

DOMESTIC VIOLENCE AND THE MARYLAND FAMILY VIOLENCE OPTION

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Along with a large majority of states, Maryland adopted a family violence option (“FVO”) as part of its welfare reform program.¹ Although Maryland’s FVO came into effect in 1997, with the strong support of the Lieutenant Governor and Attorney General,² only 554 families, or 0.66% of the entire caseload, were identified as victims of domestic violence between March 1998 and June 2000.³ Of these,

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1. See MD. REGS. CODE tit. 7, § 03.03.01-.26 (2002); see also MD. DEP’T OF HUMAN RES., TEMPORARY CASH ASSISTANCE MANUAL (last revised Jan. 15, 2002) [hereinafter TCA MANUAL], available at <http://www.dhr.state.md.us/tca/>; Mark Matthew Graham, *Domestic Violence Victims and Welfare “Reform”: The Family Violence Option in Illinois*, 5 J. GENDER RACE & JUST. 433, 434-35 (2002) (indicating that only nine states have not adopted the Family Violence Option (“FVO”)). The FVO allows waiver of TANF requirements with good cause when they would impose a burden on the ability of a victim to escape the domestic violence situation. *Id.* at 453. It also provides for maintaining confidentiality and providing counseling to victims. *Id.*

2. See ATT’Y GEN. & LT. GOVERNOR’S FAMILY VIOLENCE COUNCIL, STOPPING FAMILY VIOLENCE: THE COMMUNITY RESPONDS 3, 23 (2001) (stating that the Attorney General and Lt. Governor created the Family Violence Council to reduce and prevent family violence and describing the FVO as it operates in Maryland).

3. ANDREA HETLING-WERNYJ & CATHERINE E. BORN, WELFARE & CHILD SUPPORT RESEARCH AND TRAINING GROUP, UNIV. OF MD. SCH. OF SOC. WORK, DOMESTIC VIOLENCE AND WELFARE RECEIPT IN MARYLAND: ARE DOMESTIC VIOLENCE VICTIMS

only 261 of the families, or 0.31% of the caseload, were provided with services that exempted them from a welfare program requirement.⁴ Studies of welfare recipients nationally indicate that these numbers should have been much higher: at least 25% of the caseload should have been identified as potentially eligible for the FVO.⁵ The question is, how did it happen that the state identified so few people as potentially eligible for the FVO and provided even fewer with services? It would appear that the answers may lie in how the FVO is structured; the FVO is embedded in a welfare reform system that is itself problematic for vulnerable women and their families.

Three kinds of problems make it difficult to design an FVO that works within welfare reform, and Maryland's design falls within these problematic areas:

1. Welfare reform insists on each individual taking "personal responsibility" for his or her inability to become self-sufficient and for overcoming the barriers that keep him or her "dependent." In adopting the Personal Responsibility and Work Opportunity Reconciliation Act in 1996,⁶ Congress rejected the position that some people face structural issues that keep them from working.⁷
2. The success of a state's welfare reform program is measured by how few people remain on the rolls.⁸ If people are identified as needing services and services are delivered, the rolls do not go down.
3. Welfare reform is a behavior modification system under which welfare recipients are the target of the message, not the creators of the message.⁹ Their input about what they need a

DIFFERENT FROM OTHER WELFARE RECIPIENTS? 33 (2002).

4. *Id.*

5. *Id.* at 5 (commenting that research conservatively estimates 25% of women who receive assistance are victims of violence and that the discrepancy between estimates and actual use of the FVO is a cause of concern); JODY RAPHAEL, *SAVING BERNICE: BATTERED WOMEN, WELFARE, AND POVERTY* 5, 25 (2000) (stating that research indicates between twenty and thirty percent of women who receive welfare are victims of domestic violence); Graham, *supra* note 1, at 437-40 (providing statistics on the rates of domestic violence among welfare recipients).

6. Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended at scattered sections of 7, 8, 21, 25, and 42 U.S.C.).

7. See Karen Syma Czapanskiy, *Parents, Children, and Work-First Welfare Reform: Where is the C in TANF?*, 61 MD. L. REV. 308 (2002).

8. See Peter Edelman, *Poverty and Welfare: Does Compassionate Conservatism have a Heart?*, 64 ALB. L. REV. 1073, 1075-76 (2001).

9. See Morgan B. Ward Doran & Dorothy E. Roberts, *Welfare Reform and Families in the Child Welfare System*, 61 MD. L. REV. 386, 391-405 (2002) (explaining how welfare systems use behavior modification to coerce recipients into conforming with state standards).

system to do is neither welcome nor appreciated.

I. BACKGROUND

Maryland is subject to few federal requirements for the design of its FVO. A federally qualified FVO must include standards and procedures to screen and identify individuals with a history of domestic violence while maintaining confidentiality.¹⁰ Identified individuals must be referred to counseling and support services,¹¹ and waivers must be provided, pursuant to a determination of good cause, of normal program requirements so long as necessary.¹² To qualify the state for penalty relief, good cause waivers must be specific, must be reassessed every six months by a person trained in domestic violence, and must be subject to an appropriate service plan that is designed, ordinarily, to lead to employment.¹³

Maryland's program has nine parts:

1. Every family is screened at application and at least once annually during a recertification process to "determine if there is a history of family violence."¹⁴ Information obtained during the screening is confidential with the exception that suspected child abuse or neglect must be reported to Child Protective Services.¹⁵
2. Every local department must designate at least one in-house family violence expert.¹⁶
3. When the caseworker learns from the applicant or suspects that the family has experienced family violence, the caseworker refers the family to the family violence expert, who then prepares a safety plan with the applicant.¹⁷
4. Additional services may be provided through referrals to state-funded family violence service providers and other community resources.¹⁸
5. Family violence includes physical and sexual abuse, mental injury or verbal abuse, intimidation, neglect or deprivation of

10. 45 C.F.R. § 260.52 (2002).

11. *Id.*

12. 45 C.F.R. § 260.55 (2002).

13. *See id.*

14. TCA MANUAL, *supra* note 1, at Ch. 4, § 6.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

medical care, and false imprisonment.¹⁹

6. The screening process is required to include multiple questions and probes and must be handled with sensitivity.²⁰
7. The applicant must meet at least once with the family violence expert.²¹ If the family violence expert is convinced that “compliance [with program requirements] would make it difficult for the family to escape family violence,” then work requirements, child support cooperation and time limits can be waived.²²
8. The applicant is not required to provide “formal written documentation” of the family violence,²³ but the caseworker is given a list of possible corroborative documents to examine.²⁴
9. The case manager must decide within thirty days whether the applicant qualifies for an exemption from program requirements, including time limits and work requirements.²⁵ Exemptions must be reviewed periodically.²⁶

II. PERSONAL RESPONSIBILITY VS. SYSTEMIC PROBLEMS

Maryland’s FVO program, on its face, appears comprehensive. It defines family violence in broad terms, requires universal screening, provides for expert input, and allows for exemptions from program requirements that may prove onerous to women trying to escape their abusive partners. Why, then, were only 554 families identified?

Consider, first, that welfare reform insists on “personal responsibility.” Structural obstacles do not count as reasons for a woman’s inability to become self-sufficient. Domestic violence, however, can and must be viewed as a systemic issue. A man who subjects a woman to violence in their relationship can keep her from working.²⁷ He is allowed to do so by all the social, economic, political and judicial systems discussed elsewhere in this volume. Rather than

19. *Id.* (listing basic guideline questions that case managers can use to indicate possible family violence).

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. See RAPHAEL, *supra* note 5, at 29-45 (providing examples of an abuser making his female partner late for training or classes, preventing her from attending them at all, beating her so that she is too embarrassed to go to training or work, tearing up training books or homework, and other efforts to sabotage her employability).

think of family violence as a systemic problem, Maryland's program designers view the problem the woman faces as individual and private and susceptible to private solutions.²⁸ Consistent with welfare reform's insistence on "personal responsibility," Maryland sees the problems as personal. Women who qualify for FVO services in Baltimore City, for example, are offered "counseling" which is designed to help them "escape." What this privatized approach fails to do is connect a woman's experience to a system or a structure that allows her abuser to continue the abuse by failing to get her abuser to stop, to make the abuser change or take responsibility for his actions, or to allow her to speak without shame to her employer or community about the violence she experiences.²⁹ Further, the welfare system itself often puts women in harm's way, by conditioning their access to subsistence grants upon their compliance with a variety of individual behavior changes.³⁰

III. HOW LOW CAN THE ROLLS GO?

Problem two stems from the fact that success in welfare reform is measured generally by how much the welfare rolls have been reduced.³¹ Maryland's welfare reform program is not unusual in accepting a reduction in the numbers on the rolls as measure of success. Maryland uses diversion and administrative hassles to make it difficult for women to obtain cash assistance, and the hassling does not stop once domestic violence is identified as a problem.³² Even though a woman identified as suffering from domestic violence is relieved of some verification requirements, she is still required to tell her story several times to different people, none of whom she knows

28. See ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* 90 (2000) (noting that "by seeing woman abuse as private, we affirm it as a problem that is individual and involves only a particular intimate relationship, for which there is no social responsibility to remedy.").

29. See RAPHAEL, *supra* note 5, at 126 (describing that being abused creates a feeling of shame and asserting that the welfare system should educate women and help them escape); see also Joan Meier, *Domestic Violence, Character, and Social Change in the Welfare Reform Debate*, 19 *LAW & POL'Y* 205 (1997) (discussing links between welfare dependency and abuse).

30. See RAPHAEL, *supra* note 5, at 147 (demonstrating that requirements of working or training may contribute to an abusive man's efforts to control the woman, often by beating her).

31. See Edelman, *supra* note 8, at 1076 (explaining that reducing the numbers on the welfare rolls is the measure many reform proponents use to evaluate success).

32. See generally FAMILY INV. PROGRAM LEGAL CLINIC, *TIME OUT! A STATUS REPORT ON WELFARE REFORM IN BALTIMORE CITY AT THE THREE YEAR MARK, AS EXPERIENCED BY THOSE IT WAS INTENDED TO HELP AND THEIR ADVOCATES* (1999) [hereinafter *TIME OUT!*], available at http://www.law.umaryland.edu/facpages/kczapanski/Time_Out_Final.pdf.

well or has seen more than once.³³ In the Maryland system, as described earlier, the applicant usually sees an intake worker, who makes an initial screening decision. If domestic violence is detected or suspected, the applicant then tells the story again to the in-house domestic violence expert,³⁴ who can recommend adjustments to several program elements.³⁵ The final decision is left to a caseworker, who has much less expertise than the expert, and little or no training concerning domestic violence.³⁶ Moreover, additional people are involved in the final decision-making process to determine whether the applicant must comply with child support cooperation requirements.³⁷

Verification is another significant deterrent. Generally, detailed verification as to every element of their application is required from applicants for cash assistance.³⁸ Verification usually consists of getting a third party to confirm the applicant's statements about her children, living situation, income, assets and employment.³⁹ Domestic violence, however, is "self-verified," according to the rules and procedures.⁴⁰ Getting caseworkers to accept the different procedures is difficult, however, because their basic training teaches them to require verification in such abundance that many applicants give up before completing the application process.⁴¹ One person I have

33. See *supra* notes 14-26 and accompanying text (explaining the process for FVO qualification).

34. While that person is called an expert, the state has not issued a policy about what kind of training he or she must have to qualify. See TCA MANUAL, *supra* note 1, at Ch. 4, §§ 6, 9 (offering no guidance as to what qualifications are necessary to be an expert at identifying and addressing domestic violence issues).

35. See *id.*

36. See *id.*

37. See TCA MANUAL, *supra* note 1, at Ch. 4, § 6; see also *supra* notes 14-26 and accompanying text.

38. TCA MANUAL, *supra* note 1, Ch. 4, §§ 6, 9.

39. *Id.*

40. *Id.* at Ch. 4, § 6.

41. Another problem with getting caseworkers to apply appropriate verification standards is that the state's policies about what constitutes adequate and appropriate verification have changed three times in less than five years. In January 1997, caseworkers were given a list of three types of corroborative information that were needed to verify an applicant's account that she was subject to domestic violence. KEVIN MAHON ET AL., MD. DEP'T OF HUMAN RES., FIA ACTION TRANSMITTAL 97-77 (Jan. 23, 1997), available at <http://www.law.umaryland.edu/edocs/dhr/9777.pdf>.

A similar list was included in a policy statement made effective February 1, 1998, but a sentence was added indicating that "it is not mandatory" for the applicant to provide verification. KEVIN MAHON ET AL., MD. DEP'T OF HUMAN RES., FIA ACTION TRANSMITTAL 98-30 (Dec. 30, 1997), available at <http://www.umaryland.edu/edocs/dhr/9830.pdf>.

In 2001, the Manual issued by the Department of Human Resources included new

worked with was exempted from the child support cooperation process because the pregnancy was the product of a rape. She was required to re-verify the fact that she had been raped at least once a year for a new caseworker. In other words, once workers have been trained to reduce the rolls through bureaucratic hassling, they accomplish that task. Telling them that some applicants should be hassled less is not a message that gets through, at least not without substantial supervision. Supervisory attention, however, is largely devoted to the intricacies of verification.⁴² Routine supervision is reserved for cases where benefits are granted; where benefits are denied, no routine supervision occurs.

IV. BEHAVIOR MODIFICATION: WHO DECIDES?

The third problem standing in the way of the FVO is that welfare reform is a behavior modification program. Recipients are the objects, not the subjects, of the program. Even during the FVO application process, acceptable behavior and unacceptable behavior are defined for women experiencing domestic violence. Acceptable behavior, according to the FVO process, is "escape."⁴³ A woman who makes no attempt to "escape" does not receive services, even if domestic violence is a major problem in her life.⁴⁴

A good example of this problem is the approach of the program to women who are living with a partner at the time they apply for cash assistance. Most people view recipients of Temporary Aid to Needy Families⁴⁵ ("TANF") benefits as single mothers who live alone with their children. The reality is that many recipient households also contain male partners. Because some states, including Maryland, extend TANF benefits to some two-parent households, some of these male partners are members of assistance units and therefore known

changes as well as prior policy documents together in one document. TCA MANUAL, *supra* note 1, at Ch. 4, § 6. In the Manual, the self-verification rule is clarified. *Id.*

42. TCA MANUAL, *supra* note 1, at Ch. 4, § 9 (indicating eligibility factors that must be verified, including the Social Security Numbers of all family members and the immigration status of noncitizens).

43. *See id.* at Ch. 4, § 6; *see also* SCHNEIDER, *supra* note 28, at 77-79, 83-85.

44. *See* TCA MANUAL, *supra* note 1, at Ch. 4, § 6 (noting that "some TCA requirements may be waived if the family violence expert believes that complying will make it more difficult to escape family violence."). This implies that without escaping, a woman subject to family violence may not be eligible for benefits. Therefore, when told of this policy, the woman is likely to believe that escape is her only option.

45. *See* Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended at 42 U.S.C. §§ 601-619 (Supp. 2002)).

to the welfare bureaucracy.⁴⁶ In addition, some states, including Maryland, extend TANF benefits to households that include “stepfathers” — live-in boyfriends who are not related to a child in the household.⁴⁷ Since some of the stepfather’s income may be deemed available to the household, they too are known to the welfare bureaucracy. Many other households contain male partners who are not officially known to the welfare bureaucracy.⁴⁸

Research done by Jody Raphael and others demonstrates the various ways that applicants for and recipients of public benefits face conflicting demands from the welfare bureaucracy and their intimate partners.⁴⁹ For example, a key feature of welfare reform has been the imposition of a work requirement on most recipients.⁵⁰ What if a recipient’s partner wants her to stay at home because of his jealousy about other men or because he is threatened by her ability to earn a living? He is likely to try to undermine her ability to perform her job, whether by beating her up or refusing to watch the children while she is gone.⁵¹ Many welfare programs offer education or training programs to recipients.⁵² Some batterers do not want their partners to be in such programs because they do not want their partners to become self-confident as their skills grow.⁵³

If a woman decides that the only way to stop the abuse is to get her battering partner out of her life, the Maryland program may be right for her because of the expected goal of “escape.”⁵⁴ Counseling services and waivers from several program requirements might be available, so long as she makes it through the preliminary hoops. At the time of her application, the TCA Manual states that if a case manager suspects abuse or if an applicant indicates that abuse is a problem, then the woman/family must meet with a family violence expert who can decide to waive program requirements such as the work requirement, child support cooperation and time limits.⁵⁵

46. *See id.* In a study of Maryland’s FVO, households with a domestic violence “victim” were more likely than “non-victim” households to contain more than one adult. HETLING-WERNYJ & BORN, *supra* note 3, at 21, tbl.3.

47. *See* TCA MANUAL, *supra* note 1, at Ch. 8, § 1.

48. *See* RAPHAEL, *supra* note 5, at 110.

49. *See generally id.* at 25; Graham, *supra* note 1, at 437-40.

50. *See* RAPHAEL, *supra* note 5, at 25.

51. *See id.*

52. *See id.*

53. *See id.*

54. *See supra* note 36 and accompanying text. According to the Maryland FVO, a “good” victim of domestic violence is one who wants “to escape.”

55. *See* TCA MANUAL, *supra* note 1, at Ch. 4, § 6.

Waivers are allowed when compliance with the requirements would make it difficult for the family to “escape” violence.

But what if the applicant has not decided to leave her abuser?⁵⁶ Instead, she has come to a point in her life when she wants some help. Perhaps she is worried that the continued abuse will mean she may not be able to get a job or finish high school. She does not want to be beaten, but she is not convinced that the way to stop the abuse is to leave. Perhaps she has tried that before and her partner has convinced her not to leave or made her return. Perhaps she has used up her family’s tolerance. Perhaps her self-confidence is gone. For this woman, the Maryland FVO offers very little help because the woman does not exhibit the “correct” behavior. That is, she is not escaping.

The system in Maryland is so committed to escape as the only correct behavior that a woman with a partner may have no safe situation in which to reveal the violence to a caseworker. For example, when a woman living with a partner applies for benefits and both are included in the assistance unit,⁵⁷ both partners are interviewed by the intake worker. Several questions in the standard interview concern domestic violence.⁵⁸ Usually, she is not likely to reveal her history with her partner sitting in the next chair. Caseworkers have no instruction on how to handle this dilemma. State policies instruct workers to “exercise caution” whenever contacting applicants at home.⁵⁹ However, there is no policy about what a caretaker should do when an applicant is sitting in the office next to a possible abuser.⁶⁰

Further, intake workers are supposed to tell applicants that they are obligated to reveal any information about child abuse to the proper authorities.⁶¹ If an applicant is concerned that her partner’s abuse may be seen as a risk to their children, that revelation might be

56. See Patricia Cole & Sarah M. Buel, *Safety and Financial Security for Battered Women: Necessary Steps for Transitioning from Welfare to Work*, 7 GEO. J. ON POVERTY L. & POL’Y 307, 319 (2000) (describing various reasons why women who are victims of domestic violence decide not to leave their abuser).

57. See TCA MANUAL, *supra* note 1, at Ch. 8, § 1.

58. See *id.*

59. See *id.* at Ch. 4, § 6 (requiring the intake worker to inform applicants that “state law requires the case manager to report instances of suspected child abuse or neglect to the Child Protective Services.”).

60. The Maryland study, conducted by Hetling-Wernyj and Born, identified a higher proportion of separated women as experiencing domestic violence when compared with women in current relationships. The authors of the study speculated that “women escaping violence as opposed to those in current relationships are most likely easier to screen and serve.” HETLING-WERNYJ & BORN, *supra* note 3, at 37.

61. See TCA MANUAL, *supra* note 1.

enough to keep the applicant quiet.⁶² Knowing about the caseworker's obligation may also give her abuser one more tool for keeping her submissive.

Even if the applicant's partner is not present at the interview, workers may not discover that domestic violence is occurring within the applicant's home or they may not identify what the applicant is describing as domestic violence. Based on a representative sample of case narratives, Maryland researchers have concluded that 5.12% of female applicants have told their caseworkers that they were either currently experiencing or had experienced domestic violence at some point during the prior three years.⁶³ Caseworkers, however, recognized a domestic violence problem in less than 1% of the cases.⁶⁴ Many other women were silent; they either never informed their caseworker about domestic violence in their lives or they did not inform them in a way that prompted the caseworker to create a record in the case narrative.⁶⁵

Sometimes—perhaps most of the time—the failure to communicate occurs because workers do not get adequate interview training, particularly in dealing with difficult subjects like domestic violence.⁶⁶ The failure to communicate also occurs because domestic violence is considered irrelevant in some areas where it could be considered relevant if the women were allowed to decide for themselves the ways in which the violence should be addressed. For example, Maryland's welfare program prohibits the payment of increased cash assistance benefits directly to a mother who bears a baby more than ten months after she begins receiving welfare.⁶⁷ Maryland's form of family cap does not apply to babies born as the result of rape or incest.⁶⁸ It does apply, however, if an abusive partner

62. See *id.* (stating that, when identifying possible family violence, “[c]ase managers need to be sensitive and listen carefully to what is said and not said and for possible clues indicating the customer is in a threatening relationship.”).

63. HETLING-WERNYJ & BORN, *supra* note 3, at 9-10.

64. *Id.*

65. See *supra* notes 3-5 and accompanying text (referring to differences in the percentage of cases where domestic violence was identified and the research estimates concerning the number of cases of domestic violence that are believed to occur).

66. See HETLING-WERNYJ & BORN, *supra* note 3, at 36-37; TIME OUT!, *supra* note 32, at 13-14 (using the Baltimore City Department of Social Services as an example of a Department that failed to adequately train case workers); see also Graham, *supra* note 1, at 479-80 (noting the impact of language barriers and lack of cultural sensitivity on the part of service providers as part of the failure to communicate).

67. See MD. ANN. CODE art. 88A, § 50(e) (1957); MD. REGS. CODE, tit. 7, § 03.03.06(E) (1) (2002).

68. See MD. ANN. CODE art. 88A, § 50(e) (1957); MD. REGS. CODE, tit. 7, §

forces a woman to have sex, and the mother, as is common, fails to identify his action as "rape."⁶⁹ When a mother reports the birth of her baby, caseworkers are not required to discuss the circumstances under which the conception took place, so no inquiry is made into whether the man's behavior might be considered a rape.

Even when domestic violence was identified, half of the women in the Maryland study were not provided with waivers.⁷⁰ In some cases, the caseworker probably failed to offer an appropriate waiver. In other cases, however, the applicant probably declined the waiver because it did not meet her needs. For example, nearly all welfare recipients in Maryland are subject to a work requirement.⁷¹ For a woman still living with her abusive partner, that requirement creates many problems and solves few. The Maryland FVO addresses such problems by offering a waiver from the work requirement if the waiver is needed so the woman can escape.⁷² The waiver thus benefits women who need some protected time and space within which to leave an abusive relationship. For example, women may need to move into a shelter, or get counseling, or attend to distressed children. Other women, however, may want to stay in the relationship at least for the moment, but they want more power. They may want help getting a steady job so that they become less financially dependent on their abusers. They may also want to develop a place in the world outside of the confinement of their homes and form connections with a group of co-workers and acquaintances.⁷³

A study of the implementation of Maryland's FVO revealed that Maryland's welfare population includes battered women who need a

03.03.06(E)(5)(a) (noting that the "regulation does not apply if: the birth of a dependent child is the result of rape or incest.").

69. Batterers sometimes use force to get sex; some, out of jealousy, demand sex without contraception; others encourage women's submission by mental assault and providing intoxicating substances. See RAPHAEL, *supra* note 5, at 46-55; see also Erin Meehan Richmond, *The Interface of Poverty and Violence Against Women: How Federal and State Welfare Reform can Best Respond*, 35 NEW ENG. L. REV. 569, 581-82 (2001) (noting that a large number of children born to welfare mothers are the result of "violence, coercion, or 'choice,' which is compromised at best."). Accord Meier, *supra* note 29, at 215-16.

70. See HETLING-WERNYJ & BORN, *supra* note 3, at 33; TCA MANUAL, *supra* note 1, at Ch. 4, § 6 (noting the possible waiver of the work requirement in cases of family violence).

71. MD. REG. CODE, tit. 7, § 03.03.07(i) (2002) (stating that recipients "shall participate in a work activity").

72. See TCA MANUAL, *supra* note 1, at Ch. 4, § 6.

73. See RAPHAEL, *supra* note 5, at 29-45 (summarizing several studies showing abusers' interference with education and employment as tactics used to keep abused women from entering the workplace).

work requirement waiver and those who need help with work.⁷⁴ The study found no statistically significant differences between “victim” groups and “non-victim” groups in terms of whether they were employed, except that the group granted the work requirement waiver included fewer employed women.⁷⁵ A significant difference was found, however, between women experiencing domestic violence and those who did not in terms of how much they earned and in terms of the stability of their employment. Women who experienced domestic violence earned less and changed jobs more often.⁷⁶ For these women, the FVO needs to provide more assistance with work so that they can achieve some success and independence. For example, women may need immediate access to childcare vouchers and transportation assistance so that they are not dependent on a partner who can use childcare and transportation issues to undermine the woman’s ability to get to work. Women will likely also need a coach to whom they can turn for help while making the transition from isolation to employment. They may also need counseling to help them develop awareness of their options and needs.

Maryland’s FVO offers counseling, albeit of an unspecified nature. It does not make any special point of delivering transportation and childcare assistance in ways that are useful to women living with domestic violence.⁷⁷ Indeed, in Baltimore City, participants in work activity programs may not apply for child care vouchers or receive bus passes until they have begun to attend the program, and they may not be approved for vouchers for a month or two.⁷⁸ In the meantime, women are supposed to use care providers who will accept a promise

74. See HETLING-WERNYJ & BORN, *supra* note 3, at 22-23.

75. See *id.*

76. See *id.* at 24-28; see also ROBERT MOFFITT ET AL., WELFARE, CHILDREN & FAMILIES POL’Y BRIEF 02-2, A THREE-CITY STUDY: THE CHARACTERISTICS OF FAMILIES REMAINING ON WELFARE 3 (2002) (comparing employed women who stayed on welfare with employed women who left the welfare program or who were never in the program), available at [http://www.jhu.edu/~welfare/19505\(19459\)Welfare_Brief.pdf](http://www.jhu.edu/~welfare/19505(19459)Welfare_Brief.pdf). Women who remained in the program were more likely to have experienced domestic violence. *Id.*

77. The study found that, as compared with “non-victims,” “victims” had more children and the children were somewhat younger. HETLING-WERNYJ & BORN, *supra* note 3, at 20. It is fair to assume that the childcare needs of “victims” are greater than those of “non-victims.” RAPHAEL, *supra* note 5, at 127.

78. See TIME OUT!, *supra* note 32, at 18 (noting that the Baltimore City Department of Social Services “does not provide daycare for customers . . . until after the application has been approved and the work activity begun.”). Also, the department “informed workers that recipients should be given bus tokens so that they could get to the work activity vendor for an initial appointment.” *Id.* at 19. However, workers often made recipients get the tokens from the work vendors. *Id.*

that a voucher is forthcoming.⁷⁹ Naturally, what many must do is ask family members to help out. A woman who depends on her abusive partner to do the job is a woman whose vulnerability is increased by the work activity requirement.⁸⁰ She is also not a woman who is successfully reducing her financial dependence on an abusive partner.

If the woman fails to comply with the work activity requirement because her partner refuses to provide reliable help with childcare or transportation, she risks being sanctioned and losing the entire family's cash assistance grant. While Maryland's FVO does not explicitly address the issue of sanctions, a person can demonstrate good cause for not complying by showing that she experienced family violence or a breakdown in transportation or child care.⁸¹ On the first occasion of sanctionable behavior, the welfare office must offer a conciliation conference before imposing the sanction.⁸² During that conference, the worker and the recipient are supposed to meet to discuss whether the recipient had good cause for noncompliance.⁸³ If the recipient reveals her history of abuse at that conference, and shows that it was violence or a threat of violence that kept her from

79. *Id.* at 18 (stating that "the customer is told to advise the daycare provider that daycare will be payable as of the first day of the work activity.").

80. See Maria L. Imperial, *Self-Sufficiency and Safety: Welfare Reform for Victims of Domestic Violence*, 5 GEO. J. ON FIGHTING POVERTY 3, 4 (1997) (discussing the dependency of women on their abusive partners). "Many women in violent relationships are economically dependent on their abusive partners . . . welfare may also be a battered woman's only bridge to freedom . . . many battered women state their ability to obtain welfare is a critical first step to becoming independent." *Id.* See Anna Marie Smith, *The Sexual Relation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 165 (showing how "welfare benefits and poverty assistance programs are, in themselves, important tools for combating domestic violence. We have seen that women are more likely to leave an abusive relationship when they have access to the material resources that they need to support themselves and their children."); see also Lisa A. Crooms, *The Mythical, Magical "Underclass": Constructing Poverty in Race and Gender, Making the Public Private and the Private Public*, 5 J. GENDER, RACE & JUST. 87, 127-28 (2001) (discussing the dependency and vulnerability of abused women).

While the . . . [FVO] is intended to permit states to exempt from work requirements and time limits women leaving domestically violent relationships, it may very well create additional obstacles for women with no or limited resources who try to leave abusive relationships, at the very time they need support to successfully remove themselves and their children from violent homes. Women who leave abusive relationships are particularly vulnerable to poverty because of precipitous declines in their standards of living when their relationship ends.

Id.

81. MD. REGS. CODE, tit. 7, § 6, ch.03.03.07(I) (8) (2002).

82. MD. ANN. CODE art. 88A, § 50(f) (2); MD. REGS. CODE, tit. 7, § 6, ch.03.03.07(A) (4) (b) (i) (2002).

83. See *id.*

complying, the sanction should not be imposed.

Unfortunately, recipients often fail to attend conciliation conferences or make full use of them to resolve problems. One reason the conciliation process may fail is that the welfare offices are not committed to making it work. It was my experience as an advocate during the first few years of welfare reform that most workers did not know they were required to offer a conference. The workers who handle conciliation conferences are not required to have special training to detect or understand domestic violence,⁸⁴ and they are subject to the usual mandatory disclosure requirement if they detect a possibility of child abuse.⁸⁵ And, finally, the turnover rate for workers is so high that recipients rarely meet the same worker more than once or twice.⁸⁶ A trusting relationship that would make it more possible to reveal family problems such as domestic violence is unlikely to develop under such circumstances.

Successfully leaving an abusive situation does not happen overnight.⁸⁷ Some women make repeated attempts to leave before finding what appears to be a safe escape and garnering necessary resources.⁸⁸ One result of this process is that a woman may try and fail on numerous occasions to get work and keep a job. If her efforts occur in the context of welfare reform she may not be engaging in "correct" behavior of trying to escape and she may also repeatedly run afoul of the work requirement. In Maryland, after her first sanction, she is no longer entitled to the relatively informal conciliation conference. Her only recourse is a formal administrative appeal, where she would be required to testify to her abuse before a hearing officer. Few women take that route.

If women were asked what kinds of behavior modification requirements worked for them, many would probably suggest requiring their abusive partners to get counseling. In cases where a partner is included in the assistance unit, the state could include counseling about domestic violence as an element of the batterer's work activity requirement. Baltimore City, the jurisdiction in

84. See *TIME OUT!*, *supra* note 32, at 13.

85. See *TCA MANUAL*, *supra* note 1, at Ch. 4, § 6 (noting that workers must inform applicants of the mandatory disclosure policy regarding child abuse or neglect).

86. See generally Jim Moye & Roberta Rinker, *It's a Hard Knock Life: Does the Adoption and Safe Families Act of 1997 Adequately Address Problems in the Child Welfare System?*, 39 *HARV. J. ON LEGIS.* 375, 382-84 (discussing high turnover rates of child welfare social workers and providing reasons for the turnover that can apply to domestic violence workers as well).

87. See generally Martha Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 *MICH. L. REV.* 1 (1991).

88. See *id.*

Maryland with the largest number of recipients, has no arrangements to provide such counseling. The omission is not due to officials concluding that batterer's counseling is useless.⁸⁹ Instead, it is the product of a FVO, which makes women the object and not the subject of their lives.

V. CONCLUSION

How does it happen that a progressive state adopts a family violence option that ignores and may even endanger women who experience domestic violence? My answer to that question is that the FVO fails women because it is embedded in welfare reform.

First, welfare reform is grounded in assumptions about the wrongfulness of women being dependent on government assistance. Rather than look to the government for help, women should gain their sustenance either from employment or from a husband. The antidote to women's dependency, under welfare reform, is "personal responsibility," that is, the woman's efforts to take care of herself will cure her problems. The job of welfare, therefore, is to force the woman to be responsible.

In the context of family violence, welfare reform's assumptions run into a problem. Women do not beat themselves up. No amount of "personal responsibility" on the part of a woman will make a man stop beating her up. In fact, if she asserts she is able to take care of herself, her assertion of independence may enrage him and increase her danger. Her problems are not personal; they are systemic. A woman gets beaten because of the systems in which she lives: the family system that includes the man who beats her and the social, economic, political and judicial systems that let him do so. Welfare reform is not about systems that keep women dependent and poor, however; it is about seeing women as individuals with private lives that go untouched by their surroundings. If a woman starts to behave responsibly, the theory of welfare reform claims, she will stop needing welfare.

Second, the most widely accepted measure of the success or failure of welfare reform is whether fewer families receive welfare. Caseworkers are trained to make it difficult to get and to keep welfare. Their efforts cannot be directed simultaneously to keeping

89. See ATT'Y GEN. & LT. GOVERNOR'S FAMILY VIOLENCE COUNCIL, POSITION ON EFFECTIVENESS OF ABUSER INTERVENTION PROGRAMS (2002) [hereinafter POSITION ON EFFECTIVENESS] (finding that positive reactions to counseling directed at batterer's include a reduction in arrests for domestic violence and in the occurrence of domestic violence), available at <http://www.oag.state.md.us/Family/effectiveness.pdf>.

people off the rolls and making sure that people with problems get identified and helped. Violence is not something women admit freely. When faced with a hostile system and a negative caseworker, women are highly unlikely to reveal their victimization or expect help to be forthcoming.

Third, and last, welfare reform is about getting women to modify their behavior in ways that the policy designers have decided are acceptable. In Maryland, escape is the proper response for a woman who is being beaten. If she has any other goals, such as getting the abuse to stop but not ending the relationship, the welfare system is not prepared to help.

Welfare reform is a system that refuses to treat women as the subjects of their own lives. Everyone gets processed through the same system and gets benefits, depending on several factors over which they are told they have no control. The system cannot easily make itself over for a particular group of women who are included within the system, such as women who are experiencing domestic violence.

Furthermore, a system that does not respect what women say about themselves as individuals is also a system that resists changing in response to problems that have gone unidentified by officials. For example, it has been over a year since the Family Violence Council, an organization co-chaired by the Maryland's Lieutenant Governor and Attorney General, reported that few families had been identified for FVO services in the first four years of welfare reform. However, nothing has been done to investigate why so few families have been identified and served.⁹⁰

VI. RECOMMENDATIONS

The truth of the matter is that welfare reform is here to stay. Indeed, it may get even worse as the result of the reauthorization process now underway in Congress. So are there ways in which the system might be made somewhat more responsive to women who are very poor and also experiencing domestic violence? Here are a few suggestions:

1. Rather than requiring states to cut off welfare benefits for recipients in sixty months or less, allow benefits to continue so long as the recipient attempts to comply with program requirements.⁹¹ While this change will not free women from

90. See Graham, *supra* note 1, at 479-85 (discussing reasons why few families enter Illinois's FVO program and how to improve the progress to accommodate new families).

91. See RAPHAEL, *supra* note 5, at 124 (noting that under FVO, a state may choose

being subject to the state's vision of good behavior, it will provide some financial support to those who are trying to comply.

2. Since welfare reform will remain a behavior modification system, it should attempt to modify the behavior of the men as well as the behavior of the women. At least some of the women who experience domestic violence want to preserve their relationship with the men in their lives, but they want the men's behavior to change.⁹² If the system took that desire seriously, the state could develop programs to work with the men, both the men who are acknowledged to be members of the assistance unit and the men who are part of the women's lives but not formal members of the assistance unit.⁹³ For example, co-resident fathers could be required to attend batterer's counseling, as could fathers who are sued for child support.
3. Some of the women might say that they want counseling for themselves and their partners. They may view counseling as a way to get their partner to change and stop using violence to get his way in the relationship. The Maryland program, however, appears to provide counseling for the woman alone, not for the couple.⁹⁴ That too could change.
4. Some studies of protection orders show that women use legal help to reduce the batterer's use of violence in the relationship rather than to end the relationship.⁹⁵ Legal action is not a part of Maryland's program at present, except to the extent that a woman may be referred to community resources. However, legal assistance could be provided as a TANF benefit,⁹⁶ and work requirements and time limits could be waived while the woman attends court. Her failure to comply with a work

to temporarily waive the sixty-month lifetime limit on receipt of federal welfare benefits).

92. See POSITION ON EFFECTIVENESS, *supra* note 89 (noting that programs should be sensitive to the fact that the abuser's participation in counseling may influence whether the abused spouse will remain in the relationship).

93. See TCA MANUAL, *supra* note 1, at Ch. 8, § 7 (setting forth the eligibility requirements for establishing the members of an assistance unit).

94. See *id.* at Ch. 4, § 6 (stating that the family violence expert may refer the family to other counseling resources that may be available in the community).

95. See generally Sally Engle Merry, *Resistance and the Cultural Power of Law*, 29 LAW & SOC. REV. 11 (1995).

96. See SCHNEIDER, *supra* note 28, at 95-96 (explaining that while battered women are now afforded legal remedies, none of these new statutory schemes provide for counsel; therefore, many statutes force battered women to proceed as pro se litigants in court).

requirement could be excused if she has to meet with her lawyer or otherwise participate in the legal process.

5. Caseworkers and in-house domestic violence experts are not necessarily the right people to work with women experiencing domestic violence, because they may lack sufficient experience with and understanding of local services and because they are subject to mandatory child abuse reporting requirements. Local offices could contract with private organizations to work with women to identify and access services.⁹⁷
6. Mandatory disclosure requirements need to be changed so that women are not put at risk for losing custody of their children to social services because of a partner's violence.⁹⁸
7. Probably most important is the creation of a customer feedback loop. Welfare officials need to survey women who have used or tried to use public benefits programs to determine what has been helpful and what has not. They need to make women's voices and opinions a key part of any change in strategy.⁹⁹

Maryland's FVO provides some benefits to a small group of women who seek welfare because they have decided to take the approved route of escaping domestic violence. Because the FVO is embedded in an antipathetic welfare reform context, however, most women who are being abused do not get identified and many are poorly served. The program takes no notice of women who have not made a final decision to leave, and, still worse, it imposes requirements on welfare recipients that may place them in danger. Welfare grants are basic subsistence for women and their children. Welfare reform should include the power to refuse this basic form of support. The fact that it does should offend — and perhaps terrify — all of us.

97. See RAPHAEL, *supra* note 5, at 125-26 (describing programs initiated by some welfare departments in which the department hired domestic advocates to screen welfare reform recipients for signs of abuse and to provide information to the abused recipients regarding available services); Graham, *supra* note 1, at 480 (noting Chicago's "Options Project" as an example of a program involving cooperation between private, neighborhood counseling and support parties and the state program).

98. See SCHNEIDER, *supra* note 28, at 153-68.

99. See *id.* at 102-04.