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November 9, 2021

The Honorable James B. Eldridge
Chair, Joint Committee on the Judiciary
24 Beacon Street, Room 511-C
Boston, MA 02133

The Honorable Michael S. Day
Chair, Joint Committee on the Judiciary
24 Beacon Street, Room 136
Boston, MA 02133

Submitted to jacqueline.o.manning@mahouse.gov

RE: Testimony in support of S.1083/H.1711 An Act prohibiting discrimination against adults with disabilities in family and juvenile court proceedings

Dear Chair Eldridge, Chair Day, and Members of the Joint Committee on the Judiciary:

On behalf of the Massachusetts Association for Mental Health (MAMH), write to respectfully submit this testimony, in support of S.1083/H.1711 An Act prohibiting discrimination against adults with disabilities in family and juvenile court proceedings.

Formed over a century ago, MAMH is dedicated to promoting mental health and well-being, while preventing behavioral health conditions and associated disability. We are committed to advancing prevention, early intervention, effective treatment, and research for people of all ages. We seek to eliminate stigma and discrimination and advance full inclusion in all aspects of community life. This includes discrimination affecting not only people with behavioral health conditions, but also people who face unequal burdens and barriers to the protections and benefits of citizenship due to their race, ethnicity, gender identity, or disability status. MAMH has a demonstrated track record of furthering its mission by convening stakeholders across the behavioral health and public health communities; disseminating emerging knowledge; and providing subject matter expertise to inform public policy, service delivery, and payment methodologies.

S.1083/H.1711 provide protections to parents with disabilities, especially psychiatric or intellectual

disabilities, so that they do not inappropriately lose custody or parenting due to disability discrimination. The bills require courts to take steps in custody proceedings to protect against unfair outcomes. These include a requirement that the court determine if a parent's disability is the actual cause of alleged harm to a child. Such determinations require findings of supporting evidence. Before removing custody or reducing parenting time, a judge must assess whether the harm to the child could be avoided with adaptive equipment or supportive services to improve the parent's ability to care for their children and discharge their parental responsibilities. Further, if ruling against the parent, the judge must make written findings that a parent's disability is a negative factor in custody and parenting time decisions. These requirements are profoundly important to remedy the discrimination experienced by parents with disabilities in legal proceedings regarding custody.

Parents with disabilities are at high risk of losing custody

Parents with psychiatric disabilities are at great risk of losing custody of their children. In 2012, the National Council on Disability (NCD) reported removal rates for such parents as high as 70 percent to 80 percent.¹ The NCD cited a study by researchers at the Center for Advanced Studies in Child Welfare (CASCW) at the University of Minnesota of parents in that state found that parents who had a disability label are more than twice as likely to have child welfare involvement than their peers without such a label; emotional or behavioral disorders (60.2 percent) were the most common disability labels for parents with termination of parental rights in this study.² A study based on a 2014-15 survey found that while the rate of parenthood was similar between parents with and without serious mental illness, parents with a serious mental illness were approximately eight times more likely to have child protective services contact compared with parents without a serious mental illness.³

The burden of discrimination on the basis of disability in legal proceedings around parenting falls most heavily on members of minority groups. In 2012, thirty-one percent of the children in foster care were African American, double the percentage of African American children in the national population. Children of color are more likely to have longer placements in out-of-home care, are less likely to receive comprehensive services, and are less likely to reunify with their families than white children. Given the substantial discrimination on the basis of race, parents of color with disabilities presumably face even

¹ National Council on Disability (NCD), *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and their Children* (2012), [/publications/2012/Sep272012/](#) (Letter of Transmittal Sept. 27, 2012).

² NCD, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and their Children* (2012), Chapter 5, <https://www.ncd.gov/publications/2012/Sep272012/Ch5/>.

³ K. Kaplan et al., *Child Protective Service Disparities and Serious Mental Illnesses: Results From a National Survey*, *Psychiatric Services* (Jan. 2019), <https://ps.psychiatryonline.org/doi/full/10.1176/appi.ps.201800277> (data from the Truven Health Analytics PULSE national survey of 42,761 adults conducted between September 2014 and December 2015).

greater risk of removal than do white parents with disabilities.⁴

Women are at high risk as gender discrimination plays an additional role, on top of mental health labels

In court proceedings regarding parenting, a label of psychiatric disability is compounded by gender discrimination. One observer notes that fathers, judges, and experts use psychiatric disability to diminish mothers' credibility and attack their parental capacity. She writes that this is particularly the case where domestic violence is also at play: "Allegations of mental instability are rarely fully successful, but create space for the use of gendered stereotypes, distract the court from the analysis of the father's violence, and are rarely punished."⁵ In many cases, she continues, citing research by Diane T. Marsh, mentally ill people's inability to parent is taken for granted, rather than properly assessed. Judges also rely on mental health experts, despite the fact that such experts commit reasoning and research errors. Finally, judges rely on their personal knowledge, which is dangerous when they overestimate their understanding of psychology and fall victim to the subtlety of mental health discrimination.⁶

Separation of a child from a parent likely results in trauma

Nearly every child who is removed from a parent with a disability experiences some trauma over the separation. As the authors of an article in the *Texas Journal of Civil Liberties and Civil Rights* explain,

Psychology and science have documented a much clearer picture of the severe emotional and psychological damage infants and young children experience when separated from their primary caregivers. In fact, arguably the most significant issue for a child's development is now known to be a secure attachment to a sensitive, responsive, and reliable caregiver.⁷

Removal has significant detrimental effects as children often experience attachment disorders towards old caregivers if reunited or new caregivers during separations. These may include more severe attachment disorders including *disorganized attachment*, in which a child wants but cannot bring itself to seek the soothing and comfort of a caregiver, and *reactive attachment disorder*, which is mentally and

⁴ NCD, Chapter 5, supra note 2.

⁵ S. Zaccour, *Crazy Women and Hysterical Mothers: The Gendered Use of Mental-Health Labels in Custody Disputes*, *Can. J. Fam. L.* 57 (2018), <https://commons.allard.ubc.ca/cgi/viewcontent.cgi?article=1007&context=can-j-fam-l>

⁶ *Id.*

⁷ E. Callow et al., "Parents with Disabilities in the United States: Prevalence, Perspectives, and a Proposal for Legislative Change to Protect the Right to Family in the Disability Community," *Texas Journal of Civil Liberties and Civil Rights* (2011), at 8.

emotionally disabling.⁸ In the long term,

Traumatic and/or repeated separations from caregivers place children at an increased risk of conduct disturbances, disruptive behavioral problems, attention disorders, and mood disorders. Children who are denied secure attachment due to separation are less able to cope with psychological trauma, self-regulate their behavior, handle social interactions, and formulate positive self-esteem and self-reliance.⁹

Bias exists in the current process

In their comprehensive 2012 report, the NCD described how, despite the passage of the Americans with Disabilities Act, many parents continue to experience discrimination in child custody and visitation cases. The NCD notes that “published court opinions reflect an ambivalent approach to deciding custody and visitation disputes in which a parent has a disability.”¹⁰

The need of parents with disabilities to gain an equal footing in these legal proceedings is clear. The NCD sites a 2008 study of 200 legal cases concerning a parent with a disability involved in child custody litigation, finding that the largest number of calls (44 percent) came from parents who were involved with the family law system.¹¹ In Massachusetts, the ongoing demand for services seen by the Family Law Project (FLP) of the Mental Health Legal Advisors Committee, which provides legal representation and assistance to low income parents diagnosed with a mental illness or psychiatric disability who are seeking to access or regain custody of their children, similarly demonstrates the problem.¹²

The NCD described some of the biases that parents with disabilities face. In some cases, there is a presumption that it is not in a child’s best interest to live with—or in some cases even visit—a parent with a disability. Custody and visitation decisions also reflect patterns of bias regarding certain disabilities. Courts regularly hear negative speculations about the future, often based on stereotypes rather than on evidence.¹³

Accommodations can make a meaningful difference to parents

S.1083/H.1711 required consideration, in custody proceedings, of the use of adaptive equipment or supportive services that may aid parents in caring for their children and discharging their parental

⁸ Id.

⁹ Id.

¹⁰ NCD, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and their Children* (2012), Chapter 7, <https://www.ncd.gov/publications/2012/Sep272012/Ch7/>.

¹¹ Id.

¹² <https://mhlac.org/family-legal-support-project/>.

¹³ Id.

responsibilities. This requirement is consistent with Title II of the ADA, which requires that child welfare agencies, including the courts, must accommodate parents with disabilities and ensure that they are guaranteed meaningful participation. There are a variety of equipment and services that can benefit parents with disabilities in parenting. There are multiple resources to identify such accommodations, including the Temple University Collaborative on Community Inclusion,¹⁴ the Christopher & Dana Reeve Foundation and the National Council on Disability Toolkit,¹⁵ the Disabled Parenting Project.¹⁶ These and other resources make it possible for parties to legal proceedings to research potentially appropriate and effective resources for parents with mental health and other disabilities.

For all these reasons, it is critical that the Legislature take steps now to protect parents with disabilities who face loss of parental custody in family and juvenile court proceedings. I urge you to report **S.1083/H.1711** favorably out of Committee.

Thank you.

Sincerely,



Danna Mauch, PhD
President and CEO

c: Senator Joan Lovely
Representative Kay Khan

¹⁴ <http://www.tucollaborative.org/>.

¹⁵ https://ncd.gov/sites/default/files/Documents/Final%20508_Parenting%20Toolkit_Standard_0.pdf.

¹⁶ <https://www.disabledparenting.com/>.