



**Testimony on LB 845
Before the Judiciary Committee
Nebraska Legislature**

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Good afternoon Senator Ebke and members of the Judiciary Committee. For the record, my name is Brad B-R-A-D Meurrens M-E-U-R-R-E-N-S and I am the Public Policy Director for Disability Rights Nebraska, the designated Protection and Advocacy organization for people with disabilities in Nebraska. LB 845 is a bill we fully support.

We agree with the legislative findings in the bill that people with disabilities continue to encounter bias and preconceptions about their abilities to be parents, let alone good parents. The National Council on Disability issued a report "*Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children*"¹ in 2012 that pointed out the factors used in dependency and family court proceedings are not always objectively applied to parents with disabilities and their children. The National Council on Disability reports that parents with disabilities face high rates of custody removal:

- Rates where parents have a psychiatric disability have been found to be as high as 70 percent to 80 percent; where the parent has an intellectual disability, 40 percent to 80 percent.
- In families where the parental disability is physical, 13 percent have reported discriminatory treatment in custody cases.
- Parents who are deaf or blind report extremely high rates of child removal and loss of parental rights.

The National Council on Disability points out the significance of discriminatory custody statutes and policy for parents with disabilities:

"Even today, 22 years after the passage of the Americans with Disabilities Act, parents with disabilities are the only distinct community of Americans who must struggle to retain custody of their children...Parents with disabilities are more likely to lose custody of their children after divorce... Clearly, the legal system is not protecting the rights of parents with

¹ National Council on Disability (2012), "Rocking the Cradle: Ensuring the Rights of Parents with Disabilities and Their Children" available at: http://www.ncd.gov/sites/default/files/Documents/NCD_Parenting_508_0.pdf

disabilities and their children. Fully two-thirds of dependency statutes allow the court to reach the determination that a parent is unfit (a determination necessary to terminate parental rights) on the basis of the parent's disability." (pg. 1)

Furthermore, a technical assistance brief, jointly issued by the United States Department of Justice and Health and Human Services describes the situation LB 845 is intended to address even more bluntly: "...ensuring that parents and prospective parents with disabilities have equal access to parenting opportunities increases the opportunities for children to be placed in safe and caring homes."² This document goes further and describes how the provisions of LB 845 square with the intent and purpose of both the Americans with Disabilities Act and Section 504 of the Rehabilitation Act (emphasis added):

"Two principles that are fundamental to Title II of the ADA and Section 504 are: (1) individualized treatment; and (2) full and equal opportunity..."

Individualized treatment. Individuals with disabilities must be treated on a case-by-case basis consistent with facts and objective evidence. Persons with disabilities may not be treated on the basis of generalizations or stereotypes. For example, prohibited treatment would include the removal of a child from a parent with a disability based on the stereotypical belief, unsupported by an individual assessment, that people with disabilities are unable to safely parent their children. Another example would be denying a person with a disability the opportunity to become a foster or adoptive parent based on stereotypical beliefs about how the disability may affect the individual's ability to provide appropriate care for a child.

Full and equal opportunity. Individuals with disabilities must be provided opportunities to benefit from or participate in child welfare programs, services, and activities that are equal to those extended to individuals without disabilities. This principle can require the provision of aids, benefits, and services different from those provided to other parents and prospective parents where necessary to ensure an equal opportunity to obtain the same result or gain the same benefit, such as family reunification."

We appreciate LB 845's preference for using the terms "individual with a disability" and "parent with a disability" over "disabled person" or "disabled parent" as was in the introduced version of LB 456 (2017). Additionally, we are pleased to see that LB 845 clarifies the definition of "disability" to mirror the definition of disability in federal law, the Americans with Disabilities Act.

We recommend that LB 845 be advanced.

² "Protecting the Rights of Parents and Prospective Parents with Disabilities: Technical Assistance for State and Local Child Welfare Agencies and Courts under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act", August 2015, available at: https://www.ada.gov/doj_hhs_ta/child_welfare_ta.html