

HB1104_L.010

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Public Health Care & Human Services.

HB18-1104 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

5 **24-34-805. Family preservation safeguards for families that**
6 **include a parent with a disability - protections - legislative**
7 **declaration - definitions.** (1) (a) THE GENERAL ASSEMBLY FINDS AND
8 DECLARES THAT:

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

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

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

23 (IV) CHILDREN ARE DENIED THE OPPORTUNITY TO ENJOY THE
24 EXPERIENCE OF LIVING IN LOVING HOMES WITH A PARENT OR PARENTS
25 WITH A DISABILITY OR OTHER CARETAKERS WITH A DISABILITY.

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

30 (I) PROCEDURAL SAFEGUARDS ARE REQUIRED IN ADHERENCE TO
31 THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C.
32 SEC. 12101 ET SEQ.; AND

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

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

40 (a) EXCEPT WHEN IT IMPACTS THE HEALTH OR WELFARE OF A
41 CHILD, A PARENT'S DISABILITY ALONE MUST NOT SERVE AS A BASIS FOR

1 DENIAL OR RESTRICTION OF PARENTING TIME OR PARENTAL
2 RESPONSIBILITIES IN A DOMESTIC LAW PROCEEDING PURSUANT TO TITLE
3 14; A MINOR GUARDIANSHIP PROCEEDING, PURSUANT TO TITLE 15,
4 WITHOUT A CLEAR NEXUS TO THE PARENT'S ABILITY TO MEET THE NEEDS
5 OF THE CHILD; OR A DEPENDENCY AND NEGLECT PROCEEDING PURSUANT
6 TO ARTICLE 3 OF TITLE 19;

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

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

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

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

23 (II) IF THE BURDEN OF PROOF REQUIRED PURSUANT TO SUBSECTION
24 (2)(d)(I) OF THIS SECTION IS MET, THE PARENT OR PROSPECTIVE PARENT
25 WITH A DISABILITY MUST BE GIVEN THE OPPORTUNITY TO DEMONSTRATE
26 HOW THE IMPLEMENTATION OF SUPPORTIVE PARENTING SERVICES CAN
27 ALLEVIATE ANY CONCERNS THAT HAVE BEEN RAISED. THE COURT MAY
28 REQUIRE THAT SUCH SUPPORTIVE PARENTING SERVICES BE PROVIDED OR
29 IMPLEMENTED, GIVEN THE RESOURCES OF THE FAMILY, WITH AN
30 OPPORTUNITY TO REVIEW THE NEED FOR CONTINUATION OF SUCH SERVICES
31 WITHIN A REASONABLE PERIOD OF TIME.

32 (e) IN A DEPENDENCY AND NEGLECT CASE BROUGHT PURSUANT TO
33 TITLE 19, WHEN A RESPONDENT PARENT'S DISABILITY IS ALLEGED TO
34 IMPACT THE HEALTH OR WELFARE OF A CHILD, THE COURT SHALL FIND
35 WHETHER REASONABLE ACCOMMODATIONS AND MODIFICATIONS, AS
36 REQUIRED BY THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF
37 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND
38 IMPLEMENTING REGULATIONS, WERE PROVIDED TO AVOID NONEMERGENCY
39 REMOVAL ON THE BASIS OF DISABILITY.

40 (f) IN A CASE BROUGHT PURSUANT TO TITLE 14, A MINOR
41 GUARDIANSHIP PROCEEDING PURSUANT TO TITLE 15, OR ARTICLES 4 AND
42 5 OF TITLE 19, IF A COURT DETERMINES THAT THE RIGHT OF A PARENT OR
43 PROSPECTIVE GUARDIAN WITH A DISABILITY TO PARENTING TIME,

1 PARENTAL RESPONSIBILITIES, GUARDIANSHIP, OR ADOPTION SHOULD BE
2 DENIED, RESTRICTED, OR CONDITIONED IN ANY MANNER, THE COURT
3 SHALL MAKE SPECIFIC FINDINGS OF FACT AND LAW STATING THE BASIS FOR
4 SUCH A DETERMINATION AND WHY THE PROVISION OF SUPPORTIVE
5 PARENTING SERVICES IS NOT A REASONABLE ACCOMMODATION OR
6 REMEDY TO PREVENT THE DENIAL OR LIMITATION.

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

9 (a) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE
10 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.
11 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING
12 REGULATIONS.

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

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

22 **14-10-102. Purposes - rules of construction.** (1) This ~~article~~
23 ~~shall~~ ARTICLE 10 MUST be liberally construed and applied to promote its
24 underlying purposes.

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

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

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

30 (c) To make the law of legal dissolution of marriage more
31 effective for dealing with the realities of matrimonial experience by
32 making an irretrievable breakdown of the marriage relationship the sole
33 basis for its dissolution; AND

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

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

38 **14-10-104.5. Legislative declaration.** The general assembly
39 recognizes that it is in the best interests of the parties to a marriage in
40 which a dissolution has been granted and in which there are children of
41 the marriage for the parties to be able to resolve disputes that arise
42 subsequent to the dissolution in an amicable and fair manner. The general
43 assembly further recognizes that, in most cases, it is in the best interests

1 of the children of the marriage to have a relationship with both parents,
2 INCLUDING A PARENT WITH A DISABILITY, and that, in most cases, it is the
3 parents' right to have a relationship with their children. The general
4 assembly emphasizes that one of the underlying purposes of this ~~article~~
5 ARTICLE 10 is to mitigate the potential harm to the spouses and their
6 children and the relationships between the parents and their children
7 caused by the process of legal dissolution of marriage. The general
8 assembly recognizes that when a marriage in which children are involved
9 is dissolved both parties either agree to or are subject to orders ~~which~~
10 THAT contain certain obligations and commitments. The general assembly
11 declares that the honoring and enforcing of those obligations and
12 commitments made by both parties is necessary to maintaining a
13 relationship that is in the best interest of the children of the marriage. ~~In~~
14 ~~recognition thereof the~~ THEREFORE, THE general assembly ~~hereby~~ declares
15 that both parties should honor and fulfill all of the obligations and
16 commitments made between the parties and ordered by the court.

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

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

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

25 **19-3-100.5. Legislative declarations - reasonable efforts -**
26 **movement of children and sibling groups.** (5) Therefore, in order to
27 carry out the requirements addressed in this section, to ensure stability in
28 placements, to preserve families, and to decrease the need for
29 out-of-home placement, the general assembly shall define "reasonable
30 efforts" and identify the services and processes that must be in place to
31 ensure that "reasonable efforts" have been made. The general assembly
32 ~~shall provide~~ PROVIDES that "reasonable efforts" are deemed to be met
33 when a county or city and county provides services in accordance with
34 section 19-3-208 AND WHEN FULL CONSIDERATION HAS BEEN GIVEN TO
35 THE PROVISIONS OF SECTION 24-34-805 (2).

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

38 **19-3-208. Services - county required to provide - rules.**
39 (2)(g) SERVICES PROVIDED PURSUANT TO THIS SECTION ARE REQUIRED TO
40 MEET THE PROVISIONS OF THE FEDERAL "AMERICANS WITH DISABILITIES
41 ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED
42 AMENDMENTS AND IMPLEMENTING REGULATIONS.

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

1 as follows:

2 **19-3-507. Dispositional hearing.** (1) (c) IF ONE OR BOTH OF THE
3 PARENTS HAVE A DISABILITY, REASONABLE ACCOMMODATIONS AND
4 MODIFICATIONS, AS SET FORTH IN THE FEDERAL "AMERICANS WITH
5 DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS
6 RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS, ARE
7 NECESSARY TO ENSURE THE TREATMENT PLAN COMPONENTS ARE
8 ACCESSIBLE. IF APPLICABLE, ANY IDENTIFIED ACCOMMODATIONS AND
9 MODIFICATIONS MUST BE LISTED IN THE REPORT PREPARED FOR THE
10 DISPOSITIONAL HEARING.

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

13 **19-3-604. Criteria for termination.** (1) The court may order a
14 termination of the parent-child legal relationship upon the finding by clear
15 and convincing evidence of any one of the following:

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

21 (I) An emotional illness, a behavioral or mental health disorder,
22 or an intellectual and developmental disability of the parent of such
23 duration or nature as to render the parent unlikely within a reasonable
24 time to care for the ongoing physical, mental, and emotional needs and
25 conditions of the child. THE COURT SHALL MAKE FINDINGS THAT THE
26 PROVISION OF REASONABLE ACCOMMODATIONS AND MODIFICATIONS
27 PURSUANT TO THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF
28 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND
29 IMPLEMENTING REGULATIONS, WILL NOT REMEDIATE THE IMPACT OF THE
30 PARENT'S DISABILITY ON THE HEALTH OR WELFARE OF THE CHILD.

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

33 **19-5-100.2. Legislative declaration.** (2) It is the purpose of this
34 ~~article~~ ARTICLE 5 to promote the integrity and finality of adoptions to
35 ensure that children placed in adoptive placements will be raised in stable,
36 loving, and permanent families. IT IS THE FURTHER INTENT OF THE
37 GENERAL ASSEMBLY THAT A PROSPECTIVE PARENT WITH A DISABILITY
38 SHOULD NOT BE DENIED THE OPPORTUNITY TO PROVIDE A PERMANENT
39 ADOPTIVE PLACEMENT FOR A CHILD BASED SOLELY ON THE PARENT'S
40 DISABILITY, AS PROVIDED FOR IN SECTION 24-34-805 (2). The general
41 assembly intends that by enacting this legislation, it will be protecting
42 children from being uprooted from adoptive placements and from the
43 life-long emotional and psychological trauma that often accompanies

1 being indiscriminately moved.
2 **SECTION 10. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety."

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