

**COOPERATION AND GOOD CAUSE:
GREATER SANCTIONS AND THE FAILURE TO
ACCOUNT FOR DOMESTIC VIOLENCE**

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I. INTRODUCTION

In a report on the effect of welfare reform on battered women, Jody Raphael and Sheila Haennicke recount newspaper articles that describe the issues that victims of domestic violence face when receiving welfare.¹ One such article describes Lisa, a single mother receiving public assistance.² Lisa's boyfriend physically abused her over the course of their relationship. As part of the requirements for public assistance, however, Lisa gave the name of her boyfriend to child support enforcement officials because he is the father of her child. When Lisa's boyfriend received a letter from the child support enforcement office, he became "enraged."³ To avoid paying support, Lisa's boyfriend persuaded her to sign away legal custody of the child. Because losing legal custody of the child meant that Lisa would no longer receive any support, her boyfriend promised that he would support Lisa and the child. He also promised that she would be able to retain physical custody of the child. Lisa agreed to the plan because her boyfriend

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¹ Jody Raphael & Sheila Haennicke, *Keeping Battered Women Safe Through the Welfare-to-Work Journey: How Are We Doing?* (Taylor Institute, Ann Arbor, Mich.) Sept. 1999, at 3-4 [hereinafter *Keeping Battered Women Safe*].

² *Id.* at 3.

³ *Id.*

threatened to hurt her and the child if she did not agree. After her boyfriend was awarded legal custody, he took physical custody of the child. Lisa was caught in a custody battle over the child.⁴ Many of these problems could have been avoided had Lisa been properly informed of the “good cause” exception to the requirement that she cooperate with child support enforcement.

Situations like Lisa’s demonstrate the fact that domestic violence is a serious issue for women receiving public assistance. Reports and studies document the prevalence of domestic violence within the welfare population.⁵ The General Accounting Office (GAO) of the federal

⁴ *Id.* at 4.

⁵ See, e.g., Jill Davies, *The New Welfare Law: Child Support Enforcement*, Welfare & Domestic Violence Series: Paper # 3 (National Resource Center on Domestic Violence); Jean F. East, *Hidden Barriers to Success for Women in Welfare Reform*, FAM. IN SOC’Y: J. CONTEMP. HUM. SERV., 295 (1999); Pamela Jons, *Monitoring Domestic Violence Policy and Practice in State Welfare Programs: The Role of Community-Based Groups and Providers* (Taylor Institute, Ann Arbor, Mich.) March 1999; Demie Kurz, *Women, Welfare, and Domestic Violence*, 25 SOC. JUST. 105 (1998); Judith Lennett & Mary Ellen Colten, *A Winning Alliance: Collaboration of Advocates and Researchers on the Massachusetts Mothers Survey*, 5 VIOLENCE AGAINST WOMEN 1118 (1999); Eleanor Lyon, *Poverty, Welfare and Battered Women What Does the Research Tell Us?*, (National Resource Center on Domestic Violence) Dec. 1997; Thomas Moore & Vicky Selkove, *Domestic Violence Victims in Transition from Welfare to Work: Barriers to Self Sufficiency and the W-2 Response* (Institute for Wisconsin’s Future, Milwaukee, WI) Sept. 1999; Jessica Pearson & Esther Ann Griswold, *Child Support Policies and Domestic Violence*, PUB. WELFARE, 26 (1997); Jessica Pearson et al., *Child Support and Domestic Violence: The Victims Speak Out*, 5 VIOLENCE AGAINST WOMEN 427 (1999); Jody Raphael & Sheila Haennicke, *The Family Violence Option: An Early Assessment*, (Taylor Institute, Ann Arbor, Mich.) Sept. 1, 1999 [hereinafter *The Family Violence Option*]; *Keeping Battered Women Safe*, *supra* note 1; Jody Raphael & Richard M. Tolman, *Trapped by Poverty/Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, (Taylor Institute, Ann Arbor, Mich.) Apr. 1997; Vicki Turetsky & Susan Notar, *Models for Safe Child Support Enforcement*, at <http://www.clasp.org/pubs/childrenforce/sn4115.htm> (Oct. 1999).

government reported that between 15% and 56% of female welfare recipients studied were victims of abuse within the last fifteen months.⁶ Furthermore, over half of the welfare recipients studied had suffered physical abuse at some point in their lives.⁷ Although welfare recipients experience a higher incidence of domestic violence than their non-welfare counterparts, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996⁸ (PRWORA) has done little to address the problem. PRWORA did away with Aid to Families with Dependent Children (AFDC) and replaced it with Temporary Aid for Needy Families (TANF). TANF's stated goals include preventing out-of-wedlock pregnancies and encouraging marriage for the creation of two-parent families.⁹ One of the methods used to meet these goals is child support enforcement.¹⁰

In an attempt to enforce child support, PRWORA requires that mothers who seek public assistance cooperate in establishing paternity and child support.¹¹ This is often referred to as the “cooperation requirement.”¹² In other words, a mother who seeks public assistance is required to supply information about the father and appear at interviews, hearings, and legal proceedings to

⁶ See Moore & Selkove, *supra* note 5, at 1 (citing GAO review of abuse studies).

⁷ See *id.*

⁸ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

⁹ Administration for Children and Families, 64 Fed. Reg. 17720, 17850 (1999).

¹⁰ See *id.*

¹¹ See 42 U.S.C.A. § 608(a)(2)(A) (West Supp. 2000).

¹² Throughout this article, use of the term “cooperation requirement” will refer to the requirement that women receiving public assistance cooperate in paternity establishment and child support enforcement.

establish paternity.¹³ Furthermore, both mother and child must submit to genetic testing ordered by a court or an administrative agency.¹⁴ Failure to cooperate means a reduction in family benefits by at least 25%.¹⁵ In Wisconsin, failure to cooperate results in a complete loss of cash assistance.¹⁶ An exception to child support enforcement exists when the mother has “good cause”¹⁷ for not seeking child support.¹⁸

Since its inception, the cooperation requirement has not adequately addressed the needs of domestic violence victims. Despite the 1996 “overhaul” of welfare and the studies documenting domestic violence in the welfare population, the cooperation requirement does not protect women in Lisa’s position. Instead, the cooperation requirement and the “good cause exception” have become another part of the welfare bureaucracy.

Given the prevalence of domestic violence among TANF recipients, it is difficult to see how child support enforcement can reduce the number of out-of-wedlock pregnancies and encourage the formulation of two-parent families. This is not to say that all women who are domestic violence victims do not want child support. Many domestic violence victims do want to collect child support. However, for women who want child support and at the same time have

¹³ See 42 U.S.C.A. § 654(29)(B) (West Supp. 2000).

¹⁴ See § 654(29)(C).

¹⁵ See § 608(a)(2)(A) and (B); 45 C.F.R. § 264.30(c) (1999).

¹⁶ See WIS. STAT. ANN. § 49.19(4)(h)2. (West, WESTLAW through 1999 Act 7).

¹⁷ Under PRWORA, it is up to each state to define the criteria for “good cause.” § 654(29)(A). Prior to PRWORA, “good cause” was found in cases of emotional or physical harm to the child or parent, a child resulting from rape or incest, or a child being put up for adoption. 45 C.F.R. § 232.42, *reprinted in* 43 Fed. Reg. 45742, 45748-49 (1978). Throughout the article, this will be referred to as the “good cause exception.”

¹⁸ See § 654(29)(A).

to deal with domestic violence concerns, the system is ill-equipped to deal with their unique safety needs.

To analyze the effect of the cooperation requirement on victims of domestic violence, this article will first discuss the history of the cooperation requirement. Next, the problems behind increasing the sanctions against mothers for not complying with the cooperation requirement will be examined. An analysis of a study of the use of the good cause exception in Denver, Colorado will examine the issue of domestic violence and the recent attempts by the federal government to deal with the problem. Finally, an analysis of Wisconsin's implementation of the cooperation requirement and the good cause exception will be examined in order to expose the law in action.

II. HISTORY OF THE COOPERATION REQUIREMENT

Throughout the history of child support enforcement, States have tried to force welfare mothers to cooperate with paternity establishment and child support enforcement.¹⁹ This was done even though federal agencies and courts stated that Congress did not authorize a cooperation requirement.²⁰ Once congressional action put a cooperation requirement in place, States strictly enforced that requirement regardless of each mother's wishes.²¹

A 1987 article examining welfare and child support agencies' use of the cooperation requirement found that agency officials often did not follow required procedures.²² While

¹⁹ See discussion *infra* Part II.A.

²⁰ See discussion *infra* Part II.B.

²¹ See discussion *infra* Part II.C.

²² See Mary R. Mannix, *The Good Cause Exception to the AFDC Child Support Cooperation Requirement*, 21 CLEARINGHOUSE REV. 339, 346 (1987).

women were told they had to cooperate, many were not told of the good cause exception.²³ When the women were provided notice of the good cause exception, it was often ineffective²⁴ perhaps because of inconsistent evidentiary requirements²⁵ used to corroborate “good cause.”²⁶ Even when the good cause exception was met, the article expressed concern that child support was still pursued.²⁷ Many of these concerns still apply today.

A. *Child Support Enforcement Before the Cooperation Requirement*

As part of AFDC, legislation for the enforcement of child support was enacted in 1950. The legislation required that state welfare agencies notify law enforcement officials when a dependent child was deserted or abandoned by a parent.²⁸ However, the Handbook of Public

²³ *See id.*

²⁴ *See id.* at 341.

²⁵ Evidentiary requirements included sworn statements from individuals other than the applicant, court, medical, criminal reports that evidenced abuse, and records showing the child was the result of incest. *Id.* at 342. In many cases where the good cause exception was denied, applicants were found to have provided inadequate corroboration of abuse. *Id.*

²⁶ *See id.* at 342.

²⁷ *See id.* at 344-45.

²⁸ *See* Office of Child Support Enforcement, *Office of Child Support Enforcement 22nd Annual Report, Appendix H: Federal Legislative History of Child Support Enforcement*, at http://acf.dhhs.gov/programs/cse/rpt/22t/app_h.htm. (visited Oct. 26, 1999) [hereinafter *Appendix H*].

Assistance Administration,²⁹ made clear that “eligibility for assistance [was not] conditional upon action by the applicant” and “did not impose an additional eligibility requirement.”³⁰

In 1967, States were required to establish an organizational unit for establishing paternity and collecting child support for children receiving AFDC.³¹ In determining that the new statute did not contain a cooperation component, a United States District Court stated that, “[a]lthough the amended statute [set] out many methods for obtaining child support from an absent parent, nowhere [did] it appear that Congress intended the states to develop support resources by threatening mothers and children with the withdrawal of AFDC benefits.”³² The Department of Health, Education, and Welfare (HEW) published regulations that unequivocally stated that the requirement placed on the states “has no effect upon the determination of eligibility. It is a requirement upon the agency, and is fulfilled . . . *after* a family has been found eligible and been granted assistance.”³³

Despite the wording of the statute and the regulations, many States enacted statutes that required the mother’s cooperation with child support enforcement.³⁴ Nevertheless, courts

²⁹ Issued by the Department of Health, Education and Welfare (HEW), which is now the Department of Health and Human Services.

³⁰ 4 HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION § 8120, *quoted in* Saddler v. Winstead, 332 F. Supp. 130, 133-34 (N.D. Miss. 1971).

³¹ *See Appendix H, supra* note 28.

³² Meyers v. Juras, 327 F. Supp. 759, 761 (D. Or. 1971), *aff’d*, Juras v. Meyers, 404 U.S. 803 (1971), *reh’g denied*, Juras v. Meyers, 404 U.S. 961 (1971).

³³ 45 C.F.R. § 235.70(a) (1971) (emphasis added).

³⁴ *See* Shirley v. Lavine, 365 F. Supp. 818, 821-22 (N.D.N.Y. 1973).

invalidated these cooperation requirements because Congress did not authorize them.³⁵ Without a congressional mandate, courts would not uphold the termination of benefits for a failure to cooperate with child support enforcement.

B. *Regulations Provoke Congressional Involvement*

The cooperation requirement became an important issue in late 1972, and Congress became involved beginning in 1973. In 1972, HEW proposed a regulation that would prohibit the denial of AFDC benefits to a child when a parent did not cooperate.³⁶ This was in the midst of numerous court cases dealing with state cooperation requirements and sanctions for a failure to cooperate. On completion of the comment period, an amended regulation was issued that

³⁵ See Shirley, 365 F. Supp. at 821-22 (“Every court that has considered the question of such conditions of eligibility has found itself compelled to invalidate them.”); Meyers, 327 F. Supp. at 762 (“We are convinced that Congress intended the Public Welfare Division to consider only the income available to the mother and children in determining the amount of the AFDC grant.”); see also Doe v. Schmidt, 330 F. Supp. 159, 169 (E.D. Wis. 1971) (invalidating a statute requiring women to have begun a legal action against absent husbands as a condition for eligibility); Doe v. Shapiro, 302 F. Supp. 761 (D. Conn. 1969), *appeal dismissed*, Shapiro v. Doe, 396 U.S. 488 (1970), *reh’g denied*, Shapiro v. Doe, 397 U.S. 970 (1970) (invalidating a statute that terminated assistance to children when the mother refused to disclose the name of the child’s father); Doe v. Swank, 332 F. Supp. 61, 63 (N.D. Ill. 1971), *aff’d*, Weaver v. Doe, 404 U.S. 987 (1971) (invalidating a statute denying aid to child for the mother’s non-cooperation); Saddler v. Winstead, 322 F. Supp. 130, 135 (N. Miss. 1971) (invalidating an eligibility requirement for AFDC that required a grandmother to provide information about the parents of grandchildren for which she was caring).

³⁶ See Coverage and Conditions of Eligibility in Financial Assistance Programs, 37 Fed. Reg. 27637 (1972) (to be codified 45 C.F.R. § 233.90) (proposed Dec. 19, 1972).

prohibited the denial of benefits to the child.³⁷ However, the regulation also stated that benefits could be denied to the parent who refused to cooperate in obtaining support.³⁸ Abe Lavine, Commissioner of Department of Social Services of the State of New York was an individual who requested the additional regulation of denying benefits to the parent.³⁹ At the time, New York's Department of Social Services was involved in a lawsuit by mothers whose AFDC benefits were cut off for failing to cooperate with child support enforcement.⁴⁰

Another event which spurred congressional involvement occurred in 1972 when Congress created a \$2.5 billion annual ceiling on social services payments.⁴¹ To keep the program within the spending limits, HEW issued new regulations on February 16, 1973.⁴² Critics claimed the regulations were too harsh and, on May 1, HEW issued new regulations.⁴³ However, critics also attacked the new proposed regulations for "discriminat[ing] against [the] working poor."⁴⁴ In response to the proposed HEW regulations, Congress introduced House Bill

³⁷ Coverage and Conditions of Eligibility in Financial Assistance Programs, 38 Fed. Reg. 10940 (1973) (to be codified 45 C.F.R. § 233.90) (effective July 2, 1973).

³⁸ See Coverage and Conditions of Eligibility in Financial Assistance Programs, 38 Fed. Reg. at 10940. However, 45 C.F.R. § 235.70(a) was still in effect. See *supra* note 33.

³⁹ See Shirley, 365 F. Supp at 823.

⁴⁰ See *id.*

⁴¹ See *Social Services Program*, CON. Q. WKLY REP., Jan. 11, 1975, at 94, 95.

⁴² *Major Congressional Action: Eleven Per Cent Social Security Increase Approved*, 1973 CON. Q. ALMANAC 570, 576 (1973).

⁴³ *Id.*

⁴⁴ *Id.*

17045.⁴⁵ Called the Social Services Amendments of 1974, Congress passed House Bill 17045 on December 20, 1974.⁴⁶

C. *Creation of the Cooperation Requirement*

The Social Services Amendments of 1974 created specific state requirements for establishing paternity and child support through “the designation of a single and separate organizational unit to administer the program.”⁴⁷ The 1974 Amendments also established the cooperation requirement that barred AFDC payments to a parent who did not cooperate.⁴⁸ The cooperation requirement penalized only the parent and not the child.⁴⁹ However, the Amendments of 1974 did not provide a good cause exception.⁵⁰

As reason for establishing the cooperation requirement, the Senate Report for the Social Services Amendments of 1974 stated that the AFDC child had a right to have his or her paternity

⁴⁵ See *Social Services Program*, *supra* note 41, at 94.

⁴⁶ See Social Service Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337 (1975).

⁴⁷ See *Appendix H*, *supra* note 28.

⁴⁸ See Pub. L. No. 93-647, § 402, 88 Stat. 2337, 2359 (1975).

⁴⁹ The amended statute stated, “if the relative with whom a child is living is found to be ineligible because of failure to comply with the [cooperation requirement], any aid for which such child is eligible will be provided in the form of protective payments” *Id.* at 2359-60.

⁵⁰ The good cause exception was implemented on July 21, 1975, on passage of House Bill 8598. Pub. L. No. 94-88 § 208, 89 Stat. 433, 436 (1975).

determined, unless it was not in the best interest of the child.⁵¹ The AFDC “child’s right to support, inheritance, and to know . . . his father” was given greater priority than “the mother’s short-term interests.”⁵² At the time, the increased absence of fathers was cited as contributing to the substantial growth in the AFDC rolls.⁵³ In addition, the Senate Report acknowledged that lack of support enforcement by “judges, prosecutors and welfare officials” contributed to the problem.⁵⁴ Finally, a finding that child support enforcement was cost effective was another reason for enacting the cooperation requirement.⁵⁵

⁵¹ See SOCIAL SERVICES AMENDMENTS OF 1974, S. REP. NO. 93-1356 (1974), *reprinted in* 1974 U.S.C.C.A.N. 8133, 8154-55.

⁵² *Id.* at 8155.

⁵³ See *id.* at 8146.

⁵⁴ *Id.* at 8147. The Senate Report stated that the 1967 legislation was ineffective due in part to court holdings that prevented the State from requiring cooperation as an eligibility requirement. See *id.* at 8155. The report went on to state that “[l]ater court decisions, however, have made it clear that such aid could be denied to a non-cooperative mother.” *Id.* This statement could only be the result of the courts holding that absent any action by Congress, state agencies could not enact rules requiring cooperation as a requirement to support. See Shirley, 365 F. Supp. at 824.

⁵⁵ The Report stated that in the States that assessed administrative costs for support collection, it was found that for every 20 cents expended for collection efforts \$1.00 was returned in support payments. See S. REP. NO. 93-1356, *reprinted in* 1974 U.S.C.C.A.N. at 8149. In fiscal year 1997, for every \$1.00 spent on child support enforcement in TANF-related cases, 83 cents was collected in child support payments. See Office of Child Support Enforcement, *The Office of Child Support Enforcement 22nd Annual Report: The Child Support Enforcement Program*, at <http://www.acf.dhhs.gov/programs/cse/rpt/22t/97b.htm> (visited Oct. 26, 1999). This loss has been attributed to the automation requirements of PRWORA. See *id.* In fiscal year 1998, for every \$1.00 spent on TANF-related cases, 74 cents was collected in child support payments. See Office of Child Support Enforcement, *The Office of Child Support Enforcement 23rd Annual Report: Program Results*, at

D. *Creation of the Good Cause Exception*

To correct “serious problems regarding implementation of the [1974 Amendments],”⁵⁶ House Bill 8598 was passed on July 21, 1975.⁵⁷ One source of concern was the cooperation requirement. It was feared that the cooperation requirement would encourage fathers to physically harm or harass mothers and children.⁵⁸ Because of this fear, House Bill 8598 allowed a recipient to avoid cooperation if “such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into account the best interests of the child”⁵⁹

The final regulations enacted by HEW provided three ways to show good cause.⁶⁰ First, good cause existed when securing support was against the best interest of the child.⁶¹ This included any potential emotional or physical harm to the parent or child.⁶² Second, good cause existed when the child was the result of rape or incest.⁶³ Finally, good cause existed when the

<http://www.acf.dhhs.gov/programs/cse/rpt/annrpt23/charts/charts.html> (visited Nov. 5, 2000) [hereinafter Office of Child Support Enforcement, *Program Results*].

⁵⁶ H.R. REP. NO. 94-368, at 3-5 (1975).

⁵⁷ See Elizabeth Bowman, *House Passage: Child Support Payments*, CONGRESSIONAL Q. WKLY. REP., July 26, 1975, at 1619, 1619.

⁵⁸ See H.R. REP. NO. 94-368.

⁵⁹ Pub. L. No. 94-88 § 208, 89 Stat. 433, 436 (1975).

⁶⁰ See 45 C.F.R. § 232.42, reprinted in 43 Fed. Reg. 45742, 45748-49 (1978).

⁶¹ 45 C.F.R. § 232.42(a)(1), reprinted in 43 Fed. Reg. at 45748.

⁶² 45 C.F.R. § 232.42(a)(1)(i-iv), reprinted in 43 Fed. Reg. at 45748.

⁶³ 45 C.F.R. § 232.42(a)(2)(i), reprinted in 43 Fed. Reg. at 45748-49.

child was being put up for adoption.⁶⁴ The HEW regulations stated that the applicant had the burden of documenting that the good cause exception was met.⁶⁵ Although, a good cause finding could still be made even though documentation was unavailable.⁶⁶ In addition, when investigating a good cause claim, the State agency could request the name and address of the father.⁶⁷ Failure to provide such information could result in a denial of benefits.⁶⁸ Under the 1978 regulations, the State IV-A (welfare) agency was required to supply notification of the right to claim a good cause exception.⁶⁹

E. *PRWORA and the Cooperation Requirement*

Under PRWORA, the cooperation requirement and the good cause exception remain intact.⁷⁰ However, PRWORA imposes stiffer penalties when mothers do not cooperate in paternity establishment and child support enforcement. Instead of just the parent losing

⁶⁴ 45 C.F.R. § 232.42(a)(2)(ii), *reprinted in* 43 Fed. Reg. at 45748-49.

⁶⁵ 45 C.F.R. § 232.43, *reprinted in* 43 Fed. Reg. at 45749.

⁶⁶ The reason for this evidentiary exception is that battered women are often too afraid to let others know of their beating and therefore are unable to provide evidence for the good cause exception. *See* § 232.43(f), *reprinted in* 43 Fed. Reg. at 45749.

⁶⁷ 45 C.F.R. § 232.43(h)(1), *reprinted in* 43 Fed. Reg. at 45749.

⁶⁸ 45 C.F.R. § 232.40(c)(2), *reprinted in* 43 Fed. Reg. at 45748.

⁶⁹ *See* 45 C.F.R. § 232.40(b), *reprinted in* 43 Fed. Reg. 45745, 45748 (1978).

⁷⁰ *See* § 608 (a)(2); 45 C.F.R. § 254(29) (West Supp. 2000).

assistance, the entire family's benefit is reduced by at least 25%.⁷¹ Some States, such as Wisconsin, impose severe cooperation requirements that cut off all benefits even in circumstances where the woman claims she does not know the father's name.⁷²

States now have the authority to define the criteria for the good cause exception. "Most States have retained the old federal definition . . . of the good cause exception."⁷³ Nonetheless,

⁷¹ See § 608 (2)(2)(A), (B); 45 C.F.R. § 264.30(c) (1999). The House passed House Bill 3734 on July 18, 1996. See *Welfare Overhaul: After 60 Years, Most Control Sent to States*, 1996 CON. Q. ALMANAC 6-3, 6-12 [hereinafter *Welfare Overhaul*]. The House bill stated that the State must stop paying payments to the parent for failing to cooperate and that the State could deny benefits to the entire family. See H.R. CONF. REP. NO. 104-725 (1996), reprinted in 1996 U.S.C.C.A.N. 2649, 2746. The Senate passed House Bill 3734 on July 23, 1996, after substituting the text of House Bill 3734 with the text of its own welfare bill. See *Welfare Overhaul*, *supra*, at 6-21. The Senate amendment provided for a minimum reduction of family benefits of 25% if the parent failed to cooperate. See H.R. CONF. REP. NO. 104-725, reprinted in 1996 U.S.C.C.A.N. 2649, 2746. The House and Senate bills were reconciled in a conference agreement that followed the Senate amendment, allowing the minimum 25% reduction. See *id.* According to the Third Annual TANF Report, 30 states have elected to terminate cash assistance to families for failure to cooperate with child support, Wisconsin being one of them, See Dep't of Health and Human Servs., *Temporary Assistance for Needy Families (TANF) Program: Third Annual Report to Congress at* <http://www.acf.dhhs.gov/programs/opre/annual3.pdf> (Aug. 2000) [hereinafter *TANF Third Annual Report*]. The remaining states have elected to reduce assistance to the family for the mother's noncooperation. See *id.*

⁷² See Turetsky & Notar, *supra* note 5. For the harshness of such requirements, see Edward M. Wayland, *Perspectives on Welfare Reform: Welfare Reform in Virginia: A Work in Progress*, 3 VA. J. SOC. POL'Y & L. 249, 286-89 (1996) (describing how, under Virginia's requirement that lack of information was deemed noncooperation, aid was cut off to a woman who reported being gang-raped but had not reported the rape and thus, did not meet the exception of "verified rape.").

other reasons that States have adopted for finding “good cause” include lack of information and mental impairment.⁷⁴ The required evidence to meet the good cause exception also varies by State. According to Vicki Turetsky and Susan Notar, “some [S]tates [require] official records, some [S]tates [allow] third-party statements and some States [permit] client statements alone.”⁷⁵ While the determination of whether a mother is cooperating must be made by the child support agency,⁷⁶ it is up to the State to choose which agency will determine if the good cause exception is warranted.⁷⁷ In most States, the authority to determine the criteria for the good cause exception remains with the TANF (welfare) agency.⁷⁸

F. *Other PRWORA Requirements Related to Good Cause*

PRWORA also expanded the Federal Parent Locator Service (FPLS). The FPLS was created in 1974 to provide databases of information on parents and children.⁷⁹ PRWORA

⁷³ Turetsky & Notar, *supra* note 5. Under HEW regulations, the good cause exception applied in instances of emotional or physical harm to the child or parent, a child who was the result of rape or incest, or a child who was being put up for adoption. 45 C.F.R. § 232.42(a), *reprinted in* 43 Fed. Reg. 45742, 45748-49 (1978).

⁷⁴ See Turetsky & Notar, *supra* note 5.

⁷⁵ *Id.*

⁷⁶ See 42 U.S.C.A. § 608(a)(2); 45 C.F.R. § 264.30(b) (1999).

⁷⁷ See 42 U.S.C.A. § 654(29)(A)(i); 45 C.F.R. § 264.30(b) (1999). This means a good cause determination could be made by either the child support agency, the welfare agency or the medical agency. See *Cooperation/Good Cause Forum* at <http://www.acf.dhhs.gov/programs/cse/rpt/notar97.htm> (visited Feb. 11-12, 1997).

⁷⁸ See *Cooperation/Good Cause Forum*, *supra* note 77.

⁷⁹ When signed into law, President Ford stated that the FPLS raised “serious privacy” issues. *Statement on Signing the Social Services Amendments of 1974*, 1 PUB. PAPERS 14 (1975).

required the creation of two additional databases; one is a central registry of support orders⁸⁰ and the other is a Directory of New Hires.⁸¹ These federal databases are compiled from information submitted by each State. Such databases are a part of the streamlined enforcement efforts and are used across state lines to “identify and locate parents subject to support orders.”⁸²

Every State is required to have a safeguard, called the family violence indicator, to protect against violence that might occur from the dissemination of database information.⁸³ When triggered, the family violence indicator makes all information in the FPLS protected information. A State will activate the family violence indicator when it learns there is a potential safety issue.⁸⁴

PRWORA leaves it to the individual State to define the criteria that will trigger the family violence indicator.⁸⁵ Some States allow a family violence indicator on the discovery of a protective order, child abuse, or through self-reporting.⁸⁶ Applying for a good cause exception is also enough to trigger the family violence indicator in some States and still others have no “good cause” related criteria.⁸⁷ The remaining States require good cause status to trigger the family

⁸⁰ See 42 U.S.C.A. § 653(h) (West Supp. 2000).

⁸¹ See § 653(i).

⁸² *Welfare Overhaul*, *supra* note 71, at 6-16.

⁸³ See § 654(26)(A)-(E). For example, in Wisconsin, a family violence indicator will trigger an address block on all printed documents involving that individual. Turetsky & Notar, *supra* note 5.

⁸⁴ See Office of Child Support Enforcement, *Action Transmittal OCSE-AT-98-27* at <http://www.acf.dhhs.gov/programs/cse/pol/at-9827.htm> (visited Nov. 11, 1999).

⁸⁵ § 654(26).

⁸⁶ Turetsky & Notar, *supra* note 5.

⁸⁷ *Id.*

violence indicator.⁸⁸ This raises serious concerns over whether women in states requiring good cause exception status are adequately informed of their rights. Lack of good cause information could jeopardize the safety of these women and their children if the family violence indicator is not triggered when needed.

States are also give the right under PRWORA to “opt in” the Family Violence Option (FVO).⁸⁹ The FVO allows the State to waive PRWORA work requirements for victims of domestic violence.⁹⁰ The FVO and the good cause exception can be integrated or they can function separately. In many of the States with a certified FVO, the child support good cause exception was left in place and operates separately from the FVO.⁹¹ As will be discussed later, a non-integrated program results in confusion among mothers, the TANF agency and the child support agency.⁹²

III. INCREASED SANCTIONS PUNISH FAMILIES

The child’s best interest was reinforced as a reason for maintaining the child’s benefits.⁹³ Originally, the dependence of the child on the mother’s aid was seen as an essential reason for

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *See* 42 U.S.C. § 602(a)(7) (West Supp. 2000); 45 C.F.R. § 260.50 (1999).

⁹¹ *See* Turetsky & Notar, *supra* note 5.

⁹² *See id.*

⁹³ *See, e.g.,* Coverage and Conditions of Eligibility in Financial Assistance Programs, 38 Fed. Reg. 10940 (1973) (to be codified 45 C.F.R. § 233.90) (effective July 2, 1973).

not cutting off the mother's support.⁹⁴ Later, the Supreme Court ruled that "protection of . . . children is the paramount goal of AFDC."⁹⁵ However, by 1974, the mother's failure to comply with the cooperation requirement was reason enough to cut off the mother's aid.⁹⁶ Reportedly, the 1996 welfare reform would not punish the child for the mother's failure to cooperate.⁹⁷ Nevertheless, as enacted, PRWORA eliminates at least 25% of a family's benefits for the mother's failure to comply with the cooperation requirement.⁹⁸

A. *The Trend: Punish Mothers and Children*

This historical progression from protecting the child to punishing the entire family is viewed as an attempt to punish illegitimate children and the perceived immorality of the mother.⁹⁹ A denial of benefits to the entire family for the mother's failure to cooperate is punishment for her failure to live by societal standards of moral behavior.¹⁰⁰ The attitude behind the sanction is similar to the family cap rule. The family cap "eliminate[s] or reduce[s]

⁹⁴ See Shirley, 365 F. Supp. at 822.

⁹⁵ King v. Smith, 392 U.S. 309, 325 (1968).

⁹⁶ See *supra* notes 47-55 and accompanying text.

⁹⁷ See Robert Pear, *Clinton Announces Steps to Find Parents Who Owe Child Support*, N.Y. TIMES, June 19, 1996, at A14.

⁹⁸ § 608(a)(2)(A) and (B); 45 C.F.R. § 264.30(c).

⁹⁹ For a thorough discussion of this argument and the race-related issue of the cooperation requirement, see Naomi R. Cahn, *Representing Race: Representing Race Outside of Explicitly Racialized Context*, 95 MICH. L. REV. 965, 975-77 (1997).

¹⁰⁰ See *id.*

additional . . . benefits” for children born to a woman on welfare.¹⁰¹ These rules punish children for the behavior of their mother.¹⁰² The cooperation requirement punishes the entire family for the mother’s failure to seek a man’s economic support. If the goal of TANF is to increase marriage and to prevent illegitimacy, there is little reason to believe that cutting off the family’s benefits for perceived noncooperation achieves this goal.¹⁰³ Economically forcing a woman to look to a man for child support, even in cases of abuse, can hardly be the way to build strong families and promote marriage.

At the time of the 1996 welfare reform, there was a perception that harsher sanctions were necessary because many women were not cooperating fully with enforcement efforts.¹⁰⁴ However, evidence of a mother’s failure to cooperate with paternity establishment and child support enforcement was mostly anecdotal. In fact, social science evidence documented the level of cooperation by mothers.¹⁰⁵ The fact that the failure to cooperate was not empirically shown before enactment of the stiff PRWORA sanctions makes the potential elimination of all

¹⁰¹ Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L. J. 719, 736 (1992).

¹⁰² When discussing welfare reform before the passage of PRWORA, President Clinton said, “If the mother refused to provide the information, her share of the family welfare check could be eliminated. But the children would not be punished for her conduct and would still be able to receive their share of welfare benefits.” Pear, *supra* note 97, at A14.

¹⁰³ See Williams, *supra* note 101, at 746.

¹⁰⁴ See John F. Harris & Judith Havemann, *Clinton Vows Tougher Rules on Finding Welfare Fathers*, WASH. POST, June 19, 1996, at A2 (quoting republican congressmen who stated that a loophole allows “many mothers [to] provide just enough information to qualify for benefits but not enough to locate the father”).

¹⁰⁵ See Cahn, *supra* note 99, at 980-81; Pear, *supra* note 97, at A14.

family benefits especially harsh. In addition, one reason for the perceived failure for women to cooperate was lax enforcement.¹⁰⁶ Evidence suggests that state agencies often failed to follow up on information provided by mothers.¹⁰⁷

The problem of agency cooperation affects the information women receive. Often information that is provided to mothers to explain the cooperation requirement and the good cause exception is buried in paperwork given to the mother when she attempts to apply for public assistance.¹⁰⁸ Thus, mothers may be unaware of the requirements as well as their rights. Further, the TANF intake worker is the one who distributes the information about the cooperation requirement and the good cause exception. Many TANF intake workers have a limited understanding of the child support requirements.¹⁰⁹ This is a problem because the child support agency, not the TANF agency, is the agency that determines whether the woman is cooperating.¹¹⁰

The problem of inter-agency cooperation has led to the development of a “TANF-child support team model.”¹¹¹ This model seeks to maximize agency cooperation. For example, some sites are testing interactive video interviewing, which takes place in the TANF office between a woman seeking public assistance, the TANF worker, and the child support worker.¹¹² It is

¹⁰⁶ See Cahn, *supra* note 99, at 981; Pear, *supra* note 97, at A14.

¹⁰⁷ See Pear, *supra* note 97, at A14.

¹⁰⁸ See Turetsky & Notar, *supra* note 5.

¹⁰⁹ See *id.*

¹¹⁰ See § 608(a)(2); 45 C.F.R. § 264.30(b).

¹¹¹ Turetsky & Notar, *supra* note 5.

¹¹² *Id.*

believed that inter-agency cooperation will improve client understanding of the cooperation requirement and reduce sanctioning for failing to comply with the cooperation requirement.¹¹³

B. *Information Crucial for Women*

Another problem with the stiffer sanctions for the failure to cooperate stems from the fact that many women receive inadequate information about the use of the sanctions. A report issued by the Inspector General's Office stated that clients in half of the focus groups studied did not have a complete understanding of the sanctions they faced.¹¹⁴ In addition, many notices were inadequate because they failed to state how a client could cure a sanction to have benefits reinstated, provided incorrect information to the client, and were difficult to understand.¹¹⁵

Data for sanctions is neither reliable nor comparable among States.¹¹⁶ For example, for fiscal year 1997, 6.2% of the total cases closed nationwide were closed for "sanction" reasons,

¹¹³ *Id.*

¹¹⁴ See Office of the Inspector General, *Temporary Assistance for Needy Families: Educating Clients About Sanctions*, Oct 1999, at 12 (available from Office of the Inspector General, San Francisco Regional Office).

¹¹⁵ See Office of the Inspector General, *Temporary Assistance for Needy Families: Improving Client Sanction Notice*, Oct 1999, at 8-10 (available from Office of the Inspector General, San Francisco Regional Office).

¹¹⁶ See Office of the Inspector General, *Temporary Assistance for Needy Families: Improving the Effectiveness and Efficiency of Client Sanctions*, July 1999, at 1 (available from Office of the Inspector General, San Francisco Regional Office).

15.5% were closed for “policy” reasons, and 56.1% of cases were closed for “other” reasons.¹¹⁷ In fiscal year 1998, 6.2% of the total cases closed nationwide were closed for “sanction” reasons, 16.5% were closed for “policy” reasons and 54% cases were closed for “other” reasons.¹¹⁸ The fact that 54% of the cases in fiscal year 1998 and 56.1% of cases in fiscal year 1999 were reported by States as closed for “other reasons” limits the ability to understand program implementation.¹¹⁹ From this data, the number of cases sanctioned for failure to comply with the cooperation requirement is unknown. Thus, the effect of the cooperation requirement on a woman’s ability to receive public assistance is unknown. In Wisconsin, for fiscal year 1997, 65.2% of closed TANF cases were reported closed for “policy” reasons and 1.1% were closed for “other” reasons.¹²⁰ For fiscal year 1998, 65.2% of closed TANF cases were reported closed for “policy” reasons and 2.5% were closed for “other” reasons.¹²¹ The final TANF rules that became effective October 1999 included stricter data collection requirements for reporting case closures.¹²² Perhaps with a better understanding of the number of cases closed for a failure to cooperate, a better child support enforcement program will be put into place.

¹¹⁷ See Dep’t of Health and Human Servs., *Temporary Assistance for Needy Families (TANF) Program: Second Annual Report to Congress*, table 9:31, at <http://www.acf.dhhs.gov/programs/opre/tanifreports/tan19995.pdf> (1999) [hereinafter *TANF Second Annual Report*].

¹¹⁸ See *TANF Third Annual Report*, *supra* note 71, table 10:31.

¹¹⁹ See *TANF Third Annual Report*, *supra* note 71.

¹²⁰ See *TANF Second Annual Report*, *supra* note 117, table 9:31.

¹²¹ See *TANF Third Annual Report*, *supra* note 71, table 10:31.

¹²² See *TANF Third Annual Report*, *supra* note 71.

IV. DOMESTIC VIOLENCE AND GOOD CAUSE: IMPLEMENTATION CONCERNS

The number of women who seek the good cause exception and their reasons for seeking it is difficult to assess. The reason it is difficult to assess is that States are not required to report good cause exception information to the federal government.¹²³ For fiscal year 1997, there were 6,461,723 child support cases involving TANF.¹²⁴ For the same period, 4,196 applications for the good cause exception were made, according to the number of States who reported, and of the figure, 2,296 good cause exceptions were granted.¹²⁵ In Wisconsin for fiscal year 1997, there were 65,372 child support cases involving children to be supported or currently supported by

¹²³ See Office of Child Support Enforcement, *Office of Child Support Enforcement 22nd Annual Report: Appendix C, Table 46*, at <http://www.acf.dhhs.gov/programs/cse/rpt/22t/TABLE46.htm> (visited Oct. 26, 1999) [hereinafter Office of Child Support Enforcement, *Table 46*]. For fiscal year 1998, no data on good cause exceptions was reported. See Office of Child Support Enforcement, *Office of Child Support Enforcement 23rd Annual Report: Appendix C, State Data Tables*, at <http://www.acf.dhhs.gov/programs/cse/rpt/annrpt23/tables/index.htm>. (visited Nov. 6, 2000). At one time, states were required to report to the OCSE the number of good cause exceptions. The information was then reported in the HHS QUARTERLY PUBLIC ASSISTANCE STATISTICS. See *The Family Violence Option*, *supra* note 2, at 19-20. Further, states do keep data on the number of good cause exceptions that are granted. For example, in Wisconsin, records are to be maintained on the number of good cause exception requests, approvals, and reasons for the requests. WIS. ADMIN. CODE. § 15.04 (2000). Wisconsin does not generate statistical reports based on this information because of the confidential nature of domestic violence. E-mail from Susan Gadacz, Department of Workforce Development, to Jacqueline M. Fontana (Nov. 11, 1999, 04:07 CST) (on file with author).

¹²⁴ See Office of Child Support Enforcement, *Office of Child Support Enforcement 22nd Annual Report: Appendix C, Table 2*, at <http://www.acf.dhhs.gov/programs/cse/rpt/22t/TABLE2.htm> (visited Oct. 26, 1999).

¹²⁵ See Office of Child Support Enforcement, *Table 46*, *supra* note 123.

TANF. For the same year, there were 74 applications for the good cause exception and of that, 51 good cause exceptions were granted.¹²⁶

A study in Denver, Colorado used the low number of good cause applications as a basis for stating that agencies should not fear the good cause exception.¹²⁷ However, the fact that there are a low number of good cause applications could be interpreted as a reason to study whether women are properly informed of the good cause exception and the extent of implementation of the good cause exception by each state.

The Denver study reported that of the 1,082 applicants for public assistance who participated in the study, only 2.7% sought the good cause exception.¹²⁸ However, the number of good cause applications should be viewed in terms of the number of women who had reported violence by the father of their children. In the Denver study, 305 women reported abuse by the father of one of their children¹²⁹ and 29 of those women applied for the exception.¹³⁰ Of the 258 women who reported abuse by the father but did not seek the good cause exception, 40% stated the abuse happened a long time ago and that there was no current danger.¹³¹

¹²⁶ See *id.*; Office of Child Support Enforcement, *Office of Child Support Enforcement 22nd Annual Report: Appendix C, Table 26*, at <http://www.acf.dhhs.gov/programs/cse/rpt/22t/TABLE26.htm> (visited Oct. 26, 1999).

¹²⁷ See Pearson et al., *supra* note 5, at 444.

¹²⁸ See *id.* at 440.

¹²⁹ *Id.* at 438.

¹³⁰ *Id.* at 440.

¹³¹ *Id.* at 441, table 3.

On the other hand, of these 258 women who did not apply for the good cause exception, 21% stated that the reason for not applying was that they were afraid of the abusive partner.¹³² In addition, 51% stated that the absent parent knew where they lived and 32% stated that they did not have documents to prove harm.¹³³ Finally, 36% of the women stated they did not want to complete the paperwork, 3% stated that they did not think the good cause exception would be granted, 1% stated that they did not understand the good cause exception, and 1% felt that they would not be believed.¹³⁴

Some of these reasons should be studied further because they seem to contradict the purpose of the good cause exception. Further study might show that the term “good cause” is confusing to women. Women may think that “good cause,” when explained in terms of the cooperation requirement, means that they have “good reason” for pursuing child support. This may be why a woman would not want the good cause exception even though she was afraid of the abusive partner. The Office of Child Support Enforcement (OCSE), the Office of Family Assistance, and the Office of Assistant Secretary sponsored a Cooperation/Good Cause Forum in February 1997.¹³⁵ Participants at the forum raised the issue that the terms used by TANF and child support enforcement agencies may be confusing to mothers. Some suggested that the term “good cause” should be changed to “safety concern” or “safety waiver.”¹³⁶ This way mothers will understand that there is a mechanism to address their safety concerns.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Cooperation/Good Cause Forum, supra* note 77.

¹³⁶ *Id.*

Another important issue raised by the Denver study questioned how many of the women who did not pursue the good cause exception suffered abuse related to child support enforcement. A Massachusetts study reported that about 30% of abused women receiving public assistance reported problems with the father over child support, about 25% reported visitation problems, and 15% reported custody problems.¹³⁷ Consider that men beating the mothers of their children are two times more likely to seek sole physical custody of their children.¹³⁸ In addition, welfare mothers lose litigated custody battles from one-half to two-thirds of the time.¹³⁹ Given the increased automation and streamlined collection efforts of PRWORA, such as employer reporting requirements, license revocation and tax return diversion, one wonders if the incidence of abuse is increasing because fathers may believe that they have more to lose.

A. *The Federal Government's Response to Domestic Violence*

OCSE is trying to develop strategies that states can use to deal with the issue of the cooperation requirement and domestic violence through the implementation of “yellow light” services.¹⁴⁰ “Yellow light” services are programs developed to collect child support in a safe

¹³⁷ See Raphael & Tolman, *supra* note 5 (citing Mary Ann Allard et al., *In Harm's Way? Domestic Violence, AFDC Receipt, and Welfare Reform in Massachusetts* (McCormack Institute, Boston, Mass. (Feb. 1997))).

¹³⁸ See *The Commission on Domestic Violence: Statistics*, at <http://www.abanet.org/domviol/stats.html> (visited Oct. 23, 1999) (citing *Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996)).

¹³⁹ See Roger J.R. Levesque, *The Role of Unwed Fathers in Welfare Law: Failing Legislative Initiatives and Surrendering Judicial Responsibility*, 12 LAW AND INEQ. J. 93, 126 n.95 (1993).

¹⁴⁰ See Turetsky & Notar, *supra* note 5.

manner once a victim of domestic abuse has been identified.¹⁴¹ For example, Washington has the Address Confidentiality Program (ACP) which prevents the disclosure of home, work, and school addresses of participants.¹⁴²

In addition, various state models have been developed to establish effective methods for getting women to disclose domestic violence and to help with safer child support collection.¹⁴³ The different methods being tested include focused interviews, on-sight domestic violence specialists in TANF offices, and better coordination between child support offices and the courts.¹⁴⁴ One goal is trying to assess the mothers' needs once domestic violence has been disclosed and to evaluate whether the TANF agency can be a point of entry for women seeking help with the issue of domestic violence. It is recognized that some of the goals of these projects are competing (e.g., increasing collection and increasing safety). However, the more knowledge

¹⁴¹ For an explanation of various "yellow light" programs, see *id.*

¹⁴² An ACP participant receives a substitute address through the Secretary of State. See Jeffrey T. Even, *Washington's Address Confidentiality Program: Relocation Assistance for Victims of Domestic Violence*, 31 GONZ. L. REV. 523, 524 (1995-96).

¹⁴³ See Turetsky & Notar, *supra* note 5. Programs that have been enacted include participation in the Prevention of Domestic Violence Coalition by the Illinois Child Support Enforcement Division. *Domes Violence*, at <http://www.acf.dhhs.gov/programs/cse/rpt/bpdv98.htm> (last visited Nov. 11, 2000). The result is that child support applicants are encouraged to seek assistance when abused. *Id.* In Massachusetts, a domestic violence order database was created that identifies cases requiring domestic violence precautions. *Id.* In addition, Massachusetts Child Support Enforcement Division requires mandatory statewide training for the cooperation requirement and good cause exception procedures. *Id.*

¹⁴⁴ See Turetsky & Notar, *supra* note 5.

gathered about the issue of domestic violence and child support enforcement, the more coherent the approach will be.

B. *Systemic Failures in Granting Good Cause*

The Denver study also reported that as of the time of writing, it could report on 24 of the 29 applications for the good cause exception.¹⁴⁵ Of the 24 applications, 16 were denied.¹⁴⁶ The applications were denied even though 62% reported that they were afraid the father would harm them, 55% were afraid the father would take the children away and 34% were afraid that the father would harm the children.¹⁴⁷ In addition, 76% of the 29 women were afraid that child support enforcement was dangerous and would make the situation worse.¹⁴⁸ The two main reasons applications for good cause exception were denied was due to lack of documentation and the applicant's failure to meet appointments.¹⁴⁹

In most states, the evidence required to meet the good cause exception also needs to be reassessed. Some fear that less stringent standards for the good cause exception will increase the number of women seeking the exception. However, in states in which evidentiary standards for the good cause exception were lowered, the number of women seeking it did not increase.¹⁵⁰

¹⁴⁵ Pearson et al., *supra* note 5, at 441.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 440.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 442.

¹⁵⁰ *See Keeping Battered Women Safe, supra* note 1, at 16.

This should be reason enough to believe that evidentiary standards are only part of the problem with the good cause exception.

Another problem women face when applying for the good cause exception is the lack of coordination between the use of the FVO and the good cause exception. A study that looked at the coordination between the FVO and child support enforcement reported that in many states where the FVO existed, there was a lack of coordination with work-related exemptions and child support exemptions.¹⁵¹ In many of the states, the good cause notices were from one to four pages, with most being two pages long, and an examination of many forms showed small, “hard-to-read print.”¹⁵² The terms used on the notices were inconsistent between the FVO forms and the good cause notices.¹⁵³ The good cause notices tended to use the vague explanations of the former federal definitions of the good cause exception.¹⁵⁴ This could lead to confusion because often the explanation of the good cause exception was couched in formal legal phrases such as “[c]ooperation is anticipated to result in serious physical or emotional harm to you which is so serious it reduces your ability to care for the child adequately”¹⁵⁵

The lack of coordination is an example of the bureaucracy the good cause exception involves. A recent study looked at the effect of bureaucracy between agencies and the use of the good cause exception.¹⁵⁶ The study examined good cause exceptions that were granted in the

¹⁵¹ *Id.* at 10.

¹⁵² *Id.* at 16.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 15-16.

¹⁵⁵ *Id.* at 16.

¹⁵⁶ See generally Lael R. Keiser & Joe Soss, *With Good Cause: Bureaucratic Discretion and the Politics of Child Support Enforcement*, 42 AM. J. POL. SCI. 1133 (1998).

fifty states between 1990 and 1992.¹⁵⁷ It found that use of the good cause exception was “systemically affected by partisan control of state governments, the values of state administrators, the funding decisions of elected officials, and the levels of demand on the bureaucracy.”¹⁵⁸ Further, a state’s use of child support to offset AFDC/TANF payments provides an economic incentive for the state to collect child support and not grant the exception.¹⁵⁹ One of the conclusions of the study was that until Congress makes the good cause exception a priority and provides funding for its proper implementation, states have little incentive to promote it.¹⁶⁰

Similarly, training is a big issue in the use of the good cause exception. It has been pointed out that twenty-nine states do not train child support staff for domestic violence screening, and of the twenty-three states that do provide training, fourteen do not require it.¹⁶¹

There are three main reasons reported for nondisclosure of abuse. First, nondisclosure of abuse is related to inadequate notice.¹⁶² Lack of training and understanding of the exception by

¹⁵⁷ *Id.* at 1139.

¹⁵⁸ *Id.* at 1133.

¹⁵⁹ The federal and state governments retain a portion of child support payments to reimburse the costs of public assistance. For fiscal 1998, child support collections in AFDC/TANF cases amounted to \$2.6 billion. Of that amount, the federal government received reimbursements of about \$960 million and the state governments received about \$1.1 billion. About \$151 million of the \$2.6 billion in AFDC/TANF child support collections was paid to families. *See* Office of Child Support Enforcement, *Program Results*, *supra* note 55.

¹⁶⁰ *See* Keiser & Soss, *supra* note 156, at 1152.

¹⁶¹ *See Keeping Battered Women Safe*, *supra* note 1, at 17.

¹⁶² *See id.* at 15-16.

the child support and TANF agencies is cited as another reason.¹⁶³ Finally, women do not report abuse because they feel ashamed or feel that it is not their caseworker's business.¹⁶⁴

When dealing with victims of domestic abuse, a "one size fits all" application will not suffice. Women who suffer abuse have highly individualized reactions to the abuse and state requirements should be changed to provide individualized services for these women.¹⁶⁵ However, with child support workers handling on average over 1000 cases,¹⁶⁶ it is unlikely individualized service will occur. More cooperation with domestic violence providers is a possible solution to meeting this population's needs.

V. COOPERATION AND GOOD CAUSE IN WISCONSIN

Wisconsin Works (W-2) was enacted in 1997 to replace AFDC.¹⁶⁷ Low-income parents with children are eligible for the program.¹⁶⁸ It is stated that "[u]nder W-2, there is no entitlement to assistance, but there is a place for everyone who is willing to work to their ability."¹⁶⁹

¹⁶³ See Vicki Turetsky, *CLASP: Implementing the Family Violence Option: Lessons from Child Support*, at <http://www.clasp.org/pubs/childrenforce/fvo.htm> (Nov. 1997).

¹⁶⁴ See Moore & Selkove, *supra* note 5, at 9.

¹⁶⁵ See East, *supra* note 5, at 298, 301-02.

¹⁶⁶ See Turetsky, *supra* note 163.

¹⁶⁷ *Wisconsin Works Overview: A Place for Everyone*, at <http://www.dwd.state.wi.us/desw2/wisworks.htm> (last modified June 2, 2000).

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

An eligibility requirement for W-2 is that all custodial parents in the household cooperate with child support enforcement.¹⁷⁰ Under the cooperation requirement, the custodial parent must provide any information considered “appropriate and necessary” to establish paternity or child support.¹⁷¹ In addition, the custodial parent is required to make a good faith effort to provide the information within seven days after receiving a request for information.¹⁷² Cooperation requirements in Wisconsin include naming the non-custodial parent, establishing paternity for a child born out of wedlock, attending court hearings concerning child support, and keeping appointments with the child support worker.¹⁷³ Failure to cooperate results in non-eligibility for W-2.¹⁷⁴ Reasons for a finding of non-cooperation include missing two consecutive appointments or the failure to appear for genetic testing in paternity cases.¹⁷⁵

In Wisconsin, an application for the good cause exception, as well as the decision to grant it, is made through the W-2 agency and not the child support agency.¹⁷⁶ The reasons for granting the good cause exception continue to follow the former federal regulations.¹⁷⁷ The proof

¹⁷⁰ See WIS. STAT. ANN. § 49.19(4)(h)1.a. (West, WESTLAW through 1999 Act 198).

¹⁷¹ WIS. STAT. ANN. § 49.22(2m)(a) (West, WESTLAW through 1999 Act 198).

¹⁷² *Id.*

¹⁷³ WIS. ADMIN. CODE § 15.03(1)(a),(b) (2000)

¹⁷⁴ See WIS. STAT. ANN. § 49.19(4)(h)2.

¹⁷⁵ See Wisconsin Department of Workforce Development, Division of Economic Support, Administrator’s Memo Series 98-33 (Nov. 13, 1998).

¹⁷⁶ See WIS. ADMIN. CODE. § 15.03(4).

¹⁷⁷ The reasons related to domestic abuse include: “[p]hysical harm to the child for whom support is to be sought; . . . [e]motional harm to the child for whom support is to be sought; . . . [p]hysical harm [or] emotional harm

requirements for showing “good cause” require at least one document of evidence in addition to the parent’s sworn statement.¹⁷⁸

If the good cause exception is granted, the child support agency may be directed to either suspend all further support enforcement action or to continue support enforcement without the parent’s cooperation.¹⁷⁹ In terms of procedure, either a good cause exception or good cause status triggers the family violence indicator.¹⁸⁰ A family violence indicator will result in the automatic block of the woman’s or child’s address on all documents printed in the case.¹⁸¹

The Department of Workforce Development (DWD) completed a study of more than 39,000 families who received W-2 cash benefits or services between August 1997 and September 1999.¹⁸² “According to the [DWD] study, more than 29,000 of those families were not receiving cash assistance as of October 1999.”¹⁸³ Of those 29,000 families, about 5,000 did not participate in W-2 because of a refusal to cooperate with employment requirements or with

to the parent . . . with whom the child is living of such a nature or degree that it reduces that person’s capacity to care for the child adequately.” § 15.03(2)(a)1.

¹⁷⁸ § 15.03(9)(b).

¹⁷⁹ *See* § 15.03(11)(b).

¹⁸⁰ *See* Wisconsin Department of Workforce Development, Division of Economic Support, Child Support Bulletin 98-38 (Dec. 22, 1998).

¹⁸¹ *See* Turetsky & Notar, *supra* note 5.

¹⁸² David Callender, *Gov: Expand Job Training, Other W-2 Programs*, CAP TIMES, Mar. 16, 2000, at 2A.

¹⁸³ *Id.*

child support enforcement.¹⁸⁴ However, more than half of these 5,000 families still received other services such as food stamps and Medicaid.¹⁸⁵

Women who refuse to participate in W-2 and comply with the cooperation requirement may do so for reasons related to domestic violence. Another recent study in Wisconsin looked at the treatment of domestic violence victims who were current and past welfare recipients.¹⁸⁶ The study showed that 26.8% of the women who responded were afraid of harassment by the father if the state attempted to collect child support.

The study also showed that low numbers of women reported abuse to their caseworker. Nearly 70% of the women did not report any abuse.¹⁸⁷ Of the women who did not report abuse, more than 30% did not report it because they did not feel it was any of the caseworker's business and more than 23% were ashamed of the abuse.¹⁸⁸ Interestingly, 4% of the women who did not report abuse did not report it because they were afraid of losing benefits.¹⁸⁹

Moreover, even when abuse was reported, there were deficiencies in how the disclosures were handled. Of the women who reported abuse, only 4.9% were informed of the good cause exception.¹⁹⁰ Further, W-2 provides that weekly participation hours that are required of W-2

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ The Institute for Wisconsin's Future completed the study. *See generally* Moore & Selkove, *supra* note 5.

¹⁸⁷ *See* Moore & Selkove, *supra* note 5, at 8.

¹⁸⁸ *See id.* at 9.

¹⁸⁹ *Id.*

¹⁹⁰ *See id.* at 6, 10.

participants can be spent in counseling or domestic violence support groups.¹⁹¹ Less than 8% of the women who reported abuse were told of this participation option.¹⁹²

The recommendations of the study included better training for caseworkers and clearer procedures for the good cause exception.¹⁹³ It found “particularly disturbing” the “failure of W-2 staff to inform women of [the good cause exception] because more than a quarter of respondents (26.8 percent) reported being afraid that a former partner would return and harass them if the state attempted to collect support.”¹⁹⁴ It also recommended that W-2 agencies develop better procedures for ensuring that domestic violence victims are exempted from the cooperation requirement.¹⁹⁵ The study also called for cooperation between W-2 centers and local agencies that offer services to victims of domestic violence.¹⁹⁶ Collaboration among the W-2 center and domestic violence agencies was viewed as necessary for the development of policies and training.¹⁹⁷

VI. CONCLUSION

In Wisconsin, more emphasis should be placed on better training and more collaborative efforts. Changes in these areas may provide the services needed for proper implementation of

¹⁹¹ *Id.* at 11.

¹⁹² *Id.* at 10-11.

¹⁹³ *See id.* at 13.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 13-14.

¹⁹⁶ *Id.* at 14.

¹⁹⁷ *See id.*

the cooperation requirement and good cause exception as they apply to victims of domestic violence. While Governor Tommy Thompson likes to call W-2 a success,¹⁹⁸ recent studies in Wisconsin raise questions about whether these women's needs are being met. Especially when one considers that the consequences of not cooperating with paternity establishment and child support enforcement, result in no household members being able to participate in W-2. The Wisconsin studies show that an information gap exists between domestic violence victims and W-2 centers. Some women have chosen to leave W-2, some do not report abuse because they believe it will affect their ability to receive benefits, and of the women who do report abuse, only a small number are actually informed of the good cause exception. With family benefits being contingent on cooperation, it is imperative that procedures address domestic violence issues. Further, the W-2 program is centered around work and addressing "women's personal barriers to self-sufficiency."¹⁹⁹ W-2 centers that are capable of recognizing when women are abused and are capable of meeting their needs will better serve these women; the same women the program seeks to make self-sufficient.

Additionally, there seems to be no legitimate support for "failing to cooperate" sanctions increasing to the point where 30 states now cut off all cash assistance. Originally, the child's assistance remained intact because it was in the child's best interest. Now, in some states, the entire family, including the children, will suffer because of the failure to cooperate. How can this possibly be in the child's best interest? In addition, evidence does not demonstrate that most

¹⁹⁸ Callender, *supra* note 182.

¹⁹⁹ Moore & Selkove, *supra* note 5, at 11.

women are uncooperative with child support enforcement. To the contrary, in the past, women have sued child support agencies in an effort to pursue child support.²⁰⁰

Another issue that should be considered is that child support enforcement does not always take into account the dangers victims of domestic violence may face when child support is pursued. Minimal training, if any, on domestic violence is provided to workers in both the TANF agency and the child support agency. The Wisconsin study demonstrates the effects of this lack of training.²⁰¹ Collaboration between child support agencies, TANF agencies, and local domestic violence agencies is needed to meet the needs of this population.

The issue of domestic violence and the cooperation requirement may come to the fore with future studies that may look into why women who suffer abuse do not seek a good cause exception or how frequently incidences of abuse are a result of support enforcement. Studies that have looked at the issue of domestic violence report that each woman responds differently to abuse. The “one-size fits all” attitude of the good cause exception should not be used when dealing with victims of domestic violence. Aggressive enforcement of child support in all cases cannot possibly be in the best interest of the child nor can it promote family values. A change in attitude and enforcement may only come from a congressional mandate that requires each state to develop better programs to address the issue of child support enforcement and domestic violence.

²⁰⁰ See Cahn, *supra* note 99.

²⁰¹ According to the study, of the women surveyed, over 25% reported that they were afraid the non-custodial parent would harass them if child support was pursued. Moore & Selkove, *supra* note 5, at 11.