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WELFARE REFORM AND FAMILIES IN THE CHILD WELFARE SYSTEM

MORGAN B. WARD DORAN* & DOROTHY E. ROBERTS**

INTRODUCTION

There is little question that the sweeping changes in welfare policy initiated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA)¹ will have an impact on families involved in state child welfare systems. Past research establishes an association between welfare receipt and involvement with child protection services.² The primary goal of the PRWORA is to move people from welfare to the workforce.³ This goal has the potential to improve children's welfare by increasing poor families' income, but also to increase child maltreatment by throwing families into eco-

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1. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C. (Supp. V 1999)).

2. Howard I. Bath & David A. Haapala, *Intensive Family Preservation Services with Abused and Neglected Children: An Examination of Group Differences*, 17 CHILD ABUSE & NEGLECT 213, 218, 220 (1993) (presenting a study which found that 77% of the families referred to Child Protective Services for neglect received some form of public assistance); see also DUNCAN LINDSEY, *THE WELFARE OF CHILDREN* 4 (1994) ("Impoverished families . . . are, in overwhelming numbers, relying on the child welfare system for help."); LEROY H. PELTON, *FOR REASONS OF POVERTY* 38 (1989) ("There is by now overwhelming evidence of a strong relationship between poverty and child abuse and neglect."); Elizabeth D. Jones & Karen McCurdy, *The Links Between Types of Maltreatment and Demographic Characteristics of Children*, 16 CHILD ABUSE & NEGLECT 201, 213 (1992) (studying child abuse in light of specific demographic factors, and finding that there is a "strong connection between neglect, poverty status and female-headed households"); Kristen Shook, *Assessing the Consequences of Welfare Reform for Child Welfare*, POVERTY RES. NEWS (Joint Center for Poverty Research, Chicago, IL), Winter 1998, available at <http://www.jcpr.org/winter98/article2.html>.

3. See Personal Responsibility and Work Opportunity Reconciliation Act § 401(a)(2) (codified at 42 U.S.C. § 601) (stating that one of the purposes of the Act is to "end the dependence of needy parents on governmental benefits by promoting job preparation, work, and marriage"); see also Ladonna Pavetti & Nancy Wemmerus, *From a Welfare Check to a Paycheck: Creating a New Social Contract*, 20 J. LAB. RES. 517, 518 (1999) ("To ensure that state TANF programs emphasize work, PRWORA requires states to meet steadily increasing work participation rates to receive their full TANF allocation.").

conomic uncertainty.⁴ Many welfare recipient families have experienced a number of adverse life events, including economic strain, parental stress, and inadequate child care,⁵ which make them more vulnerable to charges of child maltreatment.⁶ In addition, the new behavioral requirements that welfare reform imposes as a condition of receiving benefits affect the parenting experiences of recipients who are concurrently involved with the child welfare system.⁷ These families are at the intersection of two state programs that seek to modify the behavior of poor parents.

The welfare and child welfare systems share overlapping histories, philosophies, and client populations. The PRWORA eliminated the federal guarantee of a basic income support for all families and replaced it with Temporary Assistance to Needy Families (TANF), a programmatic combination of work requirements and sanctions for nonconforming behavior.⁸ TANF incorporates a system of financial

4. ROB GEEN & SHELLEY WATERS, THE URBAN INSTITUTE, *THE IMPACT OF WELFARE REFORM ON CHILD WELFARE FINANCING* (1997). The authors anticipate that PRWORA will affect the child welfare system indirectly. They note that, because income level correlates with incidence of child abuse, PRWORA may result in either increases or decreases in levels of child abuse, depending on whether families' economic well-being improves or declines. *Id.* at 5; *cf.* Pavetti & Wemmerus, *supra* note 3, at 535 (concluding that welfare reform's success or failure should be measured by its ability to respond not only to the labor market, but also to the conditions of families who "have previously depended on the welfare system for support"). *But see* Christina Paxson & Jane Waldfogel, *Parental Resources and Child Abuse and Neglect*, 89 AM. ECON. REV. 239, 242 (1999) (stating that "the upward trend in reports of child maltreatment may be spuriously correlated with trends in . . . the rate of labor-force participation of mothers and the general increase in income levels").

5. *See* SARAH BRAUNER & PAMELA LOPREST, THE URBAN INSTITUTE, *WHERE ARE THEY NOW? WHAT STATES' STUDIES OF PEOPLE WHO LEFT WELFARE TELL US 8-9* (1999) (noting that preliminary studies show that the average person who leaves welfare still has an income below the poverty level, but concluding that the economic status of recipients is still unclear); PAMELA LOPREST, THE URBAN INSTITUTE, *FAMILIES WHO LEFT WELFARE: WHO ARE THEY AND HOW ARE THEY DOING?* 23 (1999) (examining the success of parents exiting the welfare system, and noting that most parents work in low paying jobs, one-quarter of the parents work night schedules, and over half of the parents struggle with coordinating child care with their work schedules).

6. *See* Kristen Shook, *Does the Loss of Welfare Income Increase the Risk of Involvement with the Child Welfare System?*, 21 CHIL. & YOUTH SERV. REV. 781, 782 (1999) ("Psychosocial theories of economic hardship and parenting predict that financial strain leads to heightened feelings of stress and depression, or lower feelings of life satisfaction, self-efficacy and self-esteem, which in turn diminish the quality of care that a parent provides."); *id.* at 803-09 (studying welfare parents' risk of involvement with the child welfare system, and finding that stressful life events increase the risk of such involvement).

7. *See generally* ROBERT GEEN ET AL., THE URBAN INSTITUTE, *WELFARE REFORM'S EFFECT ON CHILD WELFARE CASELOADS* (2001). Families involved in both welfare and a child welfare system may be affected by inadequate coordination between the two systems. *See id.* at 36.

8. *See* Personal Responsibility and Work Opportunity Reconciliation Act §§ 101-116 (codified as amended at 42 U.S.C. §§ 601-617, 619).

punishments designed to deter disapproved behavior (e.g., out of wedlock childbearing, dependence of needy parents on government benefits) and to encourage approved behavior (e.g., marriage and economic independence).⁹ In addition, job-training programs seek to improve recipients' attitudes about work.¹⁰ State child welfare agencies similarly use removal or the threat of removal of children to coerce parents charged with child maltreatment to comply with a set of requirements that typically focus on curing perceived parental deficits.¹¹ Both the welfare and child welfare systems assume that poor families' problems are caused by internal deficiencies that can be remedied by improving parental behavior, rather than by external causes that require social change.¹²

Each system is designed to effect change through a combination of rewards and punishments "that smacks of the behavioral science of B.F. Skinner."¹³ Parents involved with the child welfare system must attend parenting classes, enroll in drug-rehabilitation programs, provide drug samples, and participate in individual and family counseling in order to keep or regain custody of their children.¹⁴ Similarly, parents who receive welfare must find paid employment, attend job train-

9. See 42 U.S.C. § 607(e) (describing penalties against individual welfare recipients who fail to meet work requirements); *id.* § 608(a) (enumerating various prohibitions on the conduct of welfare recipients); see also Tonya L. Brito, *The Welfarization of Family Law*, 48 U. KAN. L. REV. 229, 234 (2000) ("Like the rules of family law, the federal TANF program and corresponding state welfare programs seek to regulate family behavior."); Martha Matthews, *Assessing the Effect of Welfare Reform on Child Welfare*, 32 CLEARINGHOUSE REV. 395, 399 (1999) (describing how families receiving TANF grants may be sanctioned if they do not comply with work program requirements).

10. See Paveti & Wemmerus, *supra* note 3, at 520 (stating that "sanctions have become an increasingly important mechanism for reinforcing the importance of work . . . as they provide workers with a concrete tool to hold recipients accountable for their actions").

11. See Laura Frame, *Suitable Homes Revisited: An Historical Look at Child Protection and Welfare Reform*, 21 CHILD. & YOUTH SERV. REV. 719, 742 (1999) ("In recent years child welfare services and foster care have been viewed as protective interventions, shielding children from the harms they may suffer from their parents.").

12. See Jill Duerr Berrick, *From Mother's Duty to Personal Responsibility: The Evolution of AFDC*, 7 HASTINGS WOMEN'S L.J. 257, 273 (1996) ("Rather than target the current debate on the inadequacies of U.S. family policies, the minimum wage, wage supplements, or the structure of the American economy, the welfare controversy focuses attention on individual women and their personal responsibilities."); Brito, *supra* note 9, at 244-50 (discussing the varying degrees to which welfare parents and nonwelfare parents retain parental responsibility, and contending that PRWORA's work requirements prescribe parenting behavior); Alexia Pappas, Note, *Welfare Reform: Child Welfare or the Rhetoric of Responsibility*, 45 DUKE L.J. 1301, 1327 (1996) (describing a shift in government social policy "from policies that ensure minimal child welfare to punitive measures intended to control parents' behavior").

13. Paul Starobin, *The Daddy State*, 30 NAT'L J. 678, 679 (1998).

14. Matthews, *supra* note 9, at 400.

ing courses, and report to caseworkers in order to maintain benefits.¹⁵ In each program, parents who fail to comply with the stated requirements face financial and behavioral sanctions. These sanctions enforce the social control and punitive functions of both the welfare and child welfare systems. Threats of benefit reductions are used to influence the work, childbearing, and marital decisions of welfare recipients.¹⁶ Likewise, threats of child removal and termination of parental rights are used to rehabilitate parents charged with maltreating their children.¹⁷

Despite the overlap in the populations served by the two programs, states have made little effort to coordinate their behavior-modifying requirements. As a result, TANF and child protection services impose compound, and often conflicting, sets of requirements on parents involved in both systems.¹⁸ It may be physically impossible for parents to comply with the daily tasks that TANF and child welfare agencies require.¹⁹ More fundamentally, welfare reform and the child welfare system implement conflicting philosophies about ideal motherhood. While TANF lauds paid employment as the ultimate feature of respectable parenting, child welfare agencies require mothers primarily to nurture and protect their children.²⁰ Parents involved in both systems may find that the demands of keeping a job conflict with their ability to care for their children, especially given the lack of adequate and affordable child care.²¹

This Article uses the findings of a qualitative study to explore the convergence of these two behavior modification programs in the lives

15. Recipients must engage in "work activities," 42 U.S.C. § 607(e) (Supp. V 1999), which include paid employment or job training. *Id.* § 607(d). In addition, welfare recipients may need to develop an "individual responsibility plan" and meet with a caseworker on a regular basis. *Id.* § 608(b).

16. *See id.* § 602(a)(1)(A) (describing the requirements for state welfare plans, including work requirements and programs designed to reduce out-of-wedlock pregnancies).

17. *See id.* § 671(a) (describing the requirements of state plans for foster care and adoption).

18. GEEN ET AL., *supra* note 7, at 35-36; Matthews, *supra* note 9, at 405.

19. *See* Matthews, *supra* note 9, at 405.

20. *See* Berrick, *supra* note 12, at 269-70 (contrasting the historical conception of motherhood as work with current views that women's work consists of supporting their children financially rather than staying at home).

21. *See generally* GEEN ET AL., *supra* note 7, at 31, 35 (describing how TANF work requirements often conflict with child welfare requirements, especially mothers who miss court appearances because that leads judges to doubt their "sincerity" in caring for their children).

of poor families.²² Our study focused on families who both received welfare and experienced involvement with the child welfare system—so-called “dual-system families.” We conducted in-depth, face-to-face interviews with a subset of sixteen dual-system parents drawn from the larger pool of families participating in the Illinois Families Study (IFS). The IFS tracks a random sample of 1400 Illinois families who received welfare benefits in 1998 for a six-year period. Our goal was to examine the impact of welfare reform on the experiences of the families in the IFS who are also involved with the Illinois Department of Children and Family Services (DCFS). Our interviews confirmed that the convergence of these two behavior modification programs places competing demands on poor parents, making it difficult to meet the expectations of either program. As a result, dual-system families are uniquely burdened by excessive and, at times, contradictory social welfare policies.

Part I of this Article describes the use of behavior modification techniques in the welfare and child welfare systems. We examine the historical emphasis of poor support on enforcing morality and the modern trend toward using sanctions as a means of influencing welfare recipients' work and family decisions. We also point out the flawed stereotypes that fueled the recent changes in welfare law. Finally, this section describes the punitive approach of the child welfare system implemented through threats to remove children or terminate parental rights if parents do not comply with agencies' requirements. In Part II, we discuss the overlap and conflict between the welfare and child welfare systems. We argue that TANF's emphasis on sanctions and work requirements, coupled with the lack of adequate child care, make many welfare recipients more vulnerable to involvement with the child welfare system. Moreover, the compounded and conflicting requirements that each system imposes make it more difficult for dual-system parents to comply with the expectations of either one. Part III presents the methodology of our study and the characteristics of our sample. In Part IV, we discuss how the parents we interviewed experience the competing demands of the welfare and child welfare systems. We conclude that the difficulty dual-system parents have in caring for their children highlights the need for Congress to provide better support for struggling families and to reexamine TANF's behavior modification philosophy.

22. Morgan B. Ward Doran & Dorothy E. Roberts, *The Impact of Welfare Reform on Families Involved in Child Protective Services: Parents' Perceptions and Experiences* (2001) (unpublished study on file with authors).

I. TWO BEHAVIOR MODIFICATION SYSTEMS

Both the welfare and child welfare systems use behavior modification techniques to coerce clients into conformance with state-approved parenting norms.²³ From its inception, United States welfare law attempted to impose moral standards on recipients and to shape their behavior.²⁴ In this Part, we examine the origins of welfare's behavior modification philosophy, as well as its contemporary manifestation in welfare reform. We also discuss the parallel punitive approach of the child welfare system.

A. *The History of Welfare's Moral Regulation*

Behavior modification techniques are not new to welfare law. Welfare programs have historically sought to both provide support to needy families and encourage parental self-sufficiency and morality. The Mother's Pensions at the turn of the twentieth century explicitly proscribed immoral behavior and afforded administrators of the program wide latitude in judging recipients' compliance.²⁵ This penchant for enforcing moral behavior was preserved in the Aid to Dependent Children (ADC) and Aid to Families with Dependent Children (AFDC) programs. While providing assistance to poor widows, orphans, and mothers was the primary goal of ADC and AFDC, both programs also sought to promote the prevailing social ideals.²⁶

The Social Security Act of 1935 created ADC,²⁷ a federal social welfare program designed to ensure that the children of widows and orphaned youth would not grow up in poverty.²⁸ ADC afforded short-term minimum income support to mothers who had no other means

23. See Lucy Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719, 720-21 (1992) (stating that the idea behind state welfare reform measures is: "only those women and children who conform to majoritarian middle-class values deserve government subsistence benefits").

24. LINDA GORDON, *PITIED BUT NOT ENTITLED* 45-46 (1994).

25. *Id.* at 43-49; JILL QUADAGNO, *THE COLOR OF WELFARE* 119 (1994); Berrick, *supra* note 12, at 261.

26. Professor Berrick has noted that:

[A]s with mothers' pensions, only certain kinds of mothers qualified for assistance under the early AFDC program. Women with young children whose husbands had died, divorced, or deserted them were commonly thought of as the "deserving poor" because the circumstances of their poverty were outside of their control. Conversely, the unfortunate woman who had a child outside of marriage was often considered by public authorities as amoral or unfit. . . . [W]omen such as these were normally disqualified from receiving public support.

Berrick, *supra* note 12, at 260 (footnote omitted).

27. Social Security Act, ch. 531, §§ 401-406, 49 Stat. 620, 627-29 (1935) (codified as amended at 42 U.S.C. §§ 601-617 (Supp. V 1999)).

28. See *id.* § 401.

to provide for their children.²⁹ However, as did the Mother's Pension statutes before it, ADC incorporated an implicit condition of parental fitness into its eligibility requirements.³⁰ Only mothers who were "deserving" of assistance were allowed to enroll in ADC.³¹

Determinations of deservingness were based on the moral standards of the era. Indeed, Congress enabled states to consider the "moral character" of the parent when determining aid for children under ADC.³² For example, women of color and mothers of "illegitimate" children were routinely denied support.³³ These moral and racial requirements created an implicit "suitable home" restriction on ADC receipt that the federal government formally enacted in 1940.³⁴ Despite the assumptions of immorality and deviance that they were based upon, the suitable home provisions had little overall impact on "sexual activity, illegitimacy, and marriage and family stability" among ADC recipients.³⁵ Although the Social Security Board and the Bureau of Public Assistance eventually recommended that the restriction be repealed in 1945,³⁶ states continued to use birth status, moral character of the mother, and condition of the home as criteria for ADC

29. *See id.* § 406(a).

30. *See* Frame, *supra* note 11, at 721-22. ADC "reflected an essential philosophy of family preservation" that attempted to distinguish between poverty and child maltreatment. *Id.* at 721. Poor children were to be kept with their families unless the parent(s) had "unworthy parental character." *Id.* No effort was made, however, to define "worthiness"; rather, a common understanding of "immorality" was assumed. *Id.* at 721-22.

31. *See, e.g.,* Berrick, *supra* note 12, at 261 (explaining how women's sexual behavior, race, religion, and character were often factors for local caseworkers in determining whether mothers "deserved" assistance); *see also* GORDON, *supra* note 24, at 37 (discussing state assistance programs to "deserving" poor single mothers in the early 1900s and how ADC adopted this model).

32. WINIFRED BELL, *AID TO DEPENDENT CHILDREN* 29 (1965); *see also* Frame, *supra* note 11, at 725-26.

33. QUADAGNO, *supra* note 25, at 119-20. ADC was used to distribute benefits based on race because Southern congressmen demanded that states have the right to establish eligibility criteria to help determine who should receive benefits. *See id.* at 119. This resulted in white, widowed women being the majority of beneficiaries rather than single, divorced, or deserted African-American mothers. *Id.*; *see* JOEL F. HANDLER & YEHESKEL HASENFELD, *THE MORAL CONSTRUCTION OF POVERTY* 105 (1991) ("[T]he Social Security Act . . . reinforce[d] locally controlled social regulation of the undeserving poor— . . . the unemployed male, the dependent aged, and poor single mothers.").

34. *See* BELL, *supra* note 32, at 29-35. In 1940, the Bureau of Public Assistance issued an official "suitable home" policy "that required state agencies to determine that conditions in the home in which a child will live will protect the interests and promote the welfare of a dependent child." *Id.* at 35-36. The policy stated that "[m]any homes in which dependent children now live do not conform to a minimum standard of decency and health." *Id.* at 36.

35. Roland J. Chilton, *Social Control Through Welfare Legislation*, 5 *LAW & SOC'Y REV.* 205, 220 (1970).

36. BELL, *supra* note 32, at 51.

grant decisions.³⁷ ADC, though technically available to all children in single-parent households, was in practice an income support program exclusively for white widows.³⁸ In 1960, reacting to protests against the widespread denial of benefits to minority and nonwidowed single-parent families, the Secretary of Health Education and Welfare issued a policy statement directing states to abandon the suitable home criteria for ADC receipt.³⁹

In 1962, the "social service amendments" to the Social Security Act renamed the ADC program "Aid to Families with Dependent Children" (AFDC).⁴⁰ The new AFDC incorporated work incentives and job training through the Work Incentive Program (WIN), which was designed to usher families off the welfare rolls.⁴¹ WIN introduced a system of inducements to work, and punishments for nonparticipation.⁴² However, the sanctions imposed under AFDC and the severely criticized WIN program were often ambiguous, largely discretionary, and seldom enforced.⁴³ The elimination of racial and moral requirements was a factor in the AFDC program's enrollment increase from three million recipients in 1960 to eleven million in 1975.⁴⁴ As the number of blacks in the welfare caseloads grew, "welfare dependency" became stigmatized, work requirements increased, and effective benefit levels were reduced.⁴⁵

37. See generally *id.* at 93-110 (discussing states' use of "suitable home" requirements between 1952 and 1960).

38. HANDLER & HASENFELD, *supra* note 33, at 104-05 (explaining how women of color, as well as divorced, abandoned, and unmarried mothers, were considered "undeserving poor" and not a part of organized public welfare programs); QUADAGNO, *supra* note 25, at 119 (arguing that state administration of ADC funds led to racial discrimination).

39. Frame, *supra* note 11, at 728. In 1968, the United States Supreme Court took the first step toward formally invalidating suitable homes provisions by nullifying "absent father" rules, which denied benefits to AFDC recipients who cohabit with a nonparental male. See *King v. Smith*, 392 U.S. 309, 334 (1968) (holding that "deserted children who are legally fatherless cannot be flatly denied federal assistance on the transparent fiction that they have a substitute father" unless there is proof he is providing actual assistance). Subsequent case law reiterated and extended the *King* holding, effectively prohibiting states from assuming that nonlegally responsible lodgers in an AFDC home contribute financially to the household. See *Van Lare v. Hurley*, 421 U.S. 338, 346 (1975) (invalidating a New York regulation that reduced benefits on the assumption that a nonpaying male lodger was contributing to the household); *Lewis v. Martin*, 397 U.S. 552, 559-60 (1970) (upholding a California regulation that treated the income of a man not married to the mother as unavailable to her children unless there was proof of support).

40. BEIRICK, *supra* note 12, at 259 n.10.

41. See HANDLER & HASENFELD, *supra* note 33, at 138-39.

42. *Id.*

43. See *id.* at 139 (explaining how the ambiguous and discretionary nature of the WIN legislation produced "dismal results").

44. See *id.* at 113.

45. See DOROTHY ROBERTS, *KILLING THE BLACK BODY* 207 (1997).

B. *Welfare Reform: Behavior Modification Through Work Requirements, Time Limits, and Sanctions*

The PRWORA reflects the government's response to the public perception that welfare was too generous and eroded core American values.⁴⁶ The law eliminated the federal guarantee of aid to poor children and replaced it with TANF, a programmatic combination of work requirements and sanctions for recipients' nonconforming behavior.⁴⁷ The new welfare law was specifically designed to employ punitive techniques as a means to modify parents' behavior.⁴⁸

The PRWORA dramatically alters the way that states dispense public assistance to the poor. At the administrative level, the PRWORA offers financial bounties for states that are able to reduce the number of families on welfare.⁴⁹ These financial rewards provide an incentive for state welfare administrators and street-level caseworkers to discourage parents from initiating or continuing their welfare receipt.⁵⁰ At the individual level, TANF incorporates a system of financial punishments that is designed to modify the behavior of recipients. For example, parents are subject to nondiscretionary sanctions for failing to work, attend school,⁵¹ or even for failing to meet with their caseworker.⁵²

1. *Deterring Disapproved Behaviors.*—Like ADC and AFDC, TANF imposes a set of behavior requirements upon mothers as a condition of federal assistance. The current welfare program addresses issues of parental fitness and moral character through sanctions and benefit reductions to modify the behavior of recipients.⁵³ Welfare historian Gwendolyn Mink writes that “[b]oth Democrats and Republicans em-

46. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 101, 103, 110 Stat. 2105, 2110-13 (codified as amended at 42 U.S.C. § 601 (Supp. V 1999)); see also NEWT GINGRICH ET AL., *CONTRACT WITH AMERICA* 65-77 (Ed Gillespie & Bob Schellhaus eds., 1994).

47. Personal Responsibility and Work Opportunity Reconciliation Act §§ 101-116 (codified as amended at 42 U.S.C. §§ 601-617, 619).

48. See 42 U.S.C. §§ 607-608 (detailing mandatory work requirements and corresponding sanctions for noncompliance); see also Pavetti & Wemmerus, *supra* note 3, at 521 (“The primary purpose of sanctions is to send a message that receipt of cash assistance carries with it a set of expectations, especially regarding work.”).

49. 42 U.S.C. § 603(a)(4), (5)(E).

50. See GORDON MERMIN & C. EUGENE STEUERLE, *THE URBAN INSTITUTE, THE IMPACT OF TANF ON STATE BUDGETS* 3 (1997).

51. 42 U.S.C. § 607(c)-(e).

52. See Evelyn Z. Brodtkin, *Inside the Welfare Contract: Discretion and Accountability in State Welfare Administration*, 71 SOC. SERV. REV. 1, 13 (1997) (explaining how caseworkers often threatened clients with financial sanctions if the clients did not follow their instructions).

53. See 42 U.S.C. §§ 607-608.

phasized the wrongs of mothers—their ‘unwillingness to work,’ their failure to marry (or stay married), their irresponsible sexuality and childbearing.”⁵⁴ Prior to 1996, approximately half of the states had applied for “waivers,” which allowed states to depart from AFDC funding requirements and to use behavior modification strategies.⁵⁵ These states acted as early laboratories for federal welfare reform. Examples of state waiver plans that focused on modifying parental behavior and were incorporated into the federal legislation include New Jersey’s Wedfare⁵⁶ and Family Cap⁵⁷ programs, and Wisconsin’s Workfare⁵⁸ and Learnfare programs.⁵⁹

TANF permits states to implement child exclusion policies, or “family caps,” to reduce pregnancies among the recipient population.⁶⁰ Somewhat akin to the ADC prohibition against single mothers having sexual relations while receiving government assistance,⁶¹ family caps function as a loosely controlled behavioral deterrent.⁶² Under child exclusion policies, mothers who currently receive welfare bene-

54. GWENDOLYN MINK, *WELFARE’S END* 4 (1998).

55. Nan S. Ellis & Cheryl M. Miller, *Welfare Waiting Periods: A Public Policy Analysis of Saenza v. Roe*, 11 STAN. L. & POL’Y REV. 343, 343 n.8 (2000); Philip Harvey, *An Analysis of the Principal Strategies that Have Influenced the Development of American Employment and Social Welfare Law During the 20th Century*, 21 BERKELEY J. EMP. & LAB. L. 677, 748 (2000).

56. N.J. STAT. ANN. § 44:10-3.4(b) (West 1993) (repealed 1997).

57. *Id.* § 44:10-3.5; see MICHAEL J. CAMASSO ET AL., A FINAL REPORT ON THE IMPACT OF NEW JERSEY’S FAMILY DEVELOPMENT PROGRAM, at i-ii (1998) (evaluating the 1992 New Jersey Family Development Program that included “family cap” provisions, which prohibit welfare recipients from receiving additional benefits for a child conceived while on welfare, and provisions similar to “Wedfare,” which eliminate the marriage penalty and equalize benefits for two-parent households); see also Ted George Goertzel & John Hart, *New Jersey’s \$64 Question*, in THE POLITICS OF WELFARE REFORM 109, 109-45 (Donald F. Norris & Lyke Thompson eds., 1995) (describing the enactment and impact of the Family Cap program); Williams, *supra* note 23, at 736 (describing the New Jersey Family Cap program).

58. WIS. STAT. ANN. § 49.147 (West Supp. 2001).

59. *Id.* § 49.26; see Thomas J. Corbett, *Welfare Reform in Wisconsin: The Rhetoric and the Reality*, in THE POLITICS OF WELFARE REFORM, *supra* note 57, at 19, 36-43 (describing the passage and implementation of the Wisconsin Learnfare program); Williams, *supra* note 23, at 726-36 (describing the Wisconsin Learnfare program). Other states also designed experimental welfare programs. See Donald F. Norris & Lyke Thompson, *Findings and Lessons From the Politics of Welfare Reform*, in THE POLITICS OF WELFARE REFORM, *supra* note 57, at 215, 221-26 (examining the laws of California, Maryland, Michigan, New Jersey, Ohio, and Wisconsin).

60. Brito, *supra* note 9, at 241 & n.47.

61. See Frame, *supra* note 11, at 725 (noting that, in the early 1900s, women who had “unmarried relationships with men” were often denied aid).

62. See Brito, *supra* note 9, at 241-42 (observing that family caps are used to deter women on welfare from having additional children, and noting that family caps are predicated on the assumption that welfare intrinsically encourages poor women to have children); see also Vicki Lens, *Welfare Reform and the Family Cap: Rhetoric Versus Reality*, 4 J. CHILD. & POVERTY 19, 26-30 (1998) (examining the theory behind the family cap and claims that reducing benefits will deter women on welfare from having more children).

fits and give birth to a child (or children) do not receive an increase in the amount of their grant.⁶³ Thus, the family cap acts as a form of punishment for an unwanted result—pregnancy—as a means to deter that behavior. Although the effectiveness of family caps at deterring pregnancy is under study,⁶⁴ it is clear that this policy reduces the amount of benefits for many children born to welfare-dependent families.⁶⁵

In addition, TANF attempts to curtail the independence of teenage recipients and punish drug use among recipients. Minors under the age of eighteen may be denied cash assistance unless they agree to live with a parent, adult relative, or legal guardian.⁶⁶ If a responsible adult is not available, the minor must rely upon the welfare agency to locate one.⁶⁷ TANF also provides that individuals convicted of drug-related felonies after 1997 will suffer a lifetime prohibition from receiving both TANF and food-stamp benefits, although states may opt out of or modify this prohibition.⁶⁸

2. *Work Requirements and Time Limits.*—The centerpiece of TANF is the requirement that all able parents work in return for the government's financial support.⁶⁹ TANF is intended to provide only short-term assistance to families until the primary caregiver finds paid employment.⁷⁰ In keeping with the emphasis on threatened punishment as a tool of behavior modification, work is mandatory under TANF, and noncompliance generates sanctions.⁷¹

Welfare receipt under TANF is limited to a five-year lifetime maximum.⁷² Further, all capable adults must find a job within twenty-four

63. See, e.g., N.J. STAT. ANN. § 44:10-3.5 (West 1992) (repealed 1997).

64. See CAMASSO ET AL., *supra* note 57, at 244 (finding that the New Jersey Family Development Program resulted in birth rates between 9% and 12% lower than the control group for women participating in the program); Lens, *supra* note 62, at 31 (concluding that no currently available evidence proves that the family cap will reduce out-of-wedlock births, and arguing that the family cap ignores changes regarding out-of-wedlock births in society as a whole).

65. See Lens, *supra* note 62, at 33.

66. 42 U.S.C. § 608(a)(5)(A) (Supp. V 1999).

67. *Id.* § 608(a)(5)(B)(i).

68. 21 U.S.C. §§ 862, 862b (2000).

69. See 42 U.S.C. § 602(a)(1)(A)(ii) (Supp. V 1999) (providing that state family assistance programs must "[r]equire a parent or caretaker receiving assistance under the program to engage in work").

70. See *id.* § 608(a)(7) (limiting assistance to a period not to exceed five years).

71. *Id.* § 607(e); see also Pavetti & Wemmerus, *supra* note 3, at 520-21 (explaining that sanctions for noncompliance have always been utilized in welfare-to-work programs, but that TANF allows states to strengthen their sanctions).

72. 42 U.S.C. § 608(a)(7).

months of their initial receipt of federal aid or risk termination of benefits.⁷³ To facilitate compliance, states may require recipients to engage in work-related activities or specific work-program mandates.⁷⁴ The PRWORA allows states to modify federal requirements by obligating recipients to work within a shorter period of time.⁷⁵ States may also exempt twenty percent of their caseloads from the time limits and work requirements for extreme hardship, battery, or cruelty.⁷⁶

Underlying TANF's work requirements and time limits are a set of assumptions regarding the financial and cognitive benefits associated with work as opposed to welfare receipt. This position considers welfare receipt in and of itself— independent of economic and socio-demographic factors—as a negative force on family functioning and child development.⁷⁷ According to this theory, welfare undermines recipients' motivation and self-esteem by discouraging work and reinforcing recipients' negative perceptions about their ability to provide for their children.⁷⁸ In turn, this theory posits that the combined effects of less effective parenting and the absence of a positive parental role model harm the children of welfare recipients.⁷⁹ Supporters of welfare reform contend that, by encouraging parents to work, TANF

73. *Id.* § 602(a)(1)(A)(ii).

74. *Id.* (authorizing states to develop plans for assistance that “[r]equire a parent or caretaker receiving assistance under the program to engage in work (as defined by the State)”).

75. *Id.* (allowing states to require work before the 24-month limit if the State determines that the recipient “is ready to engage in work”). States may also use their own funds to provide assistance after the five-year limit. Pavetti & Wemmerus, *supra* note 3, at 521. As Pavetti and Wemmerus have explained:

As of October 1997, 26 states had adopted a 60-month limit and 19 states had adopted a limit shorter than 60 months (including some states that had adopted a periodic time limit such as 24 out of 60 months). One state adopted an individualized time limit with no absolute limit specified in state law. Four states planned to continue to provide reduced benefits to families after 60 months and one state had not adopted any time limits.

Id. at 521-22.

76. 42 U.S.C. § 608(a)(7)(C).

77. See LAWRENCE M. MEAD, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP* 41 (1986) (“People . . . feel less need to fulfill work and family obligations once government is willing, in effect, to do it for them.”); Brito, *supra* note 9, at 247 (“The clear message now is that what children need is financial support from their parents (rather than from the state) and that the financial support trumps the parental nurturing role.”); Williams, *supra* note 23, at 719-21 (describing the rhetoric of the welfare reform debate).

78. See CHARLES MURRAY, *LOSING GROUND* 147-66 (1984); see also Williams, *supra* note 23, at 725.

79. See generally Thomas L. Hanson et al., *Economic Resources, Parental Practices, and Children's Well-Being*, in *CONSEQUENCES OF GROWING UP POOR* 190, 190-92 (Greg J. Duncan & Jeanne Brooks-Gunn eds., 1997) (describing the problems of children from economically disadvantaged homes).

positively affects recipients' self-perception and confers cognitive and social benefits to their children.⁸⁰

3. *Sanctions.*—Sanctions are used in TANF to facilitate compliance with work requirements.⁸¹ Recipients who do not fully participate in a given state's job assistance program, called "Work First" in many states,⁸² or who reach the twenty-four-month limit for receipt without work, are subject to sanctions.⁸³ In addition to these work-based sanctions, the PRWORA mandates that states institute a lifetime ban on all TANF and food stamp benefits to any individual who is convicted of a felony involving a controlled substance.⁸⁴ This mandatory sanction is especially significant to child welfare programs in states with major cities like Illinois, where forty percent of all child maltreatment reports involve children who are exposed to drugs.⁸⁵ Some states also require welfare recipients to enter into "personal responsibility agreements" that are used to generate sanctions even if the parent did not violate any formal welfare rules.⁸⁶ Failure to consent to the personal responsibility agreement is, in and of itself, a sanctionable offense.⁸⁷ Finally, sanctions may also be imposed by caseworkers for perceived uncooperativeness on the part of recipients.⁸⁸

According to 1999 figures, "36 states now impose 'full-family sanctions' for initial or continued noncompliance" with work programs, under which "a family's entire cash assistance grant is eliminated."⁸⁹ Fourteen of these states impose a full-family sanction as the initial penalty for noncompliance with state program requirements.⁹⁰ Nineteen states, however, use partial sanctions first.⁹¹ These states re-

80. See, e.g., Matthews, *supra* note 9, at 398 (noting that studies suggest children's well-being and intellectual attainment improve when their mothers become employed).

81. See Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion, and Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121, 1157 (2000) (noting that "[w]ork requirements generate a steady stream of opportunities for the imposition of sanctions").

82. See Pavetti & Wemmerus, *supra* note 3, at 518.

83. See 42 U.S.C. § 602(a)(1)(A)(ii) (Supp. V 1999); see also Pavetti & Wemmerus, *supra* note 3, at 521 (noting states' efforts to strengthen sanctions to reinforce the importance of work).

84. See 21 U.S.C. § 862 (2000).

85. Richard P. Barth, *The Juvenile Court and Dependency Cases*, FUTURE CHILD., Winter 1996, at 100, 103.

86. 42 U.S.C. § 608(b)(3) (Supp. V 1999); Diller, *supra* note 81, at 1157-58.

87. Diller, *supra* note 81, at 1158.

88. See Brodtkin, *supra* note 52, at 31 n.36 (defining "noncooperation" as a sanctionable offense that is largely a matter of caseworker discretion).

89. Pavetti & Wemmerus, *supra* note 3, at 521.

90. *Id.*

91. *Id.*

duce the family grant or eliminate the adult portion of the TANF award as a warning to families that compliance is necessary to continue receiving benefits.⁹²

Sanction rates reflect the economic and employment conditions that differ state by state. One study of post-TANF recipients in Maryland found that, after nine months of the program, less than five percent of clients received a full-family sanction.⁹³ In contrast, an examination of welfare reform in Delaware found that fifty percent of all recipients received some form of sanction after the implementation of TANF.⁹⁴ Another study found that, "[d]uring one three-month period, almost forty percent of recipients who left welfare nationally did so because of sanctions."⁹⁵

C. *Myths and Stereotypes: The Weak Factual Foundation for Welfare Policies*

Welfare reform's emphasis on behavior modification techniques is shaped by stereotypes about the typical welfare recipient rather than the goal of improving the lives of poor families.⁹⁶ Through the sanctions and time limits imposed under TANF, the PRWORA attempts to coerce recipients into what lawmakers consider the social mainstream.⁹⁷ However, provisions like the family cap, Learnfare, and

92. *Id.*

93. MARYLAND DEP'T OF HUMAN RESOURCES, LIFE AFTER WELFARE: AN INTERIM REPORT, at iv (1997).

94. Pavetti & Wemmerus, *supra* note 3, at 521.

95. Diller, *supra* note 81, at 1159-60.

96. *See, e.g.*, Stephen Lofredo, *Poverty, Democracy, and Constitutional Law*, 141 U. PA. L. REV. 1277, 1338 (1993) ("In the case of the poor, [the lack of a political voice] has too often allowed political discourse to degenerate into mindless scapegoating and dehumanizing stereotypes."); Robert D. Bomersbach, Note, *New Jersey's Bryant Amendment*, 15 WOMEN'S RTS. L. REP. 169, 174 n.66 (1993-94) ("The poor are seen as unwilling to work unless compelled to do so, incompetent, dishonest, and irresponsible with regard to family and community obligations alike."); *id.* at 174 (noting that current welfare laws "focus[] on the behavior of the individual who, if impoverished, is perceived to have done something wrong").

97. *See* Kathryn R. Lang, *Fair Work, Not "Workfare": Examining the Role of Subsidized Jobs in Fulfilling States' Work Requirements Under the Personal Responsibility and Work Reconciliation Act of 1996*, 25 FORDHAM URB. L.J. 959, 972-73 & n.84 (1998) (discussing a school of reformers who see work as "an essential feature of citizenship" and who believe that "[b]ringing the isolated ghetto poor back into the mainstream society requires enforcing the work ethic" (quoting MICKEY KAUS, THE END OF EQUALITY 104-05 (1992))); Williams, *supra* note 23, at 720-21 (arguing that the idea behind state demonstration projects such as "Learnfare" or "Wedfare" is that only women who conform to middle-class values deserve assistance); *see generally* Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER SOC. POL'Y & L. 13, 17 (1999) (suggesting that "[p]olicy makers argue that the goal should be independence, and favor the termination of subsidy so the individual can learn to be self-sufficient"); Lucy A. Williams, *Race, Rat Bites*

Welfare carry clear assumptions about the morality and motivations of welfare recipients.⁹⁸ These behavior modification provisions are premised upon a stereotyped understanding of the typical welfare family. They stem from the view that welfare recipients are “dysfunctional and deviant members of society because they cannot support themselves.”⁹⁹ The PRWORA’s wholesale adoption of these stereotypes serves to “reinforce[] the myth that social problems . . . are caused by the deviant behavior of welfare recipients”¹⁰⁰ rather than historical problems such as racial discrimination and socioeconomic disadvantage.¹⁰¹ Despite their prominence in the text and spirit of the PRWORA, little evidence exists to support these myths.¹⁰²

For example, child exclusion policies are based on the assumption that women receiving welfare are incapable of making responsible childbearing decisions and are enticed to have additional children by the incremental increase in benefits.¹⁰³ Empirical studies demonstrate, however, that there is no significant correlation between wel-

and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate, 22 FORDHAM URB. L.J. 1159, 1174 (1995) (discussing the role of the media in perpetuating stereotypes of welfare mothers, and arguing that these stereotypes ultimately affect the decisions of policy makers).

98. See Tonya L. Brito, *From Madonna to Proletariat: Constructing a New Ideology of Motherhood in Welfare Discourse*, 44 VILL. L. REV. 415, 425-35 (1999) (stating that “welfare policymaking continues to be dominated by race-based and gender-based assumptions”).

99. Laura M. Freidman, Comment, *Family Cap and the Unconstitutional Conditions Doctrine: Scrutinizing a Welfare Woman’s Right to Bear Children*, 56 OHIO ST. L.J. 637, 657 (1995).

100. Williams, *supra* note 23, at 727.

101. *Id.* at 719. Conservative politicians and supporters of welfare reform “claimed that the welfare initiatives of the 1960’s are responsible for the persistence of poverty in the United States” rather than “the structural problems of our society.” *Id.*; see also Lucie E. White, *No Exit: Rethinking “Welfare Dependency” From a Different Ground*, 81 GEO. L.J. 1961, 1963 (1993) (“According to this myth, it is welfare policy—rather than the more complex historical, structural, economic, and psychocultural dynamics of poverty—that causes families, especially those headed by women, to be and to remain poor.”).

102. See Robert Moffitt, *Welfare Reform: An Economist’s Perspective*, 11 YALE L. & POL’Y REV. 126, 132 (1993). The following are “popular beliefs about behavioral effects of the welfare system [under AFDC]:

- (1) that it serves as a severe disincentive to work
- (2) that it encourages long-term dependency on welfare
- (3) that it encourages marital breakup and illegitimacy
- (4) that it encourages state-to-state migration to take advantage of higher benefits
- (5) that welfare is ‘passed down’ from generation to generation”

Id. However, “little evidence exists to support any of these beliefs, with the possible exception of the first.” *Id.*

103. April L. Cherry, *Social Contract Theory, Welfare Reform, Race, and the Male Sex-Right*, 75 OR. L. REV. 1037, 1094 (1996); Martha F. Davis, *The New Paternalism: War on Poverty or War on Women?*, 1 GEO. J. ON FIGHTING POVERTY 88, 90 (1993).

fare receipt and increased childbearing.¹⁰⁴ To the contrary, welfare mothers are less likely than other mothers “to have multiple pregnancies and more likely to use contraception.”¹⁰⁵ Moreover, welfare families do not have more children than nonwelfare families.¹⁰⁶

Similarly invidious assumptions motivate the so-called Wedfare or Bridefare program.¹⁰⁷ Bridefare attempts to encourage two-parent marital families by increasing the cash benefit of welfare recipients if they marry.¹⁰⁸ This provision assumes that any two-parent family is better than a single-parent family, regardless of a parent’s abilities and desires.¹⁰⁹ It also sends a message to unmarried welfare recipients that their behavior is deviant, and that the state does not consider them to be capable parents.¹¹⁰ Under welfare reform, decisions considered to be private, constitutionally protected choices for other citizens are the subject of government coercion for welfare recipients.¹¹¹

104. See GREGORY ACS, THE URBAN INSTITUTE, THE IMPACT OF AFDC ON YOUNG WOMEN’S CHILDBEARING DECISIONS 16-17 (1993) (presenting data showing little relationship between births to low-income women and AFDC benefits); Davis, *supra* note 103, at 90 (“National and local studies have demonstrated no positive relationship between the level of welfare benefits and pregnancy . . .”). Women receiving AFDC benefits and non-AFDC middle-class women share the same reasons for childbearing. These reasons include “the belief that a child solidifies a relationship with the father, the assumption that children represent an economic value . . . a sense . . . that having a child gives [life] value and meaning, and the desire to give a grandchild to one’s own mother.” Williams, *supra* note 23, at 738-39 (footnotes omitted). Moreover, non-AFDC, middle-class women do not “have children only when they are economically able to support them,” which is another assumption of child exclusion policies. *Id.*

105. JOEL F. HANDLER, THE POVERTY OF WELFARE REFORM 106 (1995) (emphasis omitted). In 1980, under 10% of the families receiving welfare had more than three children. Williams, *supra* note 23, at 738.

106. Pappas, *supra* note 12, at 1319.

107. See Nina Perales, A “Tangle of Pathology”: Racial Myth and the New Jersey Family Development Act, in MOTHERS IN LAW 250, 263-64 (Martha Albertson Fineman & Isabel Karpin eds., 1995) (contending that Bridefare and the child exclusion provisions are based on a stereotype of women of color as being “irresponsible brood sow[s]” and “castrating matriarch[s] who scorn[] valid offers of marriage”).

108. Michele Estrin Gilman, *Legal Accountability in an Era of Privatized Welfare*, 89 CAL. L. REV. 569, 590 (2001).

109. See Will Marshall & Elaine Ciulla Karmack, *Replacing Welfare with Work*, in MANDATE FOR CHANGE 217, 226 (Will Marshall & Martin Schram eds., 1993) (stating that many state welfare reforms are premised on “recognition of the importance of the two-parent family”); see also Cherry, *supra* note 103, at 1086 (stating Congress’s assumption “that two-parent families are the source of culture and social order, social stability, economic self-sufficiency, and core social values”); Davis, *supra* note 103, at 91 (explaining that some legislators believe “mother-only families are merely ‘mother-child family fragments,’ that can only be made whole with the addition of a father”); Martha L. Fineman, *Images of Mothers in Poverty Discourses*, 1991 DUKE L.J. 274, 287 (contending that single motherhood is viewed as a disease and a threat to the foundation of society).

110. Brito, *supra* note 9, at 236, 247; Davis, *supra* note 103, at 89.

111. Brito, *supra* note 9, at 241.

Legislatures and courts treat welfare receipt as a waiver of basic privacy rights, permitting the state to penalize poor mothers for reproductive and parental behavior that violates prescribed norms.¹¹²

These myths about welfare recipients' sexual and reproductive deviance were bolstered by powerful racial imagery. The stereotype of the shiftless "welfare queen," who deliberately becomes pregnant to fatten her welfare check and then squanders it on drugs, helped to garner support for welfare reform.¹¹³ According to sociologists Joel Cazenave and Kenneth Neubeck, "Clinton and other politicians were able to successfully play the welfare 'race card' by exploiting popular welfare racist attitudes that were well documented by polling and other data."¹¹⁴ The black welfare queen embodies the reproductive irresponsibility and maternal neglect that welfare dependency was supposed to promote and is used to legitimize welfare's behavior-modifying role.¹¹⁵

D. *The Child Welfare System's Punitive Approach*

Like welfare reform, the child welfare system uses punishments and rewards to gain clients' compliance with its behavioral rules. Child protection agencies focus on "fixing" parents' deficits rather than addressing the systemic causes of child maltreatment.¹¹⁶ Parents who do not reform their behavior face the threat that their children will be removed and their parental rights terminated.¹¹⁷ Child welfare agencies and judges typically give parents a case plan that lists require-

112. Dorothy E. Roberts, *Welfare and the Problem of Black Citizenship*, 205 YALE L.J. 1563, 1579-81 (1996) (book review).

113. See ROBERTS, *supra* note 45, at 17-19; Brito, *supra* note 98, at 415; Noel A. Cazenave & Kenneth J. Neubeck, *Fighting Welfare Racism*, POVERTY & RACE, Mar.-Apr. 2001, at 1, 1; see also Williams, *supra* note 97, at 1167-68 n.47 ("People still believe that old lie that AFDC mothers keep on having kids just to get a bigger welfare check . . . are immoral . . . lazy, misuse their welfare checks, spend it all on booze, and are stupid and incompetent." (quoting Johnnie Tillman, *Welfare Is a Women's Issue*, in AMERICA'S WORKING WOMEN 357 (Linda Gordon & Susan Reverby eds., 1976))).

114. Cazenave & Neubeck, *supra* note 113, at 1.

115. See Williams, *supra* note 97, at 1160-61 & n.9 (describing how the account of a stereotypical welfare mother influenced the passage of a stringent welfare reform bill in Massachusetts).

116. See LINDSEY, *supra* note 2, at 4-5 (describing the "residual approach" to child welfare, which waits until families are in crisis for intervention); PELTON, *supra* note 2, at 27 (describing the psychodynamic model of child abuse that focuses on the treatment of parents' psychological defects).

117. See Naomi R. Cahn, *Children's Interest in a Familial Context: Poverty, Foster Care, and Adoption*, 60 OHIO ST. L.J. 1189, 1202 (1999). Many states have instituted programs that are highly punitive to families. Recipients must comply with requirements of their case plan or face termination of parental rights. *Id.* Moreover, the burden of showing significant progress and compliance is on the natural parent. *Id.*

ments they must complete to keep their children at home or regain custody of those placed in substitute care.¹¹⁸ Parents are often required to enroll in multiple services, such as drug treatment, psychological counseling, and parent training classes.¹¹⁹ Parents typically rely on public transportation to get to these mandated appointments.¹²⁰ Moreover, a judge's requirement of particular services does not mean that they are readily available. Drug treatment programs, for example, especially those that allow children to reside with their mothers, have extensive waiting lists.¹²¹

Like welfare reform, the child welfare system hides the systemic reasons for families' hardships by laying the blame on individual parents' deviant behavior. Sociologists Andrew Billingsley and Jeanne Giovannoni explain, "[t]he underlying philosophy of the present child welfare system is that *all families should* be able to function adequately without the assistance of society and that failure to perform the parental role without such assistance is indicative of individual pathology."¹²² Because the system attributes child maltreatment to parental failings, state intervention to protect children is punitive in nature. Caseworkers take on a dualistic role of investigating, coercing, and penalizing the families they are supposed to help.¹²³ The caseworker, notes Duncan Lindsey, has been "unmistakably cast in the role of inquisitor, prying into and judging the affairs of the family with predictably adverse effects on the family."¹²⁴

Recent developments in federal child welfare policy threaten to intensify this punitive approach. President Clinton signed the Adop-

118. See 42 U.S.C. § 675(1) (1994 & Supp. V 1999) (describing the contents of a case plan); see also David J. Herring, *The Adoption and Safe Families Act—Hope and Its Subversion*, 34 FAM. L.Q. 329, 332-33 (2000) (describing the requirement that states develop family case plans and a system to monitor progress).

119. See U.S. GENERAL ACCOUNTING OFFICE, PARENTAL SUBSTANCE ABUSE: IMPLICATIONS FOR CHILDREN, THE CHILD WELFARE SYSTEM, AND FOSTER CARE OUTCOMES 8 (1997) (stating that reunification is more likely if "the full range of needs of the mother are addressed").

120. See Kathleen A. Bailie, Note, *The Other "Neglected" Parties in Child Protective Proceedings: Parents in Poverty and the Role of the Lawyers Who Represent Them*, 66 FORDHAM L. REV. 2285, 2296-97 (1998) (noting that the very deficiencies that cause charges of neglect, such as lack of transportation, prevent welfare parents from complying with the service plan); see also Lang, *supra* note 97, at 974 (stating "that health care, child care, and transportation are the three most substantial barriers to [welfare recipients] participation in [work] programs").

121. See Cahn, *supra* note 117, at 1203-04 (explaining that funding shortages and high caseloads prevent welfare programs from offering sufficient services).

122. ANDREW BILLINGSLEY & JEANNE M. GIOVANNONI, CHILDREN OF THE STORM, at viii (1972).

123. See PELTON, *supra* note 2, at 118-20; Brodtkin, *supra* note 52, at 13-14 (discussing caseworkers' dual role of "counselor and cop").

124. LINDSEY, *supra* note 2, at 98.

tion and Safe Families Act (ASFA) into law in November 1997.¹²⁵ Based largely on a reactionary response to the most egregious cases of child abuse reported in the popular media, ASFA radically transformed the focus of federal child welfare policy.¹²⁶ In contrast to the emphasis on family reunification that characterized its predecessor, the Adoption Assistance and Child Welfare Act of 1980 (AACWA),¹²⁷ ASFA elevates the health and safety of children above all other concerns.¹²⁸ Indeed, ASFA's reform of federal child welfare policy reaches beyond its stated goal of protecting children and creates a legislatively mandated preference for adoption.¹²⁹ The law institutes several measures to achieve this aim, including an expedited timeframe for termination of biological parents' rights¹³⁰ and financial rewards to states that significantly increase the number of adoptions over previous years.¹³¹

Under ASFA, poor parents—already demonized because they are unable to financially support their family—must defend against intensified state efforts to terminate their parental rights. Rather than increasing support for poor families, ASFA emphasizes punitive measures designed to effect behavioral change among parents. Worse than simple monetary incentives, ASFA uses children as leverage to encourage a parent's behavioral change. ASFA's stick is the permanent end of the parent's relationship to the child through the termination of parental rights and adoption.¹³²

This punitive approach is unlikely to have the anticipated effect on the vast majority of child welfare cases, which involve parental ne-

125. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C. (Supp. V 1999)).

126. DOROTHY E. ROBERTS, SHATTERED BONDS 104-13 (2001); see also Bailie, *supra* note 120, at 2292 (explaining that Congress, prompted by the public response to news stories of egregious child abuse, passed the ASFA with a new philosophy, one which emphasized safety over family preservation).

127. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C. (1994)).

128. See 42 U.S.C. § 670 (Supp. V 1999) (stating that the purpose of the ASFA is to "provide foster care and transitional independent living programs for children"); Bailie, *supra* note 120, at 2292-93.

129. Bailie, *supra* note 120, at 2293 (noting that the ASFA "speeds up the termination of parental rights and adoption processes"); see also Cahn, *supra* note 117, at 1197 (stating "ASFA seeks to prevent children from spending too much time in foster care, and to promote adoption").

130. 42 U.S.C. § 675(5)(E).

131. See *id.* § 673b(d). States receive \$4000 for each adoption (\$6000 if the adopted child has "special needs") that exceeds a base level of adoptions the state previously completed. *Id.* § 673b(d)(1).

132. See Cahn, *supra* note 117, at 1202 (noting the punitive nature of ASFA's focus on adoption).

glect related to poverty.¹³³ Indeed, neglect is the most common form of child maltreatment.¹³⁴ Although this category is intended to capture only incidents where parents have the ability to provide for their children and fail to do so, neglect is difficult to disentangle from poverty.¹³⁵ Determinants of child neglect such as environmental neglect, inadequate supervision, inadequate food, inadequate shelter, and inadequate clothing clearly reflect the consequences of poverty.¹³⁶ Critics of the child welfare system charge that poor parents are often subject to state intervention solely on account of their economic status.¹³⁷ For these parents, ASFA represents an undeserved reprimand for a condition that they are unable to change.

II. THE OVERLAP AND CONFLICT BETWEEN SYSTEMS

The welfare and child welfare systems share overlapping histories, philosophies, and client populations. This overlap often turns into conflict in the lives of poor families involved in both systems. Dual-system parents face a double-load of demands and expectations.¹³⁸ For these parents, the sanctions, work requirements, and time limits that the TANF program uses to coerce compliance among recipients are compounded by the requirements of child welfare agencies.¹³⁹

133. See *id.* at 1198 (pointing to the link between child neglect and poverty); see also Jeanne Brooks-Gunn & Greg Duncan, *The Effects of Poverty on Children*, FUTURE CHILD., Summer/Fall 1997, at 55, 59 (comparing the percentage of abuse and neglect for poor children, 5.4%, to that for nonpoor children, 0.8%).

134. In 1997, 54.7% of the child welfare cases opened nationwide were for neglect, compared to 24.5% for physical abuse and 12% for sexual abuse. U.S. DEP'T OF HEALTH & HUMAN SERVICES, CHILD MALTREATMENT 1997: REPORTS FROM THE STATES TO THE NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM § 4.2 (1999), available at <http://www.acf.dhhs.gov/programs/cb/publications/ncands97/index.htm> [hereinafter CHILD MALTREATMENT]; see also Bailie, *supra* note 120, at 2294 n.76 (citing the National Clearinghouse on Child Abuse and Neglect database, which found "that 52 percent of children in the child protective system [in 1995] were there due to allegations of parental neglect").

135. See PELTON, *supra* note 2, at 64-66 (discussing a New Jersey case where a welfare mother's child was removed because of her poverty); see also Bailie, *supra* note 120, at 2295 (stating that the "agencies . . . are often criticized for confusing poverty with neglect").

136. See Bailie, *supra* note 120, at 2295; see also ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES, CHILD ABUSE AND NEGLECT STATISTICS: ANNUAL REPORT—FISCAL YEAR 1999, tbl.11, available at <http://www.state.il.us/dcf/CANTS99Cont.htm> (last visited Nov. 30, 2001) (listing the various types of environmental neglect alleged in Illinois).

137. See, e.g., PELTON, *supra* note 2, at 72 (concluding "[t]he child welfare system ultimately rests upon a foundation of ignorance and poverty, and this is an unjust basis for any system").

138. See Matthews, *supra* note 9, at 405 ("Unless welfare and child welfare caseworkers carefully coordinate their efforts, families involved with both welfare and child welfare agencies may have case plans and required activities that conflict with each other or overburden the family.").

139. *Id.*

Moreover, welfare reform enforces a standard of ideal motherhood based on work outside the home that contradicts the emphasis of the child welfare system on caring for children.¹⁴⁰ As a result, many dual-system families find it more difficult to fulfill the requirements of either system.

A. *Overlapping Histories*

The history of poor support is intimately connected to the development of the child welfare system. The first state programs designed to provide financial support to poor families were intended, in part, to prevent child maltreatment and neglect and to avoid the need to remove children from their destitute mothers.¹⁴¹ In 1911, Illinois enacted the country's first statewide poverty program, called the Fund to Parents Act.¹⁴² The act provided public financial assistance to poor mothers in an effort to ease the burden of child rearing and prevent child neglect among families without a male breadwinner.¹⁴³ Notably, the Fund to Parents Act was codified as an amendment to the landmark Illinois Juvenile Court Act.¹⁴⁴ The connection was an easy one to make, as the juvenile courts already held the responsibility to care for neglected and dependent children.¹⁴⁵ Still, the concept of public support to poor mothers became palatable to legislators only when the parent's poverty was not caused by immoral behavior and the assistance was explicitly tied to the care of children.¹⁴⁶

States around the country followed Illinois's lead. By 1925, legislators in forty other states had enacted similar "mother's pensions" legislation.¹⁴⁷ These laws gave juvenile court judges almost boundless control over the lives of poor mothers. Local judges determined whether a family deserved state assistance and whether the child

140. See Brito, *supra* note 98, at 415 (discussing the changing role of the mother in the context of welfare reform).

141. GORDON, *supra* note 24, at 37-39.

142. HANDLER & HASENFELD, *supra* note 33, at 67.

143. *Id.* President Theodore Roosevelt's 1909 White House Conference on the Care of Dependent Children recommended the creation of federal poor support. BELL, *supra* note 32, at 3-5. The conference concluded:

Children of parents of worthy character, suffering from temporary misfortune, and children of reasonably efficient and deserving mothers who are without the support of the normal breadwinner should, as a rule, be kept with their parents, such aid being given as may be necessary to maintain suitable homes for the rearing of children.

Id. at 4.

144. HANDLER & HASENFELD, *supra* note 33, at 67.

145. *Id.* at 62-63.

146. See *id.* at 67-68.

147. *Id.* at 67.

should be removed from the parent's home.¹⁴⁸ Given the prevailing definition of deservingness, the vast majority of families receiving poor support were white widows.¹⁴⁹ The "undeserving poor"—nonwidowed, nonwhite single mothers—were generally denied aid.¹⁵⁰

Control over poverty assistance and child welfare remained largely in the hands of local judges until 1935,¹⁵¹ when Congress passed the Social Security Act (SSA).¹⁵² Title IV of the SSA created a joint federal-state welfare program and initiated the effort to distinguish between child poverty and child maltreatment.¹⁵³ Little, however, changed in the administration of the program. Congress enacted formal "suitable homes" provisions in 1940 that ensured that ADC recipients would remain primarily white widows.¹⁵⁴

The suitable home eligibility requirements also preserved the connection between child protection and welfare receipt by allowing welfare administrators to use child removal as an alternative to financial assistance.¹⁵⁵ Only mothers who were deemed fit to raise their children were given support, while others—primarily minorities and mothers of "illegitimate" children—risked the denial of aid, the removal of their child, or both.¹⁵⁶ As a result of the suitable home and "suitable parent" provisions, ADC failed to promote child welfare or provide cash support for the majority of needy families.¹⁵⁷

Although legislatively repealed in 1945, the "suitable homes" criteria remained in effect through state-governed policies for another

148. *Id.* at 68.

149. *Id.* at 70.

150. JOEL F. HANDLER, *THE POVERTY OF WELFARE REFORM* 25 (1995) ("Excluded outright were most poor mothers—those who were divorced, deserted, never married, of color . . .").

151. *See id.* at 24-25.

152. Social Security Act, ch. 531, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C. §§ 601-617 (Supp. V 1999)).

153. Frame, *supra* note 11, at 721. The Children's Bureau, funded under Title V, provided limited funding for child welfare services. Social Security Act §§ 501-521. Title IV funded the Aid to Dependent Children program. *Id.* §§ 401-406.

154. *See* BELL, *supra* note 32, at 18-19 (discussing the suitable home requirement's effect on black, unmarried mothers); *id.* at 35-36 (noting the enactment of the official policy).

155. Frame, *supra* note 11, at 726 (discussing the historical link between "unsuitability" and the removal of children, as well as the use of child removal by states "to prevent African-American children and those born out of wedlock from receiving funds").

156. *Id.* at 725-26.

157. BELL, *supra* note 32, at 176 (indicating that in 1960, while only 30 of every 1000 children in America's "most deprived families" received welfare, 79 of every 1000 belonged to families whose total income was below \$1500 annually).

fifteen years.¹⁵⁸ In 1960, Arthur Flemming, then Secretary of Health Education and Welfare, issued a ruling (the Flemming Rule) that directed states to abandon the restrictions.¹⁵⁹ Because this shift in policy left children in truly neglectful homes at risk for continued maltreatment, Congress amended Title IV of the Social Security Act in 1961 to provide federal funds for children in homes of unemployed parents and in foster homes.¹⁶⁰ These amendments established a conjunction between the funding of federal welfare programs and child protection programs that continues today.¹⁶¹ Congress created a separate foster care program in 1980 under Title IV-E of the Social Security Act.¹⁶² These federal funds are restricted to families that meet AFDC eligibility requirements.¹⁶³

The PRWORA's replacement of AFDC with a large, free-standing block grant under TANF affected child welfare funding. For example, the Emergency Assistance Program that had existed under Title IV-A was eliminated, and its funds (\$1.6 billion in 1995) were rolled into the TANF block grant.¹⁶⁴ The PRWORA also reduced the size of the second largest source of child welfare services funding, the Social Services Block Grant (SSBG or Title XX), by fifteen percent.¹⁶⁵ The 1995 federal expenditure on the SSBG was \$2.8 billion.¹⁶⁶ Prior to the re-

158. See, e.g., Frame, *supra* note 11, at 727-28 (citing a 1952 Georgia policy that maintained a "suitable home" provision as indicative of many states and a Louisiana provision that led to 23,459 children losing ADC funds in 1960).

159. *Id.* at 728-29.

160. 42 U.S.C. §§ 607-608 (1976) (current version at 42 U.S.C. § 672 (1994 & Supp. V 1999)); see also Frame, *supra* note 11, at 729 (calling the amendments "emergency legislation").

161. In 1962 the "social service amendments" to the Social Security Act renamed the ADC program Aid to Families with Dependent Children (AFDC). See 42 U.S.C. § 601 (1994); HANDLER & HASENFELD, *supra* note 33, at 120. AFDC was funded through Title IV-A of the Social Security Act, which also provided the funding for the federal foster care program. See 42 U.S.C. § 601.

162. See Cahn, *supra* note 117, at 1195. Title IV-E provides states with funds for the bulk of child welfare services, including out-of-home care, casework services for child placement, adoption assistance, and caseworker training. 42 U.S.C. §§ 670-679.

163. See Mark E. Courtney, *Welfare Reform and Child Welfare Services*, in CHILD WELFARE IN THE CONTEXT OF WELFARE REFORM 1, 4-5 (Sheila B. Kamerman & Alfred J. Kahn eds., 1997). It is important to note that these funds, indexed to 1996 AFDC standards, are not adjusted for inflation. GEEN & WATERS, *supra* note 4, at 2; Mark Hardin, *Sizing Up Welfare Reform's Impact on Child Protection*, 15 CHILD L. PRAC. 104, 105 (1996). Given that both incomes and the price of consumer goods inevitably rise with inflation, it is possible that fewer families will meet these requirements. GEEN & WATERS, *supra* note 4, at 2. Families that fail to meet eligibility standards for TANF support may risk contact with the child welfare system. *Id.* at 5.

164. GEEN & WATERS, *supra* note 4, at 2.

165. *Id.*

166. *Id.*

ductions mandated under the PRWORA, the SSBG provided states with discretionary funds for child welfare.¹⁶⁷ The portion spent on family preservation and child maltreatment prevention likely exceeded the \$442 million directly allocated to these services under Title IV-B.¹⁶⁸ Thus, the SSBG provided an important source of discretionary funding for child protection and family preservation. Under TANF, states may continue to use the reduced SSBG funds, as well as the block grant of federal funds, for these services.¹⁶⁹ However, the creation of a large pool of undirected funds dictates that there will be an increase in the competition for federal dollars that were previously applied to child welfare services.¹⁷⁰ Because the TANF block grant is capped and Title IV-E funds for foster care are not, it is also possible that states have an incentive to shift expenditures away from child-only grants (covered under the TANF block grant) to foster and kinship care grants (covered under Title IV-E).¹⁷¹

B. *Overlapping Client Populations*

Although there is no indication in the text or legislative history of the PRWORA or ASFA, these two laws affect overlapping populations of families.¹⁷² This connection is rooted in poverty. Poor families are disproportionately represented among both the TANF and the state child welfare populations.¹⁷³

Children raised in poverty are more likely to be reported to child protective services,¹⁷⁴ more likely to have the report substantiated, more likely to be removed from the home, and more likely to remain in substitute care for a longer period of time.¹⁷⁵ In the Chicago metropolitan area, families with incomes below fifty-one percent of the

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.* at 6; see also Hardin, *supra* note 163, at 106 (suggesting that with the increased availability of federal matching funds, foster care may be used more than necessary).

172. See Cahn, *supra* note 117, at 1199-1200 (discussing TANF's relationship to ASFA); see also Matthews, *supra* note 9, at 395-97 (discussing generally TANF's "complex" relationship to child welfare systems and describing the interplay between the two systems as a "collision").

173. Courtney, *supra* note 163, at 18.

174. See Matthews, *supra* note 9, at 396.

175. See Marcia Lowry, *Derring-Do in the 1980s: Child Welfare Impact Litigation After the Warren Years*, 20 FAM. L.Q. 255, 257 (1986) (noting that the majority of foster care children come from poor households).

Child abuse and neglect happens to children of all races, in all kinds of communities, in all economic classes. But families of color, and poor families, are more likely to be identified and coerced into accepting interventions by the child wel-

poverty threshold are more than three times as likely to become involved with the child welfare system when compared to all other families.¹⁷⁶ Generally, the incidence of abuse and neglect is approximately twenty-two times as great for families with annual incomes under \$15,000, compared to families that earn over \$30,000 per year.¹⁷⁷ Poverty, rather than the type or severity of maltreatment, is the single most powerful predictor of a child's time spent in foster care.¹⁷⁸ These statistics leave "no doubt that the children in foster care have come predominantly from impoverished families, and that child abuse and neglect are strongly related to poverty."¹⁷⁹

The documented relationship between poverty and involvement in the child welfare system is even more pronounced for children receiving welfare. Children from families who receive welfare are at the greatest risk for involvement with the child welfare system due to the extreme poverty among this population.¹⁸⁰ Researchers estimate that approximately fifty percent of the families referred to the child welfare system received welfare at the time of the referral.¹⁸¹ Neglect, in particular, is highly associated with past welfare receipt and significantly more so than other forms of maltreatment.¹⁸² In Illinois, forty percent of the children in foster care came from a family that received AFDC in the month of the initial case report.¹⁸³ An additional twenty-six percent of the children in the Illinois foster care population came from families that had some active AFDC association, but did not receive an actual cash award.¹⁸⁴ These findings leave little doubt that

fare system, . . . more likely to have their children removed and placed in foster care, . . . [and] more likely to remain there for long periods of time.

Wendy Anton Fitzgerald, *Maturity, Difference, and Mystery: Children's Perspectives and the Law*, 36 ARIZ. L. REV. 11, 62 n.326 (1994) (quoting A. LEON HIGGINBOTHAM, JR., A.B.A. PRESIDENTIAL WORKING GROUP ON THE UNMET LEGAL NEEDS OF CHILDREN AND THEIR FAMILIES, AMERICA'S CHILDREN AT RISK: A NATIONAL AGENDA FOR LEGAL ACTION 51 (1993)).

176. Shook, *supra* note 6, at 801.

177. Courtney, *supra* note 163, at 18.

178. *See id.* ("Contrary to popular belief, more children are placed in foster care because of neglect than because of physical and sexual abuse combined.")

179. Leroy Pelton, *Child Welfare Policy and Practice: The Myth of Family Preservation*, 67 AM. J. ORTHOPSYCHIATRY 545, 546 (1997).

180. *See* Matthews, *supra* note 9, at 396 (noting the "high correlation" between welfare eligibility and involvement in the child welfare system).

181. CHRISTINA PAXSON & JANE WALDFOGEL, WORK, WELFARE AND CHILD MALTREATMENT 24 (1999); *see* PELTON, *supra* note 2, at 38-39.

182. Bath & Haapala, *supra* note 2, at 218 (noting that 77% of families with reported cases of child neglect received public assistance, compared with 36% of families with reported cases of physical abuse).

183. Matthews, *supra* note 9, at 396.

184. Shook, *supra* note 2.

children from families receiving welfare are at an increased risk for child welfare involvement.

C. *Welfare Reform's Impact on Child Welfare Involvement*

Because of the strong association between welfare receipt and involvement with child protective services, welfare reform is likely to have an impact on state child welfare caseloads. There is no definitive evidence of welfare reform's effect on child welfare. State officials have pointed to the dramatic decline in welfare rolls nationally in the last five years as prima facie evidence of welfare reform's success.¹⁸⁵ In Illinois, for example, welfare rolls declined by sixty-three percent from 1993 to 2000.¹⁸⁶ There is evidence, however, that sanctions, work requirements, and time limits have increased the risk that the most vulnerable families will become involved with child protective services. Moreover, it is possible that the successes of welfare-to-work programs may be reversed as the economy worsens.

1. *Sanctions.*—Sanctions imposed under TANF may increase the chances of child welfare involvement¹⁸⁷ because welfare benefits are negatively related to neglect (lower welfare benefits yield higher rates of neglect) and foster care involvement.¹⁸⁸ Sanctioned families necessarily experience income loss, and are therefore more likely to encounter a constellation of problems that affect the care of children, including the ability to provide food, clothing, housing, and pay for basic utility services. For example, in Illinois, families who had their welfare grant terminated or reduced by greater than \$75 and found no subsequent employment experienced a significantly greater likelihood of child welfare involvement.¹⁸⁹ The overall odds of a family

185. Sanford F. Schram & Joe Soss, *Success Stories: Welfare Reform, Policy Discourse, and the Politics of Research*, 577 ANNALS AM. ACAD. POL. & SOC. SCI. 49, 50 (2001).

186. U.S. DEP'T OF HEALTH & HUMAN SERVICES, CHANGE IN TANF CASELOADS STATISTICS, available at <http://www.acf.dhhs.gov/news/stats/case-fam.htm> (last visited Feb. 1, 2002).

187. Shook, *supra* note 6, at 800 (noting that a grant reduction has been shown to increase the odds of child welfare involvement three-fold).

188. Paxson & Waldfogel, *supra* note 4, at 244 (“[W]e find that socioeconomic circumstances . . . affect the incidence of child maltreatment.”); see also Leroy H. Pelton, *Welfare Discrimination and Child Welfare*, 60 OHIO ST. L.J. 1479, 1487 (1999) (noting that “most children in foster care come from poverty”).

189. Shook, *supra* note 6, at 800; see also Duncan Lindsey, *Adequacy of Income and the Foster Care Placement Decision: Using an Odds Ratio Approach to Examine Client Variables*, 28 SOC. WORK RES. & ABSTRACTS 29, 34 (1992) (noting that “an unstable income source is the best predictor of removal of a child and placement in foster care”).

experiencing a case opening or child placement is fifty-three percent higher for sanctioned grants compared to full grants.¹⁹⁰

Child exclusion policies that limit the welfare income of recipients based on the number of children in the family at the time of initial TANF receipt may also encourage child welfare involvement.¹⁹¹ Women who resist TANF's efforts to modify their childbirth decisions face the prospect of raising an additional child with the same welfare check. For these women, the family cap provisions act as income sanctions upon childbirth. Similarly, minor parents under the age of eighteen are denied cash assistance unless they agree to live with a parent, adult relative, or legal guardian.¹⁹² These sanctions may affect the recipients' ability to provide adequate child care.¹⁹³ Thus, sanctions represent not just temporary income loss, but also a greater likelihood of involvement with the child welfare system.¹⁹⁴

Other aspects of TANF's behavior modification scheme are even more intimately connected to the child welfare system. For example, TANF terminates awards to parents whose children are removed from the home for more than forty-five days for any reason, including child welfare involvement.¹⁹⁵ If reunification is not possible within this period, the resultant loss of benefits may lead to hardships such as eviction or termination of utilities that, in turn, interfere with the chances of reunification.¹⁹⁶ These families must simultaneously comply with new rules that TANF imposes while attempting to remedy the circumstances that led to their child welfare involvement. Parents may experience conflicts between compliance with work, training, and counseling requirements mandated under TANF by welfare caseworkers and the permanency plan implemented by child welfare caseworkers.¹⁹⁷

There are additional aspects of the welfare reform law that are also likely to draw more families into the child welfare system. The provision requiring teenaged recipients to live with their parents or another guardian may have the unintended consequence of increas-

190. Shook, *supra* note 2.

191. See Risa E. Kaufman, *State ERAS in the New Era: Securing Poor Women's Equality by Eliminating Reproductive-Based Discrimination*, 24 HARV. WOMEN'S L.J. 191, 205-06 (2001) (stating that such provisions deprive parents of the ability to provide necessary items for their children, such as food, shelter, and clothing).

192. 42 U.S.C. § 608(a)(5)(A) (Supp. V 1999).

193. See Shook, *supra* note 6, at 800 (noting that a grant reduction or sanction increases the risk of child welfare system involvement).

194. *Id.*

195. 42 U.S.C. § 608(a)(10)(A).

196. Matthews, *supra* note 9, at 400.

197. *Id.*

ing contact between these recipients and the child welfare system.¹⁹⁸ Child welfare agencies are better able to place young parents in supervised living arrangements and may also be asked to act as outside assessors of private placements.¹⁹⁹ The prohibition on benefits for people convicted of drug offenses could also have a substantial impact on child welfare, given the large proportion of child welfare cases either directly or indirectly related to parental drug use.²⁰⁰ Substance-abusing parents who are permanently cut from the welfare rolls will find it more difficult to care for their children.²⁰¹ What was conceived as an attempt to curb drug use among welfare-reliant parents could, therefore, result in increases in foster care caseloads.

2. *Work Requirements.*—Welfare reform's impact on child welfare will depend largely on the availability and quality of employment opportunities for recipients who leave the welfare rolls. Research shows that the type of work many welfare recipients are able to secure cannot raise their families above the poverty line.²⁰² Although eighty percent of the women who voluntarily leave welfare find employment,²⁰³ these jobs tend to be in the same types of industries, and with the same level of pay, as poor and low-income mothers.²⁰⁴ Involuntary welfare "leavers"—those who reach time-limits or are sanctioned—are at even greater risk for negative outcomes. Only around fifty percent of the women forced to exit welfare find work.²⁰⁵

Research also demonstrates that work-based requirements will significantly affect child welfare involvement. Families who leave welfare and do not find subsequent employment are three times more likely

198. See Hardin, *supra* note 163, at 106 (pointing out that child protection agencies may need to determine whether the minor's home presents a danger or to evaluate alternative acceptable placements for the child).

199. *Id.*

200. See *id.* at 107 (noting the large percentage of children entering foster care whose parents have substance abuse problems); Matthews, *supra* note 9, at 399 (noting that estimates of the percentage of families involved in child welfare systems with drug or alcohol problems run as high as 90%).

201. See Matthews, *supra* note 9, at 399-400 (describing the inadequacy of child welfare agencies' resources to meet the needs of children with drug-abusing parents).

202. Sandra Danziger et al., *Work, Income, and Material Hardship After Welfare Reform*, 34 J. CONSUMER AFF. 6, 7 (2000) (noting that "many families who have left welfare remain poor"); see LOPREST, *supra* note 5, at 12 (noting that 25% of former welfare recipients earned below \$5.29 an hour in 1997).

203. BRAUNER & LOPREST, *supra* note 5, at 8.

204. LOPREST, *supra* note 5, at 10-13.

205. See BRAUNER & LOPREST, *supra* note 5, at 5, tbl.5 (indicating employment rates for people who were forced off welfare due to sanctions in Iowa, Tennessee, and Michigan); *id.* at 8 (concluding that those who leave welfare as a result of sanctions have lower employment rates than those who voluntarily leave welfare).

to become involved with the child protection system than unemployed families who receive welfare benefits.²⁰⁶ Part-time employment is a likely effect of welfare reform that is also associated with an elevated risk of child welfare involvement. Families whose primary caregiver works part-time are 2.8 times as likely to have a child removed from the home compared to caregivers who work full-time.²⁰⁷ Indeed, unstable family income is considered the best predictor of child removal and foster care placement.²⁰⁸ By forcing recipients to work, welfare reform may exacerbate this problem by separating parents from their children for longer periods of time without adequate child care.²⁰⁹ Alternatively, families that are forced off of welfare because of sanctions or time limits may face even more extreme poverty and an increased likelihood of child welfare involvement.²¹⁰

3. *Child Care.*—As more mothers are required to work, a commensurate increase in demand for adequate child care is likely to emerge. Access to child care is considered one of the primary barriers to welfare-to-work transitions.²¹¹ Welfare recipients have a special need for child care assistance because they are significantly more likely to have children with at least one chronic health condition.²¹² Coupled with the work demands imposed by TANF, the special characteristics of welfare families make the availability of child care a crucial determinant of welfare reform's impact on children. Sanctions for noncompliance, in conjunction with sparse child care services for compliant mothers, makes it likely that the TANF work requirements may increase the incidence of maltreatment and, particularly, neglect.²¹³ The increased need for child care, then, further links child protective services to welfare reform.

The drafters of the PRWORA did not ignore the need for child care; in fact, they incorporated programs into the law that provide

206. Shook, *supra* note 6, at 800.

207. LINDSEY, *supra* note 2, at 151-52.

208. *See id.* at 155.

209. *See* Shook, *supra* note 6, at 804 (explaining that employment obligations may lead to unreliable child care arrangements and increased child neglect).

210. *See generally* BRAUNER & LOPREST, *supra* note 5, at 5, tbls.4 & 5 (comparing the employment rates for those who were forced off welfare due to sanctions and those who left welfare for other reasons, and indicating the lower employment rates for sanctioned leavers).

211. Barbara Gault et al., *Prospects for Low-Income Mothers' Economic Survival Under Welfare Reform*, PUBLIUS, Summer 1998, at 175, 187-90.

212. S. Jody Heymann & Alison Earle, *The Impact of Welfare Reform on Parents' Ability to Care for Their Children's Health*, 89 AM. J. PUB. HEALTH 502, 503 (1999).

213. Shook, *supra* note 6, at 782-83.

child care assistance to poor mothers. The new Child Care and Development Fund (CCDF) was designed to increase the "availability, affordability, and quality of child care services."²¹⁴ The new funding provided by the CCDF is structured to give states greater flexibility in allocating funds to both the welfare and nonwelfare populations.²¹⁵ Poor families who work also receive financial assistance in the form of the Child and Dependent Care Tax Credit, which provides tax reductions for child care expenses.²¹⁶ In addition, the PRWORA does allow states, at their option, to remove TANF sanctions upon single parents with a child under the age of twelve months who is unable to meet the work requirements due to a lack of available child care.²¹⁷

Despite these programs, the Congressional Budget Office projected a shortfall of over \$1.8 billion in child care funds for low-income working families by 2002.²¹⁸ Currently, the number of families in need of subsidized care far exceed the supply provided by federal reimbursement programs.²¹⁹ Approximately one-third of welfare recipients currently below the poverty line would escape poverty if their child care costs were fully subsidized.²²⁰ The dearth of adequate child care funds means that many welfare recipients will have a difficult time during the initial transition to work and will likely find it infeasible to maintain continuous employment for extended periods.²²¹ As a result, it is questionable whether the stated goal of the PRWORA, to assist families in achieving self-sufficiency, can succeed without increases in federal child care funding.

TANF sends a contradictory message to women involved with the child welfare system. Dual-system parents are told that they must work in order to receive assistance and, at the same time, they must care for their children without adequate child care services. Child care, then, exemplifies the compound demands placed on dual-system families and illustrates how being involved with both TANF and the child welfare system makes it more difficult to comply with the requirements of each individually.

214. Child Care and Development Fund, 45 C.F.R. § 98.1(6) (2000).

215. At least 70% of CCDF funds must be disbursed to families currently receiving welfare, transitioning off of welfare, or at risk of welfare involvement. *Id.* § 98.50(e).

216. I.R.C. § 21(a)(1) (1994).

217. 42 U.S.C. § 607(b)(5) (Supp. V 1999).

218. Courtney, *supra* note 163, at 20-21.

219. Gault et al., *supra* note 211, at 187.

220. *Id.* at 189.

221. *See id.* at 187 (explaining that the lack of affordable child care is one reason why having young children reduces the probability of a low-income single mother's employment).

D. *The Systems' Competing Demands*

Parents involved in both the welfare system and the child welfare system face a double-load of demands. Dual-system parents must comply with two distinct sets of rules, expectations, and time-consuming requirements. Despite the overlap in the populations served by the two programs, states have made little effort to coordinate their behavior-modifying requirements.²²²

The combined demands of both TANF and the child welfare system have more than a cumulative effect: they place conflicting pressures on the parents. For example, the meeting times of services required by child welfare agencies may conflict with parents' child care or work schedules.²²³ More fundamentally, TANF's emphasis on paid employment often conflicts with the child welfare system's emphasis on parenting.²²⁴ According to child welfare scholar Mark Courtney, "the goals of welfare reform, which is focused on adult self-sufficiency, compete with the goals of the child welfare system, which focuses on safe, nurturant child rearing."²²⁵

Stephanie Limoncelli, a sociology graduate student at UCLA, discovered striking evidence of the systems' contradictory goals when she observed a Southern California welfare-to-work program.²²⁶ Limoncelli noted the tension between the importance the program's staff placed on work outside the home and the importance participants placed on caring for their children.²²⁷ She found that the staff impressed upon participants the message that they should never admit to leaving a job as a result of pregnancy, and that they should not let their children interfere with their efforts to find and keep a job.²²⁸ The trainers stressed that maternal responsibilities were secondary to paid work, instructing the mothers not to interrupt their job search to

222. See Mark E. Courtney, *The Costs of Child Protection in the Context of Welfare Reform*, FUTURE CHILD., Spring 1998, at 88, 90 (noting the difficulty in discussing "national" welfare policy given the differences in programs from state to state).

223. See Ward Doran & Roberts, *supra* note 22, at 58-60 (citing interviews with study participants who felt overwhelmed by the competing demands of the two systems).

224. See Ellen E. Kisker & Christine M. Ross, *Arranging Child Care*, FUTURE CHILD., Spring 1997, at 99, 102 (noting that the demands of child care conflict with the demands of employment).

225. Courtney, *supra* note 222, at 101.

226. See Stephanie A. Limoncelli, *The Politics of Motherhood and Paid Work: Gender, Class, Race, and the Construction of Need in a Welfare-to-Work Program* (2000) (unpublished paper on file with authors).

227. *Id.* at 17-18.

228. *Id.*

care for sick children.²²⁹ They also tried to persuade the mothers that taking care of children meant providing financial support rather than spending time with them.²³⁰ One trainer suggested that participants impress potential employers by boasting, "I'm a workaholic. I often stay so late that I neglect my family!"²³¹

Welfare reform's very philosophy—that paid employment is the test for good parenting and should take precedence over nurturing children—contradicts the standards for parental rehabilitation set by child welfare agencies.

III. A STUDY OF DUAL SYSTEM FAMILIES: METHODOLOGY AND SAMPLE CHARACTERISTICS

The majority of studies that address the impact of welfare reform on the child welfare system employ a survey-based methodology.²³² These inquiries tend to overlook the individual experiences of dual-system families in favor of a broad assessment of the child welfare system.²³³ But these aggregate numbers tell us little about the experiences of low-income parents who have been under pressure to both work and improve their parenting. As a result, few studies are able to report findings that demonstrate whether or how the personal lives of families are affected by the new rules imposed under TANF. To understand how recent behavior modification policies have shaped the lives of dual-system families, we must look closely at their implementation by state workers and the experiences of the individuals subject to regulation. In particular, any valid appraisal of the impact of these policies must consider their combined effect on poor families.

While statistical analyses of the impact of welfare reform on child welfare caseloads and outcomes are important, only an in-depth study of the experiences of families managing both systems can shed light on the *reasons* for these outcomes. We therefore undertook a study designed to move beyond aggregate level welfare and child welfare statistics by focusing instead upon individual experiences. To accom-

229. *See id.* at 19 (noting the competing views of mothers, who believe their role is to take care of their children, and caseworkers, who believe a mother's role is to financially provide for her children).

230. *See id.*

231. *Id.* at 18.

232. *See, e.g.,* LOPREST, *supra* note 5, at 3 (using data from a national survey conducted by the National Survey of America's Families); Barbara Needell et al., *Transitions from AFDC to Child Welfare in California*, 21 CHILD. & YOUTH SERV. REV. 815, 815 (1999) (relying on a survey of AFDC histories of children with birth records, child abuse reporting data, and foster care data).

233. *See* LOPREST, *supra* note 5, at 3; Needell et al., *supra* note 232, at 815.

plish this goal, we conducted in-depth interviews of a sample of dual-system families. This Part describes the selection of our sample, the methodology we used to collect our data, and the sample's characteristics.

A. *The Sample*

The sample for this study was drawn from the Illinois Families Study conducted by the University Consortium on Welfare Reform.²³⁴ The IFS is a longitudinal panel study that will track, over the course of six years, a random sample of 1400 Illinois families who received welfare benefits in July 1998.²³⁵ In addition to an annual panel survey, the IFS utilizes a data-linking methodology to access information from a number of state administrative agencies.²³⁶ As a result, the IFS is capable of tracking family outcomes over time using both self-reports and archival state agency data.²³⁷ The goal of the IFS is to assess the impact of welfare reform in Illinois.²³⁸

The IFS utilizes a stratified random sampling design.²³⁹ Stratification for the study is based on two geographic areas: Cook County (containing the Chicago metropolitan area) and the remainder of Illinois. Within each stratum, a systematic sample with a random start was selected from the grantee populations.²⁴⁰ In addition, sample members were selected using a three-month "rolling" sample strategy that helped to correct for the potential under-representation of families that temporarily had their benefits suspended.²⁴¹ Together, these sampling strategies identified 1899 eligible TANF grantees.²⁴² Overall the sample response rate was seventy-two percent, resulting in a sample size of 1363.²⁴³

We conducted interviews with a subset of these parents who both received a cash assistance grant (TANF) and were involved in the child welfare system—dual-system families. Approximately ten percent of the 1363 parents interviewed in the IFS had a child who was

234. DAN LEWIS ET AL., UNIVERSITY CONSORTIUM ON WELFARE REFORM, WORK, WELFARE AND WELL-BEING: AN INDEPENDENT LOOK AT WELFARE REFORM IN ILLINOIS (2000).

235. *Id.* at 5.

236. *Id.* at 6.

237. *Id.*

238. *Id.* at 4.

239. *Id.* at 9.

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.* at 11.

investigated for abuse or neglect subsequent to the sample date.²⁴⁴ We focus specifically on the families who had an “indicated” allegation of abuse or neglect—an allegation that was substantiated by credible evidence.²⁴⁵ This group comprises five percent of all IFS cases, resulting in a potential sample of approximately seventy families.²⁴⁶ Our sample size fell to forty cases because we could not include families who refused to grant the IFS access to their administrative data.²⁴⁷ Of these forty cases, we were able to contact and interview sixteen respondents and were unable to interview twenty-four.²⁴⁸ Our qualitative analysis focuses on this sample of sixteen respondents who were involved with both DCFS and the welfare system.²⁴⁹

B. Methodology

The qualitative data for this study was obtained through in-depth, face-to-face interviews with these parents about their experiences with welfare reform and child protective services. Parents were asked open-ended questions about their perceptions of the two state agencies and the role the agencies play in their families’ lives. Throughout the interviews, parents were encouraged to express their ideas and opinions about the two systems, particularly regarding any information that was not covered in the interview protocol.²⁵⁰ The personal interviews allowed respondents to communicate information that extends beyond simple background characteristics, revealing a truly individual perspective on these two state-directed systems. Coupled with the IFS survey, this qualitative research design provided detailed information about families’ experiences and about the dynamics of the interaction of the child welfare and welfare systems in families’ lives.²⁵¹ Interviews began in the Summer of 2000 and were completed that Fall.²⁵² Interviews lasted forty-five to sixty minutes.²⁵³

244. Ward Doran & Roberts, *supra* note 22, at 24. This study selected families based on their involvement with child protection services beginning in July 1998, the start date for IFS interviews. A total of 14% of the IFS families had child protection involvement prior to the sample selection in 1998. *Id.* at 25 n.3.

245. *Id.* at 25.

246. *Id.*

247. *Id.*

248. *Id.* Although these families completed IFS surveys, their contact information had changed in the period between the survey and our interviews. As a result, we could not locate them. All of the parents who we were able to contact consented to be interviewed. *Id.* at 25 n.4.

249. *Id.* at 25.

250. *Id.*

251. *Id.*

252. *Id.* at 26.

C. *Sample Characteristics*

Descriptive information for our sample ($n=16$) is presented in Appendix 1.²⁵⁴ Because our sample is really a subset of all dual-system families, this table also gives descriptive characteristics for the dual-system parents we were unable to contact ($n=24$)²⁵⁵ and the IFS sample as a whole ($n=1,363$). Appendix 1 displays the unweighted case counts, weighted means, and weighted standard deviations for the three groups.²⁵⁶

As would be expected from a sample of families receiving welfare, almost all of the individuals in our sample were women ($n=15$). A disproportionate number of our respondents were black ($n=12$) due to large black populations in two of the sampling locations, Chicago and East St. Louis. The remaining four respondents were white. We had no Hispanic families in our sample. The majority of respondents had never been married ($n=7$), though a large minority were either currently married ($n=4$) or divorced or widowed ($n=5$). The average weighted age for respondents was 29 years old ($sd=5.45$). Chicago residents made up 43.8% of the interview sample ($n=7$), with the remaining 56.2% ($n=9$) living in East St. Louis and Peoria. While most respondents had an educational attainment of high school, GED, or beyond ($n=9$), 43.8% of the respondents ($n=7$) had neither graduated high school nor earned the GED. The families in our sample averaged five children ($sd=2.16$). Six families had four children or less and ten families had five or more children. The number of children per family was one of the three demographic variables that differed significantly ($p<.05$) between the interview sample ($n=16$) and the noninterview sample ($n=24$). Families that were interviewed tended to have more children ($p<.05$).

In addition to the demographic characteristics of the interview sample, Appendix 1 also presents information regarding the respondents' public assistance receipt. Almost all of the families in our sample received the three main benefits associated with welfare, measured

253. *Id.*

254. *See* Appendix 1.

255. *Id.* As noted above, the predicted number of dual-system families was seventy. Approximately thirty of these families did not give consent to examine their administrative records, so we could not include them in the study. *Id.*

256. To determine whether the respondents we were able to interview differed significantly from the respondents who we could not interview, we conducted a series of bivariate analyses. Only three variables differed significantly between the two groups. The interview group had significantly more children ($p<.05$), experienced homelessness more often, and were more likely to change residences than the noninterview group ($p<.05$).

as receipt in 1998.²⁵⁷ Specifically, 93.8% of the interview sample received Food Stamps ($n=15$), 81.3% of the sample received Medicaid ($n=13$), and 81.3% of the sample received cash assistance through TANF ($n=13$). Most respondents ($n=14$) had not been sanctioned by the TANF office in the year prior to their participation in the survey. We found no significant differences for public assistance receipt based on whether the respondent was interviewed or not.

Because all of the families in both the interview sample and the greater IFS sample are poor, we used homelessness and residential change to assess relative levels of poverty.²⁵⁸ As shown in Appendix 1, 15% of the interview sample respondents ($n=6$) were homeless in the twelve months prior to their IFS survey. Homelessness did differ between the respondents who were interviewed and those who were not, with the interviewed parents significantly more likely to have been homeless ($p<.05$). Similarly, the number of times each respondent changed residences in the past year differed significantly between the two groups ($p<.05$). In our sample of interviewed families, respondents tended to have moved less than two times ($n=14$), with 12.5% of the sample ($n=2$) having moved three times or more.

IV. TRYING TO MEET THE COMPETING DEMANDS OF TWO SYSTEMS

Because we selected our sample of parents based on their dual-system status, we anticipated that they would provide unique insight into the connection between the welfare and child welfare systems. We found that perceptions of the ties between the welfare system and the child welfare system were not at the forefront of the parents' minds.²⁵⁹ Very few parents explicitly identified the overlap between the two systems.²⁶⁰ However, during the course of the interviews, parents identified several important connections and conflicts between these two systems.

Our study revealed three types of conflicts that dual-system parents experienced in trying to meet the expectations of both TANF and child protective services. First, TANF's expectation that parents work without adequate child care made it difficult for parents to care for

257. The three main sources of welfare are: Food Stamps, Medicaid, and cash assistance. See Joel F. Handler, *Women, Families, Work, and Poverty: A Cloudy Future*, 6 UCLA WOMEN'S L.J. 375, 419 (1996).

258. Although the IFS does include several income variables, the response rate for these questions was very low. As a result, we could not use actual income as an indication of poverty.

259. Ward Doran & Roberts, *supra* note 22, at 63.

260. *Id.*

their children. Second, TANF's sanctions and time limits deprived parents of the resources needed to comply with the child welfare system's requirements. Third, parents found it logistically difficult to comply simultaneously with TANF requirements and their child welfare services case plan.

A. *Child Care and Work Requirements*

The availability of adequate child care is critical for parents attempting to meet the demands of welfare reform. Parents without access to adequate child care find it extremely difficult to simultaneously comply with the work requirements imposed under TANF and care for their children.²⁶¹ They must secure satisfactory child care or risk sanctions for missing work and possible involvement with the child welfare system.²⁶² Indeed, the parents we interviewed indicated that a lack of child care was the main reason why they were unable to exit the welfare rolls.²⁶³ Without adequate child care, the parents interviewed found it difficult to maintain a job while trying to raise their children.

The initial problem that many parents had with child care was locating a trusted provider. Christina, a thirty-three-year-old African-American single mother we interviewed, recently found a job that she enjoyed and that helped her to leave public assistance.²⁶⁴ Because she was unable to find help caring for her children, however, Christina eventually missed several days of work. As a result, she lost her job and is again receiving welfare. Christina cites child care as the principal deterrent to her ability to maintain employment.²⁶⁵ Her "consistent problem" with getting off of welfare has been "being able to hold down a job while raising kids."²⁶⁶ Like Christina, Kimberly, a thirty-two-year-old white divorced mother, was told by her public aid worker to find a job, but could not find a babysitter because "everyone works."²⁶⁷ As a result, she is only able to look for work while her children are at school.

261. *Id.*; see also Jennifer Preston, *Welfare Rules Intensify Need for Day Care*, N.Y. TIMES, Nov. 11, 1996, at B1 (discussing the link between inadequate child care options and welfare receipt).

262. See 42 U.S.C. § 607(e) (Supp. V 1999) (setting out the possible penalties if a welfare recipient does not comply with the work requirements).

263. Ward Doran & Roberts, *supra* note 22, at 63-64.

264. *Id.* at 63.

265. *Id.*

266. *Id.*

267. *Id.*

Finding child care is especially difficult for parents who have housing problems. Shelters, for example, often do not provide this service.²⁶⁸ Because families that lack adequate housing may be forced to relocate on a daily basis, they cannot secure a regular child care arrangement.²⁶⁹ For example, Angela, a thirty-four-year-old African-American single mother, needs to hire a babysitter so she can increase the hours at her job. "But I just moved here. I don't know many people [who would be available to baby-sit]," she reported.²⁷⁰ Angela now plans to wait until her oldest daughter is able to care for the younger children before she transitions to full-time employment.²⁷¹

Like many parents, Angela rejected the child care workers provided by the public aid office. "I'm really not trusting in the Department of Public Aid's babysitters so I have to find one,"²⁷² she explained. "I just don't trust the people that they pick. They have a list of people that they, like, want [you] to pick from, but I want to find my own sitter."²⁷³

Even if a parent is able to find a trustworthy child care provider, there are often problems with the state's payments for this care. Several parents mentioned that their TANF grant provided cash assistance for child care.²⁷⁴ However, this money is not disbursed at the same time the service is provided. According to Kelly, a twenty-nine-year-old African-American mother who is separated from her husband, the public assistance child care program is problematic because it "takes so long to get [the babysitters] their money—like 2 or 3 months. They want their money right then and there."²⁷⁵ Beverly, a thirty-six-year-old African-American divorced mother, also found that it was very difficult to obtain child care because the public assistance system takes so long to pay the providers.²⁷⁶ She said that she had to pay out of her pocket until the system started paying. Further, Beverly explained that child care providers must navigate an extensive application process to qualify for TANF funds. She believed this deters many providers from signing up with the public assistance program.

268. *Id.*; see also Shannon Wright, *Out of Sight, But Not Out of Mind*, HOUS. CHRON., Aug. 23, 1998, at A19 (indicating that one of the hurdles in getting out of a homeless shelter is the high cost of child care).

269. Ward Doran & Roberts, *supra* note 22, at 63-64.

270. *Id.* at 64.

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.*

275. *Id.*

276. *Id.*

Beverly experienced other delays with the public aid office, such as the time it sent a form back to her three times because they could not read her signature.²⁷⁷

Respondents also reported that problems with transportation affect their ability to arrange adequate child care and, therefore, to work.²⁷⁸ A number of parents indicated that their inability to transport caregivers to their home, or their children to the caregiver, had resulted in sporadic child care for their children, causing them to miss work.²⁷⁹ When asked about her experiences finding child care, Sally, a twenty-four-year-old white single mother, replied "it's hard 'cause I don't have any way to get [my son] to [the child care center]."²⁸⁰ Sally did try to find a private caregiver, but none she contacted provided their own transportation. As a result, Sally had trouble holding a job and currently is not working.²⁸¹ Without the ability to transport themselves and their children to and from child care, parents must sometimes subordinate their need to work to the greater need to secure their child's well-being. Sally stated that her son is "number one. But then my job's [also] number one, because I got to have a job to take care of him."²⁸²

B. Sanctions, Time Limits, and Parents' Compliance with Child Welfare Requirements

Poverty binds the two welfare programs and affects parents' ability to comply with child welfare requirements.²⁸³ Parents without the resources to provide important necessities for their family face the risk of a child welfare report for neglect.²⁸⁴ As noted above, most child maltreatment cases stem from neglect, which is intimately connected to poverty.²⁸⁵ Not surprisingly, the parents we interviewed face tremendous financial pressures. Although the majority of the respondents reported some form of employment, the part-time nature of the work limits both the hours and the wages available. In addition, the types of retail and "pink collar" jobs that these parents secure are unlikely to provide important and costly benefits, such as medical

277. *Id.*

278. *Id.* at 38.

279. *Id.*

280. *Id.* at 39.

281. *Id.*

282. *Id.*

283. *Id.* at 66.

284. *Id.*

285. *Id.*; see also *supra* notes 133-137 and accompanying text (discussing poverty's link to many maltreatment cases).

care.²⁸⁶ Of the parents we interviewed who were working, most work as part-time cashiers at retail stores or as telemarketers.²⁸⁷ Several parents either work, or were in training for work, in nursing homes.²⁸⁸ For those respondents not working and receiving cash assistance alone, the monthly benefits were often insufficient to pay both rent and utilities.²⁸⁹

Brenda, a thirty-six-year-old African-American single mother who works and also receives supplementary cash assistance, finds that the money she receives from public aid is simply not enough to meet her own needs and those of her five children: "I just make do with what I have. The toughest part is paying the bills. When it comes to paying the bills and there's not enough money, you're looking at the kids and they want this and they want that and you can't get them what they want."²⁹⁰ Paying bills and rent means that other needs go unmet. Brenda expressed deep concern with the costs associated with her children's schooling:

Me and a couple people at my job was talking, and we didn't understand why come when school getting ready to start, why come they don't give people allowances to buy school clothes. Because that's a lot especially when women are single and they have to buy school clothes. 'Cause all of mine are sitting up wondering where their school clothes at. They won't get none. . . . By the time I get done paying bills, I don't have no money to buy school clothes. . . . One month you might have to let all the bills go to have enough money to buy school clothes.²⁹¹

Although Brenda has a job, her cash assistance is cut each time she receives a raise in salary. As a result, over the past four years Brenda's monthly grant has been reduced from \$529 to \$340 to its current level—\$100.²⁹² Like many of the respondents we interviewed, Brenda has trouble paying both the rent and her bills. "Once I pay

286. See Greg Duncan et al., *How Different Are Welfare and Working Families? And Do These Differences Matter for Children's Achievement?*, in *FOR BETTER AND FOR WORSE: WELFARE REFORM AND THE WELL-BEING OF CHILDREN AND FAMILIES* 103, 104 (G. Duncan & P. Lindsay Chase-Lansdale eds., 2002).

287. Ward Doran & Roberts, *supra* note 22, at 30.

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.* at 31.

292. *Id.*

the rent," she confided, "I'm broke. I can't pay the whole [electricity] bill."²⁹³

Financial problems of this sort are echoed by all of the respondents, those working and those who are not. While public aid benefits such as Food Stamps and Medicaid make an important contribution to their lives, the combined assistance—even coupled with paid employment—is not enough to raise these parents out of poverty. As a result, these parents face an ongoing struggle to provide for their children's basic daily needs. After paying for rent, most parents we interviewed found providing enough food to be a daunting task.²⁹⁴

Cynthia, a forty-year-old white working mother who is widowed with two children, receives Food Stamps and Medicaid, but no cash grant. These benefits alone do not provide the level of support that she needs to feed her family.²⁹⁵

Try feeding a teenager on \$140 a month. I don't even make it through the month. I mean, they go through a gallon of milk every 2 days, a loaf of bread every day practically. Ya know. I mean I get [money on my link card]²⁹⁶ on the first, and I buy I usually spend it all. I get all my meals and everything, 'cause I seem to get more if I do it that way than if I just get it everyday or whatever. Although I usually have enough meat and stuff to last me a month, but I run out of milk and bread and eggs and all that. There's no money. Then I beg and borrow off of everybody. I mean, it's terrible. I'm gonna get another job.²⁹⁷

Like Cynthia, many of the respondents expressed concern about their ability to provide their children with adequate food. Other common child-rearing expenses, such as a trip to the movies, a bowling arena, or a skating rink, are considered prohibitive "luxuries" that "put a real damper on your pocket."²⁹⁸

Paid employment, either current or anticipated, is a major component of these parents' lives.²⁹⁹ Every respondent indicated a preference for earning an income. Those respondents who were already working emphasized getting a better job with higher pay.³⁰⁰ Those not working at the time of the interview expressed a desire for educa-

293. *Id.*

294. *Id.*

295. *Id.*

296. Link card refers to the commonly used name for Illinois's food stamp program.

297. Ward Doran & Roberts, *supra* note 22, at 32.

298. *Id.*

299. *Id.*

300. *Id.*

tion and training in order to get a job.³⁰¹ In addition to the financial benefits of employment, the parents we interviewed perceived work as a means to transition into the legitimate world.³⁰² According to Angela, work represents normalcy. "And then I would see other people working and, you know, doing stuff like *normal* people do," Angela said. "And I wanted to be a normal, productive member of society just like them."³⁰³ On the other hand, many parents who indicated a preference for work also expressed a concomitant fear that earning income would affect their cash benefits, Food Stamps, and medical coverage.³⁰⁴ They perceived work, while desirable, to have serious costs that make it difficult to provide food and medical care to their children. They also noted several impediments to finding and maintaining employment, including inadequate or unavailable housing, lack of access to transportation, and inaccessible child care.³⁰⁵

The income strain associated with welfare sanctions and time limits can force parents into deeper levels of poverty. Brenda had to meet only one requirement to close her DCFS case—pay her electricity bill. Though Brenda both works and receives a cash grant, she cannot afford to pay her utility bills, which prevents her from complying with DCFS demands.³⁰⁶ As a result of her poverty, she risks continued involvement with the child welfare system.

The threat of sanctions exerted a very real influence on the actions and behaviors of the parents we interviewed.³⁰⁷ All of the parents we interviewed identified the need to work to avoid sanctions as the principal message of welfare reform.³⁰⁸ The parents experienced this message in a variety of ways. Beverly is required to submit a "quarterly report form" to her public aid office.³⁰⁹ While this form may be mailed in to the aid office, Beverly hand delivers it for fear that "they will say it was lost in the mail."³¹⁰ She is also required to participate in the Illinois Job Search program, under which she must turn in ten to twenty job applications per month, each signed by the potential employer.³¹¹ Justin, a thirty-nine-year-old African-American unmarried

301. *Id.*

302. *Id.* at 32-33.

303. *Id.* at 33.

304. *Id.*

305. *Id.* at 34.

306. *Id.* at 66.

307. *Id.* at 42.

308. *Id.* at 40.

309. *Id.*

310. *Id.*

311. *Id.*

father, was working eighteen hours per week, but his caseworker said that he needed to work forty hours or risk losing his benefits.³¹² Like other respondents, Justin explained that if he could not find a job with enough hours, he was required to work in the TANF office forty hours per week.³¹³

Shirley, a twenty-nine-year-old African-American single mother, has never been sanctioned and does her best to avoid the possibility. "I've did everything that they asked me. And I can't really afford to be sanctioned by me having eight kids, you know."³¹⁴ To avoid sanctions she fills out job search forms, forwards copies of her rent receipts to the TANF office, and arrives on time for all of her TANF office appointments. "If you're not there on time and stuff . . . don't expect for the check or the stamps to be on your link card 'cause they won't. They hurry up and cut you fast!" Shirley continued, "say you probably just forgot about the appointment. They ain't tryin' to hear that. They just cut you off."³¹⁵

Dual-system parents must cope with even greater financial pressures from the welfare reform law than other recipients. The PRWORA mandates that children must live in the recipient's home in order for the parent to receive TANF benefits.³¹⁶ When children are removed from the home, for any reason, the TANF benefits terminate after forty-five days.³¹⁷ Although most parents involved with DCFS retain custody of their children,³¹⁸ parents whose children are removed from the home face the possible termination of their welfare benefits. The sudden end to welfare receipt can have devastating effects. Gloria, a thirty-one-year-old African-American married mother, lost all of her TANF benefits when her children were taken into DCFS custody. "I felt like my life fell apart when they took my kids,"³¹⁹ she recalled. Gloria's TANF termination raised substantial direct and indirect barriers to her ability to cope with the loss of her children. Because public aid terminated her cash grant, Gloria also lost her home and became homeless. In desperation, she turned to drugs for solace. Two years

312. *Id.*

313. *Id.*

314. *Id.* at 42.

315. *Id.* at 42-43.

316. 42 U.S.C. § 608(a)(1) (Supp. V 1999).

317. *Id.* § 608(a)(10)(A).

318. ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES, CHILD ABUSE AND NEGLECT STATISTICS: ANNUAL REPORT—FISCAL YEAR 1999, tbl.27 (2000), available at <http://www.state.il.us/dcf/CANTS99Cont.htm> (stating that only six percent of reported cases in Illinois ended in the child being taken into protective custody).

319. Ward Doran & Roberts, *supra* note 22, at 65.

elapsed before Gloria was able to quit using drugs, find a new home, and regain custody of her children.³²⁰

Like Gloria, Rhonda, a thirty-four-year-old African-American divorced mother, was receiving welfare at the time of the DCFS report. Although her children were placed in the custody of her father, the public aid office terminated her TANF benefits.³²¹ Her father had to contact the public aid office and have the children's grants transferred to him while he was taking care of the children. He did not begin to receive the children's cash assistance for two weeks. Rhonda lost benefits for one month.³²² Justin also had all of his welfare benefits terminated after his children were removed and was unable to pay his medical bills.³²³

The TANF rules often conflict with other aspects of recipients' lives that might improve their children's welfare. To keep receiving assistance, Shirley is required to attend GED classes.³²⁴ Although she would like to earn her GED, she is concerned that if she misses classes she will be sanctioned. In addition to her school requirements, Shirley must obtain ten signatures from potential employers.³²⁵ "They give these lists where we gotta go out and look for jobs, and get the paper signed—like ten signatures saying that you was out there lookin' for one."³²⁶ Shirley is optimistic about her job opportunities once she completes her GED.³²⁷

Despite its popularity among legislators, few respondents discussed the child exclusion policy, or "family cap," a behavior modification technique designed to discourage women from having additional children while on welfare.³²⁸ Our interviews suggest that the decision to bear children is more complicated than the simple cost-benefit analysis advanced by proponents of family caps. Rhonda's description reflects the complexity of women's decision making:

And I don't think it's fair that . . . they don't give you cash benefits for newborn babies. I don't think that's fair. It's

320. *Id.*

321. *Id.*

322. *Id.*

323. *Id.*

324. *Id.* at 40.

325. *Id.*

326. *Id.*

327. *Id.*

328. See *supra* notes 60-65 and accompanying text (discussing the family cap's affect on families). Under child exclusion policies, mothers who currently receive welfare benefits and give birth to a child do not receive an increase in the amount of their grant. Williams, *supra* note 23, at 736.

not stopping the problem of women having babies. See, because there's a lot of people in different situations. And there's a lot of times people have been down for so many years just by being in relationships, or just adjusting to living a certain type of way in poverty, or however you may put it, and then they don't have the self-esteem or the ability . . . or have enough pride to say that I want to change. You know . . . a lot of people have a lot of issues. You know, and they need to see that . . . like a lot of people need to be counseled from, you know, being raped for years, or having loss or grievances, you know loss of a loved one—a baby, a husband, or whatever. It's a lot. People can have mental . . . incapacibilities. [Welfare reformers] don't know. And they need to find out first before they be quick to say "well, you've been on this for this amount of time and we're gonna . . . [cut you off]." They should really look into things like that. 'Cause there's a lot of people that need help that don't know how to get it!³²⁹

Rhonda's observations are supported by empirical studies that find no relationship between the level of welfare benefits and out-of-wedlock births.³³⁰ Moreover, the fact that Rhonda was the only respondent who mentioned family caps suggests that these provisions do not influence recipients' decisions about childbearing to the extent that legislators predicted.

C. *Balancing the Requirements of TANF and DCFS*

As we discussed in Part II, parents involved in both the welfare system and the child welfare system must comply with two distinct sets of rules, expectations, and time-consuming requirements. They must balance the requirement to work or obtain schooling imposed by TANF, coupled with the requirement to attend parenting classes, family counseling, and drug treatment imposed by DCFS, against the demands of raising their children.

329. Ward Doran & Roberts, *supra* note 22, at 50-51.

330. See KRISTIN LUKER, *DUBIOUS CONCEPTIONS: THE POLITICS OF TEENAGE PREGNANCY* 126-27 (1999). As Kristin Luker has explained:

If welfare encouraged early and out-of-wedlock childbearing, we would expect states with more generous benefits . . . to have more such childbearing, and stingy states to have less. But a number of comparative studies have demonstrated that there is no correlation between the level of benefits and the level of out-of-wedlock births.

Id.; see also Lens, *supra* note 62, at 27-30 (citing several studies that show no correlation between receiving welfare and out-of-wedlock pregnancies).

Many of the dual-system parents we interviewed felt overwhelmed by the time consuming nature of the combined requirements imposed by TANF and DCFS and found it difficult to comply with both sets of requirements.³³¹ In addition, parents indicated that the combination of DCFS and TANF requirements interferes with the demands of raising children.³³² The conflict between DCFS requirements and TANF work requirements is evident in Brenda's response to her DCFS caseworker's request that she meet additional requirements: "I work five days a week, just like you do. What you want me to do—take off from my job to do certain things? I told you I can only do it after hours."³³³

Michelle, a twenty-three-year-old African-American single mother, believes that the services DCFS requires make it difficult for her to both work and get her children back. She feels that she is being forced to choose between these two competing goals. Child welfare services seem to consume all of her time. DCFS requires her to participate in parenting classes, substance abuse classes, counseling—"you name it. As you go, they make up stuff [for you to take]."³³⁴ These service requirements demand so much time that Michelle has not been able to keep a job.³³⁵

Michelle's experiences illustrate how the time demands of DCFS requirements can conflict with the work requirements imposed by TANF. She felt torn between the two systems because she must attend the DCFS meetings and services to regain custody of her children.³³⁶ "I have to go to the meetings with my kids and the services,"³³⁷ Michelle said.

They inhibit me from working. I have to go to the meeting with my kids rather than work because if I don't, they (the caseworkers) will make it seem like I don't love my kids. They can say anything they want. . . . I have no say so, I'm just standing there [in court].³³⁸

Although she makes her children her top priority, Michelle recognizes that this focus may have long-term implications for her TANF benefits. If she does not find employment because of her compliance

331. Ward Doran & Roberts, *supra* note 22, at 66.

332. *Id.*

333. *Id.*

334. *Id.* at 67.

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

with DCFS requirements, she risks reaching the time limit for receipt of her cash grant. Without this cash assistance, inadequate housing or her inability to provide adequate food and clothing could compromise Michelle's reunification with her children.³³⁹

Thus, the conflict between TANF requirements and DCFS requirements may create a cyclical pattern of failure. Each program's requirements may force a behavioral compromise, such as forgoing work to attend parenting classes or vice versa, that could eventually result in the loss of TANF benefits or child custody.³⁴⁰ Despite this possibility, the emphasis on caring for their children over the potential loss of TANF benefits was common among the parents we interviewed.³⁴¹ The desire to keep or regain custody of their children controls these parents' decisions. Indeed, some parents failed to perceive clear conflicts between TANF and DCFS requirements because the drive to care for their children made the TANF requirements seem insignificant.³⁴²

For example, Gloria responded to a question about the conflict between the two systems by stating that there was none: "My children are most important."³⁴³ This response was particularly surprising given that Gloria has had problems meeting her TANF requirements since she became involved with DCFS. The child welfare service requirements have forced her to miss several appointments with her TANF caseworker.³⁴⁴ She noted that "if you are late or miss an appointment they take your whole benefits out. Then you be like late on rent and everything."³⁴⁵ Gloria felt that this sanction was unfair because the only appointments that she ever missed were due to services required by DCFS. She was willing to sacrifice her welfare benefits to perform the tasks that the child welfare system required. This strategy, however, may have negative long-term consequences if the loss of TANF benefits reduces her ability to provide necessities to her children, thereby making her family vulnerable to further DCFS intervention.³⁴⁶

In addition, parents living with their children indicated that it was difficult to balance the general demands of raising children with the TANF requirements. Shirley noted that she "doesn't have much time

339. *Id.*

340. *Id.* at 67.

341. *Id.* at 67-68.

342. *Id.* at 68.

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

for anything.”³⁴⁷ Angela also feels that she has too much to balance. She tries to coordinate her public aid appointments with her work schedule. Because she works in the evening, she tries to make all of her appointments with her caseworker in the late morning after she helps her children get to school.³⁴⁸ By default, the requirements end up “balanc[ing] [them]selves”³⁴⁹ because she can only work during those times when she is not caring for her children or meeting with her caseworker. Sally also had difficulty balancing the demands of caring for her son and paid work. “I’ve got a lot of things to do. Like right now, getting [my son] involved in school, getting his school supplies, he’s got doctor’s appointments, and all that stuff. If I would be working right now, that would interfere in my work. So, yeah, sometimes [public aid] would help out.”³⁵⁰

CONCLUSION

Both the welfare and child welfare systems impose behavior modification requirements on poor parents based on the assumption that family problems are caused by parental deficiencies. Although these two systems share overlapping histories, populations, and philosophies, they impose competing—and often conflicting—demands on the families that are involved in both. Our study revealed that families’ involvement in TANF and child protective services stemmed largely from external constraints that make it difficult for poor parents to care for their children, including barriers to well-paid jobs, lack of affordable child care and housing, and transportation problems. The two systems’ conflicting behavior-modification requirements, moreover, further impede parents’ ability to conform to the expectations of either system. The dual-system parents we interviewed reported that TANF’s expectation that they keep a job without adequate child care made it harder to take care of their children; that TANF’s sanctions and time limits increased their financial insecurity; and that they found it extremely difficult to comply simultaneously with TANF requirements and their child protective services case plan. More fundamentally, despite their enthusiasm for finding paid employment, they experienced a conflict between TANF’s rules and the general demands of raising children.

This study demonstrates that welfare reform has failed to provide sufficient services and supports needed to assist parents to meet the

347. *Id.*

348. *Id.*

349. *Id.*

350. *Id.* at 68-69.

competing demands of keeping a job and caring for their children. The conflict dual-system families experience suggests a problem with TANF's behavior-modification philosophy as well. By focusing on reforming parental deficiencies, the welfare and child welfare systems overlook the societal causes of child poverty and maltreatment. Together, they place unmanageable burdens on the most desperate parents to improve their children's welfare without the tools they need. As Gwendolyn Mink observes, "*Why we end welfare dictates how we end it—whether we end it by subordinating poor single mothers or by improving their prospects for equality.*"³⁵¹ The experiences of families in the child welfare system invite Congress to re-think behavior modification as the reason and method for reforming welfare.

351. MINK, *supra* note 54, at 134.

APPENDIX

TABLE 1 UNWEIGHTED CASE COUNTS AND WEIGHTED MEANS AND STANDARD DEVIATIONS FOR ILLINOIS FAMILIES STUDY SAMPLE AND SUBSAMPLES

Demographic	Interviewed		Not Interviewed		Total Sample				
	N = 16	M	SD	N = 24	M	SD	N = 1,363	M	SD
Age		29.00	5.45		31.43	5.86		31.68	8.09
18-19	0			0					16
20-29	6			14					641
30-39	8			8					493
40-49	2	.99	.12	2	.86	.35		.96	.19
Gender									
Male	1			1					39
Female	15	.95	.21	23	.87	.34		1.08	.53
Race									
White	4			6					249
Black	12			18					1,002
Hispanic	0			0					93
Other	0			0					19
Marital Status		.98	1.25		.77	1.22		.78	1.16
Never Married	7			16					747
Married	4			5					412
Divorced	4			3					185
Widowed	1			0					14
Education		11.63	.85		11.33	.57		11.67	1.85
Below High School	7			12					540
High School or GED	7			6					522
Any College	2			6					288
College Graduate	0			0					5
Chicago Residence		.90	.31		.71	.47		.78	.41
No	9			16					776
Yes	7			8					587

Number of Children									
1	1	*5.36	2.16	3	*3.95	1.39		3.09	1.87
2	2			3			244		
3	1			4			353		
4	2			8			297		
5	4			1			219		
More than 5	6			5			128		
							113		
<i>Public Assistance</i>									
Food Stamps in 1998		.99	.11	2	.77	.43	163	.86	.35
No	1			22			1,191		
Yes	15			5	.75	.45	107	.90	.30
Medicaid in 1998		.80	.42	19	.75	.45	1,012	.76	.43
No	3			5			352		
Yes	13			19			993		
TANF in 1998		.80	.42						
No	3								
Yes	13								
<i>TANF Sanctions</i>									
Partial Sanction Past Year		.19	.41	19	.25	.44	1,016	.25	.43
No	14			4			340		
Yes	2								
<i>Housing</i>									
Homelessness Past Year		*.41	.50	22	*.22	.42	1,285	.07	.26
No	12			2			78		
Yes	4								
Times Residence Changed Past 12 Months		*2.23	1.49	14	*1.41	1.69	1,022	1.30	.60
1	9			6			281		
2	5			4			29		
3	0			0					
Over 3 times	2			0			13		

Note: * = significantly different at the $p < .05$ level
 Due to missing values, not all columns sum to total