

February 25, 2021

Re: S 56 - Preservation of Families with Disabled Parent Act

ACLU POSITION: AMEND

To Senate Judiciary Committee:

As the Director of the ACLU's Disability Rights Program, and as a disability rights attorney for the last 28 years, I am writing to express my concerns with the Preservation of Families with Disabled Parent Act.

While I understand the good intentions with which the Act was drafted, it has, in its present form, sufficient defects that it does more harm than good. My chief concern is the bill's repeated use of the word "solely" to modify a person or institution's disability based decision, as this establishes a lower standard of protection than that required by the Americans with Disabilities Act (ADA).

While it is true that section 504 of the Rehabilitation Act uses the term "solely by reason of his or her disability," Title II of the ADA, the more recent and comprehensive legislation which applies to state and local governments, removed the word "solely" in defining the obligations imposed on institutions and the government in dealing with persons with disabilities:

42 U.S.C. § 12132 states: "[N]o qualified individual with a disability shall, **by reason of such disability**, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

By repeatedly using the word "solely" in the legislation, government workers and hospital staff may erroneously conclude that if they have any other reason to refer someone to child protective services, it would be justified. So, a social worker might believe, "I am not referring these parents solely because they are deaf, I'm referring them because they did not hear their baby cry." Or, a nurse might state, "I did not refer these parents solely because they have an intellectual disability, but because they did not have the right answer when I asked if they knew what a 'normal temperature' was." In each case, the referral would be inappropriate and, in all likelihood, unlawful under the ADA. Deaf parents should be alerted to baby monitors with lights. Parents



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with intellectual disabilities should have instruction on how to use and read thermometers. These are reasonable modifications in practices, policies and procedures that the ADA requires of hospital and government workers, but that, under this bill's language, they could consider unnecessary before referring parents to DCYF for protective services. In short, use of a "solely" standard is inconsistent with the protections provided by the ADA, and may end up failing to safeguard the rights of some of the families this bill is designed to help.

Again, I applaud the intent of this legislation, and encourage you to make this revision to the bill so that it comports with the language of the ADA and its goal can be realized. People with disabilities deserve an equal opportunity to experience the joys, heartache, and connection to our future that parenting provides.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Mizner", written over a light gray rectangular background.

Susan Mizner
Director
Disability Rights Program
ACLU

