

# 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  
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for Disability Policy



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

## Introduction and Background

In the United States, there are many laws and opinions that make it hard for parents with disabilities and their children to stay together. Because people don't understand or misjudge parents with disabilities, parents with disabilities are more likely to be reported to child welfare services. They are also more likely to have their children taken away from them than other parents are. Disabled parents are also often not allowed to live with or visit their children after they get a divorce from a partner. Some people with disabilities who want to become foster or adoptive parents are denied from being able to do this.

During a time when many scientists thought disabled people shouldn't become parents, people with disabilities were given surgeries or medicine that stopped them from being able to have children, without them knowing they were undergoing these medical procedures. This was because they were seen as "unfit" to raise children. Today, almost two-thirds of state laws allow for a parent's disability to be considered when courts take away those parents' rights to raise their children. Additionally, a parent's disability is always considered when determining the "best interests of the child." Although Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA) stop government and private organizations from discriminating against parents with disabilities in most cases, it's still difficult to become or remain a parent for 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 research and advocacy team that supports parents with disabilities and their families. For this toolkit, we interviewed 19 advocates, lawyers, legislators, and legislative staff from across the country to learn about what is stopping state lawmakers from creating laws that support the rights of parents with disabilities, and how they can be helped to make sure better laws and policies are made. The

recommendations included below come from those interviews.



## South Carolina's Success Story

After a lot of hard work from people with disabilities and their allies, South Carolina passed the "[Persons with Disabilities Rights Parent Act](#)" in 2017. The first version of the bill didn't pass. Lawmakers thought it was too long and unfocused. The bill was reintroduced with clearer language. The bill said exactly what kinds of help parents may need. The bill described disability in the same way the ADA did. The bill also overturned an older law that said disability was a reason to take children from their parents' care. The law protects disabled parents working with child welfare. It also helps them in family court, adoption, and foster care.

The people who worked on getting this law passed shared some of the reasons why they think it works. A local center for independent living had a lobbyist who could help them get support from lawmakers. They got help from Republicans and Democrats. The bill was based on another state law that protected blind parents. Disabled parents telling their stories to lawmakers also helped the law get passed.

## 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 suggested a format for laws that can stop at discrimination against parents and interested parents with disabilities by the child welfare system, family courts, adoption and foster care agencies, and doctors and nurses who help people have children. Since then, nearly 30 states have passed or introduced laws related to parents with disabilities. While the legislation is different from state to state, generally, the laws ban discrimination against disabled parents, get rid of disability as a reason for

losing parental rights, and require child welfare agencies and courts to consider how adaptive parenting equipment or supports can help parents take better care of their children. Most states' laws cover all disabilities; however, a few states' bills speak about specific disabilities (such as blindness or intellectual disabilities).

## Key Principles of Effective Legislation

We found 8 ways to help create laws that will protect parents with disabilities and their children. You can read more about these ways in the *Rocking the Cradle* report.

- 1. Remove discriminatory language from existing laws.** Many state family and child welfare laws are unfair to parents with disabilities. Some say that courts can take away disabled parents' rights just because of their disability. They may not be able to take care of their children anymore. They may not even be able to see their children anymore. This isn't fair. It's important to get rid of these laws or change them.
- 2. A broad and inclusive definition of disability.** Politicians and others sometimes want to leave out certain disability types from these bills. However, complete and inclusive language is more helpful. 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. Clear definitions, such as adaptive parenting equipment, adaptive parenting strategies, and supportive services.**
  1. 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 what these mean, so they need to be clearly defined.
- 4. Commit to using the ADA in child welfare, family law, adoption, and foster care systems.** The ADA should protect parents with disabilities. But sometimes it's used the wrong way, or people ignore it. Laws should include a part clearly 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 changes that are best for a disabled parent.
- 5. Connection between disability and the supposed harm.** If anyone worries that a parent's disability makes them a bad parent, they should need to prove to the court that the parent's disability is really causing actual harm to their child(ren). 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 how the disability really could be causing harm. Similarly, if the other parent is making similar claims, that parent should have to prove if the claim is true.
- 6. Written court findings.** Court decisions about child welfare or family law cases should include written findings describing a connection between a parent's disability and claimed harm that cannot be helped by fixing parenting equipment or support services.
- 7. Accessible parenting tests.** Parents and interested parents with disabilities should be allowed to take adaptive parenting assessments (tests) for child welfare, family law, adoption, and foster care cases. These tests should be led by an expert trained in working with disabilities. The tests should be fully accessible and consider the use of adaptive parenting equipment and methods and support services.
- 8. Training.** Child welfare and court professionals often don't have enough training on working with disabled parents. These professionals should have ongoing classes on their legal obligations, adaptive parenting

equipment and strategies, and support services. Training should include parents with disabilities who can share their stories..

## How to Pass Laws Protecting Parents

It can be hard to pass new laws that protect disabled parents' rights. Here are some ideas that can help you get these laws passed.

### 1. **Cooperation between political parties.**

Both Republicans and Democrats have supported laws protecting people with disabilities. Likewise, parenting is something people from all political parties care about. A bill with support from both parties can gain the support of a large group of politicians..

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“ 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

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2. **Cooperation between people with different disabilities.** An important part of effective law-making for parents with disabilities is making sure 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. **Get different groups involved.** It's almost impossible to pass new laws without help and support from important groups and organizations. Building connections with state and national organizations can be a powerful tool for working out the details of your bill. For example, invite child welfare professionals, lawyers, and judges to collaborate in writing and planning the bill. While you may not agree

on everything, building agreements can be important to successfully pass legislation

### 4. **Research, research, research.**

Lawmakers don't know about parents with disabilities and the discrimination they face. Because of this, it is important to include facts and well-checked research into testimony and fact sheets. Giving politicians this understanding will help in getting them to support the new new bills. Just remember, lawmakers do not have a lot of time, so just give them the most important facts and information!

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“ 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

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### 5. **Stories from parents with disabilities.**

Having disabled parents share their true life stories has a value that cannot be stressed enough. Parents who have faced difficulties, such as losing rights to their children, as well as those who have not, should testify at hearings and meet with other lawmakers to tell their stories. Stories and pictures can be very helpful.

6. **Find the right sponsors.** Not all lawmakers are going to understand or care about these issues. Build relationships with politicians and determine who can be a strong opponent for the legislation. Often, personal connections to disability make certain lawmakers more willing to lend their support.

7. **Be strong and ready for change.** Not everything you are going to try is going to work. That is okay and should be expected. Being ready to change up your strategies when they fail is a necessary step in being an effective advocate!

8. **Celebrate all successes.** Getting law through takes time and perseverance. Sometimes, politicians are only interested in certain parts

of bills. For example, a lawmaker may be willing to support laws that relate to the family law system but not child welfare cases. Don't bend on the important issues but remember that slow and steady success is still success.



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

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## Learn More

For more 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](#)

## How to Cite

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## 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)