

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

Toolkit for Legislators

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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, 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, and 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.

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 aims to support parents with disabilities and their families. For this toolkit, we conducted interviews with 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.

Facts about Parents with Disabilities and Their Children

- About **5% to 10% of parents in the United States have a disability.**¹
- Nearly **10% of children in the United States have a disabled parent.**²
- At least **19% of children in foster care have a parent with a disability.**³
- Parents with disabilities are **22% more likely to have their parental rights terminated.**⁴
- Parents with psychiatric disabilities are **8 times more likely to have child welfare system involvement** than nondisabled parents and 26 times more likely to have their children removed from their homes.⁵
- Nearly **two-thirds of state laws list**

parents' disability as a reason children can be taken away from their parents.⁶

- Generally, **a parent's disability does not make it harder to care for their children**, and most challenges are related to factors not related to their disability (e.g., poverty, social isolation, inadequate supports).⁷

State Legislative Efforts

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 prohibit 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).



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

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
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.

change them.

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..
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



You really have to get through to the Speaker or the committee chairperson, mainly the speaker. I think a public awareness... would probably be a good thing because that's what they respond to. I've actually taken a gentle approach, gone to the speaker, had the conversations, said, 'This is important' and try to make a plea for it. He basically just ignores it. That's one aspect. —former legislator/advocate

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!
5. **Stories from parents with disabilities.**
 1. 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.



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 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.



Just this week, the member of the House of Delegates who was incredibly helpful reached out and said, 'Hey, do you guys want to do this again?'...He really seemed to have embraced this. He wants all of his advice from us....Very rarely do I get a delegate who calls me and says, 'Do you want to introduce this legislation again?' —advocate

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.

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

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.

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Endnotes

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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.