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Aid to Families with Dependent Children - A Study of Welfare Assistance

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NOTES

AID TO FAMILIES WITH DEPENDENT CHILDREN—A STUDY OF WELFARE ASSISTANCE

INTRODUCTION

UNTIL the Depression in 1929, welfare assistance was within the domain of private organizations. Although a few local or statewide programs did exist,[1] they were exceptions to the general rule. The advent of the Depression focused attention on this private assistance and demonstrated its inadequacy. As the Depression continued, it became more and more clear that the needs of the people could no longer be met without coordinated help. In response to the continuing depressed character of the national economy, President Roosevelt, on June 8, 1934, promised legislation on the subject of social security. He said:

> Our task of reconstruction does not require the creation of new and strange values. It is rather the finding of the way once more to known, but to some degree forgotten, ideals and values. . . .
>
> Among our objectives I place the security of the men, women, and children of the Nation first.
>
> This security for the individual and for the family concerns itself primarily with three factors. People want decent homes to live in; they want to locate them where they can engage in productive work; and they want some safeguard against misfortunes which cannot be wholly eliminated. . . .[2]

Subsequent to this statement, President Roosevelt, by executive order, created a committee whose task was to study the problems of economic deprivation and to propose legislation designed to alleviate and prevent similar conditions in the future. The President, endorsing the committee's recommendations for legislation, submitted the committee's report to Congress stating:

> The establishment of sound means toward a greater future economic security of the American people is dictated by a prudent consideration of the hazards involved in our national life. No one can guarantee this country against the dangers of future depressions but we can reduce these dangers. We can eliminate many of the factors that cause economic depressions, and we can provide the

[1] U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, *Foreword* to A CONSTRUCTIVE PUBLIC WELFARE PROGRAM at iii (1965).

[2] H.R. REP. No. 615, 74th Cong., 1st Sess. 2 (1935).

> means of mitigating their results. This plan for economic security is at once a measure of prevention and a method of alleviation.[3]

Thus it is clear that the Depression was the catalyst for a searching exploration of the economic ills of the nation; the result of this exploration was the Social Security Act of 1935.[4] This act was the first permanent legislation authorizing commitment of federal funds to states for public welfare programs.[5] It is interesting to note that the United States was the last major country to consider a comprehensive program of social security.[6]

In consideration of the act as enacted, a Senate Committee delineated the scope and purpose of the bill in the following way:

> The pressing need for social security legislation at this time is apparent on every hand. For the last 5 years we have been paying a frightful cost of insecurity in the toll of human suffering, weakened morale of our people, and mounting public expenditures for public charity. So far in the depression we have taken emergency steps, designed to relieve distress, and to take care of the immediate situation. The time has come for a comprehensive, constructive program to avoid the repetition of such a disaster in the future. The foundation for such a program is laid in this bill.[7]

In relating the broad impact of the Social Security Act to the welfare of children, a Senate Report stated:

> The heart of any program for social security must be the child. All parts of the Social Security Act are in a very real sense measures for the security of children. Unemployment compensation, for instance, will benefit many children in the homes of unemployed workers; and even old-age pensions and old-age benefits will in many cases indirectly aid children in families whose resources have been drained for the support of aged grandparents.
>
> In addition . . . there is great need for special safeguards for many underprivileged children. Children are in many respects the worst victims of the depression.[8]

Since its enactment in 1935, few years have passed without amendment or addition to the act.[9] In virtually every instance of revision, the scope of the original legislation has been enlarged or the provisions strengthened.[10]

The federal legislation was initially designed to encourage state adoption of active public relief programs. By offering states reimbursement for their welfare expenditures if the state program con-

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[3] H.R. REP. No. 615, 74th Cong., 1st Sess. 3 (1935).

[4] Social Security Act of 1935, 49 Stat. 620 (1935), 42 U.S.C. § 301 (1964).

[5] *Foreword* to A CONSTRUCTIVE PUBLIC WELFARE PROGRAM, *op. cit. supra* note 1, at iii.

[6] H.R. REP. No. 615, 74th Cong., 1st Sess. 16 (1935).

[7] S. REP. No. 628, 74th Cong., 1st Sess. 2 (1935).

[8] S. REP. No. 628, 74th Cong., 1st Sess. 16 (1935).

[9] WELFARE ADMINISTRATION, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, IMPLEMENTATION OF THE 1962 PUBLIC WELFARE AMENDMENTS 1 (1964).

[10] BUREAU OF FAMILY SERVICES, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, PUBLIC ASSISTANCE UNDER THE SOCIAL SECURITY ACT 1 (1966).

formed to federal guidelines, the states were strongly induced to begin a program of relief. In this regard, it should be noted that the federal statutes are, in effect, only permissive, insofar as any state is free to participate or not participate with the federal government in a given welfare program.

At the time of the conception of the act, nearly every state adopted a related welfare program. Today, "four out of every 100 American children depend upon the federally supported State programs of aid to families with dependent children . . . ."[11] These children are members of 1,102,449 families,[12] which encompass 3,465,554 children[13] and 1,129,711 adults who are either parents or guardians.[14] The federal expenditure totalled $161,474,677 in April of 1966,[15] an expenditure increase of 4.4% over the previous April. Relating these statistics to the state of Colorado, during the month of May 1966, this state was providing welfare aid to 12,418 families, which included 37,367 children and 11,102 parents or guardians, at a federal expense of $1,938,934.[16]

The preceding statistics demonstrate: (1) that the Aid to Families with Dependent Children program[17] encompasses a substantial part of the nation's population; and (2) that vast amounts of the nation's natural and developed wealth are committed to the support of these families and their children.

That persons needing a subsistence allowance do exist, and that without such aid such persons would be unable to provide themselves with the necessities of life, will be assumed throughout the course of this paper. In discussing AFDC, the response of the State of Colorado will be analyzed in terms of its goals and its fulfillment of specific requirements which result in receipt of matching funds from the federal government. Following this analysis, the operational effectiveness of the state program will be examined. During the

[11] BUREAU OF FAMILY SERVICES, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, DEPENDENT CHILDREN AND THEIR FAMILIES 1 (1961).

[12] BUREAU OF FAMILY SERVICES, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, Advance Release of Statistics on Public Assistance, April 1966, Table 1. It should be noted that these statistics indicate an increasing welfare burden because in 1961, only 910,000 families were receiving this aid. DEPENDENT CHILDREN AND THEIR FAMILIES, *op. cit. supra* note 11, at 2.

[13] Advance Release of Statistics on Public Assistance, April 1966, *op. cit. supra* note 12, Table 1. Here, too, an increase has occurred; 2,733,000 children received assistance in 1961. DEPENDENT CHILDREN AND THEIR FAMILIES, *op. cit. supra* note 11, at 2.

[14] Advance Release of Statistics on Public Assistance, April 1966, *op. cit. supra* note 12, Table 1.

[15] Advance Release of Statistics on Public Assistance, April 1966, *op. cit. supra* note 12, Table 2. This same release reported that one year earlier, in April of 1965, cost to the federal government was $154,713,449.

[16] *Id.* Table 7.

[17] Hereinafter, the Aid to Families with Dependent Children welfare program will be referred to as AFDC, even though Colorado still refers to its program as ADC. The federal designation is AFDC. 76 Stat. 185 (1962), 42 U.S.C. § 602 (1964).

foregoing study, suggestions as to how the program may be altered to re-integrate the welfare claimant into society, and thus lessen the long-range burden, will be discussed.

I. THE STATE PLAN

The state plan, required by the federal law, is designed to provide services and to meet the needs of that state's needy families and their dependent children.[18] In the interest of uniformity and a comprehensive welfare program, a series of requirements must be met before the state qualifies for federal financial assistance. The Bureau of Family Services, a federal agency, is charged with approving or disapproving submitted state plans. It is therefore important that each state, Colorado in this instance, carefully prepare its plan.

In Colorado, a satisfactory state plan is largely the responsibility of the Colorado State Department of Public Welfare.[19] The DPW is charged with keeping abreast of current changes in federal legislation and revising their rules and regulations accordingly. When federal revisions require state legislative action, the DPW works closely with state legislative committees by making recommendations to the state legislature, which, when enacted, will assure continued federal assistance.[20] It can be seen that the DPW shoulders substantial responsibility for a smoothly functioning and continuous welfare program.

The duties of the DPW are several, and every duty has a basic relationship to federal law. The Social Security Act provides each state with an administrative option, *i.e.*, a state may establish a single state agency to administer the state plan, or it may establish a single state agency to supervise administration of the state plan.[21] Colorado has chosen the supervisory alternative.[22] Perhaps the most important duty delegated to the DPW is the promulgation of rules and regulations binding upon each Colorado county, which are "necessary or desirable for carrying out the provisions"[23] of Colorado legislation,[24] which are in turn, essential to continued federal financial assistance.

In many instances, the federal requirements are met by direct legislative action. In other instances, these requirements are met

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[18] 79 Stat. 423 (1965), 42 U.S.C. § 602 (Supp. I, 1965).

[19] Hereinafter, the Colorado State Department of Public Welfare will be referred to as the DPW.

[20] Interview With Mr. John H. Jones, Principal Public Assistance Consultant, Colorado State Department of Public Welfare, Denver, Colorado, Sept. 9, 1966.

[21] 49 Stat. 627 (1935), 42 U.S.C. § 602(a)(3).

[22] COLO. REV. STAT. § 22-11-2(1)(b) (1963). See generally 7 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 7015, pt. IV (B) at 19 (1963).

[23] COLO. REV. STAT. § 22-11-2(1)(c) (1963).

[24] COLO. REV. STAT. § 22-11-2(1)(e) (1963).

solely by the rules and regulations promulgated by the DPW. The latter situation prevails when federal law is revised and the Colorado legislature is not in session at the time. But, regardless of which procedure is used, the revisions must be incorporated into the state's welfare program and must be binding on all political subdivisions of the state in order that it remain eligible for federal assistance. In the event the DPW acts alone, it has the authority to make and enforce the required revisions of the state welfare program. At a later date, when the legislature is in session, it may or may not incorporate the revisions into statutory form.

Revisions in the state program are not always in response to federal amendments. They may be made on the state's initiative. An example is the situation where a welfare worker finds a current practice too outmoded or inadequate to provide needed assistance. Such a worker explains the problem to his supervisor who then presents it to his administrator. The administrator reports the suggested revision to a county-state liaison worker who conveys the information to the DPW. In the event the DPW considers the suggestion valid and worthy of incorporation into the welfare program, the suggestion is drafted into final form and submitted to the Department of Health, Education, and Welfare where it is studied and approved or disapproved by the Bureau of Family Services.[25]

Whether the revision originates at the federal, state, or operational level, it is still a change in the welfare program. As such, it must always be submitted for examination and judgment.[26] This technique of examination, which occurs on every revision, permits HEW[27] to maintain surveillance over every state welfare program by continual determination and re-determination of whether any particular state is entitled to federal aid.

II. FEDERAL REQUIREMENTS: A STATE'S RESPONSE

In this section, attention shall be given to those federal requirements which are most important or most controversial. As each requirement is considered, Colorado's compliance with and operation under it will be examined. At the same time, an analysis of the effectiveness of the state operation will be made where appropriate.

[25] Interview With Mr. John H. Jones, Principal Public Assistance Consultant, Colorado State Department of Public Welfare, Denver, Colorado, Sept. 9, 1966.

[26] As might be expected, the method employed for reporting *all* revisions is a form (Form FS-553), accompanied by a final draft of the actual revision. Because revisions are so frequent, the amount of paperwork involved is tremendous. This results in somewhat of a bottleneck, causing the needed approval to be delayed in the average situation.

[27] Hereinafter, the United States Department of Health, Education, and Welfare will be referred to as HEW.

A. *Geographical Coverage*

An approved state plan must "provide that it shall be in effect in all political subdivisions of the state, and . . . be mandatory upon them . . . ."[28] By this requirement, it is intended that the whole geographical area of the state be provided with welfare assistance, rather than isolated portions thereof. Thus, provided that the state is totally served by such assistance, the political subdivision chosen by a given state, to administer the welfare, is discretionary with that state. In Colorado, the various counties have been charged with administering public welfare.

B. *State Financial Participation*

The federal government does not assume all expenses of every aspect of welfare aid, even though it is willing to provide very significant financial assistance. Thus it is that federal legislation calls for a plan of "financial participation by the State . . . ."[29]

The amount of financial assistance provided by the federal government depends in part on the particular program involved and the size of the state appropriation for that program. Because of these variables, even when a state's plan is fully approved, there is no predetermined amount of federal aid available.

C. *Opportunity for a Fair Hearing*

In recognition of the right of every individual to equal treatment under the laws, the state plan must "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness . . . ."[30] The hearing is intended to prevent arbitrary denial of an application, or delay in its consideration, at the local level.

In Colorado, county departments of public welfare are required to report their decisions rendered upon each application for aid, to the DPW. In addition, the DPW may initiate a review of any county's decision on requested aid, without regard to an applicant's desire for appeal.[31] Following appeal to, or review by, the DPW, an applicant suffering an adverse decision can appeal to a state district court. Despite this provision for court review, in Denver

[28] 49 Stat. 627 (1935), 42 U.S.C. § 602(a)(1). Colorado compliance with this requirement found in COLO. REV. STAT. § 119-1-9 (1963).

[29] 49 Stat. 627 (1935), 42 U.S.C. § 602(a)(2). Colorado compliance with this requirement found in COLO. REV. STAT. § 119-1-16 (1963).

[30] 76 Stat. 185 (1962), 42 U.S.C. § 602(a)(4). Colorado compliance with this requirement found in COLO. REV. STAT. § 22-11-9(1) (1963).

[31] COLO. REV. STAT. § 22-11-9(1) (1963).

County no judicial appeal has occurred during the past ten years.[32] The lack of judicial appeal indicates with equal force, either a strong tendency on the part of the applicants to abide by the state agency's decision or a lack of funds with which to finance such an appeal.

Appeals from the local agency to the state agency are also infrequent. Those appeals which are made, generally concern aid to needy disabled persons where the factual issue is the extent or permanence of the disability. One reason for the lack of appeals may be the fact that few technical problems are involved in the application process. The primary factual determination in AFDC cases centers on the applicant's income or the return of the husband; in either case, the issue is not complex.[33] When appeal to the state agency is taken, it must satisfy recognized due process requirements. These include the appellant's right to present witnesses and to cross-examine the welfare department's witnesses. In addition, court-room rules of evidence are applicable.

D. *Employment Incentives*

Prior to 1962, federal law required all earnings of every member of the AFDC family to be taken into account when computing the assistance for the family. The normal AFDC grant for a given number of family members would be reduced by exactly the amount earned. This requirement was destructive of employment incentives insofar as the recipients could refrain from all gainful employment and still receive the same income at the first of each month. To make the situation even worse, in some instances, the recipient who decided to work despite this financial restriction would actually be less well off after working because of incurring the expense of such items as work clothes or transportation costs. In 1962, amendments to the Social Security Act altered this situation by providing that the state plan must account for income or resources of the children and their relatives, but the income determination must also include an accounting of "any expenses reasonably attributable to the earning of any such income . . . ."[34] This allowance proved to be a limited improvement.

Recently, another amendment further liberalized consideration of outside income, by providing that the state agency could disregard the earned income of each dependent child under the age of eighteen. The disregard of such earned income was limited to fifty dollars per

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[32] Address by Mr. Frank A. Elzi, Legal Services Division, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 8, 1966.

[33] Interview With Mr. Frank A. Elzi, Legal Services Division, Denver Department of Public Welfare, Denver, Colorado, Aug. 31, 1966.

[34] 79 Stat. 423 (1965), 42 U.S.C. § 602(a)(7) (Supp. I, 1965). Colorado compliance with this requirement found in COLO. REV. STAT. § 22-11-5 (1963).

month, per child, and never to exceed a total of $150 per month for all of the children in the family.[35] Colorado, apparently recognizing the value of encouraging employment incentives, allows each child in the AFDC family to earn up to sixty-five dollars per month and each adult within the grant an amount not to exceed twenty-five dollars per month.[36] To the extent that the additional Colorado allowance exceeds the federal allowance, it is not reimbursable by the federal government.

To appreciate more fully the benefits provided by these allowances, it should be noted that prior to 1965, a dependent child was not allowed any gainful employment, under penalty of reducing the amount of the AFDC grant. In some instances, the effect of this restriction was indirectly to force the teenager out of the home so that he could continue to work to receive money of his own without increasing the burdens on his siblings covered by the grant.[37] Allowing the AFDC child to earn his own way, or perhaps to save money for vocational or other education, as the amendments now allow, seems to foster a sense of responsibility in the child which was previously quashed. Moreover, the family unity is preserved, *i.e.,* premature separation is no longer necessary.

An anomaly is created by the above discussed revisions insofar as the dependent child is given a significantly larger allowance than his parent. The seriousness of this anomaly is open to question, but it should be noted that the primary emphasis of the AFDC program is the welfare of the child. This is not to say that the parent is considered a lost cause. Rather, such a policy recognizes that the child, being in a formative stage, will likely respond more readily to responsibility. It is also a recognition of the difficulty in deciding how large the adult allowance should be before one reaches the point at which the adult recipient is provided with a double income, *i.e.,* welfare assistance and outside income. If the adult allowance is too large, inclusion on welfare rolls becomes too desirable. If it is too small, employment incentives are destroyed. Although the current allowance may be too small, it is a means of attaining the desired emphasis on improving the standards of the child.

E. *The Recipient's Right of Privacy*

The right to privacy refers to the confidential nature of the information provided by the applicant while seeking welfare assistance. To this end, the state plan must contain "safeguards which

[35] 79 Stat. 423 (1965), 42 U.S.C. § 602(a)(7) (Supp. I, 1965).

[36] Lecture by Mr. Lauren F. Chamberlain, Training Officer, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 5, 1966.

[37] *Ibid.*

restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to families with dependent children . . . ."[38] When invoked, this restriction prevents the use of welfare records for commercial, political or personal purposes.[39]

In providing this protection to Colorado applicants and recipients, the Colorado legislature has made violation of the statute a misdemeanor punishable by a fine of not more than $500 nor more than three months imprisonment, or both.[40]

F. *Right of Application*

Every person wishing to do so must be given the opportunity to apply for AFDC assistance and should the requested assistance be granted, it must be provided with reasonable promptness.[41] The rationale for providing this right is found in the following reference to the legislative history of the requirement:

> Shortage of funds in aid to dependent children has sometimes . . . resulted in a decision not to take more applications or to keep eligible families on waiting lists until enough recipients could be removed from the assistance rolls to make a place for them . . . . [T]his difference in treatment accorded to eligible people results in undue hardship on needy persons and is inappropriate in a program financed from Federal funds.[42]

G. *Desertion and Abandonment: Notice*

Every state plan must provide for a method of notice to law-enforcement officials in every situation in which aid is given and a child included in the grant has been deserted or abandoned by a parent.[43] Although the statute, as worded, appears to include desertion by either mother or father or both, Committee Reports on the legislation seem to indicate otherwise:

> It has come to [the] . . . committee's attention that the number of children receiving aid because of the desertion of the *father* is increasing. The legal responsibility of a parent for the support of his minor children is . . . clearly established in the laws of every State.[44]

As if in reliance upon this legislative history, Colorado law restricts

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[38] 76 Stat. 185 (1962), 42 U.S.C. § 602(a)(8). Colorado compliance with this requirement found in COLO. REV. STAT. § 22-11-16 (1963).

[39] Haugland v. Smythe, 25 Wash. 2d 161, 169 P.2d 706 (1946) (dictum).

[40] COLO. REV. STAT. § 22-11-16(4) (1963).

[41] 76 Stat. 185 (1962), 42 U.S.C. § 602(a)(9). Colorado compliance with this requirement found in COLO. REV. STAT. § 22-11-4(2) (1963).

[42] H.R. REP. NO. 1300, 81st Cong., 1st Sess. 48 (1949).

[43] 76 Stat. 185 (1962), 42 U.S.C. § 602(a)(10). Colorado compliance with this requirement found in 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.21 (1963).

[44] H.R. REP. NO. 1300, 81st Cong., 1st Sess. 48 (1949). (Emphasis added.)

prosecution for desertion to the father of a child, excluding the child's mother.[45] In application, Colorado's statute seems to indicate a recognition that it is the primary responsibility of the father, rather than the mother, to support their children.

From the viewpoint of the welfare agency, the Colorado statutory focus on the deserting father does not exclude the deserting mother from its concern. Rather, when the mother has deserted, the emphasis is shifted from securing financial support[46] to "providing appropriate casework services to assist applicants and recipients to work out problems of family relationships and marital difficulties . . . ."[47]

1. Desertion in Detail

In Colorado, desertion and abandonment are considered essentially the same offense and punishable as a felony. Intent to desert is an essential element of the prosecutor's burden of proof;[48] this is frequently proven by a showing that the father is continuously absent from the home and has taken other employment in a different geographical location.[49] From a technical standpoint, the DPW has promulgated a series of requirements, *all* of which must be met when applicable to the individual case, before desertion can exist. The following factors must be verified:

> [1.] The child of the deserting father is under the age of 16.
> [2.] A marriage, including prima facie common-law marriage,[50] has existed and the child is the issue of such marriage. . . .
> [3.] Unless the parents of the child are, or were, legally married, the paternity of the child must be legally established. . . .
> [4.] The father has left the home in which the child is receiving care, failing to provide for the child's support in that home or elsewhere.
> [5.] The circumstances of the absence are such that a reasonable conclusion would be that the father is voluntarily and willfully absent without apparent intent to return. . . .
> [6.] The absence has existed for a continuous period of 30 days or more, during which there has been complete lack of support of the child by the absent father. . . .
> [7.] The absence of the father is the primary reason for the need of the child for ADC.[51]

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[45] COLO. REV. STAT. § 43-1-1 (1963).

[46] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.21 (1963).

[47] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.213 (1963).

[48] COLO. REV. STAT. § 43-1-1 (1963).

[49] Interview With Mr. Frank A. Elzi, Legal Services Division, Denver Department of Public Welfare, Denver, Colorado, Aug. 31, 1966.

[50] A common law marriage is quite easily established in Colorado. Both parties to the marriage contract must be legally free to marry; both parties must consent, intend and agree to the marriage, either expressly or by implication. When these elements are met, a valid legal marriage exists which can be terminated only by legal action. See COLO. REV. STAT. § 90-1-1 (1963) (requirement of consent); Smith v. People, 64 Colo. 290, 170 Pac. 959 (1918); Estate of Klipfel v. Klipfel, 41 Colo. 40, 92 Pac. 26 (1907).

[51] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.211 (1963).

Upon proof of these factors, a finding of desertion is made. The next step is to attempt to locate the father. To this end, information concerning the father's desertion is to be employed by the various county departments in an attempt to locate him, "whether his whereabouts are known or believed to be unknown." The contact with the deserting father is for the purpose of determining his attitude concerning the family and the support of his child.[52] For the most part, location efforts are conducted either by a welfare worker or by an investigation unit.[53] This unit relies upon caseworker reports, family members, organized public or private agencies, social organizations, and correspondence with other counties and states.[54]

After it has been reasonably determined that a desertion has occurred,

> a main condition of eligibility for ADC is that the applicant (including new, reopened or reinstated cases) must sign a statement . . . that she is willing to sign a complaint against the deserting father, if requested to do so by the District Attorney. ADC is granted promptly if the applicant signs the form; it is not granted if the applicant refuses.[55]

In some situations this condition of eligibility places a substantial burden upon the applicant insofar as she has no particular desire to see the father of her child prosecuted for the felony of desertion. This required cooperation on the part of the applicant or recipient is intended to force the father, when found, to fulfill his support obligations when otherwise he probably would not.

The foregoing discussion clearly focuses upon the female applicant and the pursuit of the father. In the reverse situation, *i.e.,* where the father applies for AFDC assistance after desertion by the mother, the above condition of eligibility is somewhat modified by practical necessity. All that is really required of any applicant is that he or she cooperate with law enforcement authorities. Thus, when a father applies for AFDC, there is no legal reason for requiring cooperation, since Colorado has no provision for prosecuting a deserting mother. As a practical matter, this question arises rarely, since a father will apply for AFDC in the normal instance, only when he is incapacitated and his wife is absent.

2. Legal Aspects of Support Actions

It will be recalled that desertion, when proven, is a felony, punishable by imprisonment. The criminal complaint of desertion is usually reserved for those cases where the location of the missing

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[52] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.212 (1966).

[53] Denver Dep't of Public Welfare, Administrative Order No. 23, 1962.

[54] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.212 (1966).

[55] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.214 (1963).

father is unknown, or is known but he is outside the jurisdiction of the state. When the father's location is known and he is within the state's jurisdiction, a civil non-support action is employed. The civil action is preferred whenever possible because this gives the defendant father a further opportunity to avoid incarceration, providing he makes the proper payments under court order. In this way, the state hopes to avoid the expenses attendant to imprisonment of the father.

The county welfare department is able to select which remedy to enforce by using the eligibility forms the applicant must sign. This selection is possible because Colorado regulations provide for the immediate and full payment of the AFDC grant to the applicant when she signs a form indicating that she will cooperate with officials who might decide to pursue the deserting father.[56] The grant is made without regard to whether or not the father will make support payments. At the same time, by means of a pay-over form, the applicant signs over to the county department her rights to any support payments which might be forthcoming from the father. This DPW regulation serves a dual purpose. When the applicant relinquishes her right to the support money from the father, the county welfare department replaces the applicant as the real party in interest for the recovery of support payments. As such, the welfare agency can institute an action for support in its own name. The nature of the civil action will depend upon whether or not there has been a divorce. If there has been a divorce or legal separation which resulted in a court support order, the welfare department will enter the district court and move to have the order enforced and the department named as recipient. If there has been no divorce or legal separation and therefore no court support order, the welfare department will initiate an action in Juvenile Court against the defendant father for having contributed to the dependency of a minor, again with the department named as recipients of any payments.[57] These civil suits, because of the legal expenses involved, would likely go uninitiated by the spouse but for the resources of the welfare department, especially since the Denver Legal Aid Society, as a general policy, refrains from litigating divorce or delinquency actions.

The second purpose of this regulation is that federal requirements are immediately satisfied, allowing full payment of the AFDC assistance money to the applicant with federal participation. In the absence of fulfilling the federal requirement, the assistance could still be given to the applicant, but the funds would have to come from the General Assistance category, a category which is solely the

[56] *Ibid.*

[57] Address by Mr. Frank A. Elzi, Legal Services Division, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 8, 1966.

province of the county and therefore not reimbursable by the federal government.

Aside from purely financial considerations, the immediate payment prevents extended hardships on the applicant which would be the expected result if she were required to wait for court action and then, after successful legal recourse, still have to depend upon the usually infrequent and inadequate payments of the defendant father.[58]

3. Purpose of Support Actions[59]

As a practical matter, the type of action initiated is indicative of its purpose. The criminal desertion action is employed when punishment is the desired end. Such actions hopefully will deter others from attempting to escape their legal obligations. On the other hand, a civil action in Juvenile Court is designed to recover support payments. To this end, an average of seventy-five such cases per month are litigated with a resultant recovery of approximately $500,000 per year in Denver County.

4. Reciprocal Support Act

On occasion, the defendant father is absent from the county or state in which his dependent child resides. In this event, one of the first problems faced by the Legal Services Division of the welfare department will be the establishment of jurisdiction over the person of the father. To provide a remedy for this situation, all of the fifty states[60] have adopted reciprocal support legislation.[61] In Colorado, this act is applicable on both an interstate and intercounty basis[62] and is in addition to, rather than in place of, other remedies.[63] It is the responsibility of the district attorney to file an action under this act, either on his own initiative or at the direction of the court.[64] The county welfare department is charged with providing information to the district attorney's office as needed.

The Reciprocal Support Act is largely a response to the belief that delinquent support payments are a major contributing factor to the need for welfare assistance. But, because the act is universally in force and delinquent support payments remain a problem, it has been suggested that the act should be replaced or strengthened by

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[58] *Ibid.*

[59] Interview With Mr. Frank A. Elzi, Legal Services Division, Denver Department of Public Welfare, Denver, Colorado, Aug. 31, 1966.

[60] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.215 (1966).

[61] *E.g.*, COLO. REV. STAT. §§ 43-2-1 to -16 (1963).

[62] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.215 (1966).

[63] COLO. REV. STAT. § 43-2-3 (1963).

[64] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.215 (1966).

federal legislation. One suggestion is to make it a felony to cross state lines while guilty of non-support. This would enlist the aid of federal agencies in the pursuit of these individuals. There is some merit to such a recommendation because some states are generally uncooperative in terms of providing information which could lead to the apprehension of deserting fathers.[65] However, those advocating federal legislation in this area seemingly overlook the fact that such legislation would not significantly increase arrest percentages since mere authorization of federal law enforcement agencies to search for and arrest fugitives from support actions does not mean a sudden increase in arrests because of existing manpower and budgetary limitations.[66] Assuming for the sake of argument that arrest percentages would increase as a result of federal legislation, nonetheless, a corresponding increase in actual support payments would not necessarily occur. The welfare agencies would still be confronted with the problem of getting the money from these men even though they are in custody.[67] Frequently, these men would rather go to jail for contempt of court than make support payments to their wives and children.[68] Also, many such men lack sufficient education and training which would enable them to support the families for which they are responsible. In short, these factors combine to suggest that federal legislation would result in no significant improvement over the current Uniform Reciprocal Support Act.

H. *Services Provided to Recipients*

All state plans must "provide a description of the services . . . which the State agency makes available to maintain and strengthen family life for children . . . ."[69] In response, the DPW has promulgated the following statement:

> Within the broad framework of the Federal Social Security Act and specific Colorado statutory legislation, the purpose of public welfare in Colorado is to promote the well-bing [*sic*] of the people of Colorado by providing public assistance and social services to needy and distressed citizens. Such assistance and services shall be administered in such a way and manner as to encourage self-care, self-support, self-respect, economic and personal independence and

[65] A few states will not extradite a person, nor will they enter a court order under the act if an order is already outstanding in another state. A few other states are notorious for their refusal to return correspondence relating to the location of defendant fathers believed to be residing within their borders.

[66] Interview With Mr. Frank A. Elzi, Legal Services Division, Denver Department of Public Welfare, Denver, Colorado, Aug. 31, 1966.

[67] Address by Mr. Frank A. Elzi, Legal Services Division, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 8, 1966.

[68] *Ibid.*

[69] 70 Stat. 849 (1956), 42 U.S.C. § 602(a)(12).

> the opportunity to participate in the life of the State as a good and useful citizen.[70]

This policy statement can be summarized in a single word: self-determination.

The emphasis on welfare services to families receiving AFDC assistance is the result of the 1962 amendments to the Social Security Act.[71] The existence of these amendments and a given state's acceptance of the obligations required to place them in operation are manifestations of growing concern over the deep-rooted causes of economic and educational deprivation. Prior to these amendments, welfare aid appeared to focus on financial assistance, rather than on services in the form of education or rehabilitation. Such a focus was unfortunate since money payments alone do little or nothing to combat the circumstances which initially place a family on welfare. However, financial assistance *and* services can play a vital role in the reconstruction of the lives of people receiving welfare.

Since a service-oriented AFDC program is an essential phase of an effective welfare plan, the term requires definition and the services offered merit detailed consideration. The DPW has defined services as,

> [T]hose activities of social work staff and related specialists, which are directed toward helping the individual client in one or more areas of functioning (i.e., economic, personal, family and social) for the purpose of achieving, to the extent possible, the objectives of strengthening family life, social rehabilitation, self-care, and economic independence for each individual or adult.[72]

Services which are available are divided into two subject areas, namely services to AFDC families and services to the "single person" categories such as Aid to the Blind or Aid to the Needy Disabled.[73] Services to AFDC families are further subdivided into five specialized areas: (1) Illegitimacy; (2) Parental desertion; (3) Potential for self-support; (4) Protection of children; and (5) Child medical problems.[74]

1. Unmarried Parents: Illegitimacy

Illegitimacy is not a particularly recent problem, but increasing emphasis on welfare programs has also increased public awareness and concern about AFDC grants to unwed mothers. Many people resent this use of tax dollars and this resentment has, in some states, resulted in legislative proposals requiring sterilization of the mother

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[70] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4833.01 (1963). The actual services will be considered in detail. See notes 76-104 *infra* and accompanying text.

[71] 76 Stat. 185 (1962), 42 U.S.C. § 602(a) (Supp. I, 1965).

[72] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4800.01 (1963).

[73] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4810 (1966).

[74] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL §§ 4811.1-.5 (1966).

of illegitimate children before they can be eligible for AFDC,[75] or legislation which would simply exclude the second or subsequent illegitimate child from an AFDC grant.[76] These proposals appear to be morally obnoxious or constitutionally objectionable, or both, but the fact that such legislation has been seriously suggested seems to indicate a deep public concern over illegitimate children receiving welfare aid. Such concern is not misplaced, but it should not be exaggerated out of proportion to the welfare problem. For example, "over a 20-year period the increase in illegitimate births has been from about 4 to about 5 in each 100 live births."[77] These figures refer to the population at large rather than strictly to illegitimate births among AFDC recipients. In fact, "an estimated 21 percent *... of all illegitimate children in the Nation received assistance*" under the AFDC program in December of 1961.[78] Thus, the number of illegitimate children receiving welfare is significant, but the problem of illegitimacy is neither focused upon nor confined to the nation's public assistance programs.

The above statistics are not intended to suggest that there is no illegitimacy problem. In recognition of work to be done in this area, the DPW has provided for the evaluation of problems which relate to the legitimacy status of children, clarification of support status, counseling for the unmarried mother, and investigation of conditions which may lead to further illegitimacy.[79] The DPW has further provided that every county must provide services which aid in the planning of the future of both mother and child.[80] It may also provide optional services in the areas of prenatal and postnatal care, or in the "solution of environmental conditions seriously contributing to illegitimacy."[81] It is submitted that solution of environmental problems resulting in illegitimacy should be mandatory upon each county department, since elimination of conditons contributing to illegitimacy seems at least as important as providing medical care for a mother and her child after the child's illegitimate status is already an unpleasant fact.

In illegitimacy cases, the DPW is brought into contact with the father only to clarify support status. Thus, the father is not included

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[75] BUREAU OF PUBLIC ASSISTANCE, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, ILLEGITIMACY AND ITS IMPACT ON THE AID TO DEPENDENT CHILDREN PROGRAM 51 (1960).

[76] ILLEGITIMACY AND ITS IMPACT ON THE AID TO DEPENDENT CHILDREN PROGRAM, *op. cit. supra* note 75, at 52.

[77] ILLEGITIMACY AND ITS IMPACT ON THE AID TO DEPENDENT CHILDREN PROGRAM, *op. cit. supra* note 75, at 2.

[78] BUREAU OF FAMILY SERVICES, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, ILLEGITIMACY AND DEPENDENCY xxiv (Reprint 1963).

[79] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.11 (1963).

[80] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.12 (1963).

[81] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.13 (1963).

in the optional counseling which is sometimes available to the mother of the illegitimate child. To the extent that the father is equally as responsible for the illegitimate birth as is the mother, this appears to be a shortcoming of the services offered in this area.

Lest one believe that the new emphasis on services in the area of illegitimacy will lead to immediate improvement, it must be realized that the causes of illegitimacy are complexly interrelated in the country's social, economic and emotional structure.[82] The ultimate solution of these problems requires the extensive and long-term effort of private citizens, private welfare organizations, and public welfare agencies. The final solution, if ever attained, must be morally sound, constitutional, and directed at the causes of illegitimacy.

2. Desertion or Impending Desertion

A caseworker confronted with a family disrupted by desertion or impending desertion must evaluate problems concerned with repeated desertions indicating a desertion pattern. The caseworker must also give attention to reconciliation attempts, potential support from the absent parent, burdens on the remaining parent, and special effort directed toward keeping the family intact when it is the mother, rather than the father, who is absent from the home.[83] The caseworker may also serve as an intermediary between the feuding mother and father in hopes of preventing an impending desertion. Or, after desertion has occurred, the caseworker will aid in a more efficient management of the disrupted home.

The mandatory services which are to be provided by every Colorado county when appropriate, are to aid in seeking support from the absent parent and to alleviate the dual responsibilities of the remaining parent.[84] Each county, as limited by its resources, may provide services designed to effect a reconciliation with the deserting parent, solve the problems related to desertion patterns, provide general marriage counseling, and other services.[85]

3. Potential for Self-Support: Education

Ideally, every welfare agency is concerned with a family's potential for self-support. To evaluate this potential, services are provided which assess existing employment skills and opportunities.[86] Optionally, medical services may be secured "which will enable the recipient to engage in employment," training opportunities may be investi-

[82] Lecture by Mr. Lauren F. Chamberlain, Training Officer, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 3, 1966.

[83] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.21 (1963).

[84] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.22 (1963).

[85] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.23 (1963).

[86] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.32 (1963).

gated, and assistance may be provided to secure child care while a mother is working.[87]

In Denver County opportunity for training for useful employment exists in the form of Denver's Opportunity School. This school provides testing facilities designed to determine an applicant's aptitudes and also provides limited counseling services. The Denver Welfare Department makes every effort to encourage, since they cannot compel, AFDC recipients to make use of this service, but have experienced only limited success.[88]

Several reasons can be suggested which might explain this result. When a caseworker approaches an AFDC recipient about the advantages of Opportunity School, the subject of aptitude tests is always mentioned. The majority of recipients are frightened by the prospect of having to take a test, even though only an aptitude test. Therefore, their first reaction to further education is withdrawal from the subject. It has been suggested that a caseworker broaching this subject should never mention the word "test," but this solution is partial at best, since common knowledge always associates formal education with some form of examination.

A further explanation of the low proportion of recipients who take advantage of employment training is the presence of young, pre-school age children in the home requiring the constant care of the mother. For the welfare agency to provide care for these children while the mother is in school, and later while she is working, would create more problems than would be solved. Initially, in addition to the aid which would still be required during the training, child care must be provided. Later, when the mother begins to work, she is away from her children on a continuing basis and her absence may be detrimental to them. For these reasons, mothers with children needing regular care are not usually evaluated for potential self-support.[89]

The lack of education is, in many instances, self-perpetuating because those persons lacking education frequently are the ones who fail to appreciate its advantages. Under these circumstances, the serious welfare cycle, *i.e.,* generation after generation on welfare, comes into existence.

It is folly to underestimate the value of education. Many welfare recipients lack even a high school education. Such persons are

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[87] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.33 (1963).

[88] Lecture by Mr. Lauren F. Chamberlain, Training Officer, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 8, 1966. To illustrate, it is discouraging to note that there are more than 5,000 families receiving AFDC assistance in Denver County but only about 200 mothers have taken advantage of the training available at Opportunity School.

[89] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.31 (1963).

particularly vulnerable to overspending their income, to door-to-door salesmen, to loan-sharks, and to domestic problems. It is suggested that general education would make welfare recipients much less susceptible to these common occurrences, by teaching them the difference between a wise and foolish investment, and by teaching a husband and wife how to live together in at least semi-harmony. If education is potentially able to solve some of these very basic deficiencies, it becomes reasonable to ask why it is that education appears to be slighted in the typical AFDC grant.

It is true that Denver County has provided an apparently adequate rehabilitation program in the form of additional grants and allowances for education costs, but what value is the program if recipients cannot be "enticed" into it? Consider also the amount and allocation of an AFDC grant for four persons living in private housing in Denver, Colorado. Seventy-five dollars are allocated for food; sixteen dollars and thirteen cents for clothing; ten dollars and fifty-two cents for personal needs; thirteen dollars and twenty-eight cents for utilities; two dollars and twenty-five cents for household supplies; and *one dollar and fifty cents for education.*[90] This total amount must last this family one month. The only possible addition to this allowance is the expense of training for employment for the AFDC adult recipient.[91] Assuming that three of the four persons covered by this grant are children of school age, the above mentioned one dollar and fifty cents must cover the fees of attending public school, of buying pencils and paper, and of participating in various school activities. It is clear that this amount of money is pathetically inadequate. Almost as important is the fact that this sum of money will allow no newspaper or magazine into the AFDC home, these also being educational devices. This is not to say that there are no newspapers in the home or that school fees are not paid or school activities are not participated in. It is to say, however, that if these "luxuries" are indulged in, the money must come from other areas of the grant, *e.g.,* from the food allowance. But, the food allowance is already sorely taxed since that allowance is frequently invaded to pay the rent, for which an additional, and also inadequate, amount of sixty-one dollars and ninety cents is allocated for this family of four.

In fairness to existing welfare legislation, it must be pointed out that even though there is little money expressly set aside in the AFDC grant for education, there is still financial encouragement for education in the form of eligibility requirements. According to DPW

[90] Denver Public Welfare Department, *ADC Monetary Allowances* (1965) (insert). (Emphasis added.)

[91] Lecture by Mr. Lauren F. Chamberlain, Training Officer, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 8, 1966.

regulations, children up to the age of sixteen are eligible for inclusion in the AFDC grant.[92] After attaining this age, the child can remain a part of the grant only as long as he is in

> regular attendance at a public or private school, high school, trade school, college or university, or under other special arrangements adapted to the child's educational needs, if such other arrangements lead to a diploma or certificate of vocational or technical training designed to fit him for gainful employment.[93] [Textual footnotes deleted.]

Private welfare agencies often provide financial assistance to potentially good students while they seek further education after graduation from high school.[94]

Emphasis in the preceding discussion has been placed on formal or organized education. Individualized training, *e.g.*, a caseworker tutoring in the recipient's home, is also possible. However, it is suggested that the expense of such a program would be prohibitive due to the number of persons who would be needed to make the program work. For the most part, education, to be practical, must come from existing facilities.

A final reason which might explain low Opportunity School enrollment is apathy. It has been stated that a vital phase of the AFDC program is the establishment of self-determination for each recipient.[95] This is a worthy endeavor and is certainly an essential aspect of any "services" program, but in the face of apathy, the mere availability of educational facilities may be for naught. On one occasion, an AFDC recipient was asked if she had ever thought of taking training and then seeking employment. The recipient's answer was, "Who me? Work?" The recipient then stated that she was "too nervous" to work.[96] This recipient may, in fact, have been too nervous to work. But this is not the point. What was illustrated was the recipient's lack of desire to overcome difficulties and to become self-sufficient. For her, it was seemingly easier to wait for the AFDC check at the beginning of each month than to become self-sufficient. Lack of motivation may explain this attitude and perhaps the caseworker's task is to motivate. To some extent this is true, but encouragement and persuasion are not always the only or a sufficient means of motivation. Legislation or regulations concerning eligibility may also

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[92] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4233.1 (1965).

[93] *Ibid.*

[94] Address by Mr. D. Waddell, Community Services Consultant, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 4, 1966. The American Friends Service Committee is one such private organization.

[95] Lecture by Mr. Lauren F. Chamberlain, Training Officer, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 8, 1966.

[96] This information was obtained during a caseworker's home visit to an AFDC recipient. The author was an observer at this interview. Aug. 24, 1966.

motivate. To achieve maximum efficacy from the services presently offered, the pursuit of education and training should be made an AFDC eligibility requirement.

It should be noted that application for and receipt of AFDC assistance is voluntary, since the initial application for aid results from the payee's own initiative, *i.e.*, there is no state or federal law compelling application. Thus, to the extent that an applicant applies for aid, she must be prepared to submit to complete fulfillment of AFDC eligibility requirements. The voluntary nature of the initial application in effect gives the state and federal governments a license to make these requirements as stringent as appear to be necessary to meet the overall goals of an effective welfare program, including the goal of reducing the fundamental need of welfare at the outset. It would therefore seem, since standards already exist by which family members are evaluated on the basis of their potential for self-support,[97] that it could and should be provided that whenever a recipient is found capable of being trained for useful employment, and neither the training nor employment would adversely affect young children in the home, said recipient must agree to submit to education and training under "penalty" of being denied AFDC assistance. Should aid be denied because of the applicant's refusal to submit to education and training, the next concern centers upon the welfare of the children left in the home. In this context, there are two possible alternatives. The first and clearly most drastic alternative is to remove the children from their parent's custody by court order, although such procedure is usually considered an act of last resort. However, since welfare rolls are increasing and welfare cycles already exist, and these unpleasant facts are destined to become more serious with the passage of time unless parents are trained and educated to their basic responsibilities, perhaps drastic measures can be justified. The second alternative would be to continue welfare aid at the same level, but to subject the entire grant of money to absolute control by the welfare department. Under existing procedures, welfare funds are turned over to the recipients who then exercise their discretion with regard to how the money is to be spent. Under this suggested alternative, social workers would select and provide housing, and provide groceries and personal necessities, in all instances denying the recipient access to actual cash. Although this would minimize development of self-sufficiency in the recipient, it would serve to impress upon the recipient the advantages of training and education insofar as an agreement to further education would be "rewarded" by revesting control of the funds in the recipient.

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[97] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.31 (1963).

Consideration of these alternatives, or others like them, seems merited in view of the fact that a lack of education tends to foster ridicule of the value of education. Further, in some instances, an uneducated parent might encourage illegitimacy so that daughters can receive AFDC assistance, or the same parent's conduct might illustrate hostility toward law enforcement officials and disrespect of the laws. In short, where a lack of parental education exerts a significantly harmful influence upon children under the care of such uneducated parents, it is submitted that the existing welfare program is inadequately equipped to cope with the resulting welfare cycle and therefore drastic revisions are justifiable.

4. Children Who Need Protection

In this service area, the caseworker must evaluate problems related to children: (1) in danger of physical abuse and neglect; (2) deprived because of continuing money mismanagement; (3) without adequate supervision; and (4) with parents incapable of functioning as adequate parents.[98] Each county must "assist parents to improve home conditions and assume responsibility for care and guidance of the children, including the management of financial resources."[99] Protective service cases may originate from a referral to the agency by a non-family person, a doctor who is required by law to report injuries he has treated which appear to have been inflicted intentionally,[100] or caseworkers observing mistreatment, lack of supervision or home mismanagement during a home visit.[101] Obvious signs of grossly inadequate child care include malnutrition, ragged clothing and filthy living conditions.[102]

Child neglect is most common in economically deprived families because the demands of meeting basic needs seem to overshadow proper child care. It is for this reason that protective services properly occupy an important place in the over-all services program.

5. Child Medical Problems

The final category of services focuses on children who have special medical problems such as illness, being handicapped, emotional instability, or generally poor physical condition.[103] In the solution of these problems, the county must assist "older teenagers

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[98] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.41 (1963).

[99] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.42 (1963).

[100] COLO. REV. STAT. § 22-13-3 (1963); see generally 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4833.331 (1965).

[101] Address by Mrs. M. Snead, Intake Division, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 5, 1966.

[102] *Ibid.*

[103] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.51 (1963).

in evaluating their interests and potentials for self-support . . . ."[104]

I. *Services Plan for Each Child*

The concluding federal provision is the result of a 1962 amendment to the Social Security Act. It requires each state plan to develop and apply,

> a program for such welfare and related services for *each* child who received aid to families with dependent children as may be necessary in the light of the particular home conditions and other needs of such child . . . with a view toward providing welfare and related services which will best promote the welfare of such child and his family.[105]

The DPW, rather than the Colorado legislature, has reacted to this requirement by providing that:

> county departments are required to make a plan for every child in each ADC case and keep the plan up to date. In order to make a plan it is necessary that each child be considered in relation to his physical and emotional development and as to his home conditions. . . .
> The purpose of the individual consideration of each child is to determine whether problems exist . . . .[106]

Providing individual and extensive care for each child has a twofold effect. In addition to giving specific assistance to such child, this particular service "must always include help to parents to restore their capacity to care for children when that capacity has been weakened by long hardships."[107] Thus, evaluation of the problems of each child is indicative of the problems being faced by the parents of each child. The DPW recommends that the following areas be investigated and analyzed while formulating the required plan for each child: (1) the child's health; (2) the child's social behavior; (3) the child's attitude toward school and his performance in school; (4) the child's legal status, *e.g.,* establishment of legal paternity; (5) lack of physical care and protection; (6) lack of supervision, guidance and discipline; (7) exploitation of the child; and (8) the presence of degrading conditions such as alcoholism, promiscuity, or criminal activity.[108]

In order to facilitate an effective individual plan for each child, the DPW has promulgated several regulations designed to allow a greater time investment for each child. Effective on March 1, 1965, all AFDC cases in Colorado were declared to be service cases.[109] To be practical, this declaration required a caseload reduction. Under

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[104] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4811.52 (1963).

[105] 76 Stat. 185 (1962), 42 U.S.C. § 602(a)(13). (Emphasis added.)

[106] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4235 (1964).

[107] BUREAU OF FAMILY SERVICES, U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, SERVICES UNDER AFDC FOR CHILDREN WHO NEED PROTECTION 6 (1966).

[108] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4235.1 (1964).

[109] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4832.3 (1965).

the new regulations, no caseworker is allowed to have more than sixty service cases.[110] In addition to this, the supervisory load was altered so that no supervisor is in charge of more than five caseworkers,[111] for a maximum total of 300 service cases. Finally, this reduced caseload allows, and the DPW requires, a visit with the AFDC recipient every three months[112] rather than every six months as it was prior to the 1962 amendments to the Social Security Act.

The net result of this emphasis on service is increased contact between caseworker and recipient, which, in turn, makes the worker more familiar with the recipient's problems and allows the worker more time to expend more effort in the solution of the problems. Lest one believe that immediate and significant improvement is the dividend of this relatively new emphasis, it must be pointed out that patience is of the essence. The "services" amendments will undoubtedly lead to over-all improvement in the status of welfare recipients, but only in the long-run application of the program. It must be remembered that many recipients are "hard-core" and set in their ways. To provide services is, in a very real sense, to provide education, and the process of becoming educated, even at the practical level of home management and child care, is a slow one. But, if the needy are ever to become self-reliant, education, in every sense of the word, is the solution.

To financially expedite this services program, the federal government has made funds available which will reimburse the state and county funds to the extent of 75% of the *administrative* expenses of an approved state plan.[113] Administrative expenses, in this context, include the training of personnel and the payment of salaries of the additional number of caseworkers needed to put the services program into effect. This generous contribution from the federal treasury, although an extremely important factor in encouraging states to adopt a services program, in no way increases the amount of the AFDC grant given to a recipient.

III. AFDC AT THE OPERATIONAL LEVEL

Having devoted extensive discussion to an examination of federal and state legislation and regulation, this Note will now explore the AFDC procedure from initial application to receipt of the AFDC grant.

The first step in this process is called the "intake" procedure. This phase is defined as "that period of time between the date of

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[110] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4832.1 (1964).

[111] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4832.2 (1964).

[112] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4832.3 (1965).

[113] 76 Stat. 174, 180 (1962), 42 U.S.C. § 603(a)(3) (1964).

filing an application for public assistance and the date the county director approves the action taken to approve or deny the application . . . ."[114] The applicant is taken to a small cubicle for a ten to fifteen minute screening interview. Very basic information is solicited here, including a finding of the type of assistance being requested and whether or not the applicant has received assistance in the past.[115] At the close of this interview, a date is set for a second interview and the two or three days between these interviews is used to process the information gathered in the first interview. The second interview seeks detailed information about the applicant and constitutes a serious attempt to ascertain eligibility.

The child, to be included in the grant, must be living with an eligible relative.[116] Relatives designated as "grand" or "great" are eligible as AFDC payees, but "step-grand" relatives are ineligible. The county department has the responsibility for ascertaining this factor of eligibility and to this end, may examine birth certificates, church and school records, marriage records, court records, and others.[117]

The next determination concerns existing living arrangements. The child must live in the home of the applying AFDC payee on a permanent basis. Temporary absence of either the payee or the child will not affect eligibility.[118]

The AFDC payee must also have resided within the state of Colorado for one year prior to the date of application.[119] For the most part, however, only the residence of the child is important.[120]

A dependent child is one "who has been deprived of parental support or care . . . ."[121] This deprivation may be the result of the death of either parent, the continued absence from the home by either parent, physical or mental incapacity of either parent, or the unemployment of either parent.[122] Continued absence from the home may be due to desertion or abandonment,[123] incarceration, military service, and divorce or legal separation.[124] With regard to the

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[114] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4810.1 (1966).

[115] The author was permitted to observe several of these interviews while they were being conducted. July 29, 1966.

[116] COLO. REV. STAT. § 22-11-4(c) (1963); 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4232.1 (1966).

[117] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4232.11 (1966).

[118] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4232.3 (1965).

[119] COLO. REV. STAT. § 22-11-4 (1963).

[120] Lecture by Mr. Lauren F. Chamberlain, Training Officer, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 4, 1966.

[121] COLO. REV. STAT. § 22-11-1(3) (1963); 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4230.011 (1966).

[122] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231 (1966).

[123] See notes 43-68 *supra* and accompanying text.

[124] 4 STATE DEP'T OF PUBLIC WELFARE, STAFF MANUAL § 4231.2 (1966).

divorce or legal separation circumstance, there is little of either in AFDC situations. This is because many attorneys shy away from these people as clients since their fees are hard to collect from the ex-husbands.[125] Whether or not a divorce has occurred is of small concern to the welfare department, since even without a divorce decree (and therefore no court order for support) the department can file an action in Juvenile Court charging the father with contributing to the dependency of a minor.[126]

Once it has been determined that a dependent child does in fact exist, an income evaluation must be made. Financial need is based upon the total value of the real and personal property possessed by the applicant and dependent children sought to be covered by the grant. An eligible parent or parents and one child can own realty up to a total value of $1000. The amount of $250 is allowed for each additional child up to a final maximum amount of $2000. Should net assets be under this amount, this factor of eligibility has been met. However, these restrictions exempt a home owned and used as a residence, necessary furniture and household equipment used in the home, and necessary wearing apparel.[127] Items which are not exempt include, for example, bank accounts, retirement funds, insurance policies and court judgments.

It is always the applicant's or recipient's legal responsibility to provide accurate and up-to-date information concerning all factors of eligibility, *e.g.,* changes in employment status. The burden of showing need, therefore, is upon the AFDC payee. The information provided by the applicant at the intake interview is checked by the welfare worker conducting the interview. Should any of the information be suspicious or prove to be false, the worker may refer the case to the county department's Investigation Unit which is charged with further investigation of the applicant's circumstances.[128]

Since the factors of eligibility are considered to be so important, the application form which the applicant is required to sign before becoming eligible for assistance, informs the applicant that if she provides eligibility information which is knowingly false and would entitle her to aid to which she would not otherwise be entitled, she will be liable for fraud.[129] This form must be signed before any assistance can be given so that a refusal by the applicant to sign makes welfare aid legally impossible.

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[125] Lecture by Mr. Lauren F. Chamberlain, Training Officer, Denver Public Welfare Department Orientation Class for Welfare Workers, Aug. 5, 1966.

[126] See note 57 *supra* and accompanying text.

[127] Denver Department of Public Welfare, Policy Letter No. 12, 1959.

[128] Denver Department of Public Welfare, Policy Letter No. 23, 1962.

[129] Form PA-2, Department of Public Welfare, Application and Initial Determination of Eligibility — Family; see also COLO. REV. STAT. § 22-11-17 (1963).

In the event evidence exists which shows that a fraud has been perpetrated by an applicant or recipient, the case is referred to the Legal Services Division of the county welfare department. This division evaluates the evidence and forwards the information to the district attorney's office, which takes the case to court. In Denver County, there are an average of eight to ten cases of fraud per month and most of the defendants in these cases plead guilty.[130] As a practical matter, the fraud cases are prosecuted for their deterrent effect rather than as a punitive measure or for recovery purposes.[131] The reason for this is that from a punitive standpoint, a mother who has defrauded the welfare department will rarely be imprisoned because this would separate the family unit, creating a situation which the department seeks to avoid, not only because it is destructive of the family relationship, but also because it causes added expense in terms of care for the children. With regard to the possibility of recovery, the general economic and educational status of the AFDC recipient is not conducive to repayment of the defrauded funds.

It is the feeling of many people that the currently required complex eligibility factors are unnecessarily burdensome and time-consuming. That this may in fact be true is indicated by a 1963 nationwide survey which "revealed that less than 2 percent [of AFDC families] had apparently intentionally concealed or misrepresented facts in order to obtain assistance."[132] On the basis of this statistic, it would seem that fraud prosecutions are not really needed to deter fraudulent practices by AFDC recipients and that simplification of eligibility requirements would make administration of the AFDC program less expensive, and prosecutions unnecessary. It is submitted, however, that the statistic may be misleading or at least incomplete because there is no evaluation of the current deterrent effect of fraud prosecutions upon the low percentage figure.

CONCLUSION

Public welfare is big business, costing this nation more than $5 billion annually. Of this investment, AFDC requires a substantial percentage. The factors of adverse psychological effect on welfare recipients, resulting from general economic deprivation, and the extent of this financial commitment, combine to demand a study of those phases of welfare which seek to reduce reliance upon welfare,

[130] Interview With Mr. Frank A. Elzi, Legal Services Division, Denver Department of Public Welfare, Denver, Colorado, Aug. 31, 1966.

[131] *Ibid.*

[132] U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, A CONSTRUCTIVE PUBLIC WELFARE PROGRAM 23 (1965).

rather than perpetrate it. In this context three outstanding areas lend themselves to prevention or elimination of welfare reliance.

The first such area concerns employment incentives. A more efficient welfare system benefits both the recipient and the general public. This is achieved in part whenever the recipients of welfare earn their own way as much as possible. From the standpoint of the recipient, employment is a measure of self-sufficiency, independence, and pride, resulting in a sense of responsibility which does not exist when one depends exclusively upon public funds for his personal needs. From the standpoint of the contributing public, employment for the recipient means decreased welfare expenditures at the same time the recipient begins making useful contributions to his society. For these related reasons, employment incentives are essential. The current welfare program, although recognizing the value of such incentives, has not yet provided adequate inducements. Only recently has it become possible for the recipient to seek employment without having his AFDC grant reduced proportionately. Even now, the only significant allowance for the adult is the amount of twenty-five dollars because that amount is presumed to cover working expenses. There is no doubt that determination of what amount can be earned without decreasing the size of the AFDC grant is a difficult decision. The situation where the allowance is too high, making it too advantageous to be on welfare and resulting in double income for the recipient, must be counterbalanced against the other extreme where the allowance is too low and no attempt will be made by the recipient to seek employment because it is impossible to have a net gain. There can be no question about either the value of employment incentives or the need for increased allowances. However, determination of the amount of increased allowances can only result from extensive investigation of the problems involved and goals sought in this area of welfare assistance.

Another area which perpetrates reliance on welfare is the physical separation of parents. This separation commonly manifests itself by the desertion of the father. When that occurs, two repercussions are frequently evident; first, the children left in the home are obviously without a father, and secondly, the father is fleeing from his legal obligation to support his children. Both effects are serious in their own way. Children without a father (or mother) are lacking an environmental circumstance which is important to a well-balanced childhood. The result of the absence may be over-reliance on the remaining parent, tendencies toward juvenile delinquency, or general antagonism toward any authority. A properly operating welfare department will provide counseling services designed to fill, in part,

the void left by the deserting parent. Such counseling is both time consuming and expensive. The county welfare departments in Colorado, to discourage desertion as a means of avoiding the support obligation, pursue the father and if or when he is caught, the departments can elect to prosecute him criminally for desertion, or can sue him civilly for support. A criminal prosecution is chosen if a decision is made that deterrence is the aim of the procedure. On the other hand, if it is determined that recovery from the deserting father is possible, the civil suit will be instituted. At the present time, it would seem that the welfare department's legal alternatives efficiently operate to deter support obligation avoidance.

The final area conducive to avoiding the welfare cycle concerns services to be provided welfare recipients. The broad service area includes a division which focuses on the problems surrounding illegitimacy. Currently there are no mandatory services designed to treat conditions which result in illegitimate births. Unless extensive effort is devoted to recognition of the causes of illegitimacy, this problem will persist.

The final area of services to be evaluated focuses on education. Education, or a lack thereof, is the primary problem of most welfare recipients who receive AFDC assistance. The education they lack is not necessarily detailed formal education, but is rather basic education which is essential to day by day existence, *e.g.,* which food is most nutritious, how to avoid over-spending a fixed income, basic child care and numerous other examples which a majority of people take for granted. Parents lacking such basic education frequently fail to appreciate the advantages of any kind of training or teaching and consequently, these same parents tend to pass their lack of appreciation onto their children. The result is a perpetuation of a hostility for education. The logical effect of this hostility is a continuing need for welfare assistance from generation to generation. Such continuing needs mean an ever expanding welfare program, which costs more and more tax dollars. In the current welfare program, education appears to be slighted, since barely more than one per cent of the AFDC grant is specifically allocated to meet education expenses. In addition to this financial deficiency, adults receiving AFDC funds can escape education with impunity because welfare departments can only "encourage" and cannot require that recipients partake of available educational facilities. As a result, very few recipients take either the time or trouble to learn what causes their problems and how their problems can be solved. Their problems remain unresolved, except to the extent that a welfare worker enters their lives and solves their problems for them. On the basis of this

state of affairs, it is submitted that education and training in the basic problem areas of their existence should be made mandatory by appropriate legislation. The essential nature of education cannot be understated; extensive effort can profitably be expended in the future in pursuit of this goal.

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