

# REFORMING THE WELFARE SYSTEM: THE FAMILY SUPPORT ACT OF 1988\*

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## GENERAL INTRODUCTION

In late September of 1988, the 100th Congress of the United States sent to the President a bill to reform the welfare program. And on October 13, 1988, the President signed this bill, making it Public Law 100-485, the Family Support Act of 1988.

The welfare reform legislation marked a turning point for our nation's system of welfare for families with children, a system that had been in existence for over 50 years. It came into being with the 1935 enactment of the Social Security Act.<sup>1</sup> For at least half of that 50-plus years of the welfare system's existence, our society has recognized a serious need for reforming it, but until 1988 we had been unable to achieve that reform.

The Family Support Act of 1988 is, thus, not only the culmination of two years of difficult legislative development and bargaining over a particular bill. It is the culmination of a quarter century of searching for a workable consensus as to what was wrong with the welfare system and how it could best be repaired.

Why were we able in the 100th Congress to achieve a goal that had eluded our predecessors?

If I had to choose a single answer, it would be the recognition that our nation can no longer afford the wastefulness of a system which writes off the productive capacities of a significant segment of the population. If we are to maintain our role as a major economic competitor in today's world, we must be willing to invest not only in technology but also in our human resources.

There are many other factors which also contributed to our ability in 1988 to enact a welfare reform bill into law. We were able to build our comprehensive restructuring of the welfare system on a foundation which had been laid by some of the piecemeal reforms of prior Congresses, such as 1975 legislation which enhanced child support enforcement<sup>2</sup>, and 1981 legislation which provided for demonstration projects relating to work incentives for those on welfare.<sup>3</sup> We

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

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1. Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620, 42 U.S.C. § 301 et seq.

2. Federal Child Support Enforcement Act of 1975, Pub. L. No. 93-647, 88 Stat. 2351, 2351-2358 (amending the Social Security Act of 1935, 42 U.S.C. § 651 et seq.).

3. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, §§ 2301-2321, 95 Stat. 357, 843-60 (amending the Social Security Act, 42 U.S.C. §§ 601-10).

were able to make use of many research efforts undertaken over the past several years. These did not, by any means, provide all the answers we wanted, but they did give us confidence that we were heading in the right direction. And we were able to develop an effective political consensus on this matter by drawing upon the support and thoughtful analyses of several groups and organizations including, particularly, the National Governors' Association.

And what have we achieved?

The primary objective of the old welfare system was to provide aid to the dependent child and his family. The primary objective of the reformed system is to offer that family the hope and the means of achieving independence.

Under the newly reformed welfare system, the presumption is that the family should and can be self-supporting. We have strengthened the child support enforcement system so that families will not have to become dependent when there is a working parent who is able to fulfil the normal parental obligation of support. If support from an absent parent cannot be obtained or is insufficient, aid will be provided. But, to the maximum extent that resources can be found, that aid will be coupled with the tools—education, training, child care and other services—needed to assure that dependence on public aid will be a temporary condition leading to restored self sufficiency.

### THE QUEST FOR WELFARE REFORM

The United States' welfare program for children—Aid to Dependent Children (later renamed Aid to Families with Dependent Children)—was born in the Great Depression of the 1930's as a part of the original Social Security Act of 1935.<sup>4</sup> At the time, the typical recipient was a child whose father had died. The objective of the new program was to make it possible for the widowed mother of that child to continue to care for him or her in the child's own home. The continuing dependency of that family on public aid was assumed as a regrettable but necessary reality. There was no hope or expectation that the mother would find, or even seek, employment.

By 1962, it was clear that society had changed, but the program had not. In reporting legislation that year, congressional committees took note of this situation:

. . . public welfare programs today are being called upon to deal with problems which have very different characteristics from those that existed in the 1930's. . . . Today's families on the aid to dependent children program have substantially more social problems than those on the rolls 20 years ago and it is clear that many of those problems cannot be solved solely by the dispatch of a monthly welfare check.<sup>5</sup>

The quest for welfare reform was on. But widespread recognition that the welfare system was outdated and in need of reform did not easily translate into a consensus about what changes would constitute reform. This is because welfare of any kind evokes a fundamental conflict among deep-seated America values and sentiments. Ours is a nation born on Independence Day, and we are very

4. Social Security Act of 1935, Pub. L. No. 74-271, §§ 401-06, 49 Stat. 620, 627-29, 42 U.S.C. §§ 601-06.

5. H.R. Rep. No. 1414, 87th Cong., 2d Sess. (1962).

distrustful of anything that seems to promote a state of dependency. But we are also a generous nation with a sense of obligation towards those who are helpless and unfortunate.

Some thus looked at the welfare system and believed reform should involve providing a more generous level of assistance and extending the system's coverage to those who did not already qualify. Others felt that expanding benefits would increase dependency unless effective means could be found to move recipient families into productive employment.

In the 1960's and 1970's, several attempts were made to develop welfare reform packages which would compromise the differing views of what constituted reform; but none succeeded in winning sufficient support.

While comprehensive reform proved elusive, Congress did enact a number of piecemeal reforms which helped to pave the way for 1988's more thorough approach. The 1967 Work Incentive program established the principle that welfare aid should be coupled in some way to employment programs.<sup>6</sup> The 1974<sup>7</sup> and 1984<sup>8</sup> child support amendments gave families important tools to obtain support from responsible parents before seeking public aid. The Earned Income Tax Credit<sup>9</sup> helped to make employment for low-income families a more attractive alternative to welfare. The 1981 laws providing for work incentive demonstrations and community work experience programs allowed states the flexibility to try out various promising approaches to welfare reform.<sup>10</sup>

### SETTING THE STAGE

In 1987, I was elected by the Senate to be Chairman of the Committee on Finance, which has jurisdiction over the laws governing the United States' welfare programs. It seemed to me that the time had finally come when an attempt at comprehensive welfare reform might succeed.

By the end of 1986, several organizations—including the organization representing state welfare administrators—had released careful studies analyzing the welfare system and making recommendations for its reform. In early 1987, the National Governors' Association had also undertaken a thorough review of this issue and released a major policy statement on it. The President, moreover, had announced in his State of the Union Address that the reform of the welfare system would be a major objective of his final two years in office.<sup>11</sup>

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6. Social Security Act Amendments of 1967, Pub. L. No. 90-248, § 204, 81 Stat. 821, 884-92, 42 U.S.C. §§ 602,604.

7. In 1974, Congress amended the Social Security Act by adding Title IV-D, which required the federal government to play a more active role in child support enforcement. See 42 U.S.C. §§ 651-62 (1982). See also Note, *Child Support Enforcement*, 19 SUFFOLK U.L. REV. 687, 692-696 (1985).

8. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (codified as amended in scattered sections of 42 U.S.C.).

9. I.R.C. § 32 (1988).

10. See *supra* note 5.

11. On January 27, 1987, President Reagan in his State of the Union Message called on Congress to enact welfare reform. His proposed reform package was to include a new work, education and training program for welfare recipients and large scale demonstration projects to test state and local welfare reform ideas. H.R. Report No. 159, 100th Cong., 1st Sess., pt. 1 at 37 (1987).

When I began as Chairman of the Committee on Finance, we had a true expert on welfare reform serving as Chairman of our Subcommittee on Social Security and Family Policy. This was Senator Daniel Patrick Moynihan of New York. Senator Moynihan had devoted much of his life to this issue and had been deeply involved, both as a Senator and as an official of the executive branch, in previous attempts to enact comprehensive welfare reform.

### ENACTING WELFARE REFORM

Early in 1987, Senator Moynihan began a series of hearings before his Subcommittee on the topic of welfare reform,<sup>12</sup> and I followed up on these with hearings before the full Committee on Finance.<sup>13</sup> It was clear that there was a much greater consensus than ever before on the need and general direction of welfare reform. We had particularly strong support from the nation's governors who would, after all, be responsible for implementing welfare reform or—if Congress failed them—for continuing to run the old, unreformed system.

At the same time, it was clear to me that we had serious obstacles to overcome. While there was more consensus than perhaps ever before on the need for welfare reform, there remained deep divisions on many issues. Some witnesses at the hearings felt that any welfare reform plan must include significant expansions of benefits. Others opposed such expansions. Controversy still existed over the issue of requiring mothers to participate in employment programs, over the use of certain types of work programs, and over the question of whether mothers with very young children should be exempt or whether, on the contrary, they were the ones most likely to benefit from mandatory participation in education and training activities.

And there was the budgetary situation. In the long-run, a successful program of welfare reform will reduce dependency and lower welfare costs. In the short run, new initiatives require the investment of new resources. But we were operating in an environment of massive budget deficits. As Chairman of the Committee on Finance, I would not report out a bill that would increase that deficit. The new initiatives in welfare reform would have to be developed within the constraints of the new financing we could find to pay for them.

Despite these very serious obstacles, we were able to develop a welfare reform package and see it through the rough road to enactment.

The Committee on Finance approved the legislation in early 1988. With further amendments adopted on the Senate floor, the Senate passed the bill on June 16, 1988 by a vote of 93 to 3. This set the stage for long and difficult negotiations with the House of Representatives, which had previously passed its own bill. The ultimate objectives of the two bills were similar, but there were great differences of detail and a vast difference in cost.

Between June and August, we made several unsuccessful attempts to reconcile the differences between the House and Senate, and to do so in a way that would

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12. *Welfare: Reform or Replacement?: Hearings on S.1511 Before the Subcomm. on Social Security and Family Policy of the Senate Comm. on Finance, 100th Cong., 1st Sess. (Feb. 1987).*

13. S. Rep. No. 377, 100th Cong., 1st Sess. (1988) was developed by the Committee on Finance to discuss S. 1511, the Senate welfare reform bill. On June 13-16, 1988, the Senate considered S. 1511 but vacated proceedings on it and passed amended H.R. 1720, the bill which was eventually passed into law.

not result in a Presidential veto. By the start of the congressional August recess, no agreement had been reached and there was, I think, some doubt that agreement was possible. But this was too rare and important an opportunity for us to let it slip through our fingers. We tried again in September, and we succeeded. We achieved a compromise which passed both the House and Senate by a larger vote than had the original House and Senate bills.<sup>14</sup> Finally, on October 13, this welfare reform bill was signed into law by the President.<sup>15</sup>

### THE ELEMENTS OF WELFARE REFORM

A major piece of legislation is composed of many different provisions—some major, some minor. It is beyond the scope of this Article to provide a comprehensive description of all the details of the Family Support Act of 1988. But the major elements of that Act were all designed to serve the same overall purpose—a redirection of our welfare system in ways that would help recipients attain self-sufficiency.

#### Child Support

The first title of the welfare reform bill is composed of a series of amendments to the child support enforcement statutes.<sup>16</sup> The most significant of these amendments requires that, absent good cause or a joint agreement to the contrary, child support orders must provide for the support to be collected by withholding from wages.<sup>17</sup> States are also required to establish and use guidelines for setting child support awards and to adopt procedures for periodically reviewing the adequacy of awards.<sup>18</sup>

In many ways, the most significant child support enforcement laws had already been enacted in earlier legislation passed in 1975 and 1984. It was important, however, for the welfare reform package to endorse and build on that earlier foundation.

Children are entitled to be supported by their parents. Therefore, society's first line of assistance for children should be to make sure that parents who are able to do so live up to that obligation.

#### Job Opportunities and Basic Skills Training Program

The heart of the welfare reform bill is the new Job Opportunities and Basic Skills Training (JOBS) program.<sup>19</sup> Each state is required to establish a program of education, training, and employment aimed at helping families to avoid long-term welfare dependence. There are several key elements to the JOBS legislation:

*Administration.*—Basic administrative responsibility for the JOBS program is assigned to the state welfare agency. While this may sound like a rather technical detail, we felt that it was essential for the administrative structure to

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14. H.R. Rep. No. 998, 100th Cong., 2d Sess. (1988), the Conference Report accompanying H.R. 1720, was passed by a vote of 96 to 1 in the Senate and 347 to 53 in the House of Representatives.

15. See *supra* note 1.

16. 42 U.S.C. §§ 405, 503-04, 602, 652-53, 657-58, 666-69 (Supp. 1989).

17. 42 U.S.C. § 666 (Supp. 1989).

18. 42 U.S.C. §§ 666-67 (Supp. 1989).

19. 42 U.S.C. §§ 602-03, 607, 609, 614, 671, 681-87, 1396s (Supp. 1989).

reinforce the programmatic intent. The welfare system is no longer designed to foster dependency. Instead, it is responsible for helping individuals to attain the skills necessary to become self-supporting.

*Program content.*—States are required to make available a wide variety of services and activities including education, training, and job-based activities.<sup>20</sup> The needs of participants will be assessed by the welfare agency, and the agency will develop an employability plan in consultation with the participant.<sup>21</sup> The legislation places special emphasis on education and generally requires states to enroll parents under age 20 in educational activities if they are not high school graduates.<sup>22</sup>

If we are going to succeed in moving individuals off of welfare and into employment, we will have to be able to deal with their individualized needs. This will require a variety of different strategies, but above all it will be necessary to make sure they have basic educational skills. Writing this part of the welfare reform legislation was very difficult. We needed to require states to have broad-based, effective programs with adequate emphasis on education. At the same time, we felt it would be inappropriate and counter-productive to try to spell out every detail of what should be included in a state program. States need the flexibility to tailor their programs to fit their own resources, conditions, and populations.

*Target populations.*—States are required to devote at least 55 percent of program funds to serving certain high-priority categories of recipients, chiefly long-term recipients and younger parents who lack a high school diploma or who have little work experience. This requirement is a direct result of research efforts over the past several years.<sup>23</sup>

Analyses of the welfare population indicate that welfare recipients fall into two distinct categories: those who stay on welfare only briefly and those who stay on the rolls for many years. Another body of research has examined state employment and training programs for welfare recipients and found that these programs have often had their biggest payoff among those who were least job ready, that is, among those with little education or work experience.

Unfortunately, this research provides only part of the information we need to know. It gives us some ideas, but it does not tell us exactly how to pinpoint those who are likely to be long-term recipients or how best to serve those who are least job-ready. Consequently, we have established a fairly loose requirement aimed at encouraging states to target their funds in a way which will best serve the goal of reducing long-term dependency without creating a straight-jacket that cannot be justified by the state of the research.

*Funding and standards.*—The legislation establishes an entitlement to federal funding up to specified limits, and it requires states to achieve specified levels of participation. Welfare for families in the United States is neither a federal nor a state program but a federal-state partnership. In the area of employment and training for welfare recipients, neither side has in the past lived up to its part of

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20. 42 U.S.C. § 682(d) (Supp. 1989).

21. 42 U.S.C. § 682(b) (Supp. 1989).

22. 42 U.S.C. § 602(a)(19)(E) (Supp. 1989).

23. 42 U.S.C. § 603(l)(2)(A)-(B) (Supp. 1989).

the bargain. While some states have made commendable efforts, others have done little or nothing. One reason why some states may have been reluctant to get involved is the uncertainty of Federal commitment. The major funding source, the Work Incentive program, has operated as a discretionary appropriation, and funding levels have been severely cut back in recent years.

The new welfare reform law attempts to remedy both sides of this equation. Each state is guaranteed, on an entitlement basis, that it may draw down its share of a specified national amount (\$800 million in fiscal year 1990, rising to \$1.3 billion by fiscal year 1995).<sup>24</sup> On the other hand, to qualify for full federal funding, states must assure that their programs actively involve specified percentages of the potential caseload. This starts with seven percent in 1991 and rises to twenty percent in 1995.<sup>25</sup> This is a modest, but realistic goal which many states should strive to exceed.

### **Benefits**

While the JOBS program was the centerpiece of the new welfare reform law, several significant benefit improvements were also included. But they were included in a way which complements the reform law's objective of using the welfare system to move recipients towards self-sufficiency.

A major stumbling block to prior welfare reform efforts was the issue of benefit eligibility for two-parent families with an unemployed worker. About half the states provided assistance to such families, while the other states, for cost or other reasons, continued to limit eligibility to single-parent families. Proponents of mandating that all states assist two-parent families argued that it was unconscionable to require a father to leave his family so that they may qualify for benefits. Opponents argued that states should not be required, in the name of welfare reform, to expand their welfare rolls to add families who were arguably least appropriate for dependency.

We were able to resolve this very contentious issue by mandating assistance for two-parent families while giving states the flexibility to provide such assistance under a modified program developed by the state of Utah. Utah had designed an alternative program tailored particularly to the situation of two-parent families. This alternative program was set up as a time-limited transitional program with mandatory participation in activities aimed at quickly returning the parents to gainful employment.<sup>26</sup> It met the needs of the families involved at a modest cost and without a significant expansion of the welfare rolls.

Another important benefit change is the expansion of transitional Medicaid coverage and the adoption of transitional child care coverage for families leaving welfare for employment. These are significant new benefits, but they directly and importantly advance the basic objectives of the legislation. If we expected to move families from welfare dependency to gainful employment, we had to face up to the fact that these two needs—for child care and continuing medical care coverage—could pose a substantial barrier to making that move. To address these problems, the Act gives families leaving welfare for work access to subsidized

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24. 42 U.S.C. § 603(k) (Supp. 1989).

25. 42 U.S.C. § 603(l)(3) (Supp. 1989).

26. 42 U.S.C. §§ 602, 607 (Supp. 1989).

child care<sup>27</sup> and Medicaid<sup>28</sup> during their first year off the assistance rolls.

### **WILL IT WORK?**

The Family Support Act of 1988 is a major piece of legislation which fundamentally restructures and redirects our national system of welfare for families. The enactment of this legislation was achieved with difficulty. It required significant compromises on the part of the House and the Senate, Democrats and Republicans, the Congress and the Administration. It reflects a willingness to learn from the mistakes of the past. It makes use of research results but also recognizes their limits.

But, for all that, it was an Act of Congress, not a magic wand. It set goals and objectives and provided guidance and tools. But the really hard part lies ahead. If the legislation is to achieve its promise, the parties that worked so hard to enact it must work equally hard to implement it. The federal government—Congress and Administration—must provide the promised funding levels. And they must oversee the program. The Governors must win from their legislatures the same kind of support they won from the Congress, and they must place a high priority within their state government on meeting the objectives of this new welfare law. The private sector—which was very supportive of this legislation—must cooperate in providing job opportunities and helping to identify appropriate training needs. Welfare administrators, welfare workers, and welfare recipients must each be willing to carry out the obligations and make use of the opportunities which this reformed welfare system presents to them.

This legislation has the potential to improve the lives of some of the neediest families in our society and to do so in ways which will ultimately contribute to a healthier, more productive economy. Our challenge now is to make that potential a reality.

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27. 42 U.S.C. § 602(g)(1)(A) (Supp. 1989).

28. 42 U.S.C. § 1396r-s (Supp. 1989).