

FAIRNESS FOR FAMILIES AFFECTED BY PSYCHIATRIC DISABILITIES

PPDLA Efforts and Advocacy

The Parents with Psychiatric Disabilities Legal Advocacy Project (PPDLA) is a statewide initiative administered by the New York State Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD). This project has two grantees: Legal Services of Central New York, serving the upstate region, and the Urban Justice Center serving the downstate region. The goals of PPDLA include promoting family integrity through legal advocacy and representation, and empowering parents through trainings and outreach, and community education.

PPDLA came about as a result of grassroots organizing. Parents and parent advocates, in concert with New York Association of Psychiatric Rehabilitation Services (NYAPRS) and the Mental Health Association of New York State (MHANYS), identified the need to change overtly discriminatory laws and practices relating to the termination of parental rights due to parental psychiatric disability. PPDLA funding was approved by the Senate and Assembly Mental Hygiene Tables in March 2007 specifically to provide training for legal professionals to recognize psychiatric disabilities in parents and to connect such parents to services that enhance their parenting skills in an effort to prevent their children from entering the child welfare system.

Under the auspices of the CQCAPD, PPDLA has substantially developed and advanced its goals:

- Attorney training, because good legal advocacy for parents translates into positive outcomes for children and their families;
- Networking with parents and community advocacy programs throughout the state and

providing information and referral services, because parents with psychiatric disabilities need protection and advocacy targeted at the unique problems they and their families face when involved with the child welfare system.

- In only a matter of months since the inception of the program, we have already made significant strides in achieving project goals.

See Appendix A - PPDLA Case Illustrations; Appendix B - Networking/Community Outreach; Appendix C - Presentations.

The efforts of PPDLA benefit all stakeholders in the child welfare system, providing a win-win-win solution to a challenging problem:

1. The Project is cost-effective for New York State. PPDLA provides specialized training to the family court bar, peer advocates, and service providers. Well-trained legal advocates ensure that the legal system works more effectively resulting in fewer instances of unjust removals, increased family preservation, and efficient use of limited state resources.
2. Children win because they safely remain with or are promptly returned to their birth families. This spares them the trauma of removal and uncertainty as to their status within their families.
3. Parents, many of whom are indigent, are assured proficient, zealous advocacy. Their access to services tailored to fit their needs is increased, thereby enhancing their chances of safely parenting their children despite their disability.

Promoting Public Policy

Alleviating the fears and consequences of removals that parents risk when they become involved in the child welfare system, through effective advocacy and services, promotes good

public policy for children to safely grow up with their biological families. As a result, parents are more likely to seek the care they need in order to have healthy pregnancies and create healthy families. Families have a better chance to remain intact. This is consistent with the State's findings set forth in the Social Services Law that it is usually best for children to remain with or be returned to their birth family. New York Social Services Law 384-b (1).

Though removal and placement in foster care is inevitable in some cases in order to keep children safe, the trauma of removal and problems related to children's placement in foster care have been well-documented, and include developmental delays, teen pregnancy, and juvenile delinquency. Doyle, J. *Child Protection and Child Outcomes: Measuring the Effects of Foster Care*, American Economic Review 97 (5) December 2007: 1583-1610. In fact, this recent study suggests that children on the margin of placement tend to have better outcomes when they remain at home. Id.

History of PPDLA

PPDLA came into being because parents, mental health professionals and community advocates identified the need for change in the law and in the culture. New York parents facing a challenge to their parental rights on the basis of mental illness face higher hurdles and enhanced pressures as compared with other parents, and are disproportionately affected by time pressures to complete services. This is particularly true since the passage of the Federal Adoption and Safe Families Act (ASFA) in 1997, and subsequent change in New York State in the implementation of permanency regulations in 2005. PPDLA was funded to address discrimination and stigma affecting these parents in their family court matters.

Scope of the Project

PPDLA is a statewide initiative; our work is shared by two grantee agencies: the Upstate grantee, **Legal Services of Central New York**, has hired two attorneys for the PPDLA project. We cover 54 counties outside of the New York metropolitan area. Based on our experience with the family court system, we believe that the way to have the most significant impact, across our broad geographic region, is to provide training, resources and support to parents' attorneys, to advocate for knowledgeable and effective assigned counsel, and to provide public education on the problems inherent in the current law. We routinely provide legal advice, information and referral, technical assistance, and advocacy to parents facing challenges to the custody of their children.

The **Urban Justice Center** has hired one attorney for the PPDLA project. PPDLA downstate covers Long Island, the five New York City counties and Westchester county, providing comprehensive, specialized legal representation that includes an essential social work component. We frequently collaborate with other legal providers in the downstate region to ensure that fundamental fairness and due process in family court are afforded to parents with psychiatric disabilities. PPDLA strives to ensure that disabled parents who are at risk of state intervention are afforded the necessary services to maintain family unity.

Challenges Faced by Families with Parental Mental Illness

Parents with current or former psychiatric diagnoses face considerable stigma in family courts throughout New York State. The notion that a psychiatric illness precludes a parent from raising his or her child safely is pervasive in our society, and unfortunately, in our court rooms. In New York State, the presumption that psychiatric disability means parental unfitness is

bolstered by a law which both directly and indirectly discriminates against a parent struggling with psychiatric disabilities. The New York State provision defining the bases upon which the state may terminate a person's parental rights (SSL § 384-b) is a 1976 law. The law establishes five grounds. PPDLA is particularly concerned with the following provision:

The parent or parents, whose consent to the adoption of the child would otherwise be required . . . are presently and for the foreseeable future unable, by reason of mental illness or mental retardation, to provide proper and adequate care for a child who has been in the care of an authorized agency for the period of one year immediately prior to the date on which the petition is filed in the court.

Thirty-two years ago when this law was enacted, psychiatric medications and treatment were in a far more primitive state than they are today. The practice of psychiatry has dramatically advanced since 1976, but the law has failed to keep pace. Therapeutic and pharmacological options now offer greater opportunity for people with mental health challenges to parent effectively. Yet the stigma attached to psychiatric illness is no less crippling now than in the past.

- Research shows an alarming rate of custody loss among parents with mental illness, whether as a result of divorce, child abuse or neglect - as high as 70-80%. Statewide, about one-fourth of foster care placements involve at least one parent with a serious mental health problem.
- Parents with mental illness face the same challenges that many other parents face - relationships, employment, financial problems, affordable housing, transportation, child care, etc., but they also face the demands of managing their symptoms and treatment regimen, and misconceptions about their illness. These families need holistic services that address a wide range of problems inherent to parents with psychiatric disabilities.

- Additionally, especially in rural New York, access to appropriate treatment is limited. The expedited time line for termination penalizes parents who require mental health services because there is a shortage of providers, especially those accepting Medicaid, so wait lists are long. Parents requiring mental health services need more time because of the complex nature of required services and their limited availability, yet the law imposes a compressed time line by “fast-tracking” parents with psychiatric disabilities for earlier termination.
- Though disability alone is not justification for termination parental rights, the major concern is that the explicit inclusion of disability grounds shifts the focus to a parent’s condition or diagnosis, rather than behavior, which leads to discrimination.
- New York’s disability ground is the only ground based on a contributing factor to a parent’s behavior, rather than the behavior itself.

APPENDIX A

PPDLA CASE ILLUSTRATIONS

We have received a wide variety of referrals since May 1, 2008. What follows is a representative sample from the upstate and downstate projects:

Albany County: A young woman facing allegations of child neglect, sought assistance from MHANYS advocates. Because of the pending neglect matter, Albany County DSS was aware of her pregnancy. The young woman was not taking psychotropic medicine during her pregnancy because she and her doctor agreed that the risk of harm to the fetus due to the potential for teratogenic effects was greater than the risk of harm to the mother if she was off medication. She did, however, engage in therapy. Additionally, she made arrangements (with the help of community advocates whose assistance she sought) for supports post-partum, including visiting nurse, in-home parenting support and on-going therapy.

She and her parent advocates participated in service plan meetings and specifically addressed all possible concerns raised by her caseworker. Despite the arrangements and assurances from the caseworker that the arrangements were sufficient, the baby boy was removed at the hospital. The Department cited the pending neglect matter (unadjudicated), the young mother's psychiatric history, and failure to take psychotropic medication (despite no active symptoms). This was devastating to the mother and all who had worked so hard to assist her. She lost valuable bonding time with her son. Months later the child remains in foster care.

Broome County: Mother with significant psychiatric history seeks preventative services prior to the birth of her child. Mental Health provider, stating fears of liability for risks associated with the use of psychotropic medication during pregnancy, defers to client's obstetrician (not psychiatrically trained). Mother seeks assistance from the Department for preventative services and gives birth to a healthy baby boy; CPS removes child at birth. Mother, devastated, participates in all services provided; service plan does not foster bonding as Department schedules visits for two hours every other week. Visits, such as they are, go smoothly according to DSS casenotes. Due to mismanaged psychotropic medications, mother decompensates and enters inpatient treatment. Mother struggles with trying to continue breastfeeding but the separation and medication issues cause her to stop. Visitation with child becomes infrequent and community services cease.

The focus becomes medication adjustments to wean her off being overly medicated, though her treatment team supports continued visits with baby. Abruptly, mother is pressured to consider surrendering her parental rights. She is assured by caseworker that foster mother will openly

allow post-surrender contact and caseworker wrongly advises that mother can then petition family court for formal visitation. Mother is transferred to facility for more long-term care.

Mother's attorney learns of surrender discussions and advises client as to actual ramifications. Mother becomes confused. She declines the surrender as she wants contact with the baby. Attorney is concerned about mother's capacity to make such a serious and irrevocable decision. Attorney advocates at permanency hearing to continue goal of return to parent given the initial participation in services. The Department informs that they are not required to make diligent efforts as they may proceed with termination based on mental illness. PPDLA researches and assists attorney with motion for appointment of guardian *ad litem* to assist with decision-making regarding the proposed surrender. Because of effective legal advocacy, the court has ordered that mother be enrolled in intensive parenting class offered by the Office of Mental Health at the psychiatric hospital. Surrender is not before the court at this time, pending the court decision regarding Guardian ad litem appointment.

Bronx County: Both parents have diagnoses of schizophrenia. Soon after her child was born, the mother returned to the hospital with the infant for a routine newborn follow up. While at the hospital, the staff observed that the mother was "acting weird," so they called in a report to the SCR and immediately placed the child in care. There was no evidence of imminent risk to the child. The mother is currently on medication and is able to provide adequate care for her child. She and the child's father live in supportive housing and the child has four unsupervised overnight visits with his parents weekly. In spite of all the evidence in support of the parents' ability to care for their child, the attorney for the child and the judge are still reluctant to send the child home because of the remote possibility that something might happen to the child. The parents are being deprived of their fundamental right to parent their child solely because they have psychiatric disabilities.

Bronx County: Client has a history of schizophrenia. In 1997, she gave birth to her son, TS. TS was born with a number of developmental disorders, including Klinefelter's Syndrome. By the age of 6, TS had become extremely unruly. TS's behavior, coupled with his mother's efforts to cope with her mental illness, proved extremely challenging. Mother called the Administration for Children's Services (ACS) for help with TS and, contrary to their obligation to safeguard the family, they failed to provide services. A couple of months after her first call to ACS, TS was hospitalized. Upon his discharge, the client informed the hospital and ACS that she was unable to provide the services and intensive care that TS required. ACS should have provided preventive services to client and her child. Instead, they filed a neglect petition against her and placed TS in foster care. As a result of ACS' failure to make diligent efforts to preserve the family and prevent TS's removal, the client decompensated. In 2007 her rights were terminated. TS has remained in care since 2004. There have been two failed pre-adoptive resources. He sits in a residential treatment center in Hawthorne, NY. His mother is currently functioning well and would love to have a relationship with him. Had ACS provided the services they were required

to before and during the neglect proceedings, he would still have a loving relationship with his mother, and the client would still enjoy the benefits of motherhood. The client should be able to gain post-termination contact rights with her son.

Kings County: Mother has a diagnosis of schizophrenia. Her child was removed from her care because of educational neglect. The child has been in care for 10 months. Although there have never been any instances or allegations of the mother placing the child at risk of physical harm, the mother is still receiving supervised visits with her 11 year old son. ACS's bias is evident in the discriminatory application of their visitation policy to parents with mental illness.

Manhattan County: Mother has a history of mental illness and has had a previous termination of parental rights. When ACS found out that she had additional children, including a newborn (6 months old), they began an investigation into her ability to care for her children. During the course of the 1 ½ month investigative period, ACS failed to provide services or take affirmative action to maintain the family unit. They instead filed a neglect petition against the mother alleging mental illness. A number of weeks after the petition was filed, ACS referred the client to mental health evaluation. The referral was, however, made to the ACS Mental Health Evaluation Program.

This referral was problematic and inappropriate in two ways: 1) ACS, the prosecuting agency, made an internal referral, which poses a significant conflict of interest; and 2) this referral was only for an evaluation, as the mother could not obtain any treatment from this center. The mother would then have to wait an inordinate amount of time to receive mental health treatment, if necessary. During the course of this delay, her children are languishing in foster care and the ASFA clock is ticking. As a result of ACS' discriminatory treatment, families affected by psychiatric disabilities lose custody of their children at a disproportionate rate.

Tompkins County: Mother, likely facing termination of parental rights based on mental illness, has not been afforded an opportunity to demonstrate her parenting skills in a normal setting. Neither has she had the support of the OMRDD services to help her meet her son's special needs. Instead, the foster parents are now enjoying the benefits of those services. Mother is being pressured to surrender her rights in hopes of negotiating some post-adoption contact because, under the law (SSL 384-b), if the termination is based on mental illness, the parent is not entitled to a dispositional hearing regarding post-termination contact. Her child with special needs has been in foster care for almost 12 months. Prior to his removal, he was raised by his parents until the age of 4. It took many months to address the mother's and child's needs with appropriate services.

Mother has fully participated in all services (including parenting classes and therapy) and addressed all conditions to gain more visitation. She left her husband who was the main source

of the household parenting problem, obtained better housing and now has access to transportation. She also has family support.

Still, she has been denied requests for increased visitation. Her efforts have been overshadowed by the improvements the child has made in foster care with the benefit of new services and the privileges offered by affluent foster parents. She is highly motivated to regain custody but is being denied the chance based on a report by the visitation supervisor that she is not capable of parenting her special needs child despite her perseverance. She should have the advantage of services tailored to meet the needs of this family.

APPENDIX B

NETWORKING AND COMMUNITY OUTREACH

NATIONALLY:

- ABA Center on Children and the Law - Parent Representation Project
“The project will research and report on efforts of parents and parent advocates to improve practice in courts and influence policy. *It will start with chronicling the work in New York* and include efforts in jurisdictions across the country....Giving voice to the voiceless parent in the child welfare system is essential to positive outcomes for children and families.” PPDLA was invited to attend and submit presentation proposal for first national conference of this ABA Parent Project.
- Bazelon Center for Mental Health Law
- UPenn Collaborative on Community Integration - resources for working with parents with psychiatric disabilities facing custody issues
- Joanne Nicholson, PhD., UMass Medical School, Department of Psychiatry - Center for Mental Health Services Research - Parenting Well Resources for Healthy Families
- Kate Nemens, Esq., Clubhouse Family Legal Support Project, Boston, MA
- National Alliance on Mental Illness
- Behavioral Healthcare Magazine

NEW YORK:

- Mental Health Association of New York State - Parents With Psychiatric Disabilities Initiative
- Mental Health Association of Suffolk and Westchester Counties
- Office of Mental Health Central New York Field Office
- Onondaga County Office of Mental Health
- New York State Defenders Association
- Child Welfare Court Improvement Project
- Erie County Assigned Counsel Program - Article 10 Panel

- Catholic Charities Onondaga County - Better Beginnings program
- East New York Clubhouse
- Howie T. Harp Clubhouse
- Venture House (Clubhouse)
- Legal Services of New York (LSNY)
- New York Lawyers Assistance Group (NYLAG)
- New York Lawyers for the Public Interest (NYLPI)
- The Bronx Defenders
- The Center for Family Representation (CFR)
- The Brooklyn Family Defense Project
- The Child Welfare Organizing Project (CWOP)
- Harlem Hospital
- King's County Hospital
- Child Welfare Watch (publication)
- *Something of Substance* (Charlyne Peay television interview, October 8, 2008)

APPENDIX C

PRESENTATIONS and TRAININGS

- Office of Mental Health - Regional Retreat for Parent Advisors
- Hiscock Legal Aid - Family Court Attorneys
- Legal Aid of Mid-NY, Broome County office
- Syracuse University Children's Rights and Family Law Clinic
- Erie County Assigned Counsel Article 10 Panel
- The Brooklyn Family Defense Project - Family Court Attorneys
- The Bridge Builders Community Partnership Initiative (community advocates from more than 30 service providers, foster care agencies, ACS staff were present)
- Legal Services of New York Family Law Task Force (Family Law Attorneys)
- New York County Lawyers Association, Family Law Committee
- Child Welfare Organizing Group CWOP (Parents and Parent advocates)

COMMITTEES

- ASFA Task Force, Legislative Subcommittee
- Fordham University Interdisciplinary Parent Representation Group
- Bronx Mental Health Forum Planning Committee