

Preserving the Right to Parent: Custody Issues for Survivors with Disabilities

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In Memorial



Carrie Ann Lucas 1971-2019

Parents Empowering Parents

- Parents Empowering Parents (PEP): National Research Center on Parents with Disabilities and their Families is a cross-disability initiative guided by the ethos of the disability community, "nothing about us without us."
- Through services, research, and advocacy, the Center provides instruction and information about health and parenting services for parents with disabilities and their families.

Acknowledgements

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Overview of Presentation

- Parenting with a disability: Past and present
- Violence against people with disabilities
- Rights of parents with disabilities
- Strategies for working with parents with disabilities
- Resources
- Questions and answers

Parenting with a disability: Historical perspective

- Involuntary sterilization
 - 30 states legalized compulsory sterilization of those perceived “socially inadequate”
 - *Buck v. Bell*, 274 U.S. 270 (1927)
 - By 1970, more than 65,000 Americans were sterilized
- Restrictions on marriage
 - In 1974, ~40 states had laws forbidding people with disabilities, mostly intellectual or psychiatric disabilities, from marrying
 - As of 1997, 33 states still had statutes limiting or restricting people with intellectual or psychiatric disabilities from marrying

Historical perspective (cont'd)

Three rationalizations, all which are akin to those raised during the eugenics era, have been traditionally advanced to justify this restriction:

- Children must be protected;
- People with disabilities must be protected; and
- Society-at-large must be protected

Parenting with a disability today

28 years after the passage of the ADA...

- *Buck v. Bell* has never been overturned
- Several states still have some form of involuntary sterilization laws on their books
- Today, women with disabilities contend with coercive tactics designed to encourage sterilization or abortions because they are deemed not fit for motherhood
- Pervasive myth that people with disabilities are either sexually unwilling or unable

Parenting with a disability today (cont'd)

- Removal rates of parents with psychiatric disabilities are as high as 70-80%
- Removal rates of parents with intellectual disabilities are as high as 80%
- Extremely high removal rates and loss of parental rights for parents with sensory or physical disabilities
- More than two-thirds of dependency statutes include disability as grounds for termination of parental rights (TPR)
- In every state, disability may be considered when determining the best interest of a child for purposes of a custody determination in family or dependency court

Who are parents with disabilities and their children?

- Estimates vary:
 - 4.1 million parents (6.2%) with reported disabilities in the United States have children under age 18 (Kaye, 2012)
 - Estimates indicate 6.1 million (10%) children in the U.S. have parents with disabilities (Kaye, 2012)

Who are parents (cont'd)

- 2.9 million parents in the United States have a disability (Li, et al., 2016)
- 10.3% of parents in the United States have a disability (Sonik, et al., 2018)
- 2.7 million parents (3.8%) have a serious mental illness, 12.8 million (18.2%) have some type of mental illness (Stambaugh et al., 2016)

Violence against people with disabilities

- Disabled people have a higher lifetime prevalence of experiencing abuse than nondisabled people (Breiding & Armour, 2015)
- In 2015, disabled people were 2.5 times more likely to experience violent victimization, and 3 times more likely to experience serious violent crimes (i.e., sexual assault, aggravated assault, and robbery)
- Women with ID are 7 times more likely to experience sexual assault, people with ID are 12 times more likely (Shapiro, 2018)

Violence against people with disabilities (cont'd)

- Disabled women have 40% greater chance of intimate partner violence (IPV) (APA, n.d.)
- Police are less likely to respond to reported violence against victims with disabled people (DOJ, 2008)
- Disabled people encounter difficulties accessing appropriate, accessible services for IPV (Lightfoot & Williams, 2009)

Ways that people with disabilities experience domestic violence

- Verbal and psychological abuse
- Physical violence
- Unwanted sexual contact
- Threats and intimidation
- Neglect
- Withholding medications
- Physically harming service animals
- Isolation
- Deprivation of necessary physical accommodations
- Withholding or destroying assistive devices such as wheelchairs
- Financial exploitation and misuse of money

Source: <https://ncadv.org/blog/posts/domestic-violence-and-people-with-disabilities>

Parents with disabilities experiencing domestic violence

- Parents with disabilities involved with child welfare system were 1.5 times more likely to have witnessed violence between their parents as a child and 1.6 times more likely to have experienced abuse themselves as a child (Lightfoot & Slayter, 2014)
 - Parents with ID involved with child welfare system were less likely to be referred to domestic violence services despite and risk factor of child maltreatment (Slayter & Jensen, 2019)
 - Women with disabilities were significantly more likely than those without disabilities to stay in a bad marriage out of fear of losing their children (NCD, 2012; Nosek et al., 2001; Olkin, 2003)
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Disability can be used against a parent

- “She is incapable of taking care of our children, because...”
- “She’s crazy, she can’t be trusted to take care of the kids.”
- “She allowed her children to be exposed to violence.”

Rights of parents with disabilities

- Both the ADA and Section 504 of the Rehabilitation Act (for agencies receiving federal funding) apply to the rights of disabled parents
- The ADA was passed with the intent of ensuring “full and equal opportunity” for Americans with disabilities
- Almost every case has found that the ADA is not a defense to termination of parental rights
- There seems to be a misconception that Title II does not therefore apply to child welfare practice

Strategies for working with parents with disabilities

- Train staff to work with survivors with disabilities
- Screen everyone for disability
- Connect with disability organizations
- Ensure disabled people are being screened for domestic violence
- Recognize signs of domestic violence among disabled people and respond appropriately

Strategies (cont'd)

- Ensure accessibility (physical, programmatic, communication)
- Understand experiences of disabled parents, including discrimination and custody matters
- Ensure the rights of disabled parents are not being violated
- Ensure disabled parents are being appropriately represented by attorneys trained in disability and are properly assessed

Supporting parents

Ensure that parents are able to retain custody by providing them the supports and services that they need to be successful, including:

- Personal care attendant services
- Housing assistance
- Transportation assistance
- Peer support
- Healing services to address violence
- Parenting skills classes

What would you do?

Julia is a twenty-nine year old mother of a three-year old. She uses a wheelchair and has been diagnosed with bipolar disorder. She filed for a protection order against her husband, who physically assaulted her and took her wheelchair away from her several times. In his response, he claims that she is "making things up" and "crazy" and "unable to take care of a toddler." He wants full custody of their daughter. The court seems to agree with his argument, but Julia says that with support she can easily care for their daughter.

- What supports can you explore that could help Julia?
 - What are some strategies you can use when working with Julia?
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DOJ/HHS letter of findings (“Sara Gordon” case)

- January 29, 2015 Letter of Findings to DCF
- Mother with I/DD, lost custody of newborn
- State violated ADA and Section 504
- State must provide mother appropriate supports and opportunity to demonstrate fitness
- Available at http://www.ada.gov/ma_docf_lof.pdf
- Family was reunited after 2 years, 3 months, and 12 days!

DOJ/HHS technical assistance

- August 10, 2015
- Overview of the issues and application of ADA and Section 504
- Answers to specific questions and implementation examples for child welfare agencies and courts
- Resources to consult for additional information
- Available at http://www.ada.gov/doj_hhs_ta/child_welfare_ta.pdf

How to file complaints with DOJ & HHS

DOJ – Civil Rights Division, Disability Rights Section

http://www.ada.gov/filing_complaint.htm

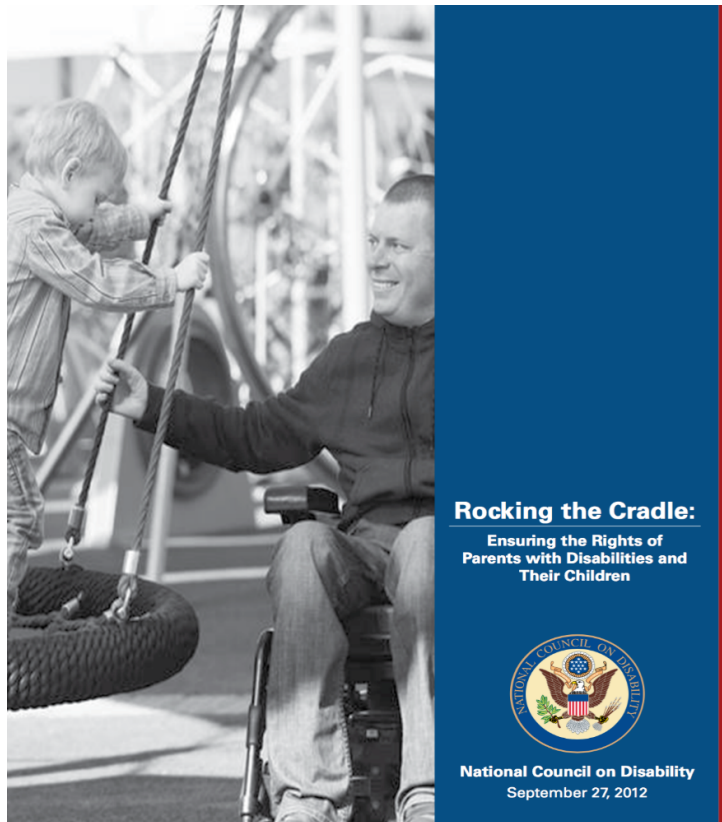
HHS – Office for Civil Rights

<https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>

Resources

- National Research Center for Parents with Disabilities
(<http://www.centerforparentswithdisabilities.org/>)
- National Disability Rights Network
(<http://www.ndrn.org>)
- The Association for Successful Parenting
(<http://www.achancetoparent.org>)

Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children



Available at
www.ncd.gov



National Research Center for Parents with Disabilities

Parents Empowering Parents

Padres Empoderando a Padres



The National Research Center for Parents with Disabilities conducts research and provides training and technical assistance to improve the lives of parents with disabilities and their families. We share our findings here on this website.



We offer resources to support [parents with disabilities](#), and information about working with parents with disabilities for [social workers](#), [researchers](#) and [legal professionals](#).



The Center for Parents recognizes that parents with disabilities know what they need. We are guided by the principle "nothing about us without us."



<http://www.centerforparentswithdisabilities.org>

Thank you!

Questions??

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Thank you!

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<https://www.surveymonkey.com/r/DPFFLNN>