Welfare Reform Under the Personal Responsibility Act: Ending Welfare as We Know It or Governmental Child Abuse?

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I. Introduction

Since the War on Poverty was first declared in 1965,[1] more than $5 trillion has been spent by federal, state and local governments on at least seventy-nine different welfare programs.[2] Despite this huge expenditure of time and money, the battle against indigency has not been won, and the percentage of Americans living in poverty still hovers at the same level as it did over thirty years ago.[3] Recognizing that "welfare as we know it" has failed to eradicate poverty, a vast majority of Americans have long felt that the nation's welfare system was in need of extensive reformation.[4] According to one recent telephone survey, 81% feel public assistance is in need of major reform and 16% that minor reform is needed.[5] Another survey revealed that only 6% of Americans believe that the welfare system should remain unchanged and concluded that "[s]upport for welfare has virtually disappeared."[6]

On August 22, 1996, in response to the public outcry for reform, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996[7] (hereinafter the "Personal Responsibility Act" or "the Act") "sailed through the House and Senate by lopsided majorities" charting the course for a critical revision in welfare policy.[8] Shortly thereafter, President Clinton signed the new law, claiming that it

1. *See* Pub. L. No. 88-452, 78 Stat. 508 (codified as amended at 42 U.S.C. §§ 2701-2955d (1988) (The Economic Opportunity Act of 1964 began the War on Poverty).

2. *See Welfare Reform: A Political Fig Leaf*, S.F. CHRON., June 16, 1994, at A24. The genesis of the present welfare system began in 1935 with the Social Security Act over sixty years ago. *See* George J. Church, *Ripping Up Welfare With Not a Little Drama*, TIME, Aug. 12, 1996, at 17 [hereinafter Church, *Ripping*].

3. *See Welfare Reform: A Political Fig Leaf, supra* note 2, at A24.

4. *See* Ellen Goodman, *Welfare Is Feeling Ill Will*, SAN JOSE MERCURY NEWS, Dec. 20, 1994, at B7 [hereinafter Goodman, *Welfare Is Feeling*] (noting that "public consensus" is that welfare should be "a program about jobs, not checks" and "time-limited, not long-term"). *See generally* WILLIAM CLINTON AND ALBERT GORE, PUTTING PEOPLE FIRST 165 (1992)

5. *See* Nancy Gibbs, *The Vicious Cycle*, TIME, June 20, 1994, at 24, 26 [hereinafter Gibbs, *Cycle*].

6. Ellen Goodman, *How Do We End Welfare As We Know It?*, BOSTON GLOBE, Dec. 16, 1993, at B7.

7. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, 42 U.S.C. § 1305 (codified as amended in scattered sections of 42 U.S.C., 7 U.S.C., & 8 U.S.C.)[hereinafter Personal Responsibility Act].

8. *See* Church, *Ripping*, *supra* note 2, at 18, 20 (noting that Republican members of both the Senate and the House of Representatives voted for the bill almost unanimously, joined by 25 Democratic Senators and 98 Democratic Representatives).

would help welfare recipients appreciate the importance of "work and family and independence."[9]

The Personal Responsibility Act will change the lives of everyone currently receiving some form of welfare,[10] including those receiving Aid to Families With Dependent Children (AFDC), food stamps, Medicaid,[11] Medi-Cal, and Supplemental Security Income.[12] It also threatens to constitute a form of governmental child abuse with potentially devastating ramifications for our nation's poor parents and children.

In particular, the Personal Responsibility Act terminates entitlement programs which have provided crucial safety nets for indigent families. It ends the sixty-two year old federal guarantee of federal cash assistance for poor children.[13] As Senator Daniel Patrick Moynihan (D-NY) puts it: "Through 11 Presidents and 31 Congresses, we have tried to help dependent children and never, until now, have we undertaken to do them harm."[14]

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9. Jack E. White, *Let Them Eat Birthday Cake*, TIME, Sept. 2, 1996, at 45. Although President Clinton promised in 1992 to "end welfare as we know it," he had vetoed two previous welfare reform bills passed by Congress in December of 1995 and January of 1996, believing that the previous measures were too harsh on children. Robert Pear, *Clinton Aids 'Deadbeat Dad' Searches*, SAN JOSE MERCURY NEWS, June 19, 1996, at A1 [hereinafter Pear, *Clinton Aids*].

10. *See* Personal Responsibility Act, Pub. L. No. 104-193, 42 U.S.C. § 1305. *See also Getting Down To Details*, SAN JOSE MERCURY NEWS, Aug. 4, 1996, at A2. The Act is expected to save as much as $61 billion over six years by cutting back money available for the various welfare programs. *See* Vanessa Gallman, *Kids Emerge As Focus Of Welfare Debate*, SAN JOSE MERCURY NEWS, July 30, 1996, at A9 [hereinafter Gallman, *Kids Emerge*]. For example, California's Legislative Analyst's Office estimates that the state's federal funds will be decreased by $6.8 billion during the first six years of the Act. *See* Legislative Analysts Office, *Federal Welfare Reform (H.R. 3734): Fiscal Effect On California*, Aug. 20, 1996.

11. *See* Robert Pear, *Surgeon General Says Medicaid Enslaves Poor Pregnant Women In Cycle Of Poverty*, N.Y. TIMES, Feb. 26, 1994, at A8 (As of February of 1994, Medicaid served 33 million Americans.).

12. "S.S.I. is a federal welfare program primarily for low-income blind, elderly and disabled people with insufficient work histories to qualify for regular Social Security benefits." Michael Dorgan, *Addicts Collect Billions In U.S. Aid*, SAN JOSE MERCURY NEWS, Feb. 11, 1994, at A7.

13. *See* Personal Responsibility Act § 103(a) (codified as amended at Social Security Act §401(b), 42 U.S.C. § 601(c)). The Act's provision does not, however, preclude states from providing for individual entitlement as a matter of state law. *See* Children's Defense Fund, *Summary of Welfare Conference Bill*, Part 1, Aug. 12, 1996, at 3.

14. Alison Mitchell, *White House Sees A Dire Result, But May Accept Plan On Welfare*, N.Y. TIMES, Nov. 10, 1995, at A1 [hereinafter Mitchell, *White House*] (noting that the Senator's remarks referred to the 1995 Senate welfare bill, which is substantially similar to the Personal Responsibility Act). Similarly, as part of the floor debate, Senator Edward Kennedy (D-Mass.) characterized the 1996 Personal Responsibility Act as "legislative child

Likewise, the Personal Responsibility Act abolishes AFDC, which has functioned as the primary cash aid program for families.[15] In its place, the federal government will provide the states with lump sums of money, known as Temporary Assistance For Needy Family (T.A.N.F.) block grants. These grants will be used to run the states' own welfare programs.[16] However, states are not obligated to match the federal block grant or provide additional welfare assistance.[17] Moreover, they can elect to provide vouchers or services rather than money.[18]

Next, the Personal Responsibility Act precludes states from providing welfare benefits or food stamps to most current legal immigrants and from providing Medicaid to future legal immigrants during their first five years in the country.[19] States are also prohibited from providing benefits to mothers under the age of eighteen unless they

abuse." *See* Peter Edelman, *The Worst Thing Bill Clinton Has Done*, ATLANTIC MONTHLY, Mar. 1, 1997, at 43.

15. *See* Personal Responsibility Act § 103(a) (codified as amended at 42 U.S.C. § 603). Prior to the enactment of the Personal Responsibility Act, states received federal funds on an open-ended entitlement basis. *See id.* Under the Act, states receive a "capped" block grant that is set at $16.4 billion nationally for the next six years with only very limited additional funding available for inflation or population growth. *See id.* States will thus have considerably less money by 2002 then they would have had under AFDC. *See* Edelman, *supra* note 14, at 50. Further, only $2 billion is allocated by the Act over the next five years to help states deal with local recessions or other economic crises. *See id.* However, $6 billion in additional welfare costs were needed in a three year period during the recession in the early 1990's. *See id.* There is, therefore, a real possibility that states will run out of money before the end of a given year. Indeed, in 1995, the Federal Office of Management and Budget considered all the pieces of legislation being proposed at that time to establish block grants and concluded that the proposals would have increased the number of destitute families from 600,000 to one million. *See* Mark Neal Aaronson, *Scapegoating The Poor: Welfare Reform All Over Again And The Undermining Of Democratic Citizenship*, 7 HASTINGS WOMEN'S L.J. 213, 237 n.76 (Summer 1996) (citing OFFICE OF MANAGEMENT AND BUDGET, POTENTIAL POVERTY AND DISTRIBUTIONAL EFFECTS OF WELFARE REFORM AND BALANCED BUDGET PLANS 10 (Nov. 9, 1995)).

16. *See* Personal Responsibility Act § 103(a) (codified as amended at 42 U.S.C. § 603).

17. *See id.*

18. *See* Children's Defense Fund, *supra* note 13, at 1. Accordingly, states can contract with charitable, religious, or private organizations, providing certificates or vouchers to welfare recipients, who can then redeem them with the organizations. *See* Edelman, *supra* note 14, at 49. Advocates for the poor worry that the block grant system will be a "dangerous tool" in the hands of conservative states like Mississippi. *See* Kevin Sack, *In Mississippi, Will Poor Grow Poorer with State Welfare Plan?*, N.Y. TIMES, Oct. 23, 1995, at A1 [hereinafter Sack, *Mississippi*].

19. *See* Personal Responsibility Act § 400-02 (codified as amended at 8 U.S.C. § 1611). However, states can provide Medicaid for legal immigrants who are already here. In the case of *illegal* aliens, the Personal Responsibility Act precludes the distribution of even state-financed cash benefit programs, unless the state passes legislation explicitly authorizing the distribution. *See* § 411 (codified as amended at 8 U.S.C. § 1621).

live at home (or in another adult-supervised setting) and attend high school (or an alternative educational or training program) as soon as their child is three months old.[20] Indeed, states can deny all assistance to teenage mothers[21] or to children born to parents more than ten months after the family went on welfare (popularly known as "family caps").[22]

The Personal Responsibility Act also contains a number of federal guidelines mandating that the states impose work requirements and time limits on the length of time poor families can receive T.A.N.F. grants.[23] Specifically, the Act mandates a two year limit on payments to a family for any one period of time[24] and a five year lifetime cap on the receipt of welfare by an adult, subject to hardship exemptions for up to 20% of each state's average monthly caseload.[25] It then requires the head of every family to find work within two years or the family loses all benefits,[26] while containing no provision for publicly-financed work opportunities. This means that federal welfare benefits for an entire family can be terminated after two years even if the parents cannot meet the work requirements solely because there are no jobs available.[27] States need not provide vouchers or other services to meet the economic needs of children if the families' federally-funded grants are decreased or terminated.[28]

The Act goes even further by specifying that states can impose even *more stringent* work requirements and time limits on the receipt of assistance than those imposed under the Act.[29] In fact, it *encourages* states to impose more restrictive welfare policies by awarding supplemental federal grants to states that have low amounts of federal

20. *See* Personal Responsibility Act § 103(a) (codified as amended at 42 U.S.C. § 608).

21. *See id.*

22. *See id.*

23. *See id.* The Act also imposes guidelines on the states for providing food stamps to childless adults, between the ages of eighteen and fifty, for longer than three months during any three year period. *See id.* § 824 (codified as amended at 42 U.S.C. § 2015).

24. *See* Personal Responsibility Act § 103(a) (codified as amended at 42 U.S.C. § 602).

25. *See id* (codified as amended at Social Security Act § 408(a)(7)(C), 42 U.S.C. 608).

26. *See* Personal Responsibility Act § 103(a) (codified as amended at 42 U.S.C. § 602). In addition, at least 50% of all single parents on welfare must be working or in "work-related activities" by 2002 or the state's block grant will be decreased. *See* Church, *Ripping*, *supra* note 2, at 22.

27. President Clinton has, in the past, proposed a far more humane and enlightened plan, whereby welfare benefits could only be terminated if recipients refused to accept government subsidized jobs.

28. *See* Personal Responsibility Act § 103 (codified as amended at Social Security Act §404(d)(3)(A), 42 U.S.C. § 604).

29. *See id.* § 103(a) (codified as amended at 42 U.S.C. § 607).

welfare spending for each recipient.[30] Bonuses are also available to states that can show a decrease in illegitimate births and teenage pregnancies.[31]

Unfortunately, even *without* these economic incentives, a number of states have already obtained or requested federal "waivers" allowing them to implement welfare programs mirroring some of the Act's most repressive provisions.[32] For example, Florida, Iowa, Vermont and Wisconsin have all received federal permission to place time limits on the receipt of welfare.[33] And since August of 1993, when New Jersey imposed a "family cap,"[34] numerous other states, including Wisconsin in 1994,[35] Mississippi in 1995,[36] and California in 1996,[37] have denied benefits to welfare recipients who have additional chil-

30. *See id.* (codified as amended at 42 U.S.C. § 603).

31. *See id.*

32. *See* Aaronson, *supra* note 15, at 24, n.73 (citing Joel F. Handler, THE POVERTY AT WELFARE REFORM at 90). Between 1992 and 1994, forty states requested waivers, with the government granting twenty-five of the applications. *See id.* In June of 1996, New Hampshire became the fortieth state to get a waiver for its welfare plan since January of 1993. *See* Pear, *Clinton Aids*, *supra* note 9.

The Personal Responsibility Act permits states already granted waivers to continue their programs for the duration of the waiver, even if the program is inconsistent with the Act. *See* Personal Responsibility Act § 103(a) (codified as amended at 42 U.S.C. § 615).

In 1992, the Bush Administration announced that states would be freely granted "waivers" of federal law for virtually any experimental or demonstration program, so long as the program resulted in no increased cost to the federal government and was subject to evaluation. *See* Mark Greenberg, *Ending Welfare Law As We Know It: The New World Of Welfare Waivers*, 4 CONSORTING 1, No. 1 (Nov. 1993) (noting that the requirement of cost-neutrality has deterred states from testing approaches that could improve the well-being of poor families, such as enhanced services, reductions in earning penalties or allowing assistance to two-parent families). *See also* Shapiro v. Thompson, 394 U.S. 618, 674 (1974) (commenting that in the "field of welfare assistance," there is a "widely recognized need for fresh solutions and consequently for experimentation").

33. *See* Greenberg, *supra* note 32; Jason DeParle, *In Welfare Debate, It's Not 'How?' But 'Why?'* N.Y. TIMES, May 8, 1994, at E1 [hereinafter DeParle, *Welfare Debate*].

34. *See* Gregory Spears, *Welfare Experiment Draws Notice*, SAN JOSE MERCURY NEWS, Mar. 28 1994, at A11 [hereinafter Spears, *Welfare Experiment*]. After the "family cap" was imposed on August 1, 1993, the number of babies conceived by New Jersey mothers already on welfare between August and October of 1993 was reportedly down by 452 from the same time period in 1992. *See* Richard Lacayo, *Unraveling the Safety Net*, TIME, Jan. 10, 1994, at 25, 27.

35. *See Feds Allow Statewide Welfare Cap*, N.Y. TIMES, June 25, 1994, at A1.

36. *See* Sack, *Mississippi, supra* note 18, at A1.

37. *See* Casey S. McKeever, *Early Emerging Issues In California's Implementation Of Federal Welfare Reform*, Aug. 26, 1996 (unpublished memorandum) [hereinafter McKeever, *Emerging Issues*] (noting that according to Welfare and Institutions Code section 11450.04 "continuous" means a break of no more than two months during the ten month span). On August 19, 1996, the Department of Health and Human Services approved California's "maximum family grant" waiver application permitting California to deny additional grant amounts for children born to a family on aid continuously for ten months prior

dren.[38] With the Act's economic incentives, there can be little doubt that these repressive "welfare reform" measures will continue to proliferate at the state level.[39]

When evaluating the potential ramifications of such repressive federal and state welfare reform measures, it is crucial to keep in mind that, of the 14 million people eligible for welfare checks, more than two-thirds are children.[40] Any welfare reform scheme that pushes parents abruptly off the rolls or refuses extra benefits for additional offspring is the equivalent of governmental child abuse since it will spawn a generation of hungry and homeless American children.

A study by the Urban Institute Study[41] has, in fact, estimated that the Personal Responsibility Act will push an additional 2.6 million people, including 1.2 million children into poverty.[42] It has also shown that the Act will worsen conditions for children who are already below the poverty line.[43] According to the Children's Defense Fund, the

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to the birth of the child. *See id.* The excluded child is, however, eligible for Medi-Cal and child care services. *See id.*

38. *See* DeParle, *Welfare Debate*, *supra* note 33, at D1. New Jersey, Arkansas, and Georgia are denying additional benefits to welfare recipients who have additional children. *See id.*

39. In addition to waivers imposing time limits or family caps, states have received, or are seeking, waivers for other programs that critics regard as a piecemeal dismantling of the system. *See id.* For example, Maryland has received federal approval to reduce AFDC payments to mothers who fail to get their children immunized, while Colorado penalizes welfare families whose children are not immunized. *See Welfare Tests May Cheat Poor*, S.F. CHRON., Apr. 18, 1994, at A4.

40. *See* Gallman, *Kids Emerge*, *supra* note 10, at A9.

41. *See* Edelman, *supra* note 14, at 43. *See also Kids Will Suffer In Welfare Plan, Researchers Say*, SAN JOSE MERCURY NEWS, July 26, 1996, at A10 [hereinafter *Kids Will Suffer*].

42. *See* Edelman, *supra* note 14, at 43. *See also* Gallman, *Kids Emerge*, *supra* note 10, at A9. A previous study, conducted by the President's Office of Management and Budget in November of 1995, concluded that the Senate plan would have forced 1.1 million children into poverty. This study mirrored the results of a "draft" study conducted in September of 1995 by the Department of Health and Human Services (H.H.S.) finding that a Senate welfare reform plan, markedly similar to the 1996 Act, would have thrown 1.1 million children into poverty and led to an 11% increase in the number of children living below the poverty line. *See* Alison Mitchell, *Study: Welfare Bill Would Put 1.1 Million Kids In Poverty*, SAN JOSE MERCURY NEWS, Oct. 28, 1996, at A10 [hereinafter Mitchell, *Study*] (noting that the study also concluded that poor families with children would lose so much income that an additional $4.1 billion would be needed simply to bring them back up to the poverty line). The H.H.S. study concluded that these effects would "make families below the poverty line worse off." *Id.* The Senate plan "exacerbates the deteriorating economic situation for these families." Elizabeth Shogren, *Welfare Report Clashes with Clinton, Senate*, L.A. TIMES, Oct. 27, 1995, at A1 [hereinafter Shogren, *Welfare Report*].

43. *See* Shogren, *Welfare Report*, *supra* note 42, at A1. The Personal Responsibility Act will decrease the aid currently provided to over eight million families with children by an average of $1,300 each year. *See* Edelman, *supra* note 14, at 43, 46. *See also Kids Will*

Act's cuts of nearly $3 billion over six years from child nutrition programs will likely reduce the number of meals provided to poor children in day care centers and summer food programs.[44] Finally, experts opine that the current welfare reforms "threaten to accelerate [the] dangerous trend" towards an increase in the proportion of American children without health insurance.[45] This decline in health insurance for children will not only effect welfare recipients but also those with low paying jobs, since most low-skilled workers do not earn enough "to provide for the minimum health needs of their children."[46]

"Even in cold financial terms, the dollar cost of such wholesale [abuse and] neglect will be greater to society than paying to save children from poverty."[47] In addition, reducing or eliminating aid "subvert[s] the fundamental purpose of the welfare system: to provide a safety net for poor children."[48] A consortium of seventy academic researchers issued a statement arguing that "the damage done to children by denying assistance to their families would be far too great to justify eliminating the safety net for them."[49]

Suffer, *supra* note 41, at A10 (noting that almost half of those families currently have members who work). The Center on Budget and Policy Priorities estimates that households with incomes below half of the poverty line (or $7,800 for four people) will bear about 50% of the Act's $23 billion in decreased funding for the Food Stamp program for U.S. citizens, with families with children absorbing about 70% of the cuts. *See* Children's Defense Fund, HN3208, *Summary of Welfare Conference Bill*, Aug. 12, 1996, at 1, 2.

44. *See* Edelman, *supra* note 14, at 49.

45. *See* Rachel L. Jones, *More Kids Doing Without Health Coverage Insurance*, SAN JOSE MERCURY NEWS, Aug. 17, 1996, at A6.

46. *Id.* (quoting Douglas Nelson, Executive Director of the Annie E. Casey Foundation, as stating that "welfare reform as presented does not meaningfully provide for the health care of low income families"). As of 1993, the Census Bureau reported that 9.6 million children under the age of eighteen were uninsured, an increase of 900,000 from 1992. *See* Robert Pear, *Health Insurance Percentage Is Lowest In 4 Sun Belt States*, N.Y. TIMES, Oct. 7, 1994, at A16. During 1994, according to a General Accounting Office report, the number of uninsured minors increased to over ten million or 14.2% of all American children. *See* Jones, *supra* note 45, at A6. *See also* Edelman, *supra* note 14, at 58 (noting that a total of 40 million Americans do not have health coverage).

47. *Real Welfare Reform*, SAN JOSE MERCURY NEWS, Apr. 24, 1994, at F6.

48. *Welfare Tests May Cheat Poor*, *supra* note 39, at A4.

49. *GOP's Strict Welfare Plan Draws Stinging Rebuke*, S.F. CHRON., June 24, 1994, at A7. Senator Moynihan (D-N.Y.) also has commented that cutting off government aid to families could provoke "scenes of social trauma such as we haven't known since the cholera epidemics" including increased homelessness, child abandonment, hunger, abortion and perhaps even street violence. Jason DeParle, *Abolition Of Welfare Is Gaining Support*, SAN JOSE MERCURY NEWS, Apr. 22, 1994, at A10 [hereinafter DeParle, *Abolition*]. Welfare analysts also predict that there will be indirect problems resulting from the effects of the Act, including increases in drug and alcohol abuse, infant mortality, malnutrition, crime and domestic violence against women and children, which will put additional strains on the already overloaded child welfare system and battered womens' shelters. *See* Edelman, *supra* note 14, at 53.

This Article will demonstrate that federal and state policies that establish family caps, deny public assistance to teenage mothers or impose time limits and work requirements on the receipt of welfare, without providing "employment insurance" through publicly-funded jobs, have disastrous implications for our nation's children. These repressive provisions are not only harmful from a public policy perspective but are also inhumane as a way to alleviate the public's valid concerns regarding the current welfare system.[50] Rather than enabling the welfare poor to achieve economic independence, these proposals will result in a form of governmental child abuse which denies millions of needy children food and shelter and increases indigency and homelessness among American families.

Ultimately, if parents are no longer able to provide food and shelter for their children, the state will be forced to step in, remove the children, and place them in foster care. Ignoring the atrocity inherent in this outcome, it makes no sense even in purely economic terms, since it costs the taxpayer far more to maintain a child in foster care than in a family home.[51] In an effort to throw out the bath water of a

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Robert Scheer describes the distressing situation as follows:

> There are 9 million kids sitting in a boat called AFDC, the federal guarantee of subsistence income for families with dependent children, and Congress has launched a torpedo aimed at scoring a hit below the waterline.
> Sink or swim, Congress has ordered, with a callous indifference to the fate of innocent children that would make an ordinary terrorist proud. Maybe state governments will pick up the survivors, but not too many . . . .
> The Senate rejected an amendment to allow states to issue vouchers to buy diapers, school supplies, clothing and medicine for the millions of children expected to be forced off welfare. What is to become of them? Can Clinton go along with depriving them of the necessities of life because their mothers can't or won't hold a job? Or will they be stripped from their mothers and placed in one of the orphanages that Gingrich finds attractive?

Robert Scheer, *Terrorism In The Guise Of 'Reform'*, L.A. TIMES, July 30, 1996, at A1.

50. A recent Yankelovich poll shows that at least some members of the general public do not support the most inhumane proposals which would perhaps save money initially but would mean that indigent people would not receive adequate public support. *See* Gibbs, *Cycle*, *supra* note 5, at 24, 26. For example, only 7% supported eliminating welfare programs entirely, 17% favored requiring women to get off welfare within two years, with their children going to an orphanage if their mothers couldn't care for them, 25% supported cuts in welfare and 42% supported ending increased payments to women who gave birth to children while on welfare. *See id.* There can be little doubt that the percentages in the Yankelovich poll would be even lower if the public were better informed about the effects of the proposals.

51. *See Real Welfare Reform*, *supra* note 47, at F6. For example, according to an "Op-Ed" piece written by Mary Brosnahan, Executive Director of the Coalition for the Homeless, foster care in New York City costs approximately $50,000 per year. The average increase in welfare assistance is only a little over $800 per year. *See* Gibbs, *Cycle, supra* note 5. *See Hope for the Homeless; The Mayor's Empty Words*, N.Y.TIMES, June 9, 1994, at A25.

flawed welfare system, these plans threaten to toss out the baby as well. This is not the desired result of enlightened welfare reform.

Fortunately, there are alternative ways to reform the current welfare morass while, at the same time, encouraging economic independence and replacing the spectre of governmental child abuse with the vision of a governmental commitment that all American children will be provided with the basic essentials of life. Such alternatives can serve as blueprints for state welfare programs developed in response to the Personal Responsibility Act. It is clear at the outset that, in order to meet the Act's work participation requirements, able-bodied individualism welfare needs career counseling, job training and employment opportunities. For a limited number of poor individuals on welfare treatment for mental or physical disabilities, including substance abuse, job training is needed before they can join the workforce. Since T.A.N.F. recipients are, by definition, families with children, the parents also need help with the costs of child care to be able to work or receive job training. In addition, there must be publicly-funded employment supplementing private sector jobs and tolling the running of any time limits on the receipt of public benefits. Finally, wages and medical benefits need to be sufficient to enable the welfare poor and the working poor to meet the goal of economic independence.

These alternative suggestions for reforming welfare, while encouraging economic independence and guaranteeing the well-being of impoverished children, are not cost free. It is clear that regaining some of the expenses of welfare assistance is a legitimate public concern. However, financing enlightened social programs can be achieved without terminating or cutting off assistance to disfavored groups, such as immigrants, teenage mothers or families with multiple children. Rather, more effective and humane alternatives for financing include reducing the administrative costs of welfare, preventing the possibility of overpayment of welfare benefits due to mistake or fraud, and most important, enforcing child support orders against all non-custodial parents.

Part I of this Article describes the demographics of families on the poverty continuum, including both welfare recipients, members of the working poor and their children. Part II discusses and dispels some of the most prevalent myths regarding welfare recipients, which form the premises underlying welfare reform provisions involving time limits, family caps and terminating assistance to teenage parents. Part III suggests several ways to regain some of the costs of providing

enlightened social programs. Finally, Part IV describes humane and effective alternatives for reforming welfare with the goal of enabling those on the poverty continuum to achieve economic independence without the threat of governmental child abuse which sacrifices the health and well-being of America's impoverished children.

II. The Demographics of Poverty: The Welfare Poor, The Working Poor, and the Children of Poverty

In 1971, Robert J. Lampman, one of the "architects of the war on poverty," wrote that indigence could be eliminated before 1980 "at which time the next generation will have set new economic and social goals."[52] His optimism was based on historical trends. "From 1961 to 1971, the number of [indigent Americans] fell by more than one-third . . . [and] [m]any economists shared Mr. Lampman's belief that, with an active government and a growing economy, the poverty problem would be 'solved in the near future.'"[53]

Unfortunately, the future is now here, and indigency remains. The continuum of Americans living below the poverty level includes both the welfare poor and the working poor. The welfare poor are comprised of the 15 million Americans receiving public assistance, either as their only income or as a supplement to a job that does not pay a living wage.[54] The working poor encompasses nearly one out of every five working Americans, who remain below the poverty line, and, in some cases, are worse off financially then those who receive public assistance.[55]

In 1992, the number of people on the poverty continuum rose for the third consecutive year.[56] Increasing three times as fast as the over-

52. Robert Pear, *Poverty 1993: Bigger, Deeper, Younger, Getting Worse*, N.Y. TIMES, Oct. 10, 1993, at D5 [hereinafter *Poverty*].

53. *Id.*

54. *See* Jason DeParle, *Gauging Workfare's Employability*, N.Y. TIMES, Mar. 6, 1994, at E3 [hereinafter DeParle, *Gauging*]. Public assistance includes both AFDC and General Assistance (G.A.) which is provided to single indigents, many of whom are homeless. Since this Article focuses on the impact of welfare reform on dependent children, the problems faced by single welfare recipients are not addressed.

55. *See* Robert A. Rosenblatt, *Nearly 1 In 5 U.S. Workers Lives In Poverty*, S.F. CHRON., Mar. 31, 1994, at A2. *See also* Sam Howe Verhovek, *Expansion of Aid for Working Poor is Tied to Budget*, N.Y. TIMES, July 25, 1993, at A1 [hereinafter Verhovek, *Expansion of Aid*] (noting that, according to the United States Census Bureau, approximately five million Americans worked 40 hours per week but remained below the poverty line annual income of $11,500 for a family of three and $14,750 for a family of four).

56. *See* Pear, *Poverty*, *supra* note 52, at D5. America's poverty population has shown other demographic changes over the ensuing years. For example, in 1970 only 13% of families consisted of children residing with only one parent; by 1996, that figure had risen

all population to include 36.9 million Americans, it was the highest figure since former President Lyndon Johnson launched the War on Poverty nearly three decades before.[57] Despite the end of the recession, in 1993, the Census Bureau reported that the poverty rate rose in thirty-three states,[58] with the number of Americans living below the poverty level reaching 39.3 million people, the highest number in a decade.[59] In 1994, a combination of the economic recovery and the earned income tax credit[60] caused a decrease of 1.1% in the number of poor Americans, but 38.1 million people still remained below the poverty line.[61] The following year left approximately 36.4 million or 13.8% of America's population living in poverty.[62]

The escalation of the number of poor Americans has resulted in a parallel increase in the number of welfare recipients.[63]

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to 30%. *See* Maya Suryaraman, *Future Families*, SAN JOSE MERCURY NEWS, Oct. 20, 1996, at A1. From 1980 to 1990, the number of single mothers increased from 5.8 million to 7.7 million while the number of "displaced homemakers" increased four million to 17.8 million. *See Single Women And Poverty: Study Shows a Strong Link*, N.Y. TIMES, Feb. 20, 1994, at Y14.

57. *See* Pear, *Poverty*, *supra* note 52, at D5 (noting that those on the poverty continuum accounted for 14.5% of the total population in 1992 whereas in 1971 only 12.5% of the population were categorized as poor). *See also* Robert Pear, *Welfare Rolls Finally Level Off After 6-Year Rise,* N.Y. TIMES, Oct. 7, 1994, at A1, A20 [hereinafter Pear, *Welfare Rolls*] (noting that the number of poor Americans rose by 3.3% in 1992 while the population rose by only 1.1%). Robert Greenstein, Executive Director of the Center on Budget and Policy Priorities, blamed the increase in poor Americans in 1992 on "persistent unemployment, widespread cuts in social services by the states." Christopher Scanlan, *Ranks of Poor, Uninsured Americans Swelled In '92, Census Bureau Says*, SAN JOSE MERCURY NEWS, Oct. 5, 1993, at A3.

58. *See* Robert Reno, *More Poor*, SAN JOSE MERCURY NEWS, Oct. 7, 1993, at B7.

59. *See* R.A. Zaldivar, *Poverty Rate Hits '90s High*, SAN JOSE MERCURY NEWS, Oct. 7, 1994, at F1.

60. The earned income tax credit provides low income wage earners with a refundable tax credit. *See More Children Growing Up in 'Working Poor' Families*, S.F. CHRON., June 4, 1996, at A7 (The report was released in June of 1996 by the Annie E. Casey Foundation.)

61. *See* Ramon G. McLeod, *Number Of Poor Dropped In '94*, S.F. CHRON., Oct. 6, 1995, at A13 (noting that the poverty line in 1994 was $15,141 for a family of four).

62. *See* Jane Ciabattari, *Who Lives In Poverty?*, WASH. POST, Oct. 27, 1996, at 12. According to the U.S. Census Bureau, the poverty line in 1995 for a family of four was $15,569 in total income for the entire household. *See id.* Despite this decrease, the United States has the world's second greatest gap, among industrialized countries, between the incomes of its richest and poorest citizens, with only Russia showing a greater disparity. *See Poverty Study Finds U.S. Kids Faring Poorly*, SAN JOSE MERCURY NEWS, Oct. 17, 1996, at A13.

63. Between 1990 and 1992, the number of American households receiving AFDC increased by 24%. *See* Thomas Sancton, *How to Get America Off The Dole*, TIME., May 25, 1992, at 44 (noting that as of May of 1992 there were 4.7 million families, or 13.6 million individuals, receiving aid). By the end of 1992 over 14 million individuals were receiving aid. *See* Robert Pear, *Poverty In U.S. Grew Faster Than Population Last Year*,

This increase has occurred even in the country's most affluent states. California's AFDC "caseloads grew three times faster than the national average during the prosperous 1980s, with only Texas experiencing faster growth."[64] Likewise, in the five years from 1988 to 1993, the AFDC caseload in California grew 47%, more than four times faster than the state's population growth, with some of the most dramatic increases occurring in wealthy counties such as Orange County.[65] As of October of 1996, more than 2.7 million Californians were receiving AFDC,[66] including 1.8 million children.[67]

Not only has the number of welfare poor escalated, but the number of working poor has increased as well.[68] Indeed, the low-wage sector is the fastest growing part of the U.S. labor force.[69] In

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N.Y. TIMES, Oct. 5, 1993, at A10. The number of food-stamp recipients also shot up from 24.9 million in December of 1991 to 26.6 million one year later. *See* Pear, *Welfare Rolls, supra* note 57, at A1, A20. By June of 1993, the number of families collecting AFDC benefits had "topped five million for the first time ever." *See 5 Million Now Get A.F.D.C. Benefits*, S.F. CHRON., June 2, 1993, at A4. Nine months later, a record 15 million people were receiving AFDC, including ten million indigent children. *See* DeParle, *Gauging, supra* note 54, at E3. Of the five million adults, 95% were single women. *See id.* As of November of 1995, 12.8 million people, including 8.8 million children, were receiving AFDC. *See* Aaronson, *supra* note 15, at 1. Welfare expert Senator Moynihan (D-NY) estimated that, of all American children born in 1980, one in three—including eight out of ten African-Americans—will wind up on welfare. *See* Sancton, *supra*, at 44, 45.

64. Ken Hoover, *Many on Welfare Just Want a Hand*, S.F. CHRON., May 4, 1991, at A13.

65. *See* Ramon G. McLeod, *California's Welfare Rate Soaring*, S.F. CHRON., Dec. 13, 1993, at A1 (noting that welfare in California has been growing faster than the population for more than a decade). Orange County, which had by far the highest growth rate among the state's 58 counties, recorded a staggering 106% increase in caseloads between 1988 and 1993. *See id.*

66. *See* Dan Bernstein, *"C" Or Better Worth $100 To Welfare Teens*, SAN JOSE MERCURY NEWS, Mar. 2, 1994, at B3. This was an increase of 500,000 families over the number of California families who were receiving AFDC as of March of 1994. *See id.*

67. *See* Casey S. McKeever, *Aid and Employment Services to Needy Families under the TANF Block Grant* (Aug. 20, 1996) (unpublished memorandum, on file with the Western Center on Law and Poverty) [hereinafter McKeever, *Aid and Employment*] (noting that in 1996 the average welfare family was comprised of a 30 year old mother and two children, one of whom was five years old or younger).

68. Commentators describe the working poor as being part of a "risky and often cruel world where good workers bounce from employment to unemployment, to welfare and back, accumulating long resumes of low-pay, low-skill, dead-end jobs, worrying about health insurance, child care and the employee pension they may never get." Guy Gugliotta, *Struggling to Break Out of Labor's Twilight Zone*, WASH. POST, Sept. 11, 1994, at A1.

69. *See id.* Moreover, many of these low paid working poor are single mothers and "displaced homemakers." *See Single Mothers, Divorcees Show Sharp Rise In Poverty*, SAN JOSE MERCURY NEWS, Feb. 18, 1994, at A11 (noting that economic shifts in the service economy had thrown more women into minimum-wage jobs). The poverty rate among such single mothers and displaced homemakers entering the workforce is four times the

fact, many current welfare recipients were members of the workforce until the recession of 1991-93 resulted in the loss of jobs by the working poor.[70] Compounding the problem, the average length of unemployment has grown longer in recent years, due in part to rapid changes in technology which have made some jobs obsolete.[71] Even those fortunate enough to retain their old jobs, or find new ones, were frequently unable to continue earning enough money to maintain a decent standard of living and thereby augmenting the ranks of working poor.[72] These "forgotten [working] poor" earn too little to pay for

national average. *See id. See also Single Women And Poverty: Study Shows A Strong Link*, *supra* note 56, at Y14. The median annual income for the 17.8 million displaced homemakers in the U.S. in 1990 was only $6,766; for the 5.8 million single mothers the amount was $9,353. *See Single Mothers, Divorcees Show Sharp Rise In Poverty*, *supra*, at A11.

70. In 1990, even before the full force of the recession hit, 2.2 million Americans lost their old jobs permanently. *See* Jonathan Marshall, *How Clinton Would Mend Safety Net*, S.F. CHRON., Jan. 27, 1994, at D1, D2. This was up from an annual average of 1.8 million during the late 1980s. *See* Carl T. Hall, *Clinton's Rx For The Jobless*, S.F. CHRON., Oct. 11, 1993, at D1. As the recession hit full force, many more people joined the ranks of the unemployed. California, perhaps the hardest hit state, lost nearly 800,000 jobs between May of 1990 and October of 1992 and economists opined that the State economy was in "its worst slump since the Depression." Steve Kaufman, *Economy's Down; Spirits Are Even Lower*, SAN JOSE MERCURY NEWS, Oct. 1, 1992, at A1. *See also* George J. Church, *Who Needs A Boom?*, TIME, Dec. 13, 1993, at 33, 35 [hereinafter Church, *Boom*] (reporting that, despite an economic surge nationwide, California was still in a recession at the end of 1993 and the Northeast was "no better than bumping along the bottom"). By May of 1991, 303,000 people exhausted their unemployment benefits by being out of work more than twenty weeks. *See* Gary Blonston, *Glimpse Of Recession's End Only A Mirage To The Poor*, SAN JOSE MERCURY NEWS, July 15, 1991, at A1, A6 (noting that according to Isaac Shapiro, an unemployment researcher at the Center on Budget and Policy Priorities, this was the highest number in one month since 1983). As of December of 1993, 8.3 million Americans were still looking fruitlessly for employment. *See* Church, *Boom*, at 35.

71. *See* Marshall, *supra* note 70, at D2. Of the 2.5 million jobs created from December 1992 to December 1993, 1.2 million were in management and the professions; more than twice as many as in jobs involving "service" or "technical, sales and administrative support." Gary Blonston, *White-Collar Jobs Make A Comeback*, SAN JOSE MERCURY NEWS, Feb. 12, 1994, at A1 (commenting that in "this slow-growth economy, low skill jobs are growing very slowly if at all"). In the 1970s, fewer than one in nine unemployed workers remained without a job for six months or more. *See* Marshall, *supra* note 70, at D2. By the 1980s, that fraction had grown to nearly one in six. *See id.* In 1992, it reached one in five, with three out of four workers who lost their jobs that year being permanently laid off. *See id. See also* Hall, *supra* note 70, at D7 (noting that in 1992, a near-record 20.6% of officially jobless Americans were out of work for at least six months, up from an average of 15% in the 1980s and 11% in the 1970s).

72. *See More Children Growing Up in 'Working Poor' Families*, *supra* note 60, at A7. According to a 1992 Commerce Department study, 18% of Americans with year-round full-time jobs had earnings of less than $13,091. *See* Rosenblatt, *supra* note 55, at A2. By contrast, in 1979, only 12% of all full-time workers earned comparably low wages. *See id.* The Tufts University Center on Hunger, Poverty and Nutrition Policy concluded that: "[h]alf of our families are experiencing declining wages, and the other half are those who

their own homes, cars, health insurance, day care, and "sometimes even food . . . ."[73] The working poor's precarious economic position puts them continuously at risk of homelessness or of not being able to afford adequate food and shelter.[74]

These sad statistics result in part from the failure of the minimum wage to keep pace with inflation. Throughout most of the 1960's and 70's, a full-time job at a minimum wage was sufficient to maintain a family of three above the poverty line.[75] By 1991, however, a full-time job at the minimum wage left a family of three nearly $2,000 below the poverty line and a family of four nearly $5,000 below the poverty level.[76] In fact, the percentage of Americans working full time but earning less than the poverty level for a family of four rose by 50% in the thirteen year period between 1981 and 1994.[77]

Researchers also blame the growth of the working poor on the globalization of markets and advances in technology that shut out the poorly educated and the unskilled.[78] "The nation is moving away from higher-paying manufacturing jobs in the auto, steel, chemical and other industries and toward lower-paying service jobs in everything from retail stores to fast-food restaurants."[79] "Even so, the extraordinary growth in the poorest paid employees as a proportion of

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have always been struggling near poverty." *Child Poverty Soars in Suburbs*, S.F. CHRON., Sept. 28, 1994, at A7.

73. *See More Children Growing Up in 'Working Poor' Families*, *supra* note 60, at A7.

74. Even those slightly above the poverty line are having trouble: "Relatively low wages make it difficult to pay for basic services like housing, child care, education and medical care." *Middle Class Trickling Down Into Poverty, Report Says*, SAN JOSE MERCURY NEWS, Mar. 31, 1994, at A7. In a survey of hunger in the United States released in March of 1994, researchers reported that 44% of those seeking donations of food to feed themselves and their families did not expect, three months before, that they would need the help; 28% said that they were employed at some level; and 21% of those without jobs had been unemployed for less than three months. *See Hunger Poll Contradicts Stereotypes*, S.F. CHRON., Mar. 9, 1994, at A13 (90% of the food stamp recipients said that food stamps do not last the entire month.)

75. NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, GO DIRECTLY TO JAIL 9 (Dec. 1991)(citing AFL-CIO Department of Economic Research, Monthly Estimates of Poverty Line).

76. *See id. See also* Nancy Gibbs, *Shameful Bequests To The Next Generation*, TIME, Oct. 8, 1990, at 43 (quoting Sen. John D. Rockefeller IV, Chairman, National Commission on Children) The official poverty line for a family of four was $12,675 per year as of October of 1990. *See id.*

77. *See Hard-Working Poor*, N.Y. TIMES, Mar. 31, 1994, at A1 (This increase held true irrespective of sex and race but was more pronounced among the young and uneducated.).

78. *See* Steven A. Holmes, *Children Of Working Poor Are Up Sharply, Study Says*, N.Y. TIMES, June 4, 1996, at C19 [hereinafter Holmes, *Children of Working Poor*].

79. Rosenblatt, *supra* note 55, at A2.

the labor force is disconcerting and 'highlights the need for improved education and training skills.'"[80]

The most distressing demographic regarding the poverty continuum, however, is the increase in the number of children who spend their formative years trying to survive in the world of indigency. "In 1974, 10.2 million American children lived below the poverty level."[81] By the time of the 1993 Census, that number had increased by almost 50%, with 15.7 million, or 22.7%, of all children classified as poor.[82] Despite a decline in the number of children living in poverty in 1994 and 1995,[83] a 1996 UNICEF report found that, with more than one in five American children (or 21.5%) still falling below the poverty line, the United States "easily heads the poverty league" among the world's richest industrial nations.[84] By comparison, the poverty rate among children in the next-highest industrialized country, Australia, was 14.1%, while Finland had the lowest rate of only 2.5%.[85] Indeed, only four other countries had child poverty rates of more than 10%.[86] In America, however, more than one in four children are "habitually hungry."[87]

Census Bureau studies show an increase in poverty among very young children. For example, the number of impoverished children under six years of age has almost doubled from 3.5 million to 6.1 million.[88] And of all ethnic and geographic groups, young children are more likely to be poor than any other age group.[89]

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80. *Id.* (quoting Martin Regalia, Chief Economist for U.S. Chamber of Commerce).

81. *More Children In 'Working Poor' Families*, *supra* note 60, at A7.

82. *See More Children, Fewer Elderly Live In Poverty*, SAN JOSE MERCURY NEWS, Oct. 11, 1994, at A6. *See also Child Poverty Soars In Suburbs*, *supra* note 72, at A7 (noting that "the proportion of children living below the poverty line rose 49% from 1973 to 1992, [according to] researchers at the Tufts University Center on Hunger, Poverty and Nutrition Policy").

83. *See* Ciabattari, *supra* note 62, at 12 (the number of children living in poverty decreased to 15.3 million by the end of 1994 and 14.7 million by the end of 1995).

84. Robin Wright, *U.S. Child Poverty Worst Among Richest Nations*, L.A. TIMES, June 12, 1996, at A22. The report also noted that, ironically, the world's *richest* children also live in the United States. *See id.*

85. *See Poverty Study Finds U.S. Kids Faring Poorly*, *supra* note 62, at A13.

86. *See* Wright, *supra* note 84, at A8 (Those countries included Australia, Canada, Ireland and Israel.).

87. *Poverty Study Finds U.S. Kids Faring Poorly*, *supra* note 62, at A13.

88. *See* Bob Herbert, *In America: One in Four,* N.Y. TIMES, Dec. 17, 1996, at A15 (citing a 1996 Columbia School of Public Health study and noting that the poverty rate for children under six years of age was 25%, "much higher than in any other major Western democracy").

89. *See id.* Similar results were also reached in a study by the Carnegie Corporation, which revealed that three million children, or nearly one-fourth of all infants and toddlers, live in poverty. *See* Susan Chira, *Study Confirms Worst Fears On U.S. Children*, N.Y.

A parallel increase has occurred in the number of children who grow up in "working poor" families.[90] As of 1994, 5.6 million (or 7.6%) American children live in working-poor families, an increase of 30% over the last five years[91] and 65% over the last twenty years.[92] In fact, children of the working poor are the fastest-growing segment of American children living in poverty.[93] Unless the problems of the working poor are solved, requiring current welfare recipients to work may exacerbate the problem of impoverished children by compounding the numbers of working poor families.[94]

Beyond the day-to-day struggle to survive on a poverty level income, children who grow up in indigence manifest the negative consequences of their impoverished condition in all areas of their lives. Poor children are "more likely to be born at low birthweight, to be hospitalized during childhood, to die in infancy or early childhood, to receive lower-quality medical care, to experience hunger and malnutrition, . . . and to experience . . . delays in their . . . development."[95] As they reach adulthood, they are "more likely to drop out of school, have children out of wedlock, and be unemployed."[96] Thus, the spectre of "[s]ix million kids in poverty during these critical years ought to be a real wake-up call for the nation."[97]

TIMES, Apr. 12, 1994, at A1. This report was based on a review of scientific data and scholarly studies as well as an examination of statistical indicators of children's status, such as the number living in single-parent homes. *See id. See also More Children, Fewer Elderly Live In Poverty*, *supra* note 82, at A6 (noting that 25% of children under six and 21.9% of those under eighteen were classified as poor).

90. *See More Children In 'Working Poor' Families*, *supra* note 60, at A7. A family of three was defined as "working poor" in 1994 if one parent worked at least fifty weeks out of the year and earned less than $11,821. *See* Holmes, *Children of Working Poor, supra* note 78, at C19.

91. *See id.* (noting that only 3.4 million children lived in working poor families in 1974).

92. *See* Holmes, *Children of Working Poor, supra* note 78, at C19 (Two decades ago only 3.4 million children were in that group.). In contrast, the number of children receiving welfare increased by only 25% during the same twenty-year period. *See id.*

93. *See id.*

94. *See id. See also* Herbert, *supra* note 88, at A15 (noting that a Columbia School of Public Health study found that 62% of impoverished children lived in working poor families).

95. Herbert, *supra* note 88, at A15. Similarly, poor children are more likely to be ill and underweight and either to fall behind in school or to drop out entirely. *See More Children In 'Working Poor' Families*, *supra* note 60, at A7.

96. Herbert, *supra* note 88, at A15. *See also More Children Growing Up In Poverty*, *supra* note 60, at A7 (Impoverished children were more likely to become teenage parents, to commit crimes and to struggle economically as adults.).

97. Herbert, *supra* note 88, at A15.

III. Providing Accurate Information Regarding Welfare Recipients So That Informed and Effective Welfare Plans Can Be Devised By the States

A. The Myths Regarding Welfare Recipients

The escalation of welfare caseloads and the increasing numbers of welfare poor have made prevalent the feeling that public assistance does not help people but instead sustains them in dependency and helplessness.[98] By a four to one margin, Americans surveyed in 1996 felt that the worst thing about the welfare system was that it "encourages people to adopt the wrong lifestyle and values."[99] Likewise, welfare recipients are frequently and inaccurately described as "poorly educated, not wanting to work, living in female-headed households with too many illegitimate children, trapped by their dependency on welfare, and more likely than not drug or alcohol addicted and engaged in cheating the system."[100]

Such concerns that excessively expensive public assistance programs permit lazy, unemployed, long-term "welfare queens" to drive Cadillacs[101] or buy drugs, underlie the Personal Responsibility Act's stringent time limits and mandatory work requirements in non-publicly-funded jobs. Such misleading portrayals have found their way into the rhetoric of many political leaders who drive public opinion and ultimately public policy. Indeed, both Democratic and Republican Presidents have credited the myth that welfare recipients receive too much money for too long. In a 1992 speech, presidential candidate Bill Clinton remarked, for example, that "the current welfare system undermines the basic values of work, responsibility and family, trapping generation after generation in dependency."[102] Former Pres-

98. *See, e.g.*, Church, *Ripping*, *supra* note 2, at 17, 22. *See also* Goodman, *Welfare Is Feeling*, *supra* note 4 (noting that there is agreement that welfare is "less a safety net than a trap" which "sustains [recipients] in a state of helplessness").

99. Ellen Goodman, *Politicians at Play,* SAN JOSE MERCURY NEWS, May 24, 1996, at B7 [hereinafter Goodman, *Politicians*] (citing survey by Public Agenda Foundation). Donald R. Taylor, the Executive Director of Mississippi's Department of Human Services, claims that the states' economic problems are not due to a "crisis in material poverty" but to a "crisis in behavioral poverty," and notes that "you get what you pay for, and in the last three years [Mississippi has] paid for non-marriage and non-work." Sack, *Mississippi, supra* note 18, at A14 (pointing out that Mississippi has the lowest cash benefits in the nation, paying only $120 per month for a parent with two children, less than one-third of the national median).

100. Aaronson, *supra* note 15, at 231-32.

101. *See* Sancton, *supra* note 63, at 44 (quoting former President Ronald Reagan).

102. Church, *Ripping*, *supra* note 2, at 22.

ident George Bush has likewise compared welfare assistance to a narcotic.[103]

In a similar vein, other public officials have expressed the concern that many welfare recipients spend their grants on drugs or alcohol. For example, Congresswoman Nancy Johnson (R-CT) opined that "some women on welfare are more consumed with the feeding of their drug habit than the gut instinct to feed their children."[104] Her perspective was echoed by Congressman Gary Franks (R-CT), who commented on "taxpayer dollars [for welfare] going into the hands of drug dealers."[105] In proposing a November 1992 ballot measure to reduce AFDC benefits by 15%, California Governor Pete Wilson offhandedly commented "that he assumed welfare recipients would have to do without a six-pack of beer if their grants were cut."[106]

Governmental officials have also affirmed the prevalent belief, that welfare encourages illegitimacy. Congressman Tom DeLay (R-Tex.) has claimed that "welfare enables illegitimacy."[107] Congressman James Talent (R-Mo.) has complained that welfare "'socially engineers illegitimacy' by enabling young women with no other means of support to have children."[108]

Even the federal judiciary has contributed to the mythology. Justice Richard Posner, of the U.S. Court of Appeals for the Seventh Circuit has described AFDC as operating "as a subsidy on having children outside of marriage" and opined that the program has "contributed to the disarray of poor families."[109]

Much of this negative rhetoric, and the public policy which it has spawned, is premised on inaccurate and distorted information or on an unusually egregious situation.[110] It is, therefore, important to de-

103. *See* Sancton, *supra* note 63, at 44 (quoting Bush's 1992 State of the Union message).

104. Jason DeParle, *House G.O.P. Proposes 'Tough Love' Welfare Requiring Recipients To Work*, N.Y. TIMES, Nov. 11, 1993, at A13 [hereinafter DeParle, *House G.O.P.*].

105. *Id.*

106. Hoover, *supra* note 64, at A13.

107. Barbara Vobejda, *Hot Debate On Welfare Children*, S.F. CHRON., June 7, 1994, at A6.

108. Carolyn Lochhead, *Vastly Different Bills Introduced To Alter Welfare*, S.F. CHRON., Apr. 29, 1994, at A3 (quoting James Talent).

109. ArLynn Leiber Presser, *Thinking Positive Do We Need More Rights*, 77 A.B.A. J. 56, 60 (1991).

110. For example, in proposing a federal bill which would have terminated welfare benefits to teenage mothers, a Congressman frequently described an egregious situation in Chicago where six teenage mothers, living in a small, squalid apartment with their nineteen neglected children, were collecting $5,496 per month in welfare benefits. *See* Gibbs, *Cycle*, *supra* note 5, at 24.

termine at the outset which policy-making premises are based on accurate information and which are based on a few distorted statistics or on isolated examples chosen for their shock value rather than their prevalence. It is only when a true picture of public assistance and its recipients is painted that the broad brush of welfare reform can be wielded in an informed, humane and effective way.

B. Dispelling the Myths

Contrary to the perception of much of the public, federal and state governments do not spend too much money on the poor when compared to the total amount of government spending.[111] Federal spending for social welfare programs for the poor totals $75 billion while federal spending for "corporate welfare" totals $104 billion.[112] Further, the big-ticket entitlements are Social Security and Medicare, which provide retirement pensions and health services to virtually all elderly Americans and amount to 51% of all federal spending on social programs.[113] The cost of AFDC, on the other hand, amounts to only 4% of all federal money spent on social programs[114] and only 3.4% of the average state budget.[115] In fact, over the twenty years from 1976 to 1996, there has been a decline in the percentage of public money spent to finance AFDC benefits.[116] Thus, "contrary to popular belief, welfare, with a total annual price tag of $24 billion, out of a government budget of $1.3 trillion, is not to blame for the bloated federal deficit."[117]

Far from spinning out of control, the average welfare benefits decreased an estimated 26% between 1972 and 1992,[118] even after the

111. When participants in a 1992 Time/CNN poll were asked if the government was spending too much on the "poor," only 17% said yes; when asked if too much was being spent on "welfare," 32% said yes. *See* Sancton, *supra* note 63, at 44.

112. *See* Ralph Nader, *The Biggest Welfare Recipient: Business*, SAN JOSE MERCURY NEWS, Feb. 16, 1994, at B11.

113. *See* Sancton, *supra* note 63, at 45. As of February of 1994, the Social Security Program, which is the largest "entitlement" program costed $335 billion per year. *See* Jason DeParle, *Democrats Face Hard Choices In Welfare*, N.Y. TIMES, Feb. 21, 1994, at A16 [hereinafter DeParle, *Democrats Face*]. Medicare and Medicaid, which together account for $273 billion, are the next two largest social programs. *See id.* Food stamps cost about $24 billion per year and AFDC about $23 billion. *See id.* The Supplemental Security Income Program, which provides payments to the indigent elderly and disabled, accounts for about $22 billion. *See id.*

114. *See* Sancton, *supra* note 63, at 45.

115. *See* Kevin Sack, *The New, Volatile Politics of Welfare*, N.Y. TIMES, Mar. 15, 1992, at Y16 [hereinafter Sack, *Volatile Politics*]; *see also* Sancton, *supra* note 63, at 45.

116. *See* Aaronson, *supra* note 15, at 228.

117. *Welfare Reform Will Not Come Cheap*, *supra* note 2, at A5.

118. *See id.*

value of non-cash benefits such as food stamps is counted. In practical terms, this means that between 1972 and 1991, AFDC benefits for a mother of two children with no income declined by 41% in constant dollars.[119] If the same mother earned $7,500 per year, her benefits would have declined 93% during the same period.[120]

In addition, during the 1990s, many states decreased the money available from their AFDC programs. By the end of 1992, for example, five states had reduced AFDC benefits and thirty-nine states had frozen the benefits, despite a 3% increase in the cost of living.[121] By March of 1994, after being adjusted for inflation, AFDC payments had declined 46% since 1970.[122] And, as of August of 1996, the basic monthly welfare benefits for a family of four ranged from a low of $187 in Mississippi to a high of $655 in Vermont.[123]

Unfortunately, at the same time that AFDC benefits have plummeted, housing costs have far out-distanced welfare income.[124] During the 1980s, the United States lost nearly two million units that had rented for $300 per month or less.[125] As of December of 1991, "poor people [were] facing the most acute shortage of affordable housing in two decades, with millions at risk of homelessness."[126] In May of 1994, for example, California paid $607 a month for a parent and two children, an amount which ranked among the four highest in the nation.[127] However, the payment was less than the fair market rents[128] for two bedroom apartments in the major California cities of San Di-

119. *See* Richard Whitmire, *Will The Deadbeat Dads Finally Get Tracked Down?*, SAN JOSE MERCURY NEWS, Nov. 14, 1992, at A4.

120. *See id.*

121. *See* Jason DeParle, *States Cutting Or Freezing Their Cash Welfare Benefits*, S.F. CHRON., Feb. 10, 1993, at A7 [hereinafter DeParle, *States Cutting*] (The survey was compiled by the Center on Budget and Policy Priorities in Washington, D.C. and the Center for the Study of the States at State University of New York in Albany.).

122. *See* Gregory Spears, *Officials Face Dilemma of Getting Tough Without Hunting Children: Welfare Reform Efforts Trap Kids In Middle*, SAN JOSE MERCURY NEWS, Mar. 14, 1994, at A5 [hereinafter Spears, *Officials Face Dilemma*].

123. *See* Church, *Ripping*, *supra* note 2, at 21.

124. *See* Ellen L. Bassuk, *Homeless Families*, SCI. AM., Dec. 1991, at 66, 68.

125. Deborah Berger, *Helping The Homeless . . . One By One*, SAN JOSE MERCURY NEWS, July 21, 1991, at 8.

126. Karen Schneider, *Poor Hurt By Loss Of Low-Rent Housing: Shortage is Putting Millions at Risk of Being Homeless,* SAN JOSE MERCURY NEWS, Dec. 12, 1991, at A3. Between 1970 and 1989, the number of low income families seeking affordable rental housing *increased* by 3.2 million while the number of affordable rental units *decreased* by 1.3 million. *See id.* In many parts of the country, recipients of AFDC were economically precluded from much of the rental market, putting them at risk of homelessness. *See id.*

127. *See* Bob Egelko, *Welfare Benefit Cuts Rejected By Court*, SAN JOSE MERCURY NEWS, May 4, 1994, at B3 (noting that if cost of living benefits are taken into account, 29 states pay higher benefits than California).

ego ($711), Oakland ($798), Los Angeles ($804), San Jose ($883) and San Francisco ($962).[129]

There have also been extensive cuts by the Department of Housing and Urban Development (H.U.D.) in financial incentives for building low-cost homes, leading private investors to cease building such housing. The federal government has virtually ceased funding construction or rehabilitation programs for low and moderate income housing. For example, between 1980 and 1987, new commitments for the construction of public and Section 8 subsidized housing fell from 173,249 to 12,244 apartments.[130] At the same time, budget money allocated for housing programs subsidized by the federal government was slashed nearly 75%, from more than $32 billion in 1981 to 8.7 billion in 1990.[131] Further, an estimated "500,000 units of low income housing are lost each year to the collective forces of abandonment, arson, demolition and inflation," and the conversion of low-income housing to other uses.[132] In fact, "for 9.6 million poor households only 5.5 million subsidized or unsubsidized housing units . . . [meet affordability][133] standards . . . ."[134] As Barry Zigas, Executive Director of the Low Income Housing Information Center stated: "The federal

128. Fair market rent is determined by the U.S. Department of Housing and Urban Development using the cost at the 45th percentile of standard quality rental housing units leased to persons who have moved within the previous two years, excluding public housing and units constructed within two years of the survey date. *See* Fair Market Rent Schedules, 56 Fed. Reg. 14733 (1991).

129. *See id.*

130. *See* Bassuk, *supra* note 124, at 68 (citing Michael A. Stegman of the University of North Carolina at Chapel Hill.)

131. *See* Berger, *supra* note 125, at 8.

132. Robert W. Collin & Daniel J. Barry, *Homelessness: A Post-Industrial Society Faces A Legislative Dilemma*, 20 AKRON L. REV. 409, 412-13 (1987).

133. Housing costs, including rent and utilities, are considered affordable if they consume no more than 30% of a family's income. *See* Schneider, *supra* note 126, at A3. Unfortunately, a study by the Low Income Housing Information Service found that in 1989, 3.5 million poor renters spent at least *one-half* of their income on housing, making it tougher to pay food, medical and other bills. *See id.*

134. *Housing Costs Are Staggering For Poor In U.S., Report Says*, SAN JOSE MERCURY NEWS, Nov. 25, 1992, at A8 (The 1992 Center on Budget & Policy Priorities report studied Census Bureau figures from 1986 to 1989 for 44 of the nation's 50 largest metropolitan areas.) *See also* Lee v. Pierce, 698 F. Supp. 332, 335 (D.D.C. 1988) (denying an injunction to homeless plaintiffs seeking to enjoin H.U.D. from selling single family homes other than for the benefit of the homeless). There are "many more homeless persons in the United States than units of available housing" and the "absence of affordable housing is reflected by the long waiting lists for subsidized housing programs: 800,000 households nationwide." *Id.*

government has largely abdicated its responsibility to address housing needs."[135]

In contrast to the perception of much of the public, most welfare recipients spend only a short time receiving benefits, and the stereotype of welfare dependency being passed on from generation to generation is not true.[136] Michigan's Institute for Social Research conducted a nineteen year, nationwide study that tracked 1,085 families supported by AFDC[137] Thirty percent of those families received welfare for only one or two years.[138] The median length of receipt is under four years, and less than 30% of the families got benefits for a total of eight years or more.[139] Further, over half of the women who enter the welfare system throughout the country remain in the system for less than four years and never re-enter the system.[140] Historically, half of all AFDC recipients get off the welfare rolls within two years, with only 2% remaining on them for more than a decade.[141]

State welfare patterns are similar. Four out of every five California welfare recipients use the welfare system as a "stopgap" measure only, with stays averaging only 16.6 months.[142] Even with such multiple stays, however, less than 20% of single-parent recipients in 1991 were considered "long-term," meaning that they collected aid for

135. Schneider, *supra* note 126, at A3.

136. *See* Stephen Robitaille, *Living Hand To Mouth And The Poor Are Victims In The Tug of War To Hasck Millions From California's Welfare Budget*, SAN JOSE MERCURY NEWS, May 12, 1991, at A1, A10.

137. *See id.*

138. *See Welfare Myths Contradicted By New Study*, S.F. CHRON., Jan. 29, 1988, at A16.

139. *See id.* Similar results were obtained in a study families on welfare as of November of 1993 breaking down the population according to the total number of years they received welfare payments, and whether those years were consecutive or not. *See Limiting Welfare: Two Years And Out*, TIME, Nov. 15, 1993, at 30. The study revealed that 21% of the families received welfare for a period of from 1 to 3 years, 26% from 3 to 5 years, 15% from 6 to 8 years and 38% for over 8 years. *See id.* The study also showed that the majority of first-time welfare recipients spend less than two years in the program, but 45% of first-time recipients eventually go back on welfare. *See id.*

140. *See* Jason DeParle, *Why Marginal Changes Don't Rescue the Welfare System*, N.Y. TIMES, Mar. 1, 1992, at D3 [hereinafter DeParle, *Marginal Changes*].

141. *See* Lacayo, *supra* note 34, at 25. *See also* Sancton, *supra* note 63, at 45.

142. *See Welfare Myths Contradicted By New Study*, *supra* note 138, at A16. Similarly, a 1991 survey of Santa Clara County, California, showed that the average length of time a family spent on AFDC was slightly more than two years. *See* Gina Boubion, *Welfare Cuts, Increase In Food Stamps Proposed*, SAN JOSE MERCURY NEWS, Mar. 4, 1991, at A1 (quoting Kathy Gallagher, Director of Government Relations and Planning for the Santa Clara County Social Services Agency.) *See also* Hallye Jordan, *Welfare Chief Defends Call For Its Abolishment*, SAN JOSE MERCURY NEWS, Nov. 22, 1996, at B3 [hereinafter Jordan, *Welfare Chief*] (citing the estimate of Eloise Anderson, Director of California's Department of Social Services, that one-fourth of welfare recipients leave the AFDC program after one year).

eight years or more.[143] As of August of 1996, the typical length of time on AFDC for first time recipients was still less than two years, with two-thirds leaving the welfare rolls because they found employment.[144]

The public's perception that welfare rolls are full of able-bodied adults who are too lazy to work is also incorrect. A 1991 study by the Brookings Institute revealed that recipients of public assistance readily left welfare even for relatively low-paying jobs.[145] Census data for 1993 showed that there were 474,000 women nationwide receiving AFDC who were either employed or looking for jobs.[146]

A similar willingness to work is also found when a single city or state is studied. For example, in the fall of 1992, 1,200 residents of public housing applied for 300 positions in Chicago's Step Up Program.[147] In Ohio, as of June of 1994, "1,800 welfare recipients had opted off the welfare rolls by signing up with a program called Cleveland Works," which trained them for tasks like lead-paint removal and placed them in jobs with benefits.[148]

The popularly-invoked image of welfare mothers having baby after baby to increase their benefits is also false. The average AFDC family has, in fact, *decreased* from three children in 1969[149] to fewer than two children as of June of 1994.[150] This means that the average

143. *See id.*

144. *See* McKeever, *Aid and Employment, supra*, note 67. Once again, about 60% of those leaving the rolls eventually sought additional public assistance, usually for a relatively short time. *See id.* (pointing out that at any point in time, about 65% of families will have received AFDC for more than two years and 32% for a total of more than five years).

145. *See* Robitaille, *supra* note 136, at A10. According to Jill Duerr Berrick, Director of the Center For Social Services Research at the University of California, 60 to 65% of AFDC recipients eventually find employment and leave the welfare rolls. *See* Nancy Weaver Teichert, *Poor Families Fearful Of Life After Welfare*, SACRAMENTO BEE, Aug. 12, 1996, at A1.

146. *See* Carol Kleiman, *Putting Welfare Moms To Work Poses Risks*, SAN JOSE MERCURY NEWS, Feb. 1, 1996, at PC1 (The survey was conducted by the Illinois-based MDR Demographic Applications.)

147. *See* Isabel Wilkerson, *Taste Of Middle-Class Pay For Welfare Mothers*, N.Y. TIMES, Feb. 10, 1994, at A1.

148. Gibbs, *Cycle, supra* note 5, at 30.

149. *See* Sack, *Volatile Politics, supra* note 115, at Y16.

150. *See* Vobejda, *supra* note 107, at A6. *See also* Spears, *Welfare Experiment, supra* note 34, at A11 (The average size of a welfare family has been declining, from a four-person family in 1969 to 2.9 persons in 1991.) As of March of 1992, only 10% of all welfare families had more than three children. *See* DeParle, *Marginal Changes, supra* note 140, at D3. *See also* Sancton, *supra* note 63, at 45 (The average AFDC family in 1992 had only 1.9 children.); Hoover, *supra* note 64, at A13 (The average California welfare family has just under two children.)

welfare family has the same number of children as the average American family.[151]

Furthermore, the assertion that the marginal increase in welfare payments for an additional child gives welfare mothers an economic incentive to have more children is ludicrous. The average increase in welfare assistance is only $67 per month, far less than the cost of raising another child.[152] The assertion is also belied by the fact that, in most states, the AFDC benefits structure penalizes those with more children by decreasing the monetary payment for each successive child.[153] Indeed, according to "nearly every careful study, family caps do nothing to discourage childbirth but they do victimize innocent children."[154]

151. *See* Timothy Taylor, "... *And Welfare Reform Isn't Likely To Change That,*" SAN JOSE MERCURY NEWS, June 30, 1994, at B11.

152. *See* Gibbs, *Cycle*, *supra* note 5, at 28. *See also The Harm In Family Welfare Caps*, N.Y. TIMES, June 9, 1994, at A18 (stating that the average extra stipend to welfare mothers who give birth is less than $75 per month—which does not even cover the cost of diapers and other expenses for the new baby); Vobejda, *supra* note 107, at A6 (revealing that "mothers laughed" when asked whether they would have another baby for extra benefits). Florida International University sociologist Betsy Smith, who has studied women and welfare extensively, describes the "premise that women have children for economic reasons [as] a joke" and opines that women "have children to fulfill an emotional need: to have someone that loves them unconditionally, or simply to have the experience of raising a child." Gibbs, *Cycle*, *supra* note 5, at 29.

153. For example, the welfare benefits in 1991 in California for a family of 10 were only $587 more than the assistance provided a family of four. *See* Boubion, *supra* note 142, at A1. In addition, if the family included more than ten people, there was no increase in benefits at all. *See id.*

154. *The Harm In Family Welfare Caps*, *supra* note 152, at A18. Nevertheless, supporters of the New Jersey family cap, which was started in August of 1993, reported that by November of 1993, the number of births to welfare mothers had decreased by 16% when compared with the number of births in November of 1992. *See* Gibbs, *Cycle*, *supra* note 5, at 29. The New Jersey law was criticized for punishing innocent children to "begrudge their poor mothers $64 more a month." Spears, *Welfare Experiment*, *supra* note 34, at A11. But its author, Wayne Bryant, a Democratic assemblyman representing Camden, New Jersey, claims that welfare recipients will be condemned to poverty until they learn that their actions carry consequences: "It might seem harsh, but no employer on Earth gives you a raise if you have a child." *Id.* Bryant also noted that more that one-third of Camden's almost 87,000 residents are on welfare. *See id.* Another proffered rationale for the cap is that welfare mothers can find jobs more quickly if they don't have to care for an infant. *See* Greenberg, *supra* note 32, at 1.

Such criticism of family caps comes from a broad (and somewhat unlikely) spectrum of the public, including both pro-life and pro-choice advocates. Some right to life groups, joined by the Catholic Church, oppose family caps based on a fear that they might encourage abortion. *See* Gibbs, *Cycle*, *supra* note 5, at 29. Pro-choice advocates challenge family caps on the grounds that the woman's constitutionally-based right to privacy includes her right to choose of have children, even if she cannot afford them without public assistance. *See id.*

An increase in welfare benefits does *not* lead to more illegitimate births.[155] Nor is it a significant contributor to recent increases in births to unwed mothers.[156] Rather, these increases have been attributed to more extensive sexual activity among teenagers and "diminished economic prospects for those in the poorest neighborhoods."[157]

In addition, since the increase in illegitimate births has happened at all income levels, both for those who receive AFDC and for those who do not, it seems unlikely that the receipt of welfare is a main cause of this phenomenon. Moreover, merely "cutting the average welfare payment by about 40 percent—which, in effect, is what has happened since 1970—hasn't ameliorated the number of illegitimate births" or, for that matter, the number of welfare recipients.[158] Thus, it seems difficult to understand why further reductions or elimination of welfare benefits should suddenly have such an effect.

There is one distressing demographic regarding welfare recipients, which appears to be accurate: the correlation between the birth of illegitimate babies[159] and the need for financial assistance. "Nearly a third of American children are [now] born out of wedlock,[160] and

155. *See The Harm In Family Welfare Caps*, *supra* note 152, at A18. In June of 1994, a group of more than 70 academic researchers concluded that, although welfare may have "some modest impact on out-of-wedlock childbearing," welfare programs are not a primary reason for illegitimate births. *GOP's Strict Welfare Plan Draws Stinging Rebuke*, *supra* note 49, at A7.

156. *See* Elizabeth Mehren, *Unwed Births 'A Society-Wide Problem,'* SAN JOSE MERCURY NEWS, Oct. 31, 1995, at A9 (noting that evidence linking welfare benefits with the increases is "inconsistent" and even when a link is found, "it tends to be small").

157. Jason DeParle, *President to Campaign Against Teen-Age Pregnancy*, N.Y. TIMES, June 10, 1994, at A12 [hereinafter DeParle, *President to Campaign*].

158. Taylor, *supra* note 151, at B11. The average welfare check (adjusted for inflation) has fallen steadily from $644 in 1970 to $458 in 1980 to $388 in 1992. *See id.* During the same time period, the number of families receiving welfare has increased "from 1.9 million in 1970 to 4.7 million in 1992." *Id.*

159. Statistics used to demonstrate the increasingly high incidence of unwed mothers in the United States were recently called into question when it was revealed that if a woman's last name was different from her husband on the child's birth certificate, several states counted her as an unwed mother. *See* Hallye Jordan, *Married Moms May Be 'Unwed'*, SAN JOSE MERCURY NEWS, May 2, 1996, at A1 [hereinafter Jordan, *Married Moms*]. For example, California is one of five states that does not record the marital status of the mother on the birth certificate and simply infers that the woman is unmarried if the parents surnames are different. *See id.* Since many women keep their maiden names after they marry, this procedure inaccurately categorizes them as unwed mothers. *See id.*

160. Gibbs, *Cycle*, *supra* note 5, at 27. According to a report by the Department of Health and Human Services, in 1993, 30% of births were to unwed mothers, almost eight times the number in 1940. *See also* DeParle, *Abolition*, *supra* note 49, at A10 ("stating that the figures have climbed every year for three decades"). The unwed birthrates in 1993 ranged from a high of 67.8% in the District of Columbia to a low of 15.5% in Utah. *See* Jordan, *Married Moms*, *supra* note 159, at A16 (revealing that California's birth rate to

those children are four times as likely to be poor."[161] In addition, unwed mothers need public assistance far longer than married women, averaging nearly eight years on welfare.[162]

The problems are particularly acute if the unwed mother is a teenager.[163] The birth rate among unwed mothers between the ages of fifteen and nineteen has doubled since 1970.[164] Each year about 50,000 babies are born to teenage mothers,[165] 72% of whom are not married.[166] Half of these unmarried teenage mothers receive welfare assistance within the first year after the baby's birth and 75% receive

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unwed mothers was 35.3%, the ninth highest in the country). The report found that the proportion of couples who married before the birth of an expected child declined markedly from the 1960s to the 1980s. *See* Mehren, *supra* note 156, at A9 (from 61% to 34% among Caucasians, from 33% to 23% among Latinos, and from 31% to 8% among African-Americans). Most analysts view this trend with alarm, asserting that one parent families provide children with less financial and emotional care than two parent households. *See* DeParle, *Abolition, supra* note 49, at A10. This concern is heightened by the fact that, of the 1.2 million illegitimate births in the United States in 1993, "the overwhelming majority of the mothers were poorly skilled, low-income women." Steven Hayward, *Out-Of-Wedlock Births Are The Big Problem*, SAN JOSE MERCURY NEWS, Jan. 11, 1994, at B7.

161. Gibbs, *Cycle, supra* note 5, at 27. *See also* Hayward, *supra* note 160, at B7 (members of "a household headed by a single mother are six times as likely" to live in poverty than those in a two-parent household). Indeed, "half of all children on welfare were born out of wedlock, compared with just 10% for American children generally." Lacayo, *supra* note 34, at 25. *See also* Vobejda, *supra* note 107, at A6 (reporting that there is "widespread acknowledgment" that illegitimate children are "more likely to be poor, have a harder time in school and face other obstacles").

162. *See* Gibbs, *Cycle, supra* note 5, at 26.

163. *See, e.g., Poor Mother, Poor Child*, N.Y. TIMES, June 17, 1994, at A14 (Every year nearly 400,000 Americans are born to "girls with no high school diplomas, no husbands and few prospects" and 80% of those babies "will know poverty and, more likely than not, be cruelly affected by its pathologies.").

164. *See* Gregory Spears, *U.S. To Target Teen Birth Rate*, SAN JOSE MERCURY NEWS, Apr. 11, 1994, at 3E [hereinafter Spears, *U.S. To Target*]. *See also* DeParle, *President to Campaign, supra* note 157, at A9 (noting that the number of children born to unwed teenagers has risen sharply from about 250,000 in 1980 to about 357,000 a decade later). In April of 1994, the Carnegie Corporation reported on the well-documented and troubling changes in family structure over the last 30 years, including the increase in the percentage of births to unmarried mothers from 5% in 1960 to 28% in 1990, the one million adolescents who become pregnant each year, and the more than 500,000 who give birth. *See* Chira, *supra* note 89, at A12. *See also Endangered Children*, N.Y. TIMES, Apr. 15, 1994, at A22.

165. *See* Elizabeth Shogren, *Welfare Overhaul For Teen Mothers*, SAN JOSE MERCURY NEWS, May 5, 1996, at A1 [hereinafter Shogren, *Welfare Overhaul*].

166. *See* Mehren, *supra* note 156, at A9 (citing a 1993 study by the Department of Health and Human Services). *See also* Steven A. Holmes, *Public Cost Of Teen Pregnancy Is Put At $7 Billion This Year*, N.Y. TIMES, June 13, 1996, at A19 [hereinafter Holmes, *Public Cost*] (citing a study by the Robin Hood Foundation revealing that 72% of the women who give birth from the ages of 15 to 19 are unmarried).

public assistance within five years after the birth.[167] In 1993 alone, benefits to families headed by teenager mothers cost the United States $34 billion.[168] As of May 1996, half of all adults receiving AFDC, or about 2 million people, had their first children when they were teenagers.[169]

The costs to taxpayers in 1996 was nearly $7 billion, including $2.2 billion in welfare and food stamp benefits, $1.5 billion in health care, $900 million in foster care and $1 billion for constructing additional prisons.[170]

In addition, young children, the illegitimate babies "score lower on [both] verbal and math achievement tests."[171] Throughout childhood, they continue to achieve lower grades, exhibit more behavioral problems, and suffer from higher rates of chronic mental and physical disorders.[172]

IV. Regaining the Costs of Providing Effective and Humane Social Programs for All those on the Poverty Continuum

Funding for the Personal Responsibility Act currently depends primarily on reducing other social programs, especially those providing benefits to legal immigrants.[173] As of July 1, 1997, legal immigrants are no longer guaranteed Medicaid and cash grants for dependent children, although states have the option of either continuing benefits or terminating them six months earlier.[174] Legal immigrants will also be ineligible for Social Security Insurance (SSI) or

167. *See* Donna St. George, *School Aims To Keep Teen Moms Off Welfare*, SAN JOSE MERCURY NEWS, Feb. 6, 1994, at A2. *See also Endangered Children*, *supra* note 164, at A22 (According to a report by the Carnegie Corporation, 46% of all teenage mothers go on welfare within four years of giving birth.).

168. *See Poor Mother, Poor Child*, *supra* note 163, at A14.

169. *See* Shogren, *Welfare Overhaul*, *supra* note 165, at A1.

170. *See id.* (noting that approximately 500,000 children annually are born to mothers aged 15 to 19). In June of 1996, the New York-based Robin Hood Foundation, released a comprehensive study of the long-term costs associated with teenage pregnancies which included welfare payments, publicly financed health care, placement in foster care in abuse and neglect cases and incarceration. *See* Holmes, *Public Cost*, *supra* note 166, at A19.

171. *Id.*

172. *See id.*

173. *See Getting Down To Details*, SAN JOSE MERCURY NEWS, Aug. 4, 1996, at A2. The benefit cuts for legal immigrants will reportedly account for about 40% of the savings in the bill, or about $22 billion over the next six years. *See also* Edelman, *supra* note 14, at 48.

174. *See Getting Down To Details*, *supra* note 173, at A2.

food stamps unless they served in the American military or were employed and paid taxes for ten years.[175]

Curtailing benefits to legal immigrants is not the most effective and humane way to fund welfare reform. President Clinton characterized the exclusion of legal immigrants from most federal benefits as "'just wrong,'" and has expressed his hope that the provision will be changed by future legislation.[176]

There are several alternative ways to recoup some of the expenses of welfare reform without the draconian human costs of scapegoating legal immigrants and their children. For example, streamlining some of the laborious procedures for obtaining public assistance would lead to reduced administrative expenses. Improving accounting and recording procedures to reduce the likelihood of overpayment errors and prevent the possibility of fraudulently-obtained benefits would also cut costs. Most importantly, stringent enforcement of the child support obligations of non-custodial parents would help recoup remaining expenses and might even provide additional funding.[177]

175. *See id.* According to President Clinton's task force on welfare reform, the number of non-citizens receiving SSI benefits increased fivefold from 1982 to 1992, and three-fourths of the recipients were elderly immigrants sponsored by their children. *See* Debra J. Saunders, *The Welfare Reform That Wasn't*, S.F. CHRON., Mar. 25, 1994, at A25 [hereinafter Saunders, *Welfare Reform*].

176. *See* Church, *Ripping*, *supra* note 2, at 20. Welfare experts predict that many long-time non-citizens, who are elderly and disabled, will not have the mental capacity to pass the citizenship requirements and will be discharged from nursing homes when their public assistance ends since they will no longer be able to pay. *See* Edelman, *supra* note 14, at 48. Non-citizens make up only a small percentage of welfare recipients. For example, as of August of 1996, only about 16% of California's AFDC recipients were non-citizens. *See* McKeever, *Aid and Employment, supra* note 67. Furthermore, *illegal* immigrants are not eligible for most welfare benefits in the first place. *See* Sam Howe Verhovek, *Stop Benefits For Aliens? It Wouldn't Be That Easy*, N.Y. TIMES, June 8, 1994, at A1 [hereinafter Verhovek, *Stop Benefits*]. Federal law requires welfare officials to check the immigration status of welfare clients through an I.N.S. database and denies illegal immigrants welfare benefits except for emergency health care and some school lunch programs and prenatal services. *See* Steve Johnson, *Initiative On Illegal Entrants Qualifies*, SAN JOSE MERCURY NEWS, June 24, 1994, at A1 [hereinafter Johnson, *Initiative*]. Most of the AFDC benefits which are currently paid to the families of illegal immigrants are derived through the *children* who were *born in the United States*. The children's' rights to welfare are the same as those of any other native-born Americans. *See* Verhovek, *Stop Benefits, supra*, at A12 (noting that some politicians, like California Governor Pete Wilson, have called for a constitutional amendment to take away citizenship rights from the American-born children of illegal aliens).

177. Furthermore, ending certain types of "corporate welfare" would result in savings of approximately $261 billion over the next five years. *See* David E. Rosenbaum, *Liberals Move To Fight "Corporate Welfare,"* N.Y. TIMES, Mar. 13, 1997, at A13. Reform of corporate welfare includes ending tax breaks benefiting insurance companies, corporations con-

A. Saving Administrative Costs By Streamlining Procedures for Obtaining Public Assistance

The costs of welfare would be reduced and recipients better served if the procedures for obtaining public assistance were streamlined and simplified. Currently, the administrative cost of "running welfare programs is rising more than twice as fast as the number of people on the rolls."[178] President Clinton's 1994 welfare task force has referred to the "simplification of assistance programs [as] the 'holy grail' of welfare reform—always sought, never realized," and has noted that "everyone agrees that recipients, administrators and taxpayers are all losers due to the current complexity."[179]

This complexity results partly from the fact that various welfare programs have "different and often inconsistent requirements overseen by different federal agencies and congressional committees."[180] Therefore, as a first step, Clinton's welfare task force recommended that cash assistance and food stamp programs for families adopt the same rules for assets and income.[181] The task force also suggested creating "one-stop-shopping centers," where welfare recipients who had not yet found employment could pick up their assistance checks,

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ducting business abroad and entertainment expenses of business executives. Congressmen John R. Kasich (R-Ohio), suggested eliminating the Agriculture Department's Market Access Program, which subsidizes advertising by exporters of food and wine. *See id.* Another current proposal, which has bipartisan support, would save approximately $281 million over five years by abolishing the Overseas Private Investment Corporation, which provides loans and insurance to U.S. companies that invest in developing countries. *See id.*

In December of 1993, Labor Secretary Robert B. Reich, suggested disallowing homeowners tax deductions for the interest on mortgages over $500,000 rather than putting the cap at $1 million. *See* DeParle, *Democrats Face, supra* note 113, at A12. The reduction would reportedly raise about $4 billion over a five year period. *See id.* Another suggestion is to limit the amount of agricultural subsidies paid to affluent farmers, such as those with non-farm incomes of more than $100,000 per year. *See Pondering Financing For Welfare*, SAN JOSE MERCURY NEWS, Apr. 21, 1994, at A4. According to the Congressional Budget Office, this would save about $300 million over five years. *See id.* Alternatively, more money could be collected from veterans or their insurance companies when the government treats them for conditions unrelated to their military service. *See id.* A final suggestion is to regulate the amount of tax-deferred interest that could build up in annuities. *See id.*

178. *Red Tape Blamed for Soaring Welfare Costs*, S.F. CHRON., Jan. 3, 1994, at A3 (citing 1994 Department of Health and Human Services report on the overly complex and bloated bureaucracy and noting that between 1987 and 1991, federal administrative costs for Medicaid, food stamps, and AFDC increased 43% (from about $3.4 billion to $4.9 billion) while the number of recipients increased an average of only 18% (from 53.3 million to 62.5 million).

179. *Id.*

180. *Id.*

181. *See* Catherine S. Manegold, *Clinton Is Seeking "One Stop" Assistance Centers for the Jobless*, N.Y. TIMES, Feb. 3, 1994, at A8.

obtain job training and receive career counseling and employment referrals.[182] In addition, access to social services might be eased by establishing a toll-free number for information regarding the availability of various public assistance and social service programs.[183]

B. Recouping Money By Decreasing the Likelihood of Overpayment Error and Preventing the Possibility of Fraudulently Obtained Benefits

The vast majority of welfare recipients are, at most, receiving only the benefits they are entitled to receive. The error rate for overpayment of welfare recipients, due to mistakes by agency employees and fraud and error by welfare recipients, was less than 5% in 1991—the lowest rate since overpayment statistics have been maintained.[184] Nevertheless, out of the $20.4 billion paid to 12.6 million low-income individuals that year, more than $1 billion was lost in the AFDC program because of a combination of mistaken overpayments and fraud.[185] Furthermore, according to the General Accounting Office, as much as 10% of the more than $150 billion that Medicaid recipients received in 1993 may have been obtained by fraud.[186]

There are several alternatives available to states to prevent overpayment due either to mistake or fraud. First, rent and utility payments can be deducted from a welfare recipient's T.A.N.F. check and paid directly to the Public Housing Authority or landlord. Second, food stamps could be replaced with picture identification credit cards which cannot be used for purchasing alcohol or tobacco. In addition to insuring that the basic needs of shelter and food are provided to all welfare recipients, this combination of direct payment for housing and utilities and credit cards for food would alleviate some of the illegal trafficking in food stamps[187] and save money.[188]

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182. *See id.* (quoting President Clinton as saying that the "welfare office ought to be . . . the job-training office").

183. In 1994, Angela Alioto, then President of the San Francisco Board of Supervisors, proposed the establishment of such a toll-free 800-number to enable the homeless to more easily access the City's social service programs. *See* Ben Wildavsky, *Alioto's New Plan To Help Homeless*, S.F. CHRON., Feb. 14, 1994, at A14.

184. *See* Gregory Spears, *Welfare Fraud Crackdown Planned*, SAN JOSE MERCURY NEWS, May 9, 1994, at A6 [hereinafter Spears, *Welfare Fraud*] (citing a 1991 Department of Health and Human Services survey).

185. *See id.* (noting that "[p]recisely how much money is siphoned away by fraud is unknown").

186. *See id.*

187. *See* Martin Anderson, *Get The Cheaters Off It*, SAN JOSE MERCURY NEWS, Jan. 11, 1994, at B7 (reporting that from 1991 to 1994, over 70 people had been convicted of illegal trafficking in food stamps, involving more than $60 million out of the $22 billion per year

States could also follow Maryland's lead and replace both welfare checks and food stamps with "Independence Cards" that give welfare recipients access to prearranged monthly sums.[189] Welfare recipients could use their "Independence Cards" to shop at supermarkets and other stores and to pay for public housing rent and utility bills,[190] with the amount of each purchase automatically deducted from the amount of monthly assistance, just as a purchase amount is deducted from the available credit line on a credit card. "Independence Cards" would virtually eliminate the expense of preparing and distributing welfare checks.[191] Further, "Independence Cards" could be improved by programming them against purchases of non-essential items such as cigarettes and alcohol. Additionally, picture identification and signatures imprinted on the Cards would prevent anyone other than the recipient from using them.

In June of 1994, Vice-President Albert Gore unveiled a federal program to allow electronic access to government benefits, including food stamps, using plastic automated teller machine cards, programmed with personal identification numbers to prevent thieves from using stolen cards.[192] The system is expected to be running in nine states in 1996 and nationwide by 1999.[193] According to the Vice President,

food stamp program). Several states have already received, or are seeking, federal approval for a so-called "cashing out" program in which food stamps are replaced with cash that recipients can spend as they choose. *See Welfare Reform—Cash Instead Of Food Stamps*, S.F. CHRON., Mar. 8, 1994, at A2. For example, as of March 1994, Alabama was seeking federal permission to continue its four-year "cash out" experiment for another two years while Colorado, Mississippi, Missouri, Oregon and Wisconsin had pending applications for initial federal approval. *See id.* Proponents of "cashing out" maintain that it will eliminate trafficking in food stamps and cut administration costs. *See id.* On the other hand, advocates for the poor fear that "cashing out" may lead "some recipients [t]o . . . spend their food money on rent, utilities or even drugs." *Id.*

188. For example, San Mateo County, California, saved $171,000 in the first year of its General Assistance voucher program for indigent individuals by providing direct payment for services to landlords and stores with only $58 in cash going to recipients. *See Welfare Voucher System Not A Big Money Saver*, S.F. CHRON., May 13, 1994, at D5.

189. *See* Thomas McCarroll, *No Checks. No Cash. No Fuss?*, TIME, May 9, 1994, at 60 (commenting on the 200% increase in electronic transfers since 1986 and the increased use of credit cards to pay for everything from taxi rides to phone calls to mortgages).

190. *See id.*

191. *See id.* Studies have shown that the most cost-effective means of delivering welfare payments to recipients with their own bank accounts is through direct deposits. *See Federal Benefits Through ATMs*, HONOLULU ADVERTISER, June 1, 1994, at A6. However, approximately 31 million people who receive some form of governmental assistance do not have bank accounts. *See id.*

192. *See Federal Benefits Through ATMs*, *supra* note 191, at A6.

193. *See id.* (The nine states include: Alabama, Arkansas, Florida, Georgia, Kentucky, Missouri, North Carolina, South Carolina and Tennessee.).

in addition to saving taxpayers $195 million annually, electronic delivery is expected to reduce fraud, relieve the "stigma" associated with receiving government aid, and simplify federal and state benefit programs.[194]

As for combating sophisticated schemes for fraudulently obtaining welfare, the Clinton administration has proposed creating an interstate computer database that would allow social workers to call up an applicant's wage and tax records or check a name against the benefit rolls in another state.[195] This database would help prevent scams like that engaged in by 425 welfare recipients in Newark, New Jersey, who stole more than $1 million by regularly commuting to New York City to collect a second monthly welfare check.[196] Likewise, Los Angeles County uses fingerprint checks to verify that applicants for AFDC are not already collecting welfare checks under other names.[197] Widespread use of such checks would stop the type of fraud committed by two sisters in Salt Lake City, Utah who took names from gravestones and collected welfare under false identities, all the while working under their real names.[198]

Most welfare overpayments, which technically constitute fraud, however, occur when welfare recipients take part-time jobs and fail to report their earnings because it would reduce their benefit checks. A recent study of fifty Chicago welfare mothers revealed that every single mother worked to supplement her welfare check, while only four reported any of their extra income to the welfare department, and none of those four reported all of their earnings.[199] Rutgers University sociologist Kathryn Edin, who conducted the study, concluded that the mothers failed to report their income because none of them could meet their families' basic living expenses on their benefit checks

194. *See id.* (noting that there will be an electronic audit trail for every transaction, making fraud much easier to detect and prosecute). The Consumers Union criticized Vice-President Gore's plan, calling it a "disaster for public assistance recipients" and noting that welfare recipients will have to pay a withdrawal fee for each automatic teller transaction. *See id.* Other critics of the credit card system fear that state bureaucrats could use the cards to pry into the personal lives of welfare recipients by tracing their electronic purchases. *See* McCarroll, *supra* note 189, at 61.

195. *See* Spears, *Welfare Fraud, supra* note 184, at A6.

196. *See id.*

197. *See id.* For example, Los Angeles County has fingerprinted General Assistance recipients since 1991, cutting their costs by $5.4 million, or more than half, in the first six months. *See Welfare Program Requiring Parents To Be Fingerprinted*, N.Y. TIMES, Mar. 31, 1994, at A14.

198. *See* Spears, *Welfare Fraud, supra* note 184, at A6.

199. *See id.*

alone.[200] Obviously, this type of "welfare fraud" would be reduced if the families were provided with sufficient economic resources to afford the basic necessities of life.

C. Vigorously Enforcing Child Support Orders Against Non-Custodial Parents

Undoubtedly, the most important alternative way to create a source of economic revenue is to vigorously enforce child support against non-custodial parents. There is little controversy about the need for such enforcement, not only against non-custodial parents of children receiving public assistance but against all "dead beat" parents, whether or not the child is receiving welfare. "Provisions to enforce child support orders" have long had "widespread public support," endorsement of the Clinton administration and bi-partisan support in Congress.[201]

Indeed, the nationwide lack of child support is truly shocking. Two-thirds of women with children by an absent father collect no child support[202] and only about 25% of women receive the full amount they are owed.[203] Support is collected for less than 20% of the nation's children, with states collecting an average of only $530 per year per child.[204] The situation is especially dire in California, where only 13% of the state's children receive an average of only about $380 per year per child,[205] meaning that more than three million California children are getting no economic support at all from the absentee parent and the rest are getting an average of less than $40 per month.[206]

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200. *See id.*

201. Gregory Spears, *Tracking Deadbeat Parents*, SAN JOSE MERCURY NEWS, June 16, 1994, at A4 [hereinafter Spears, *Tracking*].

202. *See* Christopher Scanlan, *The Fathers Who Run, And The People Who Track Them*, SAN JOSE MERCURY NEWS, Mar. 13, 1994, at H1.

203. *See* Sonia Nazario, *State To Chase Deadbeat Dads Across Nation*, S.F. CHRON., May 16, 1994, at A3. Studies have shown that most non-support cases involve recalcitrant fathers. For example, a 1994 study of Maine's non-supporting parents revealed that fathers were the deadbeats in 97% of the cases. *See* Glenn Adams, *Licenses of "Deadbeat Dads" Yanked*, SAN JOSE MERCURY NEWS, June 28, 1994, at A8.

204. *See* Steve Johnson, *Child Support Collection Among Lowest In Nation*, SAN JOSE MERCURY NEWS, May 1, 1996, at B3 [hereinafter Johnson, *Child Support*].

205. *See id.* (Annual Report to Congress by the U.S. Department of Health Services' Office of Child Support Enforcement, ranked California 44th nationwide for "overall performance" in support collection.). According to a January 1996 study by researchers at Columbia and Princeton Universities, California and Maryland were the "least effective states" in collecting child support throughout the 1980s and early 1990s. *Id.*

206. *See* Joanne Jacobs, *It's Way Past Due For Deadbeat Parents*, SAN JOSE MERCURY NEWS, May 2, 1996, at B9 [hereinafter Jacobs, *Way Past Due*].

Moreover, in most cases, this nationwide lack of support is not the result of the non-custodial parent's inability to pay.[207] Eighty percent of non-custodial fathers spend less than 15% of their income on child support,[208] meaning that absent fathers could pay approximately three times more in child support than they are paying.[209]

Child support payments for children receiving welfare assistance are also abysmal. "Only $13 billion each year is collected in child support although the potential amount exceeds $47 billion."[210] As of May of 1996, approximately half of the children of non-supporting parents were receiving welfare assistance, with only 11.5% of the welfare costs being recouped from the absentee parents.[211] In fact, experts say unpaid child support is a prime reason that more than one in five American children live in poverty.[212]

On the other hand, of the one million children born out of wedlock in the United States, two-thirds have no legal father and, consequently, no court order guaranteeing them support.[213] It is thus clear that, as a first step in increasing child support, paternity must be established at the earliest opportunity.

The Personal Responsibility Act requires mothers to identify the fathers of their children as a condition of receiving assistance.[214] This should result in many fathers being identified even before the child is born since most women seek welfare assistance during their preg-

207. *See* Vanessa Gallman, *Advocates Urge Adding Dads To Welfare Reform Equation*, SAN JOSE MERCURY NEWS, June 19, 1994, at A8 [hereinafter Gallman, *Advocates*]. According to a March 1994 study of census data, conducted by the Urban Institute, a majority of "dead beat" parents are financially able to provide support. *See id.*

208. *See id. See also Spears, Tracking, supra* note 201, at A4. There was also no significant disparity in income between absent fathers who pay child support and those who do not. *See* Scanlan, *supra* note 202, at H5 (noting that the average personal income of fathers who didn't pay child support in 1990 was $20,215 compared to $26,475 for fathers who paid). In addition, absent fathers have higher incomes and lower poverty rates than mothers raising children alone. *See id.* However, one-third of all non-custodial fathers are unemployed or among the working poor. *See* Gallman, *Advocates, supra* note 207, at A8.

209. *See* Scanlan, *supra* note 202, at H1.

210. Nazario, *supra* note 203, at A3.

211. *See* Jacobs, *Way Past Due, supra* note 206, at B9 (noting that the taxpayers must pick up the bill when the absentee parent does not).

212. *See* Tamar Lewin, *Private Firms Help Single Parents Get What's Due*, N.Y. TIMES, May 21, 1994, at Y1.

213. *See* Scanlan, *supra* note 202, at H5. *See also* Spears, *Tracking, supra* note 201, at A4 (noting that 76% of never-married mothers had no order from the court to enforce child support as compared with only 28% of previously married mothers).

214. *See* Personal Responsibility Act § 103(a) (codified as amended at Social Security Act § 408(a)(2), 42 U.S.C. § 608). Maryland and Virginia also terminate benefits of mothers who will not cooperate in establishing paternity. *See* Cindy Loose, *D.C. Options For Welfare Cover Range*, WASH. POST, Jan. 5, 1997, at B1.

nancy. However, denying assistance to a mother who does not know who fathered her child or his current whereabouts only punishes the child. Therefore, rather than requiring such identification as a condition of receiving welfare, a slightly lesser standard should be imposed, such as mandating that social service agencies make "every effort" to establish paternity and locate the father. Mothers could be required to provide additional information regarding the fathers, such as address, place of employment, and Social Security number, to help identify and locate fathers now and in the future.[215]

If the identity of the father has not been established at the time of the baby's birth, it seems advisable to require hospitals to make "every effort" to establish paternity at that time since more than 80% of unmarried parents are in contact with one another at the time of the birth of their child.[216] Hospitals could also be required to determine the relationship and to record pertinent identification information about anyone visiting the mother or the baby. This would likely result in identifying some fathers even in cases where the mothers were unwilling or unable to provide the information at the time they applied for public assistance.

Once the father's identity and location is determined, "every effort" should be made to secure a court order for support.[217] The time of the baby's birth would be the ideal time to start this process, perhaps by offering voluntary paternity establishment at hospitals in which a signed paternity affidavit from the mother would have the effect of a final judgment at law, closing off later legal challenges.[218] Alternatively, once the mother leaves the hospital, she could be required to seek a court order for child support as a condition of continuing to receive public assistance. Social workers could provide welfare recipients with any needed assistance in filling out the necessary court order forms and obtaining any required documentation.

After a court order is obtained, it must be enforced by collecting the child support payments from the non-custodial parent, though studies show that parents under such court orders frequently shirk re-

215. In June of 1996, the Clinton administration established new initiatives requiring this type of identification from all mothers as a condition of receiving welfare. *See* Pear, *Clinton Aids*, *supra* note 9, at A1.

216. *See* Carolyn Lochhead, *Congresswomen Push To Make Fathers Pay*, S.F. CHRON., June 9, 1994, at A3.

217. *See* Lewin, *supra* note 212, at Y7. At the present time, states seeking paternity orders succeed for only about one-third of the 1.5 million babies born each year to unmarried women. *See id.*

218. *See* Lochhead, *supra* note 216, at A3 (This plan was previously proposed in a bipartisan bill, sponsored by the House of Representatives' Womens' Caucus.).

sponsibility for their children.[219] The Personal Responsibility Act creates new hire reporting registries at both the national and state levels, so that child support withholding can begin whenever a non-supporting parent changes jobs.[220] The Act also requires states to report delinquencies in child support payments to credit bureaus.[221]

Similarly, in 1994, President Clinton proposed a comprehensive plan for tracking absentee parents to assure the collection of child support. The Plan involved establishing a national computer clearinghouse with state registries of parents owing child support, which are regularly updated and matched with nationwide employment records.[222] This computer system facilitated collection of back payments from out-of-state parents who were some of the worst non-support offenders. They account for nearly one-third of child-support cases but contribute only 10% of the child support collected.[223]

Under the Clinton plan, lists of parents who are delinquent in their payments are matched periodically against a national data bank of employed workers, compiled from the W-4 tax-withholding form filled out by all new employees.[224] When a match is found, the amount of child support is deducted from the recalcitrant parent's earnings before he or she gets paid.[225] Withholding child support payments directly from wages, avoids the bureaucratic quagmire which

219. As of June of 1994, an "absolutely staggering" $34 billion in child support payment orders were unpaid each year throughout the nation. *See id.* (arguing that "ultimately taxpayers are the victims when they pick up the bill for deadbeat dads"). *See also* Lewin, *supra* note 212, at Y7 (noting that, according to an Urban Institute study, children in single-parent families would get $34 billion if all child-support obligations were met). Nationwide, of the 60% of non-custodial parents who were subject to a child support order, only one-half pay the full amount they are obligated to pay. *See When Dad Doesn't Pay*, SAN JOSE MERCURY NEWS, Mar. 6, 1997, at B8. In California, according to the Department of Social Services, approximately half of the two million parents owing child support as of September of 1995 were under court order to make payments, but approximately 300,000 of these parents were still paying nothing toward support of their children. *See* Scott Thurm, *Penalty For Child-Support Shirkers*, SAN JOSE MERCURY NEWS, Sept. 29, 1995, at B3. Part of the problem in California is that the economic incentives paid to county collection agencies are based on how many cases are handled, rather than on how much money is collected. *See id.*

220. *See* Personal Responsibility Act § 313 (codified as amended at 42 U.S.C. § 654). As of June of 1996, information regarding new hires was being collected by 25 states. *See* Pear, *Clinton Aids*, *supra* note 9, at A1.

221. *See* Personal Responsibility Act § 367 (codified as amended at 42 U.S.C. § 666(a)(7)).

222. *See* Spears, *Tracking*, *supra* note 201, at A4.

223. *See* Nazario, *supra* note 203, at A3.

224. *See* Spears, *Tracking*, *supra* note 201, at A4. "Failure to include a child support order on the W-4 form would constitute tax fraud." Lochhead, *supra* note 216, at A3.

225. *See* Spears, *Tracking*, *supra* note 201, at A4.

can result from involving child support agencies in two states and can often give delinquent fathers time to change jobs before collection orders go through their present circuitous route.[226]

The effectiveness of garnishing the wages of deadbeat parents has already been demonstrated at the state level. For example, in the first five months of California's wage-garnishment pilot program, the State collected $11.2 million in overdue support from fathers residing within California.[227] The state forwarded its most difficult collection cases to California's Franchise Tax Board which then tracked down recalcitrant parents with computer databases used to collect delinquent state taxes and capable of locating anyone with a Social Security number.[228] In one case involving a professional rapper, the tax board was able to locate the absentee father's bank account and collect $105,000 in child-support payments, approximately $20,000 of which was used as reimbursement to the government for past welfare payments.[229] Massachusetts has also used its Franchise Tax Board effectively to locate missing parents, find hidden assets, freeze bank accounts, and garnish wages.[230]

Another measure which has proven effective is suspending or revoking licenses of non-custodial parents who fail to make child support payments. The Personal Responsibility Act gives states the authority to withhold, suspend, or restrict the use of drivers', professional, occupational and some recreational licenses. Such restrictions would prevent delinquent parents from obtaining jobs in various occupations until they paid their back support.

The efficacy of such an approach is again illustrated at the state level. For example, in 1993, the Maine state legislature, in response to overdue child support payments totaling approximately $150 million per year, passed the Family Financial Responsibility Act, permitting the revocation of professional and driver's licenses of parents who refused to pay back child support.[231] In accordance with the Act, the

226. *See* Lochhead, *supra* note 216, at A3.

227. *See* Nazario, *supra* note 203, at A3 (noting that the program will be expanded to target the 11,600 parents, mostly fathers, living outside California).

228. *See id.* California agencies are also endeavoring to locate recalcitrant parents by establishing links with other state databases, such as matching information regarding missing or defaulting parents with the Department of Motor Vehicles database. *See* Jacobs, *Way Past Due, supra* note 206, at B9.

229. *See* Nazario, *supra* note 203, at A3.

230. *See* Jacobs, *Way Past Due, supra* note 206, at B9.

231. *See Deadbeat Dads In Maine Lose Driving Rights*, S.F. CHRON., June 28, 1994, at A12; *see also* Glenn Adams, *Licenses of "Deadbeat Dads" Yanked*, SAN JOSE MERCURY NEWS, June 28, 1994, at A8 (indicating that recalcitrant parents are given an opportunity to

state then mailed notices threatening license revocation to approximately 20,000 parents who were at least ninety days behind in child support.[232] As a result of the notices, as of June of 1994, Maine had collected $11.5 million, or nearly $1 million per month, in back payments.[233]

Additional suggestions[234] for obtaining child support include taking money out of tax refunds of parents who refuse to make child support payments[235] or following Massachusetts' lead by making willful non-payment of child support a felony punishable by as much as a five-year prison term.[236] Indeed, even the threat of requiring a father to work off his child support debt may be sufficient. When Wisconsin

avoid revocation by working out a payment schedule). Similarly, in Michigan, since December of 1995, parents who fail to support their children lose their driver's and professional licenses. *See* Peter T. Kilborn, *Steps Taken On Welfare In Michigan*, N.Y. TIMES, Nov. 1, 1995, at A11. Wisconsin also takes away the driver's licenses of parents who "don't cough up child support." *Deadbeat Parents*, TIME, Jan. 13, 1997, at 21.

232. *See Deadbeat Dads In Maine Lose Driving Rights*, *supra* note 231, at A12. In June of 1994, Maine followed through on the threat of license revocation in the case of eight fathers who together owed more than $140,000 in back child support. *See* Adams, *supra* note 203, at A8 (noting that the fathers automatically got 20-day "due process periods" to arrange to repay the child support or prove state error).

233. *See* Gibbs, *Cycle*, *supra* note 5, at 30.

234. The basic components of the child support recoupment program in England might also be imitated here. Since April of 1993, Great Britain has operated the Child Support Agency, with the goal of reducing the burden on taxpayers by using stepped up collections against absent parents to offset the cost of social welfare benefits. *See* William K. Stevens, *In Tough Mood, Britain Pursues Absent Parents*, N.Y. TIMES, Feb. 7, 1994, at A1 (noting that social welfare benefits are received by 76% of Britain's 1.3 million single-parent families). The Agency hopes to save British taxpayers $800 million this year and $1.35 billion or more ultimately, against a total annual bill for welfare payments to single-parent families of nearly $10 billion. *See id.* The program sets a formula requiring the absent parent to provide at least half of his or her income, minus allowances for housing and other personal expenses, up to the amount of the minimum financial requirement for the child's support as calculated by the Agency. *See id.* (commenting that the formula approach has been used effectively in Australia and by some American states and that it helps eliminate the wide variations in support orders imposed by judges). Single mothers receiving welfare benefits are required to identify the fathers even if the women fear retribution from the men. *See id.* To insure compliance, the Agency has been given broad powers to track wayward fathers by examining tax and employment records and by "dunning" them if necessary. *See id.* If all else fails, the Agency can seek the arrest of a non-paying parent. *See id.* Many British fathers complain that the program does not (1) sufficiently consider divorce agreements under which the mother receives the family home or lump-sum payment in the divorce settlement or (2) give enough weight to the financial needs of second families. *See id.*

235. *See id.* (indicating that 95% of the 600 Americans in the Yankelovich survey supported taking money out of paychecks and tax refunds of parents who fail to make child support payments).

236. *See* Gibbs, *Cycle supra* note 5, at 30.

required non-paying fathers to work at community-service jobs, four out of five came up with the money on their own.[237]

A final innovative idea for increasing the amount of child support paid and collected would be to establish a "child support system," whereby the government would pay the full amount of the child support order to the custodial parent and then seek reimbursement from the non-custodial parent. This system would have the advantage of guaranteeing that children would have the financial support they need throughout their minority years. It would also put more pressure on enforcement agencies to collect child support from the recalcitrant parents since the government, rather than the custodial parents, would be owed the money. Enforcement agencies would, in turn, be more aggressive in their collection endeavors, resulting in more deadbeat parents meeting their financial obligations to their children.

V. Designing Effective and Humane Solutions to Enable All Welfare Recipients to Reach the Goal of Economic Independence and to Avoid the Threat of Governmental Child Abuse

A 1996 Public Agenda Foundation study found that the number one complaint about America's welfare system, even among people receiving welfare, was that it undermines the work ethic.[238] For example, 67% of welfare recipients felt that public assistance encourages dependency, 71% believed that receiving welfare was more lucrative than working, and 92% agreed with the statement that "welfare mothers will gain self-respect by working and their children will learn the importance of work."[239]

Responding to this widespread public concern, the Personal Responsibility Act imposes a number of work participation requirements, with stiff financial penalties, on the states. Under the Act, 25% of all one parent families must engage in at least twenty hours of work

237. *See* Joanne Jacobs, *We Could End Welfare—With Work*, SAN JOSE MERCURY NEWS, Jan. 31, 1994, at B7 [hereinafter Jacobs, *Could End Welfare*].

238. *See* Joanne Jacobs, *The Goal Is To Make Working A Better Deal Than Welfare / Stay Tuned To The Wisconsin Experiment*, SAN JOSE MERCURY NEWS, May 9, 1996, at B11 [hereinafter Jacobs, *Goal*] (noting that the complaint that welfare "costs too much in tax money" did not rank as high).

239. Jacobs, *Goal, supra* note 238, at B11. In January of 1994, in what was termed "a sign of widening consensus, the American Public Welfare Association endorsed" the recommendation that "most welfare recipients be required to accept work after" receiving two years of public assistance. *Administrators Of Welfare Urge Overhaul*, S.F. CHRON., Jan. 12, 1994, at A8.

each week, and 75% of all two parent families must engage in at least thirty-five hours of work.[240] If an adult refuses to participate in the work requirements, states must reduce the family's grant by a pro rata amount or, at the states' option, by a higher amount, including terminating help to the entire family.[241]

In meeting these work participation requirements, only 20% of the required "work" may be met by participation in high school, vocational, or training programs (which can be of no more than one year duration).[242] "Work," under the Act, also does not encompass basic education for non-teenagers or job searches for longer than four consecutive or six total weeks.[243] States face financial penalties of up to 5% for the first year they fail to comply with the work participation requirements, with greater penalties in subsequent years, up to a maximum of 21% of the block grant.[244]

In designing state programs to meet the Act's work requirements, careful consideration must be given to the various components which are needed to create a comprehensive "workfare" program which will meet the dual goals of (1) mandating that all able-bodied welfare recipients participate in a "workfare" program as a condition of receiving public assistance and (2) assuring that no children are deprived of life's essentials on account of their parents' inability to locate employment in the private sector.

The first goal can be achieved by maximizing the opportunity for all welfare recipients who participate in the workfare program to ultimately obtain employment in the private sector and achieve economic independence. Teenage welfare recipients should be able to satisfy their workfare requirements by completing high school, which will make them more competitive in the private sector job market and less likely to need welfare assistance in the first place. All welfare recipients who are substance abusers should first receive treatment for their addictions so that they can become able-bodied participants in the workfare program. Welfare recipients with preschool children should

240. *See* Personal Responsibility Act § 103(a) (codified as amended at Social Security Act, §407(b)(5), 42 U.S.C. § 607).

241. *See id.*

242. *See id.* Starting in 1999, however, individuals may satisfy participation requirements by at least 20 hours of work, with the remaining required hours met through work-related or high school equivalency education. *See id.*

243. *See id.*

244. *See id.* States have six months from the date of submission of a state plan to comply with the requirements. *See id.* States will be penalized 5% in the first year for noncompliance with the work participation requirements and 2% for each successive year. *See id.*

be assured of child care while they work, either through private day care facilities or through publicly-funded "Carefare Centers," staffed by fellow welfare recipients. Finally, welfare recipients seeking private sector employment should be offered career counseling, job training, and social service assistance in locating and obtaining jobs.

By the same token, recipients who are unable to find employment in the private sector within the two year time limit should not have their public assistance terminated. Instead, they should be offered "employment insurance" in the form of government-financed jobs. Through their employment in the public sector, some recipients will be able to "earn" their T.A.N.F. checks by doing community service work, thereby benefiting the community, enabling the workers to gain valuable practical experience, and possibly even preparing them to obtain private sector jobs. Other recipients, most likely those who are parents of preschool children, should be able to opt to satisfy their workfare requirement by providing childcare for children of other welfare recipients as part of the "carefare" program. Rather than being subject to an arbitrary time limit on the receipt of welfare, such publicly-financed jobs would also meet the second goal of assuring that no child is denied public assistance because their parent is unable to obtain a private sector job.

The solution to teenage pregnancy's impact on the welfare system lies in providing a combination of education, prevention, and other social services to discourage teenage parenthood and encourage high school graduation. Ideally, efforts should be made to prevent pregnancies from occurring at all during the teenage years and to motivate teenagers to complete high school with the ultimate goal of achieving financial independence. The efficacy of this approach was demonstrated in a survey conducted by the Clinton administration in June of 1994 showing that about 80% of children born to unwed women before finishing high school are living in poverty, compared with only 8% if the teenagers finish high school, marry and defer having children until age twenty.[245] There are already a number of states which have received federal waivers to experiment with conditioning the amount of a families' welfare assistance on the children's attendance and success in school. In at least ten states, federal approval has been obtained to cut welfare payments to women whose children skip

245. *See* DeParle, *President to Campaign, supra* note 157, at A9. *See also More Children Growing Up In Poverty, supra* note 60, at A7 (noting that 40% of parents in working poor families are high school dropouts).

school.[246] New York is proposing both to cut benefits in cases of chronic truancy and to increase them for good attendance.[247] In California, welfare families with "students with a 'C' average or better will receive a cash bonus of $100 per report card, while students who [don't] maintain at least a 'D' average will have their benefits cut by the same amount."[248] When the students graduate from high school, they receive a cash bonus of $500.[249]

In addition to simply providing economic incentives to remain in high school, there are also several comprehensive programs which have achieved considerable success in motivating teenagers to remain in high school and defer having children until after they graduate.[250] For example, Atlanta, Georgia's Postponing Sexual Involvement Program promotes abstinence among eighth graders by using older students as mentors to encourage the postponement of sexual involvement and by referring sexually active teens to a clinic for contraceptives and counseling.[251] While these efforts have delayed the onset of sexual activity in a small sample of participants by a year and have reduced pregnancies by about one-third,[252] an economist at the University of Pennsylvania cautions that such success stories are often based on imprecise research techniques, the results impossible to replicate on a larger scale.[253]

Nevertheless, at least one large scale program using a similar approach, New York's Family Life and Sex Education Program of the Children's Aid Society, has achieved sufficient success that it is now being replicated in ten cities throughout the United States.[254] Like Georgia's Postponing Sexual Involvement Program, the New York

246. *See* Patricia Edmonds, *Making Parents Pay For Their Kids' Truancy*, HONOLULU ADVERTISER, June 6, 1994, at B1; DeParle, *Welfare Debate, supra* note 33.

247. *See* Kevin Sack, *New York State Shifting Focus Of Welfare To Job Placement*, N.Y. TIMES, May 21, 1994, at Y8 [hereinafter Sack, *New York*].

248. Bernstein, *supra* note 66, at B3.

249. *See State To Pay Welfare Parents For Schoolwork*, S.F. CHRON., Mar. 2, 1994, at A2.

250. Planned Parenthood of Leadville, Colorado has experimented with using financial incentives to deter teenagers from becoming pregnant. *See* Christine Gorman, *Dollars For Deeds*, TIME, May 16, 1994, at 51. The agency pays teenagers $1.00 for each day they do *not* become pregnant. *See id.* The agency has found that when the young women come to collect the money, they often remain to talk with counselors about their lives. *See id.*

251. *See* DeParle, *President to Campaign, supra* note 157, at A1, A12.

252. *See id.*

253. *See id.* For example, a similar program, Teenage Parent Demonstration provided intensive counseling and education to 6,000 teenage mothers in New Jersey and Illinois but was not successful in keeping the mothers from having a second child. *See id.* Even worse, a Chicago program made unwed mothers *more* likely to have an additional child, perhaps because they had developed more competence through the program. *See id.*

254. *See* Richard Lacayo, *Want A Baby? First Get A Life*, TIME, June 20, 1994, at 33.

Program also tries to prevent teenagers from becoming parents before high school graduation.[255] It includes private tutoring, weekly sports lessons, career counseling, summer employment, and guaranteed admission and full tuition to Manhattan's Hunter College for all those who graduate from the program without giving birth.[256] By June, of the 250 graduates of the program, only eight of the girls and two of the boys had become parents of illegitimate children.[257] In addition, 41% of the graduates went on to college.[258] Given the widespread availability of college grants and loans to qualified admittees from low income families, there would appear to be few financial barriers to guaranteeing college tuition to all welfare recipients who graduate from high school and are accepted at any college or university.

Further, teenagers who attend high school during and after their pregnancies are more likely to remain in school and graduate than those who drop out of school before having their child.[259] Thus, the Personal Responsibility Act seems clearly to be on the right track by conditioning welfare assistance on remaining in high school. Similarly, twenty-six states already have provisions requiring that unwed teenage mothers stay in school and denying benefits to those who drop out.[260] On the other hand, young teenage parents also likely need counseling and support, perhaps including financial incentives and/or disincentives, to encourage them to meet this goal.

In Ohio, the Learning, Earning and Parenting (LEAP) program has been successful in motivating teenagers who have had or are expecting children to complete their high school education by increasing the welfare checks of parents who remain in school by $62 and decreasing the checks of parents who drop out of school by the same amount.[261] In addition to the financial incentives and disincentives, LEAP provides some counseling and assistance with child care.[262] Nearly half of the teenage welfare parents who took part in LEAP

255. *See id.*

256. *See id.*

257. *See id.*

258. *See id.*

259. *See Clinton Proposal Nudges Teen Welfare Moms*, SAN JOSE MERCURY NEWS, May 7, 1996, at B6 (noting that teenage parents "who had already failed academically had a hard time returning to school regardless of the financial rewards or penalties").

260. *See id.*

261. *See* Dirk Johnson, *Wisconsin Welfare Effort On Schools Is A Failure, Study Says*, N.Y. TIMES, May 19, 1996, at Y11.

262. *See id.*

went on to graduate from high school or to receive their General Educational Development (G.E.D.) diploma.[263]

Another successful program at the Laurence G. Paquin School in Baltimore, Maryland, involves 300 teenage women who are expecting or have given birth.[264] The young mothers attend both academic and child care classes while their babies are in the school's nursery.[265] Counselors are available if the mothers want to pursue a college education.[266] If they want to seek employment, they learn industrial sewing and move toward economic self-sufficiency by selling a line of baby clothes in a downtown Baltimore store.[267]

Solutions are also needed to address the impact of drug abuse among welfare recipients upon the welfare system. According to a 1994 Columbia University study, 40% of the most chronic welfare mothers are serious drug abusers and many are emotionally disturbed.[268] The Act's imposition of arbitrary time limits on the welfare eligibility of long-term recipients will not solve their problems or transform them into productive members of society. Rather, comprehensive treatment programs are needed to enable chronic welfare recipients to become able-bodied participants in workfare programs and ultimately economically self-sufficient. There are also *non*-chronic welfare recipients who need treatment for their substance abuse problems before they can be considered able-bodied participants in workfare programs.[269]

263. *See id.* (comparing the statistic with a success rate of 39% in a control group). *See also* James A. Finefrock, *The Poverty Of Welfare Reform*, S.F. EXAMINER, Dec. 19, 1993, at A20 (noting that, as a result of the program, more that 60% of the young mothers stay in school).

264. *See* St. George, *supra* note 167, at A2.

265. *See id.*

266. *See id.*

267. *See id.*

268. *See Time Limits Are A Fatal Flaw In Reform*, SAN JOSE MERCURY NEWS, May 27, 1996, at B6.

269. The precise number of recipients with substance abuse problems is difficult to determine. A study reported in June of 1994 by the Center on Addiction and Substance Abuse at Columbia University concluded that one in four mothers on welfare uses illicit drugs or drinks excessively. *See Welfare-Roll Study Finds Vast Drug Use*, N.Y. TIMES, June 28, 1994, at A11 (noting that in 1991 more than one million parents receiving AFDC were alcohol and drug abusers or addicts). *See also* Taylor, *supra* note 151, at B11 (reporting that the study revealed that more than one-third of the mothers on AFDC have drug or alcohol problems). However, the Department of Health and Human Services criticized the study's definition of abuse as much too broad. *See Welfare-Roll Study Finds Vast Drug Use*, *supra*, at A11 (noting that the Center defined alcohol abuse as drinking five or more drinks at a sitting, two or more times per month and drug abuse as the use of illicit drugs at any time during the past year). The Department's own analysis suggested that only 4.5% of AFDC recipients have abuse problems which would prevent them from participating in

In order to identify welfare recipients who need treatment, all workfare program participants should be screened for physical or psychological disabilities, including substance abuse, which would preclude them from being considered able-bodied. Disabled applicants should be required to obtain treatment before participating in any workfare program. And while such applicants are enrolled in treatment programs, payments should go directly to the treatment facility.

Welfare recipients should be required to continue their participation in treatment programs as a condition of their receipt of public assistance, so long as treatment is needed and is available. If no treatment programs are available, the disabled applicants should continue to receive public assistance with money spent to establish additional treatment facilities. This additional expenditure is a cost effective alternative to causing disabled indigents to spend a lifetime on public assistance.

At least one state has already started requiring welfare recipients to receive treatment for their substance abuse problems. Since May of 1996, Wisconsin has required substance abusers to attend rehabilitation treatment programs.[270] Work opportunities are provided through "transitional jobs," extended on a case by case basis, to permit disabled recipients to "engage in work consistent with their capabilities, such as sheltered workshops."[271] Wisconsin's method of transitioning substance abusing welfare recipients from rehabilitation to protected workshops to mainstream employment seems highly advisable and should serve as a model for other state programs.

The impact of insufficient child care resources on the welfare system must also be addressed. It is essential to ensure full participation by welfare recipients in workfare programs so that all recipients have the opportunity to achieve economic independence.[272] A major stumbling block to full participation, however, is the unmet need for economically feasible child care. Currently, recipients' hopes for economic independence and the effectiveness of the work requirements threaten to be undermined by the number of exemptions which

employment or training programs. *See id.* At the state level, California's Department of Social Services Director Eloise Anderson estimates that only 20% of the 980,000 parents in the state who receive AFDC are unemployable because of drug addition or illness. *See* Jordan, *Welfare Chief, supra* note 142, at B3.

270. *See* Jacobs, *Goal, supra* note 238, at B11.

271. Judith Havemann, *Clinton Embraces Plan For 'Bold' Welfare Change*, SAN JOSE MERCURY NEWS, May 19, 1996, at A6.

272. In a 1994 study, 92% of the 600 Americans surveyed supported requiring all able-bodied welfare recipients to work or learn a job or skill. *See* Gibbs, *Cycle, supra* note 5, at 24, 26.

will ultimately have to be granted to parents by both federal and state programs.

Under the Personal Responsibility Act, a single mother with a child under the age of six is excused from the work requirements if she can prove that child care is unavailable; otherwise, she risks the reduction or termination of her welfare benefits.[273] In addition, the Act permits states to exclude parents with a child under one year of age.[274]

Similar exemptions have curtailed the effectiveness of state-run workfare programs in achieving economic independence for all their welfare recipients. For example, Georgia has exempted anyone caring for a child under fourteen from its requirement that any able-bodied welfare recipient who turns down a minimum-wage job will be denied benefits,[275] or, as a practical matter, about 94% of the 120,000 adult Georgians on welfare.[276] It is thus clear that by utilizing the skills of all able-bodied welfare recipients, including those with children over the age of one year, a far higher percentage of recipients would be able to participate in a workfare program leading to economic independence.

One way to achieve full participation by parents in the workfare program would be to provide increased benefits for child care. Unfortunately, the Congressional Budget Office estimates that the Personal Responsibility Act's child care allocations are more than $1 billion less than the amount needed to enable each state to comply with the Act's work participation requirements.[277] For example, it is estimated that, under the Act, California will receive approximately $900 million in new child care funds through fiscal year 2002.[278] However, if Cali-

273. *See* Personal Responsibility Act § 103(a) (codified as amended at Social Security Act § 407(e), 42 U.S.C. § 607(e).

274. *See id.* One reason for the changed attitude toward requiring even the mothers of young children to work is that most middle-class mothers now hold jobs. *See* DeParle, *Gauging, supra* note 54, at E3. There is also a sense that many welfare mothers, themselves young and uneducated, do not do a good job in the home and that work will set a positive example. *See id.*

275. *See* Lacayo, *supra* note 34, at 25, 27. States vary as to the child's age, which will exempt the mother from otherwise mandatory work requirements. Wisconsin requires the state's 53,000 welfare mothers to go to work when their babies are twelve weeks old. *See* Goodman, *Politicians, supra* note 99, at B7. Maryland exempts women with children under one year of age, while Virginia exempts women with children up to eighteen months old. *See* Loose, *supra* note 214, at B1.

276. *See* Lacayo, *supra* note 34, at 25, 27.

277. *See* Edelman, *supra* note 14, at 50. States are authorized to spend up to 30% of their block grants for child care or other social services. *See id.*

278. *See* CAL. SENATE HEALTH AND HUMAN SERVICES COMMITTEE, PRELIMINARY FACT SHEET ON PENDING FEDERAL LEGISLATION (HR 3734), Aug. 10, 1996, at 1, 2.

fornia meets the Act's required "work participation" rates, it is anticipated that this amount will be half a billion to one billion dollars *less* than the state will need by fiscal year 2002.[279]

Obviously, if full participation in the workfare program is to be achieved, a great deal of additional money will need to be allocated by the state or some other source to compensate for this deficiency.[280] Perhaps more importantly, the Act's child care provisions require that parents work outside the home. Welfare parents do not have the option under the Act of satisfying their work participation requirements while still being the primary care givers for their children.

One alternative for meeting the needs for child care would be a "Carefare" program allowing parents to satisfy their work requirements while their children are with them. Participating welfare recipients, "Carents," would earn their welfare checks by providing cost free child care at government-funded Carefare Centers, on behalf of other recipients enrolled in job training, seeking employment or working.[281] Funding for these government-sponsored Carefare Centers could be drawn from the money already allocated to defray childcare expenses in the Personal Responsibility Act.

Carents would be trained and supervised by the Directors of the government-funded Carefare Centers,[282] allowing them to get training in the job and to spend time with their children in the interim. By

279. *See id.*

280. For example, Wisconsin plans to apply much of its $40 million in extra welfare spending under Wisconsin Works Plan (W-2) for child care based on a projection that the number of children in subsidized day care will double to 70,000 due to the requirement that all mothers, with children older than 12 weeks, obtain employment. *See* Church, *Ripping, supra* note 2, at 18, 21.

281. California's Department of Social Services Director Eloise Anderson estimates that 80% of the state's AFDC recipients possess some skill, such as parenting experience, which would make them employable in some capacity, such as providing child care. *See* Jordan, *Welfare Chief, supra* note 142, at B3. *See also* Gibbs, *Cycle, supra* note 5, at 24, 26 (noting that 90% of the 600 Americans in the Yankelovich survey support spending money to provide free day care to allow poor mothers to work or take classes).

282. Federal standards for the quality of care should be established. In 1990, when Congress established a program of Federal grants for child care, the suggestion was made, and rejected, that federal standards be mandated. *See* Robert Pear, *Audit Of Day Care Centers Finds Widespread Problems*, N.Y. TIMES, Feb. 11, 1994, at A8 (identifying the Children's Defense Fund and Hillary Rodham Clinton as two proponents of the plan). As a result, each state is now almost exclusively responsible for regulating the quality of child care. *See id.* Unfortunately, state inspections have not proved sufficient to maintain healthy and safe conditions in the state-run centers, primarily because the work loads for the child care inspectors are much too large. *See id.* (noting that in the last few years, at least 18 states have reduced the frequency of inspections of child care facilities).

thus using the skills of able-bodied mothers and fathers, child care services would be more readily available to all welfare recipients.[283]

In addition to training Carents, Carefare Center directors would oversee the maintenance of the childcare facilities, alleviating some of the health and safety problems which have plagued state-operated day care centers.[284] The directors would also perform criminal background checks on everyone applying for jobs at the centers, Carents included, as this too has presented problems at state-operated day care centers.[285] Ideally, Care Centers would be established in locations convenient to clusters of welfare recipients, or transportation would be provided to parents and children by fellow welfare recipients through government-subsidized employment.

First priority as to such childcare would be given to those who were still receiving public assistance. However, if additional space was available, childcare could be offered to former welfare recipients who had secured private sector employment on a sliding scale based on income. In addition to helping to defray some of the facility's operating expenses, this might prevent some former welfare recipients from returning to the rolls. A survey of graduates of California's Greater Avenues To Independence (GAIN) Program, who found jobs and then went back on welfare, underscores the need for Carefare for this purpose. Four of the fifteen women surveyed said childcare problems had forced them to quit their new-found jobs.[286] Hopefully,

283. The Carefare program might also enable welfare recipients to share child care with one another at times when they were not engaged in a workfare program to save the costs of hiring babysitters.

284. In February of 1994, federal auditors performed unannounced inspections at child care centers in North Carolina, South Carolina, Nevada and Wisconsin to ascertain whether the state inspections were alleviating any problems. *See id.* They found numerous unhealthy and unsanitary conditions at 25% of the 134 centers they visited, including inoperable or unflushed toilets, raw sewage in play areas and cockroach infestations. *See id.* They also found safety violations at 29% of the facilities, including finding locked or blocked fire exits, broken glass, sharp knives, toxic chemicals, bug spray, antifreeze, and alcohol in areas accessible by children. *See id.*

285. The General Accounting Office investigation also revealed that, in licensing the state-run centers, 17 states did not conduct criminal background checks on the Centers' employees and nineteen did not check child abuse registries. *See id.* In North Carolina, federal auditors from the Department of Health and Human Services found Child Care Center employees who had been arrested on charges of prostitution, theft, and possession of illicit drugs. *See id.* An employee of one child care center had been arrested 14 times in eight years. *See id.*

286. *See* Joanne Jacobs, *Commentary: Without Child Care Help, Workfare Doesn't Add Up*, SAN JOSE MERCURY NEWS, July 11, 1988, at B5 [hereinafter Jacobs, *Commentary*]. GAIN pays for child care while a single parent is in training and for three months after she starts a paying job. *See id.* The GAIN Program envisioned that a woman's name would come up for subsidized child care at about the time that the transitional care ended. *See id.*

the Carefare program will fill this gap by providing high quality, low cost day care.

Ultimately, welfare recipients trained by the Carefare program might be authorized by the care center directors to provide childcare in their own homes. A 1991-92 study of such "family day care" (defined as non-parental care provided outside the child's home or a day-care center), conducted by the National Center for Children in Poverty, confirmed the feasibility of such an approach.[287] This research group, affiliated with Columbia University, studied ten community-based programs in nine states that successfully create and maintain a supply of quality day care in low-income areas by selecting providers, training them, placing children in their homes, and monitoring the children's progress.[288]

In addition to adequate childcare, most welfare mothers, to be competitive in the private job market, need "pre-job screening, and testing, training in how to get and keep a job and to develop a strong personality and the confidence to handle rejection."[289] Therefore, a comprehensive workfare program should include advice on resume writing and interviewing, assistance with job placement, and counseling regarding other aspects of securing employment.[290] This component of the workfare program could perhaps be modeled after a New York corporation, American Works, which was formed to place welfare recipients in private sector jobs.[291] New York City pays American Works to place 450 welfare recipients per year at a cost of $5,300 per placement, with the full fee paid only if the recipient succeeds in keeping the job for at least seven months.[292] American Works spends

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However, the wait for state-subsidized care in some counties in California is one and one half years, meaning that "[t]here is not enough subsidized care for the working mom to get her foot in the [job market] door." *Id.*

287. *See* Lena Williams, *Study Praises Day Care Plans*, N.Y. TIMES, May 11, 1994, at A20.

288. *See id.* (The nine states are California, Connecticut, Georgia, Kentucky, Massachusetts, New York, Oregon, Pennsylvania and Texas.).

289. Kleiman, *supra* note 146, at PC 1.

290. For example, New Hampshire is seeking federal approval to straighten welfare recipient's teeth, "on the theory that better looks will lead to better jobs." *Welfare Tests May Cheat Poor*, *supra* note 39, at A4. *See also* Manegold, *supra* note 181, at A8 (describing a Louisville, Kentucky program called Job Link which bought a prospective job applicant a dress for her successful employment interview). In February of 1994, Labor Secretary Robert B. Reich described several successful private job placement programs as "combining practical job training with essentials like baby-sitting, transportation, letter and resume-writing." *Id.*

291. *See Finding Jobs For Welfare Clients*, N.Y. TIMES, Jan. 21, 1994, at A14.

292. *See id.*

a few weeks teaching clients job-readiness skills which range from how to dress to how to use a computer.[293] After locating work, the company provides temporary help in arranging for day care, managing money, and resolving conflicts that threaten work performance.[294] The company reports that almost 70% of its clients are hired permanently.[295]

Several states likewise provide assistance in finding and getting jobs as part of their current workfare programs. For example, Michigan's Project Zero includes assistance from social workers in finding jobs as well as subsidized child care and transportation to the work site.[296] Only seven months after Project Zero was started, three times the national average of welfare recipients (or 30% of its 190,000 recipients) were working, making Michigan the nation's leader in finding jobs for former welfare recipients.[297] In Maryland, social workers conduct videotaped mock interviews with workfare participants and provide day care and transportation vouchers during the job search process.[298] Participants must spend four weeks looking for a job[299] and, if offered one, must take it.[300] Those who do not find jobs within four weeks are placed in training programs.[301]

In California, state-funded model programs in San Mateo County, known as Success Centers, require participants to attend six days worth of classes which focus on maximizing attributes sought by potential employers, responding to interview questions, conducting job hunts, networking, and using low-paying jobs as stepping stones to higher-paying employment.[302] After completing their classes, participants return to the Center to search for jobs. They receive free child care from the county for one year.[303] The Success Centers have re-

293. *See id.*

294. *See id.*

295. *See id.*

296. *See* Robyn Meredith, *Democrats Find Welfare Plan They Can Like*, S.F. CHRON., Nov. 22, 1995, at A5.

297. *See* Peter T. Kilborn, *Steps Taken On Welfare In Michigan*, N.Y. TIMES, Nov. 1, 1995, at A11.

298. *See* Church, *Ripping*, *supra* note 2, at 18.

299. *See id.* (Welfare recipients must prove they had ten or more interviews or job applications each week.).

300. *See id.* (noting that "any job is a good first job").

301. *See id.*

302. *See* Jennifer Mena, *Peninsula Welfare Program Gains Jobs But Loses Funding*, SAN JOSE MERCURY NEWS, June 13, 1996, at A1.

303. *See id.*

duced federal welfare costs over three years by almost $3 million[304] by finding employment for approximately 100 welfare recipients each month at a cost of approximately $3,578 per placement.[305] In contrast, one year before the Success Centers opened, the county was only able to place a total of 108 people in jobs at a cost of approximately $26,210 each.[306] Eighty percent of those placed through the Success Centers got jobs with wages of $7.35 an hour, with 25% earning between $8.76 and $10.25 per hour.[307] From June of 1995 until June of 1996 alone, the programs helped 900 households get off welfare.[308] Because of this success rate, similar programs were subsequently funded by California in Alameda, Monterey, Napa, San Francisco, and Santa Cruz counties.[309]

To further maximize the opportunity for as many welfare recipients as possible to obtain private sector employment, social workers should evaluate all workfare participants to determine which of them have sufficient education or prior work experience to leave the welfare rolls and achieve economic independence at an early date. For example, welfare recipients who have completed high school might be encouraged to apply for admission to college. Similarly, welfare recipients with extensive work histories may just need "brush up" courses or lump sums of money to purchase the necessary tools for becoming economically independent. Welfare recipients going to school or receiving job training should receive counseling regarding their possible eligibility for the numerous federal, state, and private loans and grants available for such academic or vocational pursuits. Such counseling services should also assist potentially eligible recipients in filling out the necessary forms and compiling the required documentation. Money obtained from loans or scholarships could then be used to offset or eliminate welfare assistance.

Welfare recipients who do not have strong educational or experiential backgrounds, on the other hand, should start working as soon as possible in order to gain on-site work experience and obtain necessary

304. *See id.* (According to the Employment Development Department, the federal savings totaled $2.8 million.).

305. *See id.*

306. *See id.*

307. *See id.* However, advocates for the poor, such as Casey McKeever of the Western Center on Law and Poverty, are concerned that the Success Center's de-emphasis on skilled job training in favor of quick employment "leaves participants with low-paying jobs and limited futures." *Id.*

308. *See id.* (During the same period, the number of adult welfare recipients was cut 17%, from 5,300 to 4,400.).

309. *See id.*

training for, or in addition to, the job. Wisconsin currently takes this approach with job training offered in addition to the work requirements rather than in lieu of them.[310] The "work first" approach has also proven successful in California's GAIN Program, the nation's largest job-training program for welfare recipients.[311] There, 24,750 participants earned an average of 22% more income over a three-year period than those welfare recipients who were not part of the program.[312] However, after three years, only 19% of the participants were completely off AFDC, compared to 16% of the control group.[313] According to study analysts, the statistical difference between the GAIN participants and the control group would undoubtedly have been even greater if instead of randomly selecting participants, the social workers had "cherry picked" them, working first with those with education or work experience, in order to give them the best chance of getting off the welfare rolls.[314]

Indeed, when the GAIN programs of each county were evaluated, the successful results of the "work first" approach were readily apparent. The most significant success was achieved by the GAIN Program of Riverside County, California, where participants boosted their earnings by $3,113, 49% more than a control group, and taxpayers saved $2.84 for every dollar invested in the program.[315] Moreover, the cost of the GAIN Program in Riverside was only $1,597 per capita compared to a cost of $5,597 per capita for the far less successful Alameda County GAIN Program.[316] Administrators of the Riverside GAIN program attributed their success to their emphasis to partici-

310. *See* Jacobs, *Goal, supra* note 238, at B11.

311. *See id.*

312. *See also* Joanne Jacobs, *The President's Way Off Welfare*, SAN JOSE MERCURY NEWS, June 16, 1994, at B7 [hereinafter Jacobs, *Way Off*] (noting that 31% of employed GAIN participants earned more than $10,000 in the third year, compared to 27% of those in a control group of employed people who did not participate in the program).

313. *See id.* (noting that 43% of the GAIN participants never earned any money during the three-year test period).

314. *See* Peter Passell, *Economic Scene*, N.Y. TIMES, June 16, 1994, at C2.

315. *See* Jacobs, *Way Off, supra* note 312, at B7. The GAIN program also resulted in welfare savings greater than program costs in San Diego County and broke even in Butte County. *See id.* However, in Alameda, Los Angeles, and Tulare Counties, the program cost more than it saved. *See id.* Overall, the six counties involved in the GAIN program returned only 76 cents for every dollar spent. *See Welfare Reform: A Political Fig Leaf, supra* note 2, at A24. It is worth noting that the two counties with the most substantial losses, Alameda and Los Angeles, both have a large, chronically poor underclass, described by Rebecca Blank, an economist at Northwestern University, as people who "start with five strikes against them," providing support for the idea that "cherry picking" a target group is advisable. Passell, *supra* note 314, at C2.

316. *See id.*

pants that the single most important goal was to find a job, not merely undergo training.[317] The Riverside GAIN staff also put serious effort into matching recipients with prospective employers. The program imposed a mutual responsibility pact and emphasized that welfare was a temporary safety net rather than a way of life.[318]

Charlene Mittel, manager of Family Home Care, a Riverside home nursing agency, serves as an example of the Riverside GAIN Program's success.[319] In 1993, Mittel was a single mother on welfare who turned to GAIN for assistance.[320] After a week of phoning possible employers, she found an entry level job with Family Home Care, rose through the facility's employee ranks, and now manages the 45-employee company.[321] She has used her position to hire over ninety other GAIN participants during the past three years, giving them "a stepping stone, a ladder to get off welfare."[322]

The GAIN Program in Los Angeles County experienced similar success with getting welfare recipients off of public assistance once it began implementing Riverside's "work first" methodology. After two years, job placements through the Los Angeles County GAIN office had increased 400%, while the cost of placing each welfare recipient in a job had decreased by 60%.[323] Approximately 50,000 Los Angeles County GAIN participants found employment, saving more than $80 million in AFDC payments.[324] Moreover, 64% of those placed stayed off of welfare for at least two years after obtaining their jobs.[325] Most

317. *See id.* Manpower researchers describe the Riverside methodology as follows: "Most distinctive was Riverside's attempt to communicate a strong "message" to all registrants (even those in education and training activities), at all stages of the program, that employment was central, that it should be sought expeditiously, and that opportunities to obtain low-paying jobs should not be turned down." Debra J. Saunders, *The Reagan Welfare Reform*, S.F. CHRON., June 17, 1994, at A27 [hereinafter Saunders, *Reagan Welfare*]. In contrast, the report noted that the GAIN Program in Alameda County, which was far less successful than Riverside in placing registrants in jobs, "encouraged registrants to be selective about the jobs they accepted and to take advantage of GAIN's education and training to prepare for higher-paying jobs." *Id.*

318. *See* Passell, *supra* note 314, at C2.

319. *See id.*

320. *See id.*

321. *See id.*

322. *Id.*

323. *See GAIN At A Glance*, L.A. TIMES, Aug. 22, 1996, at A1 (noting that the cost of each placement using a program emphasizing education or training was approximately $7,000).

324. *See id.*

325. *See id.*

of the placements were in general office work, retail sales, construction, manufacturing, and medical services.[326]

Increased job opportunities for welfare recipients in the private sector require that efforts be made by employers to encourage job opportunities for workfare participants in the private sector. Several states have tried to achieve this result by providing economic incentives to private employers who hire welfare recipients. Wisconsin offers a wage subsidy to any private employer who hires an unskilled worker.[327] Oregon and Missouri use federal money, which formerly went into cash grants to welfare parents, to subsidize the wages employers pay to welfare clients.[328]

Another possibility for increasing employment opportunities in the private sector might be to enable workfare participants to go into business for themselves. This innovative idea was tried with success in California by the San Jose Development Corporation.[329] The eighteen program participants were chosen from a pool of 1,000 applicants based on their business proposals and their enthusiasm for the project.[330] All of the participants attended ten weeks of classes on how to start up and operate a business.[331] Aside from a small loan fund, the participants had to come up with most of the money for the businesses themselves.[332]

Finally, efforts must be made to ensure that those who work full-time in the private sector do not remain below the poverty level. Assuming participants in the private sector portion of the workfare program work forty hours per week at minimum wage, they will earn more than they previously received on welfare; only "[thirty-five] hours per week at minimum wage equals the current welfare grant for a family of three."[333] They will also be able to boost their net income

326. *See id.*

327. *See* Jacobs, *Goal, supra* note 238, at A11. As part of its 1996 welfare reform package, the Clinton administration considered paying employers a bounty of $5,000 for each welfare recipient hired. *See* Finefrock, *supra* note 263, at A20. This proposal was criticized as being expensive, perhaps subsidizing employers for hiring they would do anyway and running the risk of pushing other job seekers into welfare. *See id.* Moreover, at least one study found that employers were less likely to hire subsidized employees. *See id.*

328. *See* Church, *Ripping, supra* note 2 at 18, 21.

329. *See* E.A. Torriero, *18 Moving From Welfare To Owning A Business*, SAN JOSE MERCURY NEWS, Feb. 15, 1994, at B1.

330. *See id.* A larger group of 220 students, chosen from 3,000 applicants, began the program in March of 1994. *See id.*

331. *See id.*

332. *See id.*

333. Jacobs, *Could End Welfare, supra*, note 237, at B7.

by collecting the federal earned-income tax credit.[334] According to former Labor Secretary Robert Reich, the federal earned-income tax credit (EITC) resulted in about two million Americans rising above the poverty level in 1994 alone.[335] In addition, seven states have supplemented the wages of the working poor, complementing the federal EITC, with a state earned income tax credit.[336]

At least fourteen states also allow welfare recipients to earn more money than their grants without losing benefits,[337] thereby encouraging them to work. New Jersey allows working AFDC parents to earn up to 50% of their grant levels without losing benefits.[338] California recently received federal approval to allow welfare recipients to save up to $2,000—rather than the current $1,000 limit—without losing their benefits.[339] They can also save up to $5,000 for certain purposes, such as a child's college education or purchasing a home.[340] In addition, they can own a car worth up to $4,500 rather than the current maximum of $1,500.[341]

It is also crucial to ensure that all former welfare recipients, and other members of the working poor, are provided with full medical care benefits. Currently, children of people on welfare qualify for some critical benefits, like health insurance, that may be unavailable to children of the working poor.[342] Such medical insurance is vitally important, especially to parents with children, and can operate as a disincentive to working, which could be removed by guaranteeing health coverage to all working parents and their families.

Recognizing this need, several states already ensure continued health coverage for workfare participants. For example, Wisconsin

334. *See id.* As of April of 1994, President Clinton had put in place $21 billion to provide advance refunds to low-income workers under the earned income tax credit plan. *See White House Poverty Plan Hopes to Quietly Give Communities A Hand*, SAN JOSE MERCURY NEWS, Apr. 1, 1994, at E2.

335. *See* McLeod, *supra* note 61, at A13.

336. *See* McKeever, *Aid and Employment, supra* note 67.

337. *See Welfare Tests May Cheat Poor, supra* note 39, at A4.

338. *See* Sancton, *supra* note 63, at 44, 47.

339. *See* Bernstein, *supra* note 66, at B3.

340. *See id.*

341. *See id.*

342. *See* Holmes, *Children of Working Poor, supra* note 78, at C19. Explaining his view that "as a nation, as a society, we have a moral responsibility" to provide health coverage "for our most vulnerable children," Senator Orin Hatch (R-Or.) became the chief sponsor of legislation which would provide health insurance for half of America's ten million uninsured children. *Hatch Supports Kennedy's Plan On Child Health*, SAN JOSE MERCURY NEWS, Mar. 14, 1997, at A14 (commenting that he was proposing the bill to prove that the Republican Party "does not hate children"). The health care coverage would be financed by a federal tax on tobacco. *See id.*

provides child care, health care, and other benefits for as long as the worker needs them.[343]

Unfortunately, although some workfare participants may succeed in locating employment in the private sector, there simply are not enough jobs to accommodate all able-bodied welfare recipients. A 1996 study of fast-food job seekers in Harlem found, for example, that there were fourteen applicants for every job opening.[344] Furthermore, of the unsuccessful applicants, 75% had still not found employment a year later.[345] In short, "the number of low-skilled job applicants pounding the pavement for work far exceeds the number of jobs to be found."[346] According to sociologist William Julius Wilson, "it would take ten to fifteen continuous years of economic expansion to absorb [the oversupply of workers]," but America has "never had a period of sustained economic growth that has lasted that long."[347] Thus, "if we want to prevent a large number of mothers and children who are now on welfare from becoming homeless once they reach the time limit we're going to have to create public service jobs."[348]

Although there are no reliable estimates of how many of the fifteen million indigent women and children who rely on public assistance would be left without a job or aid if durational limits on welfare were imposed without any provision for subsidized employment,[349] some economists have said that hundreds of thousands of families might eventually be affected.[350] Indeed, with no source of income, these parents will soon be unable to provide food and shelter for their children, forcing the state to step in, remove the children, and place them in foster care. This outcome is not only morally and psychologi-

343. *See* Goodman, *Politicians*, *supra* note 99, at B7; Jacobs, *Goal*, *supra* note 238, at B11.

344. *See* Jack E. White, *Let Them Eat Birthday Cake*, TIME, Sept. 2, 1996, at 45 (citing study conducted by Harvard University Professor Katherine Newman).

345. *See id.*

346. *Id.*

347. *Id.* Unfortunately, in some of our country's major cities, the number of available jobs has actually *decreased*. For example, the City of New York has lost 227,000 jobs since 1990 and the greater New York metropolitan area has lost 260,000 jobs during the same period of time. *See* Edelman, *supra* note 14, at 52.

348. White, *supra* note 344, at 45.

349. *See* Jason DeParle, *Proposal For Welfare Cutoff Is Dividing Clinton Officials*, N.Y. TIMES, May 22, 1994, at Y12 [hereinafter DeParle, *Proposal for Welfare*].

350. *See id.* Gary Burtless, an economist at the Brookings Institution, believes that the majority of the able-bodied welfare families can find some sort of private employment. *See id.* However, he feels that there is a "sizable minority," that could eventually range between 300,000 and 800,000 families, "whose problems are so severe and whose lives are in such disorder" that they will be unable to hold jobs "outside a sheltered workshop." *Id.*

cally indefensible, but the higher costs of foster care make it economically indefensible as well.

Thus, it seems clear that strict time limits on receipt of welfare should be tempered by offering welfare recipients "employment insurance" through government financed employment opportunities which allow families to "earn" their continued public assistance through gainful employment.[351] There is, after all, substantial public support for government-subsidized jobs. In fact, the Yankelovich poll revealed that 74% of the 600 people surveyed wanted to replace welfare with a system of guaranteed public jobs.[352] Such government-subsidized jobs would not pay wages; they would just make welfare recipients eligible for their welfare and health benefits. Recipients would be required to work enough hours to cover their welfare payments, calculated on a basis of what they would receive if they were earning

351. A plan for government subsidized employment for welfare recipients unable to find private sector jobs was the cornerstone of a welfare reform package proposed by President Clinton in June of 1994, prior to the enactment of the Personal Responsibility Act. *See Clinton Launches His High-Stakes Welfare Overhaul*, SAN JOSE MERCURY NEWS, June 15, 1994, at A6. Clinton's proposal, the Work and Responsibility Act, was introduced before both Houses of Congress in June of 1994. *See* Aaronson, *supra* note 15, at 223, n.37. However, it never received active congressional consideration. *See id.* Clinton's budget included $7 billion to be spent on education, training and day care and $1.2 billion to create or subsidize 40,000 jobs within six years, which would employ 8% of adults receiving AFDC. *See* Jacobs, *Way Off, supra* note 312, at B7. *See also* Jason DeParle, *An End To Welfare?*, N.Y. TIMES, June 15, 1994, at A10 [hereinafter DeParle, *End To Welfare*] (noting that the plan was expected to cost more than twice as much in the second five years).

Under the President's proposal, in order to receive public assistance, applicants had to sign a "responsibility" contract, pledging to take a job if one was offered. *See* James W. Brosnan, *Clinton's Welfare Proposals Amount To A 'Culture Reform,'* S.F. EXAMINER, June 12, 1994, at B11. However, if able-bodied recipients were unable to find employment in the private sector after a two year life-time cap of receiving aid, they would have had the opportunity to work in taxpayer-financed, minimum wage public-service jobs with subsidized private employers, governments or nonprofit groups. *See Clinton Launches His High-Stakes Welfare Overhaul, supra*, at 6A. Recipients would have been allowed to stay in the subsidized jobs as long as they continued to seek private work. *See* Jason DeParle, *Committee Presses Ahead On Welfare*, N.Y. TIMES, June 18, 1994, at Y9 [hereinafter DeParle, *Committee Presses*]. However, recipients working in public service jobs would not have qualified for the earned income tax credit like other low-wage earners. *See* Brosnan, *supra*, at B11 (noting that recipients could not stay in the same subsidized jobs for longer than one year).

At the time he introduced his previous proposal, President Clinton projected that about 14% adult welfare recipients under the age of 29 would get off welfare by the year 2000 if his reforms were adopted. *See Clinton Launches His High-Stakes Welfare Overhaul, supra* note 351, at A6. In addition, the President estimated that 222,000 individuals would be working part-time and 394,000 people would be employed in subsidized jobs by the turn of the century. *See* Debra J. Saunders, *Growing Welfare As We Know It*, S.F. CHRON., June 15, 1994, at A21 [hereinafter Saunders, *Growing Welfare*].

352. *See* Gibbs, *Cycle, supra* note 5, at 24, 26.

the minimum wage and creating a real incentive to locate higher paying private employment.

The Personal Responsibility Act explicitly provides that, as of September 1, 1997, states may require adults on welfare to earn their grants by doing community service work.[353] However, since no federal government money is allocated for this purpose, it is up to the states to finance these jobs. Further, there are several states that already provide their welfare recipients with government subsidized jobs without durational limits. For example, rather than terminating welfare assistance, Massachusetts allows able-bodied welfare recipients who have not found private sector jobs to enroll in a community service program called Transitional Employment for Massachusetts Parents.[354] Michigan's similar pilot program to eliminate unemployment among welfare recipients in six counties,[355] known as "Project Zero," requires those receiving assistance to work at least twenty hours each week in return for assurance of welfare benefits until their earnings reach a "subsistence level standard of living."[356] Recipients who are unsuccessful in finding work can perform community service in order to keep receiving their grants.[357] Oregon, on the other hand, combines all the money now spent on welfare, food stamps, and a few other social service programs and gives recipients a subsidized job instead of welfare.[358]

There are also several states which provide government-subsidized jobs for only a limited time, after which welfare benefits are terminated.[359] As part of its W-2 Program, for instance, Wisconsin requires all welfare recipients in two counties to find full-time work

353. *See Getting Down To Details*, *supra* note 10, at A2.

354. *See* William Claiborne, *Massachusetts To Cut Welfare Cash To Able-Bodied*, S.F. CHRON., Jan. 15, 1994, at A7 (noting that able-bodied people who applied for welfare after 1994 can receive AFDC for 90 days before being required to accept private jobs or community service positions while those who applied for assistance before 1994 have one year to find employment in the private sector before being required to accept publicly-financed jobs).

355. *See* Meredith, *supra* note 296, at A5.

356. Kilborn, *supra* note 297, at A11.

357. *See* Meredith, *supra* note 296, at A5. Anyone refusing to try to find employment or to do community service work, including mothers with babies at least six weeks old, would lose all their benefits within two months. *See* Kilborn, *supra* note 297, at A11.

358. *See* Sara Rimer, *Welfare Plan Places Limit On Cash Grants*, N.Y. TIMES, Jan. 14, 1994, at A12.

359. For example, the Wisconsin Works Plan provides that welfare recipients who are not able to locate employment in the private sector, will be placed in community service or "transitions jobs" for up to five years. *See* Church, *Ripping*, *supra* note 2, at 18, 21.

within thirty days after entering the welfare rolls.[360] If they cannot find full-time work, the recipients are allowed to participate in taxpayer subsidized employment.[361] Such government-financed jobs have durational limits of two consecutive years or five years during the recipients' lifetime.[362] This W-2 Program has been very successful. After only one year, the welfare caseload in Fond du Lac County declined by forty percent.[363] And Wisconsin estimates that two-thirds of welfare recipients will obtain private sector jobs.[364]

Unfortunately, even if this prediction is accurate, one-third of Wisconsin's welfare recipients will be cut off entirely from public assistance despite their willingness to work in publicly financed jobs. This is not a humane solution to the welfare problem and has devastating consequences for children whose aid is terminated. Clearly, the better solution is not to impose any time limits on publicly financed jobs. It is firm in recognizing that able-bodied recipients must work for their welfare checks but is fair in not abandoning parents (and their children) who, through no fault of their own, cannot locate unsubsidized employment.

Workfare participants who are, in fact, unable to locate private sector jobs, should ideally also have meaningful government-financed employment. Some workfare jobs could be modeled after the Works Progress Administration (W.P.A.) which employed more than eight million workers during the Depression building highways, airports, and bridges.[365] To help make such jobs meaningful, rather than "make work," they could be tied into the needs of local communities, churches, or volunteer organizations. Participants in a modern day W.P.A. could work at planting trees, painting over graffiti, or stopping

360. *See* Sara Rimer, *supra* note 358, at A12. In May of 1996, President Clinton endorsed Wisconsin's W-2 program, commenting that it had "the makings of a solid, bold welfare reform plan." Goodman, *Politicians*, *supra* note 99, at B7. Wisconsin Governor Tommy Thompson, who claims to have reduced his state's welfare rolls by 35% during his nine years in office, has become well-known among Republicans for his innovative "tough love" policies. *See* Johnson, *supra* note 261, at Y11.

361. *See* Havemann, *supra* note 271, at A6. Wisconsin may need to create as many as 40,000 subsidized jobs to provide employment for all of its welfare recipients even though the workers receive $550 monthly, which is below minimum wage. *See* Goodman, *Politicians*, *supra* note 99, at B7.

362. *See* Goodman, *Politicians*, *supra* note 99, at B7.

363. *See* Jacobs, *Goal, supra* note 238, at B11. *See also* Church, *Ripping*, *supra* note 2, at 18, 21 (pointing out that Wisconsin officials attributed the decline in part to the fact that many people who applied for welfare decided not to accept it after learning of the work requirement).

364. *See* Jacobs, *Goal, supra* note 238, at B11.

365. *See* Sancton, *supra* note 63, at 44, 46; DeParle, *Gauging, supra* note 54, at E3.

traffic for school children. They could clear trash from cities, weed freeway dividers, fill potholes, repaint housing projects, and repair schools. Parents of older children could work in their youngsters' schools, staffing before- and after-school programs or acting as teachers' aids. If fluent in a language other than English, they could provide invaluable help in working with children for whom English is a second language. Welfare recipients with reading skills could help with President Clinton's proposed nationwide effort to teach all children to read by the end of the third grade.[366] Welfare recipients without such skills could take part in classes when reading lessons were underway, while aiding the teachers in other areas such as art, music, or physical education.

In addition to helping the nation's children, another rich source of publicly-financed jobs would be in aiding the nation's elderly. Welfare recipients could provide senior citizens with transportation to medical appointments or local markets for shopping or with assistance in day-to-day activities such as dressing, cooking, and cleaning. Welfare recipients could also help fellow recipients, through the Carefare Program described above, or through aid in private job searches. Such government-subsidized jobs could involve typing and clerical assistance in writing cover letters, developing resumes, filling out application forms, and maintaining listings of employment opportunities.

A final mutually beneficial area for government-funded jobs would be employing welfare recipients in constructing and renovating apartments and homes for their own use. The federal government has funded a particularly exciting and ambitious program using this approach in Chicago, Illinois.[367] This program, called Step Up, uses federal housing rehabilitation money to train public housing residents in construction jobs.[368] Former welfare recipients earn $13.52 per hour

366. *See* Suryaraman, *supra* note 56, at A19 (The President's proposal included using one million volunteers.).

367. *See* Wilkerson, *supra* note 147, at C18. In a similar program in East Harlem, an organization known as YouthBuild, has enabled hundreds of inner-city youths to gain construction-job skills while repairing abandoned houses for the homeless in Harlem, Boston and eight other cities. *See* Robert A. Rankin, *Activists Fight Urban Rot, Conventional Pessimism*, SAN JOSE MERCURY NEWS, May 24, 1992, at A1.

368. *See* Wilkerson, *supra* note 147, at C18. The renovations were part of the Chicago Housing Authority's regular program to repair vacant apartments. *See id.* To make the program possible, H.U.D. created a new job category to satisfy federal restrictions regarding who can work on federal construction. *See id.* H.U.D. also had to convince trade unions to cooperate with housing authorities, with one inducement being an agreement to hire union members to train the residents. *See id.* To be hired, the welfare recipients had to pass a drug test, be able to read at sixth-grade level and show that they were on a public housing lease. *See id.*

for rehabilitating abandoned public housing units which have been stripped by vandals and gang members.[369] A team of ten to twenty trainees is capable of renovating a gutted apartment in two or three days.[370] Participants in this Step Up Program have completed renovation of 1,551 apartments in half a dozen housing projects.[371] Federal officials describe Step Up as a natural job-training program for public housing since there are "thousands of abandoned units around the country, millions of tenants with no skills or chance of getting them, and $3 billion in Federal rehabilitation money to pay whoever does the work."[372] The program is now being duplicated on a smaller scale in Baltimore, Maryland, Phoenix, Arizona, and Huntington, West Virginia.[373]

VI. Conclusion

The spectre of governmental child abuse, created by the repressive time limits and termination provisions of the Personal Responsibility Act, must be replaced with a governmental commitment to provide all of our nation's children with the basic essentials they need to survive. Rather than leaving millions of American children hungry, sick, or homeless, this "new entitlement" should mean that every child will have medical care, food, and shelter. Certainly, this is the minimum that an enlightened society must provide for its youngest, and most vulnerable, members. And surely, this provision does not mean that we must sacrifice the underlying goal of welfare reform that all able-bodied welfare recipients obtain employment. By providing career counseling, child care, and other social service support to welfare recipients and by motivating employers to hire them, we can ensure that many workfare participants will obtain jobs in the private sector. By creating "unemployment insurance," we can ensure that recipients who cannot find private sector employment, will be able to continue to "earn" their welfare benefits by performing meaningful work, such

369. *See id.* (noting that while in the Program, the trainees did not lose their Medicaid benefits nor did their rent increase).

370. *See id.*

371. *See id.*

372. *Id.* One problem with the program is that the jobs are not permanent since the housing authority wants to open the positions to new trainees. *See id.* The agency tries to place Step Up "graduates" in formal union apprenticeships before taking new participants; but this is not always possible. *See id.* Of the original 298 trainees, fifty have been hired by the Chicago Housing Authority at $19 per hour to remove lead from the Housing Projects or as lower paid clerks or truck drivers for the Housing Authority. *See id.* Eighteen other participants are in training for union carpentry apprenticeships. *See id.*

373. *See id.*

as providing child care for other recipients through the Carefare Program. This Program, in turn, can afford parents the financial stability to continue to provide for their children, without facing governmental child abuse through termination of their public assistance. This opportunity for all parents to achieve economic independence should be the new entitlement for all American adults. And the guarantee of life's basic necessities, including on-going medical care, sufficient food, and adequate shelter, must be the new entitlement for all American children.