



State Legislation - Parents with Disabilities - Summary

Despite notable achievements in other areas of disability rights, parents with disabilities continue to encounter significant discrimination. Parents with disabilities are more likely to have their children removed by the child welfare system as well as have their parental rights terminated. Moreover, within the family law system, disabled parents are less likely to gain access to custody or visitation of their children. Finally, prospective parents with disabilities encounter barriers to adopting children or becoming foster parents. While there are many reasons for the pervasive discrimination, it is notable that the child welfare, family law, and adoption systems are largely driven by state statutes.

In 2012, the National Council on Disability issued its seminal report, *Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children*. Included in *Rocking the Cradle* was model legislation that would revise child welfare, family law, and adoption statutes to eliminate discrimination against parents with disabilities, which states were urged to adopt. Since *Rocking the Cradle* was issued, there has been a surge of activity on both the national and state level. Indeed, within the past few years, at least 20 states have successfully passed or sought to pass legislation protecting the rights of parents with disabilities and their families. The National Research Center for Parents with Disabilities' *Changes in State Legislation to Protect the Rights of Parents with Disabilities* table describes each legislation by state, including the citation, link to text, status, disability types covered, and a summary.

As advocates have worked with state legislatures to enact legislation aimed at eliminating discrimination, there are a number of trends in the legislation:

Disability types covered

Although the majority of legislation includes parents with all disabilities, some states have targeted only certain subgroups of parents with disabilities. For example, Washington's (H. 2616) legislation only covered parents with intellectual and developmental disabilities. Moreover, Illinois (H. 2626), South Carolina (S. 687, H. 4469), New York (A. 0171, A. 03266), Oregon (H. 3392), Ohio (H. 309), and Virginia (H. 2273) have passed or have legislation pending that is specific to parents who are blind or have low vision.

Incorporation of the ADA

Some states' legislation has specifically incorporated the Americans with Disabilities Act (ADA) definition into their legislation, such as Idaho (H. 579), Maryland (S. 613, H. 689), and Massachusetts (S. 896, H. 845). Other states have legislation that states that existing child welfare laws must incorporate the ADA, including Arkansas (S. 489), Nebraska (Bill 456), and West Virginia (H. 2200).

Adaptive equipment and support services

Many states' legislation has mentioned adaptive equipment and support services for parents with disabilities, specifying that courts must consider their use in making determinations. These states include Idaho (H. 577, H. 579, H. 167), Kansas (S. 230), Massachusetts (S. 896, H. 845), Nebraska (Bill 456), South Carolina (S. 291, H. 3538), and Vermont (H. 635). In addition, the state of California (A. 2152) passed legislation that caused adaptive baby care equipment to be included in the list of durable medical equipment covered by their Medicaid program. Finally, the state of Minnesota (S. 846, H. 898) has legislation that would establish a pilot project is to assist a parent with a disability in childrearing tasks and to prevent removal of a child from a parent solely because the parent has a disability.

Burden of proof

Some states have legislation that require that the party (i.e. state or other parent) asserting that the disability harms the child, bears the burden of proving so by clear and convincing evidence, including Illinois (H. 2626), Nebraska (Bill 456), Oregon (H. 2433), and Virginia (H. 2273). Some legislation requires courts to make specific findings that the parent's disability causes an actual harm that cannot be alleviated with adaptive equipment or supports, including Idaho (H. 577), Illinois (H. 2626), Massachusetts (S. 896, H. 845), Rhode Island (H. 7750A), and Virginia (H. 2273).

Removes disability as grounds for termination of parental rights

Some states have legislation that removes disability from their state's termination of parental rights statute, including Idaho (H. 160), Massachusetts (S. 896, H. 845), Rhode Island (H. 7750A), and South Carolina (S. 291, H. 3538).