

H. 845 and S. 896: 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. Removal rates of children from parents with psychiatric or intellectual disabilities are as high as 70—80%. Parents with sensory or physical disabilities also experience extremely high removal rates and loss of their parental rights.

H. 845/S. 896 will require courts to determine whether a parent’s disability causes harm to their child by requiring written findings when a parent’s disability is relied on as a negative factor in a custody or parenting time determination. This law will also require courts to determine whether 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. A decision to terminate parental rights, remove custody or deny parenting time to a parent based solely on their disability status violates the Americans with Disabilities Act (ADA). See U. S. Departments of Justice (DOJ) and Health and Human Services (HHS) joint letter finding discriminatory actions 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. Despite this, 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 parenting ability.

H. 845/S. 896 is consistent with current Massachusetts case law, federal and state anti-discrimination law, a trend in state family law, and a resolution of the American Bar Association (ABA) Commission on Disability Rights. ABA Resolution 114 supports the requirement of a showing of a causal relationship between a parent’s disability and significant harm or imminent risk of harm to the child, before that disability can be used as a basis to restrict the parent’s access to their child. The ABA urges consideration of appropriate services, supports, and reasonable modifications that can alleviate harm or imminent risk of harm to the child, which would be codified by the passage of this legislation. See http://www.americanbar.org/content/dam/aba/administrative/mental_physical_disability/114.auctheckdam.pdf, and see the National Council on Disability’s report: “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. 845/S. 896 will not cost the state money and may even save the state money by preventing unnecessary foster care placements.

For more information please contact:

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(See reverse for current co-sponsorship and organizational support)

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