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Terminating the Parental Rights of Mothers with Disabilities: An Empirical Legal Analysis

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ABSTRACT

A sizable body of scholarship indicates parents with disabilities – including physical, intellectual, psychiatric, and sensory disabilities – experience pervasive inequities that threaten their fundamental right to parenthood. In particular, compared to nondisabled parents, parents with disabilities are overrepresented in the child welfare system, receive inadequate family preservation and reunification services, and have disproportionate rates of termination of parental rights. Despite extensive legal and social science scholarship, however, there are no empirical analyses of judicial opinions to identify factors that predict termination of parental rights in cases involving parents with disabilities.

This is the first empirical legal study to analyze appellate decisions to determine predictors of termination of parental rights in appeals cases that included mothers with disabilities. In particular, we sought to understand whether a mother's disability type was associated with the termination of parental rights. To that end, this study analyzed 2,064 appellate opinions decided between 2006 and 2016. We found that ninety-three percent of the cases resulted in the termination of parental rights. After controlling for a variety of parent, family, court, case, and policy characteristics, however, maternal disability type did not predict termination of parental rights. Nevertheless, the odds of termination of parental rights were higher for cases in which parents had substance use histories, household incomes below 200% of the federal poverty level, prior child welfare system involvement, negative expert testimony, or received family preservation and reunification services tailored to parents with disabilities. Conversely, the likelihood of termination of parental rights was decreased in cases that included positive expert testimony or were decided in the Southeast or West. The Article concludes by discussing the policy and practice

implications of the study's findings and identifying critical areas for further research.

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I. INTRODUCTION

“Surely there can be few losses more grievous than the abrogation of parental rights.”¹

For five years, Amy Fabbrini and Eric Ziegler, both with intellectual disabilities, together fought the state of Oregon to regain custody of their sons, Christopher and Hunter, after the children were removed by the state’s child welfare agency.² The parents’ battle to reunite with their children began in September 2013, shortly after Fabbrini gave birth to Christopher.³ Within days of bringing their newborn home from the hospital, Fabbrini’s family contacted the Oregon Department of Human Services (“DHS”), expressing concerns that Fabbrini and Ziegler’s disabilities affected their ability to care for their son.⁴ DHS agreed and placed Christopher in foster care.⁵

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1. *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 40 (1981) (Blackmun, J., dissenting).

2. This narrative is adapted from Samantha Swindler, *IQ Costs Oregon Parents Their Kids, but is that Fair?*, THE OREGONIAN (July 19, 2017), https://www.oregonlive.com/pacific-northwest-news/2017/07/parents_with_intellectual_disa.html [perma.cc/J5QG-WYBG]; and U.S. DEP’T OF HEALTH & HUMAN SERV., OFFICE FOR CIVIL RIGHTS ADMIN. FOR CHILDREN & FAMILIES, VOLUNTARY RESOLUTION AGREEMENT BETWEEN U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE FOR CIVIL RIGHTS AND OREGON DEPARTMENT OF HUMAN SERVICES (Nov. 18, 2019) [hereinafter VOLUNTARY RESOLUTION AGREEMENT], <https://www.hhs.gov/sites/default/files/odhs-vra.pdf> [perma.cc/9EEM-JTJH]. See also Robyn Powell, *An Oregon Couple Can Get Their Kids Back from Foster Care. But Many Disabled Parents Don’t Get that Chance*, REWIRE.NEWS (Dec. 11, 2019, 4:44 PM), <https://rewire.news/article/2019/12/11/discrimination-against-disabled-parents-is-common/> [perma.cc/9FWL-BF52].

3. Powell, *supra* note 2.

4. Powell, *supra* note 2.

5. Powell, *supra* note 2.

Fabbrini and Ziegler complied with the case plan they were given by DHS, including successfully enrolling in and passing classes on parenting, CPR, and nutrition.⁶ However, DHS moved forward to terminate Fabbrini and Ziegler's parental rights anyway.⁷ While there were no specific allegations of abuse or neglect, DHS told the court that both parents had "limited cognitive abilities that interfere with [their] ability to safely parent the child."⁸ Meanwhile, in February 2017, Fabbrini gave birth to the parents' second child, Hunter.⁹ This time, DHS took custody of their son while he and Fabbrini were still in the hospital.¹⁰

In court, focusing on the parents' intellectual disabilities, DHS raised several weaknesses they contended demonstrated Fabbrini and Ziegler's inability to care for their sons, including that during visitation sessions the parents did not read to their children, forgot to apply sunblock on Hunter, and fed Christopher chicken nuggets as a snack.¹¹ The parents were also faulted for asking both too many and too few questions about parenting issues.¹² After a lengthy court battle, Fabbrini and Ziegler were reunited with Hunter and Christopher, in December 2017 and January 2018, respectively.¹³

The right to parent is one of our most cherished and fundamental as Americans. Indeed, the Supreme Court has continuously affirmed that the Fourteenth Amendment of the United States Constitution ensures a parent's right to raise their children.¹⁴ As such, termination of parental rights cases necessitate a higher standard of proof than other family court decisions. Rather than a preponderance of the evidence, termination of parental rights cases require "clear and convincing" evidence.¹⁵ Nonetheless, that right is

6. Powell, *supra* note 2.

7. Powell, *supra* note 2.

8. Powell, *supra* note 2.

9. Powell, *supra* note 2.

10. Powell, *supra* note 2.

11. Powell, *supra* note 2.

12. Powell, *supra* note 2.

13. Powell, *supra* note 2.

14. *See generally* Troxel v. Granville, 530 U.S. 57, 65 (2000); Santosky v. Kramer, 455 U.S. 745, 753 (1982); Quilloin v. Walcott, 434 U.S. 246, 255 (1978); Smith v. Org. of Foster Families, 431 U.S. 816 (1977); Stanley v. Illinois, 405 U.S. 645, 651 (1972); Prince v. Massachusetts, 321 U.S. 158 (1944); Pierce v. Soc'y of Sisters, 268 U.S. 510, 534–35 (1925); Meyer v. Nebraska, 262 U.S. 390, 399, 401 (1923).

15. *Santosky*, 455 U.S. at 747–48 (requiring "clear and convincing evidence" before termination of parental rights while establishing the fundamentality of parental rights in the Supreme Court's purview); *see also* Josephine Fiore, *Constitutional Law: Burden of Proof - Clear and Convincing Evidence Required to Terminate Parental Rights*, 22 WASHBURN L.J. 140, 145 (1982) ("Clear and convincing evidence is commonly defined as proof which produces in the factfinder's mind the belief that the truth of the facts asserted is highly probable. Proof by clear and convincing evidence is not as demanding as proof beyond a

balanced by states' *parens patriae*¹⁶ interest in promoting the welfare of children and may, in the course of protecting children, interfere with parental rights.¹⁷ Hence, states, vis-à-vis the child welfare system, have the legal authority to investigate allegations of child maltreatment and act as needed to safeguard children, including terminating parental rights.

Notwithstanding parents' fundamental right to care for their children, as Fabbrini and Ziegler's story demonstrates, that right has not been fully afforded to all people with disabilities. Indeed, despite significant successes in achieving equality for people with disabilities, the right to parenthood remains inaccessible for many disabled people.¹⁸ In particular, pervasive discrimination toward parents with disabilities – including physical, intellectual, psychiatric, and sensory disabilities – endures within the child welfare system. Specifically, parents with disabilities are more likely than nondisabled parents to be referred to the child welfare system and have their parental rights terminated at disproportionately high rates.¹⁹

reasonable doubt. It does, however, require a greater degree of persuasion than proof by a preponderance of the evidence.”).

16. Latin for “ultimate parent or parent of the country,” refers to the power of the state to assume the legal rights of the natural parent, and to serve as the parent of any child who is believed to need protection. Marvin Ventrell, *The History of Child Welfare Law*, in CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 113, 126–27 (Marvin Ventrell & Donald N. Duquette eds., 2005); *Parens patriae*, BLACK'S LAW DICTIONARY (11th ed. 2019).

17. *Santosky*, 455 U.S. at 766.

18. Dave Shade, *Empowerment for the Pursuit of Happiness: Parents with Disabilities and the Americans with Disabilities Act*, 16 LAW & INEQ. 153, 153–54 (1998) (“Although persons with disabilities have made significant gains in recent years in overcoming the invidious discrimination with which they have long been burdened, the legal rights of parents with disabilities remain in question.” (footnote omitted)).

19. NAT'L COUNCIL ON DISABILITY, ROCKING THE CRADLE: ENSURING THE RIGHTS OF PARENTS WITH DISABILITIES AND THEIR CHILDREN 72 (2012) [hereinafter ROCKING THE CRADLE], https://www.ncd.gov/sites/default/files/Documents/NCD_Parenting_508_0.pdf [https://perma.cc/MY38-FGWT] (“Parents with disabilities and their families are frequently, and often unnecessarily, forced into the system and, once involved, lose their children at disproportionately high rates.”); see also Tim Booth & Wendy Booth, *Findings from a Court Study of Care Proceedings Involving Parents with Intellectual Disabilities*, 1 J. POL'Y & PRAC. INTELL. DISABILITIES 179, 180 (2004); Tim Booth et al., *Care Proceedings and Parents with Learning Difficulties: Comparative Prevalence and Outcomes in an English and Australian Court Sample*, 10 CHILD & FAM. SOC. WORK 353, 355 (2005); Maurice A. Feldman, *Parents with Intellectual Disabilities: Implications and Interventions*, HANDBOOK OF CHILD ABUSE RESEARCH AND TREATMENT 401 (John R. Lutzker ed., 1998); Gwynnyth Llewellyn et al., *Prevalence and Outcomes for Parents with Disabilities and their Children in an Australian Court Sample*, 27 CHILD ABUSE

Despite considerable academic attention to the experiences of parents with disabilities who are involved with the child welfare system, the existing scholarship has notable limitations. For example, the vast majority of legal scholarship in this area, especially concerning termination of parental rights, has been disability-specific, focusing mostly on parents with intellectual or psychiatric disabilities.²⁰ While existing studies indicate that parents with intellectual or psychiatric disabilities experience substantial inequities within the child welfare system,²¹ researchers are increasingly reporting that many parents with disabilities involved with the child welfare system often have more than one disability.²² Thus, legal scholarship must consider the disparities experienced by these parents through a cross-disability lens, an approach consistent with that espoused by disability studies scholars.²³

& NEGLECT 235, 239 (2003); David McConnell et al., *Parental Cognitive Impairment and Child Maltreatment in Canada*, 35 *Child Abuse & Neglect* 621, 624 (2011).

20. See, e.g., Robyn M. Powell, *Safeguarding the Rights of Parents with Intellectual Disabilities in Child Welfare Cases: The Convergence of Social Science and Law*, 20 *CUNY L. REV.* 127 (2016); Charisa Smith, *The Conundrum of Family Reunification: A Theoretical, Legal, and Practical Approach to Reunification Services for Parents with Mental Disabilities*, 26 *STAN. L. & POL'Y REV.* 307 (2015); Jude T. Pannell, *Unaccommodated: Parents with Mental Disabilities in Iowa's Child Welfare System and the Americans with Disabilities Act*, 59 *DRAKE L. REV.* 1165 (2011); Alexis C. Collentine, *Respecting Intellectually Disabled Parents: A Call for Change in State Termination of Parental Rights Statutes*, 34 *HOFSTRA L. REV.* 535 (2005). But see Ella 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*, 17 *TEX. J. C.L. & C.R.* 9 (2011) (analyzing issues facing parents with a range of disabilities).

21. See Callow et al., *supra* note 20, at 15 (estimating removal rate of 40% to 60% for parents with intellectual disabilities and 70% to 80% for parents with psychiatric disabilities); Pannell, *supra* note 20, at 1172 (reporting a study finding that 76.2% of parents facing termination of parental rights had intellectual or psychiatric disabilities).

22. See Elspeth M. Slayter & Jordan Jensen, *Parents with Intellectual Disabilities in the Child Protection System*, 98 *CHILD. & YOUTH SERVS. REV.* 297, 300-01 (2019) (finding that parents with intellectual disabilities involved with the child welfare system had high rates of co-existing disabilities); Elizabeth Lightfoot et al., *Parental Supports for Parents with Disabilities: The Importance of Informal Supports*, 96 *CHILD WELFARE* 89, 98 (2018) (finding 30% reported multiple disabilities in a study of 30 parents).

23. See Arlene S. Kanter, *The Law: What's Disability Studies got to do with it or an Introduction to Disability Legal Studies*, 42 *COLUM. HUMAN RIGHTS L. REV.* 403, 404 (2011) ("It is now well accepted that Disability Studies has emerged as a new and exciting field of academic inquiry. Disability Studies applies social, cultural, historical, legal, philosophical, and humanities perspectives to understanding the place of disability in society. It explores

Further, although legal scholars have examined child welfare system disproportionality and disparities among parents with disabilities and their families, to our knowledge, no studies have systematically analyzed appellate decisions involving parents with a range of disabilities to elucidate predictors of termination of parental rights.²⁴ This Article begins to address this gap.

Through quantitative analysis of 2064 termination of parental rights appellate decisions issued between January 1, 2006, and December 31, 2016, involving mothers with disabilities and their families, this study offers new and much-needed data about factors that predicted termination of parental rights in these cases.²⁵ This study examines whether maternal disability type is associated with the termination of parental rights in appeals cases. It also considers how, if at all, parent, family, court, case, or policy characteristics predict outcomes in these decisions. The Article then discusses what the findings suggest for policy and practice considerations as well as implications for future scholarship. Accordingly, this study has two overarching research questions. First, does a mother's disability type predict the outcome in termination of parental rights appellate decisions? Second, are other factors, such as parent and child characteristics or case, legal, and policy characteristics, associated with outcomes in these cases?

Termination of parental rights, coined the “death penalty” of civil cases,²⁶ is a permanent and devastating outcome, and should only occur in dire circumstances. Specifically, it is the process whereby parental rights are severed based on a court's determination that doing so is in the “child's best interest.”²⁷ Parents with disabilities are at heightened risk of having their

disability as a social and cultural construct and as a phenomenon reflecting and constituting identity formation by incorporating the ‘real-lived’ experiences of people with disabilities. Furthermore, Disability Studies adopts a cross-disability perspective and explores differences and commonalities in the experiences of the diverse groups of people society has defined as ‘the other’ based on their disability.”).

24. Notably, researchers analyzed 42 appellate termination of parental rights decisions involving parents with intellectual disabilities to show the prevalence of judicial consideration of parental IQ test evidence. See Ella Callow et al., *Judicial Reliance on Parental IQ in Appellate-Level Child Welfare Cases Involving Parents with Intellectual and Developmental Disabilities*, 30 J. APPL. RES. INTELLECT. DISABIL. 553 (2017).

25. This study is limited to cases where the mother had a disability. Notably, in some instances, the father also was disabled. The decision to only analyze cases where at least the mother had a disability was because the number of cases that included a disabled father and nondisabled mother were minimal. Nonetheless, future studies should examine the experiences of fathers with disabilities.

26. *In re K.A.W.*, 133 S.W.3d 1, 12 (Mo. 2004) (en banc) (“The termination of parental rights has been characterized as tantamount to a ‘civil death penalty.’”).

27. Charisa Smith, *Finding Solutions to the Termination of Parental Rights in Parents with Mental Challenges*, 39 LAW & PSYCHOL. REV. 205, 206 (2014–2015).

parental rights terminated. Therefore, it is essential to systematically understand how decisions concerning them are made. This evidence can inform strategies to improve outcomes for these parents and their families, identify whether bias is occurring in decision-making, and ensure these families are afforded their rights.

This Article proceeds in four Parts. Part II provides an overview of how the right to parent among people with disabilities has evolved and the experiences of parents with disabilities and their families when involved with the child welfare system. It describes the historical and contemporary experiences of these families, including their prevalence and the disparities they experience. Part III explains the study's methodology and data, including the process for selecting, coding, and analyzing appellate decisions. Part IV presents the findings of the quantitative analysis. This Part describes the characteristics of the sample, stratified by maternal disability type, and the association between characteristics and the termination of parental rights. Finally, this Part reports the logistic regression estimates and the factors that predicted the termination of parental rights in appellate decisions involving mothers with disabilities. Part V concludes by exploring study implications for policy and practice as well as areas warranting future inquiry.

II. PARENTS WITH DISABILITIES AND THE CHILD WELFARE SYSTEM

Scholarship about parents with disabilities and their families involved with the child welfare system is expanding. To date, research about these families has been relatively narrow, focusing mostly on parents with intellectual or psychiatric disabilities. Existing legal scholarship has been theoretical or concentrated on specific jurisdictions. As such, the value of this study lies in providing the first-ever systematic analysis of termination of parental rights appellate decisions involving mothers with disabilities and their families over an eleven-year period. Only once we understand how such decisions are made can we ensure these parents are afforded their fundamental rights.

Before exploring these crucial questions, however, it is necessary to understand the overall experiences of parents with disabilities and their families. To that end, this Part begins with a succinct discussion of the historical context of parenting with a disability in the United States. Next, it examines the current state of knowledge about parents with disabilities and their families, including their prevalence and circumstances. Finally, it describes the experiences of parents with disabilities involved with the child welfare system, demonstrating a pattern of disparities and disproportionality.

A. Historical Context

The United States has a history of restricting people with disabilities from living the lives they choose, including enacting policies and practices

that impede people with disabilities from creating and maintaining families.²⁸ One prominent example is the eugenics movement, which emerged in the first half of the twentieth century. Specifically, negative eugenics sought to limit procreation by people with disabilities, especially those with intellectual or psychiatric disabilities, and others deemed “socially inadequate.”²⁹ Negative eugenics, including involuntary sterilization and institutionalization, targeted those considered inferior, such as people with disabilities, people with substance use or criminal histories, people of color, and those living in poverty.³⁰ Negative eugenics centered on preventing people whom society deemed “unfit for parenthood” from reproducing,³¹ and the idea that their offspring would be disastrous and burdensome to society.³² In the 1927 *Buck v. Bell* decision,³³ the United States Supreme Court upheld Virginia’s statute allowing state institutions to condition release upon involuntary sterilization. Finding that “[i]t would be strange if [the State] could not call upon those who already sap the strength of the State for these lesser sacrifices . . . in order to prevent our being swamped with incompetence,” the Court declared that “[t]hree generations of imbeciles are enough.”³⁴ Akin to other involuntary sterilization statutes, Virginia’s law was premised on the idea that “many defective persons . . . would likely become by the propagation of their kind a

28. See generally Robyn M. Powell & Michael Ashley Stein, *Persons with Disabilities and Their Sexual, Reproductive, and Parenting Rights: An International and Comparative Analysis*, 11 FRONTIERS L. CHINA 53 (2016) (describing how restrictions on sexual, reproductive, and parenting rights for people with disabilities have evolved over time and across jurisdictions).

29. J.H. Landman, *The Human Sterilization Movement*, 24 J. CRIM. L. & CRIMINOLOGY 400, 400–01 (1933). EDWARD J. LARSON, SEX, RACE, AND SCIENCE 22 (1995) (stating that “negative eugenics” focused on preventing those considered socially inferior from reproducing, including through restrictive marriage laws, institutionalization and sexual segregation, and involuntary sterilization). See also DANIEL J. KEVLES, IN THE NAME OF EUGENICS 91 (1995) (discussing that “positive eugenics” involved policies and programs that incentivized the procreation of those considered superior (e.g., upper-class, high intelligence), such as through tax rebates and contests.)).

30. Landman, *supra* note 29, at 402.

31. See Eric M. Jaegers, *Modern Judicial Treatment of Procreative Rights of Developmentally Disabled Persons: Equal Rights to Procreation and Sterilization*, 31 U. LOUISVILLE J. FAM. L. 947, 948 (1992) (“The purpose of these laws was to protect and streamline society by preventing reproduction by those deemed socially or mentally inferior.”).

32. Michael G. Silver, *Eugenics and Compulsory Sterilization Laws: Providing Redress for the Victims of a Shameful Era in United States History*, 72 GEO. WASH. L. REV. 862, 865 (2004); Paul A. Lombardo, *Medicine, Eugenics, and the Supreme Court: From Coercive Sterilization to Reproductive Freedom*, 13 J. CONTEMP. HEALTH L. & POL’Y 1, 1–2 (1996).

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

34. *Id.* at 207.

menace to society[.]”³⁵ More than thirty states enacted similar laws,³⁶ and over 65,000 Americans were sterilized by 1970.³⁷

Another aspect of negative eugenics that restricted people with disabilities from creating and maintaining families was the passage of state laws that prevented people with disabilities from marrying.³⁸ For example, a Connecticut law prohibited “epileptics, imbeciles, and feeble-minded persons” from marrying or having extramarital sexual relations before the age of forty-five.³⁹ In 1974, a study found that nearly forty-four states had laws forbidding people with disabilities, most commonly those with intellectual or psychiatric disabilities, from marrying.⁴⁰ The most recent systematic investigation of this topic, which was conducted in 1997, found thirty-three states still had statutes limiting or restricting people with intellectual or psychiatric disabilities from marrying.⁴¹ Although no additional empirical studies have examined marriage laws as they apply to people with disabilities, these statutes continue to exist in some states.⁴² Notably, three eugenics-based rationalizations have been traditionally leveraged to advance these marriage restrictions: “the potential children must be protected; people with [disabilities] themselves must be protected; and society at large must be protected.”⁴³

B. Parenting with a Disability Today

Today, many people with disabilities in the United States are choosing to become parents. Indeed, largely because of deinstitutionalization,⁴⁴ more

35. See Eugenical Sterilization Act, Act of Mar. 20, 1924, ch. 394, 1924 Va. Acts 569 (repealed 1974).

36. Lombardo, *supra* note 32, at 2 n.2.

37. PAUL A. LOMBARDO, THREE GENERATIONS, NO IMBECILES: EUGENICS, THE SUPREME COURT, AND *BUCK V. BELL* 104, 116 (2008).

38. Brooke Pietrzak, *Marriage Laws and People with Mental Retardation: A Continuing History of Second Class Treatment*, 17 DEV. MENTAL HEALTH L. 1, 35 (1997).

39. Robert J. Cynkar, *Buck v. Bell: “Felt Necessities” v. Fundamental Values?*, 81 COLUM. L. REV. 1418, 1432 (1981).

40. PRESIDENT’S COMM. ON MENTAL RETARDATION, SILENT MINORITY 33 (1974).

41. Pietrzak, *supra* note 38, at 2.

42. See e.g., Michael Waterstone, *Disability Constitutional Law*, 63 EMORY L.J. 527, 548–549 (2014) (describing state laws that restrict people with disabilities from marrying). Moreover, government policies that reduce or terminate disability benefits if people with disabilities get married results in continuing marriage restrictions for many. *Id.* at 549 n.132.

43. Pietrzak, *supra* note 38, at 35.

44. Samuel R. Bagenstos, *The Past and Future of Deinstitutionalization Litigation*, 34 CARDOZO L. REV. 1, 8 (2012) (“[T]he deinstitutionalization movement centered around two major campaigns: the campaign to close large

people with disabilities are raising families than ever before,⁴⁵ and that number will continue to grow as people with disabilities enjoy greater opportunities to live and work in their communities.⁴⁶ The estimated prevalence of parents with disabilities varies by data source, but there is no doubt that the population is sizable. Current estimates range from 2.9 million to 4.1 million, to roughly 10 percent of parents in the United States have a disability.⁴⁷ While the estimates differ, the number of parents with disabilities in the United States is undoubtedly substantial.

Although parents with disabilities constitute a considerable and growing segment of the parent population, presumptions that they are inherently incapable of safely raising children continue to endure. Naturally, speculations about unfitness manifest themselves differently depending on the parent's disability. Deaf parents often contend with presumptions that their children's language development will be delayed, while blind parents and those with physical disabilities face assumptions that they cannot safely supervise their children.⁴⁸ Parents with intellectual disabilities are expected to be wholly unable to care for children, as well as incapable of learning parenting tasks.⁴⁹ Additionally, parents with psychiatric disabilities encounter

state mental hospitals, and the campaign to close large state facilities housing people with intellectual and developmental disabilities.”).

45. Loran B. Kundra & Leslie B. Alexander, *Termination of Parental Rights Proceedings: Legal Considerations and Practical Strategies for Parents with Psychiatric Disabilities and the Practitioners Who Serve Them*, 33 PSYCHIATRIC REHABILITATION J. 142 (2009).

46. ROCKING THE CRADLE, *supra* note 19, at 45 (“Millions of parents throughout the United States have disabilities, and this number is likely to grow as people with disabilities become increasingly independent and integrated into their communities.”); *see also* Feldman *supra* note 19, at 401.

47. *See* Henan Li et al., *Health of US Parents with and without Disabilities*, 10 DISABILITY AND HEALTH JOURNAL 303, 305 (2017) (estimating that 2.9 million parents in the United States have a disability); H. Stephen Kaye, *Current Demographics of Parents with Disabilities in the U.S.*, THROUGH THE LOOKING GLASS (2012), <https://www.lookingglass.org/national-services/research-a-development/126-current-demographics-of-parents-with-disabilities-in-the-us> [perma.cc/5D3N-TWBF] (estimating that 4.1 million parents in the United States have a disability); Rajan Sonik et al., *Parents with and without Disabilities: Demographics, Material Hardship, and Program Participation*, 14 REV. OF DISABIL. STUDIES: AN INTERNATIONAL JOURNAL 1 (2018) (estimating that approximately ten percent of parents in the United States have a disability).

48. Michael Ashley Stein, *Mommy has a Blue Wheelchair: Recognizing the Parental Rights of Individuals with Disabilities*, 60 BROOK. L. REV. 1069, 1083 (1994).

49. Chris Watkins, *Beyond Status: The Americans with Disabilities Act and the Parental Rights of People Labeled Developmentally Disabled or Mentally Retarded*, 83 CALIF. L. REV. 1415, 1440 (1995) (“[T]he labels of developmentally disabled and mentally retarded are often misleading because they have little, if any, predictive value regarding individual capability. Nonetheless, statutes and

pervasive stereotypes that suggest, often without justification, that they are a danger to their children.⁵⁰ Presumptions about the capabilities of parents with disabilities have resulted in contemporaneous discriminatory child welfare, family law, adoption, and reproductive health care policies and practices that assume parental unfitness.⁵¹

To be sure, parents with disabilities and their families often have risk factors for child welfare system involvement. For example, parents with disabilities, especially mothers, frequently experience high rates of poverty, low educational attainment, unemployment, and receipt of government benefits.⁵² At the same time, these parents often have high disability-related expenses, elevated living costs, and they typically struggle to afford basic necessities.⁵³ Furthermore, because people with disabilities often receive government benefits and other social services, they are at increased risk of being reported to the child welfare system because of perceived shortcomings by mandated reporters (e.g., therapists, health care providers, case managers,

courts often use a ‘diagnosis’ of developmental disability or mental retardation both to explain past behavior and to predict future behavior.”); *see also* Powell *supra* note 20, at 143 (“[T]here is a belief that parents with intellectual disabilities are unable to learn the necessary skills to safely parent.”).

50. Theresa Glennon, *Walking with Them: Advocating for Parents with Mental Illnesses in the Child Welfare System*, 12 TEMP. POL. & C. R. L. REV. 273, 291 (2003) (“Most damaging to parents involved in the child welfare system is the deeply embedded belief that individuals with mental illnesses are unpredictable and dangerous.”).

51. *See generally* ROCKING THE CRADLE, *supra* note 19, at 15 (“The report provides a comprehensive review of the barriers and facilitators people with diverse disabilities—including intellectual and developmental, psychiatric, sensory, and physical disabilities—experience when exercising their fundamental right to create and maintain families, as well as persistent, systemic, and pervasive discrimination against parents with disabilities. The report analyzes how U.S. disability law and policy apply to parents with disabilities in the child welfare and family law systems, and the disparate treatment of parents with disabilities and their children. Examination of the impediments prospective parents with disabilities encounter when accessing assisted reproductive technologies or adopting provides further examples of the need for comprehensive protection of these rights.”).

52. *See* Li et al., *supra* note 47, at 305; Kaye, *supra* note 47; Sonik et al., *supra* note 47, at 1; Susan L. Parish et al., *It’s Just That Much Harder: Multilayered Hardship Experiences of Low-Income Mothers with Disabilities* 23 AFFILIA 51, 55 (2008).

53. Parish et al., *supra* note 52, at 58 (“Chronic struggles to pay the bills, have sufficient food, clothe children, and afford school supplies were recounted by every focus-group participant, and several mothers reported having to choose between health care and other needs. Many of the mothers spoke about losing their basic household utilities or being evicted because of a chronic shortfall of resources.”).

social workers).⁵⁴ In other words, “the fact that parents with [] disabilities have more exposure to public systems in the first place creates what some call an ‘exposure bias’ or ‘visibility bias,’ causing heightened scrutiny of their parenting, as opposed to the lower level of scrutiny for nondisabled parents with less public system contact.”⁵⁵

C. Child Welfare System Disparities and Disproportionality

The child welfare system is complex. It is not a single entity, but rather, the child welfare system is comprised of state and local child welfare agencies, state courts, and intersections with mental health, substance abuse, health care, education, and domestic violence service systems.⁵⁶ The goal of the child welfare system is to promote the safety and wellbeing of children.⁵⁷

Although the child welfare system is administered primarily by states, the federal government plays a notable role in the delivery of child welfare services through the enactment of federal laws and program funding.⁵⁸ In 1974, Congress passed the Child Abuse Prevention and Treatment Act (“CAPTA”), which was the first national effort to address the issue of child maltreatment.⁵⁹ CAPTA required states to “prevent, identify, and treat child abuse and neglect.”⁶⁰ In an attempt to reform the child welfare system, in

54. Susan Kerr, *The Application of the Americans with Disabilities Act to the Termination of Parental Rights of Individuals with Mental Disabilities*, 16 J. CONTEMP. HEALTH L. & POL’Y 387, 402 (2000) (explaining process of reporting alleged child maltreatment by parents with disabilities); Susan Stefan, *Accommodating Families: Using the Americans with Disabilities Act to Keep Families Together*, 2 ST. LOUIS U. J. HEALTH L. & POL’Y 135, 170 (2008) (asserting that mental health professionals often report parents with disabilities to the child welfare system).

55. Charisa Smith, *Making Good on an Historic Federal Precedent: Americans with Disabilities Act (ADA) Claims and the Termination of Parental Rights of Parents with Mental Disabilities*, 18 QUINN. HEALTH L. J. 191, 227–28 (2015).

56. CHILD WELFARE INFO. GATEWAY, U.S. DEP’T OF HEALTH & HUMAN SERVS., HOW THE CHILD WELFARE SYSTEM WORKS 2–3 (2013) [hereinafter HOW THE CHILD WELFARE SYSTEM WORKS], <https://www.childwelfare.gov/pubPDFs/cpswork.pdf> [perma.cc/L8GB-CAB4].

57. *Id.* at 1.

58. *Id.*; see also Frank E. Vandervort, *Federal Child Welfare Legislation*, in CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 199–200 (Donald N. Duquette & Ann M. Haralambie eds., 2d. 2010) (describing how federal laws govern the child welfare system primarily through funding rather than substantive law).

59. HOW THE CHILD WELFARE SYSTEM WORKS, *supra* note 56, at 2

60. Child Abuse Prevention and Treatment Act of 1974 §4(a), Pub. L. No. 93-247, 88 Stat. 4 (codified as amended at 42 U.S.C. §§ 5101–5106 (1994)).

1980, Congress passed the Adoption Assistance and Child Welfare Act (“AACWA”).⁶¹ Notably, AACWA required that child welfare agencies make “reasonable efforts” to keep children with their parents, both to prevent or eliminate the need for removal of children from their families and to make it possible for children to be reunified with their families following removal.⁶² Hence, the primary objective of AACWA was to rehabilitate and reunify families rather than sever parental rights.⁶³

Nearly twenty years later, in 1997, Congress passed the Adoption and Safe Families Act (“ASFA”)⁶⁴ in response to the growing number of children who were lingering in foster care.⁶⁵ ASFA has three overarching goals: (1) decrease the length of time children spend in foster care,⁶⁶ (2) prevent possible future abuse from biological parents by promoting adoption,⁶⁷ and (3) make timely permanency decisions.⁶⁸ ASFA provides two specific provisions

61. Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in various sections of 42 U.S.C.).

62. Adoption Assistance and Child Welfare Act of 1980 § 101(a)(1), 42 U.S.C. § 671(a)(15)(B)(i)–(ii) (2018); *see also* David J. Herring, *The Adoption and Safe Families Act—Hope and Its Subversion*, 34 FAM. L.Q. 329, 330, 336–338 (2000) (describing the Adoption Assistance and Child Welfare Act).

63. *See* Cristine H. Kim, Note, *Putting Back into the Reasonable Efforts Requirement in Child Abuse and Neglect Cases*, 199 U. ILL. L. REV. 287, 293 (1999) (“Moreover, AACWA financially rewarded states for keeping children in foster care, so that the states had no incentive to plan for a child’s permanency. So while state child welfare agencies attempted to rehabilitate parents—which usually continued for years—children languished in foster care and remained in limbo as to their permanency.”); Theodore J. Stein, *The Adoption and Safe Families Act: Creating a False Dichotomy between Parents’ and Childrens’ Rights*, 81 FAM. IN SOC’Y 586, 586 (2000) (“AACWA was crafted to overcome deficiencies in the child welfare system, including...services to help biological parents resolve the problems that necessitated placement of their children were rarely provided[.]”).

64. Adoption and Safe Families Act of 1997, Pub. L. No. 105–89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.).

65. Clare Huntington, *Rights Myopia in Child Welfare*, 53 UCLA L. REV. 637, 649 (2006) (explaining that the Adoption and Safe Families Act was enacted in response to the “foster care drift,” which referred to children remaining in foster care for extended periods of time).

66. John Thomas Halloran, *Families First: Refraining Parental Rights as Familial Rights in Termination of Parental Rights Proceedings*, 18 U.C. DAVIS J. JUV. L. & POL’Y 51, 59 (2014); *see also* Olivia Golden & Jennifer Macomber, *Framework Paper*, in INTENTIONS AND RESULTS: A LOOK BACK AT THE ADOPTION AND SAFE FAMILIES ACT 11–12 (Susan Notkin et al., eds. 2009) (explaining the goal of creating permanency for children).

67. Golden & Macomber, *supra* note 66, at 11–13 (describing adoption incentives).

68. *Id.* at 14 (describing the importance of timely decision-making to advance goal of permanency).

related to the termination of parental rights. First, ASFA requires states to petition courts for termination of parental rights in cases where a child has been in foster care for fifteen of the most recent twenty-two months (commonly known as the “15/22 rule”).⁶⁹ While ASFA does not reference parental disability status at all, disabled parents may have difficulty complying with the strict timelines set forth by ASFA because effective treatment often takes longer than the mandated timelines, and adequate, appropriate disability supports and services may take time to obtain.⁷⁰ Second, ASFA permits child welfare agencies to bypass the provision of reasonable efforts and instead terminate parental rights in limited circumstances.⁷¹ In addition to egregious acts such as manslaughter or murder, some states include a parent’s disability as justification for bypassing reasonable efforts and “fast-tracking” termination of parental rights.⁷² Further, ASFA authorizes concurrent planning, which allows child welfare agencies to provide reunification services to families while simultaneously planning for permanency (i.e., adoption) if reunification efforts fail.⁷³ Hence, a parent’s disability often serves as the reason a family is referred to the child welfare system and then as the justification for denying reunification.⁷⁴ ASFA and its current focus on permanency continue to provide the framework for child welfare practice and judicial decision-making in termination of parental rights cases.

A sizable body of research indicates that child welfare system policies and practices are administered in ways that advance bias against parents with disabilities and lead to notable disparities and overrepresentation in the child welfare system.⁷⁵ Studies have consistently found that parents with

69. 42 U.S.C. § 675(5)(I) (2018).

70. See Callow, *supra* note 20 at 22; Leslie Francis, *Maintaining the Legal Status of People with Intellectual Disabilities as Parents: The ADA and the CRPD*, 57 FAM. CT. REV. 21, 25 (2019); Christina Risley-Curtiss, et al., *Identifying and Reducing Barriers to Reunification for Seriously Mentally Ill Parents Involved in Child Welfare Cases*, 85 FAM. SOC’Y 107, 112 (2004); Colby Brunt & Leigh Goodmark, *Parenting in the Face of Prejudice: The Need for Representation for Parents with Mental Illness*, 36 CLEARINGHOUSE REV. 295, 299 (2002); see also ROCKING THE CRADLE, *supra* note 19, at 87–88 (detailing the difficulties parents with disabilities experience related to complying with ASFA’s timelines).

71. 42 U.S.C. § 671(a)(15)(D)(i)-(iii) (2018).

72. ROCKING THE CRADLE, *supra* note 19, at 90–92 (explaining the bypass provision and its effect on parents with disabilities).

73. 42 U.S.C. § 671(a)(15)(F).

74. Watkins, *supra* note 49, at 1444.

75. See ROCKING THE CRADLE, *supra* note 19, at 43 (“The rate of removal of children from families with parental disability—particularly psychiatric, intellectual, or developmental disability—is ominously higher than rates for children whose parents are not disabled. And this removal is carried out with far less cause, owing to specific, preventable problems in the child welfare system.”).

disabilities are more likely than nondisabled parents to be referred to the child welfare system and to have their parental rights terminated.⁷⁶ For example, a recent national survey revealed that parents with psychiatric disabilities were eight times more likely to have contact with the child welfare system, compared to parents without psychiatric disabilities.⁷⁷ Another recent study found that nineteen percent of children were placed in foster care, at least in part, because of parental disability.⁷⁸ The same study found that children of parents with disabilities were less likely than other children to be returned to their parents, and the odds of termination of parental rights was twenty-two percent higher for disabled parents.⁷⁹ Parents with disabilities are also less likely than nondisabled parents to receive family preservation or reunification services,⁸⁰ and when they do receive services, they are often not tailored to

According to the Child Welfare Information Gateway, disparities are “unequal outcomes of one...group as compared to outcomes for another...group.” CHILD WELFARE INFO. GATEWAY, U.S. DEP’T OF HEALTH & HUMAN SERVS., RACIAL DISPROPORTIONALITY AND DISPARITY IN CHILD WELFARE 2 (2016), https://www.childwelfare.gov/pubpdfs/racial_disproportionality.pdf [<https://perma.cc/6TLF-SM7J>]. Conversely, disproportionality occurs when there is “underrepresentation or overrepresentation of a...group compared to its percentage in the total population.” *Id.*

76. ROCKING THE CRADLE, *supra* note 19, at 72 (“Parents with disabilities and their families are frequently, and often unnecessarily, forced into the system and, once involved, lose their children at disproportionately high rates.”); *see also* Booth & Booth, *supra* note 19, at 180; Booth et al., *supra* note 19, at 355–56; Feldman *supra* note 19, at 401; Llewellyn et al., *supra* note 19, at 239; McConnell et al., *supra* note 19, at 629.

77. Katy Kaplan et al., *Child Protective Service Disparities and Serious Mental Illnesses: Results from a National Survey*, 70 PSYCHIATRIC SERVICES 202, 204 (2019).

78. Elizabeth Lightfoot & Sharyn DeZelar, *The Experiences and Outcomes of Children in Foster Care who Were Removed Because of a Parental Disability*, 62 CHILD. & YOUTH SERVS. REV. 22, 26 (2016).

79. *Id.*

80. *See* Int’l Ass’n for the Sci. Study of Intellectual Disabilities Special Interest Research Grp. on Parents and Parenting with Intellectual Disabilities, *Parents Labelled with Intellectual Disability: Position of the IASSID SIRG on Parents and Parenting with Intellectual Disabilities*, 21 J. APPLIED RES. INTELL. DISABILITIES 296, 300–01 (2008) [hereinafter IASSID SIRG] (explaining the experiences of parents with intellectual disabilities); Robyn M. Powell & Joanne Nicholson, *Disparities in Child Protective Services: Commentary on Kaplan et al.* (2019), 70 PSYCHIATRIC SERVICES 209–10 (2019) (discussing disparities experienced by parents with psychiatric disabilities when involved with the child welfare system); ROCKING THE CRADLE, *supra* note 19, at 71–107 (describing the experiences of parents with disabilities as related to the child welfare system).

meet the individual needs of parents with disabilities.⁸¹ Additionally, child welfare system professionals have limited knowledge about parents with disabilities, and their understanding of disabilities may be based on stereotypes and misconceptions.⁸²

In sum, parents with disabilities and their families experience pervasive disparities and disproportionality within the child welfare system, extending to high rates of termination of parental rights. To address this trend, it is imperative to identify its underlying causes. This study seeks to advance our understanding by examining predictors of termination of parental rights in appellate decisions involving mothers with disabilities. Such knowledge is critical to providing meaningful legal representation and ensuring these families are afforded their rights.

III. METHODOLOGY AND DATA

This Part explains the study's methodology and data. First, it describes the study's data source, including details about how the data was selected and coded. Next, it explains the measures used in the study as well as how the data was analyzed. Finally, it describes the study's limitations.

A. Data Source

This study analyzes termination of parental rights appeals decisions involving mothers with disabilities and their families. This study includes both published and unpublished opinions. This Subpart describes the data analyzed in this study, beginning with an overview of how the data was selected. Thereafter, it explains the process used to code the data.

1. Data Selection

The dataset includes termination of parental rights state appellate decisions issued between January 1, 2006, and December 31, 2016. Appeals of termination of parental rights were selected for this study due to availability and resources. Dependency cases, also known as termination of parental rights cases, are typically statutorily confidential. In other words, lower court termination of parental rights opinions are not usually accessible to the public or even to legal database subscribers without substantial costs.⁸³ In contrast,

81. Phillip A. Swain & Nadine Cameron, "Good Enough Parenting;" *Parental Disability and Child Protection*, 18 *DISABILITY & SOC'Y* 165, 170 (2003).

82. *Id.* at 167; see also Callow, *supra* note 20, at 17–18, 20 (describing an overarching bias that parents with disabilities cannot safely care for children).

83. Callow et al., *supra* note 24, at 559 (analyzing appellate-level termination of parental rights cases, the authors explain "Our reasoning for using appellate-level cases was that in the USA, trial-level cases are not published, meaning that

however, once such cases are appealed, the decisions generally become available through legal databases. Confidentiality, nonetheless, is maintained by abbreviating names.

Cases were obtained through LexisNexis using the following Boolean search:

“termination of parental rights” AND “Americans with Disabilities Act” OR “disab!” OR “mental illness” OR “mental retard!” OR “handicap!” OR “blind” OR “deaf”

These search terms were expansive to capture as many cases involving parents with a range of disabilities as possible. Our search generated 4136 state appellate decisions. However, because of the broad search terms, 1751 decisions were subsequently excluded upon review because they were irrelevant to this study. For example, many of the excluded cases involved children with disabilities rather than parents with disabilities. Other opinions were excluded because they involved a private party seeking to terminate a parent’s rights rather than the state initiating the case. Once the unrelated decisions were omitted, 2385 decisions remained. For this study, the sample was further limited to cases involving mothers with disabilities.⁸⁴ Thus, after excluding 321 cases where only the father was disabled, the final analytic sample included 2064 cases, involving mothers with physical or sensory disabilities ($N = 29$), intellectual disabilities ($N = 124$), psychiatric disabilities ($N = 1598$), and multiple disabilities ($N = 313$).⁸⁵

2. Coding and Review of Coding

Once the pertinent decisions were identified, procedures were followed to ensure consistent and reliable coding. Specifically, the first author created a form that captured the variables of interest, based on a comprehensive review of the relevant literature. Those variables included case caption information (e.g., name of the case, jurisdiction, year), procedural posture (i.e., type of appeal), information about the family (e.g., type of disability, socioeconomic factors, family composition), factual information (e.g.,

they are not available to the public or even to subscribers to private database systems without the incurrence of significant costs.”).

84. For this study, we elected to limit our analysis to only cases involving mothers with disabilities. Research suggests that most parents with disabilities who are involved with the child welfare system are single mothers. *See* Elizabeth Lightfoot et al., *A Case Record Review of Termination of Parental Rights Cases Involving Parents with a Disability*, 79 CHILD. & YOUTH SERVS. REV. 399, 401 (2017); McConnell et al., *supra* note 19, at 627. Future studies will analyze the entire dataset.

85. In some circumstances, the second parent was also disabled. None of the cases in this study listed two same-sex parents.

discussion about the Americans with Disabilities Act (“ADA”), expert testimony, alleged maltreatment, state laws), information about the family’s involvement with the child welfare system (e.g., history, services provided), and outcome (i.e., whether the court terminated the parental rights). The form contained twenty-seven questions for each decision. Most questions were closed-ended, with the exception of the name of the case, year case was decided, state case was decided in, and the number of children involved in the case. Comprehensive instructions accompanied the survey and provided detailed information about each question.

Coding was completed by the first author and three trained coders. To begin, each coder was assigned ten cases to code based on a line-by-line reading of the decision. Subsequently, the first author reviewed the coder’s work to ensure accuracy and reliability. If any discrepancies were identified, the first author and coder met individually to discuss. This process continued until the coder was accurately and reliably coding the decisions without issue.

Thereafter, the first author assigned coders cases in batches of 250 decisions. Throughout the coding process, the first author remained in close contact with the coders and was available to answer questions as they arose. Each coder read and coded between 500 and 1000 cases. The first author also read and coded approximately 1500 decisions.

Finally, to ensure accuracy and reliability, the first author randomly reviewed 100 decisions coded by each of the three trained coders. Any issues were discussed and resolved. Further, once all coding was complete, the first author conducted a thorough line-by-line review of the dataset to ensure the data was free of typographical errors and accurate. For example, the first author sorted the data by state to ensure that the state statute information was consistent. Any irregularities were corrected.

B. Measures

This Subpart describes the measures used to conduct statistical analyses. First, the study’s dependent variable is defined, followed by the study’s key independent variable. Thereafter, a description of the covariates that were used is provided.

1. Dependent Variable

The dependent variable for this study was termination of parental rights. This measure was a dichotomous variable (yes, including if based on curing a procedural defect by the lower court, versus no). This outcome does not necessarily reflect whether the appeals court upheld a lower court’s decision. For example, in rare situations, it was the state which brought the appeal, and if the appellate court terminated the parents’ rights, the lower court’s decision was reversed, and the parental rights were severed. Conversely, and far more commonly, it was the parent who brought the appeal, and if their parental rights were terminated, a lower court’s decision was upheld.

2. Independent Variable

The study's key independent variable of interest was maternal disability type. The independent variable was categorical: physical or sensory disability, intellectual disability, psychiatric disability, or multiple disabilities. The multiple disabilities category included mothers who had more than one disability.

3. Covariates

Based on the variables identified in the existing literature and the availability of such measures in the decisions, factors related to parent, family, court, case, and policy characteristics were included in the analysis as control variables.

Parent and family characteristics. Parent and family covariates included (1) the marital status of the mother (divorced, separated, widowed, or single versus married); (2) a binary variable identifying if the other parent was also disabled; (3) whether either parent had a criminal history (criminal conviction, jail, or criminal background of one or both parents was mentioned versus no criminal history mentioned); (4) if either parent had a substance use history (decision referenced issues related to using alcohol or drugs by either parent versus no substance use history mentioned);⁸⁶ (5) household income in relationship to 200% of the federal poverty level (household income was considered below 200% of the federal poverty level if court referenced the parents' lack of economic means, receipt of Supplemental Security Income ("SSI"), Social Security Disability Insurance ("SSDI"), or Temporary Assistance for Needy Families ("TANF"), or one or both of parents were unemployed); (6) if any of the children had disabilities; and (7) the family's prior involvement, if any, with the child welfare system (no prior involvement; yes, but not termination of parental rights; or termination of parental rights). Additionally, there was a continuous variable measuring the number of children in the family.⁸⁷

Court, case, and policy characteristics. Court and case covariates included (1) the year the case was decided, measured as a binary variable (2006-2010 versus 2011-2016); (2) the type of court the case was decided in (intermediate court of appeals versus state's highest court of appeals); and (3) the geographic region of the case based on the United States Census-designated regions (Midwest, Northeast, Southeast, Southwest, or West). Binary covariates also measured whether an expert's testimony, such as that

86. Substance use is considered a disability under the Americans with Disabilities Act ("ADA"). See 42 U.S.C. § 12,210. However, the ADA does not protect people currently using illegal drugs. See 28 C.F.R. Pt. 35, App. A, 35.131 (2019).

87. For bivariate and multivariate analysis, the number of children was constructed into a binary measure (one child versus two or more children).

of a psychologist, was mentioned in the court decision.⁸⁸ One variable measured if an expert testified that the mother could raise the child and one variable measured if an expert testified that the mother could not raise the child.⁸⁹ Other covariates⁹⁰ included (1) whether the child welfare agency provided the mother with family preservation or reunification services;⁹¹ (2) whether the child welfare agency provided the mother with family preservation or reunification services specifically for parents with disabilities;⁹² (3) the child's placement at the time of the case (foster care, kinship care, or other);⁹³ and (4) the alleged type of maltreatment (abuse, neglect, or abuse and neglect).⁹⁴ Finally, a binary covariate was constructed to measure if the state termination of parental rights law governing the case allowed for consideration of parental disability.⁹⁵

88. For each of the binary variables, we took a conservative approach whereby unknown was collapsed into "no."

89. Experts often play a critical role in termination of parental rights cases, and judges often rely heavily on their testimony. Corina Benjet & Sandra T. Azar, *Evaluating the Parental Fitness of Psychiatrically Diagnosed Individuals: Advocating a Functional-Contextual Analysis of Parenting*, 17 J. FAM. PSYCHOL. 238, 239 (2003). Nevertheless, many experts lack the necessary training to appropriately evaluate parents with disabilities, which in turn can negatively impact cases. Joshua B. Kay, *Representing Parents with Disabilities in Child Protection Proceedings*, 13 MICH. CHILD WELFARE L. J. 27, 33 (2009).

90. For each of the binary variables, we took a conservative approach whereby unknown was collapsed into "no."

91. Research indicates parents with disabilities are often not provided family preservation or reunification services. *See e.g.*, Slayter & Jensen, *supra* note 22, at 300–02 (finding parents with intellectual disabilities were less likely than nondisabled parents to be provided services).

92. Parents with disabilities are often denied services tailored to meet their individual needs. *See* Swain & Cameron, *supra* note 81, at 170

93. Research has found children of parents with disabilities these cases were more likely to be placed in nonrelative foster care rather than with relatives. *See* Lightfoot & DeZelar, *supra* note 78 at 27. "Other" includes placements that were not foster care or kinship care, such as institutional settings.

94. For this study, we included cases coded as neglect where there were presumptions about the possibility of neglect due to a mother's disability. In some states, this is termed "predictive neglect." *See* Alissa Bang, Note, *What do Judges and Fortune Tellers have in Common? Connecticut's Predictive Neglect Doctrine as a Basis for Premature Suspension of Parental Rights*, 32 QUINNIPIAC. PROB. L. J. 410, 428 (2019). Also, notably, most parents with disabilities involved with the child welfare system are the subject of neglect allegations rather than abuse. MONICA MCCOY & STEPHANIE KEEN, CHILD ABUSE AND NEGLECT 63–87 (Taylor & Francis 2009).

95. The presence or absence of a statute was determined based on the National Council on Disability's chart, which found that two-thirds of state dependency statutes included parental disability as grounds for termination of parental rights. ROCKING THE CRADLE, *supra* note 19, at 84, 265–300.

C. Analytic Strategy

Statistical analyses were conducted using Stata/SE 15.1 for Mac. Descriptive statistics characterize the sample, stratified by maternal disability type. For categorical variables, chi-square tests were used to measure statistical differences.⁹⁶ For continuous variables, *t*-tests were used to compare each group using the means of independent variables.⁹⁷ Next, odds ratio tests were conducted to measure the association between each variable and the dependent variable, termination of parental rights.⁹⁸ If the *p*-value of the chi-square test, odds ratio, or *t*-test was .05 or less, there was a statistically significant difference between the groups.

Because the dependent variable was binary, logistic regression analysis was conducted. Specifically, logistic regression modeling allowed for the testing of multiple variables simultaneously to evaluate whether each characteristic had a statistically significant relationship with the dependent variable, while controlling for all others.⁹⁹ Only variables that indicated a statistical significance during bivariate analysis were included. Odds ratios and ninety-five percent confidence intervals are reported for ease of interpretation.

D. Limitations

As with all research, this study has some limitations. First, the measure of maternal disability type posed some challenges. Identification of a mother's disability was based on language in the opinion, and the decision may not have included all relevant information, including the nature and severity of the disability. Likewise, this study used broad categories of disability and did not account for the varying experiences of disability or how multiple disabilities intersected. Second, because this study is an analysis of

96. DAVID KREMELBERG, PRACTICAL STATISTICS 120 (2011) ("The chi-square statistic is used to show whether or not there is a relationship between two categorical variables.").

97. William M.K. Trochim, *The T-Test*, RESEARCH METHODS KNOWLEDGE BASE, <https://conjointly.com/kb/statistical-student-t-test/> [perma.cc/E9MG-XCLB] (last visited December 29, 2019) ("The t-test assesses whether the means of two groups are *statistically* different from each other. This analysis is appropriate whenever you want to compare the means of two groups[.]" (emphasis in original)).

98. Magdalena Szumilas, *Explaining Odds Ratios*, 19 J. CAN. ACAD. CHILD ADOLESC. PSYCHIATRY 227, 227 (2010) ("An odds ratio (OR) is a measure of association between an exposure and an outcome. The OR represents the odds that an outcome will occur given a particular exposure, compared to the odds of the outcome occurring in the absence of that exposure.").

99. See generally DAVID W. HOSMER, JR. ET AL., APPLIED LOGISTIC REGRESSION (3d ed. 2013); SCOTT LONG & JEREMY FREESE, REGRESSION MODELS FOR CATEGORICAL DEPENDENT VARIABLES USING STATA (3d ed. 2014).

observational data, causality cannot be inferred. Hence, case outcomes may be attributable to other factors not considered in this study. Third, as with all analyses of judicial decisions, several potentially important variables were not available in the data, including in-depth sociodemographic information, detailed data on disability-related needs and available supports and services, and comprehensive family characteristics.¹⁰⁰ Similarly, this study is constrained by the limited data available in appellate decisions. Fourth, because the cases varied across courtrooms and geographic locations, there may be differences in the quality of data. Nonetheless, at least one other study has investigated appellate termination of parental rights decisions to examine the experiences of parents with disabilities in the United States.¹⁰¹

Fifth, this study is limited by selection bias because the data only included appeals cases, meaning cases that were not appealed could not be analyzed. Although parents with low incomes generally have a right to court-appointed legal counsel for appeals in these cases, additional costs (e.g., court filing fees, experts) sometimes make it challenging for parents to appeal.¹⁰² Similarly, some parents may feel defeated and do not pursue an appeal. Given these circumstances, future research should analyze trial data. Sixth, this study focused only on mothers with disabilities and did not consider the other parent's disability type. Thus, forthcoming studies should include both parents' disability types. Seventh, this study lacked a comparison group of appellate decisions involving mothers without disabilities, limiting the inferences that can be made. Eighth, because multiple individuals coded the data, some irregularities may exist. Nonetheless, continuous checks were conducted to improve reliability. Finally, although this study used broad search terms to identify decisions, some relevant cases may have been excluded. Notwithstanding the aforementioned shortcomings, however, this study offers a novel investigation, with important findings described in the next Part.

100. Karen A. Jordan, *Empirical Studies of Judicial Decisions Serve an Important Role in the Cumulative Process of Policy Making*, 31 IND. L. REV. 81, 88 (1998) (“[S]tudies of judicial decisions yield useful, albeit narrow information, that moves us toward a greater understanding of the bigger policy questions.”).

101. See Bruce A. Boyer, *Justice, Access to the Courts, and the Right to Free Counsel for Indigent Parents: The Continuing Scourge of Lassiter v. Department of Social Services of Durham*, 15 TEMP. POL. & CIV. RTS. L. REV. 635, 641 (2006) (“Poor people facing the termination of parental rights may be effectively prevented from meaningful access to justice not only by the deprivation of counsel, but also by the imposition of litigation access fees, necessary ongoing litigation expenses, the requirement of advance security or payment for litigation expenses, and the taxation of costs.”) (internal citations omitted). *But see* M.L.B. v. S.L.J., 519 U.S. 102, 127–28 (1996) (holding that a parent is entitled to a transcript on appeal of termination of parental rights even if she does not have the ability to pay).

102. See Callow et al., *supra* note 24, at 553–62 (analyzing the prevalence of judicial consideration of parental IQ test evidence in appellate cases).

IV. FINDINGS

We used statistical analyses to achieve two goals. First, we sought to describe the cases sampled and the families involved in them. Second, we aimed to identify the predictors of termination of parental rights in appellate decisions involving mothers with disabilities. In particular, we wanted to determine whether maternal disability type predicted case outcomes, or if other factors (i.e., parent, family, court, case, and policy characteristics) predicted whether a disabled mother's parental rights were terminated. In this Part, we present the study's findings. First, we describe the sample, including comparisons across disability type. Next, we provide results from our analysis of the association between characteristics and the termination of parental rights. Finally, based on logistic regression, we explain the factors that predicted the termination of parental rights in appellate decisions involving mothers with disabilities. In sum, analyses revealed that after controlling for a variety of parent, family, court, case, and policy characteristics, however, maternal disability type did not predict termination of parental rights. Nevertheless, several parent, family, court, case, and policy characteristics increased or reduced the likelihood of termination of parental rights in these cases.

A. Description of the Sample

In this Subpart, we report descriptive statistics for the cases ($N = 2,064$) included in this study. We present totals across all cases as well as comparisons based on maternal disability type.

Table 1 presents parent and family characteristics. Although most of the cases in this study (63%) involved single mothers, analyses indicated that compared to mothers with physical or sensory disabilities (41%), those with psychiatric disabilities (65%) or multiple disabilities (60%) were significantly more likely to be single. Cases involving mothers with intellectual disabilities were significantly less likely than those involving mothers with physical or sensory disabilities to have criminal (23% vs. 52%) or substance use (25% vs. 45%) histories. Further, cases involving mothers with psychiatric disabilities (26% vs. 7%) or multiple disabilities (25% vs. 7%) were significantly more likely to have previous child welfare system involvement without prior termination of parental rights, compared to cases with mothers with physical or sensory disabilities. No other statistically significant differences were found.

Table 1. Parent and Family Characteristics

Characteristic	Any 2,064	Physical or Sensory 29 (1.4)	Intellectual 124 (6.0)	Psych. 1,598 (77.4)	Multiple 313 (15.2)	Statistical Difference a b c
	<i>N</i> (%)	<i>N</i> (%)	<i>N</i> (%)	<i>N</i> (%)	<i>N</i> (%)	χ^2
Single	1,303 (63)	12 (41)	62 (50)	1,040 (65)	189 (60)	b c

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Two disabled parents	249 (46)	7 (47)	28 (64)	158 (40)	56 (65)	-
Criminal history	915 (44)	15 (52)	28 (23)	752 (47)	120 (38)	a
Substance use history	1,119 (54)	13 (45)	31 (25)	916 (57)	159 (51)	a
Income < 200% FPL	1,451 (70)	21 (72)	90 (73)	1,012 (69)	238 (76)	-
Disabled children	712 (35)	12 (41)	62 (50)	493 (31)	145 (46)	-
Prior involvement						
None	1,114 (54)	18 (62)	74 (60)	861 (54)	161 (51)	-
Yes, not TPR	510 (25)	2 (7)	17 (14)	412 (26)	79 (25)	b c
Yes, TPR	440 (21)	9 (31)	33 (27)	325 (20)	73 (23)	-
	<i>Mean (SD)</i>	<i>Mean (SD)</i>	<i>Mean (SD)</i>	<i>Mean (SD)</i>	<i>Mean (SD)</i>	<i>t</i>
Number of children	2.7 (1.8)	3.2 (1.7)	2.7 (1.9)	2.6 (1.8)	2.8 (1.8)	-

Note: FPL = federal poverty level; TPR = termination of parental rights.

a Statistically significant difference at $p < 0.05$ between mothers with physical or sensory disabilities and intellectual disabilities.

b Statistically significant difference at $p < 0.05$ between mothers with physical or sensory disabilities and psychiatric disabilities.

c Statistically significant difference at $p < 0.05$ between mothers with physical or sensory disabilities and multiple disabilities.

Table 2 describes the court, case, and policy characteristics. Nearly all cases (93%) resulted in the termination of parental rights, and a vast majority (75%) involved allegations of neglect, rather than abuse (5%) or abuse and neglect (21%). Compared to cases involving mothers with physical or sensory disabilities, those involving mothers with psychiatric disabilities (93% vs. 83%) or multiple disabilities (93% vs. 83%) were significantly more likely to end in termination of parental rights. Cases involving mothers with multiple disabilities were significantly more likely than those involving mothers with physical or sensory disabilities (54% vs. 31%) to have an expert testify that their disability negatively affected their ability to care for their children. Compared to mothers with physical or sensory disabilities, mothers with intellectual disabilities (87% vs. 72%) or multiple disabilities (89% vs. 72%) were significantly more likely to receive non-individualized family preservation or reunification services. However, only parents with multiple disabilities (44%) were significantly more likely to receive services

specifically tailored to parents with disabilities. Children who had mothers with psychiatric disabilities were significantly more likely than those whose mothers had physical or sensory disabilities (17% vs. 4%) to be placed in kinship care. Finally, compared to cases involving mothers with physical or sensory disabilities, those involving mothers with intellectual disabilities (68% vs. 17%), psychiatric disabilities (70% vs. 17%), or multiple disabilities (78% vs. 17%) were significantly more likely to be decided in states that included disability as grounds for termination of parental rights. No other statistically significant differences were found.

Table 2. *Court, Case, and Policy Characteristics*

Characteristic	Any 2,064	Physical or Sensory 29 (1.4)	Intellectua l 124 (6.0)	Psych. 1,598 (77.4)	Multiple 313 (15.2)	Statistical Difference a b c
	<i>N (%)</i>	<i>N (%)</i>	<i>N (%)</i>	<i>N (%)</i>	<i>N (%)</i>	<i>X2</i>
Year decided						
2006 – 2010	777 (38)	15 (52)	53 (43)	579 (36)	130 (42)	-
2011 – 2016	1,287 (62)	14 (48)	71 (57)	1,019 (64)	183 (59)	-
Type of court						
Ct. of appeals	1,955 (95)	29 (100)	119 (96)	1,513 (95)	294 (94)	-
Highest ct. app.	109 (5)	0 (0)	5 (4)	85 (5)	19 (6)	-
Region						
Midwest	601 (29)	11 (38)	46 (37)	445 (28)	99 (32)	-
Northeast	449 (22)	4 (14)	26 (21)	353 (22)	66 (21)	-
Southeast	373 (18)	6 (21)	27 (22)	269 (17)	71 (23)	-
Southwest	175 (9)	1 (4)	8 (7)	145 (9)	21 (7)	-
West	466 (23)	7 (24)	17 (14)	386 (24)	56 (18)	-
Parental rights terminated	1,915 (93)	24 (83)	112 (90)	1,488 (93)	291 (93)	b c
Positive expert testimony	168 (8)	1 (4)	12 (10)	128 (8)	27 (9)	-
Negative expert testimony	831 (43)	10 (31)	63 (51)	588 (37)	170 (54)	c
Received services	1,740 (84)	21 (72)	108 (87)	1,334 (84)	227 (89)	a c
Received services tailored to disabled parents	821 (40)	7 (24)	41 (33)	636 (40)	137 (44)	c
Placement of child						
Foster care	1,695 (82)	27 (93)	114 (92)	1,280 (80)	274 (88)	-
Kinship care	313 (15)	1 (4)	9 (7)	277 (17)	26 (8)	b
Other	56 (3)	1 (4)	1 (1)	41 (3)	13 (4)	-
Alleged type of maltreatment						
Abuse	105 (5)	2 (7)	8 (7)	86 (5)	9 (3)	-
Neglect	1,537 (75)	20 (69)	87 (70)	1,202 (75)	228 (73)	-
Both	422 (21)	7 (24)	29 (23)	310 (19)	76 (24)	-

State TPR law
includes

disability	1,449 (70)	5 (17)	84 (68)	1,116 (70)	244 (78)	a b c
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Note: TPR = termination of parental rights.

a Statistically significant difference at $p < 0.05$ between mothers with physical or sensory disabilities and intellectual disabilities.

b Statistically significant difference at $p < 0.05$ between mothers with physical or sensory disabilities and psychiatric disabilities.

c Statistically significant difference at $p < 0.05$ between mothers with physical or sensory disabilities and multiple disabilities.

B. Bivariate Analysis

Table 3 presents the results of the bivariate analysis, showing which characteristics were associated with this study's dependent variable: termination of parental rights. With respect to the association between maternal disability type and termination of parental rights, cases involving mothers with psychiatric disabilities had more than two times greater odds of resulting in termination of parental rights ($OR = 2.82, p < 0.05$), compared to those involving mothers with physical or sensory disabilities. Other parent and family characteristics were also associated with the termination of parental rights among cases involving mothers with disabilities. Cases in which there was substance use had 68% greater odds of termination of parental rights ($OR = 1.68, p < 0.01$), and cases with household incomes below 200% of the federal poverty level had an 87% increased likelihood of termination of parental rights ($OR = 1.87, p < 0.01$). Cases in which the family had prior child welfare system involvement without past termination of parental rights had an 87% increased likelihood of termination of parental rights ($OR = 1.87, p < 0.01$).

Several court, case, and policy characteristics were also associated with the termination of parental rights among cases involving mothers with disabilities. Cases that were decided between the years 2011 and 2016 had 75% increased odds of resulting in termination of parental rights, compared to cases decided between the years 2006 and 2011 ($OR = 1.75, p < 0.001$). Compared to cases decided in the Midwest, those decided in the Southeast ($OR = 0.42, p < 0.001$) and the West ($OR = 0.56, p < 0.05$) had a decreased likelihood of terminating mothers' parental rights. Further, cases in which an expert testified positively about the mother significantly reduced the likelihood of termination of parental rights ($OR = 0.23, p < 0.001$), and cases in which an expert testified negatively about the mother's capabilities had 92% increased odds of termination of parental rights ($OR = 1.92, p < 0.001$). The receipt of preservation or reunification services significantly increased the likelihood of termination of parental rights by 73% ($OR = 1.73, p < 0.01$). Further, cases in which the family received services tailored to parents with disabilities had an 88% increased likelihood of termination of parental rights ($OR = 1.88, p < 0.001$). Finally, cases in which children were placed in kinship care had a 77% increased likelihood of termination of parental rights ($OR = 1.77, p < 0.05$).

Table 3. Association Between Characteristics and Termination of Parental Rights

Characteristic	Parental rights terminated	
	OR	95% CI
Parent and family characteristics		
Mother's disability type		
Physical or sensory	ref	ref
Intellectual	1.94	0.63, 6.03
Psychiatric	2.82*	1.05, 7.53
Multiple	2.76	0.96, 7.93
Single	1.10	0.78, 1.55
Two disabled parents	0.85	0.47, 1.51
Criminal history	1.27	0.90, 1.79
Substance use history	1.68**	1.20, 2.35
Income < 200% FPL	1.87***	1.33, 2.63
Children disabled	1.42	0.98, 2.06
Prior involvement		
None	ref	ref
Yes, not TPR	1.87**	1.19, 2.94
Yes, TPR	1.54	0.98, 2.40
Two or more children	1.00	0.69, 1.44
Court, case, and policy characteristics		
Case decided between 2011 and 2016	1.75***	1.25, 2.45
Highest court of appeals	0.86	0.42, 1.73
Region		
Midwest	ref	ref
Northeast	0.85	0.50, 1.45
Southeast	0.42***	0.26, 0.68
Southwest	1.31	0.56, 3.02
West	0.56*	0.35, 0.91
Expert testimony in support of parent	0.23***	0.15, 0.35
Expert testimony against parent	1.92***	1.32, 2.79
Received services	1.73**	1.16, 2.57
Received services for disabled parents	1.88***	1.29, 2.73
Placement of child		
Foster care	ref	ref
Kinship care	1.77*	1.01, 3.12
Other	0.85	0.33, 2.16
Alleged type of maltreatment		
Abuse	Ref	ref
Neglect	0.34	0.11, 1.10
Both	0.47	0.14, 1.58
State TPR law includes disability	0.89	0.61, 1.29

Note: FPL = federal poverty level; TPR = termination of parental rights.
 * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

C. Logistic Regression

Based on findings from the unadjusted comparisons in *Table 3* one logistic regression model was estimated to determine predictors of the termination of parental rights in appeals cases involving mothers with disabilities. In particular, the objective was to identify what, if any, association existed between maternal disability type and termination of parental rights. The logistic regression model only included characteristics that had statistically significant associations in the unadjusted comparisons.

As presented in *Table 4*, after controlling for parent, family, court, case, and policy characteristics, maternal disability type was no longer associated with the termination of parental rights. Other characteristics, however, did predict the termination of parental rights. Cases with substance use histories had 53% increased odds of termination of parental rights ($OR = 1.53, p < 0.05$). Families whose household incomes were below 200% of the federal poverty level had a 56% increased likelihood of having their parental rights terminated ($OR = 1.56, p < 0.05$). Families with prior child welfare system involvement without previous termination of parental rights had 75% increased odds of termination of parental rights ($OR = 1.75, p < 0.05$). Concerning geographic variation, compared to cases decided in the Midwest, those decided in the Southeast ($OR = 0.41, p < 0.001$) and the West ($OR = 0.54, p < 0.05$) had reduced likelihood of termination of parental rights. Cases that included positive expert testimony had an 83% reduced likelihood of termination of parental rights ($OR = 0.17, p < 0.001$), and those that included negative expert testimony had nearly three times higher odds of termination of parental rights ($OR = 2.69, p < 0.001$). Lastly, cases in which families received tailored preservation or reunification services had a 66% increased likelihood of termination of parental rights ($OR = 1.66, p < 0.01$).

Table 4. Odds ratios [95% CI] for Logistic Regression Models of Termination of Parental Rights

Characteristic	TPR	
	N (%)	OR [95% CI]
Parent and family characteristics		
Mother's disability type		ref
Physical or sensory	24 (1)	
Intellectual	112 (6)	1.88 [0.55, 6.43]
Psychiatric	1,488 (78)	2.29 [0.78, 6.72]
Multiple	291 (15)	2.03 [0.64, 6.38]
Parent and family characteristics		
Substance use history	1,056 (55)	1.53 [1.06, 2.22]*
Income < 200% FPL	1,366 (71)	1.56 [1.06, 2.28]*
Prior involvement		ref
None	1,016 (53)	
Yes, not TPR	485 (25)	1.75 [1.08, 2.82]*
Yes, TPR	414 (22)	1.34 [0.84, 2.15]
Court, case, and policy characteristics		

Case decided between 2011 and 2016	1,213 (63)	1.23 [0.85, 1.77]
Region		
Midwest	570 (30)	ref
Northeast	422 (22)	0.90 [0.50, 1.62]
Southeast	330 (17)	0.41 [0.25, 0.68]***
Southwest	168 (9)	1.27 [0.53, 3.03]
West	425 (22)	0.54 [0.33, 0.90]*
Expert testimony in support of parent	132 (7)	0.17 [0.10, 0.26]***
Expert testimony against parent	791 (41)	2.69 [1.75, 4.14]***
Received services	1,626 (85)	1.03 [0.64, 1.65]
Received services tailored to disabled parents	781 (41)	1.66 [1.09, 2.53]*
Placement of child		
Foster care	1,565 (82)	ref
Kinship care	299 (16)	1.72 [0.95, 3.11]
Other	51 (3)	0.76 [0.27, 2.13]
Constant		2.80 [0.89, 8.79]
χ^2		127.89***

Note: FPL = federal poverty level; TPR = termination of parental rights.

* $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$

V. DISCUSSION AND IMPLICATIONS

The present study adds to the extant literature on parents with disabilities and their families who are involved with the child welfare system. To date, the vast majority of legal scholarship about disabled parents and the child welfare system has focused on parents with intellectual or psychiatric disabilities, and not through a cross-disability lens. Further, most of the existing legal scholarship has been theoretical, and no known studies have systematically analyzed appellate decisions involving parents with a range of disabilities to elucidate predictors of termination of parental rights. Empirical legal research is uniquely able to identify how cases are decided by studying both case outcomes and the content of judicial opinions. Hence, this study complements existing research by offering new and much-needed data about how termination of parental rights appellate cases that involve disabled mothers are decided. Findings can improve how the legal system works for these families by informing policy and practice.

Certainly, one study cannot satisfy the many unanswered questions about how to ensure that parents with disabilities are afforded their fundamental right to parenthood. This study, nonetheless, has created new knowledge about how appeals of termination of parental rights cases involving mothers with disabilities are decided. We learned that ninety-three percent of the cases in this study resulted in the termination of parental rights. After controlling for a variety of parent, family, court, case, and policy characteristics, however, maternal disability type did *not* predict termination of parental rights. Nevertheless, the odds of termination of parental rights were higher for cases in which parents had substance use histories, household

incomes below 200% of the federal poverty level, prior child welfare system involvement, negative expert testimony against parents, or received family preservation and reunification services tailored to parents with disabilities. Conversely, the likelihood of termination of parental rights was decreased in cases that included positive expert testimony or were decided in the Southeast or West.

We do not presume to identify all factors that predict the termination of parental rights in cases involving mothers with disabilities, nor can we explain the exact causes of certain disparities. Instead, in this Part, we first offer insights into how these cases are decided, including aspects that are associated with outcomes. Second, we suggest implications for policymaking and practice as well as directions for future research. Finally, this Part considers areas warranting further attention by policymakers, attorneys, and legal scholars.

A. Policy and Practice Considerations

As scholarship on parents with disabilities and the child welfare system grows, areas of potential policy and practice intervention will become more salient. This Article provides a better understanding of how courts decide termination of parental rights appeals cases involving mothers with disabilities. In turn, findings from this study can inform both the development and implementation of policies to address some of the issues facing these families as well as strategies for representing parents with disabilities. Although a comprehensive policy and practice proposal is beyond the scope of this Article, this Subpart offers two areas worthy of consideration: (1) accessible parenting evaluations and (2) increased services and supports.

1. Accessible Parenting Evaluations

Findings from this study underscore the importance of accessible parenting evaluations for parents with disabilities. In termination of parental rights proceedings, parents with disabilities typically undergo assessments by mental health professionals who then testify as expert witnesses,¹⁰³ and judges usually rely extensively on this expert testimony.¹⁰⁴ Judges and attorneys often do not challenge these experts, and their testimony typically informs a judge's decision about whether to terminate a parent's rights.¹⁰⁵ At times, experts may harbor biases about parents with disabilities, which can affect

103. Benjet & Azar, *supra* note 89, at 239.

104. MARTHA A. FIELD & VALERIE A. SANCHEZ, EQUAL TREATMENT FOR PEOPLE WITH MENTAL RETARDATION: HAVING AND RAISING CHILDREN 244 (1999).

105. Robert L. Hayman, Jr., *Presumptions of Justice: Law, Politics, and the Mentally Retarded Parent*, 103 HARV. L. REV. 1201, 1237–38 (1990).

their ability to provide objective assessments.¹⁰⁶ Also, evaluations are often inaccessible, fail to accommodate the needs of disabled parents, and rely on pseudoscientific measures, such as IQ scores, which do not accurately measure parenting ability.¹⁰⁷ Moreover, studies suggest that some experts lack training on how to evaluate parents with disabilities appropriately. For example, in a survey of 206 family court evaluators, nearly 63% lacked training about testing accommodations for people with disabilities, and over 85% had no training specifically about conducting parenting assessments of people with disabilities.¹⁰⁸

In this study, positive expert testimony concerning the mother's ability to care for her children decreased the odds of termination of parental rights. In contrast, negative expert testimony increased the likelihood that disabled mothers had their parental rights terminated. Hence, expert testimony is crucial in these cases. As such, attorneys must insist that parents with disabilities receive accessible parenting evaluations conducted by trained professionals. In particular, assessments of parents with disabilities should adhere to the American Psychological Association's *Guidelines for Assessment of and Intervention with Persons with Disabilities*.¹⁰⁹

Further, judges and attorneys must be prepared to challenge the testimony of experts in these cases, especially inquiring how the evaluations were modified to accommodate the parent's needs and if the measures used in the assessment have been validated for appraising the capabilities of disabled parents. Judges and attorneys should also query whether parenting evaluators considered the use of adaptive parenting equipment or services and supports for disabled parents when conducting their assessment.¹¹⁰

106. Duffy Dillon, *Child Custody and the Developmentally Disabled Parent*, 2000 WIS. L. REV. 127, 149 (2000).

107. Kay, *supra* note 89, at 33. For a discussion on appropriate and accessible parenting assessments, see ROCKING THE CRADLE, *supra* note 19, at 129–38.

108. Christine Breeden et al., *Child Custody Evaluations When One Divorcing Parent has a Physical Disability*, 53 REHABILITATION PSYCHOL. 445, 450 (2008).

109. American Psychological Association, *Guidelines for Assessment of and Intervention with Persons with Disabilities* (2012), <https://www.apa.org/pi/disability/resources/assessment-disabilities> [perma.cc/8C28-2DMH]. These guidelines provide strategies for psychologists to use when working with people with a range of disabilities.

110. See ROCKING THE CRADLE, *supra* note 19, at 140–41 (“Appropriate adaptations are integral to parenting assessment, not only in the choice of assessments and the manner of conducting formal assessments but also to level the playing field before and after assessments...Evaluators need to understand the adaptive resources used by parents with disabilities and the appropriate practice with such parents and their children to determine whether the parent could have been expected to benefit from services...”). Examples of adaptive parenting include lowered cribs, wheelchair accessible changing tables, and vibrating or flashing baby monitors. *Id.*

2. Increased Services and Supports

Findings from this study also reinforce the need for increased services and supports for disabled parents, especially the expansion of income transfer programs. Poverty is a pervasive issue plaguing many parents with disabilities.¹¹¹ The present study corroborates this reality, finding that more than two-thirds of the families had household incomes below 200% of the federal poverty level. Moreover, in this study, having a low household income increased the odds of termination of parental rights, even after controlling for a variety of other factors. For parents with disabilities, poverty is compounded by the fact that these parents often have high disability-related expenses and struggle to afford basic necessities.¹¹² Thus, parents with disabilities often earn less than nondisabled parents and have higher costs. As poverty is a prominent risk factor for child welfare system involvement, disabled parents with low incomes are at heightened jeopardy because of both their disabilities and socioeconomic status.¹¹³ Instead of punishing disabled mothers who are poor by terminating their parental rights, policymakers should focus on improving the economic wellbeing of parents with disabilities and their families.

To be sure, many parents with disabilities receive government assistance, such as SSI or SSDI, which provides income assistance.¹¹⁴ Nonetheless, financial hardships for these families persist, primarily because of how these programs are administered. For example, neither SSI nor SSDI benefit amounts increase if a person with a disability has a child.¹¹⁵ Additionally, some government benefits programs penalize people with disabilities if they get married by reducing monthly benefit amounts.¹¹⁶ Such restrictions force some people with disabilities to choose between creating families and receiving necessary income assistance.¹¹⁷ Furthermore, even

111. *Id.* at 202 (“...the most significant difference between parents with disabilities and parents without disabilities is economic...); see also Li et al., *supra* note 47, at 305; Sonik et al., *supra* note 47, at 1; Parish et al., *supra* note 52, at 51–58.

112. Parish et al., *supra* note 52, at 58.

113. Sarah H. Ramsey, *Children in Poverty: Reconciling Children’s Interests with Child Protective and Welfare Policies*, 61 MD. L. REV. 437, 437–38 (2002) (“The majority of families involved with (CPS) are low-income families.”); see also Cynthia R. Mabry, *Second Chances: Insuring that Poor Families Remain Intact by Minimizing Socioeconomic Ramifications of Poverty*, 102 W. VA. L. REV. 607, 614 n.31 (2000).

114. Parish et al., *supra* note 52, at 52; ROCKING THE CRADLE, *supra* note 19, at 202; Sonik et al., *supra* note 47, at 1.

115. ROCKING THE CRADLE, *supra* note 19, at 203; Parish et al., *supra* note 52, at 52.

116. Waterstone, *supra* note 42, at 549 n.132.

117. While marriage is certainly not required to form families, it should be available to people with disabilities the same as it is for nondisabled people.

with benefits such as SSI, material hardships often persist for families.¹¹⁸ However, the economic difficulties these families face could be mitigated through the expansion of existing government assistance programs. In particular, increasing benefit amounts and repealing antiquated program rules that restrict marriage for people with disabilities could improve the economic wellbeing of these families and decrease their risk of child welfare system involvement.

In addition to expanding income transfer programs, family preservation and reunification services for parents with disabilities should be improved. Past research has found that parents with disabilities are often not provided services by the child welfare system,¹¹⁹ and even when they are provided services, they are often inadequate because they are not tailored to meet the individual needs of disabled parents.¹²⁰ Although this study found that receipt of services did not decrease the likelihood of termination of parental rights, this finding may be because the services these families received were inappropriate. Likewise, while this study found that receiving services specifically for parents with disabilities increased the odds of termination of parental rights, we do not know whether these services actually met the individual parents' needs. In other words, the extent to which the services met the needs of these families is questionable.

Under Title II of the ADA, child welfare agencies and courts must (1) provide parents with disabilities an equal opportunity to participate in services, programs, and activities;¹²¹ (2) administer services, programs, and activities in the most integrated setting appropriate to the needs of parents with disabilities;¹²² (3) not impose or apply eligibility criteria that screen out or tend to screen out parents with disabilities;¹²³ (4) provide auxiliary aids and services;¹²⁴ (5) not place surcharges on parents with disabilities to cover the costs of measures to ensure nondiscriminatory treatment;¹²⁵ and (6) not deny benefits, activities, and services to parents with disabilities because entities

118. See Subharati Ghosh & Susan L. Parish, *Prevalence and Economic Well-Being of Families Raising Children with Disabilities*, 35 CHIL. & YOUTH SERVICES REV. 1431, 1438 (2013); Rajan Sonik et al., *Food Insecurity in U.S. Households that Include Children with Disabilities*, 83 EXCEPTIONAL CHILD. 42, 48–51 (2016).

119. IASSID SIRG, *supra* note 80, at 298; Powell & Nicholson, *supra* note 80, at 209–10; ROCKING THE CRADLE, *supra* note 19, at 71–107; Slayter & Jensen, *supra* note 22, at 300–01.

120. Swain & Cameron, *supra* note 81, at 170. Examples of services include in-home training for parents, adaptive parenting equipment, respite services, and mental health treatment.

121. 28 C.F.R. § 35.130(b)(1)(ii) (2019).

122. *Id.* at § 35.130(d).

123. *Id.* at § 35.130(b)(8).

124. *Id.* at § 35.160(a)(1), (b)(1); *Id.* at § 35.164.

125. *Id.* at § 35.130(f).

facilities are inaccessible.¹²⁶ Additionally, child welfare agencies and courts are required to provide reasonable modifications to policies, practices, or procedures for parents with disabilities.¹²⁷

The ADA's individualized treatment mandate is particularly relevant to this study. Specifically, child welfare agencies and courts must treat parents with disabilities on a case-by-case basis, consistent with facts and objectives, and may not act based on stereotypes and generalizations about parents with disabilities.¹²⁸ Therefore, the receipt of services, even if they are considered tailored to parents with disabilities, may not be enough because the ADA requires that services be *individually* tailored to the specific person's needs.

Services and supports that can be adapted to meet the individual needs of parents with disabilities must be developed and implemented. Further, courts and child welfare agencies must do more to ensure full compliance with the ADA. For example, child welfare agencies should develop policies and procedures regarding the provision of reasonable modifications, including community-based services and supports. In addition, courts should require proof from child welfare agencies that they provided individually-tailored services and supports to parents with disabilities before petitioning for termination of parental rights.

Notably, the Family First Prevention Services Act of 2017 ("Family First Act") may offer opportunities to develop and implement family preservation services for parents with disabilities.¹²⁹ Commentators have praised the Family First Act for providing funding for up-front, time-limited services to

126. *Id.* at § 35.130(b)(1)(i).

127. *Id.* at § 35.130(b)(7)(i).

128. *See, e.g., Id.* at § 35.130(b) (2018); *see also* 28 C.F.R. pt. 35, App. B (explaining in the 1991 Section-by-Section guidance to the Title II regulation that, "[t]aken together, the[] provisions [in 28 C.F.R. § 35.130(b)] are intended to prohibit exclusion . . . of individuals with disabilities and the denial of equal opportunities enjoyed by others, based on, among other things, presumptions, patronizing attitudes, fears, and stereotypes about individuals with disabilities. Consistent with these standards, public entities are required to ensure that their actions are based on facts applicable to individuals and not presumptions as to what a class of individuals with disabilities can or cannot do.").

129. H.R. 253, 115th Cong. (2017). This legislation was initially introduced as the Family First Prevention Services Act of 2016. H.R. 5456, 114th Cong. (2016); S. 3065, 114th Cong. (2016). It was sponsored by Rep. Vernon Buchanan (R-FL) in the House, and by Sen. Orrin Hatch (R-UT) and Sen. Ron Wyden (D-OR), with support from House Ways and Means Committee Chairman Kevin Brady (R-TX) and Ranking Member Sander Levin (D-MI). *Id.* The House of Representatives passed the legislation by voice vote on June 21, 2016, but it stalled in the Senate. *Actions Overview S.3065 — 114th Congress (2015-2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/3065/actions> [perma.cc/B5YS-V2J2].

prevent foster care placements.¹³⁰ Specifically, the Family First Act allocates Social Security Title IV-E funds for twelve months of in-home parenting skills programs, substance use treatment, and mental health services to keep families intact and children out of foster care.¹³¹ If individually tailored to meet parents' specific needs, these programs could serve as reasonable modifications for some parents with disabilities. However, the Family First Act does not force states to provide services using Title IV-E funds; they must "elect" to do so, and the federal government will match a state's contribution fifty percent until the year 2026.¹³² Still, the Family First Act, if implemented correctly, could improve access to individually-tailored services for disabled parents through additional federal monies for child welfare agencies.

B. Directions for Future Research

The findings of this Study provide an essential starting point for future research concerning parents with disabilities and the child welfare system. Research related to these families and the disparities they encounter is emerging. Nevertheless, the need for additional scholarship is immense. Accordingly, the potential for critical follow-up studies to the present one is substantial. Neither the legal profession nor the child welfare system can adequately ensure that parents with disabilities are afforded their rights without fully understanding their experiences, including the barriers to justice that exist for these families. This Subpart highlights areas warranting future investigation.

First, more knowledge is needed about the association between paternal disability and termination of parental rights. In this study, we found that after controlling for a variety of parent, family, court, case, and policy characteristics, maternal disability type did not predict termination of parental rights. This finding is unexpected and requires further investigation. Past research has found that parents with intellectual or psychiatric disabilities have their parental rights terminated at disproportionately high rates.¹³³ However, many of those studies were drawn from small samples and lack generalizability. Future research should examine if there are differences based on specific diagnoses rather than broad disability types. Analyses

130. John Kelly, *One Month of Spending, Years of Child Reform*, IMPRINT NEWS (Feb. 9, 2018), <https://chronicleofsocialchange.org/child-welfare-2/one-month-spending-years-child-welfare-reform> [perma.cc/6MS6-ETFF].

131. H.R. 253. Before the enactment of the Family First Act, states could only spend Title IV-E funds on foster care and adoption assistance. *Id.*

132. H.R. 253

133. See e.g., ROCKING THE CRADLE, *supra* note 19, at 78 (reporting studies that found removal rates for parents with psychiatric disabilities as high as 70% to 80%; 40% to 80% for parents with intellectual disabilities; and 13% for parents with physical disabilities); see also Booth & Booth, *supra* note 19, at 180; Booth et al., *supra* note 19, at 355; Feldman *supra* note 19, at 401; Llewellyn et al., *supra* note 19, at 239; McConnell et al., *supra* note 19, at 624.

should also be conducted to elucidate how parents with multiple disabilities fare, based on the types of disabilities they have. In this study, we coded a mother as having multiple disabilities when there was more than one disability discussed in the opinion. However, we did not measure the mothers' specific types or number of disabilities. In the present study, substance use history was included as a control variable and was found to be associated with the termination of parental rights. Additional research should consider substance use as a disability, per the ADA.¹³⁴ Moreover, among the cases in this study that involved two parents, nearly half included two disabled parents. Nonetheless, we did not stratify analyses by the type of disability the other parent had. Thus, future research should study if that changes based on their disability type.

Second, additional research is necessary to identify the causal mechanisms behind these findings. The present study was limited by the information available in the judicial opinions and was missing several potentially pertinent variables, such as in-depth sociodemographic information, detailed data on disability-related needs and available supports and services, and comprehensive family characteristics. The information about the family's race and ethnicity, for example, is essential to consider because studies have consistently found that racial and ethnic minority families are disproportionately involved with the child welfare system and have high rates of child removal.¹³⁵ In the context of disabled parents, research indicates that disability is higher among African American and Native American parents.¹³⁶ Also, in this study, poverty was identified as a predictor of termination of parental rights among mothers with disabilities, which is consistent with prior research reporting that low-incomes families fare worse within the child welfare system.¹³⁷ Hence, an intersectional lens is critical to understanding how different identities overlap to create bias within the child welfare system and lead to disproportionately high rates of termination of parental rights among parents with disabilities.¹³⁸

134. Substance use is considered a disability under the ADA. *See* 42 U.S.C. § 12,210. However, the ADA does not protect people currently using illegal drugs. *See* 28 C.F.R. Pt. 35, App. A (2019).

135. *See, e.g.,* Dorothy E. Roberts, *Child Welfare and Civil Rights*, 2003 U. ILL. L. REV. 171, 172 (2001) ("The disproportionate number of black children in America's child welfare system is staggering.").

136. *See* Li et al., *supra* note 47, at 305; Kaye, *supra* note 47; Sonik et al., *supra* note 47, at 1; *see also* ROCKING THE CRADLE, *supra* note 19, at 79 ("While no available data look specifically at the overrepresentation of parents of color with disabilities and their families, presumably the numbers are devastatingly high.").

137. *See e.g.,* Tanya Asim Cooper, *Racial Bias in American Foster Care: The National Debate*, 97 MARQ. L. REV. 215, 218 (2013) ("The nation's poorest children, not surprisingly, make up most of the foster care population.").

138. *See* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory*

Third, more research could fruitfully examine how expert testimony operates in termination of parental rights cases involving parents with disabilities. In this study, positive expert testimony concerning the mother's ability to care for her children decreased the likelihood of termination of parental rights, whereas negative expert testimony increased the likelihood. Child welfare agencies often request – or courts order – assessments of parents with disabilities by mental health professionals who then testify as expert witnesses,¹³⁹ and judges rely heavily on this expert testimony when making decisions about whether to terminate a parent's rights.¹⁴⁰ These parenting assessments are often inaccessible, fail to accommodate the needs of disabled parents, and rely on pseudoscientific measures, such as IQ scores, which neither accurately measure nor predict parenting ability.¹⁴¹ Naturally, this begs the question: “How can we give such weight to such speculation, while at the same time deny parents the opportunity to prove these guesses wrong?”¹⁴² Accordingly, future research should investigate who is testifying in these trials, what their qualifications are, and how, if at all, parents' attorneys or judges are challenging such testimony. Further, researchers should investigate the extent of compliance with, and case outcomes when the American Psychological Association's *Guidelines for Assessment of and Intervention with Persons with Disabilities* are implemented.¹⁴³

Fourth, information is needed about the types of family preservation and reunification services parents with disabilities and their families are receiving. In the present study, interestingly, receipt of services tailored to disabled parents increased the odds of termination of parental rights. This is a surprising finding and requires further investigation. Specifically, what types

and *Antiracist Politics*, 1 U. CHI. LEGAL F. 139, 140 (1989). In 1989, Kimberlé Crenshaw coined the term “intersectionality” as a way to help explain the oppression of African-American women. *Id.* See also Kimberle Crenshaw, *Race, Gender and Violence Against Women: Convergences, Divergences and Other Black Feminist Conundrums*, in FAMILY MATTERS: READINGS ON FAMILY LIVES AND THE LAW 230, 230–32 (Martha Minow ed., 1993) (explaining how the intersectionality of race, class, gender, and other social characteristics may particularly constrain poor minority women from seeking help to stop ongoing domestic violence against them). Since then, intersectionality has been used to study how people who are members of multiple historically marginalized communities experience discrimination, including people with disabilities. See e.g., Beth Ribet, *Surfacing Disability Through a Critical Race Theoretical Paradigm*, 2 GEO. J. L. & MOD. CRIT. RACE PERSP. 209, 211–22 (2010).

139. Benjet & Azar, *supra* note 89, at 239.

140. FIELD & SANCHEZ, *supra* note 104 at 244.

141. Kay, *supra* note 89, at 33. For a discussion on appropriate and accessible parenting assessments, see ROCKING THE CRADLE, *supra* note 19, at 129–38.

142. Brandon R. White, *Termination of Parental Rights of Mentally Disabled Parents in New York: Suggestions for Fixing an Overbroad, Outdated Statute*, 34 BUFF. PUB. INT. L.J. 1, 36 (2016).

143. American Psychological Association, *supra* note 109.

of services are these families receiving, and how exactly are these services accommodating parents? Additionally, why does receipt of services increase the likelihood of termination of parental rights among disabled mothers? ASFA requires child welfare agencies to make reasonable efforts to keep families together, both by preventing removal and reunifying families who are separated.¹⁴⁴ At the same time, however, when parents with disabilities are provided services by child welfare agencies, the services often do not meet the parents' individual needs.¹⁴⁵

Fifth, because nearly all of the cases resulted in the termination of parental rights, research is needed about the type of legal representation these families are receiving and if the representation is adequate. In *Lassiter v. Department of Social Services*,¹⁴⁶ the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment does not automatically confer the right to counsel to parents with low incomes facing the termination of their parental rights. Nevertheless, in forty-five states and Washington, D.C., parents have an absolute statutory right to counsel in state-initiated termination of parental rights hearings, while in the remaining five states, it is left to the judge's discretion or there is only a right in certain circumstances.¹⁴⁷ Even with this right, however, parents with disabilities often experience barriers to receiving meaningful legal representation.¹⁴⁸ Specifically, parents with disabilities are often represented by court-appointed attorneys who have high caseloads and minimal training about parents with disabilities.¹⁴⁹ Thus, these attorneys may not have the necessary knowledge to represent these parents, which, in turn, may affect case outcomes. Accordingly, scholars should study the quality of legal representation that disabled parents are receiving in termination of parental rights proceedings as well as the training that their attorneys receive. Understanding barriers to meaningful representation can inform the development and implementation of legal services to meet these parents' needs.

Sixth, future research should investigate if the experiences of the disabled mothers in this study are comparable to all appellate termination of parental rights cases. Here, nearly ninety-three percent of the cases resulted

144. 42 U.S.C. § 671(a)(15)(B) (2018). Notably, some states bypass this requirement when disabled parents are involved. See ROCKING THE CRADLE, *supra* note 19, at 90–92.

145. Joshua B. Kay, *The Americans with Disabilities Act: Legal and Practical Applications in Child Protection Proceedings*, 46 CAP. U. L. REV. 783, 809–10 (2018).

146. *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, at 31–32 (1981).

147. Vivek Sankaran & John Pollock, *A National Survey On A Parent's Right To Counsel In Termination Of Parental Rights And Dependency* 1 (2016), http://civilrighttocounsel.org/uploaded_files/219/Table_of_parents_RTC_in_dependency_and_TPR_cases_FINAL.pdf [perma.cc/ZR65-2PRS].

148. ROCKING THE CRADLE, *supra* note 19, at 98–101.

149. ROCKING THE CRADLE, *supra* note 19, at 100.

in the termination of parental rights.¹⁵⁰ In comparison, a study of California termination of parental rights appeals cases found that between the years 2003 and 2006, only ten percent of the cases were reversed.¹⁵¹ Similarly, a study of Indiana Court of Appeals cases decided between March 1, 2008, and November 30, 2009, revealed that only five percent of the termination of parental rights cases were reversed.¹⁵² Researchers should determine if the national rate is parallel to California and Indiana. If the national rate of appeals cases resulting in termination of parental rights is different between parents with and without disabilities, research needs to determine why. If the rates are analogous, scholars should elucidate why so many parents are losing their appeals.

Seventh, additional investigation is needed to understand geographical differences.¹⁵³ In the present study, we found that appeals cases had decreased odds of termination of parental rights in the Southeast and West. The reasons for this finding must be understood on a regional and state basis. Are the services and supports better in these areas for disabled parents? Do professionals receive training on how to work with parents with disabilities and their families effectively? Are there specific policies that affect outcomes in these cases?

Interestingly, state dependency laws that included disability as grounds for termination of parental rights did not predict outcomes in our study. Nonetheless, advocates have actively sought to amend state child welfare laws to protect the rights of parents with disabilities, and nearly thirty states have passed or considered such legislation.¹⁵⁴ In light of the variation in policies and practices across states and regions, it is essential to understand how these differences affect parents with disabilities involved with the child welfare

150. See *infra* Table 2.

151. William Wesley Patton, *To Err Is Human, To Forgive, Often Unjust: Harmless Error Analysis in Child Abuse Dependency Proceedings*, 13 U.C. DAVIS J. JUV. L. & POL'Y 99, 112, (2009) (citing JUDICIAL COUNCIL OF CALIFORNIA, 2007 COURT STATISTICS REPORT: STATEWIDE CASELOAD TRENDS: 1996-1997 THROUGH 2005-2006, at 26.)

152. Karen A. Wyle, *Fundamental Versus Deferential: Appellate Review of Terminations of Parental Rights*, 86 IND. L.J. SUPP. 29, 29–32 (2011).

153. Josh Gupta-Kagan, *Child Protection Law as an Independent Variable*, 54 FAM. CT. REV. 398, 399 (2016) (calling for empirical legal research that considers geographical facts related to the child welfare system, explaining “Enormous outcome differences exist between jurisdictions at every stage of child protection cases. These differences are so large that varying state laws, administrative agencies, and family courts, rather than demographic or socioeconomic differences, likely explain most of the differences.”).

154. NATIONAL RESEARCH CENTER FOR PARENTS WITH DISABILITIES, MAP OF CURRENT STATE LEGISLATION SUPPORTING PARENTS WITH DISABILITIES, (Oct. 22, 2019). <https://heller.brandeis.edu/parents-with-disabilities/map/index.html> [perma.cc/MFX2-G7UM].

system. Having this understanding, in turn, will inform policymaking and advocacy strategies.

These are just a few of the many critical areas warranting further examination. As research regarding parents with disabilities and the child welfare system expands, we expect these questions and many others to begin to be addressed. Further, in forthcoming publications, we will examine some of the issues identified in this study, such as what predicts when the ADA is raised or applied in appellate termination of parental rights cases involving mothers with disabilities.¹⁵⁵

VI. CONCLUSION

The belief that people with disabilities are inherently unfit to care for children endures in the United States, and today manifests in discriminatory child welfare policies and practices against disabled parents and their families. Although scholars have documented that parents with disabilities experience significant disparities within the child welfare system, existing legal scholarship has failed to empirically analyze appellate judicial opinions to identify predictors of termination of parental rights among parents with disabilities. This study, therefore, makes a novel contribution to legal scholarship by using quantitative analysis to investigate appellate termination of parental rights decisions involving mothers with disabilities.

To adequately protect the fundamental right of parenthood for disabled people, policymakers and the legal profession must fully understand the experiences of parents with disabilities during termination of parental rights proceedings. This study provides new knowledge about predictors of termination of parental rights among cases involving mothers with disabilities are decided. We learned that ninety-three percent of the cases in this study resulted in the termination of parental rights. After controlling for a variety of parent, family, court, case, and policy characteristics, however, maternal disability type did *not* predict termination of parental rights. Nevertheless, the odds of termination of parental rights were higher for cases in which parents had substance use histories, household incomes below 200% of the federal poverty level, prior child welfare system involvement, negative expert testimony, or received family preservation and reunification services tailored to parents with disabilities. Conversely, the likelihood of termination of parental rights was decreased in cases that included positive expert testimony or were decided in the Southeast or West.

Many issues undoubtedly persist for policymakers, the legal profession, and scholars to resolve. Findings from this study underscore the importance of accessible parenting evaluations for parents with disabilities facing termination of parental rights. Further attention must also be given to the development and implementation of individually tailored services and

155. Robyn M. Powell, et al. *The Americans with Disabilities Act and Termination of Parental Rights Cases: An Examination of Appellate Decisions Involving Mothers with Disabilities* (forthcoming).

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supports for parents with disabilities and their families that will help prevent child welfare system involvement and promote family reunification. Additionally, further research is needed to understand issues related to these families and their interactions with the child welfare and judicial systems as well as strategies for effective legal representation.