

IL-NET

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The New Frontier of Disability Rights: Introduction to Child-Custody Rights of Parents with Disabilities

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What you will learn...

- History and impact of the eugenics movement and fundamental trends leading to discrimination against parents with disabilities
- How disability law and policy apply to parents with disabilities in the child welfare and family law systems
- Intersection between state law and ADA protections
- Strategies and types of programs that can protect parents with disabilities and their children from involvement in child custody litigation and/or improve outcomes if they do become involved in such litigation
- Basic structural (legal and service) changes needed to protect this population of families

Introduction/Problem Definition

The first half of the 20th century was characterized by the eugenics movement, during which more than 30 states legalized involuntary sterilization.

This legislative trend was premised on the belief that people with disabilities and other “socially inadequate” populations would produce offspring who would be burdensome to society.

Because of these state statutes, more than 65,000 Americans were involuntarily sterilized by 1970.

From NCD Report “Rocking the

Introduction/Problem Definition

Even today, 24 years after the passage of the ADA, several states still have some form of involuntary sterilization laws on their books. A few even retain the original statutory language, which labels the targets of these procedures as possessing hereditary forms of “idiocy” and “imbecility,” and state that the best interests of society would be served by preventing them from procreating.

From NCD Report “Rocking the Cradle”

Introduction/Problem Definition

The rate of removal of children from families with parental disability—particularly psychiatric, intellectual, or developmental disability—is ominously higher than rates for children whose parents are not disabled.

This removal is carried out with far less cause, owing to specific, preventable problems in the child welfare system. Further, parents with disabilities are more likely to lose custody of their children after divorce, have more difficulty in accessing reproductive health care, and face significant barriers to adopting children.

From NCD Report "Rocking the Cradle"

Introduction/Problem Definition

One of the most fundamental human rights is the right to mate, reproduce and raise a family!

What is the Legal Program at Through the Looking Glass's (TLG) National Center for Parents with Disabilities & their Families?

- The legal program focuses on the intersection of civil rights with family & disability law
 - Research on prevalence and experience
 - Trial and appellate level case strategy
 - Legislative efforts

The wellbeing of children is our core concern; this is not antagonistic to protecting the rights of parents with disabilities.

Parenting is a Civil Right Protected by the Constitution



- Est. in U.S. jurisprudential theory; Rousseau-Locke
- Constitutional protection; 14th & 5th Amendment
- Supreme court interpretation; Meyer-Pierce-Stanley-Santosky
- Federal policy recognition; ex. fitness standard – due process
- State recognition in law
- Yet many parents with disabilities lose custody of their children through dependency, probate and family court proceedings; deprivation of true due process is common

Legal Framework

- Disability as Status Crime
- Woven into most if not all state legislation
- Directly impacted by federal legislation
- Unique in jurisprudence
- Argument regarding Nexus
- Attitudinal bias

- 37 states have laws that allow parental disability as a grounds for removal, termination of parental rights and/or bypass (Lightfoot, et al. 2010)
- 12.9% of 17 state sample removed from caretaker with disability though only 6.2% of parent population (Callow, 2011)
- 3x more likely to be a parent in child welfare if a child who received special education (Laliberte, 2012)
- Significant # of parents with physical disability report discriminatory family court treatment (TLG, 2001)
- 40-80% of parents with intellectual or psychiatric disability lose custody of their children respectively (RTC, 2012)

- States traditionally have subject matter jurisdiction over custody cases
- The standards for deciding in family court is best interest of child; in dependency court it is fitness of the parent
- 100% of states allow for parental disability to be considered when making custody decisions in family court – a handful have language to require critical evaluation of parental disability
- 37 states have laws that allow parental disability as a grounds for removal, termination of parental rights and/or bypass in dependency court – a handful have limiting language (Lightfoot, et al. 2010)

The Americans with Disabilities Act— Uses and Limits



- Discrimination against parents with disabilities was an issue documented during congressional hearings on the ADA at passage, but not specifically addressed in subsequent legislation.
- Almost every case has found that the ADA is not a defense to termination of parental rights and rarely considered in family law cases despite *In re Marriage of Carney*.
- There seems to be a misconception that Title II does not, therefore apply to child welfare or family law practice.
- Did not fix *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985)—no strict scrutiny of discriminatory state laws regarding disability.

The Americans with Disabilities Act: Uses and Limits, cont'd.

- Reasonableness: “Agencies must make reasonable modifications in policies, practices, or procedures, unless such modifications would fundamentally alter the nature of the service, program or activity.” 28 CFR 35.130 (B)(7).
Onus on the state to show why not reasonable.
- Equal Access: Also must provide people with disabilities an equal opportunity to participate in programs, services and activities.” 28 CFR 35.130 (B).
- Broadness: “The ADA’s broad language makes no exception for activities that implicate strong state interests.”
Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S. 2006 (1998).

Questions?



Services & programs that can prevent custody loss & address current problems in practice

CIL engagement with issues of parents with disabilities by:

- Identifying parents with disabilities served in CILs
 - In 'Through the Looking Glass' (TLG) National Center research on paratransit access for parents with disabilities and their children only 15% of 73 CILs kept track of parental disability (Jacob, et al., 2013)
- Helping support families of parents with disabilities
 - Family services in the original CIL model (1974-82)
 - Build on your current services that support families
 - Benefit from the strategies TLG used

How such services and programs can be located or built in a community

- CILs can link to and collaborate with local community prevention and support services to expectant parents, parents, parenting grandparents, children and families.
 - Early Head Start, early intervention, public health nursing, infant mental health services, kinship care in foster care systems, home visiting programs
- Linking these systems to CILs can help—
 - inform the systems about appropriate disability practice, disability culture and solutions
 - identify individuals in these systems who will provide appropriate services & support advocacy efforts

CIL roles can vary from advocating for community services to offering direct services to families

- Assistive technology services can be supported to include parenting adaptations, with linkages to interested OTs and rehabilitation engineers (and TLG).
- CILs can have peer support groups for parents with disabilities.
- With the required supervision CILs can provide internships for mental health professionals, specializing in serving parents with disabilities and their children.

Appropriate community-based supports can prevent families from having custody problems or provide informed input if custody problems arise

- Custody loss in parents with intellectual disability 40-60% nationally; with TLG preventive intervention 4-7%
- Example of “parenting evaluations”
 - Bias and lack of disability knowledge in evaluations
 - Assumptions about parental diagnosis vs. observation of parenting
 - The role of disability – informed input
- Example of the impact of baby care adaptations & assessment

It isn't enough to pass legislation! Passing legislation without local accommodated services for parents with diverse disabilities and their children can still result in unnecessary custody loss.

Steps CIL workers and other advocates can take in individual cases

Begin thorough discussion w/parent about disability & circumstances impacting/suspected of impacting parenting:

- What disabilities?
- When disabled? How?
- Any medications? Effects? Supply? Legal?
- Pain/Illness? Need medical attention?
- Are they safe?
- Support people? Family?
- Equipment? Condition?
- Literate?
- Stable residence?
- Income?
- Attitudinal bias in the case worker? Explain?
- What accommodations want for court and child welfare agency?
- Questions?

Steps CIL workers and other advocates can take in individual cases, cont'd.

- Help client determine type of case they're in—often don't know
- Determine if client has attorney; if so, see if client would like to create a relationship between the two of you
- Contact courthouse ADA coordinator/or talk to parent's attorney to request accommodations prior to any hearings
- Help client secure copy of file and put together kit to keep track of proceedings going forward
- Determine transportation options for your client to get to court, visits, mediations, case services, etc.
- If there is an attorney apprise them as appropriate/client directed of what learned in independent investigation.

Understand the trauma they are experiencing

- No one believes in them, not even their own lawyers or therapists
- Their own families often challenge their custody
- They love their children as much as we love ours
- They are bitter that they are lumped in with parents who hurt their children
- That there is no life without their children – they would rather have received a death sentence
- They will never forget their children or stop trying to get them back no matter what I say about statutes of limitations
- They say thank you, just for being decent
- They say they were molested, in foster care, in institutions, poor, abused, beaten by parents and husbands and boyfriends
- ...But they still find the strength to love someone

More steps CIL workers and other advocates can take

- Understand that Evidence-creation matters and the basic evidence-creating methods to establish parenting capability [Adaptive Baby Care Assessment; accommodated evaluations and intervention; evidence based practice/best practice for family support; declarations; records collection]
- Contact TLG and other resources *early on*; connect client and attorneys to the disability community/materials
- Use general community resources to strengthen family functioning [Early Head Start, Boys & Girls Club, etc.]
- Download a copy of Rocking the Cradle to flesh out the issues discussed here today

Questions?



COMMITTEE ON FAMILY (Fathers & Mothers Independently Living with their Youth)

Members

- Parents with Disabilities
- CILs
- Attorneys
- Protection & Advocacy
- State Children's Services
- Grandparents as Parents
- Parent Training Centers
- DD Council
- University Center on Excellence
- Legislators

Purpose

1. Review Current Child Custody Laws
2. Remove Discriminatory Language
3. Build in Protections Against Discrimination
4. Create a Fair Evaluation System

Meetings

- 1999—5
- 2000—1
- 2001—2
- 2002—1

Legislation

- Child Protection
- Adoption
- Divorce
- Separation
- Guardianship

Legislative Success

- 2000— Passed Senate, Killed in House
- 2001—Passed Senate, Killed in House
- 2002—HB 577 & 579 Passed Senate and House and Signed by Governor
- 2003—HB 160 & 167 Passed Senate/House & Signed by Governor

Lessons Learned

- Involve Courts
- Involve Prosecutors
- Use Attorney General's Office

The FAMILY Committee modified every child custody law in the State of Idaho. As far as is known at this time, Idaho is the only state to have accomplished this.

The legislation has had a positive impact on an estimated 14,750 Idaho families.

Resources

- *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children*
<http://www.ncd.gov/publications/2012>
- The National Center for Parents with Disabilities & their Families at Through the Looking Glass:
www.lookingglass.org; (510) 848-1112; (800) 644-2666; TTY (800) 804-1616
 - Technical assistance/consultation, publications, e.g. re: custody issues, parenting adaptations, and services for parents with all disabilities
 - Videos/DVDs illustrating baby care adaptations
 - Regional trainings, facilitating linkages with child/family systems such as Early Head Start, Infant Mental Health

Resources, cont'd.

- The Association for Successful Parenting, (800) 599.8810, PO Box 1773, Hartford, CT 06144; achancetoparent.net
 - Connect families where parents have intellectual or disability to resources, provide training and networking opportunities to professionals and systems involved in the lives of these families.
- The Judge David L. Bazelon Center for Mental Health Law (202) 467.5730, 1101 15th Street, NW, Suite 1212 Washington, DC 20005; www.Bazelon.org
 - Protect and advance the rights of adults and children who have mental disabilities with resources and referrals.

Advocacy Organizations

- These organizations regularly provide funding to assist consumers with parenting/custody litigation. They have each generated some level of materials or structural response within their organizations to address this issue.
 - National Disability Rights Network (NDRN) 202-408-9514; 820 1st Street NE, Suite 740, Washington, DC 20002; www.ndrn.org
 - Nonprofit, voluntary membership association for the Protection & Advocacy and Client Assistance Program agencies. Collectively, the network is the largest provider of legally based advocacy services to people with disabilities in the U.S. While these programs do not list parenting rights as a 'priority' they will litigate for consumers, they have involved themselves to varying degrees based on the facts of cases, on a case-by-case basis. You can find your state affiliate through the national site.

Advocacy Organizations, cont'd.

- National Federation of the Blind
200 East Wells Street *at Jernigan Place*
Baltimore, MD 21230
410-659-9314
www.nfb.org
- The National Multiple Sclerosis Society
1-800-344-4867
www.nationalmssociety.org

Questions?



Wrap Up and Evaluation

Please *click the link below* to complete your evaluation of this program:

<https://vovici.com/wsb.dll/s/12291g56860>

For more information

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