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CHILDREN IN POVERTY: RECONCILING CHILDREN'S INTERESTS WITH CHILD PROTECTIVE AND WELFARE POLICIES

A Response to Ward Doran and Roberts

SARAH H. RAMSEY*

INTRODUCTION

When Congress adopted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), the Aid to Families with Dependent Children (AFDC) program was replaced with the Temporary Assistance to Needy Families (TANF) program, which emphasized work first and ended federal entitlement to benefits.¹ TANF will expire in 2002, however, and this University of Maryland School of Law symposium provides an opportunity to explore issues related to its reauthorization.

This commentary responds to the conference paper presented by Morgan B. Ward Doran and Dorothy E. Roberts.² Ward Doran and Roberts address the problems of “dual-system families”—TANF families who are also involved with the child welfare system. They argue that both systems assume that a family’s problems are caused by parental deficiencies that can be remedied by behavior modification programs. Further, they note that the goals and requirements of TANF and child welfare often conflict. They conclude that more generous support for parents is needed rather than requirements that parents modify their behavior in accordance with TANF rules. They support their general thesis with a report on an empirical study of sixteen dual-system families—TANF families who had an “indicated” child neglect or abuse allegation (an allegation supported by some credible evidence) and, therefore, were also involved in the child welfare system. Their sample was drawn from a larger, longitudinal study

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

2. Morgan B. Ward Doran & Dorothy E. Roberts, *Welfare Reform and Families in the Child Welfare System*, 61 MD. L. REV. 386 (2002).

that is ongoing in Illinois.³ They document how TANF failed to solve the child care, transportation, and other employment barriers for the sixteen parents who were participants in their empirical study.⁴ The Ward Doran and Roberts study found that the parents' TANF problems were compounded by the need for these dual-system families to comply with the requirements of the child protective system.⁵

Ward Doran and Roberts focus their attention primarily on the impact of TANF and child welfare on mothers. My critique will take a more child-centered view. Parts I and II of my commentary will elaborate on the overlapping issues of the child welfare system and TANF. Parts III and IV will identify some positive as well as negative aspects of these two systems. The conclusion contends that parental responsibility should not be used as a justification for depriving children of basic needs and proposes that child welfare be considered more as a joint parent-community responsibility.

I. THE CHILD WELFARE AND TANF POPULATIONS

The majority of families involved with child protective services (CPS) are low-income families.⁶ The connections between poverty and maltreatment are complex. Most low-income parents do not abuse or neglect their children. However, researchers suggest that poverty, coupled with other problems such as depression, unemployment, and domestic violence, may lead to an increase in maltreatment.⁷ A number of studies have connected poverty-related factors and CPS involvement.⁸ Neglect is a major basis for reported cases and

3. *Id.* at pt. III.A (describing the sample used in the study). Their subset of the larger study was about 5%, or seventy families. They were only able to interview sixteen parents, however, and they note that the interviewees differed on several measures from the subset generally. *Id.*

4. Morgan B. Ward Doran & Dorothy E. Roberts, *The Impact of Welfare Reform on Families Involved in Child Protective Services: Parents' Perceptions and Experiences* (July 1, 2001) (unpublished study on file with authors).

5. Ward Doran & Roberts, *supra* note 2, at pt. IV (discussing the competing demands of DCFS and TANF on study participants).

6. See Diana J. English, *The Extent and Consequences of Child Maltreatment*, *FUTURE CHILD.*, Spring 1998, at 39, 47 (noting that poverty contributes to the likelihood of child maltreatment). The term "child protective services" usually refers to the particular laws, service agencies, and funding that comprise the governmental response to child abuse and neglect incidents. The term "child welfare services" typically includes child protective services and additional services such as adoption and foster care. See Patricia A. Schene, *Past, Present, and Future Roles of Child Protective Services*, *FUTURE CHILD.*, Spring 1998, at 23, 24 (differentiating between protective and welfare services for children).

7. English, *supra* note 6, at 45-47.

8. For specific citations to these studies, see Sarah H. Ramsey, *The United States Child Protective System—a Triangle of Tensions*, 13 *CHILD & FAM. L.Q.* 25 (2001).

removals.⁹ A very small percentage (14%) of children in substantiated maltreatment cases are removed from their homes and placed in foster care, but the majority of these are neglect cases.¹⁰ Abuse, as well as neglect, is associated with poverty.¹¹

If poverty is viewed as a proxy for both TANF eligibility and an increased likelihood of child maltreatment, then both the TANF and CPS caseloads could potentially include a far greater number of children compared to current caseloads. The majority of poor children, however, do not end up in TANF or the CPS system. Using the federal poverty guidelines, an appalling 17.5% (12.4 million or more than one in six) of children live in poverty, representing a decrease from the 22% rate of 1992.¹² For children under age five, one in five, or 19.7%, are living below the poverty line.¹³ The number of children in families receiving TANF benefits, however, is about one-half that number—only 6,273,000.¹⁴ The number of children in the child protective system is under one million.¹⁵

Even though most families living below the poverty line will not become part of the CPS caseload, this does not mean that their children are not at risk. It is well documented that poverty is harmful to children.¹⁶ Children are better off if their parents can provide good housing, supervision, education, food, and medical care.

9. JANE WALDFOGEL, *THE FUTURE OF CHILD PROTECTION* 6 (1998). In 1996, child protective service agencies received three million child abuse and neglect reports (47 per 1000 children). *Id.* Of these, 58% were neglect, 22% physical abuse, and 12% sexual abuse. *Id.* at 8.

10. *Id.* at 11.

11. *See id.* at 6-9.

12. David M. Betson & Robert T. Michael, *Why So Many Children Are Poor*, *FUTURE CHILD.*, Summer-Fall 1997, at 25, 30; Press Release, Children's Defense Fund, *New Data Show High Poverty Levels for Children in Every State* (Aug. 6, 2001) (data from the Census 2000 Supplementary Survey). Families below the poverty threshold are substantially below one-half the median family income, an accepted relative measure of poverty. The median income for families with children in 1999 was \$47,949. *CHILDREN'S DEFENSE FUND, THE STATE OF AMERICA'S CHILDREN 2* (2001) [hereinafter *THE STATE OF AMERICA'S CHILDREN*]. The federal poverty guideline in 2001 was \$14,630 for a family of three. Annual Update of the HHS Poverty Guidelines, 66 Fed. Reg. 10,695, 10,695 (Feb. 16, 2001).

13. Press Release, *supra* note 12.

14. U.S. DEP'T OF HEALTH & HUMAN SERVICES, *CHARACTERISTICS AND FINANCIAL CIRCUMSTANCES OF TANF RECIPIENTS: FISCAL YEAR 1998*, available at <http://www.acf.dhhs.gov/programs/opre/characteristics/fy98/sum.htm> (last visited Feb. 1, 2002).

15. *See* U.S. DEP'T OF HEALTH & HUMAN SERVICES, *CHILD MALTREATMENT 1999*, at 19 (2001) (stating that 826,000 children were CPS-recognized abuse victims in 1999).

16. *See* ARLOC SHERMAN, *CHILDREN'S DEFENSE FUND, POVERTY MATTERS: THE COST OF CHILD POVERTY IN AMERICA* 22-32 (1997); Karen Syma Czapanskiy, *Parents, Children, and Work-First Welfare Reform: Where is the C in TANF?*, 61 MD. L. REV. 308 (2002).

There is another measure of poverty that is even more ominous in terms of children's well-being, and that is *extreme poverty*—families whose income is less than one-half the federal poverty threshold.¹⁷ For a family of three this would be less than \$7315. The number of children living in families in extreme poverty increased by 400,000 (from six million to 6.4 million) between 1995 and 1997.¹⁸ When we are critiquing the child welfare system and TANF, it is important to keep in mind that neither program has successfully dealt with child poverty—an overriding problem for their service populations.

II. THE IMPACT OF TANF ON THE CHILD WELFARE SYSTEM

Child welfare system workers and others expected that there would be a large increase in the number of families referred to the child welfare system due to families who lost their welfare benefits from TANF sanctions or lifetime eligibility limits. Instead, the slight decline that began in 1994 in the number of child maltreatment victims has continued nationwide, although there was a slight increase in the number of neglect cases.¹⁹ Some states have had an increase in substantiated maltreatment, but child welfare staff and others interviewed in some of these states did not think the increase was due to TANF.²⁰ The number of children in foster care continued to rise, but between 1996 and 1999, the last years these data were available, the average annual rate of increase (2.3%) was less than it was for 1993 through 1996 (when the average annual increase was 4.7%).²¹

In spite of no overall apparent impact, studies have found that child welfare system workers are seeing conflicts between the two systems similar to those found in the Ward Doran and Roberts study. These conflicts include:

Work requirements may conflict with families' access to child welfare imposed services and attendance at court hearings;
Families may be overwhelmed by the stress of attempting to meet the requirements of both systems;
Families with emergency needs not addressed by TANF may have children placed in foster care; and

17. ARLOC SHERMAN ET AL., CHILDREN'S DEFENSE FUND, WELFARE TO WHAT?: EARLY FINDINGS ON FAMILY HARDSHIP AND WELL-BEING 2 (1998).

18. *Id.* at 11.

19. ROB GEEN ET AL., THE URBAN INSTITUTE, WELFARE REFORM'S EFFECT ON CHILD WELFARE CASELOADS 20 (2001). There were 1,026,000 child maltreatment victims in 1993 (15.3 per 1000); 1,012,000 in 1996 (14.7 per 1000); 903,000 in 1998 (12.9 per 1000). *Id.*

20. *Id.* at 20-21.

21. *Id.* at 32-33.

Mandating work without adequate childcare may undermine child safety and lead to neglect reports.²²

Some programs, however, are working to resolve these problems. Some, for example, count child welfare activities toward the TANF work requirement or grant a "good cause" work exemption.²³ Other localities are providing integrated services to families by developing a team approach that uses workers from child welfare, TANF, and other agencies.²⁴

In addition to program conflicts, child welfare workers are seeing changes in the types of cases reported. For example, more families were reported for inadequate supervision, which workers believed "was the direct result of welfare parents working and not being able to secure appropriate child care."²⁵ Workers have also identified a new problem, namely somewhat older children, such as ten-year-olds, being expected to care for younger children even though they are too young to do so.²⁶ Also, some studies within states have found connections between families who have been sanctioned and abuse and neglect reports; one study found that one out of six reports involved sanctioned families.²⁷ Another study found that "sanctioned families were 50 percent more likely to have had some contact with the child welfare system than nonsanctioned families."²⁸ Note that these connections do not necessarily mean that the sanction caused the contact with child welfare; instead, both the CPS referral and the sanction may have been due to other causes.²⁹

In addition to different types of cases, neglect reports from welfare staffs to child welfare agency staffs were more frequent under TANF than they were under AFDC.³⁰ In some instances this increase was because TANF staff were told to report families who were sanctioned or had reached their time limits.³¹ More generally, however, TANF workers may have increased reporting because they have more

22. *Id.* at 35.

23. JENNIFER EHRLE ET AL., THE URBAN INSTITUTE, WELFARE REFORM AND OPPORTUNITIES FOR COLLABORATION BETWEEN WELFARE AND CHILD WELFARE AGENCIES 6 (2001).

24. *Id.* at 12.

25. GEEN ET AL., *supra* note 19, at 23.

26. *Id.*

27. *See id.* at 25 (reporting that of 600 abuse reports in Alameda County, California, about 100 came from households that had also been sanctioned by TANF).

28. *See id.* (reporting the results of a 1997 Michigan study).

29. *See id.* at 13-15.

30. *See id.* at 26.

31. *See* EHRLE ET AL., *supra* note 23, at 8 (referencing a Florida policy that refers sanctioned families to child welfare). The practice of also reporting families who had reached their time limits was stopped because of the increased child welfare caseload. *Id.*

contact, including in-home visits, with TANF families than they did with AFDC families.³² These TANF worker reports, however, may reflect a lack of training about what the child welfare system considers to be “neglect.”³³ Some of the CPS staffs have suggested that TANF staffs are not used to seeing the degree of poverty that recipients suffer and inappropriately equate it with neglect.³⁴ For example, in several states TANF workers reported homeless families to CPS even though homelessness is not a sufficient basis for a finding of neglect.³⁵

To consider these findings from a different perspective, the children in these families were living in dire poverty and needed help, but neither TANF nor CPS provided adequate assistance. The families were already connected to TANF, but were still living in situations that the TANF workers viewed as neglect. CPS, however, was not able or willing to be a service provider until the families’ circumstances worsened.

The child welfare workers also reported that more new families, who were not already in the child welfare system, were coming to them for emergency assistance.³⁶ The child welfare system may justify paying utility bills or assisting with rent as a means of avoiding placing children in foster care.³⁷ This helping function of child welfare may seem surprising because Ward Doran and Roberts, among others, view the child welfare system as a punitive system.³⁸ The child welfare system, however, has more of a split mission than does TANF. Under TANF, the parent and child are viewed as a unit, with a focus on the parent. TANF’s work-first, parental responsibility message is clear—the child will benefit when the parent succeeds, but will suffer when the parent fails. The child welfare system, however, focuses on the child as well as the parent. Indeed, it has been noted that the child welfare mission of helping families actually conflicts with the goals of TANF.³⁹ If the TANF sanction means that a family’s utilities will be cut off, for example, but the child welfare system provides temporary

32. GEEN ET AL., *supra* note 19, at 27.

33. See EHRLE ET AL., *supra* note 23, at 16-17 (discussing training for TANF workers and noting that few TANF workers received training on abuse or neglect).

34. *Id.* at 27.

35. *Id.*

36. *Id.* at 24, 37.

37. *Id.*

38. Ward Doran & Roberts, *supra* note 2, at pt. I.D.

39. See Mark E. Courtney, *The Costs of Child Protection in the Context of Welfare Reform*, FUTURE CHILD., Spring 1998, at 88, 100 (stating that “this very assistance to poor families by the child welfare system may undercut the impact of benefit reductions that new welfare programs use to enforce their work requirements and time limits”).

assistance to keep utilities on, the child welfare system aid ultimately undermines the TANF sanction.

III. THE SERVICE MISSION OF THE CHILD WELFARE SYSTEM

Child welfare agencies should be a resource for children who are maltreated, both in order to provide a safe environment and to assist with the children's medical, mental health, education, and other needs. They also should be a resource for parents who need assistance with problems that prevent them from caring adequately for their children. Unfortunately, however, these resources are frequently unavailable, in spite of extensive regulatory efforts and numerous lawsuits aimed at improving child welfare service delivery.

State child protective services are extensively regulated, although indirectly, by federal requirements, particularly by the Adoption Assistance and Child Welfare Act of 1980 (AACWA)⁴⁰ and the Adoption and Safe Families Act (ASFA).⁴¹ AACWA was passed in response to concerns that children were being removed from their homes unnecessarily and placed in foster care where they drifted from placement to placement.⁴² AACWA required that states make "reasonable efforts" to keep maltreated children at home and to reunify the family if removal was necessary.⁴³ Courts were given an active oversight role to ensure that children were not in foster care unnecessarily or for too long.⁴⁴

Unfortunately, because of large caseloads and a lack of resources, the states did not offer programs or services that truly constituted "reasonable efforts" to help families. Instead of programs that were

40. Pub. L. No. 96-272, 94 Stat. 500 (1980) (codified as amended in scattered sections of 42 U.S.C. (1994)) (conditioning federal funding for various state social welfare programs on compliance with federal law). See generally Alice C. Shotten, *Making Reasonable Efforts in Child Abuse Neglect Cases: Ten Years Later*, 26 CAL. W. L. REV. 223 (1990) (describing the goals and impacts of the AACWA).

41. Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified in scattered sections of 42 U.S.C. (Supp. V 1999)).

42. See Michael S. Wald, *State Intervention on Behalf of "Neglected" Children: Standards for Removal of Children from Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights*, 28 STAN. L. REV. 623, 628-29 (1976) (stating that children are removed from homes for reasons ranging from physical abuse to filthy living arrangements); see also Shotten, *supra* note 40, at 223-24 (stating that a goal of AACWA was to prevent the breakup of families).

43. 42 U.S.C. § 671(a)(15) (1994). AACWA stated that "in each case reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home." *Id.*

44. See Mark Hardin, *Child Protection Cases in a Unified Family Court*, 32 FAM. L.Q. 147, 151-53 (1998).

individually tailored to meet a family's needs, they were "one-size-fits-all."⁴⁵ These and other problems meant that AACWA was never fully implemented, and the foster care population increased rather than decreased.

ASFA was passed to correct the problems with AACWA and did so by placing a greater emphasis on child safety and permanency.⁴⁶ To reduce the length of stay in foster care, strict time limits were imposed within which children were to be returned home or freed for adoption through termination of their parents' rights. Under ASFA, a petition to terminate parental rights must be filed when a child has been in foster care for fifteen of the most recent twenty-two months.⁴⁷ ASFA also allows concurrent planning, so that agencies may plan for adoption or other out-of-home permanent placement while trying to reunify the family.⁴⁸

In the abstract, many aspects of the AACWA and ASFA requirements are in accord with what we know about child well-being. When a child is abused or neglected, the state should intervene; efforts should be made to keep the child in the home or to reunify the family if the child was removed because the home could not be made safe. Services and programs should allow a majority of children and parents to live together in an environment that is safe for the child. If efforts at reunification fail, however, the child should be moved to a permanent placement, preferably with another family that has been identified as suitable for the child's needs. Under this model, the child welfare system would provide effective assistance to maltreated children and their families, combined with coercion that is used only when necessary for the child's safety.

The operational reality of child welfare, however, is very different. The helping aspect of CPS is usually buried in underfunded, poorly staffed, and overburdened agencies. On a nationwide level there is general agreement that the CPS system is performing poorly.⁴⁹ CPS programs, as implemented, suffer from being overinclusive and underinclusive—some families are included in the CPS system unneces-

45. WALDFOGEL, *supra* note 9, at 86-87.

46. See David J. Herring, *The Adoption and Safe Families Act—Hope and Its Subversion*, 34 FAM. L.Q. 329, 329 (2000) (stating that ASFA had the twin goals of securing child safety and safeguarding the family structure).

47. 42 U.S.C. § 675(5)(E) (Supp. V 1999). There are some exceptions to the requirement. For example, the state agency is not required to file for termination of parental rights when the child is in a relative's care. *Id.* § 675(5)(E)(i).

48. *Id.* § 671(a)(15)(F).

49. See, e.g., Jane Waldfogel, *Protecting Children in the 21st Century*, 34 FAM. L.Q. 311, 311 (2000).

sarily and others omitted when they should be included.⁵⁰ Studies of CPS investigations of maltreatment reports and assessments of risk for removal and reunification portray a system that is arbitrary and frequently wrong.⁵¹

Overall, if a TANF family does end up in the child welfare system, either by self-referral because of a need for services or because of an abuse or neglect report, the likelihood that the family will be effectively assisted by the child protective services system is slight. Indeed, neglect cases are more likely than abuse cases to receive no services at all.⁵² The child welfare system is unlikely to have resources that can be stretched to cover basic needs, such as housing, on more than a short-term, emergency basis. A persistent complaint about child welfare is the lack of funding for preventive services and the states' failure to make reasonable efforts.⁵³ Although in theory children are not removed from their parents because of poverty, the intersection of neglect, abuse, and poverty, coupled with a lack of CPS or other resources, means that this distinction cannot be maintained.⁵⁴

Particularly in the context of a poorly functioning CPS system, the ASFA time limits that set a fast track for termination of parental rights are a cause for heightened concern. Family reunification programs can be successful, but successful programs are not the norm.⁵⁵ In addition to the problem of unnecessary termination of parental rights, adoption is not necessarily the panacea that will resolve a child's problems. In September 1999, an estimated 118,000 children were awaiting adoption, with sixty percent of these children having been in continuous foster care for two or more years.⁵⁶ A majority of these children were in nonrelative foster care (58%) and were African-American (50%).⁵⁷ The median age of these children was 7.8

50. *Id.*

51. Ramsey, *supra* note 8, at 31-32.

52. English, *supra* note 6, at 49-50 (estimating that between 40% and 60% of substantiated cases receive no services).

53. See Edith Fein & Anthony N. Maluccio, *Permanency Planning: Another Remedy in Jeopardy?*, 66 SOC. SERV. REV. 335, 338-39 (1992).

54. Daan Braveman & Sarah H. Ramsey, *When Welfare Ends: Removing Children from the Home for Poverty Alone*, 70 TEMP. L. REV. 447, 448 (1997) (stating that a basic assumption of early drafts of ASFA was that poor children would be better cared for by the state).

55. See Robert F. Kelly, *Family Preservation and Reunification Programs in Child Protection Cases: Effectiveness, Best Practices, and Implications for Legal Representation, Judicial Practice, and Public Policy*, 34 FAM. L.Q. 359, 376 (2000) (stating that "[w]hile family reunification programs are far from being globally effective, their promise is notable").

56. U.S. DEP'T OF HEALTH & HUMAN SERVICES, THE AFCARS REPORT, available at <http://www.acf.dhhs.gov/programs/cb/publications/afcars/ar1000.htm> (last visited Feb. 4, 2002).

57. *Id.*

years.⁵⁸ Older, special needs, or minority children are hard to place. In addition, adoptions are not always successful. National figures on adoption disruption (when the child is removed from the home prior to the adoption being legally completed) and on adoptive dissolution (the termination of a completed adoption) are not available.⁵⁹ However, various studies of adoption have found disruption rates that ranged from three percent to fifty-three percent, depending on the population studied and measurements used.⁶⁰ Overall, an estimated ten percent to thirteen percent of all adoptive placements are disrupted. Disruption rates are higher for special needs, older children, and children with longer foster care stays and previous placements.⁶¹

Although Ward Doran and Roberts place the coercive aspect of CPS in a negative frame, it is important to keep in mind that some parents do abuse and neglect their children, and coercive intervention is needed in some instances. Further, CPS can provide helpful intervention. Some family preservation and family reunification programs have been successful, even with multiproblem families.⁶² Frequently these successful programs had well-trained staff and offered extensive concrete services, such as emergency cash, food, housing, and therapy programs.⁶³ Staff in these programs had more flexibility in program budgeting, and services were offered for an extended time. Larger scale system innovations have also been successful.⁶⁴

A critique of child welfare should recognize its strengths, as well as its weaknesses, in order to develop proposals for change. Recent proposals for a "differential response system" recognize the need for improved helping systems, but also recognize the need for coercion in some cases.⁶⁵ The differential response system provides a more targeted response to families' needs. Families would be connected to a network of community-agency partnerships that form a broader base of service providers. A differential response model would also include assistance to families who were not part of CPS, but who nonetheless needed assistance. It could be a resource, therefore, for the majority

58. *Id.*

59. Kathy S. Stolley, *Statistics on Adoption in the United States*, FUTURE CHILD., Spring 1993, at 26, 31.

60. *Id.*

61. *Id.* at 31-32.

62. Kelly, *supra* note 55, at 385-86.

63. *Id.* at 382-84.

64. WALDFOGEL, *supra* note 9, at 137-60 (criticizing the current narrow scope of CPS programs, and advocating a broader, more diverse approach like those taken in Missouri, Florida, and Iowa).

65. Waldfogel, *supra* note 49, at 315-16.

of low-income families who do not enter the child welfare system. A more coercive response would be used with relatively few families. The differential response model has been implemented successfully in several localities and has been the focus of recent reform efforts.⁶⁶

Reform efforts and service programs should be evaluated to determine their impact on children's health, education, and general well-being. Ostensibly both welfare and child welfare are intended to benefit children, yet little attention is paid to the actual impact of these programs on children.⁶⁷

IV. IS TANF A SUCCESS?

The welfare system, like the child welfare system, is not entirely bad. A possible explanation for the apparent lack of substantial TANF impact on the child welfare system is that overall TANF has not had a negative effect on the well-being of children in low-income families. Some of the problems that Ward Doran and Roberts identify with TANF, such as the family cap,⁶⁸ the termination of benefits when children are placed in foster care,⁶⁹ and the lack of sufficient funds for necessities, were also problems in the AFDC program.⁷⁰ Further, the PRWORA did substantially reduce work disincentives that were present in AFDC, including providing more generous access to Medicaid and childcare subsidies. Overall, under TANF, when a family moves from no work to even part-time, minimum wage work (twenty hours/week at \$5.15/hour), the family's income⁷¹ increases substantially.

The effect of work on income varies by state because of the variations in TANF benefit levels and eligibility rules.⁷² A family that moves from no work to work in a low TANF benefit state will have a

66. WALDFOGEL, *supra* note 9, at 151-57 (describing Florida's innovations with sexual abuse cases and the Patch Project in Linn County, Iowa).

67. Timothy M. Smeeding, *An Interdisciplinary Model and Data Requirements for Studying Poor Children*, in *ESCAPE FROM POVERTY: WHAT MAKES A DIFFERENCE FOR CHILDREN?* 291, 292 (P. Lindsay Chase-Lansdale & Jeanne Brooks-Gunn eds., 1995).

68. Ward Doran & Roberts, *supra* note 2 at 395-96.

69. *Id.* at 412.

70. Mary B. Lerner, *Welfare to Work: Analysis and Recommendations*, *FUTURE CHILD.*, Spring 1997, at 4, 5-6. In 1994, a mother and two children received \$366 per month on average, and the combination of AFDC, food stamps, and Medicaid left families substantially below the federal poverty level. *Id.* at 6.

71. NORMA B. COE ET AL., *THE URBAN INSTITUTE, DOES WORK PAY? A SUMMARY OF THE WORK INCENTIVES UNDER TANF*, at tbl.1 (1998) (using a definition of net income that "consists of earnings, TANF benefits, the cash value of food stamp allotment, the federal Earned Income Tax Credit, and state earned income and other tax credits, less the employee's share of payroll taxes and federal and state income tax liabilities").

72. *Id.* at 2.

higher percentage increase in income, for example, than a family in a high benefit state. For a family of three, the TANF benefit in Mississippi, which had the lowest benefit of all the states, was \$170; in Massachusetts, however, which ranks seventh, the benefit was \$579.⁷³ In Mississippi, the net income of a family of three moving from no work to a part-time minimum wage job would change from \$435 per month to \$905 per month, a 108% increase in income with a negative marginal tax rate of negative six percent, meaning that for every dollar the family earned the family actually received \$1.06.⁷⁴ In Massachusetts, however, a family of three would move from \$825 per month to \$1209 per month, a forty-seven percent increase in income with a thirteen percent effective marginal tax rate, meaning that for every dollar the family earned the family actually received \$.87.⁷⁵

Other factors affect the work-benefit calculation as well. Some states, for example, allow a family to keep more of their earned income before reducing their TANF grant than do other states. In California, for example, a family can keep the first \$225 of earned income per month and their TANF grant is reduced by only \$.05 per dollar thereafter.⁷⁶ In Washington, however, the TANF grant is cut by \$0.50 per dollar for every dollar earned.⁷⁷ Overall, however, TANF recipients benefit more from employment than did AFDC recipients.

In addition to financial benefits, many studies have found that low-income mothers' employment does not have a negative impact on children and in some instances is actually related to improved child well-being.⁷⁸ Positive results have been found even when a mother is employed when the child is an infant.⁷⁹ One study, for example, found that children whose low-income mothers were employed fared better on several measures than those whose mothers relied solely on welfare.⁸⁰ The study compared children whose mothers were employed during the first three years of the children's life using outcome

73. THE STATE OF AMERICA'S CHILDREN, *supra* note 12, at 124 tbl.B3.

74. COE ET AL., *supra* note 71, at tbl.1.

75. *Id.*

76. *Id.* at 3.

77. *Id.*

78. See generally Martha J. Zaslow & Carol A. Emig, *When Low-Income Mothers Go to Work: Implications for Children*, FUTURE CHILD., Spring 1997, at 110 (discussing how mothers working may affect their children); Martha Zaslow et al., *Welfare Reform and Children: Potential Implications*, available at <http://newfederalism.urban.org/html/anf23.html> (last visited Feb. 4, 2002) (reporting on findings from studies on JOBS, the New Chance Demonstration, and the Teenage Parent Demonstration).

79. See, e.g., Judith R. Smith et al., *Welfare and Work: Complementary Strategies for Low-Income Women?*, 62 J. MARRIAGE & FAM. 808, 817 (2000).

80. *Id.*

measures of cognitive development, behavior problems, and home learning environment when the children were age five to six.⁸¹ Employment may also have a positive impact on parents' self-esteem and motivation, which may result in their being less likely to need child welfare intervention.⁸² Ward Doran and Roberts noted that one of the participants in their study viewed work as normalcy and "wanted to be a normal, productive member of society."⁸³

However, negative impacts have also been found. Contrary to family researchers' expectations, teenaged children may be negatively affected when parents are in work programs.⁸⁴ In addition, researchers are quick to point out that many of the studies that found positive effects involved mothers who chose to work rather than being forced to work.⁸⁵ Further, the type of job was influential in some studies, with children faring better when mothers were employed full-time in more stimulating jobs. Positive effects may be reduced or lost if the mother is in a part-time, low wage, or repetitive job.⁸⁶ Some positive effects may also be lost if the mother has more symptoms of depression, or more additional risk factors such as low educational attainment.⁸⁷

These positive aspects of TANF notwithstanding, the program has a number of troublesome issues. These include whether families who leave TANF will be able to move into higher paying, secure jobs; what will happen to families who leave TANF because of sanctions or time limits; whether families with multiple employment barriers can succeed in the "work first" environment; and whether the families' employment gains will be sustainable in a poor labor market.

An additional and more fundamental problem is that graduating from TANF into the ranks of the working poor may provide some benefits for children, but not enough. TANF grants taper off as family income approaches poverty levels; thus, the family may not successfully achieve an income that is above the poverty line, much less an income that provides a decent standard of living. The Ward Doran and Roberts recommendation for more generous support for TANF

81. *Id.* at 810-11.

82. GEEN ET AL., *supra* note 19, at 28.

83. Ward Doran & Roberts, *supra* note 2, at [TEXT ACCOMPANYING FN 303].

84. JENNIFER L. BROOKS ET AL., CHILD TRENDS, WELFARE REFORM'S IMPACT ON ADOLESCENTS: EARLY WARNING SIGNS (July 2001), available at <http://www.childtrends.org/PDF/WelfareEditBrief.pdf>.

85. Zaslow & Emig, *supra* note 78, at 111; Zaslow et al., *supra* note 78.

86. Zaslow & Emig, *supra* note 78, at 113.

87. Zaslow et al., *supra* note 78.

families, if adopted, would be unlikely to result in benefits that were generous enough to lift families above the level of the working poor.

Connection to the labor market can provide important financial benefits, but many parents need education and training programs to move into work that will lift their families out of poverty. Most former TANF recipients will remain in low-wage jobs, and, because of their low education and skill levels, they will not succeed in moving up to higher paid work.⁸⁸ Many of the problems affecting children in these former TANF families are problems for working poor families generally.⁸⁹ A third of poor children live with someone who works full-time, and seventy-eight percent live in a family where someone is employed.⁹⁰ More state programs aimed at helping these parents improve their job chances are needed.⁹¹ To achieve a decent standard of living, additional public support for childcare, health insurance, and wage supplements, such as the earned income tax credit, are needed.⁹²

Another substantial problem with TANF is the impact of termination and sanctions on families. A three-city study has found that the picture of who is leaving TANF is complex, and that a number of families who are leaving are the least job-ready as well as the most job-ready.⁹³ A number of TANF cases are closed because the caregiver is no longer eligible due to an increase in income. For those families who are sanctioned, however, a different picture emerges:

[C]aregivers who had the most complex and challenging daily lives were more likely to have experienced a partial or full loss of benefits. Being able to turn forms in on time or

88. See Gary T. Burtless, *Welfare Recipients' Job Skills and Employment Prospects*, FUTURE CHILD., Spring 1997, at 39, 49-50.

89. There is no generally accepted definition of "working poor." Child Trends, the influential research institute, has developed the following definition:

Working poor families with children are families whose incomes are below the federal poverty threshold . . . and in which either two parents together work a total of at least 35 hours a week or a single parent works at least 20 hours a week.

This work standard is similar to that established by the 1996 welfare reform law. RICHARD WERTHEIMER, CHILD TRENDS, WORKING POOR FAMILIES WITH CHILDREN: LEAVING WELFARE DOESN'T NECESSARILY MEAN LEAVING POVERTY 1 (2001), available at http://www.childtrends.org/pdf/May_2001.pdf (emphasis omitted). An estimated 12% of working poor families received TANF in 1998. *Id.*

90. THE STATE OF AMERICA'S CHILDREN, *supra* note 12, at 1, 4.

91. See U.S. GENERAL ACCOUNTING OFFICE, WELFARE REFORM: PROGRESS IN MEETING WORK-FOCUSED TANF GOALS 13 (2001).

92. *Id.*

93. Andrew Cherlin et al., *Sanctions and Case Closings for Noncompliance: Who is Affected and Why* 6 (2001), available at http://www.jhu.edu/~welfare/18058_Welfare_Policy_Brief.pdf.

to follow up with doctors' offices or employers' personnel offices requires keeping up with the mail; noticing and adhering to deadlines; and reading, interpreting, and responding to questions—all of this by mothers who may have lower skill levels and poorer health in addition to raising a family and working.⁹⁴

Only twelve percent of the sanctions were imposed because the caregiver refused to take a job or show up for a job-related activity.⁹⁵ One recipient, for example, missed the filing deadline for a monthly form that reported income, work hours, and household data. The recipient was not avoiding work, but rather was working full time.⁹⁶ Her noncompliance was due to factors such as the following:

[She] could not read well; her caseworker did not speak her native language, Spanish; and her phone had been disconnected for part of the time—all of which led to communication difficulties. She had never received pay stubs before, and she had difficulty completing the week-by-week income section. She also had other sources of stress that caused her to neglect the form: in addition to holding a job that required a daily three-hour commute, she cared for six children and one grandchild, and had a boyfriend who was threatening her with violence.⁹⁷

An additional problem with TANF is that the states' approach of moving families quickly into jobs, the "work first" strategy, may not work for many of the families who have remained on TANF. Families with multiple barriers to employment, such as little education, poor transportation, and health and mental health problems, are less likely to be able to leave welfare for employment.⁹⁸

Many experts feel claims that TANF is successful are premature and it is still too early to tell what impact TANF will have. Economic prosperity, low unemployment, the increase in the minimum wage, and low inflation may explain the drop in welfare rolls and may have provided a cushion for families who either left or were sanctioned off

94. *Id.* at 5.

95. *See id.* at fig. 2.

96. *Id.* at 4.

97. *Id.*

98. *See generally* Sandra Danziger et al., *Barriers to Work Among Welfare Recipients*, *Focus*, Spring 1999, at 31, available at <http://www.ssc.wisc.edu/irp/focus/foc202.pdf> (analyzing potential barriers to employment and their effects on welfare recipients looking to obtain jobs).

TANF.⁹⁹ Relatively few families have reached time limits, although about twenty states did put in shorter time limits than the required five years.¹⁰⁰ Particularly now that the United States is in a recession, finding jobs for current TANF families and helping those who left TANF stay employed will be more challenging.

CONCLUSION

Ward Doran and Roberts's concern about the punitive behavior modification approach prevalent in the child welfare and welfare systems is well founded. But concern about the state punishing parents should not cause us to lose sight of the fact that there are children being harmed by poverty and at risk of maltreatment. Something needs to be done to help these children—the question is what.

To paint the welfare and child welfare systems in their worst light, both systems place all responsibility and focus all attention on parents. If parents fail to become self-sufficient within TANF time limits or fail to comply with TANF regulations, they are no longer to receive assistance; their children, if necessary, will be placed in foster care. If the parents further fail to correct the problems that led to placement within the ASFA time limits, their rights will be terminated and their children placed for adoption, shifting the responsibility for the children to new parents.

To put these systems in their best light, parents need to take responsibility, financially and otherwise, for themselves and their children. If they are not doing so, behavior modification is appropriate and necessary. Both programs offer incentives as well as coercion—carrots as well as sticks—to help parents become self-sufficient. If parents cannot assume financial and caretaking responsibility for their children in a reasonable time, their children are better off with new parents.

These programs pose fundamental questions about the way we view the relationship of children and parents to government. The extreme views of these programs rely too much on ideology and too little on data about families and programs. In addition, both extreme views focus on parents, as do Ward Doran and Roberts. Focusing on the impact of these programs on children, rather than on protecting or punishing parents, may help us identify programs that provide posi-

99. William Julius Wilson & Andrew J. Cherlin, *The Real Test of Welfare Reform Still Lies Ahead*, N.Y. TIMES, July 13, 2001, at A21.

100. LIZ SCHOTT, CENTER ON BUDGET & POLICY PRIORITIES, WAYS THAT STATES CAN SERVE FAMILIES THAT REACH WELFARE TIME LIMITS 3 (2000).

tive child outcomes and achieve a balance between the two extremes. To deal with child poverty we need to change our focus and rhetoric from parental responsibility to an acceptance of child welfare as a joint parent-community responsibility.

There is resistance to this move because it can be seen as undermining parents. Having the village help raise your child also means that the village is intruding in your affairs. When the village is viewed as the coercive arm of the state that will intrude on low-income parents, particularly single mothers, and even more particularly minority single mothers, a safer approach is to argue that the way to improve the lives of children is to empower parents. Ward Doran and Roberts take this approach, advocating for changes in the child welfare and welfare systems that would provide more resources for parents without sanctions; the benefits that the parents receive are assumed to also benefit children. The danger in this approach, however, as demonstrated by TANF, is that viewing parents and children as a unit helps justify imposing sanctions on the unit, such as full-family sanctions, that harm children. The focus of reform should not be on parents, but on what changes are needed in these programs to improve the lives of children.

Problems identified by the Ward Doran and Roberts study, such as the need for child care subsidies, resources for necessities, transportation, housing subsidies, and consistent program requirements, are important and are in accord with other studies of welfare and work. Further, these problems may well be similar to needs identified in a more child-centered analysis.

Unfortunately these are not new issues. The problem in the United States is not the lack of knowledge about these issues, but rather the lack of will to resolve them. Perhaps a more child-centered approach would provide that determination. Qualitative studies such as the Ward Doran and Roberts study may help us more clearly envision the struggles some of these families confront and bring about tangible support that will help lift children in both TANF and working poor families from the risks poverty entails.