

H. 1370: An Act prohibiting discrimination against adults with disabilities in family and juvenile court proceedings

Capable parents with disabilities should not be denied the right to raise their children. Parents with disabilities lose their children at alarming rates. Parents with disabilities are more likely to lose custody of their children after divorce. Removal rates of children from parents with psychiatric or intellectual disabilities is as high as 70—80%. Parents with sensory or physical disabilities also experience extremely high removal rates and loss of their parental rights.

H. 1370 will require courts to determine whether or not a parent’s disability causes harm to their child, by requiring written findings when courts rely on a parent’s disability as a negative factor in a custody or visitation determination. This law will also require courts to determine whether the harm to the child can be alleviated by adaptive equipment or supportive services for the parent.

Disability alone is not a reason: Reliance on a parent’s disability without explanation is illegal discrimination. 25 years after the passage of the Americans with Disabilities Act, adults with disabilities have increased protections in education and work life, but parents with disabilities are still at significant risk to lose their children. A decision to terminate parental rights, remove custody or deny parenting time to a parent based solely on their disability status violates the ADA. See U. S. Departments of Justice (DOJ) and Health and Human Services (HHS) joint letter finding disability rights violations by the Massachusetts Department of Children and Families (DCF) at: http://www.ada.gov/ma_docf_lof.pdf

Keeping families together is good for children. Extensive research shows that children fare better when they remain with their parents. But children of parents with disabilities continue to be inappropriately removed from their homes or separated from their parents without a determination of how the parent’s disability affects their ability to parent.

H. 1370 is consistent with current Massachusetts case law, federal and state anti-discrimination law, and a trend in state family law. For further information see the recent report of the National Council on Disability: “Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children,” which can be found at: <http://www.ncd.gov/publications/2012/Sep272012/>.

H. 1370 will not cost the state money and may even save the state money by preventing unnecessary foster care placements.

For more information please contact:

Kate Nemens, Esq., MHLAC, 617-338-2345 ext. 128, knemens@mhlac.org

(See reverse for sponsorship and organizational support)

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