues for accepting this amendment.

I yield the floor.

Mr. MOYNIHAN addressed the Chair.

Does the Senator wish to urge adoption?

The PRESIDING OFFICER. Does the Senator yield back the remainder of his time?

Mr. WELLSTONE. I do.

A-22

I urge adoption of my amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania has 5 minutes.

Mr. SANTORUM. Mr. President, I rise to say we accept the amendment, as modified, and allow the Senator to continue with the adoption of the amendment.

Mr. WELLSTONE. Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. The question is now on agreeing to amendment No. 2584, as modified.

The amendment (No. 2584), as modified, was agreed to.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. NICKLES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2609

The PRESIDING OFFICER. Under the previous order, there will now be 10 minutes of debate equally divided on the Faircloth amendment, No. 2609, to be followed by a vote on or in relation to the amendment.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, my pending amendment modifies a provision in the Dole bill which allows Federal funds to be used for cash aid to unmarried teenage mothers.

The sole purpose of this amendment is designed to disrupt the pattern of out-of-wedlock childbearing that is passing from one generation to the next. My amendment seeks to stop giving cash aid that rewards multigenerational welfare dependency.

Let us be clear what the Dole bill currently does. The bill says you can use Federal funds to give vouchers or inkind benefits to an unmarried teenage mother or you can use funds to put the mother in a supervised group home. That is fine, and we have all agreed upon that.

The Dole bill then goes on to say that you can use Federal funds to give cash benefits to unmarried teenage mothers if that mother resides with her parent.

We need to be very clear what type of household we are putting cash into. In this household, there will be three people. First, the newborn child; second, the unmarried teenage mother of that child; and third, the mother of the teenager who has the child, or the grandmother, the adult, in other words, in charge of the household.

The problem with this scenario is that the adult woman, the mother of the teenager, the grandmother of the new child, the person in charge of the operation, the one we are depending upon for supervision of the unmarried teenage mother is very likely either to be or have been an unmarried welfare mother herself. It is very likely that this adult mother gave birth to the teenager out of wedlock some 15 to 16 years ago and raised her at least partly on welfare. The young teenager giving birth out of wedlock is simply repeating the pattern and model which her mother laid down.

Let me remind you of a few public statistics to confirm what I am saying. A girl who is raised in a single-parent home on welfare is five times more likely to have a child out of wedlock herself than is a girl raised in a two-parent home without welfare. Roughly two-thirds of all the unwed teenage mothers were raised in broken or single-parent homes.

The amendment I am offering is intended to break up the lethal growing pattern of multigenerational illegitimacy and welfare dependency. That is the purpose, to try to break the cycle. The current amendment follows the same basic rule on teenage mothers as the Dole bill, which says you cannot use Federal funds to give cash aid, a check in the mail to a teenage mother unless that teenage mother resides with her parents or another adult relative.

My amendment maintains that same rule but adds only the one limitation, and the limitation states that an unmarried teenage mother cannot receive Federal aid, that is a check in the mail, if the parent or adult relative the teenager is living with herself had a child out of wedlock and has recently received aid to families with dependent children.

The teenage mother cannot get cash aid, cannot get a check in the mail if she is residing with a parent who herself has had a child out of wedlock and was a welfare mother and has recently received aid to families with dependent children.

The PRESIDING OFFICER. The time of the Senator from North Carolina has expired. The Senator from North Carolina had 5 minutes.

Mr. FAIRCLOTH. I ask unanimous consent for an additional minute.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from North Carolina.

Mr. FAIRCLOTH. The teenager in those circumstances could receive a voucher or federally funded inkind aid, but she could not get a Federal welfare check in the mail.

I want to stress that this does not prevent teenage mothers from living at home or from receiving noncash benefits. Of course, this restriction applies only to Federal funds. A State can use its money to send a check in the mail to anyone it wants.

If you vote against this amendment, you are voting to give cash aid to multigenerational welfare households. If you vote against this amendment, you are voting to subsidize and promote multigeneration illegitimacy.

I urge my colleagues to support this amendment.

The PRESIDING OFFICER. Who yields time? The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SANTORUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I ask for the yeas and nays on the Faircloth amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. SANTORUM. I yield back the remainder of my time.

The PRESIDING OFFICER. The question is now on agreeing to the Faircloth amendment. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

The PRESIDING OFFICER (Mr. THOMAS). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 17, nays 83, as follows:

[Rollcall Vote No. 422 Leg.]

YEAS—17

Ashcroft	Inhofe	Shelby
Brown	Lott	Smith
Faircloth	McCain	Stevens
Gramm	McConnell	Thompson
Grams	Nickles	Thurmond
Helms	Pressler	

NAYS—83

Abraham	Dorgan	Leahy
Akaka	Exon	Levin
Bancus	Feingold	Lieberman
Bennett	Feinstein	Lugar
Biden	Ford	Mack
Bingaman	Frist	Mikulski
Bond	Glenn	Moseley-Braun
Boxer	Gorton	Moynihan
Bradley	Graham	Murkowski
Breaux	Grassley	Murray
Bryan	Gregg	Nunn
Bumpers	Harkin	Packwood
Burns	Hatch	Pell
Byrd	Hatfield	Pryor
Campbell	Heflin	Reid
Chafee	Hollings	Robb
Coats	Hutchison	Rockefeller
Cochran	Inouye	Roth
Cohen	Jeffords	Santorum
Conrad	Johnston	Sarbanes
Coverdell	Kassebaum	Simon
Craig	Kempthorne	Simpson
D'Amato	Kennedy	Snowe
Daschle	Kerrey	Specter
DeWine	Kerry	Thomas
Dodd	Kohl	Warner
Dole	Kyl	Wellstone
Domenici	Lautenberg	

So the amendment (No. 2609) was rejected.

AMENDMENT NO. 2528

The PRESIDING OFFICER. Under the previous order, there will now be 10 minutes of debate, equally divided, on the Conrad amendment No. 2528, to be followed by a vote on or in relation to the amendment.

Mr. CONRAD. Mr. President, I ask unanimous consent that we be able to temporarily set aside the Conrad-Lieberman amendment because we have a request from the other side that we do that so that we perhaps have a chance to work things out before a vote.

The PRESIDING OFFICER. Is there objection?

Friday and then complete action on the appropriations bills on the 30th of September. If we can do that, there may be an opportunity for us to have a week's recess.

So I hope all of our colleagues would help us on the appropriations bills. To get to the appropriations bills, we have to finish welfare reform, and we are only going to have one cloture vote. If we do not get cloture, that is it. It will go in the reconciliation and all these amendments that are pending will be pending forever, I guess.

In any event, there will be no more votes tonight and the votes will start at 10 o'clock tomorrow morning.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I call up my amendment No. 2584 on behalf of myself and Senator MURRAY.

AMENDMENT NO. 2584

The PRESIDING OFFICER. The Senator has called up amendment No. 2584, which is the pending question.

The Senator from Minnesota is recognized.

If the Senator will suspend a moment? If those Members who are having discussions in the aisle could please retire to the cloakroom?

The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I thank the Chair for gaining order in the Chamber.

Mr. President, I will speak for a while and then I really would like to defer to my colleague from Washington, Senator MURRAY. Then I will complete my remarks.

Mr. President, could I have order in the Chamber, please?

The PRESIDING OFFICER. Those Members who are still in the aisle, please retire to the cloakroom so the Senator may be heard.

The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, last year the Congress made a commitment to fight the epidemic of violence against women and children when we passed the historic Violence Against Women Act. This commitment must not be forgotten as we debate welfare reform. Yet, the bill that we have before us does not contemplate even for 1 minute that many women are on welfare because they have escaped violence in their homes. Some of the studies that have been done show that as many as 60 percent of welfare mothers are women who were battered, women who have left a very dangerous home.

The last thing we want to do is force those women back into those homes. For many of these women, welfare is the only alternative, for some support it is the only alternative, for some public financial support for themselves and their children is the only alternative to a very dangerous home.

Domestic violence is one of the most serious issues our country faces. I wish I did not have to say that on the floor of the Senate, but it is the case. It knows no borders, neither race, gender, geography nor economic status shields someone from domestic violence.

Every 15 seconds a woman is beaten by a husband or a boyfriend every 15 seconds. Over 4,000 women are killed every year by their abuser. Every 6 minutes a woman is forcibly raped. The majority of men who batter women also batter their children. A survey conducted in 1992, Mr. President, found that more than half of battered women stayed with their batterer because they did not feel they could support themselves or their children. We do not want to put women in a situation where they have to stay in an unsafe home where their lives are in jeopardy, where their children's lives are in jeopardy because of a piece of legislation we passed.

Mr. President, this amendment allows an exemption for women who come out of these kinds of homes who have had to deal with this kind of physical violence, and it allows States to exempt people who have been battered—it could be a man; usually it is a woman—or subjected to extreme cruelty from the strict new rules that we have within the welfare system without being penalized for meeting the participation rate.

Mr. President, this amendment allows States to modify or to exempt women from some of the requirements in this bill. Monica Seles, the tennis player who was stabbed took 2 years before she could get back to playing tennis. Just imagine what it would be like for a woman who had been beaten over and over and over and over again and finally left that home with her children. How long does it take her to mend? Do we want to say she has to work or she is out? Two years and she is out? It may take a longer period of time.

This amendment says we ought to establish at the national level some overall standards so that States will exempt from some of the provisions of this piece of legislation women and children who come out of these circumstances.

Mr. President, the term "battered" or subjected to "extreme cruelty" includes physical acts, sexual abuse, neglect or deprivation of medical care, and extreme mental abuse. But we leave it up to the States to define those terms. But what we are saying is this is an epidemic. We made a commitment last year. We do not want to force a woman and her children because of their economic circumstances back into a brutal situation, back into a home which is not a safe home, but a very dangerous home. We have to provide some protection. That is the reason for this general guideline that we establish at the national level and then allow States to go forward. And it is extremely important that States be allowed to do so. Otherwise, they will be penalized for not reaching their employment goal.

Right now a State has no incentive to exempt a mother who is faced with these kinds of conditions because that State is trying to meet that work participation rate.

This amendment says States ought to be allowed that exemption or modifying it. For example, maybe a mother can meet the 2-year requirement. Maybe she cannot.

It is shocking, I say to my colleagues, because they go into a job training program they have trouble with their abuser. So maybe she cannot do that or maybe she can. Maybe the 5-year requirement does not work. We are talking about women and children who have lived through, if they are lucky enough, to have lived through nightmare circumstances.

So I certainly hope the Senate will have the compassion, and the Senate will have the commitment to women and children to allow this very, very important amendment to pass with this very important exemption.

I yield the floor.

Mrs. MURRAY addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I am very proud to join my colleague from Minnesota, Senator WELLSTONE, in offering this extremely important amendment. And I commend him on his very eloquent statement and appreciate his work on this very difficult and very important issue of battered individuals. He has committed a lot of time and energy to that. I want him to know how much I appreciate that.

We all know that America's poor face many obstacles as they try to get back on their feet and become productive, contributing members of our society. However, the women who have been victims of abuse and the children, frankly, who have witnessed this abuse, or were abused victims themselves, have even more barriers which impede their ability to move on and move up.

I would hope that this Senate steps back from the rhetoric of the past few days and the technical terms that we are using, and think for a few minutes about some of the people that this welfare reform bill is going to very directly affect as we pass it, in particular battered women and children.

These abused women and children have lasting scars that will take many years to heal, and they are often forced to live in fear that their abuser will find them and hurt them once again.

This amendment is important because we must recognize that women on public assistance who were battered confront unique obstacles and circumstances as they make the very difficult move from dependency to self-sufficiency. As we attempt to fix our troubled welfare system and help rebuild America's families, let us not make it harder for these women and their kids to get ahead and put there troubled past behind them.

Domestic violence and the impact that it makes on those who suffer this abuse is a very real and a very serious problem. In my State, a survey of

women on public assistance found that over half reported being physically abused by a spouse or a boyfriend.

Throughout this debate on welfare, I have come to the floor several times to talk about June, who is a welfare recipient in my State, and who is my partner in the Walk-a-Mile Program. That is a program that began in the State of Washington. It has gone across the country. That matches a welfare recipient with an elected legislator. We have talked on the phone. We have shared experiences. I shared mine with her. She has shared hers with me. So that we have gotten to know what it is like to live in each other's shoes. And I will tell you that hearing her story has really enabled me to better understand the everyday challenges of a young mother trying to make it on her own and to take care of two young kids. It has been difficult for June to share some of her stories with me because she was in a very abusive relationship. Her children witnessed their mother being beaten and verbally abused. In fact, June told me her most vivid memory of that time was hearing her frightened 3-year old daughter's pleading voice saying, "Daddy, are you going to kill my mommy? Please do not kill my mommy."

That is what this woman came from. And I can tell you as a mother, and as a former preschool teacher, memories like that have an everlasting and dramatic effect on the lives of children who experienced such pain and torment in addition to the emotional trauma that confronts both the woman who suffered abuse and the children who are exposed to it. There are many practical problems which prevent these women from succeeding that we have to consider as we look at this welfare debate.

First, these women who are abused survivors often have problems holding a job.

Second, women who have lived with a batterer often lack skills because their abuser did not allow them to go to work or to attend school.

And third, a woman who has left her abuser often faces the extreme danger of being stalked. And she may not be able to leave her house to go to job training classes or to work. And the same woman who has finally decided that enough is enough may live in fear that her abuser will come after her and to get their children and to take them away. Do we think that this woman is going to be a productive worker? Do we think she is going to leave her kids out of her sight? I can tell you the answer is no. These are difficult problems that these women have to overcome.

This amendment takes those factors into account and offers the flexibility States need to help women who have been abused to successfully improve their lives and that of their children.

We cannot ignore these problems that these women will face, and we have to make some exceptions for them. Believe me, and frankly believe June, my Walk-a-Mile partner. It will be hard enough for these families to make it. But let us not make it impossible.

As Senator WELLSTONE has so eloquently stated, we do not want to force these women back into the home of their abuser because welfare is not available for them.

I urge my colleagues to send the women and children of our Nation the right message: We care about you. We respect you. We want you to succeed.

Please cast your vote in favor of this amendment.

I thank the Chair. I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. I have much more to say, but I believe my colleague from North Carolina wants to speak now and I will wait and follow or respond to him.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. I thank the Chair.

I call up my amendment No. 2609, and I ask for its immediate—

Mr. WELLSTONE. Mr. President, I thought my colleague was here to debate my amendment.

Mr. FAIRCLOTH. I am sorry. I had an amendment. I thought the Senator was through.

Mr. WELLSTONE. No. I am sorry.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Minnesota is recognized.

Mr. WELLSTONE. I thank the Chair.

I apologize to my colleague from North Carolina. I thought he was here to debate my amendment, and I did not want to keep him waiting.

Mr. President, let me just read a few examples that I think tell the story. Linda Duane from Edison, NJ.

Linda is a 38-year-old mother of five. Her ex-husband was a police officer. He was abusive toward her. In 1982, the abuse led her and her husband to separate. "At that time," she says, "domestic violence laws were not set up to protect women; they protected him." She was forced to move into her mother's home and she started to receive welfare. She had married right out of high school and never worked outside her home. When her divorce came through she paid back all the welfare payments.

For five years she was alone and on her own, but she did not get any counseling for her previous abuse. She became involved in an even more abusive relationship. She later separated from him but he continued to stalk her. He came to her place of employment and she was subsequently suspended from her job for a week. He hung himself the next week on her porch while her children were inside the house. She lost her job the next day because she was told she needed to receive mental help before she could return to work. She lost her home and ended up in a battered women's shelter and again began to receive benefits. She is currently in transitional housing where she is trying to put her life together. She just finished some college classes and hopes to return to school this fall.

Mr. President, another woman from St. Paul, MN, Fran Stark.

Fran, who I must say is quite a success story, is currently the office manager for TRIO and tutor coordinator for Student Support Services at the University of Minnesota. She married the year after she graduated from high school. But after 16 years of an abusive relationship she divorced her husband. That left her with two children and very few job skills. She went on welfare. She enrolled her son in Head Start and became involved with parent training courses there. She has since enrolled at the University of Minnesota and is almost done with her course work to get her bachelor's degree.

Lisa Yost from Wilmington, DE.

Lisa is a single mother. She has been on welfare since her daughter was born. The father of her child was unemployed and very abusive. After 3 years she could not take it any more. She had him arrested in 1993 and went to a shelter. She went on welfare and started to take her life back. She started school to get her GED. She testified that,

Without welfare I would not be able to maintain my apartment or provide day care for my child. Food stamps help feed my family and we relied on Medicare while I am attending school. The abuse I suffered lowered my self-esteem which kept me from achieving any goals for myself and my child. Healing took time, counseling and a lot of effort from myself . . . Without the financial assistance of AFDC I would not have been able to get my life back on track.

Mr. President, what this amendment says one more time is let us not have a one size fits all welfare system. Let us at least make some commitment that there will be some compassion built into this piece of legislation.

Again, I say to my colleagues, all you have to do is spend some time with families that have been through this violence.

Monica Seles took 2 years to go back to the tennis court because of what she had to deal with. Imagine what it would be like to be beaten over and over again. How long does it take to heal? What we are saying is that this piece of legislation does not take into account any of these circumstances for women and their children.

What we are saying is that we set at the national level an exemption to the rules. Then we let States decide how to implement this and we make sure that no State, loses sight of this kind of an epidemic that we are faced with in this country and, no State is penalized for making sure that we do not take women who have been receiving some assistance and force them back into violent homes.

If this amendment does not pass, that is precisely what we are doing with this piece of legislation.

Again—and my colleague from Washington did a very fine job of really stating the case—it just takes time. If you

go to visit shelters, many of the women and men that work in the shelters will tell you that over 60 percent of the women who try to find shelters have to be turned away.

You are now on your own. You have been beaten. You suffer from the equivalent of post-traumatic stress syndrome. You are frightened. You are scared. Almost all of your confidence has been beaten out of you or you feel like a failure.

And I again remind my colleagues, every 15 seconds a woman is beaten by a husband or a boyfriend. Over 4,000 women are killed every year by their abuser. Every 6 minutes a woman is forcibly raped and over 60 percent of welfare mothers come from these kinds of abusive situations.

We have to have some exemption. So my amendment specifically says,

Notwithstanding any other provision of this bill, the applicable administering authority of any specified provision shall exempt from (or modify) the application of such provision to any individual who was battered or subjected to extreme cruelty if the physical, mental, or emotional well-being of the individual would be endangered by the application of such provision.

That is legalese. What we are saying is that a State can establish the criteria of what is abuse or extreme cruelty. But States must not be penalized when they make exceptions for the victims of domestic violence. They do not have to count these victims in their calculation of participation rates.

Mr. President, there was a study of a training program in Chicago that found that 58 percent of its participants were current victims of domestic violence, and an additional 26 percent were past victims.

So what happens, to give an example, when a mother now tries to go into a job training program to move into the work force, but the confidentiality she needs to be safe from her husband is breached, or for her boyfriend who is fiercely possessive and angry because she is now in a job training program. And many women get beaten up because they go into these job training programs. We are going to have to take some kind of an allowance. There has to be some sort of an allowance for these kinds of special circumstances.

Mr. President, do we want to say after 5 years no more assistance and you have got to go back into this kind of home regardless of the circumstances? What happens if a woman cannot find a home? What happens if she cannot go into a job training program, no fault of her own? What happens if her children who were also beaten or who saw their mother beaten over and over and over again and are emotionally scarred and she needs to spend more time at home with those children? What happens, Mr. President, if she has to leave the State to get away from her batterer because she is not safe in that State, which means she has to essentially uproot herself, go to another State, start her life all over again, which makes it much more difficult, we all know, to find a home, to find a job, to get back on your own two feet?

Mr. President, if we were going to say that a young mother under 18 years of age should not automatically assume that she can set up a separate household and receive full support. She should stay with her family. Fine.

But what if she is in an abusive home? What if she herself has been battered? Do we want to force her back into that home? Do we want to say that is the only place she can be?

Mr. President, there are many other examples that I could give. But as we search for solutions that will help women and children escape poverty, we must understand the violence that exists in the lives of many economically vulnerable women and their children. And this whole debate on welfare reform that we have had is just one more glaring example of the lack of awareness, I think on our part, unfortunately, and understanding of domestic violence. The whole community has to be there to support these women and their children. Otherwise, they are not going to have the opportunity to become safe, and then to become strong and independent and healthy families. But the burden cannot just be put on the mother.

It seems to me that this debate is the same old "it's not my business" excuse. But it is our business. We must all be involved. Domestic violence is a root cause of violence in our communities, and we must do everything we can to end the cycle of violence. And I will tell you right now, this will not be real welfare reform if it is one-size-fits-all, if we do not at least set some sort of national standard, giving States maximum flexibility to make sure that there is an exemption for women and children who come from such families, or at least some modification.

I say to my colleagues, do not put women and children in a situation where they have no other choice but to go back into a home where their very lives are at risk.

Unfortunately, that is not melodramatic. I know this. I know it from the work that Sheila, my wife, and I do in Minnesota with so many women and children who have been victims of domestic violence. We just lost sight of this.

Last year we passed the Violence Against Women Act. In one short year, has so much changed that we are no longer willing to look at these special concerns and circumstances of the lives of these women and these children?

Mr. President, this is an amendment that deals with the protection of battered individuals. Usually they are women and children; sometimes men. This is an amendment that I think builds into this piece of legislation an extremely important exemption. It is an amendment, if passed, which will be nationally significant because the U.S. Senate will be saying that we understand the magnitude of the problem of domestic violence, of family violence in our Nation, that we understand that in this welfare reform bill there ought to be some sort of allowance set at the national level with States having maximum flexibility so that we do not lose sight of the fact that all too many of these welfare mothers having come from violent homes, having been battered, they may not be able to adhere to all these requirements. And we need to allow for that. We need to have either an exemption or some kind of modification, letting States administer it.

And, Mr. President, if we do not pass this, we are unwittingly going to put many women in a situation where they are going to have to return to that violent home, to that dangerous home, because they have no other alternative. We are cutting them off the welfare. And the welfare was the only alternative they had to that abusive relationship. We cannot go backward in that way.

Mr. President, I do not see anybody here on the floor that seems interested in debating me on this. For tonight, I will take that as a sign of unanimous support. But I leave the floor full of optimism that I will get good bipartisan support for this amendment.

I would yield the floor to my colleague from North Carolina.

Mr. FAIRCLOTH addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

AMENDMENT NO. 2609

Mr. FAIRCLOTH. Mr. President, I call up my amendment No. 2609 and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, amendment No. 2609 now becomes the pending question before the Senate.

The Senator from North Carolina is recognized.

Mr. FAIRCLOTH. Mr. President, I have heard a number of my colleagues remark today that there is no evidence which connects welfare with illegitimacy. And I would say first that not even President Clinton agrees with this. President Clinton believes there is a link between welfare and the collapse of the family.

I ask unanimous consent a list prepared by the Heritage Foundation of 19 recent academic studies on the link between welfare benefits and out-of-wedlock births be printed in the RECORD.

There being no objection, the studies were ordered to be printed in the RECORD, as follows:

STUDIES OF WELFARE AND ILLEGITIMACY

The following is a list of nineteen studies conducted since 1980 on the relationship of welfare to illegitimacy. Fourteen of these studies found a relationship between higher welfare benefits and increased illegitimacy.

1. Bernstam, Mikhail S., "Malthus and Evolution of the Welfare State: An Essay on the Second Invisible Hand, Parts I and II", working papers E-88-41, 42, Palo Alto, CA, Hoover Institution, 1988

Research by Mikhail Bernstam of the Hoover Institution at Stanford University shows that childbearing by young unmarried

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SEC. 1106. ESTABLISHING NATIONAL GOALS TO PREVENT TEENAGE PREGNANCIES.

(a) IN GENERAL.—Not later than January 1, 1997, the Secretary of Health and Human Services shall establish and implement a strategy for—

(1) preventing out-of-wedlock teenage pregnancies, and

(2) assuring that at least 25 percent of the communities in the United States have teenage pregnancy prevention programs in place.

(b) REPORT.—Not later than June 30, 1998, and annually thereafter, the Secretary shall report to the Congress with respect to the progress that has been made in meeting the goals described in paragraphs (1) and (2) of subsection (a).

SEC. 1107. SENSE OF THE SENATE REGARDING ENFORCEMENT OF STATUTORY RAPE LAWS.

It is the sense of the Senate that States and local jurisdictions should aggressively enforce statutory rape laws.

SEC. 1108. SANCTIONING FOR TESTING POSITIVE FOR CONTROLLED SUBSTANCES.

Notwithstanding any other provision of law, States shall not be prohibited by the Federal Government from sanctioning welfare recipients who test positive for use of controlled substances.

SEC. 1109. ABSTINENCE EDUCATION.

(a) INCREASES IN FUNDING.—Section 501(a) of the Social Security Act (42 U.S.C. 701(a)) is amended in the matter preceding paragraph (1) by striking "Fiscal year 1990 and each fiscal year thereafter" and inserting "Fiscal years 1990 through 1995 and $761,000,000 for fiscal year 1996 and each fiscal year thereafter".

(b) ABSTINENCE EDUCATION.—Section 501(a)(1) of such Act (42 U.S.C. 701(a)(1)) is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by adding "and" at the end; and

(3) by adding at the end the following new subparagraph:

"(E) to provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups which are most likely to bear children out-of-wedlock.".

(c) ABSTINENCE EDUCATION DEFINED.—Section 501(b) of such Act (42 U.S.C. 701(b)) is amended by adding at the end the following new paragraph:

"(5) ABSTINENCE EDUCATION.—For purposes of this subsection, the term 'abstinence education' means an educational or motivational program which—

"(A) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

"(B) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

"(C) teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

"(D) teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

"(E) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

"(F) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

"(G) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

"(H) teaches the importance of attaining self-sufficiency before engaging in sexual activity.".

(d) SET-ASIDE.—

(1) IN GENERAL.—Section 502(c) of such Act (42 U.S.C. 702(c)) is amended in the matter preceding paragraph (1) by striking "From" and inserting "Except as provided in subsection (e), from".

(2) SET-ASIDE.—Section 502 of such Act (42 U.S.C. 702) is amended by adding at the end the following new subsection:

"(e) Of the amounts appropriated under section 501(a) for any fiscal year, the Secretary shall set aside $75,000,000 for abstinence education in accordance with section 501(a)(1)(E).

SEC. 1110. PROVISIONS TO ENCOURAGE ELECTRONIC BENEFIT TRANSFER SYSTEMS.

Section 904 of the Electronic Fund Transfer Act (15 U.S.C. 1693b) is amended—

(1) by striking "(d) In the event" and inserting "(d) APPLICABILITY TO SERVICE PROVIDERS OTHER THAN CERTAIN FINANCIAL INSTITUTIONS.—

"(1) IN GENERAL.—In the event"; and

(2) by adding at the end the following new paragraph:

"(2) STATE AND LOCAL GOVERNMENT ELECTRONIC BENEFIT TRANSFER PROGRAMS.—

"(A) EXEMPTION GENERALLY.—The disclosures, protections, responsibilities, and remedies established under this title, and any regulation prescribed or order issued by the Board in accordance with this title, shall not apply to any electronic benefit transfer program established under State or local law or administered by a State or local government.

"(B) EXCEPTION FOR DIRECT DEPOSIT INTO RECIPIENT'S ACCOUNT.—Subparagraph (A) shall not apply with respect to any electronic funds transfer under an electronic benefit transfer program for deposits directly into a consumer account held by the recipient of the benefit.

"(C) RULE OF CONSTRUCTION.—No provision of this paragraph may be construed as—

"(i) affecting or altering the protections otherwise applicable with respect to benefits established by Federal, State, or local law; or

"(ii) otherwise superseding the application of any State or local law.

"(D) ELECTRONIC BENEFIT TRANSFER PROGRAM DEFINED.—For purposes of this paragraph, the term 'electronic benefit transfer program'—

"(i) means a program under which a government agency distributes needs-tested benefits by establishing accounts to be accessed by recipients electronically, such as through automated teller machines, or point-of-sale terminals; and

"(ii) does not include employment-related payments, including salaries and pension, retirement, or unemployment benefits established by Federal, State, or local governments.".

SEC. 1111. REDUCTION IN BLOCK GRANTS TO STATES FOR SOCIAL SERVICES.

Section 2003(c) of the Social Security Act (42 U.S.C. 1397b(c)) is amended—

(1) by striking "and" at the end of paragraph (4); and

(2) by striking paragraph (5) and inserting the following:

"(5) $2,800,000,000 for each of the fiscal years 1990 through 1996 and for each fiscal year after fiscal year 2002; and

"(6) $2,520,000,000 for each of the fiscal years 1997 through 2002.".

And the Senate agree to the same.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, amend the title so as to read as follows: "An Act to restore the American family, enhance support and work opportunities for families with children, reduce out-of-wedlock pregnancies, reduce welfare dependence, and control welfare spending.".

And the Senate agree to the same.

BILL ARCHER,
BILL GOODLING,
PAT ROBERTS,
E. CLAY SHAW, JR.,
JAMES TALENT,
JIM NUSSLE,
TIM HUTCHINSON,
JIM MCCRERY,
LAMAR SMITH,
NANCY L. JOHNSON,
DAVE CAMP,
GARY A. FRANKS,

As an additional conferee:

BILL EMERSON,

As an additional conferee:

RANDY "DUKE" CUNNINGHAM,

Managers on the Part of the House.

WILLIAM V. ROTH, JR.,
BOB DOLE,
JOHN H. CHAFEE,
CHARLES GRASSLEY,
ORRIN HATCH,

From the Committee on Labor and Human Resources:

NANCY LANDON KASSEBAUM,
JIM JEFFORDS,
DAN COATS,
JUDD GREGG,

From the Committee on Agriculture, Nutrition, and Forestry:

JESSE HELMS,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4) to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence, submit the following joint statement to the House and Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment to the text of the bill struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

TABLE 1.—ORGANIZATION OF CONFERENCE COMPARISON DOCUMENT BY TITLE AS COMPARED WITH TITLES OF HOUSE BILL AND SENATE AMENDMENT

Name of title	Conference title	House title	Senate title
Part 1:			
Block Grants for Temporary Assistance for Needy Families.	I	I	I
Supplemental Security Income.	II	VI	II
Child Support Enforcement.	III	VII	IX
Restricting Welfare and Public Benefits for Aliens.	IV	IV	V
Reductions in Federal Government Positions.	V		XII
Housing	VI		X
Protection of Battered Individuals.	(1)		VIII
Miscellaneous	XI	VIII	XIII
Part 2:			
Child Protection	VII	II	XI
Adoption Expenses	VII		VIII
Child Care Block Grant.	VIII	III	VI
Part 3			
Child Nutrition	IX	III	IV
Food Stamp Reform	X	V	III

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TABLE 1.—ORGANIZATION OF CONFERENCE COMPARISON DOCUMENT BY TITLE AS COMPARED WITH TITLES OF HOUSE BILL AND SENATE AMENDMENT—Continued

Name of title	Conference title	House title	Senate title
Commodity Distribution.	X	V	IV

[1] Not included.

TITLE I. BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

1. SHORT TITLE (SECTION 1)

Present law

Not applicable.

House bill

The Personal Responsibility Act of 1995.

Senate amendment

The Work Opportunity Act of 1995.

Conference agreement

The conference agreement follows the House bill and the Senate amendment as follows: The personal Responsibility and Work Opportunity Act of 1995.

2. OBJECTIVES

Present law

To provide for the general welfare by enabling the several States to make more adequate provision for dependent children. (Social Security Act, 1935).

House bill

To restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence.

Senate amendment

To enhance support and work opportunities for families with children, reduce welfare dependence, and control welfare spending.

Conference agreement

The conference agreement follows the House bill and the Senate amendment as follows: To restore the American family, enhance support and work opportunities for families with children, reduce out-of-wedlock pregnancies, reduce welfare dependence, and control welfare spending.

3. SENSE OF THE CONGRESS ON FAMILIES (SECTION 101)

Present law

To provision.

House bill

It is the sense of the Congress that marriage is the foundation of a successful society, and an essential social institution which promotes the interests of children and society at large. The negative consequences of an out-of-wedlock birth on the child, the mother, and society are well documented. Yet the nation suffers unprecedented and growing levels of illegitimacy. In light of this crisis, the reduction of out-of-wedlock births is an important government interest and the policy contained in provisions of this title address the crisis.

Senate amendment

Congress finds that marriage is the foundation of a successful society and an essential institution that promotes the interests of children. Promotion of responsible fatherhood and motherhood is integral to successful child-rearing and well-being of children. It is the sense of Congress that prevention of out-of-wedlock pregnancy and reduction in out-of-wedlock birth are very important government interests and that the policy contained in provisions of this title is intended to address the crisis.

Conference agreement

The conference agreement follows the Senate amendment.

4. REFERENCE TO SOCIAL SECURITY ACT (SECTION 102)

Present law

Not applicable.

House bill

No provision.

Senate amendment

No provision.

Conference agreement

Except as otherwise specifically provided, wherever in this title an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

5. GRANTS TO STATES FOR NEEDY FAMILIES (SECTION 103)

A. Purpose

Present law

Title IV-A, which provides grants to States for aid and services to needy families with children (AFDC), is designed to encourage care of dependent children in their own homes by enabling States to provide cash aid and services, maintain and strengthen family life, and help parents attain maximum self-support consistent with maintaining parental care and protection.

House bill

Block grants for temporary assistance for needy families (Title IV-A) are established to increase the flexibility of States in operating a program designed to:

(1) provide assistance to needy families so that children may be cared for in their homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting work and marriage; and

(3) discourage out-of-wedlock births.

Senate amendment

Block grants for temporary assistance for needy families (Title IV-A) are established to increase the flexibility of States in operating a program designed to:

(1) provide assistance to needy families with minor children;

(2) provide job preparation and opportunities for such families; and

(3) prevent and reduce the incidence of out-of-wedlock pregnancies, with a special emphasis on teen pregnancies, and establish annual goals for preventing and reducing these pregnancies for fiscal years 1996 through 2000.

Conference agreement

The conference agreement follows the House bill and the Senate amendment to read as follows:

Block grants for temporary assistance for needy families (Title IV-A) are established to increase the flexibility of States in operating a program designed to:

(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

(4) encourage the formation and maintenance of two-parent families.

B. Eligible States; State Plan

Present law

A State must have an approved State plan for aid and services to needy families containing 43 provisions, ranging from single-agency administration to overpayment recovery rules. State plans explain the aid and services that are offered by the State. Aid is defined as money payments. For most parents without a child under age 3, States must provide education, work, or training under the JOBS program to help needy families with children avoid long-term welfare dependence. To receive Federal funds, States must share in program costs. The Federal share of costs (matching rate) varies among States and is inversely related to the square of State per capita income. For AFDC benefits and child care, the Medicaid matching rate is used. This rate now ranges from 50 percent to 79 percent among States and averages about 55 percent. For JOBS activities, the rate averages 60 percent; for administrative costs, 50 percent. In FY 1995, 20 percent of employable (nonexempt) adult recipients must participate in education, work, or training under JOBS, and at least one parent in 50 percent of unemployed-parent families must participate at least 16 hours weekly in an unpaid work experience or other work program. States must restrict disclosure of information to purposes directly connected to administration of the program and to any connected investigation, prosecution, legal proceeding or audit. Each State must offer family planning services to all "appropriate" cases, including minors considered sexually active. States may not require acceptance of these services. States must have in effect an approved child support program. States must also have an approved plan for foster care and adoption assistance. States must have an income and verification system (covering AFDC, Medicaid, unemployment compensation, food stamps, and—in outlying areas—adult cash aid) in accordance with Sec. 1137 of the Social Security Act.

House bill

An "eligible State" is a State that, during the 3-year period immediately preceding the fiscal year, had submitted a plan to the Secretary of HHS for approval. The plan must include:

(1) A written document describing how the State will:

a. conduct a program that provides cash benefits to needy families with children, and provides parents with help in preparing for and obtaining employment and becoming self-sufficient;

b. require at least one parent in a family that has received benefits for 24 months to engage in work activities defined by the State;

c. ensure that parents engage in work activities in accord with section 404;

d. treat interstate immigrants, if their benefits differ from State residents;

e. take such reasonable steps as State deems necessary to restrict use and disclosure of information about recipients;

f. take actions to reduce out-of-wedlock pregnancies, including helping unmarried mothers and fathers avoid subsequent pregnancies and provide care for their children; and

g. reduce teen pregnancy, including through the provision of education and counseling to male and female teens.

(2) Certification by the Governor that the State will operate a child support enforcement program.

(3) Certification by the Governor that the State will operate a child protection program, including a foster care and adoption program.

(4) The Secretary shall determine whether the State plan contains the material required.

Senate amendment

An "eligible State" is a State that annually submits to the Secretary: an outline of its program; a 3-year strategic plan; various

individual to live in the home of such parent, guardian, or relative;

"(III) the State agency determines that—

"(aa) the individual or the minor child referred to in subparagraph (A)(ii)(II) is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the individual's own parent or legal guardian; or

"(bb) substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the individual and the minor child lived in the same residence with the individual's own parent or legal guardian; or

"(IV) the State agency otherwise determines that it is in the best interest of the minor child to waive the requirement of subparagraph (A) with respect to the individual or the minor child.

"(iii) SECOND-CHANCE HOME.—For purposes of this subparagraph, the term 'second-chance home' means an entity that provides individuals described in clause (ii) with a supportive and supervised living arrangement in which such individuals are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and the well-being of their children.

"(6) NO MEDICAL SERVICES.—

"(A) IN GENERAL.—A State to which a grant is made under section 403 shall not use any part of the grant to provide medical services.

"(B) EXCEPTION FOR PREPREGNANCY FAMILY PLANNING SERVICES.—As used in subparagraph (A), the term 'medical services' does not include prepregnancy family planning services.

"(7) NO ASSISTANCE FOR MORE THAN 5 YEARS.—

"(A) IN GENERAL.—A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences, subject to this paragraph.

"(B) MINOR CHILD EXCEPTION.—In determining the number of months for which an individual who is a parent or pregnant has received assistance under the State program funded under this part, the State shall disregard any month for which such assistance was provided with respect to the individual and during which the individual was—

"(i) a minor child; and

"(ii) not the head of a household or married to the head of a household.

"(C) HARDSHIP EXCEPTION.—

"(i) IN GENERAL.—The State may exempt a family from the application of subparagraph (A) by reason

of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

"(ii) LIMITATION.—The number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 20 percent of the average monthly number of families to which assistance is provided under the State program funded under this part.

"(iii) BATTERED OR SUBJECT TO EXTREME CRUELTY DEFINED.—For purposes of clause (i), an individual has 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.

"(D) DISREGARD OF MONTHS OF ASSISTANCE RECEIVED BY ADULT WHILE LIVING ON AN INDIAN RESERVATION OR IN AN ALASKAN NATIVE VILLAGE WITH 50 PERCENT UNEMPLOYMENT.—In determining the number of months for which an adult has received assistance under the State program funded under this part, the State shall disregard any month during which the adult lived on an Indian reservation or in an Alaskan Native village if, during the month—

"(i) at least 1,000 individuals were living on the reservation or in the village ; and

"(ii) at least 50 percent of the adults living on the reservation or in the village were unemployed.

"(E) RULE OF INTERPRETATION.—Subparagraph (A) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.

"(F) RULE OF INTERPRETATION.—This part shall not be interpreted to prohibit any State from expending State funds not originating with the Federal Government on benefits for children or families that have become ineligible for assistance under the State program funded under this part by reason of subparagraph (A).

"(8) DENIAL OF ASSISTANCE FOR 10 YEARS TO A PERSON FOUND TO HAVE FRAUDULENTLY MISREPRESENTED RESIDENCE IN ORDER TO OBTAIN ASSISTANCE IN 2 OR MORE STATES.—A State to which a grant is made under section 403 shall not use any part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under pro-

104TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
104–725

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

CONFERENCE REPORT

TO ACCOMPANY

H.R. 3734

JULY 30, 1996.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1996

26–206

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Senate amendment

Same.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

40. PROHIBITIONS; REQUIREMENTS—MEDICAL SERVICES

Present law

States must assure that family planning services are offered to all AFDC recipients who request them. (The Secretary is to reduce AFDC payments by 1 percent for failure to offer and provide family planning services to those requesting them.)

House bill

Federal family assistance grants may not be used to provide medical services; Federal funds may, however, be used to provide prepregnancy family planning services.

Senate amendment

Same.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

41. PROHIBITIONS; REQUIREMENTS—TIME-LIMITED BENEFITS

Present law

No provision.

House bill

Federal family assistance grants may not be used to provide assistance for the family of a person who has received block grant aid for 60 months (or fewer, at State option), whether or not consecutive. States may give hardship exemptions in a fiscal year to up to 20 percent of their average monthly caseload, including individuals who have been battered or subjected to sexual abuse (but States are not required to exempt these persons). When considering an individual's length of stay on welfare, States are to count only time during which the individual received assistance as the head of household or as the spouse of the household head. Any State funds spent to aid persons no longer eligible for TANF after 5 years of benefits may be counted toward the maintenance-of-effort requirement.

This part shall not be interpreted to prohibit a State from using State funds not originating with the Federal government to aid families that lose eligibility for the block grant program because of the 5-year time limit.

Senate amendment

Same, except adds an exemption from the time limit for persons who live on a reservation of an Indian tribe with a population

of at least 1,000 persons and with at least 50 percent of the adult population not employed.

Conference agreement

The conference agreement follows the House bill and the Senate amendment on the time limit policy, and includes the Senate provision on exceptions for certain Indian populations and the House provision specifying States' authority to use State and local funds to provide support, including cash assistance, after 5 years. (For a description of other Federal funds that may be provided such families, see the conference agreement description of item 33 above.)

42. PROHIBITIONS; REQUIREMENTS—FRAUDULENT MISREPRESENTATION OF RESIDENCE IN TWO STATES

Present law

No provision.

House bill

Any person convicted in Federal court or State court of having fraudulently misrepresented residence in order to obtain benefits or services in two or more States from the family assistance grant, Medicaid, Food Stamps, or Supplemental Security Income programs is ineligible for family assistance grant aid for 10 years.

Senate amendment

Same.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

43. PROHIBITIONS; REQUIREMENTS—FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATORS

Present law

States may provide a recipient's address to a State or local law enforcement officer who furnishes the recipient's name and social security number and demonstrates that the recipient is a fugitive felon and that the officer's official duties include locating or apprehending the felon.

House bill

No assistance may be provided to an individual who is fleeing to avoid prosecution, custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony (or, in New Jersey, a high misdemeanor), or who violates probation or parole imposed under Federal or State law.

Any safeguards established by the State against use or disclosure of information about individual recipients shall not prevent the agency, under certain conditions, from providing the address of a recipient to a law enforcement officer who is pursuing a fugitive felon or parole or probation violator. This provision applies also to a recipient sought by an officer not because he is a fugitive but be-

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United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 104th CONGRESS, FIRST SESSION

Vol. 141 WASHINGTON, THURSDAY, DECEMBER 21, 1995 No. 206

House of Representatives

CONFERENCE REPORT ON H.R. 4, PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY ACT OF 1995

Mr. ARCHER submitted the following conference report and statement on Wednesday, December 20, 1995, on the bill (H.R. 4) to restore the American family, reduce illigitimacy, control welfare spending, and reduce welfare dependence:

CONFERENCE REPORT (H. REPT. 104-430)

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 4), to restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Personal Responsibility and Work Opportunity Act of 1995".

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

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at least 12 weeks of age in his or her care, and has not successfully completed a high-school education (or its equivalent), if the individual does not participate in—

"(A) educational activities directed toward the attainment of a high school diploma or its equivalent; or

"(B) an alternative educational or training program that has been approved by the State.

"(6) NO ASSISTANCE FOR TEENAGE PARENTS NOT LIVING IN ADULT-SUPERVISED SETTINGS.—

"(A) IN GENERAL.—

"(i) REQUIREMENT.—Except as provided in subparagraph (B), a State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to an individual described in clause (ii) of this subparagraph if the individual and the minor child referred to in clause (ii)(II) do not reside in a place of residence maintained by a parent, legal guardian, or other adult relative of the individual as such parent's, guardian's, or adult relative's own home.

"(ii) INDIVIDUAL DESCRIBED.— For purposes of clause (i), an individual described in this clause is an individual who—

"(I) has not attained 18 years of age; and

"(II) is not married, and has a minor child in his or her care.

"(B) EXCEPTION.—

"(i) PROVISION OF, OR ASSISTANCE IN LOCATING, ADULT-SUPERVISED LIVING ARRANGEMENT.— In the case of an individual who is described in clause (ii), the State agency referred to in section 402(a)(4) shall provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement, taking into consideration the needs and concerns of the individual, unless the State agency determines that the individual's current living arrangement is appropriate, and thereafter shall require that the individual and the minor child referred to in subparagraph (A)(ii)(II) reside in such living arrangement as a condition of the continued receipt of assistance under the State program funded under this part attributable to funds provided by the Federal Government (or in an alternative appropriate arrangement, should circumstances change and the current arrangement cease to be appropriate).

"(ii) INDIVIDUAL DESCRIBED.—For purposes of clause (i), an individual is described in this clause if the individual is described in subparagraph (A)(ii), and—

"(I) the individual has no parent, legal guardian or other appropriate adult relative described in subclause (II) of his or her own who is living or whose whereabouts are known;

"(II) no living parent, legal guardian, or other appropriate adult relative, who would otherwise meet applicable State criteria to act as the individual's legal guardian, of such individual allows the individual to live in the home of such parent, guardian, or relative;

"(III) the State agency determines that—

"(aa) the individual or the minor child referred to in subparagraph (A)(ii)(II) is being or has been subjected to serious physical or emotional harm, sexual abuse, or exploitation in the residence of the individual's own parent or legal guardian; or

"(bb) substantial evidence exists of an act or failure to act that presents an imminent or serious harm if the individual and the minor child lived in the same residence with the individual's own parent or legal guardian; or

"(IV) the State agency otherwise determines that it is in the best interest of the minor child to waive the requirement of subparagraph (A) with respect to the individual or the minor child.

"(iii) SECOND-CHANCE HOME.—For purposes of this subparagraph, the term 'second-chance home' means an entity that provides individuals described in clause (ii) with a supportive and supervised living arrangement in which such individuals are required to learn parenting skills, including child development, family budgeting, health and nutrition, and other skills to promote their long-term economic independence and the well-being of their children.

"(7) NO MEDICAL SERVICES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a State to which a grant is made under section 403 shall not use any part of the grant to provide medical services.

"(B) EXCEPTION FOR FAMILY PLANNING SERVICES.—As used in subparagraph (A), the term 'medical services' does not include family planning services.

"(8) NO ASSISTANCE FOR MORE THAN 5 YEARS.—

"(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), a State to which a grant is made under section 403 shall not use any part of the grant to provide cash assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences.

"(B) MINOR CHILD EXCEPTION.—In determining the number of months for which an individual who is a parent or pregnant has received assistance under the State program funded under this part, the State shall disregard any month for which such assistance was provided with respect to the individual and during which the individual was—

"(i) a minor child; and

"(ii) not the head of a household or married to the head of a household.

"(C) HARDSHIP EXCEPTION.—

"(i) IN GENERAL.—The State may exempt a family from the application of subparagraph (A) by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

"(ii) LIMITATION.—The number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 15 percent of the average monthly number of families to which assistance is provided under the State program funded under this part.

"(iii) BATTERED OR SUBJECT TO EXTREME CRUELTY DEFINED.—For purposes of clause (i), an individual has 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.

"(D) RULE OF INTERPRETATION.—Subparagraph (A) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.

"(9) DENIAL OF ASSISTANCE FOR 10 YEARS TO A PERSON FOUND TO HAVE FRAUDULENTLY MISREPRESENTED RESIDENCE IN ORDER TO OBTAIN ASSISTANCE IN 2 OR MORE STATES.—A State to which a grant is made under section 403 shall not use any part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under programs that are funded under this title, title XIX, or the Food Stamp Act of 1977, or benefits in 2 or more States under the supplemental security income program under title XVI.

"(10) DENIAL OF ASSISTANCE FOR FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATORS.—

"(A) IN GENERAL.—A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to any individual who is—

"(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

"(ii) violating a condition of probation or parole imposed under Federal or State law.

"(B) EXCHANGE OF INFORMATION WITH LAW ENFORCEMENT AGENCIES.—If a State to which a grant is made under section 403 establishes safeguards against the use or disclosure of information about applicants or recipients of assistance under the State program funded under this part, the safeguards shall not prevent the State agency administering the program from furnishing a Federal, State, or local law enforcement officer, upon the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that—

"(i) the recipient—

"(I) is described in subparagraph (A); or

"(II) has information that is necessary for the officer to conduct the official duties of the officer; and

"(ii) the location or apprehension of the recipient is within such official duties.

"(11) DENIAL OF ASSISTANCE FOR MINOR CHILDREN WHO ARE ABSENT FROM THE HOME FOR A SIGNIFICANT PERIOD.—

"(A) IN GENERAL.—A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance for a minor child who has been, or is expected by a parent (or other caretaker relative) of the child to be, absent from the home for a period of 45 consecutive days or, at the option of the State, such period of not less than 30 and not more than 90 consecutive days as the State may provide for in the State plan submitted pursuant to section 402.

"(B) STATE AUTHORITY TO ESTABLISH GOOD CAUSE EXCEPTIONS.—The State may establish such good cause exceptions to subparagraph (A) as the State considers appropriate if such exceptions are provided for in the State plan submitted pursuant to section 402.

"(C) DENIAL OF ASSISTANCE FOR RELATIVE WHO FAILS TO NOTIFY STATE AGENCY OF ABSENCE OF CHILD.—A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance for an individual who is a parent (or other caretaker relative) of a minor child and who fails to notify the agency administering the State program funded under this part of the absence of the minor child from the home for the period specified in or provided for pursuant to subparagraph (A), by the end of the 5-day period that begins with the date that it becomes clear to the parent (or relative) that the minor child will be absent for such period so specified or provided for.

"(12) INCOME SECURITY PAYMENTS NOT TO BE DISREGARDED IN DETERMINING THE AMOUNT OF ASSISTANCE TO BE PROVIDED TO A FAMILY.—If a State to which a grant is made under section 403 uses any part of the grant to provide assistance for any individual who is receiving a payment under a State plan for old-age assistance approved under section 2, a State program funded under part B that provides cash payments for foster care, or the supplemental security income program under title XVI, then the State shall not disregard the payment in determining the amount of assistance to be provided under the State program funded under this part, from funds provided by the Federal Government, to the family of which the individual is a member.

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appropriate relative or the State agency determines (1) that they had suffered, or might suffer, harm in the relative's home or (2) that the requirement should be waived for the sake of the child.

The State shall provide or assist a minor mother in finding a suitable home, a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement. The amendment authorizes to be appropriated, and appropriates funding for second-chance homes for unmarried teenage parents ($25 million yearly for FYs 1996 and 1997 and $20 million yearly for FYs 1998-2000).

Further, if a State aids these unwed minor mothers, it must require those who have not completed high school, or its equivalent, to attend school unless their child is under 12 weeks old. If the mother fails to attend high school or an approved alternative training program, the State must reduce her benefit or end it.

Conference agreement

The conference agreement follows the Senate amendment regarding the state option to deny cash assistance for out-of-wedlock births. The conference agreement follows the Senate amendment with regard to second chance homes, except that funding is authorized but not appropriated for this purpose. The conference agreement follows the Senate amendment regarding the school requirement for unwed minor mothers.

(4) No additional assistance for additional children

Present law

No provision.

House bill

Block grant funds may not be used to provide additional cash benefits for a child born to a recipient of cash welfare benefits, or an individual who received cash benefits at any time during the 10-month period ending with the birth of the child. Mothers to whom children are born as a result of rape or incest are exempted. Block grant funds can be used to provide non-cash (voucher) assistance to young mothers and their children.

Senate amendment

Explicitly permits States to deny aid to child born to a mother already receiving aid under the program or to one who received benefits from the program at any time during the 10 months ending with the baby's birth.

Conference agreement

The conference agreement represents a compromise between the House and Senate provisions. The compromise is that States must deny additional assistance to mothers already receiving assistance who have babies, but that States can exempt themselves from this requirement if they enact a law to the effect that the State wants to be excluded from this Federal requirement.

(5) No assistance for more than 5 years

Present law

No provision.

House bill

Block grant funds may not be used to provide cash benefits for the family of an individual who, after attaining 18 years of age, has received block grant funds for 60 months, whether or not successive; States are permitted to provide hardship exemptions from the 60-month time limit for up to 10 percent of their caseload.

Senate amendment

Block grant funds may not be used to provide cash benefits for the family of a person who has received block grant aid for 60 months (or less at State option), whether or not consecutive. States may give hardship exemptions to up to 20 percent of their caseload. (Exempted from the 60-month time limit is a person who received aid as a minor child and who later applied as the head of her own household with a minor child.)

Conference agreement

The conference agreement follows the Senate amendment, with the modification that no assistance may be provided beyond 5 years and that States may exempt up to 15 percent of their caseload from this limit. Battered individuals may qualify for this exemption, but States are not required to exempt such individuals.

(6) Reduction or elimination of assistance for noncooperation in child support

Present law

As a condition of eligibility, applicants or recipients must cooperate in establishing paternity of a child born out-of-wedlock, in obtaining support payments, and in identifying any third party who may be liable to pay for medical care and services for the child.

House bill

Block grant funds may not be used to provide cash benefits to persons who fail to cooperate with the State child support enforcement agency in establishing the paternity of any child of the individual; the child support agency defines cooperation.

Senate amendment

Maintains current law. In addition, see "Payments To States" for penalty against a State that fails to enforce penalty requested by the IV-D against a person who does not cooperate in establishing paternity.

Conference agreement

The conference agreement follows the Senate amendment with the modification that States must deny a parent's share of the family welfare benefit if the parent fails to cooperate; the State may deny benefits to the entire family for failure to cooperate.

(7) No assistance for families not assigning support rights to the State

Present law

As a condition of AFDC eligibility, applicants must assign child support and spousal support rights to the State.

House bill

Block grant funds may not be used to provide cash benefits to a family with an adult who has not assigned to the State rights to child support or spousal support.

Senate amendment

Gives States the option to require applicants for temporary family assistance (and recipients) to assign child support and spousal support rights to the State.

Conference agreement

The conference agreement follows the House bill.

(8) Withholding portion of aid for child whose paternity is not established

Present law

No provision.

House bill

If, at the time a family applies for assistance, the paternity of a child in the family has not been established, the State must impose a financial penalty ($50 or 15 percent of the monthly benefits of a family of that size, whichever the State chooses) until the paternity of the child is established. Once paternity is established, all the money withheld as a penalty must be remitted to the family if it is still eligible for aid. Mothers to whom children are born as a result of rape or incest are exempted from this penalty. Provision effective 1 year after enactment (2 years at State option).

Senate amendment

No provision.

Conference agreement

The conference agreement follows the House bill with the modification that States may, but are not required to, impose a financial penalty if paternity is not established.

(9) Denial of benefits to persons who fraudulently received aid in two States

Present law

No provision.

House bill

Ineligible for block grant assistance for 10 years is any individual convicted of having fraudulently misrepresented residence (or found by a State to have made a fraudulent statement) in order to obtain benefits or services from two or more States from the block grant, Medicaid, Food Stamps, or Supplemental Security Income.

Senate amendment

Ineligible for block grant assistance for 10 years is any person convicted in Federal court or State court of having fraudulently misrepresented residence in order to obtain benefits or services from two or more States from the cash block grant, Medicaid, Food Stamps, or Supplemental Security Income.

Conference agreement

The conference agreement follows the Senate amendment.

(10) Denial of aid for fugitive felons, probation and parole violators

Present law

No provision.

House bill

No assistance may be provided to an individual who is fleeing to avoid prosecution, custody or confinement after conviction for a crime (or an attempt to commit a crime) that is a felony (or, in New Jersey, a high misdemeanor), or who violates probation or parole imposed under Federal or State law.

Any safeguards established by the State against use or disclosure of information about individual recipients shall not prevent the agency, under certain conditions, from providing the address of a recipient to a law enforcement officer who is pursuing a fugitive felon or parole or probation violator. This provision applies also to a recipient sought by an officer not because he is a fugitive but because he has information that the officer says is necessary for his official duties. In both cases the officer must notify the State that location or apprehension of the recipient is within his official duties.

Senate amendment

A State shall furnish law enforcement officers, upon their request, the address, social security number, and photograph (if available) of any recipient if the officers notify the agency that the recipient is a fugitive felon, or a violator of probation or parole, or that he has information needed by the officers to perform their duties, and that the location or apprehension of the recipient is within the officers' official duties.

Conference agreement

The conference agreement follows the House bill.

(11) No assistance for minor children who are absent, or relatives who fail to notify agency of child's absence

Present law

Regulations allow benefits to continue for children who are "temporarily absent" from home.

House bill

No assistance may be provided for a minor child who has been absent from the home for

"(c) NONDISCRIMINATION PROVISIONS.—The following provisions of law shall apply to any program or activity which receives funds provided under this part:

"(1) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

"(2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

"(3) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(4) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

"(d) ALIENS.—For special rules relating to the treatment of aliens, see section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

42 USC 609.

"SEC. 409. PENALTIES.

"(a) IN GENERAL.—Subject to this section:

"(1) USE OF GRANT IN VIOLATION OF THIS PART.—

"(A) GENERAL PENALTY.—If an audit conducted under chapter 75 of title 31, United States Code, finds that an amount paid to a State under section 403 for a fiscal year has been used in violation of this part, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year quarter by the amount so used.

"(B) ENHANCED PENALTY FOR INTENTIONAL VIOLATIONS.—If the State does not prove to the satisfaction of the Secretary that the State did not intend to use the amount in violation of this part, the Secretary shall further reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year quarter by an amount equal to 5 percent of the State family assistance grant.

"(2) FAILURE TO SUBMIT REQUIRED REPORT.—

"(A) IN GENERAL.—If the Secretary determines that a State has not, within 1 month after the end of a fiscal quarter, submitted the report required by section 411(a) for the quarter, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to 4 percent of the State family assistance grant.

"(B) RESCISSION OF PENALTY.—The Secretary shall rescind a penalty imposed on a State under subparagraph (A) with respect to a report if the State submits the report before the end of the fiscal quarter that immediately succeeds the fiscal quarter for which the report was required.

"(3) FAILURE TO SATISFY MINIMUM PARTICIPATION RATES.—

"(A) IN GENERAL.—If the Secretary determines that a State to which a grant is made under section 403 for a fiscal year has failed to comply with section 407(a) for the fiscal year, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than the applicable percentage of the State family assistance grant.

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"(B) APPLICABLE PERCENTAGE DEFINED.—As used in subparagraph (A), the term 'applicable percentage' means, with respect to a State—

"(i) if a penalty was not imposed on the State under subparagraph (A) for the immediately preceding fiscal year, 5 percent; or

"(ii) if a penalty was imposed on the State under subparagraph (A) for the immediately preceding fiscal year, the lesser of—

"(I) the percentage by which the grant payable to the State under section 403(a)(1) was reduced for such preceding fiscal year, increased by 2 percentage points; or

"(II) 21 percent.

"(C) PENALTY BASED ON SEVERITY OF FAILURE.—The Secretary shall impose reductions under subparagraph (A) with respect to a fiscal year based on the degree of noncompliance, and may reduce the penalty if the noncompliance is due to circumstances that caused the State to become a needy State (as defined in section 403(b)(6)) during the fiscal year.

"(4) FAILURE TO PARTICIPATE IN THE INCOME AND ELIGIBILITY VERIFICATION SYSTEM.—If the Secretary determines that a State program funded under this part is not participating during a fiscal year in the income and eligibility verification system required by section 1137, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant.

"(5) FAILURE TO COMPLY WITH PATERNITY ESTABLISHMENT AND CHILD SUPPORT ENFORCEMENT REQUIREMENTS UNDER PART D.—Notwithstanding any other provision of this Act, if the Secretary determines that the State agency that administers a program funded under this part does not enforce the penalties requested by the agency administering part D against recipients of assistance under the State program who fail to cooperate in establishing paternity or in establishing, modifying, or enforcing a child support order in accordance with such part and who do not qualify for any good cause or other exception established by the State under section 454(29), the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year (without regard to this section) by not more than 5 percent.

"(6) FAILURE TO TIMELY REPAY A FEDERAL LOAN FUND FOR STATE WELFARE PROGRAMS.—If the Secretary determines that a State has failed to repay any amount borrowed from the Federal Loan Fund for State Welfare Programs established under section 406 within the period of maturity applicable to the loan, plus any interest owed on the loan, the Secretary shall reduce the grant payable to the State under section 403(a)(1) for the immediately succeeding fiscal year quarter (without regard to this section) by the outstanding loan amount, plus the interest owed on the outstanding amount. The Secretary shall not forgive any outstanding loan amount or interest owed on the outstanding amount.

"(7) FAILURE OF ANY STATE TO MAINTAIN CERTAIN LEVEL OF HISTORIC EFFORT.—

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"(b) REASONABLE CAUSE EXCEPTION.—

"(1) IN GENERAL.—The Secretary may not impose a penalty on a State under subsection (a) with respect to a requirement if the Secretary determines that the State has reasonable cause for failing to comply with the requirement.

"(2) EXCEPTION.—Paragraph (1) of this subsection shall not apply to any penalty under paragraph (7) or (8) of subsection (a).

"(c) CORRECTIVE COMPLIANCE PLAN.—

"(1) IN GENERAL.—

"(A) NOTIFICATION OF VIOLATION.—Before imposing a penalty against a State under subsection (a) with respect to a violation of this part, the Secretary shall notify the State of the violation and allow the State the opportunity to enter into a corrective compliance plan in accordance with this subsection which outlines how the State will correct the violation and how the State will insure continuing compliance with this part.

"(B) 60-DAY PERIOD TO PROPOSE A CORRECTIVE COMPLIANCE PLAN.—During the 60-day period that begins on the date the State receives a notice provided under subparagraph (A) with respect to a violation, the State may submit to the Federal Government a corrective compliance plan to correct the violation.

"(C) CONSULTATION ABOUT MODIFICATIONS.—During the 60-day period that begins with the date the Secretary receives a corrective compliance plan submitted by a State in accordance with subparagraph (B), the Secretary may consult with the State on modifications to the plan.

"(D) ACCEPTANCE OF PLAN.— A corrective compliance plan submitted by a State in accordance with subparagraph (B) is deemed to be accepted by the Secretary if the Secretary does not accept or reject the plan during 60-day period that begins on the date the plan is submitted.

"(2) EFFECT OF CORRECTING VIOLATION.—The Secretary may not impose any penalty under subsection (a) with respect to any violation covered by a State corrective compliance plan accepted by the Secretary if the State corrects the violation pursuant to the plan.

"(3) EFFECT OF FAILING TO CORRECT VIOLATION.—The Secretary shall assess some or all of a penalty imposed on a State under subsection (a) with respect to a violation if the State does not, in a timely manner, correct the violation pursuant to a State corrective compliance plan accepted by the Secretary.

"(4) INAPPLICABILITY TO FAILURE TO TIMELY REPAY A FEDERAL LOAN FUND FOR A STATE WELFARE PROGRAM.—This subsection shall not apply to the imposition of a penalty against a State under subsection (a)(6).

"(d) LIMITATION ON AMOUNT OF PENALTIES.—

"(1) IN GENERAL.—In imposing the penalties described in subsection (a), the Secretary shall not reduce any quarterly payment to a State by more than 25 percent.

"(2) CARRYFORWARD OF UNRECOVERED PENALTIES.—To the extent that paragraph (1) of this subsection prevents the Secretary from recovering during a fiscal year the full amount of penalties imposed on a State under subsection (a) of this

"PART A—BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

"SEC. 401. PURPOSE. 42 USC 601.

"(a) IN GENERAL.—The purpose of this part is to increase the flexibility of States in operating a program designed to—

"(1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

"(2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

"(3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

"(4) encourage the formation and maintenance of two-parent families.

"(b) NO INDIVIDUAL ENTITLEMENT.—This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part.

"SEC. 402. ELIGIBLE STATES; STATE PLAN. 42 USC 602.

"(a) IN GENERAL.—As used in this part, the term 'eligible State' means, with respect to a fiscal year, a State that, during the 2-year period immediately preceding the fiscal year, has submitted to the Secretary a plan that the Secretary has found includes the following:

"(1) OUTLINE OF FAMILY ASSISTANCE PROGRAM.—

"(A) GENERAL PROVISIONS.—A written document that outlines how the State intends to do the following:

"(i) Conduct a program, designed to serve all political subdivisions in the State (not necessarily in a uniform manner), that provides assistance to needy families with (or expecting) children and provides parents with job preparation, work, and support services to enable them to leave the program and become self-sufficient.

"(ii) Require a parent or caretaker receiving assistance under the program to engage in work (as defined by the State) once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier.

"(iii) Ensure that parents and caretakers receiving assistance under the program engage in work activities in accordance with section 407.

"(iv) Take such reasonable steps as the State deems 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.

"(v) Establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Sep-1996 04:02pm

TO: (See Below)

FROM: Jeremy D. Benami
Domestic Policy Council

SUBJECT: Pres Memo on DV

Betsy just called me. The President is now scheduled to do an event on Domestic Violence on October 1 to mark the beginning of domestic violence awareness week. She wants to release the Presidential Memo then.

She understands what it can and cannot have in it - i.e., no reference to the time limit, penalties, etc.

Do you all have a problem with that?

Lyn is going to be working with DOJ and HHS and Betsy's office to get the memo drafted, cleared etc. Obviously, the memo will pass by all of us for approval.

Lyn: let's talk when you are back.

Distribution:

TO: Carol H. Rasco
TO: Bruce N. Reed

CC: Lyndell Hogan
CC: Diana M. Fortuna
CC: Elena Kagan
CC: Deborah L. Fine

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

25-Sep-1996 07:10pm

TO: (See Below)

FROM: Lyndell Hogan
Domestic Policy Council

SUBJECT: Domestic Violence Initiative

FYI,

As I think everyone knows, The Women's Office has an Oct. 1 date for a Presidential event around Domestic Violence. They would like to announce the Domestic Violence Directive at that event.

I have talked with Joan Silverstein at DOJ and Ann Rosewater at HHS. Both DOJ and HHS support the decision to go with a Presidential Directive to the AG and Sec. Shalala without any regulatory measure.

DOJ and HHS will fax me drafts of their portion of the directive tomorrow, we'll combine them, iron out any differences, and pass it around for comment.

Obviously, Oct. 1 is approaching quickly, so we need to move fast.

Thanks!

Distribution:

TO: Jeremy D. Benami
TO: Betsy Myers
TO: Deborah L. Fine
TO: Dennis Burke
TO: Elena Kagan
TO: Bruce N. Reed

CC: Elizabeth E. Drye

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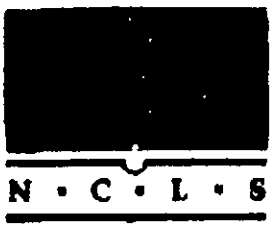

Facsimile Cover Sheet

To: **Carrie Wofford**
Company: White House
Phone:
Fax: 202-456-7311

From: **Wendy Pollack**
Phone: 312/263-3830 x238
Fax:

Date: 09/16/96
Pages including this cover page: 9 plus attachments = 23

Comments: This is a listing of sections of H.R. 3734 where the impact on DV victims is most acute. If you have any questions, do not hesitate to call me. Thanks.

Pam Conkos wants to meet w/ DPC staff to discuss these welfare implementation issues

205 West Monroe, 2d Floor ■ Chicago, Illinois 60606-5013 ■ 312.263.3830
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DRAFT--9/3/96

H.R. 3734 (P.L. 104-193) Through The Domestic Violence Lens

A Guide for DV and Welfare Advocates

by Wendy Pollack
Poverty Law Project
312-263-3830 x238

The following is a list of sections of HR 3734 where adoption or lack of adoption and/or the interpretation of the statute will have potentially additional significant negative impacts on women and girls who are victims and survivors of domestic violence. Some are mandatory and cannot be waived, but States can be encouraged/discouraged to adopt with State funds; some are mandatory, but can be waived for DV victims if a State adopts the Wellstone Amendment; some are State options and can be defined and implemented by a State in any manner. In many instances, the bill is silent, leaving it up to the States to decide. This is true of provisions such as the child exclusion and benefit levels. HHS should play an affirmative role in encouraging definitions and implementation that is the least punitive and cruel, and see to it that State programs are designed to transition recipients to work rather than simply cut them off. See, W. Pollack, Twice Victimized: Domestic Violence and Welfare "Reform", 30 Clearinghouse Review 329 (July 1996), attached.

Title I--TANF

1. Title I, § 401(b). No entitlement to assistance. This is deadly. States may enact their own entitlement to assistance with State funds and should be encouraged to do so.

2. Title I, § 402(a)(1)(A)(ii). "Work" and "job ready" (both State defined) must have broad definitions to include activities that lead to self-sufficiency, such as counseling and drug treatment; and flexible enough to allow for lapses in ability to engage in work activity, as demonstrated by behavior such as absenteeism or poor job performance, etc.

Work required after 24 months of assistance. It is a State option to require work in less than 24 monts. Discourage States from decreasing this time limit. States must be encouraged to waive this work requirement for DV victims who are not able to successfully engage in activities. This can be waived with adoption of Wellstone Amendment.

3. Title I, § 402(a)(1)(A)(iii). Work activities under § 407. Waive for DV victims individually screened and assessed as necessary, under Wellstone Amendment.

4. Title I, § 402(a)(1)(A)(iv). What are "reasonable steps" to ensure confidentiality are heightened for DV victims.

5. Title I, § 402(a)(1)(A)(v). Actions necessary to prevent and reduce out-of-wedlock pregnancies, particularly among teens, may differ for DV victims (victims of rape, incest, child abuse, child sexual abuse).

6. Title I, § 402(a)(1)(B)(i) and § 404(c). State option to treat families moving into the State from another State differently than other families. Discourage adoption by State. Restrictions on the right to travel is a deterrent to DV victims who often must cross state lines to escape abuse. If State adopts this option, State can opt to exclude DV victims or waive rule for DV victims under the Wellstone Amendment.

7. Title I, § 402(a)(1)(B)(ii). State option to exclude noncitizens. This allows DV victims no escape. Discourage adoption by State. If State adopts this option, State can opt to exclude DV victims or waive rule for DV victims under Wellstone Amendment.

8. Title I, § 402(a)(1)(B)(iii). Objective criteria for the delivery of benefits and determination for eligibility and for fair and equitable treatment must be informed by the epidemic of DV in our society and among the current AFDC population.

9. Title I, § 402(a)(1)(B)(iv). State option to require community service employment after 2 months of assistance receipt. States must be encouraged to opt out of this requirement or at least waive for DV victims under Wellstone Amendment.

10. Title I, § 402(a)(4). States must ensure that DV victims and survivors and DV, education and training and other welfare advocates, are consulted and have sufficient opportunity to comment on the State plan.

11. Title I, § 402(a)(7). This is the Wellstone Amendment. State option to screen and identify DV victims and survivors and waive any program requirement that would make it more difficult to escape violence or unfairly penalize DV victims and survivors. This applies to all Titles of the Act (even if not specifically cited here).

States must be encouraged to adopt this option. Any individual exempted from the 5 year (or less, at state option--to be discouraged) lifetime limit on assistance shall not be counted towards the 20% hardship exemption under § 408(a)(1)(B), § 408(a)(7), § 408(a)(7)(C) and § 409(a)(9). Any individual exempted from any other requirement or State option under this Act shall not be counted towards the denominator when computing the percentage of the caseload that fulfills the particular requirement. For example, an individual exempted from work participation requirements shall not be counted in the computation that determines the percentage of the caseload meeting the State work participation requirements; an individual exempted from cooperating with paternity establishment and/or child support enforcement shall

not be counted towards the percentage of the caseload for which paternity has been established and/or a child support order has been entered. States must keep separate statistics on the number of DV victims exempt from each program requirement and the percentage of the caseload DV victims make up.

12. Title I, § 402(a)(7)(B) and § 408(a)(7)(C)(iii). The definition of domestic violence must be broad enough to include all forms of DV, not just severe physical assault. This includes physical abuse such as slapping, pushing and shoving, mental abuse such as harassing phone calls, verbal attacks and put downs, and threats of physical and mental abuse including threats to take the child(ren) away, abuse of the court system, abuse of visitation, etc.

Required corroboration should be limited to the DV victim's sworn statement, unless there is an independent, reasonable basis to question the individual's credibility. Third-party corroboration does not exist in most instances of DV (not just among the AFDC population) and is not always in the best interest of the DV victim or her child(ren). It is often wise to not go to court for an Order of Protection so that the abuser cannot locate the DV victim.

13. Title I, § 403(a)(2). Bonus to States for decrease in illegitimacy. Any out-of-wedlock pregnancies or births resulting from rape, incest and/or a DV situation should not be counted in these statistics if the State has adopted the Wellstone Amendment (§ 402(a)(7)).

14. Title I, § 403(a)(4)(C). Formula for measuring state performance developed by the Secretary in consultation with the National Governors' Association should include provisions that award States that adopt and properly implement the Wellstone Amendment (§ 402(a)(7)).

15. Title I, § 404(a). Grants may be used in any manner reasonably calculated to accomplish the purpose of this part. This should include the provision of services necessary to help DV victims and survivors become self-sufficient, such as counseling for DV victim and her children, drug treatment programs, education and training programs, job retention programs.

16. Title I, § 404(i). Learnfare is a State option. Discourage adoption. If adopted, exclude DV victims or at least waive under the Wellstone Amendment.

17. Title I, § 404(j). State option to require a high school diploma or GED for any family that includes an adult over age 20 and younger than age 51 that does not have, or is not working toward attaining, a secondary high school diploma or GED. State option to require this under the Food Stamp Program too. Discourage adoption. If adopted, exclude DV victims or at least waive rule for DV victims under the Wellstone Amendment.

18. Title I, § 407. Mandatory work requirements. Under the Wellstone Amendment, DV victims and survivors (in one- or two-parent families) are exempt from meeting the work requirements and excluded from the denominator when calculating the monthly participation rate; and/or the definition of "work activity" must be broadened to include activities that lead to self-sufficiency such as counseling and drug treatment, and flexible enough to allow for lapses in ability to participate as demonstrated by absenteeism or poor job performance. Separate work participation calculations must be made for families with DV victims and survivors.

19. Title I, § 407(c)(2)(C) and § 408(a)(4). Teen parents required to be in school to meet work participation requirements and eligibility requirements. DV victims and survivors waived from this requirement and not included in State participation rate under the Wellstone Amendment.

20. Title I, § 407(e). State option to terminate entire family if an individual refuses to engage in work. Discourage States from adoption. If adoption, States must adopt Wellstone Amendment and screen for DV to ensure DV is not the cause of "refusal."

21. Title I, § 407(h). States should impose certain requirements on noncustodial, nonsupporting parents under age 18. States must first screen to discover if custodial parent is a DV victim or survivor and the noncustodial parent is an abuser to determine proper course of action, including <u>not</u> contacting abuser.

22. Title I, § 407(i). Congressional review of state work programs in 1999 should include review of impact on DV victims and survivors.

23. Title I, § 408(a)(2). State option to deny entire family assistance for noncooperation in establishing paternity or obtaining child support. Discourage adoption. States should never deny entire family assistance if DV alleged, even if State does not find good cause. Just because a State determines there is not good cause in a particular case does not mean DV does not exist.

24. Title I, § 408(a)(5)(B)(i) & (ii). Teenage parents under 18 must live in adult-supervised settings to be eligible for benefits. Safety for DV victims and their children must be paramount in this decision.

25. Title I, § 408(a)(7). Five year lifetime limit on assistance. Discourage States from adopting a shorter lifetime limit. Provision waived if States adopt Wellstone Amendment. This is in addition to the 20% hardship exception. See #12 and #34.

26. Title I, § 408(a)(7)(F). State option to use State funds on benefits for children or families that have become ineligible for assistance due to the 60 month lifetime limit. Encourage States to adopt this provision.

27. Title I, § 408(a)(8). Denial of assistance for 10 years to a person found to have fraudulently misrepresented residence in order to obtain assistance in 2 or more states. May be waived for DV victims and survivors under Wellstone Amendment.

28. Title I, § 408 (a)(9). Denial of assistance for fugitive felons and probation and parole violators. May be waived for DV victims and survivors under Wellstone Amendment.

29. Title I, § 408(a)(10). Denial of assistance for minor children who are absent from the home for a significant period and failure to report absence of child. Good cause should include situations where child(ren) are away from the home for safety and well-being reasons due to DV in the home and it is deemed appropriate to continue payments to the parent (or caretaker relative), again for safety and well-being reasons (e.g., benefits necessary to pay rent/mortgage on home large enough to accommodate child(ren) when they return); and DV must be a good cause reason for failure to report absence.

30. Title I, § 408(b). Individual Responsibility Plans. Assessment of skills and employability should include whether or not the individual is a DV victim or survivor, the impact this may have on her ability to comply with the plan, and the DV services provided by the State. DV must be a good cause reason for failure to comply with an individual responsibility plan.

31. Title I, § 409(a)(3). Penalties for failure of States to comply with § 407(a) should not be imposed by HHS if such failure is due to the waiver of DV victims and survivors from the mandatory work participation requirements under the Wellstone Amendment.

32. Title I, § 409(a)(5) and (8). Penalties for failure to comply with paternity establishment and child support enforcement requirements should not be imposed by HHS if such failure is due to the waiver of DV victims and survivors from cooperation under the Wellstone Amendment, in addition to other good cause or other exception established by the State.

33. Title I, § 409(a)(7). Maintenance of Effort. Qualified state expenditures should include activities specifically for DV victims and survivors. Encourage States to use State funds for activities specifically for DV victims and survivors as part of their MOE.

34. Title I, § 409(a)(9). Penalties for failure to comply with 5-year limit on assistance should not be imposed by HHS if such failure is due to the waiver of DV victims and survivors from the time limit under the Wellstone Amendment.

35. Title I, § 409(b). HHS may not impose a penalty on a State if HHS determines that the State has reasonable cause for failing to comply with the requirement. However, no reasonable cause shall apply to the 5 year time limit on assistance or the maintenance of effort.

36. Title I, § 411(a)(1)(A). Data collection should include the number of families on assistance that are determined to be DV victims and survivors under the Wellstone Amendment and which requirements they receive a waiver and for how long. Estimates can be used only if the State adopts and properly implements the Wellstone Amendment.

37. Title I, § 412 and § 1108. Grants to Indian tribes and territories. All provisions relevant to DV victims and survivors in other parts of this statute should also apply to Indian tribes.

38. Title I, § 413(a). Research on impact of this legislation in States that adopt the Wellstone Amendment and States that do not adopt the Wellstone Amendment should be a priority.

39. Title I, § 413(b). Innovative approaches to reducing welfare dependency and increasing child well-being should include programs that seek to reduce and eliminate DV in the lives of recipients and help victims and survivors along the path to recovery and self-sufficiency.

40. Title I, § 413(d) and (e). HHS should not rank a State least successful in its work program or out-of-wedlock births if that State has adopted the Wellstone Amendment and has a large population of DV victims and survivors among its caseload.

41. Title I, § 413(g). HHS reports to Congress should include numbers of DV victims and survivors in each category to be reported to Congress.

42. Title I, § 413(h). Funding of studies and demonstrations should include studies and demonstrations that seek to reduce and eliminate DV and to test methods and programs that best help DV victims and survivors get safe and remain safe and recover and become self-sufficient.

43. Title I, § 413(i). The link between child poverty rates and DV should be evaluated and incorporated into any corrective action plan.

44. Title I, § 415. Waivers. HHS should approve waivers that seek to reduce and eliminate DV, including an entitlement for DV victims and survivors, proper screening and assessment of DV and individual responsibility plans that are flexible enough to meet the needs of DV victims and survivors whether in crisis mode (safety planning) or not: flexibility in time limits, work requirements, services provided, etc.

45. Title I, § 114(a)(3). Medicaid. Discourage States from adopting the option to terminate medical assistance to the adult for failure to meet the work requirement or at least waive this rule for DV victims and survivors under the Wellstone Amendment.

46. Title I, § 115. State option to deny assistance and food

stamps for certain drug-related convictions. States should be encouraged to opt out of this provision or exclude DV victims and survivors from this rule or at least waive the rule for DV victims and survivors under the Wellstone Amendment.

47. Title I does not mandate any minimum benefit levels. States should be encouraged to at least maintain the existing the current benefits levels. Keep in mind what it takes for DV victims and survivors to escape violence and to remain safe so that they can afford not to return to their abusers.

Title II--SSI

48. Title II, Subtitle A. Eligibility restrictions should be waived for DV victims and survivors under the Wellstone Amendment.

49. Title II, Subtitle D. Studies regarding the SSI Program should include studies of the number of DV victims and survivors and whether or not DV is a contributing cause of the disability.

Title III--Child Support

50. Title III, Subtitle D. Paternity establishment. DV victims and survivors should have good cause for refusing to cooperate even if not specifically mentioned in this section or at least the rule is waived under the Wellstone Amendment. Screening for DV and proper notice of the alternatives to, the legal consequences of, the rights afforded (including the right to refuse to cooperate due to current, past or fear of future DV) and the responsibilities that arise from establishing paternity should take place prior to requesting voluntary or requiring mandatory cooperation in paternity establishment programs and procedures, including genetic testing, hospital-based programs, and services offered by birth record agencies and other agencies. See, W. Pollack, In-Hospital Paternity Establishment Bill Deserves a Veto, Illnois Welfare News, Vol. 1, Issue 11 at 4 (July 1996), attached.

Also, "cooperation" should include attesting that the individual has provided all the information she has in her possession or can reasonably obtain about the noncustodial parent. States should be encouraged to adopt this definition of cooperation. This is particularly important for DV victims and survivors who want to establish paternity and/or obtain child support or who applied for and were denied a good cause exception. If States adopt a narrower definition of cooperation, they should exclude DV victims and survivors or at least waive this rule for DV victims and survivors under the Wellstone Amendment.

51. Title III, Subtitle E. HHS should develop an incentive system that rewards States for screening for current, past and future DV and exempting DV victims and survivors from paternity establishment and/or child support enforcement. The calculation of paternity establishment percentage should exclude DV victims and survivors under the Wellstone Amendment.

52. Title III, Subtitle F, § 373. State option to enforce child support orders against grandparents in cases of minor parents. Discourage States from adoption. If adopted, exclude DV victims and survivors or at least waive rule under the Wellstone Amendment.

53. Title III, Subtitle I. No noncustodial parent access or visitation program should be developed or funded that may put DV victims and survivors at risk of physical or emotional harm.

Title IV--Restrictions on Aliens

54. Title IV. Restrictions on aliens receiving federal public benefits should be waived for DV victims and survivors under the Wellstone Amendment, especially if abuser is sponsor. Encourage States to use State funds to cover aliens.

Title VIII--Food Stamps

55. Title VIII. Income and assets of abuser should not be counted against DV victims and survivors if they have no access to them.

56. Title VIII, § 815(d)(1), § 817 and § 824. Employment and training requirements. DV should be good cause for nonparticipation based on sworn statement of DV victim or survivor. No other corroboration should be necessary unless there is an independent, reasonable basis to question the credibility of the individual. The limitation on receipt of food stamps to 3 months within a 36 month period, unless employed (§ 824) should not apply to DV victims and survivors under the Wellstone Amendment.

57. Title VIII, § 819 through 821. Disqualifications. DV victims and survivors should not be disqualified for food stamps under the Wellstone Amendment.

58. Title VIII, § 822. Cooperation with child support. Discourage States from adopting this option. If adopted, DV should always be good cause for noncooperation. No corroboration other than individuals sworn statement should be required.

59. Title VIII, § 829. Failure to comply with other means-tested programs. Food stamp benefits should not decrease if it is determined that failure to comply with other programs is due to DV, even if this is not the reason for failure to comply by personnel of other program or agency.

Twice Victimized—Domestic Violence and Welfare "Reform"

by Wendy Pollack

I. Introduction

The extent of domestic violence in our society and its impact on victims are well documented.[1] Domestic violence must be prevented and reduced. Strong public policy to this end is currently reflected in both federal and state legislation[2] generally limited to criminal and civil codes that outline procedures for police departments and the courts with respect to domestic violence situations (e.g., presumptive or mandatory arrest, the issuance of orders of protection, antistalking laws, child custody issues). But domestic violence affects every aspect of its victims' lives, and its impact reverberates throughout our society, including our welfare system.[3] This should not be surprising since domestic violence often makes women poor and keeps them poor.[4] Only recently, however, has the relationship between domestic violence and the receipt of public assistance, particularly Aid to Families with Dependent Children (AFDC), been documented, and only recently, too, have its public policy implications been considered.[5]

The prevalence of domestic violence in the lives of AFDC recipients is startling. Research supports what domestic violence advocates and welfare-to-work service providers have observed for years—between 50 percent and 80 percent of women receiving AFDC nationwide are past or cur-

[1] *See, e.g.*, Children's Working Group of the Mass. Coalition of Battered Women Service Groups, The Children of Domestic Violence (Dec. 1995) (unpublished manuscript); Susan Lloyd, The Effects of Domestic Violence on Female Labor Force Participation (Nov. 1995); BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT, NATIONAL CRIME VICTIMIZATION SURVEY, VIOLENCE AGAINST WOMEN: ESTIMATES FROM THE REDESIGNED SURVEY (Aug. 1995) (hereinafter NATIONAL CRIME VICTIMIZATION SURVEY); B. Groves et al., *Silent Victims: Children Who Witness Violence*, 269 JAMA 262 (1993); LENORE E. WALKER, THE BATTERED WOMAN SYNDROME (1984); LENORE E. WALKER, THE BATTERED WOMAN (1979).

[2] *See, e.g.*, The Violence Against Women Act of 1994, Pub. L. No. 103-322, tit. IV, 108 Stat. 1902–55, codified in part at 42 U.S.C. §§ 13931–40; The Illinois Domestic Violence Act of 1986, 750 ILCS 60/101 *et seq.*

[3] *See* Joan Zorza, *Woman Battering: High Costs and the State of the Law*, 28 CLEARINGHOUSE REV. 383 (Special Issue 1994).

[4] Melanie Shepard & Ellen Pence, *The Effect of Battering on the Employment Status of Women*, 3 AFFILIA 55 (1988).

[5] 42 U.S.C. §§ 601 *et seq.*

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rent victims of domestic violence.[6] This fact alone should drastically alter the tenor of the welfare reform debate among our representatives in both the executive and legislative branches on the federal and state level. The current emphasis on policies that blame and punish women and their children for being poor and for their alleged failure to take responsibility for their actions is misplaced. Policies that provide a safe harbor for women and their children experiencing varying levels of crisis as a result of current or past domestic violence victimization must take priority. The link between alternative means of financial support and dependency upon the abuser is strong. Without an entitlement to cash and other forms of public assistance, women may not be able to extricate themselves and their children from violent situations. Women often stay with or return to their abusers because they lack the resources to support themselves and their children. Policies that limit entitlement to public assistance increase dependency, which increases domestic violence.

Like it or not, AFDC plays a key role in saving battered women's lives.[7] As meager as it is, a monthly AFDC check provides the safety net necessary to allow women and children to escape violent situations and to stay safe. Unfortunately, little or no awareness of or sensitivity to this issue is reflected in most of the proposed federal and state welfare legislation or state waiver requests of current federal welfare law to the Department of Health and Human Services (HHS).[8] Many of the policies falling under the rubric of "welfare reform" not only ignore the reality of domestic violence among the AFDC

[6] Jody Raphael, *Prisoners of Abuse: Policy Implications of the Relationship Between Domestic Violence and Welfare Receipt*, in this issue; *id.*, PRISONERS OF ABUSE: DOMESTIC VIOLENCE AND WELFARE RECEIPT (Apr. 1996) (Clearinghouse No. 51,815); *id.*, DOMESTIC VIOLENCE: TELLING THE UNTOLD WELFARE-TO-WORK STORY (Jan. 30, 1995) (Clearinghouse No. 51,820); *id.*, CHICAGO COMMONS WEST HUMBOLDT EMPLOYMENT TRAINING CENTER (ETC) DEMONSTRATION LITERACY LABORATORY: A MODEL WELFARE-TO-WORK PROGRAM, A PRELIMINARY REPORT (1993); PEGGY ROPER & GREGORY WEEKS, WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, CHILD ABUSE, TEENAGE PREGNANCY, AND WELFARE DEPENDENCY: IS THERE A LINK? (1993).

[7] "[W]omen's escape from violence in their own homes is dependent, to a great extent, on available financial resources." Martha F. Davis & Susan J. Kraham, *Protecting Women's Welfare in the Face of Violence*, 22 FORDHAM L. REV. 1141, 1153 (1995).

[8] There are exceptions. The "Family Violence Exemption" amendment to the Senate version of the welfare legislation (H.R. 4, as amended and passed by the Senate on September 19, 1995) did attempt to address the issue of domestic violence and the ability of its victims to comply with the new requirements of welfare reform. Introduced by Sen. Paul Wellstone (D-Minn.), the amendment would allow, but not mandate, states to waive or modify the strict mandates of the welfare bill to address the distinctive needs of economically vulnerable women and families who are living in or fleeing from dangerous homes. The amendment did not survive the joint House-Senate conference committee.

Also, a resolution that expressed the sense of Congress that any welfare reform legislation passed by Congress should protect women experiencing domestic violence was adopted unanimously on May 9, 1996, by the House Budget Committee. The resolution is now part of the FY 1997 budget resolution and will be voted on by the full body. This effort was engineered by Cong. Lucille Roybal-Allard (D-Cal.). Senator Wellstone will circulate his version of the resolution on the Senate side. No further congressional action has been taken at this writing.

Utah's Single Parent Demonstration Project (SPED) takes an individualized approach to welfare reform. SPED emphasizes mutual responsibility of the government and the family. There are no fixed time limits. Case managers have a duty to work with every client, regardless of the barriers she may face, and to provide the needed services, including counseling for domestic violence victims. Individually designed self-sufficiency agreements consider each client's particular barriers. Participation in SPED includes activities which address these various barriers.

Under section 1115(a) of the Social Security Act, the Department of Health and Human Services (HHS) may approve waivers for experimental programs that are likely to assist in promoting the objectives of the Aid to Families with Dependent Children (AFDC) program. 42 U.S.C. § 1315(a).

population but also punish victims for being victims. Unrealistic requirements, harsh penalties, and misguided incentives on states put added pressure on domestic violence victims to choose between personal safety and economic support. These policies also increase the risk of abuse.

The federal welfare conference bill, H.R. 4, which was vetoed by the President on January 9, 1996, contained a number of harmful provisions addressed in this article.[9] Many of these provisions are already incorporated in several state welfare programs under HHS waivers and are likely to be included in future incarnations of federal welfare reform legislation. Further implementation of these policies will result in negative consequences for most AFDC recipients for a variety of reasons but will have particularly devastating effects on most of the 50 percent to 80 percent of AFDC recipients who are also victims of domestic violence.[10]

The following discussion reviews provisions of H.R. 4 that would limit entitlement to public assistance and thereby create potentially grave consequences for domestic violence victims. If these provisions become law, states may choose to implement them through state law and/or required state plans in ways that decrease the danger and the damage to women and their children.[11] Some suggestions are offered.

JIM WEST

II. The Child Exclusion Policy

H.R. 4 would have denied additional cash benefits for a child born to a family already receiving cash assistance or if assistance was received at any time during the ten-month period ending with the birth of a child.[12] Firstborn children and children born as a result of rape or incest were excepted from this provision. States were entitled to "opt out" of the child exclusion provision by passing legislation specifically exempting the state. If states did nothing, child exclusion would become the law automatically.

This provision wrongly assumed that women get pregnant to increase their benefit amount in spite of mounting social science research finding little or no correlation between the level of welfare benefits and birthrates.[13] It also

[9] H.R. CONF. REP. No. 430, 104th Cong., 1st Sess. (1995) (conference report to accompany H.R. 4). This bill took its bill number from the initial House of Representatives bill, the Personal Responsibility Act, H.R. 4, 104th Cong., 1st Sess. (1995). H.R. 4, tit. I, § 103, Block Grants to States, amends pt. A, tit. IV (codified at 42 U.S.C. §§ 601 *et seq.*).

[10] Many other important provisions in H.R. 4 and state demonstrations have a negative impact on domestic violence victims by denying them cash and other key supports. These include provisions on noncitizens, Medicaid, and the Food Stamp Program.

[11] H.R. 4, tit. I, § 103, pt. A, § 402.

[12] *Id.*, pt. A, § 408.

[13] *See* Michael C. Laracy, If It Seems Too Good to Be True, It Probably Is: Observations on Rutgers University's Initial Evaluation Findings That New Jersey's Child Exclusion Law Has Not Reduced AFDC Birth Rates . . . Contrary to Previous Claims by Its Supporters (June 21, 1995); GREGORY ACS, THE IMPACT OF WELFARE ON YOUNG WOMEN'S CHILDBEARING DECISIONS (1995) (available from the Urban Institute); Joint Statement by 76 Researchers Re: Welfare and Out-of-Wedlock Births (June 23, 1994); CONGRESSIONAL BUDGET OFFICE, SOURCES OF SUPPORT FOR ADOLESCENT MOTHERS 43 (1990) ("[s]tudies of the effects of AFDC on the fertility of female teenagers find no evidence that benefit levels encourage childbearing"); Mark Rank, *Fertility Among Women on Welfare: Incidence and Determinants*, 54 AM. SOCIO. REV. 296-403 (Apr. 1989); David Ellwood & Mary Jo Bane, The Impact of AFDC on Family Structure and Living Arrangements (1984) (Working Paper No. 92A-82).

failed to deal adequately with the fact that domestic violence often includes rape and incest.[14]

Like it or not, Aid to Families with Dependent Children plays a key role in saving battered women's lives.

Although the federal legislation allowed exemptions to the child exclusion policy for children born as a result of rape or incest, advocates who have dealt with the exemption issue as part of the AFDC paternity establishment and child support cooperation eligibility requirement know this is not a simple issue in a welfare system that is often premised on the belief that women do not tell the truth about these matters. What should be a fairly straightforward procedure can dissolve into an unnecessary and maddeningly complex ordeal for victims.[15] For states choosing not to opt out of the child exclusion policy, four areas of concern emerge.

First, it would be up to states to define rape and incest. And what is rape? Is it "real" rape with a stranger as the perpetrator and the use of physical force, not just threats?[16] Does it include marital rape? Is rape in this civil law context different from a state criminal code's definition? Should it be?

Second, states would determine the type of corroboration necessary as proof of rape or incest. Must there be a police report? A medical report within 24 hours of the incident? Would evidence necessary to convince a court of law to convict the rapist be enough to convince a welfare department that a rape occurred?

Third, to whom and under what circumstances must a rape or incest survivor reveal this most personal of tragedies? To a public assistance caseworker with no training in domestic violence issues in a crowded office with no privacy, no guarantee of confidentiality, and no support systems in place to help her deal with the consequences of such an intrusion into her privacy?

Fourth, when and how would AFDC applicants and recipients be given notice of the exemption to the child exclusion policy for children born as a

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[14] "Each year [1992 and 1993] an estimated 500,000 women were the victims of some form of rape or sexual assault. Thirty-four percent of these victimizations were completed rapes, and an additional 28 percent were attempted rapes. . . . Friends and acquaintances committed about half of all rapes and sexual assaults. Intimate offenders (husband, ex-husband, boyfriend or ex-boyfriend) committed an additional 26 percent. Altogether, offenders known to the victim accounted for about three-quarters of all rapes and sexual assaults against women. Strangers committed 18 percent of such assaults." NATIONAL CRIME VICTIMIZATION SURVEY, *supra* note 1, at 6.

Several studies report a high association between teenage pregnancy and sexual abuse. From one-half to two-thirds of young mothers surveyed had been sexually molested prior to their first pregnancy. Over 40 percent had been the victims of rape. As many as 25 percent became pregnant as a direct result of rape. Previously victimized girls may be more likely to get pregnant intentionally—in one survey sexual abuse victims were twice as likely as nonvictims to say they wanted to have a baby.

Patterns of adult abuse of teenage girls leading to pregnancies emerge from the results. Only 29 percent of babies born to teen mothers are fathered by teenagers, and 71 percent are fathered by men over 20. One survey found that 46 percent of abusers were at least ten years older than their victims. Adult men are particularly likely to be the fathers of children born to very young girls. Further, in one study of teen mothers, more than one-quarter of the victims were abused by male family members—fathers, grandfathers, brothers, uncles, and others. Only a small number reported that they were abused by strangers. Fathers, grandfathers, brothers, and uncles accounted for almost 38 percent of 1993 Illinois sexual abuse cases. THE OUNCE OF PREVENTION FUND, HEART TO HEART: AN INNOVATIVE APPROACH TO PREVENTING CHILD SEXUAL ABUSE (1995); Kathleen Quinn, *Teen Pregnancy or Adult Abuse?*, COALITION COMMENTARY, Spring 1995 (available from the Illinois Coalition Against Sexual Assault).

[15] See sec. III, *infra*, for a discussion of paternity establishment and child support enforcement.

[16] *See* SUSAN ESTRICH, REAL RAPE (1987).

result of rape or incest? Applicants and recipients must be given adequate notice of exception and due process if denied an increase in benefits for the additional child. At the very least, adequate notice must be comprehensible oral and written notice when the state agency becomes aware that a woman is pregnant or at the time the child is added to the household, whichever comes first.[17]

These concerns are real. Women and girls vastly underreport rape and incest. Studies indicate that victims often do not tell *any* third party about sexual assault. Fear, guilt, and shame prevent women from reporting sexual assault.[18] Sexual assault victims often do not want their family, friends, or the media to find out.[19] Only 16 percent of women who are sexually assaulted report the crime to the police.[20] The National Women's Study reports that victims had a medical examination in only 17 percent of all rape cases. In only 30 percent of these cases were doctors informed that a rape had occurred.[21] In cases where the women received a medical examination, only 40 percent had the examination within 24 hours of the assault. Failure to disclose sexual assault to doctors and delays of more than 24 hours are likely to lead to inconclusive medical determinations of sexual assault. Moreover, because many women do not suffer serious physical injuries during sexual assault, reports often do not result in reliable medical determinations as to whether an assault occurred.[22] Incidents that are perpetrated by intimate offenders are unlikely to be reported.[23]

Expecting untrained caseworkers to probe victims about their sexual assault in an inappropriate setting is another violation of the victim. How many men victimized by rape or incest would reveal that information to a stranger who was not adequately trained in dealing with these issues, who did not have the victim's interests at heart and may, in fact, have diametrically opposed interests (i.e., reducing the caseload, reducing the rate of illegitimacy among recipients, increasing the rate of paternities established and child support orders entered, increasing the rate of employment among recipients, etc.) and without, at the very least, the assurance of confidentiality?

The child exclusion policy would further pressure states to define narrowly the exemptions for children born as a result of rape or incest and to demand third-party corroboration that does not exist in most instances.

In combination with incentives for reducing a state's illegitimacy ratio and abortion rate, the child exclusion policy would further pressure states to define narrowly the exemptions for children born as a result of rape and incest and to demand third-party corroboration that does not exist in most instances of rape and incest (not just among the AFDC population). In addition, the

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[17] *See* NATIONAL CTR. ON WOMEN & FAMILY LAW, THE "GOOD CAUSE" EXCEPTION TO THE COOPERATION REQUIREMENT FOR APPLICANTS FOR AFDC CHILD SUPPORT (1995) (Item No. 169) for examples of notices of the right to claim a good-cause exception.

[18] JUDITH MUSICK, YOUNG, POOR, AND PREGNANT: THE PSYCHOLOGY OF TEENAGE MOTHERHOOD (1993). In a survey funded by the Ounce of Prevention Fund, 39 percent of the teens reported that they never told anyone about the sexual abuse they experienced before the survey. *Id.*

[19] NATIONAL VICTIM CTR., RAPE IN AMERICA: A REPORT TO THE NATION 4 (1992). Seventy-one percent of rape victims were concerned that their family would find out, 68 percent feared that others outside their family would find out, and 50 percent had concerns that the media would publish their names.

[20] *Id.* Rape remains the most underreported violent crime in America.

[21] *Id.*

[22] *Id.* at 4.

[23] NATIONAL CRIME VICTIMIZATION SURVEY, *supra* note 1, at 1.

child exclusion policy would do nothing to protect victims of rape and incest from further victimization by the welfare system, its employees and contractors, and its misguided policies.[24]

To overcome some of these problems, advocates should review their states' criminal code and civil or criminal domestic violence statute to determine whether definitions of the terms that cover incidents of incest and rape, and the evidence necessary to convict an offender of these crimes, are useful. Women's advocates have been writing laws and outlining practices and procedures concerning violence against women issues for years, and many good examples are available in several states.

Leaving it to states to define cooperation with paternity establishment has already proven hazardous for recipients of Aid to Families with Dependent Children.

Advocates should make sure the terms for incest and rape are not so narrow or vague that women who are victims are improperly denied assistance. For example, current federal regulations limit the good-cause exemptions for cooperation with paternity establishment and child support enforcement proceedings to children "conceived as a result of incest or forcible rape."[25] Although not necessarily ideal language, the Illinois Criminal Code uses the terms "sexual assault" and "aggravated sexual assault" instead of "rape" or "forcible rape":

> The accused commits criminal sexual assault if he or she [commits an act of sexual penetration]: (1) . . . by the use of force or threat of force; or (2) . . . and the accused knew that the victim was unable to understand the nature of the act or was unable to give knowing consent; or (3). . . with a victim who was under 18 years of age when the act was committed and the accused was a family member; or (4) . . . with a victim who was at least 13 years of age but under 18 years of age when the act was committed and the accused was 17 years of age or over and held a position of trust, authority or supervision in relation to the victim.[26]
>
> "Family member" means a parent, grandparent or child, whether by whole or half blood or adoption and includes a step-grandparent, step-parent or step-child. "Family member" also means, where the victim is a child under 18 years of age, an accused who has resided in the household with such child continuously for at least one year.[27]
>
> "Force or threat of force" means the use of force or violence, or the threat of force or violence, including but not limited to the following situations: (1) when the accused threatens to use force or violence on the victim or on any other person, and the victim under the circumstances reasonably believed that the accused had the ability to execute that threat; or (2) when the accused has overcome the victim by use of superior strength or size, physical restraint or physical confinement.[28]

[24] H.R. 4, tit. I, § 103, pt. A, § 403.

[25] 45 C.F.R. § 232.42(a)(2)(i).

[26] 720 ILCS 5/12-13. Sexual assault involving a family member (brother, sister, father, mother, stepfather, or stepmother, whether by whole or half-blood or adoption) and a woman over the age of 18 is defined as "incest," consistent with the Illinois Criminal Code. *Id.* at 5/11-11.

[27] *Id.* at 5/12-12(c).

[28] *Id.* at 5/12-12(d)

> Aggravated criminal sexual assault [includes] . . . the accused [causing] bodily harm to the victim. . . .[29]

Under Illinois's six-month paternity establishment waiver request, to be excepted from cooperation with paternity establishment and child support enforcement for incest and rape, an AFDC recipient must furnish third-party corroboration. Thus, the Illinois Department of Public Aid puts a greater burden on an AFDC recipient seeking to prove that her child was born as a result of rape or incest than is necessary to convict the offender of the crime in an Illinois court of law.[30] This is not acceptable. Incest and rape survivors should not be held to an improperly high standard. A woman's confidential statement should be sufficient to establish that her child was born as a result of incest or sexual assault, unless there is an independent, reasonable basis to doubt the veracity of her statement. The information given by the woman regarding the incest or sexual assault should not be disclosed to any other individual or entity (including the federal government and other state agencies). All documentation produced relating the circumstances under which the child was conceived should prominently display a statement to this effect.

Advocates must work with state welfare agencies to sensitize caseworkers to these issues. At the very least, a good referral system must be put in place to ensure that women are not unfairly denied the additional benefits necessary to care for their newborns.

III. Paternity Establishment and Child Support Provisions

A. Cooperation

Current federal law requires AFDC applicants and recipients to cooperate in establishing paternity and obtaining child support.[31] The AFDC paternity establishment and child support enforcement program is also referred to as the IV-D program.

Federal regulations define cooperation as providing "verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the applicant or recipient . . . or attesting to a lack of information, under penalty of perjury."[32] If the applicant or recipient is not cooperative, she becomes ineligible for cash benefits and Medicaid, and the AFDC benefit for the family is reduced.[33] Applicants and recipients are advised that they must cooperate in order to receive AFDC. They may be told of the benefits of cooperation such as establishing future rights to social security, veterans, and other government benefits for the child. But there is no requirement that before

[29] *Id.* at 5/12-14(2). "'Bodily harm' means physical harm, and includes, but is not limited to, sexually transmitted disease, pregnancy, and impotence." *Id.* at 5/12-12(b).

[30] Illinois Dep't of Pub. Aid, State of Illinois Request for Federal Waiver for the Six Month Paternity Establishment Demonstration (submitted July 14, 1995) (Clearinghouse No. 51,150). The Department of Public Aid published emergency regulations at 19 Ill. Reg. 15337–554, 15519 (Nov. 13, 1995) (amending Ill. Admin. Code tit. 89, §§ 160, 160.62 (D(2)). The emergency regulations affected by the state's pending waiver request have not yet been implemented.

The Illinois Supreme Court has ruled that a victim's testimony does not need to be corroborated for a criminal defendant to be found guilty of a sex offense. In Illinois v. Schott, 582 N.E.2d 690 (Ill. 1991), the court affirmed the conviction of a man for taking aggravated indecent liberties with his stepdaughter. In doing so, the court abolished the former requirement that a sex-offense victim's testimony be clear and convincing or "substantially corroborated" in order to sustain a sex-offense conviction and replaced it with the "reasonable doubt" test used in all other criminal cases. The court noted that the testimony of no other category of crime victim is held to be automatically suspect or to require additional proof. The corroboration requirement, it said, was a "sexist anachronism." Id. at 695 (quoting Illinois v. Roy, 201 Ill. App. 3d 166, 185 (1990)).

[31] 42 U.S.C. §§ 602(a)(26), 654 *et seq.* (Title IV-D).

[32] 45 C.F.R. § 232.12(b)(1) & (3).

[33] *Id.* § 232.12(d).

Family Violence Prevention Fund

Founded in 1980 by Esta Soler, the Family Violence Protection Fund is a national nonprofit organization focusing on domestic violence education, prevention, and public policy reform. The fund's central mission is to stem the epidemic of violence in our homes. It has sought to further its objectives through several initiatives.

In June 1994, the fund launched a national public education campaign, "There's No Excuse for Domestic Violence," designed to promote prevention and intervention. The campaign includes television, radio, and print public service announcements, community organizing, and more.

The fund functions as a national clearinghouse for domestic violence as a health issue, distributing information to medical researchers, health care professionals, and others on the topic. The fund has also developed a National Health Initiative on Domestic Violence, which assesses and improves hospital emergency departments' responses to battered women. Through this initiative, the fund is developing a model protocol and training program for emergency health care workers.

The fund's Judicial Education Project aims to improve courts' handling of cases involving domestic violence. The fund has created national training curricula both for judges presiding in the criminal courts and for judges hearing civil court cases. It is also developing a program to educate judges adjudicating child custody matters on how domestic violence affects children. To address the gaps between the fields of domestic violence and family preservation, the fund is developing a model training program.

Through its Battered Immigrant Women's Rights Project, the fund works to expand victims' access to legal assistance and culturally appropriate services. The fund has compiled cases nationwide documenting the extent of physical and sexual abuse experienced by immigrant and refugee women.

The fund has a library of several publications of interest to advocates for victims of domestic violence. For more information, contact the Family Violence Prevention Fund, 383 Rhode Island St., Suite 304, San Francisco, CA 94103-5133; (800) 313-1310.

cooperating they be advised of the consequences of establishing paternity, such as establishing the father's right to seek visitation and even custody, consequences that can prove fatal for domestic violence victims.

Under H.R. 4, the federal definition of cooperation would have been repealed, and each state would have developed its own definition of cooperation. H.R. 4 would have required states to deny a parent's share of benefits for failure to cooperate and would have permitted states to impose a full-family sanction.[34]

Leaving it to states to define cooperation has already proven hazardous for AFDC recipients in some states. In Massachusetts, about 1,800 families receiving cash assistance were sanctioned because the mothers were unable to give the father's full name and social security number or the father's full name and other specific identifying information. Five children and their mothers filed a class action lawsuit on behalf of themselves and other children subject to sanctions.[35] Their families had been sanctioned even though the mothers had cooperated fully and had given all the information that they had. The court entered a temporary restraining order stopping the sanctions and reinstating all 1,800 of the families and their children.[36]

In Illinois, a waiver request submitted to HHS and pending approval would establish a statewide demonstration in which cooperation would be defined as requiring AFDC recipients to *identify and locate* the absent parent within six months of receipt of cash assistance. The custodial parent's inability to give this

[34] H.R. 4, tit. I, § 103, pt. A, § 408(a)(3)(A) & (B).

[35] Doe v. Gallant, No. 96-1307-D (Mass. Super. Ct. Suffolk County filed Mar. 11, 1996) (Clearinghouse No. 51,056).

[36] *Id.* (prelim. inj. entered Apr. 19, 1996); *see also* Deborah Harris, Massachusetts Law Reform Inst., Statement in Opposition to Sections 1 and 2 of H.5859 (Mar. 1996); Press Advisory, Massachusetts Law Reform Inst. (Apr. 1996) (Clearinghouse No. 50,100).

specific information would be considered a failure or refusal to cooperate. Sanctions for noncooperation would be expanded to include the termination of cash assistance and Medicaid not only to the parent but also to the child for whom paternity establishment and child support were sought.[37]

B. Good Cause Exceptions to the Cooperation Requirement

Current federal law allows domestic violence victims and others with good cause the opportunity to request a waiver from cooperating with the AFDC child support enforcement requirement.[38] Circumstances meriting good-cause exemption from the cooperation requirements include situations in which cooperation is expected to result in physical or emotional harm to the parent or the child for whom support is sought or where the child was conceived as a result of incest or forcible rape.[39] Proof of good cause includes sworn statements from individuals other than the claimant with knowledge of the circumstances that form the basis for the good-cause exemption. Where a claim is based on anticipation of physical harm, the claimant's statement, if credible, is sufficient.[40]

In practice, this waiver is rarely requested or granted. In FY 1993, of approximately five million AFDC cases nationwide, custodial parents claimed good cause for refusing to cooperate in establishing paternity and securing child support in only 6,585 cases, and only 4,230 of those claims were found valid.[41] Though it may be reasonable to question the reliability of these very low figures, even if the actual number of good-cause claims requested and found valid were ten times greater than the reported figures, these numbers would still not reflect the extent of domestic violence among the AFDC population. Of course, not every victim of domestic violence wants or needs an exemption from cooperation with paternity establishment and/or child support enforcement. However, these low figures do reflect AFDC recipients' lack of knowledge of their right to an exemption from cooperation. The current law on providing notice is weak and, to compound the problem, state public assistance agencies often fail to provide any notice.[42]

If H.R.4 were to become law, the federal definition of "good cause" would be repealed. Each state, taking into account the best interests of the child, would define good cause and any other exceptions to the state's cooperation requirement.[43]

As in the case of the child exclusion provision, there is great concern that states would define good-cause exemptions, and the evidence required to establish them, so as to require a higher degree of abuse and "official" proof (i.e., police reports, medical records, state agency reports) than under current law.[44] And there is no assurance about what type of notice, if any, recipients would be given of the opportunity to request an exemption.

For example, Illinois's six-month paternity establishment waiver request

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[37] Illinois Dep't of Pub. Aid, *supra* note 30; 19 Ill. Reg. 15537–554, 15492–20, *supra* note 30.

[38] 42 U.S.C. § 602(a)(26)(B) ("good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed . . ."); 45 C.F.R. §§ 232.40–.49 (standards prescribed by HHS); *see also* NATIONAL CTR. ON WOMEN & FAMILY LAW, THE "GOOD CAUSE" EXCEPTION TO THE COOPERATION REQUIREMENT FOR APPLICANTS FOR AFDC CHILD SUPPORT (1995) (Item No. 169).

[39] 45 C.F.R. § 232.42.

[40] *Id.* § 232.43.

[41] U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD SUPPORT ENFORCEMENT: EIGHTEENTH ANNUAL REPORT TO CONGRESS FOR THE PERIOD ENDING SEPTEMBER 30, 1993 (1995).

[42] 45 C.F.R. § 232.40 & app. A.

[43] H.R. 4, tit. III, subtit. D, § 332(3).

[44] See sec. II, *supra*, for a discussion of the child exclusion provision.

would limit the exception that allows aid to be paid when paternity is not established within six months of receipt of cash assistance to circumstances where (1) cooperation was expected to result in physical or emotional harm to the custodial parent and/or child, *and* formal third-party corroboration (criminal, medical, or state agency report) indicated the alleged father might inflict this harm; or (2) the custodial parent had furnished a birth certificate or medical or law enforcement records indicating the child was conceived as the result of incest (*and* the custodial parent attests to fear that the alleged father might inflict *physical* harm on the custodial parent and/or child), or forcible rape.[45]

Because victims suffer many types and degrees of harm as a result of domestic violence, each woman must be allowed the time and flexibility necessary to find safety, to begin the healing process, and to become economically self-sufficient.

To overcome these issues, advocates should examine their state's domestic violence statute to see how abuse is defined and what proof is necessary for a court to enter an order of protection. For example, the Illinois Domestic Violence Act of 1986 defines domestic violence as follows: "[P]hysical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis."[46]

The evidence necessary to substantiate that an order of protection should be entered is generally limited to the sworn statement of the victim.

This language is preferable to the language used to exempt battered women from the 60-month lifetime limit on the receipt of cash assistance in H.R. 4.[47] And the requirements for corroboration of abuse are less onerous than those demanded in Illinois's paternity establishment waiver request.

C. In-Hospital Paternity Establishment

While the goal of making it easier for parents to establish paternity is good, the push for in-hospital voluntary paternity establishment may be moving too quickly.[48] No one should be asked to sign an important document with life-long consequences so shortly after giving birth without proper precautions.

First, legal acknowledgment of paternity should not be allowed to take precedence over steps to assure the health and welfare of a new mother and her baby. Second, formal acknowledgment of paternity should not be sought unless both parties have given informed consent. The time between the birth of a child and discharge from the hospital is generally very brief. It is an emotionally charged and physically draining time for the mother. Whether informed consent is truly possible during this time is questionable. Third, in any process seeking formal acknowledgment of paternity, the parties should be furnished detailed information, in both oral and written form, regarding the consequences of the acknowledgment, including the possible disadvantages to establishing paternity such as establishing the father's right to assert custody or visitation or oppose adoption.[49]

Additional protections must be in place for victims of domestic violence. Before approaching the father, a health professional and/or licensed social worker trained in domestic violence issues should conduct a private and confidential interview with the mother to determine if she is a victim of domestic violence and if the abuser is the child's

[45] Illinois Dep't of Pub. Aid, *supra* note 30.

[46] The Illinois Domestic Violence Act of 1986, 750 ILCS 60/103(1) & (3).

[47] H.R. 4, tit. I, § 103, pt. A, § 408. See also sec. IV, *infra*, for a discussion on time limits.

[48] H.R. 4, tit. III, subtit. D, § 331.

[49] Deborah Harris, Massachusetts Law Reform Inst., Comments on the Proposal to Require Hospitals to Assist in Establishing Paternity H.4944, § 6 (1995).

father. If this is the case, the father should not be offered the opportunity to sign an acknowledgment of parentage.

IV. Time Limits

H.R. 4 would have set a maximum 60-month lifetime limit on receipt of cash assistance paid for with federal funds.[50] States would have been allowed to cut off benefits sooner. If a state determined that a recipient was ready to engage in work or had received cash assistance for 24 months, whichever was earlier, the state could require the recipient to work or lose benefits.[51]

Exemptions included recipients who were minors and not the head of a household or married to the head of the household. In addition, "[t]he State may exempt a family from [the 60-month lifetime limit] by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty."[52] A hardship exemption for battered women is not present in any other part of the bill. H.R. 4 defined battery or extreme cruelty as:

> (1) physical acts that resulted in, or threatened to result in, physical injury to the individual;
>
> (2) sexual abuse;
>
> (3) sexual activity involving a dependent child;
>
> (4) being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;
>
> (5) threats of, or attempts at, physical or sexual abuse;
>
> (6) mental abuse; or
>
> (7) neglect or deprivation of medical care.[53]

Public assistance must be available so that women and children can leave violent homes before the situation becomes extreme. The bill's use of the term "extreme cruelty" foreshadows a trend toward higher thresholds for the type and degree of abuse that must be experienced to merit an exemption than are now required by most states to obtain a criminal or civil order of protection.[54] Abuse should not be limited to a narrow interpretation of the seven types of violence listed in H.R. 4.

For some domestic violence victims, the best way to cope with their crisis is to work. For many more, that is not possible. Time limits may be too difficult for most victims of domestic violence to meet. Because victims suffer many types and degrees of harm as a result of domestic violence, each woman must be allowed the time and flexibility necessary to find safety, to begin the healing process, and to become economically self-sufficient. For some women, this may take only months; for others, a few years. For many women, the healing process extends over a lifetime, with good times when it is possible to work, go to school, take care of the children, and get counseling, and bad times when some or all of those things are impossible.

Fifteen percent of the caseload exempted from time-limited benefits is insufficient to cover all battered women receiving benefits, let alone all families enduring other forms of domestic violence and other hardships associated with poverty. This provision ignores that violence against so many impoverished women is prevalent, that violence inflicts harm on its victims, and that violence makes and keeps many women poor. An entitlement to benefits without time limits is necessary for victims of domestic violence.

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[50] H.R. 4, tit. I, § 103, pt. A, § 408(a)(8)

[51] *Id.* § 402(a)(1)(A)(ii).

[52] *Id.* § 408(a)(8).

[53] *Id.* § 408(a)(8)(C)(iii).

[54] *See, e.g.*, The Illinois Domestic Violence Act of 1986, 750 ILCS 60/101 *et seq.*; see also sec. III.B, *supra*, for a discussion of good-cause exceptions.

V. Mandatory Work Requirements

H.R. 4 would have required that 50 percent of a states' welfare caseload meet the work requirement by October 1, 2001. The minimum number of hours per week to count toward a state's work participation rate would have been 35 hours, of which at least 20 hours per week were attributable to allowable work activities.[55]

Allowable work activities would have included unsubsidized employment, subsidized private or public sector employment, work experience if sufficient private sector employment was not available, on-the-job training, community service programs, up to four weeks of job search and job readiness assistance, education directly related to employment for recipients 20 years of age or younger who did not have a high school diploma or general equivalency diploma, job skills training directly related to employment; and secondary school for a recipient who had not completed secondary school, was a dependent child, or was a household head under 20 years of age. Vocational education would have been permitted but could not exceed 12 months for any individual. In any month, no more that 20 percent of adults in all families could meet the work participation rates through vocational education.[56]

Domestic violence victims face enormous hurdles to employment and employment-related activities.

States would have had the option to require custodial parents with children under 12 months of age to work.[57]

The work provisions in H.R. 4 assumed that all welfare recipients are equally capable of functioning at a level at which they could find and maintain employment or attend and successfully complete an education or training program. But domestic violence victims face enormous hurdles to employment and employment-related activities. A victim may be disempowered and physically and emotionally scarred from the abuse; her abuser may disrupt her attempts to work or go to school so that he many remain or regain control of her.[58] The additional hurdles that domestic violence victims face should not cause them to be penalized. Nor should these hurdles prevent them from starting on the path to recovery and out of poverty.

Moreover, the 20-percent maximum on recipients allowed to engage in vocational education would limit economic opportunities. Without job training, women are often eligible for only low-end, low-skilled, low-wage employment. Enhanced skills leading to higher-wage jobs would better enable women to leave violent situations and stay safe.

VI. Restrictions on the Right to Travel

H.R. 4 would have permitted states to treat differently from other families those moving from another state.[59] Specifically, a state would have been allowed to apply the rules (including benefit amounts) of the program funded under H.R. 4 in the family's former state of residence if the family had resided in the current state for less than 12 months.

This provision is a deterrent to domestic violence victims, who often must cross state lines to escape abuse. Many abused women have limited economic resources, especially if they must leave home suddenly. Therefore, they often must rely on public assistance benefits. Denying women and their children a minimally adequate benefit amount deemed necessary to survive in the new state by limiting them to a lower benefit

[55] H.R. 4, tit. I, § 103, pt.A, § 407.

[56] *Id.* § 407(d).

[57] *Id.* § 407(b)(5).

[58] See *supra* notes 1, 4, & 6 for research that discusses barriers to work for domestic violence victims.

[59] H.R. 4, tit. I, § 103, pt. A, §§ 402(a)(1)(B)(i), 404(c).

amount set by the state they are fleeing would exacerbate the financial hardship they must face. It would increase domestic violence victims' risk of homelessness and malnutrition, as well as the likelihood of their staying with or returning to their abusers.[60]

VII. Conclusion

The "reforms" in H.R 4, other proposed federal and state welfare legislation, and state waiver requests to HHS will serve only to further abuse victims of domestic violence. Many of these policies will result in the reduction or denial of economic support for poor children and their families. To prevent a second victimization of domestic violence victims, the prevention and reduction of domestic violence must be included as an important goal of any welfare reform legislation.

[60] *See* Davis & Graham, *supra* note 7; Green v. Anderson, 811 F. Supp. 516 (E.D. Cal. 1993), *aff'd*, 26 F.3d 95 (9th Cir. 1994), *vacated on other grounds*, 115 S. Ct. 1059 (1995) (Clearinghouse No. 48,733). In *Green*, the plaintiffs challenged, and the district court invalidated, California's durational residency requirement.

In-Hospital Paternity Establishment Bill Deserves Veto

Opinion

While the goal of making it easier for parents to establish paternity is good, the push for in-hospital voluntary paternity establishment may be moving too quickly. In Illinois, Senate Bill 1388 passed both houses of the General Assembly and is awaiting the Governor's signature.

SB 1388 provides that a newborn's unmarried mother and father may sign an acknowledgment of parentage at the hospital, and that acknowledgment legally and conclusively establishes a parent and child relationship, with all the attendant rights and obligations. Similarly, if a husband, who is normally presumed to be the father of the baby, is not the biological father, the parties may sign a denial of paternity.

No one should be asked to sign an important document with life-long consequences so shortly after the birth of a child without proper precautions.

First, legal acknowledgment of paternity should not be allowed to take precedence over steps to assure the health and welfare of a new mother and her baby. Institutions such as hospitals and birthing centers must be required to have provisions in their medical protocols to screen for and recognize domestic violence and other risk situations for mothers and their children, to counsel new mothers about the possible negative consequences of establishing paternity, to assure confidentiality between hospital personnel and their patients, and to ensure against coercion and duress.

A health care professional and/or licensed social worker trained in domestic violence issues should conduct the initial private and confidential interview out of the presence of the alleged father. If the new mother is a victim of domestic violence and the abuser is the child's biological father, or another risk situation is identified, the mother should not be asked to sign an acknowledgment of parentage or denial of paternity, and the father should not be offered the opportunity to sign an acknowledgment of parentage or a denial of paternity.

Second, formal acknowledgment of paternity should not be sought unless both parties have given informed consent. The time between the birth of a child and discharge from the hospital is generally very brief. It is an emotionally charged and physically draining time for the mother. Whether informed consent is truly possible during this time is often questionable.

Third, in any process seeking formal acknowledgment of paternity, the parties should be furnished detailed information regarding the consequences of the acknowledgment, including possible disadvantages to the mother of establishing paternity, such as the father's right to seek custody or visitation, or to oppose adoption. This information should be provided in both oral and written form, in a language other than English when necessary, and at an appropriate reading level.

The provisions in SB 1388 that require the Department of Public Aid (DPA) to furnish the necessary forms to the hospitals, provide "[a]n explanation of the implications of signing parentage and, if necessary, a denial of paternity," and provide new mothers with an opportunity to speak to a DPA employee versed in paternity establishment rules are inadequate. For example, there is no requirement that DPA provide new mothers with an opportunity to speak with persons trained in domestic violence issues, including rape and incest.

Governor Edgar should veto SB 1388. Failing that, he should insure that DPA adopts rules that adequately protect mothers and children.

Wendy Pollack,
Poverty Law Project
Staff Attorney

Document No. 125

WHITE HOUSE STAFFING MEMORANDUM

DATE: 9/29 ACTION/CONCURRENCE/COMMENT DUE BY: 9/30 1:00pm

SUBJECT: Family Violence Directive (to be signed Tuesday)

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	☑	☐	McCURRY	☐	☑
PANETTA	☑	☐	McGINTY	☐	☐
McLARTY	☐	☐	NASH	☐	☐
ICKES	☑	☐	QUINN	☑	☐
LIEBERMAN	☑	☐	RASCO	☑	☐
RAINES	☐	☐	REED	☑	☐
BAER	☑	☐	SOSNIK	☑	☐
CURRY	☐	☐	STEPHANOPOULOS	☑	☐
EMANUEL	☑	☐	STIGLITZ	☐	☐
GIBBONS	☐	☐	STREETT	☐	☐
HALE	☐	☐	TYSON	☐	☐
HERMAN	☐	☐	HAWLEY	☐	☐
HIGGINS	☑	☐	WILLIAMS	☐	☐
HILLEY	☐	☐	Kagan	☐	☑
KLAIN	☐	☐	Myers	☑	☐
LAKE	☐	☐	Klein	☑	☐
LINDSEY	☐	☐		☐	☐

REMARKS:

Comments to this office (to be signed Tues 10/1)

RESPONSE:

Staff Secretary
Ext. 6-2702

October 1, 1996 96 SEP 27 P6:12

MEMORANDUM TO THE SECRETARY OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES AND THE ATTORNEY GENERAL

Subject: Guidelines to States for Implementing the Family Violence Provisions

Domestic violence has a devastating impact on families and communities. Every year, hundreds of thousands of Americans are subjected to assault, rape and murder at the hands of an intimate family member. Our children's futures are mortgaged by the very fact that they live in homes with domestic violence. We know that children who grow up with such violence are more likely to become victims or batterers themselves. The violence in our homes is then perpetuated into the future, spilling into our schools, our hospital wards, and our workplaces.

Domestic violence is a problem throughout our society. But it can be particularly damaging to women and children on the margins. The profound mental and physical effects of domestic violence can often interfere with victims' efforts to pursue education or employment -- to become self-sufficient and independent. Moreover, it is often the case that the abusers themselves fight to keep their victims from becoming independent.

As we reform our nation's welfare system, we must make sure that welfare-to-work programs across the country have the tools and the training necessary to meet the special needs of battered women so they can move successfully into the workforce and become self-sufficient.

That is why I strongly encourage states to implement the Wellstone/Murray Family Violence provisions in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. These provisions invite states to increase services for battered women through welfare programs to help these women move successfully and permanently into the workplace. Specifically, the Family Violence provisions give states an option to screen and identify welfare recipients, to find and help battered women, refer battered women to counseling and support services, and for other purposes. The Family Violence provisions are critical in responding to the unique needs faced by women and families subjected to domestic violence.

As we move forward on our historical mission to reform the welfare system, this Administration is committed to offering states assistance in their efforts to implement the Family Violence provision.

Accordingly, I direct the Secretary of the Department of Health and Human Services and the Attorney General to develop guidance to states to assist and facilitate the implementation of the Family Violence provisions. In crafting this guidance, I want the Departments of Health and Human Services and Justice to work with states, domestic violence experts, victims' services programs, law enforcement, medical professionals, and others involved in fighting domestic violence. This guidance would address suggested standards and procedures that will help make welfare programs fully responsive to the needs of battered women.

The Secretary of Health and Human Services is further directed to provide states with technical assistance as they work to implement the Family Violence provisions.

Finally, we understand the need to have better information on the number of women receiving welfare who have been or are currently victims of domestic violence. I therefore direct the Secretary of the Department of Health and Human Services to establish as a priority, understanding the incidences of domestic violence in the lives of welfare recipients, and the best assessment, referral, and delivery models to improve safety and self-sufficiency for welfare recipients who are victims of domestic violence.

I ask the Secretary of Health and Human Services and the Attorney General to report to me in writing 45 days from the date of this memorandum on the specific progress that has been made toward these goals, followed by a final report on progress January 13, 1997.

William J. Clinton

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

19-Sep-1996 08:35pm

TO: (See Below)

FROM: Jeremy D. Benami
Domestic Policy Council

SUBJECT: RE: Exec. Order on Domestic Violence & Welfare

PLEASE PLEASE be aware that the policy of the President is that the time limits and the work requirements of this bill need to be enforced.

There will continue to be discussions within the administration on how this bill is to be implemented in its particulars. But as of now there has been no decision whether there will be any executive action on this particular issue, and if so what it will be. There should be no signals from any office of the White House that there is any potential that the President will suggest exemptions from the time limit for any purpose.

Executive Orders and Directives need to be carefully thought out, and there should be no effort by any White House office to help build outside support for such an effort.

We will forward a decision memo to the appropriate people in the White House laying out options on this issue. Please help us ensure that the White House and the President have the maximum flexibility in deciding how to proceed on this issue.

Thanks.

Distribution:

TO: Betsy Myers
TO: Lyndell Hogan
TO: Deborah L. Fine
TO: Lisa Ross

CC: Carol H. Rasco
CC: Bruce N. Reed
CC: Elena Kagan
CC: Diana M. Fortuna

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

19-Sep-1996 08:34pm

TO: Carol H. Rasco
TO: Bruce N. Reed
TO: Elena Kagan
TO: Diana M. Fortuna

FROM: Jeremy D. Benami
Domestic Policy Council

SUBJECT: attached email

Attached email came from Women's Office.

I have tried to be clear with them that they need to be careful how they represent the White House on this issue.

I am replying and will cc you on my response. Please feel free to add your thoughts if appropriate.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

19-Sep-1996 07:09pm

TO: Lyndell Hogan
TO: Deborah L. Fine
TO: Jeremy D. Benami

FROM: Betsy Myers
Office of Public Liaison

CC: Lisa Ross
CC: Jennifer Palmieri

SUBJECT: Exec. Order on Domestic Violence & Welfare

FYI

From Carrie:

Wellstone's meeting today with HHS, DOJ, advocates and us went well today. Everyone urged a Presidential directive/exec. order to urge states to exempt battered women from time limits and work requirements -- using their option under the welfare bill (Wellstone-Murray Family Violence Amendment).

Sen. Wellstone called for the groups to pull together and expressed his hope that the President would issue an exec. order/directive.

HHS indicated Shalala's support for urging states to implement their option to exempt battered women, and Edelman said the Secretary supported the idea of reg's to make sure that states are not penalized for low participation rates because of battered women exemptions.

The groups announced that: (1) They support an exec. order/directive;
(2) They want HHS to put out educational material to the states on the following (and HHS agreed):
- screening for battered women needs to be sensitive - caseworkers need training on how to help women find safety, etc.
- criteria for battered women to get a waiver needs to be carefully thought out (how "battered" do women have to be?)
- women should not be penalized for disclosing the fact they are battered - e.g., they should not then face loss of custody of children, and they should not be excluded from any welfare-to-work job training available)

They also raised:
- HHS should form an advisory committee on welfare & Domestic Violence
- Groups want more research and evaluation (Panetta in their June welfare meeting with him supported the idea of a study on battered women and poverty)
- Groups want more technical assistance funding (HHS said this is limited).

- (something about battered women being included in the denominator count (they didn't specify what they want).

"(A) IN GENERAL.—A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences, subject to this paragraph.

"(B) MINOR CHILD EXCEPTION.—In determining the number of months for which an individual who is a parent or pregnant has received assistance under the State program funded under this part, the State shall disregard any month for which such assistance was provided with respect to the individual and during which the individual was—

"(i) a minor child; and

"(ii) not the head of a household or married to the head of a household.

"(C) HARDSHIP EXCEPTION.—

"(i) IN GENERAL.—The State may exempt a family from the application of subparagraph (A) by reason of hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.

"(ii) LIMITATION.—The number of families with respect to which an exemption made by a State under clause (i) is in effect for a fiscal year shall not exceed 20 percent of the average monthly number of families to which assistance is provided under the State program funded under this part.

"(iii) BATTERED OR SUBJECT TO EXTREME CRUELTY DEFINED.—For purposes of clause (i), an individual has 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.

"(D) DISREGARD OF MONTHS OF ASSISTANCE RECEIVED BY ADULT WHILE LIVING ON AN INDIAN RESERVATION OR IN AN ALASKAN NATIVE VILLAGE WITH 50 PERCENT UNEMPLOYMENT.—In determining the number of months for which an adult has received assistance under the State program funded under this part, the State shall disregard any month during which the adult lived on an Indian reservation or in an Alaskan Native village if, during the month—

"(i) at least 1,000 individuals were living on the reservation or in the village ; and

"(ii) at least 50 percent of the adults living on the reservation or in the village were unemployed.

"(E) RULE OF INTERPRETATION.—Subparagraph (A) shall not be interpreted to require any State to provide assistance to any individual for any period of time under the State program funded under this part.

"(F) RULE OF INTERPRETATION.—This part shall not be interpreted to prohibit any State from expending State funds not originating with the Federal Government on benefits for children or families that have be-

come ineligible for assistance under the State program funded under this part by reason of subparagraph (A).

"(8) DENIAL OF ASSISTANCE FOR 10 YEARS TO A PERSON FOUND TO HAVE FRAUDULENTLY MISREPRESENTED RESIDENCE IN ORDER TO OBTAIN ASSISTANCE IN 2 OR MORE STATES.—A State to which a grant is made under section 403 shall not use any part of the grant to provide cash assistance to an individual during the 10-year period that begins on the date the individual is convicted in Federal or State court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from 2 or more States under programs that are funded under this title, title XIX, or the Food Stamp Act of 1977, or benefits in 2 or more States under the supplemental security income program under title XVI. The preceding sentence shall not apply with respect to a conviction of an individual, for any month beginning after the President of the United States grants a pardon with respect to the conduct which was the subject of the conviction.

"(9) DENIAL OF ASSISTANCE FOR FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATORS.—

"(A) IN GENERAL.—A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to any individual who is—

"(i) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or

"(ii) violating a condition of probation or parole imposed under Federal or State law.

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P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
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P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

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b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

NOW LEGAL DEFENSE AND EDUCATION FUND 119 Constitution Avenue, N.E., Washington, D.C. 20002 (202) 544-4470 Fax (202) 546-8605

MEMO

August 23, 1996

To: Donna Shalala & Sarah Kovner

From: Pat Reuss & Pam Coukos, NOW LDEF WDC office

Re: President's Executive Order on Battered Women and Welfare

In a phone conversation with Eleanor Smeal, Donna suggested that the President would be issuing an Executive Order regarding battered women and the welfare bill.

Because we have been working on the correlation between poverty and violence -- rather intensely over the past several years -- Ellie called us and we volunteered to collect our ideas for an EO and deliver them to you.

I know you have many people in your shop who know this issue as well, but I hope that the enclosed draft will be helpful. We have polled the leading experts on this issue and their recommendations for what should be done are included in the "therefore" section.

Pam and I are available to you or your staff at any time. I will be in Chicago at the convention and Pam's home phone number is P6/(b)(6) Please feel free to contact us at any time, because we know the time-sensitive nature of this endeavor.

[001]

DRAFT * DRAFT *** DRAFT**

August ___, 1996

Domestic violence is a national tragedy that disrupts communities, destroys relationships and harms millions of Americans each year. Battering, child abuse and sexual assault are serious crimes that also may have a devastating impact on the self-sufficiency of citizens victimized by abusers. In order to address these issues, and to promote the safety and self-sufficiency of survivors of domestic violence, the new welfare law includes an important provision. The Family Violence Amendment to the welfare bill, which the Senate passed by unanimous consent, invites states to increase services and add protections in cases of "battering or extreme cruelty" -- including physical abuse, sexual assault, and child abuse. States have the option of certifying standards and procedures to screen for and identify domestic violence in their State Plans. Because the proper implementation of the Family Violence Amendment is essential to keeping many women and families safer from violence, I call on every state to choose this option and pledge my Administration's full support to the states who step forward to do so.

As documented by important new research, the physical and mental effects of domestic violence, as well as direct efforts by abusers to interfere with their victims' education and employment, have serious implications for a successful welfare-to-work transition. Studies report that fifty percent of employed battered women lose at least three days of work a month due to domestic violence, that seventy percent report difficulty in job performance because of abuse, and up to three-quarters experienced on-the-job harassment from their batterers. Women may need to leave a job to get to a safe living situation with their children. Compelling accounts of abusers who sabotage women's efforts to complete education and training programs further demonstrate the hurdles in the path to economic stability for many battered women and their families.

To meet these challenges, the Family Violence Amendment invites states to provide better services for battered women through their welfare programs, including screening and confidentiality provisions, and referrals to shelters, counseling, legal representation and other important services. One of the key provisions of the Family Violence Amendment permits states to implement temporary and flexible good cause waivers of any program requirements, when complying with those requirements would make it harder for recipients to escape violence or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence. Some examples where good cause waivers could be made include time limits on assistance or before work is required, child support and paternity establishment cooperation, residency requirements and child exclusion ("family cap") provisions. Child support cooperation requirements may subject women to retaliatory abuse. Residency requirements may harm women who cross state lines to flee a dangerous living situation. Imposing a child exclusion provision in cases of physical and sexual violence is an onerous penalty to the woman and the child. The length of the good cause waiver would depend on the recipient's needs.

The good cause waiver provision is particularly important when violence makes

complying with work requirements difficult or dangerous to the recipient or her family. Arbitrary and inflexible time limits may need to be modified where violence prevents a woman from working, or forces her to leave her job to get to safety. Because of the dramatic impact of violence on employment, such tailoring is essential to attain the bill's goal of increased employment for all recipients. As Senator Wellstone said in introducing the Family Violence Amendment, "we cannot have 'one size fits all.'" States that accept Congress' bipartisan invitation to use the good cause waiver provision to make welfare-to-work programs work better for battered women must not be penalized by having to count these individuals toward their work participation requirements. To do otherwise would undermine the spirit and purpose of the Family Violence Amendment.

While every American must take some personal responsibility in the fight against domestic violence, with the Family Violence Amendment, every state can play a major role in our national effort to end violence against women and children. Because I know that every governor and state legislator will want to do the utmost to implement the letter and spirit of the Family Violence Amendment,

THEREFORE I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby call on the Governors and Legislatures of the Fifty States to adopt all of the policies and procedures contained in Section 402(A)(7) of Part A of Title IV, the Family Violence Amendment, and do hereby declare the following:

In order to execute the clear intent of the Family Violence Amendment and to demonstrate the commitment of this Administration to the elimination of domestic violence, the Secretary of the Department of Health and Human Services will not impose a financial penalty on states that fail to meet the monthly mandatory participation rates specified in Section 407 of Part A of Title IV, when that failure results from making good cause waivers of work requirements in cases of battering or extreme cruelty.

The Secretary of the Department of Health and Human Services shall provide discretionary funding to any state seeking to study the incidence of violence in the lives of welfare recipients; the impact that domestic violence has on welfare program rules and requirements; and the best assessment, referral and delivery models to improve safety and self-sufficiency for battered welfare recipients; and

The Secretary of the Department of Health and Human Services shall provide discretionary funding for model programs in the states to implement the Family Violence Amendment, and shall provide technical assistance and ongoing support to every state seeking to implement the Family Violence Amendment.

IN WITNESS WHEREOF I have set my hand this ___ day of August etc. etc.

NATIONAL TASK FORCE ON VIOLENCE AGAINST WOMEN

NOW Legal Defense & Education Fund 119 Constitution Ave., NE., WDC 20002 (202) 544-4470 (202) 546-8605 (fax)

The Wellstone/Murray Family Violence Amendment to the Welfare Bill (House Report 725)

August 12, 1996

Now that Congress has passed a welfare bill eliminating the federal entitlement and imposing a host of new requirements for recipients, advocates need to work in their states to ensure that battered women and victims of sexual assault are not unfairly penalized by these new rules. An important tool is the Family Violence Amendment, a state option to increase services and to waive requirements in cases of domestic violence and sexual abuse. Senators Paul Wellstone (D-MN) and Patty Murray (D-WA) amended the Senate version of the welfare bill to require states to provide these services and to make necessary waivers, but the Conference Committee converted the Family Violence Amendment to a state option.

Why State Welfare Legislation Should Address Domestic Violence and Sexual Abuse

The Amendment recognizes that violence makes and keeps women poor, and that it may be difficult and dangerous for battered women and victims of sexual assault to meet the welfare bill's new requirements. As documented by research such as Jody Raphael's report *Prisoners of Abuse: Domestic Violence and Welfare Receipt* (Taylor Institute 1996), the physical and mental effects of domestic violence, as well as direct efforts by abusers to interfere with their victims' education and employment, have serious implications for welfare-to-work programs. Arbitrary and inflexible time limits may need to be modified where violence prevents a woman from working. Child support cooperation requirements may subject women to retaliatory abuse. Residency requirements may harm women crossing state lines to flee a dangerous living situation. Imposing a child exclusion ("family cap") provision, as some states do, in cases of physical and sexual violence, is a particularly unfair penalty to the woman and the child.

To address these issues, the Amendment's provisions encourage states to include both increased services and flexible waivers in their state programs. **Specifically, the Amendment invites states to:**

- SCREEN APPLICANTS FOR DOMESTIC VIOLENCE WHILE MAINTAINING CONFIDENTIALITY;
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Flexible Waivers In Cases of Battering or Extreme Cruelty

The waiver provision is an important tool for advocates, who should urge their states to adopt it. Waivers apply to the two-year time limits (before work is required) and five-year time limits (capping lifetime aid), which would be waived for as long as necessary. States should be able to exclude waived individuals from mandatory participation rates. The waivers also apply to the residency requirements, child support cooperation requirements and child exclusion provisions. Waivers are to be granted where the requirements would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence.

The provisions apply to cases of "battering or extreme cruelty," which is defined broadly in another section of the bill to include acts of physical and sexual violence (including marital rape) as well as threats and attempts of physical and sexual violence, child sexual abuse, mental abuse and deprivation of medical care.

How States Can Implement the Family Violence Amendment

Under the welfare bill each state must submit a plan to the federal government, describing how the state will spend its block grant funds. In that plan, states can provide for these services and for waivers of federal requirements without incurring penalties. The state is required to make a summary of its plan available to the public. *Additionally, a separate welfare bill provision that applies only to the 5-year time limit on welfare receipt permits a state to make hardship exemptions of up to 20% of the caseload. Hardship explicitly includes battering and extreme cruelty, defined the same way as for the purposes of the Wellstone/Murray Amendment. The Family Violence Amendment contains no limitation on how many cases a state may address when increasing services or making flexible waivers.*

Advocates must pressure their state legislatures to include **all** of the provisions of the Family Violence Amendment as part of their state plans. Since the Amendment is only a state option, states may be tempted to avoid providing additional services or tailoring welfare-to-work programs to address violence against women. They may instead attempt to use the Amendment to exclude battered women from existing services or they may simply ignore the problem of violence in the lives of welfare recipients. Only diligent efforts at the state level will ensure that the Family Violence Amendment is implemented properly or implemented at all. But these efforts can pay off by increasing the safety and economic self-sufficiency of many recipients.

The National Task Force on Women, Welfare and Abuse will be developing more extensive materials for state activists seeking to ensure that their state welfare program addresses the correlation between violence and poverty. These materials will be available after October 1, 1996. For further information, contact: Martha Davis, NOW LDEF/NYC (212) 925-6635, Jody Raphael, Taylor Institute (312) 342-5510, or Pat Reuss or Pamela Coukos, NOW LDEF/DC (202) 544-4470.

THE WELLSTONE/MURRAY FAMILY VIOLENCE AMENDMENT

Sec. 103 - Block Grants to States - SubSec. 402(a)(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 as 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 subject to extreme cruelty" as defined in section 408(a)(7)(C)(iii).

****

SubSec. 408(a)(7)(C)(iii) -- Battered or Subject to Extreme Cruelty Defined: ...an individual has 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.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Sep-1996 08:01pm

TO: Elena Kagan

FROM: Lyndell Hogan
Domestic Policy Council

SUBJECT: Today's Domestic Violence Meeting

To let you know how the meeting ended...

Debbie and I are going to draft an options memo to go to Carol Rasco and Bruce. Basically the memo will list three options: the NOW Executive Order; a softer Presidential Directive to the Secretary and Attorney General directing them to provide states with guidance and technical assistance; and a letter from the President to the states encouraging states to address domestic violence in the context of welfare reform by, among other things, providing services to victims of domestic violence to help them safely and effectively move from welfare to work.

What is your opinion on all of this? Do you prefer one option over the other, or none of the above? Are we proceeding corectly? Feedback is welcome and encouraged.

Thanks.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

04-Sep-1996 05:00pm

TO: (See Below)

FROM: Lyndell Hogan
Domestic Policy Council

SUBJECT: Domestic Violence Meeting

DOMESTIC VIOLENCE/WELFARE REFORM MEETING
Thursday, September 5
4:30-5:50
211 OEOB

As you all know, the Justice Department and HHS have been working on approaches to highlight the Wellstone domestic violence amendment in the welfare reform legislation. One idea is to issue an Executive Order modeled after NOW's document; another is a Presidential statement; still another is a directive to Sec. Shalala and the Attorney General to issue state guidelines for implementing the provision.

I'm pulling this meeting together to discuss a) the various options being batted around; b) the most effective of these options; c) and the best follow-up procedure.

Sorry for the last minute notice -- it just became clear that there are a couple of different paths people are taking. We just need to make sure we are all on the same path.

The following are confirmed for the meeting. Please let me know if you are able to attend.

HHS, Confirmed
--Peter Edelamn
--Virginia Cox
--Anna Durand

HHS, Not Confirmed
--Ann Rosewater

Justice, Confirmed
--Virginia Cox
--Liz Hyman

Thanks.

Chris Shrader Telecon 8/28/96

Domestic Violence Amend

Min partic rate

Murray-Wellstone

p. w/ exemp are in denum, but not in num.

num: fams rec. assis w/ wkg adult mbrs

denum: all on assis

Secy h. can exercise direct auth to relieve state from this burden

Sec. 409(b)(1)

"reas cause for failing to comply"

(reas cause)

if not RAT - it would deter states from

DRAFT * DRAFT *** DRAFT**

August ___, 1996

Domestic violence is a national tragedy that disrupts communities, destroys relationships and harms millions of Americans each year. Battering, child abuse and sexual assault are serious crimes that also may have a devastating impact on the self-sufficiency of citizens victimized by abusers. In order to address these issues, and to promote the safety and self-sufficiency of survivors of domestic violence, the new welfare law includes an important provision. The Family Violence Amendment to the welfare bill, which the Senate passed by unanimous consent, invites states to increase services and add protections in cases of "battering or extreme cruelty" -- including physical abuse, sexual assault, and child abuse. States have the option of certifying standards and procedures to screen for and identify domestic violence in their State Plans. Because the proper implementation of the Family Violence Amendment is essential to keeping many women and families safer from violence, I call on every state to choose this option and pledge my Administration's full support to the states who step forward to do so.

As documented by important new research, the physical and mental effects of domestic violence, as well as direct efforts by abusers to interfere with their victims' education and employment, have serious implications for a successful welfare-to-work transition. Studies report that fifty percent of employed battered women lose at least three days of work a month due to domestic violence, that seventy percent report difficulty in job performance because of abuse, and up to three-quarters experienced on-the-job harassment from their batterers. Women may need to leave a job to get to a safe living situation with their children. Compelling accounts of abusers who sabotage women's efforts to complete education and training programs further demonstrate the hurdles in the path to economic stability for many battered women and their families.

To meet these challenges, the Family Violence Amendment invites states to provide better services for battered women and abused children through their welfare programs, including screening and confidentiality provisions, and referrals to shelters, counseling, legal representation and other important services. One of the key provisions of the Family Violence Amendment permits states to implement temporary and flexible good cause waivers of any program requirements, when complying with those requirements would make it harder for recipients to escape violence or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence. Some examples where good cause waivers could be made include time limits on assistance or before work is required, child support and paternity establishment cooperation, residency requirements and child exclusion ("family cap") provisions. Child support cooperation requirements may subject women to retaliatory abuse. Residency requirements may harm women who cross state lines to flee a dangerous living situation. Imposing a child exclusion provision in cases of physical and sexual violence is an onerous penalty to the woman and the child. The length of the good cause waiver would depend on the recipient's needs.

The good cause waiver provision is particularly important when violence makes complying with work requirements difficult or dangerous to the recipient or her family.

Arbitrary and inflexible time limits may need to be modified where violence prevents a woman from working, or forces her to leave her job to get to safety. Because of the dramatic impact of violence on employment, such tailoring is essential to attain the bill's goal of increased employment for all recipients. As Senator Wellstone said in introducing the Family Violence Amendment, "we cannot have 'one size fits all.'" States that accept Congress' bipartisan invitation to use the good cause waiver provision to make welfare-to-work programs work better for battered women must not be penalized by having to count these individuals toward their work participation requirements. To do otherwise would undermine the spirit and purpose of the Family Violence Amendment.

While every American must take some personal responsibility in the fight against domestic violence, with the Family Violence Amendment, every state can play a major role in our national effort to end violence against women and children. Because I know that every governor and state legislator will want to do the utmost to implement the letter and spirit of the Family Violence Amendment,

THEREFORE I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby call on the Governors and Legislatures of the Fifty States to adopt all of the policies and procedures contained in Section 402(A)(7) of Part A of Title IV, the Family Violence Amendment, and do hereby declare the following:

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The Secretary of the Department of Health and Human Services shall provide discretionary funding to any state seeking to study the incidence of violence in the lives of welfare recipients; the impact that domestic violence has on welfare program rules and requirements; and the best assessment, referral and delivery models to improve safety and self-sufficiency for battered welfare recipients; and

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IN WITNESS WHEREOF I have set my hand this ___ day of August etc. etc.

NATIONAL TASK FORCE ON VIOLENCE AGAINST WOMEN

NOW Legal Defense & Education Fund 119 Constitution Ave., NE., WDC 20002 (202) 544-4470 (202) 546-8605 (fax)

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August 12, 1996

Now that Congress has passed a welfare bill eliminating the federal entitlement and imposing a host of new requirements for recipients, advocates need to work in their states to ensure that battered women and victims of sexual assault are not unfairly penalized by these new rules. An important tool is the Family Violence Amendment, a **state option** to increase services and to waive requirements in cases of domestic violence and sexual abuse. Senators Paul Wellstone (D-MN) and Patty Murray (D-WA) amended the Senate version of the welfare bill to require states to provide these services and to make necessary waivers, but the Conference Committee converted the Family Violence Amendment to a state option.

Why State Welfare Legislation Should Address Domestic Violence and Sexual Abuse

The Amendment recognizes that violence makes and keeps women poor, and that it may be difficult and dangerous for battered women and victims of sexual assault to meet the welfare bill's new requirements. As documented by research such as Jody Raphael's report *Prisoners of Abuse: Domestic Violence and Welfare Receipt* (Taylor Institute 1996), the physical and mental effects of domestic violence, as well as direct efforts by abusers to interfere with their victims' education and employment, have serious implications for welfare-to-work programs. Arbitrary and inflexible time limits may need to be modified where violence prevents a woman from working. Child support cooperation requirements may subject women to retaliatory abuse. Residency requirements may harm women crossing state lines to flee a dangerous living situation. Imposing a child exclusion ("family cap") provision, as some states do, in cases of physical and sexual violence, is a particularly unfair penalty to the woman and the child.

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The waiver provision is an important tool for advocates, who should urge their states to adopt it. Waivers apply to the two-year time limits (before work is required) and five-year time limits (capping lifetime aid), which would be waived for as long as necessary. States should be able to exclude waived individuals from mandatory participation rates. The waivers also apply to the residency requirements, child support cooperation requirements and child exclusion provisions. Waivers are to be granted where the requirements would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence.

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Advocates must pressure their state legislatures to include **all** of the provisions of the Family Violence Amendment as part of their state plans. Since the Amendment is only a state option, states may be tempted to avoid providing additional services or tailoring welfare-to-work programs to address violence against women. They may instead attempt to use the Amendment to exclude battered women from existing services or they may simply ignore the problem of violence in the lives of welfare recipients. Only diligent efforts at the state level will ensure that the Family Violence Amendment is implemented properly or implemented at all. But these efforts can pay off by increasing the safety and economic self-sufficiency of many recipients.

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SubSec. 408(a)(7)(C)(iii) -- Battered or Subject to Extreme Cruelty Defined: ...an individual has 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.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

26-Aug-1996 10:15am

TO: Diana M. Fortuna

FROM: Lyndell Hogan
Domestic Policy Council

CC: Elena Kagan
CC: Emily Bromberg
CC: Jeremy D. Benami

SUBJECT: RE: may be women's domestic violence amendment?

Diana,

You may have found out already, but yes, there is a provision in the welfare bill that allows states to exempt victims of domestic violence from the work requirements and other requirements. The women's groups actually fought very hard for this exemption and we have been playing it up. Thanks for highlighting it.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

23-Aug-1996 04:16pm

TO: Elena Kagan
TO: Lyndell Hogan
TO: Emily Bromberg

FROM: Diana M. Fortuna
Domestic Policy Council

CC: Jeremy D. Benami

SUBJECT: may be women's domestic violence amendment?

Liz Hyman from somewhere in doj thinks some amendment passed to the welfare bill that lets states exempt women who are victims of domestic violence from many of the bill's provisions (like family cap, etc.) If so,she points out that we should let women's groups know to address some of their concerns. I don't have time to check this out....

DRAFT * DRAFT *** DRAFT**

August ___, 1996

Domestic violence is a national tragedy that disrupts communities, destroys relationships and harms millions of Americans each year. Battering, child abuse and sexual assault are serious crimes that also may have a devastating impact on the self-sufficiency of citizens victimized by abusers. In order to address these issues, and to promote the safety and self-sufficiency of survivors of domestic violence, the new welfare law includes an important provision. The Family Violence Amendment to the welfare bill, which the Senate passed by unanimous consent, invites states to increase services and add protections in cases of "battering or extreme cruelty" -- including physical abuse, sexual assault, and child abuse. States have the option of certifying standards and procedures to screen for and identify domestic violence in their State Plans. Because the proper implementation of the Family Violence Amendment is essential to keeping many women and families safer from violence, I call on every state to choose this option and pledge my Administration's full support to the states who step forward to do so.

As documented by important new research, the physical and mental effects of domestic violence, as well as direct efforts by abusers to interfere with their victims' education and employment, have serious implications for a successful welfare-to-work transition. Studies report that fifty percent of employed battered women lose at least three days of work a month due to domestic violence, that seventy percent report difficulty in job performance because of abuse, and up to three-quarters experienced on-the-job harassment from their batterers. Women may need to leave a job to get to a safe living situation with their children. Compelling accounts of abusers who sabotage women's efforts to complete education and training programs further demonstrate the hurdles in the path to economic stability for many battered women and their families.

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The waiver provision is an important tool for advocates, who should urge their states to adopt it. Waivers apply to the two-year time limits (before work is required) and five-year time limits (capping lifetime aid), which would be waived for as long as necessary. States should be able to exclude waived individuals from mandatory participation rates. The waivers also apply to the residency requirements, child support cooperation requirements and child exclusion provisions. Waivers are to be granted where the requirements would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence.

The provisions apply to cases of "battering or extreme cruelty," which is defined broadly in another section of the bill to include acts of physical and sexual violence (including marital rape) as well as threats and attempts of physical and sexual violence, child sexual abuse, mental abuse and deprivation of medical care.

How States Can Implement the Family Violence Amendment

Under the welfare bill each state must submit a plan to the federal government, describing how the state will spend its block grant funds. In that plan, states can provide for these services and for waivers of federal requirements without incurring penalties. The state is required to make a summary of its plan available to the public. *Additionally, a separate welfare bill provision that applies only to the 5-year time limit on welfare receipt permits a state to make hardship exemptions of up to 20% of the caseload. Hardship explicitly includes battering and extreme cruelty, defined the same way as for the purposes of the Wellstone/Murray Amendment. **The Family Violence Amendment contains no limitation on how many cases a state may address when increasing services or making flexible waivers.***

Advocates must pressure their state legislatures to include **all** of the provisions of the Family Violence Amendment as part of their state plans. Since the Amendment is only a state option, states may be tempted to avoid providing additional services or tailoring welfare-to-work programs to address violence against women. They may instead attempt to use the Amendment to exclude battered women from existing services or they may simply ignore the problem of violence in the lives of welfare recipients. Only diligent efforts at the state level will ensure that the Family Violence Amendment is implemented properly or implemented at all. But these efforts can pay off by increasing the safety and economic self-sufficiency of many recipients.

The National Task Force on Women, Welfare and Abuse will be developing more extensive materials for state activists seeking to ensure that their state welfare program addresses the correlation between violence and poverty. These materials will be available after October 1, 1996. For further information, contact: Martha Davis, NOW LDEF/NYC (212) 925-6635, Jody Raphael, Taylor Institute (312) 342-5510, or Pat Reuss or Pamela Coukos, NOW LDEF/DC (202) 544-4470.

THE WELLSTONE/MURRAY FAMILY VIOLENCE AMENDMENT

Sec. 103 - Block Grants to States - SubSec. 402(a)(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 as 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 subject to extreme cruelty" as defined in section 408(a)(7)(C)(iii).

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SubSec. 408(a)(7)(C)(iii) -- Battered or Subject to Extreme Cruelty Defined: ...an individual has 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.

DRAFT * DRAFT *** DRAFT**

August ___, 1996

Domestic violence is a national tragedy that disrupts communities, destroys relationships and harms millions of Americans each year. Battering, child abuse and sexual assault are serious crimes that also may have a devastating impact on the self-sufficiency of citizens victimized by abusers. In order to address these issues, and to promote the safety and self-sufficiency of survivors of domestic violence, the new welfare law includes an important provision. The Family Violence Amendment to the welfare bill, which the Senate passed by unanimous consent, invites states to increase services and add protections in cases of "battering or extreme cruelty" -- including physical abuse, sexual assault, and child abuse. States have the option of certifying standards and procedures to screen for and identify domestic violence in their State Plans. Because the proper implementation of the Family Violence Amendment is essential to keeping many women and families safer from violence, I call on every state to choose this option and pledge my Administration's full support to the states who step forward to do so.

As documented by important new research, the physical and mental effects of domestic violence, as well as direct efforts by abusers to interfere with their victims' education and employment, have serious implications for a successful welfare-to-work transition. Studies report that fifty percent of employed battered women lose at least three days of work a month due to domestic violence, that seventy percent report difficulty in job performance because of abuse, and up to three-quarters experienced on-the-job harassment from their batterers. Women may need to leave a job to get to a safe living situation with their children. Compelling accounts of abusers who sabotage women's efforts to complete education and training programs further demonstrate the hurdles in the path to economic stability for many battered women and their families.

To meet these challenges, the Family Violence Amendment invites states to provide better services for battered women and abused children through their welfare programs, including screening and confidentiality provisions, and referrals to shelters, counseling, legal representation and other important services. One of the key provisions of the Family Violence Amendment permits states to implement temporary and flexible good cause waivers of any program requirements, when complying with those requirements would make it harder for recipients to escape violence or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence. Some examples where good cause waivers could be made include time limits on assistance or before work is required, child support and paternity establishment cooperation, residency requirements and child exclusion ("family cap") provisions. Child support cooperation requirements may subject women to retaliatory abuse. Residency requirements may harm women who cross state lines to flee a dangerous living situation. Imposing a child exclusion provision in cases of physical and sexual violence is an onerous penalty to the woman and the child. The length of the good cause waiver would depend on the recipient's needs.

The good cause waiver provision is particularly important when violence makes complying with work requirements difficult or dangerous to the recipient or her family.

Arbitrary and inflexible time limits may need to be modified where violence prevents a woman from working, or forces her to leave her job to get to safety. Because of the dramatic impact of violence on employment, such tailoring is essential to attain the bill's goal of increased employment for all recipients. As Senator Wellstone said in introducing the Family Violence Amendment, "we cannot have 'one size fits all.'" States that accept Congress' bipartisan invitation to use the good cause waiver provision to make welfare-to-work programs work better for battered women must not be penalized by having to count these individuals toward their work participation requirements. To do otherwise would undermine the spirit and purpose of the Family Violence Amendment.

While every American must take some personal responsibility in the fight against domestic violence, with the Family Violence Amendment, every state can play a major role in our national effort to end violence against women and children. Because I know that every governor and state legislator will want to do the utmost to implement the letter and spirit of the Family Violence Amendment,

THEREFORE I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby call on the Governors and Legislatures of the Fifty States to adopt all of the policies and procedures contained in Section 402(A)(7) of Part A of Title IV, the Family Violence Amendment, and do hereby declare the following:

In order to execute the clear intent of the Family Violence Amendment and to demonstrate the commitment of this Administration to the elimination of domestic violence, the Secretary of the Department of Health and Human Services will not impose a financial penalty on states that fail to meet the monthly mandatory participation rates specified in Section 407 of Part A of Title IV, when that failure results from making good cause waivers of work requirements in cases of battering or extreme cruelty.

The Secretary of the Department of Health and Human Services shall provide discretionary funding to any state seeking to study the incidence of violence in the lives of welfare recipients; the impact that domestic violence has on welfare program rules and requirements; and the best assessment, referral and delivery models to improve safety and self-sufficiency for battered welfare recipients; and

The Secretary of the Department of Health and Human Services shall provide discretionary funding for model programs in the states to implement the Family Violence Amendment, and shall provide technical assistance and ongoing support to every state seeking to implement the Family Violence Amendment.

IN WITNESS WHEREOF I have set my hand this ___ day of August etc. etc.

NATIONAL TASK FORCE ON VIOLENCE AGAINST WOMEN

NOW Legal Defense & Education Fund 119 Constitution Ave., NE., WDC 20002 (202) 544-4470 (202) 546-8605 (fax)

The Wellstone/Murray Family Violence Amendment to the Welfare Bill (House Report 725)

August 12, 1996

Now that Congress has passed a welfare bill eliminating the federal entitlement and imposing a host of new requirements for recipients, advocates need to work in their states to ensure that battered women and victims of sexual assault are not unfairly penalized by these new rules. An important tool is the Family Violence Amendment, a **state option** to increase services and to waive requirements in cases of domestic violence and sexual abuse. Senators Paul Wellstone (D-MN) and Patty Murray (D-WA) amended the Senate version of the welfare bill to require states to provide these services and to make necessary waivers, but the Conference Committee converted the Family Violence Amendment to a state option.

Why State Welfare Legislation Should Address Domestic Violence and Sexual Abuse

The Amendment recognizes that violence makes and keeps women poor, and that it may be difficult and dangerous for battered women and victims of sexual assault to meet the welfare bill's new requirements. As documented by research such as Jody Raphael's report *Prisoners of Abuse: Domestic Violence and Welfare Receipt* (Taylor Institute 1996), the physical and mental effects of domestic violence, as well as direct efforts by abusers to interfere with their victims' education and employment, have serious implications for welfare-to-work programs. Arbitrary and inflexible time limits may need to be modified where violence prevents a woman from working. Child support cooperation requirements may subject women to retaliatory abuse. Residency requirements may harm women crossing state lines to flee a dangerous living situation. Imposing a child exclusion ("family cap") provision, as some states do, in cases of physical and sexual violence, is a particularly unfair penalty to the woman and the child.

To address these issues, the Amendment's provisions encourage states to include both increased services and flexible waivers in their state programs. **Specifically, the Amendment invites states to:**

- SCREEN APPLICANTS FOR DOMESTIC VIOLENCE WHILE MAINTAINING CONFIDENTIALITY;
- PROVIDE REFERRALS TO COUNSELING AND SUPPORTIVE SERVICES;
- MAKE GOOD CAUSE WAIVERS FOR CERTAIN WELFARE PROGRAM REQUIREMENTS.

Flexible Waivers In Cases of Battering or Extreme Cruelty

The waiver provision is an important tool for advocates, who should urge their states to adopt it. Waivers apply to the two-year time limits (before work is required) and five-year time limits (capping lifetime aid), which would be waived for as long as necessary. States should be able to exclude waived individuals from mandatory participation rates. The waivers also apply to the residency requirements, child support cooperation requirements and child exclusion provisions. Waivers are to be granted where the requirements would make it harder for welfare recipients to escape domestic violence, or where the requirements would unfairly penalize past, present or potential victims of physical or sexual violence.

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