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PREDICTIVE NEGLECT AND “UNFIT” MOTHERS - WHEN HAVING A MENTAL ILLNESS MEANS THE STATE TAKES YOUR CHILD

*Amelia Lyte**

I. INTRODUCTION

Mindi was a twenty-five-year-old new mother when she experienced a psychotic episode.¹ She believed that her five-month-old daughter was raped the night before, despite the doctors finding no evidence that her baby was hurt.² Mindi underwent a psychiatric evaluation and was later diagnosed with postpartum psychosis.³ Child protective services were notified by the hospital staff and Mindi’s daughter was removed from her custody.⁴ There was no evidence that the baby was harmed in any way or that Mindi would harm her.⁵ Subsequently, Mindi secured a new job, her own apartment, attended therapy and had a second child, all while calling her daughter at her foster home every night.⁶ Mindi remained unable to regain custody of her daughter, even after she was found competent to parent again by judges and doctors and

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¹ Seth Freed Wessler, *Should a Mental Illness Mean You Lose Your Kid?*, PROPUBLICA (May 30, 2014, 5:45 AM), <https://www.propublica.org/article/should-a-mental-illness-mean-you-lose-your-kid>. A psychotic episode involves disruptions as to how the individual thinks and perceives the world around them, which may cause that person to temporarily lose touch with reality. *Early Psychosis And Psychosis*, NAMI (last visited Dec. 19, 2017), <https://www.nami.org/earlypsychosis>.

² Wessler, *supra* note 1. Mindi had been struggling financially and emotionally, becoming depressed after her daughter was born. *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

had been given an assessment that her disorder would not interfere with her ability to parent.⁷

“Predictive neglect” is the theory that a child may be removed from his or her mother’s⁸ care based on the *possibility* that the child *may* be hurt.⁹ This theory is often applied in situations where a mother has a mental illness.¹⁰ A child does not actually need to be harmed or put into harm’s way.¹¹ Rather, the mere threat of harm due to the perception that a child *may* be abused, maltreated, or not provided with a suitable home, raises the concern which may result in the state’s removal of the child deemed “at risk.”¹² Examples of triggers that may lead to the removal of a child include a mother’s past attempt to commit suicide or a schizophrenia diagnosis.¹³

Where evidence confirms that a mentally ill mother poses an imminent threat to a child’s safety, removal may be warranted.¹⁴ For example, in two extreme cases, two mentally-ill mothers in Texas killed their children during psychotic episodes.¹⁵ Although such dramatic examples are not the norm, the fear of

⁷ *Id.* Mindi’s daughter’s foster parents pushed heavily to have Mindi’s rights terminated so that they could adopt the child. *Id.* The Missouri Supreme Court ruled that the trial court’s initial finding that Mindi was a danger to her child should be respected despite the evidence that Mindi was a fit parent. *Id.*

⁸ For the purposes of this note, “mother” will generally be used in lieu of “parent.” See *infra* note 17 and accompanying text.

⁹ Hendrik deBoer & Mark Randall, “Predictive Neglect” Cases Based on Parent’s Mental Health, CONN. GEN. ASSEMBLY OFFICE OF LEGIS. RESEARCH (Feb. 16, 2012), <https://www.cga.ct.gov/2012/rpt/2012-R-0103.htm>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ 4-28 SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION LAW AND PRACTICE § 28.02(1)(g) (Matthew Bender, Rev. Ed. 2016).

¹⁴ This evidence could include statements or behavior of the parent that indicate they might hurt the child. Evidence could also include signs that the child is not being properly cared for, such as malnutrition.

¹⁵ See generally Lauren Johnston, *Tale of Two Killer Moms*, CBS NEWS (Apr. 4, 2004, 6:44 PM), <http://www.cbsnews.com/news/tale-of-two-killer-moms/>.

such tragedies has contributed to an over-zealous system that often rashly separates families. This is especially disturbing because once a child is taken away under such circumstances, mothers often find it difficult, if not impossible, to regain custody of that child even if they get treatment for their illness.¹⁶

This note will explore the connection between predictive neglect and the removal of children or newborns based on a mental illness or disability in parents, usually the mother.¹⁷ Family court judges are given broad discretion to make these determinations.¹⁸ Since these cases are extremely fact specific, mothers have little chance for a successful appeal.¹⁹ Even if a mother’s mental health improves, she is unlikely to regain custody once she has been stigmatized by mental illness.

Part I will examine the problems mothers with mental illness face and how these problems affect removal decisions. It will also address the general standards and procedures for removing children and how that removal may affect the mother.

Part II will examine the law as it currently stands. Different states have different standards and procedures for removing children either permanently or temporarily. Because of the fact-sensitive nature of cases involving removal of children and termination of parental rights, this note will examine both statutes and case law to evaluate the fairness, effectiveness, and practical

¹⁶ See Wessler, *supra* note 1.

¹⁷ Mothers are more likely to be the primary or only caregiver of a child. See U.S. DEP’T OF COMM., CENSUS BUREAU, CH-1 LIVING ARRANGEMENTS OF CHILDREN UNDER 18 YEARS OLD: 1960 TO PRESENT (2016) (explaining that about eighty-five percent of single parents are mothers); see U.S. DEP’T OF COMM., CENSUS BUREAU, FIG. CH-2.3.4 PERCENT OF CHILDREN UNDER 18 WHO LIVE WITH THEIR MOTHER ONLY (2016) (stating that roughly fifty-two percent of black children, twenty-five percent of Hispanic children, and eighteen percent of white children live with their mother only).

¹⁸ Family court judges are historically afforded broad discretion due to the fact-sensitive nature of family matters. In particular, legal scholars have noted the extremely fact sensitive nature of custody matters. See, e.g., Dana Harrington Conner, *Abuse and Discretion: Evaluating Judicial Discretion in Custody Cases Involving Violence Against Women*, 17 AM. U. J. OF GENDER, SOC. POL’Y & THE L. 163, 169-70 (2009).

¹⁹ *Id.*

application of these rules and standards. Connecticut, Utah, and California will be used as case studies as each of these states represent different approaches to the issue of predictive neglect and mental illness.

Part III will propose flexible recommendations and solutions that will help judges make better determinations regarding removal of children or termination of parental rights in situations where the mental illness of the mother is the primary consideration.

A. Part I: The Problem of Mental Illness & Child Removal

The National Institute of Mental Health has found that approximately 18.1 percent of adults and 21.8 percent of women in the United States suffer from mental illness.²⁰ Of that number, 9.8 million²¹ adults in the United States suffer from a serious mental illness, which is defined as any mental, behavioral, or emotional disorder that “result[s] in [a] serious functional impairment, which substantially interferes with or limits one or more major life activities.”²² Roughly five percent of adult women in the United States have a serious mental illness.²³

Different mental illnesses can have varying effects on a mother’s ability to parent. Illnesses such as schizophrenia, personality disorders, and severe depression can lead to a mother being unable to emotionally or physically care for a child.²⁴ The

²⁰ *Any Mental Illness (AMI) Among U.S. Adults*, NAT’L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/statistics/prevalence/any-mental-illness-ami-among-us-adults.shtml> (last visited Dec. 19, 2017).

²¹ 9.8 million adults is equal to roughly four percent of the adult population of the United States. *Serious Mental Illness (SMI) Among U.S. Adults*, NAT’L INST. OF MENTAL HEALTH, <https://www.nimh.nih.gov/health/statistics/prevalence/serious-mental-illness-smi-among-us-adults.shtml> (last visited Dec. 19, 2017).

²² *Id.*

²³ *Id.*

²⁴ Louis Appleby & Chris Dickens, *Mothering skills of women with mental illness: Not enough known about the postpartum period*, 306 *BMJ* 348, 348 (1993) (elaborating that unresponsiveness, lack of warmth, neglect, irritability, lack of motivation, and disturbed behavior are some possible concerns when dealing with mentally ill mothers).

stigma associated with mental illness is something felt by both the mothers themselves and by case workers.²⁵ Mothers may feel the need to prove themselves capable of parenting, attempting to overcome the assumption that, unlike everyone else, they are unfit to parent or that they will abuse their children.²⁶ When it comes to the everyday stresses of life, mothers are confused as to whether what they are feeling is normal or part of their illness.²⁷ In focus group studies that explored the effects of mental illness on mothers, most participants cited parenting as being a very important part of their lives.²⁸ Participating mothers indicated that their children also provided them with a sense of normalcy²⁹ and a purpose that motivated them to improve their health.³⁰

Although women with mental illness have children at about the same rate as the rest of the population, they are far more likely to lose custody of those children.³¹ In rare instances where the children are returned to the mother,³² the fear that they will be removed again is constantly in the back of the mother’s mind.³³

²⁵ Joanne Nicholson et al., *Mothers with Mental Illness: I. The Competing Demands of Parenting and Living with Mental Illness*, 49 J. PSYCHIATRIC SERV. 635, 638 (1998).

²⁶ *Id.*

²⁷ *Id.* at 639.

²⁸ Carol T. Mowbray et al., *Parenting and the Significance of Children for Women with a Serious Mental Illness*, 22 J. OF MENTAL HEALTH ADMIN. 189, 190-92 (1995) (indicating that for this study, about twenty-four mothers with mental health issues were individually interviewed to determine their parenting behaviors/attitudes as well as their interpersonal/socioeconomic supports).

²⁹ Nicholson, *supra* note 25, at 635 (explaining that being a parent and having a routine connecting to your child’s care can be normalizing, giving a mother a structured role in her day to day life).

³⁰ Mowbray, *supra* note 28, at 196.

³¹ Nicholson, *supra* note 25, at 639-40.

³² See Chapter 5: *The Child Welfare System: Removal, Reunification, and Termination*, NAT’L COUNCIL ON DISABILITY, <http://www.ncd.gov/publications/2012/Sep272012/Ch5> (last visited Dec. 19, 2017) [hereinafter *The Child Welfare System*] (finding that laws such as the Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115, have had the effect of making it more difficult to reunify families).

³³ Nicholson, *supra* note 25, at 639.

Permanent termination of parental rights can be devastating.³⁴ When children are removed from their mother, reduced or irregular contact with them can interfere with a mother's ability to get well.³⁵ Some mothers may choose to avoid seeking treatment out of fear that they will lose their children.³⁶ Having a mental illness does not make a mother an unfit parent, but it may make her be seen as or feel like one.³⁷

Although each state has specific standards regarding the removal of children from their homes, the consistent goal throughout the process is to act in the best interest of the child.³⁸ Common principles for determining what would be best for the child include consideration for keeping the family whole, the emotional or physical health and safety of the child, the gravity of making permanent changes, and the ultimate impact of removal on the child's ability to be cared for and to grow.³⁹ The mental health of the mother is relevant to making these decisions since mental illnesses may impact the ability of the mother to care for her child and to keep them safe and healthy. The child's best interest is prioritized over the interests and health of the mother and the integrity of the family unit.⁴⁰

Child protective service ("CPS") employees walk the fine line between removing the child from a potentially harmful situation and keeping the family whole.⁴¹ The agency holds the ultimate power over a mother because it can threaten court action and the removal of her children from her care.⁴² To determine if a child is not being properly cared for, CPS uses a two-step process

³⁴ *Id.* at 639-40.

³⁵ *Id.* at 639 (showing that mothers may be worried about their absent children and can become distracted from their treatments due to the lack of contact with their children).

³⁶ *Id.* at 636.

³⁷ *Id.* at 638-39.

³⁸ U.S. DEP'T OF HEALTH & HUM. SERV., CHILDREN'S BUREAU, DETERMINING THE BEST INTERESTS OF THE CHILD, 2 (2016).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *The Child Welfare System*, *supra* note 32.

of screening and investigation.⁴³ Screening is usually conducted via referral in situations where alleged child maltreatment is reported.⁴⁴

After the initial screenings are complete, the next step is to conduct an investigation.⁴⁵ The primary purpose of an investigation is to discover whether the child is being, or will likely be, maltreated.⁴⁶ The investigation also determines what services would be appropriate for that child and their family.⁴⁷ In 2014, approximately 2.2 million investigations or dispositions were conducted across the country.⁴⁸ Even if the investigation ends there, that process alone and the inherent scrutiny can be traumatizing for any mother. If the investigation continues, it can make mothers feel like criminals⁴⁹ or cause them immense terror.⁵⁰

R.C.⁵¹ was eight months pregnant when she went for a check-up with her obstetrician.⁵² The doctor informed her that her medical records indicated that she had attempted to commit suicide ten years earlier.⁵³ However, R.C. had never attempted to

⁴³ U.S. DEP’T OF HEALTH & HUMAN SERV., CHILDREN’S BUREAU, CHILD MALTREATMENT 2014, 7 (2016).

⁴⁴ *Id.* Screenings are rather superficial and are used to determine if a referral meets agency criteria. *Id.* Approximately 3.6 million referrals were made in 2014 with a national average of 60.7 percent of those screenings leading to additional action. *Id.*

⁴⁵ *Id.* at 8.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Conor Friedersdorf, *When the State Takes Kids Away From Parents: Three Perspectives*, THE ATLANTIC (July 24, 2014), <http://www.theatlantic.com/national/archive/2014/07/when-the-state-gets-between-kids-and-parents-3-radically-different-perspectives/374954/> (stating one father’s account of how being investigated by CPS made him feel like a criminal and describing how he was deeply hurt, shocked, and offended by the accusations that he was not a fit parent).

⁵⁰ *The Child Welfare System*, *supra* note 32.

⁵¹ “R.C.” agreed to be interviewed for this note on the condition of anonymity. Telephone Interview with “R.C.” (Oct. 15, 2016).

⁵² *Id.*

⁵³ *Id.*

commit suicide and was naturally shaken and frustrated by the accusation.⁵⁴ As a consequence, the doctor told R.C. that he would be reporting her to the state.⁵⁵ R.C. explained that the records were false, but the doctor remained insistent.⁵⁶ He claimed that he would be held liable if she harmed the baby and he had not reported the potential risk.⁵⁷ Luckily, R.C.'s husband's parental right to custody would remain intact, meaning that the worst-case scenario would involve R.C.'s child being placed in his care.⁵⁸ Even with that assurance, R.C. was still facing the possibility that the state would order that she not be allowed alone with her new baby.⁵⁹ R.C. gave birth to a beautiful baby girl and while she was still recovering in the hospital, two nurses came to question her about the suicide attempt.⁶⁰ R.C. considers herself lucky since she had sufficient resources to obtain advice and ensure that the case would not go any further, and it did not.⁶¹ Conversely, women who have lower incomes are more likely to have their children removed since they do not have the resources, time, or money to go to court and fight to get their children back.⁶² Even though R.C. did not suffer from a mental illness, she was still subjected to the stigma that she would not be a competent parent and would be a danger to her baby.⁶³

While investigating claims of child endangerment is

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Professionals may be required to report physical abuse depending on the state. *See* U.S. DEP'T OF HEALTH & HUMAN SERV., CHILDREN'S BUREAU, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT, 2 (2015). However, I was unable to find support for the claim that the doctor would be liable in this case.

⁵⁸ Telephone Interview with "R.C.," *supra* note 51.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *See generally* Maren K. Dale, *Addressing the Underlying Issue of Poverty in Child-Neglect Cases*, ABA (Apr. 10, 2014), <https://apps.americanbar.org/litigation/committees/childrights/content/article/s/spring2014-0414-addressing-underlying-issue-poverty-child-neglect-cases.html>.

⁶³ Telephone Interview with "R.C.," *supra* note 51; *see The Child Welfare System*, *supra* note 32.

important, the steps involved could traumatize mothers, even if they are good parents.⁶⁴ The children too can suffer long-term emotional harm from being shuffled from home to home in the system.⁶⁵ The chance of a reunion is made even more difficult given the slow moving nature of family court.⁶⁶ By the time the court clears a mother to parent, years may have passed and the child may have settled into another home situation.⁶⁷

Judges are not trained mental health professionals. Further, mental illness is still far from being understood in today’s culture.⁶⁸ Trained medical professionals often have difficulty diagnosing and understanding mental illness.⁶⁹ As such, judges are ill equipped to make decisions about a family when a mental illness is a significant factor. The stigma attached to mental illness is strong. Unlike substance abuse screening, no test exists for mothers with mental illness. Some judges fear that the mother’s mental illness may recur without warning and put the child in danger, despite medical testimony that she is currently fit to parent.⁷⁰ Once a mother is perceived to have had a mental illness,

⁶⁴ *The Child Welfare System*, *supra* note 32 (explaining that mothers with a mental illness already struggle with their internal feelings about their ability to take care of their children).

⁶⁵ See generally CHILD WELFARE INFO. GATEWAY, *Consequences of Multiple Parents*, U.S. DEP’T OF HEALTH AND HUMAN SERV. (last visited Dec. 19, 2017), <https://www.childwelfare.gov/topics/outofhome/placement/consequences/>.

⁶⁶ Joaquin Sapien, *The Trials of New York’s Family Court*, PROPUBLICA (Feb. 2, 2016, 12:45 PM), <https://www.propublica.org/article/the-trials-of-new-yorks-family-court>.

⁶⁷ In custody cases, for example, a court may consider the impact of uprooting a child or changing their environment when deciding what would be in the best interests of that child. 2-14 CHILD CUSTODY AND VISITATION LAW AND PRACTICE, *supra* note 13, at § 14.01(3).

⁶⁸ See generally WORLD HEALTH ORGANIZATION, *THE WORLD HEALTH REPORT 2001: MENTAL HEALTH: NEW UNDERSTANDING, NEW HOPE* (2002).

⁶⁹ *Id.*

⁷⁰ See *The Child Welfare System*, *supra* note 32 (explaining that there is a belief in the system that people with mental illnesses are dangerous and therefore unable to parent because of that danger).

she can do little to combat the assumption that she cannot parent.⁷¹ Family court judges have great discretion to make these decisions, often with little evidence outside of the CPS reports.⁷² CPS and medical reports may themselves be inaccurate or based on false assumptions.⁷³ The mothers may not be observed while actually parenting at home.⁷⁴

One such story involved Rudy, a New Yorker with bipolar disorder, whose daughter was taken after only two home visits and a review of Rudy's records by a psychologist.⁷⁵ Evaluations by either CPS agents or mental health professionals may not consider factors such as the mother's support system or take the necessary time to accurately determine if the mother is capable.⁷⁶ Different evaluators use various methods that can produce very different results.⁷⁷ With millions of child neglect and abuse investigations across the country, it is not surprising that these evaluations and reports may be flawed, especially considering the additional difficulty of stigma attached to mental illness.⁷⁸ Unfortunately, the stakes are very high and judges rely on this often incomplete and

⁷¹ *Id.*

⁷² Wessler, *supra* note 1.

⁷³ Part of the judge's decision to take away the child in Mindi's case, for example, rested on her facial expressions in court which he felt reinforced the diagnosis he received from a psychiatrist. *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* (explaining that Rudy's daughter was a newborn when she was put in foster care because of his disabilities and concerns over the baby's mother, despite the lack of history of violence, abuse, or neglect).

⁷⁶ Wessler, *supra* note 1 (explaining that evaluations of mothers are often incomplete). Evaluations seem to trend toward being superficial rather than probative of the mother's actual condition and parenting ability. See Karen S. Budd et. al., *Clinical Assessment of Parents in Child Protection Cases: An Empirical Analysis*, 25 L. & HUM. BEHAV. 93, 105 (2001) (examining how mental health evaluation reports were conducted in Chicago and emphasizing the fact that evaluations neglect the parent's personal network, child rearing qualities, and the child's relationship with their parent).

⁷⁷ See Budd, *supra* note 76, at 98 (finding six evaluation types, but specifying that there were "other" infrequently used evaluation types as well).

⁷⁸ CHILD MALTREATMENT 2014, *supra* note 43, at 7; see generally Wessler, *supra* note 1; see generally *The Child Welfare System*, *supra* note 32.

uncertain information to determine the fates of families and children.⁷⁹

B. Part II: The Law

1. Background and Terminology

Sometimes children are temporarily removed from their home involuntarily to ensure their safety.⁸⁰ Once a child welfare agency petitions for removal and a court determines that removal would be in the best interest of the child, the child is taken from their mother.⁸¹ At that point, the child may be placed with another relative or in foster care.⁸²

After removal, the state is required to make “reasonable efforts” to preserve and reunify families.⁸³ Many programs and strategies exist to reunite families. However, courts must determine that reunification would be in the best interests of the child.⁸⁴ Reunification can be made more difficult by time limitations such as those in the Adoption and Safe Families Act of 1997.⁸⁵

⁷⁹ It is also the case that the mental health professionals tasked with evaluating mothers may not understand the court system well enough to tailor their analysis to address the legal standards, leading judges to rely on information that may not be addressing the issue of if the mother is legally capable to take care of the child. *See* Lenore M. McWey et al., *Mental Health Issues and the Foster Care System: an examination of the Impact of the Adoption and Safe Families Act*, 32 J. OF MARITAL & FAM. THERAPY 195, 195 (2006).

⁸⁰ U.S. DEP’T OF HEALTH & HUMAN SERV., CHILDREN’S BUREAU, UNDERSTANDING CHILD WELFARE AND THE COURTS, 3 (2016).

⁸¹ *Id.* (describing the child welfare court process).

⁸² *Id.*

⁸³ U.S. DEP’T OF HEALTH & HUMAN SERV., CHILDREN’S BUREAU, REASONABLE EFFORTS TO PRESERVE OR REUNIFY FAMILIES AND ACHIEVE PERMANENCY FOR CHILDREN, 2 (2016).

⁸⁴ *Id.* at 2-3. Determining if reunification is appropriate can be more difficult when considering mental illness. *See supra* Part I.

⁸⁵ *See generally* Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115.

In extreme cases, a mother may have her parental rights terminated, which ends the legal relationship between the parent and the child.⁸⁶ In order to terminate, the court must cite at least one supporting local statutory requirement beyond the temporary removal standard of what is in the child's best interest.⁸⁷ Once the mother's rights are terminated, the child is transferred to the custody of the state, which must find a permanent place for that child.⁸⁸

2. Federal Law

i. *The Adoption and Safe Families Act of 1997* (“ASFA”)

The ASFA provides incentives to move children through the foster care system faster rather than returning them to their families.⁸⁹ This effectively shifts the focus away from reunification to what is in the best interests of the child. The goal of the ASFA is to quickly find a more permanent home for the child, thereby giving them stability.⁹⁰ However, this well-intentioned process can make it even more difficult for mothers with mental illnesses to get their children back once they have been removed. Welfare agencies like CPS are required to make “reasonable efforts” to reunify families, but the standard for what is “reasonable” is not

⁸⁶ U.S. DEP'T OF HEALTH & HUMAN SERV., CHILDREN'S BUREAU, GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS, 1 (2013) (explaining that this termination could be voluntary, as when parents place their child up for adoption, or involuntary).

⁸⁷ 4-28 CHILD CUSTODY AND VISITATION LAW AND PRACTICE § 28.02(1). The specific grounds for termination vary, but neglect or inability to care for the child can often be enough to terminate parental rights. *Id.*

⁸⁸ GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS, *supra* note 86, at 4. It is possible to reinstate parental rights, however the requirements and standards for doing so vary by state and may be very difficult to meet. *Id.*

⁸⁹ *See generally* Adoption and Safe Families Act §§ 101(a), 201.

⁹⁰ 2-17 JOAN H. HOLLINGER, ADOPTION LAW AND PRACTICE § 17.02(2) (Matthew Bender, Rev. Ed. 2016).

defined.⁹¹ What is “reasonable” may not be much when services and agents are underequipped to deal with mental illness or view mothers with mental disabilities as incapable of parenting in the first place.⁹² That vagueness coupled with other factors, including the ability of agents to plan for out-of-home placement while attempts at reunification are in progress,⁹³ may lead to a child being more likely to be kept away from their families.

Issues of mental illnesses are seldom addressed overnight. The treatment of most mental illnesses requires a long-term combination of medication and therapy. However, the ASFA requires child welfare agencies to begin termination proceedings relatively quickly after a child has been temporarily removed from their mother and placed into foster care.⁹⁴ In accordance with the ASFA, most states have limited the time a child may be in foster care to fifteen out of the past twenty-two months.⁹⁵ If a mother has a mental illness and is determined to be unable to care for her child because of it, it may take months to years to get well enough to satisfy the court that she is a capable parent, assuming she started treatment right away.⁹⁶ If the mother does not get “better” in time, then she is more likely to permanently lose her parental rights.⁹⁷

⁹¹ See generally Adoption and Safe Families Act § 101(a).

⁹² See generally *The Child Welfare System*, *supra* note 32.

⁹³ Adoption and Safe Families Act § 201(i)(2)(B).

⁹⁴ Adoption and Safe Families Act § 103(a)(3)(E) (stating that there are limited exceptions, such as when the child is with a relative and not in foster care, appropriate services to reunify have not been done, or termination is not in the best interest of the child).

⁹⁵ GROUNDS FOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS, *supra* note 86, at 3 (elaborating that if, in the past twenty-two months, a child has been in foster care for a total of fifteen months, termination proceedings must begin, even if the fifteen months are not continuous); see also Adoption and Safe Families Act § 103(a)(3)(E).

⁹⁶ See *McWey*, *supra* note 79, at 202.

⁹⁷ *Id.* at 203.

*ii. The Americans with Disabilities Act
("ADA")*

The ADA protects Americans with disabilities and applies to federal agencies,⁹⁸ including child welfare services. The definition of "disability" includes any mental impairment that impacts major life activities,⁹⁹ including performing basic life functions such as caring for yourself or your children.¹⁰⁰ Title II of the ADA mandates that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."¹⁰¹

Under the ADA, government agencies must provide equal services to all people.¹⁰² Further, the government must allow every person the equal opportunity to take part in available services, and must not administer programs or use criteria to discriminate against people based on their disability.¹⁰³ Critically, "[a] public entity shall not impose or apply eligibility criteria that screens out or tends to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity."¹⁰⁴

When administering any government program, public entities must work with the needs of the disabled individual.¹⁰⁵ Moreover, public entities are required to make appropriate modifications in their procedures in order to avoid discrimination.¹⁰⁶ This standard applies unless "the modifications would fundamentally alter the nature of the service, program, or

⁹⁸ 42 U.S.C. § 12131(1)(B) (1990).

⁹⁹ 42 U.S.C. § 12102(1)(A) (2012).

¹⁰⁰ 42 U.S.C. § 12102(2)(A).

¹⁰¹ 42 U.S.C. § 12132 (2012).

¹⁰² 28 C.F.R. § 35.130(b) (2016).

¹⁰³ *Id.* § 35.130(b).

¹⁰⁴ 28 C.F.R. § 35.130(b)(8).

¹⁰⁵ 28 C.F.R. § 35.130(d).

¹⁰⁶ 28 C.F.R. § 35.130(b)(7)(i).

activity.”¹⁰⁷ CPS must evaluate a present mental illness when determining the needs of the child and the family. To be in compliance with the ADA, agents must not discriminate against mothers based on their mental disability or unfairly categorize their illness when determining parental rights.¹⁰⁸ In practice, however, individual agents may have difficulty separating the stigma of mental illness from their duty not to discriminate and to evaluate the situation impartially.¹⁰⁹ This can lead to conflicts resulting in the mandates of the ADA being effectively ignored.¹¹⁰

Some courts do not allow a mother to claim an ADA violation as a defense in an action for termination of parental rights.¹¹¹ Many state laws include mental illness as grounds for the removal of children,¹¹² effectively stating that a mother can be unfit because of a mental illness. These standards and statutes work against the purpose of the ADA: to eliminate discrimination based on a disability.¹¹³

3. State Law

Generally, states consider the welfare of the child paramount and mental illness is part of the determination of whether a mother can adequately care for her child.¹¹⁴ The exact procedure and law regarding mental illness and removal of

¹⁰⁷ *Id.*

¹⁰⁸ 28 C.F.R. § 35.130(b).

¹⁰⁹ *The Child Welfare System*, *supra* note 32.

¹¹⁰ *Id.*

¹¹¹ Mothers may be unable to claim an ADA violation because some courts may not view CPS’s actions as a “service” under the ADA. One example is Louisiana. *See In re B.K.F.*, 704 So.2d 314, 317 (La. Ct. App. 1997). Other courts allow such a defense, but the burden for the mother is high, requiring that she show that she qualifies under the ADA as having a disability and that she was discriminated against. 4-28 CHILD CUSTODY AND VISITATION LAW AND PRACTICE, *supra* note 13, at § 28.02(6).

¹¹² 4-28 CHILD CUSTODY AND VISITATION LAW AND PRACTICE, *supra* note 13, at §§ 28.02(1)(g), (h).

¹¹³ 42 U.S.C. § 12101(b).

¹¹⁴ DETERMINING THE BEST INTERESTS OF THE CHILD, *supra* note 38, at 2.

children varies by state. The Connecticut, Utah, and California courts highlight the fact-specific nature of the implementation of state law in family matters.¹¹⁵

i. Connecticut

In Connecticut, a child can be found to be “neglected” because they are “being denied proper care and attention . . . or . . . [are] being permitted to live under conditions, circumstances or associations injurious to the well-being of the child.”¹¹⁶ If a mother has a mental illness, then her child may be living under such circumstances and may be considered “neglected” under the statute.¹¹⁷ The doctrine of “predictive neglect” has been present in Connecticut for many years and courts have relied on this doctrine to remove children based on a mother’s mental illness.¹¹⁸

In *re Joseph W.*, defined the standard of proof for removing a child under the predictive neglect doctrine.¹¹⁹ That case involved parents whose two children were removed based on predictive neglect.¹²⁰ The trial court found by a preponderance of the evidence that the children were in danger of future neglect even though no evidence of actual harm was proffered.¹²¹ The trial court

¹¹⁵ See generally *supra* note 18 and accompanying text. Each state that is discussed *infra* approaches mental illness and removal of children in different ways.

¹¹⁶ CONN. GEN. STAT. § 46b-120(6) (2016); see generally CONN. GEN. STAT. § 46b-129 (2016) (stating the process for removal of children in Connecticut).

¹¹⁷ CONN. GEN. STAT. § 46b-120(6); see generally *In re Joseph W.*, 46 A.3d 59 (Conn. 2012).

¹¹⁸ See generally *deBoer & Randall*, *supra* note 9.

¹¹⁹ See generally *In re Joseph W.*, 46 A.3d 59.

¹²⁰ *Id.* at 61-62 (stating that the mother had another child by a different father who was removed from the mother prior to the birth of the two children at issue in this case and that this child was removed shortly after her birth due to the determination that the mother would not be able to properly care for her child because of the mother’s mental illness and “strange behavior” she exhibited at the hospital).

¹²¹ *Id.* at 64.

considered the mother’s history of narcolepsy¹²² and mental illness, which included her unusual behavior in the hospital after giving birth.¹²³ The court also considered the father’s uncooperativeness with authorities and his inability to handle or understand the mother’s mental illness.¹²⁴ The mother also had not complied with treatment plans for her mental illness.¹²⁵ During visits with the children, the mother was determined to be unable to care for them, although the father seemed capable of doing so.¹²⁶ Based on these facts, the trial court found that it would be in the best interests of the children to be removed from both parents.¹²⁷

On appeal, the Supreme Court of Connecticut stated that predictive neglect is based on the state’s obligation to protect children by avoiding harm and not just responding to it.¹²⁸ However, the court found that to remove children “merely by proving by a preponderance of the evidence that there is a ‘potential risk’ of neglect” would be inconsistent with due process.¹²⁹ A small risk of harm is not enough. Rather, it must be “more likely than not that, if the child remained in the current situation,” they would be neglected.¹³⁰ Since the trial court’s standard was too low, a new trial was ordered.¹³¹ This case raised the standard for removal based on predictive neglect because it required the state to show more than just the slight possibility of

¹²² See *Narcolepsy*, NAT’L SLEEP FOUNDATION, <https://sleepfoundation.org/sleep-disorders-problems/narcolepsy-and-sleep> (last visited Dec. 19, 2017) (explaining that narcolepsy is a sleep disorder where sleep cycles are not stable and can cause sleepiness, hallucinations, and other symptoms).

¹²³ *In re Joseph W.*, 46 A.3d at 62, 64.

¹²⁴ *Id.* at 64.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 66.

¹²⁹ *In re Joseph W.*, 46 A.3d 59, 66 (Conn. 2012).

¹³⁰ CONN. GEN. STAT. §46b-120(6); *In re Joseph W.*, 46 A.3d at 67.

¹³¹ *In re Joseph W.*, 46 A.3d at 68. The parents also attempted to make a claim of discrimination under the ADA, but were unsuccessful. *Id.* at 69. On remand, their parental rights were terminated. *In re Joseph W.*, 78 A.3d 276, 277 (Conn. App. Ct. 2013).

harm.¹³²

When a court considers mental health or illness as part of a predictive neglect determination, children are often found to be neglected.¹³³ *In re T.K.*,¹³⁴ for example, involved a mother with heightened anxiety who had thoughts of harming herself and her baby.¹³⁵ The parents were sent to a clinical psychologist for evaluation.¹³⁶ Despite the mother's private psychologist's opinion that she had never acted upon any thoughts of harming the baby or herself, and never would, the court-appointed psychologist disagreed, stating that "there is a first time for everything."¹³⁷ The court found sufficient evidence that the child was in danger to warrant a finding of neglect.¹³⁸

Before the heightened standard set by *In re Joseph W.*,¹³⁹ mothers could overcome a charge of predictive neglect. *In re Olivia O.* involved a single mother who suffered a breakdown and was hospitalized for two months.¹⁴⁰ While her condition could potentially pose a danger to her child, the court found insufficient evidence to find that the child was currently in danger or neglected.¹⁴¹ The court rejected the claim of predictive neglect by the Department of Children and Families since the mother did not cause or anticipate this breakdown, and she otherwise showed no

¹³² *In re Joseph W.*, 46 A.3d at 66-67.

¹³³ deBoer & Randall, *supra* note 9 (stating that in a 2012 report, at least seventy-four cases, often involving newborns, were found in Connecticut where courts considered predictive neglect; of those, sixty-four found the child to have been neglected and thirty-six cited specifically the mental health of a parent).

¹³⁴ See generally *In re T.K.*, 939 A.2d 9 (Conn. App. Ct. 2008).

¹³⁵ *Id.* at 11-12 (stating that the father also had experienced suicidal thoughts).

¹³⁶ *Id.* at 12-14 (stating that the parents were working with a marriage counselor and the mother had been going to a psychologist, both of whom were consulted by the clinical psychologist the court had appointed).

¹³⁷ *Id.* at 14.

¹³⁸ *Id.* at 15.

¹³⁹ *In re Joseph W.*, 46 A.3d at 66-67.

¹⁴⁰ *In re Olivia O.*, 2007 Conn. Super. LEXIS 2998, at *1 (Conn. Super. Ct. 2007).

¹⁴¹ *Id.* at *6, *11.

signs of being an unfit parent.¹⁴²

ii. Utah

Utah law explicitly states that a child cannot be removed from its mother based on a “mental illness or poverty of the parent or guardian.”¹⁴³ However, if one or more specified conditions are met, a child may be removed.¹⁴⁴ These conditions include “an immediate danger to the physical health or safety of the child,”¹⁴⁵ a threat to the child from the parent, the parent or guardian being unavailable,¹⁴⁶ the parent creating an environment that puts a child’s safety at serious risk, or when “the child’s welfare is otherwise endangered.”¹⁴⁷ While mental illness alone cannot serve as the sole basis of removal, a child can be removed if any of the statutory conditions are met and the existence of a mental illness could cause or contribute to one of those conditions.¹⁴⁸

Still, the “predictive neglect” doctrine in theory could not be applied in Utah, as the statutory language explicitly forbids the inference that because a mother has a mental illness, their child is at risk of future abuse.¹⁴⁹ The list of conditions for removal support this, focusing on “imminent” and “serious” risk or danger, rather than theoretical future danger.¹⁵⁰ The statutory language focuses on removal as an emergency action to be taken when necessary and not as a mere precaution.¹⁵¹ However, children may still be

¹⁴² *Id.* at *6-7, *11.

¹⁴³ UTAH CODE ANN. § 78A-6-302(4)(b) (2016).

¹⁴⁴ UTAH CODE ANN. § 78A-6-302(1).

¹⁴⁵ UTAH CODE ANN. § 78A-6-302(1)(a).

¹⁴⁶ UTAH CODE ANN. § 78A-6-302(1)(f) (including examples of the unavailable parent being institutionalized or imprisoned).

¹⁴⁷ UTAH CODE ANN. § 78A-6-302(1). These named factors are but a few examples of those listed in the statute.

¹⁴⁸ UTAH CODE ANN. §§ 78A-6-302(1), (4)(b).

¹⁴⁹ UTAH CODE ANN. § 78A-6-302(4)(b).

¹⁵⁰ UTAH CODE ANN. § 78A-6-302(1).

¹⁵¹ UTAH CODE ANN. § 78A-6-302(1)(i)(i) (stating that the child can be removed if “a parent’s or guardian’s actions, omissions, or habitual action create an environment that *poses a serious risk to the child’s health or safety*”).

removed from a mother who has a mental illness under conditions such as the catch-all provision of general endangerment to the child's welfare.¹⁵²

Beyond mere removal, parental rights may be terminated if the mother is determined to be unfit or unable to care for the child.¹⁵³ Mental illness can be considered as a factor to determine unfitness.¹⁵⁴ This is reasonable since a mental illness can interfere with a mother's ability to care for a child.

In addition to the general inability to care for children, parental rights may also be terminated if the mother has not made enough of an effort to support her child or "to avoid being an unfit parent."¹⁵⁵ Although the initial temporary removal of a child may not be based solely on mental illness or health,¹⁵⁶ it may be a significant factor for the permanent removal of that same child as a mental health issue could implicate the mother's fitness.¹⁵⁷ At that point, the mother must make more than "token efforts" to become fit, or gain control of their mental illness.¹⁵⁸ A mother has a limited amount of time to show that she has resolved her mental health issues once a child is removed.¹⁵⁹ Once that time frame expires,

for which immediate removal or preventive action is necessary") (emphasis added).

¹⁵² UTAH CODE ANN. § 78A-6-302(1)(n).

¹⁵³ UTAH CODE ANN. § 78A-6-507(1) (2016). The language of this section mirrors the language of UTAH CODE ANN. § 78A-6-302 in that it emphasizes that termination of parental rights is only to be done when the court finds it "strictly necessary." *Id.* Additionally, Utah state law specifies that the state is to support the parent, who has a right to raise their children freely. UTAH CODE ANN. § 78A-6-503(10) (2016). However, when there is a finding of unfitness, the best interests of the child take precedent. UTAH CODE ANN. § 78A-6-503(12).

¹⁵⁴ *A.E. v. State*, 191 P.3d 1241, 1241-42 (Utah Ct. App. 2008).

¹⁵⁵ UTAH CODE ANN. § 78A-6-507(1)(f).

¹⁵⁶ UTAH CODE ANN. § 78A-6-302(4)(b).

¹⁵⁷ UTAH CODE ANN. § 78A-6-507(1)(c).

¹⁵⁸ UTAH CODE ANN. § 78A-6-507(1)(f)(iv).

¹⁵⁹ *A.E. v. State*, 191 P.3d at 1242 (stating that the parent only has one year to "resolve all issues that would affect [their] parenting, including mental health issues" and the parent is not entitled to an unlimited period of time to get well).

parental rights may be terminated.¹⁶⁰ The fact that the mental illness may not be resolvable within that time, or at least not to the extent that the court requires, cannot be used as a defense or to stay termination.¹⁶¹

In A.E. v. State, the mother’s parental rights were terminated because she could not complete her service plan due to her mental health issues and the court did not allow her to postpone completion of the plan to resolve those issues.¹⁶² It is reasonable not to allow an unlimited period to address mental health issues since children should not have to wait in limbo when their mother may never be able to get well enough to take care of them. Regardless, a lack of flexibility may not be in the best interest of the child or the mother.

Utah courts tend to consider mental illness when connected to unfitness and the overall best interests of the child.¹⁶³ Utah courts focus not on the possibility of abuse, but on actual abuse, examining the entire situation and using mental illness as a mere factor in that determination.¹⁶⁴ For example, in State ex rel. J.N. v. State a mother’s parental rights were terminated based on her

¹⁶⁰ *Id.*

¹⁶¹ *Id.* (explaining that the court requires that the mental health issues be resolved enough so that the parent can “immediately care for the physical and emotional needs of [their] child”).

¹⁶² *Id.* at 1241-42. The court only refers to the mother’s mental health issues as “severe.” *Id.* This particular termination may have been necessary based on the severity of the mother’s condition.

¹⁶³ State ex rel. J.N. v. State, 267 P.3d 287, 289 (Utah Ct. App. 2011).

¹⁶⁴ *See, e.g.*, J.K. v. State (State ex rel. B.W.), No. 20040322-CA, 2005 Utah App. LEXIS 34, at *4-6 (Utah Ct. App. Jan. 27, 2005) (stating that the mother’s parental rights were terminated because her mental illness made her unable to provide a stable home for her children, there was an opportunity for the children to be adopted, the mother was unable to fix the problems, and the children had been removed on three previous occasions because of abuse and neglect); *see also* S.O. v. State (State ex rel. J.O.), 189 P.3d 90, 91, 93 (Utah Ct. App. 2008) (stating that the mother’s mental health was a consideration for termination in addition to the lack of stability in the mother’s life and her home being filthy and covered with waste from eight cats).

mental illness.¹⁶⁵ The court found that she was not capable of taking care of her children and that they had suffered emotional abuse and neglect.¹⁶⁶ However, the mother's mental illness was not the sole reason for removal.¹⁶⁷ The children had been placed out of the home and another party wished to adopt them.¹⁶⁸ The court terminated the mother's parental rights because she was not able to remedy her situation nor care properly for the children.¹⁶⁹ Moreover, it was in the children's best interest to be adopted into a stable home.¹⁷⁰

iii. California

A child can be found to be a dependent of the court in California if "there is a substantial risk that the child will suffer . . . serious physical harm."¹⁷¹ The finding of such risk may be based on considerations including "the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness."¹⁷² This language supports removal of a child based on predictive neglect as it refers to the risk of harm as well as actual harm to the child.¹⁷³ However, California courts require that evidence of mental illness have a specific causal link to the harm or risk of harm to the child.¹⁷⁴ The burden to prove

¹⁶⁵ State ex rel. J.N. v. State, 267 P.3d at 287.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 288.

¹⁶⁸ *Id.* at 289.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ CAL. WELF. & INST. CODE § 300(a) (Deering 2016).

¹⁷² WELF. & INST. §§ 300(b)(1), (j).

¹⁷³ WELF. & INST. § 300(a).

¹⁷⁴ In re David M., 134 Cal. App. 4th 822, 830 (Cal. Ct. App. 2005). In this case the lower the court found, based on the parents' mental illnesses and some marijuana use by the mother, the two children to be dependents of the court because they were at risk of substantial harm. *Id.* at 827-28. The evidence of the mother's mental health was weak and was based on a diagnosis from several years earlier. *Id.* at 826-27. The social worker testified that because the father depended on social security income due to his anxiety disorder (which prevented him from working) his ability to care

such a link rests on the petitioning agency.¹⁷⁵ The mere existence of a mental illness alone is not enough and risk cannot be presumed based on such illness.¹⁷⁶ Nevertheless, what defines a necessary “link” can vary.

Kimberly R. v. Superior Court and In re Elijah T. illustrate a risk of abuse due to the mother’s mental illness.¹⁷⁷ However, the cases were reversed on appeal because there was an insufficient link between the mental illness and the risk of harm.¹⁷⁸ In Kimberly R. v. Superior Court, the mother (“Kimberly”), had a substance abuse problem and “was diagnosed as bipolar with schizoaffective disorder.”¹⁷⁹ Her son was removed from her custody.¹⁸⁰ He was later returned because Kimberly was making progress on her case plan, had negative drug tests, and was managing her mental health.¹⁸¹ A few months later, another petition was filed to remove the child because Kimberly, on a single occasion, did not pick her son up from school and was later seen incoherent at home by her aunt.¹⁸² The lower court removed the child based on this evidence.¹⁸³ The appellate court reversed and found that while Kimberly had a mental illness, she managed it and removal of the child based on such evidence was in error.¹⁸⁴

for his children might also be “impaired.” *Id.* at 827. The appellate court reversed, finding no actual link between the parents’ illnesses and risk to the children. *Id.* at 829. The evidence pointed to the older child being healthy and loved. *Id.* at 830.

¹⁷⁵ *Id.* at 830.

¹⁷⁶ *Id.*

¹⁷⁷ See Kimberly R. v. Superior Court, 96 Cal. App. 4th 1067 (Cal. Ct. App. 2002); see In re Elijah J., No. B152836, 2002 Cal. App. LEXIS 6219 (Cal. Ct. App. 2002).

¹⁷⁸ *Id.*

¹⁷⁹ Kimberly R. v. Superior Court, 96 Cal. App. 4th at 1070.

¹⁸⁰ *Id.* at 1071.

¹⁸¹ *Id.*

¹⁸² *Id.* at 1071, 1074 (stating that Kimberly testified that she did not pick up her son on time because she was stuck in traffic and that she was incoherent because she had been sleeping after taking her prescribed pain medication).

¹⁸³ *Id.* at 1075.

¹⁸⁴ *Id.* at 1079 (“Parental grogginess, somnolence and severe fatigue are a part of life in families with small children.”).

In re Elijah involved the removal of the child based on four events: (1) the baby spitting up in bed during the night and the mother (“Victoria”) washing his face but not fully bathing him before putting him back to sleep; (2) Victoria forgetting to pack an extra set of clothes for the baby during a dentist visit; (3) standing in the rain for a few minutes with the baby wrapped in a blanket; and (4) changing a diaper but leaving the dirty one within reach of the baby.¹⁸⁵ Victoria was fifteen when she had the baby and was a ward of the state herself.¹⁸⁶ The baby was taken from Victoria and the Department of Children and Family Services (“DCFS”) claimed that these four events demonstrated that “Victoria had endangered [the baby’s] future health and safety.”¹⁸⁷ DCFS also found that her “emotional and psychiatric difficulties might render her periodically incapable of caring for him in the future.”¹⁸⁸ The lower court found the baby to be a ward of the state because “Victoria’s mental illness created a substantial risk to his physical and emotional well-being.”¹⁸⁹ The appellate court reversed, stating that these events “are the mishaps of a new parent” and that just because Victoria suffers from a mental illness, a risk of harm cannot be assumed.¹⁹⁰

Although the children in these cases were returned to their mothers, and the appeals process in California was effective, they were still subjected to the removal process and forced to appeal the lower courts’ decisions.¹⁹¹ Kimberly R. v. Superior Court and In re Elijah T. are cases where the lower courts’ rulings seem extreme.¹⁹² This raises the issue of what may happen in future cases where the facts are more complicated and the lower court’s ruling is more moderate.

¹⁸⁵ In re Elijah J., 2002 Cal. App. LEXIS 6219, at *2-3.

¹⁸⁶ *Id.* at *2.

¹⁸⁷ *Id.* at *4.

¹⁸⁸ *Id.* at *4-5 (internal quotations omitted) (stating that Victoria was later diagnosed with “possible depressive disorder, impulse control disorder or oppositional defiant disorder” by the court appointed psychiatrist).

¹⁸⁹ *Id.* at *5-6.

¹⁹⁰ *Id.* at *8-9.

¹⁹¹ See Kimberly R. v. Superior Court, 96 Cal. App. 4th; see In re Elijah J., 2002 Cal. App. LEXIS 6219.

¹⁹² *Id.*

The mother in *B.H. v. Superior Court* had significant problems caring for her three children and as a result all three were removed from her care.¹⁹³ The social worker who evaluated the mother “described her as volatile, aggressive, and threatening.”¹⁹⁴ She was later evaluated by a psychologist who did not diagnose her as having a mental disorder but found that “she may have a long-term personality disorder or a mental disorder that had not yet manifested.”¹⁹⁵ In July 2008, at the six-month review, the mother had been participating in services, was cooperative, had completed a parenting course, was in counseling, and had tested negative for drugs.¹⁹⁶ Another psychiatric evaluation was done and “the psychiatrist did not diagnose any psychiatric problems” and no medication was prescribed, although he did suspect that there was “an underlying personality disorder.”¹⁹⁷ At the twelve-month review, in January 2009, the court found that it was too early to return the children to the mother.¹⁹⁸ During the hearing however, the mother was interrupting and arguing with the court.¹⁹⁹ This conduct led the court to state “that the mother’s behavior in court leads the Court to conclude that this mother does indeed have emotional/mental health issues.”²⁰⁰ The court went on to question the findings of the medical professionals who had not diagnosed

¹⁹³ *B.H. v. Superior Court*, No. F057764, 2009 Cal. App. LEXIS 6489, at *1-2 (Cal. Ct. App. 2009). When the children were removed, there was evidence that they were homeless. *Id.* at *2. Additionally the children were “inappropriately dressed and exhibit[ed] poor hygiene,” were without shoes, not attending school, were stealing to buy food, and there was confusion regarding medication. *Id.* at *2-3. The mother was also confused and gave conflicting answers to the court. *Id.* at *1-3. The children were diagnosed with mental disorders as well in January 2008. *Id.* at *5-6.

¹⁹⁴ *Id.* at *4.

¹⁹⁵ *Id.* at *5-6 (“[H]er level of intellectual functioning was [also] in the borderline range and her memory, reasoning, and problem solving skills were impaired.”).

¹⁹⁶ *Id.* at *8.

¹⁹⁷ *Id.* at *9.

¹⁹⁸ *Id.* at *9-10.

¹⁹⁹ *B.H. v. Superior Court*, No. F057764, 2009 Cal. App. LEXIS 6489, at *10 (Cal. Ct. App. 2009).

²⁰⁰ *Id.* (internal quotations omitted).

her with a mental illness.²⁰¹ At the eighteen-month review, the mother's therapist testified that the mother had been "actively participating in therapy . . . had an apartment, was working on a degree in criminal justice, could provide for the children's needs and seemed to be a good parent."²⁰² Nevertheless, the court terminated reunification services and did not return the children to the mother.²⁰³ On appeal, the court upheld the children's removal, citing the mother's problems participating in therapy and her denial regarding her family's collective mental health issues and her past problems caring for the children.²⁰⁴ Her progress in therapy was not enough to overcome the juvenile court's finding that she posed a risk to her children.²⁰⁵

iv. Final Notes on State Law

Most states have statutory language that allows courts to remove a child or terminate parental rights based specifically on a mental illness in a mother.²⁰⁶ Different states have other features

²⁰¹ *Id.*

²⁰² *Id.* at *12-13 (explaining that the therapist also stated her belief that the family should be reunited, that the children's safety was not an issue, that the mother did not have a diagnosable condition, and that "the children's removal was discussed at each of their sessions").

²⁰³ *Id.* at *13. Termination was not baseless, as the mother did seem to be in a state of denial over why her children were initially removed and her own issues regarding their care. *Id.* at *11. Additionally, her therapist had never met the children and had not been treating the mother long. *Id.* at *12-13.

²⁰⁴ *Id.* at *14.

²⁰⁵ *B.H. v. Superior Court*, No. F057764, 2009 Cal. App. LEXIS 6489, at *14 (Cal. Ct. App. 2009).

²⁰⁶ *See, e.g.*, ALASKA STAT. § 47.10.011(11) (2017) (stating that a child could be found "in need of aid" if "the parent . . . has a mental illness, serious emotional disturbance, or mental deficiency of a nature and duration that places the child at substantial risk of physical harm or mental injury"); *see, e.g.*, HAW. REV. STAT. ANN. § 571-61(b)(F) (LexisNexis 2017) (stating that parental rights may be terminated if a parent "is found by the court to be mentally ill or intellectually disabled and incapacitated . . . from providing now and in the foreseeable future the care necessary for the well-being of the child"); *see, e.g.*, MASS. ANN. LAWS ch. 210, § 3(c)(xii) (LexisNexis 2017) (stating that when determining parental unfitness, the court shall

that demonstrate the high variance in policy and practical application. Delaware, for example, requires that two qualified psychiatrists be appointed by the court to evaluate the situation.²⁰⁷ They must present evidence that the parents are “unable to discharge parental responsibilities in the foreseeable future.”²⁰⁸ Kentucky requires reasonable efforts be made to reunify the child with their family unless the parent is found to have a mental illness or intellectual or developmental disability “that places the child at substantial risk of physical or emotional injury.”²⁰⁹ In that case, “reasonable efforts”²¹⁰ for reunification may no longer be required.²¹¹ As demonstrated by the examples above, courts have a variety of ways to apply their individual state’s laws, including in ways that can be chilling.²¹²

C. Part III: Recommendations

Judicial discretion and flexibility are important when determining where a child is placed, especially when considering the extremely fact specific nature of these cases.²¹³ Yet, when the stigma and uncertainty of mental illness is a factor, allowing judges too much discretion can lead to families being separated prematurely on very thin evidence of so-called “neglect.”²¹⁴

consider “a condition which is reasonably likely to continue for a prolonged, indeterminate period, such as . . . mental deficiency or mental illness, and the condition makes the parent . . . unlikely to provide minimally acceptable care of the child”); *see also supra* Part II.

²⁰⁷ DEL. CODE ANN. tit. 13, § 1103 (2016).

²⁰⁸ *Id.*

²⁰⁹ KY. REV. STAT. ANN. § 610-127(6) (LexisNexis 2016).

²¹⁰ KY. REV. STAT. ANN. § 620-020 (“‘Reasonable efforts’ means the exercise of ordinary diligence and care by the [child welfare] department to utilize all preventative and reunification services available . . . which are necessary to enable the child to safely live at home.”).

²¹¹ KY. REV. STAT. ANN. § 610-127.

²¹² *In re T.K.*, 939 A.2d at 14 (stating that “there is a first time for everything”).

²¹³ *See generally* Conner, *supra* note 18.

²¹⁴ While it is difficult to prove that a judge’s decision was based on bias, there are examples of cases which suggest that stigma influenced the

Additionally, states deal with mentally ill mothers in different ways. Therefore, addressing the problem of a child's removal based on the mother's mental illness on a national level is difficult. As with most family court matters, the facts are too diverse and the problems too complicated for an easy, blanket solution. Binding judges with mandatory rules on how to handle mental illness in family court may improve certain aspects of this issue, but may also have the side effect of putting some children in very real danger.²¹⁵ There are however possible steps that can be taken to better determine when a mental illness actually warrants removal.²¹⁶

1. Changes in the Law

i. On the Federal Level

Rather than attempting new, sweeping federal legislation, a more practical step to address the issues presented by predictive neglect would be to amend the laws that we already have: the ADA and the ASFA.²¹⁷

The first step would be to amend the ADA to include

outcome. In *Mindi's* case for example, the judge noted her facial expressions in court. Wessler, *supra* note 73 and accompanying text; *see, e.g., In re Joseph W.*, 46 A.3d at 62, 64 (finding the mere possibility of abuse based partially on the mother's strange behavior at the hospital); *see, e.g., In re T.K.*, 939 A.2d at 14 (stating that "there is a first time for everything"); *see, e.g., B.H. v. Superior Court*, 2009 Cal. App. LEXIS 6489, at *10 (stating the Court's belief that the mother had a mental illness based on her behavior in court despite clinical evaluations to the contrary); *see, e.g., In re Elijah J.*, 2002 Cal. App. LEXIS 6219, at *2-3 (stating that the lower court removed the child based on four isolated mishaps).

²¹⁵ *See generally* Johnston, *supra* note 15.

²¹⁶ It is important to note what should not change. Temporary, short-term removal of children as an emergency measure should remain in place. These recommendations pertain to permanent or long-term removal of children. There are no silver bullet solutions to the problems raised by predictive neglect. The recommendations that follow are steps varying in cost and difficulty, which may help address the doctrine's problems.

²¹⁷ *See generally* Adoption and Safe Families Act §§ 101(a), 201; *see generally* 42 U.S.C. §§ 12102, 12131-32.

removal of children as a “service.” This would allow a mother to make a claim that she was discriminated against due to her mental illness. The purpose of the ADA is to curb discrimination.²¹⁸ As many courts do not view the ADA’s definition of “service” as covering the removal of children, discrimination persists without challenge.²¹⁹ Since the stigma attached to a mother with a mental illness is powerful, this will help fulfil the ADA’s purpose and provide mothers with an additional avenue to recover their children and to be treated fairly.

The ASFA could also be amended to provide more flexibility as to when termination proceedings are required to begin. The rigid timelines imposed by the ASFA, which are adopted by most states, may not allow the time needed for mothers to adequately treat their mental illness.²²⁰ While allowing an indefinite period for the mother to handle their illness may not be fair to a child who requires a stable home, flexibility may better serve the family as a whole. The focus should be on reunification of families rather than on relocation of children.

ii. On the State Level

The two bookends for how states address mental illness in mothers is to embrace the predictive neglect doctrine, as Connecticut has,²²¹ or to explicitly reject the idea that a child can be removed based on mental illness alone, as Utah has.²²² Other states, such as California, fall in between these two views.²²³ The first option that individual states may take to better handle families dealing with mental illness may be to move closer to Utah’s approach by changing their statutory language to explicitly forbid removal based solely on mental illness. This would require that the state provide evidence that there has been abuse or that the child is

²¹⁸ 42 U.S.C. § 12101(b)(1).

²¹⁹ See *supra* note 111 and accompanying text.

²²⁰ See generally *The Child Welfare System*, *supra* note 32.

²²¹ deBoer & Randall, *supra* note 9.

²²² UTAH CODE ANN. § 78A-6-302(4)(b).

²²³ CAL. WELF. & INST. CODE § 300(a).

in actual, immediate danger before removing the child from their home. This would eliminate the possibility of removing children when there is merely a vague possibility of future danger. Such statutory language may help to curb the impulse to remove children out of mere fear or stigma surrounding mental illness. Further, it would force courts to focus on the mother's ability to raise their child rather than on the fact that the mother has a mental illness.

2. Changes in the Courtroom

When a court determines the fitness of the mother, mental illness is relevant, but it should not be determinative. When ruling if a child is in danger or should be removed, the court should focus on the mother's actual ability to raise their child and not solely on a disability that mother may have. While amending statutory language would be beneficial, the necessary discretion and independence of family court judges suggest that solutions should target the courtroom. After all, Connecticut's predictive neglect doctrine arose out of case law.²²⁴ Moreover, because family court judges are not trained medical professionals, flexible suggestions or standards may prove to be a help to these judges by providing some guidance on how to address a mother's mental illness. Moreover, such standards would allow judges to maintain their discretion so as to handle more complicated cases and facts.

i. Continuing Education

Stigma is a persistent problem facing mothers who suffer from mental illness, and judges may make decisions based on these generalizations.²²⁵ One simple way to combat this is through education.²²⁶ Education programs can have the effect of improving the understanding of those with mental illnesses and lowering the

²²⁴ deBoer & Randall, *supra* note 9.

²²⁵ See *supra* note 214 and accompanying text.

²²⁶ Patrick W. Corrigan & Amy C. Watson, *Understanding the impact of stigma on people with mental illness*, 1 WORLD PSYCHIATRY 16, 17 (2002).

effect of negative stigma.²²⁷ Applying the same principle to judges may have a similar effect. There are already a variety of continuing legal education (“CLE”) classes available across the country.²²⁸ Some states, such as North Carolina, require that attorneys take CLE credits that relate specifically to mental illness.²²⁹ Although most CLE classes are specific to the relationship between the law and mental illness, courses could be adapted to focus on the specifics of mental illness. Requiring family judges to take part in these classes may better prepare them to address cases involving mental illness. It is important for judges to understand that not all mental illnesses are the same and each can have varying impacts on the ability of a mother to raise her

²²⁷ Amy C. Watson et al., *Changing Middle Schooler’s Attitudes About Mental Illness Through Education*, 30 SCHIZOPHRENIA BULL. 563, 569- 70 (2004) (finding that children who were introduced to a mental illness course had reduced negative stigma toward those with a mental illness); Patrick W. Corrigan et al., *Three Strategies for Changing Attributions about Severe Mental Illness*, 27 SCHIZOPHRENIA BULL. 187, 192 (2001) (finding that education resulted in a broad change in attitude toward mental illness, including the view that those with mental illness have the ability to get treatment and recover); David L. Penn et al., *Dispelling the Stigma of Schizophrenia: What Sort of Information Is Best?*, 20 SCHIZOPHRENIA BULL. 567, 572 (1994) (finding that those who personally knew or met someone with a mental illness reported them as being less dangerous and, specifically in regard to schizophrenia, that just being aware of the symptoms and not the treatment would result in more negative attitudes).

²²⁸ ABA CLE, AM. BAR ASS’N, <http://shop.americanbar.org/eBus/abaacademy.aspx> (last visited Dec. 19, 2017) (showing CLE courses offered by the American Bar Association).

²²⁹ CLE – North Carolina, AM. BAR ASS’N, http://www.americanbar.org/cle/mandatory_cle/mcle_states/states_l-o/north_carolina.html (last visited Dec. 19, 2017) (requiring one hour every three years); CLE – Florida, AM. BAR ASS’N, http://www.americanbar.org/cle/mandatory_cle/mcle_states/states_a-k/florida.html (last visited Dec. 19, 2017) (requiring “[five] hours of ethics, professionalism, substance abuse, or mental illness awareness” every three years); CLE – Iowa, AM. BAR ASS’N, https://www.americanbar.org/cle/mandatory_cle/mcle_states/states_a-k/iowa.html (last visited Dec. 19, 2017) (expanding ethics requirement to include courses involving mental health).

child.

Requiring CLE for family court judges is a simple step that would likely go a long way in addressing the problems inherent in predictive neglect. Judges need to understand that just because a mother has a mental illness, it does not mean that her child must be taken from her. Additionally, due to the availability of CLE courses addressing mental illness, requiring judges take these classes would not be difficult and judges themselves would not have to dedicate too much extra time or effort to take the courses.²³⁰ CLE courses are already required in many states.²³¹ Dedicating a couple of credits to courses relating to mental illness will provide an easy yet effective way for family court judges to learn more about mental illness.

ii. Better use of Mental Health Professionals

Psychiatric evaluations are critical to truly understanding a mother's mental illness and her ability to care for her child. However, there are ways that mental health professionals can be better utilized. Requiring an independent mental health evaluation would provide an extra safeguard to mothers. Various states already require that the mother be evaluated by a mental health professional before termination proceedings can begin.²³² Delaware goes further and requires that two qualified psychiatrists independently evaluate the parent's situation.²³³ Of course, such reviews need to be more substantive than a mental health professional quickly looking over a patient file. These

²³⁰ Normally, one hour of classes is worth one CLE credit. *Mandatory CLE*, AM. BAR ASS'N, http://www.americanbar.org/cle/mandatory_cle.html (last visited Dec. 19, 2017). Additionally, classes are available in-person and online. *CLE*, AM. BAR ASS'N, <http://www.americanbar.org/cle.html> (last visited Dec. 19, 2017).

²³¹ *Mandatory CLE*, AM. BAR ASS'N, http://www.americanbar.org/cle/mandatory_cle.html (last visited Dec. 19, 2017) (showing required CLE by state).

²³² See, e.g., 750 ILL. COMP. STAT. ANN. 50/1(D)(p) (LexisNexis 2016); see, e.g., KY. REV. STAT. ANN. § 625.090(3)(a) (LexisNexis 1986); see, e.g., MISS. CODE ANN. § 93-15-121(a) (2016).

²³³ DEL. CODE ANN. tit. 13, § 1103.

professionals need to be given the time to spend with the patient to not just clinically determine if a mental illness exists, but to evaluate how that mental illness impacts the individual’s ability to parent. While multiple long sessions with the mother would be ideal, it would not be practical. However, requiring that an independent mental health professional spend at least a few hours with the patient, perhaps performing a quick home visit, may allow the court and the professional to see a more complete and accurate picture of the mother’s illness and its impact on the child. Mental health professionals and courts should be aware that it is not just the mother’s condition that is relevant, but also their support network and how they manage their illness. All of these factors need to be considered when making a determination of neglect.

While requiring an independent evaluation would be a step in the right direction, there are also circumstances in which the mother may have been involved in ongoing treatment with a mental health professional. These professionals may have a better understanding of the mother’s condition than a professional who has only just met her. For that reason, providing deference, when appropriate, to the longer treating professional should be considered as to do so may prevent weak findings of neglect or danger as was the case in *In re T.K.*²³⁴

Finally, it is important that mental health professionals understand the legal standards for neglect and abuse. Mental health professionals may be unfamiliar with legal standards.²³⁵ Providing those professionals with extra information prior to their evaluations may help them better understand the process and what the court requires of them.²³⁶

²³⁴ *In re T.K.*, 939 A.2d at 14 (stating that the court, despite the mother’s personal psychologist’s opinion that the mother would never harm her child, sided with the court psychologist who said “there is a first time for everything”).

²³⁵ See *supra* note 79 and accompanying text.

²³⁶ The New York State Appellate division, for example, has a catalog of professionals available for mental health evaluations who are required to view training videos and participate in continuing education every year. *Mental Health Professionals Panel*, N.Y. ST. UNIFIED CT. SYS.,

iii. Mental Illness/Disability Panels

A good way to prevent removal and improve the appeals process would be through the use of panels. Ideally, these panels would include at least one mental health professional, a social worker, and an attorney specializing in family law and termination proceedings. These independent panels would be focused on mental health within the family court. A panel would be better trained and better equipped to make independent assessments of individual cases, taking into account all of the evidence, mental health evaluations, and facts. These panels would provide informed recommendations to the judge on what action should be taken. Such a system would have the added benefit of judges not relying solely on what any single mental health professional or child protection agent recommends.

These panels could be used at two stages of the removal process. The first would be before a judge is presented the case. In New Jersey, family courts utilize early settlement panels in divorce cases.²³⁷ The divorce panels are in a sense mediation panels made up of experienced attorneys who specialize in matrimonial law.²³⁸ The panelists examine the entire case, as well as both sides' arguments, and try to resolve the dispute and ultimately make a recommendation to the parties on how the case should be handled.²³⁹ Similarly, the petitioning agency could be required to bring their case to a "mental health" focused panel for an initial review. At this initial stage, the panel would first determine if the case has merit, providing a fresh perspective of the facts and screening out cases where there is little or no evidence of danger or neglect. Predictive neglect is not founded on actual abuse or neglect, but on the mere possibility of it. These panels could halt

<https://www.nycourts.gov/courts/ad2/mentalhealthproffhome.shtml> (last visited Dec. 19, 2017).

²³⁷ *Program for Mediation of Economic Aspects of Family Law Cases*, N.J. CT., <https://www.judiciary.state.nj.us/courts/family/familyrosters.html> (last visited Dec. 19, 2017); see N.J. CT. R. 1:40-5.

²³⁸ *Id.*

²³⁹ *Id.*

cases where the danger to the child is simply too speculative while still considering the mother's mental illness as a part of the mother's ability to raise her child. If the case for removal has merit, the panel could then provide recommendations on treatment or monitoring as ways to avoid removal of the child. The mother and the agency could consider the panel's recommendation, as is done in New Jersey panels,²⁴⁰ for a plan to avoid removal or a timetable. The difference would be that the mental health panel would make a recommendation to the court in addition to the parties.

The second way these panels could be utilized is on appeal rather than pre-trial. Sometimes, the appeals process works well enough. However, the reunification and appeals processes can prove to be difficult obstacles for a mother. These appeal panels would be structured and function much in the same way as the pre-trial panel would. The key difference would be that after reviewing the case, the panel would simply make a recommendation to the appellate court who would then decide the ultimate outcome. Having the panels operate as part of the appeals process would likely cut the costs and narrow the function of the panel as there would be no need to review every case involving a mother with a mental illness. Instead, the court panel would only review the cases that are appealed. However, having panels involved early in the case may prevent a child from being removed from their mother, reducing the burden and strain on the mother and the entire family. In either case, panels could serve to help prevent discrimination against mothers and protect families while evaluating how well cared for the child is. The guidance they could give to judges, both at the lower and appellate court levels, would be invaluable and would help curb the problems of the predictive neglect doctrine.

²⁴⁰ *Id.* In New Jersey early settlement panels, the recommendations to the parties are not binding, nor are the parties required to agree. *Id.* Similarly, the proposed mental illness panel recommendations would also be non-binding on the parties.

II. CONCLUSION

Predictive neglect is destructive. Without any evidence of actual abuse or neglect, a child can be taken from their mother just because of the mother's mental illness. Children should not be removed from their mother's care based on a hunch or mere speculation of current or future abuse. When children are unnecessarily removed, it can cause damage to both the child and the mother, even if the family is later reunited. While there is no single, silver bullet solution to the problems posed by predictive neglect, the steps discussed above may refine the court process and better protect mothers and children from devastating long term separation due to mental illness issues that have yet to unfold.

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**INTERVIEW OF “R.C.” TRANSCRIPT,
CONDUCTED BY AMELIA LYTE (“A.L.”)**

OCT. 15, 2016

R.C. agreed to be interviewed on the condition of anonymity.

[Introduction dialogue removed]

A.L.: So why don't you tell me what happened?

R.C.: Basically what had happened was my obstetrician was not following the directions of my metabolic specialist.

A.L.: OK.

R.C.: So I demanded to have them speak to each other because I wanted to make sure I was having a healthy pregnancy. The obstetrician instead of speaking to the metabolic specialist just demanded all of my records. The metabolic specialist managed to send over everything they had and in there was an erroneous note that I had had a suicide attempt. I have never had a suicide attempt before. Um. This is not part of who I am. Jumping ahead and then jumping back, upon my own investigation I found out that that came from a self-report from when I was like anesthetized post-surgery . . .

A.L.: Yeah.

R.C.: . . . and on morphine and so . . . when you know I was not in sound mind when I was filling out paperwork. So I don't know what I thought I was checking but I certainly you know; but anyway the metabolic specialist never had a concern and it was no big deal and it was never removed from my chart. Instead of the obstetrician focusing on anything else in my record, which is what I needed him to focus on, he uh he approached my husband and I and he wanted to know about it and we both said that there was no

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history of suicide attempt, suicide indication, or anything. Ah there was one bad reaction to a medication but that was about it. And um he at which point said that [he] needs proof of that and we kind of looked at each other and he goes otherwise I have to call the state. That's when I called [a lawyer] because I wanted to make sure I had an attorney in case he did actually call the state on me. I also called my friend who worked for DCCNP and he said basically not to worry, but you know, but they would show up if he calls but they definitely won't remove the baby.

A.L.: Now worst case scenario and they removed the baby, did anyone tell you what you would have to argue to get your baby back?

R.C.: No.

A.L.: Ok.

R.C.: Because what I had been told is that because my husband had not been accused of having a mental illness they would leave the baby in his care. And basically not allow me alone with the child until I had a court order saying that I could.

A.L.: That's insane.

R.C.: Well yeah. If I was a single mother it would have been much harder situation.

A.L.: Um hum

R.C.: Um so at which point we decided to switch obstetricians because I wasn't going to go to a guy who wanted to remove my child. Now he and I had also had a contentious relationship before that. He had told me on more than one occasion that he didn't think that I was a fit parent. Um.

A.L.: Did he give any reason for that, because that sounds really [judgmental].

R.C.: He said I questioned him a lot and I didn't like the decisions he made I would question it. Um and I think he didn't like patients that argued with him. . . . I should have switched doctors earlier. After I switched doctors everything was going well and I go to deliver and I deliver a healthy baby girl.

A.L.: Congratulations

R.C.: Thank you. One of the issues between me and my obstetrician was that he was convinced that I would not deliver a healthy baby because I wasn't following his directions. Um and so the night she was delivered, my husband was running out to the parking lot to go get one of the bags he left in the car and he runs into the doctor that was threatening to call [the state]. Um at which point the doctor stopped and my husband walked on past . . . it wasn't worth engaging with this guy. I have a theory, and I don't know if this is true or not that this doctor pulled my records that night. Um he could see that there was a very healthy baby girl without any issues claims that there were guaranteed issues. So anyway my third night in the hospital, my second night in the hospital, the nurses come in at 4o'clock in the morning to discuss with me my past suicide attempt.

A.L.: Nurses and not state agents?

R.C.: No, not state agents. Now here is what's interesting, there is no way they would have gotten that record had he not said something. Because that record was not transferred to the new obstetrician. So how would it have gotten to the hospital?

A.L.: Wow. It sounds like this doctor had some kind of vendetta.

R.C.: Yeah. So at which point I explained the whole situation and nothing ever came of it and the nurses agreed that there was no risk to the baby and moved on. Um but I'm lucky, you know I have a master's degree, I have resources, I can navigate.

[Section omitted due to personal information]

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A.L.: So how did you feel when [the doctor] told you CPS was going to come and take your kid away?

R.C.: Well I don't think he was threatening to take the kid away, he was more threatening to call them and let them make the evaluation. The way that he said it was that if he knew that I had a mental illness and he didn't alert the state and I did something to the baby then it would fall on him, which is not true at all. Um so I was just more frustrated . . . and I knew that at the end of the day I needed an attorney but I knew that nothing was really going to come of it. Um you know worst case scenario they would leave the child with my husband and you know they would say that I couldn't be alone with her. Um and I would go to court the next week and deal with it. . . . In the first 24 hours I was very fearful and stressful until I really processed it and realized that they wouldn't take the baby. I have enough family and friends and people nearby that they would leave the baby with one of them in a worst case scenario.