



Parenting with a Mental Illness: Child Welfare & Custody Issues

One of life's most significant social roles is parenting. Parenting can be one of life's greatest sources of joy and purpose. But it can also entail stress and difficulty. For individuals who live with a psychiatric disability (mental illness) the added stress of parenting and family life may affect their recovery process. The impact of their illness on their children and family life may be significant as well and can lead to even greater mental or emotional distress, complicated by prejudice against people with mental illnesses, lack of parenting supports and lack of accessible information about legal rights where parenting is concerned.

Over two-thirds of all women and more than half of all men who experience a mental illness during their lifetime are parents. Like most everyone, people with mental illnesses want to be the best parents they can.

Loss of custody of a child can be a devastating event for any parent, and can give rise to an acute episode of mental illness, possibly making it more difficult to regain custody. Fear of child custody loss may also prevent parents from seeking the treatment they need early on, making legal intervention in the long run more likely. It is important, therefore, for parents with psychiatric disabilities and those who are close to them to understand child welfare/custody issues and the best course to prevent and respond to loss of custody.

Dealing with a child custody case may be challenging and stressful so it is essential to use all the resources and information at your disposal for the well-being of both your child and yourself. Early, appropriate supports can prevent custody loss so that families stay together.

Child Welfare and Custody Loss

A child welfare agency may remove a child from the parent's custody due to allegations of neglect or abuse. Neglect can include not supervising the child properly, not attending to the child's medical needs, or not providing the child with a safe home.

While mental disability alone is usually insufficient to prove parental unfitness, custody loss among individuals with psychiatric disabilities remains a serious issue. Rates of custody loss for parents with mental illnesses range as high as 70 percent or 80 percent, a much higher proportion than among parents without a mental illness. Studies show that only one-third of children who have a parent with a serious mental illness are in the custody of that parent. Primary factors in the loss of custody are the severity of the illness and the absence of other competent adults in the home.

Child welfare procedure and custody policies vary widely by state and locality so it is important to seek legal advice as soon as these issues arise. The following are some general suggestions if your custody is or may be challenged:

- **Don't sign away your right to custody.** Do not sign a consent form or voluntary placement agreement for your child/ren before consulting an attorney. If you do so it may be more difficult or take you longer to regain custody. Also, in some cases this type of consent may delay your initial hearing before a judge.

- **Be cautious if a child welfare agency worker requests that you sign information release forms.** In general, consult with an attorney before signing medical or other release-of-information forms about you personally. It is, however, usually recommended to sign such forms where the child is concerned.

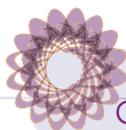
- **Establish Stand-by Guardianship.** Some states recognize a guardian that you designate to take custody of your child when a "trigger" event arises. This allows you to legally identify someone to take care of your child if you become sick or incapacitated, without relinquishing permanent custody rights. In some states these forms must be filed with the court.

If you are a parent with a psychiatric disability and your child has been removed from your custody by the local child welfare agency . . .

Start working IMMEDIATELY to correct the conditions that caused your child to be removed.

In most cases, the child welfare agency must try to terminate the parents' rights to the child so that the child may be adopted if a child is in foster care for 15 out of the last 22 months. Some states have an even shorter deadline. There are only a few very limited exceptions to this requirement, so if your children are in placement, you need to start working right away to get your children back. Talk to your attorney (lawyer) and your child welfare social worker to find out more about this deadline and what you need to do at the start of your case.

Suggestions on the following pages may also be helpful. These tips can also be useful for service providers and others who support parents with custody concerns.





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Please Note: Although the recommendations below are numbered for ease in reading they are all equally important.

I. Staying Mentally Healthy

These steps will not only help you to feel better and help your child, they will also show the judge and all those involved in your case that you are serious about being a good parent.

1. Seek and maintain treatment for your mental illness.

If you have a mental illness or a substance abuse problem, the most important thing you can do for yourself and your child is to get treatment. It is difficult to be a good parent when you are experiencing an untreated episode of mental illness or when you are dealing with a substance abuse problem. The best way to prove to the court that you are committed to being a responsible parent is to show that you are also committed to treatment for anything that might interfere with being a good parent.

2. Communicate openly with your child about your mental illness.

Children who are separated from their parents and at the center of a custody dispute often feel distress and insecurity. Parents can help their children by explaining the process to them in a way that they can understand. Make sure your child knows what you are doing to help yourself get better and that your mental illness and the custody dispute are not their fault!

3. Maintain as much contact with your child as possible and avoid missing child visits.

It is crucial to maintain as much contact with your child as possible. Not only can this help you and your child continue your relationship, it also shows the court and everyone involved in your family's case that your child is your top priority.

4. Develop parenting skills and a support system.

Join a parenting class and/or a support group to help you gain new parenting and coping skills, and to build a supportive community. Even if there is not a group specifically designed for parents in your area, attending a self-help or support group focused on your mental illness can provide the opportunity to connect with others in similar circumstances. (Contact your local Mental Health Association if you need help locating resources like these.)

5. Find an advocate.

The ideal advocate is a parent with a history of a mental illness who has had direct experience with the family court process. It can be very helpful to talk with someone who has dealt with the same issues that you are facing. You can contact your local Mental Health Association to ask if they have a peer advocate program.

6. Plan Ahead.

Create a wellness or recovery plan that includes a child care plan and an advance directive for treatment if you become acutely ill. A wellness or recovery plan is a set of steps you can take to maintain good mental health and avoid triggering episodes of your mental illness. It should include a child-care plan that specifies contact information for people who have agreed to care for your children in the event of an acute episode of your mental illness. An advance directive instructs providers about your treatment preferences in the event that your decision-making abilities are impaired by your mental illness. A wellness plan, child care plan and an advance directive are all very important indicators to the court that you are serious about staying well and parenting well.

II. Dealing with the Legal System

1. Know your rights.

The federal Adoption and Safe Families Act (ASFA), signed into law in 1997, provides protections for both children and their families. Among these, the Act states that in most cases parents have a right to services and supports to assist them in retaining or regaining custody of their children. Certain rights are upheld nationally while others apply on a state-by-state basis. The following, however, are always the case:

- A child welfare agency cannot keep custody of your child without a court proceeding. If a child is removed from your care by a child welfare agency, you have a right to a court hearing to determine if he or she should be returned to you. If the court decides that your child should not be returned, the court will monitor your progress and decide if and when your custody may be restored.

- If your child is placed in foster care, the child welfare agency responsible for your child is also required, in most cases, to make reasonable efforts to reunite the family. Ask the social workers involved in your case for help finding resources and supports. If you are not getting the help you asked for, tell your lawyer, or, if you do not have a lawyer, tell the judge.

- Federal law requires the child welfare agency to file a petition to terminate parental rights in most circumstances after a child has been in placement for 15 months (or less, depending on the state).





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II. Dealing with the Legal System (continued)

2. Hire a family law attorney and educate him/her about your mental illness.

If you or your family cannot afford an attorney, you may be entitled to free legal services based on your income. In most states if you cannot afford your own attorney, the court will appoint one for you. If you are not sure if you have the right to a lawyer, ask the court to appoint one for you at the first hearing. If you do not have a right to an attorney, you may be able to obtain one through your local legal services organization or bar association. Educate your attorney about your illness and recovery, how it impacts your parenting and what treatment and supports you need or have sought to minimize its impact on your parenting.

3. Try to establish a good relationship with the law guardian for your child, if one has been appointed.

Most states require that a *guardian ad litem* and/or an attorney be appointed for your child. Generally, one person acts both as the guardian ad litem (representing the best interests of the child) and attorney (representing the wishes of the child). In a few states, the roles are separate and both an attorney and a guardian are appointed. It will be important for the person(s) representing your child to understand your illness and all that you are doing to regain custody of your child and promote the best interests of your family. If you have an attorney, your attorney should help you in communicating with your child's advocate(s).

4. Obtain information and keep records of everyone involved in your case.

Get a notebook and keep the names and phone numbers of everyone involved in your case. Also, write down the dates and a brief summary of all telephone calls and meetings. Keep all paperwork you receive, such as letters from social workers or your lawyer, in a folder or box. Not only will keeping this information be helpful to you, it will also help show the court that you are an organized and responsible parent.

5. Be prepared to release information about your mental illness and treatment to the court and the child welfare agency.

If mental illness is an issue in your case, then the court and the child welfare agency will want to know about your diagnosis and treatment. While you may have a right to keep that information confidential, doing so will make it much harder to get custody of your children back. Talk with your mental health provider about what information you are comfortable with releasing. Often, it is enough to share your diagnosis, treatment recommendations, and whether or not you are compliant with your treatment.

6. Prepare for court; be neatly dressed and respectful of the judge.

Dress yourself appropriately and neatly when appearing in court. If your children are still in your custody, be sure to dress your children neatly as well. It is advisable to not wear very casual clothes, such as shorts, t-shirts or jeans because this may convey to the judge that you are not serious about your case. Likewise, always speak politely and respectfully to the judge. Never interrupt the judge or raise your voice in court. These are ways to show the judge that you are handling your problems in a mature fashion.

7. Work with your attorney to prepare for the following questions typically asked by family court:

- What is your present ability to parent?
- What is your present ability to respond to day-to-day responsibilities?
- What treatment are you receiving?
- How do you interact with the children?
- What are the safety concerns involved?

*****Resources For More Information*****

National Mental Health Association Fact Sheets:

- Tips on Healthy Parenting for Mothers with Depression:
<http://www.nmha.org/infoctr/factsheets/HealthyParentingTips.pdf>
- Strengthening Families Fact Sheets List:
<http://www.nmha.org/children/invisible.cfm#strengtheningfactsheets>
- Child Custody Issues:
<http://www.nmha.org/children/custody.pdf>
- Serious Mental Illness and Parenting:
<http://www.nmha.org/children/custody.pdf>

Parenting Well: Resources for Healthy Families:
<http://www.parentingwell.info/faq.html>

Mental Health Association in New York State
Helping Yourself Through Family Court:
http://www.mhanys.org/pwpd/pwpd_familycourt.htm

The Judge David L. Bazelon Center for Mental Health Law:
<http://www.bazelon.org>

Invisible Children's Project
<http://www.nmha.org/children/invisible.cfm>
<http://www.nmha.org/children/invisiblesites.cfm>
http://www.mhanys.org/ebpdb/spotlight_icp.htm

Substance Abuse and Mental Health Services Administration (SAMHSA)

Parents with Mental Illness and their Families:
<http://www.mentalhealth.samhsa.gov/publications/allpubs/KEN-01-0109/default.asp>

