

**NATIONAL LAW CENTER
ON HOMELESSNESS & POVERTY**

**Shortchanging Survivors:
The Family Violence Option for TANF benefits**

**A Report by the
Domestic Violence Program of the
National Law Center on Homelessness & Poverty**

DECEMBER 2009

1411 K Street, NW, Suite 1400
Washington, DC 20005
Phone: 202-638-2535
Fax: 202-628-2737
www.nlchp.org

ABOUT THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

The National Law Center on Homelessness & Poverty is committed to solutions that address the causes of homelessness, not just the symptoms, and works to place and address homelessness in the larger context of poverty.

To this end, we employ three main strategies: impact litigation, policy advocacy, and public education. We are a persistent voice on behalf of homeless Americans, speaking effectively to federal, state, and local policy makers. We also produce investigative reports and provide legal and policy support to local organizations.

You are invited to join the network of attorneys, students, advocates, activists, and committed individuals who support NLCHP. Our network provides a forum for individuals, non-profits, and corporations to participate and learn more about using the law to advocate for solutions to homelessness. For more information about our organization and access to publications such as this report, please visit our website at www.nlchp.org.

Board of Directors of NLCHP*

William Breakey, MD
Chair
Johns Hopkins University

Vasiliki Tsaganos
Vice-Chair
Fried, Frank, Harris, Shriver
& Jacobson LLP

Edward McNicholas
Secretary
Sidley Austin LLP

Michael Allen
Treasurer
Microsoft Corporation

Kenneth S. Aneckstein
DLA Piper

Peter H. Bresnan
Simpson Thacher & Bartlett
LLP

Tonya Y. Bullock
Community Activist

Bruce Casino
Katten Muchin Rosenman
LLP

Roderick DeArment
Covington & Burling LLP

Maria Foscarinis
Executive Director
NLCHP

Howard Godnick
Schulte Roth & Zabel LLP

Kirsten Johnson-Obey
Porterfield, Lowenthal &
Fettig LLC

**Father Alexander
Karloutsos**
Greek Orthodox Archdiocese
of America

Pamela Malester
Community Volunteer

Tashena Middleton Moore
Jones Day

Margaret Pfeiffer
Sullivan & Cromwell LLP

Jeffrey Simes
Goodwin Procter LLP

Mona Touma
Goldman, Sachs, & Co.

Angela Ward
Community Volunteer

**Affiliations for identification purposes only*

Staff of NLCHP

Catherine Bendor
Legal Director

Andy Beres
Grant Writer/
Communications Assistant

Vibha Bhatia
Director of Operations

Kelly Connolly
Deferred Fellow,
Alston + Bird

Karen Cunningham
Director of Pro Bono
Services

Maria Foscarinis
Executive Director

Whitney Gent
Development &
Communications Manager

Jessica Libbey
Development Assistant

Marion Manheimer
Volunteer

Rachel Natelson
Domestic Violence Staff
Attorney

Tulin Ozdeger
Civil Rights Program
Director

Ashley Shuler
Program Assistant/Executive
Assistant

Jason Small
Policy Director

Eric Tars
Human Rights Program
Director/ Children & Youth
Attorney

TABLE OF CONTENTS

Acknowledgments.....	3
Executive Summary.....	4
Introduction.....	11
Family Violence Option Overview.....	13
Screening for Domestic Violence & Notification about Waivers.....	15
<u>Screening</u>	
Forms of Screening Tools.....	16
Crafting the Screening Tool.....	17
Implementation of Screening Mechanisms.....	18
<u>Notification</u>	
Notification about Waiver.....	20
Approval of Waivers.....	21
Case Studies.....	23
New York.....	23
Washington, DC.....	28
San Francisco.....	34
Conclusion.....	38
Recommendations.....	39
Appendix.....	42

ACKNOWLEDGMENTS

The National Law Center on Homelessness & Poverty (NLCHP) would like to thank all of the people who contributed to this report.

In particular, NLCHP would like to thank Cecelia Friedman Levin and Kathy Zeisel, the principal authors of this report. NLCHP also thanks Catherine Bendor, Isha Plynton, Bill Emerson Congressional Hunger Fellow, and especially Jamison Brewer, law intern, for their work on this report. NLCHP would also like to thank Ellen Wells, Amy Schwartz, Sonia Mansoor, Minouche Kandel, and Megan Koroshetz for their contributions to this report.

NLCHP acknowledges with gratitude the generous support of the Waitt Family Foundation, Freddie Mac Foundation, Herb Block Foundation, the Paige Family Foundation, the Public Welfare Foundation, the US Human Rights Fund, and our anonymous donors.

NLCHP would also like to thank our LEAP member law firms: Akin Gump Strauss Hauer & Feld LLP; Blank Rome LLP; Bruce Rosenblum; Covington & Burling LLP; Dechert LLP; DLA Piper; Fried, Frank, Harris, Shriver & Jacobson LLP; Goodwin Procter LLP; Greenberg Traurig, LLP; Hogan & Hartson LLP; Jenner & Block LLP; Jones Day; Katten Muchin Rosenman LLP; Latham & Watkins LLP; Morrison & Forrester Foundation; O'Melveny & Myers LLP; Schulte Roth & Zabel LLP; Sidley Austin LLP; Simpson Thacher & Bartlett LLP; Sullivan & Cromwell LLP; and WilmerHale.

EXECUTIVE SUMMARY

The Domestic Violence Program at the National Law Center on Homelessness & Poverty strives to prevent homelessness for victims* of domestic violence. Violence against women is a leading cause of homelessness nationwide. About 20% of homeless women report domestic violence or abuse as a reason for their homelessness, and 28% of U.S. cities surveyed in 2008 reported that domestic violence was a primary cause of homelessness. Domestic violence victims, particularly those with limited resources, often have to choose between living with their abusers and becoming homeless. Many survivors become homeless after fleeing an abusive relationship or after being evicted for reasons related to the abuse such as police involvement or property damage. As abusers often control finances to maintain control in the relationship, survivors may lack steady income, landlord references, and good credit, all of which are necessary to find new housing. Furthermore, statistics show that a lack of affordable housing and housing assistance further limits the options available to these women.

Achieving financial self-sufficiency is essential for domestic violence victims seeking to secure safe housing. In an effort to gain resources to live apart from their abuser and to house themselves and their children, many domestic violence victims with children seek assistance through the Temporary Aid to Needy Families (TANF) program. Created by the Personal Responsibility and Work Opportunity Act of 1996, TANF provides time-limited financial support to parents on the condition that they adhere to strict employment requirements and seek child support; failure to meet these obligations can result in sanctions or termination of benefits. However, for many victims, it is difficult or impossible to comply with these requirements as they also attempt to bring their abuser to justice, protect their children and rebuild their lives: they must attend court dates, keep therapy and medical appointments, and ensure they and their children are not harmed by the abuser.¹ Seeking child support from an abuser and participating in certain work activities may require a victim to face the abuser whether or not it is safe to do so.

In response to this problem, Congress passed the Family Violence Option (FVO) as part of the welfare reform legislation of 1996. This provision allows states to exempt victims of domestic violence from any of the requirements of the TANF program.² All 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands have adopted either the federal family violence option or a state version of the law.³ However, implementation of the FVO provisions has often proven to be ineffective and inadequate. As a result, the vast majority of eligible victims do not benefit from its protections,

*Domestic violence “survivor” is the preferred term of advocates in this field, but “victim” will be used in this report for consistency with the language in applicable laws and regulations.

¹ Hearn, M.E., *Dangerous Indifference: New York City’s Failure to Implement the Family Violence Option*, Joint Project of the NOW Legal Defense Fund, The Legal Aid Society, Civil Division, The Women, Welfare and Abuse Task Force, and The Urban Justice Center, 7 (2000).

² See 42 U.S.C. §§ 602(a)(7) & 608(a)(7)(C)(iii) (1996).

³ HHS, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, EIGHTH ANNUAL REPORT TO CONGRESS, XII, 44-45 (June 2009), at <http://www.acf.hhs.gov/programs/ofa/data-reports/annualreport8/ar8index.htm> (last visited 11/24/09).

placing them at risk of being unfairly sanctioned for noncompliance and deprived of a vital source of income.

This problem stems primarily from the failure of TANF offices to identify victims of domestic violence. Multiple reports and surveys across the country indicate a stark disparity between the probable number of victims applying for TANF benefits and the number actually identified at the TANF office:

- While about 22% of women in the general population have experienced domestic violence,⁴ at least 50% of women participating in TANF have experienced domestic violence⁵ and at least 25% of women participating in TANF have experienced domestic violence in the past year.⁶
- Generally fewer than 10% of domestic violence victims who disclosed their victim status to other professionals identify themselves as domestic violence victims to TANF office staff.⁷
- One recent study concluded that domestic violence screenings failed to identify 86% of the likely total of women who were victims of recent violence.⁸

The reasons for this disparity in waiver utilization vary. Some domestic violence victims participating in the TANF program may prefer to seek employment and child support for their children rather than obtaining an FVO waiver. In addition, TANF offices may have institutional problems with implementing FVO policies. These challenges may arise from ineffective or inconsistent screening practices at TANF offices or a lack of training for TANF caseworkers about the dynamics of domestic violence.

These inconsistencies are rooted largely in the structure and administration of the TANF program. Unlike earlier incarnations of public assistance in which the federal government designed uniform program requirements, TANF provides funding to the states to design and administer their own programs, leading to considerable variation from one region to the next. Moreover, while some TANF program components are mandatory for all states, others are purely optional.

⁴ Lyon, E, *Welfare, Poverty, and Abused Women: New Research and its Implications*, p.1 at: http://new.vawnet.org/Assoc_Files_VAWnet/BCS10_POV.pdf (last visited 11/24/09); See also Centers for Disease Control, *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence --- United States, 2005*, MORBIDITY AND MORTALITY WEEKLY 57(05); 113-117, Table 1 (Feb. 8, 2008) at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm> (last visited 11/24/09).

⁵ *Id.*

⁶ Lindhorst T, Meyers M, & Casey E, *Screening for Domestic Violence in Public Welfare Offices: An Analysis of Case Manager and Client Interactions*, *Violence Against Women*, 14: 5-28, 6, 15 (2008).

⁷ Lyon E, *supra* note 4, at 6.

⁸ Lindhorst et al., *supra* note 6, at 15. (In this study, several hundred interactions between TANF applicants and caseworkers were observed across 4 states. The proportion of applicants who disclosed abuse to caseworkers was compared to a conservative estimate of the proportion of these applicants who were likely victims of domestic violence in the past year.).

Among such discretionary provisions is the Family Violence Option, which states may, but are not required to, incorporate into their respective welfare programs. Since adoption is optional, the federal government offers states a great deal of flexibility in devising their policies. For example, states can opt to limit the circumstances in which program requirements may be waived; while some offer waivers only in cases of ongoing violence, others also provide them where compliance would penalize those still struggling with the consequences of past abuse.

Due to the decentralized way in which states administer benefits, FVO implementation also varies by locality. While the Option is initially adopted through legislative or administrative action at the state level, its implementation is left to local government agencies, which inevitably vary in culture and resources. As a result, even states with relatively strong FVO legislation can lack uniformity in application from one locality to another.

Through interviews and reviews of available data, NLCHP conducted case studies of procedures used and results obtained in the implementation of FVO policies in three major cities: New York City, Washington, DC, and San Francisco, California. These case studies found that, despite the existence of innovative legislation in these jurisdictions, significant challenges in the implementation of the FVO waiver remain.

New York City:

FVO waivers in New York are granted through a two-step process. First, an applicant must self-identify as a domestic violence victim to frontline caseworkers. Then, a specialized Domestic Violence Liaison assesses the credibility of the applicant's claims and the need for waivers. Even with specialized Liaisons, there are problems in the initial screening process. A study based on two surveys found that 56-72% of women did not receive a Domestic Violence Screening Form when applying for TANF in New York City.⁹

New York also uses a restrictive eligibility standard in determining who may receive a waiver. Waivers are only granted where a victim is considered to be in current danger.¹⁰ This excludes victims who may not be in current danger because they are cooperating with law enforcement or victim advocates but have numerous appointments and court dates as a result that interfere with their ability to comply with the requirements of the TANF program.

- In New York, 108,371 Family Assistance TANF applications were approved in 2007.¹¹

⁹ Hearn, M.E., *supra* note 1 at 12.

¹⁰ NY Social Services Consolidated Laws (SOS) § 349-A (valid through June 30, 2012), at <http://public.leginfo.state.ny.us/menugetf.cgi?COMMONQUERY=LAWS> (last visited 11/24/09).

¹¹ New York State Office of Temporary and Disability Assistance, 2007 STATISTICAL REPORT ON TEMPORARY ASSISTANCE PROGRAMS, 10, at: http://www.otda.state.ny.us/main/reports/2007_LEGISLATIVE_REPORT.pdf (last visited 11/24/09).

- Only 8.9% of these Family Assistance TANF participants identified themselves as being in danger from domestic violence in 2007, and only 6.5% received any type of waiver.¹²

Washington, DC:

Although the District of Columbia passed innovative legislation in 2000 that requires a domestic violence service provider to review all claims of domestic violence by TANF applicants, the city implementation of FVO waivers remains problematic. In Washington, DC, from October of 2007 through September of 2008, 81 victims of domestic violence identified themselves to the Income Maintenance Administration (IMA), the office that administers TANF in D.C.¹³ Not a single person was granted a waiver during this time period.¹⁴

In the past year, there has been some progress in implementing FVO waivers, as the agency reviewing domestic violence claims by TANF applicants is a service provider with a long history of serving domestic violence victims.

- In April 2009, there were 16,017 households participating in TANF, and the majority of these households are single women with children.¹⁵
- From October 2008 to June 2009, at least 54 victims of domestic violence identified their status as victims to the IMA office and 51 of these are receiving domestic violence services.¹⁶ Among that group, 21 FVO waivers have been requested and granted.
- Since approximately 16,017 households are currently participating in TANF in DC and only 54 victims have been referred for services, this means that a mere 0.3% of households have been connected with counselors for domestic violence assessment and services. Even fewer have received waivers.

Given these numbers, the IMA of the District of Columbia should consider placing co-located advocates at the IMA office to provide screening and services onsite for TANF applicants and participants. This would improve the screening and notification process and would strengthen relationships between the IMA and the domestic violence community.

¹² *Id.* at 82.

¹³ Data provided by the Income Maintenance Administration, June 12, 2009.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ IMA, *supra* note 13.

San Francisco, California:

The City of San Francisco has groundbreaking regulations and implementation strategies that have resulted in an improved TANF system for victims of domestic violence. In California, TANF benefits and programs are administered by CalWorks.¹⁷ Three co-located advocates at the CalWorks/TANF office provide domestic violence screening, mandatory orientation for all TANF participants, on-site safety planning and counseling services, and training for other staff.¹⁸ San Francisco also allows domestic violence-related activities, including court dates and medical appointments, to be counted as employment hours under the TANF work requirements.¹⁹ Therefore, many victims do not need waivers because they are able to fulfill the TANF requirements.²⁰

- As of June of 2009, there were 4,800 families receiving TANF in San Francisco.²¹
- Local advocates report that they provide services to approximately 250 FVO waiver holders each month, and anticipate that the number of families receiving TANF in San Francisco will increase significantly in the coming year.²²
- An estimated 4-5% of current TANF participants have received FVO waivers and are participating in services with the co-located advocates.

These numbers may be deceptively low, however, when compared with less flexible programs. Because of the flexibility of San Francisco's program in addressing barriers to work generally, many participants do not need FVO waivers who otherwise would. As a testament to the success of the co-located services for domestic violence victims, 71% of the TANF participants with FVO waivers are ready to begin fulfilling all TANF requirements within a year of their referral to a co-located advocate.²³

San Francisco has made important strides in improving its TANF services for victims of domestic violence. Many domestic violence victims are seeking services from the co-located advocates and all participants referred for these services receive waivers. San Francisco's current FVO program, future budget cuts notwithstanding, could provide an important model for other cities and states to evaluate and consider for their own use.

¹⁷ The California Work Opportunities and Responsibility to Kids program (CalWorks) is the state program administering TANF benefits. The program is under the California Department of Social Services. For more information visit, <http://www.ladpss.org/dpss/calworks/default.cfm>. (last visited 11/24/09).

¹⁸ Interview with Megan Koroshetz of the Riley Center, co-located domestic violence advocate at CalWorks of San Francisco County, June 4, 2009.

¹⁹ San Francisco Human Services Agency, *Welfare to Work Handbook*, § 71.6 (effective May 2, 2005).

²⁰ Koroshetz, *supra* note 18.

²¹ San Francisco Human Services Agency, *CalWorks Quarterly Report June 2009*, at <http://www.sfhsa.org/asset/ReportsDataResources/CalWORKs2009JuneOversightCommitteeReport.pdf> (last visited 11/24/09).

²² Koroshetz, *supra* note 18.

²³ *Id.*

Recommendations

Based on its research, NLCHP offers the following recommendations:

To the Federal Government

- Provide funding for research into best practices and effectiveness of TANF programs in addressing domestic violence and other barriers to success for TANF applicants/participants.
- Examine current domestic violence screening policies throughout the country to identify best practices, and actively promote these practices through enhanced federal guidance.
- Conduct outreach with TANF offices to ensure they understand the framework of the federal law, and specifically that they will not be penalized for granting waivers.
- Make the FVO a mandatory, rather than optional, component of the TANF program in order to encourage greater uniformity in implementation throughout the country.

To State and Local Governments

- Facilitate TANF applicant/participant access to good cause domestic violence waivers:
 - Improve legislation and regulations pertaining to the Family Violence Option.
 - Provide funds to support outreach and advocacy for the Family Violence Option.
 - Enhance communication among domestic violence advocates and TANF offices by creating and enforcing protocols and requiring the TANF office to conduct quarterly meeting with agencies that are funded to provide waivers to discuss progress.
 - Require that screenings for domestic violence be conducted at the time of application when considering imposition of sanctions or at any other time the caseworker deems necessary.

To Local TANF Offices

- Enhance outreach to local domestic violence shelters, service providers, advocates and citizens to improve public awareness of the availability of the option so that TANF applicants know their rights before they come to the TANF office.
- Provide comprehensive training for all caseworkers and administrators on domestic violence, its relation to TANF, and the policies around the Family Violence Option.
- Consider using a co-located advocate to provide domestic violence training, screening and other services. If that is not possible, work with local service providers to coordinate trainings and services.
- Improve accountability mechanisms:
 - for individual caseworkers and the office as a whole to ensure that appropriate screening is occurring.

- for the office by conducting yearly evaluations in conjunction with domestic violence providers to consider problems and successes;
- for monitoring the number of FVO applications and waivers actually granted.

To Advocates and Service Providers

- Train all staff on the Family Violence Option waiver and how to advocate for it.
- Ensure that all victims are informed about the waiver and how to ask for it where appropriate.
- Build a coalition of service providers to meet with TANF officials to discuss Family Violence Option implementation, and ask for data concerning screening and waivers on, at minimum, an annual basis.

INTRODUCTION

The Domestic Violence Program at the National Law Center on Homelessness & Poverty strives to prevent homelessness for victims* of domestic violence. Thousands of families throughout the United States become homeless each year as a result of domestic violence. In fact, domestic violence is one of the leading causes of homelessness in America, particularly for women and families.²⁴ An abuser may cause a victim to be evicted from an apartment or prohibit her from putting her name on a lease. Financial abuse and the awareness of how difficult it will be to secure long-term housing is a major reason victims stay in or return to abusive relationships. Abusers may also cause the victim to miss work or interfere with the victim's job by aggressively stalking a victim at the victim's place of employment or prohibiting a victim from pursuing an education or other career oriented activities.²⁹

In order to afford living apart from their abuser and to obtain adequate housing, many domestic violence victims with children seek benefits through the Temporary Aid to Needy Families (TANF) program. This program can provide critical benefits in the form of cash and rental assistance for these victims and their families. Unfortunately, many victims find it difficult to comply with the onerous requirements of the TANF program to seek employment and child support, which can result in sanctions or termination of the benefits. Victims of domestic violence face significant challenges; they must attend court dates, therapy and other medical appointments, and are trying to rebuild their lives.²⁵ Moreover, the requirements to seek child support from an abuser and to participate in certain work activities may require a victim to face the abuser when it is unsafe to do so.

In response to these unique challenges, Congress authorized the Family Violence Option (FVO) as part of the Temporary Aid to Need Families (TANF) legislation it passed in 1996.²⁶ The FVO provision allows states to grant waivers that exempt victims of domestic violence who participate in the TANF program from certain requirements such as the work and child support requirements and the time limit for receiving benefits.²⁷ In spite of this legislation, however, studies show that generally fewer than 10% of domestic violence victims who have identified themselves as victims to other professionals identify themselves to TANF office staff.²⁸ Further, even fewer request waivers, and fewer still are found to have credible claims for those waivers and actually granted waivers.

How a TANF office implements FVO policies and procedures may largely depend on the professional culture of the particular TANF office. States are generally more successful at identifying and granting FVO waivers to victims when TANF offices incorporate the

²⁴ The United States Conference of Mayors – Hunger and Homelessness Survey, 19 (December 2008), at http://usmayors.org/pressreleases/documents/hungerhomelessnessreport_121208.pdf (last visited 11/24/09).

²⁹ Richard Tolman & Jody Raphael, *A Review of Research on Welfare and Domestic Violence*, Journal of Social Issues, Winter, 3 (2000) available at http://findarticles.com/p/articles/mi_m0341/is_4_56/ai_70460020 (last visited 11/24/09).

²⁵ Hearn, M.E., *supra* note 1.

²⁶ 42 U.S.C. §§ 602(a)(7) & 608(a)(7)(C)(iii) (1996).

²⁷ *Id.*

²⁸ Lyon E, *supra* note 4, at 6.

identification of (and flexibility toward) victims of domestic violence into the culture of the office.²⁹ If a TANF office adopts a holistic culture or approach to providing services, then the focus is placed on training caseworkers to address the wide range of problems that TANF participants may face, including the special obstacles presented by domestic violence.³⁰ The holistic cultural shift often includes in-depth training for caseworkers as well as display of domestic violence materials, including posters and fliers, around the TANF office. Training must include the general dynamics of domestic violence, how to address issues of safety and confidentiality, and basic safety planning. If a TANF office adopts a more holistic approach to services, then FVO waivers may not be as necessary because activities related to the domestic violence, such as attending court dates, therapy appointments or medical appointments, are incorporated into the self-sufficiency plan and can be counted towards the work requirements.³¹

Other TANF offices operate within a cost-centered culture in which caseworkers are rewarded for keeping the number of TANF participants, and the length of time they receive TANF benefits, low.³² Such an environment can be detrimental for victims if caseworkers are encouraged to deny waivers so that clients will leave the TANF program sooner. This is especially problematic where states or TANF offices do not understand that the waivers are permitted under the federal law's state performance requirements, and that they will not be sanctioned for granting FVO waivers.

This report assesses the FVO policies and practices of three jurisdictions to explore why FVO implementation is failing in most of the country by focusing on 5 different areas:

- 1) A description of the federal, state, and local FVO laws, policies, and practices.
- 2) A discussion of the front-line strategies that different localities employ to implement FVO policy.
- 3) A discussion of the challenges regarding the implementation and approval of FVO waivers.
- 4) An examination of FVO legislation and implementation through case studies of New York City, Washington, DC, and San Francisco, California.
- 5) Recommendations to stakeholders in the TANF system for improvements in the implementation of FVO policy.

²⁹ Lindhorst et al., *supra* note 6, at 14; *See also* Burt M, Zweig J & Schlichter K, STRATEGIES FOR ADDRESSING THE NEEDS OF DOMESTIC VIOLENCE VICTIMS WITHIN THE TANF PROGRAM: THE EXPERIENCE IN SEVEN COUNTIES, ix & 8-3, The Urban Institute (June 30, 2000) at: <http://www.urban.org/publications/409578.html> (last visited 11/24/09).

³⁰ The TANF office in Anne Arundel County, Maryland made such a culture shift in 1995, and research showed that the holistic approach made the office more effective in serving clients generally. Michelle Ganow, *Strategies for TANF Agencies to Identify and Address Domestic Violence*, 5 WELFARE INFORMATION NETWORK (Dec. 2001) at http://www.financeproject.org/Publications/tanf_dvissuenote.htm (last visited 11/24/09).

³¹ Burt et al., *supra* note 29.

³² Lindhorst et al., *supra* note 6, at 5.

**FAMILY VIOLENCE OPTION OVERVIEW:
THE NEED, THE LAW, AND ADOPTION BY THE STATES**

Public benefits serve as an important safety net for victims who choose to leave an abusive relationship as the benefits provide some measure of economic security. Temporary Assistance for Needy Families (TANF) is an especially important resource for victims with children because it provides cash and rental assistance for a limited period. TANF participants are disproportionately victims of domestic violence compared to the general population. Research indicates that, while about 22% of women in the general population have experienced domestic violence,³³ at least 50% of women participating in TANF have experienced domestic violence³⁴ and at least 25% of women participating in TANF have experienced violence in the past year.³⁵

Unlike other public assistance programs such as Food Stamps, the federal regulations pertaining to the TANF program requires that participants adhere to stringent participation requirements. Specifically, TANF programs require that participants engage in work activities (totaling at least 30-35 hours per week),³⁶ mandate that participants seek child support from the non-custodial parent,³⁷ and place a five year time limit on cash assistance.³⁸ Individuals who fail to comply with the program requirements face sanctions in the form of a reduction in benefit levels or, ultimately, termination of assistance.³⁹

Congress passed the Family Violence Option (FVO) amendment as part of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act to assist domestic violence victims in maintaining their TANF benefits.⁴⁰ However, the law does not mandate that states adopt an FVO policy, nor does it specify how FVO policies should be implemented in each state. Currently, all fifty states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have adopted either the federal FVO amendment into their state law or implemented a similar, though not identical, state version of the law.⁴¹

The FVO amendment recommends that states screen TANF participants for domestic violence and allows state TANF offices to waive work, child support, time limit, and other requirements (such as residency) to protect the safety or physical and mental health of a victim. Most states require a formalized screening of all TANF applicants for past or current domestic violence problems. TANF caseworkers implement these screenings

³³ Lyon E, *supra* note 4, at 1; See also Centers for Disease Control, *Adverse Health Conditions and Health Risk Behaviors Associated with Intimate Partner Violence --- United States, 2005*, MORBIDITY AND MORTALITY WEEKLY 57(05); 113-117, Table 1 (Feb. 8, 2008) at <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5705a1.htm> (last visited 11/24/09).

³⁴ *Id.*

³⁵ Lindhorst et al., *supra* note 6, at 6, 15.

³⁶ Temporary Assistance for Needy Families (TANF) Federal Regulations, 45 CFR §261.31-32 (73 FR 6823: Feb. 5, 2008).

³⁷ *Id.* at 45 CFR §264.30(a)(2) (64 FR 17896: April 12, 1999).

³⁸ *Id.* at 45 CFR §264.1(a)(1) (64 FR 17884: April 12, 1999).

³⁹ *Id.* at 45 CFR §261.14 (64 FR 17884: April 12, 1999).

⁴⁰ *See* 42 U.S.C. §§ 602(a)(7) and 608(a)(7)(C)(iii) (1996).

⁴¹ HHS, *supra* note 3.

through a written form, an oral interview, or a combination of these mechanisms as highlighted in the case studies of this report. Once an applicant has identified him or herself as a victim of domestic violence, the process to determine credibility of the applicant's claim and to grant an FVO waiver varies significantly from state to state and even county to county.

Waivers from TANF requirements usually exempt the victim from the specified requirements for six months and require a victim to enroll in domestic violence counseling or other services. TANF staff members develop an individualized service plan to ensure that the applicant is working towards self-sufficiency and eventually will no longer need the waiver. In some states, domestic violence activities, such as counseling or medical appointments, are considered qualifying employment activities and are incorporated into the plan without the need for a specific waiver. In most states, however, a separate plan for domestic violence services is developed as part of the process of granting the waiver. Some states, such as New York, allow for partial waivers, in which a TANF participant is not completely exempt but is required to fulfill only some portion of a requirement.⁴² For instance, a domestic violence victim may be required to work only 20 hours per week rather than 40 hours.

The flexibility concerning TANF requirements that the federal government seeks to encourage through the FVO can easily be forgotten in the general culture of state enforcement of TANF requirements. This culture of rigid enforcement of the rules is encouraged by general federal funding policies. For instance, the federal government imposes funding sanctions on states that do not enforce work requirements. Each state must show that 90% of two parent households participating in TANF are working 35 hours a week and that 50% of single parent households are working for at least 30 hours per week.⁴³ The federal government also imposes financial sanctions on states that fail to enforce child support requirements. At least 95% of single parent households must pursue child support, which will be surrendered to the state to offset the TANF benefits.⁴⁴ States also face sanctions for exceeding the 5-year limit of assistance for TANF participants.⁴⁵ States are not penalized, however, for granting FVO waivers of work, child support, and time-limit requirements, because waivers for domestic violence related reasons that are recognized by the federal government under its FVO policy will not be counted in the determination of the state's compliance with work, child support, and time-limit standards.⁴⁶

⁴² Domestic Violence: Final TANF Regulations and the Family Violence Option, Attachment B, 1999 ADM-8 (New York, 1999), at http://www.otda.state.ny.us/main/directives/1999/ADM/99_ADM-08.pdf (last visited 11/24/09).

⁴³ HHS, ADMINISTRATION FOR FAMILIES AND CHILDREN, MAJOR PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 (P.L. 104-193), at <http://www.acf.hhs.gov/programs/ofa/law-reg/finalrule/aspesum.htm> (last visited 11/24/09).

⁴⁴ *Id.*

⁴⁵ Federal Regulations, *supra* note 36, at §262.1(a)(9), (71 FR 37480: June 29, 2006).

⁴⁶ *Id.* at § 260.58-59 (concerning work requirements and time limits) and § 264.31 (concerning child support requirements).

Despite these legislative efforts, in practice the FVO waiver is largely underutilized. Although victims of domestic violence are disproportionately represented in the TANF participant population, states across the board have a very low rate of applicants and participants who disclose their status as victims and an even lower rate of waivers being granted to those who do self-disclose. Studies in Texas, Chicago, Maryland, and Georgia report that only 0.5% – 3.0% of TANF participants received waivers.⁴⁷ Some state methods have proven to be more effective than others at identifying and granting waivers to victims of domestic violence, and past studies have emphasized the best implementation practices as models for increasing the utilization of FVO waivers nationwide.⁴⁸

SCREENING FOR DOMESTIC VIOLENCE AND NOTIFICATION ABOUT WAIVERS

The low level of disclosures of abuse discussed above may be due to ineffective screening and FVO notification procedures. When TANF applicants are required to disclose their status as a victim of domestic violence and a screening is initiated at the time that she/he first makes contact with TANF staff, problems are likely to occur, especially in light of the fact that the disclosure involves a very sensitive topic. The following discussion considers various methods of screening applicants to ascertain whether they are victims of domestic violence and procedures for notifying applicants about the availability and purpose of the FVO waiver. Screenings and notifications may be combined in the same communication.

Screening at the TANF Offices

Screening applicants to ascertain whether they are victims of domestic violence is a significant challenge for offices that administer TANF programs. A recent study concluded that domestic violence screenings failed to identify 86% of the likely total number of women who were victims of recent violence.⁴⁹ Victims may be hesitant to disclose that they are victims, especially if they are uncertain *why* a TANF employee is inquiring about incidents of domestic violence. Disclosing incidents of domestic violence can be a very sensitive matter for victims, and a discussion of confidentiality must be coupled with an explanation about the FVO waiver, the potential benefits to the applicant, and the fact that the information is needed to determine eligibility.

Without clear information about the FVO waivers, applicants during the screening may also be afraid of the consequences of disclosure with respect to their TANF benefit application or in other contexts such as immigration or child welfare. Immigrant applicants in particular may be unlikely to disclose their status as domestic violence victims due to linguistic or cultural barriers or because they are hesitant to involve their

⁴⁷ Lindhorst et al., *supra* note 6, at 6.

⁴⁸ Burt et al., *supra* note 29.

⁴⁹ Lindhorst et al., *supra* note 6, at 15. (In this study, several hundred interactions between TANF applicants and caseworkers were observed across 4 states. The proportion of applicants who disclosed abuse to caseworkers was compared to a conservative estimate of the proportion of these applicants who were likely victims of domestic violence in the past year.)

current or former partners with the law. They may also be hesitant to disclose their status as domestic violence victims for fear they could be responsible for the deportation of their abuser or lose their own eligibility for a visa.

When formal screening for domestic violence occurs, it increases the odds that an individual's status as a victim will be disclosed during a meeting with the caseworker.⁵⁰ Screening at the TANF offices is important not only for determining eligibility for FVO waivers -- it is also a point of contact where many victims may disclose abuse for the first time and may have their first opportunity to be referred to social and legal services to assist them with respect to ending the violence itself.

A. Forms of Screening Tools

Domestic violence screenings can be implemented through a written form, an oral interview, or a combination of these mechanisms. Such screenings can be formally required at certain points in the process or they may be conducted at undefined times, such as when an applicant happens to request one or when a caseworker comes to believe the applicant could be eligible for a waiver. Many offices use some combination of a screening tool during the application process and a subsequent evaluation by the caseworker as circumstances warrant.

Some written screening forms directly ask applicants if they are victims of domestic violence and if they believe violence will interfere with their ability to maintain stable employment. Other screening forms utilize less direct questions about domestic violence, probing whether the applicant is afraid at home, or has been physically injured, yelled at repeatedly, or threatened by anyone in the home. These questions help a caseworker assess if the applicant is a victim of domestic violence without simply asking if the person is a victim. Victims often will not check a box indicating they are domestic violence victims because they do not want to be stigmatized as a victim or because they may not understand what the term "domestic violence" means.⁵¹

A written screening can be problematic because it requires a certain level of literacy that some applicants may not possess. While applicants can ask for help, the double stigma of illiteracy and victimization may act as an additional barrier to disclosure. In cases where the applicant is unable to read the form, a caseworker must be available to read it out loud in the appropriate language. The written screening form should also be available in multiple languages.

The impersonal nature of written screenings may also contribute to their ineffectiveness. In addition, written screenings may be more problematic than oral screenings because of perceived confidentiality issues. Victims may be concerned that the information they provide on the screening form could be disseminated. At the initial screening and at all subsequent screenings, caseworkers should emphasize the confidential nature of the screening and the limits to confidentiality, and clearly state the purpose of the screening,

⁵⁰ *Id* at 15.

⁵¹ Burt et al., *supra* note 29, at 8-4.

i.e. to ascertain eligibility for the waiver. Applicants may be especially nervous about disclosing abuse in a written screening without clear written and oral assurances that the written disclosure will not be used to deny or otherwise limit the applicant's eligibility for any benefits.

Oral screening occurs when caseworkers verbally ask applicants if they are victims of domestic violence. This approach may include a formalized set of screening questions similar to those in a written screening, or it may be an informal inquiry completely within the caseworker's discretion. Every oral screening by a TANF caseworker should remind applicants what the FVO waiver is, the potential benefits to the individual, and that information provided about domestic violence will be kept confidential. As with written screenings, simply asking if someone is a victim without adequate context is unlikely to result in a significant number of disclosures due to the victim's fears about losing benefits or being labeled as a victim. A formalized screening process that occurs at several points throughout the TANF participant's interactions with the caseworker is likely to be more effective as it allows multiple opportunities for disclosure and also avoids the potential hurdles of a low level of literacy.

The informal approach to screenings, in which caseworkers screen only if they are concerned that there may be a problem with domestic violence, is strongly influenced by a caseworker's own experience with domestic violence. This approach is problematic because it relies solely on caseworkers' abilities to identify victims. This may lead to exclusion of non-traditional victims, such as victims of same-sex domestic violence. In addition, victims may be hesitant to disclose because they feel targeted or singled-out by their caseworkers if they know that the questions regarding domestic violence are not asked of all applicants.

B. Crafting the Screening Tool

TANF offices should carefully craft a screening procedure in consultation with domestic violence experts and advocates to ensure effectiveness of the FVO waiver policy. If the screening simply consists of asking if the applicant is a victim of domestic violence, many victims will not identify themselves as such.⁵² However, overly detailed questions may seem intrusive and discourage disclosure. Research shows that asking specific questions about the actions of the abuser will also discourage disclosure.⁵³ Unless the information is relevant and the person asking is trained specifically to work with domestic violence victims, questions about the actions of the abuser could cause further trauma and potentially discourage victims from seeking assistance.

Research about screening in the health-care context is instructive. Screening for domestic violence has been incorporated into the standards of care for many health care

⁵² *Id.*

⁵³ United States Government Accountability Office (GAO), TANF: State Approaches to Screening for Domestic Violence Could Benefit from HHS Guidance, GAO-05-701 at 9 (August 2005).

practitioners.⁵⁴ Primary care, emergency, and other medical personnel often ask questions about whether certain types of behaviors are present but do not ask for more details about specific incidents of abuse. Both oral and written screenings for domestic violence occur during initial patient interviews, and later by trusted care providers.⁵⁵ Although there is no similar research with respect to TANF, it appears that similar screening strategies may be effective as they allows for multiple opportunities to disclose and an ability for an individual to build trust with the provider (the case manager).

C. Implementation of Screening Mechanisms

Although much research and experience has been applied to the design of screening mechanisms, the failure of state TANF offices to implement an effective screening policy is widespread. Over 60% of forty-three states surveyed in 2005 reported that they have policies to actively screen for domestic violence.⁵⁶ Twenty-three of these states have mandatory screening tools that staff must use during screenings.⁵⁷ Eight states indicated that they had no formal screening policy, but rather simply provide staff with guidance such as regulations and manuals.⁵⁸ Many states with a mandatory screening policy report that TANF caseworkers will screen for domestic violence early in the TANF application process and again in subsequent interactions (for instance, in a meeting if a client fails to meet the program goals).⁵⁹ When researchers observed the TANF application process in four states that required universal screening for domestic violence, they found that these screenings occurred in only 9.3% of the applications observed.⁶⁰ During the few screenings observed in those four states, 13.7% of screened applicants identified as victims of domestic violence.⁶¹

In addition to problems with implementation, insensitivity to victims of domestic violence (by frontline workers) has been one of the most significant barriers to successful identification of victims.⁶² In the TANF context, domestic violence victims may see caseworkers as government agents who have some power to retaliate against them, who will call child welfare or who are generally untrustworthy.⁶³ Victims who are engaged in custody cases in the court system may also fear that disclosure will impact their ability to retain or gain custody of their children.⁶⁴ TANF caseworkers generally are required to report any credible information that children are endangered in the home, and this reporting requirement should be disclosed in advance to TANF applicants. While these

⁵⁴ Family Violence Prevention Fund, *National Consensus Guidelines: on identifying and responding to domestic violence victimization in health care settings*, at <http://www.endabuse.org/userfiles/file/Consensus.pdf> (last visited 11/24/09).

⁵⁵ *Id.* at 6.

⁵⁶ GAO, *supra* note 53, at 12.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* at 12-13.

⁶⁰ Lindhorst et al., *supra* note 6, at 15.

⁶¹ *Id.*

⁶² *Id.* at 8.

⁶³ GAO, *supra* note 53, at 8.

⁶⁴ *Id.*

fears cannot be dispelled for all applicants, TANF offices should take measures to encourage disclosure and proper utilization of the waivers.

Even when a victim discloses his or her status as a victim, TANF caseworkers often lack adequate training to address domestic violence sensitively and to explain why disclosure may aid the victim in the TANF process. The majority of states do not require frontline caseworkers to attend training on how best to assess and support victims of domestic violence. In fact, as of 2005, of the forty-five states that screen for domestic violence, only fourteen states provide any domestic violence training to frontline workers.⁶⁵

Comprehensive annual training for front-line caseworkers is essential in order to ensure adequate sensitivity. This report's case study of San Francisco reveals how effective and important this training can be in a TANF office with high staff turnover. When new staff came to the office, the number of FVO referrals was noticeably reduced prior to training.⁶⁶

Some localities, such as San Francisco, try to provide more effective screening by co-locating advocates at the TANF site so that applicants can choose to access them. This allows specialists to work with clients on issues of domestic violence while caseworkers can remain focused on other issues that may arise. Thirteen states currently provide some on-site services at the TANF offices.⁶⁷ Studies show that victims want advocates to be available and that when they were able to access advocates on-site, the majority of victims found them to be helpful in some way.⁶⁸ Offices that utilize co-located advocates also have better relationships with local domestic violence service providers, which can improve services for the domestic violence victims.⁶⁹

In some localities, such as Washington, DC, caseworkers may do the initial screening and then refer applicants to off-site advocates for further screening and referral to services. While this may improve services for victims who disclose to the caseworker, it still leaves the initial screening in the hands of the caseworker, who may not have the necessary training to address domestic violence issues effectively. Research shows that victims disclose domestic violence at a higher rate when an advocate with knowledge of domestic violence is present.⁷⁰

⁶⁵ *Id.* at 1.

⁶⁶ Koroshetz, *supra* note 18. (The referral numbers were restored to their prior level of about 250 open cases at a time after a co-located domestic violence advocate provided trainings for all 150 TANF staff members.)

⁶⁷ GAO, *supra* note 53, at 23.

⁶⁸ Lyon, *supra* note 4, at 7.

⁶⁹ Burt et al., *supra* note 29, at 3-8.

⁷⁰ *Id.*

Notification about Waiver

The most effective front-line strategy for implementing FVO policy is a combination of screening for domestic violence and notification about the FVO waivers for every applicant. Relying solely on a notification-based strategy places the burden on the applicant to request a screening and waiver. In 2005, five states reported that they provide only the notification and do not actively screen for domestic violence.⁷¹ In such localities, caseworkers usually do not separate domestic violence from other reasons why waivers might be given, such as substance abuse or disability.⁷² In addition, applicants are frequently steered towards refusing the waivers rather than asking about services or for more information about the waiver.⁷³

Some TANF offices utilize universal notification about FVO waivers to identify domestic violence victims. With this approach, all TANF applicants receive a written or oral notice about the FVO waiver. Universal notification has the advantage of ensuring that *all* applicants have the opportunity to request the FVO waiver.⁷⁴ However, notification of the FVO waiver, by itself, is unlikely to be sufficient to identify victims. As discussed earlier, applicants may be hesitant to self-identify as domestic violence victims if they do not know the TANF office will keep that information confidential or that identification as a domestic violence survivor will not penalize them.⁷⁵ Another concern is that applicants will not understand the purpose of the FVO waiver by reading a notification that the waiver may be available.⁷⁶

In jurisdictions where there is no universal notification, information about waivers is only given when an applicant or participant identifies as a victim of domestic violence. Even when the victim self-identifies as a victim, the caseworker has discretion as to whether to relay the information about the waiver to the victim.

To address these concerns, notification should be given in multiple forms, including brochures, posters and written notices mailed to participants.⁷⁷ Caseworkers should also take the time to explain the FVO waiver so that TANF applicants understand their options. Written notices should be available in multiple languages,⁷⁸ and in cases where a client does not speak any of the languages in which the notification is available, the caseworker must notify the client verbally as well in the victim's language.

⁷¹ GAO, *supra* note 53, at 13.

⁷² Lindhorst et al., *supra* note 6, at 21.

⁷³ *Id.* at 22.

⁷⁴ Davies, J, FAMILY VIOLENCE PROTOCOL DEVELOPMENT, National Resource Center on Domestic Violence, Part IIA, at: http://new.vawnet.org/category/Main_Doc.php?docid=210 (last visited 11/24/09).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

Approval of Waivers

Once a victim has been identified and has requested an FVO waiver, the TANF office or designated representative must make a determination as to whether the victim qualifies for a waiver of any of the program requirements. State or local law will determine the process by which a waiver is granted.

State officials report that many domestic violence victims do not want FVO waivers because the victims are eager to take advantage of work opportunities, believing that financial independence will aid their effort to escape abusive relationships.⁷⁹ Studies indicate that welfare can be an essential tool that allows domestic violence victims to leave abusers and re-start their career or train for a new one.⁸⁰ In addition, many victims report that they do not want a child support waiver because they want to receive child support or do not believe there is any danger in cooperating with child support enforcement.⁸¹

However, the fact that some victims do not want a waiver does not explain the fact that there is a very low rate of granting waivers even for those who request them.⁸² Some advocates report that state TANF officials are concerned about being sanctioned for having too many TANF participants out of compliance with requirements. FVO waivers, however, explicitly exempt victims from these requirements under federal law, and state officials should not discourage them out of fear of sanctions.

Some states require that the victim provide additional evidence of domestic violence beyond the information provided in the initial screening. In ten states, a victim must provide a written statement stating that he or she is a victim of domestic violence.⁸³ This may be a simple written statement of the need for domestic violence services or a more detailed, sworn statement. Fifteen other states require some form of written statement, but also recommend that a victim submit additional documentation, including police reports and medical records.⁸⁴ Eighteen states require an applicant to submit both a statement and documentation in order to be granted a waiver.⁸⁵

In addition to documentation requirements, twenty-seven states require that victims must receive domestic violence services in order to receive a waiver.⁸⁶ Washington is one of the states with this requirement, and this requirement is the main reason that officials there do not require any evidence of domestic violence beyond the victim's word. The Community Services Office, which administers TANF in Washington, does not withhold benefits if the required services are temporarily unavailable.⁸⁷ Domestic violence

⁷⁹ GAO, *supra* note 53, at 22.

⁸⁰ Lyon, *supra* note 4, at 3.

⁸¹ *Id.* at 7.

⁸² *Id.*

⁸³ GAO, *supra* note 53, at 21.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ Information provided by the Community Services Office, Olympia, Washington, on June 24, 2009.

services and activities that are needed to address obstacles to self-sufficiency and compliance with TANF requirements are all considered eligible activities that can replace work hours without sanction, even if the participant has the referral but must wait for some period of time to begin services.⁸⁸ This flexible approach is very important if requirements to participate in services, which may be in short supply, are to serve the purpose of helping participants overcome obstacles without creating even greater obstacles to maintaining eligibility for benefits and avoiding sanctions.

Some states utilize domestic violence advocates or specialized caseworkers to determine whether an applicant qualifies for a waiver, while other jurisdictions rely solely on the frontline TANF caseworkers.⁸⁹ When the frontline caseworker makes the final determination about a waiver, it is common for applicants to be denied waivers, as the caseworkers frequently do not find the victim's claims credible. Based on anecdotal evidence, it appears that this happens most frequently when an applicant discloses that he or she is a victim of domestic violence after the first meeting with a caseworker, since the caseworker may question why the victim did not disclose during the initial interaction. Waivers may also be denied where the caseworker or advocate has not been properly trained about the circumstances in which a waiver can be granted or because of misconceptions or stereotypes about victims of domestic violence.

States that utilize domestic violence advocates in the screening process generally require the victim to be assessed by a victim service provider after the initial screening. If the advocate is co-located at the office or is part of the initial screening, then he or she may make the determination during the same visit as the screening. The provider may have the authority to grant the waiver or only to make a recommendation to the TANF office about whether the waiver should be granted. Domestic violence service providers may also make referrals or provide counseling and other assistance to victims.

⁸⁸ *Id.*

⁸⁹ GAO, *supra* note 53, at 16.

CASE STUDIES

With this range of FVO implementation policies across the country, a comparison of policies, practices, and outcomes in specific jurisdictions can provide insights as to model policies and practices and illustrate common problems with implementation. During the spring and summer of 2008, NLCHP examined three jurisdictions that were reported by advocates to have established FVO waiver programs. The information for the case studies was gathered through interviews, literature review and data either publicly available or provided to NLCHP by the relevant governmental agencies. The case studies will discuss the FVO legislation in the jurisdiction, the method of implementation, and some of the challenges faced by TANF offices.

A. Case Study: New York

1. Legislation

In 1997, the state of New York passed the Welfare Reform Act, which included its current FVO policy.⁹⁰ While the law was enacted at the state level, it is implemented locally by social service district. It requires all TANF offices to follow strict domestic violence screening and assessment procedures for all individuals who apply for and/or receive public benefits.⁹¹ Waivers may be granted from any requirement of TANF, including employment, child support, time limits and any other requirement.⁹² Currently, however, the law allows the granting of waivers *only* in cases in which compliance with such requirements would make it more difficult for the individual or individual's children to escape from domestic violence, or would subject the individual or his/her children to further risk.⁹³

These situations of increased risk of violence and difficulty in escaping violence are included among the good cause reasons for an FVO waiver under federal regulations.⁹⁴ However, those federal regulations include another good cause reason that is absent from NY law –good cause for a waiver is established in cases where compliance with TANF requirements would “unfairly penalize those who are *or have been* victimized” by domestic violence.⁹⁵ Without this broader good cause reason in its law, New York's standard focuses on current dangers of domestic violence and differs from other states' policies that evaluate obstacles related to domestic violence history as well as current risks.

New York's standard should be broadened to recognize more fully the purpose of the FVO, which was adopted in part to address obstacles that arise for TANF participants

⁹⁰ NY Laws, *supra* note 10.

⁹¹ *Id* at § 349-A(1 & 2).

⁹² *Id* at § 349-A(5)(c) (extra hardship requirements for waiver of time limit on receipt of benefits).

⁹³ *Id* at § 349-A(6).

⁹⁴ Fed Reg, *supra* note 36, at § 260.52(c).

⁹⁵ *Id.* (emphasis added)

who have a recent history of being abused and are involved in ongoing litigation, counseling, and generally re-building their lives apart from their former abuser. These obstacles may exist for many years after an individual is out of immediate danger from domestic violence. New York's policy on notifications⁹⁶ and screenings⁹⁷ also refer to existing and present domestic violence without requiring notifications and screenings for those struggling with TANF compliance as a result of domestic violence history.

The New York law requires both universal notification and universal screening at the initial application meeting and at all subsequent re-certification appointments.⁹⁸ All applicants receive a Universal Notification Handout, which informs them of their right to receive domestic violence waivers and of the office's confidentiality policy concerning domestic violence.⁹⁹ All applicants and current participants also receive a Domestic Violence Screening Form at their application and recertification appointments.¹⁰⁰ Applicants can voluntarily identify themselves as a victim of domestic violence and request a waiver through this form or at any point while they are participating in the TANF program.

Under the law, waivers may be granted for a minimum of four months and no more than six months, with the possibility of extending the waiver after a periodic evaluation every six months.¹⁰¹ In addition, a waiver may either grant full exemption from a particular requirement or a partial exemption, which requires the applicant to comply with some, but not all, of the components of a particular requirement. For instance, an individual with a partial employment waiver may only be required to do employment activities for 20 rather than 40 hours per week. The authorization for partial employment waivers originates from the TANF regulations for New York as finalized in 1999.¹⁰⁷ This regulation can serve as a model for introducing greater flexibility in FVO policy for domestic violence victims who wish to pursue limited employment through the TANF program.

The law also creates the position of a Domestic Violence Liaison to be made available in each office administering TANF.¹⁰² All screening forms are sent to the Liaison, even if the individual indicates that there is no current domestic violence occurring or discloses

⁹⁶ NY Laws, *supra* note 10, at § 349-A(1).

⁹⁷ *Id.* at §349-A(3).

⁹⁸ *Id.* at §349-A(1&2).

⁹⁹ New York State Office for the Prevention of Domestic Violence (OPDV), WELFARE REFORM AND THE FAMILY VIOLENCE OPTION, at http://www.opdv.state.ny.us/professionals/social_services/fvo.html (last visited 11/24/09).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰⁷ NY Regulations, *supra* note 42, at Attachment B and 4.

¹⁰² In New York City, however, advocates have reported that multiple offices share a single Liaison. This can result in delays for applicants and participants who wish to meet with the Liaison. *See* An Evaluation of Welfare Reform in New York State, New York State Assembly Standing Committee on Social Services, Part II(b)(5) (Feb. 2006), at <http://assembly.state.ny.us/comm/SocServ/20060316/#toc3b> (last visited 11/24/09).

violence but does not wish to meet with the Liaison.¹⁰³ In this way, the universal screening process is monitored directly by the Liaison.¹⁰⁴ If an individual elects to meet with the Liaison, the Liaison makes the determination about whether that individual should receive an FVO waiver and the appropriate duration of the waiver, including extensions where applicable. The Liaison is responsible for assessing the credibility of an applicant's claims, which requires a sworn statement from the victim, determining the safety of the applicant, determining whether or not compliance with the program requirements will put the victim or the victim's children in danger, and referring victims of domestic violence to appropriate services. All applicants who indicate they are victims are referred to the Liaison. Applicants may choose not to meet with the Liaison and thus forfeit the waiver, as meeting with the liaison is a requirement in order to be granted a waiver.¹⁰⁵

The law and subsequent regulations have detailed requirements to ensure that Liaisons are properly trained and sensitized to domestic violence. Social Services districts are required to give a "strong preference" when hiring Liaisons to those who have "relevant advocacy and counseling experience."¹⁰⁶ In some localities, Liaisons are TANF office caseworkers who may have multiple other roles as child or adult protective services workers, eligibility caseworkers, or supervisors.¹⁰⁷ In other localities, the Liaison is an employee of a local domestic violence service provider working under a contract with the office, but in some cases, Liaisons under contract are not actually located at the office administering TANF.¹⁰⁸

The New York State legislation, as written, creates a model for screening victims and granting waivers that encourages victims to disclose and request appropriate waivers. Through repeated universal screening and notification, victims have multiple opportunities to disclose. In addition, a trained Domestic Violence Liaison who is sensitive to the needs of victims can be a valuable asset to the TANF offices and relieve caseworkers who have less expertise in domestic violence of the duty to assess these cases.

Despite its many strengths, New York FVO policy could be strengthened in many respects to address more effectively the full range of barriers that domestic violence victims face in attaining self-sufficiency through TANF benefits and services. The standard for allowing waivers only when a requirement puts an applicant or child at risk of abuse should be broadened. Written notifications should be repeated in oral communications with TANF applicants and participants, and caseworkers should be

¹⁰³ NYS Office of Temporary and Disability Assistance, INFORMATIONAL LETTER, 2, at <http://www.otda.state.ny.us/main/directives/2006/INF/06-INF-11.pdf> (last visited 11/24/09).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ New York State Office of Temporary and Disability Assistance, NEW YORK STATE PLAN AND EXECUTIVE CERTIFICATION, Attachment F, p.3 at <http://www.otda.state.ny.us/main/tanf/TANF2009-Cover.pdf> (last visited 11/24/09).

¹⁰⁷ Empire Justice Testimony on the Effect of Welfare Reform Policy in New York State: Variation in Domestic Violence Liaison Services (2005).

¹⁰⁸ *Id.*

prepared to conduct screenings orally when necessary to supplement the written screening form. Finally, the law should provide more stringent standards for the Domestic Violence Liaison's expertise and experience with domestic violence advocacy, and more resources should be made available to employ more of these advocates on a full-time basis.

2. Implementation

Although New York has enacted rules and regulations to identify and address the needs of domestic violence victims, the counties charged with implementing these rules have low rates of identifying victims and granting waivers to those who request them. New York City, like other parts of the state, could benefit from improvements both in screening and in waiver access.

- 108,371 Family Assistance TANF applications were approved in New York in fiscal year 2007.¹⁰⁹
- 9,678 of these Family Assistance TANF participants indicated they were in current danger of domestic violence, representing 8.9% of the total number of participants.¹¹⁰
- A total of 7,070 of these participants, or 6.5% of the total number of participants, had an FVO waiver for at least one of the TANF requirements in 2007.¹¹¹

These statewide statistics may not accurately reflect FVO policy implementation in all parts of the state of New York, because the numbers of current danger disclosures and FVO waivers varied by county.

- Among the 11 counties that have the largest populations of TANF Family Assistance participants outside NYC, the level of current danger reporting ranges in 2007 from 15.5% of the total number of participants in Albany County to just 0.2% of the total in Renssalaer County.¹¹²
- The percentage of the total number of TANF Family Assistance participants with FVO waivers in 2007 ranges from 10.1% in Erie County to 0.4% in Renssalaer County.¹¹³ This data for 2007 strongly suggests that New York's uniform statewide FVO policy has not ensured uniform statewide implementation.

¹⁰⁹ NY '07 Stat. Report, *supra* note 11, at 10.

¹¹⁰ *Id.* at 82.

¹¹¹ *Id.* (This statistic refers only to those with full FVO waivers. The number of participants with partial FVO waivers for New York's Family Assistance TANF program is not available.)

¹¹² *Id.*

¹¹³ *Id.* (Also, in Schenectady County, 20% of TANF Family Assistance participants reported current danger and 16.8% of participants had a waiver in 2007. These are exceptional results for the state of New York, especially considering that the county handles a substantial caseload 671 TANF Family Assistance participants.)

Research in New York has shown, not only that domestic violence waivers are underutilized despite the large numbers of victims who are applying for assistance, but also that this occurs at least in part because TANF offices are failing to implement their screening mandates. Victims are not being given the opportunity to disclose and to ask for the waiver in some cases.

- A multi-state study reported on hundreds of interviews between frontline TANF caseworkers and TANF applicants and participants between November 1999 and August 2000 and found that domestic violence screenings took place in New York in only 4.9% of these interviews.¹¹⁴
- A study that included two surveys between March and August 1999 found that 56-72% of women did not receive a Domestic Violence Screening Form when applying for TANF in New York City.¹¹⁵ Even fewer applicants in New York City were informed of the reason for the screening and availability of FVO waivers.¹¹⁶

The screening process should also be considered in the context of the New York domestic violence shelter system. New York is unique in that it has an entire state-supported shelter system specifically for victims of domestic violence, which is funded primarily by the Social Service Districts that administer TANF and other forms of public assistance.¹¹⁷ If a shelter resident is eligible for TANF or other public assistance, the local district or the resident's district of origin will pay the shelter for the cost of the resident's stay.¹¹⁸ Since victims are already pre-screened by shelters, and in many cases the shelters have instructed them to apply for benefits, the numbers of victims identified by TANF staff should be higher than in other states.¹¹⁹ But this potential benefit of the New York shelter system may be lost unless shelter staff are also aware of the FVO waivers and communicate with the Domestic Violence Liaison at the local TANF office as well as notifying their residents of the importance of seeking a waiver. It is also not clear how well domestic violence victims who are not in a shelter are being identified.

Not only is it important for Liaisons to conduct outreach with local domestic violence shelters to identify victims who apply to and participate in TANF programs, but the Liaison, who is responsible for determining the credibility of claims for FVO waivers, must also coordinate with other TANF staff to streamline the process of granting waivers. The Liaison's effectiveness is clearly a pivotal factor in determining if applications for FVO waivers are deemed to be credible and later granted. In some counties, as discussed previously, the Liaison also serves as a child protective or adult protective services caseworker or a general supervisor.¹²⁰ This may mean that Liaisons are not able to

¹¹⁴ Lindhorst et al., *supra* note 6, at 15.

¹¹⁵ Hearn, *supra* note 1, at 12.

¹¹⁶ *Id.*

¹¹⁷ Empire Justice Testimony, *supra* note 107.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

devote sufficient time to the TANF component of their job and may not possess the necessary domestic violence qualifications. More oversight over the Liaisons and resources for this critical position is clearly necessary. Oversight should be provided both by TANF officials and by local advocates whose clients interact with the office.

While New York has a higher rate of victims of domestic violence who identify themselves and who receive waivers than many other states, it is evident that there are still significant problems with the system. County and state governments must examine the effectiveness of their screening processes for identifying domestic violence victims and the effectiveness of the Domestic Violence Liaisons in order to improve the system.

B. Case Study: Washington, District of Columbia

The District of Columbia has one of the highest rates of child poverty in the nation,¹²¹ and a significant percentage of its residents receive TANF.

- In March 2009, 16,306 households received TANF in DC.¹²²

Consistent with findings nationwide, studies find that TANF participants in DC have experienced a significantly higher rate of domestic violence than is found among the general population.

1. Legislation

DC amended its welfare law to include the Family Violence Option in 1997 in response to advocacy by local domestic violence advocates, who also assisted in the formulation of subsequent regulations.¹²³ TANF is administered by the Income Maintenance Administration (IMA), the executive agency that oversees the administration of public benefits programs in DC. IMA administers all TANF-related waivers except child support waivers, which are administered by the Child Support Services Division. The DC law permits the waiver of TANF requirements where such requirements would make it more difficult for individuals to escape domestic violence or would unfairly penalize individuals who are or have been victimized by such violence.¹²⁴ The regulations for DC TANF legislation provide for the waiver of work requirements,¹²⁵ child support requirements,¹²⁶ and the extension of the time limit for receipt of benefits for those who

¹²¹ US Census Bureau, 2007 AMERICAN COMMUNITY SURVEY (2008) at http://factfinder.census.gov/servlet/GRTTable?_bm=y&-geo_id=01000US&-box_head_nbr=R1704&-ds_name=ACS_2008_1YR_G00_&-redoLog=false&-mt_name=ACS_2007_1YR_G00_R1704_US30&-format=US-30 (ranks the District of Columbia as having the 2nd highest child poverty rate in the nation in 2008 with 25.9% of children living below poverty level).

¹²² DC. Fiscal Policy Institute, "Trends in Caseloads for DC Temporary Assistance for Needy Families." (available at <http://dcfpi.org/wp-content/uploads/2009/04/tanf.pdf>) (last visited 11/24/2009).

¹²³ DC Code § 4-205.19b(d) (2009).

¹²⁴ *Id.*

¹²⁵ DC Municipal Regulations (CDCR) § 29-5823 (2009).

¹²⁶ *Id.* at § 29-1709.

have work requirement waivers or are making a good faith effort to comply with work requirements.¹²⁷

The regulations require universal screening and notification for all applicants. Notification must be made and both orally and in writing when an individual applies for TANF and prior to any sanction.¹²⁸ In order to facilitate disclosure, all applicants are to be informed that any disclosure of incidents of domestic violence is confidential and will not negatively affect or delay their receipt of assistance, but that information about child neglect, child abuse, or elder abuse must be reported to other agencies.¹²⁹ The regulations also require that applicants be informed that they can disclose domestic violence through the initial screening or at any time while they are receiving assistance.¹³⁰

The written screening tool utilized by IMA was written in collaboration with domestic violence advocates.¹³¹ All applicants must complete a Preliminary Assessment Form, which asks about several potential barriers for applicants.¹³² The form directly asks if the applicant is a victim of domestic violence and also utilizes other screening questions with responses that can indicate domestic violence, including whether: the applicant's partner has ever threatened or physically hurt the applicant or the applicant's children, tried to control whom the applicant sees or talks to, or tried to prevent the applicant from working, and whether the applicant has experienced physical, emotional or sexual abuse in the past.¹³³ Caseworkers are then required to review the assessment verbally with the applicant, paying special attention to any disclosures related to potential domestic violence.¹³⁴

In recognition of the important role that caseworkers play in the initial screening for domestic violence, all frontline workers at the IMA are required to attend domestic violence trainings every other year.¹³⁵ These trainings, which were completed in June 2009 by more than 200 of the IMA staff, were provided by clinicians from My Sister's Place, a domestic violence services provider that also contracts with the IMA to accept referrals of applicants and participants who disclose domestic violence.¹³⁶

Once an applicant discloses that he or she is a victim of domestic violence, the caseworker will provide the applicant with a written referral to My Sister's Place (MSP), which has a contract with IMA to provide services, to make credibility determinations

¹²⁷ *Id* at § 29-5840.

¹²⁸ *Id* at § 29-5819.2.

¹²⁹ *Id* at § 29-5819.2(c,d).

¹³⁰ *Id* at § 29-5819.2(a).

¹³¹ See Attached Preliminary Assessment Form for TANF Applicants, Appendix.

¹³² DC Regulations, *supra* note 125, § 29-5820.1-3.

¹³³ Preliminary Assessment, *supra* note 131, at 2A(B) & 2C.

¹³⁴ Income Maintenance Administration (IMA) Policy Manual, Part VIII: Case Maintenance, § 3.8, *at*: http://www.dhs.dc.gov/dhs/cwp/view.a.1345.q.603816.dhsNav_GID.1728..asp#3-8 (last visited 11/24/09).

¹³⁵ Interview with Ellen Wells, Deputy Administrator Program Development & Training, Income Maintenance Administration (IMA), in Washington, DC (July 7, 2009).

¹³⁶ Interview with My Sister's Place (MSP) staff, July 1, 2009.

and to recommend whether the individual should receive a waiver.¹³⁷ A victim may be asked to submit various forms of evidence such as police, medical, or court records to verify that he or she is a victim of domestic violence, but a sworn statement is sufficient to make a valid claim in the absence of other evidence.¹³⁸ Generally, an interview about the domestic violence with a clinician at MSP is sufficient to demonstrate the individual's need for services, and waivers are recommended if the individual consents to pursuing those services.¹³⁹ The policy allows for the domestic violence agency to make the credibility assessment for waivers of work requirements.¹⁴⁰ The regulations also allow for the extension of the time limit on receipt of benefits for participants with these waivers.¹⁴¹

MSP makes a recommendation about whether the waiver should be granted, but IMA has final authority over whether to grant the waiver. A decision on a request for a waiver must be made within 15 business days from the date of application for benefits, during which time the applicant will receive aid without being required to comply with relevant program requirements.¹⁴² Waivers are granted for as long as necessary¹⁴³ but must be reassessed at least once every six months.¹⁴⁴

Applicants and participants seeking waivers for the child support requirement must do so through the DC Child Support Services Division (CSSD).¹⁴⁵ The office utilizes a written universal notification that is sent as part of a packet of information to clients. Through the packet, the office notifies clients that domestic violence can constitute good cause for exemption from pursuing child support and provides an address confidentiality form that clients can complete and return to CSSD. During the intake process, the custodial parent is asked questions about need for confidentiality and incidents of domestic violence. Once the request for an exemption has been made, the Intake Unit Chief reviews the request and can approve the waiver.

CSSD does not have data available on how many waivers it grants per year. Thus, there is currently no way to monitor the implementation of this part of DC's FVO waiver program, but the official policy is that waivers are granted in all domestic violence cases where such a waiver is requested.¹⁴⁶ Even in cases where they do not grant a waiver for the requirement to pursue child support, CSSD officials state that they will not contact a non-custodial parent without informing the TANF participant and will not contact the non-custodial parent at all if it puts the participant in danger.¹⁴⁷

¹³⁷ DC Regulations, *supra* note 125, §29-5820.

¹³⁸ *Id* at § 29-5824.

¹³⁹ MSP, *supra* note 136.

¹⁴⁰ DC Regulations, *supra* note 125, at § 29-5820.

¹⁴¹ *Id* at § 29-5840.

¹⁴² IMA, *supra* note 134.

¹⁴³ DC Municipal Regulations (CDCR) §29-5825 (2009).

¹⁴⁴ *Id* at § 29-5826.1.

¹⁴⁵ *Id* at § 29-1709.

¹⁴⁶ Reported by staff of DC Child Support Services Division (CSSD), October 22, 2008.

¹⁴⁷ Income Maintenance Administration Policy Manual, Part V: Program Requirements and Sanctions, at http://www.dhs.dc.gov/dhs/cwp/view.a.1345.q.604656.dhsNav_GID.1728..asp#2-3 (last visited 11/24/09).

2. Implementation

While the legislation and regulations in DC create a strong framework for the family violence option, problems exist in its actual implementation. A study in 2003 of single-parent TANF participants in DC revealed that 14.6% of participants had experienced severe domestic violence within the last year which adversely affected a participant's ability to meet work requirements under TANF.¹⁴⁸ Between October 2007 and May 2008, there was an average of 14,743 households participating in TANF in DC, mostly single women with children.¹⁴⁹ From this study,¹⁵⁰ 2,064 participants would be expected to benefit from FVO waivers from work requirements.¹⁵¹ Between October 2007 and May 2008, however, the Income Maintenance Administration (IMA) identified and referred only 42 participants to be assessed for FVO work requirement waivers and no FVO waivers were granted.¹⁵² In prior years, these numbers were similar.¹⁵³

- In April 2009, there were 16,017 households participating in the TANF program in Washington, DC, and the majority of these households are comprised of single women with children.¹⁵⁴
- From October 2008 to June 2009, at least 54 victims of domestic violence disclosed their status as victims to the TANF office and 51 of these are receiving domestic violence services.¹⁵⁵ Among that group, 21 FVO waivers have been requested and granted.¹⁵⁶
- Since approximately 16,017 households are currently participating in TANF in DC and only 54 victims have been referred for services, this means that a mere 0.3% of households have been connected with MSP for domestic violence assessment and services. Even fewer have received waivers.

These statistics indicate that there is a significant problem in DC with the implementation of screening procedures and that many victims are either not screened or do not disclose the abuse. In past years, even when victims were identified, they were not receiving waivers. Improvement in that area in fiscal year 2009 may be the result of the IMA's

¹⁴⁸ Acs, G, Loprest, P, A STUDY OF THE DISTRICT OF COLUMBIA'S TANF CASELOAD, see Exhibit ES-1, p.iii (Urban Institute, Sept. 01, 2003), at <http://www.urban.org/publications/410863.html> (last visited 11/24/09).

¹⁴⁹ TANF Cumulative Stats, data compiled by the Income Maintenance Administration, June 11, 2008.

¹⁵⁰ Acs, G, *supra* note 148.

¹⁵¹ This estimate is based on 14.6% of the 14,743 participants in the TANF program. This estimate assumes that the percentage of households participating in TANF in DC for whom domestic violence is a barrier to work did not change significantly between 2003 and 2008.

¹⁵² May Statistical Data Report 2008, submitted to the Income Maintenance Administration (IMA) from EFFORTS on June 13, 2008.

¹⁵³ Interview with Ellen Wells, Deputy Administrator Program Development & Training, Income Maintenance Administration (IMA), in Washington, DC (May 19, 2008).

¹⁵⁴ Data provided by the Income Maintenance Administration (IMA), June 12, 2009

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* (There is no specific data collected by the CSSD on the number of child support waivers granted by this agency. But the CSSD reports that they grant child support waivers in all cases that they are requested.)

contract with a new agency, My Sister's Place (MSP), to whom domestic violence victims are referred for further assessment and services.

The low rates at which victims are identified may be due to problems in the screening process. While all applicants are required to complete a Preliminary Assessment Form, it is not clear whether applicants are being informed that disclosure will not affect their benefits, and the assessment form does not state this. In addition, they may be afraid that they will be reported to child welfare or suffer other collateral consequences. The IMA has made an effort to identify more victims by including an outreach component in the contract with the domestic violence services provider.¹⁵⁷

In addition to failure to identify victims, the process of granting FVO waivers is also problematic in Washington, DC. The regulations require that the IMA will refer any applicant or participant who discloses his or her status as a domestic violence victim to a professional trained in domestic violence to conduct an assessment. If this assessment verifies the claim of domestic violence history, a plan for services must be developed along with any recommendations for FVO waivers.¹⁵⁸ For many years, the IMA has contracted with outside organizations to provide assessments, services, and recommendations for waivers and, for FY 2009, the IMA contracted for the first time with a long-time domestic violence services provider, My Sister's Place (MSP). The regulations require that anyone who self-identifies to the IMA as a domestic violence victim, in order to benefit from an FVO waiver, must comply with the referral instructions as well as the service plan that MSP develops in consultation with the victim.¹⁵⁹

Mandating services with a particular agency is not effective or empowering for victims of domestic violence.¹⁶⁰ When victims who disclose domestic violence to the IMA are required to participate in services provided by a particular organization in order to avoid sanctions, this may discourage many from seeking the help they need. A staff member at MSP reports that some who come to MSP after an IMA referral report having been threatened with the loss of benefits if they do not get counseling.¹⁶¹

The perception that the process is punitive rather than supportive may contribute to a problem recognized by both the IMA¹⁶² and MSP;¹⁶³ some who are referred never come to MSP for an assessment and services. Another reason for this no-show problem may be the referral process itself. IMA does not refer victims directly to advocates who can assist them with the FVO waiver.¹⁶⁴ Rather, advocates may attempt to reach victims only

¹⁵⁷ IMA, *supra* note 152.

¹⁵⁸ DC Regulations, *supra* note 125, § 29-5820.

¹⁵⁹ *Id.* at §§ 29-5820.6 & 29-5820.10.

¹⁶⁰ MSP, *supra* note 136.

¹⁶¹ *Id.*

¹⁶² IMA, *supra* note 135.

¹⁶³ MSP, *supra* note 136.

¹⁶⁴ *Id.*, also IMA, *supra* note 135.

after the administrative offices of the IMA and MSP have processed the referral and the MSP office provides the victim's information to one of their clinicians.¹⁶⁵ .

Despite many victims falling through the cracks in the referral process, the IMA's new relationship with MSP has had benefits for FVO implementation in DC. When domestic violence victims come to MSP for an assessment, a waiver may be recommended after the initial interview, even if the individual is not immediately ready for counseling and other services.¹⁶⁶ The domestic violence victim, however, must be in need of services and consent to eventually participating in services in order to receive a waiver.¹⁶⁷ In the past year, MSP has granted only work requirement waivers because there has not been a need for waivers of the time limit for receipt of benefits.¹⁶⁸ Most waivers are granted for 6 months while services are provided, but a trauma-screening tool is used to indicate when waivers and services are needed for a longer period.¹⁶⁹

Also, in June 2009, MSP conducted small-group, domestic violence trainings for more than 200 of the IMA's 300 employees.¹⁷⁰ MSP staff could also benefit from trainings from the IMA about the options for domestic violence survivors seeking benefits and the procedures involved.¹⁷¹ These trainings could be especially useful as a means to inform MSP staff of the process by which TANF applicants and participants obtain waivers from child support requirements with the Child Support Services Division (CSSD).

Another important benefit of the new relationship between the IMA and MSP is that MSP staff have also recommended FVO waivers for domestic violence victims who come to MSP directly for services rather than through a referral from the IMA.¹⁷² In this way, referrals can be made in both directions, but more direct contact between IMA caseworkers and clinicians at MSP is needed to enhance the effectiveness and efficiency of their collaboration.

The contract between the IMA and MSP should not keep other service providers from joining the effort to help domestic violence victims participate successfully in TANF programs and receive FVO waivers when desired. There is no provision in the DC TANF regulations that prohibit other domestic violence service providers from recommending FVO waivers for their clients.¹⁷³ However, IMA staff indicated that they have not received recommendations from other organizations.¹⁷⁴ Victims who are already receiving services from another organization should be notified that they can ask

¹⁶⁵ *Id.*, also IMA, *supra* note 135.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ DC Regulations, *supra* note 125, at § 29-5820. (These regulations only require that the assessment for and recommendation of FVO waivers be made by someone trained in domestic violence, not that the recommendation be made by the staff of any particular organization or by an organization working under contract with the IMA).

¹⁷⁴ IMA, *supra* note 135.

their own service provider to recommend a waiver to the IMA, if that provider is willing to do so without reimbursement for administrative costs. Under their contract with the IMA, MSP is responsible for outreach through public education about the Family Violence Option.¹⁸⁴ This outreach should include the education of other service providers in order to open the waiver recommendation process to more organizations.

In addition to increasing access points for the waiver, individualized flexibility should be emphasized over blanket requirements for receiving the waiver. Those who disclose their status as a domestic violence victim should not be told they are required to participate in any particular domestic violence-related service in order to obtain the waiver but should be referred directly to a domestic violence advocate for an initial consultation to determine what services, if any, might be helpful.

DC should also consider revamping its process for screening and for granting waivers. A system with a co-located advocate might prove to be more effective because it would promote change in the TANF office culture and would provide more sensitive screenings and referrals for services. If DC continues with the current model, it must reevaluate how the referrals for the contracted services are made, and the requirement that those requesting FVO waivers consent to receiving domestic violence services. The IMA should instruct domestic violence service providers, in accordance with regulations, to make a determination about the need for child support waivers – not just work requirement waivers – when service plans are first developed with the victim.¹⁷⁵ The consideration of child support waivers by domestic violence service providers (and not solely by CSSD) will increase access to these waivers and streamline the process for victims. It is important to reengage with the broader domestic violence community to evaluate how improvements can be made in the system and to increase awareness of the FVO waiver.

C. Case Study: San Francisco, California

1. Legislation

California adopted the Family Violence Option in 1998 as part of the California Work Opportunity and Responsibility for Kids program (“CalWorks”).¹⁷⁶ The related legislation created a task force to establish statewide protocols and allowed every county in California some flexibility in determining how best to implement the FVO program.¹⁷⁷

The state legislation does, however, mandate statewide standards for assessing the need for an FVO waiver and the credibility of a claim. The standard for demonstrating a need for an FVO waiver is broad, stating that, for as long as necessary, counties shall waive

¹⁸⁴ IMA, *supra* note 135.

¹⁷⁵ DC Regulations, *supra* note 125, § 29-5820.8.

¹⁷⁶ Cal Wel & Inst Code, §§ 11495-11495.40 (2008).

The California Work Opportunities and Responsibility to Kids program (CalWorks) is the state program administering TANF benefits. The program is under the California Department of Social Services. For more information visit, <http://www.ladpss.org/dpss/calworks/default.cfm>. (last visited 11/24/09).

¹⁷⁷ *Id* at § 11495.1(a) (2008).

any program requirements that would make it more difficult for victims to escape abuse or would be detrimental or unfairly penalize either pastor present victims of abuse.¹⁷⁸ County welfare agencies are not permitted to require more than a sworn statement to establish a valid claim of domestic violence history unless the county states in writing an independent, reasonable basis to find the applicant or participant not credible.¹⁷⁹

San Francisco was one of the many counties that decided to adopt its own version of the option. In order to develop local rules, San Francisco looked to domestic violence service providers and other knowledgeable professionals to draft the actual rules and regulations. The program is part of a comprehensive approach to overcoming barriers to self-sufficiency for TANF participants.*

San Francisco's regulations require that universal notification be provided and that screening through both written and oral means be conducted for all TANF applicants and at recertification meetings for current participants.¹⁸⁰ All applicants for and participants in TANF must be given an opportunity to disclose domestic violence in a safe space after being informed about the reasons for screening and that the disclosure will be kept confidential.¹⁸¹ In addition to the opportunity to disclose their status as a victim during meetings with their caseworker, all new TANF participants are required to attend an orientation that includes a session about domestic violence and the FVO.¹⁸²

San Francisco utilizes co-located advocates from a local domestic violence service provider, the Riley Center. Since 2003 the San Francisco TANF office has funded at least 2 co-located advocates from the Riley Center and began funding a third position as of fiscal year 2009.¹⁸³ These advocates provide domestic violence training to TANF staff as well as TANF participants, and they offer counseling, referrals and screening services to any applicant who desires domestic violence services.¹⁸⁴ TANF applicants or participants may seek the services of an advocate at any time.

After they have identified themselves as victims, applicants and participants work with a co-located advocate to develop a service plan, including any waivers, which is also signed by an employment specialist and unit supervisor in the TANF office. The victim may receive a waiver from any of the requirements,¹⁸⁵ including the requirement to have

* It should be noted that the current budget crisis in California has placed all TANF programming in the state in jeopardy. This report presents San Francisco County's FVO program as of June 2009 as a model for other offices regardless of how budget cuts may affect this program in the future.

¹⁷⁸ *Id* at § 11495.1(a)(3) (2008).

¹⁷⁹ *Id* at § 11495.25 (2008).

¹⁸⁰ San Francisco Human Services Agency, *CalWorks Eligibility Handbook*, §§ 50-34.1 & 50-34 (effective March 1, 2005).

¹⁸¹ *Id* at §§ 50-34.2 & 50-38.

¹⁸² Interview with Minouche Kandel, Esq., Bay Area Legal Aid in San Francisco, CA, August 1, 2008.

¹⁸³ Koroshetz, *supra* note 18.

¹⁸⁴ *CalWorks Eligibility Handbook*, *supra* note 180, at § 50-33.

¹⁸⁵ *Id* at § 50-36.

a self-sufficiency plan.¹⁸⁶ A victim who receives a waiver from work requirements may volunteer to participate in work programs to the extent that the victim is able to do so, but will not be required to complete any particular number of work hours.¹⁸⁷

In addition to providing waivers of specific requirements, San Francisco allows domestic violence-related activities, including counseling, medical treatment and court dates, to make up part of the employment plan and be counted as work.¹⁸⁸ Once a plan for the client is in place, whether domestic violence services accompany a waiver or are incorporated into the employment plan, an advocate is then responsible for ensuring that the victim complies with any relevant service plan including receipt of domestic violence services.¹⁸⁹

2. Implementation

- As of June 2009, there were 4,800 families receiving TANF in San Francisco.¹⁹⁰ Local advocates anticipate that the number of families receiving TANF in San Francisco will increase significantly in the coming year.¹⁹¹
- Local advocates report that they provide services to approximately 250 clients each month referred by the San Francisco TANF program, and all of these clients have received FVO waivers.¹⁹²
- An estimated 4-5% of current TANF participants have received the FVO waivers and are participating in services with the co-located advocates.

It is difficult to assess the full scope of the FVO program in San Francisco from available statistics because they do not reflect victims who have domestic violence services incorporated into work plans, and therefore are not counted as receiving a waiver.

Cost-focused TANF offices may be concerned about having participants receiving benefits indefinitely and may be skeptical of waivers exempting participants from time limits for receiving TANF benefits. San Francisco is a model for utilizing waivers for all types of TANF requirements, including time limits. Many domestic violence victims receive waivers exempting them from the time limits, and yet 71% of the TANF participants in San Francisco with FVO waivers are ready to begin fulfilling all TANF requirements within a year of their referral to a co-located advocate.¹⁹³

Perhaps the most notable aspect of the success of the San Francisco program is the degree to which the accessibility of services for domestic violence victims as well as the culture

¹⁸⁶ Koroshetz, *supra* note 18.

¹⁸⁷ Welfare to Work Handbook, *supra* note 19, § 71.6.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ San Francisco Quarterly Report June 2009, *supra* note 21.

¹⁹¹ Koroshetz, *supra* note 18.

¹⁹² *Id.*

¹⁹³ *Id.*

of the offices has been positively affected by the presence of co-located advocates. San Francisco advocates report that they are very involved with the system, and their presence in TANF offices has allowed them to work closely with TANF staff. After the mandatory orientation for all TANF applicants, which includes discussion of the FVO waiver, there are frequent instances in which individuals choose to disclose violence, though they did not do so during the initial screening.¹⁹⁴ In fact, domestic violence victims have disclosed their status as victims to co-located advocates, in some cases, only after TANF they have failed to fulfill work requirements and are facing the loss of benefits and other sanctions. In these cases, FVO waivers have been granted retroactively in order to restore TANF benefits and services and avoid sanctions for these current or former domestic violence victims.¹⁹⁵

Advocates are also available to support TANF staff as they work to assess the best options for their clients who are victims of domestic violence.¹⁹⁶ The simple presence of an advocate who specializes in domestic violence enables the TANF office to react more effectively when there are disclosures of violence, and allows caseworkers to do their jobs without advanced training or knowledge about the dynamics of domestic violence.

In addition, advocates participate in trainings with the frontline caseworkers to ensure sensitivity to domestic violence on all fronts.¹⁹⁷ As a result of repeated budget cuts in recent years, there has been heavy turnover of TANF office staff in San Francisco.¹⁹⁸ The co-located advocates have provided important consistency in this atmosphere. When a large number of new employees joined the TANF staff, the number of FVO referrals that the co-located advocates and the Riley Center received declined noticeably. After a co-located advocate did trainings with all 150 TANF staff members, the referral numbers returned to the typical level of about 250 open cases.¹⁹⁹

In spite of the positive developments, however, it is not clear if all victims in San Francisco make full use of FVO waivers. Some applicants affected by domestic violence may be choosing not to disclose their status as victims and instead try to comply with program requirements rather than seek a waiver even though they may ultimately be unsuccessful in complying. Funding also continues to be an issue for many California benefit programs. One of the co-located advocates reports that there would probably be more referrals for domestic violence services and more FVO waivers granted if funding were increased to provide for more co-located advocates.²⁰⁰ Unfortunately, given the current budget crisis in California, this funding situation is likely to worsen. It is clear, however, that San Francisco's current FVO programs could provide a promising model for other localities.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

CONCLUSION

The Family Violence Option is a critical tool that can be used to help TANF participants who have experienced domestic violence gain self-sufficiency. There is significant variation both in the state laws that implement the option and in its actual implementation. Advocates looking to strengthen the system must first examine the applicable state legislation and regulations to determine whether they are written in a way that encourages successful implementation of the FVO. Laws must have flexible standards that can take into account the full spectrum of obstacles faced by domestic violence victims and incorporate a universal screening for domestic violence and notification of the FVO waiver for all applicants. Frontline workers and supervisors should be trained on the dynamics of domestic violence. States and municipalities may want to consider whether it is possible to utilize a co-located advocate or a specialized caseworker to conduct screenings and administer the waivers.

With respect to implementation, there are many strategies for successful implementation that cannot be required through laws or regulations. The most important consideration is how to create an office culture in which work barriers are addressed in a constructive way, including efforts to address the obstacles created by a domestic violence history. The challenge of shifting to a culture where the clients are seen as individuals who require a self-sufficiency plan that meets their particular needs will require not only the support of government officials, but also the active participation of local advocates.

There is much that can be learned from the relevant legislation and implementation of the Family Violence Option in New York, Washington, DC, and San Francisco. Universal screening and notification are important components of all the programs and help ensure that clients do not feel they are being singled out for screening. However, these methods of screening are only as effective as the workers utilizing them and the policies in place to guide effective implementation of these laws.

In all three cities, comprehensive legislation and regulations to create a promising structure for implementation of the law were created through a partnership between TANF officials and advocates. Where the implementation is most successful, advocates continue to be involved in the day-to-day operation of the program and in regular monitoring of the system.

Co-located advocates are a promising approach since they not only provide more effective screening, but they also ensure links between the TANF offices and the domestic violence community. Specialized TANF workers could also prove effective, but it is essential to ensure that such workers are properly trained and receive the appropriate support in the office. Even with co-located advocates or specialized workers, frontline staff and supervisors still need to have regular domestic violence training since they will be the first to have contact with the clients and will set the tone for clients who must decide whether they want to see the advocate or specialized worker.

Advocates must reengage with the TANF program. In order to ensure that the Family Violence Option, which advocates fought for in the 1990's, is effectively implemented, advocates and TANF offices must cooperate and provide consistent review of the legislation and regulations and of the implementation of the law. Advocates must play an essential role in monitoring the programs and must call for accountability. Internally, TANF offices should, at a minimum, review the data regarding screening and waivers annually with advocates and discuss strategies for improving the process. State and local officials must also play a role in overseeing the family violence option and in ensuring the TANF program is truly helping to eliminate barriers to self-sufficiency for victims of domestic violence and their families.

RECOMMENDATIONS

To the Federal Government

Oversight

- Examine current domestic violence screening policies throughout the country to identify best practices, and actively promote these practices through enhanced federal guidance.
- Provide funding for research into best practices and effectiveness of TANF programs in addressing domestic violence and other barriers to success for participants.
- Make the FVO a mandatory, rather than optional, component of the TANF program in order to encourage greater uniformity in implementation throughout the country.

Outreach

- Encourage state and local governments who receive TANF funds to improve community outreach and domestic violence screening processes.
- Conduct outreach to TANF offices to ensure that TANF staff understand the framework of the federal law, and specifically that their office will not be penalized for granting waivers

To State and Local Governments

- Facilitate TANF applicant/participant access to good cause domestic violence waivers:
 - Improve legislation and regulations regarding the Family Violence Option
 - Provide funds to support outreach and advocacy for the Family Violence Option
 - Enhance communication among domestic violence advocates and TANF offices by creating and enforcing protocols and requiring the TANF office

to conduct quarterly progress meetings with agencies that are funded to provide waivers.

- Require that individuals be screened for domestic violence at the time of application, recertification, when any sanctions are imposed for non-compliance, or at any other time the caseworker deems it necessary.
- Provide funding for research into best practices and effectiveness of TANF programs in addressing domestic violence and other barriers to success for participants.

To Local TANF Offices

Improve implementation

- Evaluate how to change office culture so that the office addresses barriers to success and so that each employee is committed to that goal.
- Enhance outreach to local domestic violence shelters, service providers, advocates and citizens about the availability of the option so that TANF applicants know their rights before they come to the TANF office.
- Implement universal screening and notification through a combination of oral and written screening tools.

Training for all stakeholders

- Provide comprehensive training for all caseworkers and administrators on domestic violence, its relation to TANF, and policies concerning the Family Violence Option.
- Consider using a co-located advocate to provide domestic violence training to TANF staff and participants, as well as screening and other services. If that is not possible, work with local service providers to coordinate trainings and services.
- Strengthen communication with domestic violence service providers by offering to provide trainings about TANF policies and procedures.

Oversight

- Improve accountability mechanisms:
 - for individual caseworkers and the office as a whole to ensure that appropriate screening is occurring.
 - for the office by conducting yearly evaluations in conjunction with domestic violence providers to identify problems and successes.
 - for monitoring the number of FVO applications and waivers actually granted.

To Advocates and Service Providers

Train all staff on the Family Violence Option Waiver and how to advocate for it.

- Ensure that all victims are informed about the waiver and how to ask for it where appropriate.
- Build relationships with local TANF offices and administrators and advocate for improved policies pertaining to domestic violence.
- Build a coalition of service providers to meet with TANF officials to discuss Family Violence Option implementation, and ask for data concerning screening and waivers on, at minimum, an annual basis.

APPENDIX

★ ★ ★
Income Maintenance Administration
Department of Human Services
Government of the District of Columbia



Preliminary Assessment Form for TANF Applicants

The District of Columbia Department of Human Services provides a wide range of services in addition to cash assistance (TANF), medical assistance, and Food Stamps. Please answer the following questions so that we can better serve you. The more information you give us, the better able we are to help you. If you require any special help because of a disability, please tell us so that we can make arrangements for you.

Part I: BACKGROUND INFORMATION (To Be Completed By Applicant)

1. Contact Information

Name: _____ Case Number: _____

Address: _____

Social Security Number (SSN): _____ Your Telephone #: _____

Other numbers where you can be reached: _____

2. Conditions that Make it Hard to Find or Keep a Job

A. The following are issues that may make it hard for you to work or participate in work activities. Check all that apply to you so that we may arrange for services to help you.

- A. _____ I have a health problem/issue (including physical, mental, alcohol, or drug related issues).
- B. _____ I am or was a victim of domestic violence.
- C. _____ I need child care.
- D. _____ I need help with transportation.
- E. _____ I lack education or had difficulty learning in school.
- F. _____ I have legal issues, court problems, or a criminal record.
- G. _____ Other (explain): _____

B. Please answer the following questions.

Yes No

- | | | | |
|--------------------------|--------------------------|----|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. | Have you ever felt you ought to cut down on your drinking or drug use? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. | Have people annoyed you by criticizing your drinking or drug use? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. | Have you ever felt bad or guilty about your drinking or drug use? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. | Have you ever had a drink or used drugs first thing in the morning to steady your nerves or to get rid of a hangover? |

Rev. 3/18/03

1

C. Please answer the following questions.

- | Yes | No | | |
|--------------------------|--------------------------|----|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. | Has your partner or spouse ever made you afraid by threatening, yelling, or physically hurting you or your children? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. | Has anyone tried to control who you can see or talk to, or limit your access to family and friends? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. | Growing up, did you see or experience physical, emotional, or sexual abuse? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. | Has your partner or spouse made it hard for you to participate in work activities or go to work (e.g., prevented you from going or harassed you for going)? |

If you answered yes to any question above:

Is this happening now, or has it happened in the past, or both? _____

3. Exemption Checklist

Please check all of the following situations that apply to you.

- A. _____ I only receive TANF for my relative, not for myself.
- B. _____ I am a single parent caring for a child less than 12 months old.
- C. _____ I am more than 60 years of age.
- D. _____ I am in my last 3 months of pregnancy.
- E. _____ A member of my household is disabled and I care for him/her in my home.
- F. _____ I am currently working. I work _____ hours per week.
- G. _____ I am a VISTA/Americorps volunteer.

Customer Signature: _____ Date: _____

STOP AND GIVE THIS FORM TO YOUR CASEWORKER