

WORK SANCTIONS UNDER WELFARE REFORM: ARE THEY HELPING WOMEN ACHIEVE SELF-SUFFICIENCY?

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The Personal Responsibility and Work Opportunity and Reconciliation Act (PRWORA) of 1996¹ radically reshaped the landscape of welfare for women.² The changes transformed a program designed to meet the material needs of poor women and their families into one primarily focused on preventing dependency through promoting work. PRWORA includes an array of behavioral-based reforms that mandate work and penalize its absence. One of the key tools for enforcing the work mandate is sanctions, which can include financial penalties. Women who do not comply with work rules can lose all or some of their cash assistance, food stamps, and Medicaid.

Whether sanctions help women achieve self-sufficiency in the labor market is a subject of scholarly debate. Central to this discussion is how sanctions are being used on the front-lines of welfare, and how recipients are responding to them. This article reports the findings of the author's empirical study of the sanctioning process in two regions in Texas: one primarily rural and the other urban/suburban. It examines how and when sanctions are imposed by local staff in welfare offices and what problems recipients encounter when they attempt to comply with the work rules and avoid sanctions. Using this and other empirical studies on sanctions, this article examines whether sanctions are helping poor women achieve self-sufficiency.

Part I of this article discusses the history of work rules in public assistance programs. Part II examines the use of sanctions in welfare-to-work programs, drawing extensively on the empirical literature describing the rates of sanction, the characteristics of sanctioned families, and whether sanctions induce hardship. Part III reports on the results of the study. Part IV evaluates whether sanctions are an appropriate tool for addressing the problem of poverty and welfare dependency among poor women and their families.

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1. Personal Responsibility and Work Opportunity and Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 7, 8, 21, 25, 42 U.S.C.).

2. Although men are also eligible for assistance, PRWORA especially affects women because they account for 90% of adults receiving public assistance. ADMIN. FOR CHILDREN AND FAMILIES, U.S. DEP'T OF HEALTH AND HUMAN SERVS., CHARACTERISTICS AND FINANCIAL CIRCUMSTANCES OF TANF RECIPIENTS FISCAL YEAR 2001, *available at* <http://www.acf.hhs.gov/programs/ofa/character/fy2001/characteristics.htm> (last visited Sept. 29, 2005). Therefore, the word "women" is used interchangeably with "recipients" throughout this article.

I. HISTORY OF WORK RULES

In the seventy years since the Aid to Dependent Children (ADC) program³ was enacted, it has evolved from a program designed to keep mothers out of the workforce to a program requiring their participation. This shift mirrors today's greater acceptance of women's participation in the market economy.⁴ But the amendments to ADC also reflect changing notions of who is deserving of government aid and what recipients must do to obtain it.

Passed during the upheaval of the Great Depression, ADC was one of many programs that signaled a new role for the federal government in funding and administering social welfare programs. Modeled on state Mothers' Pension Programs, it provided aid to children who had lost a parent due to death or physical or mental incapacity. The primary beneficiaries were white widows.⁵ African-American women, the divorced and the never married were routinely denied benefits through state suitable home provisions that required officials to determine a home's fitness before aid was granted.⁶ However, although white widows were deemed worthy of aid, their worth was measured as being less than that of every other needy group. In fact, ADC was the least generous of the programs enacted in response to the Great Depression.⁷

The New Deal also codified into law a gender distinction that disadvantaged women. A two-tiered system was created where paid workers, who were primarily men, received social insurance benefits, while poor women received means-tested welfare. Thus, while ADC exempted women from work, the lack of a connection to the labor market marked them as less worthy of receiving social welfare. As Bussierre describes it, "men were treated as rights-bearing citizens, ADC recipients as subjects to be molded into 'good' mothers."⁸

Starting in the 1960s, attempts were made to also mold these "good mothers" into good workers. Work requirements were introduced for the first time in 1967 by the enactment of the Work Incentive Program (WIN).⁹ Welfare departments were required to refer employable recipients, defined as those without preschool children, to state labor departments, and offer a range of

3. Social Security Act of 1935, Pub. L. No. 271, 49 Stat. 620 (1935) (codified as amended at 42 U.S.C. §§ 601 *et seq.*). For a comprehensive discussion of the origins of the ADC program, see MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN* (rev. ed. 1996); MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* (2d ed. 1997); THEDA SKOCPOL, *SOCIAL POLICY IN THE UNITED STATES* (1995). The original program only provided aid for children. A mother's grant was added in 1950 and the program's name was changed to Aid to Families with Dependent Children (AFDC) in 1962. ABRAMOVITZ, *supra*, at 316.

4. See Rebecca M. Blank & Lucie Schmidt, *Work, Wages and Welfare*, in *THE NEW WORLD OF WELFARE* 70, 72 (Rebecca M. Blank & Ron Haskins eds., 2001). From 1969 to 1999 the percentage of women in the labor force increased from 48.6% to 72.2%. *Id.*

5. ABRAMOVITZ, *supra* note 3, at 319.

6. See *id.* In 1939, only 25% of ADC mothers were divorced, separated, or abandoned by their husbands, while 61% were widowed. *Id.*

7. *Id.* at 317.

8. ELIZABETH BUSSIERE, *(DIS)ENTITLING THE POOR: THE WARREN COURT, WELFARE RIGHTS, AND THE AMERICAN POLITICAL TRADITION* 75 (1997).

9. 42 U.S.C. §§ 630-645 (2000), *repealed by* Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2377.

services, including child care, transportation and training to facilitate work.¹⁰ The program lasted until 1989 and accomplished little because of limited funding. Only about two percent of the eligible welfare population obtained jobs through the program.¹¹ Many recipients of what was by then known as Aid to Families with Dependent Children (AFDC) were exempted, and those who did participate, often did little more than register for the program.¹²

The 1980s brought more serious attempts to move recipients from welfare to work. Programs such as those established by the Job Training Partnership Act of 1982 provided a wide range of services including counseling, education and job search assistance to the economically disadvantaged, including welfare recipients.¹³ States were also encouraged by the federal government to experiment with more intensive welfare-to-work programs.¹⁴ Under a federal waiver program, states were permitted to deviate from WIN rules and use more coercive approaches including mandatory work and full-family sanctions.¹⁵ The states responded with a range of voluntary and involuntary programs offering such services as child care and transportation and training and education. Some programs fared better than others.¹⁶ However, overall, they did little to lift poor women out of poverty, because the only jobs they were often suited for were unskilled and, hence, low-paying.¹⁷

These welfare-to-work programs served as a model for the next major program, which was the most radical reform of the welfare system before PRWORA. The Family Support Act of 1988¹⁸ made work its centerpiece, and unlike past programs, made it mandatory for more recipients. While carrots such as education, training and support services were offered, those clients who refused to participate in the newly created Jobs Opportunity and Basic Skills Program (JOBS) risked the partial loss of their grant.¹⁹ Unlike the WIN program, mothers with preschool children (over the age of three) were required to

10. For a discussion of the WIN program, see MARY JO BANE & DAVID T. ELLWOOD, *WELFARE REALITIES: FROM RHETORIC TO REFORM* 20-21 (1994); FRANCES FOX PIVEN & RICHARD CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* 382-383 (1993).

11. PIVEN & CLOWARD, *supra* note 10, at 3.

12. ABRAMOVITZ, *supra* note 3, at 341.

13. PIVEN & CLOWARD, *supra* note 10, at 386.

14. BANE & ELLWOOD, *supra* note 10, at 21-22.

15. The waiver programs (referred to as "section 1115 waivers" for the section in the Social Security Act under which they were granted) permitted states to experiment with work rules, time limits and sanctions. By 1996, forty-six states had been granted waivers of federal requirements. U.S. GEN. ACCOUNTING OFFICE, *WELFARE REFORM: STATES' EARLY EXPERIENCES WITH BENEFIT TERMINATION 3* (1997), available at <http://www.gao.gov/archive/1997/he97074.pdf> [hereinafter STATES' EARLY EXPERIENCES].

16. The most effective waiver program was the Greater Avenue to Independence Program (GAIN) in Riverside County, California. Compared to a control group, participants increased their earnings by \$1000 and their probability of employment by 9%. Blank & Schmidt *supra* note 4, at 93. For a summary of the research on these waiver programs, see JUDITH M. GUERON & EDWARD PAULEY, *FROM WELFARE TO WORK* (1991).

17. For a critique of the overall impact of the programs the states created, see PIVEN & CLOWARD, *supra* note 10, at 387-389; BANE & ELLWOOD, *supra* note 10, at 21-23.

18. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343-2428 (codified as amended in scattered sections of 42 U.S.C.).

19. *See id.*

participate.²⁰ By reaching further into the pool of mothers and threatening sanctions for nonparticipation, JOBS signaled a turning point in welfare. Poor women's work behavior, and not their need or mothering responsibilities, became the focus. The coercive and punitive aspects of the law also made it clear that the women's work behavior was suspect. However, like the WIN program before it, JOBS had meager results because of a lack of resources and minimal participation from the welfare population.²¹

The transformation of the welfare system into a work system was completed with the passage of PRWORA in 1996.²² The law imposes a lifetime five-year limit on assistance and escalates both mandatory work participation rates and the use of sanctions.²³ States are required to ensure that a substantial portion of their welfare population is participating in work activities for a prescribed number of hours each week. States are also permitted to impose either full or partial sanctions for noncompliance with work rules.²⁴ States have the option of exempting parents from the work requirement for the first twelve months of their children's lives.²⁵ While the goal of the law is self-sufficiency for recipients, it has a very limited view of what route recipients should take to obtain it. Education and training are severely limited; thus, recipients are required to enter the labor market immediately and take any available job.²⁶

PRWORA has also changed welfare delivery systems. Federal funding was changed to a block grant and states were left free to devise their own programs within the framework of work rules and time limits described by the act.²⁷ The result has been a decrease in spending on cash assistance and an increase in spending on a variety of programs and services, including child care, employment and training, and innovative diversion programs.²⁸ Service

20. *Id.*

21. According to BANE & ELLWOOD, *supra* note 10, at 25, only 16% of nonexempt recipients participated in 1992, because a lack of funds and a recession prevented the states from doing more under the program.

22. Personal Responsibility and Work Opportunity and Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 7, 8, 21, 25, 42 U.S.C.).

23. *Id.*

24. As of 2002, states were required by 42 U.S.C. § 607(a)(1)(2000) to ensure that 50% of their welfare population is participating in work programs. Clients are required to work a minimum of thirty hours per week. 42 U.S.C. § 607(c)(1)(A) (2000). Federal law requires states to impose partial sanctions for violations of work rules and grants states the option to increase and extend sanctions, including imposing full-family sanctions. 42 U.S.C. § 607(e) (2000).

25. 42 U.S.C. § 607(b)(5) (2000).

26. Vocational education is allowed only for one year and for only 30% of families. 42 U.S.C. § 607(c)(2)(D)-(d)(8) (2000). Work activities include job search, unsubsidized employment, community service, and on-the-job training. 42 U.S.C. § 607(c)(2)(D) (2000). This approach is commonly referred to as "work first." For a discussion of the various ways in which states have implemented "work first," see Thomas L. Gais et al., *Implementation of the Personal Responsibility Act of 1996*, in *THE NEW WORLD OF WELFARE* 35, 52-59 (Rebecca Blank & Ron Haskins eds., 2001).

27. 42 U.S.C. § 603 (2000).

28. Gais et al., *supra* note 26, at 50-51. Child care especially received a boon from welfare reform. The law created the Child Care and Development Fund (CCDF) which consolidated and increased the funding of existing child care programs. States also used TANF monies to fund directly child care services. The result was a 60% increase in funding for child care between 1994

delivery was also reconfigured around the work requirements. Many local welfare offices have become “job centers.” Others have forged relationships with outside providers, including state employment offices, nonprofit and even for-profit agencies, to provide welfare-to-work services.²⁹ Thus, while work is mandated, it is also supported through an array of services, including child care, transportation assistance, work incentives and other initiatives designed to help women obtain and retain employment.³⁰

In sum, today’s current welfare system stands at a polar opposite from its historical roots. The worthy white widow of the past has been replaced by the unworthy single mother of the present. Staying at home to care for children is no longer the preferred option, or even a choice. Work is not just supported, but compelled: the failure to work is now a sanctionable offense punishable by a loss of all or part of a family’s grant.

II. SANCTIONS

A. The Structure and Design of Sanctions

PRWORA elevated sanctions from the sidelines of welfare, where they were sparingly employed, to a central and defining role. The law requires states to impose partial sanctions for violations of work rules, and gives states the option to increase and extend sanctions, including imposing full-family sanctions.³¹ All states but three (Arkansas, Rhode Island, and Washington) have sanctions that are harsher than the minimum required by federal law, although their structure and stringency vary.³² Seventeen states impose an immediate full-family sanction when a recipient fails to comply with the work rules, which means that the entire family is cut off from aid.³³ Another eighteen states impose

and 1999. Douglas J. Besharov with Nazanin Samari, *Child Care after Welfare Reform*, in *THE NEW WORLD OF WELFARE* 461, 462-63. (Rebecca Blank & Ron Haskins eds., 2001).

29. For a discussion of these various new service delivery systems, see KARIN MARTINSON & PAMELA A. HOLCOMB, *THE URBAN INST., REFORMING WELFARE: INSTITUTIONAL CHANGE AND CHALLENGES* (2002), available at <http://www.urban.org/url.cfm?ID=310535>.

30. The block grant funding permitted states to spend federal funds for new types of benefits and services. The sharp decline in caseloads after welfare reform also left the states with surplus TANF funds to spend on new programs and services. The states responded with often innovative projects designed to help women achieve self-sufficiency. Gais et al., *supra* note, 26, at 48-52.

31. 42 U.S.C. § 607(e) (2000). States are also required to impose sanctions for a recipient’s failure to comply with child support obligations without good cause by imposing not less than a 25% reduction of the grant, with the option of imposing a full-family sanction. 42 U.S.C. § 608 (a)(2) (2000). States can also impose sanctions for a failure to ensure that children attend school, failure to work toward a high school diploma or equivalent, failure to comply with individual responsibility plans, and for testing positive for controlled substances. 42 U.S.C. § 604(i)-(j) (2000); 42 U.S.C. § 608(b) (2000); 21 U.S.C. § 862b (2000). However, the most commonly sanctioned conduct is violation of the work rules. 42 U.S.C. § 607(e) (2000).

32. U.S. GEN. ACCOUNTING OFFICE, *WELFARE REFORM: STATE SANCTION POLICIES AND NUMBER OF FAMILIES AFFECTED* 14, 16-17 (2000), available at <http://www.gao.gov/new.items/he00044.pdf> [hereinafter STATE SANCTION POLICIES].

33. LADONNA PAVETTI ET AL., *MATHEMATICA POLICY RESEARCH, INC., REVIEW OF SANCTION POLICIES AND RESEARCH STUDIES 2* (2003), available at <http://aspe.hhs.gov/hsp/TANF-Sanctions03/> [hereinafter REVIEW OF SANCTION POLICIES].

a gradual full-family sanction: for the first failure to comply, only the violator's portion of the grant is eliminated, but subsequent violations result in a total loss of the grant.³⁴ Fourteen states and the District of Columbia impose a partial sanction: only the noncompliant adult's portion of the grant is eliminated.³⁵ The minimum duration of sanctions also varies among the states. In most states, immediate compliance will stop the sanction the first time the work rules are violated.³⁶ Subsequent violations result in longer sanctions, often up to six months; in seven states, they result in a lifetime termination of benefits.³⁷

Sanctions can also result in more than a partial or full loss of cash assistance. States also have the option to terminate Medicaid benefits for nonpregnant adults who have violated the work rules,³⁸ and terminate food stamp benefits for the entire family if all the children in the household are over six years of age.³⁹

In all states, clients can avoid a sanction by showing that they had "good cause" for not complying with a work rule.⁴⁰ Federal law prohibits sanctioning clients who do not comply because they were unable to obtain child care for a child under six, but otherwise does not define good cause.⁴¹ The states have adopted various criteria, some more specific than others. Ill health, a family crisis, childcare difficulties, or lack of transportation are some examples of good cause.⁴²

B. Rates of Sanctioning

Measuring sanctioning rates has proved difficult for methodological reasons and because states and counties within the same state vary widely in how often they sanction. A study conducted by the U.S. General Accounting Office in 1998 reported that in an average month, only five percent of the total TANF caseload in the country is in sanction status.⁴³ However, this study only counted sanctions during the first month they are imposed, even though

34. *Id.* One state, Wisconsin, has a pay-for-performance sanction which reduces the grant by the amount of required hours not worked. *Id.* at 3.

35. *Id.* at 2. The fourteen states are: Alaska, Arkansas, California, District of Columbia, Indiana, Maine, Minnesota, Missouri, Montana, New Hampshire, New York, Rhode Island, Vermont and Washington. *Id.* at app. A.

36. *Id.* at 3.

37. *Id.* at 3-4. The states that apply lifetime termination of benefits for repeated noncompliance are: Delaware, Georgia, Idaho, Mississippi, Nevada, Pennsylvania, and Wisconsin. *Id.* at app. B.

38. Thirteen states have chosen this option. They are: Alabama, Idaho, Indiana, Kansas, Louisiana, Michigan, Mississippi, Nebraska, Nevada, New Mexico, Ohio, South Carolina, and Wyoming. *Id.* at app. C-1.

39. Fifteen states have chosen to do so. They are: Alabama, Delaware, Florida, Georgia, Kansas, Louisiana, Massachusetts, New Jersey, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Utah, and Virginia. *Id.* at app. C-1.

40. See STATE POLICY DOCUMENTATION PROJECT, SANCTIONS: 'GOOD CAUSE' FOR NONCOMPLIANCE AS OF APRIL 2000 (2001), available at <http://www.spdp.org/tanf/sanctions/goodcause1.PDF> & <http://www.spdp.org/tanf/sanctions/goodcause2.PDF>.

41. 42 U.S.C. § 607 (e)(2) (2000).

42. STATE POLICY DOCUMENTATION PROJECT, *supra* note 40.

43. STATE SANCTION POLICIES, *supra* note 32, at 5.

sanctions can last for several months.⁴⁴ Other studies that have followed recipients over time have found much higher sanction rates, although still a great variation in sanction rates. For example, studies in Delaware and Indiana found sanction rates of approximately fifty percent,⁴⁵ while another study in South Carolina found a much lower sanction rate of nineteen percent.⁴⁶ Sanction rates can also increase over time within a specific state. The Delaware study found sanction rates had more than doubled from eight percent to eighteen percent in a one-year period.⁴⁷

Thus, sanction rates can be very fluid: they vary over time, as well as from state to state, and within states. However, they are an integral part of each state's welfare system under PRWORA.

C. Characteristics of Sanctioned Families

While sanction rates vary across states, throughout the nation the characteristics of sanctioned families remain remarkably constant. Studies from multiple states consistently show that sanctioned recipients are more disadvantaged and suffer from more serious barriers to employment than other recipients. Virtually every study has found that sanctioned clients have either lower levels of education or are less likely to have graduated from high school or both.⁴⁸ Sanctioned clients also have less work experience,⁴⁹ and have spent

44. REVIEW OF SANCTION POLICIES, *supra* note 33, at 9.

45. DAVID J. FEIN & WANG S. LEE, ABT ASSOC. INC., THE ABC EVALUATION: CARRYING AND USING THE STICK: FINANCIAL SANCTIONS IN DELAWARE'S A BETTER CHANCE PROGRAM 8 (1999), available at <http://www.abtassociates.com/reports/Sanfin3.pdf> (finding a 52% sanction rate in Delaware for work-related sanctions among early enrollees of the program); see also Pamela Holcomb & Caroline Ratcliffe, *When Welfare Recipients Fail to Comply with Work Requirements: Indiana's Experience with Partial Benefit Sanctions*, 24 J. APPLIED SOC. SCI. 1, 4 (2000) (finding a 45% sanction rate in Indiana for work-related sanctions).

46. ROBIN KORALEK, THE URBAN INST., SOUTH CAROLINA FAMILY INDEPENDENCE PROGRAM PROCESS EVALUATION, TOPICAL REPORT: CONCILIATION AND SANCTIONING 8 (2000), available at <http://www.urban.org/url.cfm?ID=410011>.

47. FEIN & LEE, *supra* note 45, at 8.

48. *Id.* at 18 (finding that sanctioned individuals in Delaware were more likely than nonsanctioned individuals to have less education); KORALEK, *supra* note 46, at 12 (finding in South Carolina that sanctioned individuals are more likely to have less than a high school education); DAVID MANCUSO & VANESSA L. LINDLER, THE SPHERE INST., EXAMINING THE CIRCUMSTANCES OF WELFARE LEAVERS AND SANCTIONED FAMILIES IN SONOMA COUNTY, FINAL REPORT 5 (2001), available at <http://www.sphereinstitute.org/publications/HewlettSonomaFinal.pdf> (finding that sanctioned individuals in California were less likely to have a high school diploma); LADONNA PAVETTI ET AL., MATHEMATICA POLICY RESEARCH, INC., THE USE OF TANF WORK-ORIENTED SANCTIONS IN ILLINOIS, NEW JERSEY AND SOUTH CAROLINA 33 (2004), available at <http://mathematica-mpr.com/publications/pdfs/tanf3state.pdf> [hereinafter THE USE OF TANF WORK-ORIENTED SANCTIONS] (finding that sanctioned families in Illinois and New Jersey have less education than nonsanctioned individuals); KAREN WESTRA & JOHN ROUTLEY, ARIZ. DEP'T OF ECON. SEC., ARIZONA CASH ASSISTANCE EXIT STUDY: FIRST QUARTER 1998 COHORT (2000), available at <http://www.de.state.az.us/links/reports/exitstudy.html> (finding that in Arizona 45% of sanctioned individuals had completed high school as compared to 54% of nonsanctioned individuals); CHIFANG WU ET AL., UNIV. OF WIS.-MADISON, INST. FOR RESEARCH ON POVERTY, HOW DO WELFARE SANCTIONS WORK? 17 (2004), available at <http://www.irp.wisc.edu/publications/dps/pdfs/dp128204.pdf> (finding that sanctioned recipients in Wisconsin are more likely to have less education than nonsanctioned recipients); Andrew Cherlin et al., *Operating within*

longer periods of time on public assistance.⁵⁰ As compared to nonsanctioned clients, they are younger,⁵¹ have more children,⁵² and are more likely to have never married.⁵³ Numerous studies in such diverse states as South Carolina, Michigan, and Arizona to name just a few, have found that women of color are more likely to be sanctioned than white mothers.⁵⁴

Sanctioned clients are also more likely to experience problems that may interfere with employment. They or other household members are more likely to have health problems, including alcohol and drug problems,⁵⁵ and to

the Rules: Welfare Recipients' Experiences with Sanctions and Case Closings, 76 SOC. SERV. REV. 387, 399 (2002) (finding that sanctioned clients in Boston, Chicago and San Antonio are less likely to have a high school degree); Marilyn Edelhoeh et al., S.C. Dep't of Soc. Servs., *The Post-Welfare Progress of Sanctioned Clients in South Carolina*, 24 J. APPL. SOC. SCI. 55, 58, 60 (2000) (finding that in South Carolina those with the lowest educational attainment were twice as likely to be sanctioned as the group with the highest educational attainment); Yehekel Hasenfeld et al., *The Logic of Sanctioning Welfare Recipients: An Empirical Assessment*, 78 SOC. SERV. REV. 304, 311 (2004) (finding that sanctioned recipients in California are less educated than nonsanctioned recipients); Ariel Kalil et al., *Sanctions and Material Hardship under TANF*, 76 SOC. SERV. REV. 642, 654 (2002), (finding that women in Michigan with low education are more than twice as likely to be sanctioned). *But see* Taryn Lindhorst et al., *Is Welfare Reform Working? A Study of the Effects of Sanctions on Families Receiving Temporary Assistance to Needy Families*, 27 J. SOC. & SOC. WELFARE 185, 195 (2000) (finding no significant difference in educational levels between sanctioned individuals and nonsanctioned individuals in a southern urban area).

49. CATHERINE BORN ET AL., UNIV. OF MD. SCH. OF SOC. WORK, LIFE AFTER WELFARE: A LOOK AT SANCTIONED FAMILIES 24 (1999), available at <http://www.familywelfare.umaryland.edu/reports/ffsanctions.pdf> (finding that fewer sanctioned clients in Maryland had wage histories); THE USE OF TANF WORK-ORIENTED SANCTIONS, *supra* note 48, at 35; WU ET AL., *supra* note 48, at 17; *see also* Hasenfeld et al., *supra* note 48, at 311.

50. MANCUSO & LINDLER, *supra* note 48, at 10; WU ET AL., *supra* note 48, at 17; Edelhoeh et al., *supra* note 48, at 58, 61, 63.

51. BORN ET AL., *supra* note 49, at 22; FEIN & LEE, *supra* note 45, at 21; KORALEK, *supra* note 46, at 12; THE USE OF TANF WORK-ORIENTED SANCTIONS, *supra* note 48, at 33; Cherlin et al., *supra* note 48, at 399; Hasenfeld et al., *supra* note 48, at 311; Kalil et al., *supra* note 48, at 655.52., MANCUSO & LINDLER, *supra* note 48, at 9; Cherlin et al., *supra* note 48, at 399; Edelhoeh et al., *supra* note 48, at 12; Hasenfeld et al., *supra* note 48, at 311.

53. KORALEK, *supra* note 46, at 12; THE USE OF TANF WORK-ORIENTED SANCTIONS, *supra* note 48, at 33; WESTRA & ROUTLEY, *supra* note 48, at 10.

54. FEIN & LEE, *supra* note 45, at 21 (finding sanctions were more common among nonwhites); KORALEK, *supra* note 46, at 12 (finding blacks in South Carolina were more likely to be sanctioned); THE USE OF TANF WORK-ORIENTED SANCTIONS, *supra* note 48, at 33 (finding higher sanction rates for blacks in Illinois and New Jersey); WESTRA & ROUTLEY, *supra* note 48, at 11 (finding a slightly higher percentage of blacks and Hispanics were sanctioned while only 22% of whites were sanctioned); WU ET AL., *supra* note 48, at 18 (finding sanctions more likely for women of color in Wisconsin); Cherlin et al., *supra* note 48, at 399 (finding blacks were more likely to have their grants reduced or discontinued in Boston, Chicago, and San Antonio); Edelhoeh et al., *supra* note 48, at 58 (finding that 31% of blacks in South Carolina were sanctioned); Kalil et al., *supra* note 48, at 655 (finding blacks in Michigan were twice as likely to be sanctioned as whites in Michigan).

55. THE USE OF TANF WORK-ORIENTED SANCTIONS, *supra* note 48, at 36 (finding sanctioned clients were more likely to have health and physical problems); MANCUSO & LINDLER, *supra* note 48, at 59 (finding sanctioned clients were more likely to report symptoms of depression); DENISE POLIT ET AL., MANPOWER DEMONSTRATION RESEARCH CORP., THE HEALTH OF POOR URBAN WOMEN: FINDINGS FROM THE PROJECT ON DEVOLUTION AND URBAN CHANGE, ES-16 (2001), available at <http://www.mdcrc.org/Reports2001/UC-HealthReport/UC-HealthRpt-FullRpt2001.pdf> (finding that women in Cleveland, Los Angeles, Miami, and Philadelphia with multiple health problems, including depression, were more likely to be sanctioned); Cherlin et al., *supra* note 48, at 399 (finding

experience domestic violence.⁵⁶ Logistical problems, such as difficulty securing transportation or child care, are also more common among sanctioned clients.⁵⁷ In sum, while virtually all welfare recipients are disadvantaged, sanctioned clients are the most disadvantaged.

D. Consequences of Sanctions

Not surprisingly, given the circumstances and characteristics of sanctioned families, sanctions can cause severe hardship. In states that impose full-family sanctions, families lose all of their benefits, while in states that impose partial family sanctions, families lose a substantial portion of their benefits. Since public assistance benefits are already very low and have not been increased or adjusted for inflation, even a partial loss of benefits can have serious consequences.⁵⁸

These consequences include material hardships. Sanctioned families are at an increased risk of hunger and food insecurity.⁵⁹ Housing conditions can deteriorate, as sanctioned families run an increased risk of homelessness, eviction, and utility shut-offs.⁶⁰ Medical needs can go unmet.⁶¹ Children are particularly vulnerable. One study found that young children in sanctioned families were at an increased risk for food insecurity and hospitalizations as

that sanctioned clients were more likely to report using marijuana within the last year, although they did not report higher rates of hard drug use); Kalil et al., *supra* note 48, at 655 (finding that sanctioned clients were more likely to have mental health problems).

56. MANCUSO & LINDLER, *supra* note 48, at 58 (finding sanctioned respondents were more likely to report being the victim of a physical act of domestic violence in the previous six months); POLIT ET AL., *supra* note 55, at ES-16 (finding women who reported being physically abused were more likely to be sanctioned); Kalil et al., *supra* note 48, at 652 (finding sanctioned clients were more likely to have experienced domestic violence within the last year).

57. JUNE GIBBS BROWN, DEP'T OF HEALTH AND HUMAN SERVS., TEMPORARY ASSISTANCE FOR NEEDY FAMILIES: IMPROVING THE EFFECTIVENESS AND EFFICIENCY OF CLIENT SANCTIONS 13 (1999), available at <http://oig.hhs.gov/oei/reports/oei-09-98-00290.pdf> (finding that transportation was one of the biggest barriers facing clients, especially in rural areas with limited job opportunities); MANCUSO & LINDLER, *supra* note 48, at 27-28 (finding that sanctioned clients were less likely to have a car and more likely to have transportation problems than nonsanctioned clients); Hasenfeld et al., *supra* note 48, at 312 (finding that transportation was even more of a barrier to clients than were health problems); THE USE OF TANF WORK-ORIENTED SANCTIONS, *supra* note 48, at 36 (finding that families that experienced one or more personal, family, or logistical challenge, including child care, were more likely to be sanctioned); Cherlin et al., *supra* note 48, at 399 (finding that sanctioned clients were less likely to have a working phone or car); Kalil et al., *supra* note 48, at 652 (finding that sanctioned clients were less likely to have a car or driver's license than were nonsanctioned clients).

58. The median TANF benefit in 2000 was \$381. This amounts to eighteen dollars less than the \$399 benefit available in 1996 when welfare reform was first enacted. Blank & Schmidt, *supra* note 4, at 81. For a family of three, the financial cost of sanctions has been estimated to range from less than \$100 to over \$400. THE USE OF TANF WORK-ORIENTED SANCTIONS, *supra* note 48, at 8.

59. Nancy E. Reichman et al., *TANF Sanctioning and Hardship*, 79 SOC. SERV. REV. 215, 223 (2005); Lindhorst et al., *supra* note 48, at 195.

60. Lindhorst et al., *supra* note 48, at 196; Reichman et al., *supra* note 59, at 223; see also Kalil et al., *supra* note 48, at 652 (finding sanctioned clients two and one-half times more likely to have a utility shut off).

61. Lindhorst et al., *supra* note 48, at 195.

compared to children in nonsanctioned families.⁶² Since sanctioned families are cut off from their only means of support, they must seek alternative and often less stable means to survive. While some sanctioned families find employment, sell possessions, and turn to family members for support, one study found that sanctioning is also associated with illegal activities, such as begging and stealing.⁶³

E. Reasons for Noncompliance with Work Rules

Several studies have demonstrated that clients' reasons for noncompliance are frequently linked to their disadvantaged status, or obstacles that interfere with work. For example, in California, a survey of local county welfare offices and advocacy groups listed illness or a disability (84%), followed by a lack of transportation (70%) and then child care (42%), as the most common reasons why clients were unable to comply with the work rules.⁶⁴ In New York, recipients reported lack of transportation or child care, illness, or the need to care for a sick relative as the most common reasons for why they failed to comply.⁶⁵ Similarly, a survey of sanctioned families in Utah revealed that a third of families cited health problems as the reason they did not comply.⁶⁶ In Iowa, the three most common reasons cited by clients for not complying with the work rules were a serious personal issue or health problems (29.6%), a lack of transportation (27.8%), and a lack of child care (20.4%).⁶⁷

Clients may also fail to comply because they do not understand the work rules. Certain health problems, including depression and learning disabilities, or low educational skills or intelligence, may make it difficult for them to

62. John T. Cook et al., *Welfare Reform and the Health of Young Children: A Sentinel Survey in 6 US Cities*, 156 ARCHIVES PEDIATRICS & ADOLESCENT MED. 678, 681 (2002) (finding that children aged three or under in sanctioned families were significantly more likely to be in food-insecure households; also finding that children aged three or under in sanctioned families were 1.8 times more likely to be hospitalized after an emergency room visit).

63. Cherlin et al., *supra* note 48, at 400 (finding that the most common responses to sanctions or benefit termination were to pursue employment, cut back on necessities, and obtain assistance from family and friends); Kalil et al., *supra* note 48, at 649, 652 (finding that sanctioned clients engaged in such hardship-mitigating activities as "pawning or selling possessions, taking food or items from stores without paying for them, searching in trash cans or begging, and engaging in illegal activity, and selling or trading food stamps.").

64. CAL. DEPT' OF SOC. SERVS., GOOD CAUSE ESTABLISHMENT, COMPLIANCE AND CURING SANCTIONS: CALWORKS WELFARE TO WORK PROGRAM (2001), available at <http://www.dss.cahwnet.gov/research/res/pdf/SanctionReport.pdf#xml=http://www.dss.cahwnet.gov/cdssweb/dtSearchASP/dtsearch2.asp?cmd=pdfhits&DocId=17949&Index=d%3a%5cinternetpub%5capproot%5cdtsearchindex%5cCDSSInternet&HitCount=12&hits=1+2+3+32+33+34+1cf+1d0+1d1+7b9+7ba+7bb+&hc=141&req=%22good+cause+establishment%22>.

65. Jean Oggins & Amy Fleming, *Welfare Reform Sanctions and Financial Strain in a Food-Pantry Sample*, 28 J. SOC. & SOC. WELFARE 101, 112-113 (2001).

66. MICHELLE DERR, UNIV. OF UTAH, THE IMPACT OF GRANT SANCTIONING ON UTAH'S TANF FAMILIES (1998).

67. THOMAS M. FRAKER ET AL., MATHEMATICA POLICY RESEARCH INC., IOWA'S LIMITED BENEFIT PLAN tbl.VI.4 (1997), <http://aspe.os.dhhs.gov/hsp/isp/iowalbp/Cover.htm>; see also Emily Bazelon & Tamara Watts, *Welfare Time Limits on the Ground: An Empirical Study of Connecticut's Jobs First*, 32 CONN. L. REV. 717, 805 (2000) (finding a range of reasons for missed work appointments in Connecticut's TANF program, including illness, lack of child care, conflicts on the job).

understand the tasks required to comply with the work rules, or the consequences of not doing so.⁶⁸ Thus, sanctions can result not because clients are unwilling to comply, but because they are unable to.⁶⁹

In sum, there are a range of personal and family challenges that may interfere with a recipient's ability to work and which can result in a sanction. Less attention, however, has been paid to the role of agency error in the sanctioning process, and agency-created obstacles that make it difficult for clients to comply. Several studies have suggested that there are problems in the administration of sanctions. A review of case closures in Tennessee revealed that caseworkers improperly applied sanctions in thirty percent of the cases.⁷⁰ An independent government audit in Wisconsin also found a high rate of error in imposing sanctions.⁷¹ Finally, many sanctions are reversed at fair hearings because of agency error.⁷²

What is causing these agency errors, however, is less clear. In the past, welfare bureaucracies have been criticized for creating an eligibility compliance culture characterized by administrative disorganization, an excessive preoccupation with paperwork, miscommunication between clients and workers, and an overall skepticism of clients' claims.⁷³ The procedural hurdles, or red tape, created by such a culture often result in bureaucratic disenfranchisement, or the denial of aid to eligible people based on process, not substance.⁷⁴

There is some evidence that similar problems and errors are occurring in welfare offices today in the administration of sanctions. For example, in the Iowa study cited above, clients complained that case workers were unsupportive of clients, were generally unresponsive, did not return phone calls, and failed to send notices or record client phone calls or participation.⁷⁵ Of those clients who informed caseworkers about various barriers to working, two-thirds reported that their caseworkers did not help them resolve their

68. See EILEEN SWEENEY, CTR. ON BUDGET & POLICY PRIORITIES, RECENT STUDIES INDICATE THAT MANY PARENTS WHO ARE CURRENT OR FORMER WELFARE RECIPIENTS HAVE DISABILITIES OR OTHER MEDICAL CONDITIONS (2000), available at http://www.wkkf.org/Pubs/Devolution/CBPP_Recent_studies_indicate_many_parents_are_current_or_former_welfare_recipients_have_disabilities_00331_02668.pdf; see also U.S. GEN. ACCOUNTING OFFICE, WELFARE REFORM: MORE COORDINATED FEDERAL EFFORT COULD HELP STATES AND LOCALITIES MOVE TANF RECIPIENTS WITH IMPAIRMENTS TOWARD EMPLOYMENT (2001), available at <http://www.gao.gov/new.items/d0237.pdf>.

69. FEIN & LEE, *supra* note 45, at 13-14; DERR, *supra* note 66.

70. HEIDI GOLDBERG & LIZ SCHOTT, CTR. ON BUDGET AND POLICY PRIORITIES, A COMPLIANCE-ORIENTED APPROACH TO SANCTIONS IN STATE AND COUNTY TANF PROGRAMS 19 (2000), available at <http://www.cbpp.org/10-1-00sliip.pdf>.

71. WIS. LEGISLATIVE AUDIT BUREAU, AN EVALUATION: WISCONSIN WORKS (W-2) PROGRAM 7 (2005), available at <http://www.legis.state.wi.us/lab/reports/05-6full.pdf>.

72. Vicki Lens, *Bureaucratic Disenfranchisement after Welfare Reform: Are Fair Hearings the Cure?*, 12 GEO. J. ON POVERTY L. & POL'Y 13, 50 (2005) (finding reversal rates in work related hearings of 53% in Texas, 52% in Wisconsin, and 77% in New York).

73. See Thomas J. Kane & Mary Jo Bane, *The Context for Welfare Reform*, in WELFARE REALITIES: FROM RHETORIC TO REFORM 15-20 (Mary Jo Bane & David T. Ellwood eds., 1994) (discussing the characteristics of an eligibility compliance culture); see also Michael Lipsky, *Bureaucratic Disenfranchisement in Social Welfare Programs*, 58 SOC. SERV. REV. 3 (1984).

74. LIPSKY, *supra* note 73, at 3.

75. See FRAKER ET AL., *supra* note 67.

problems.⁷⁶ A more recent study in Michigan suggested that confusion and mismanagement in the administration of work requirements caused at least some of the recent decline in caseloads.⁷⁷ For example, an agency's failure to fully, clearly, and appropriately explain the rules to clients with mental health problems or other problems that make it difficult for them to understand the work rules may result in misapplied sanctions.⁷⁸ Thus, as these studies demonstrate, agency error and administrative obstacles may significantly contribute to clients' alleged noncompliance with the work rules.

The next section reports on the findings of an empirical study designed to more fully understand how the sanctioning process works on the front lines of welfare. Using fair hearing data from Texas, the study asks the following: What violations of the work rules are occurring? What are the reasons clients provide for noncompliance with these rules? What problems or obstacles do clients encounter within the agency when attempting to comply? What mistakes or errors are being made by the agency when imposing sanctions?

III. STUDY FINDINGS

A. Research Design

This study utilizes fair hearing decisions to examine the sanctioning process. Fair hearings are an administrative mechanism for correcting agency error or mistakes in the administration of public assistance. They are requested by clients to challenge an adverse agency action, including sanctions.⁷⁹ In Texas, as in all other states, clients are entitled to challenge any denial, discontinuance, or reduction in assistance and must be provided with timely and adequate notice of any adverse action, including information about their right to appeal.⁸⁰ Hearings are held by the state agency to determine whether the local agency's action was correct.

76. *Id.*

77. EVELYN Z. BRODKIN ET AL., ACCESSING THE SAFETY NET: ADMINISTRATIVE BARRIERS TO PUBLIC BENEFITS IN METROPOLITAN CHICAGO 45-47 (2005).

78. Misapplied sanctions were especially a problem in the early years of welfare reform. The Inspector General of the Department of Health and Human Services, after an eight state study of how sanctions were being administered, found that "more than two-thirds of the TANF offices do not provide clear and complete information about the amount of sanctions and the definitions of good cause exemptions from work requirements." DEP'T OF HEALTH & HUM. SERVS., EDUCATING CLIENTS ABOUT SANCTIONS 2 (1999), available at <http://oig.hhs.gov/oei/reports/oei-09-98-00291.pdf#search='Office%20of%20Inspector%20General%20Educating%20Clients%20About%20Sanctions'> [hereinafter EDUCATING CLIENTS].

79. Fair hearings have been required since the enactment of the Aid to Dependent Children program in 1935. After the Supreme Court's decision in *Goldberg v. Kelly*, 397 U.S. 254 (1970), which required states to provide pre-termination hearings, fair hearing use increased and became a fixed feature of the welfare bureaucracy. See Cesar Perales, *The Fair Hearing Process: Guardian of the Social Service System*, 56 BROOK. L. REV. 889, 895 (1990); Under PRWORA, states are still required to maintain a hearing system, although there is no longer any federal oversight. 42 U.S.C. § 602(a)(1)(B)(iii) (2000). All states, except for Wisconsin, have substantially retained their ADFC fair hearing systems. Welfare Law Ctr., *Due Process and Fundamental Fairness in the Aftermath of Welfare Reform*, WELFARE NEWS (Sept., 1998).

80. 40 TEX. ADMIN. CODE § 811.14(b) (2005); 40 TEX. ADMIN. CODE §§ 811.71-811.73 (2005).

Because of the nature of the adversarial process, the fair hearing record leaves a rich data trail on frontline interactions between clients and workers.⁸¹ Both the client and agency are expected to present their case orally, confront and cross-examine witnesses or each other, and submit evidence. Hearing officers are required to explain their decision in writing, which typically includes a summary of each side's position, and findings of fact and law. The decisions can thus provide a useful description and analysis of contested events.

Statistical data was first obtained to determine the reversal rate on work-related hearings in Texas during 2002. This data was obtained from the Texas Department of Human Services (now the Texas Health and Human Services Commission) through the Texas Freedom of Information Law.⁸² Two regions in Texas were chosen to provide a contrast between a primarily urban/suburban area and a more rural area. The regions reflect geographical distinctions made by the Texas Department of Human Services, which divided the state into ten separate regions. One region is a well-populated urban/suburban region and the other region is a rural region with no large cities.⁸³ This data revealed a statewide reversal rate of fifty-three percent, indicating a high likelihood of errors in sanctioning, since more than half of the clients successfully won reversal.

The Texas Freedom of Information Law was also used to request a random sample of every other fair hearing decision on work rules issued in 2002. The total sample was made up of 178 decisions, including 109 decisions from the urban/suburban region and 69 from the rural region.⁸⁴ The decisions were then analyzed using content analysis. Content analysis is a method for systematically

81. While hearings are used primarily to resolve individual cases, their usefulness for "detecting and correcting improper administration" has been recognized through the years. Joel Handler, *Justice for the Welfare Recipient: Fair Hearings in AFDC—the Wisconsin Experience*, 4 SOC. SERV. REV. 12, 18 (1969). In the initial years of the ADC program, as individual counties came under state supervision for the first time, fair hearings helped to standardize the administration of benefits. *Id.* at 18. A study conducted a decade after *Goldberg v. Kelly*, in 1979, on the usefulness of fair hearings for monitoring agency performance found that they could be used to "isolate particular breakdowns which occur in the administration of state AFDC programs." Stan Altman et al., *The Use of State Fair Hearing Data to Monitor Performance of the AFDC Program*, 31 ADMIN. L. REV. 463, 482 (1979). Using a seven state sample, the researchers examined whether patterns in fair hearing data based on issues appealed and outcomes could provide "diagnostic information [on] . . . operational failures" including inconsistent, conflicting or unclear procedures or policies. *Id.* at 478. They concluded that if a disproportionate number of agency decisions on specific issues were reversed by a formal hearing decision, it could indicate a problem in applying or interpreting certain policies on the frontline. *Id.* at 476. Even decisions where clients lost more often than not, could be useful in demonstrating problems within the system, such as a failure to clearly communicate rules and expectations. *Id.* at 480. The researchers found that hearings were useful for identifying systemic flaws even in states with low levels of fair hearing activity. *Id.* at 471, 482.

82. 5 TEX. GOV'T CODE ANN. § 552.021 (Vernon 2004).

83. Regions rather than individual counties were chosen to permit an adequate sample size. Also, because fair hearing decisions are maintained by region, the report indicated only the county where the hearing officer is presiding, which may or may not be the county where the event took place.

84. Pursuant to 45 C.F.R. § 5.67 (2005) and 5 TEX. GOV'T CODE ANN. § 552.101 (Vernon 2004), personal identification information, including certain demographic information will redacted from the decisions to protect the privacy of recipients.

examining data by coding it, or breaking it down into parts or categories to identify themes and patterns.⁸⁵

B. Description of *Texas Works*

Texas's work program, called *Texas Works*, was initiated in 1997.⁸⁶ Although federal law allows five years of assistance, Texas has chosen stricter time limits. The most educated and experienced clients receive one year of assistance and the least educated receive three years of assistance.⁸⁷ However, unlike many other states, at the time of this study, Texas chose a more lenient approach to sanctions.⁸⁸ At the time of the study, Texas imposed only partial sanctions for violations of the work rules: reducing the family's grant by seventy-eight dollars for failing to participate in its welfare-to-work program, *Choices*, and fining a client twenty-five dollars for voluntarily quitting a job.⁸⁹ Minimum penalty periods also applied: one month (or until the client complied, whichever is longer) for the first noncompliance and then three and six months thereafter.⁹⁰

Texas views an application for assistance as a request for help in finding a job.⁹¹ As part of the application process, applicants are required to complete an employment profile and to visit an on-site resource room which contains local job postings, lists of community resources, and child care information. Unless exempt from the work rules, they are referred to the *Choices* work program. Parties that are exempt include children under eighteen, adults over sixty, pregnant women, adults caring for a child under the age of one or a disabled household member, adults unable to work because of a disability expected to

85. See MATTHEW B. MILES & MICHAEL HUBERMAN, *QUALITATIVE DATA ANALYSIS* (1994) (providing a practical guide to data and content analysis for the researcher, as well as commentary on the merits of various analytical methods).

86. TEX. DEP'T. OF HUMAN SERVS., *TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF) FREQUENTLY ASKED QUESTIONS*, <http://www.dhs.state.tx.us/programs/TexasWorks/TANF-FAQ.html> (last visited Feb. 5, 2006).

87. *Id.* Clients with a high school education or better, or with work experience of at least eighteen months can only receive assistance for one year, while for those with less than three years of high school or less than six months of experience, the limit is three years. *Id.* There is a two year limit for clients who completed at least three years of high school or who have work experience of six to eighteen months. *Id.*

88. As noted *supra*, seventeen states impose an immediate full family sanction, while another eighteen states impose a gradual full-family sanction. As of November, 2003, Texas began imposing full-family sanctions. Letter from Luis M. Macias, Director, Workforce Dev. Div., Tex. Workforce Comm., to Local Workforce Dev. Bd. Executive Dirs. et al., *New Choices Rules Effective November 18, 2003* 2, 6 (Jan. 9, 2004) available at <http://www.twc.state.tx.us/boards/wdletters/letters/06-04.pdf>.

89. TEX. HEALTH & HUMAN SERVS. COMM'N, *TEXAS WORKS HANDBOOK* § 2135 (02-05 rev. ed., 2005). The maximum grant for a family of three is about \$200, thus a sanction can reduce the grant by more than a third. For two parent households where both parents are not in compliance the financial penalty is \$125. TEX. DEP'T OF HUMAN SERVS., *REFERENCE GUIDE: TEMPORARY ASSISTANCE FOR NEEDY FAMILIES (TANF)* (1999), available at www.dhs.state.tx.us/publications/refguide/1999/sec2-7.html.

90. TEX. HEALTH & HUMAN SERVS. COMM'N, *supra* note 89, at § 1841.

91. *Id.* at § 111 ("[I]f an applicant chooses to apply for assistance, he is requesting help finding a job.").

last more than 180 days, and a grandparent over age fifty caring for a grandchild under age three.⁹² Clients are required to sign a personal responsibility agreement that covers personal behavior ranging from work, to parenting, to the use of drugs.⁹³

Clients are referred to a separate state agency, the Texas Workforce Commission, which operates through local workforce development boards and their service contractors (profit and nonprofit) to provide all work-related services and to monitor the client's compliance with work requirements. Clients attend an initial orientation to familiarize themselves with the local labor market and available resources for finding jobs.⁹⁴ They are required to search for work and if they do not find a job, they must attend an "employment planning session" and then must participate in various *Choices* employment services programs. These programs include vocational training, job search and placement, on-the-job training, and for those who still cannot find a job, community service placement.

Violations of the work rules can occur either during activities designed to prepare clients for work (i.e. employment planning sessions, career advancement classes, job search training conducted through the local workforce boards) or when clients are actually working or searching for a job and are required to report their hours or job contacts. The *Choices* staff decides whether a violation has occurred and if the client has "good cause" for not complying.⁹⁵ The Texas Department of Human Services is responsible for implementing the sanction.

C. Description of the Findings

Sanctions were most commonly imposed during the work preparation stage, and most—71% in the rural region and 67.8% in the urban/suburban region—were based on a single missed appointment by the client at the workforce agency. Less than a third of clients were sanctioned for failing to work a sufficient number of hours, or for not having sufficient job contacts. Thus, based on fair hearing records, sanctions were primarily used to insure that clients attended the various activities required by the local workforce boards to prepare them for work.

In both regions, a combination of administrative and personal barriers resulted in sanctions. In the urban/suburban region the most common reason clients gave for not complying with work rules was a medical or other

92. *Id.* at § 1821.1.

93. As workers, they must agree to participate in job training or educational programs or to not voluntarily quit a job. As parents, they must cooperate with child support enforcement, agree to keep their children in school, have their children immunized and bring them to health screenings, and attend parenting classes, if requested. They must also agree not to abuse alcohol or drugs. *Id.* at § 2110.

94. *Id.* at § 2213.

95. Good cause is defined in the regulations as temporary illness or incapacitation, court appearance, caring for a physically or mentally disabled household member, lack of transportation or child care, an absence of support services, an individual or family crisis or family circumstance (including substance abuse, mental health or disability-related issues), and domestic violence. 40 TEX. ADMIN. CODE § 811.16(c) (2005).

exemption (31%); the second most common reason was that notice of the appointment was never received (22%). 18% claimed a family emergency or temporary illness, and 13% said work or school obligations prevented them from complying. 16% cited problems with transportation or child care. 14% claimed that they had complied, and that the agency's records were in error.⁹⁶ Thus, in the urban/suburban region, personal barriers, such as disabilities, childcare and transportation problems, as well as family emergencies, were cited more often than administrative barriers, such as scheduling conflicts with work or school, lack of notice, and agency error (65% to 49%).

In the rural region, the most common reason for noncompliance was that the notice of appointment was never received (41%). Equal percentages (18%) claimed either a medical or other exemption, or said that they had in fact complied. 13% claimed work or school obligations prevented them from complying. 10% cited problems with child care or transportation, while only 3% claimed a family emergency or crisis. Thus, in contrast to the urban/suburban region, administrative barriers (scheduling conflicts with work or school, lack of notice, and agency error) were cited more often than personal barriers (disabilities, childcare and transportation problems, and family emergencies) for rural residents (72% to 31%). Each of the reasons given, and the agency errors that occurred in the sanctioning process, are examined separately below.

Table 1: Reasons for Noncompliance

Reason	Urban/Suburban Region	Rural Region
Scheduling conflict with work or school	13%	13%
Agency error	14%	18%
Transportation/child care	16%	10%
Family emergency/illness	18%	3%
Nonreceipt of notice of date of appointment	22%	41%
Medical or other exemptions	31%	18%

1. Medical or Other Exemptions

In the urban/suburban region, a frequent complaint by sanctioned clients was that the agency had ignored medical documentation verifying their exemption. 57% of clients who claimed a medical or other exemption from the work rules (medical, caretaker, or pregnancy) had their sanction reversed. The hearing officers found a range of errors, including the improper coding of clients as nonexempt despite evidence to the contrary, the failure to advise clients of the documentation needed to prove an exemption, or failure to assist clients in documenting their disabilities.

In several cases, the agency had ignored medical evidence in its own files and admitted at the hearing that the sanction was in error. Other times the

96. The total of the percentages is more than 100% because clients gave multiple reasons for not complying.

agency failed to communicate to clients what was needed to prove an exemption. In one such example, a client with a documented disability of more than three years was denied an exemption because her physician did not indicate how long her disability was expected to last, as required by the agency. The hearing officer reversed the sanction, noting that the agency had failed to advise the client that her documentation was incomplete. The hearing officer also held that the “worker must offer reasonable assistance in obtaining information.” In another case, the hearing officer found that the agency had not fully explained the exemption process and had not given the client an opportunity to provide a physician’s note documenting her pregnancy. In other instances, clients were often given erroneous information about documentation requirements. For example, one client whose sanction was reversed was told by the agency that she did not need a physician’s note to verify that she cared for her father who was on dialysis three times a week.

Those clients whose sanctions were upheld expressed confusion over the requirements for a medical exemption and had difficulty proving that they were disabled. Some claimed poor health, but never told the agency until after the sanction was imposed or never followed through with the agency’s requests (or the hearing officer’s request) to verify their disability. Unlike those clients whose sanctions were reversed, very few of these clients claimed they had submitted verification that was ignored by the agency. Overall, this group was more confused and less willing or less able to secure the needed documents to prove a medical or other exemption. For example, one client who had problems lifting over five to ten pounds and expected to have surgery, never provided a doctor’s note. Another client testified that she was in poor health and that it was hard for her to work, but did not report her health problems until she was at the hearing. Another, whose SSI benefits had been cut after four years, thought reporting to her work appointment might jeopardize her SSI appeal. In a few cases, the hearing officer found that the clients were disabled, but that the agency was correct in imposing the sanction, because it did not have any medical verification when the decision was made.

In the rural region, 50% of the medical exemption cases were decided in favor of the client. Here, as in the urban/suburban region, there was some indication that agency workers were missing important cues that the client was disabled or were ignoring submitted medical evidence. For example, in one case, the client had been terminated from a job because of medical problems. The hearing officer found that the agency “did not thoroughly grasp, explore, and/or document in her electronic case file the information the client provided regarding her employments status” and also “did not follow established procedure in allowing client an opportunity to provide verification of her inability to return to work.” In another case reversed by the hearing officer, the agency sanctioned the client before the time limit for providing medical documentation.

Clients in the rural region whose sanctions were upheld either failed to provide medical verification, provided it too late, or submitted medical forms that did not establish a disability.

2. Nonreceipt of Appointment Letters

In both the urban/suburban and the rural region, many clients claimed to have never received the notice advising them of their appointment. Most of these clients said that the notice advising them of the sanction was the first time they discovered the missed appointment had been scheduled. In the urban/suburban region 38% of clients had these sanctions reversed. In the rural region the percentage was 55%.

In the urban/suburban region, the hearing officer most often reversed sanctions based on agency error (such as by sending the appointment letter to the wrong address or not sending one at all). In contrast, most reversals in the rural region were attributed to mail delivery problems and not agency error. Thus, both agency errors and client mistakes served as a basis for sanction reversals in different areas. However, in both regions, complaints that appointment notices had not been received were often met with skepticism and the sanction was upheld.

Clients, whether they won or lost, shared some common experiences. Several had inconsistent contact with the agency because they moved among different relatives or friends and lacked stable living arrangements. One client explained that she had recently moved and had not yet acquired a permanent address, thus she never received her appointment notice. Another client described how she had been hospitalized and then moved, events that made contact with the agency difficult.

Other clients spoke of difficulty getting through to their agency workers. For example, one client never received the notice of appointment, but did receive a notice to telephone his agency worker at the local workforce office. He testified to three unsuccessful attempts to reach his agency worker, who was first at lunch, then at a doctor's appointment, and then at a training. He explained that "each call cost him fifty cents and that he didn't have the money to keep on calling." In another case, an agency worker from the workforce office verified that the client, who had never received the appointment letter, had tried to contact the local welfare office, but no one had returned his calls. In this case, the workforce office attempted to reverse the sanction, because no appointment had ever been scheduled for the client to miss. Nevertheless, the sanction remained, indicating communication problems between the workforce office and the local welfare office.

3. Work/School Scheduling Conflicts

In both regions, sanctioned clients included those who were already working and/or attending school. For several of these clients, their workforce appointment was scheduled when they were working, thus making it difficult for them to attend. Other clients were sanctioned for not working enough hours or for not working or looking for a job during holiday breaks.

In the urban/suburban region, only 31% of clients had their sanction reversed. A particularly egregious case, later reversed by the hearing officer, occurred when a worker, without any regulatory authority, required a client to search for jobs during her Christmas Break from school. The client, a grandmother who cared for two grandchildren, attended classes during the semester and was engaged in community service and work in the afternoon.

The hearing officer chastised the agency worker for not using common sense or her knowledge of the rules when requiring the client to search for a job during her Christmas break. The hearing officer also noted that the agency worker had failed to accommodate the client's request to schedule work meetings on Friday morning, even though the agency worker was available at that time. In another case, the hearing officer reversed a sanction for a client who had missed his appointment because he was working sixty to seventy hours a week driving a cab.

For the most part, however, urban/suburban clients who claimed that they were too busy working to attend work appointments had their sanctions upheld. One such example is a client who explained that she was busy cleaning houses at the time of her work appointment. Another client, who worked in the mornings when work appointments were usually scheduled, acknowledged that she understood she was supposed to attend but claimed that she could not miss work. Nevertheless, her sanction was upheld. The work rules were also strictly applied to clients who were a few hours short of the required thirty hour workweek. For example, one client was sanctioned although she had recently increased her work hours from twenty to twenty-five by working for two different employers.

Clients with work-related excuses from the rural region fared better, with forty-four percent winning their cases. When reversing sanctions, hearing officers often cited miscommunication between client and worker, as well as agency error. In one case, a client was scheduled for a *Choices* appointment the day she was to start a new job. When she contacted her *Choices* worker, she was told that she still had to attend the meeting or she would not get her public assistance check. She decided not to miss the first day of work to attend the *Choices* meeting. In another case, a client was working thirty hours and reported her time, but was unaware that she also had to attend career advancement classes. Another client was mistakenly told by the agency she that was exempt because she was attending school. A third client was sanctioned even though she was working the required number of hours.

4. Family Crisis, Illness, and Logistical Problems

In the urban/suburban region, only 23% of clients who claimed an assortment of logistical and personal problems, including sick children, child care difficulties, and transportation obstacles, had their sanctions reversed. All of these clients were working or trying to work, but doing so erratically or for fewer hours than required. The most common pattern was consistent participation in work activities, followed by a decline in hours because of a family crisis, illness, or other difficulty.

The hearing officers in these cases typically found that the work requirements were not met and/or that good cause had not been established, even though clients testified to myriad problems. In one example, the client had complied with agency requirements for several months, even completing thirty extra hours of job search activities in one month. Over the next several months, her hours dipped below the mandatory minimum number. Required to produce fifteen job contacts one week, she produced only twelve and was finally sanctioned. She attributed her reduced work hours to medical problems with

her children, including two doctor's appointments for one son and a hospitalization for another.

In another case in which the sanction was upheld, the client also had an uneven work record, sometimes working more than the number of hours required and other times fewer hours. Sanctioned for missing an orientation and job search class, she explained that she did not have daycare and could not bring her four children to such a class. She was told by the agency at the hearing that she could bring them with her to the location, but not into the job search room itself because of the expensive computers. The agency did not explain who would watch the children in the waiting room.

In another case in which the client lost, she chose to remain in *Choices* even though she was exempt for four months after the birth of her child. She complied for several months, but was sanctioned after she turned in her job search paper late (with more than the required contacts) and for missing some hours "because she was either at a doctor's appointment getting shots for her children, or at a WIC appointment." She subsequently began community service and then obtained a job.

Other clients who lost their cases reported a variety of problems. One client explained that she had failed to start community service because "of serious family problems that caused her face to bruise, and she didn't want to go out in public." During this time, she also moved in with a relative and had a child constantly sick from daycare. She noted that "she did turn in two weeks of job search in spite of all the things that were happening." Another client had been in jail and another had to temporarily move in with friends while she looked for permanent housing.

In those few cases where the sanctions were reversed, the hearing officer found either a mistake on the part of the agency, because clear instructions had not been provided, or that the clients had stayed in close contact with the agency during a family crisis or illness. For example, one client whose sister's child died on the day of her appointment, called the agency that day and then again when she had to leave town for her mother's illness. Another client, whose daughter was ill on the day of the appointment, testified to numerous and repeated attempts to call the agency. She described how she "started [dialing] extensions at random and left voice mail messages for everyone she found," with not one person answering their phone. The hearing officer found that the agency was correctly implementing policy, but reversed the sanction because the client had made every effort to contact the agency the day of her appointment.

In the rural region, many of the cases involved a lack of transportation or child care, with the two sometimes connected.⁹⁷ Clients won 62% percent of the cases in this category. In one such successful case, the agency and the *Choices* representatives who had imposed the sanction, argued at the hearing that the client should not be sanctioned. They explained that the client, despite graduating at the head of her class, was unable to get a job because of the lack of employment opportunities in the small community where she lived and because

97. For example, one woman explained that it took three hours to get her son to daycare.

the entry-level jobs that did exist only offered the evening shift, when public transportation had stopped running.

5. Agency Error

While all categories of cases described above often contained some allegation of agency error, the following cases focused primarily on alleged administrative errors. In the urban/suburban region, the agency was reversed 73% of the time. Some of these errors were of the type expected in any bureaucracy; for example, mistakenly scheduling an appointment when a case was not yet active on the computer or ignoring a change of address request. Other cases however revealed more avoidable problems. For example, in one case the hearing officer found that the workforce agency “[h]ad requested a sanction before the appellant showed up for the appointment” for which she was late.

In another case, a client was two minutes late for a required test. She rescheduled that day and had already taken the test when she then received the sanction notice. The workforce agency representative testified that she tried to reverse the sanction, but that it did not go through the computer system, so she advised the client to appeal instead.

Other times the agency gave clients incorrect information; for example, erroneously advising a client that no appointment was scheduled. Clients also complained of difficulties getting through to their agency workers. One client was told her agency worker was not accepting calls and then was later told by the agency worker that she only accepts calls on one particular day of the week. In another case, the career counselor explained that around the time of the sanction, he “was having problems receiving his messages on a consistent basis . . . and [that] several other individuals told him they had left messages for him, but he did not receive them.”

In the rural region, clients’ success rate was 61% when agency error was alleged. Problems identified by the hearing officer included the agency’s failure to fully and accurately inform clients of program requirements.⁹⁸

Table 2: Client Success Rates

Reason	Urban/Suburban Region	Rural Region
Scheduling conflict with work or school	31%	44%
Agency error	73%	61%
Transportation/childcare family emergency/illness	23%	62%
Nonreceipt of notice of date of appointment	38%	55%
Medical or other exemption	57%	50%

98. For example, changes in employment rules and the number of hours required to be worked.

D. Summary of the Findings

In summary, the findings of this study demonstrate several problems in the administration of sanctions. First, personal barriers, such as disabilities, family crises, and a lack of transportation or childcare, made it difficult for clients to comply with the work rules. Erroneous sanctions resulted when workers overlooked these barriers or failed to fully assist clients to overcome or document them. Second, administrative errors also resulted in incorrect sanctions. Some errors were clerical mistakes that can plague any large bureaucracy, but others were less benign. Less benign errors were committed by workers who automatically entered sanctions into the system without evaluating the reasons for the noncompliance, as well as workers who were difficult to contact or who failed to provide accurate information, thereby causing miscommunications. Finally, technically correct but ill-advised sanctions also resulted both because of the nature of the rules and the way they were applied.

As an example of the latter, in several cases, sanctions were imposed despite personal and family challenges and then not reversed by the hearing officer. It is plausible that these clients' explanations of family difficulties were not credible and thus rejected by the hearing officers. However, it seems that a singular and strict adherence to the rules, rather than the goals behind the rules, may have played a role. For instance, several of these clients were sanctioned for working less than the required number of hours, even when their work history, as detailed by the hearing officer, demonstrated a commitment to work.⁹⁹ A more complex look at their history and current situation and a more flexible approach to sanctions might have resulted in supportive services instead. Similarly, several clients were sanctioned for missing an appointment because of work, thus indicating that technical compliance with the rules was more important than the purpose of the rules, which is to encourage work. In short, a too rigid rule, combined with an inflexible application, resulted in sanctions that were deemed correct by the hearing officer, but that were arguably inappropriate.

The fact that the vast majority of sanctions were for missing a single appointment, reveals a mechanistic approach to sanctioning. Workers only had to determine whether the appointment was missed; a full assessment of the complexity and totality of clients' work experiences and attitudes was not required.¹⁰⁰ Thus, imposing a sanction became a clerical chore and, even though technically correct, may have subverted rather than encouraged a client's attempt to work.

In sum, the findings of this study indicate a need for welfare bureaucracies to focus on avoiding erroneous sanctions, and to avoid applying them too rigidly and bureaucratically. This and other studies which have documented

99. For example, working extra hours in the past, or volunteering to work even when exempt.

100. It may be the case that workers had given the client multiple chances to comply, but that such information was not included in the record because one missed appointment was sufficient to impose a sanction. However, as described above, there was evidence in the record that workers followed a more perfunctory approach to sanctioning.

the disadvantages faced by sanctioned clients¹⁰¹ also raise the question of the efficacy of sanctions in general, and whether there are other more appropriate and effective ways to encourage and to support working, as discussed in the next section.

IV. DO SANCTIONS WORK?

Sanctions are based on the premise that poor women will change their work behavior to avoid the loss of all or part of their welfare grant.¹⁰² Implicit in this approach are two assumptions: that low-income women have poor attitudes towards work, and that financial penalties will alter their behavior. These assumptions, that poor women's work habits are suspect and that they must be compelled to work, have been the subject of scholarly debate for many decades. Conservatives generally believe that a poor work ethic, a lack of personal responsibility, and an unhealthy dependence on government benefits are the primary causes of poverty.¹⁰³ Their solution is to require work in exchange for benefits. Conversely, liberals argue that the behavior of labor markets, rather than the behavior of individuals, is to blame.¹⁰⁴ PRWORA's rules on sanctions and work participation embodies the conservative view, although the law seeks to help women achieve self-sufficiency by providing child care, some training opportunities, and other supportive services.

These opposing views of the causes and cures for welfare dependency have replicated themselves in the debate over whether welfare reform has been effective. Certain facts, however, are incontrovertible. The welfare rolls have declined. In 1996, the year the welfare reform act was enacted, nearly 4.5 million families received assistance, whereas in June 2003, that number stood at a little over 2 million.¹⁰⁵ More poor women, including those who have historically relied on welfare, are working. Between 1989 and 2000 the labor force participation of these women went from close to thirty percent to close to fifty-seven percent, with the sharpest increases coming after welfare reform.¹⁰⁶ Child

101. See discussion *supra*, in Part II C.

102. As discussed *supra* in note 2, sanctions disproportionately affect women, as 90% of the recipients of public assistance are women. Therefore, the word "women" is used interchangeably with "recipients" throughout this article.

103. For a discussion of this view of poverty by its proponents, see LAWRENCE M. MEAD, *THE NEW POLITICS OF POVERTY* (1992); LAWRENCE M. MEAD, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP* (1986); CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980* (1984).

104. For a discussion of the connection between public assistance programs and the labor market, see PIVEN & CLOWARD, *supra* note 10. For a discussion of the political and ideological currents underlying changes in public assistance programs over the years, see Hugh Hecla, *The Politics of Welfare Reform in THE NEW WORLD OF WELFARE* 169-200 (Rebecca Blank & Ron Haskins eds., 2001). See generally ABRAMOVITZ, *supra* note 3, for a feminist perspective on welfare reform.

105. U.S. Dep't. of Health and Human Servs., Aid to Families with Dependent Children (AFDC) and Temporary Assistance for Needy Families (TANF), Average Monthly Families and Recipients for Calendar Years 1936-2001, <http://www.acf.dhhs.gov/news/stats/3697.htm> (last visited Sept. 25, 2005). U.S. Dep't. of Health and Human Servs., TANF Caseloads Reported as of 12/02/03, http://www.acf.hhs.gov/news/press/2003/mar03_jun03.htm (last visited Sept. 25, 2005).

106. Blank & Schmidt, *supra* note 4, at 73.

poverty rates have also declined from 37.7% in 1996 to 34.5% in 2003.¹⁰⁷ Thus, it would appear that more poor women are working and less of their children are poor.

However, behind these numbers is another set of questions. Did welfare reform, or the economy, or both contribute to the increase in work and decrease in poverty rates? If welfare reform was the cause, was the change brought about by the reform's punitive aspects (sanctions and time limits), its supportive aspects (child care, work incentives, and other services), or both? How large a role did other anti-poverty policies play, such as the Earned Income Tax Credit (EITC) or the increase in the national minimum wage?¹⁰⁸ Sorting out the answers to these questions has been difficult because these factors are so closely related.

It is clear that economic forces and policy changes unrelated to welfare reform were at least partially responsible for increased employment among poor women, especially during the robust economy when welfare reform was implemented. During these robust years, which lasted until 2001, unemployment reached historic lows, and jobs were being generated for low-skilled workers at increased wage rates, especially for women.¹⁰⁹ In addition, policy changes including the substantial expansion of the EITC in the first half of the 1990s and the increase in the minimum wage in the late 1990s, also made work more attractive and profitable for the poor.¹¹⁰ Many women on welfare have previously worked, and use welfare as a transitional program until they obtain new work, while other long-term users cycle between work and welfare.¹¹¹ The expansion of the economy and policy changes made it easier for both short term and long term recipients to cycle off, and to stay off, welfare.

However, there is also evidence that even during the economic expansion, welfare reform played a role in the work increase, although it is not clear how much and which aspects of the reform contributed to the increase. States with stronger work incentives¹¹² had a four percent higher rate of increase in labor force participation among single mothers than states with weak work incentives.¹¹³ However, these strong work incentives included a mix of the coercive (time limits and sanctions) and the supportive (high earnings disregards).¹¹⁴ One study found that PRWORA's punitive requirements—work

107. U.S. Census Bureau, Historical Poverty Tables, Table 11: Related Children as a Proportion of the Poverty Population by Race and Hispanic Origin: 1959-2003, <http://www.census.gov/hhes/www/poverty/histpov/hstpov11.html> (last visited Sept. 25, 2005).

108. The EITC is a refundable tax credit that decreases tax liability for low-wage workers, and acts as a supplement to wages for the poorest workers. By 2000, the EITC program was larger than TANF, Food Stamps, or SSI. Blank & Schmidt, *supra* note 4, at 86. In addition, in 1999, the minimum wage was increased to \$5.15. *Id.*

109. *Id.* at 75.

110. *Id.* at 96.

111. Welfare caseloads include short-termers, who use welfare for transitional assistance, and long-termers, who move on and off the rolls in any given year. Bane & Ellwood, *supra* note 10, at 40-41.

112. Strong work incentives include low benefits, high earnings disregards, strict sanctions, and shorter time limits.

113. Blank & Schmidt, *supra* note 4, at 83.

114. Earned income disregards are the amount of work income recipients get to keep without the income being applied against their grant. Rather than reducing benefits dollar-for-dollar, for every

requirements and time limits—accounted for seventeen percent and ten percent respectively of the increased participation in the workforce among single mothers.¹¹⁵ The study also found that other key economic and policy variables had a much larger effect, including the EITC (thirty-three percent) and macroeconomic changes (twenty-five percent).¹¹⁶ In contrast, a study by the Council of Economic Advisors that looked at caseload declines between 1996 and 1998 attributed a large share of the decline, one-third, to welfare reform and only eight to ten percent to the labor market.¹¹⁷

Not only have there been very few studies that look specifically at the role of sanctions in welfare reform, but such studies have produced mixed results. For example, one study found that sanctions are associated with exits from welfare due to employment.¹¹⁸ However, studies that looked more specifically at whether sanctions caused clients to comply with the work rules when on welfare, found that sanctions did not lead to compliance.¹¹⁹ The authors in one such study concluded that it was the “clients’ circumstances and abilities to understand the rules, rather than unwillingness to meet the requirements, that was the cause of the noncompliance,” and further suggested that “intensive outreach and services may generate better results than sanctions.”¹²⁰ However, since the possible deterrent effect of sanctions is not measurable, it is difficult to determine the actual role of sanctions in welfare reform.

The economic downturn that began in 2001 also has not fully resolved the debate over whether it is the economy or welfare reform, specifically sanctions,

dollar earned, states have adopted various and more generous disregards in order to incentivize women to work while on welfare. Blank & Schmidt, *supra* note 4, at 81. Only three states do not provide such disregards (Arkansas, Indiana, and Wisconsin). GRETCHEN ROWE & VICTORIA RUSSELL, THE URBAN INST., THE WELFARE RULES DATABOOK AS OF JULY 2002 72, 74-75 (2004), available at <http://www.urban.org/template.cfm?Template=/TaggedContent/ViewPublication.cfm&PublicationID=9082&NavMenuID=95>. See *id.* for a description of each state’s disregard.

115. HANMING FANG & MICHAEL P. KEANE, ASSESSING THE IMPACT OF WELFARE REFORM ON SINGLE MOTHERS 9 (2004), available at http://cowles.econ.yale.edu/lec_lun/2004/keane-040505.pdf#search='ASSESSING%20THE%20IMPACT%20OF%20WELFARE%20REFORM%20ON%20SINGLE%20MOTHERS'.

116. *Id.*

117. COUNCIL OF ECON. ADVISORS, ECONOMIC EXPANSION, WELFARES REFORM, AND THE DECLINE IN WELFARE CASELOADS: AN UPDATE 2 (1999).

118. SANDRA L. HOFFERTH ET AL., POPULATION STUDIES CTR. AT THE INST. FOR SOC. RESEARCH, UNIV. OF MICH., EXITING WELFARE IN THE 1990S: DID PUBLIC POLICY INFLUENCE RECIPIENTS BEHAVIOR? 15 (2000), available at <http://www.psc.isr.umich.edu/pubs/pdf/rr01-469.pdf>. See also Lawrence M. Mead, *Welfare Reform in Wisconsin: The Local Role*, 33 ADMIN. & SOC. 523 (2001) (finding that policy changes, including sanctions and organizational reforms, are responsible for the success of welfare reform in Wisconsin).

119. GAYLE HAMILTON & SUSAN SCRIVENER, MANPOWER DEMONSTRATION RESEARCH CORP., PROMOTING PARTICIPATION: HOW TO INCREASE INVOLVEMENT IN WELFARE-TO-WORK ACTIVITIES 29 (1999), available at http://www.wkcf.org/Pubs/Devolution/MDRC_Promoting_participation_how_to_increase_involvement_in_welfare_to_work_activities_00331_02849.pdf#search='HOW%20TO%20INCREASE%20INVOLVEMENT%20IN%20WELFARETOWORK%20ACTIVITIES' (finding that in programs that required clients to participate rather than making it optional and where participation was monitored, high sanctioning rates did not increase participation). See also FEIN & LEE, *supra* note 45, at 38. (finding that severe penalties did not induce compliance with work rules in Delaware’s welfare program).

120. FEIN & LEE, *supra* note 45, at 38-39.

that increased poor women's participation in the labor market. There are fewer single-adult households (composed primarily of women) working full-time, and more such households not working at all in 2003 than there were in 2000, indicating the sensitivity of welfare reform to the economy.¹²¹ In addition, the poverty rate for single-adult households has also increased. However, so far the increase has been slight (from 34.6% to 37.7% between 2000 and 2003) and less than in past recessions, perhaps indicating the continuing influence of welfare reform.¹²²

In sum, welfare reform, economic fluctuations, and policy changes are all contributing factors to the increase in poor women's labor force participation, but it is impossible to determine precisely which variable is primarily responsible. While welfare reform has mandated work, it is also the first time that the entire welfare system was revamped to promote it. Along with sanctions, support for work is also provided on an unprecedented scale. Moreover, it is likely that all of these variables have a synergistic effect. For instance, sanctions may compel women to work, but the increased availability of child-care funds makes it easier for them to do so.

However, the fact that more women are working and fewer are relying on welfare is not the end of the inquiry. The next question is whether working has improved the financial well-being of women who left welfare. Scholars can provide some definitive and refined answers about how such women are doing, especially those in sub-populations among welfare users. Since welfare reform, many states and independent researchers have conducted "welfare leaver" studies, which follow former welfare clients over time to see how they are fairing.¹²³

These studies have found that a majority of women leaving welfare, as many as two-thirds, including those who have been sanctioned, do find work.¹²⁴

121. Between 2000 and 2003, the share of households generating full-time, full-year work dropped from 57% to less than 50%, while the share of households with no work rose from 11.2% to 16.4%. GREGORY ACS ET AL., THE URBAN INST., HOW HAVE HOUSEHOLDS WITH CHILDREN FARED IN THE JOB MARKET DOWNTURN? 2 (2005), available at http://www.urban.org/UploadedPDF/311163_A-67.pdf.

122. *Id.* at 3. For example, the poverty rate of single mothers in 1994, during a recession, was 44%. U.S. Census Bureau, Historical Poverty Tables, Table 4: Poverty Status of Families, by Type of Family, Presence of Related Children, Race, and Hispanic Origin: 1959 to 2003, <http://www.census.gov/hhes/poverty/histpov/hstpov4.html> (last visited Feb. 4, 2006).

123. The Office of the Assistant Secretary for Planning and Evaluation (ASPE) within the U.S. Department of Health and Human Services commissioned more than thirty studies of welfare leavers. States and various nonprofit research organizations also did several studies—some of individual states and others more national in scope.

124. PAMELA LOPREST, THE URBAN INST., FAMILIES WHO LEFT WELFARE: WHO ARE THEY AND HOW ARE THEY DOING? 8 (1999), available at <http://www.urban.org/UploadedPDF/discussion99-02.pdf>. This statistic is consistent with a number of U. S. Department of Health and Human Services-funded and state-level studies which have also found that about approximately 60% of clients who leave welfare are employed. See also GREGORY ACS & PAMELA LOPREST, UPIOHN INST. FOR EMPLOYMENT RESEARCH, LEAVING WELFARE: EMPLOYMENT AND WELL-BEING OF FAMILIES THAT LEFT WELFARE IN THE POST ENTITLEMENT ERA 7 (2004); SHARON PARROT, CTR. ON BUDGET AND POLICY PRIORITIES, WELFARE RECIPIENTS WHO FIND JOBS: WHAT DO WE KNOW ABOUT THEIR EMPLOYMENT AND EARNINGS? (1998), available at <http://www.cbpp.org/11-16-98wel.htm> (for a review of the various leaver studies).

However, women who leave welfare, even for work, fare only marginally better, or are worse off, than when they were on welfare. Most former welfare recipients tend to cluster in the service sector, where wages are low, jobs are unstable, and employers rarely provide health care and other benefits.¹²⁵ In one 1999 national study of post-welfare workers, the median wage was only \$6.61.¹²⁶ This transition from welfare to work often results in only a few hundred dollars more a month and increased work expenses for the former recipient.¹²⁷ Many welfare leavers have thus joined the ranks of the working poor, with incomes below the poverty line.¹²⁸ In addition, these welfare leavers find it difficult to increase their earnings over time.¹²⁹

While welfare reform is gender neutral on its face, it also perpetuates existing gender-based inequities in the workplace. Many former recipients, the vast majority of whom are female, work in low-wage and low-end jobs in often female dominated service sectors.¹³⁰ Because welfare reform emphasizes a work-

125. PARROT, *supra* note 124, at 15-20. See also HEATHER BOUSHEY & DAVID ROSNICK, CTR. FOR ECON. & POLICY RESEARCH, FOR WELFARE REFORM TO WORK, JOBS MUST BE AVAILABLE (2004), http://cepr.net/publications/welfare_reform_2004_04.htm (finding that approximately two-thirds of former recipients work in service sector jobs, such as retail, eating and drinking establishments, and personal care services).

126. See LOPREST, *supra* note 124, at 12. (finding also that 25% are earning more than \$8.00 an hour and another 25% are making less than \$5.29 an hour).

127. See MARIA CANCIAN ET AL., UNIV. OF WIS.-MADISON, BEFORE AND AFTER TANF: THE ECONOMIC WELL-BEING OF WOMEN LEAVING WELFARE 77 (1999) (finding in Wisconsin that one year after leaving welfare between 55% and 60% had incomes \$1,000 less than the previous year, while only about 30% had more income). See also Robert Moffitt & Katie Winder, *Does it Pay to Move from Welfare to Work? A Comment on Danziger, Heflin, Corcoran, Oltmans, and Wang*, 24 J. POL'Y ANALYSIS & MGMT. 399 (2005) (finding income gains of \$150 to \$227 or 14% to 21% between working leavers and nonworking stayers in the three cities of Boston, Chicago and San Antonio); but see Sheldon Danziger & Hui-Chen Wang, *Does it Pay to Move from Welfare to Work? Reply to Robert Moffitt and Katie Winder*, 24 J. POL'Y ANALYSIS & MGMT. 411, 416 (2005) (finding that in Michigan working nonleavers do better than when on welfare, and earn more per additional hour of work than those that combine work and welfare, although the gains are small).

128. ACS & LOPREST, *supra* note 124, at 8 (finding that about 40-50% of leaver families live in poverty); CANCIAN et al., *supra* note 127, at 34 (finding that 63-74% of leavers had incomes below the poverty line); PARROT, *supra* note 124, at 10 (finding that earnings of former recipient parents fall well below the poverty line in all of the states studied).

129. See Melissa Wavelet & Jacquie Anderson, *Promoting Self-Sufficiency: What We Know About Sustaining Employment and Increasing Income among Welfare Recipients and the Working Poor*, 22 FOCUS (SPECIAL ISSUE) 56 (2002) (noting that job advancement among low wage workers, and especially among those without a high school education, is very limited). See also JULIE STRAWN, CTR. FOR LAW & SOC. POLICY, WHY CONGRESS SHOULD EXPAND, NOT CUT, ACCESS TO LONG-TERM TRAINING IN TANF 2 (2004), available at http://www.clasp.org/publications/TANF_Postsec.pdf (noting that former recipients in low wage jobs experience little earnings growth).

130. About two-thirds of former recipients work in service sector jobs, such as retail, eating and drinking establishments, and personal care services. See BOUSHEY & ROSNICK, *supra* note 125. Service sector jobs are often predominantly female; for example, in 2004, 91.8% of nursing, psychiatric, and home health aid workers were women, as were 89.7% of all maids and housekeeping cleaners. U.S. Dep't of Labor, Women's Bureau, 20 Leading Occupations of Employed Women 2004, <http://www.dol.gov/wb/factsheets/20lead2004.html> (last visited Feb. 4, 2005). These jobs are among the lowest paying of all occupations; for example the median hourly wage for personal care and service occupations is \$8.59 an hour. U.S. Dep't of Labor, Bureau of Labor Statistics, November 2003 National Occupational Employment and Wage Estimates Personal Care

first approach rather than training or education, few women gain the skills and education needed to advance to better-paying jobs.¹³¹ The emphasis on work also makes it difficult for these women, most of whom are single parents, to balance their dual roles of worker and parent.¹³² The increased hours women must work when on welfare (thirty), and when they leave welfare to obtain sufficient monies for basic needs no longer covered by welfare, leaves less time for caring for children.

An increased number of women who have left welfare are also in deep poverty—their incomes are below one-half the poverty level.¹³³ A quarter or more leavers have difficulty paying their bills and providing for basic needs, such as food and housing.¹³⁴ The decline in the economy over the last few years has worsened the situation. Among the population of low-income single parent households, most of which are headed by women,¹³⁵ there has been a growth in poverty and low incomes between 2000 and 2003.¹³⁶

Further, a substantial sub-population of welfare leavers is especially vulnerable because they are no longer on welfare and are not working. About a quarter of leavers fall into this category.¹³⁷ These women have multiple disadvantages, both personal and logistical, that make work difficult. These disadvantages include illness or disability, limited education and work experience, and a lack of transportation and child care.¹³⁸ The barriers faced by

and Service Occupations, http://www.bls.gov/oes/2003/november/oes_39pe.htm (last visited Feb. 4, 2005).

131. STRAWN, *supra* note 129, at 1 (noting that that women with an associates degree earn twice as much as those with a high school diploma); Wavelet & Anderson, *supra* note 129, 56-7 (noting that a college education is increasingly needed to obtain a better paying job). Federal law limits vocational training to one year, which precludes college and many other long-term training programs, and also limits the percentage of recipients who can participate in such programs. Many women need more than a year to complete remedial classes and occupational certificate programs. STRAWN, *supra* note 129, at 2.

132. IRV GARFINKEL & SARAH McLANAHAN, *SINGLE MOTHERS AND THEIR CHILDREN* (1988).

133. Ron Haskins, *Reform, Family Income, and Poverty*, in *THE NEW WORLD OF WELFARE* 103, 128 (Rebecca Blank & Ron Haskins eds., 2001).

134. ACS & LOPREST, *supra* note 124, at 8.

135. 78% of single parent households are headed by women. TERRY LUGAILA & JULIA OVERTURE, U.S. CENSUS BUREAU, *CHILDREN AND THE HOUSEHOLDS THEY LIVE IN: 2000* (2004), available at <http://www.census.gov/prod/2004pubs/censr-14.pdf>.

136. See GREGORY ACS ET AL., *THE URBAN INST., HOW HAVE HOUSEHOLDS WITH CHILDREN FARED IN THE JOB MARKET DOWNTURN?* 3 (2005), available at http://www.urban.org/UploadedPDF/311163_A-67.pdf (finding an increase in poverty rates for single adult households from 34.6% to 37.7% between 2000 and 2003 with the share of low incomes increasing from 62.9% to 65.4%).

137. See LOPREST, *supra* note 124, at 14 (finding that about a quarter of leavers are not working and do not have a working partner or spouse); LESLEY TURNER ET AL., *UNIV. OF MICH., FAILING THE TRANSITION FROM WELFARE TO WORK: WOMEN DISCONNECTED FROM WORK WELFARE, AND OTHER SOURCES OF ECONOMIC SUPPORT* (2004), available at <http://www.fordschool.umich.edu/research/poverty/pdf/disconnected-april04.pdf> (finding that approximately 25% of leavers are not working, receiving cash assistance or other sources of economic support).

138. LOPREST, *supra* note 124, at 15 (finding that more than a quarter reported they were ill or disabled, 12% reported problems with transportation or child care, and 15% reported that they were unable to find a job); TURNER et al., *supra* note 137, at 6 (finding the following barriers among this population: children with health problems, less than a high school education, few work skills, no car or drivers' license, reading scores at the fifth grade level or lower, and a learning disability).

time, a multitude of factors, including upturns in the economy and policy changes such as the EITC, along with welfare reform, have resulted in an increased number of poor, formerly welfare-reliant, working women. While some of these gains have diminished as the economy has faltered, there are still fewer women on welfare and more women working than before the reforms. However, many of these women are poorly paid and struggling to meet their family's basic needs despite their increased work efforts. This predicament negates many of the purported gains associated with recent welfare reforms.

Policy-makers need to address these problems by enacting changes both internal and external to the welfare system. Outside the welfare system, low wages need to be supplemented and improved through such mechanisms as the EITC and living wage laws.¹⁴³ Within the welfare system, the emphasis should be shifted from the current "work first" approach to an approach based on training and education, which will lead to better-paying jobs. Additional supports and incentives that facilitate and reward work, such as child care and transportation are also crucial. These "carrots," rather than the "sticks" of sanctions, should be emphasized.

Welfare offices should also take measures to prevent the sanctioning of families who are unable, rather than unwilling, to comply with "work first" provisions. These measures should create better tools for assessing and addressing barriers to work, so that these families are supported rather than sanctioned. Further, welfare offices should more effectively weed out arbitrary and inappropriate sanctions.¹⁴⁴ Welfare reform can only truly be judged a success when support, rather than sanction, is its guiding philosophy, and when the most disadvantaged women are not forced to endure punitive hardships on their way to self-sufficiency.

143. See Jared Bernstein, *The Living Wage Movement: Pointing the Way Toward the High Road*, VIEWPOINTS, July 17, 2000, available at http://www.epi.org/content.cfm/webfeatures_viewpoints_lw_movement (discussing living wage laws, which attempt to increase the pay of low-income workers above the poverty level).

144. The National Council on Disability suggests that these changes be made through federal law. The Council proposes that the law be amended to prohibit the state from sanctioning a family unless they take steps to identify barriers, provide the family with help in complying, and modify the rules for disabled parents or children, so that the family can comply. The Council also suggests that all states be required to have pre-sanction review procedures to avoid erroneous and inappropriate sanctions. See generally, NAT'L COUNCIL ON DISABILITY, TANF & DISABILITY: IMPORTANCE OF SUPPORTS FOR FAMILIES WITH DISABILITIES IN WELFARE REFORM (2003), available at <http://www.ncd.gov/newsroom/publications/2003/pdf/familysupports.pdf#search=',%20IMPOR TANCE%20OF%20SUPPORTS%20FOR%20FAMILIES%20WITH%20DISABILITIES%20IN%20WELFARE%20REFORM'>.