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Effects on Children of Parents with BPD

The consequences for children with a parent with Borderline Personality Disorder (BPD) are clear enough. Studies have documented role-reversal between parent and child, emotional impairment, and attachment styles which demonstrate a need for the parent concomitant with fear of the parent. A recent study revealed that eighty percent of children with parents who have BPD showed an organized attachment style; this is the same percentage found among maltreated children. Children with parents suffering from BPD are more likely than those whose parents suffer from other mental illnesses to experience family upheaval, removal from the home, changes in schools, exposure to substance and alcohol abuse, and a parent’s suicide attempts. They also have more anxiety, depression, and low self-esteem than children of mothers with other personality disorders and those whose mothers have no disorder.

a.) Role-reversal

In a study completed at the University of Tennessee, role-reversal characterized by the child’s adopting the role of parent, peer, or spouse occurred more often with mother-child pairs when the mother has BPD than with normative comparisons. This study found a significant relationship between role reversal and all but one borderline symptom. The effects of role-reversal on the development of the child include attachment anxiety, depression, and an excessive need for reassurance.

2. Id. at 70.
3. Id.
4. Id.
5. Sean M. Holden, Role Reversal between Mothers with Borderline Personality Disorder and their Children during Reunion, 2011 UNIVERSITY OF TENNESSEE HONORS THESIS PROJECTS 1, 9.
6. Id.
7. Id. at 3.
Role reversal present in a toddler’s relationship with his mother also predicts emotional and behavioral dysregulation during the preschool period. Studies show that role-reversal persists over generations demonstrating the necessity of intervention during the first generation.

b.) Disorganized Attachment with Parent
Disorganized attachment evolves typically as a response to recurrent stress. Disorganized attachment includes limited responsiveness to the parent after separation and dazed or confused looks and looks away from the parent. “Disorganized attachment is thought to stem from fear of the mother or seeing the mother herself to be afraid.” Researchers have observed a disorganized attachment style much more often among children with parents who have BDP than among children with parents without the disorder. Some scholars theorize that this response characterized by an avoidant-approach behavior toward the parent corresponds with the symptomatology of BPD. Avoidant-approach behavior occurs when a child looks for the parent during times of danger or stress but, realizing that the parent herself actually poses the threat, simultaneously avoids the parent.

The effects of a disorganized attachment behavior which is inherently maladaptive include stress management issues, externalizing behaviors, and sometimes dissociative behaviors. The study from the University of Tennessee concludes by suggesting that role-reversal may arise from this disorganized attachment behavior. Other studies have shown that disorganized attachment predicts role-reversal when the child is a toddler and at age six.

c.) Emotional Impairment
Studies have observed mothers with BPD having disrupted affective communication with their infants. Since children learn appropriate emotional responses from their relationship with their caregiver, this maladaptive communication tracks the presence of emotional impairment in children during stressful situations. Children of parents with the disorder score lower on appropriate response/behavior scales during stressful situations and require more time to recover.

Additionally, in a study comparing children of parents with a major depressive disorder (MDD) and those of parents with BPD comorbid with MDD, the latter group showed greater cognitive and interpersonal vulnerability to depression. Emotional regulation deficits have been found to be associated with the development of depressive symptomatology.

Statistics
- Approximately one to two percent of the population suffers from BPD.
- Nearly seventy-five percent of those diagnosed are women.
- Between eight and ten percent eventually commit suicide while seventy to ninety percent threaten or attempt it.
- Eleven percent of first-degree relatives of someone with BPD also have it.
- In some studies, seventy-five percent of BPD patients, both inpatient and outpatient, have reported childhood sexual abuse.
- More BPD patients report a history of childhood sexual abuse, physical abuse, neglect, and separation from or loss of a parent than do people with other disorders.
Origins
The etiology of BPD remains unclear as researchers debate whether genetics, the high prevalence of sexual abuse history among BPD patients, temperament, or invalidating family environments outline a causal pathway. The most plausible explanation emerges from what is called a transactional model. From this analytical perspective, researchers have concluded that a combination of emotional vulnerability and an invalidating family environment produce the symptoms of BPD. An invalidating family environment constitutes one which lacks emotional support. In the transactional model, emotional vulnerability and invalidating family environments reinforce each other and cause a worsening of symptoms. While other influences can elevate the risk of developing BPD, the most accurate description of causation at this point incorporates only some and the relationship between them is unclear.

Symptoms
The symptoms of BPD manifest as impulsivity, emotion dysregulation, fear of abandonment (whether real or imagined), suicidal tendencies, and an intense need for care. People with BPD have a level of daily function as low as for those with schizophrenia. While BPD patients have gained a reputation as a therapist’s worst nightmare and researchers report discrimination against such patients in the fields of medicine and clinical psychology, they receive the least appropriate care in the child welfare system. Namely, a failure to develop a legal framework for emotional neglect in many jurisdictions has led to desperate attempts to redefine what actually happens so as to remove the child from an obviously devastating environment. However, many parents with BPD love their children and would welcome help for a mental illness they cannot control without it.

Effective Intervention
Because of the difficulty of diagnosis, the prevailing stigma against BPD patients in the psycho-medical field, and the prevalence of situations defined as physical neglect and sometimes abuse in families with a parent suffering from BPD, responses to the particular needs of these families and use of effective intervention programs have been inadequate. The story behind the statistics is of generations of children, later parents with BPD, whom our child welfare system could not save and who have their children taken from them indefinitely.

What does not work are medications for depression; courts who write off on a parent’s case plan but refuse to return the child because the mother is “defensive”; therapists who do not want to treat those with BPD; caseworkers who develop case plans incognizant (voluntarily or involuntarily) of the mother’s challenges with mental illness; a legal system that prefers to focus on the parent’s concrete actions as opposed to the cause and possible remedies or makeshift definitions of physical neglect/abuse to account for the reality of emotional neglect/abuse.

What can work (in conjunction with regular therapy for the parent) are family psychoeducation (FPE) and family education (FE) programs. The first of these incorporates learning coping skills and empathy in order to improve the condition for the one suffering from the mental illness. The second focuses on the same kind of skill development but aims to improve the family member’s well being. These will have to be adapted for younger children but studies have shown sustained improvements for adult family members participating in FE and FPE programs in the areas of depression, anxiety, burden, and mastery of coping skills. FE programs typically last several weeks while FPE programs will last nine to thirty-six months. While this could theoretically reduce the emotional impairment, disorganized attachment, and role-reversal effects of living with a parent who has BPD, it can also help produce a validating family environment for both parent and child sending many of the symptoms into remission.

33. Susan N. Ogata, Kenneth R. Silk et al., Childhood Sexual and Physical Abuse in Adult Patients with Borderline Personality Disorder, 1990 AMERICAN JOUR. OF PSYCHIATRY 1008.
34. Macfie, supra note 1, at 69 (“However, etiology is a complex interaction of genetic predispositions and environmental factors, which studies of offspring are unable to disentangle.”).
35. Fruzzetti, supra note 4, at 1014, 1026.
36. Macfie, supra note 1, at 68.
37. Id. at 1014.
38. See id at 1012.
39. Macfie, supra note 1, at 69; Lamont, supra note 10, at 40.
42. See Howland, supra note 41, passim.
44. Id.
45. Id at 68, 69, 71.
46. Id. at 69.
Cases

CALIFORNIA SUPREME COURT HOLDS THAT ICWA APPLIES IN SOME DELINQUENCY PROCEEDINGS

by Janet G. Sherwood

On August 8, 2012, the California Supreme Court issued a decision held that the Indian Child Welfare Act (ICWA) applies in some California delinquency proceedings.1 Those cases include cases where the child has been found to have committed a status offense and may be committed to foster care due to harmful conditions in the child’s home, cases in which the child is placed in foster care at disposition, and the purpose of the placement is the care and protection of the minor rather than rehabilitation or other concerns related to the child’s criminal conduct, and cases where the child has been committed to foster care and termination of parental rights becomes a possibility. It also held that provisions of state law implementing ICWA in California require the juvenile court and the probation department to inquire about the minor’s possible Indian status if the child is already in foster care or is at risk of entering foster care due to harmful conditions in the child’s home.

Factual and Procedural Background

After several delinquency adjudications in which W.B. was ordered placed in his mother’s home with wraparound services, a new petition was filed alleging that W.B. had committed a residential burglary. The probation officer’s report indicated that ICWA might apply because the child’s mother had reported Cherokee ancestry and recommended that the child be placed in foster care. The juvenile court found the burglary allegation true, ordered W.B. placed in a foster care facility, and ordered him to comply with probation conditions. Return to mother was contingent on successful completion of the placement program. Relying on a state rule court requiring ICWA compliance in delinquency cases in which “the child is at risk of entering foster care or is in foster care,” the minor appealed, arguing that the juvenile court failed to comply with ICWA notice requirements before ordering him placed in foster care. The Court of Appeal held that notice was not required because federal law specifically excluded delinquency cases from ICWA. The Supreme Court granted the minor’s Petition for Review to consider the issue.

Decision Based on ICWA Definition of “Child Custody Proceeding.”

The Supreme Court determined that California statutes implementing ICWA intended to adopt the federal definition of “child custody proceeding.”2 It acknowledged that delinquency cases were traditionally thought to be exempt from ICWA because the Act excludes from that definition placements “based upon an act which, if committed by an adult, would be deemed a crime.”3 However, after reviewing various kinds of delinquency cases and placement options, the court concluded that ICWA does apply in certain delinquency proceedings that meet the federal definition of “child custody proceeding” even though they arise in the context of a delinquency case. These include cases where the proscribed conduct would not otherwise be considered criminal conduct, in cases in which a delinquent child is committed to foster care based solely on concern about harmful conditions in the home, and in cases where termination of parental rights is sought. The court then went on to explain in more detail why ICWA compliance is required in these types of delinquency proceedings.

Status Offenses Are Subject to ICWA Where The Child Is Removed From The Home.

First, the court recognized that state delinquency law encompasses what are known as “status offenses.” These offenses involve allegations that the minor refused to obey orders of a parent, is beyond parental control, violated age-based curfew ordinances, is truant, or has violated a law that proscribes conduct only when it is committed by a minor (e.g., underage drinking.) The court held that these cases are subject to ICWA when the child is removed from the family home because they are not based on conduct that would be criminal conduct if committed by an adult.

ICWA Applies When Removal Is Based Solely On Conditions In The Home

Second, under California law, delinquent minors may be ordered into foster care when the juvenile court finds that the parent has not or cannot provide proper care for the child, that previous attempts at in-home probation have failed to reform the child, or that the child’s welfare requires that custody be taken from the parent. The court held that those cases in which the foster care placement is due solely to abuse or neglect in the child’s home and the placement is not being made to address the child’s misconduct or to prevent future wrongdoing, ICWA’s notice requirements and other procedures apply. However, the court went on to specify that it will be presumed that a foster care

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1. In re W.B. 281 P.3d 906 (Calif. 2012)
placement order is based on the minor’s offense and is not subject to ICWA, unless the court “announces on the record” that the placement is based entirely on parental abuse or neglect and not on the minor’s offense.

Some ICWA experts are troubled by this part of the opinion because ICWA requires notice to the appropriate tribe(s) a minimum of 10 days in advance of the placement hearing.4 Under the court’s decision, the necessity for ICWA notice will not be apparent until after the reasons for the placement decision are announced. The likely result is that juvenile courts will never make an explicit finding that the foster care placement of an Indian child is based solely on parental abuse and neglect, leaving in place the presumption that the placement was based at least in part on the minor’s misconduct and thereby eliminating the need for notice under the Act.

A subset of these cases includes those of “dual status” children. In the few California counties that have chosen to exercise the option, a child may be both a delinquent and a dependent at the same time. In dual status cases, either the dependency is suspended while the child is under the delinquency court’s jurisdiction or the social services agency and the probation department agree as to which shall be the “lead agency” for the purposes of case management and court-related matters and all matters concerning the child are heard by the same court. Whether ICWA applies still depends on the reason for the placement. When the court places the minor in foster care due to harmful conditions in the home, ICWA applies. If the foster care placement is motivated in part by the minor’s delinquent conduct and the need for rehabilitation, the placement is exempt from ICWA.

ICWA Applies When the Delinquency Court Moves to Terminate Parental Rights

Cases in which a termination of parental rights is sought are the third set of delinquency cases subject to ICWA. Without acknowledging that California uses Title IV-E federal foster care funds for delinquency foster care placements, the court explained that when a delinquent minor is placed in foster care, California law requires that reunification services be offered to preserve and strengthen the child’s family relationships and the juvenile court must conduct review hearings every six month at which specified findings must be made. (The findings enumerated by the court are all findings required by federal law for continued foster care funding under Title IV-E.) If the child is not returned home within 12 months, the court must hold a permanency planning hearing at which termination of parental rights, permanent guardianship, placement with a relative, or another planned permanent living arrangement are possible permanent plans. Because the federal definition of “child custody proceeding” includes actions resulting in the termination of the parent-child relationship,5 when a delinquency foster care placement leads to a potential termination of parental rights, ICWA compliance is required.

The Duty To Inquire About Child’s Indian Status

The court’s ruling that juvenile courts and probation officers are required to inquire whether the child may be an Indian child in cases in which the child is already in foster care or is at risk of entering foster care because of conditions in the child’s home is based on the language of California Welfare and Institutions Code section 224.5(a). That statute was enacted by 2006 legislation designed to incorporate ICWA requirements into state law. While ICWA has no specific inquiry requirements, the Indian Child Custody Guidelines adopted by the Bureau of Indian Affairs in 1979 do contain such a requirement. (Guideline B.5(a).) The state legislation included the substance of a number of the BIA’s Guidelines. Section 224.5(a) imposes a continuing, affirmative duty on the court and the probation department to inquire whether the child may be an Indian child whenever a petition has been or will be filed in any delinquency proceeding where the child is already in foster care or is at risk of entering foster care. State law defines “at risk of entering foster care” as meaning that “conditions within a minor’s family may necessitate his or her entry into foster care unless those conditions are resolved.”

Application to W.B.

Although the court ruled that ICWA does apply in some types of delinquency proceedings, its ultimate conclusion was that, with rare exceptions, foster care placements in delinquency proceedings are presumptively exempt from ICWA. Applying its conclusions in W.B’s case, the court found that his placement outside the home was not because of abuse or neglect but because the minor continued to commit criminal acts and presented a risk to the safety of the community. His placement was for a defined period of time after which return home was contemplated. There was no risk of termination of parental rights. Consequently, even if the minor was an Indian child, the juvenile court did not err in failing to give ICWA notice of the disposition proceedings.

View case details

NOTICE TO READERS: Decisions reported herein may not be final. Case history should always be checked before relying on a case. Cases and other material reported are intended for educational purposes and should not be considered legal advice. Featured cases are identified by NACC staff and our members. We encourage all readers to submit cases. If you are unable to obtain the full text of a case, please contact the NACC and we will be happy to furnish NACC members with a copy at no charge.
Amicus

E.T. v. Cantil-Sakauye

BRIEF TO REDUCE CASELOADS FOR COURT APPOINTED ATTORNEYS

Recently, the NACC joined with First Star and Voices for America’s Children in filing an amicus curiae brief to reduce caseloads for court appointed attorneys. In the case of E.T. v. Cantil-Sakauye, the NACC filed this brief in support of Plaintiff-Appellant’s petition for a writ of certiorari before the Supreme Court of the United States.

In this case, Sacramento County foster children filed a class action law suit in the District Court under 42 U.S.C. §1983, alleging that the excessive caseloads of the Sacramento County Dependency Court and its court-appointed attorneys violated federal and state statutory requirements of due process. Plaintiffs argued that the large number of cases interfered with the Court’s ability to adequately hear dependency cases and impaired court-appointed attorneys’ duty to provide effective counsel, resulting in harm to the Plaintiffs. Plaintiffs sought a declaratory judgment, injunctive relief, and an order that Defendants provide additional funding to improve the ability of the Dependency Court and court-appointed attorneys to help children in dependency cases.

The District Court dismissed Plaintiff’s claims under O’Shea and Younger on abstention grounds. In a child protection dependency case, the court must adequately hear the case and provide its voice in court.

The NACC filed the amicus curiae brief in support of the plaintiff class’s appeal to the Supreme Court of the United States for a writ of certiorari. In the brief, Amici argue that the District Court failed to adequately take into account the unique nature of child protection dependency proceedings. Amici also claim that the District Court did not consider the injury suffered by foster care children from the inappropriate application of O’Shea and Younger to the case.

Inarguably, child protection dependency cases are fundamentally different from other types of proceedings, such as those in O’Shea and Younger. In a child protection dependency case, the children appear as involuntary, victimized parties and the California dependency court system has the duty to protect their best interests. Similarly, child dependency attorneys have a “primary responsibility of any counsel appointed to represent a child pursuant to this section shall be to advocate for the protection, safety, and physical and emotional well-being of the child.” Additionally, dependency proceedings have a statutorily mandated, specialized process with specific hearings at specific times for specific issues. The pendency of a child protection dependency case is often years, as the court addresses all of the significant issues with respect to the child as any placements or circumstances change throughout the minor’s childhood.

Unlike many adults, children are unlikely to know or assert their rights in a dependency hearing. Without effective counsel, the children lose their voice in court.

Amici argue that the District Court’s abstention leaves no appropriate venue for this issue since dependency courts are not equipped to handle the matter and state forums would not be able to meaningfully address the issue. Since dependency courts and dependency attorneys deal with every significant aspect of the children’s lives, the overburdening of the courts and attorneys have an appalling impact on the children who require these services. Amici contend that the Courts had failed to properly consider this impact on the children when deciding to abstain from the case.

View case details

To view briefs or submit a request for the NACC to participate as Amicus Curiae in a case, visit the Amicus Curiae page on the NACC website.


2. Id

3. Id. at 3.

4. Id

5. Id.
Policy & News

NACC Encourages Congress to Make Budget Decisions to Support Children and Families

The NACC joined with over 1,600 national, state and local organizations and signed onto a letter to the SAVE for All Statement of Principles. The new letter urges Congress to keep low-income programs safe from sequestration and to find appropriate revenue sources instead of cutting programs that help the most needy.

› Read the letter

Letter of Support to California Governor Brown

The NACC urged the governor of California to sign bill SB 1476 that would allow the court to recognize more than two people as the child’s parent when it would be in the child’s best interests to do so. The NACC signed on as a supporter of this bill when it was first introduced in the Legislature.

› Read the letter

Unfortunately, Governor Brown vetoed the bill despite NACC’s letter.

U.S. Senate Proposes Act to Help Foster Youth Succeed in School

On August 1, the U.S. Senate introduced the Uninterrupted Scholars Act, which, if passed, would amend the Family Educational Rights and Privacy Act (FERPA) to grant foster care workers and foster parents access to the educational records of foster youth. The Act, introduced by Sen. Mary Landrieu (D-La.), has bipartisan support.

› Read the full bill

Scientists Begin to Unravel the Long-Lasting Biological Effects of Early-Life Adversity, Social Isolation

Researchers at Boston Children’s Hospital reported last week that mice raised in isolation not only behave differently, they have thinner insulation around brain cells in a key region of the brain. These changes cause signals to travel more sluggishly through the brain and appear to be irreversible.

› Read article

October is National Youth Justice Awareness Month (YJAM).

Every year, an estimated 250,000 youth younger than age 18 are tried, sentenced, or incarcerated in the adult criminal justice system. Sponsored by the Campaign for Youth Justice, YJAM raises awareness of the consequences of prosecuting youth in the adult system and brings communities together to advocate for reform.

› More information

Certification Update

Become a Child Welfare Law Specialist

The NACC is pleased to announce several new changes to make the Certification Application and Exam process more convenient for you.

• The Certification Application is now available in electronic form. Request an application via our web site.

• NACC has launched a computer-based Certification Exam offered at ACT Centers nationwide. With locations in every state the ACT Center network delivers computer-based testing at hundreds of sites across the country. Approximately 85% of the U.S. population lives less than an hour from an ACT Center.

These changes will permit the NACC to accept applications year-round. Once your application is approved, you will be able to schedule your own exam at a local ACT testing center.

QIC Application Fee Waivers — 2012

The U.S. Children’s Bureau is funding an additional 200 slots for certification. This means applicants can have their fees paid by the U.S. Government. To apply, visit the Certification page on the NACC website.

2013 Target States

The NACC is applying to open certification in Alabama, Arizona, and Minnesota. We anticipate accepting applications as early as January 2013.

› More information
You now have the opportunity to purchase publications from the NACC Official Bookseller: Bookworks. Available publications include:

**Confessions of a Prairie Bitch: How I Survived Nellie Oleson and Learned to Love Being Hated**
- By Alison Arngrim
- Paperback $14.99
- Availability: In Stock at Warehouse; Usually Ships in 1–5 Days
- Published: It Books, 06/2011

**All Alone in the World: Children of the Incarcerated**
- By Nell Bernstein
- Paperback $16.95
- Availability: In Stock at Warehouse; Usually Ships in 1–5 Days
- Published: New Press, 08/2007

**The APSAC Handbook on Child Maltreatment**
- By John E. B. Myers, John E. B. Myers, APSAC (American Professional Society on the Abuse of Children)
- Paperback $120.90
- Availability: In Stock at Warehouse; Usually Ships in 1–5 Days
- Published: Sage Publications (CA), 06/2010

**The Backlash: Child Protection Under Fire**
- By John E. B. Myers
- Paperback $65.00
- Availability: In Stock at Warehouse; Usually Ships in 1–5 Days
- Published: Sage Publications (CA), 07/1994

**Child Maltreatment: A Collection of Readings**
- By John E. B. Myers
- Paperback $46.80
- Availability: Special Order; Price and Availability May Change
- Published: Sage Publications (CA), 05/2011

**A History of Child Protection in America**
- By John E. B. Myers
- Paperback $24.99
- Availability: In Stock at Warehouse; Usually Ships in 1–5 Days
- Published: Xlibris Corporation, 05/2004

**Legal Issues in Child Abuse and Neglect Practice**
- By John E. B. Myers
- Paperback $128.75
- Availability: In Stock at Warehouse; Usually Ships in 1–5 Days
- Published: Sage Publications (CA), 07/1998

Other editions of this title

**Legal Issues in Child Abuse and Neglect Practice, 2nd Edition**
- By Donald N. Duquette and Ann M. Haralambie, General Editors
- Item No: BK1070-2
- Price: $89.00

And, available from Bradford Publishing:

**Child Welfare Law and Practice, 2nd Edition**
- By Donald N. Duquette and Ann M. Haralambie, General Editors
- Item No: BK1070-2
- Price: $89.00
NACC Mission

As a multidisciplinary membership organization, we work to strengthen legal advocacy for children and families by:

• Ensuring that children and families are provided with well resourced, high quality legal advocates when their rights are at stake

• Implementing best practices by providing certification, training, education, and technical assistance to promote specialized high quality legal advocacy

• Advancing systemic improvement in child-serving agencies, institutions and court systems

• Promoting a safe and nurturing childhood through legal and policy advocacy for the rights and interests of children and families

A big thank you to Southwest, the preferred airline of NACC!

Through the generosity of Southwest Airlines, NACC has been able to develop a Member Emergency Assistance Program (MEAP). A limited number of travel vouchers are available to current NACC members for work-related travel.

› Learn more about this exciting member benefit