

CHAPTER 164

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 18-1104

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AN ACT**CONCERNING FAMILY PRESERVATION SAFEGUARDS FOR PARENTS WITH DISABILITIES.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 24-34-805 as follows:

24-34-805. Family preservation safeguards for families that include a parent with a disability - protections - legislative declaration - definitions. (1) (a) **THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:**

(I) **PERSONS WITH DISABILITIES CONTINUE TO FACE UNFAIR, PRECONCEIVED, AND UNNECESSARY SOCIETAL BIASES, AS WELL AS ANTIQUATED ATTITUDES, REGARDING THEIR ABILITY TO SUCCESSFULLY PARENT THEIR CHILDREN;**

(II) **PERSONS WITH DISABILITIES HAVE FACED THESE BIASES AND PRECONCEIVED ATTITUDES IN FAMILY AND DEPENDENCY LAW PROCEEDINGS CONCERNING PARENTAL RESPONSIBILITIES AND PARENTING TIME DECISIONS, PUBLIC AND PRIVATE ADOPTIONS, GUARDIANSHIP, AND FOSTER CARE;**

(III) **BECAUSE OF THESE SOCIETAL BIASES AND ANTIQUATED ATTITUDES, CHILDREN OF PERSONS WITH DISABILITIES HISTORICALLY HAVE BEEN VULNERABLE TO UNNECESSARY REMOVAL FROM ONE OR BOTH OF THEIR PARENTS' CARE OR ARE RESTRICTED FROM ENJOYING MEANINGFUL TIME WITH ONE OR BOTH PARENTS; AND**

(IV) **CHILDREN HAVE BEEN DENIED THE OPPORTUNITY TO ENJOY THE EXPERIENCE OF LIVING IN LOVING HOMES WITH A PARENT OR PARENTS WITH A DISABILITY OR**

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

OTHER CARETAKERS WITH A DISABILITY.

(b) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT TO PROTECT THE BEST INTERESTS OF CHILDREN WHO ARE PARENTED BY PERSONS WITH DISABILITIES OR CHILDREN WHO COULD BE PARENTED BY PERSONS WITH DISABILITIES:

(I) PROCEDURAL SAFEGUARDS ARE REQUIRED IN ADHERENCE TO THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS; AND

(II) IT IS NECESSARY TO HAVE RESPECT FOR THE DUE PROCESS AND EQUAL PROTECTION RIGHTS OF PARENTS AND PROSPECTIVE PARENTS WITH DISABILITIES IN THE CONTEXT OF CHILD WELFARE, FOSTER CARE, FAMILY LAW, GUARDIANSHIP, AND ADOPTION.

(2) ACHIEVING THE GOAL OF FAMILY PRESERVATION FOR A PARENT OR PROSPECTIVE PARENT WITH A DISABILITY INCLUDES THE FOLLOWING REQUIREMENTS:

(a) A PARENT'S DISABILITY ALONE MUST NOT SERVE AS A BASIS FOR DENIAL OR RESTRICTION OF PARENTING TIME OR PARENTAL RESPONSIBILITIES IN:

(I) A DOMESTIC LAW PROCEEDING PURSUANT TO TITLE 14, WITHOUT A CLEAR NEXUS TO THE PARENT'S ABILITY TO MEET THE NEEDS OF THE CHILD;

(II) A MINOR GUARDIANSHIP PROCEEDING PURSUANT TO TITLE 15, WITHOUT A CLEAR NEXUS TO THE PARENT'S ABILITY TO MEET THE NEEDS OF THE CHILD; OR

(III) A DEPENDENCY AND NEGLECT PROCEEDING PURSUANT TO TITLE 19, EXCEPT WHEN IT IMPACTS THE HEALTH OR WELFARE OF A CHILD;

(b) A PROSPECTIVE ADOPTIVE PARENT'S DISABILITY ALONE MUST NOT SERVE AS A BASIS FOR THE DENIAL OF HIS OR HER PARTICIPATION IN A PUBLIC OR PRIVATE ADOPTION PURSUANT TO ARTICLE 5 OF TITLE 19 UNLESS IT WOULD IMPACT THE HEALTH OR WELFARE OF A CHILD;

(c) AN INDIVIDUAL'S DISABILITY ALONE MUST NOT SERVE AS A BASIS FOR THE DENIAL OF TEMPORARY CUSTODY OR FOSTER CARE OF A MINOR, EXCEPT WHEN IT IMPACTS THE HEALTH OR WELFARE OF A CHILD;

(d) IN A CASE BROUGHT PURSUANT TO TITLE 14, A MINOR GUARDIANSHIP PROCEEDING PURSUANT TO TITLE 15, OR ARTICLE 4 OF TITLE 19:

(I) WHERE A PARENT'S OR PROSPECTIVE GUARDIAN'S DISABILITY IS ALLEGED TO HAVE A DETRIMENTAL IMPACT ON A CHILD, THE PARTY RAISING THE ALLEGATION BEARS THE BURDEN OF PROVING, BY A PREPONDERANCE OF THE EVIDENCE, THAT THE BEHAVIOR OR BEHAVIORS OF THE PARENT OR PROSPECTIVE PARENT ARE CONTRARY TO THE CHILD'S BEST INTEREST; AND

(II) IF THE BURDEN OF PROOF REQUIRED PURSUANT TO SUBSECTION (2)(d)(I) OF THIS SECTION IS MET, THE PARENT OR PROSPECTIVE GUARDIAN WITH A DISABILITY MUST BE GIVEN THE OPPORTUNITY TO DEMONSTRATE HOW THE IMPLEMENTATION OF

SUPPORTIVE PARENTING SERVICES CAN ALLEVIATE ANY CONCERNS THAT HAVE BEEN RAISED. THE COURT MAY REQUIRE THAT SUCH SUPPORTIVE PARENTING SERVICES BE PROVIDED OR IMPLEMENTED, GIVEN THE RESOURCES OF THE FAMILY, WITH AN OPPORTUNITY TO REVIEW THE NEED FOR CONTINUATION OF SUCH SERVICES WITHIN A REASONABLE PERIOD OF TIME.

(e) IN A DEPENDENCY AND NEGLECT CASE BROUGHT PURSUANT TO TITLE 19, WHEN A RESPONDENT PARENT'S DISABILITY IS ALLEGED TO IMPACT THE HEALTH OR WELFARE OF A CHILD, THE COURT SHALL FIND WHETHER REASONABLE ACCOMMODATIONS AND MODIFICATIONS, AS REQUIRED BY THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS, WERE PROVIDED TO AVOID NONEMERGENCY REMOVAL ON THE BASIS OF DISABILITY.

(f) IN A CASE BROUGHT PURSUANT TO TITLE 14, A MINOR GUARDIANSHIP PROCEEDING PURSUANT TO TITLE 15, OR ARTICLES 4 AND 5 OF TITLE 19, IF A COURT DETERMINES THAT THE RIGHT OF A PARENT OR PROSPECTIVE GUARDIAN WITH A DISABILITY TO PARENTING TIME, PARENTAL RESPONSIBILITIES, GUARDIANSHIP, OR ADOPTION SHOULD BE DENIED, RESTRICTED, OR CONDITIONED IN ANY MANNER, THE COURT SHALL MAKE SPECIFIC FINDINGS OF FACT AND LAW STATING THE BASIS FOR SUCH A DETERMINATION AND WHY THE PROVISION OF SUPPORTIVE PARENTING SERVICES IS NOT A REASONABLE ACCOMMODATION OR REMEDY TO PREVENT THE DENIAL OR LIMITATION.

(3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS.

(b) "SUPPORTIVE PARENTING SERVICES" MEANS THE PROVISION OF REASONABLE ACCOMMODATIONS AND MODIFICATIONS AS SET FORTH IN THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS, AND ARE DIRECTLY RELATED TO A DISABILITY AND THAT ENABLE A PARENT WITH A DISABILITY TO SAFELY FULFILL PARENTAL RESPONSIBILITIES.

SECTION 2. In Colorado Revised Statutes, **amend** 14-10-102 as follows:

14-10-102. Purposes - rules of construction. (1) ~~This article shall~~ ARTICLE 10 MUST be liberally construed and applied to promote its underlying purposes.

(2) ~~Its~~ THE underlying purposes OF THIS ARTICLE 10 are:

(a) To promote the amicable settlement of disputes that have arisen between parties to a marriage;

(b) To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage; ~~and~~

(c) To make the law of legal dissolution of marriage more effective for dealing

with the realities of matrimonial experience by making an irretrievable breakdown of the marriage relationship the sole basis for its dissolution; AND

(d) TO PROVIDE SAFEGUARDS FOR A PARENT WITH A DISABILITY, PURSUANT TO THE PROVISIONS OF SECTION 24-34-805.

SECTION 3. In Colorado Revised Statutes, **amend** 14-10-104.5 as follows:

14-10-104.5. Legislative declaration. The general assembly recognizes that it is in the best interests of the parties to a marriage in which a dissolution has been granted and in which there are children of the marriage for the parties to be able to resolve disputes that arise subsequent to the dissolution in an amicable and fair manner. The general assembly further recognizes that, in most cases, it is in the best interests of the children of the marriage to have a relationship with both parents, INCLUDING A PARENT WITH A DISABILITY, and that, in most cases, it is the parents' right to have a relationship with their children. The general assembly emphasizes that one of the underlying purposes of this ~~article~~ ARTICLE 10 is to mitigate the potential harm to the spouses and their children and the relationships between the parents and their children caused by the process of legal dissolution of marriage. The general assembly recognizes that when a marriage in which children are involved is dissolved both parties either agree to or are subject to orders ~~which~~ THAT contain certain obligations and commitments. The general assembly declares that the honoring and enforcing of those obligations and commitments made by both parties is necessary to maintaining a relationship that is in the best interest of the children of the marriage. ~~In recognition thereof the~~ THEREFORE, THE general assembly ~~hereby~~ declares that both parties should honor and fulfill all of the obligations and commitments made between the parties and ordered by the court.

SECTION 4. In Colorado Revised Statutes, 19-1-103, **add** (42.5) as follows:

19-1-103. Definitions. (42.5) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS.

SECTION 5. In Colorado Revised Statutes, 19-3-100.5, **amend** (5) as follows:

19-3-100.5. Legislative declarations - reasonable efforts - movement of children and sibling groups. (5) Therefore, in order to carry out the requirements addressed in this section, to ensure stability in placements, to preserve families, and to decrease the need for out-of-home placement, the general assembly shall define "reasonable efforts" and identify the services and processes that must be in place to ensure that "reasonable efforts" have been made. The general assembly ~~shall provide~~ PROVIDES that "reasonable efforts" are deemed to be met when a county or city and county provides services in accordance with section 19-3-208 AND WHEN FULL CONSIDERATION HAS BEEN GIVEN TO THE PROVISIONS OF SECTION 24-34-805 (2).

SECTION 6. In Colorado Revised Statutes, 19-3-208, **add** (2)(g) as follows:

19-3-208. Services - county required to provide - rules. (2) (g) SERVICES PROVIDED PURSUANT TO THIS SECTION ARE REQUIRED TO MEET THE PROVISIONS OF

THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS.

SECTION 7. In Colorado Revised Statutes, 19-3-507, **add** (1)(c) as follows:

19-3-507. Dispositional hearing. (1) (c) IF ONE OR BOTH OF THE PARENTS HAVE A DISABILITY, REASONABLE ACCOMMODATIONS AND MODIFICATIONS, AS SET FORTH IN THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS, ARE NECESSARY TO ENSURE THE TREATMENT PLAN COMPONENTS ARE ACCESSIBLE. IF APPLICABLE, ANY IDENTIFIED ACCOMMODATIONS AND MODIFICATIONS MUST BE LISTED IN THE REPORT PREPARED FOR THE DISPOSITIONAL HEARING.

SECTION 8. In Colorado Revised Statutes, 19-3-604, **amend** (1)(b) introductory portion and (1)(b)(I) as follows:

19-3-604. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon the finding by clear and convincing evidence of any one of the following:

(b) That the child is adjudicated dependent or neglected and the court finds that ~~no~~ AN appropriate treatment plan ~~can~~ CANNOT be devised to address the unfitness of the parent or parents. In making such a determination, the court shall find one of the following as the basis for unfitness:

(I) An emotional illness, a behavioral or mental health disorder, or an intellectual and developmental disability of the parent of such duration or nature as to render the parent unlikely within a reasonable time to care for the ongoing physical, mental, and emotional needs and conditions of the child. THE COURT SHALL MAKE FINDINGS THAT THE PROVISION OF REASONABLE ACCOMMODATIONS AND MODIFICATIONS PURSUANT TO THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS, WILL NOT REMEDIATE THE IMPACT OF THE PARENT'S DISABILITY ON THE HEALTH OR WELFARE OF THE CHILD.

SECTION 9. In Colorado Revised Statutes, 19-5-100.2, **amend** (2) as follows:

19-5-100.2. Legislative declaration. (2) It is the purpose of this ~~article~~ ARTICLE 5 to promote the integrity and finality of adoptions to ensure that children placed in adoptive placements will be raised in stable, loving, and permanent families. IT IS THE FURTHER INTENT OF THE GENERAL ASSEMBLY THAT A PROSPECTIVE PARENT WITH A DISABILITY SHOULD NOT BE DENIED THE OPPORTUNITY TO PROVIDE A PERMANENT ADOPTIVE PLACEMENT FOR A CHILD BASED SOLELY ON THE PARENT'S DISABILITY, AS PROVIDED FOR IN SECTION 24-34-805 (2). The general assembly intends that by enacting this legislation, it will be protecting children from being uprooted from adoptive placements and from the life-long emotional and psychological trauma that often accompanies being indiscriminately moved.

SECTION 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 25, 2018