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When a Parent Has a Mental Illness: Child Custody Issues

Some state laws cite mental illness as a condition that can lead to loss of custody or parental rights. Thus, parents with mental illness often avoid seeking mental health services for fear of losing custody of their children. Custody loss rates for parents with mental illness range as high as 70-80 percent, and a higher proportion of parents with serious mental illnesses lose custody of their children than parents without mental illness. Studies that have investigated this issue report that:

- Only one-third of children with a parent who has a serious mental illness are being raised by that parent.
- In New York, 16 percent of the families involved in the foster care system and 21 percent of those receiving family preservation services include a parent with a mental illness.
- Grandparents and other relatives are the most frequent caretakers if a parent is psychiatrically hospitalized, however other possible placements include voluntary or involuntary placement in foster care.[1]

The major reason states take away custody from parents with mental illness is the severity of the illness, and the absence of other competent adults in the home.[2] Although mental disability alone is insufficient to establish parental unfitness, some symptoms of mental illness, such as disorientation and adverse side effects from psychiatric medications, may demonstrate parental unfitness. A research study found that nearly 25 percent of caseworkers had filed reports of suspected child abuse or neglect concerning their clients.[3]

The loss of custody can be traumatic for a parent and can exacerbate their illness, making it more difficult for them to regain custody. If mental illness prevents a parent from protecting their child from harmful situations, the likelihood of losing custody is drastically increased.

Legal Issues

All people have the right to bear and raise children without government interference. However, this is not a guaranteed right. Governments may intervene in family life in order to protect children from abuse or neglect, imminent danger or perceived imminent danger. When parents are not able, either alone or with support, to provide the necessary care and protection for their child, the state may remove the child from the home and provide substitute care.

Adoption and Safe Families Act

The Federal Adoption and Safe Families Act, Public Law 105-89 (ASFA) was signed into law November 19, 1997. This legislation is the first substantive change in federal child welfare law since the Adoption Assistance and Child Welfare Act of 1980, Public Law 96-272.4 It is intended to achieve a balance of safety, well-being and permanency for children in foster care. It requires that state child welfare agencies make "reasonable efforts" to prevent the unnecessary placement of children in foster care and to provide services necessary to reunify children in foster care with their families. ASFA establishes expedited timelines for determining

whether children who enter foster care can be moved into permanent homes promptly—their own familial home, a relative's home, adoptive home, or other planned permanent living arrangement.

While ASFA is designed to protect children, it also includes provisions pertaining to parental rights. For example, under ASFA, parents have the right to receive supports and services to help them retain custody and keep their families intact. The child welfare system must provide these services according to an individualized plan that has been developed and agreed upon by all parties to ensure parents with mental illnesses are not discriminated against due to their illness. A plan with parental input also helps ensure that, when appropriate, efforts are made by state welfare agencies to promote family permanency, including establishing whether children in foster care can be moved into a permanent living situation.

Helping Families Stay Intact

Parental mental illness alone can cause strain on a family; parental mental illness combined with parental custody fears can cause even greater strain. Such strain, as well as the lack of specialized services for families in the child welfare system and the overall stigma associated with mental illness, makes it difficult for families to get the help they need. With the right services and supports though, many families can stay together and thrive. The following efforts by advocates can help families living with mental illness maintain custody and stay intact:

- Help parents become educated about their rights and obtain legal assistance and information
- Advocate for parents as services plans are developed, and assist adult consumers to develop their own self-care plans and advance directives to strengthen their parenting skills and manage their own illness
- Enable parent-child visitation during psychiatric hospitalization to maintain the bond between parent and child
- Train child protective services workers to better understand parental mental illness
- Educate the legal system about advances in the treatment of serious mental illness
- Advocate for increased specialized services for parents with serious mental illnesses available through the court system

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