



Child Custody Laws List a Mental Illness or Disability as Grounds for not Providing Reasonable Efforts to Reunify a Family

Mikayla Bailey-Null of Arizona ran up against her state's child custody law when her daughter was abruptly taken from her home and she was forced to battle to get her daughter back. (See "A Case in Point," attached, for more about her story.)

Bailey-Null is not alone: Arizona is one of five states – the others are Alaska, California, Kentucky, and North Dakota – as well as Puerto Rico that list mental illness or a disability as grounds for not providing Reasonable Efforts to Reunify a family. Such laws do not take into account the fact that staying with their families may be better for the children. According to MIT assistant professor Joseph Doyle Jr., "My research suggests that children on the margin of foster care placement have better employment, delinquency, and teen motherhood outcomes when they remain at home."¹

With the proper treatment and supports, people in recovery from mental illnesses can develop and maintain strong and loving relationships with their children and can rear them as capably as any other parents in their community. In fact, many of our neighbors, friends and families are doing just that: An estimated 26.2 percent of Americans ages 18 and older – about one in four adults – have a diagnosable mental disorder in any given year, according to National Institute of Mental Health statistics.²

One study, by Mark E. Courtney of the University of Chicago's Chapin Hall Center for Children, indicated that children in foster care are more likely than other disadvantaged youth to drop out of school, commit crimes, use drugs, and become parents while they're still in their teens.³ And the study by Joseph Doyle Jr., published in the *American Economic Review*,⁴ "confirms what experience and observation tell us: Kids who can remain in their homes do better than in foster care," Gary Stangler, executive director of the Jim Casey Youth Opportunities Initiative, a foundation for foster teens, told USA Today.⁵

¹"Kids gain more from family than foster care." *MIT News*. 3 July 2007. Massachusetts Institute of Technology. < <http://web.mit.edu/newsoffice/2007/sloan-fostercare-study-0703.html> >

²"Health and Outreach: Statistics." 15 February 2008. National Institute of Mental Health. < <http://www.nimh.nih.gov/health/topics/statistics/index.shtml> >

³ Koch, W. "Study: Troubled homes better than foster care." USA Today. 2 July 2007.

⁴ Doyle, J. (2007) "Child Protection and Child Outcomes: Measuring the Effects of Foster Care." *American Economic Review*. (97(5). 1583-1610.

⁵ Koch, W., op. cit.

Yet research indicates that, in families where the parents have mental illnesses, custody loss rates may be as high as 70 percent to 80 percent.⁶ A study of mothers in Philadelphia who had serious mental illnesses found that they were three times as likely to have been involved in the child welfare system, or to have children who have been placed outside the home, as mothers who did not have such illnesses.⁷ Yet there is evidence that mothers who have mental illnesses are no more likely to abuse their children than mothers without such illnesses.⁸

Keeping families whole also makes sense for the community. Fear that they will lose custody of their children may prevent parents with mental illnesses from seeking the treatment they need, which could increase the likelihood of subsequent legal intervention. Such intervention, which is costly to taxpayers, is an example of the kind of cost-shifting to public service systems that is often the fallout when families are destroyed. For example, the 1997 *Survey of Inmates in Adult State and Federal Correctional Facilities* notes that nearly 20 percent of inmates under the age of 30, and 25 percent of these inmates with prior convictions, reported spending time in foster care when they were young.⁹

Under no circumstances would it be right to advocate that children be reunited with parents who pose a danger to them, regardless of the parents' mental health. However, parents in recovery from mental illnesses should be given accommodations and necessary supports that will allow them to be successful parents.

The UPenn Collaborative on Community Integration of Individuals with Psychiatric Disabilities, a national Rehabilitation Research and Training Center devoted to promoting community integration for individuals with psychiatric disabilities, is working to educate legislators around the country about the importance of keeping families together. The Collaborative is especially targeting state laws – in Alaska, Arizona, California, Kentucky and North Dakota, as well as in Puerto Rico – that list mental illness as one of the grounds for not providing “reasonable efforts” to reunify a family.

There has been progress. For example, the Kansas child custody statute was recently rewritten to include language stating that “[n]othing in this code shall be construed to permit discrimination on the basis of disability. . . .” More recently, Arizona Senator Huppenthal introduced Bill SB1147 to remove mental illness as grounds for not providing Reasonable Efforts to Reunify or Terminate Parental Rights.

The UPenn Collaborative is publicizing Mikayla Bailey-Null’s situation as part of its mission to educate legislators and the public about the barriers individuals with mental illnesses face as a result of their disability.

⁶ Joseph, J., Joshi, S., Lewin, A. & Abrams, M. (1999) “Characteristics and perceived needs of mothers with serious mental illness.” *Psychiatric Services*, 50(10), 1357-1359. Mowbray, C., Oyserman, D., Zemencuk, J. & Ross, S. (1995) “Motherhood for women with serious mental illness: pregnancy, childbirth, and the postpartum period.” *American Journal of Orthopsychiatry*, 65(1), 21-38.

⁷ Park, J.M., Solomon, P., Mandell, D.S. (2006) “Involvement in the Child Welfare System Among Mothers with Serious Mental Illness.” *Psychiatric Services*, 57(4), 493-497.

⁸ Ibid.

⁹ Doyle, J., op. cit.

In addition, the Bazelon Center for Mental Health Law – a key affiliate of the UPenn Collaborative – is working to reform policies that lead to parents’ losing custody of children because of the parents’ mental illnesses.

This is the first of a series of resource sheets about this important problem. For more information, or to inquire about specific custody issues, please contact the UPenn Collaborative (<http://www.upennrrtc.org>).