

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 13, 2018
Date

Committee on Public Health Care & Human Services.

After consideration on the merits, the Committee recommends the following:

HB18-1104 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 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 HAVE BEEN DENIED THE OPPORTUNITY TO ENJOY
24 THE EXPERIENCE OF LIVING IN LOVING HOMES WITH A PARENT OR PARENTS

1 WITH A DISABILITY OR OTHER CARETAKERS WITH A DISABILITY.
2 (b) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT TO
3 PROTECT THE BEST INTERESTS OF CHILDREN WHO ARE PARENTED BY
4 PERSONS WITH DISABILITIES OR CHILDREN WHO COULD BE PARENTED BY
5 PERSONS WITH DISABILITIES:
6 (I) PROCEDURAL SAFEGUARDS ARE REQUIRED IN ADHERENCE TO
7 THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C.
8 SEC. 12101 ET SEQ.; AND
9 (II) IT IS NECESSARY TO HAVE RESPECT FOR THE DUE PROCESS AND
10 EQUAL PROTECTION RIGHTS OF PARENTS AND PROSPECTIVE PARENTS WITH
11 DISABILITIES IN THE CONTEXT OF CHILD WELFARE, FOSTER CARE, FAMILY
12 LAW, GUARDIANSHIP, AND ADOPTION.
13 (2) ACHIEVING THE GOAL OF FAMILY PRESERVATION FOR A PARENT
14 OR PROSPECTIVE PARENT WITH A DISABILITY INCLUDES THE FOLLOWING
15 REQUIREMENTS:
16 (a) A PARENT'S DISABILITY ALONE MUST NOT SERVE AS A BASIS
17 FOR DENIAL OR RESTRICTION OF PARENTING TIME OR PARENTAL
18 RESPONSIBILITIES IN:
19 (I) A DOMESTIC LAW PROCEEDING PURSUANT TO TITLE 14,
20 WITHOUT A CLEAR NEXUS TO THE PARENT'S ABILITY TO MEET THE NEEDS
21 OF THE CHILD;
22 (II) A MINOR GUARDIANSHIP PROCEEDING PURSUANT TO TITLE 15,
23 WITHOUT A CLEAR NEXUS TO THE PARENT'S ABILITY TO MEET THE NEEDS
24 OF THE CHILD; OR
25 (III) A DEPENDENCY AND NEGLECT PROCEEDING PURSUANT TO
26 TITLE 19, EXCEPT WHEN IT IMPACTS THE HEALTH OR WELFARE OF A CHILD;
27 (b) A PROSPECTIVE ADOPTIVE PARENT'S DISABILITY ALONE MUST
28 NOT SERVE AS A BASIS FOR THE DENIAL OF HIS OR HER PARTICIPATION IN
29 A PUBLIC OR PRIVATE ADOPTION PURSUANT TO ARTICLE 5 OF TITLE 19
30 UNLESS IT WOULD IMPACT THE HEALTH OR WELFARE OF A CHILD;
31 (c) AN INDIVIDUAL'S DISABILITY ALONE MUST NOT SERVE AS A
32 BASIS FOR THE DENIAL OF TEMPORARY CUSTODY OR FOSTER CARE OF A
33 MINOR, EXCEPT WHEN IT IMPACTS THE HEALTH OR WELFARE OF A CHILD;
34 (d) IN A CASE BROUGHT PURSUANT TO TITLE 14, A MINOR
35 GUARDIANSHIP PROCEEDING PURSUANT TO TITLE 15, OR ARTICLE 4 OF
36 TITLE 19:
37 (I) WHERE A PARENT'S OR PROSPECTIVE GUARDIAN'S DISABILITY
38 IS ALLEGED TO HAVE A DETRIMENTAL IMPACT ON A CHILD, THE PARTY
39 RAISING THE ALLEGATION BEARS THE BURDEN OF PROVING, BY A
40 PREPONDERANCE OF THE EVIDENCE, THAT THE BEHAVIOR OR BEHAVIORS
41 OF THE PARENT OR PROSPECTIVE PARENT ARE CONTRARY TO THE CHILD'S

1 BEST INTEREST; AND
2 (II) IF THE BURDEN OF PROOF REQUIRED PURSUANT TO SUBSECTION
3 (2)(d)(I) OF THIS SECTION IS MET, THE PARENT OR PROSPECTIVE GUARDIAN
4 WITH A DISABILITY MUST BE GIVEN THE OPPORTUNITY TO DEMONSTRATE
5 HOW THE IMPLEMENTATION OF SUPPORTIVE PARENTING SERVICES CAN
6 ALLEVIATE ANY CONCERNS THAT HAVE BEEN RAISED. THE COURT MAY
7 REQUIRE THAT SUCH SUPPORTIVE PARENTING SERVICES BE PROVIDED OR
8 IMPLEMENTED, GIVEN THE RESOURCES OF THE FAMILY, WITH AN
9 OPPORTUNITY TO REVIEW THE NEED FOR CONTINUATION OF SUCH SERVICES
10 WITHIN A REASONABLE PERIOD OF TIME.
11 (e) IN A DEPENDENCY AND NEGLECT CASE BROUGHT PURSUANT TO
12 TITLE 19, WHEN A RESPONDENT PARENT'S DISABILITY IS ALLEGED TO
13 IMPACT THE HEALTH OR WELFARE OF A CHILD, THE COURT SHALL FIND
14 WHETHER REASONABLE ACCOMMODATIONS AND MODIFICATIONS, AS
15 REQUIRED BY THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF
16 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND
17 IMPLEMENTING REGULATIONS, WERE PROVIDED TO AVOID NONEMERGENCY
18 REMOVAL ON THE BASIS OF DISABILITY.
19 (f) IN A CASE BROUGHT PURSUANT TO TITLE 14, A MINOR
20 GUARDIANSHIP PROCEEDING PURSUANT TO TITLE 15, OR ARTICLES 4 AND
21 5 OF TITLE 19, IF A COURT DETERMINES THAT THE RIGHT OF A PARENT OR
22 PROSPECTIVE GUARDIAN WITH A DISABILITY TO PARENTING TIME,
23 PARENTAL RESPONSIBILITIES, GUARDIANSHIP, OR ADOPTION SHOULD BE
24 DENIED, RESTRICTED, OR CONDITIONED IN ANY MANNER, THE COURT
25 SHALL MAKE SPECIFIC FINDINGS OF FACT AND LAW STATING THE BASIS FOR
26 SUCH A DETERMINATION AND WHY THE PROVISION OF SUPPORTIVE
27 PARENTING SERVICES IS NOT A REASONABLE ACCOMMODATION OR
28 REMEDY TO PREVENT THE DENIAL OR LIMITATION.
29 (3) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
30 REQUIRES:
31 (a) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE
32 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.
33 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING
34 REGULATIONS.
35 (b) "SUPPORTIVE PARENTING SERVICES" MEANS THE PROVISION OF
36 REASONABLE ACCOMMODATIONS AND MODIFICATIONS AS SET FORTH IN
37 THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C.
38 SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING
39 REGULATIONS, AND ARE DIRECTLY RELATED TO A DISABILITY AND THAT
40 ENABLE A PARENT WITH A DISABILITY TO SAFELY FULFILL PARENTAL
41 RESPONSIBILITIES.

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

3 **14-10-102. Purposes - rules of construction.** (1) This ~~article~~
4 ~~shall~~ ARTICLE 10 MUST be liberally construed and applied to promote its
5 underlying purposes.

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

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

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

11 (c) To make the law of legal dissolution of marriage more
12 effective for dealing with the realities of matrimonial experience by
13 making an irretrievable breakdown of the marriage relationship the sole
14 basis for its dissolution; AND

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

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

19 **14-10-104.5. Legislative declaration.** The general assembly
20 recognizes that it is in the best interests of the parties to a marriage in
21 which a dissolution has been granted and in which there are children of
22 the marriage for the parties to be able to resolve disputes that arise
23 subsequent to the dissolution in an amicable and fair manner. The general
24 assembly further recognizes that, in most cases, it is in the best interests
25 of the children of the marriage to have a relationship with both parents,
26 INCLUDING A PARENT WITH A DISABILITY, and that, in most cases, it is the
27 parents' right to have a relationship with their children. The general
28 assembly emphasizes that one of the underlying purposes of this ~~article~~
29 ARTICLE 10 is to mitigate the potential harm to the spouses and their
30 children and the relationships between the parents and their children
31 caused by the process of legal dissolution of marriage. The general
32 assembly recognizes that when a marriage in which children are involved
33 is dissolved both parties either agree to or are subject to orders ~~which~~
34 THAT contain certain obligations and commitments. The general assembly
35 declares that the honoring and enforcing of those obligations and
36 commitments made by both parties is necessary to maintaining a
37 relationship that is in the best interest of the children of the marriage. ~~In~~
38 ~~recognition thereof~~ ~~the~~ THEREFORE, THE general assembly ~~hereby~~ declares
39 that both parties should honor and fulfill all of the obligations and
40 commitments made between the parties and ordered by the court.

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

1 as follows:

2 **19-1-103. Definitions.** (42.5) "DISABILITY" HAS THE SAME
3 MEANING AS SET FORTH IN THE FEDERAL "AMERICANS WITH DISABILITIES
4 ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED
5 AMENDMENTS AND IMPLEMENTING REGULATIONS.

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

8 **19-3-100.5. Legislative declarations - reasonable efforts -**
9 **movement of children and sibling groups.** (5) Therefore, in order to
10 carry out the requirements addressed in this section, to ensure stability in
11 placements, to preserve families, and to decrease the need for
12 out-of-home placement, the general assembly shall define "reasonable
13 efforts" and identify the services and processes that must be in place to
14 ensure that "reasonable efforts" have been made. The general assembly
15 ~~shall provide~~ PROVIDES that "reasonable efforts" are deemed to be met
16 when a county or city and county provides services in accordance with
17 section 19-3-208 AND WHEN FULL CONSIDERATION HAS BEEN GIVEN TO
18 THE PROVISIONS OF SECTION 24-34-805 (2).

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

21 **19-3-208. Services - county required to provide - rules.**
22 (2)(g) SERVICES PROVIDED PURSUANT TO THIS SECTION ARE REQUIRED TO
23 MEET THE PROVISIONS OF THE FEDERAL "AMERICANS WITH DISABILITIES
24 ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED
25 AMENDMENTS AND IMPLEMENTING REGULATIONS.

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

28 **19-3-507. Dispositional hearing.** (1) (c) IF ONE OR BOTH OF THE
29 PARENTS HAVE A DISABILITY, REASONABLE ACCOMMODATIONS AND
30 MODIFICATIONS, AS SET FORTH IN THE FEDERAL "AMERICANS WITH
31 DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS
32 RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS, ARE
33 NECESSARY TO ENSURE THE TREATMENT PLAN COMPONENTS ARE
34 ACCESSIBLE. IF APPLICABLE, ANY IDENTIFIED ACCOMMODATIONS AND
35 MODIFICATIONS MUST BE LISTED IN THE REPORT PREPARED FOR THE
36 DISPOSITIONAL HEARING.

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

39 **19-3-604. Criteria for termination.** (1) The court may order a
40 termination of the parent-child legal relationship upon the finding by clear
41 and convincing evidence of any one of the following:

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

6 (I) An emotional illness, a behavioral or mental health disorder,
7 or an intellectual and developmental disability of the parent of such
8 duration or nature as to render the parent unlikely within a reasonable
9 time to care for the ongoing physical, mental, and emotional needs and
10 conditions of the child. THE COURT SHALL MAKE FINDINGS THAT THE
11 PROVISION OF REASONABLE ACCOMMODATIONS AND MODIFICATIONS
12 PURSUANT TO THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF
13 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND
14 IMPLEMENTING REGULATIONS, WILL NOT REMEDIATE THE IMPACT OF THE
15 PARENT'S DISABILITY ON THE HEALTH OR WELFARE OF THE CHILD.

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

18 **19-5-100.2. Legislative declaration.** (2) It is the purpose of this
19 ~~article~~ ARTICLE 5 to promote the integrity and finality of adoptions to
20 ensure that children placed in adoptive placements will be raised in stable,
21 loving, and permanent families. IT IS THE FURTHER INTENT OF THE
22 GENERAL ASSEMBLY THAT A PROSPECTIVE PARENT WITH A DISABILITY
23 SHOULD NOT BE DENIED THE OPPORTUNITY TO PROVIDE A PERMANENT
24 ADOPTIVE PLACEMENT FOR A CHILD BASED SOLELY ON THE PARENT'S
25 DISABILITY, AS PROVIDED FOR IN SECTION 24-34-805 (2). The general
26 assembly intends that by enacting this legislation, it will be protecting
27 children from being uprooted from adoptive placements and from the
28 life-long emotional and psychological trauma that often accompanies
29 being indiscriminately moved.

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

** *** ** *** **