

NYU Press

Chapter Title: The Criminalization of Poverty

Book Title: Cheating Welfare

Book Subtitle: Public Assistance and the Criminalization of Poverty

Book Author(s): Kaaryn S. Gustafson

Published by: NYU Press

Stable URL: <http://www.jstor.com/stable/j.ctt9qfttq.7>

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The Criminalization of Poverty

The 1996 welfare reforms were designed, so then-president Bill Clinton said, to “make work pay.” Work, however, was only one of the many areas of life regulated by the welfare reform measure. As a result of the reforms, the federal government and the states instituted a host of policies and practices that equated welfare receipt with criminality; policed the everyday lives of poor families; and wove the criminal justice system into the welfare system, often entangling poor families in the process. David Garland notes that the “themes that dominate crime policy—rational choice and the structures of control, deterrents, and disincentives, the normality of crime, the responsabilization of individuals, the threatening underclass, the failing, overly lenient system—have come to organize the politics of poverty as well” (2001, 196). Current welfare policies were designed to punish the poor; to stigmatize poverty, particularly poverty that leads to welfare receipt; and to create a system of deterrence to keep low-wage workers attached to the labor force.

Other scholars have begun tracing the ways that crime control strategies have seeped into various realms of social life. John Gilliom, for example, traced the emergence of drug testing in the workplace and how it involved a process of “reclassifying largely criminal policies as administrative and colonizing the workplace as a site of surveillance and control” (1996, 119). As another example, Jonathan Simon offers evidence to show how Americans are now “governing through crime”: in other words, using the fear of crime as the “occasion and rationale for governance” (2002, 1418). Both Gilliom and Simon highlight the many ways that crime control mechanisms are becoming part of the normal landscape of daily life. Not only are individuals subject to more intrusive forms of crime control, they are also adopting and perpetuating the measures themselves.

Certainly a vast regulatory and punitive system developed under welfare reform. The welfare policies the states put in place under the block grant system included a broad range of punitive approaches to the poor designed to punish not only poor adults who failed to transition to work but also entire

families where the head of the household failed to live up to governing standards of morality. The reforms ended aid to families as a federal entitlement and allowed states to develop their own eligibility rules.

The influence of criminology on welfare policy is evident not only in the specific policies of welfare reform but also in the rhetoric used in policy development. For example, in the early 1990s the routine experience of a family's leaving the welfare system for work and then returning to the system later was commonly described as "cycling" by welfare researchers. By the early 2000s, however, this experience had been relabeled "recidivism" by the Department of Health and Human Services and was being adopted by social scientists (e.g., Gurmu and Smith 2006). The term *recidivism*, of course, is pejorative and borrowed from criminology, where it is used to describe repeated engagement in crime.

This chapter examines the increasing criminalization of the welfare system and welfare recipients. Because the empirical study was conducted in California, this chapter gives special attention to the welfare policies there.

The Welfare System as a Tool of Law Enforcement

The policing that occurs through the welfare system spans various fields of social life. Current policies are geared to regulating the sexual morality of the low-income mothers, regulating the formations of family and the details of family life, and regulating the labor market. Jacques Donzelot, in his book *The Policing of Families* (1997), borrows Michel Foucault's use of the term *policing*, not "in the limiting, repressive sense we give the term today, but according to a much broader meaning that encompass[es] all of the methods for developing the quality of the population and strength of the nation" (6). It is this expansive definition of policing that is usually used in this book in discussion of welfare policies. In this section, though, the term *policing* is used more specifically to describe policies that reflect a merging of the welfare system and the criminal justice system. Indeed, numerous sections of the federal welfare reform legislation of 1996 and many of the laws and policies implemented by the states as a result embrace both the goals and the methods of the criminal justice system.

For example, the fugitive felon prohibitions, Operation Talon, and the drug felony lifetime ban have little to do with aid to the poor. These rules and programs are essentially new ways for the criminal justice system to make use of welfare administrative data to capture poor individuals who are also wanted by the criminal justice system. Through changes in statutes and practices, then, the welfare system has become an extension of the criminal justice system.

Fugitive Felon Prohibitions

The federal welfare legislation of 1996 included a provision that prohibited any individual who is wanted by law enforcement officials for a felony warrant or for violating the terms of parole or probation from receiving government benefits, including not only TANF benefits but also food stamps, SSI, and housing assistance. According to a report by the U.S. General Accounting Office, “About 110,000 beneficiaries [were] identified as fugitive felons and dropped from the SSI, Food Stamp, and TANF rolls” (2002, 3). While government officials claim that fugitive felon rules remove dangerous criminals from the streets, it is not clear that dangerous criminals are those who are ensnared. According to the GAO report, more than one-quarter of the SSI recipients excluded from aid under the rule were dropped because of parole or probation violations; in more than 37.4 percent of the cases, the offense on the warrant was not indicated in the data (39). Not all parole or probation violations, however, are direct threats to public safety. An individual may have a warrant issued for arrest for parole or probation offenses that, while they may be violations of parole, are not criminal acts. For example, an individual may have a warrant issued for missing a meeting with a parole or probation officer, missing a substance abuse meeting, or being determined to be psychologically unstable.

Thus it is not clear whether this rule is reining in threatening criminals and keeping public housing safe or merely reducing the government costs of providing aid to individuals with outstanding warrants. Excluding felons—even those who have served their sentences—from the full benefits available to citizens without felony convictions certainly draws upon precedents under some state laws. A number of states exclude convicted felons, including those who have completed their sentences, from voting (Manza and Uggen 2006, 74). However, the drug felony exclusion and the fugitive felon rules extend beyond political disfranchisement to encompass deprivations of economic citizenship. While withdrawing the right to vote may have little impact on an individual’s daily life, economic disfranchisement can substantially and detrimentally affect not only daily life but also physical well-being.

The fugitive felon provisions raise several concerns: first, the denial of benefits to needy adults and their children; second, the suspension of procedural rights within the welfare system for individuals who have been involved in the criminal justice system; and third, the denial of economic citizenship.

Operation Talon

The federal legislation also loosened the confidentiality that once protected poor families' personal and financial information. Before 1996, law enforcement officers could access welfare records only through legal process. Now, however, welfare records are available to law enforcement officers simply upon request—without probable cause, suspicion, or judicial process of any kind. Under the federal regulations, both welfare offices and public housing agencies are required to “furnish any Federal, State, or local law enforcement officer, upon the request of the officer, with the current address, Social Security number, and photograph of any recipient of assistance.” This exchange of information is available to law enforcement officials not only when the welfare recipient herself has violated the law but also when an officer believes the aid recipient, or anyone in her household, “has information that is necessary for the officer to conduct an official duty” (7 U.S.C. 2020(e)(8); 42 U.S.C. 1437z).

The information exchange between public assistance files and law enforcement, however, has expanded beyond mere investigatory use. Under a program titled Operation Talon, food stamp offices are used as the sites of sting operations for arresting individuals with outstanding warrants. Under the program, individuals with warrants who receive food stamps typically receive a call telling them to report to a welfare office at a designated time to resolve a problem with their benefits or to receive some kind of bonus. When they show up, an officer from the sheriff's department is waiting to serve the arrest warrant. Thousands of low-income citizens have been rounded up under the program. Between early 1997 and September 2006, Operation Talon led to the arrest of 10,980 individuals across the country (Office of Inspector General 2006).

Operation Talon has made the welfare system an extension of the criminal justice system, transforming welfare offices into traps for hungry lawbreakers. Bayview, the research site for this study, was, in fact, one of the one hundred sites in the country where these sting operations began. While the Inspector General's Year 2000 Update on Operation Talon indicates that some individuals arrested under the program faced charges on violent or serious crimes, many others did not. For example: 31 percent were for offenses known as “Group B offenses,” which are considered less serious (e.g., writing bad checks). And many of the Group A offenses were nonviolent offenses: 11 percent for fraud charges and 10 percent for larceny/theft offenses, categories that may include welfare fraud; 23 percent for drug-related offenses (Viadero

2001, Exhibit A; Office of Inspector General 2000, 6). More than three-fourths of the California warrants were on fraud charges (which include but are not limited to welfare fraud charges) (Office of Inspector General 2000, 6). Thus it is not clear whether this program is protecting public safety by capturing violent criminals or simply providing law enforcement officers a new tool in making easy arrests.

The Drug Felony Lifetime Ban

The federal welfare legislation encourages states to adopt rules excluding adults with drug felony convictions from receiving aid. By December 2001, forty-two states had adopted the drug felony ban either in part or in full, though the number dropped to thirty-two by 2005 (Gustafson 2009, 672). State lawmakers choose the criteria used to determine whether an individual is ineligible for government aid on the basis of a past drug conviction. These criteria vary dramatically.

In fifteen states, including California, all drug-related charges—from possession of small quantities to major trafficking—will disqualify an individual from welfare receipt for life (U.S. Government Accountability Office 2005, 33-34, table 5). Low-income adults with drug records may receive neither cash aid nor food stamps. The other states that exclude convicted drug felons have modified their exclusions in various ways. For example, some of the states disqualify individuals convicted of manufacturing or distributing drugs but allow those who have been convicted of using drugs to remain on aid. Some states allow parents who are participating in or who have completed drug treatment programs to requalify for aid. And in some states adults are ineligible for aid for the first twelve months after incarceration but are eligible thereafter.

As well as anyone has been able to count, approximately ninety-two thousand adults had been removed from the welfare rolls because of felony drug convictions between 1997 and 2002 (Allard 2002, 4). According to data analysis by Patricia Allard at the Sentencing Project, California disqualified 37,825 adults from welfare receipt under the felony drug exclusion between 1996 and 1999 (Allard 2002, 5, table 2), meaning Californians accounted for more than one-third of the adults excluded under the felony drug exclusion nationwide.

While California's TANF program is supposed to make substance abuse treatment available to individuals who need it to become work-ready, it is unlikely that parents with substance abuse problems who know about the

felony drug exclusion will reveal their problems to caseworkers, given the penalties for being arrested with drugs. Rather than deterring welfare recipients from drug use, these rules—assuming they are known and understood by welfare recipients—may have the countereffect of discouraging individuals with drug problems from inquiring about or seeking out help with their problems.

Given the limited knowledge of the elements of welfare reform, it is unlikely most recipients are aware of the felony drug exclusion. This lack of knowledge and the diversity of rules nationwide make it difficult for the felony drug exclusion to serve as a clear deterrent to drug use. In some states the drug exclusion rules are so complex that it is unlikely that any welfare recipients know or fully understand them unless or until they find themselves subject to those rules.

It could be argued persuasively that the drug felony ban is unfair—that it punishes not only parents but also their children. It is a harsh punishment for first-time petty drug offenders. In addition, it is arbitrary to target drug offenders when individuals convicted of other crimes, such as homicide and rape, can receive benefits after serving time. The drug felony lifetime ban, again, makes the welfare system an instrument of the criminal justice system. And here, again, the policies push those who are already economically marginalized to the periphery of society.

Conflating Poverty and Crime

Biometric Imaging and Data Sharing between the Welfare and Criminal Justice Systems

In the late 1990s some federal studies began to examine welfare cheating and welfare overpayments. Some studies found that some individuals might be receiving food stamp benefits in more than one state or collecting cash aid in multiple states (U.S. General Accounting Office 1998; Office of State Systems 1997). Reports also began to surface that government benefits were flowing to men and women who were incarcerated (U.S. General Accounting Office 1997).

The 1996 federal welfare reform legislation required states to institute fraud prevention programs. The legislation did not, however, specify what the fraud prevention programs should look like. The three most populous U.S. states—California, New York, and Texas—as well as some other states—Arizona, Connecticut, Illinois, Massachusetts, and Pennsylvania—instigated biometric imaging, in most cases fingerprint-imaging programs, as

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

While there were several well-publicized California and Illinois cases of double-dipping welfare fraud between 1975 and 1983 (discussed in chapter 2), in all of those cases the welfare recipients had signed up for aid before applicants were required to submit Social Security numbers and before extensive computer verification systems existed. With computerized records and substantial documentation requirements now in place, individuals would have great difficulty opening multiple cases: even if they used fake Social Security numbers, computer checks on the numbers would be likely to reveal earnings or assets associated with those numbers. The fingerprint-imaging systems, then, are largely superfluous to existing efforts to reduce fraud. But fingerprint imaging serves another purpose: the collection of biometric data scrutinizes and stigmatizes low-income adults in a way that equates poverty with criminality.

In states with biometric imaging, applying for welfare mirrors the experience of being booked for a crime: after being interrogated about family and finances, individuals are photographed and fingerprinted. The fingerprint images are entered into statewide computer systems and then used to check for duplicate applications. Few duplicates—indicating one person submitting more than one welfare application—are found. In California, for example, the state identifies only three matches per month and typically refers only one of these cases per month for more extensive fraud investigation or prosecution (Rivera 1994). A report by the California state auditor in 2005 berated the legislature for the fingerprint-imaging system, stating it was impossible “to determine whether SFIS [State Fingerprint Imaging System] generates enough savings to cover the estimated \$31 million the State has paid for SFIS or the estimated \$11.4 million the State will pay each year to operate it” (California State Auditor 2005, 1).

Policy makers claim that the real motive behind fingerprint imaging is deterring, not catching, acts of fraud. There is, however, evidence that pro-

cedures deter not only fraudulent applications but also legitimate applications by needy families, particularly eligible immigrant families (Services, Immigrant Rights and Education Network 2000). The Asian Pacific American Legal Center (APALC) conducted a survey of community-based organizations to determine why, despite such high poverty rates about Asian and Pacific Islander communities, food stamps were being underutilized by eligible members of those communities. The report listed fear of the state fingerprint-imaging system as one of the top four barriers to food stamp use among the eligible poor (Asian Pacific American Legal Center 2000). The fingerprint-imaging requirements create another hurdle poor people must clear in what is an otherwise demanding application process. In some counties in California, fingerprint imaging is done only on certain days, sometimes requiring aid applicants to make an additional trip to the welfare department and delaying the time between initial application and first day of aid receipt. (In fact, while recruiting interviewees outside a California welfare office for this study, I routinely ran into welfare applicants who were showing up for their second or third fingerprint-imaging appointments because the machine had been broken on previous visits to the welfare office.)

Studies in the states that fingerprint welfare recipients have blasted the practice as costly and ineffective. According to the testimony of Celia Hagert, a senior policy analyst at the Center for Public Policy Priorities, Texas began fingerprint imaging on a pilot basis in 1996 and implemented it statewide in August 1999 (Hagert 2001). According to the report evaluating the program in Texas, fingerprint imaging did not reduce caseloads and, instead of saving taxpayer dollars, cost the state \$1.7 million during the first seven months of operation (Schexnayder et al. 1997). By the end of 2000, fingerprint imaging had cost the state \$15.9 million. The fingerprinting program did not reveal widespread fraud. According to Hagert, between 1996 and the end of 2000, fingerprint imaging had “resulted in only nine charges filed by the DA, 10 administrative penalty cases, and 12 determinations of no fraud” (Hagert 2001). The high costs and low yield of criminal wrongdoing, though, did not prompt repeal. While in 2002 the Texas Board of Human Services voted to allow certain seniors and the disabled to request exemption from the fingerprint-imaging requirement of the food stamp application process where the imaging would pose an undue burden, the fingerprint-imaging system was otherwise left intact and remains in use today. Evidence of the cost-effectiveness of California’s fingerprint-imaging system was similarly elusive (California State Auditor 2009).

While lawmakers and the public seem unwilling to devote tax dollars to providing cash benefits to the poor, there seems to be great willingness to spend money to police the poor—even when doing so appears to be economically inefficient or ineffective. By instituting these programs, states signal that crime control—specifically preventing the receipt of excess government benefits—takes priority over relieving poverty, relieving food insecurity, and containing state administrative costs.

Drug Testing

The welfare system is moving beyond efforts to punish people for drug convictions; there have been efforts to use the welfare system to root out drug use. There have been numerous proposals to identify drug use among the welfare poor by making drug tests a condition of welfare receipt. Michigan, for example, instituted a pilot drug-testing program in three counties, and policy makers hoped to institute the program statewide. Under the program, all adults who applied for welfare were to be tested as part of the application process. In addition, every six months 20 percent of the recipients would be randomly tested. Welfare applicants and recipients who refused urine testing or refused to comply with a treatment plan after a positive test were to be refused benefits.

Michigan's drug-testing program was challenged in a case called *Marchwinski v. Howard* (2000). A federal district court enjoined the testing, ruling that the practice amounted to an illegal search in violation of the Fourth Amendment. In 2002, however, the Sixth Circuit Court of Appeals lifted the district court's injunction, allowing Michigan to proceed with its drug-testing program. The Sixth Circuit extended, some might say stretched, the definition of a "special need" justifying suspicionless searches by grouping a number of social concerns into a special need particular to welfare recipients. These concerns included "the safety of the children of families" receiving aid, "the risk to the public from the crime associated with illicit drug use and trafficking," and the need to ensure that cash assistance was "used by the recipients for their intended purposes and not for procuring controlled substances" ((2002), 336). The Sixth Circuit decision declared that welfare recipients, relative to other citizens, "have a somewhat diminished expectation of privacy" ((2002), 337). The Sixth Circuit opinion stood in stark contrast to the welfare rights cases from the early 1970s, where lawyers argued that the poor do not lose their fundamental rights even when receiving government aid. The majority opinion also expressed the view that the government goal

of reducing drug use outweighs both individual privacy rights and the needs of the poor, some of whom might be dissuaded from seeking benefits by the humiliation of urine testing. The case was reheard *en banc*; the Sixth Circuit judges split evenly on the constitutionality of drug testing. By default, the original injunction granted by the district court was reinstated, and the drug-testing program in Michigan ceased (2003).

Since then, however, there have been proposals to modify Michigan's original drug-testing program and give it another try. In addition, over the last decade both members of Congress and state legislators have advanced numerous proposals to require that welfare recipients undergo drug tests. The drug testing of welfare recipients particularly highlights the conflation of poverty and crime and the widespread assumption that poor women of color are the causes of crime. There is some dispute as to whether welfare recipients have higher drug use and dependence than the population at large (Pollack et al. 2002, 259). Drug use among welfare recipients appears to be higher than drug use in the general population, but drug dependence, which interferes with relationships and work, may not be higher (Pollack et al. 2002, 268-69). Further, even if some welfare recipients use drugs, statistics indicate that the vast majority of those who might be subjected to drug testing do not (Jayakody et al. 2004).

Punishing the Poor

In addition to adopting many of the goals of the criminal justice system, the welfare system has its own internal processes of policing the poor. The federal welfare reform legislation instituted a host of new penalties for welfare recipients who did not comply with the welfare rules or, in the case of the family caps, with mainstream mores around sexuality, marriage, and child-bearing. Administrative punishments are described and analyzed below.

Administrative Sanctions

During the welfare reform debates of the mid-1990s, politicians and the public repeatedly championed the “carrot and stick” approach to welfare. The numerous people who used this phrase seemed uncritical of the beast-of-burden imagery that the phrase “carrot and stick” evokes with relation to the poor individuals subject to the carrot and the stick. The “carrot and stick” is a phrase with dual meanings: in one meaning, the carrot dangles from a stick as an incentive but is never actually attained as a reward; under

the other meaning, the carrot is an incentive while the stick is used to beat an animal too uncooperative and lazy to be lured by the carrot. Use of the metaphor also echoes Louisiana Senator Huey Long's notorious description of welfare recipients as "brood mares" during a 1967 Senate Finance Committee meeting (Orleck 2005, 114). The phrase also conjures up images of coerced, unpaid labor and resonates with images of black servitude under slavery. Martin Gilens (1999) has documented that widespread negative attitudes toward the welfare system are inextricably tied to racism and aversions to providing African Americans with government benefits. In a particularly vivid example of the dehumanization of welfare recipients, John Mica, a Republican congressional representative from Florida, held up a sign during a congressional debate that read, "Don't feed the alligators" (Gallman 1995; Horsburgh 1996, 565-66). On the House floor, Mica argued that providing aid to poor women would do nothing but spur them to reproduce, entice them to return for more free handouts, and threaten the general public safety (141 Cong. Rec. 9194 (1995)).

The federal reforms were supposed to create a new welfare system that included not only incentives but also disincentives, including punishments, even those that would go as far as state violence. The "carrot and stick" approach was designed to coax welfare recipients who were not participating in the formal wage-labor market to seek steady employment and leave the welfare system. There were a few carrots: increased earnings disregards; increased availability of child care subsidies; and the Earned Income Tax Credit. The true underpinning of reform, however, came in the form of sanctions—the reduction or elimination of a family's benefits. They were the big sticks.

Sanctions have become routine. Sanctions may be imposed for failing to comply with welfare-to-work requirements, failing to fulfill the number of work hours required, or merely failing to attend a scheduled meeting at the welfare office. One study of the sanctions imposed in three major cities found that missed appointments were the most common triggers for sanctions (Cherlin et al. 2002). The result of a sanction in California at the time of this study was a reduction of the adult's portion of aid from the grant check—approximately \$125 (depending on the family size), a significant penalty for a family living in poverty.

While many people assume that transitions from welfare to work account for dramatic decreases in welfare caseloads, a number of studies indicate that sanctions actually account for the decline. Research by Sanford Schram found evidence that "get-tough policies, especially strict sanctions, have con-

tributed to the roll declines and may have done so in ways that forced people off even while they still needed assistance” (2002, 97).

As troubling as the effects of sanctioning practices are, the sanctions raise other concerns. For example, a study by Yeheskel Hasenfeld and colleagues found that approximately half of the sanctioned adults surveyed did not know they had been sanctioned (Hasenfeld, Ghose, and Hill- esland-Larson 2004, 314). For those families, the welfare system became so complex, arbitrary, and mystifying that they could not determine why their benefits were fluctuating. This suggests that rather than creating a set of incentives that would “make work pay,” the sanctioning of welfare system recipients simply punished people who could not figure out how the system worked.

Many poor families have suffered as a result of these sanctions. In some states, as many as a third of the welfare cases have been sanctioned (Peterson 2002, 4; Haskins, Sawhill, and Weaver 2001). A group of researchers examining the effects of sanctions concluded: “Sanctions and procedural case closings appeared to ensnare families that were experiencing hardships and possibly to impose more hardships on some of them.” They explained: “For low-income individuals with limited education, daily lives filled with personal turmoil, and employment and family responsibilities to balance, meeting all of these demands may be more than many can handle. Being able to turn in forms on time or to follow up with doctors’ offices or employers’ personnel offices can be a feat in itself. It requires keeping up with the mail; noticing and adhering to deadlines; and reading, interpreting, and responding to questions—all of this by mothers who may have complex and challenging daily lives” (Cherlin et al. 2002, 402). More than half a million families were subject to full-family sanctions from 1997 through 1999 (Goldberg and Schott 2000).

State Family Cap Policies

The family cap policies, welfare rules prohibiting an increase in a family’s cash assistance when a new child is born into the family, highlight the ways welfare regulations affect issues of personal and family autonomy. The family cap rules (also known as “child exclusion” or “maximum family grant” rules) were intended by lawmakers to influence women’s—and especially poor women of color’s—decisions about birth control, abortion, childbearing, and family formation. The policies punish not only women who decide to bear children while on welfare but also their entire families.

Federal welfare reform legislation gave states the option of instituting family cap policies that prohibit welfare offices from offering cash assistance to children born to families receiving welfare. During the 1990s, twenty-one states, including California, adopted the family cap while two others, Idaho and Wisconsin, instituted flat grants for families of any size (Schram 2002, 95). Since 2004, three states—Illinois, Maryland, and Nebraska—have repealed their family cap policies (Romero and Agénor 2009, 356, table 1).

These policies manifest the beliefs that any child born to a family on welfare is illegitimate and unworthy of assistance. The family cap policies effectively deny the existence—the personhood and the economic needs—of children born to mothers who are poor and usually single. They punish mothers for non-normative, meaning nonmarital, sex and childbearing. They also punish not only the mother who has made the decision to become a parent but also the newborn child and any other children in the aid unit. Numerous studies have found that the family cap policies do not seem to have had an effect on birthrates among welfare recipients (Dyer and Fairlie 2004; Joyce et al. 2004; Ryan, Manlove, and Hofferth 2006).

Welfare Fraud Investigations

PRWORA required the states to institute fraud control measures, though it did not specify what those measures should include. In California, the administrative fraud control measures that had been in place under AFDC were expanded. As before reform, California welfare recipients were required to submit monthly forms, known as “CA-7s,” by the fifth of every month to remain eligible for welfare. Welfare recipients were required to report any changes in address, income, assets, or household composition on their CA-7s. Aid recipients were also required to record the number of hours they worked. Recipients also had to go through an annual renewal, where they met with a welfare worker and filled out many of the forms again.

The CA-7s were used to determine a family’s cash aid eligibility and amount of payment. The first \$225 of an adult’s earnings was ignored in the calculation of aid; any additional earnings were factored into a complex calculation of cash aid and food stamps based on family size. Families whose earnings varied from month to month therefore faced fluctuations in the cash aid and food stamp grants.

To identify possible sources of fraud, California instituted a system in 1984 called the Income and Eligibility Verification System (IEVS), which continued to be used at the time of these research interviews. Through the

verification system, which relied on welfare recipients' Social Security numbers, the welfare offices collected the income and assets data recipients submitted each month and matched this information against records from the Employment Development Division, which tracks employment status and administers Disability and Unemployment Insurance; the Social Security Administration; and the Internal Revenue Service and the California Franchise Tax Bureau, both of which record information about state wage earners. Information exchanges were conducted once every fiscal quarter—every three months. On the basis of these data exchanges, county welfare offices received reports of duplicate Social Security numbers or mismatched earnings reports. Counties then had the burden of investigating the cases that were flagged by the verification system.

Failing to report all of one's income or to report household composition accurately to the welfare department is rule breaking under the welfare rules. Welfare recipients can—and are—pursued either civilly with a claim of intentional program violation or as common criminals charged with welfare fraud.

California county welfare agencies bear responsibility for identifying and reclaiming overpayments from recipients, whether those overpayments are due to recipient error or office error. The federal regulations require welfare offices to notify clients within forty-five days of becoming aware of a likely overpayment, though this notice rule was regularly violated by the research county during the period of data collection. An overpayment to a family still on aid resulted in a 10 percent reduction of the family's future grants until the overpayment was reclaimed by the county. The counties pursued cash repayments from individuals who were no longer receiving aid. When those repayments were not forthcoming, the counties pursued collections, sometimes leading to wage garnishment for newly employed former welfare recipients.

Welfare cheating typically takes one of several forms. The first involves working at a legitimate job but failing to report all of the earnings to the welfare office. The second type involves under-the-table employment for cash that is not reported either to the welfare office or to tax authorities. A third type of fraud occurs when welfare recipients fail to report to welfare officials the presence of wage earners in their households. Other fraudulent activities may include receiving aid for a child no longer in the household or, in rare cases, establishing false identities to collect aid for nonexistent persons.

Welfare offices aggressively investigate fraud before and after welfare recipients receive benefits. In fact, in some California counties at the time of this writing, applicants for public assistance received an unannounced

visit and home search by a deputized fraud investigator before receiving any benefits. San Diego's practice of conducting suspicionless searches of welfare applicants' homes was contested in federal court as a violation of Fourth Amendment protections against unreasonable search but was ultimately upheld (*Sanchez v. County of San Diego* (2007)).

Civil Penalties

The line between administrative and criminal penalties for welfare cheating has become increasingly blurry. PRWORA greatly increased administrative penalties, instituting a rule that if an individual loses benefits in any federally funded, means-tested program because of fraud she or he will not only lose benefits under that program but also become ineligible for increased benefits under any other program. In other words, if a welfare recipient is found to be engaged in cash aid fraud by virtue of failing to report all of her income, she will lose cash aid, and her household will see no increase in food stamps or housing assistance to offset the decrease in aid.

As states implemented rules under federal welfare reform, many stiffened their civil and criminal penalties for welfare cheating. Before being criminally charged with welfare fraud, many welfare recipients face administrative penalties for having resources they have not reported. According to the California Welfare and Institutions Code § 11486(c)(1)(B)-(c)(2)(B), an Intentional Program Violation occurs when a welfare recipient is found "(A) Making a false or misleading statement or misrepresenting, concealing, or withholding facts. (B) Committing any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity." These violations occur routinely; in fact, they occur whenever a welfare recipient fails to report all income, informal child support, gifts, or new members of the household. Even if a recipient's failure to report income would not change the family's aid calculation, the recipient is still violating the program requirements.

California implemented a "three-strikes-and-you're-out" rule for welfare cheating and the penalties for failing to report required information—even where the reporting failures would not affect aid calculations—are stiff. A finding of one offense in an administrative hearing or in a court disqualifies an individual from aid for six months. A second occasion results in a twelve-month disqualification from aid, and a finding of a third occasion results in permanent—meaning lifelong—disqualification from aid.

Other violations can lead to permanent disqualification from welfare. An individual can be excluded from receiving welfare benefits for life for

any of the following violations: (1) “double-dipping,” or in other words, making false statements or representations about one’s place of resident in order to make simultaneous claims for aid in more than one county or state; (2) submitting documents to receive aid for nonexistent children or for children ineligible for aid; or (3) receiving more than ten thousand dollars in aid as a result of intentionally and willfully making false statements or misrepresenting, concealing, or withholding pertinent facts from welfare administrators.

Disqualification Consent Agreements

California welfare recipients who are identified through Income Eligibility Verification System matches are often called into meetings at the welfare office, where they are asked to sign disqualification consent agreements. These agreements are basically admissions that the recipients did not state all necessary facts in their monthly reporting forms or in their (re)applications for aid. By signing one of these agreements, a welfare recipient waives any available administrative remedies. Before asking an individual to sign a disqualification consent agreement, counties are required to give the individual a notice including the following: (1) “A statement for the accused individual to sign that he/she understands the consequences of consenting to disqualification”; (2) “A statement that consenting to disqualification will result in a reduction in the AU’s [assistance unit’s] CalWORKs aid payment . . . even though the accused individual was not found guilty of civil/criminal misrepresentation or fraud”; (3) “A warning of the disqualification penalties which could be imposed . . . and a statement of which penalty shall be imposed”; and (4) “A statement that any remaining assistance unit members shall be held responsible for repayment of the resulting overpayment, unless the accused individual has already repaid the overpayment” (California Department of Social Services Manual of Practices and Procedures § 20-352.211, effective July 1, 1998). The procedures do not specify how far in advance the recipient must be given this notice, so it is conceivable that the individual might receive notice only minutes before signing what amounts to a confession. While these consent agreements occur at the administrative level, they are readily used as evidence by prosecutors who may later file criminal charges. It is not at all clear that recipients who sign these agreements are aware that doing so may, instead of resolving their difficulties with the welfare office, initiate their transition from the welfare system to the criminal justice system.

Criminal Prosecutions

In addition to civil penalties, California imposes stiff criminal penalties for welfare fraud, including permanent exclusion from aid. Failing to report all sources of income and support to the welfare office can result in a host of criminal charges. District attorneys may bring not only fraud charges but also perjury charges against welfare recipients who earn income through work but who do not accurately report all of their income on their monthly reporting forms (Calif. Penal Code § 118). Anyone convicted in state or federal court of felony welfare fraud is ineligible for aid for two years if the amount of money in dispute is less than two thousand dollars. A person convicted of fraudulently receiving between two thousand and ten thousand dollars is barred from receiving aid for five years; a person convicted of fraudulently receiving more than ten thousand dollars is prohibited from receiving aid for life.

In 1998, the state of California incentivized welfare prosecutions by the counties by rewarding them 25 percent of any overpayment determined (California Assembly Bill 1542). During this same period, the federal government offered incentives to states for welfare fraud prosecutions. (Congress later passed the Improper Payments Information Act of 2002, requiring states to compile information on overpayments and underpayments of benefits.) At one point, California prosecutors were pursuing welfare fraud so aggressively that in some counties pending criminal welfare fraud investigation caseloads exceeded welfare caseloads. The 2002-3 California budget, however, eliminated the \$5.1 million welfare fraud incentive payments that had been provided to counties. Since then, fraud prosecutions have dropped significantly, particularly in those counties where prosecution rates had been unusually high.

The legislative drive to punish welfare cheaters has brought about cozy relationships between welfare providers and fraud investigators. In many California counties the physical boundaries between welfare administration and criminal fraud control efforts have disappeared. Of California's fifty-eight counties, only twenty-eight have the county welfare departments conduct welfare fraud investigations. The remaining counties have moved their fraud investigators to law enforcement, with twenty-one counties housing their fraud investigation units in the offices of the district attorney (DA), nine situating satellite DA's offices in the welfare office, and two placing fraud investigations in the hands of local sheriff's offices. The close relationship between officials who administer aid and those who police cheating raises some troubling issues. Welfare recipients identified as having received overpayments are notified by letter that they must attend a meeting with

an official, and many of these officials share office space with caseworkers. Although these officials are criminal fraud investigators or members of the county DA's office, many welfare recipients do not realize that these officials are part of the criminal justice system rather than the welfare system. As a result, they attend the meetings without consulting or bringing legal counsel.

Nationwide Trends in Criminalizing Welfare Cheating

Welfare officials and local prosecutors have the option of either seeking civil remedies or bringing criminal charges against welfare cheats. In California, there has been a push for criminal penalties (Gustafson 2009, 689). In a few states, where welfare recipients do not owe huge sums and where they make restitution, prosecutors typically do not bring criminal charges. In other states—Oklahoma and Wyoming, for example—prosecutors bring criminal charges even when money is repaid to the state. In some states, decisions about investigations and prosecutions are centralized. In Wisconsin, for example, the state has a Model Prosecution Agreement that includes a model diversion recommendation. Wisconsin also apparently attempts to track welfare fraud referrals better than other states. In a greater number of states, however, welfare fraud is left to the discretion of local prosecutors. There appear to be a growing number of state or local welfare fraud diversion programs, efforts to impose suspended sentences, or efforts to address welfare fraud under general pretrial diversion statutes.

The welfare fraud diversion programs share some of the same problems as the drug diversion programs. First, the effects of the welfare fraud diversion programs have undergone even less research than the drug diversion programs. Second, there is some evidence that many of the participants in welfare fraud diversion programs do not or cannot comply with the condition of participation, which is usually repayment. Third, it may be that, as with the drug courts, more individuals are finding themselves under the control of the criminal justice system than if the diversion programs were not available (Miller 2004, 1558-60). This is because weak cases do not get dropped by prosecutors, and those who fail to meet the administrative requirements of the diversion programs—in these cases, repaying the money—find themselves either under the control of the criminal justice system for a longer time than had they been charged or ultimately facing felony charges.

Some states (e.g., Florida) consistently pursue civil remedies first, while others (e.g., Illinois and California) favor criminal prosecutions. Whether criminal charges are brought as felonies depends upon state statutes, which vary significantly.

cantly from state to state in the dollar amount of overpayment that will trigger a felony charge. In Florida, for example, a loss of state benefits of only two hundred dollars in a twelve-month period is sufficient to establish a third-degree felony (Fl. Stat. 414.39). And while disposition of the cases is left to the discretion of prosecutors in many states, there are other states, such as Illinois, where prosecutors let the cases go to court and have judges determine the appropriate sanctions. In Massachusetts, cases where individuals have not made restitution and are subsequently referred for criminal prosecution typically result in probation.

States devote significant resources to policing welfare fraud. In 2008, California spent twenty-eight million dollars for investigations that screen welfare applicants for possible fraud before a case is opened and thirty-four million dollars for investigations of ongoing welfare cases (California State Auditor 2009, 2). Though devoting more than sixty million dollars to fraud investigations, the state identified only \$19.6 million in overpayments—and collected only a fraction of that amount back from recipients (California State Auditor 2009, 2). The costs of policing welfare fraud are so high because the number of welfare fraud investigators has soared in the years since welfare reform. There appear to be two reasons for the rising number of welfare fraud investigators in a period when welfare caseloads are declining. First, much of the welfare money that flows to states and counties is federal money. If that money is not spent, the states and counties lose it. Rather than lay off government employees and lose the stream of federal funding, many counties are transferring former welfare caseworkers and civil fraud investigators into positions as deputized welfare fraud investigators.

Second, the welfare fraud investigators are gaining political leverage. Welfare fraud investigators in many locales are unionizing. In many states (Alabama, Arizona, Colorado, Iowa, Minnesota, Ohio, New York) investigators have formed associations and have even hired lobbyists. These associations urge legislators to step up efforts to investigate and prosecute welfare fraud and to move investigations from the civil to the criminal arena. Whether these efforts to criminalize welfare fraud investigations are in the real interests of the public or merely an example of the power of self-interested bureaucrats remains an open question.

The previous chapter outlines the discursive and political shifts that produced a welfare system that equates poverty with criminality and gives prominence to welfare use and welfare cheating as threats to both society and economy. This chapter has mapped the numerous policies and practices that manifest the criminalization of poverty.

The growth of punitive welfare policies and the policing of welfare fraud represent something more than the policing of crime. There is something fundamentally different about imposing criminal penalties rather than other available penalties. Criminalization serves an expressive function, labeling not only certain behaviors but also certain groups of people as deviant. Welfare policies and practices feed on the view that the poor are latent criminals and that anyone who is not part of the paid labor force is looking for a free handout. In many ways, the policy aspirations to punish nonworking welfare recipients, welfare cheats, and aid recipients who engage in unrelated crimes have overwhelmed any remaining aspirations to help poor children.

The following four chapters focus on individuals who receive welfare—people about whom a lot is assumed but little is actually known. In these chapters, welfare recipients reveal how they experience the welfare system and its punitive policies, how they survive on limited resources, and how they perceive themselves and other welfare recipients within the system.