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A Life Worth Living: Fighting Filicide Against Children With Disabilities

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A LIFE WORTH LIVING: FIGHTING FILICIDE AGAINST CHILDREN WITH DISABILITIES

Haley Moss*

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INTRODUCTION

In February 2010, multimillionaire Gigi Jordan took her eight-year-old son, Jude Mirra, to the luxurious Peninsula Hotel on Fifth Avenue in New York City.¹ However, this was no lavish vacation or a sightseeing tour. Ms. Jordan took Jude to the Peninsula Hotel with a plan to take his life, as well as her own.² Jude was no ordinary boy – he was profoundly autistic and unable to speak for himself.³ While in their extravagant hotel suite, Ms. Jordan fed Jude a lethal cocktail of prescription drugs mixed with alcohol and orange juice through a syr-

* Haley Moss, Esq. J.D., University of Miami School of Law 2018; B.S., University of Florida, 2015; B.A., University of Florida, 2015. Thank you to my parents for always believing in me. This Article is dedicated to all of the tireless advocates within the disability community who are leading the charge towards greater acceptance, understanding, and inclusion – and those we have lost as victims of filicide.

1. See Sebastien Malo, *New York Socialite Sentenced to 18 Years in Poisoning Autistic Son*, REUTERS (May 28, 2015, 6:41 PM), <https://www.reuters.com/article/us-usa-new-york-autistic/new-york-socialite-sentenced-to-18-years-in-poisoning-autistic-son-idUSKBN0OD2XW20150528>; see also Al Baker & C.J. Hughes, *Mother Held in Death of Boy, 8, at Luxury Hotel*, N.Y. TIMES (Feb. 5, 2010), <http://www.nytimes.com/2010/02/06/nyregion/06hotel.html>.

2. Baker & Hughes, *supra* note 1.

3. Malo, *supra* note 1.

inge, and attempted to take her own life immediately afterwards.⁴ Jude died at the hands of his mother in that hotel suite, while his mother's suicide attempt failed.⁵

Jude's death and Ms. Jordan's failed suicide attempt raised questions of motive and justice. Ms. Jordan alleged she was trying to protect her son from her two ex-husbands.⁶ In her defense, Ms. Jordan also claimed one of her ex-husbands was trying to murder her and further claimed if he succeeded, the other ex-husband would receive custody of Jude and would sexually abuse him.⁷

While she was on trial facing charges of murder and voluntary manslaughter, Ms. Jordan testified she wanted to spare her son from a lifetime of "unimaginable suffering."⁸ In closing arguments, Ms. Jordan's defense attorney told the jury she killed Jude "because she loved" him.⁹ The jury sympathized with Ms. Jordan, and convicted her of voluntary manslaughter, but not murder. One convicted of voluntary manslaughter can receive a sentence of five to twenty-five years in prison whereas if Ms. Jordan had been convicted of murder, she would have received a sentence anywhere from twenty-five years to life in prison.¹⁰ Five years after killing her son, Ms. Jordan was ultimately sentenced to eighteen years in prison for voluntary manslaughter.¹¹ The outraged judge said she exhibited "an absolute lack of any remorse."¹²

Jude Mirra is not the first or only disabled or autistic victim whose death was unnecessarily caused by a parent, and he most certainly will not be forgotten. Every year on March 1, the disability community and its allies gather at vigils throughout the world for the

4. Baker & Hughes, *supra* note 1.

5. Malo, *supra* note 1.

6. James C. McKinley, Jr., *Gigi Jordan Convicted of Manslaughter, Not Murder, in Son's Killing*, N.Y. TIMES (Nov. 5, 2014), <https://www.nytimes.com/2014/11/06/nyregion/gigi-jordan-found-guilty-of-manslaughter-in-death-of-autistic-son.html>.

7. *Id.*

8. Crimesider Staff, *NY Socialite Gigi Jordan Gets 15 Years for Killing Autistic 8-Year-Old Son*, CBS NEWS (May 28, 2015, 4:38 PM), <https://www.cbsnews.com/news/new-york-socialite-gigi-jordan-gets-15-years-for-killing-autistic-8-year-old-son/>.

9. McKinley, *supra* note 6.

10. *See id.*

11. Shayna Jacobs, *Gigi Jordan, Multi-Millionaire Mom who Forced Fatal Overdose on 8-year-old Son Inside Fifth Ave. Hotel, Gets Slammed with 18 Years in Prison*, N.Y. DAILY NEWS (May 28, 2015, 7:56 PM), <http://www.nydailynews.com/new-york/nyc-crime/gigi-jordan-18-years-prison-death-8-year-old-son-article-1.2239269>.

12. *Id.*

Disability Day of Mourning.¹³ This gathering memorializes the names and lives of disabled people who have died at the hands of family members, such as parents, children and siblings, and caretakers.¹⁴ In the past five years, over six hundred people with disabilities have been murdered at the hands of parents and caretakers alone.¹⁵ Out of the six hundred whose names have been read at the Disability Day of Mourning vigils, the most notable are the names of children like Jude Mirra, who are child victims of filicide. Like Jude, these filicide victims were unable to advocate for themselves, and the people they trusted the most fatally betrayed them.

This article aims to explore filicide as it relates to children with disabilities. Filicide is a specific type of killing where a parent murders his or her own child.¹⁶ Part II gives a historical perspective on filicide. Part II also explains the various reasons behind filicide and why those reasons specifically apply to the killings of children with disabilities. Further, Part III explores the relationship between sentencing disparities in cases where society sympathizes with the parents of children with disabilities and condemns parents of nondisabled children. Part III also argues that children with disabilities face additional barriers in the fight for access to justice than their victimized, nondisabled counterparts. Part IV concludes by proposing a solution as to how Western society could end filicide against disabled children by protecting them from parents and caregivers who may possibly endanger their lives. Part IV also offers a final reflection on why the lives of children with disabilities deserve to be protected and cherished.

I. A COMPLETELY UNFATHOMABLE CRIME AGAINST CHILDREN

Every year in the United States, about five hundred children die as a result of murders committed by their parents.¹⁷ Filicides are met with shock and horror, and against non-disabled children, make waves throughout popular culture. Most imagine Andrea Yates, who notoriously drowned her five children one by one in a bathtub back in

13. *Disability Community Day of Mourning*, AUTISTIC SELF ADVOC. NETWORK, <http://autisticadvocacy.org/projects/community/mourning/> (last visited Dec. 22, 2020).

14. *Id.*

15. *Id.*

16. See generally Sara G. West, *An Overview of Filicide*, 4 PSYCHIATRY 48 (2007) (explaining what filicide is and the history of filicide).

17. David Perry et al., *On Media Coverage of the Murder of People with Disabilities by Their Caregivers*, RUDERMAN FAM. FOUND. 1, 5-6 (2017), https://rudermanfoundation.org/white_papers/media-coverage-of-the-murder-of-people-with-disabilities-by-their-caregivers/

2001.¹⁸ Yet, in cases like Yates's, society struggles to process disturbing facts and may even feel sympathy or understanding towards the killer; a suburban mother who kills her children does not appear to have same effect as a madman who enters a home and kills an entire family.¹⁹ However, mothers like Yates are not as rare as expected. Between 1976 and 1997, filicides accounted for 11,000 murders, which was 15% of all murders over this thirty-two-year period.²⁰ Yet, filicide is still perceived as a rare crime.

A. *From Sacrifice to Murder*

While people in the United States today consider a parent killing their own child a shocking and unconscionable crime, filicide has taken place throughout the world since before recorded history.²¹ Newborns and infants in primitive societies have often been targets of filicide because resources were scarce.²² The same was true in tribal societies for twins where eugenics were at play.²³ Generally, the tribe would kill the weaker of the two newborn babies if the tribe felt that both twins could not be supported with the community's resources.²⁴ In ancient Greco-Roman times, a father was also allowed to kill his own child without any legal repercussions.²⁵

Filicide was also a way for various cultures and communities to enforce cultural norms and was often seen as a misguided "survival of the fittest" mentality. Historically, newborn girls in countries such as China and India have been, and continue to be, at risk of filicide. Today, in parts of rural India, the murder of a newborn baby girl is considered no different than an abortion.²⁶ The Chinese culture also historically places a higher value on having a son than a daughter because a son will be able to carry the family name while daughters

18. Faith McLellan, *Mental Health and Justice: The Case of Andrea Yates*, 368 LANCET 1951, 1951 (Dec. 2, 2006), <https://www.thelancet.com/journals/lancet/article/PIIS0140673606697894/fulltext>.

19. See Bob Hebert, *In America, Empathy for a Killer*, N.Y. TIMES (July 5, 2001), <http://www.nytimes.com/2001/07/05/opinion/in-america-empathy-for-a-killer.html>.

20. Timothy Y. Mariano, Heng Choon "Oliver" Chan, & Wade C. Myers, *Toward a More Holistic Understanding of Filicide: A Multidisciplinary Analysis of 32 Years of U.S. Arrest Data*, 236 FORENSIC SCI. INT'L 46, 46 (2014).

21. Mark A. Koenen & John W. Thompson, Jr., *Filicide: Historical Review and Prevention of Child Death by Parent*, 29 INFANT MENTAL HEALTH J. 61, 62 (2008).

22. *Id.*

23. *Id.*

24. *Id.*

25. West, *supra* note 16, at 49.

26. Koenen & Thompson, Jr., *supra* note 21, at 63.

create the financial burden of a dowry for the family.²⁷ The killing of newborn girls in China was condemned as a social problem as early as 1984, and the 2000 census reflects this trend of filicide in its gender ratios.²⁸

Westernized cultures have a different approach than the tribal and primitive procedures of the past. In the United States and other westernized cultures, the baby's biological sex does not determine whether a newborn deserves to live. The rise of Christianity in the West brought with it a greater respect for life,²⁹ for example, the Puritans believed mothers who killed their children were monsters violating God's laws of nature.³⁰ By the 16th and 17th centuries, Europeans started to find parents murdering their children repugnant.³¹ In 1643, Russia became the first country to distinguish filicide from murder.³² Following Russia, both France and England also enacted laws that made filicide a crime punishable by death, and presumed a mother on trial for filicide to be guilty before proven innocent.³³ However, the death penalty fell out of favor when England established the Infanticide Acts of 1922 and 1938, which recognized that a mother's mental health may be impacted for up to twelve months after the birth of a child.³⁴ Instead of the death penalty, the punishments became similar to those in place for manslaughter.³⁵

B. What's Gender Got to Do With It?

Laws decreasing the charge of filicide from murder to manslaughter have frequently only applied to mothers.³⁶ This means if the father killed his child, he would almost always be charged with or convicted for murder.³⁷ Even though mothers and fathers commit filicide

27. *Id.* at 62.

28. *Id.*

29. West, *supra* note 16, at 49.

30. Laura E. Reece, *Mothers Who Kill: Postpartum Disorders and Criminal Infanticide*, 38 UCLA L. REV. 699, 744, n.214 (1991) (citing A. JONES, WOMEN WHO KILL 54 (1980)).

31. See West, *supra* note 16, at 49.

32. Koenen & Thompson, Jr., *supra* note 21, at 63.

33. West, *supra* note 16, at 49.

34. *Id.*

35. *Id.*

36. Susan Hatters Friedman & Phillip J. Resnick, *Child Murder by Mothers: Patterns and Prevention*, 6 WORLD PSYCHIATRY 137, 138 (2007).

37. Koenen & Thompson, Jr., *supra* note 21, at 63 (citing Thoger Harder, *The Psychopathology of Infanticide*, 43 ACTA PSYCHIATRICA SCANDINAVICA 196 (1967)).

at similar rates, the law has shown less mercy towards fathers.³⁸ In fact, filicide is one of the few crimes women commit almost as much as men do.³⁹ Mothers, however, receive more scrutiny from society, especially because of gendered stereotypes and beliefs that mothers are expected to be selfless, loving, and protective of their children at all costs.⁴⁰

In particular, gender is considered to be a factor in both causation and the motive behind filicide.⁴¹ Modern European laws typically take into account that mothers may experience postpartum depression or other mental health conditions after giving birth, especially in those filicide cases where the child is under a year old at the time of the murder.⁴² Studies have shown that elevated levels of testosterone may also be a factor in filicide.⁴³ Mothers are more likely to have younger victims than fathers.⁴⁴ Mothers who have killed their children typically report they were motivated by stress, lack of resources or support, and mental illness whereas fathers have reported that anger, jealousy, and marital issues motivated them.⁴⁵ Mothers also appear to be younger, mentally ill, and use less violent means of killing than fathers, who are more likely to use firearms and do not seek psychiatric help.⁴⁶

Today, from a legal standpoint, fathers who murder their children are likely to face harsher punishments.⁴⁷ On the other hand, mothers are more likely to prevail in asserting the insanity defense to

38. *Id.* (citing Lester Adelson, *Slaughter of the Innocents – A Study of Forty-Six Homicides in Which the Victims Were Children*, 264 *NEW ENG. J. MED.* 1345-49 (1961)) (summarizing community samples and aggregate crime data).

39. *Id.*

40. See Phillip J. Resnick, *Filicide in the United States*, 58 *INDIAN J. PSYCHIATRY*, S203, S204 (2016).

41. See generally Mariano et al., *supra* note 20, at 47 (describing the differences in detail between mothers and fathers who commit filicide).

42. West, *supra* note 16, at 49.

43. See Mariano et al., *supra* note 20, at 51 (noting findings from studies conducted on animals indicating generally that a higher level of testosterone increases the level of filicidal behavior in females).

44. *Id.* at 47.

45. *Id.*

46. See *id.*

47. *Id.*; see also Resnick, *supra* note 40, at S206 (citing P.J. Resnick, *Child Murder by Parents: A Psychiatric Review of Filicide*, 126 *AM. J. PSYCHIATRY & L.* 325 (1969)) (highlighting fathers are also more likely to be sentenced to execution than mothers).

avoid criminal responsibility for filicide.⁴⁸ Mothers are also more likely to attempt or commit suicide following a filicide than fathers.⁴⁹

C. Five Reasons Why

In 1969, lead filicide researcher Phillip J. Resnick offered five different reasons why parents murder their own children: (1) altruistic filicide; (2) acutely psychotic filicide; (3) unwanted child filicide; (4) accidental filicide; and (5) spouse revenge filicide.⁵⁰ The five categories are explained in further detail below.

First, altruistic filicide typically accounts for nearly half of all filicides.⁵¹ In altruistic filicides, the parent believes that they are killing the child out of love either through suicide or to ease the child's suffering.⁵² In suicide cases, the parent believes that they could not abandon their child after committing their own suicide.⁵³ In altruistic filicides aimed at easing the child's suffering, the parent kills the child to relieve the child of a real or imagined suffering.⁵⁴ Real or imagined suffering is often a parent's reasoning behind killing their child who has a disability; the parent typically claims the child was suffering because of their disability. Though sometimes, when it comes to children with disabilities, there also may be an element of imagined suffering,⁵⁵ for example, in the case of Gigi Jordan and Jude Mirra. Ms. Jordan believed her ex-husband would sexually abuse Jude even though there was no evidence to support that Jude was ever sexually abused.⁵⁶

48. Mariano et al., *supra* note 20, at 47 (citing Carmen Cirincione et al., *Rates of Insanity Acquittals and the Factors Associated with Successful Insanity Pleas*, 23 BULL. AM. ACAD. PSYCHIATRY & L. 399 (1995)); *see also* Resnick, *supra* note 40, at S207 (citing MICHAEL L. PERLIN, *THE JURISPRUDENCE OF THE INSANITY DEFENSE* 125 (1994)) (exemplifying that altruistic filicide and acutely psychotic filicide are most likely to be successful for purposes of the insanity defense).

49. *See* West, *supra* note 16, at 52 (noting 36.4% of filicidal women attempt suicide and 16-29% of all filicidal mothers succeed).

50. *See generally* Phillip J. Resnick, *Child Murder by Parents: A Psychiatric Review of Filicide*, 126 AM. J. PSYCHIATRY & L., 325, 329-330 (1969) (explaining the five different classifications of filicides and their differences in detail).

51. *Id.* at 329.

52. *Id.*

53. *See id.* ("One mother left a suicide note saying, 'Bury us in one box. We belong together you know.'").

54. *Id.*

55. West, *supra* note 16, at 50.

56. *See* ASAN Statement on Sentencing in Jude Mirra's Murder, AUTISTIC SELF ADVOC. NETWORK (June 1, 2015), <https://autisticadvocacy.org/2015/06/asan-statement-on-sentencing-in-jude-mirras-murder/> ("Justice Solomon noted that the trial produced no evidence to support her claim that Jude was a survivor of past sexual abuse or a potential victim of future sexual abuse."); *see also* Lucien Greaves, *The ISSTD & the Death of Jude Mirra*,

The second type of filicide is known as acutely psychotic filicide. An acutely psychotic filicide occurs when the parent has no rational motive for killing their children, but are responding to a psychotic episode.⁵⁷ Acutely psychotic filicide is closely associated with mental illnesses such as schizophrenia; yet, filicides that are a result of a mental illness or psychotic episode do not always fall into this category.⁵⁸ For example, acute psychosis filicides occur when a parent is commanded to kill a child by the voices in their head without any comprehensible motive.⁵⁹ Mental illness or mental health related issues, such as postpartum depression, may also provide a motive.⁶⁰

The third category, unwanted child filicide murder occurs when the child is no longer wanted, desired, or is considered a hindrance to the parent.⁶¹ This category of filicide usually benefits the parent in some way. Some common examples include the parent receiving insurance money from the child's death, marrying a partner who does not want a child, or the illegitimacy of a child born out of wedlock or as a result of an extramarital affair.⁶²

Accidental filicide is a misnomer, for it is only "accidental" because the "homicidal intent is lacking."⁶³ Accidental filicide usually is a result of child abuse, following battered child syndrome.⁶⁴ It is not uncommon for victims of accidental filicide to also be previous victims of physical or sexual abuse at home. Accidental filicides are commonly the result of violent outbursts related to the abuse, such as a sexual fetish gone wrong or an overly severe punishment given to the child.⁶⁵

GREY FACTION, <https://greyfaction.org/resources/grey-faction-reports/the-isstd-the-death-of-jude-mirra/> (last visited Dec. 23, 2020); James C. McKinley, Jr., *Gigi Jordan Receives 18-Year Sentence for Killing Her Son*, N.Y. TIMES (May 28, 2015), <https://www.nytimes.com/2015/05/29/nyregion/gigi-jordan-receives-18-year-sentence-for-killing-her-son.html>.

57. *Id.*

58. Resnick, *supra* note 50, at 330.

59. Hatters Friedman & Resnick, *supra* note 36, at 137.

60. *Id.*

61. *See id.* (noting fathers tend to kill their children because they deem them to be a financial burden or hinder their potential career goals).

62. West, *supra* note 16 at 50; *see also* Dominique Bourget, Jennifer Grace, & Laurie Whitehurst, *A Review of Maternal and Paternal Filicide*, 35 J. AM. ACAD. PSYCHIATRY & L. 74, 74 (2007).

63. Resnick, *supra* note 50, at 330.

64. *Id.*

65. *See id.* (describing one situation where a father gained sexual pleasure from sadistic acts while thinking he was disciplining his daughter by tying "an apron over her face with a tight strap . . . [and] beating her with an electric cord, he planned to masturbate, but instead found his daughter dead.").

The final category, spousal revenge filicide, consists of parents who kill their child in order to make their spouse suffer.⁶⁶ Revenge killings are more likely to motivate a father rather than a mother to kill his child.⁶⁷ Often, these revenge filicides are motivated by the former spouse's infidelity or the filicidal spouse's loss of custody of children.⁶⁸ Spousal revenge filicide can also take the form of a murder-suicide plan where the spouse takes their own life as well as the child's in order to cause an extreme emotional reaction in the other spouse. Spousal revenge filicides may also take place because the parent views the child as an object with significant emotional value to the spouse, rather than as an independent human being.⁶⁹

In the filicide cases involving disabled children, the vast majority of these victims fall into the altruistic filicide category; however, it is also common the child was possibly unwanted due to the alleged burden the child's condition places on the parents.⁷⁰ Further, altruistic filicides against children with disabilities typically garner the sympathy of the public. Children with disabilities have an undue burden on them by virtue of even having a disability.

II. NO LOVE IN THE LAW, NO EMPATHY TOWARDS DISABLED CHILDREN

More than 1,600 children with developmental disabilities have been homicide victims.⁷¹ Between 2011 and 2015, at least one person with a disability was killed each week by a parent or caregiver.⁷² In addition to the risk of being killed by their parents, disabled children are also at a higher risk of being abused by their parent(s) than nondisabled children.⁷³ Notably though, autistic children are at the highest

66. *Id.*

67. Joni E. Johnston, "This is Why I Killed Your Kids," *PSYCHOL. TODAY* (Sept. 13, 2012), <https://www.psychologytoday.com/us/blog/the-human-equation/201209/is-why-i-killed-your-kids>.

68. *Id.*

69. See Glenn Carruthers, *Making Sense of Spousal Revenge Filicide*, 29 *AGGRESSION & VIOLENT BEHAV.* 30, 30 (2016).

70. See Mark T. Palermo, *Preventing Filicide in Families with Autistic Children*, 47 *INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY* 47, 47 (2003) (citing Phillip J. Resnick, *Child Murder by Parents: A Psychiatric Review of Filicide*, 126 *AM. J. PSYCHIATRY* 58 (1969)) (noting study that found 56% of cases fall into altruistic filicide category and 11% of all filicides are unwanted filicides).

71. *Id.* at 48.

72. Perry et al., *supra* note 17, at 5-6 (compiling data from media reports on 260 deaths from January 2011 to December 2015; noting with certainty that the data *significantly* undercuts the number of deaths that actually occurred).

73. Palermo, *supra* note 70, at 48.

risk for filicide within the disabled population.⁷⁴ Specifically, children with autism account for more than half of all child filicide victims with disabilities.⁷⁵ Even when parents murder their disabled children, those children with disabilities often do not receive the same treatment legally and in the media as their nondisabled peers.⁷⁶

Disability is seen through multiple different perspectives.⁷⁷ The medical model of disability focuses on the physical or mental impact of a condition that places a person with a disability at a disadvantage.⁷⁸ Through this specific lens, disability is a problem that is inherent within the individual.⁷⁹ In comparison, the social model of disability views disability as a social process that turns an impairment into a disadvantage because of barriers to access.⁸⁰ Under the social model, disability exists only in the gap between a person's abilities and capacities and the demands of the environment."⁸¹

In the cases of so-called mercy killings and altruistic filicide, a disability is portrayed through the medical model of disability, where parents view their child's disability as an impairment or problem that may be fixed or cured through medical intervention.⁸² People with disabilities, especially children, are seen through this model as "second-class citizens" because of the work that goes into raising a disabled child.⁸³ Filicidal parents of disabled children may blame the stress of

74. See *id.* (noting of the 1,600 filicides against disabled children 80% of them involved children with autism); see also Rohini Coorg & Anne Tournay, *Filicide-Suicide Involving Children with Disabilities*, 28 J. CHILD NEUROLOGY 745, 745 (2012) (finding 50% of children included in the newspaper search reported they were autistic).

75. See Coorg & Tournay, *supra* note 74, at 746.

76. See *id.* (noting that a computerized literature search of Medline did not reveal a single publication during the past 10 years relating to filicide and developmental disabilities).

77. See generally Julie F. Smart & David W. Smart, *Models of Disability: Implications for the Counseling Profession*, 84 J. COUNSELING & DEV. 29, 29-40 (2006) (discussing the several broad models through which a disability is perceived: (1) the biomedical model; (2) the functional model; (3) the environmental model; and (4) sociopolitical model).

78. See MICHAEL OLIVER, UNDERSTANDING DISABILITY: FROM THEORY TO PRACTICE 32 (1995); see also CLAIRE H. LIACHOWITZ, DISABILITY AS A SOCIAL CONSTRUCT: LEGISLATIVE ROOTS 12 (1988).

79. Deborah Kaplan, *The Definition of Disability: Perspective of the Disability Community*, 3 J. HEALTH CARE L. & POL'Y 352, 352-53 (2000).

80. Arlene S. Kanter, *The Law: What's Disability Studies Got to Do with It or An Introduction to Disability Legal Studies*, 42 COLUM. HUM. RTS. L. REV. 403, 427 (2011).

81. Michael L. Wehmeyer, Shea Tanis, Daniel K. Davies, & Steven E. Stock, *The Role of Applied Cognitive Technology and Assistive Technology in Supporting the Adaptive Behavior of People with Intellectual Disability*, HANDBOOK OF ADAPTIVE BEHAV. 7 (2020).

82. *Id.* at 29; Kaplan, *supra* note 79.

83. See *id.* at 30 ("There is a clear cut normative aspect to the Biomedical Model in that the disability is considered to be biological inferiority, malfunction, pathology, and deviance

raising a child with a disability and access to services as reasons for killing their kids.⁸⁴ However, this narrative is inconsistent with the facts in the case of Isabelle Stapleton, where her mother was able to have her kid placed in foster care, but waived it away.⁸⁵ Equally inconsistent are those cases such as Jude Mirra's, where the parents are wealthy and, thus, have the ability to access any treatment or intervention on the market, but still feel "helpless" or as though their children are burdens.⁸⁶ The idea that disabled children are burdens is nothing new – children with disabilities have been warehoused in institutions until rapid policy changes following the civil rights movement in the 1960s and 1970s.⁸⁷ Although institutionalization is no longer in practice, the children and adults with disabilities still did not receive the right to be fully integrated into communities and receive community-based services until the landmark *Olmstead v. L.C.* decision in 1999.⁸⁸

A. *Do the Crime, If You Can't Do the Time?*

When it comes to filicides of children with disabilities, the parent-murderers disproportionately receive lighter sentences than parents who murder their nondisabled children.⁸⁹ Activists believe that in the eyes of mercy killing parents, a "disability is a horrendous life experi-

when compared with individuals without disabilities [...] . . . Thus, the individual with a disability . . . understands she belongs to a devalued group.").

84. Palermo, *supra* note 70, at 50; see Tracy Connor, *Jillian McCabe Gets Life for Throwing Her Autistic Son Off a Bridge*, NBC NEWS (Feb. 23, 2016, 7:15 PM), <https://www.nbcnews.com/news/us-news/jillian-mccabe-gets-life-throwing-her-autistic-son-bridge-n524506>.

85. Elizabeth Picciuto, *Why Are We Sympathetic to the Murderers of Disabled Children?*, ESTABLISHMENT (June 23, 2016), <https://theestablishment.co/why-are-we-sympathetic-to-the-murderers-of-disabled-children-805a9bbadf98>.

86. Nancy Dillon, George Rush, & Stephanie Gaskell, *Poor Health of Autistic Son Jude Mirra Led Mother Gigi Jordan to Kill Him: Pal*, N.Y. DAILY NEWS (Feb. 7, 2010, 11:59 PM), <http://www.nydailynews.com/news/crime/poor-health-autistic-son-jude-mirra-led-mother-gigi-jordan-kill-pal-article-1.196072>.

87. Smart & Smart, *supra* note 77, at 29.

88. *Olmstead v. L.C.*, 527 U.S. 581 (1999) (holding people with disabilities have a qualified right to receive state funded supports and services in the community rather than institutions when the following three-prong test is met: 1) the person's treatment professionals determine that community supports are appropriate; 2) the person does not object to living in the community; and 3) the provision of services in the community would be a reasonable accommodation when balanced with other similarly situated individuals with disabilities).

89. See Sheela Nimishakavi, *Murders of Persons with Disabilities Receive Disproportionally Lower Sentences*, NONPROFIT Q. (Mar. 20, 2017), <https://nonprofitquarterly.org/2017/03/20/murders-persons-disabilities-receive-disproportionately-lower-sentences/> (noting a case where mother who killed her child with a disability received a three-year

ence nobody wants to have.”⁹⁰ This continues to perpetuate the false stereotypes regarding a disability under the medical model.⁹¹ The incurable are seen as unwanted. For example, Jillian McCabe, a wife and mother of a six-year-old autistic son, London, threw him off a bridge and left a note for her husband.⁹² Ms. McCabe’s note talked about how she felt as though their child was a burden and London was specifically an obligation for her husband;⁹³ therefore, Ms. McCabe wanted to take him away to give her husband a fresh start.⁹⁴

Sentencing disparities were evident when two filicides occurred within a year of each other in Illinois. One of the victims, Alex Spourdakalis, was a fourteen-year-old autistic boy whose mother and godmother decided to kill him through an overdose on sleeping pills; when their plan failed, the two women repeatedly stabbed him.⁹⁵ A year later, and about 37 miles away from where Alex Spourdakalis lived, a nondisabled eleven-year-old girl died from a stomach rupture after her mother repeatedly punched her.⁹⁶ Both mothers were charged with first-degree murder.⁹⁷ The mother of the nondisabled eleven-year-old girl was convicted of murder and sentenced to forty-three years.⁹⁸ Alex’s mother and godmother plead guilty to involuntary manslaughter and only served three years each before they were sentenced to time served and released.⁹⁹

Like in the case of Alex Spourdakalis, sentencing disparities are not uncommon should the filicidal parent stand trial. Like Alex’s mom, New York socialite Gigi Jordan was sentenced to eighteen years in prison for voluntary manslaughter after the jury rejected the prosecution’s recommendation that she be charged with first-degree murder,

sentence whereas mother who killed her non-disabled child was the mother 43-year sentence).

90. *Id.*

91. See generally Smart & Smart, *supra* note 77, at 30-31 (describing in detail that under the biomedical model a person with a disability is considered to belong to a devalued group).

92. Lindsey Bever, ‘Everyone Will Hate Me’: Mother Sentenced to Life for Throwing Autistic Son Off Bridge, WASH. POST (Feb. 24, 2016, 11:20 AM), https://www.washingtonpost.com/news/morning-mix/wp/2016/02/24/the-voices-said-you-need-this-mother-sentenced-to-life-in-prison-for-killing-autistic-son/?utm_term=.B2013db0d6b5.

93. *Id.*

94. *Id.*

95. See David Lohr, *How Murder Victims with Disabilities Get Blamed for Their Own Deaths*, HUFFPOST (Mar. 14, 2017, 8:00 AM), https://www.huffingtonpost.com/entry/murder-victims-disabilities-mercykillings_us_58bd5abfe4b05cf0f401b603.

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

which could carry a sentence of up to life in prison.¹⁰⁰ However, the judge at the sentencing phase did not show any mercy on Ms. Jordan, commenting on the killing of her son Jude and her “absolute lack of any remorse.”¹⁰¹ Suppose Jude Mirra was not disabled. A jury may have been less sympathetic to the idea of a mercy killing or the defense’s argument that Ms. Jordan killed her son out of love.

In fact, jurors are more likely to perceive the parent of a disabled child differently than the parent of a nondisabled child. In a 2011 study, jurors demonstrated a bias against disabled infants in infanticide cases.¹⁰² In this study, researchers evaluated the difference in the portrayal of infant victims as severely disabled or developmentally normal.¹⁰³ The portrayal had little effect on central judgments in the case such as verdict, but jurors who believed the infant was severely disabled gave significantly shorter sentences to the defendant, were less likely to perceive the defendant as mentally ill, and felt significantly less empathy for and similarity to the infant victim.¹⁰⁴

However, the trend is slowly going in the right direction when it comes to sentencing filicidal parents of children with disabilities. Similar to the Spourdakalis case, in terms of pleading to lesser charges, is the case of Kelli Stapleton and her daughter, Isabelle. Ms. Stapleton attempted to kill both herself and her daughter by placing charcoal grills inside of her van and drugging Isabelle.¹⁰⁵ Though both survived, Isabelle suffered serious brain damage as a result.¹⁰⁶ Notably, the attempted murder of Isabelle occurred two weeks after sympathetic media coverage in the Spourdakalis case.¹⁰⁷ While Ms. Stapleton was charged with attempted murder, she pled guilty to first-degree child abuse – a lesser offense.¹⁰⁸ Ms. Stapleton, however, was sentenced within the regular guidelines of 10 to 22 years in prison for the offense;

100. Jacobs, *supra* note 11.

101. *Id.*; see also *ASAN Statement on Sentencing in Jude Mirra’s Murder*, AUTISTIC SELF ADVOC. NETWORK (June 1, 2015), <https://autisticadvocacy.org/2015/06/asan-statement-on-sentencing-in-jude-mirras-murder/>.

102. Bette L. Bottoms et al., *Gender Differences in Jurors’ Perceptions of Infanticide Involving Disabled and Non-disabled Infant Victims*, 35 CHILD ABUSE & NEGLECT 127, 134 (2011).

103. See generally *id.* at 130-33 (discussing the methodology of the study).

104. *Id.* at 134.

105. See Hanna Rosin, *By Noon They’d Both be in Heaven*, N.Y. MAG. (Oct. 19, 2014), <http://nymag.com/daily/intelligencer/2014/10/kelli-stapleton-issy-stapleton.html>.

106. *Id.*

107. See Picciuto, *supra* note 85.

108. See Rosin, *supra* note 105.

this sentencing is also consistent with those received by parents charged with child abuse against their nondisabled child.¹⁰⁹

The most recent victory within the disability community was in the death of London McCabe, a six-year-old autistic boy in Oregon whose mother threw him off a bridge.¹¹⁰ While London's mother suffered from numerous mental illnesses, she was sentenced to life in prison.¹¹¹ Building off of this trend towards seeking justice on behalf of disabled victims of filicide, prosecutors are seeking the death penalty following the murder of Alejandro Ripley, a 9-year-old autistic boy in Miami, Florida, whose mother drowned him in a canal.¹¹² In the future, vigorous prosecutions, as in the cases of London's mother and Alejandro's mother, should discourage copycat filicides and give children with disabilities the same justice that they deserve, which their nondisabled peers have already been receiving.

North America has seen sentences for completed (not attempted) filicides ranging from three years all the way to life in prison with no consistency, beginning with Tracy Latimer's death in 1993 as the start of aggressive filicide coverage and awareness towards children with disabilities. This disparity is potentially a result of sympathy given to the parent by society for the "burden" they face in raising a child with a disability.

B. Misplaced Sympathy: Lifting the Wrong Names and Voices

Parents who murder their disabled children frequently receive a media platform that allows them to justify their actions during the time leading up to trial, after sentencing, and even after release. Further, the media reporting on filicide tells an altruistic and mercy killing story, rather than a victim-centered story.¹¹³ Most often, the parent is seen as the victim – rather than the disabled child – and the disabled child is made out to be a burden or difficult because of their varying disabilities.

109. See Jeff Truesdell, *Kelli Stapleton Sentenced to 10-22 Years for Attempt on Daughter with Autism's Life*, PEOPLE (Oct. 8, 2014, 9:45 PM), <http://people.com/crime/kelli-stapleton-sentenced-to-10-22-years-for-attempt-on-daughter-with-autisms-life/>.

110. Bever, *supra* note 92.

111. *Id.*

112. *Woman Accused of Killing Autistic Son Faces Death Penalty*, AP (Oct. 30, 2020), <https://apnews.com/article/virus-outbreak-miami-florida-crime-77158bdb8aa952785cff1157bc82b136>.

113. SONYA FREEMAN LOFTIS, IMAGINING AUTISM: FICTION AND STEREOTYPES ON THE SPECTRUM 61-63 (2015).

The trend of giving altruism its platform in the filicide conversation began on October 24, 1993, when Robert Latimer, a farmer in Canada, piped carbon monoxide into his pickup truck to kill his twelve-year-old disabled daughter, Tracy.¹¹⁴ Tracy had a severe form of cerebral palsy where she was a quadriplegic, bedridden, and nonverbal.¹¹⁵ In her short life, Tracy had numerous surgeries even though she was not terminally ill.¹¹⁶ Mr. Latimer believed killing Tracy was less painful for her than allowing her to continue living.¹¹⁷ Mr. Latimer received two trials and at both, he was convicted of second degree murder.¹¹⁸ Mr. Latimer was also to serve ten years in prison before he would even be given the opportunity for parole.¹¹⁹

To this day (and even after his release), Mr. Latimer still believes he did the right thing by ending his daughter's life while his wife and other children were at church.¹²⁰ Tracy's life, however, was worth living and even the Supreme Court of Canada seemed to think so when it upheld Mr. Latimer's convictions.¹²¹ While Tracy's mental capacity was determined to be that of a four-month-old baby,¹²² she could communicate through facial expressions, laughing, and crying.¹²³ Tracy would typically light up when she was around family and loved when

114. *Robert William Latimer v. Her Majesty the Queen: In the Supreme Court of Canada*, 17 ISSUES L. & MED. 71, 72-73 (2001) (hereinafter "*Robert William Latimer: In the Supreme Court of Canada*").

115. *Id.* at 72.

116. *See id.* at 72-73 (discussing the surgeries Tracy had undergone and was expected to undergo).

117. *Id.* at 73.

118. *See* Alex MacPherson, 'What I Did Was Right': Robert Latimer Steadfast 24 Years After Daughter's Death, SASKATOON STARPHOENIX, <http://thestarphoenix.com/news/local-news/robert-latimer-mclachlin> (last updated Oct. 31, 2017); *see also* Jason Proctor, *Robert Latimer, Convicted of Killing His Disabled Daughter, Applies for Pardon*, CBC NEWS CAN. (July 11, 2018, 5:51 PM), <https://www.cbc.ca/news/canada/british-columbia/latimer-pardon-murder-justice-1.4743353> ("He has appeared twice before the Supreme Court of Canada – first in 1997 when the court offered a new trial due to jury interference.").

119. *See* Proctor, *supra* note 118 (noting that Latimer served a minimum ten-year sentence after refusing to admit it was wrong to end Tracy's life).

120. *Id.*; *see also* 'Compassionate Homicide': The Law and Robert Latimer, CBC NEWS CAN. (Dec. 6, 2010, 11:59 AM), <http://www.cbc.ca/news/canada/compassionate-homicide-the-law-and-robert-latimer-1.972561> (noting that Tracy's father speaking ten years after the incident believed he did the right thing).

121. *Robert William Latimer: In the Supreme Court of Canada*, *supra* note 114, at 72-73; *see also* MacPherson, *supra* note 118.

122. This is an example of mental age theory, which disability rights advocate purport is unhelpful when referring to disabled people because it robs them of dignity, freedom, and civil rights. *See* Ivanova Smith, *Mental Age Theory Hurts People with Intellectual Disabilities*, NOSMAG (Sept. 7, 2017), <http://nosmag.org/mental-age-theory-hurts-people-with-intellectual-disabilities/>.

123. *Robert William Latimer: In the Supreme Court of Canada*, *supra* note 114, at 72.

her parents gently rocked her in their arms.¹²⁴ Tracy also loved music and she was able to play music on a radio that had a special button for her to use; she also enjoyed bonfires, being around her family and the circus.¹²⁵ Yet, even though Tracy appeared to be happy and have many interests, Mr. Latimer contended her life was not worth living because of her disability.¹²⁶ Mr. Latimer essentially took it upon himself to decide for Tracy whether or not her life was worth living.

Mr. Latimer's supposed mercy killing rhetoric and relatively light prison sentence could have potentially inspired hundreds of other parents to fall for the influence of compassionate homicide or euthanasia of disabled children. Twenty-four years after killing Tracy, Mr. Latimer continues to have a platform in newspapers and media to talk about why he believes Tracy's murder was justified.¹²⁷ Media coverage on Tracy Latimer's death overwhelmingly used softer terminology like "euthanasia" or "mercy killing," rather than condemning Mr. Latimer's actions as murder or a crime.¹²⁸ This language further contributes to the stigma created by the biomedical model of disability and allows one to sympathize with the parents who commit an altruistic filicide of their disabled child. Irresponsible media coverage regarding murders of children with disabilities as mercy killings do, in fact, lead to inspired, copycat murders.¹²⁹ Irresponsible coverage has consequences because it does not help solve the growing number of developmentally disabled children that are dying at the hands of their parents.¹³⁰

While copycats are inspired by headlines such as those in the Latimer case, the underlying concepts are the same. Gigi Jordan and her son, Jude Mirra, were not much different than Robert Latimer and his daughter, Tracy Latimer. Like Tracy's father, Ms. Jordan claimed Jude's death was the compassionate, right thing to do.¹³¹ Ms. Jordan

124. *Id.* at 73.

125. *Id.*

126. *Id.*

127. See MacPherson, *supra* note 118 (speaking to the press 24 years after the incident, Tracy's father states, "[w]hat I did was right, and the government and the authorities can't understand that. Or the fact that what they have done is wrong . . . [.]").

128. See Richard Lucardie & Dick Sosbey, *Portrayals of People with Cerebral Palsy in Homicide News*, 332 DEVELOPMENTAL DISABILITIES BULL. 99, 112 (2005) (finding in 97.74% of media stories concerning Tracy Latimer's death used the terms mercy killings and euthanasia).

129. See *id.* at 118 (suggesting that some of the media's portrayal of Tracy Latimer's killing may have resulted in copycat crimes).

130. See Picciuto, *supra* note 85.

131. McKinley, *supra* note 56, at 1.

also appeared on the *Dr. Phil* television show and shared how she killed her son out of love.¹³²

Even with the case of Jillian McCabe— media reported (1) the “McCabes were good people,” (2) Ms. McCabe was a “loving mother/wife,” and (3) about the difficulties Ms. McCabe faced while raising her son.¹³³ Because Ms. McCabe received most of the media attention, she was able to control the narrative – that her son’s death would make things easier on the family. The media explained that Ms. McCabe suffered from a mental illness and her husband had multiple sclerosis.¹³⁴ The media also painted Ms. McCabe as stressed and depressed due to the stressors of raising an autistic child.¹³⁵ The narrative did not focus on the real victim – six-year old London McCabe whose life was stripped from him by the person who was supposed to protect him. Instead, the media focused on his mother’s depression and stress resulting from raising an autistic child, when the focus should have been solely on the six-year-old happy, smiley boy who loved big hats and fuzzy stuffed animals.¹³⁶

Kelli Stapleton rounds out the recent media platform promoting the parents of disabled children as victims, and not the children as victims.¹³⁷ After being incarcerated for attempted murder of her autistic daughter, Ms. Stapleton famously proclaimed, “the jail of Benzie County ha[d] been a much kinder warden than the jail of autism.”¹³⁸ This statement reaffirmed that the attempted murder was for Ms. Stapleton’s own benefit as she had also blogged about her daughter and her life; the blog was aptly named “The Status Woe.”¹³⁹ The Status Woe was a way for Ms. Stapleton to garner sympathy in her plight of raising an autistic daughter.¹⁴⁰

When Ms. Stapleton was on *Dr. Phil* in 2014, the segment was marketed and framed as “A Mother’s Worst Nightmare”; the television

132. *Death on 5th Avenue, Millionaire Mom Accused of Murdering Son Speaks from Rikers Island*, DR. PHIL SHOW (Oct. 31, 2014), <https://www.drphil.com/shows/2304/>.

133. *See, e.g.*, Christine Mai-Duc, *Oregon Mom Suspected of Throwing Autistic Boy Off Bridge is Charged*, L.A. TIMES (Nov. 4, 2014, 11:57 AM), <http://www.latimes.com/nation/nationnow/la-na-nn-oregon-mother-son-bridge-20141104-story.html>.

134. *Id.*; *see also* Bever, *supra* note 92.

135. *See, e.g.*, David M. Perry, *Why London McCabe’s Death Matters*, CNN (Nov. 10, 2014, 9:05 AM), <http://www.cnn.com/2014/11/10/opinion/perry-autism-london-mccabe/>.

136. *Id.*

137. *See* Rosin, *supra* note 105.

138. *Id.*

139. *Id.*

140. *Id.* (expressing she wanted people to “understand the hardship of raising a violent autistic child” and “[her husband’s] relatives saw the blog as proof that Kelli loved attention.”).

show also brought on another mother who wanted to kill herself and her autistic child, but couldn't bring herself to do it.¹⁴¹ Bringing another mother onto the show invited the public to place their sympathy in the filicidal parents, rather than for the child victims. Framing autism as a parent's worst nightmare bolsters the case for the altruistic filicide and society's sympathy towards filicidal parents. It hinders the case that disabled lives are worthy and enforces the belief that the happiness and wellbeing of a disabled child is worth less than the mother's intent of wanting her child to go to heaven.¹⁴²

Overall though, none of these murders or attempted murders are assisted suicides. Murders or attempted murders towards other family members with disabilities, such as spouses, are often framed as assisted suicides or acts of love;¹⁴³ however, disability rights activists also consider assisted suicide a form of discrimination on the basis of disability.¹⁴⁴ What differs is the aspect of consent and voice. Terminally ill patients at some point have or had the ability to advocate and share their wishes with loved ones, while with filicides, the parents take matters into their own hands and deem their children's lives not worth living. The child essentially is blamed for their own death, while the parent becomes the victim garnering sympathy for putting a child out of misery – but is it really misery when the child did not want to die?

III. MOURN FOR THE DEAD, FIGHT LIKE HELL FOR THE LIVING

Throughout the world, at the annual Disability Day of Mourning gatherings, there is always a call to action to prevent future filicides against people with disabilities. Zoe Gross, who founded the annual Day of Mourning tradition, shares that filicides against disabled children happen because of the normalization of previous filicides and murderers, such as Robert Latimer.¹⁴⁵ There is an inher-

141. Haley Moss, *Stapleton Case Causes Autism in Kids to be Misunderstood*, ALLIGATOR (Sept. 25, 2014), http://www.alligator.org/opinion/columns/article_8c6be544-4396-11e4-b10b-83589c07f9ef.html.

142. *Id.*

143. Sara Luterman, *There Is Nothing Loving About Killing Disabled People*, WASH. POST (Jan 1, 2020), <https://www.washingtonpost.com/outlook/2020/01/01/there-is-nothing-loving-about-killing-disabled-people/>.

144. See generally Ron Amundson & Gayle Taira, *Our Lives and Ideologies: The Effect of Life Experience on the Perceived Morality of the Policy of Physician-Assisted Suicide*, 16 J. DISABILITY POL'Y STUDIES (2005).

145. See Zoe Gross, *Killing Words*, AUTISTIC SELF ADVOC. NETWORK (Apr. 10, 2012), <http://autisticadvocacy.org/2012/04/killing-words/> (“When journalists call murderers ‘loving and devoted parents,’ when television shows give Robert Latimer airtime, when parents

ent belief in society that it is better to be dead than disabled.¹⁴⁶ Parents believe they are easing their children's suffering through what has been described as mercy killings or voluntary euthanasia, yet the only ones who are able to determine the quality of life in these cases are those who were killed – the children with disabilities. The victims highlighted throughout this Article, such as Jude Mirra, Isabelle Stapleton, Tracy Latimer, and London McCabe, were all described as happy children (despite their varying challenges related to their disabilities), loved their family members, and had varying interests ranging from music to fuzzy stuffed animals.¹⁴⁷

The steps needed going forward should be to prevent further filicides against disabled children. Activists continue to call for vigorous prosecutions of parents in order to deter future filicide and show other parents thinking of doing the same thing that it is not acceptable or sympathetic behavior. If Robert Latimer was not afforded the media platform he received to create his narrative, if Dorothy Spourdakalis' and Agatha Skrodzka had received a prison sentence in line with those of non-disabled children (not a meager three years), and if Gigi Jordan had been convicted of first-degree murder – then maybe this discussion would not be continuing and potential copycat killers would fear consequences from killing their own children. Parents have motive behind these killings and consequences must exist because filicide cannot be said to be solely a mental health problem, even if there are many filicidal parents that are afflicted with mental health conditions.¹⁴⁸

The mental health aspect of people perceived to be loving parents acting horrifically in times of crisis fails to address the issues surrounding a child's disability. However, communities sometimes respond to filicide and mounting concern amongst distressed parents of disabled children as if such actions and distress are solely resulting from mental health crises. Solely viewing filicide against disabled children as a mental health issue ultimately centers the parent's need rather than the child's and the inequities disabled people face. In doing so, well-intentioned communities build upon a perceived need for respite and continued community support, such as through creating

normalize murder by saying that all special-needs have murderous thoughts, the result is an environment in which these murders are seen as acceptable.”).

146. See generally Joel Michael Reynolds, “*I’d Rather be Dead Than Disabled*” – *The Ableist Conflation and The Meanings of Disability*, 3 REV. COMM. 149, 149-63 (2017) (proposing the use of albeit conflation of disabilities to better equip medical professionals to combat stigmas associated with disabilities).

147. See Perry, *supra* note 135; see also *Robert Latimer: In the Supreme Court of Canada*, *supra* note 110, at 73 (describing Tracy Latimer’s hobbies of listening to music).

148. West, *supra* note 16, at 52.

hotlines for parents of disabled children,¹⁴⁹ or offering respite care services for parents,¹⁵⁰ to hopefully alleviate stress and avert mental health crises. Yet these approaches fail to center the victims and continue to uphold the stereotypes and beliefs about the burdens of children with disabilities.

The Autistic Self-Advocacy Network, which helps sponsor the Day of Mourning each year, poses what the steps going forward should be. First, they recommend that the media conversation surrounding filicide change to focus on the victim, not the murderer.¹⁵¹ Current media needs to cease referring to filicides as “mercy killings” and refrain from focusing on what makes the murderer a good, loving parent with few mentions of the actual victim – the disabled child.¹⁵² Instead, media should center their reporting on the child with a disability who was a victim of a crime their parent committed. Doing so would give the parent less sympathy from the public, a smaller platform from the media, as well as provide a clearer picture of who the real victim is, rather than being a ploy for parental pity. By refusing to “understand” or justify the killing of a disabled child, these filicides will be treated just as any other murder would be.

Similarly, the sentencing disparity between killers of disabled and nondisabled children needs to end. Filicidal parents of children with disabilities should be prosecuted under the fullest extent of the law.¹⁵³ Vigorous prosecution will help deter copycat murderers and will also assist others to take filicide seriously while creating a sense of justice for disabled children, who oftentimes are seen as less than human when their parents are prosecuted, which ultimately leads to lighter sentences and acquittals.

State legislatures and Congress have the responsibility as well to increase funding and accessibility to disability services. Waitlists for Medicaid-funded home and community-based services for people with intellectual and developmental disabilities can last years and continue

149. Bianca Padró Ocasio, *After Death of Boy with Autism, Miami Special Needs Group Sees Rise in Crisis Calls*, MIAMI HERALD (May 24, 2020, 6:09 PM), <https://www.miamiherald.com/news/local/community/miami-dade/article242970041.html>.

150. Sergio Carmona, *JAFCO Resumes Respite Services Following Death of Autistic Child* (June 3, 2020, 12:21 PM) S. FLA. SUN-SENTINEL, <https://www.sun-sentinel.com/florida-jewish-journal/broward/fl-jj-sunrise-jafco-emergency-respite-friendship-circle-20200603-qzdumiffebar5emkrujdkswkfa-story.html>.

151. *Anti-Filicide Toolkit*, AUTISTIC SELF ADVOC. NETWORK (Jan. 2017), <http://autisticadvocacy.org/wp-content/uploads/2015/01/ASAN-Anti-Filicide-Toolkit-How-Can-We-Prevent-This.pdf>.

152. Perry et al., *supra* note 17, at 33.

153. *Anti-Filicide Toolkit*, *supra* note 151.

to grow.¹⁵⁴ Many parents of children with disabilities cite a lack of services as one factor leading to these killings. While lack of services has been a continuous problem within the disability community, federal and state governments have the ability to provide and streamline processes for such services as well as end the waitlists. All people with disabilities are entitled to accommodations in various settings such as schools, public places, and even at home.¹⁵⁵

Further, one's disability is not a part of hate crime laws – adding it to the classes protected under hate crimes will allow for greater prosecution of disability-related murders.¹⁵⁶ Policy changes have been in effect to combat filicide in the United States since 1999 with enactment of safe haven laws allowing parents to surrender custody of their newborns to the state without legal repercussions.¹⁵⁷ Currently, forty-six states have safe haven laws.¹⁵⁸ However, these laws only apply to newborns and do not protect infants or older children with disabilities. Safe haven laws are also problematic because not all disabilities are recognizable at birth or slightly thereafter. Some disabilities have later onset symptoms or no physically recognizable traits, such as autism, learning disorders, or intellectual impairments.¹⁵⁹ Though, safe haven laws may potentially help curb filicides against those with physical or genetic disabilities such as cerebral palsy or Down syndrome, they do not help those children diagnosed with autism spectrum disorders, who are most likely to be victims of filicide.¹⁶⁰ The risk factors for filicides in cases involving autistic children include, but are not limited to misinformation, lack of information, and lack of services; thus, education about developmental disabilities and empowerment may also offer a solution.¹⁶¹

154. Michelle Diamant, *Nationally, Waiting Lists for Waiver Services Growing*, DISABILITY SCOOP (Feb. 7, 2020), <https://www.disabilitycoop.com/2020/02/07/nationally-waiting-lists-waiver-services-growing/27783/>.

155. 42 U.S.C. § 12101 (2019); *see also* What is the Americans with Disabilities Act (ADA)?, ADA NAT'L NETWORK, <https://adata.org/learn-about-ada> (last visited Dec. 22, 2020).

156. *Anti-Filicide Toolkit*, *supra* note 151.

157. West, *supra* note 16, at 55.

158. *Id.*

159. National Institutes of Health, *When Do Children Usually Show Symptoms of Autism*, U.S. DEP'T HEALTH & HUM. SERVS., <https://www.nichd.nih.gov/health/topics/autism/conditioninfo/symptoms-appear> (last visited Dec. 22, 2020) (noting diagnosis of autism usually occurs after three while symptoms begin to show during twelve to eighteen months); *Down Syndrome*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/down-syndrome/diagnosis-treatment/drc-20355983> (last visited Dec. 22, 2020) (noting Down Syndrome can be diagnosed while baby is in utero).

160. Coorg & Tournay, *supra* note 74, at 746.

161. Palermo, *supra* note 70, at 51.

CONCLUSION

As one can see, there is no single solution to stopping filicide against children with disabilities. Rather, preventing and/or stopping filicide calls on the efforts of several initiatives in hopes of changing cultural attitudes and inducing policy changes that will bring the unfathomable to an end. We can best advocate alongside children with disabilities to prevent unnecessary deaths that occur for no other reason except for the child's disability by advocating for the deterrence of future crimes through increased prosecution, access to disability education, increased psychiatric and disability support services, legislative policy changes, and changes in the media's reporting tactics for these crimes. May the six hundred names read each year at the Day of Mourning not be in vain, and with proper reform, may we stop adding the names of more disabled children to the list.