

## LEGAL SERVICES OF CENTRAL NEW YORK, INC.

472 SOUTH SALINA STREET, SUITE 300

SYRACUSE, NEW YORK 13202

TEL. (315) 703-6500

FAX (315) 475-2706

### PARENTS WITH PSYCHIATRIC DISABILITIES LEGAL ADVOCACY PROJECT:

#### SOCIAL SERVICES LAW 384-b EDUCATION INITIATIVE

The termination of parental rights completely and irrevocably severs a parent's right to custody as well as the right to ever visit, communicate with, or regain custody of her child. Parents with psychiatric disabilities are particularly vulnerable to loss of custody and termination of parental rights due to preconceived notions of mental illness and the focus on their diagnosis or condition, rather than their behavior, i.e. ability to parent.

New York Social Services Law § 384-b is on its face discriminatory because it explicitly and unnecessarily incorporates disability-related grounds for termination of parental rights. The NY law specifies the following grounds for termination of parental rights:

- Abandonment
  - Permanent Neglect
  - Severe and Repeated Abuse
  - Parent is unable by reason of **mental illness or mental retardation** to provide proper and adequate care
- ▶ Our project seeks to remove discriminatory disability-related grounds because such grounds unfairly allow a shift in the focus from a parent's behavior to a parent's diagnosis.
- ▶ Parents with psychiatric disabilities are not given the same chance as other parents to address the issues that led to removal of their children.
- ▶ The law discriminates against parents with psychiatric or developmental disabilities by not requiring the Department of Social Services agency to show that they made diligent efforts to reunite the family.
- ▶ In contrast, under permanent neglect grounds, the *threshold issue* is whether the agency made diligent efforts. Only upon that showing, the court then considers whether the parent failed to plan for the future of the child.

When disability grounds are utilized, the parent will be ordered to be examined by a court-appointed psychologist or psychiatrist. As a coercive tool against parents reluctant to subject themselves to such examination, their rights may be terminated based only upon the expert's review of their psychiatric records. Parents, often indigent, are unable to hire their own expert to refute the testimony of the court-appointed psychologist or psychiatrist.

The Social Services Law was amended in 1976 to add the current grounds to the already existing abandonment and neglect grounds. Since then, much progress has been made in psychiatric treatment and medications. The law should be changed to reflect such progress and allow parents with psychiatric disabilities the chance to become better parents with proper treatment and services. Moreover, the legislature should take heed of the subsequent enactment of the Americans with Disabilities Act of 1990 (ADA), and the ADA Amendments Act of 2008, to afford parents with disabilities an equal opportunity to benefit from services offered by state and local agencies.

Without the objectionable disability grounds, the current law would sufficiently protect the safety of children. Permanent neglect encompasses a parent's failure to plan for the future of the child, despite the Department of Social Service agency's diligent efforts to strengthen the parental relationship. Disability grounds unfairly allow the agency to dispense with diligent efforts and focus on surrender or termination, rather than fulfill their obligation to help keep families together.

- The use of mental illness grounds promotes the stereotype that parents with psychiatric disabilities are inadequate.
- The stigma associated with mental illness and the fear of loss of custody are often barriers to seeking treatment.
- Under the current statute parents suffer from a presumption of unfitness.
- Parents with disabilities are not more likely to maltreat their children than parents without disabilities.
- Poverty and chronic unemployment are among the greatest risk factors for child abuse or neglect.
- While parents with psychiatric disabilities are just as likely to become parents as compared to the general population, studies report alarming rates of custody loss - as high as 70% to 80%.

We seek the support of all stakeholders and others interested in removing legal obstacles that unfairly interfere with the rights of disabled parents to care for their children.

For more information, please contact the Staff Attorneys for the Upstate Parents With Psychiatric Disabilities Legal Advocacy Project: Christine S. Waters at (315) 703-6562 or Elaine C. Amory at (315) 703-6598.