

## **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](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](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:

Kate Nemens, Esq., MHLAC, 617-338-2345 ext. 128, [knemens@mhlac.org](mailto:knemens@mhlac.org)

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

**H. 845 and S. 896: An Act prohibiting discrimination against adults with disabilities in family and juvenile court proceedings**

**Sponsored by:** Representative Heroux and Senator L'Italien

**Co-sponsored by:** Representative Balse, Representative Brodeur, Representative Calter, Representative Cantwell, Representative Chan, Representative Crighton, Representative Decker, Representative Dwyer, Representative Farley- Bouvier, Representative Garballey, Representative Gonzalez, Representative Gregoire, Representative Hecht, Representative Higgins, Representative Keefe, Representative Khan, Representative Kuros, Representative Lewis, Representative McGonagle, Jr., Representative McMurtry, Representative Murphy, Representative O'Day, Representative Provost, Representative Smola, Representative Stanley, Representative Tucker, Representative Ultrino, Representative Vega, Representative Chris Walsh, Representative Thomas Walsh, Senator Barrett, Senator DiDomenico, Senator Eldridge, Senator Flanagan, Senator Gobi, Senator Lewis, Senator McGee

**Supported by:** Mental Health Legal Advisors Committee  
Disabled Parenting Project  
Easter Seals Massachusetts  
Independent Living Center of the North Shore and Cape Ann, Inc.