Marsha Garrison Family Law & Policy Fellow abstracts

2024

Informed Doula Services Can Serve as a "Reasonable Accommodation" for Parents with Disabilities Under the *Americans with Disabilities Act* of 1990

Jessica H. Ramsawak '24

Abstract:

Parents with disabilities are disparately impacted by scrutiny and surveillance in the family regulation system. Though the Americans with Disabilities Act and other federal laws have been designed to safeguard against discrimination and provide reasonable accommodations to people with disabilities, parents with disabilities in the family regulation system face structural barriers and have their children forcibly removed from their homes at disproportionately high rates. This suggests that the ADA is not being effectively applied in these circumstances to demand appropriate accommodations to ensure that parents can exercise their fundamental rights to have safe and equitable pregnancies and families.

This paper argues that doula services can serve as a reasonable accommodation for parents and can benefit the varied needs of parents with disabilities. Further, doulas can undergo education and training workshops to learn in part how to defend their clients against surveillance from the family regulation system. In line with the ADA's history of adapting to disability-related needs, expanding access for parents to be accommodated under the ADA with resources such as doula services could foster more equitable pregnancy and parenthood experiences.

Calling for Greater Autonomy for Modern American Families Through Standby Guardianship

Yumi Higashi '25

Abstract:

Immigration has changed the demographic of American families over the past decades. For immigrant parents without other family members in the U.S., guardianship planning can be much more challenging than the others. Their natural choice might be to have a family member as guardian and move the children back to their home country. Even if a parent nominates a guardian in a duly executed will, however, a judicial proceeding takes at least a few months to over a year until the person named in the will gains legal power to act as guardian. Parents cannot proactively plan for childcare during this waiting period. In addition, under regular guardianship procedure, parents would not know whether the court would agree with their choice of guardian, nor can they further assert the reasoning.

This paper supports that a judicial guardianship proceeding is necessary and does not infringe on the fundamental rights of parents to direct child rearing. Instead, this paper proposes to utilize standby guardianship laws to empower parents to direct smooth transition of childcare without any intermission. While standby guardianship was originally enacted to safeguard terminally ill parents and their children, more families can benefit from it regardless of the health condition of parents. Specifically, this paper argues that limiting access to standby guardianship violates substantive and procedural due process, the health condition requirement should be abolished, and states

should collaborate to collect and analyze data, share best practices, and continue to improve administrative efficiency.

Children's Healthcare Rights and Gender-Affirming Care: An Analysis of Bill S2475A

Eva van Ophem '25

Abstract:

One of the most controversial topics in medical care right now is gender-affirming hormone therapy and whether or not minors and youth should have access to this treatment. Across the United States, a whopping 23 states have implemented policies that severely limit or outright ban gender-affirming care (GAC) for minors. In June 2023, New York State implemented a law to ease minors' access to GAC and counteract the hard-edged bans from other states (Bill S2475A). New York became a "Safe Haven" state in which state courts are barred from enforcing the laws of other states that might authorize a child to be taken away from their parents if the parents provide GAC including puberty blockers or hormone therapy. In short, parents cannot be penalized in custody battles and risk losing their children if they allow them to undergo gender-affirming hormone therapy.

There is one major issue with this bill, however. Bill S2475A does not give minors more rights and agency regarding their healthcare decisions, so minors are still heavily reliant on their parents and guardians to give the "okay" regarding access to GAC. This paper explores an alternate solution to easing minors' access to GAC, which is allowing "mature minors" to make the medical decision for themself regarding their hormone therapy and care. In the United States, there has been a long history of parental rights taking precedence over that of their children, and it has been well-established that parents have the ultimate say over most of what their children do. However, many doors have already opened up which allow minors and teenagers to make decisions for themselves regarding sexual health, abortions, pregnancy, STDs, and so forth. The same principles and ethical concerns that apply to teens' sexual health decisions can be used here. Gender-affirming hormone therapy is not without its risks, however, and this paper further explores what those risks are and what the ramifications would be of lowering the age of consent for medical care.

Exploring Mediation and Litigation for Domestic Relations Disputes: A Comparative Analysis of Pros, Cons, Accessibility, and Alternative Approaches

Jessie Duggan '25

Abstract:

This project examines mediation and litigation as methods for resolving domestic relations disputes, assessing their respective advantages and drawbacks while considering their accessibility. Mediation, known for its collaborative nature and emphasis on communication, offers parties the opportunity to craft mutually agreeable solutions, potentially fostering long-term cooperation and preserving relationships. However, its effectiveness relies heavily on voluntary participation and may not be suitable for cases involving power imbalances or high conflict. Conversely, litigation provides a structured legal process with binding results, ensuring impartiality and enforcement of court orders.

Nevertheless, it often exacerbates animosity between parties, entails substantial time and cost, and grants limited control over outcomes. Accessibility to both methods varies, with mediation generally offering a more informal and cost-effective avenue compared to the formalities and expenses associated with litigation. Furthermore, alternative dispute resolution mechanisms, such as collaborative law and arbitration, present viable options that blend elements of mediation and litigation, tailoring solutions to meet the unique needs of disputing parties. By critically analyzing the pros and cons of mediation and litigation, and exploring alternative approaches, this project aims to provide stakeholders with valuable insights into navigating domestic relations disputes effectively and ethically.

Beyond Punishment: Rethinking Child Support Enforcement in Legal Frameworks

Jessica Flaherty '24

Abstract:
This paper focuses on child support enforcement in the criminal legal system, and the ways in which merging the two is dangerous for American families. While the enforcement of child support obligations is undeniably crucial for the well-being of children and families, resorting to punitive measures within the criminal system creates a revolving door of incarcerated parents, usually non-custodial fathers. This results in weakened family ties and removes other types of physical and emotional support from children's lives.

Through stories of firsthand accounts and an analysis of comparative law, this paper argues that criminally punitive approaches to child support enforcement fail to effectively address non-payment and perpetuates cycles of poverty, incarceration, and family alienation. Moreover, it highlights the disproportionate impact of criminalizing child support obligations on marginalized communities, exacerbating systemic inequalities. By advocating for alternative approaches grounded in social support and family-centered policies, I seek to provoke critical reflection and encourage meaningful reform in the realm of child support enforcement.

2023

An Awful Situation with No Clear Guidance: Things the Legal System Can Do to Empower Parents Struggling with Mental Health and Their Children

Chelsea Daniels '23

Abstract:
This paper explores the impact our legal system has on families where parents struggling with mental health or substance abuse. I explore the legal definitions of certain mental health or substance abuse struggles and compare it with the clinical, and how that impacts parent outcomes. it explores the ways in which our legal systems responses to these issues are ineffective or harmful to the children they intend to protect. Family law scholars have noticed a lack of uniformity in how family courts handle parental addiction and mental illness. This can be attributed to the fact that few Family Court judges have any formal training in evaluation these serious issues. In addition, there is very vague legislation and guidelines about dealing with these issues, and the scientific community is often ignored. Accordingly, without clear guidelines, personal beliefs and values often affect custody decisions, this can lead to poor

outcomes for children and parents. Some states, such as California, include parental alcohol abuse as one of the specific factors the court should consider in determining custody issues. However, this has also led to widely differing interpretations and applications, since the term "alcohol abuse" itself means different things to different people, including judges.

I found that there are three main things to fix in order to improve family this and actually increase the likelihood of helping these families. (1) Growth in the expertise on these topics, within the legal community. Anyone deciding on these issues should have training on what to consider This training should be recurring, include an expansive and up to date understanding of the mental illness, addiction, or more than likely the combination. (2) Second courts should have means to provide families with better access to resources. Families need access to well invested in resources such as drug treatment programs and support services that can help parents overcome their addiction and become fit to care for their children. (3) Legislature should use the experts and increased resources to come up with clearer and more uniform laws. The inconsistency and space for bias is causing more harm than help regarding this issue and the children deserve to be our main priority.

The "Big Brother" of the New York State Family Policing System: How 1984-esque Surveillance Affects Pregnant and Parenting Teens in a Post-Dobbs World

Erin Larkin Jensen '23

Abstract:
On June 24, 2022, the Supreme Court overturned the constitutional right to abortion for women across the United States, imposing severe and sudden constraints on notions of bodily autonomy. This ruling irrevocably harms all groups of women. Yet, sadly, not much has changed for the disproportionately at-risk Pregnant and Parenting Teens ("PPT") living in foster care. Dobbs threatens PPT rights as young mothers who arguably have minimal rights as these women are no strangers to the idea of the state enacting control and scrutiny over their lives through surveillance. This paper, inspired and empowered by the personal experiences of young women living in group homes, will discuss how the family policing system has wielded surveillance over youth in foster care through the weaponization of medical and mental health records, complete lack of sexual education, and controlling living conditions within group homes for decades. It leaves us with a simple fact: the family policing system is only further reinforced by the Dobbs decision.

This paper explores the typology of surveillance that currently exists within the family policing system and grapples with the effects it has on PPT in foster care, specifically focusing on those living in group homes. The goal of this paper is to shed light on the detrimental effects surveillance has on the removal of the children of PPT by arguing that, rather than providing care for these young women, these barbs of surveillance instead cultivate distrust in the system and entrap youth in a multi-generational cycle that is near-impossible to escape. Drawing on the Dobbs decision, this paper will touch on how it adds a layer of surveillance and reminds PPT of their lack of autonomy as children of the state.

The Power of the Patriarchy: Financial Inequity and the Rise of Parental Alienation Theory to Defend Against Allegations of Domestic Abuse and Child Sexual Abuse

Jami Nicolson '24

Abstract:

In the late twentieth century, Parental Alienation Syndrome (PAS) emerged in response to rising allegations of child sexual abuse of the child(ren) by mothers targeted at fathers during custody proceedings. This new theory was proposed to capture the perceived experience of children who were being coached by one parent to breakdown that child's relationship with the other parent. In the context divorce or separation proceedings, when custody is often a contentious matter between the parties, one parent may strategically allege parental alienation. This note explores the development and growth of parental alienation theory and argues that parental alienation allegations have the ability to problematically change the context of custody cases where domestic abuse is present. While domestic abuse cuts across all identity categories, the scope of this note will focus on the rise of parental alienation allegations in custody cases by fathers against mothers who are either victim-survivors of domestic abuse or are alleging child sexual abuse on behalf of their child(ren). When parental alienation is alleged against a victim-survivor of domestic abuse, the burden of proof is strategically shifted from the party causing harm to have to defend against allegations of abuse, to the party alleging the harm to have to prove that they are not alienating the child. This essay then will review caselaw where parental alienation is alleged by fathers in response to allegations of abuse by mothers in custody cases to highlight the integration and effects of parental alienation theory on the judicial system. After thorough analysis of present barriers to access to counsel in the civil legal system, this note offers a two-part solution to eliminate inequities between parties' where allegations of parental alienation and abuse are both present. First, it proposes the need for robust training and support for court appointed civil attorneys in trauma- informed care and presenting allegations of abuse. Second, it proposes the radical introduction of a balancing test where judicial actors have discretion weigh the parties' legal resources in order to ensure fairness when a parental alienation argument is presented in response to allegations of abuse.

When Permanency is Permanent Separation: In the Family Regulation System, A Temporary Removal Fast Tracks Terminating Parents' Rights

Alison Peebles '24

Abstract:

The Adoption and Safe Families Act (ASFA) is a federal law that creates a mandate for states to move to terminate parents' rights if a child has been in foster care for fifteen out of the twenty-two most recent months.

For each adoption over a threshold amount, the federal government pays states, resulting in the United States disbursing over four hundred million dollars to states for terminating over two million children's parents' rights. Black, Indigenous, and families of color as well as low-income families disproportionately experience the trauma and harm of permanent family separation.

This Note argues that, because of ASFA's rigid timeline coupled with persistent family court delays, government intervention via a temporary removal to foster care during a "child protective proceeding" is a central contributing factor to a termination of parental rights (TPR). Government-forced family separation causes irreparable and damaging breaches to the parent-child relationship, earning TPRs the epithet "the civil death penalty." ASFA must be repealed immediately, and the solution to keeping families together and safe should include distributing no-strings-attached cash payments directly to parents. Additionally, investing in robust anti-poverty efforts, led by communities who are the most impacted by the family regulation system, will encourage self-determination and autonomy for families, thereby rendering the family regulation system obsolete.

2022

Parental Alienation: Expert Testimony as Armor or Ammunition

Nicholle Feldman ’23

Abstract:
This paper explores the development and use of "Parental Alienation Syndrome" (PAS), coined in 1985 by Dr. Richard Garner, in child custody proceedings. Garner defined the disorder as one in which children, influenced by the allegedly "loved" parent, embark upon a campaign of vilification of the allegedly "hated" parent. By examining the application of PAS, I identify its challenges and the dichotomy of thought surrounding it. One perspective believes PAS is a genuine and tragic antagonization of the alienated parent, yielding false allegations and unwarranted hatred by the parties' child. Litigants in favor of PAS use it to disprove fiction and unify a parent who is unjustly isolated from their child. This stance also likens the behavior of the alienating parent to child abuse. The other perspective deems PAS a farcical attempt to attack an innocent parent who is only advocating in their child's best interest. This approach views the syndrome as a "junk science," being used to invalidate the claims of a child justified in their negative view of that parent.

This paper analyzes the use of expert testimony when a party alleges parental alienation in a divorce action. Monied litigants often favor the costly approach of involving expert testimony to illustrate parental alienation to the factfinder. Research shows that ultimately, PAS and the expert witnesses involved are not viewed favorably by the courts. The syndrome is still in its early stages of acceptance, and experts repeatedly miss the mark by failing to make firsthand observations of the child's experience. The court's response over the past few decades leads to my conclusion that neither as armor nor ammunition is the allegation of PAS worth the attempts by the experts to capitalize on custody disputes.

The Forgotten Victims of the Hague Convention

Rosaleen Maresco ’23

Abstract:
This paper focuses on domestic violence survivors who flee from their violent partners with their children to the United States, from a foreign country, only to be caught in the web of the Hague Convention of 1980 and its Codified law in the United States, the International Child Abduction Remedies Act (ICARA). The goal of this paper is to shed light on the detrimental effects for children who witness domestic abuse and are still expected to return to the parent that caused the abuse and why there needs to be a change to the laws surrounding international child abduction.

The United States statutory law and subsequent case law have established tests to apply when a child has been abducted in a foreign country and needs to be returned to their “habitual residence.” While an exception exists, in theory, for victims of domestic violence, in practice, federal case law in the United States has yet to explain the direct requirements for providing clear and convincing evidence for this exception. This includes the most recent US Supreme Court decision on the matter, Monasky v. Taglieri where evidence of abuse existed, but the court chose only to establish the existence ofthe child’s habitual residence. While there is hope for change with the US Supreme Court agreeing to hear another case on the matter recently, Golan v. Saada, this paper hopes to explain the urgency to protect these mothers and children who are attempting to find safety and security within the walls of the United States.

2021

The Future of Kinship Care in New York State: A Comparative Examination of Best Practices and Consequences

Abstract:

Over the last two decades, the family regulation system has increasingly relied on extended family members to act as caregivers for children who have been removed from their parents. There are approximately 2.13 million children in the United States, who are living in some type of kinship care arrangement. In an effort to support this growing area of childcare, New York State in 2017 expanded its Kinship Guardianship Assistance Program (KinGAP). The amendments widened the definition of "relative guardian" to accommodate for family friends who may be caring for removed children. Additionally, KinGAP increased the period for how long families can receive assistance payments.

This paper examines the potential complications and shortcomings of New York's KinGAP program by comparing it to the kinship care programs of California and Illinois —both of which implemented more comprehensive or earlier reforms. The kinship care expansion in California and Illinois revealed that, if reforms and financial support systems are not robust enough, kinship care actually exacerbates problems for many low-income families or families with elderly caregivers. This paper will not only be exploring new policy proposals and best practices for kinship care, but also asking how we can imagine solutions outside of the family regulation system itself to support healthy families and permanent placements for children.

The Double Standard of Young People's Autonomy in the Legal System

Abstract:

Adolescents have become a special demographic within the legal system in the past couple of decades. While the courts continue to struggle to determine how best to administer what they consider proper punishment, they have recognized young people's rights to decision making while simultaneously acknowledging that they cannot be fully accountable for their actions. Accordingly, many jurisdictions have enacted legislation that prevents 16- and 17-year-olds from automatically being tried as an adult and placed in adult jails. This change has come from the legal system's acknowledgement that young people are fundamentally different than adults and shouldn't be treated as such. At the same time, minors have been given increasingly more autonomous rights in the health care context, including the right to mental health services, physical health services and in some places, the right to independent consent for DNA testing.

However, once a young person is placed in the carceral system, their autonomous rights are compromised. When they are placed in the carceral system, the courts have decided they are mature enough to face the consequences of their actions. But the act of taking away the rights to their personhood is in direct contradiction to their decision of punishment. Instead of giving young people the right to make mental health and medical decisions, the law allows any parent or guardian to override the young person's decisions. At any time during a young person's sentence a parent or guardian can object to health services including medication, nutrition and even the taking of samples for analysis. The legal system should not be allowed to deem young people mature enough to place them within the carceral system and simultaneously take away their rights to their personhood. This paper explores the law surrounding the autonomous rights of minors within the carceral system and advocates for their full and complete rights to their health and bodies.

Legal Representation in Child Protection Proceedings: Red States vs. Blue States

Abstract:

This research project considers the impact of state-level presidential voting patterns on the type and quality of legal representation that states provide to children and parents involved in child-protection proceedings. It builds on the finding that, since 2004, the outcomes of U.S. presidential elections, at the state level, are highly correlated with the extent to which a state has moved toward the "second demographic transition," (SDT) marked by increased gender equality, later marriage and childbirth, smaller families, and higher levels of cohabitation and nontraditional relationships. Some family law scholars have concluded that the same SDT variables which predict presidential-election outcomes also predict state differences in family law and policy, with low-SDT (red) states adopting policies that favor traditional families and gender roles and high-SDT (blue) states adopting policies that promote individual autonomy and relational choice. This thesis is undeniably correct for controversial issues like same-sex marriage and abortion, but there is very little research on less controversial aspects of family law. Because representation in child-protection proceedings involves fundamental policy choices about parents' and children's rights, one would expect a blue-red policy divide. I utilized national surveys of children's and parents' representation to determine whether there were blue-red state differences in a number of variables relating to the type and quality of representation in child-protection proceedings; I found no red-blue divide. My conclusion is that legal representation in child-protection proceedings has not been sufficiently politicized to trigger differences in state policy.

Punishing Drug Use During Pregnancy and the Slippery Slope of Fetal Rights

Abstract:
In Family Courts throughout the country, civil neglect and abuse petitions are routinely brought against women based on their drug use during pregnancy. This project analyzes divergent state approaches to drug use during pregnancy via Family Court systems. About half the states consider drug use during pregnancy as child abuse or neglect per se under their child-welfare statutes. The remaining states require a showing of harm to the child caused by the parent's drug use during pregnancy before a finding of neglect or abuse can be made.

While some may be quick to justify such state interventions in the name of child protection and welfare based on the presumption that drug use always harms fetuses in utero, and thus the child once it is born, this project questions the propriety of such justifications. While, in some instances, drug use during pregnancy can have some detrimental health effects, the theoretical underpinning of such assumptions has been dramatically distorted due to racist and classist assumptions that permeate child protective schemes. Medical research suggests that harm to the child resulting from in utero exposure to substances has been vastly overstated due in large part to the pervasive rhetoric of the War on Drugs, "crack babies," and the vilification of Black motherhood. As such, the justifications for state intervention (i.e., preventing harm to the child) must be carefully scrutinized. Otherwise, Family Courts, despite their purported rehabilitative and non-punitive purpose, are simply carrying out state- sanctioned family separation, the trauma of which cannot be overstated.

New York's statutory scheme requires a showing of harm to the child caused by drug use during pregnancy before a finding of abuse or neglect may be sustained. While far preferable to state approaches which permit such a finding without any showing of harm, New York caselaw suggests ample room for improvement. First, New York must promulgate clear standards for establishing harm to the child. New York also cannot ignore the harm of the most drastic and invasive of its interventions – removal of the infant – in its analysis. New York must establish clear guidelines for drug testing and subsequent reporting of pregnant women. Finally, to truly work in the best interests of children and families and to best align with its "rehabilitative" purpose, New York Family Courts must prefer interventions supporting maternal health and recovery.

The Effects of COVID-19 on Educational Neglect Proceedings

Abstract:
In March of 2020, as cases of COVID-19 began to rise in the State of New York, Governor Andrew Cuomo declared a state of emergency, closing NYC public schools and requiring non-essential workers to stay home. As a result of Cuomo's stay-at-home orders, children were no longer physically available to trained individuals required to report, such as teachers, causing a decrease in the number of reports of alleged child abuse. On the contrary, although there was an overall decrease in the child welfare reports by mandatory reporters, complaints of educational neglect increased dramatically when many low-income students were not attending virtual classes as they lacked the resources to do so.

In efforts to address the increasing number of educational neglect cases resulting from COVID-19, as well as complaints that a child's failure to participate in remote learning should not be enough to justify an investigation, the New York State Senate introduced Bill S8398 and additional guidelines for mandatory reporters. Regardless of the ineffectiveness/effectiveness of the Bill and guidelines, the government, as a result of COVID-19, exposed a greater issue within child welfare cases—that government intervention/ interference is largely connected with a family's income and inability to provide resources or opportunities for their children rather than "bad" parents.

This paper examines the relationship between COVID-19 and educational neglect cases and criticizes Bill S8398 and additional guidelines for mandatory reporters as these 'remedial actions' are limited to COVID- 19 and do nothing to resolve the issues on a larger scale. In doing so, this paper further seeks to bring attention to the disproportionate impact of the system on disadvantaged communities who, as a result of COVID-19, are at a higher risk of educational neglect proceedings and governmental surveillance.

2019

Same-Sex Parenting after Obergefell: The Continued Fight for Equality

Abstract:
LGBT couples continue to face difficulty and impediments despite marriage equality. Notwithstanding this major success for equality, same-sex couples are still faced with barriers when it comes to building a family— a natural sequence that follows marriage. The purpose of this paper is to examine the legal remedies available for same-sex couples and individuals as well as to analyze future litigation continuing the fight for same-sex couples and family equality. For instance, one current issue is that some states allow child welfare agencies to act pursuant to their religious beliefs, which allows them to refuse to place children for fostering and adoption with same-sex couples. Moreover, the laws protecting such organizations receive taxpayer funds to perform services on the state's behalf, which includes the process of screening prospective parents for caring after foster children or matching homes for foster children. This creates a concern of state supported discrimination. Part I of this paper addresses the legal consequences and litigation surrounding same- sex couples and the current tensions between marriage equality and the protection of religious freedom. Part II looks onward regarding same-sex family litigation after Masterpiece Cakeshop and the continued fight for equality.

Replacing Foster Care with Family Care: The Family First Prevention Services Act of 2018

Abstract:
On February 9, 2018, the Family First Prevention Services Act ("FFPSA") was enacted as part of the Bipartisan Budget Act. This Act reallocates federal child welfare funding streams, Title IV-B and Title IV- E of the Social Security Act, to assist families at risk of entering the child welfare system, specifically by reimbursing

states for families' mental health services, substance abuse treatment, and in-home parenting skills training. For the first time, federal dollars are being redirected from foster care homes to parents to address the increasing number of children in foster care related to abuse and neglect, the opioid epidemic, mass incarceration, and increased homelessness.
This federal funding will reduce the number of children in foster care and shift the focus of our child welfare system from the removal of children to the preservation of families.

As of October 20, 2017, 437,465 children were in foster care with a median age of 7.8 years. Of those, 49,234 children entered foster care before their first birthday. While family separation should protect children from child abuse and neglect, the trauma of family separation is child abuse itself. This paper examines the current federal funding streams dedicated to child welfare and the new FFPSA as a response to the increasing number ofchildren in foster care. Part I ofthis paper will set forth a briefhistory offederal child welfare legislation regarding funding from the 1980s to the present. Part II will analyze the scope of the FFPSA, discussing its services, duration, and target population. Part III will highlight the limitations of the FFPSA, focusing on the available funding, the opioid epidemic's effect on child welfare, and discrimination in access to preventative services.
Finally, Part IV will argue the necessity ofoptimizing federal funding streams to better serve the targeted populations and incentivize states to provide family care through more federal funding, earlier intervention, more inclusive services, and niche markets like daycare.

Child Marriage in the United States

Abstract:
Child marriage is a quiet and dangerous epidemic in the United States. In a continuing failure of the legal system, twenty states do not have a statutory age minimum set. Over 200,000 children under the age of 18 were married between 2000-2015, about 37 children a day. The CDC (Centers for Disease Control) estimates six percent offemales (girls) and two percent ofmales (boys) in the present U.S. will be married before age eighteen.

Boys are also victims of child marriage, but to a significantly lesser degree than girls due to gender and historic bias. Child marriage is not confined to a single geographic area, culture or tradition and has a high rate of divorce and instability. Married children are two times more likely to live in poverty, and three times more likely to be victims of domestic violence from spouses than married adults.

This paper explores the history of child marriage, discusses the "current" laws in effect by state and the legal exceptions to minimum ages, and considers modern legislation and activism efforts while arguing for a minimum marriage age of 18 with no exceptions.

2017

Incorporating a Trauma-Informed Approach to Youth Victims of Trafficking

Abstract:
Anywhere between 9,000 and 100,000 youth are victims of sex trafficking in the United States annually. Since 1910, federal and state lawmakers have adopted numerous laws and policies to address trafficked youth. Most recently, states have begun to adopt Safe Harbor Laws, in conformity with the Trafficking Victims Protection Act,

to shield youth from being prosecuted for prostitution. Despite these efforts, trafficked youth continue to experience police harassment, criminal incarceration, and criminal treatment. Meanwhile, the men engaging in sex with these minors, along with the men trafficking these minors, are rarely, ifever, prosecuted for their crimes. This project provides an overview of youth in trafficking in the United States, and identifies common trends and vulnerabilities among the victims. It then analyzes current federal and state legislation, such as the Trafficking Victims Protection Act and state Safe Harbor Laws, and highlight gaps and inconsistences between law, policy, and practice. Finally, it advocates for the incorporation of trauma- informed services into the trafficking intervention models of law enforcement agencies and the courts.

Embracing the Indian Child Welfare Act (ICWA) and Indian Culture in the Twenty-First Century

Abstract:
The assimilation of Native Americans into American culture dates back to the time of the first settlers. From Pocahontas to Geronimo, Native Americans have been oppressed by coerced assimilation. Up until 1978 native children were being taken away at an alarmingly high rate from their families and, often put up for adoption. The Indian Child Welfare Act of 1978 (ICWA) was passed to prevent native children from being taken away from their families and tribe. This Act was intended to preserve a culture that has been under attack since the first settlers at Jamestown.

This paper examines ICWA's history and argues that ICWA should be vigorously enforced. This discussion will include: 1) the history and rationales for ICWA; 2) the adoption industries lobbying against ICWA; 3) legislation passed in 2016 updating ICWA and SCOTUS cases that came dangerously close to invalidating ICWA. After this background, it will argue that in order for ICWA to prevail Indian sovereignty must be recognized and more cultural education must be taught in schools and through the media.

The New York Court of Appeals' Expansion of the Definition of the Term 'Parent' Leaves Future Questions Unanswered

Abstract:
On August 30, 2016, the New York Court of Appeals in the Matter of Brooke S.B. v. Elizabeth A.C.C., expanded the definition of the term 'parent,' overruling the twenty-five year-old rule that barred functional parents standing to seek custody or visitation. In 1991, the New York Court of Appeals decided Alison D. v. Virginia M. where they defined the term 'parent' to include only people who have a biological or adoptive relationship with the child, reasoning that the typical family consisted of a husband and wife. In many cases subsequent to Alison D., courts have attempted to alleviate the harsh application this rule had on many parents and their children. Finally, based on the major changes in the law and statistical data of non- traditional families, the court found this definition became "unworkable". It held that if a non-biological, non-adoptive parent, by clear and convincing evidence, can prove a pre-conception agreement to jointly raise the child, he or she has established standing to seek custody or visitation. However, the court did not answer whether a petitioner, in the absence of a pre-conception agreement, could establish standing for a custody or visitation proceeding. This note argues that in the absence of a pre-conception agreement a non-biological, non- adoptive parent should have the opportunity to establish standing under a functional approach that considers (1) consent on the part ofthe biological or adoptive parent, (2) the functional parent's intent when forming a relationship with the child, and (3) the relationship formed between the child and the functional parent.

This paper has been accepted for publication in the Journal of Law and Policy.

2016

Shame Stigma and Mass Incarceration: The Effect of Shame on Children with Incarcerated Parents

Abstract:

Many children that have a parent who encounters prison face almost insurmountable odds that affect their emotional, academic, and financial prospects, both short- and long-term. United States lack of support for current and former incarcerated adults has a radical trickle-down effect that harms their children. While there are services available for children, these efforts fall short. This lack of empathy and support, both financially and systemically, essentially is shame stigma.

The purpose of this discussion is to examine the stigma of shame that children with an incarcerated parent experience and how society is currently helping them cope with the parent's absence. This discussion will briefly describe issues affecting these children such as: 1) how shame effects children; 2) bonds that children share with their parents and how these bonds are severely interrupted upon incarceration; and 3) how the long-term ramifications create a generational effect of mass incarceration.

International Family Law: The Case for an International Convention on Premarital Agreements

Abstract:

In the past, the fundamental legal milestones of family life – marriage, divorce, and death – often occurred in the same jurisdiction. In modern society, however, family law is increasingly becoming an international practice. One study estimates that in 2000, there were approximately 12 million international marriages and that this number has increased steadily in the years since. Family law varies widely amongst nations, making it essential to have a modern means for parties to contract around default matrimonial regimes. By allowing parties to execute internationally recognized premarital agreements, we afford prospective spouses predictability and give meaning to their personal autonomy. This project puts forth a model international convention on premarital agreements – essentially laying out principals of law that, if adopted, would create uniform standards by which premarital agreements could be enforced internationally. The convention adopts many of the substantive and procedural facets of the Uniform Premarital and Marital Agreements Act (UPMAA), and is heavily influenced by the jurisdictional mechanisms in other international conventions and treaties.

Raising a Rape-Conceived Child: Limited Legal Protections Afforded to Women Who Become Mothers Through Rape and a Proposal for Change in New York

Abstract:

Approximately 25,000-32,000 women become pregnant from rape annually, with anywhere from 33%- 64% of these women choosing to raise their children. The purpose of this paper is to examine the lack of legal remedies available to women who become pregnant as a result of rape and choose to raise their children, and propose a new legal model, within the framework of New York law. The laws in many states make exceptions for raped women who choose abortion and make adoption readily available; however women who choose to raise their rape-conceived children are left with either illusory legal options, or no remedy all together. Part I of this paper briefly discusses the legal and non-legal consequences that women suffer when they choose to raise their rape-conceived children.

Part II examines the role of parental rights in the United States and the legal standard required for determining parental unfitness upheld by the United States Supreme Court. Part III addresses the various factors New York considers in custody cases, specifically the "best interest of the child" standard. This section also examines how New York courts view intimate violence from both a psychological and legal perspective. Last, Part IV argues for specific rape custody laws to be passed in New York that could serve as a model for all other states.