

# Passing Legislation to Protect the Rights of Parents with Disabilities and Their Children

## Toolkit for Advocates

Robyn Powell & Jack Rubinstein • July 2020

**Brandeis**

THE HELLER SCHOOL  
FOR SOCIAL POLICY  
AND MANAGEMENT  
Lurie Institute  
for Disability Policy



National Research Center for Parents with Disabilities  
Parents Empowering Parents  
Padres Empoderando a Padres

## Introduction and Background

In the United States, parents with disabilities and their children experience policies and practices that threaten their right to remain together. Parents with disabilities face bias and speculation that leads to over-representation within the child welfare system as well as disproportionately high rates of termination of parental rights. Disabled parents are also often denied custody or visitation during divorce disputes. Further, some people with disabilities are prevented from becoming foster or adoptive parents because of discrimination.

During the eugenics movement, people with disabilities were involuntarily sterilized because they were deemed “unfit” to raise children. Today, nearly two-thirds of state laws allow for a parent’s disability to be considered when courts are terminating parental rights. Additionally, a parent’s disability is always considered when determining the “best interests of the child.” Indeed, although Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) prevent government and private entities from discriminating against parents with disabilities in most instances, parenthood remains inaccessible to many disabled people.

This toolkit is a product of the National Research Center for Parents with Disabilities, located at the Lurie Institute for Disability Policy at Brandeis University. We are a collaborative research and advocacy project that aims to support parents with disabilities and their families. For this toolkit, we conducted interviews with 19 advocates, attorneys, legislators, and legislative staff from across the country to learn about the barriers and facilitators to passing state legislation to support the rights of parents with disabilities. The recommendations included below come from those interviews.

## State Legislative Efforts

In the 2012 report, [\*Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children\*](#), the National Council on Disability proposed model legislation aimed at preventing discrimination against parents and prospective

parents with disabilities by the child welfare system, family courts, adoption and foster care agencies, and reproductive health care providers. Since then, nearly 30 states have passed or introduced legislation related to parents with disabilities. While the legislation varies from state to state, generally, the bills prohibit discrimination against disabled parents, eliminate disability as grounds for termination of parental rights, and require child welfare agencies and courts to consider how adaptive parenting equipment or supports can alleviate alleged parenting issues. Most states’ legislation covers all disabilities; however, a few states’ bills address specific disabilities (e.g., blindness or intellectual disabilities).



## South Carolina’s Success Story

After strong advocacy by the disability community over two legislative sessions, South Carolina passed the “[Persons with Disabilities Rights Parent Act](#)” in 2017. The first version of the bill was unsuccessful because legislators found it too long and unfocused. The bill was reintroduced with stronger and more targeted language. The bill included clear definitions of relevant provisions, such as adaptive parenting equipment and support services. Its definition of disability matched the ADA’s. The bill also repealed a prior law that included a parent’s disability as grounds for termination of parental rights. The legislation protects the rights of disabled parents in child welfare and family proceedings as well as adoption and foster care.

Advocates point to many strategies that helped them in getting this legislation passed. First, a local center for independent living had a lobbyist who helped them find sponsors and garnish support by legislators. Support by local and national disability and legal organizations was crucial. They also were able to acquire bipartisan support. Further, this legislation built on a prior bill that protected the rights of blind parents. Finally, advocates found that telling their stories was crucial to getting legislators to understand the issues.

# Key Principles of Effective Legislation

In order to pass legislation that will effectively support the rights of parents with disabilities and their children, we identified eight principle provisions that must be included in state legislation. Language for most of these provisions can be found in the *Rocking the Cradle* report.

1. **Remove discriminatory language from existing laws.** Many state child welfare and family law statutes include discriminatory language, such as the inclusion of disability as grounds for termination of parental rights or loss of custody or visitation. As such, it is important that these laws be repealed or amended.
2. **Comprehensive definition of disability.** Legislators and others sometimes want to exclude certain disability types from these bills. However, comprehensive and inclusive language is far more effective. Remember, many people with disabilities have more than one type of disability! We recommend using the ADA's definition of disability: "(a) a physical or mental impairment that substantially limits one or more major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment."
3. **Key definitions, such as adaptive parenting equipment, adaptive parenting strategies, and supportive services.** Parents with disabilities often rely on a variety of equipment, strategies, and supports to care for their children. Unfortunately, courts and child welfare agencies do not always understand these concepts.
4. **Reaffirm the ADA's application to child welfare, family law, adoption, and foster care systems.** While the ADA should apply to parents with disabilities, it is often misapplied or ignored. Legislation should include a provision explicitly stating that the ADA applies to child welfare, family law, adoption,

and foster care systems. For example, case plans for child welfare cases must include reasonable modifications.

5. **Nexus between disability and the alleged harm.** Whoever raises concerns that parent's disability affects their parenting abilities should be responsible for demonstrating to the court a nexus between the disability and actual harm to the child(ren) in question. For example, if the child welfare agency makes the claim that a child could be harmed by their parent's disability, that agency should prove a nexus between the disability and alleged harm. Similarly, if the other parent is making similar allegations, the burden should be on them to prove.
6. **Written court findings.** Court decisions concerning child welfare or family law cases should include written findings describing a nexus between a parent's disability and alleged harm that cannot be alleviated by adapting parenting equipment or support services.
7. **Adaptive parenting assessments.** Parents and prospective parents with disabilities should have access to adaptive parenting assessments for child welfare, family law, adoption, and foster care cases. These assessments should be conducted by an evaluator trained in working with parents with disabilities. The assessments should be fully accessible and consider the use of adaptive parenting equipment and strategies and support services.
8. **Training.** Child welfare and court professionals often lack training on working with disabled parents. These professionals should receive ongoing training on their legal obligations, adaptive parenting equipment and strategies, and support services. Training should include parents with disabilities who can share their lived experiences.

# Advocacy Strategies for Passing Legislation

Passing legislation that supports the rights of parents with disabilities is challenging. Below are strategies that can assist in getting these bills passed.

1. **Bipartisanship.** Disability is an issue that has historically garnered bipartisan support. Likewise, parenting is not a partisan issue. As such, a bipartisan bill can gain the support of a diverse group of legislators.

---

“ I think the bipartisanship sponsorships helped...they were committed to it. And, nobody came out really opposed to it. DSS was able to work with the parents and the advocates and come to an agreement of where to go and how to do it. I think that that respect among all of the parties and the respect across the aisle of the legislators, made a difference. —advocate

---

2. **Cross-disability support.** A central tenet of effective legislation for parents with disabilities is ensuring that it has cross-disability support. Bills that only cover some types of disabilities will likely not gain attention by the broad cross-disability community. Remember, there is strength in numbers!
3. **Stakeholder coalitions.** Passing legislation without stakeholder input and support will be nearly impossible. Building coalitions with state and national organizations can be a powerful tool for putting pressure on legislators to support this legislation. For example, invite child welfare professionals, attorneys, and judges to collaborate in developing the bill. While you may not agree on everything, consensus-building can be crucial to successfully pass legislation.
4. **Research, research, research.** Lawmakers lack knowledge about parents with disabilities and the discrimination they face. As such, it

is important to incorporate facts and peer-reviewed research into testimony and fact sheets. Giving legislators this understanding will help in getting them to support the legislation. Just remember, legislators do not have a lot of time, so just give them high-level facts and information!

5. **Testimony from parents with disabilities.** Having disabled parents share testimony has a value that cannot be stressed enough. Parents who have faced difficulties, such as termination of parental rights, as well as those who have not, should testify at hearings and meet with legislators to tell their stories. Stories and pictures can be very helpful.

---

“ I think personal stories help a lot, a whole lot. And having people that have not had their kids removed makes a difference too, to be able to come and say, 'Hey, I am a successful blind mom.' 'I am a successful quadriplegic dad.' —legislator

---

6. **Find the right sponsors.** Not all legislators are going to understand or care about these issues. Build relationships with legislators and determine who can be a strong opponent for the legislation. Often, personal connections to disability make certain legislators more willing to lend their support.
7. **Persistence and adaptation.** Not everything you are going to try is going to work. That is okay and should be expected. Being willing to change up your strategies when they fail is a necessary step in being an effective advocate!

---

“ I would say find the simplest change to the statute that you can. Keep it easy to explain. And be sure to work with as many partners as you can in both the world of parental rights law and law practice in general. —legislative staff

---

8. **Celebrate all successes.** Getting legislation takes time and perseverance. Sometimes, legislators are only interested in certain

aspects of bills. For example, a legislator may be willing to support legislation that relates to the family law system but not child welfare cases. Don't bend on the important issues but remember that incremental success is still a success.

## How to Cite

Powell, R.M. & Rubinstein, J. (2020). Supporting Legislation to Protect the Rights of Parents with Disabilities and their Children: Toolkit for Legislators. Waltham, MA: Brandeis University.

## Additional Resources

For additional information, please check out the following resources.

- [National Research Center for Parents with Disabilities](#)
- [National Federation of the Blind's model blind parent legislation](#)
- [Rocking the Cradle report by the National Council on Disability](#)
- [Guide for Creative Legislative Change: Disability Status in Termination of Parental Rights and Other Child Custody Statutes by the University of Minnesota](#)
- [American Bar Association's resolution urging states to adopt legislation](#)

## Contact Us

- **Website** [heller.brandeis.edu/parents-with-disabilities](https://heller.brandeis.edu/parents-with-disabilities)
- **Twitter** [@NatRCPD](https://twitter.com/NatRCPD)
- **Facebook** [facebook.com/nrcpd](https://facebook.com/nrcpd)
- **Email** [centerforparents@brandeis.edu](mailto:centerforparents@brandeis.edu)

**DISCLAIMER: The National Research Center for Parents with Disabilities receives funding from the National Institute on Disability, Independent Living, and Rehabilitation Research, Grant # 90DPGE0001. Opinions and findings in this article are the responsibility of the authors, not the National Institute on Disability, Independent Living, and Rehabilitation Research.**