WELFARE REFORM AND THE ADMINISTRATION FOR CHILDREN'S SERVICES: SUBJECTING CHILDREN AND FAMILIES TO POVERTY AND THEN PUNISHING THEM FOR IT

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INTRODUCTION

The repercussions of welfare reform[1] cannot be easily determined. On the surface, welfare reform seeks to teach parents lessons about independence, hard work, and the value of marriage. Having learned such values, the children of former welfare recipients, removed from the harmful influences of welfare dependence, will be less likely to depend on welfare themselves, less likely to commit criminal offenses, and more likely to succeed in school. However, in the interim period between welfare reform's enactment and its expectant cure-all effect, the elimination of public assistance will endanger the health and development of thousands of children by either pushing their families into poverty or worsening their already existing poverty. To better contemplate the implications of welfare reform, consider these figures: two-thirds of all welfare recipients are children;[2] the average monthly number of children receiving Aid to Families With Dependent Children (AFDC) benefits increased nearly threefold to 9,300,000 from 1965 to 1992, while the total number of children in the United States aged zero to eighteen declined by 5.5% during the same period;[3] 21% of all children in the United States lived in poverty in 1997;[4] in 1994, 9% of children in the United States lived in families in extreme poverty (i.e., income below 50% of the poverty threshold);[5] and in 1995, in no state except

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1. Enacted as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.) [hereinafter PRA].

2. *See* ANNE COLLINS, ANTICIPATING THE EFFECTS OF FEDERAL AND STATE WELFARE CHANGES ON SYSTEMS THAT SERVE CHILDREN 8 (National Ctr. for Children in Poverty, Children and Welfare Reform Issue Brief 2, 1997).

3. *See* PRA § 101(5), 110 Stat. at 2110 (citing these statistics).

4. Children's Defense Fund, *Key Facts About U.S. Children* (visited Feb. 11, 1998) <http://www.childrensdefense.org/keyfacts2.html> [hereinafter CDF, *Key Facts*].

5. THE ANNIE E. CASEY FOUNDATION, KIDS COUNT DATA BOOK: STATE PROFILES OF CHILD WELL BEING 21 (1997) (citing Population Reference Bureau, analysis of data from the U.S. BUREAU OF THE CENSUS, CURRENT POPULATION SURVEY (March Supp.), 1992 through 1996). In calendar year 1993, the U.S. poverty threshold, as defined by the U.S. Office of Management and Budget, for a typical family of four persons was $14,763. In this category, a typical family of four had income of less than $7382.

Alaska and Hawaii did AFDC payments combined with Food Stamp benefits raise a family of three above the poverty line.[6]

Ordinarily parents shoulder the enormous task of ensuring the well-being of their children. However, the state intervenes to protect these children's interests when their parents are unable to provide for them or when their parents place them at risk. Unfortunately, administrative agencies designated with this responsibility confront a myriad of problems including budgetary constraints, overwhelming caseloads, and the sometimes irreversible consequences of caseworker error. In addition, legislative bodies, challenged by separate pressures, promote policies that sometimes work against administrative agencies' efforts to provide the best and most efficient services for children.

In New York City, the Administration for Children's Services' (ACS) recent policy shift from family preservation towards aggressive child protection, and the simultaneous enforcement of federal welfare reforms enacted by Congress in 1996, will lead to results that are incompatible with both programs' objectives. The convergence of benefit termination and the aggressive pursuit of child welfare cases will be detrimental to both children and families by pushing greater numbers of families into poverty. Greater poverty increases the risk of child abuse and neglect, which in turn warrant ACS involvement. In order to provide children and families with needed protections which will promote their future stability and well-being, legislators and administrative authorities should design policy based on collaborative planning that takes account of issues such as constitutional rights to basic assistance, the importance of family integrity, and the root causes of poverty.

In Part One of this article, I describe both the Personal Responsibility and Work Opportunity Act of 1996[7] (PRA) and New York's compliance with this federal policy amendment, and I critique the feasibility of welfare reform success. In Part Two, I describe ACS's objectives, procedures, and recent policy changes. In Part Three, I examine the tensions that will result from welfare reform legislation and ACS policy. I conclude with recommendations for legislators and administrators to protect children and families by improving existing policies which are harmful in practice.

In the course of the article, I will recount the story of "Tammy" to highlight the injurious effects of welfare reform and ACS policies on poor families. While Tammy is a character of my own invention, her story is all too real—and all too common. The untenable situation in which she finds herself is not unlike that faced by countless others every day.

6. CHILDREN'S DEFENSE FUND, THE STATE OF AMERICA'S CHILDREN YEARBOOK 109 (1995).

7. Pub. L. No. 104-193, 110 Stat. 2105 (1996).

I.
FEDERAL AND NEW YORK WELFARE REFORM

Tammy is a single, twenty-three-year-old mother of two children, Carl Jr. and Keisha, and has intermittently received AFDC benefits for the past seven years. Tammy became pregnant with Carl Jr. during her junior year of high school, and she subsequently dropped out of school during the summer before her senior year to take care of him. Tammy received AFDC benefits for Carl Jr. while living at home with her mother and three younger sisters. Carl Jr.'s father provided no financial or emotional support. A year later, Tammy became pregnant again. Tammy's mother refused to allow her to continue to live at home since she already had several children to support herself. Keisha's father also was not present in his child's life. Tammy and her children moved to a one bedroom apartment in the projects of East New York, Brooklyn.

Tammy's welfare caseworker told her that she would have to find a job or would have her benefits terminated pursuant to the new welfare reform work requirements that went into effect earlier that month. Tammy searched for, and eventually found a job as a part-time salesclerk at a local supermarket. She has worked in the past, but since she has no high school diploma and few skills, her previous jobs paid only slightly above minimum wage. Her current job pays the same. Tammy works from 3 P.M. to 9 P.M., five days a week. Tammy's mother and sisters help her by looking after her children when she is at work. This is a blessing, because she could not otherwise afford child care. But after Tammy had worked a few weeks at the supermarket, her caseworker informed her that she no longer qualified for cash assistance since her earnings were now just above the income eligibility maximum for a family of three. Tammy, confused, did not understand why her benefits were canceled, especially after she had complied with the new welfare rules and began her life as an independent, self-sufficient mother. Assuming that her loss of benefits also meant that she no longer qualified for Food Stamps and Medicaid, Tammy did not reapply for either program and has struggled to make ends meet ever since.

A. The Personal Responsibility and Work Opportunity Act of 1996

In August 1996, the 104th Congress ended the Aid to Families with Dependent Children program, which since 1935 had provided cash benefits to economically disadvantaged families with children who lacked the support of one or both parents.[8] Under AFDC, states were reimbursed by

8. *See* U.S. GEN. ACCOUNTING OFFICE, WELFARE REFORM—STATES' EARLY EXPERIENCES WITH BENEFIT TERMINATION, REPORT NO. GAO/HEHS 97-74 (May 15, 1997), 1997

federal matching funds for a portion of the benefits provided to eligible families with dependent children.[9] The PRA replaced AFDC with block grants to states under the Temporary Assistance for Needy Families (TANF) program.

The PRA responded to several years of political debate over the direction of public assistance policy in the United States. Reform supporters celebrated the change as a much-needed renovation of a system that created a cycle of welfare dependency. The old system, critics asserted, offered aid recipients more incentives to continue receiving benefits than it did inducements to remove themselves from the welfare rolls. Opponents of the reform criticized some of its provisions for relying on misleading stereotypes and conjectures. These opponents argued that pervasive notions of the African-American "Welfare Queen"[10] who has additional children in order to receive an extra welfare check from the government were warped and misleading.[11]

In the legislation, Congress concluded that "marriage is the foundation of a successful society."[12] Accordingly, PRA seeks to encourage marriage, prevent out-of-wedlock pregnancies and reduce out-of-wedlock births.[13] In addition, PRA institutes work requirements that are intended to end the dependence of needy parents on government benefits by promoting job preparation and work.[14]

PRA amendments transformed previous welfare law. The amendments most relevant to this article are the provisions for termination of benefits to families based on either new time limits or a parent's failure to comply with program rules. Under AFDC, states were restrained, with few exceptions, from terminating benefits on the basis of sanctions or time limits.[15] Instead, prior law required states to provide aid to all individuals whose income and assets fell within a state's prescribed range in order for

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WL 288910, at *1 (FDCH) (evaluating Personal Responsibility and Work Opportunity Act of 1996 in comparison with studies of states' prior termination of benefits under federal demonstration project waivers) [hereinafter GAO, WELFARE REFORM].

9. Social Security Act, ch. 531, §§ 401–406, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C. §§ 601-617 (1988)).

10. *See* Risa E. Kaufman, *The Cultural Meaning of the "Welfare Queen": Using State Constitutions to Challenge Child Exclusion Provisions*, 23 N.Y.U. REV. L. & SOC. CHANGE 301, 308–12 (1997) (analyzing origins of "welfare queen" concept critically, concluding that it derives from historical distinctions between "deserving" and "undeserving" poor).

11. *See* Joel F. Handler, *Two Years and You're Out*, 26 CONN. L. REV. 857, 860–61 (1994) (noting that typical welfare recipient is over eighteen years old, white, with fewer than two children); Nichola L. Marshall, *The Welfare Reform Act of 1996: Political Compromise or Panacea for Welfare Dependency?*, 4 GEO. J. ON FIGHTING POVERTY 333, 336 (1997) ("Welfare reform would be far more effective if it was aimed at providing meaningful solutions to these fundamental problems [of health care, education, and living wages] rather than relying on outdated stereotypes of welfare recipients.").

12. *See* PRA § 101(1), 110 Stat. 2105, 2110 (1996).

13. *See* PRA § 103(a)(1), 110 Stat. at 2113.

14. *Id.*

15. *See* GAO, WELFARE REFORM, *supra* note 8, at *2.

the state to continue to receive federal funding for AFDC.[16] Benefits were thus akin to an entitlement to qualifying individuals; a family with dependent children was eligible for monetary benefits so long as it could demonstrate need. Even before PRA ended this entitlement system, however, section 1315 of the Social Security Act[17] allowed states to apply for waivers to the statutory requirements for AFDC and to experiment with benefit termination. Since PRA now mandates benefit termination, states no longer need to apply for waivers.

The PRA required every state to design a plan outlining how it proposed to accomplish the goal of ending dependence on government benefits by promoting job preparation, work, and marriage.[18] TANF provides each state increased flexibility to implement programs designed to achieve these objectives and address the individual needs of the particular state.[19] The amount of each state's federal block grant is tied to its performance with respect to annual target rates of state employment percentages, teenage and out-of-wedlock pregnancy statistics, and welfare roll reduction figures set by Congress. However, the state block grant is capped at $16.4 billion and will not increase until fiscal year 2002.[20] Hence, a state must reach these federal goals in order to avoid having its level of federal funding for public assistance reduced.[21] Unfortunately, the incentive for states to maintain their levels of federal funding has resulted in stringent provisions which have already disqualified millions of needy families from welfare.[22]

Under PRA, a family is excluded from TANF-funded aid if it includes an adult who has received any TANF-funded assistance in any state for a cumulative period of sixty months.[23] The sixty month limit is the federal maximum and does not prohibit individual states from setting shorter time

16. *Id.*

17. 42 U.S.C. § 1315 (1997) (amending 42 U.S.C. § 1115 (1933 & 1988 Supp.)).

18. The plans were due July 1, 1997. PRA § 402(a), 110 Stat. at 2113–15.

19. *See* PRA § 401(a)(1), 110 Stat. at 2113 ("The purpose of this part is to increase the flexibility of States in operating a program . . . .").

20. JANE KNITZER & STANLEY BERNARD, THE NEW WELFARE LAW AND VULNERABLE FAMILIES: IMPLICATIONS FOR CHILD WELFARE/CHILD PROTECTION SYSTEMS 8 (National Ctr. for Children in Poverty, Children and Welfare Reform Issue Brief 3, 1997). There is a $2 billion contingency fund for economic downturns. *See* PRA § 403(b), 110 Stat. at 2121.

21. In addition, during each of the fiscal years 1999–2000, up to five states were eligible for a $20 million "bonus" grant as a reward for achieving the greatest decreases in out-of-wedlock births, so long as abortion rates remain stable. *See* PRA § 403(a)(2), 110 Stat. 2118–19.

22. *Cf.* President William J. Clinton, *Remarks on Welfare Reform Before Departing for New Jersey*, Oct. 8, 1997, *available in* 1997 WL 626800, at *1 (FDCH) (praising welfare reform's influence in reducing welfare rolls).

23. *See* PRA § 408, 110 Stat. at 2134–38. Certain exceptions exist for minor parents, hardship cases, and Native Americans on reservations. *See* PRA § 408(a)(7)(B)–(D), 110 Stat. at 2137–38.

eligibility limit boundaries.[24] In other words, the federal government will refuse to provide assistance under the TANF program to needy families that include members who have received a total of five years of benefits over their adult lifetime, regardless of individual circumstances or hardships. PRA allows a state to exempt a maximum of 20% of its average monthly caseload from the sixty month time limit due to hardship or if the family includes an individual who has been battered or subjected to extreme cruelty.[25] Nevertheless, even this limited provision has been subject to political criticism, raising questions as to whether Congress included this stipulation out of genuine concern for those families facing the most dire of circumstances, or because of political compromise.[26]

In addition to the eligibility time limits, adult recipients are now required to be employed no later than twenty-four months after they begin receiving benefits.[27] Although welfare-to-work programs were initiated for certain categories of recipients as early as 1968, failure to comply with requirements in the past could only result in the reduction, not termination, of benefits.[28] The federal government has now set minimum participation rates (25% of TANF's single parent family population in 1997, 30% in 1998, 35% in 1999, 40% in 2000, 45% in 2001, and 50% in 2002),[29] and weekly hours requirements (twenty hours for families with dependent children in 1997 and 1998, twenty-five hours in 1999, and thirty hours in 2000)[30] and has specified a list of permitted work activities.[31] A state must reach the required participation rates and ensure that benefit recipients are employed in appropriate types of work for the requisite number of hours to avoid a reduction in federal funding. A recipient must demonstrate that she[32] is actively trying to find work or improve her employability, and must

24. Some states had been granted waivers under section 1115 of the pre-PRA Social Security Act, and had already begun experimenting with shorter lifetime limits before the PRA became law. *See* ANN COLLINS & J. LAWRENCE ABER, STATE WELFARE WAIVER EVALUATIONS: WILL THEY INCREASE OUR UNDERSTANDING OF WELFARE REFORM ON CHILDREN? 14, tbl.1 (National Ctr. for Children in Poverty, Working Paper, 1996) [hereinafter COLLINS & ABER, STATE WELFARE WAIVER].

25. PRA § 408(a)(7)(C), 110 Stat. at 2137–38 (1996).

26. Consider Oklahoma Representative Steve Largent's remarks that while the 20% hardship exemption for extreme cases provides needed flexibility for states, later budget proposals worked to reverse many of the reforms made in the PRA. Largent expressed his hope that he and his colleagues could work together in the future to restore the original intent of the 1996 welfare reforms. 143 CONG. REC. E1604-02 (daily ed. July 31, 1997) (statement of Rep. Steve Largent).

27. PRA § 402(a)(1)(A)(ii), 110 Stat. at 2113.

28. *See* GAO, WELFARE REFORM, supra note 8, at *2.

29. PRA § 407(a)(1), 110 Stat. at 2129.

30. PRA § 407(c)(1)(A), 110 Stat. at 2131.

31. PRA § 407(d), 110 Stat. at 2133.

32. Although both men and women living in poverty are eligible for public assistance, roughly 80% of persons in poor families are women and children. Thus, I will use the term "she" to refer to the typical welfare recipient. *See* BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REP. NO. P60-185, POVERTY IN THE UNITED STATES: 1992, at 10, tbl.5 (1993).

accept any offer of lawful employment, regardless of the salary, to avoid having her benefits terminated.[33] Despite a recipient's employability and individual circumstances, she may be ineligible for an exemption and, if she is unable or unwilling to find continuous work after twenty-four months, assistance will be terminated.

PRA further prohibits assistance for teenage parents not living in an adult-supervised setting or attending high school or an equivalent training program.[34] State officials must determine that extenuating circumstances exist in order for a teen parent to be exempt from this rule.[35] Excusing factors include either that (1) the teen parent has no living parent, legal guardian, or other appropriate adult relative with whom to live; (2) such persons will not allow the teen to live with them; or (3) the teen parent has been, is, or may be subject to physical or emotional abuse in such person's home.[36]

Sanctions follow for failure to comply with the new rules. A recipient who exceeds her time eligibility limit or violates any requirement set forth above receives a pro rata reduction or complete termination of benefits.[37] Evaluations of section 1315 waiver experiments[38] with strategies similar to those incorporated in PRA provide some insight as to the potential effects of welfare reform on families. However, these evaluations are limited since children were not the focus of many of the studies.[39]

Through December 1996, three states—Iowa, Massachusetts, and Wisconsin—accounted for 13,000, or 72%, of the 18,000 terminations nationwide under the section 1315 waiver provision.[40] A General Accounting Office (GAO) study found that failure to comply with work requirements was the most common reason for benefit termination in these three states.[41] Hurried terminations resulted in high rates of error—in some states, more than half of the case terminations were reversed on appeal.[42] In addition, the GAO found that a significant portion of the terminated families did not continue to receive Food Stamps and Medicaid, even

33. PRA § 407(d)–(e), 110 Stat. at 2133.

34. PRA § 408(a)(4)–(5)(A), 110 Stat. at 2135–36.

35. PRA § 408(a)(5)(B), 110 Stat. at 2136–37.

36. *Id.*

37. PRA § 408(b)(3), 110 Stat. at 2141.

38. 42 U.S.C. § 1315 (1997). *See supra* note 17 and accompanying text.

39. *See* ANNE COLLINS & J. LAWRENCE ABNER, HOW WELFARE REFORM CAN HELP OR HURT CHILDREN 2 (National Ctr. for Children in Poverty, Children and Welfare Reform Issue Brief 1, 1997) ("Changes now being implemented in welfare policies and programs take many forms, but most of them have one thing in common—they are almost all driven by adult-focused goals.").

40. *See* GAO, WELFARE REFORM, *supra* note 8, at *5.

41. *Id.*

42. *See* Children's Defense Fund, *The New Welfare Law: One Year Later* (visited Oct. 14, 1997) <http://www.childrensdefense.org/fairstart_oneyr.html> [hereinafter CDF, *The New Welfare Law*] (detailing sanction and reversal rates in Iowa, Massachusetts, and Wisconsin).

though they might have remained eligible for these programs.[43] Families stopped receiving Food Stamps and Medicaid coverage in states where eligibility for both programs was unaffected by AFDC termination, as well as in those states where sanctions for AFDC, Food Stamps, and Medicaid were linked.[44] Explanations for this drop include the failure by many families to take the steps necessary to maintain eligibility and the doubt of many families that eligibility continued or was worth the effort.[45] We should interpret the correlation between AFDC termination and families' discontinued receipt of other governmental assistance benefits in Iowa, Massachusetts, and Wisconsin as a warning that PRA terminations are likely to have similar consequences.

Between 1987 and the passage of PRA in 1996, thirty-three states received federal waivers for benefit termination provisions similar to those of PRA.[46] Of these states, nineteen had actually terminated benefits prior to the enactment of PRA.[47] Pursuant to the provisions of PRA, all states are now required to include full-benefit sanction provisions in their welfare plans. If the devastating effects of this requirement are not immediately alarming, they should be. The results of section 1315 termination strategies may not provide exact estimates of the implications of PRA because of the greater number of families implicated by PRA; thus we can expect that the aggregate effects of PRA termination will be significantly worse than those of section 1315 terminations. In addition to families losing their cash assistance, we may also see a tremendous decline in the number of families who continue to receive Food Stamps and Medicaid benefits, although they may be still eligible for these programs.

B. New York's Welfare Reform Act of 1997

New York's welfare reform strategy, enacted to comply with the federal law, is known as the Welfare Reform Act of 1997[48] (NYRA). NYRA went into effect November 1, 1997.

The rules of NYRA generally coincide with corresponding federal requirements. NYRA's sixty month eligibility limit, adult work requirement, and teenage parent residency and school requirements incorporate the terms of PRA.[49] But NYRA adds another restriction: a two year limit for state funded benefits, called Safety Net Assistance—receipt of which also counts toward the sixty month federal limit.[50] Welfare recipients who have

43. *See* GAO, WELFARE REFORM, *supra* note 8, at *4.
44. *Id.*
45. *Id.*
46. *Id.* at *4–*5.
47. *Id.*
48. S. 5788, 220th Leg., pt. B (N.Y. 1997), *subsequently codified as* Welfare Reform Act of 1997, N.Y. SOC. SERV. LAW § 1 (McKinney 1999) [hereinafter NYRA].
49. *See* NYRA §§ 10(a), 11(5), 11(18), 37(2)(a).
50. *See* NYRA § 37(2)(a)–(c).

exceeded the time limit are permanently terminated from TANF-funded benefits. A benefit recipient who quits or reduces work hours without good cause becomes ineligible for benefits until she is willing to comply with work requirements. For a "second offense," she automatically becomes ineligible for benefits for at least three months—longer if she does not comply with the requirements. For a "third offense," she loses her benefits for a minimum of six months.[51] NYRA exempts the following classifications of individuals from work requirements: the ill, incapacitated, elderly, disabled, caretakers of ill or incapacitated members of the household, parents and caretakers of children under the age of one, and pregnant women after the eighth month of pregnancy.[52] Significantly, NYRA eliminates past exemptions for people without access to transportation and for teens who have been out of the house for more than a year.[53]

C. *Welfare Reform: Evaluations*

Sponsors of welfare reform point to reports of shrinking welfare rolls and caseloads across the country as evidence of success. Welfare reform proponents boast that the current percentage of people in the United States on welfare is the lowest in thirty years.[54] Fourteen months after the enactment of PRA, welfare rolls had fallen nationally by more than 1.7 million people.[55]

Most reports claim that welfare rolls have diminished considerably because former recipients have moved from welfare into the workplace and no longer rely on public assistance. However, not all persons leaving welfare have made the transition to work—the reduction is largely the result of recipients who no longer qualify for aid for other reasons. In fact, the GAO findings indicate that more families in Iowa, Massachusetts, and Wisconsin had earnings before benefit termination than afterwards.[56]

Legislators must look beyond the figure reduction rhetoric and recognize the distinction between welfare reform's simple removal of families from welfare rolls and this reduction being a reliable indicator that these families are now self-sufficient. It is simply implausible that the threat of termination of benefits engenders economic independence. At the very

51. *Id.*

52. *Id.*

53. *Id.*

54. *See, e.g.*, Clinton, *supra* note 22, at *1. *See also* 143 CONG. REC. E355-01, Early Results of Welfare Reform, Hon. Newt Gingrich of Georgia, Mar. 3, 1997 (detailing the 30% reduction of caseloads in Oklahoma less than a year after PRA went into effect).

55. Clinton, *supra* note 22, at *1.

56. *See* GAO, WELFARE REFORM, *supra* note 8, at *34–*36. In Massachusetts, for example, 23% of families whose benefits were terminated had income after termination, as compared to the nearly 50% who had earnings before termination. *Id.*

least, benefits termination must be accompanied by services such as job training and child care.[57]

In Connecticut, where the twenty-one month welfare limit is one of the shortest in the nation, 11,000 families on welfare—approximately one-fifth of the state's current caseload of 52,000—were expected to lose benefits by November 1998.[58] Advocates for the poor fear that the families that have been moved off the rolls are not financially stable, even if they are working.[59] The decreasing rolls include the families that are currently being terminated because recipients failed to demonstrate a good-faith effort to find work or failed to show up for eligibility interviews.[60] Insofar as these recipients chose not to comply with program rules, termination may have been appropriate. However, benefit termination is an incomplete strategy here—what the state will do next with these families remains a question. Many families will be much worse off after benefit termination, yet these cases are frequently overlooked by reports that praise welfare reform.

Even when families do move from welfare to work, evidence indicates that reform gains are still tenuous. For instance, although Michigan's welfare program has put nearly 30% of the state's welfare recipients into jobs, economists, sociologists, and officials from other states describe these gains as limited and uncertain.[61] Studies of the short-term effects of welfare-to-work programs found only moderate differences in earnings between program participants and control groups.[62] In a study of the five-year impacts of four welfare-to-work programs, the Manpower Demonstration Research Corporation found somewhat more substantial gains in earnings for welfare-to-work program participants, but the greatest improvement was only $2076 annually.[63] Moreover, once reductions in cash assistance are accounted for, the overall income of participants improved in only two of the four programs.[64] Policy-makers can easily reduce welfare rolls, but the challenges for PRA and NYRA are to permanently keep the rolls low and

57. Given this lack of social services, one wonders whether the politicians supporting welfare reform are really motivated by concern for children and families. Considering the general makeup of welfare rolls, racism and gender bias are plausible explanations.

58. Jonathan Rabinovitz, *Connecticut Welfare Cutoff Falls on Hundreds of Families*, N.Y. TIMES, Nov. 3, 1997, at B1. The first group of about 950 families to reach the twenty-one month limit did so on October 31, 1997. *Id.*

59. *See id.* (noting that "advocates for the poor . . . say[ ] the policy has done little to help people leave the welfare rolls, let alone escape poverty").

60. *Id.*

61. Peter T. Kilborn, *Michigan Puts Poor to Work but Gains Appear Precarious*, N.Y. TIMES, Oct. 24, 1995, at A1.

62. *See generally* DANIEL FRIEDLANDER & GARY BURTLESS, FIVE YEARS AFTER: THE LONG TERM EFFECTS OF WELFARE-TO-WORK PROGRAMS (1995). The short-term effects were usually measured after two years.

63. ANNE COLLINS & J. LAWRENCE ABNER, HOW WELFARE REFORM CAN HELP OR HURT CHILDREN 6 (National Ctr. for Children in Poverty, Children and Welfare Reform Issue Brief 1, 1997).

64. *Id.*

reduce poverty at the same time. The failure to accomplish these objectives is a failure of welfare reform.

D. Welfare Reform: Future Considerations

At a rudimentary level, PRA may be a rational plan designed to encourage personal responsibility and two-parent family arrangements among teens. By removing incentives to remain on welfare and eliminating the financial shelter for single teenage parents, PRA presumably results in fewer families depending on welfare and fewer out-of-wedlock births. Unfortunately, however, the drafters of federal welfare reform grounded these conclusions on unrealistic assumptions about the economy, individual employability, and personal choices. Reform supporters have trivialized—or disregarded altogether—the unreliability of these presumptions in public discussions about welfare reform.

First, the attainment of the goals outlined in federal reforms depend in large part on the condition of the economy. Because the PRA's supporters fail to recognize the importance of external economic conditions, reports that detail welfare recipients' transformation towards self-respect are both premature and demeaning to those on welfare.[65] These characterizations exhibit the prejudices against the poor that may have been the impetus behind reform—mainly that welfare recipients are themselves responsible for their fortune in life.[66] Equally important, these portrayals do not account for the inevitable fluctuation of the strength of the economy.

The economy must support job opportunities in which earnings will exceed the cost of living. Nationwide, there are only enough new jobs to employ 54% of all welfare recipients required to work.[67] In New York, the situation is even worse, as that figure drops to 13%.[68] In Michigan, only 20% of residents whose aid was terminated had found steady jobs two years after the state welfare reform was enacted.[69] In New York City, less than one-tenth of those who have spent time participating in the workfare program reported that they had found full-time jobs within two years of welfare reform's institution.[70]

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65. *See* Kaufman, *supra* note 10, at 308 (confirming this view); *see also* 142 CONG. REC. H9380-07 (daily ed. July 31, 1996) (statement of Rep. Chrysler) (advising President to approve Personal Responsibility and Work Opportunity Act to assist people who "need our help in restoring the basic human dignity and pride that comes from bringing home a paycheck and providing care for your family").

66. Matthew Diller, *Introductory Remarks: Is the Issue Welfare or Poverty?*, 22 FORDHAM URB. L.J. 875, 879 (1995).

67. CDF, *The New Welfare Law*, *supra* note 42.

68. *Id.*

69. Jason DeParle, *Less is More: Faith and Facts in Welfare Reform*, N.Y. TIMES, Dec. 3, 1995, § 4, at 1.

70. David Firestone, *Workfare Cuts Costs but Tracking New Jobs Poses Problems*, N.Y. TIMES, Sept. 9, 1996, at B1.

Additionally, the country's recent record low unemployment conditions are inevitably short-lived.[71] As long as the economy experiences a period of growth, job opportunities will exist. When the economy experiences a recession, as the business cycle dictates, unemployment rates will rise. It is a matter of little dispute that families whose income is near or below the poverty line—typically welfare families and the working poor, and disproportionately African-Americans—are harshly affected by economic decline.[72] This is because the scarcity of jobs usually translates into the exclusion of the least skilled applicants from hiring consideration.[73] The typical welfare recipient has lower educational and employment qualifications than the non-welfare recipient. Furthermore, strong competition exists even for positions customarily regarded as low-skilled posts. A 1995 study found that there were fourteen applicants for each position at fast food restaurants in Harlem, New York, and almost three-quarters of the rejected applicants were still searching for jobs a year later.[74] In fact, this is the situation across most of the country. In 1997, economic forecasters predicted that only thirteen states would have enough low-skilled jobs to accommodate the new welfare recipients required to work by 1999.[75] Another study, conducted in 1997 by the Midwest Job Gap Project, found that Ohio had twenty-three job-seekers for every low-skilled job that paid at least poverty-level wages; sixty-six workers for every job that paid at least 150% of poverty-level wages; and 100 workers for every job that paid approximately $26,000, the estimated living wage for a family with children.[76]

Next, variables that depend on benefit recipients' personal characteristics may make welfare reform assumptions unrealizable. Recipients whose benefits have been terminated may have failed to comply with program regulations because they want to stay home with their children, follow their own career plans, including higher education, and are unwilling to work for

71. In November 1997, the U.S. unemployment rate fell to 4.6%, the lowest rate since 1973. Also, in November 1997, the unemployment rate in New York City fell to 8.7%, the first time it has fallen below 9% in more than a year, according the New York State Department of Labor. *See* Bureau of Labor Statistics Data, *Labor Force Statistics from the Current Population Survey* (visited Jan. 30, 1998) <http://146.142.4.24/cgi-bin-surveymost>. *See also* Kirk Johnson, *Unemployment Rate Drops in New York*, N.Y. TIMES, Dec. 24, 1997, at B6 (reporting that New York City's unemployment rate of 8.7% (below 9% for the first time in more than a year) could be attributed to a "surge in seasonal hiring and a decrease in the number of people searching for jobs").

72. *See* GERALD JAYNES & ROBIN WILLIAMS, A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY 294, 296 (1989) (noting that African-Americans are overrepresented in low wage, unskilled, and untenured positions, which are most vulnerable to changes in the business cycle).

73. *See, e.g., id.* ("An economic downturn has an immediate impact on black blue-collar workers, especially the many blacks lacking skills, experience, and seniority.").

74. Katherine Newman & Chauncy Lennon, *The Job Ghetto*, AM. PROSPECT, Summer 1995, at 66.

75. CDF, *The New Welfare Law*, *supra* note 42.

76. *Id.*

low wages.[77] Although these explanations seem reasonable, none is a valid reason for exemption from work requirements. Perhaps a more fundamental question is whether we should blame any mother for choosing to raise her child at home rather than working in a low-wage job that perpetuates poverty. The broad work requirement does not account for differences among welfare recipients, and the only flexibility in sanctioning families is limited to the 20% hardship exemption. To illustrate, consider that one mother may find it easier to find a job, because of a certain training, while another may have difficulty, because of lack of skills; regardless, both are given the same amount of time to find employment. One mother may find a day job only a few blocks from her home, while another may have to ride the subway for an hour each night to get to work; regardless, both are expected to report to work for the required number of hours each week. In the first example, a job search that lasts too long can result in sanctions; in the second example, missing work may also bring penalties. In sum, when jobs are scarce, what happens to the welfare family that has exceeded the lifetime limit and made a good-faith effort to find employment, but cannot find a job? The family's assistance will be terminated.

An equally important consideration is what parents will do with their children when they are working. Despite the federal government's increase of the subsidy for child care programs, the Office of Management and Budget estimates that if all states meet their work requirements, this increase will still fall $2.4 billion short of the new need for welfare families.[78] Perhaps PRA and NYRA should regard taking care of a child at home a permissible work activity.

Finally, the premise that terminating benefits for teenage parents who do not live at home or attend school will lead to fewer out-of-wedlock births is doubtful. Removing the so-called financial safety net may not be the most effective method for reducing teenage pregnancy. In fact, research indicates that sex education programs that emphasize contraception and abstinence are the most successful at reducing teen pregnancy.[79] If teens do not have babies in order to manipulate the welfare system to receive welfare checks,[80] then some of the primary aims of reform are misguided. The risk of erroneously excluding individuals based on misinformed presumptions creates a substantial danger that the children of teen mothers will suffer from benefit termination when their parents act in a manner inconsistent with the government's plan.

Welfare reform, both at the federal and state levels, forces upon current welfare recipients a harsh realization that their government is willing

77. *See* GAO, WELFARE REFORM, *supra* note 8, at *4.

78. Children's Defense Fund, *Summary of Current Welfare Legislation (Public Law 104-193)* (visited Nov. 17, 1997) <http://www.childrensdefense.org/fairstart_weslum.html>.

79. *Teen Parents and Welfare Reform: Hearings Before the Senate Comm. on Fin.*, 104th Cong. 79 (1995) (statement of Kristin A. Moore, Executive Director, Child Trends).

80. *See* Kaufman, *supra* note 10, at 310.

to forsake their well-being at the direction of a set of improbable assumptions and stereotypes. The most distressing aspect of this message is unmistakable, though often ignored: welfare reform will push thousands of children into the harshest conditions by taking assistance away from their parents. The Congressional Budget Office estimates that 14% of children eligible for aid under AFDC will lose benefits by the year 2000.[81] Not only will children face the perils associated with economic deficiency, but the state's child protective services will also endanger these children by threatening their family's integrity.

II.
NEW YORK CITY'S CHILD WELFARE SYSTEM: ADMINISTRATION FOR CHILDREN'S SERVICES

Tammy, in need of additional income since losing her public assistance, convinced the manager of the supermarket where she worked to increase her hours. The only problem was that the extra hours were during the day, which required her to find someone else to watch her children. The only person that she could afford had to leave one and a half hours before she returned home on Tuesdays. Tammy tried to work something out, but the babysitter had other obligations and could not stay until Tammy got home. Her options were to find another babysitter, or to ask the babysitter to have the kids take a nap before leaving, and to hope that nothing happened to them before she got home. Since Tammy barely had enough money for rent, bills, clothes and food, she reluctantly chose to leave the kids unattended.

A. ACS Structure

The maltreatment[82] of children is a growing national concern. "In 1990, the U.S. Advisory Board on Child Abuse and Neglect declared that child abuse and neglect was a national emergency."[83] Between 1974 and 1994, the number of reported child maltreatment cases ballooned from 60,000 to over 2.9 million nationwide.[84] Each year, 1046 children die from

81. CHILDREN'S DEFENSE FUND, UNSHARED SACRIFICE: THE HOUSE OF REPRESENTATIVES' SHAMEFUL ASSAULT ON AMERICA'S CHILDREN 11 (1995).

82. A "maltreated child" includes a child: (a) under eighteen years of age, and (b) defined as a neglected child by the family court act; or (c) who has had serious physical injury inflicted upon him by other than accidental means. *See* Child Protective Services Act of 1997, N.Y. SOC. SERV. LAW § 412(2)(a) (McKinney 1999).

83. *See* U.S. GEN. ACCOUNTING OFFICE, CHILD PROTECTIVE SERVICES—COMPLEX CHALLENGES REQUIRE NEW STRATEGIES, REPORT NO. GAO/HEHS 97-115, 1997 WL 524863, at *7 (July 21, 1997) [hereinafter GAO, CHILD PROTECTIVE SERVICES] (assessing status of child protective services and offering remedies for improvement).

84. *See id.* at *8.

abuse and neglect.[85] This increase occurred despite the creation of laws aimed to improve child maltreatment reporting and prevention methods.[86] Researchers concluded that the stress of poverty on families is one explanation for the increase.[87] Although child protective services intervene in both abuse and neglect cases, neglect is the more common form of maltreatment.[88]

ACS has a legal obligation to investigate reports of suspected child abuse and neglect in New York City appropriately.[89] Caseworkers at ACS investigate these reports through Protective/Diagnostic Units in each of the five boroughs.[90] New York's Social Services Law requires ACS to commence an investigation within twenty-four hours of receiving a report of allegations and to assess whether any children in the reported household are in immediate danger of serious harm.[91] During this initial phase of family assessment, a caseworker's responsibility is to identify imminent risk factors and to provide emergency services to diminish those risks.[92] The caseworker first collects data about the child and her environment and then evaluates the findings in order to develop an intervention plan. The investigation includes an assessment of the child, her parents or the alleged perpetrator, the family or household composition, the neighborhood and household conditions, statements from collateral contacts,[93] and the family's financial situation.[94] The caseworker's findings may also form the basis for evidence in subsequent judicially ordered removal and emergency removal proceedings.[95] Within sixty days of the report date, a caseworker

85. CDF, *Key Facts, supra* note 4.

86. *See, e.g.*, Child Abuse Prevention Act of 1985, N.Y. SOC. SERV. LAW § 34-a (McKinney 1997); New York State Child Welfare Reform Act of 1979, N.Y. SOC. SERV. LAW § 358-a (McKinney 1997); Child Protective Services Act of 1973, N.Y. SOC. SERV. LAW § 411 (McKinney 1997).

87. GAO, CHILD PROTECTIVE SERVICES, *supra* note 83, at *7.

88. *Id.*

89. *See* Child Protective Services Act of 1973, N.Y. SOC. SERV. LAW § 424(6) (McKinney 1997).

90. CITY OF NEW YORK, THE ADMINISTRATION FOR CHILDREN'S SERVICES OVERVIEW (1997) [hereinafter ACS OVERVIEW]. Other units reporting to the Deputy Commission of the Division of Child Protection include Emergency Children's Services (an after-hours unit) and the Office of Confidential Investigations (which investigates allegations of abuse and neglect within foster care or daycare settings).

91. N.Y. SOC. SERV. LAW § 424(6) (McKinney 1997).

92. CHILD PROTECTIVE SERVICES FIELD OPERATIONS MANUAL, ch. 4, at 24 (1991).

93. A collateral contact is any individual other than the source, the perpetrator, or the immediate subject family who can advance the assessment of the allegations and/or the understanding of the family functioning. Examples of collateral contacts are medical, educational, social service and mental health professionals, police, neighbors, and relatives. *Id.*, ch. 4, at 18.

94. *See id.*, ch. 4, at 12–19 (providing a model for caseworkers' approaches to field assessments).

95. *See id.*, ch. 8, at 3–4 (outlining some of the instances in which a caseworker's testimony may be crucial to family court proceedings).

must determine whether each allegation is indicated[96] or unfounded;[97] this determination must then be documented and submitted to the State Central Register.[98] Cases are then designated unfounded and closed, unfounded but open with ACS services unrelated to the allegation, indicated and open for services, or indicated and closed.[99]

An ACS caseworker must take steps to protect a child if she determines that the child has been abused, neglected, or that imminent danger to the child's life or health exists.[100] The caseworker can seek court intervention—a series of hearings to determine whether the risk of harm is great enough to warrant removal, whether the alleged neglect occurred, who will have control over the child, and what steps must be taken to improve the family situation.[101] The law permits a caseworker to remove a child immediately, without a court order, in emergency situations in which the child's life or health is believed to be in imminent danger.[102] Although parents can voluntarily place a child in protective services, most children are placed in foster care through court intervention when the state charges a parent with either abuse or neglect.[103] Once the state removes a child, she is placed in protective custody, which may either be foster care, a group home, or placement with a relative.[104]

Most cases of neglect involve poor and minority families.[105] One aim of AFDC was to assist low-income families in obtaining basic necessities. Section 1012(f)(i)(A) of the New York Family Court Act, drafted in response to this problem, is designed to prohibit a finding of abuse or neglect unless the parents are "financially able" to care for their children or were

96. An allegation is indicated when "[t]he report has been investigated, and there is some credible evidence to support abuse or maltreatment (neglect)." *Id.*, ch. 4, at 29 (internal citations omitted).

97. An allegation is unfounded when "[t]he report has been investigated, and there is no credible evidence to support the allegations of abuse or maltreatment (neglect) of any of the children." *Id.*

98. *See* N.Y SOC. SERV. LAW § 424(6) (McKinney 1997).

99. CHILD PROTECTIVE SERVICES FIELD OPERATIONS MANUAL, *supra* note 92, ch. 4, at 31.

100. N.Y. SOC. SERV. LAW §§ 417, 424(9) (McKinney 1997); N.Y. COMP. CODES R. & REGS., tit. 18, § 432.2 (1997).

101. *See* GAO, CHILD PROTECTIVE SERVICES, *supra* note 83, at *5.

102. N.Y. FAM. CT. ACT § 1024 (McKinney 1997).

103. Joseph R. Carrieri, *Termination of Parental Rights and Proceedings*, 173 P.L.I. 50 (Mar. 1996).

104. *See* GAO, CHILD PROTECTIVE SERVICES, *supra* note 83, at *23.

105. Families reported for neglect are four times more likely to be on public assistance and twice as likely to be black as compared to the general population. Thirty percent of abused children, and 45% of neglected children, are on public assistance. *See* N.Y. FAM. CT. ACT § 1012, Douglas J. Besharov, *Supplementary Practice Commentaries* (McKinney 1997) [hereinafter Besharov, *Supplementary Practice Commentaries*] (citing AMERICAN HUMANE ASS'N, TRENDS IN CHILD ABUSE AND NEGLECT: A NATIONAL PERSPECTIVE, 24, tbl.IV-3, 97, tbl.A-IV-7 (1984); Douglas J. Besharov, *How Child Abuse Programs Hurt Poor Children*, 22 CLEARINGHOUSE REV. 218 (1988)).

"offered financial or other reasonable means to do so."[106] However, this provision does not eliminate the need to protect those children in poor families who are neglected. In fact, courts do not interpret the statutory provision as barring a finding of neglect for poverty.[107] Instead, there are minimum standards of proper care for children that all parents must meet, regardless of social or economic position.[108] Any report of suspected abuse or neglect triggers ACS action, and an indicated determination can result in child removal regardless of the parent's financial status. In other words, section 1012(f)(i)(A) is not a functional protection for poor families, since they too can be found neglectful of their children. To hold otherwise would be to expose all children in poor families to unrestrained neglect.

B. ACS Policy Shift

ACS was created in New York City's most recent remodeling of its child welfare system. In January 1996, ACS replaced the troubled Child Welfare Agency (CWA) as New York City's principal agency for foster care and child protective services.[109] The overhaul of the child welfare system followed several highly publicized deaths due to child abuse and neglect—deaths attributed to the shortcomings of CWA.[110] Although city officials pledged improvement with the creation of the new agency, child deaths due to ACS missteps have continued, and the intense public scrutiny of ACS has remained.[111]

CWA's legal responsibility was the same as ACS's is today: child protective services. However, CWA and ACS policies of fulfilling this mandate differ. CWA's general policy was to consider alternative services

106. N.Y. FAM. CT. ACT § 1012(f)(i)(A) (McKinney 1997).

107. *See In re* Ayana E., 557 N.Y.S.2d 14 (App. Div. 1990) (affirming finding of neglect based on respondent's poor judgment, disorganization, and subjecting children to dark apartment with blinds closed and lights off; respondent had claimed problems all stemmed from poverty and homelessness); *see also* Matter of Jennifer B., 558 N.Y.S.2d 429 (App. Div. 1990) (affirming neglect finding because children continuously lived in squalid conditions and parents failed to clean residence or exercise minimum cleanliness).

108. *See* Besharov, *Supplementary Practice Commentaries, supra* note 105.

109. *See* ACS OVERVIEW, *supra* note 90.

110. Most notable was the death of six-year-old Elisa Izquierdo. Court records showed that child welfare officials had received many reports that Awilda Lopez had beaten and abused her daughter for many months before finally killing her in November 1995. *See* Charlie Leduff, *Woman Sentenced in Daughter's Death*, N.Y. TIMES, Aug. 1, 1996, at B4 (reporting details of the Izquierdo case). *See generally* Nina Bernstein, *City Agency's Lapses Cited Time and Again*, N.Y. TIMES, Dec. 24, 1995, § 1, at 22; Joe Sexton, *A Report on 25 Child Deaths Finds 25 Agency Failures*, N.Y. TIMES, Jan. 19, 1996, at B3.

111. In a study released by the New York City Public Advocate's Office, fifteen children died in 1996 in cases in which ACS failed to monitor abuse adequately or provide needed services. *See* Vivian S. Toy, *Public Advocate Faults Child Welfare Agency in the Deaths of 15*, N.Y. TIMES, Nov. 20, 1997, at B1 (reporting details of the Public Advocate's report).

before foster care; the agency's focus was on family preservation or keeping the child within her existing family structure.[112] Caseworkers were trained to use procedures for removal of a child only if there was no other way of preventing harm to the child.[113] Even when imminent danger to the child's life or health existed, federal law instructs caseworkers to make reasonable efforts to prevent or eliminate the need for removal in situations where federal monies are spent through the provision of home-based services.[114]

Today, however, child protective services units across the country, including ACS, appear to be making child removal their primary response to abuse and neglect investigations.[115] One theory for the shift is that agency administrators realize that even one death due to their own inaction is too many; therefore, they prefer to err on the side of precaution. However, given that the agency's immunity from liability covers caseworkers acting within the scope of their employment,[116] this explanation seems inadequate. One conceivable explanation for the shift is that it is politically popular for city officials to be overly tough on abuse and neglect allegations.

ACS's new strategy to ensure child safety is the aggressive pursuit of child abuse and neglect cases. The fear that a child's serious injury could be caused by an agency mistake, coupled with the threat of public and legal reproach, has led city officials to encourage the removal of children from families as soon as alleged abuse or neglect is reported.[117] As a result, the number of children in foster care has grown.[118] ACS's policy of aggressive child protection incorporates police force assistance, and it has local and national political support as well.

112. CHILD PROTECTIVE SERVICES FIELD OPERATIONS MANUAL, *supra* note 92, ch. 5, at 1.

113. *Id.*, ch. 6, at 1.

114. 42 U.S.C. § 671(a)(15) (1997). For additional discussions of the reasonable efforts requirement, see Daan Braveman & Sarah Ramsey, *When Welfare Ends: Removing Children from the Home for Poverty Alone*, 70 TEMPLE L. REV. 447, 447–61 (1997) [hereinafter Braveman & Ramsey, *When Welfare Ends*]; Alice C. Shotton, *Making Reasonable Efforts in Child Abuse and Neglect Cases: Ten Years Later*, 26 CAL. W. L. REV. 223 (1990).

115. *See* Alan Finder, *The Pendulum of Policies on Child Abuse*, N.Y. TIMES, Jan. 12, 1996, at B4 (noting shift in approach).

116. *See* N.Y. SOC. SERV. ACT § 419 (McKinney 1999). Immunity does not extend to acts of gross negligence or willful misconduct.

117. Rachel L. Swarns, *In a Policy Shift, More Parents Are Arrested for Child Neglect*, N.Y. TIMES, Oct. 25, 1997, at A1.

118. Peter T. Kilborn, *Priority on Safety is Keeping More Children in Foster Care*, N.Y. TIMES, Apr. 29, 1997, at A1. Kilborn notes that the foster care population has almost doubled since 1985, growing from 276,000 to 500,000 children. These children stay in foster care for an average of three years. *Id.*

New York City's use of its police force to handle minor neglect as well as more serious cases of abuse has contributed to a 60% increase in misdemeanor arrests for endangering children over the past two years.[119] Arrests for neglect cases were expected to reach 1400 by the end of 1997, compared to 461 arrests in 1990.[120] Parents convicted of misdemeanors face penalties of up to one year in jail, and many children spend days and weeks in foster care while their neglect cases proceed through family court.[121] It is unclear whether the misdemeanor cases should even be heard in criminal court, however. For example, the judge presiding over all parental misdemeanor cases filed in Brooklyn has stated his belief that while many parents have been guilty of neglect, few have committed crimes, and most of the cases should instead be resolved in family court.[122] Family court possesses the power to transfer a proceeding to a criminal court if it concludes that the processes of the family court are inappropriate.[123] Moreover, unlike criminal court, in family court a proceeding will be focused on the best interests of the child, not solely on determining the culpability of parents.[124]

The aggressive tactics of ACS may appear more permissible because of their broad political backing. The governor's Commission on Child Abuse, headed by the state attorney general, recommended in March 1996 that endangering the welfare of a child be made a felony.[125] ACS, acting on this support, has adjusted its fiscal structure to reflect apparent disfavor for the prior policy of family preservation. For example, city spending on counseling parents declined by 20% between January 1995 and October 1997.[126] Ostensibly these actions demonstrate the agency's intent to make child protection the highest concern in New York.

In theory, a movement towards child protection is praiseworthy, for too often children's health and safety are ignored. In practice, however, enforcing a strict policy of child protection may not be in the child's best interests, since the unnecessary removal of a child from a family can have detrimental consequences. Both emotional and physical harms can result

119. *See* Swarns, *supra* note 117, at A1 ("Once renowned for a child welfare philosophy that emphasized counseling troubled parents, New York City has embraced an aggressive approach to protecting its most vulnerable children, becoming one of only a handful of cities to vigorously prosecute a small, but growing number of abuse cases.").

120. *Id.*

121. *Id.*

122. *Id.*

123. N.Y. FAM. CT. ACT § 1014 (McKinney 1997).

124. *See* N.Y. FAM. CT. ACT § 1011 (McKinney 1997) (affirming family court's role "to help protect children from injury or mistreatment and to help safeguard their physical, mental, and emotional well-being"). *See also* CHILD PROTECTIVE SERVICES FIELD OPERATIONS MANUAL, *supra* note 92, app. A, at 13.

125. Joe Sexton, *Panel Calls for Tougher Child Abuse Laws*, N.Y. TIMES, Mar. 20, 1996, at B4.

126. *See* Swarns, *supra* note 117.

from placing a child in protective custody. Therefore, adopting an inflexibly strict policy of child protection should be weighed carefully against the costs of providing services to keep families intact where possible.

C. *ACS Performance*

ACS serves a critical role within the community. ACS caseworkers provide the primary defense for protecting children against abuse and neglect in New York City. This significant level of responsibility placed on the agency's workers requires that they execute their duties with the highest level of care. Anything less in the domain of child welfare can easily result in permanent tragedy.

Despite the creation of ACS and its assertive policy of protecting children, New York City's child welfare department has not substantially improved. Evaluations of ACS reveal that the agency, similar to its predecessor CWA, continues to provide substandard services to children and families.[127] In response to the 1995 class action lawsuit *Marisol A. v. Giuliani*,[128] a judicially ordered panel was established to study the quality of work done by ACS.[129] The plaintiffs, a group of eleven children who had suffered or were at risk of severe abuse and neglect, claimed that ACS, New York City, and the State of New York had deprived them of state and federal statutory and constitutional rights by mishandling abuse and neglect cases and by refusing to provide family preservation services.[130] The panel reviewed hundreds of randomly selected cases covering ACS investigations of suspected abuse and maltreatment in both familial and foster home settings; the analysis also examined open indicated cases.[131] The

127. *See, e.g.*, NEW YORK CITY'S ADMINISTRATION FOR CHILDREN'S SERVICES, *Marisol v. Giuliani* Case Record Review, Report #1, Investigations of Reports of Suspected Child Abuse and Maltreatment 10 (Aug. 12, 1997) [hereinafter MARISOL REPORT #1]; NEW YORK CITY'S ADMINISTRATION FOR CHILDREN'S SERVICES, *Marisol v. Giuliani* Case Record Review, Report #2, Services to Families with Open Indicated Cases (Sept. 5, 1997) [hereinafter MARISOL REPORT #2]; NEW YORK CITY'S ADMINISTRATION FOR CHILDREN'S SERVICES, *Marisol v. Giuliani* Case Record Review, Report #3, Services to Children in Foster Care and Their Families (Dec. 1997) [hereinafter MARISOL REPORT #3].

128. 929 F. Supp. 662 (S.D.N.Y. 1996). On defendant's motion to dismiss, the court held that the plaintiffs did not have a specific constitutional right to rely on a state agency to strengthen family ties. *Id.* at 674 n.3. However, the court held that individuals in the foster care system did have a constitutional right to protection from harm, and the state harms children when it fails to take steps to reunite them with their biological parents. *Id.* at 674–75.

129. District Judge Robert J. Ward ordered the appointment of a joint review team to conduct a review of case records of children in the New York City child welfare system on January 28, 1997. *See* Marisol A. v. Giuliani, No. 95 Civ. 10533, 1997 WL 630183, at *1 (S.D.N.Y. Oct. 10, 1997) (describing procedural history of case).

130. *Marisol A.*, 929 F. Supp at 674.

131. *See, e.g.*, MARISOL REPORT #1, *supra* note 127; MARISOL REPORT #2, *supra* note 127; MARISOL REPORT #3, *supra* note 127.

panel's findings highlight the persistent deficiencies of ACS, and they underscore particularly weak areas on which ACS should focus its improvement efforts.

In familial settings, the evaluations reveal that ACS investigations of suspected child abuse and maltreatment fell below legal standards and standards of good practice.[132] The panel found that: 31% of familial reports had an inadequate assessment of immediate danger to children within the initial twenty-four hour investigation; ACS did not provide safety intervention in 19% of cases in which reviewers' judgments determined that safety interventions were needed within the first seven days to protect children; ACS provided an inadequate assessment of future abuse and maltreatment for all children in the home in 34% of cases; and ACS closed 27% of cases inappropriately.[133]

The panel also concluded that there were no statistically significant differences in the completeness and adequacy of child protective investigations of familial situations between the 1996–1997 and 1995–1996 reviews.[134] Thus, the quality of work done by New York City's CWA and ACS was found to be roughly the same—unacceptably poor.

In open indicated cases, ACS did not meet regulatory requirements relating to case planning. A case plan is important because it provides at the minimum an assessment of the family situation and specifies treatment services to be provided by the caseworker to reduce the risk of abuse or maltreatment and improve family functioning. The review team also found ACS's provision of services deficient: ACS provided parenting skills training in only 61% of cases in which it was planned, and in only 44% of cases in which reviewers' judgments concluded that it was needed; in addition, ACS provided housing in only 42% of cases in which it was planned, and in only 27% of cases in which reviewers' judgments concluded that it was needed.[135] As expected, considering the shift away from family preservation, the panel found that although ACS provided family preservation services in 80% of cases in which they were planned, the agency provided services in only 24% of cases in which they were judged to be needed.[136]

The panel also concluded that caseworker contact with children and families in open indicated cases was far below city and state standards. In nearly one third of the cases reviewed, evaluators found that caseworkers had no face-to-face contact with children or parents named in an allegation during the entire six month period in which caseworkers collected data following the initial investigation.[137] Moreover, the panel determined that

132. *See* MARISOL REPORT #1, *supra* note 127, at 3.
133. *Id.* at 73–74.
134. *Id.* at 78.
135. MARISOL REPORT #2, *supra* note 127, at 5.
136. *Id.*
137. *Id.* at 6.

ACS closed 30% of cases inappropriately, and that insufficient documentation existed to justify case closure in 27% of the cases reviewed.[138]

The *Marisol v. Giuliani* review panel's findings provide a valuable update on the status of New York City's child welfare system. However, despite the study's informative contribution to the public's understanding, its numbers understate the problematic repercussions of a deficient child protective services system. Data alone hardly represent the real children and families affected by ACS's failures. An overburdened, underfunded, and sometimes negligent agency produces unwarranted family dissolutions, numerous child injuries, and even deaths—at least some of which could be prevented.

III.
TENSIONS BETWEEN ACS AND WELFARE REFORM POLICIES

Three weeks later, on a Tuesday, Keisha woke up before Tammy came home. Scared, Keisha began to cry loudly for about a half-hour before a neighbor heard her screams. The neighbor, acting out of concern, immediately called the police, who then contacted ACS. Two officers and an ACS caseworker entered the apartment and found Carl Jr. and Keisha alone and frightened. In all of the commotion, during which onlookers had gathered to see what was going on, Tammy returned from work. Terrified that something had happened to her children, she rushed into the apartment. After the caseworker determined that Tammy had left the young children at home alone, the officers arrested her for endangering the children. Although unharmed, both children were immediately removed from Tammy's custody and placed in a foster care facility where they currently remain pending a family court hearing. Tammy also faces criminal charges.

A. Increased Child Maltreatment Allegations

It is my contention that ACS will see an increase in the number of abuse and neglect cases as a result of the changed welfare law. In 1991, the Los Angeles County Department of Children and Family Services found that "child abuse and neglect referrals jumped 12 percent following a 2.7 percent decrease in the state's AFDC grant and another 20 percent following AFDC cuts totaling 5.8 percent in 1992."[139] Moreover, the National Incidence Study of Child Abuse and Neglect reports that children in families with incomes under $15,000 a year are twenty-two times more likely to experience maltreatment than children in families with incomes over

138. *Id.* at 7.

139. KNITZER & BERNARD, *supra* note 20, at 4 (internal citations omitted).

$30,000.[140] Finally, since PRA denies legal immigrants Food Stamp benefits and gives states the option to deny them TANF cash assistance, Medicaid, and child care services as well, many legal immigrant families are at risk of becoming involved with the child welfare system. States across the country with large immigrant populations will face particular challenges to meet these families needs, and to assess the impact of welfare reform on the child welfare system.[141] Fortunately, New York has not exercised its option to eliminate TANF cash assistance to legal immigrants.

Families whose benefits are cut off may have no other resources on which to survive. The lack of alternative sources of income will result in a dangerously lower standard of living for thousands of families. Without monetary assistance or Food Stamps, parents will not be able to meet the nutritional needs of their children. Parents will barely, if at all, be able to afford living expenses such as rent and utilities. The incidence of parents leaving children unattended or in the hands of unqualified caretakers will become more frequent given that affordable quality child care is already virtually nonexistent. Combined, these financial strictures will have the effect of subjecting poor families to the threat of state intervention for neglect. Furthermore, the current trend towards the criminalization of neglect cases will result in poor women being inordinately penalized by the law.[142]

In order to meet the needs of the additional children and families pulled into poverty, ACS will have to amend its existing services and increase the services it offers to families in need. However, recent evidence illustrating ACS's failure to substantially improve its resources, even in the wake of several infamous child tragedies, suggests that such an expansion is unlikely to occur without a corresponding shift in structural philosophy and a budget augmentation. Even with an increased budget, ACS must prioritize raising the quality of its services; without additional funds, ACS will be constrained to either serving fewer children and families or providing fewer services altogether. ACS's failure to act has already produced distressing results, with the city's child welfare woes arguably at their worst.

An increased number of neglect cases will cause an already overloaded child welfare system in New York City to serve children and families in a narrower capacity than it already does. Since the quality of ACS's work already falls below legal standards and standards of good practice, more children will be put in peril. The heightened risk affects children who are in danger but are judged not in need of removal, children whose danger persists but whose cases are improperly closed, and children who are erroneously removed from their families and consequently encounter the threat

140. *Id.* (citing Social Legislation Information Service, *Child Abuse and Neglect National Incidence Study*, 34 WASH. SOC. LEG. BULLETIN 165 (1996), and A.J. SEDLAK & D.D. BROADHURST, FINAL REPORT (National Clearinghouse on Child Abuse and Neglect Info., Third National Incidence Study of Child Abuse and Neglect, 1996)).

141. *See* KNITZER & BERNARD, *supra* note 20, at 5.

142. *See* Swarns, *supra* note 117 and accompanying text.

of abuse and neglect, including psychological harm in foster care settings.[143]

B. *Impairment of PRA Objectives*

This change in ACS policy, particularly when coupled with the threat of benefit termination under the PRA, impedes the stated goals of federal welfare reform. Even assuming the validity of the premises which form the basis of the need for welfare reform, the inconsistencies between the two social welfare policies become obvious. Family structure and self-sufficiency are not promoted when parents are compelled to work in low-skill, low-wage, transitory jobs. Instead, the strict work requirements and aggressive child protection discourage family cohesiveness by leaving families in poverty and subsequently removing children for neglect when their parents are unable to provide for their care. The most likely scenario is that some public assistance recipients will be unable to obtain employment because jobs are not available or a benefit recipient's employability proves to be non-competitive in the market. Terminating benefits will leave these families in a dire predicament. PRA and NYRA eliminate the "financial" and the TANF-funded "other reasonable" means named in section 1012(f)(i)(A) of the New York Family Court Act that ACS has available to offer to poor families. As a result, this statutory provision has even less protective force, since welfare reform eliminates even the option to provide poor parents with the means by which they can give their children adequate housing, food, clothing, and child care.

IV.
SUGGESTIONS FOR IMPROVEMENT

Tammy's account illustrates the tension between the ACS and NYRA reform policies. Either by working for wages that push income only slightly above eligibility limits, failing to comply with work requirements, or exceeding state or federal time limits, many needy families will be left in poverty by the termination provisions of welfare reform. At the same time, the aggressive ACS policy to protect children will further harm these families by removing their children because they are poor. The combined impact of welfare reform and ACS's policing of families is self-defeating and serves to obstruct rather than promote each administration's individual policy objectives.

143. *See* MARISOL REPORT #3, *supra* note 127, at 5–6,11–12. The risks associated with foster care found by the panel include the following: only 46% of children in foster care were in the same placement since entry into care; 26% of children in foster care had needs of medical, dental, and/or mental health services which were not met; only half of foster parents needing services received services; parental skills training was provided in only 46% of the cases in which it was planned by caseworkers and 38% of the cases in which it was judged by case readers to be needed. *Id.*

A. Constitutional Arguments

Legislators and ACS officials can begin to protect children and families by recognizing a child's right to coverage of her basic needs and a family's right to integrity.

1. Right to Aid

On a federal level, it may be that the United States Supreme Court is unlikely to impose an affirmative duty on either the federal government or the states to provide a minimum level of assistance to the poor.[144] Historical cases involving constitutional protections for the poor might have suggested otherwise, however.[145] Within the context of welfare, *Shapiro v. Thompson*[146] and *Goldberg v. Kelly*[147] provided a possible basis for finding that the government had a duty to provide assistance to the poor. In *Thompson*, the Court held that a state law which imposed a residency requirement for the receipt of welfare benefits was unconstitutional, noting that a state may not preserve its fiscal integrity by making "invidious distinctions between classes of its citizens."[148] In *Goldberg*, the Court came arguably its closest to establishing the treatment of welfare benefits as property, but the holding did not extend as far as creating a constitutional obligation on the state to provide assistance to the poor. Nevertheless, after *Goldberg*, public assistance was treated as a statutory entitlement that required appropriate due process procedures prior to benefits termination.[149]

To the misfortune of the impoverished, the Supreme Court has been less progressive in furthering a constitutional right to aid. In decisions subsequent to *Goldberg*, the Court has consistently and definitively denied the existence of an affirmative duty upon the federal government or the states under the Constitution to provide support to the poor.[150] Furthermore,

144. *See* Sarah Ramsey & Daan Braveman, *"Let Them Starve": Government's Obligation To Children In Poverty*, 68 TEMP. L. REV. 1607, 1617 (1995) [hereinafter Ramsey & Braveman, *"Let Them Starve"*] ("Current constitutional doctrine would permit government to let children starve, leaving political largesse and private arrangements as the only recourse.") (internal citations omitted).

145. *See* Gideon v. Wainwright, 372 U.S. 335 (1963) (imposing obligation on states to provide free counsel to indigent defendants in criminal cases); *see also* Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966) (holding that poll taxes discriminate against poor persons).

146. 394 U.S. 618 (1969).

147. 397 U.S. 254 (1970).

148. *Thompson*, 394 U.S. at 623.

149. *Goldberg*, 397 U.S. at 262.

150. *See* Lavine v. Milne, 424 U.S. 577, 584 n.9 (1976) ("Welfare benefits are not a fundamental right, and neither the State nor the Federal Government is under any sort of constitutional obligation to guarantee minimum levels of support."); Dandridge v. Williams, 397 U.S. 471 (1970) (upholding Maryland's maximum AFDC family grant under equal protection analysis while acknowledging limited constitutional restraints on state's operation of welfare programs).

commentators suggest that the Court has become less likely to find affirmative constitutional obligations.[151] Nevertheless, advocates can rely on *Plyler v. Doe*[152] to argue that, although there is no fundamental right to welfare and poor children are not a suspect class, laws excluding them from public assistance commit them to poverty and subject them to burdens that may lead to lifelong hardships.[153]

At the state constitutional level, NYRA illustrates what appears to be a growing disregard for the state constitutional assurance of aid to the needy. Since 1938, the New York Constitution has included a right to aid, making it one of only a handful of states to explicitly guarantee assistance to the needy.[154] Article XVII reads, "the aid, care, and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine."[155] New York courts have upheld this constitutional provision against challenges. For example, in *Tucker v. Toia*,[156] plaintiffs challenged a state regulation denying public assistance to youth who live on their own unless the person has a judicial order of support against their parent or legally responsible relative.[157] The New York Court of Appeals struck down the law as violative of Article XVII, holding that the legislature could not deny aid to the needy on the basis of criteria unrelated to their need.[158] Subsequent cases have limited *Tucker* however. For example, in *Bernstein v. Toia*,[159] the New York Court of Appeals held that *Tucker* prohibited the exclusion of needy persons from public assistance under the state constitution, but that *Tucker* was not applicable to questions regarding the sufficiency of benefits.[160] The court's deference to

151. *See* Ramsey & Braveman, *"Let Them Starve," supra* note 144, at 1621 (arguing that changes in the Court's composition since *Plyler* have meant the "Court has become more deferential to federalism concerns and less willing to find affirmative constitutional obligations") (internal citations omitted).

152. 457 U.S. 202, 223 (1982) (holding Texas statute which denied public education to undocumented alien children unconstitutional because it imposed "lifetime hardship on a discrete class of children not accountable for their disabling status").

153. *See* Ramsey & Braveman, *"Let Them Starve," supra* note 144, at 1621 (quoting Plyler v. Doe, 457 U.S. at 223).

154. N.Y. CONST., art. XVII (McKinney 1997) The purpose of New York's constitutional revision was to sustain constitutional attacks on social welfare programs previously created by the state and to impose a positive duty upon the state to aid the needy. *See, e.g.,* Tucker v. Toia, 371 N.E.2d 449, 451 (N.Y. 1977) (describing evolution of constitutional provision).

155. N.Y. CONST., art. XVII, § 1.

156. 371 N.E.2d 449 (N.Y. 1977).

157. *Id.* at 449–51.

158. *Id.* at 451–52.

159. 373 N.E.2d 238 (N.Y. 1977) (involving challenge to New York's maximum shelter grant regulation).

160. *Id.* at 243–44.

the legislature and the Department of Social Services in defining need, setting the amount of aid, and selecting the methods for providing aid, is representative of many decisions that hinge on the legislature's interpretation of need.[161]

2. Right to Family Integrity

The right to freedom of personal choice in family life is one of the fundamental interests protected by the Due Process Clause of the Fourteenth Amendment.[162] Within this interest, there is the "freedom of a parent and a child to maintain, cultivate, and mold their ongoing relationship."[163] The Supreme Court has recognized the parent's primary responsibility for raising a child and has given credit to the notion of family autonomy.[164] Family autonomy is not absolute, however, as the state can restrict this freedom given a compelling interest.[165] A state's compelling interest for intervention must be narrowly tailored and use the least intrusive means.[166] Using Tammy as an example, it seems obvious that providing funds or other means for child care is clearly less intrusive than removing Carl Jr. and Keisha. However, the Supreme Court has ruled that a state does not have an affirmative obligation to intervene to protect children or family integrity.[167] If the state does intervene, then it may have a constitutional obligation to provide assistance in the home, rather than remove children from the family.[168]

161. *Id.* at 244. *See generally* Lovelace v. Gross, 605 N.E.2d 852 (N.Y. 1992); Childs v. Bane, 605 N.Y.S.2d 488 (App. Div. 1993).

162. *See generally* Santosky v. Kramer, 455 U.S. 745, 753 (1982); Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632, 639–40 (1974).

163. Franz v. United States, 707 F.2d 582, 595 (D.C. Cir. 1983).

164. *See, e.g.,* Moore v. City of E. Cleveland, 431 U.S. 494 (1977); Wisconsin v. Yoder, 406 U.S. 205, 232 (1972); Prince v. Massachusetts, 321 U.S. 158, 166 (1944); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

165. *See* Parham v. J.R., 442 U.S. 584, 603 (1979) (holding that state is not without constitutional control over parental discretion when child's physical or mental health is jeopardized).

166. *See generally Developments in the Law: The Constitution and the Family*, 93 HARV. L. REV. 1156, 1231-42 (1980); *Franz*, 707 F.2d at 602; Roe v. Conn, 417 F. Supp 769, 779 (M.D. Ala. 1976).

167. *See* DeShaney v. Winnebago County Dep't of Soc. Serv., 489 U.S. 189, 200 (1989) (concluding under substantive due process analysis that states do not have an affirmative duty to protect individual liberty interests against harms that are not state-created); *see also* Lipscomb v. Simmons, 962 F.2d 1374, 1384 (9th Cir. 1992) (accepting state's judgment regarding best allocation of limited social welfare resources despite result of less-than-perfect social services for children).

168. *See* Marisol A. v. Giuliani, 929 F. Supp, 662, 677 (S.D.N.Y. 1996) (noting that once Department of Social Services intervenes to place children in foster care, allegations that they languish there, separated from families, may constitute harm giving rise to a colorable Due Process claim); Braveman & Ramsey, *When Welfare Ends, supra* note 114, at 464 ("[I]f the state decides to intervene, it may have a constitutional obligation to provide assistance in the home, rather than remove children from the family.").

Given legal precedent, establishing a federal constitutional right to aid and to family integrity will be difficult. Courts frequently defer to state legislatures, allowing them discretionary authority to formulate welfare policy. As discussed in Part I, PRA gives states even more flexibility. Within the context of family integrity, ACS's obligation to keep a family intact does not begin until after it intervenes. Thus, there is a legal focus on family restoration, but not family preservation. Despite the discouraging prospects, there appears to be a greater potential to argue for these rights under the New York constitution than on federal grounds, because of New York's explicit guarantee to aid for the needy. Using either analysis, policymakers should recognize that benefit termination for children is entirely different from benefit termination for adults. Proposals such as the current welfare reform place children in a highly unstable position. Children cannot go out and work to provide for themselves, yet they are penalized as if they could—as adults. In consideration of this distinction, and of its state constitutional guarantee of aid, New York should apply different standards of benefit eligibility for children. A child in poverty is a child in need. Recognizing that need, courts should prohibit the state from excluding impoverished children from public assistance.

B. Collective Planning

Next, the legislature and administrative agencies can work collaboratively with communities, practitioners, and others involved with the child welfare system to plan complementary laws and regulations concerning children and families which are consistent with and do not undermine each other in practice. New York City provides a clear example of the tension that results within the welfare system and the child welfare system from the failure to coordinate local, state, and federal policies. Such incongruous policies debilitate one another, cause unnecessary harm, and are a waste of resources. Section 425 of the New York Social Services Law[169] empowers child protective services to request assistance from any other state agency that will enable child protective services to fulfill its responsibilities properly. The cooperative planning espoused by this provision should not begin after a policy is enacted, but instead should be utilized during such policy's formulation. An argument against the foregoing proposition is that increased participation in the legislative and administrative processes will further commit resources and frustrate procedures. Regardless of the veracity of that contention, welfare reform and ACS policy will undoubtedly not affect members of Congress, the New York State Legislature, or ACS, since none of these individuals nor members of their families could be classified as living near or below the poverty line given their income levels. In light of this observation, policymakers should welcome the input of those persons who are implicated by welfare reform policies, and they should

169. N.Y. SOC. SERV. LAW § 425 (McKinney 1997).

also incorporate into their policy planning the expertise of those seasoned in welfare policy and the welfare system.

C. *Examining Poverty as a Cause*

Policymakers should also address the problem of poverty among families who depend on welfare and are charged with neglect. The solution to ending welfare dependence must involve an analytical view of the unmistakable link between poverty and welfare dependence. Congress's findings in the PRA note that children born out-of-wedlock or to welfare dependent mothers are more likely to have out-of-wedlock births or be dependent on welfare themselves. The value of these findings is minor—the simplified observations are indicative of a superficial understanding of the causes of welfare dependency. In its preamble to the PRA, Congress did not include educational, health, or economic causes for the alarming statistics, nor did it offer any solutions other than the termination of benefits. PRA implies that welfare dependency is pathological—welfare dependents are responsible for their predicament and pass their plight along to their children. Moreover, because children in poverty-stricken families are more likely to suffer maltreatment, policymakers should explore poverty as a consideration in child protection policy as well as a cause of welfare dependency. Since the standard of poverty is defined by a measure of adequate food, clothing, and shelter, determinations of neglect might also consider a family's welfare dependency and its poverty. These considerations can be made in conjunction with the suggestion for collaborative planning, as ACS caseworkers and welfare staff can work closely together to identify children and families who are at risk because of their loss of benefits.[170]

D. *Providing Alternative Services*

Finally, promoting the institutions of marriage and family can be accomplished through less expensive and disruptive means. By providing increased services to needy families and alternative solutions to child removal in maltreatment cases, the legislature can promote family constancy and possibly save limited funds. As an illustration of the potential savings, consider the comparative costs of foster care and AFDC: in 1996, foster care costs were between $10,000 and $20,000 per year per child,[171] while AFDC grants, including Food Stamps and Medicaid, for a family of three ranged from $1,968 to $11,076.[172] As the cost of foster care increases with the nationwide growth of child removals due to neglect, the "savings"

170. *See* KNITZER & BERNARD, *supra* note 20, at 9 (suggesting holistic state approach to identifying families in need of assistance).

171. David Herring, *Exploring the Political Roles of the Family: Justifications for Permanency Planning for Children*, 26 LOY. U. CHI. L.J. 183, 195 (1995).

172. CHILDREN'S DEFENSE FUND, THE STATE OF AMERICA'S CHILDREN YEARBOOK 68 (1996).

derived from welfare reform will soon become deficits. Also, when the potential physical and emotional harms of foster care are factored in, providing direct benefits to children and families appears even more rational. The provision of direct benefits in the form of financial assistance, non-cash vouchers for children, adequate child care, or other services is economical, keeps families together, and provides for the welfare of children.

Although these suggestions are departures from current practice, all of the propositions have been raised in the past. However, the present status of the child welfare system and the permanent repercussions of welfare reform should compel officials to rethink their policy approaches immediately, not after thousands of children have been harmed.

> *In a better ending, the ACS caseworker, recognizing the vulnerability of Tammy's family, and following the agency's policy of family permanency, would suggest a plan for services for the family before removing Carl Jr. and Keisha and having Tammy arrested. The ACS caseworker would then call Tammy's welfare caseworker and the New York City Department of Social Services to get financial assistance and vouchers for child care at one of the city-funded daycare centers, and to have Tammy re-registered for Food Stamps and Medicaid. Even though Tammy would not be eligible for financial assistance under the state's new strict welfare law, at least the law did include a provision whereby Tammy could receive vouchers for Carl Jr. and Keisha to obtain daycare, clothes, and other basic necessities—an allowance proposed by a joint commission comprised of legislators, child protective services officials, welfare caseworkers, child and family advocates, and community representatives. Tammy could therefore go back to work at the supermarket and no longer rely on cash assistance. Most importantly, Carl Jr. and Keisha could be at home with their loving mother.*

CONCLUSION

Welfare reform's benefit termination provisions aim to encourage marriage and self-determination, and ACS's aggressive child safety actions function to reduce the risk of harm to children. Unfortunately, neither program is flawless, and when enforced together, many children and families will be worse off than before. Welfare reform depends on many contingencies that have historically proven to be inconstant and unpredictable. At the same time, ACS's policy of acting quickly and decisively in order to err on the side of caution results in premature state intervention into families where poverty may be the sole reason for neglect allegations. One policy perpetuates family poverty, and the other dissolves families for being in poverty. Thus, welfare reform and ACS do not provide one another with

complementary efforts, but instead complicate each other's policy objectives.

The New York legislature and ACS can eliminate the foregoing problems and avoid similar contradictory legislation and policy in the future. Both bodies have to work together, however. In the absence of a constitutional amendment eliminating its guarantee of aid, New York still has an obligation to provide for its needy citizens. ACS is also the state's arm responsible for child protection services. If New York is truly concerned about caring for its families, and more importantly its defenseless children, then its policymakers will cast aside all political maneuverings, and do a more effective job of addressing the real issues at hand.