

**A173218**

---

---

**IN THE COURT OF  
APPEAL OF THE STATE OF  
CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION 4**

In re L.G., a Person Coming Under the Juvenile Court Law  
CONTRA COSTA COUNTY CHILDREN & FAMILY  
SERVICES,  
*Petitioner and Respondent,*  
v.  
M.G.,  
*Objector and Appellant.*

---

CASE NO. J24-00703  
HON. REBECCA C. HARDIE  
CONTRA COSTA COUNTY  
SUPERIOR COURT

**APPLICATION FOR LEAVE TO FILE *AMICI CURIAE*  
BRIEF IN SUPPORT OF OBJECTOR AND APPELLANT  
M.G.; PROPOSED *AMICI CURIAE* BRIEF OF  
DISABILITY RIGHTS EDUCATION AND DEFENSE  
FUND, *ET AL.* IN SUPPORT OF OBJECTOR AND  
APPELLANT M.G.**

---

**DISABILITY RIGHTS EDUCATION AND DEFENSE FUND**

Kavya Parthiban, SBN 346669  
Jillian MacLeod, SBN 352889  
3075 Adeline Street, Suite 210  
Berkeley, California 94703  
Tel: (510) 644-2555  
Emails:  
kparthiban@dredf.org  
jmacleod@dredf.org  
Attorneys for Amici

## Application for Leave to File Amici Curiae Brief

Under California Rules of Court, rule 8.200(c), Disability Rights Education and Defense Fund and additional *amici* parties respectfully request leave to file the attached *amici curiae* brief in support of Appellant Mother's appeal. The *amici* parties share an interest in preventing and remedying disability discrimination against parents with disabilities who participate in dependency proceedings. The amici are committed to disability nondiscrimination and reasonable modifications in all aspects of dependency. The proposed brief reviews the application of dependency and disability nondiscrimination principles to the proceeding below and will assist the Court in deciding this matter. *Amici* include:

*Amicus* the Brooklyn Law School **Disability and Civil Rights Clinic (DCRC)** provides essential legal services and community education to adults with intellectual and developmental disabilities (I/DD). The DCRC works to protect the civil rights of individuals with I/DD and prevent discrimination against them through its work restoring rights under guardianship, preventing the imposition of unnecessary guardianships, and pursuing cases to challenge discrimination. A central focus of the DCRC's work involves advocating for parents with disabilities in family regulation matters where fundamental rights to due process, autonomy, and family integrity are at stake.

*Amicus* **Disability Rights California (DRC)** is a non-profit Protection & Advocacy agency mandated under state and federal law to advance the legal rights of Californians with disabilities. DRC was established in 1978 and is the largest disability rights legal advocacy organization in the nation. Each year DRC helps more than 20,000 Californians with disabilities. As part of its mission, DRC works to ensure that people with disabilities have access to essential services and supports and that they are not subject to disability-based discrimination.

*Amicus Disability Rights Education and Defense Fund (DREDF)* based in Berkeley, California, is a national nonprofit law and policy center dedicated to protecting and advancing the civil and human rights of people with disabilities. Founded in 1979 by people with disabilities and parents of children with disabilities, DREDF remains board- and staff-led by members of the communities for whom we advocate. DREDF pursues its mission through education, advocacy, and law reform efforts. For more than three decades, DREDF has received funding from the California Legal Services Trust Fund (IOLTA) Program as a Support Center providing consultation, information, training, and representation services to legal services offices throughout the state as to disability civil rights law issues. DREDF is nationally recognized for its expertise in the interpretation of federal and California disability civil rights laws. DREDF has participated as amicus and amici counsel in numerous cases addressing the scope and meaning of California civil rights mandates. DREDF remains dedicated to advancing the human and civil rights of people with disabilities, including disabled parents impacted by family and dependency court systems.

*Amicus Legal Services for Prisoners with Children (LSPC)* is a nonprofit public benefit corporation with over 45 years of experience advocating to release incarcerated people, restore human and civil rights, and reunify families and communities. Guided by the vision of people in prison and of formerly incarcerated individuals, working in unity with attorneys and policy advocates, LSPC seeks to transform the injustice of mass incarceration and the harms of the family policing system. As a California Legal Services Trust Fund (IOLTA) Support Center, LSPC provides legal training, legal technical assistance, and advocacy support to legal services offices throughout the state on legal issues affecting incarcerated, formerly incarcerated and convicted individuals and their families, and foster system-impacted families.

*Amicus Public Counsel* is a nonprofit public interest law firm dedicated to advancing civil rights and racial and economic justice, as well as to amplifying the power of our clients through comprehensive legal advocacy. In our work with children and families, we see how the long reach of the child welfare system separates children, both formally and informally, from their families, communities, and culture—creating trauma that reverberates through generations. The Americans with Disabilities Act is critical to safeguard the rights and interests of parents with disabilities from unwarranted state intrusion into their families, a core constitutional value.

*Amicus Robyn M. Powell* is a professor of law and nationally recognized expert on disability rights and the rights of parents with disabilities. Her scholarship and advocacy examine how child welfare systems disproportionately target parents with psychiatric disabilities based on stereotypes and diagnoses rather than evidence of actual harm to children. Professor Powell submits this brief to assist the Court in evaluating the constitutional and civil rights implications of removing a child from a parent solely on the basis of disability, without individualized proof of risk or neglect.

*Amicus Sarah H. Lorr* is an Associate Professor of Law at the University of Maryland Francis King Carey School of Law. Her research focuses on disability and family law, specifically studying the role of disability in the family regulation system, the right to marry, the imposition of guardianship, and broader conceptions of the American Family.

*Amicus Shanta Trivedi* is an Assistant Professor of Law & the Faculty Director of the Sayra and Neil Meyerhoff Center for Families, Children and the Courts at the University of Baltimore School of Law. Her scholarship focuses on the harms of the family policing system, particularly to marginalized communities.

On behalf of all *amici* parties, DREDF respectfully requests that the Court grant this application and permit the filing of the proposed amicus curiae brief for consideration in this matter.

Dated: December 23, 2025

Respectfully submitted,

By:  \_\_\_\_\_

Kavya Parthiban, SBN 346669  
Jillian MacLeod, SBN 352889  
Disability Rights Education & Defense Fund  
3075 Adeline Street, Suite 210  
Berkeley, CA 94703  
(510)-644-2555  
Attorneys for Amici Curiae

Document received by the CA 1st District Court of Appeal.

**A173218**

---

**IN THE COURT OF  
APPEAL OF THE STATE OF  
CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION 4**

In re L.G., a Person Coming Under the Juvenile Court Law  
CONTRA COSTA COUNTY CHILDREN & FAMILY  
SERVICES,  
*Petitioner and Respondent,*  
v.  
M.G.,  
*Objector and Appellant.*

---

CASE NO. J24-00703  
HON. REBECCA C. HARDIE  
CONTRA COSTA COUNTY  
SUPERIOR COURT

**PROPOSED *AMICI CURIAE* BRIEF OF DISABILITY  
RIGHTS EDUCATION AND DEFENSE FUND, *ET AL.* IN  
SUPPORT OF OBJECTOR AND APPELLANT M.G.**

---

**DISABILITY RIGHTS EDUCATION AND DEFENSE FUND**

Kavya Parthiban, SBN 346669  
Jillian MacLeod, SBN 352889  
3075 Adeline Street, Suite 210  
Berkeley, California 94703  
Tel: (510) 644-2555  
Emails:  
kparthiban@dredf.org  
jmacleod@dredf.org  
Attorneys for Amici

Document received by the CA 1st District Court of Appeal.

## Table of Contents

Application for Leave to File Amici Curiae Brief .....	ii
Introduction .....	10
Argument.....	11
I.    Eugenics and Ableism Underpin the Present-Day Child Welfare System and Interfere with Disabled People’s Right to Parent. .	13
A.    State-Sponsored Eugenics and Pervasive Ableism Have Long Denied Disabled People the Opportunity to Form Families and Parent. ....	15
B.    Ableism and Eugenic Thinking Drive Systemic Overreach and Involvement by Child Welfare Services in the Lives of Parents with Disabilities. ....	19
II.    Parents With Psychiatric Disabilities, Like Mother, Can and Do Successfully Parent, Despite Widespread Misinformation and Pervasive Stereotypes to the Contrary.....	22
III.    Prolonged Parent-Child Separation has Negative Consequences for Children and Parents.....	25
IV.    Disability Nondiscrimination Laws Apply to Dependency Decisions. ....	26
V.    The Bureau Used Discriminatory Methods of Administration to Remove L.G. Using an Improper Safety Plan, Then Used the Fallout From the Plan to Allege Mother Was a Substantial Risk in Jurisdictional Proceedings.....	30
A.    The Bureau Defeated the Purpose of A Safety Plan By Improperly Using It To Transfer Custody, A Process Deemed “Hidden Foster Care.”.....	31

VI. The Bureau Failed to Provide Effective Communication to Mother When Implementing the Safety Plan, Resulting in Her Confusion and Distress. ....	35
VII. The Evidence Fails to Meet Disability Nondiscrimination Requirements to Conduct an Individualized Assessment of Risk That Considers Reasonable Modifications and Support and Thus Does Not Establish Substantial Risk, Substantial Danger, or Absence of Reasonable Means To Avoid Removal.....	36
A. The Bureau Failed to Establish Substantial Risk Based on an Individual Assessment and Objective Facts. ....	37
B. The Bureau Failed to Provide or Consider Reasonable Means to Maintain Family Unity, and Disability-Related Modifications, Supports and Services. ....	48
VIII. Conclusion.....	50
CERTIFICATION OF WORD COUNT.....	52
Certification Pursuant to California Rule of Court 8.200 subd. (c)(3) .....	53
DECLARATION OF SERVICE.....	54

**Table of Authorities**

**Cases**

*Buck v. Bell* (1927) 274 U.S. 200 ..... 15, 16

*Guardianship of Christian G.* (2011) 195 Cal.App.4th 581 ..... 31, 33, 34

*In re A.L.* (2017) 18 Cal.App.5th 1044 ..... 37, 39, 41, 43

*In re Anthony P.* (2000) 84 Cal.App.4th 1112 ..... 29

*In re Diamond H.* (2000) 82 Cal.App.4th 1127 ..... 29

*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774..... 37

*In re Jamie M.* (1982) 134 Cal.App.3d 530 ..... 23, 37

*In re K.C.* (2012) 212 Cal.App.4th 323 ..... 49

*In re L.W.* (2025) 109 Cal.App.5th 1012..... 37, 39, 41, 43

*In re Marriage of Carney* (1979) 24 Cal.3d 725 ..... 23

*In re N.R.* (2023) 15 Cal.5th 520 ..... 37

*In re S.F.* (2023) 91 Cal.App.5th 696..... 36

*In re Victoria M.* (1989) 207 Cal.App.3d 1317 ..... 49

*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067 ..... 37

*Lee v. City of Los Angeles* (9th Cir. 2001) 250 F.3d 668 ..... 27

*Patricia W. v. Superior Ct.* (2016) 244 Cal.App.4th 397 ..... 49

*Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415 ..... 23, 41

**Statutes**

29 U.S.C. § 794 ..... 27

42 U.S.C. § 12132 ..... 26

42 U.S.C. §12131 ..... 27

Cal. Gov. Code, § 11135 ..... 27, 35, 38, 49

Cal. Stats. 1992, ch. 913, § 18 (AB 1077).....27

Welf. & Inst. Code, § 21000 .....23

Welf. & Inst. Code, § 300.....36, 48

Welf. & Inst. Code, § 355.....36

Welf. & Inst. Code, § 361.....36

**Regulations**

28 C.F.R. § 35.130.....30, 49

28 C.F.R. § 35.139.....41, 47, 49

.....35

.....35

45 C.F.R. § 84.60.....passim

89 Fed. Reg. 40066 (May 9, 2024, eff. July 8, 2024) .....28, 29

Cal. Code Regs., tit. 2, § 14025 et seq. ....27

Cal. Code Regs., tit. 2, § 14026.....30

Cal. Code. Regs., tit. 2, § 14327.....49

**Other Authorities**

Adam Cohen, *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck* (2016)..... 15

Agumasie Semahegen et. al, *Psychotropic medication non-adherence and its associated factors among patients with major psychiatric disorders: a systematic review and meta-analysis* (2020).....42

Alexandra Minna Stern et al., *California’s Sterilization Survivors: An Estimate and Call for Redress* (2017) ..... 16

Angela O. Burton & Angeline Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being* (2021) ..... 18, 19

Anne Nichol et al., Chapter 1.4: Modern Developments: the Decline of Institutional Treatment, <i>in</i> <i>Mental Disorders and the Criminal Justice System</i> (2025).....	17
Anne Nichol et al., Chapter 1.5: Deinstitutionalization and Disability Rights (2025) .....	17
C.I. Harries et al., <i>Parenting and Serious Mental Illness (SMI): A Systematic Review and Metasynthesis</i> (2023).....	20, 21, 22, 25
California Evidence-Based Clearinghouse (CEBC), <i>Infant and Early Childhood Mental Health (Birth to 5)</i> (2025) .....	25
Claire Ryan, <i>Children as Bargaining Chips</i> (2021).....	33
Daryn David et al., <i>Supported Parenting to Meet the Needs and Concerns of Mothers with Severe Mental Illness</i> (2011) .....	16, 21, 24
Dorothy Roberts, <i>Abolishing Policing Also Means Abolishing Family Regulation</i> , <i>The Imprint</i> (2020) .....	10
Elaine Liu, <i>Willowbrook State School: Institutional Abuse, Medical Ethics and the Rise of Disability Rights in the United States</i> (2025).....	17
Elizabeth Lightfoot et al., <i>Substantiation of Child Maltreatment Among Parents with Disabilities in the United States</i> (2021).....	20
Elizabeth Lightfoot, Katharine Hill, and Traci LaLiberte, <i>The Inclusion of Disability as a Condition for Termination of Parental Rights</i> (2010).....	14
H.R. Rep. No. 101-485, 2nd Sess. p. 41 (1990), reprinted in 1990 U.S.C.A.N 303 .....	26
Henry C. Kempe et al., <i>The Battered-Child Syndrome</i> (1962) .....	18
Jean Marie S. Place et al., <i>Barriers to help-seeking for postpartum depression mapped onto the socio-ecological model and recommendations to address barriers</i> (2024) .....	42
Jeremy Loudenback, <i>Foster Youth Are at Great Risk for Suicide as They Prepare to Leave the System, California Study Finds</i> , <i>Imprint News</i> (Nov. 20, 2024) .....	26
Joanne Nicholson, Elaine M. Sweeney, and Jeffrey L. Geller, <i>Mothers With Mental Illness: I. The Competing Demands of Parenting and Living With Mental Illness</i> , 49 <i>Psych. Servs.</i> 632 (1998).....	22, 25

John Devaney et al., <i>Early maternal death following child removal – A short report using observational data</i> (2024) .....	26
Joshua B. Kay, <i>Representing Parents with Severe Mental Illness in Child Welfare Cases</i> , (2012) .....	19, 22, 24, 42
Joshua Gupta Kagan, <i>America’s Hidden Foster Care System</i> (2020) ..	32, 33
Karrie Kingsley et al, <i>Interventions Supporting Mental Health and Positive Behavior in Children Ages Birth-5 Yr: A Systematic Review</i> (2020).	24, 25
Kathryn Sabella et al., <i>A Challenging Yet Motivating Journey: Experiences of Young Adult Parents with Serious Mental Health Conditions in the USA</i> , 13 <i>Frontiers in Psychiatry</i> 1, 8 (Mar. 14, 2022).....	20, 22, 23
Katy Kaplan et al., <i>Child Protective Service Disparities and Serious Mental Illnesses: Results From a National Survey</i> (2019).....	passim
Kimbely Howard, Anne Martin, Lisa J. Berlin and Jeanne Brooks-Gunn, <i>Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families</i> (2011) .....	25
L. Frunel & Sarah Lorr, <i>Lived Experience and Disability Justice in the Family Regulation System</i> (2022) .....	48
Liz Lightfoot, Mingyang Zhen, and Sharyn DeZelar, <i>Are Reports of Child Abuse Among U.S. Parents with Disabilities More Likely to be Substantiated?</i> (2021).....	22
Marie T. Brown & Jennifer K. Bussell, <i>Medication Adherence: WHO Cares?</i> (2011).....	42
Marina Lalayants et al., <i>Separation and psychosocial challenges of parents with children in foster care</i> (2025).....	26
Nancy D. Polikoff and Jane M. Spinak, <i>Forward - Strengthening Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well-Being</i> (2021) .....	10
National Council on Disabilities (NCD), <i>Rocking the Cradle: Ensuring the Rights of Parents with Disabilities</i> 94-98 (September 27, 2012)	14, 20, 21, 22
National Women’s Law Center, <i>Forced Sterilization of Disabled People in the United States</i> 1,15-19 (2021).....	17

Patricia Kime, *Canceled Appointments, Unexplained Mixups- Veterans Facing Challenges Getting VA Mental Health Care*, Military.com (Oct. 17, 2024)..... 41

Philip Mulvey et al., *Mothering Through Mental Illness: Exploring the Experiences of Motherhood for Criminally Involved Women on Mental Health Probation*, *Crime & Delinquency* (2022) ..... 22

Project South et al., *Letter: Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center 18-20* (Sept. 14, 2020)..... 17

Robyn M. Powell, *Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach* (2022)..... 10, 13, 15, 18

Robyn M. Powell, *Disability Reproductive Justice* (2002)..... 15

Robyn M. Powell, Susan L. Parish, Monika Mitra, and Joanne Nicholson, *Responding to the Legal Needs of Parents with Psychiatric Disabilities: Insights from Parent Interviews* (2020) ..... 23, 24

Robyn M. Powell, *Under the Watchful Eye of All: Disabled Parents and the Family Policing System’s Web of Surveillance* (2024) ..... 13

Robyn Powell, Susan Parish, Monika Mitra, and Joanne Nicholson, *Meeting the Needs of Parents with Psychiatric Disabilities Facing Loss of Child Custody: Advice for the Legal Profession* (2020) ..... 24

Robyn Powell, Susan Parish, Monika Mitra, and Joanne Nicholson, *Perceived community-based needs of low-income parents with psychiatric disabilities who experienced legal challenges to their parenting rights* (2020) ..... 24

Ryan Shellady, *Martinis, Manhattans, and Maltreatment Investigations: When Safety Plans Are a False Choice and What Procedural Protections Parents Are Due* (2019) ..... 32

Samantha Shortall & Miriam Heyman, *Life Circumstances of Diverse Parents with Disabilities With Child Welfare System Involvement 1-2* (2024) ..... 21

Sarah Lorr, *Disabling Families* (2024) 76 *Stan. L.Rev.* 1255 ..... 26, 32

Shanta Trivedi, *The Harm of Child Removal* (2019) ..... 25, 26

Sharyn DeZelar & Elizabeth Lightfoot, *Use of parental disability as a removal reason for children in foster care in the U.S.* (2018).....21

Shilpa Jindia, *Belly of the Beast: California’s Dark History of Forced Sterilizations*, *The Guardian* (Jun. 30, 2020) ..... 16

Stephanie M. Gwillam, *The Death Penalty of Civil Cases: The Need for Individualized Assessment & Judicial Education When Terminating Parental Rights of Mentally Ill Individuals* (2009)..... 14, 25

Susan Stefan, *Accommodating Families: Using the Americans with Disabilities Act to Keep Families Together*, (2008)..... 19

Stephanie Nelson-Dusek et al., *Assessing the Value of Family Safety Networks in Child Protective Services: Early Findings from Minnesota* (2017) .....31

*The Supreme Court Ruling That Led To 70,000 Forced Sterilizations*, Nat’l Pub. Radio (Mar. 7, 2016)..... 16

U.S. Dep’t of Health and Human Services and U.S. Dep’t of Justice, *Letter Re: Investigation of the Massachusetts Department of Children and Families by the United States Departments of Justice and Health and Human Services Pursuant to the Americans with Disabilities Act and the Rehabilitation Act*.....27, 31, 47, 50

U.S. Dept of Health & Human Serv., *Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts Under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act* 1, 8 (Aug. 2015).....passim

## Introduction

This case exemplifies the pervasive and unmitigated disability discrimination long entrenched in the child welfare system.<sup>1</sup> Often, the existence of parental disability, particularly psychiatric disabilities, acts as a substitute for evidence of unmitigable risk and parental unfitness. For disabled parents like the Mother in this case, acknowledging mental health struggles, seeking help, or relying on social support too often becomes grounds for suspicion rather than proof of responsible parenting. In *In re L.G.*, those dynamics led to improper jurisdictional findings and continued removal at disposition, resulting in the unnecessary and prolonged separation of a healthy infant from a willing and capable mother based on speculation and stigma rather than actual risk.

*Amici* and the broader disability community understand that this problem does not just devastate individual families but also perpetuates and reinforces a dark history of eugenics that seeks to prevent people with disabilities from building families and making decisions about our own

---

<sup>1</sup> *Amici* use the term “child welfare system” in this brief for consistency with appellant mother’s brief. *Amici* nonetheless assert that “family regulation system” or “family policing system” are more accurate terms used by experts to describe a system that seeks to “regulate and punish black and other marginalized people.” Dorothy Roberts, *Abolishing Policing Also Means Abolishing Family Regulation*, The Imprint (2020), <https://imprintnews.org/child-welfare-2/abolishing-policing-alsomeans-abolishing-family-regulation/44480>; see also Nancy D. Polikoff and Jane M. Spinak, *Forward - Strengthening Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well-Being* (2021) 11 Colum. J. Race & L. 427, 431 [available at <https://journals.library.columbia.edu/index.php/cjrl/issue/view/789/188>]; see also Robyn M. Powell, *Achieving Justice for Disabled Parents and Their Children: An Abolitionist Approach* (2022) 33(2) Yale J. L. and Feminism 35 [available at <https://openyls.law.yale.edu/server/api/core/bitstreams/0d262e38-7a39-44cd-bc37-e894857aa55b/content>] [hereinafter “*Achieving Justice*”].

bodies, reproductive choices, and futures. We recognize that the State’s *parens patriae* authority is essential to protecting those who cannot protect themselves. Still, that authority has limits and may not be exercised through assumptions or stereotypes that people with disabilities are unfit to parent absent evidence showing a specific, probable, safety risk. When child welfare agencies and courts ignore those limits under disability and state dependency law, the government puts children and disabled parents at grave risk of devastating and lifelong harm.

Parenthood is an inherently humanizing experience. It involves and requires vulnerability, learning, and reliance on others. For parents, confronting mental health challenges when they occur and seeking help is a mark of responsibility, not danger. Unfortunately, disabled parents are often denied the grace afforded to others, such as the ability to ask for help, rely on support, and struggle in the process without being condemned as unfit and risky. This case offers a devastating example of such discrimination.

### **Argument**

*Amici* have not been given access to court records, the following facts are taken from reviewing the filed briefs and responses. All citations are taken from the Mother’s and Respondent’s briefing.

L.G. was removed from her mother at five months old following the Contra Costa County Children and Family Services Bureau’s (“the Bureau”) improper determination that Appellant Mother (“Mother”) represented an immediate danger to the infant. (CT 4-8.) The Bureau relied on generalized concerns about Mother’s mental health, minor caregiving missteps, and facts from before L.G. was even born. (CT 6-7, 12, 35-36.) None of these facts establishes a current, substantial risk to L.G. Unable to initially justify a lawful removal upon their first investigation, the Bureau instead induced Mother to sign an overly broad and coercive “safety plan” that required her to relinquish custody to maternal grandmother who would

seek legal guardianship while she “sought treatment for mental health.” (CT 15-16.) When maternal grandmother refused Mother from seeing L.G. and Mother sought clarification and attempted to regain custody of her child, her distress and disagreement were recast as proof of mental instability and used to justify formal removal. (CT 17-29.) The dependency court then improperly endorsed the Bureau’s decision, finding substantial risk and that continued removal was necessary. (CT 58-62; 2RT 323-25.)

The facts of this case should deeply trouble the Court. They contravene settled disability nondiscrimination principles and California dependency law. Both require an individualized, present-focused, and evidence-based assessment of risk and consideration of reasonable supports and services tailored to disability-related needs before finding jurisdiction and separating families at disposition. Disability alone cannot establish risk, yet here the Bureau and the trial court do not articulate how their list of mere concerns meets federal disability law and state dependency requirements. By all accounts, L.G. was perfectly healthy, and there were few concerns while in Mother’s care. (CT 12-14.) The State’s decision in this case runs not only afoul of the law, but against the entire weight of it.

This practice of unnecessarily intervening and removing children based on speculative theories about parents with disabilities is not isolated. Parents with psychiatric disabilities are disproportionately investigated, separated, and fast-tracked into a dependency process that affirms these decisions without properly showing there is a substantial risk of harm. These disparities reflect a long, draconian history of state-sponsored eugenics, forced sterilization, and involuntary institutionalization. While these practices have fallen out of favor, the prejudice remains.

Not only did the Bureau rely on broad concerns about Mother’s disabilities, but it also effectively removed L.G. through an informal and improper “safety plan” and framed Mother’s discontent with the plan and

advocacy for access to her child as pathology. (CT 15-29.) It simply cannot be the law that the State can manufacture a scenario in which a parent cooperates with the process mandated by the State, is illegally deprived of their rights, and their subsequent objection to such deprivation is used as justification for prolonged removal. Disability nondiscrimination requirements demand more, and so does California dependency law. We urge this Court to reassess this case with the proper framework set out by disability rights guidance and complementary principles in dependency case law. In doing so, this Court will reaffirm that parents with disabilities are entitled to the same presumption of fitness, the same evidentiary protections, and the same opportunity to parent with support afforded to many nondisabled parents.

**I. Eugenics and Ableism Underpin the Present-Day Child Welfare System and Interfere with Disabled People’s Right to Parent.**

The U.S. Supreme Court has long recognized the need to balance a parent’s fundamental right to raise their children free from undue state interference with the State’s *parens patriae* authority to intervene and restrict parental rights when necessary to protect children from harm.<sup>2</sup> State dependency law is intended to enforce that balance by imposing procedural and evidentiary guardrails to limit state intervention and ensure that any restriction on parental rights and custody is proportional to the risk presented.

For parents with disabilities, particularly those with psychiatric disabilities like Mother, these guardrails too often fail to operate on equal

---

<sup>2</sup> Powell, *Achieving Justice*, *supra*, n. 1, at p. 50 n. 94 [collecting Supreme Court cases affirming the fundamental constitutional right to parent]; Robyn M. Powell, *Under the Watchful Eye of All: Disabled Parents and the Family Policing System’s Web of Surveillance* (2024) 112 Cal. L.Rev. 2005, 2011-2017 [reviewing the constitutional framework of the child welfare system].

terms due to entrenched ableism. Disabled parents are often denied the fundamental right to form and maintain families because they are cast as inherently unfit to care for children based on disability alone.<sup>3</sup> Reflecting these assumptions, many state child welfare statutes list parental disability or “incapacity” as a factor supporting limitation or termination of parental rights, subjecting disabled parents to heightened scrutiny throughout child welfare investigations and court proceedings.<sup>4</sup>

These attitudes and statutory structures predictably produce disproportionately adverse outcomes for parents with disabilities at every stage of child welfare involvement. This distortion is structural and reflects a longstanding and troubling history of state-sponsored eugenics and ableist regulation of disabled people’s bodies, reproductive choices, and family lives.

---

<sup>3</sup> See generally National Council on Disabilities (NCD), *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities* 94-98 (September 27, 2012) [available at <https://www.ncd.gov/assets/uploads/reports/2012/ncd-rocking-the-cradle.pdf>]; see also Stephanie M. Gwillam, *The Death Penalty of Civil Cases: The Need for Individualized Assessment & Judicial Education When Terminating Parental Rights of Mentally Ill Individuals* (2009) 29 St. Louis U. Pub. L.Rev. 1 [available at <https://scholarship.law.slu.edu/cgi/viewcontent.cgi?article=1186&context=plr>] [hereinafter “*The Death Penalty of Civil Cases*”]; Elizabeth Lightfoot, Katharine Hill, and Traci LaLiberte, *The Inclusion of Disability as a Condition for Termination of Parental Rights* (2010) 34(12) *Child Abuse and Neglect* 927, 928.

<sup>4</sup> See NCD, *Rocking the Cradle*, *supra*, n. 3, at p. 94; see Lightfoot, *The Inclusion of Disability as a Condition for Termination of Parental Rights*, *supra*, n. 3, at p. 929.

### **A. State-Sponsored Eugenics and Pervasive Ableism Have Long Denied Disabled People the Opportunity to Form Families and Parent.**

In the late nineteenth and early twentieth century, the United States embraced eugenics as official public policy, using law and public institutions to prevent reproduction by people deemed “unfit for parenthood.”<sup>5</sup> “[E]ugenicists ‘greatest target was the feebleminded,’” a deliberately vague designation that encompassed people with psychiatric and intellectual disabilities, women perceived as excessively interested in sex, and others “who offended the middle-class sensibilities of judges and social workers.”<sup>6</sup> This expansive and stigmatizing category enabled the State to regulate not only disability, but also gender, morality, poverty, and conformity which swept in other marginalized groups including Black, brown, Indigenous, immigrant, poor, and incarcerated people.

Eugenics policies took many forms, including state-sponsored forced sterilization, laws limiting the ability of people with disabilities to get married and have sex before the age of 45, and widespread institutionalization that segregated people with disabilities from the rest of society.<sup>7</sup>

In 1927, the Supreme Court endorsed this regime, holding that a Virginia law allowing forced sterilization of the “feeble-minded” was constitutional. (*Buck v. Bell* (1927) 274 U.S. 200, 205, 207.) In terrifying fashion, Justice Oliver Wendell Holmes justified the decision by arguing:

“

---

<sup>5</sup> Powell, *Achieving Justice*, *supra*, n. 1 at pp. 1, 70.

<sup>6</sup> *Id.* (quoting Adam Cohen, *Imbeciles: The Supreme Court, American Eugenics, and the Sterilization of Carrie Buck* (2016) p. 6.)

<sup>7</sup> See Robyn M. Powell, *Disability Reproductive Justice* (2002) 170 Univ. Penn. L.Rev. 1851, 1856-1860 [detailing the history of eugenics and reproductive oppression of people with disabilities in the United States].

offspring for crime or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind... Three generations of imbeciles are enough.” *Ibid.* *Buck v. Bell* has never been explicitly overturned by the Supreme Court.

The consequences of *Buck* were profound. Following the decision, at least 70,000 Americans were involuntarily sterilized.<sup>8</sup> California alone conducted approximately 20,000 sterilizations of people in state institutions from 1919 to 1952—the most of any state.<sup>9</sup> Forced institutionalization, particularly of people with psychiatric disabilities, facilitated these abuses. By 1945, over 21,300 people living in mental hospitals had been sterilized, and 4,000 more were sterilized in the 1950s.<sup>10</sup> Historical records show that institutionalized women who already had children faced extended family separation. A review of inpatient records from 1905-1974 in England found that over 57% of women hospitalized for severe psychiatric distress had been separated from their children against their will, and there is “every reason to believe that women in U.S. institutions experienced a similar fate.”<sup>11</sup>

These eugenics practices are not a fixture of the past. California continued to sterilize incarcerated people until as recently as 2013<sup>12</sup> and

---

<sup>8</sup> See *The Supreme Court Ruling That Led To 70,000 Forced Sterilizations*, Nat’l Pub. Radio (Mar. 7, 2016), <https://www.npr.org/sections/health-shots/2016/03/07/469478098/the-supreme-court-ruling-that-led-to-70-000-forced-sterilizations>.

<sup>9</sup> See Alexandra Minna Stern et al., *California’s Sterilization Survivors: An Estimate and Call for Redress* (2017) 107(1) Am. J. Public Health 50 [available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC5308144/>].

<sup>10</sup> Daryn David et al., *Supported Parenting to Meet the Needs and Concerns of Mothers with Severe Mental Illness* (2011) 14 Am. J. of Psychiatric Rehabilitation 137 [hereinafter “*Supported Parenting*”].

<sup>11</sup> *Ibid.*

<sup>12</sup> See Shilpa Jindia, *Belly of the Beast: California’s Dark History of Forced Sterilizations*, *The Guardian* (Jun. 30, 2020),

involuntary sterilizations of immigrant women were reported in immigration detention facilities as recently as 2020.<sup>13</sup> As of 2021, 31 states and Washington D.C. still permit the sterilization of disabled people under guardianship without their consent.<sup>14</sup>

In response to a growing public awareness of the abuses and inhumane treatment of disabled people in institutions,<sup>15</sup> a deinstitutionalization movement emerged in the 1950s and 60s, promoting the integration of disabled people into society through the use of community-based services.<sup>16</sup> But as large-scale institutionalization began to

---

<https://www.theguardian.com/us-news/2020/jun/30/california-prisons-forced-sterilizations-belly-beast>.

<sup>13</sup> See Project South et al., *Letter: Lack of Medical Care, Unsafe Work Practices, and Absence of Adequate Protection Against COVID-19 for Detained Immigrants and Employees Alike at the Irwin County Detention Center* 18-20 (Sept. 14, 2020) [available at <https://projectsouth.org/wp-content/uploads/2020/09/OIG-ICDC-Complaint-1.pdf>].

<sup>14</sup> National Women’s Law Center, *Forced Sterilization of Disabled People in the United States* 1, 15-19 (2021) [available at [https://nwlc.org/wp-content/uploads/2022/01/%C6%92.NWLC\\_SterilizationReport\\_2021.pdf](https://nwlc.org/wp-content/uploads/2022/01/%C6%92.NWLC_SterilizationReport_2021.pdf)]

<sup>15</sup> See generally Elaine Liu, *Willowbrook State School: Institutional Abuse, Medical Ethics and the Rise of Disability Rights in the United States* (2025) 5 *Critical Debates in Humanities, Science and Global Justice* 85 [available at <https://criticaldebateshsgj.scholasticahq.com/article/141852-willowbrook-state-school-institutional-abuse-medical-ethics-and-the-rise-of-disability-rights-in-the-united-states>] [detailing the history of the Willowbrook state school scandal and the horrific conditions endured by disabled children in Willowbrook and other institutions for disabled people].

<sup>16</sup> Anne Nichol et al., Chapter 1.4: Modern Developments: the Decline of Institutional Treatment, *in* *Mental Disorders and the Criminal Justice System* (2025) [available at <https://openoregon.pressbooks.pub/mentalcrimjustsys1e/chapter/oo1-4/>]; see also *id.* at Chapter 1.5: Deinstitutionalization and Disability Rights [available at <https://openoregon.pressbooks.pub/mentalcrimjustsys1e/chapter/oo1-5/>].

fall out of favor, the State’s regulation of disabled people’s reproduction and parenting did not stop there, it simply shifted forums.

In 1962, Dr. Henry Kempe and colleagues published an article called *The Battered Child Syndrome* which catalyzed the modern child abuse reporting system.<sup>17</sup> While framed as a medical breakthrough drawing attention to an epidemic of child abuse, the article relied on highly stigmatizing language to speculate that abusive parents were “probably” people with psychiatric disabilities and people from other marginalized groups: “Psychiatric factors are *probably* of prime importance in the pathogenesis of the disorder...Parents who inflict abuse on their children do not necessarily have psychopathic or sociopathic personalities or come from borderline socioeconomic groups, although most published cases have been in these categories.”<sup>18</sup> He further pointed to the opinions of social workers that parents who abused their children were “of low intelligence” and “[a]lcoholism, sexual promiscuity, unstable marriages, and minor criminal activities are reportedly common amongst them.”<sup>19</sup> These assumptions and assertions shaped child welfare law as we know it today.

In response to Kempe’s article and mounting public pressure, Congress enacted the Child Abuse Prevention and Treatment Act (CAPTA), formalizing mandatory reporting and investigation systems. Critically, CAPTA collapsed intentional abuse with poverty-related conditions into a single framework of “child abuse and neglect.”<sup>20</sup> In doing

---

<sup>17</sup> See generally, Henry C. Kempe et al., *The Battered-Child Syndrome* (1962) 181 J. Am. Med. Ass’n 17; see also Powell, *Achieving Justice*, *supra*, n. 1 at p. 73 [describing Battered Child Syndrome article’s impact on child welfare systems].

<sup>18</sup> Kempe, *Battered-Child*, *supra*, n. 17 at p. 24 [emphasis added].

<sup>19</sup> *Id.* at p. 18.

<sup>20</sup> Angela O. Burton & Angeline Montauban, *Toward Community Control of Child Welfare Funding: Repeal the Child Abuse Prevention and Treatment Act and Delink Child Protection from Family Well-Being* (2021) 11(3)

so, “lawmakers knowingly created a false equivalence between intentional physical harm to children [...] and conditions of poverty [due to structural deprivation]” into “a problem of individual parental pathology and deviant behavior.”<sup>21</sup> Parents with psychiatric disabilities are highly vulnerable within this framework, as their behaviors are frequently seen as deviant and they are more likely to live in poverty.<sup>22</sup>

Although the State no longer relies on mass sterilization to prevent parents with psychiatric disabilities from parenting, the logical fallacy of equating disability with parental fitness to prevent persons from reproducing and building families has remained unchecked and continues with force in the modern-day child welfare system.

### **B. Ableism and Eugenic Thinking Drive Systemic Overreach and Involvement by Child Welfare Services in the Lives of Parents with Disabilities.**

Despite this unfortunate history, people with psychiatric disabilities today are just as likely to be parents as people without psychiatric disabilities.<sup>23</sup> Although parenting with a mental health or psychiatric disability is exceedingly common, parents with mental health and

---

Colum. J. of Race & L. 639, 666 [available at <http://journals.library.columbia.edu/index.php/cjrl/article/view/8747/4497>].

<sup>21</sup> *Id.* at 667 [citing Dorothy E. Roberts, *Shattered Bonds: The Color of Child Welfare* (2002) pp. 1, 14-15].

<sup>22</sup> Joshua B. Kay, *Representing Parents with Severe Mental Illness in Child Welfare Cases*, (2012) 14 Mich. Child Welfare L. J. 44, 44; *see also* Susan Stefan, *Accommodating Families: Using the Americans with Disabilities Act to Keep Families Together*, (2008) 2 St. Louis U. J. Health L. & Pol’y 135, 138.

<sup>23</sup> Katy Kaplan et al., *Child Protective Service Disparities and Serious Mental Illnesses: Results From a National Survey* (2019) 70(3) *Psychiatric Services* 202 [available at <https://psychiatryonline.org/doi/pdf/10.1176/appi.ps.201800277>] [hereinafter “*Child Protective Service Disparities*”].

psychiatric disabilities report that fear of discrimination in child welfare involvement deters them from seeking needed parenting or social services and disclosing their disability.<sup>24</sup> These fears are justifiable.

Generally, parents with disabilities are significantly more likely to be reported to child welfare services, have allegations substantiated, experience prolonged separation, and have their parental rights terminated than nondisabled parents.<sup>25</sup> Parents with psychiatric disabilities experience some of the most severe disparities at every stage of the process.<sup>26</sup>

In fact, parents with psychiatric disabilities are **eight times** more likely to experience child welfare involvement than nondisabled parents.<sup>27</sup> Once involved, agencies are *most* likely to substantiate claims against parents with “emotional disturbance” (i.e. mental health or psychiatric disabilities).<sup>28</sup> Parents with psychiatric disabilities are **63% more likely** than nondisabled parents to have allegations of maltreatment substantiated, controlling for other demographic and risk factors.<sup>29</sup> Parents with psychiatric disabilities are also **25 times** more likely to have a child removed from the home.<sup>30</sup> In California, about one third of all removals

---

<sup>24</sup> Kathryn Sabella et al., *A Challenging Yet Motivating Journey: Experiences of Young Adult Parents with Serious Mental Health Conditions in the USA*, 13 *Frontiers in Psychiatry* 1, 8 (Mar. 14, 2022) [hereinafter “*Challenging Yet Motivating*”]; see also C.I. Harries et al., *Parenting and Serious Mental Illness (SMI): A Systematic Review and Metasynthesis* (2023) 26 *Clinical Child and Family Psychology Rev.* 303, 333-334 [hereinafter “*Parenting with SMP*”].

<sup>25</sup> Kaplan, *Child Protective Service Disparities*, *supra*, n. 23 at p. 204.

<sup>26</sup> See NCD, *Rocking the Cradle*, *supra*, n. 3 at pp. 80-105.

<sup>27</sup> *Ibid.*

<sup>28</sup> See Elizabeth Lightfoot et al., *Substantiation of Child Maltreatment Among Parents with Disabilities in the United States* (2021) 15(5) *J. Pub. Child Welfare* 583, 589.

<sup>29</sup> *Ibid.*

<sup>30</sup> Kaplan, *Child Protective Service Disparities*, *supra*, n. 23 at p. 204.

involve parents with disabilities,<sup>31</sup> and some studies report removal rates for parents with psychiatric disabilities as high as 70 percent to 80 percent.<sup>32</sup> Once pulled into dependency proceedings, parents with psychiatric disabilities often receive few accommodations, supports and services tailored to their experiences of parenting with psychiatric or mental health conditions.<sup>33</sup>

These disparities are driven in part by higher rates of poverty, inadequate housing, and barriers to medical and mental health care which can exacerbate alcohol and drug use.<sup>34</sup> Additionally, parents with psychiatric disabilities and mental health disabilities often face barriers to accessing timely, affordable, and appropriate treatment and parenting support resources tailored to their needs.<sup>35</sup>

Bias also operates even before disabled parents become pregnant. Parents with psychiatric disabilities report that negative social assumptions undermine their perceived right to bear and raise children and providers presume incapacity at birth. One mother stated “I guess I feel that if I got pregnant, my child would be taken away from me because I have a mental illness. I feel like I'm sterilized by the department of social services and have no rights.”<sup>36</sup> Once a person with a psychiatric disability becomes a

---

<sup>31</sup> Sharyn DeZelar & Elizabeth Lightfoot, *Use of parental disability as a removal reason for children in foster care in the U.S.* (2018) 86 Child. & Youth Servs. Rev. 128, 131-132.

<sup>32</sup> NCD, *Rocking the Cradle*, *supra*, n. 3 at p. 16.

<sup>33</sup> *See* Harries, *Parenting and SMI*, *supra*, n. 24 at pp. 334-335.

<sup>34</sup> Samantha Shortall & Miriam Heyman, *Life Circumstances of Diverse Parents with Disabilities With Child Welfare System Involvement 1-2* (2024) [available at <https://heller.brandeis.edu/parents-with-disabilities/research/publications/child-welfare-family-law-rights/pdfs/life-circumstances-of-diverse-parents-w-disabilities-w-cws-involvement.pdf>].

<sup>35</sup> *See* David, *Supported Parenting*, *supra*, n. 10 at p. 5.

<sup>36</sup> Joanne Nicholson, Elaine M. Sweeney, and Jeffrey L. Geller, *Mothers With Mental Illness: I. The Competing Demands of Parenting and Living*

parent, they are more likely to be presumed unfit to parent by child welfare agencies and dependency courts:

There are a number of false stereotypes reflected in lower court decisions and termination filings that also permeate the attitudes of child protective services workers and the agencies where they operate: psychiatric disability and symptoms are permanent and unchanging; requiring assistance means the person is unfit to parent; being disrespectful to the social worker means unfitness to parent; and attempting suicide means unfitness to parent.<sup>37</sup>

As discussed further below, we see *every single one* of these stereotypes weaponized against Mother in this case.

## **II. Parents With Psychiatric Disabilities, Like Mother, Can and Do Successfully Parent, Despite Widespread Misinformation and Pervasive Stereotypes to the Contrary.**

Despite pervasive stereotypes to the contrary, parents with psychiatric disabilities like Mother can and do successfully parent. Empirical research consistently shows that parents with disabilities are no more likely than parents without disabilities to abuse or neglect their children.<sup>38</sup> Parents with psychiatric disabilities acknowledge that parenting can sometimes be complicated by their mental health conditions.<sup>39</sup> At the

---

*With Mental Illness*, 49 Psych. Servs. 632, 638 (1998) [hereinafter “*The Competing Demands of Parenting*”].

<sup>37</sup> NCD, *Rocking the Cradle*, *supra*, n. 3 at pp. 97-98.

<sup>38</sup> Liz Lightfoot, Mingyang Zhen, and Sharyn DeZelar, *Are Reports of Child Abuse Among U.S. Parents with Disabilities More Likely to be Substantiated?* (2021); Kay, *Representing Parents with Severe Mental Illness in Child Welfare Cases*, *supra*, n. 22 at p. 45.

<sup>39</sup> Sabella, *Challenging Yet Motivating*, *supra*, n. 24 at 7; *see also* Harries, *Parenting and SMI*, *supra*, n. 24 at p. 335; *see also* Philip Mulvey et al., *Mothering Through Mental Illness: Exploring the Experiences of Motherhood for Criminally Involved Women on Mental Health Probation*, *Crime & Delinquency* (2022) pp. 1713, 1730-1732.

same time, many report that parenting itself promotes stability, hope, and a sense of purpose.<sup>40</sup> Parental identity is also a strong motivator for them to start and maintain mental health treatment.<sup>41</sup> The majority of cases involving a parent with a psychiatric disability that comes in contact with the child welfare system do not require separation. Instead, parents “simply need access to services and support that can help them parent effectively.”<sup>42</sup>

California dependency case law recognizes the unremarkable but critical proposition that parental capacity must be assessed with their supports and disability accommodations in place. (*See In re Marriage of Carney* (1979) 24 Cal.3d 725, 736 [directing courts to conduct a holistic assessment of a parent’s disability, including their adaptations and supports]; *Tracy J. v. Superior Court* (2012) 202 Cal.App.4th 1415, 1427 [favorably weighing the role of supports, including partners and family in increasing parental capacity]; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 541 [reinstating reunification services where decision seemingly based termination on parents psychiatric diagnosis alone and did not assess the mitigating role of potential supports]; *Welf. & Inst. Code*, § 21000, subds. (c) & (d), as amended by Stats. 2022, ch. 894, 16 [finding that “[l]ike adults without disabilities, adults with disabilities may use a wide range of voluntary supports ... The capacity of an adult should be assessed with any supports ... that the person is using or could use.”].)

Research confirms that targeted interventions, when needed, are effective. A study of parents with psychiatric disabilities found that continuity of mental health services, assistance with housing and public

---

<sup>40</sup> Sabella, *Challenging Yet Motivating*, *supra*, n. 24 at p. 7.

<sup>41</sup> *Ibid.*

<sup>42</sup> Robyn M. Powell, Susan L. Parish, Monika Mitra, and Joanne Nicholson, *Responding to the Legal Needs of Parents with Psychiatric Disabilities: Insights from Parent Interviews* (2020) 38 *Minn. J. L. & Inequity* 1, 78 [hereinafter “*Responding to the Legal Needs of Parents*”].

benefits, and community-based support effectively support parenting.<sup>43</sup> Other studies demonstrate that a parent’s mental health, social support, and access to appropriate services improved when given support and assistance in connecting with resources.<sup>44</sup> Also effective to mothers was modeling from family coaches on time management, conflict resolution and self-advocacy skills.<sup>45</sup> Parents with psychiatric disabilities can benefit from access to respite care, pre-arranged substitute care if they experience hospitalizations, and tailored parenting education.<sup>46</sup>

Moreover, early intervention services and parent-child dyadic therapies effectively support both parental mental health and safe caregiving. Systematic reviews of interventions for infants and their caregivers demonstrate that relationship-based services, such as parent-child interaction therapy or other dyadic modalities, reduce parental stress and psychiatric symptoms, improve parental sensitivity and responsiveness, and strengthen attachment. These interventions address parental mental health needs while simultaneously supporting parenting capacity.<sup>47</sup>

---

<sup>43</sup> Robyn Powell, Susan Parish, Monika Mitra, and Joanne Nicholson, *Meeting the Needs of Parents with Psychiatric Disabilities Facing Loss of Child Custody: Advice for the Legal Profession* (2020) (summarizing findings from Powell et. al, *Responding to the Legal Needs of Parents*, *supra*, n. 42; Robyn Powell, Susan Parish, Monika Mitra, and Joanne Nicholson, *Perceived community-based needs of low-income parents with psychiatric disabilities who experienced legal challenges to their parenting rights* (2020) 112 *Children and Youth Servs. Rev.* 104902).

<sup>44</sup> David, *Supported Parenting*, *supra*, n. 10 at 5.

<sup>45</sup> *Ibid.*

<sup>46</sup> Kay, *Representing Parents with Severe Mental Illness in Child Welfare Cases*, *supra*, n. 22, at 48; *see also* Kaplan, *Child Protective Service Disparities*, *supra*, n. 23 at p. 206.

<sup>47</sup> *See* Karrie Kingsley et al, *Interventions Supporting Mental Health and Positive Behavior in Children Ages Birth-5 Yr: A Systematic Review* (2020) 74 *Am. J. of Occupational Therapy* 2 [hereinafter “*Interventions Supporting Mental Health*”]; *see generally* California Evidence-Based

### III. Prolonged Parent-Child Separation has Negative Consequences for Children and Parents.

Long-term separation from a parent can result in a negative impact on the well-being and functioning of both children and their parents.<sup>48</sup> Research consistently demonstrates that removal often causes more harm than good.<sup>49</sup> Separation of a mother and child during early childhood, as is the case here, is especially harmful. Between birth and age two, children rely on physical proximity as the primary indicator of their mother's availability.<sup>50</sup> An Infant's limited understanding of the reasons for maternal absence and the timing of her return, making disruptions at this time particularly significant.<sup>51</sup>

Child welfare involvement, child removal, and parental rights terminations can also have a devastating impact on the stability and recovery of parents with psychiatric disabilities. The trauma of separation often exacerbates mental health and psychiatric symptoms, making it more difficult to comply with reunification requirements and reinforcing the very concerns used to justify continued separation.<sup>52</sup> Indeed, the consequences

---

Clearinghouse (CEBC), *Infant and Early Childhood Mental Health (Birth to 5)* (2025) [available at [https://www.cebc4cw.org/files/TopicAreaSummary\\_Infant&ECMH-Birthto5.pdf](https://www.cebc4cw.org/files/TopicAreaSummary_Infant&ECMH-Birthto5.pdf)].

<sup>48</sup> Kingsley, *Interventions Supporting Mental Health*, *supra*, n. 47, at p. 4.

<sup>49</sup> Gwillim, *The Death Penalty of Civil Cases*, *supra*, n. 3 at p. 360; Shanta Trivedi, *The Harm of Child Removal* (2019) 42 N.Y.U. Rev. L. & Soc. Change 523, 526 [discussing the research that children suffer psychological harm when removed from their parents].

<sup>50</sup> Kimbely Howard, Anne Martin, Lisa J. Berlin and Jeanne Brooks-Gunn, *Early Mother-Child Separation, Parenting, and Child Well-Being in Early Head Start Families* (2011) p. 6.

<sup>51</sup> *Ibid.*

<sup>52</sup> Nicholson, *The Competing Demands of Parenting*, *supra*, n. 36 at p. 641; *see also* Harries, *Parenting with SMI*, *supra*, n. 24 at p. 334; *see also* Kaplan, *Child Protective Service Disparities*, *supra*, n. 23 at p. 202; Sarah

of family separation increase the likelihood of the following for both parents and their children: unemployment, incarceration, homelessness, chronic health issues, school disruption, substance use, and death.<sup>53</sup>

#### **IV. Disability Nondiscrimination Laws Apply to Dependency Decisions.**

Congress enacted the Americans with Disabilities Act (“ADA”) in response to entrenched discrimination faced by people with disabilities, including discriminatory practices leading to the unnecessary child custody loss by disabled parents.<sup>54</sup> Title II of the ADA provides that no qualified individual with a disability shall, “by reason of such disability,” be excluded from participation in, or be denied the benefits of, a public entity’s services, programs or activities. (42 U.S.C. § 12132.) Title II of the ADA’s reach is intentionally broad and applies to “any State or local

---

Lorr, *Disabling Families* (2024) 76 Stan. L.Rev. 1255, 1294-1300; Marina Lalayants et al., *Separation and psychosocial challenges of parents with children in foster care* (2025) 171 Child. & Youth Services Rev. 4, 5 [available at <https://www.sciencedirect.com/science/article/abs/pii/S0190740925000635>].

<sup>53</sup> See generally Trivedi, *The Harm of Child Removal*, *supra*, n. 49; Lorr, *Disabling Families*, *supra*, n. 52 at pp. 1294-1300; Jeremy Loudonback, *Foster Youth Are at Great Risk for Suicide as They Prepare to Leave the System, California Study Finds*, Imprint News (Nov. 20, 2024), <https://imprintnews.org/top-stories/foster-youth-are-at-great-risk-for-suicide-as-they-prepare-to-leave-the-system-california-study-finds/256210>; Kaplan, *Child Protective Service Disparities*, *supra*, n. 23, at p. 202; John Devaney et al., *Early maternal death following child removal – A short report using observational data* (2024) 33(4) Child Abuse Rev. 1 [available at <https://onlinelibrary.wiley.com/doi/10.1002/car.2892>] [finding mothers in the UK died following child removal due to deterioration in mental health].

<sup>54</sup> See, e.g., H.R. Rep. No. 101-485, 2nd Sess. p. 41 (1990), reprinted in 1990 U.S.C.A.N 303, 323 [“[B]eing paralyzed has meant far more than being unable to walk – it has meant ... being deemed an ‘unfit parent.’”]

government” and “any department, Bureau, special purpose district, or other instrumentality of a State or States or local government.” (42 U.S.C. §12131(1)(A)-(B).) The ADA covers “anything a public entity does.” (*Lee v. City of Los Angeles* (9th Cir. 2001) 250 F.3d 668, 691 [the term “public entity” “include[s] every possible Bureau of state or local government.”].)

Section 504 of the Rehabilitation Act (“Section 504”) similarly prohibits discrimination against people with disabilities in services, programs and activities that receive federal financial assistance, including federal assistance provided to child welfare agencies and courts. (29 U.S.C. § 794(a); 45 C.F.R. § 84.)

Similarly, in 1977, California enacted Government Code section 11135, which prohibits discrimination by state-funded programs based on disability, among other protected statuses. In 1992, California amended section 11135 to incorporate by reference the protections of Title II of the ADA as a minimum standard. (Cal. Stats. 1992, ch. 913, § 18 (AB 1077) (enacting Cal. Gov. Code, § 11135, subd. (b)).) In 2024, the California Civil Rights Department published robust regulations implementing the protections of Section 11135. (Cal. Code Regs., tit. 2, § 14025 et seq.)

In response to a joint investigation by the U.S. Department of Justice (“DOJ”) and Health and Human Services (“HHS”) into the Massachusetts child welfare system’s treatment of a mother with an intellectual disability that confirmed systemic discriminatory practices against parents with disabilities,<sup>55</sup> the DOJ and HHS issued comprehensive technical assistance

---

<sup>55</sup> U.S. Dep’t of Health and Human Services and U.S. Dep’t of Justice, *Letter Re: Investigation of the Massachusetts Department of Children and Families by the United States Departments of Justice and Health and Human Services Pursuant to the Americans with Disabilities Act and the Rehabilitation Act* (DJ No. 204-36-216 and HHS No. 14-182176) [available at [https://www.hhs.gov/sites/default/files/mass\\_lof.pdf](https://www.hhs.gov/sites/default/files/mass_lof.pdf)] [finding that systemic discrimination against disabled parents in the form of, among

to guide child welfare agencies and dependency courts in the application of well-established nondiscrimination requirements of the ADA and Section 504 to “all child welfare-related activities and programs.”<sup>56</sup> That guidance expressly applies to “assessments, removal of children from their homes, case planning and serving planning, and family court proceedings,”<sup>57</sup> and provides a detailed structure for evaluating risk and making nondiscriminatory decisions about parental rights.<sup>58</sup> The Technical Assistance identified two foundational principles that are fundamental to the ADA and Section 504 in child welfare and dependency proceedings: (1) individualized treatment and (2) equal opportunity.<sup>59</sup>

Section 504’s implementing regulations issued in May 2024 reinforced the Technical Assistance requirements and regulations. (*See* 89 Fed. Reg. 40066 (May 9, 2024, eff. July 8, 2024), at 40188-89 (adding 45 C.F.R. § 84.60 titled “Children, parents, caregivers, foster parents, and prospective parents in the child welfare system.”).) The updated regulations explicitly apply Section 504 to child welfare programs and activities receiving federal funds, prohibit decisions based on “speculation, stereotypes, or generalizations” about disabled parents, and require

---

other things unnecessary and prolonged removals without consideration of reasonable modifications and disability-related supports and assessments of risk grounded in assumptions rather than evidence] [hereinafter “Gordon Letter”].

<sup>56</sup> *See* U.S. Dept of Health & Human Serv., *Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts Under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act 1*, 8 (Aug. 2015) [available at <https://www.hhs.gov/sites/default/files/disability.pdf>] [hereinafter “Technical Assistance 2015”] [updated version (Jun. 2020) available at <https://www.ada.gov/resources/protecting-parent-rights/>]

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

parenting evaluation procedures to assess actual parenting ability rather than disability, by ensuring parents are assessed with adapted services and reasonable modifications. (*See* 45 C.F.R. § 84.60 et seq.)

The regulations reaffirm the longstanding applicability of federal disability nondiscrimination requirements in light of extensive evidence of ongoing discrimination against parents and children with disabilities in child welfare processes. (*See* 89 Fed. Reg. 40066 (May 9, 2024, eff. July 8, 2024), at 40104-40108.)

The requirements of state and federal disability nondiscrimination laws are consistent with California dependency standards. For example, the dependency requirement that “substantial risk” to a child must be assessed on a case-by-case basis is consistent with the required individualized assessment under disability nondiscrimination jurisprudence. The dependency requirement that removal be based on a finding that no other “reasonable means” will allow the child to safely remain in home is consistent with reasonable accommodations required by state and federal disability nondiscrimination laws.

Despite these correlations, dependency courts fail to consistently apply basic principles of disability nondiscrimination to cases involving parents with disabilities. This inconsistency has been exacerbated by overly broad interpretations of two early California appellate decisions that did not allow the ADA as a defense to specific, individual dependency proceedings. (*See In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1139; *In re Anthony P.* (2000) 84 Cal.App.4th 1112, 1116.) These cases have contributed to ongoing confusion on how to properly assess risk when it comes to disabled parents in dependency. As a result, disabled parents and their trial counsel, like Mother’s counsel here, are often chilled from asserting protections under disability law and guidance at the stages they are most needed. Proper application of disability nondiscrimination

standards, consistent with nondiscrimination requirements of the Welf. & Inst. Codes, within dependency proceedings therefore, remains appropriate and necessary to improve accuracy and prevent discrimination in the evaluation of risk, safety, and supports to avoid separation for families with disabilities.

**V. The Bureau Used Discriminatory Methods of Administration to Remove L.G. Using an Improper Safety Plan, Then Used the Fallout From the Plan to Allege Mother Was a Substantial Risk in Jurisdictional Proceedings.**

Title II and Section 504 prohibit child welfare agencies from using “methods of administration” that discriminate “on the basis of disability” or have the “purpose or effect of defeating or substantially impairing the objectives of the [agency’s] program with respect to individuals with disabilities.” (28 C.F.R. § 35.130(b)(3)(i), (ii); 45 C.F.R. § 84.60(b)(1), (2).) State nondiscrimination law is consistent. (Cal. Code Regs., tit. 2, § 14026.)

These prohibitions are designed to prevent child welfare agencies from accomplishing—through policies, practices, or informal mechanisms—what they may not lawfully accomplish. Accordingly, agencies may not, through “contracts, agreements, or other arrangements,” deny custody to a disabled parent and implement plans that “rely on fears or stereotypes to require parents with disabilities to accept unnecessary services or complete unnecessary tasks to prove their fitness to parent when nondisabled parents would not be required to do so.” (45 C.F.R. § 84.60(b)(1).)<sup>60</sup> The law squarely prohibits practices that impose heightened burdens on disabled parents or substitute coercive or discriminatory plans

---

<sup>60</sup> See also Technical Assistance 2015, *supra*, n. 56 at p. 13.

for the provision of individualized assessments and reasonable modifications required by the ADA and Section 504.

As the DOJ and HHS explained in the *Gordon Letter*, this prohibition applies at the “outset” of agency involvement, including during investigatory decision-making, when child welfare agencies are required to make “reasonable efforts to maintain the family unit and to prevent unnecessary removal of a child.”<sup>61</sup> At this stage, agencies must conduct an individualized assessment and consider what in-home services, family supports, or reasonable modifications would allow a parent with a disability to retain custody.<sup>62</sup> Child welfare agencies may not bypass these statutory and regulatory obligations by transferring custody through informal mechanisms that function as de facto removals without judicial oversight, procedural safeguards, or meaningful consent, including pushing families into probate guardianship proceedings where the parent has no right to counsel. (*See, for example, Guardianship of Christian G.* (2011) 195 Cal.App.4th 581, 597-601.)

**A. The Bureau Defeated the Purpose of A Safety Plan By Improperly Using It To Transfer Custody, A Process Deemed “Hidden Foster Care.”**

In principle, a “safety plan” is “a plan that is developed by the parent, worker, children (depending upon their age), and network members to ensure the safety of their children.”<sup>63</sup> Safety plans are intended to be collaborative and support family preservation by enabling children to stay

---

<sup>61</sup> *Gordon Letter, supra*, n. 55 at pp. 12, 15-16.

<sup>62</sup> *Ibid.*

<sup>63</sup> Stephanie Nelson-Dusek et al., *Assessing the Value of Family Safety Networks in Child Protective Services: Early Findings from Minnesota* (2017) 22 Child & Fam. Soc. Work 1365.

with their families during investigations, while awaiting formal court involvement, or as a less intrusive alternative to more formal child welfare intervention.

In practice, however, safety plans are frequently misused to transfer custody without court oversight, counsel, or meaningful consent. Legal scholars widely recognize this practice as “hidden foster care.” Professor Gupta-Kagan explains, child welfare agencies “induce parents to transfer physical custody to kinship caregivers through threats of the state taking legal custody of children [...] without any other branch of government checking or balancing the agency’s actions and without anyone getting a lawyer.”<sup>64</sup>

The coercive nature of these arrangements is well documented. Scholars observe that parents “are typically unsophisticated actors compared to lawyers” and often lack the legal knowledge to determine “whether state investigators have sufficient legal authority to require the implementation of a safety plan.”<sup>65</sup> Put simply, parents may not understand that they are surrendering custody through these plans, or that the agency lacks sufficient legal grounds to compel such an arrangement at all. These risks are acute for families from marginalized backgrounds, particularly parents with disabilities, who face compounded vulnerabilities due to power imbalances, communication barriers, and entrenched stereotypes about how disability affects caregiving.<sup>66</sup> As a result, safety plans

---

<sup>64</sup> Joshua Gupta Kagan, *America’s Hidden Foster Care System* (2020) 72 Stan. L. Rev 841, 843.

<sup>65</sup> Ryan Shellady, *Martinis, Manhattans, and Maltreatment Investigations: When Safety Plans Are a False Choice and What Procedural Protections Parents Are Due* (2019) 104 Iowa L.Rev. 1613, 1629.

<sup>66</sup> Gupta, *America’s Hidden Foster Care System*, *supra*, n. 64, at pp. 864-65; Lorr, *Disabling Families*, *supra*, n. 52 at 1286-90 [on stereotypes at outset].

frequently impose open-ended, compliance-based demands under threat of removal, including requirements that parents “agree to assign custodial rights over to family members” or “engage in substance abuse or behavioral programs.”<sup>67</sup> These demands often exceed what the state could lawfully require absent the leverage of child removal and imposed on parents without the procedural protections ordinarily necessary to constrain agency power.

These arrangements mirror the function and impact of formal foster care, including denial of custody and limitations on child contact, yet lack the procedural safeguards that accompany such removals and infringement on parental rights. Even when formal removal occurs, the goal of the child welfare system is to be “rehabilitative” and understands that “reunifying children with their parents will serve their best interest.”<sup>68</sup> By contrast, in hidden foster care, transfers of custody through safety plans “exempts agencies from core legal requirements” designed to meet that goal. There are no mandated reasonable efforts to reunify, no case-planning obligations to facilitate reunification, and no timeline parents and children can rely on for return of custody.<sup>69</sup> As such, parents can lose custody of their children indefinitely using these coercive informal arrangements.

While guardianship proceedings differ from dependency proceedings in sparing children from placement in state legal custody, “both contain provisions through which parents may ultimately lose custody of their children.” (*Guardianship of Christian G.* (2011) 195 Cal.App.4th 581, 596.) Critically, parents in guardianship proceedings have

---

<sup>67</sup> Claire Ryan, *Children as Bargaining Chips* (2021) 68 UCLA L. Rev. 410, 416.

<sup>68</sup> Gupta, *America’s Hidden Foster Care System*, *supra*, n. 64 at p. 877.

<sup>69</sup> Gupta, *America’s Hidden Foster Care System*, *supra*, n. 64 at pp. 877-879.

far fewer procedural “safeguards favoring continuance of parental custody” than do parents in dependency proceedings. (*Id.* at p. 596, 598, 600.) This distinction is critical, because child welfare agencies often present guardianship in safety plans as a less intrusive alternative than removal when, in practice, it can result in prolonged or indefinite loss of parental custody with even fewer protections.

From the details in the briefing, the “safety plan” imposed on Mother bore the hallmarks of improperly using safety plans to effectuate “hidden foster care.” Although Mother indicates the Bureau told her there was “no abuse or neglect here” (CT 24), they simultaneously presented her with a custody-shifting “safety plan” that required her to allow maternal grandmother to obtain primary custody and pursue legal guardianship while she got mental health treatment. (CT 15-16.) The plan seems extraordinarily vague and lacks basic parameters. Nothing indicates that the plan specified the duration, conditions for reunification, visitation rights, or what Mother needed to do to end any legal guardianship. Rather than serving as a temporary, collaborative, and consensual safety measure, the Bureau used the plan to effectively deny Mother all custody and meaningful contact, without judicial oversight, or access to counsel before requiring Mother to sign. The Bureau’s use of this safety plan constitutes a discriminatory method of administration that had the effect of defeating the child welfare system’s obligation to consider reasonable efforts and alternatives to removal at investigation for a disabled parent. As such, it denied Mother an equal opportunity to family preservation by failing to conduct an individualized assessment that considered reasonable modifications, in-home services, or family support that would allow her to retain L.G. The Bureau compounded this discrimination by denying Mother effective communication when signing the plan and later relied on the very

consequences of the imposed improper safety plan to file for jurisdiction and argue for continued removal, described further below.

**VI. The Bureau Failed to Provide Effective Communication to Mother When Implementing the Safety Plan, Resulting in Her Confusion and Distress.**

Child welfare agencies and courts are required to take appropriate steps to ensure effective communication with parents with disabilities. (Cal. Gov. Code, § 11135(b) (incorporating standards of ADA regulations); 28 C.F.R. § 35.160; 45 C.F.R. § 84.52(b).)<sup>70</sup> In the case of a safety plan, especially a plan that denies a parent custody as occurred in this case, it is imperative that parents with disabilities are given details about the plan and its legal and practical consequences in a form that they understand.

Here, Mother disclosed a learning disability (CT 15) and the Bureau later told police she “may have a cognitive disability,” (CT 24) a strong indication that she needed effective communication support. To support Mother’s communication, ensure her understanding, and allow Mother to give informed consent to the voluntary safety plan, the CPS worker should have asked about her communication needs. The worker could have used plain language, read the plan out loud to her, checked Mother’s understanding, or used visual aids. Once Mother expressed confusion and distress about the plan, the Bureau should have checked Mother’s understanding of the plan, corrected any misunderstandings, and considered another plan that was more aligned with her wishes—for example, a temporary placement with the aunt that would not have resulted in termination of custody. There is no evidence that the Bureau took any of these steps.

---

<sup>70</sup> See also Technical Assistance 2015, *supra*, n. 56 at pp. 10-12.

**VII. The Evidence Fails to Meet Disability Nondiscrimination Requirements to Conduct an Individualized Assessment of Risk That Considers Reasonable Modifications and Support and Thus Does Not Establish Substantial Risk, Substantial Danger, or Absence of Reasonable Means To Avoid Removal**

To establish jurisdiction, the dependency court must find, by a preponderance of evidence, that the allegations in a child welfare agency’s petition are true and that the child is a person described under Welfare & Institutions Code section 300. (Welf. & Inst. Code, § 355, subd. (a).) Under section 300, subdivision (b), a child may be a dependent only if the child “has suffered, or there is substantial risk that the child will suffer, serious physical harm or illness” as a result of the parent’s conduct, including “inability of the parent [...] to provide regular care to the child” due to the parent’s “mental illness, developmental disability, or substance abuse.” (Welf. & Inst. Code, § 300, subd. (b)(1)(D).)

Even once jurisdiction is established, removal at disposition requires two additional findings under a clear and convincing evidence standard. First, the dependency court must find that returning the child to the parent would pose “substantial danger” to the child’s emotional or physical well-being. (Welf. & Inst. Code, § 361, subd. (c)(1).) Second, the court must find there are “no reasonable means” to protect the child in the home. (*Ibid.*) Although a jurisdictional finding is prima facie evidence that a child may not be able to remain in the home, removal remains the “last resort” and may occur only after the child welfare agency made “reasonable efforts to prevent the need for removal.” (*Id.* at subs. (c)(1) & (e); *see also In re S.F.* (2023) 91 Cal.App.5th 696, 720.)

These California statutory standards are consistent with state and federal disability law standards, which likewise require an individualized

assessment showing that a parent with a disability poses a significant risk to the child’s health or safety that cannot be eliminated by a reasonable modification.<sup>71</sup>

**A. The Bureau Failed to Establish Substantial Risk Based on an Individual Assessment and Objective Facts.**

Under California dependency law and disability nondiscrimination law, mental health diagnoses alone do not demonstrate substantial risk or support jurisdiction. In California, “[t]he fact that a parent has a mental illness without more, is insufficient to support jurisdiction.” (*In re L.W.* (2025) 109 Cal.App.5th 1012, 1022 (*citing to In re N.R.* (2023) 15 Cal.5th 520, 558); *see also In re A.L.* (2017) 18 Cal.App.5th 1044.) The court in *In re Jamie M.* rejected any assumption that a parent with a mental health condition such as schizophrenia would “necessarily be detrimental to the mental or physical well-being of her offspring.” (134 Cal.App.3d at p. 541-542.) Courts have a “duty” to “examine the facts in detail” and must find that the worker demonstrated “with specificity how the minor has been or will be harmed” by the parent’s disability. (*Id.* at 542; *see also Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1078-1079 (holding there was not sufficient evidence for removal for mother with a serious mental illness); *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1789-90 (condemning the “mistreatment and misunderstanding of [disabled] parents” and affirming that mental illness is only “the starting point,” requiring an examination of the parent’s current condition, response to treatment, and actual impact on the child).)

State and federal disability law similarly require that courts conduct an individualized assessment grounded in “current medical knowledge” or

---

<sup>71</sup> *See also* Technical Assistance 2015, *supra*, n. 56 at pp. 4, 5.

the “best available objective evidence,” to determine the nature, duration, probability, and severity of any alleged risk related to parental disability, and the likelihood that the feared outcome will actually occur. (Cal. Gov. Code, § 11135, subd. (b); 28 C.F.R. § 35.139(b).)<sup>72</sup> The focus of this analysis is functional, not diagnostic. The question is not whether the parent has a particular mental health diagnosis or exhibits symptoms, but whether a specific symptom or limitation interferes with caregiving in a way that endangers the child. Accordingly, “assessments of and decisions regarding individuals with disabilities are based on actual facts that pertain to the individual person and not assumptions, generalizations, fears, or stereotypes about disabilities and how they might manifest.”<sup>73</sup> The 2024 Section 504 regulations reinforce this requirement by forbidding decisions based on speculation and generalizations and mandating that assessments “be tailored to assess actual parenting ability,” using “the best available objective evidence,” rather than mere “measure[s] of the person’s disability.” (45 C.F.R § 84.60(a), (c).)

**1. Finding B-1(a) Cannot Support Jurisdiction  
Because It Rests Solely on Mother’s Psychiatric  
Diagnoses in Violation of California Dependency  
Law and Disability Nondiscrimination Law.**

Finding b-1(a) states “On or around 12/2/2024 the mother stated that she has diagnoses of Borderline Personality Disorder, Major Depressive Disorder, Complex PTSD, and Anorexia and is not medication compliant.” This allegation cannot support jurisdiction because it rests solely on Mother’s psychiatric diagnoses, cited mental health symptoms largely

---

<sup>72</sup> See also Technical Assistance 2015, *supra*, n. 56 at pp. 4, 5.

<sup>73</sup> *Id.* at p. 12.

predating L.G.'s birth (CT 14, 88-90), and fails to identify how those diagnoses or circumstances resulted in a current, specific disability-related impairment that interfered with her ability to safely care for L.G. Critically, nothing in the record links any of these diagnoses to a concrete parenting failure, an inability to perform basic caregiving tasks, or functional limitation that placed L.G. at substantial risk of some concrete harm. (45 C.F.R. § 84.60(a), (c); *see, for example, In re L.W., supra*, 109 Cal.App.5th at p. 1019 (“there is no dispute that mother has been diagnosed with mental illness, but what is lacking is that evidence that her mental illness precludes her from safely caring for L.W. or that her illness otherwise places L.W. at substantial risk of serious physical harm or illness.”).)<sup>74</sup>

Here, the record affirmatively undermines any inference of such risk. L.G. was healthy and developmentally appropriate, and Mother was attentive to the infant throughout the investigation. By jurisdiction and disposition, Mother was engaged in treatment, completed a parenting class, and demonstrated appropriate and loving care during visitation. (CT 91-92, 95-96.) Finding b-1(a), therefore, cannot be affirmed as it fails to point to a specific, evidence-based risk that results from her diagnoses under both dependency and disability non-discrimination law.

Further, a brief period of medication lapse is not enough to infer substantial risk to a child. (*See In re L.W., supra*, Cal.App.5th at pp. 1022-23 [holding that a lapse in medication and resulting mental health hold does not support jurisdiction and removal]; *see also In re A.L. (2017)* 18 Cal.App.5th 1044.)

The record demonstrates that Mother's medication lapse and related symptoms were temporary, situational, and mitigated appropriately through her own protective actions. (CT 13-15.) In speculating that Mother's

---

<sup>74</sup> *See also* Technical Assistance 2015, *supra*, n. 56, at pp. 4-5.

medication noncompliance could render her neglectful and unwilling to accept help in caring for L.G. (Mother’s Brief p. 35, CT 97), the Bureau relied on “generalizations or stereotypes” about people with disabilities rather than “facts and objective evidence,” as required by the Technical Assistance.<sup>75</sup>

**2. Findings b-1(b) and b-1(c) Cannot Support Jurisdiction Because They Are Untethered to a Showing of Substantial Risk to L.G. And Instead Based On Speculative Assumptions About Mother’s Ability To Care For L.G.**

Finding b-1(b) states: “(b) On or around December 2, 2024, the mother admitted that her mental health escalated, and she was experiencing erratic behaviors, struggling with post-partum depression, and suicidal thoughts stating she attempted suicide last Thanksgiving Day 2024.” (CT 58-62; RT2 325.) Finding b-1(c) states: “The mother admitted that she stopped taking all prescribed psychotropic medications one week prior to November 19, 2024, without recommendations from the treating physician.” (CT 58-62; RT2 325.) The Court noted in its findings that mental health was like chronic substance abuse – not a snapshot that occurs one time, but a chronic issue. (2RT 323.) But this finding is based on stereotypes about people with psychiatric and mental health disabilities that vastly oversimplifies the reality of mental health conditions and associated symptoms. Neither finding can support jurisdiction because they rest on a brief, time-limited lapse in medication compliance and associated disability-related symptoms, without evidence that those symptoms actually impaired Mother’s ability to provide safe care for L.G. or created a

---

<sup>75</sup> *Id.* at p. 4.

probable or substantial risk of some serious future harm. Under state and federal disability law, identifying the existence of symptoms is insufficient. The law requires an individualized assessment and proof of a causal connection between symptoms and a probable risk of harm. (28 C.F.R. § 35.139(b); *see also In re A.L., supra*, 18 Cal.App.5th at p. 1051; *In re L.W., supra*, 109 Cal.App.5th at pp. 1022-24.)<sup>76</sup>

In fact, far from demonstrating impaired judgement or dangerousness, the objective evidence portrays a first-time mother who retained insight into her mental health, anticipated her needs, and took protective action. Mother disclosed her medication lapse to her physician and scheduled a follow-up appointment to restart her medication before the Bureau's initial investigation. Any delay in follow-up care was not willful and was beyond Mother's control. Documented delays in Veterans Affairs' mental health scheduling plausibly contributed to the timing of this follow-up appointment.<sup>77</sup> California dependency case law does not penalize parents for delays attributable to health care or disability service systems. (*See, for example, In re L.W., supra*, 109 Cal.App.5th at p. 1015 [mother's lapse in medication occurred because of administrative delays in accessing refills]; *see also T.J. v. Superior Ct.* (2018) 21 Cal.App.5th 1229 [agency cannot point to a parent's delay in accessing services when services were backlogged and beyond her control].)

Furthermore, the Bureau's reliance on Mother's brief medication lapse to infer substantial risk is inconsistent with established medical understanding. Medical interruptions are common across psychiatric

---

<sup>76</sup> *See also* Technical Assistance 2015, *supra*, n. 56, at p. 5.

<sup>77</sup> *See* Patricia Kime, *Canceled Appointments, Unexplained Mixups - Veterans Facing Challenges Getting VA Mental Health Care*, Military.com (Oct. 17, 2024), <https://www.military.com/daily-news/2024/10/17/canceled-appointments-unexplained-mixups-veterans-facing-challenges-getting-va-mental-health-care.html>.

conditions and other chronic health conditions, and do not automatically create risk.<sup>78</sup> Postpartum women with disabilities may have more trouble engaging with proper treatment due to a wide range of factors, including fear of how medication will affect their child while breastfeeding or fear of encountering even more negative attitudes from providers and their social network.<sup>79</sup> Risks associated with these lapses are mitigated through timely support, reassessment, and collaborative planning.<sup>80</sup> Where, as here, a parent retains insight and seeks reengagement with treatment, it is associated with improved mental health outcomes and could limit problematic parenting and risk of maltreatment.<sup>81</sup>

Additionally, Mother’s mental health symptoms did not pose a substantial risk to L.G. During periods of heightened emotional distress, Mother ensured L.G. was cared for by relatives. On Thanksgiving when

---

<sup>78</sup> Agumasie Semahegen et. al, *Psychotropic medication non-adherence and its associated factors among patients with major psychiatric disorders: a systematic review and meta-analysis* (2020) 9 Systematic Rev. 17 [non-adherence rates for psychiatric conditions are between 44 to 56 percent]; Marie T. Brown & Jennifer K. Bussell, *Medication Adherence: WHO Cares?* (2011) 86 (4) Mayo Clin Proc. 304 [available at [https://www.mayoclinicproceedings.org/article/S0025-6196\(11\)60007-4/fulltext](https://www.mayoclinicproceedings.org/article/S0025-6196(11)60007-4/fulltext)] [nonadherence across chronic conditions is around 50%] (hereinafter “*Medication Adherence*”).

<sup>79</sup> Jean Marie S. Place et al., *Barriers to help-seeking for postpartum depression mapped onto the socio-ecological model and recommendations to address barriers* (2024) 5 Front. Glob. Women’s Health 1, 3 [hereinafter “*Barriers to help-seeking*”] [available at <https://www.frontiersin.org/journals/global-womens-health/articles/10.3389/fgwh.2024.1335437/full>]; Monika Mitra et al., *Prevalence and Risk Factors for Postpartum Depression Symptoms among Women with Disabilities* (2015) 19 Matern. Child Health J. 1, 7 [available at <https://pmc.ncbi.nlm.nih.gov/articles/PMC4254905/pdf/nihms-601304.pdf>].

<sup>80</sup> Brown & Bussell, *Medication Adherence*, *supra*, n. 79, at pp. 304-305.

<sup>81</sup> *Id.* at 312.; Kay, *Representing Parents with Severe Mental Illness*, *supra*, n. 22, at p. 45

mother experienced suicidal ideation heightened by her feelings of isolation from her family, L.G. was not present and Mother handled the situation appropriately by calling a friend who helped calm her down. (CT 15.) This was a situational event, and Mother’s conduct demonstrates an acknowledgement and willingness to engage with clinical support and an ability to rely appropriately on her support network when in distress. Moreover, whenever mental health checks occurred by the County and police, neither found her symptoms of emotional distress rose to the level of necessitating more intensive intervention like a psychiatric hold. (CT 13, 23.)

Viewed holistically, the record shows a temporary mental health setback followed by steps to stabilize. Under disability nondiscrimination principles, and cases like *In re L.W* and *In re A.L.*, such a brief medication lapse followed by stabilization, in the absence of actual harm or neglect to the child, cannot support a finding of substantial risk under Welfare and Institutions Code section 300(b).

**3. Finding b-1(e) Cannot Support Jurisdiction Because Mother’s Text Messages Do Not Demonstrate a Substantial Risk to L.G. and Instead Display Valid Concern for L.G. And Desire to Reunite with L.G.**

Finding b-1(e) asserts that “between December 2 and December 8, 2024, the Mother sent text messages evidencing ‘unstable mental health.’” (CT 6, 58-62; RT2 325.) Properly understood, these messages do not reflect a disability-related risk to L.G. Rather, they reflect a parent’s understandable distress and confusion after the Bureau implemented a de facto removal through a “safety plan,” which is recognized as “hidden

foster care,” as discussed above. The Court should evaluate Mother’s text messages in that context.

Mother’s early texts express confusion about why grandmother was denying contact, requested maternal aunt as an alternative support, and asked basic questions about visitation. (CT 17, 18-21.) These are not messages showing risky mental instability; they demonstrate confusion about the consequences of a plan Mother did not fully understand and a desire to maintain contact with her child.

Mother’s text messages – sent after realizing that the separation would not be temporary – reflect the predictable distress of a parent unexpectedly and indefinitely denied access to her infant. In group text messages, Mother apologized for coming to grandmother’s home unannounced and stated she wanted to see, hold, and care for L.G. (CT 21.) At no point did the Bureau respond to these expressions of confusion and disagreement by clarifying Mother’s rights, modifying the plan, or reassessing whether alternative supports could better help Mother retain custody. They did not explore placement with maternal aunt as requested and did not address Mother’s concerns about grandmother as a caretaker with her. (CT 18-21, 30-31). Instead, the Bureau continued enforcing the safety plan arrangement that functionally deprived Mother of her custody and meaningful contact with L.G.

When maternal grandmother later contacted the police because Mother was outside the home attempting to see her child, officers assessed Mother’s mental health and did not initiate a psychiatric hold. (CT 23.) This contemporaneous determination, that Mother was not a danger to herself or others, directly contradicts the Bureau’s later characterization of Mother’s conduct during this period as evidence of acute instability or danger to the child.

Despite Mother texting the Bureau that she felt misled by the safety plan (CT 24), the Bureau circumvented supporting mom's efforts to reunify and attempted to work with the police and grandmother to reinforce the safety plan, rather than providing Mother with an opportunity to develop an alternative plan with appropriate supports or reasonable modifications. (CT 24-25, 26, 30-31.)

Law enforcement themselves informed the Bureau that the safety plan was not a legal order they could enforce. (CT 26.) Later, they clarified that if Mother came to retrieve her own child, they would be legally obligated to allow her to do so. (CT 27.) This independent determination confirms that Mother's efforts to retrieve L.G. were lawful and reasonable, not evidence of mental instability. Communicating concern for a child's well-being, insisting on contact with your own child, and objecting to an arrangement that is unclear, coercive, or misleading are hallmarks of *good* parenting, not substantial risk.

The Bureau then relied on Mother's objections to the safety plan, concerns about grandmother as caretaker, and understandable distress in light of separation from her child as evidence of substantial risk and justification for continued separation at jurisdiction/disposition.

The Bureau's framing has fundamental discriminatory flaws. The Bureau penalized Mother for rejecting a legally unenforceable safety plan and then characterized her challenge and disagreement to that plan as mental instability. Treating normal parental advocacy as "erratic" because the parent has a psychiatric disability reflects disability-based stereotyping prohibited by disability rights law and dependency case law.<sup>82</sup> (2RT 316-318, CT 16.)

---

<sup>82</sup> The Bureau also faulted Mother for declining to cooperate with maternal grandmother (CT 21-24, 27-28), despite evidence that grandmother was not acting as a neutral supporter but instead sought to retain custody over

Informal safety plans are consistently used to deny disabled parents' custody and function as de facto removals without proper oversight. Agencies may not lawfully treat a parent's refusal to acquiesce to such a plan as evidence of disability-related risk. Here, instead of conducting the required individualized analysis of risk and considering reasonable modifications, supports and services to prevent removal under disability nondiscrimination law and dependency law, the Bureau relied on Mother's disability statuses and distress *that they engineered* by implementing an unfair, overly broad safety plan to justify prolonged separation. For all these reasons, the text messages and Mother's refusal to acquiesce grandmother's unilateral control cannot be treated as substantial evidence of risk to L.G. None of the messages occurred while L.G. was in Mother's care, none resulted in any harm to the infant, and none demonstrated that Mother was unable to safely meet L.G.'s needs.

**4. Findings b-2(a)-(c) Cannot Support Jurisdiction Because They Do Not Demonstrate Substantial Risk to L.G.**

Mother's briefing demonstrates that these allegations were not sustained. (Appellant's Reply Brief at p. 13, 2RT 312-314, 325.) Assuming this Court considers these dismissed allegations proper, they are legally insufficient. Under disability rights laws and California dependency law, generalized concerns, minor parenting imperfections, or poverty-related

---

Mother's objection. She advanced stereotype-based assertions that Mother was unfit to parent due to her mental health (CT 15-16), restricted visitation, repeatedly threatened police involvement and restraining orders, and attempted to secure legal guardianship without Mother's consent. Penalizing Mother for distrusting a relative who was actively attempting to take custody and prevent more visitations unfairly reinterprets Mother's justified concern and frustration as pathology. (CT 17-31.)

conditions cannot establish jurisdiction or justify removal. Yet here, the remaining facts – missed or rescheduled baby appointments, infant spit-up during feeding, and lack of baby furniture – would be legally insufficient to establish substantial risk for a nondisabled parent. (CT 58-62; RT2 325.) These circumstances are merely generalized concerns and hold Mother to an impermissible “higher standard than necessary” due to disability.<sup>83</sup>

Disability rights laws require an individualized assessment of disability-related risk and consideration of whether reasonable modifications can mitigate that risk before concluding a parent is a threat to their child. (28 C.F.R. § 35.139(b).)<sup>84</sup> The Bureau made no showing of how any of Mother’s scheduling difficulties or feeding practices caused any unmet medical needs or adverse outcomes. To the contrary, the record shows that L.G. was healthy and adjusting well. (CT 14, 33, and 92.) Nor does the Bureau show that it considered whether reasonable formal or informal support to Mother, such as appointment scheduling assistance or parenting/feeding guidance, would not readily address their concerns. Treating ordinary, correctable parenting missteps that are common among first-time parents as evidence of substantial risk or danger reflects improper and heightened scrutiny rooted in disability bias rather than actual substantial risk.<sup>85</sup>

Furthermore, Mother’s lack of baby furniture and reliance on family support to obtain baby supplies is more an indication of material hardship than substantial risk. Parents with and without disabilities routinely rely on family, public benefits, and community resources to meet their children’s

---

<sup>83</sup> *Gordon Letter, supra*, n. 55, at p. 19; *See also* Technical Assistance 2015, *supra*, n. 56, at pp. 10, 13.

<sup>84</sup> *See also* Technical Assistance 2015, *supra*, n. 56, at p. 5.

<sup>85</sup> *Gordon Letter, supra*, n. 55, at p. 19; *See also* Technical Assistance 2015, n. 56, at pp. 10, 13.

needs. California law is explicit that poverty alone cannot support jurisdiction, or be used as evidence of parental unfitness, including for parents with disabilities. (Welf. & Inst. Code, § 300, subd. (b)(2), criteria (A) & (C); see *T.J.*, *supra*, 21 Cal.App.5th at p. 1251.) Still, child welfare workers and courts too often mischaracterize a disabled parent’s use of ordinary, common-sense support, such as help from a family member for childcare or groceries, as evidence of incapacity and dependency rather than responsible parenting.<sup>86</sup> Yet all parents— disabled and non-disabled— rely on some form of a support network to raise their children. Treating disabled parents’ reliance on such supports as proof of unfitness transforms ordinary circumstances into evidence of substantial risk solely because the parent is disabled. Here, nothing in the record suggests Mother failed to seek assistance and resources when needed for L.G.

Accordingly, these remaining allegations fail to establish substantial risk under both California dependency law and by applying the disability law framework.

**B. The Bureau Failed to Provide or Consider Reasonable Means to Maintain Family Unity, and Disability-Related Modifications, Supports and Services.**

California dependency case law and state and federal disability nondiscrimination laws require agencies and courts to assess whether available disability-related modifications, supports, and services could safely maintain the child in the parent’s care before resorting to temporary or prolonged removal.

---

<sup>86</sup> See L. Frunel & Sarah Lorr, *Lived Experience and Disability Justice in the Family Regulation System* (2022) 12 Colum. J. Race & L. 477, 485.

California dependency law requires a showing of “reasonable means” at disposition and “reasonable services” at review hearings. California, which requires agencies to tailor services and efforts to a parent’s known disability-related needs which is a function that holds the same purpose as providing “reasonable modifications” and “equal opportunity” under disability nondiscrimination law. Courts repeatedly uphold that services and efforts are unreasonable, and termination or continued separation decisions are improper when the child welfare agency fails to tailor efforts and services to a parent’s known disability. (*See In re Victoria M.* (1989) 207 Cal.App.3d 1317, 1331 [holding courts cannot terminate parental rights “without first assessing whether the services offered by the state [...] may enable the family of a disabled person to stay intact.”]; *Patricia W. v. Superior Ct.* (2016) 244 Cal.App.4th 397, 401, 425-427 [child welfare agency cannot just identify issues, they must show effort to “ascertain how [a parent] could better manage [their disability-related needs]”; *In re K.C.* (2012) 212 Cal.App.4th 323, 325 [“efforts must be tailored to fit the unique challenges” faced by families and must “accommodate the special needs of disabled parents ... including those disabled by mental illness.” ].)

Similarly, state and federal disability rights laws require agencies and courts to consider reasonable modifications or the auxiliary aids, services, or supports that could mitigate the stated risk before seeking removal or curtailment of parental rights. (Cal. Gov. Code, § 11135; Cal. Code. Regs., tit. 2, § 14327; 28 C.F.R. §§ 35.130(b)(7), 35.139.)<sup>87</sup> This includes consideration of the parent’s strengths, including reliance on family and social supports, coordinated mental health care, and availability

---

<sup>87</sup> *See* Technical Assistance 2015, *supra*, n. 56 at p. 5.

of in-home services. (*See, for example, Gordon Letter, supra*, n. 55 at pp. 16-17.)

Here, Mother was willing to receive support from the maternal aunt—the relative who had lived with Mother and the infant and stated she would be willing to move back in. (CT 13, 16, 90.) In addition, Mother’s sister expressed a willingness to return and resume supporting Mother with the infant. (CT 16, 90.) Additionally, the Bureau could have also implemented a family-maintenance plan, provided in-home services, arranged structured check-ins, or connected Mother to disability-competent parenting supports as described in *Section II*. Mother had natural support and other parenting supports she could have relied on. Each of these options constitutes a reasonable modification or reasonable means that should have been evaluated before resorting to removal.

### **VIII. Conclusion**

Consulting and applying federal disability rights guidance ensures courts understand how dependency law’s requirements operate in cases involving parents with disabilities. As this case painfully exemplifies, when disability is consistently used as a proxy for risk and danger, jurisdictional findings and dispositional removals rest on speculation, stigma, and fear rather than individualized evidence showing risk that cannot be mitigated.

A disability nondiscrimination framework, as consistent with California dependency caselaw, safeguards against precisely the errors that occurred here: improper conflation between disability and risk, the elevation of minor parenting imperfections as substantial risks solely because the parent is disabled, and failure to ask the legally required questions of whether any identified risk can be mitigated through reasonable supports, services, and modifications. Properly applied, such a framework ensures that courts assess present, probable, specific harm

through concrete objective evidence, not assumptions about parental disability or speculation of their willingness to seek help.

In doing so, it protects families from discriminatory jurisdictional findings and removals and ensures proceedings fulfill their core purpose of protecting children without unnecessarily intruding on the parent-child relationship and infringing on parents with disabilities constitutionally protected parental rights. Amici urge this Court to adopt this framework to prevent the unnecessary and devastating separation of families like Mother and L.G., whose prolonged separation and involvement seems to be driven not by danger, but speculation and discrimination.

Dated: December 23, 2025

Respectfully submitted,

By:  \_\_\_\_\_

Kavya Parthiban, SBN 346669  
Jillian MacLeod, SBN  
Disability Rights Education & Defense Fund  
3075 Adeline Street, Suite 210  
Berkeley, CA 94703  
(510)-644-2555  
Attorneys for Amici Curiae

**CERTIFICATION OF WORD COUNT**

The text of this brief consists of 11,509 words as counted by this Microsoft Word for Microsoft 365 version word-processing program used to generate this brief.

Dated: December 23, 2025

Respectfully submitted,

By:  \_\_\_\_\_

Kavya Parthiban, SBN 346669  
Jillian MacLeod, SBN 352889  
Disability Rights Education & Defense Fund  
3075 Adeline Street, Suite 210  
Berkeley, CA 94703  
(510)-644-2555  
Attorneys for Amici Curiae

Document received by the CA 1st District Court of Appeal.

**Certification Pursuant to California Rule of Court 8.200 subd. (c)(3)**

Amici affirm that no counsel for any party authored this brief in whole or in part; no party or party's counsel contributed money intended to fund preparing or submitting this brief; and no other person or entity contributed money to fund preparing or submitting this brief.

Dated: December 23, 2025

Respectfully submitted,

By:  \_\_\_\_\_

Kavya Parthiban, SBN 346669  
Jillian MacLeod, SBN 352889  
Disability Rights Education & Defense Fund  
3075 Adeline Street, Suite 210  
Berkeley, CA 94703  
(510)-644-2555  
Attorneys for Amici Curiae

Document received by the CA 1st District Court of Appeal.

**DECLARATION OF SERVICE**

I, Alexandra Cline, declare I am a citizen of the United States, over 18 years of age, and not a party to within action; my business address is 3075 Adeline Street, Suite 210, Berkeley, CA 94703. On December 23, 2025, I caused to be served the following documents:

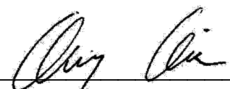
APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF IN SUPPORT OF OBJECTOR AND APPELLANT M.G.; PROPOSED AMICI CURIAE BRIEF OF DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, ET AL. IN SUPPORT OF OBJECTOR AND APPELLANT M.G.

PROPOSED AMICI CURIAE BRIEF OF DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, ET AL. IN SUPPORT OF OBJECTOR AND APPELLANT M.G.

by electronic service through TrueFiling to the addresses designated below:

First District Appellate Project eservice@fdap.org	Louise Collari lcollari@fdap.org
Tamara Predes Mother’s Trial Counsel Tamara.predes.law@gmail.com	Suzyn Card Mother’s Guardian ad Litem Suzyn.Card@cardlawfirm.com
Rowena Libang Minor’s Trial Counsel rlibanglawoffice@gmail.com	Patricia Lowe County Counsel Patricia.Lowe@cc.cccounty.us

I declare under penalty of perjury that the foregoing is true and correct.  
Executed this 23<sup>rd</sup> day of December, at Berkeley, CA.

By:  \_\_\_\_\_

Alexandra Cline  
Disability Rights Education & Defense Fund  
3075 Adeline Street, Suite 210  
Berkeley, CA 94703  
(510)-644-2555