

# Parents with Disabilities

Deserving of the same parental rights as parents without disabilities



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### Rights in Arizona

It is important to know your rights as a parent with a disability. Currently, there are no laws in Arizona to explicitly protect parents with disabilities from discrimination. This brochure will explain the current state of parental rights for parents with disabilities in Arizona to help guide future lawmaking.

There are services for parents with disabilities that can help them care for themselves and their children. The Arizona Department of Child Safety (DCS) is responsible for providing access to these resources.

Under the Americans with Disabilities Act (ADA), people with disabilities have the right to *equitable access*. That means that accommodations must be provided to give people with disabilities access to something that people without disabilities have access to.

The ADA requires child welfare agencies like the Arizona DCS to:

- Give a fair chance to parents with disabilities so they can take part in programs, services, or activities.
- Provide help so that people with disabilities understand what is being said or done.
- Prevent barriers that make programs, activities or services hard to access because of disability.
- Not rely on stereotypes of people with disabilities when determining the capability to care for a child.

#### Sources:

- 1. US DOJ 12/16/24
  <a href="https://www.justice.gov/archives/opa/pr/justice-d">https://www.justice.gov/archives/opa/pr/justice-d</a>
  <a href="epartment-finds-arizonas-department-child-safety-discriminates-against-parents-and">https://www.justice.gov/archives/opa/pr/justice-d</a>
  <a href="epartment-finds-arizonas-department-child-safety-discriminates-against-parents-and">epartment-finds-arizonas-department-child-safety-discriminates-against-parents-and</a>
- 2. Claire Chiamulera, American Bar Association <a href="https://www.americanbar.org/groups/public\_interest/child\_law/resources/child\_law\_practiceonline/child\_law\_practice/vol-34/february-2015/representing-parents-with-disabilities--best-practice/#:~:text=Bias/speculation%20in%20best%20interests,Marriage%20of%20Carney%2C%20598%20P.
- 3. Parental rights foundation.org 06/12/2019
- 4. ada.gov

### Case Law Examples

Unfortunately, DCS has been found to discriminate against parents with disabilities in Arizona and in other states.

**ARIZONA.** DCS did not provide reasonable accommodations to accessing resources.

- The Department of Justice cites two separate cases in which ASL interpreters were not present when DCS removed children from Deaf families' households<sup>1</sup>.
- A father with cognitive disabilities was not offered accommodations such as written descriptions of medical appointments or parenting classes to learn to care for his child with medical needs<sup>1</sup>.

**MASSACHUSETTS.** DCS operated based on assumptions surrounding disabilities rather than facts.

 Sara Gordon had her newborn removed from her custody on day 2 of life citing her moderate intellectual disability as reason for removal. Even though Sara's family had made many changes to help Sara adjust to motherhood, Sara was not allowed to prove herself as a mother before being determined unfit by the state of Massachusetts in 2012. Eventually, through multiple court cases, Sara regained custody of her daughter<sup>2</sup>.

#### Sources:

- 1. Department of Justice, Dec 16 2024. The United States' Findings and Conclusions from Investigating the State of Arizona's Department of Child Safety under the Americans with Disabilities Act, DJ No. 204-8-264
- 2. United States Department of Justice, Jan 29, 2015. Re: Investigation of the Massachusetts Department of Children and Families by the United States Departments of Justice and Health and Human Services Pursuant to the Americans with Disabilities Act and the Rehabilitation Act

# Example: Rights in Nevada and Colorado

It can be helpful to look at laws in nearby states when trying to develop new legal protections in Arizona.

#### Nevada<sup>1</sup>

NRS 125C.215 states: "Denial of custody or visitation on basis of disability or possession of registry identification card prohibited."

 "Disabilities" covered by this statute include deafness, blindness, or another physical disability

#### Colorado<sup>2</sup>

Family Preservation For Parents With Disability Act states:

- A parent's disability must not serve as a basis for denial or restriction of parenting time or parental responsibilities in a domestic law proceeding.
- A parent's disability must not serve as a basis for denial of participation in adoption, foster care or quardianship.
- Requires supportive parenting services to be provided
- "Disability" is defined as a person who "has a physical or mental impairment that substantially limits one or more major life activities, has a history or record of such an impairment, or is perceived by others as having such an impairment."

#### Sources:

- 1. NRS 125C.215
- 2. Family Preservation For Parents With Disability Act

# Example: Rights in Tennessee and Massachusetts

It can be helpful to look at laws in states with similar populations when trying to develop new legal protections in Arizona.

#### Tennessee<sup>1</sup>

- <u>Senate Bill No. 749</u> states that: "The disability of a parent seeking custody shall not create a presumption for or against awarding custody to such a party but may be a factor to be considered by the court."
- This means that the court must consider all relevant factors pertaining to custody when making a decision on what is in the children's best interests. A parent's disability alone is not enough to deny custody or visitation. Instead, the adult's physical or mental disability is one of many important factors to be considered by the court.

#### Massachusetts<sup>2</sup>

Parents with disabilities have the following rights in MA:

Protection from discrimination

o Parents with disabilities have the right to parent their children and should not be denied custody or parenting time due to disability discrimination.

#### Reasonable accommodations from the courts

o Parents can request reasonable accommodations and file complaints if they believe they have not received them.

#### Access to programs and services

 Courts must provide parents with disabilities with the same fair chance to receive programs and services that parents without disabilities are eligible for.

#### Support from organizations

- There are several organizations that provide support to parents with disabilities, including:
- **Arc Massachusetts**: A statewide volunteer educational and advocacy organization
- Family TIES of Massachusetts: A statewide information and parent-to-parent support project
- Federation for Children with Special Needs: A center for parents and parent organizations to work together
- Massachusetts Association of Special Education Parent Advisory Councils (MASSPAC): An organization that works to

promote understanding, respect, and support for children with special needs

#### MA

https://www.doe.mass.edu/sped/parents.html

https://www.dlc-ma.org/

https://www.mass.gov/info-details/resources-for-parents-with-disabilities

https://namimass.org/wp-content/uploads/Protect-Disabled-Parents-Rights-Fact-Sheet-3-10-23.pdf

https://turcolegal.com/blog/disabled-parents-rights-cus
tody/

### **Future directions**

Parents with disabilities in Arizona deserve legal protections that prevent discrimination against them based on their disability.

We propose that Arizona adopt a law like Tennessee's <u>Senate Bill No. 749</u>. "Courts must consider *all* relevant factors pertaining to custody when deciding on what is in the children's best interests." A parent's disability cannot be the sole factor in denying custody or visitation. Our proposed law also includes retraining employees in the rights of parents with disabilities and the obligations of DCS to ensure state employees, case workers, and those in the courts understand how to work with families ethically and equitably.

DCS needs to uphold its responsibilities to parents with disabilities. This includes providing the necessary support services and ensuring that parents with disabilities are treated fairly and equally.

Removing children from parental custody or denying visitation only on preconceptions of a person with disabilities not only affects the parents but the entire family unit. Arizona must implement and abide by laws that protect parents with disabilities.

### Nonprofits that Help Parents with Disabilities

#### **The Disability Law Center (DLC)**

- A private, non-profit organization that provides legal advocacy on disability issues.

#### **Disabled Parenting Project**

(https://disabledparenting.com/)

 Contains a variety of resources, including blogs, a directory of external health, legal, social services, and a marketplace to buy, sell, and trade adaptive parenting equipment

#### **Through the Looking Glass**

(https://lookingglass.org/national-centers-and-organizations/)

#### **National Federation of the Blind**

(<a href="https://nfb.org/our-community/blind-parents">https://nfb.org/our-community/blind-parents</a>)

- Provides some resources for deaf parents, mostly related to advocacy for their own children's educational needs along with research articles.

#### **National Deaf Center**

(<a href="https://nationaldeafcenter.org/">https://nationaldeafcenter.org/</a>)

- Provides some resources for deaf parents, mostly related to advocacy for their own children's educational needs along with research articles

#### **Christoper & Dana Reeve Foundation**

(https://www.christopherreeve.org/)

 Resources, blogs, and online support for people, including parents, with spinal cord injuries

#### **Adaptive Parent Project**

(<a href="https://www.adaptiveparentproject.org/">https://www.adaptiveparentproject.org/</a>)

- A nonprofit organization dedicated to empowering parents with all types of disabilities.

### **National Center for Disability and Pregnancy Research**

(<a href="https://heller.brandeis.edu/disability-and-pregnancy">https://heller.brandeis.edu/disability-and-pregnancy</a>)

- Resources for pregnancy and disability including relevant research

### **National Research Center for Parents with Disabilities**

(<a href="https://heller.brandeis.edu/parents-with-disabilities/">https://heller.brandeis.edu/parents-with-disabilities/</a>)

- Resources for parents with disabilities

#### The Association for Successful Parenting (TASP)

(https://achancetoparent.net/serviceprograms/)

- Includes a resource directory for parents with disabilities, blogs, opportunities to connect to the

community, and more information on adaptive parenting products.

#### **Connections for Families**

(<a href="http://www.connectionscounselling.ab.ca/about-us">http://www.connectionscounselling.ab.ca/about-us</a>)

 Offers parenting skills education and family support that help adults who have a developmental disability, Fetal Alcohol Syndrome or brain injury be successful parents