



Working Paper Series, No. 3

To Punish the Poor:
Criminalizing Trends in the Welfare System

Kaaryn Gustafson

Women of Color Resource Center
1611 Telegraph Ave. #303, Oakland, CA 94612
510-444-2700 (t); 510-444-2711 (f)
info@coloredgirls.org, www.coloredgirls.org

Criminalizing Trends in the Welfare System

by Kaaryn Gustafson

I. Introduction

In addition to providing a safety net, though a threadbare one, for impoverished families, the welfare system in the United States is increasingly casting a broad net that gathers poor families into the criminal justice system. Families usually turn to the welfare system as a last resort, when they cannot find employment to provide sufficient income for their most basic needs. The cash benefits available under Temporary Aid to Needy Families (TANF), however, are far too low to sustain a family. Families receiving TANF benefits are overwhelmingly female-headed; in fiscal year 2000, men made up only 10 percent of adult TANF recipients (ACF 2002). Women on welfare have long been penalized for the sins of being poor, for declining (for whatever reasons) to join male-headed households through civil marriage, and for bearing children outside marriage. They have been penalized through the provision of completely inadequate levels of support, through public shaming, and through intrusive administrative forays into their personal lives that none but the truly needy would tolerate. In recent years, however, the penalizing of welfare recipients has shifted from the metaphorical to the literal as policies have been enacted to criminalize a population long deemed socially repugnant.

This shift has a decidedly racial character in at least three different ways. First, for a complex set of historical, economic and social reasons, the welfare rolls include a disproportionately high number of African-American and Latina women, a disparity that has only increased since the implementation of the 1996 welfare reforms (Savner 2000). Any policy that negatively affects women on welfare will have a negative impact on the women of color over-represented in the welfare system and among the poor. If women on welfare are being vigorously prosecuted for welfare fraud, or fingerprinted and subjected to random drug testing as a condition of receiving government assistance, then women of color will be subject to these practices much more often than white women.

**Table 1: Race of AFDC/TANF Recipients
(Percent of all families)**

	FY 1996	FY 2000
White	35.9	31.2
Black	36.9	38.6
Hispanic	20.8	25.0
Asian	3.0	2.2
American Native	1.4	1.6
Other	-	0.6
Unknown	2.0	0.8

Source: United States Administration for Children and Families 2002

Second, the criminalization of women on welfare converges with—and becomes a constituent part of—another trend particularly prevalent in, but by no means confined to the African-American community: the increasing rates of arrest, conviction, and incarceration of women (Harrison and Karberg 2003). At the same time that a rising number of women of color were

being convicted on drug-related felony charges (Davis and Shaylor 2001:182-183), the welfare rules in many states changed to exclude individuals with felony convictions from receiving various government benefits.

Third, the criminalization of women welfare plays upon longstanding stereotypes that widespread social ills—from drug use to criminal activity to sexual depravity—are rooted in communities where African-American women raise children outside of the patriarchal model of state-sanctioned marriage. These stereotypes hold not only that black women are to blame for failing to socialize their children and run their communities properly, but also that they are to blame for giving birth to the young men, and increasingly the young women, who often wind up in the criminal justice system. According to these views low income women of color embody and breed criminality.

This paper traces some of the criminalizing practices that have emerged in the welfare system since the U.S. Congress passed, and President Bill Clinton signed, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (hereafter “PRWORA”). PRWORA abolished federal entitlement to relief for poor families under the Aid to Families with Dependent Children program and instituted TANF, a program available for only a maximum of 60 months throughout an adult’s lifetime. TANF allows states to set other limits or impose other conditions on families receiving aid. The legislation contains a number of punitive measures designed to push welfare recipients into the work force and imposes harsh penalties on households whose members fail to comply with new welfare rules and requirements or who engaged in criminal conduct unrelated to welfare receipt. In addition, the 1996 legislation fashioned the welfare system into a new tool in U.S. crime control efforts.

This paper highlights a number of criminalizing trends in welfare policy and practice. The following section defines the term “criminalization” as it is used in this paper and provides some historical context to the current welfare system and the increasing association of welfare receipt with criminality. The next two sections describe some of the criminalizing trends, first, at the federal level and, second, at the state level. A final section describes local practices that criminalize welfare recipients.

II. Defining Criminalization

The term “criminalization” in relation to the welfare system describes the many ways that the welfare system and the criminal justice system are converging. First, crime control has become central to justifications for and designs of welfare reform policies and practices. Second, the welfare system has become a tool of crime control. Third, policy makers have come to identify poor families of color, childbearing among poor families, and welfare use itself as social risks—as threats to the economic and social order of the United States. Finally, recent developments in welfare administration conflate poverty and crime, and manifest a widespread assumption that welfare recipients are latent criminals.

The criminalization of welfare recipients entails a long historical process of public discourse and policy infused with race, class and gender bias. State and federal government aid programs

developed in the first half of the twentieth century were generally designed to support white, male workers and the white women and children dependent upon their wages (Nelson 1990). The Social Security Act of 1935, often viewed as the foundation of the American welfare state, excluded entire categories of workers—including agricultural workers and domestics—from receiving benefits (Quadagno 1994). These categories of work were those dominated by African-Americans and by women of all racial and ethnic groups. At the time of the passage of the Act, most African-American and Latino men were agricultural workers; domestic work, while engaged in by women of all racial and ethnic groups, was one of very few employment options for women of color.

The Social Security Act created Aid to Dependent Children (ADC), a program specifically designed for poor mothers and their children and originally intended to support the widows of working men (Nelson 1990). After World War II, the ADC rolls grew—from 701,000 in 1945 to 3 million in 1960 (Trattner 1994, 85-86). The proportion of families headed by divorced or unmarried mothers grew, while the proportion of families headed by widows declined (Trattner 1994, 106). In addition, the number of African-American families receiving welfare rose, especially as African-American families migrated from Southern agricultural areas to the industrial hubs of the North—New York, Boston, Philadelphia, Chicago and Detroit. Along with these changes in welfare recipient populations came the general sense among middle-class Whites that aid was no longer flowing to those who had originally been given primacy as the deserving poor, namely White families who had lost their male breadwinners.

Welfare offices in many states and locales adopted morality standards and “suitable home” requirements which were arbitrarily and discriminatorily applied, and commonly excluded women of color from the welfare rolls, especially in the South (Bell 1965). Notwithstanding a 1961 rule issued by the Secretary of Health, Education and Welfare barring the arbitrary application of suitable home requirements, many welfare offices continued to engage in midnight raids on the homes of ADC recipients to police “man-in-the-house” rules (Reich 1965). The surprise visits by welfare workers were designed to catch men sleeping in the homes of mothers receiving aid. The stated rationale welfare offices used to end aid payments to households where men were found was two-fold. First, unmarried women with men in their beds were deemed morally unfit and their households therefore unsuitable for assistance. Second, the men discovered in the homes were considered household breadwinners who had been hiding their income support from the aid office. The underlying goals of the rules, however, were to police and punish the sexuality of single mothers, to close off the indirect access to government support of able-bodied men, to winnow the welfare rolls, and to reinforce the idea that families receiving aid were entitled to no more than near-desperate living standards.

A 1965 often-cited report by Daniel Patrick Moynihan promoted the idea that the problems of inner cities—poverty, joblessness and crime—could be traced to a “culture of poverty” perpetuated by jobless, unmarried Black mothers relying on welfare. The Moynihan Report identified “family disorganization” among poor African Americans as a source of social, moral, and economic instability in the United States. The report stated that “[a]s a direct result of this high rate of divorce, separation, and desertion, a very large percent of Negro families are headed by females. While the percentage of such families among white has been dropping since 1940, it has been rising among Negroes” (Moynihan 1965, 9). Even worse, according to the report,

many of the children in female-headed households received AFDC (formerly ADC), a program originally designed for widows and orphans (Moynihan 1965, 12). In Moynihan's popular portrayal, low-income African-American mothers were a threat because they gave birth to and raised African-American sons who became the criminal, urban underclass.

The image of low-income mothers took an even more negative turn during the 1970s and 1980s. Governor-turned-President Ronald Reagan used the symbol of the "welfare queen" to propel his ideas on limited government and increased crime control. He used the extreme and unusual examples of one Illinois woman and two California women who had committed welfare fraud to portray an image of widespread depravity and criminality among low-income women of color. Despite the factual inaccuracy of Reagan's descriptions, the symbol of the welfare queen resonated with the public and merged into a single persona. It were as if Reagan gave a name to an archetype that had lain dormant in the sub-consciousness of White—and perhaps many non-White—Americans for a long time. The welfare queen became the most prominent representative of the undeserving poor.

From the 1970s onward, the government increasingly shifted its crime-control efforts and resources to focus on communities of color. The number and proportion of African Americans and Latinos in state and federal prisons rose dramatically (Fellner 2000, Section III). Legislators and prosecutors targeted crimes more common in communities of color. For example, the federal sentencing guidelines imposed stiffer sentences for possession of crack cocaine (a charge more commonly brought against African Americans) than powder cocaine (more often used by Whites).

Perhaps not coincidentally, throughout the 1970s, '80s, and '90s, the value of the welfare grant, adjusted for inflation, declined dramatically. The weighted average maximum benefit per three-person family was \$854 in 1969 but had plummeted to \$456 by 2001 (US Dept. of Health and Human Services 2003, Table TANF 6). While welfare grants were always too low to bring a family's income to even the poverty threshold, it became increasingly hard for welfare recipients to cover their most basic expenses—food, clothing, rent—with their welfare grants. Unable to survive on welfare checks and facing barriers to employment, many welfare recipients had to scrounge for other sources of income, whether help from kin or participation in underground labor markets, and to hide those sources from the welfare office under fear of losing the small checks they received (Edin & Lein 1997).

In the 1990s, states began going after welfare recipients through welfare fraud prosecutions. California's Republican governor, Pete Wilson, reduced the welfare grants to needy families and increased the number of welfare fraud investigators in the state. In other words, California—like many other states—made it more difficult for welfare recipients to survive on their welfare grants alone, and shifted state money from aiding low-income women to policing and punishing them.

Vilifying the low-income mothers receiving welfare became a bi-partisan project in the 1990s. Survey research revealed that Americans associated welfare with African Americans and viewed the welfare system as a program that rewarded laziness among African Americans (Gilens 1999). "Welfare dependency" became a keyword associated not only with economic risk and social

disorder, but also with crime. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was designed, so then-President Bill Clinton said, to “make work pay.” Work, however, was only one of the many areas of life regulated by the welfare reform measure. As a result of welfare reform, the state and federal governments put in place a host of new practices that equated welfare receipt with criminality and depravity. Federal lawmakers employed dehumanizing rhetoric to describe welfare recipients. Many described federal welfare policies as a “carrot and stick approach” to welfare, metaphorically and uncritically positioning low-income welfare recipients as lowly beasts of burden in the use of that metaphor. In a particularly brutal example of the dehumanization of welfare recipients, John Mica, a Republican Congressional Representative from Florida, held up a sign during a Congressional debate that read, “Do not feed the alligators.” He argued that providing aid to poor women would do nothing but spur them to reproduce, return for more free handouts, and threaten the general public safety.

Not only did welfare reform produce punitive policies, but it also created a system that blurred the boundaries between the welfare system and the criminal justice system. Today beneficent, disciplinary, and penal state practices are now complexly intertwined.

III. Federal policies and practices that criminalize the welfare poor

The welfare reforms instituted in 1996 police the everyday lives of poor families. For example, the reforms include mandatory work requirements, require mothers to submit to intrusive questions about the paternity of their children, and require that states monitor the immunization records and school attendance of welfare recipients’ children. More troubling, though, the federal reforms weave the criminal justice system into the welfare system, often entangling poor families in the process. The scope of the punitive policies created under the 1996 federal welfare reforms is without precedent. Some of the punitive policies instituted at the federal level are described in more detail below.

A. Loosening the confidentiality of welfare records

One of the clearest examples of the intermingling of the welfare and criminal justice systems is the provision in the federal legislation allowing law enforcement officials access to the basic information contained in aid recipients’ files. For a long time before the welfare reforms of 1996, welfare recipients had had the very details of their everyday lives recorded and monitored by welfare officials and, since the 1970s, recorded in computer databases. But before 1996, law enforcement could only access these files through legal process. As a result of some of the PRWORA provisions, however, law enforcement officials may now access welfare recipients’ files if doing so will assist in an official investigation in any way. The welfare recipient whose files are accessed need not be the subject of the investigation.

The federal legislation loosens the confidentiality of welfare records and makes them available to law enforcement agencies upon request. Under the federal regulations, both welfare offices and public housing agencies are required to “furnish any Federal, State, or local law enforcement officer, upon the request of the officer, with the current address, Social Security number, and photograph of any recipient of assistance” (7 U.S.C. 2020(e)(8); 42 U.S.C. 1437z). This exchange of information is not only available to law enforcement officials when the welfare

recipient herself is suspected of violating the law, but also when an officer believes the aid recipient, or anyone in her household, “has information that is necessary for the officer to conduct an official duty.” *Id.* The administrative data collected by welfare system, then, has become a tool of crime control.

Further, the information exchange between public assistance files and law enforcement has expanded beyond mere investigatory use. Use of the welfare system in combating crime is vividly exemplified in the “fugitive felon rule” and a federal program called “Operation Talon,” described in more detail below.

B. The Fugitive Felon Rule

The welfare system has become a tool for officers of the criminal justice system. PRWORA instituted a “fugitive felon rule,” a provision that prohibits any individual wanted by law enforcement officials for a felony warrant or for violating the terms of parole or probation from receiving government benefits, including not only TANF benefits, but also food stamps, SSI, and housing assistance (P.L. 104-193, §§ 202 [SSI], 821 [food stamps], 903 [housing]). According to a 2002 report by the Government Accounting Office, approximately 110,000 beneficiaries had been dropped from the SSI, Food Stamp, and TANF rolls under the fugitive felon rule (GAO:2002:3).

While government officials claim that fugitive felon rules remove dangerous criminals from the streets, it is not clear that dangerous criminals are the majority of those affected by the effort. According to the GAO report, more than one quarter of the SSI recipients excluded from aid under the rule were dropped because of parole or probation violations; in more than 37.4 percent of the cases, the offense on the warrant was not indicated in the data (GAO 2002:39). Not all parole or probation violations, however, are direct threats to public safety. An individual may have an arrest warrant issued for parole or probation offenses that, while they may be violations of parole, are not criminal acts. For example, an individual may have a warrant issued for missing a meeting with a parole or probation officer, missing a substance abuse meeting, or being determined to be psychologically unstable.

Excluding felons—even those who have served their sentences—from the full benefits of citizenship certainly draws upon precedents under some state laws. A number of jurisdictions exclude convicted felons, including those who have completed their sentences, from voting in elections (Uggen and Manza 2002). However, the drug felony exclusion and the fugitive felon rules extend even beyond political disfranchisement to encompass deprivations of economic citizenship. While withdrawing the right to vote may have little impact on an individual’s daily life, economic disfranchisement can substantially and detrimentally affect not only daily life, but also physical well-being.

C. Operation Talon

Operation Talon is a program developed under the Office of Inspector General to expedite enforcement of the fugitive felon rule. As a result of the 1996 rule changes, law enforcement officers now actively use the food stamp records of local social service agencies to locate and apprehend individuals with outstanding arrest warrants. Government agents cross-check lists of

individuals with outstanding arrest warrants against lists of food stamp recipients. Those individuals whose names show up in both lists then become the targets of sting operations. This practice raises several concerns.

First, by allowing criminal investigators to seek personal information or conduct investigations without justifying those actions to a neutral adjudicator, the data sharing provisions allow the criminal justice system to side-step the Fourth Amendment protections against warrantless searches. Second, the program works by conning food stamp recipients into believing lies created by the government. The targets of Operation Talon are commonly drawn into the snare by letters stating that they need to show up for a critical meeting at a government office or that there is some type of bonus or prize awaiting them. When they arrive at the office, they are instead greeted by officers waiting to make arrests.

Finally, and perhaps of most concern, Operation Talon undermines the beneficent nature of the food stamp program, transforming the welfare system into an extension of the criminal justice system.

Operation Talon has had widespread effects. Between early 1997 and the middle of 2003, Operation Talon led to the arrest of 8,793 individuals across the country (Fong 2003). While the Office of Inspector General's year 2000 update on Operation Talon indicates that some individuals arrested under the program faced charges on violent or serious crimes, many others did not. For example:

- 31% were for offenses known as "Group B offenses", which are considered less serious offenses (e.g., writing bad checks).
- 23% were for drug-related offenses
- 11% were for fraud charges, which may include welfare fraud.

Administration of the program is inconsistent from one jurisdiction to another. States seem to have targeted different types of felony offenders under the program. For example, two-thirds of the individuals caught in the Illinois program instituted under Operation Talon had outstanding warrants on drug-related charges, while more than three-fourths of the California warrants were on fraud charges (which include but are not limited to welfare fraud charges) (OIG 2000). In neither case, nor in many other of the cases, is it clear that this program is protecting public safety by reining in violent criminals or simply providing law enforcement officers a new tool.

Government costs—and any cost savings—associated with administering the program are unclear. In testimony before the U.S. House of Representatives Committee on the Budget, Inspector General Phyllis Fong stated, "It is difficult...for most States to determine costs savings because even though fugitives are removed from the food stamp eligibility roles, they may be only one member in an entire household that continues to be eligible" (Fong 2003). Researchers have yet to explore the effects of this program on the families who receive food stamps and other

benefits. The big value for the federal government and for localities seems to rest in the numerous press releases celebrating the number of arrests made through use of Operation Talon.

D. The drug felony lifetime ban

Law enforcement's use of the welfare system does not stop at catching those with outstanding arrest warrants. Imposing additional punishments on convicted felons has also become one of the new functions of the welfare system. PRWORA gave states the option to exclude from their government aid programs those individuals who had been found guilty of drug-related felonies. As of December 2001, 42 states had adopted the drug felony ban either in part or in full (Allard 2002, 1). The states themselves determine the criteria they use to determine whether an individual is ineligible for government aid based on a past drug conviction and these criteria vary dramatically. In twenty-two states, all drug-related felony convictions—from possession of small quantities to major trafficking—disqualify an individual from welfare receipt for life (Allard 2002, 2). Poor adults in these states may receive neither cash aid nor food stamps. A study of the effects of the felony drug exclusion rule found that roughly 92,000 adults across the United States had been excluded from aid because of the rules between 1996 and 1999 (Allard 2002).

The lifetime ban is particularly hard on parents who have histories of drug felony convictions. The restrictions on their eligibility for government benefits make it difficult for these parents, who already face barriers in employment because of their conviction histories, to reenter society and support their transition from the criminal justice system to civil society (Hirsch et al. 2002). As legal advocate Amy Hirsh notes, "Access to public benefits can mean the difference between success and disaster for parents with criminal records" (Hirsch et al. 2002, 37). The lifetime ban smacks of unfairness for parents who are trying to move beyond criminal pasts.

The lifetime ban also unquestionably affects more families of color than white families, and more incarcerated mothers than incarcerated fathers. In 1999 more than one million of the 1.5 million minor children who had parents in state or federal prison were Black or Hispanic (Mumola 2000, 2). Thirty-five percent of the mothers in state prison in 1999 were serving sentences for drug offenses (compared to 23% of fathers) (Mumola 2000, 6). Rather than helping low-income women of color who use drugs or participate in the drug trade, the lifetime ban adds to the likelihood that these women and their children will be unable to achieve full economic participation in U.S. society.

Deterring low-income parents from using drugs served as the rationale for the felony drug exclusion. There is, however, no way to know whether the rule served its deterrent function because there is no way to measure recipients' knowledge of the rule or to compare drug use among welfare recipients before the rules implementation with use after the implementation. What is certain is that the rules have punished thousands of families, imposing permanent pariah status on many.

IV. State Policies that criminalize welfare minority

Welfare reform ended aid as a federal entitlement and allowed states to develop their own rules about who was entitled to welfare and their own regulations and practices regarding removing

families from the rolls. Many states instituted policies that heavily regulated and punished the behavior of parents receiving aid. These punitive policies included varying types of economic sanctions for parents who failed to comply fully with welfare rules such as the mandatory work hours. Still other state programs included policies borrowed from the criminal justice system: drug testing welfare applicants; fingerprinting applicants for cash aid and food stamps; and the refusal to provide aid to children born to families on welfare, otherwise known as the “family cap.” These state-initiated programs are detailed below.

A. Drug Testing

State efforts to surveil and control the bodies of welfare recipients go well beyond the regulation of how and where they spend their time. Presumptions of criminality underlie welfare reform practices that compromise the bodily integrity of poor women. For example, federal welfare reform allows states to test welfare recipients for drug use. While, as of this writing, no state has a program of random testing for all welfare recipients, a few states require welfare recipients who have been convicted of drug use or possession to submit to and pass drug tests as a condition of receiving benefits. These states include Louisiana, New Jersey, and Wisconsin.

Michigan lawmakers designed a pilot drug testing program in 1999 requiring all welfare applicants to provide urine samples as a condition of welfare receipt and requiring the random testing of welfare recipients thereafter. An injunction prevented the implementation of the program for years while the courts decided on its constitutionality.

In 2002 Judge Alice Batchelder of the Six Circuit Court of Appeals ruled that suspicionless drug testing of welfare recipients did not violate the Fourth Amendment (illegal search) rights of poor mothers. *Marchwinski v. Howard*, 309 F.3d 330 6th Cir., Oct. 18, 2002. Judge Batchelder held that several concerns might constitute a “special need” for these searches. These concerns included “the safety of the children of families” receiving aid; “the risk to the public from the crime associated with illicit drug use and trafficking”; the need to insure that cash is “used by the recipients for their intended purposes and not for procuring controlled substances.” 309 F.3d at 336. While all of these rationales might just as well justify drug testing of all recipients of child tax credits—or even all holders of drivers’ licenses—it would be difficult to imagine such a policy. Implicit in the opinion was the assumption that welfare recipients are especially inclined to drug use and crime and therefore pose a particular risk to society at large.

The decision also stated that drug testing did not intrude into welfare recipients' privacy interests because “welfare assistance is a very heavily regulated area of public life with a correspondingly diminished expectation of privacy.” 309 F.3d at 337. According to this reasoning, then, government refusals to acknowledge the privacy rights of welfare recipients and the increasing state regulation of poor families justify further invasions—including those that intrude upon the bodily integrity of citizens who have not been charged with any crime.

The injunction was lifted and drug testing of welfare recipients began in 2003. During the five weeks the drug testing program was in effect, 435 individuals were subject to urine testing and 45 tested positive, mostly for marijuana. Not long after the testing program began, the *Marchwinski* case was reheard *en banc* by the Sixth Circuit, which split evenly—six to six—on

the earlier ruling. *Marchwinski v. Howard*, 2003 U.S. App. LEXIS 6893 (6th Cir. Apr. 7, 2003). Because there was no majority decision, the deadlock effectively reaffirmed the earlier district court decision granting injunction and barring implementation of universal drug testing of welfare recipients.

The *Marchwinski* case, however, did not settle the issue of drug testing in Michigan. In September 2004 the Michigan House of Representatives passed a bill that, if it also passes in the state Senate, will require any welfare recipient in the state to undergo drug testing if any employee of the welfare agency (called the “Family Independence Agency”) has probable cause to suspect the recipient of substance abuse (Michigan H.B. 6161, passed Sep. 22, 2004). Though legislative analysts noted before the vote that welfare agency employees lack the skills to be able to determine probable cause; that drug testing would be costly; that the bill violated the *Marchwinski* settlement reached between the Family Independence Agency and the ACLU; and that passage of the bill would likely result in costly litigation, the bill nevertheless passed by a vote of 73 to 33. The costs of punishing welfare recipients are treated as good investments. The drug testing of welfare recipients not only draws upon but also perpetuates widespread assumption that welfare recipients are latent or active criminals.

B. Biometric data collection

A January 2002 report found that nine states (see Table 2, below), including the three most populous—California, New York, and Texas—have instituted biometric imaging, in most cases finger-imaging programs, as part of their welfare fraud control measures. These biometric data collection requirements have been applied, depending on the state, to recipients of food stamps, TANF grants, and General Assistance grants (available to indigent adults without children). Individuals who apply for cash aid or food stamps in these states are required to submit fingerprints—and sometimes photographs—through an electronic imaging system. New fingerprints are cross-checked with those on record to identify cases where a person might have tried to apply for aid in two different welfare offices. The stated goals of these programs are to deter and catch individuals who might attempt to “double-dip” by using aliases to open welfare cases.

Table 2: State welfare programs that require the collection of biometric data from welfare recipients

	Food Stamps	TANF	General Assistance
Arizona	X	X	-
California	X	X	X
Connecticut	-	X	X
Illinois	-	X	-
Massachusetts	X	-	X
New Jersey	-	-	X
New York	X	X	X
Pennsylvania	X	X	-
Texas	X	X	-

Source: Borden and Ruben-Urm 2002:18

While there were several well-publicized California and Illinois cases of double-dipping welfare fraud between 1975 and 1983, in all of those cases the welfare recipients had first signed up for aid before applicants were required to submit social security numbers, and before extensive computer verification systems existed. With computerization in place, individuals would have great difficulty opening multiple cases: even if they used fake social security numbers, computer checks on the numbers would be likely to reveal earnings or assets associated with those numbers. The finger-imaging systems, then, are superfluous to existing anti-fraud efforts. The collection of biometric data scrutinizes and stigmatizes low-income adults in a way that equates poverty with criminality.

The finger printing of welfare recipients subjects low-income individuals to surveillance measures from which the middle and upper classes are exempt. Further, while the finger imaging requirement may not be doing much to prevent welfare fraud, it is likely compromising the well-being of recipients who fear the consequences of exchanging surveillance data for a government grant.

Separate audits of the finger imaging systems in New York, Texas, and California determined that the systems were costly, caught few (if any) cheats, and served as both a hurdle and a deterrent to poor families in need of aid. In each case, less than one-half of one percent of the new and recertified cases triggered a match--0.44 percent in Texas (Texas DHS 1999). By instituting these programs, states signaled that crime control—specifically preventing the receipt of excess government benefits—takes priority over both relieving poverty and food insecurity and containing state administrative costs.

The finger-imaging programs, which degrade families who apply for assistance and contribute to the stigma of receiving government aid, may also be deterring needy families from applying. It is generally true that only a fraction of those families eligible for food stamps receive them. But, nearly all the states with finger-imaging requirements in 2001 had fewer eligible families receiving food stamps than the national average (see Table 3).

Table 3: 2001 Food Stamp Participation Rates in States that Require Finger Imaging for Food Stamps

	Food Stamp Participation Rate in 2001
Arizona	51%
California	54%
Massachusetts	45%
New York	58%
Pennsylvania	69%
Texas	49%
National Average	60%

Source: Castner and Shirm 2004

C. Child Exclusion through Family Caps

Even childbearing has become a punishable offense. Under the “family cap” (known in some states as “maximum family grants”) women who give birth to a child while on welfare are denied an incremental increase in cash aid, despite the increased number of household members. Twenty-four states adopted family cap policies during the 1990s. Though Maryland phased out its family cap policy in 2002 and Illinois passed a bill in 2003 to phase out its program, Minnesota legislators, dismissing evidence from other states that the policy had ill effects on families, implemented a family cap policy for the first time in 2003.

At the time family caps were instituted, incremental increases in assistance were relatively small, from about \$24 in Mississippi to about \$107 in California (Levin-Epstein 1999, 5). To an impoverished family with a young child, however, these dollars can be important. The family cap policies are particularly noteworthy because, in effect, they punish entire families for actions of the mother.

Racial disparities can be seen not only among those who are subject to the family cap, but also in the effects of the family cap on families. Political Scientist Sanford Schram has found that “the percentage of [welfare] recipients who are African American” in a state was “related to the probability that a state would adopt a family cap policy” (Schram 2002, 97). Thus, African American women were more likely to be affected by the family cap than White women. The effects of the family cap are not insignificant. According to the U.S. Government Accounting Office, in an average month in the year 2000, approximately 108,000 families were receiving less cash assistance as a result of family cap policies (GAO 2001, 2). The family cap rules may also be increasing the number of abortions among low-income women of color. A study of women affected by New Jersey’s family cap found that the abortion rate rose among welfare recipients subject to the rule—but only among African American welfare recipients (Jagannathan and Camasso 2003).

The federal and state policies designed to reduce childbearing within low-income families reflect a number of disturbing trends, all related to the rising tide of punitive state practices and the withdrawal of state action directed toward the good of citizens. First, family cap policies have diverted funding and resources away from direct aid to the needy. Second, they have advanced the ideological notion that childbearing among poor women of color is such a threat to the general population that it warrants state action. Third, family cap policies promote the idea that efforts to deter childbearing among low-income women will serve a more general crime-control function by preventing the very births of a new generation of criminals. Finally, family cap policies suggest theories of eugenics, which hold that the world will be better off if certain classes and races are bred out of existence.

V. Local criminalizing practices

In addition to the policies and practices mandated by the states and by the federal government, many jurisdictions have found additional ways to criminalize welfare recipients. Many counties across the country have instituted fraud control measures even more draconian than the measures

implemented by the States and the federal government. For example, San Diego California fraud investigators conduct unannounced home visits to all families who apply for aid. Families who refuse to comply with the visits are not only denied aid, but are also referred for fraud investigations.

Certain counties—Alameda County California for example—have significantly higher rates of prosecution for welfare fraud than others. This may be mere coincidence, or a matter of excessive prosecutorial enthusiasm on the part of Alameda authorities. Prosecutions for welfare fraud disproportionately ensnare women of color in criminal procedures. Research has indicated the greater likelihood of imposition of punitive welfare policies in states with higher numbers of women of color on the rolls (Schram 2002). Research is clearly needed on the dramatic disparities among counties, and perhaps states, in rates of welfare fraud prosecution.

Many counties across the county have also pursued individuals (mostly women) for welfare fraud with a zealotry that belies the public threat or criminal intent actually associated with the problem. A number of studies in recent years have found that welfare recipients find it impossible to make ends meet on welfare benefits alone (Edin and Lein 1997; Gilliom 1997; Gilliom 2001; Secombe 1999). According to a study of Chicago welfare recipients by Kathryn Edin and Christopher Jencks, "Every single mother supplemented her check in some way, either by doing unreported work, by getting money from friends and relatives, or by persuading someone else to pay a lot of her expenses" (Edin and Jencks 1993, 207). Failing to report supplemental income to the welfare office may result in criminal charges for perjury or fraud.

Unlike most criminal acts, acts of fraud—or at least the ones prosecuted—tend to be perpetrated by women at rates that match or exceed male rates. While women made up only 17% of those convicted of felony crimes in the US in 2002 (the most recent year for which statistics are available), they made up 42% of felony fraud convictions that year. (Durose, Levin and Langan 2002, 6)¹. Data assembled by the U.S. Department of Justice on arrests and convictions in 40 large U.S. urban counties reveal that in 2000 women made up 55% of the defendants charged with felony fraud (Rainville and Reaves 2003, Table 4). In no other category of crime do women come even close to making up such a large percentage of felony defendants.

While some criminologists make the connection between property crimes and a society's economic infrastructure, far too little analysis has been done in the area of welfare fraud. In addition, the racial history and gendered institution of family life in the U.S. are deeply implicated in the criminalizing of women who commit property crimes to feed, clothe, and house their families.

IV. Conclusion

Criminalizing practices in the welfare system have long existed, but have become harsher in recent years. The movement to label women on welfare as criminal builds upon earlier decades'

¹ In this study, the category of felony convictions labeled "fraud" includes convictions for forgery and embezzlement.

focus on the criminality of African Americans in general and the sexual immorality of African-American women in particular.

Economically privileged and overwhelmingly White policy makers have established welfare rules with which compliance is difficult, if not impossible, and have devoted more and more resources to punishing recipients for non-compliance. They have also created a system that is self-reinforcing. By punishing more and more low-income individuals for crimes like welfare fraud, states perpetuate the notion that low-income individuals—particularly women of color—are more disposed to commit crime than the general population.

The language of pathology and crime has become central in discussions of welfare and welfare reform. The use of the term “welfare dependency,” now commonplace in public and policy discussions of aid programs, has assumed a thoroughly negative connotation (Fraser and Gordon, 1994), and seems to be more often used these days than the more neutral term “welfare use.” In addition, the federal and state governments and an expanding group of social scientists and policy makers now use the term “recidivism” to describe families’ departures from and returns to the welfare system. Once a term generally limited in use to discussions of crime and used to describe an individual’s repeated involvement with the criminal justice system through criminal activity, recidivism is now the word that has displaced the neutral term “welfare cycling,” which most social scientists used before welfare reform.

Political Scientist Stuart Scheingold writes that crime may serve as a condensation symbol, one “expressing a variety of public anxieties about seemingly intractable structural problems” (Scheingold 1991:7). He also notes that “symbolic enemies” may arise from these anxieties (Scheingold 1991:172). Public concern with criminal behavior among welfare recipients and the potential for welfare fraud in particular seem to serve as a clear example of a site where American anxiety has condensed and pooled. The combination of welfare and crime play host to various American anxieties about economic risk, changing structures of family life, sexual roles, and race. And adults receiving welfare—largely female, unmarried, and non-white—serve as easy enemies for an anxious mainstream culture.

Rather than use the symbol of the welfare queen as the object of our social anxieties, we have a duty to resist this symbol and bring to light the struggles and difficulties that low-income women of color face in raising healthy children and avoiding the broad reach of the criminal justice system.

Issues for advocacy and organizing

- Repeal the federal lifetime ban on welfare for individuals who have felony drug convictions.
- Repeal the federal family cap.
- Repeal the federal provision allowing states to drug test welfare recipients.
- Repeal the federal laws allowing law enforcement officials access to welfare records, making the records available only through order of a neutral adjudicator.

- Discontinue Operation Talon.
- Repeal the fugitive felon provision, allowing the discontinuance of benefits only with fair notice and right of appeal.
- Discontinue the state fingerprinting programs for public benefits.
- To avoid conflicts of interest, create separate agencies to administer aid programs and to investigate recipient fraud.
- Abolish the 60-month lifetime limit on TANF receipt: there is no lifetime limit on poverty.

References

- Allard, Patricia. *Life Sentences: Denying Welfare Benefits to Women Convicted of Drug Offenses*. Washington: The Sentencing Project, 2002.
- Bell, Winnifred. *Aid to Dependent Children*. New York: Columbia University Press, 1965).
- Borden, William S. and Robbi L. Ruben-Urm. *An Assessment of Computer Matching in the Food Stamp Program, Volume 1 – Summary of Survey Results, Final Report*. Washington: U.S. Dept. of Agriculture, Food and Nutrition Service 2002.
- California State: California Bureau of State Audits. *Statewide Fingerprint Imaging System*. Sacramento: Cal. Bureau of State Audits, 2003.
- Castner, Laura A. and Allen L. Schirm. *Reaching Those in Need: State Food Stamp Participation Rates in 2001*. Washington: Mathematica Policy Research, Inc, 2004.
- Davis, Angela Y., and Cassandra Shaylor “Race, Gender, and the Prison Industrial Complex: California and Beyond.” Blackwell, Maylei, Linda Burnham, and Jung Hee Choi eds. *Time to Rise*. Berkeley, CA: Women of Color Resource Center, 2001
- Delgado, Gary, and Rebecca Gordon "From Social Contract to Social Control: Welfare Policy and Race." Delgado, Gary, and Menachem Krajcger, eds. *From Poverty to Punishment: How Welfare Reform Punishes the Poor*. Oakland, CA: Applied Research Center, 2002.
- Durose, Matthew R., David J. Levin, and Patrick A Langan. *Felony Sentences in State Courts, 2002*. Washington, DC: Office of Justice Programs, U.S. Department of Justice, 2002.
- Edin, Kathryn, and Christopher Jencks. “Welfare.” in *Rethinking Social Policy*, edited by Christopher Jencks. New York: Harper Collins, 1993.
- Edin, Kathryn, and Laura Lein. *Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work*. New York: Russell Sage, 1997.
- Fellner, Jamie. “Punishment and Prejudice: Racial Disparities in the War on Drugs.” *Human Rights Watch Report 12.2* (2000) <<http://www.hrw.org/reports/2000/usa.index.htm>>.
- Fong, Phyllis K. Statement before the U.S. House of Representatives Committee on the Budget on Fraud, Waste, and Abuse in Mandatory Spending Programs. 9 July 2003.
- Fraser, Nancy, and Linda Gordon. “A Genealogy of ‘Dependency’: Tracing a Keyword of the U.S. Welfare State.” *Signs* 19 (1994): 309-336.
- Garland, David. *The Culture of Control*. Chicago: University of Chicago Press, 2001.
- Gilens, Martin. *Why Americans Hate Welfare*. Chicago: University of Chicago Press, 1999.
- Gilliom, John. “Everyday Surveillance, Everyday Resistance: Computer Monitoring in the Lives of the Appalachian Poor.” *Studies in Law, Politics, and Society*. Greenwich, Conn.: JAI Press, 1997.
- Gilliom, John. *Overseers of the Poor: Surveillance, Resistance, and the Limits of Privacy*. Chicago: University of Chicago Press, 2001.

- Gordon, Rebecca. *Cruel and Unusual: How Welfare 'Reform' Punishes Poor People*. Oakland, CA: Applied Research Center, 2001.
- Hagert, Celia. Testimony before House Committee on Human Services, 77th Texas Legislature. 12 Feb. 2001.
- Harrison, Paige M., and Jennifer C. Karberg. *Prison and Jail Inmates at Midyear 2002* (Bureau of Justice Statistics Bulletin). Washington, DC: US Department of Justice Office of Justice Programs. Apr. 2003.
- Hirsh, Amy, Sharon M. Dietrich, Rue Landau, Peter D. Schneider, Irv Ackelsberg, Judith Bernstein-Baker, and Joseph Hohenstein. *Every Door Closed: Barriers Facing Parents with Criminal Records*. Washington, DC: Center for Law and Social Policy and Philadelphia, PA: Community Legal Services, 2002.
- Jagannathan, Radha and Michael J. Camasso. "Family Cap and Nonmarital Fertility: The Racial Conditioning of Policy Effects." *Journal of Marriage and Family* 65.1 (2003):52-71.
- Levin-Epstein, Jodie and Shelley Stark. *Excluded Children: Family Cap in a New Era* (Washington: Center for Law and Social Policy, 1999)
- Moynihan, Daniel Patrick. *The Negro Family: The Case for National Action* Washington, DC: Office of Policy Planning and Research, United States Department of Labor, 1965.
- Mumola, Christopher J. United States Department of Justice. *Incarcerated Parents and Their Children. Bureau of Justice Statistics Special Report*. Aug. 2002
<http://www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf>.
- Neubeck, Kenneth J., and Noel A. Cazenave. *Welfare Racism*. New York: Routledge, 2001.
- Nelson, Barbara J. "The Origins of the Two-Channel Welfare State: Workmen's Compensation and Mothers' Aid." Linda Gordon, ed. *Women, the State, and Welfare*. Madison, WI: University of Wisconsin Press, 1990.
- Quadagno, Jill. *The Color of Welfare*. New York/Oxford: Oxford University Press, 1994.
- Rainville, Gerard, and Brian A. Reaves. *Felony Defendants in Large Urban Counties, 2000*. NCJ 202021, Washington, DC: United States Department of Justice, Bureau of Justice Statistics, Dec 2003.
- Reich, Charles A. "Midnight Welfare Searches and the Social Security Act." *Yale Law Journal* 72 (1963): 1347-1360.
- Savner, Steve. "Welfare Reform and Racial/Ethnic Minorities: The Questions to Ask" *Poverty & Race* (Washington, DC: Poverty & Race Research Action Council) 9.4 (2000): 3-5.
- Secombe, Karen. *"So You Think I Drive a Cadillac?": Welfare Recipients' Perspectives on the System and its Reform*. Needham Heights, MA: Allyn and Bacon, 1999.
- Scheingold, Stuart A. *The Politics of Street Crime*. Philadelphia: Temple University Press, 1991.
- Schram, Sanford F. "Race and State Welfare Reform Choices: A Cause for Concern." Gary Delgado, ed. *From Poverty to Punishment: How Welfare Reform Punishes the Poor*. Oakland, CA: Applied Research Center, 2002.

- Texas State. Texas Department of Human Services. *1999 Department of Human Services Annual Report – Welfare Reform*. Texas DSS, 1999.
- Trattner, Walter I. *From Poor Law to Welfare State: A History of Social Welfare in America*. New York: Free Press, 1994.
- Uggen, Christopher and Jeff Manza. “Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States.” *American Sociological Review* 67.6 (2002): 777-803.
- United States. Administration for Children and Families, *Characteristics and Financial Circumstances of TANF Recipients, October 1999 – September 2000*. Washington: U.S. Dept. of Health and Human Services, 2002
<<http://www.acf.dhhs.gov/programs/opre/characteristics/fy2000/analysis.htm>>
- United States. Bureau of Labor Statistics and Office of the Census. *CPS Annual Demographic Supplement (2001 Poverty)*. 23 Sept. 2002
<http://ferret.bls.census.gov/macro/032002/pov/new01_007.htm>
- United States. Department of Health and Human Services. *Characteristics and Financial Circumstances of TANF Recipients, October 1999 – September 2000*. June 2002.
<<http://www.acf.hhs.gov/programs/opre/ar2001/chapter10.htm>>
- United States. Department of Health and Human Services. *Indicators of Welfare Dependence, 2003: Annual Report to Congress*. 20 Aug. 2003. <<http://aspe.hhs.gov/hsp/indicators03/>>
- United States. General Accounting Office. *Welfare Reform: Implementation of Fugitive Felon Provisions Should Be Strengthened*. Washington: GAO, 2002.
- United States. General Accounting Office. *Welfare Reform: More Research Needed on TANF Family Caps and Other Policies for Reducing Out-of-Wedlock Births*. Washington: GAO, 2001.
- United States. Office of Inspector General. *Operation Talon, October 2000 Update*. U.S. Department of Agriculture, 2000.
- United States. Office of Inspector General *Operation Talon*. U.S. Office of Inspector General, 1998.

Kaaryn Gustafson: Currently an Associate Professor of Law at the University of Connecticut, Kaaryn Gustafson was a New Voices Fellow at the Women of Color Resource Center from 2002-2004. While at WCRC, Kaaryn served as Program Director for the Economic Justice and Human Rights Program and created the Welfare Rights Education and Advocacy Project. A native of Michigan, Kaaryn is a working mother who graduated magna cum laude in Sociology from Harvard College, holds a law degree from Boalt Hall School of Law, University of California at Berkeley and earned her PhD from the Jurisprudence & Social Policy Program at UC Berkeley. Her dissertation is titled “The Morality and Rationality of Welfare.” Kaaryn continues her association with WCRC through her research on the impact of family cap policies on women’s reproductive choices; her analysis of marriage promotion policies; and her ongoing support for and guidance to the Welfare Radio Collaborative.

WCRC Working Paper Series is free on-line. Printed copies are \$5.00

The Series outlines important issues and trends for activists, scholars and the general public on critical issues facing women of color, such as welfare reform, militarism, and human rights. Now available, Working Paper No.1 “The Wellspring of Black Feminist Theory,” (2001) by Linda Burnham, Working Paper No. 2, “Racism in U.S. Welfare Policy: A Human Rights Issue,” (2002) by Linda Burnham, and Working Paper No. 3, “Criminalizing Trends in the Welfare System,” (2005) by Kaaryn Gustafson. For more information and forthcoming issues, see www.coloredgirls.org.

Mission

Women of Color Resource Center (WCRC) promotes the political, economic, social and cultural well-being of women and girls of color in the U.S. Informed by a social justice perspective that takes into account the status of women internationally, WCRC is committed to organizing and educating women of color across lines of race, ethnicity, nationality, class and sexual orientations, physical abilities and age.

For more information on WCRC projects, or to volunteer, visit www.coloredgirls.org.

WCRC sincerely appreciates the support of the Ford Foundation and the Libra Foundation, whose grants make possible the work of WCRC’s Economic Justice and Human Rights Program.