

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-0480.01 Jane Ritter x4342

HOUSE BILL 18-1104

HOUSE SPONSORSHIP

Danielson,

SENATE SPONSORSHIP

(None),

House Committees

Public Health Care & Human Services

Senate Committees

A BILL FOR AN ACT

101 CONCERNING FAMILY PRESERVATION SAFEGUARDS FOR PARENTS WITH
102 DISABILITIES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill establishes that family protection safeguards for a parent or prospective parent with a disability are critical to family preservation and the best interests of the children of Colorado. These safeguards include:

- ! That a parent's disability must not serve as a basis for denial or restriction of parenting time or parental

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- responsibilities;
- ! That, when devising a treatment plan, active efforts must be made to include the provision of reasonable accommodations for a parent's disability;
- ! That a parent's disability must not serve as a basis for denial of participation in a public or private adoption, or for denial of foster care or guardianship, when it is otherwise determined to be in the best interest of the child; and
- ! That the benefits of providing supportive parenting services must be considered by a court when determining parental responsibilities, parenting time, adoption placements, foster care, and guardianship.

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

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

4 **24-34-805. Family preservation safeguards for families that**
 5 **include a parent with a disability - protections - legislative**
 6 **declaration - definitions.** (1) (a) THE GENERAL ASSEMBLY FINDS AND
 7 DECLARES THAT:

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

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

17 (III) BECAUSE OF THESE SOCIETAL BIASES AND ANTIQUATED
 18 ATTITUDES, CHILDREN OF PERSONS WITH DISABILITIES ARE BEING
 19 UNNECESSARILY REMOVED FROM ONE OR BOTH OF THEIR PARENTS' CARE

1 OR BEING RESTRICTED FROM ENJOYING MEANINGFUL TIME WITH ONE OR
2 BOTH PARENTS; AND

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

6 (b) THEREFORE, THE GENERAL ASSEMBLY DECLARES THAT TO
7 PROTECT THE BEST INTERESTS OF CHILDREN WHO ARE PARENTED BY
8 PERSONS WITH DISABILITIES OR CHILDREN WHO COULD BE PARENTED BY
9 PERSONS WITH DISABILITIES, PROCEDURAL SAFEGUARDS MUST BE
10 ESTABLISHED THAT REQUIRE ADHERENCE TO THE FEDERAL "AMERICANS
11 WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND
12 RESPECT FOR THE DUE PROCESS AND EQUAL PROTECTION RIGHTS OF
13 PARENTS AND PROSPECTIVE PARENTS WITH DISABILITIES IN THE CONTEXT
14 OF CHILD WELFARE, FOSTER CARE, FAMILY LAW, GUARDIANSHIP, AND
15 ADOPTION.

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

19 (a) A PARENT'S DISABILITY MUST NOT SERVE AS A BASIS FOR
20 DENIAL OR RESTRICTION OF PARENTING TIME OR PARENTAL
21 RESPONSIBILITIES IN A DOMESTIC LAW PROCEEDING PURSUANT TO TITLE 14
22 OR A DEPENDENCY OR NEGLECT PROCEEDING PURSUANT TO ARTICLE 3 OF
23 TITLE 19 WHEN THE ISSUE AT HAND IS DETERMINED TO OTHERWISE BE IN
24 THE BEST INTEREST OF THE CHILD;

25 (b) A PROSPECTIVE PARENT'S DISABILITY MUST NOT SERVE AS A
26 BASIS FOR THE DENIAL OF HIS OR HER PARTICIPATION IN A PUBLIC OR
27 PRIVATE ADOPTION PURSUANT TO ARTICLE 5 OF TITLE 19 WHEN THE

1 ADOPTION IS DETERMINED TO OTHERWISE BE IN THE BEST INTEREST OF THE
2 CHILD;

3 (c) AN INDIVIDUAL'S DISABILITY MUST NOT SERVE AS A BASIS FOR
4 THE DENIAL OF TEMPORARY CUSTODY, FOSTER CARE, OR GUARDIANSHIP
5 OF A MINOR, WHEN THE APPOINTMENT IS DETERMINED TO OTHERWISE BE
6 IN THE BEST INTEREST OF THE CHILD;

7 (d) (I) WHERE A PARENT'S OR PROSPECTIVE PARENT'S DISABILITY
8 IS ALLEGED TO HAVE A DETRIMENTAL IMPACT ON A CHILD, THE PARTY
9 RAISING THE ALLEGATION BEARS THE BURDEN OF PROVING, BY CLEAR AND
10 CONVINCING EVIDENCE, THAT THE BEHAVIOR OR BEHAVIORS OF THE
11 PARENT OR PROSPECTIVE PARENT ARE ENDANGERING OR WILL LIKELY
12 ENDANGER THE HEALTH, SAFETY, OR WELFARE OF THE CHILD.

13 (II) IF THE BURDEN OF PROOF REQUIRED PURSUANT TO SUBSECTION
14 (2)(d)(I) OF THIS SECTION IS MET, THE PARENT OR PROSPECTIVE PARENT
15 WITH A DISABILITY MUST BE GIVEN THE OPPORTUNITY TO DEMONSTRATE
16 HOW THE IMPLEMENTATION OF SUPPORTIVE PARENTING SERVICES CAN
17 ALLEVIATE ANY CONCERNS THAT HAVE BEEN RAISED. THE COURT MAY
18 REQUIRE THAT SUCH SUPPORTIVE PARENTING SERVICES BE PROVIDED OR
19 IMPLEMENTED, WITH AN OPPORTUNITY TO REVIEW THE NEED FOR
20 CONTINUATION OF SUCH SERVICES WITHIN A REASONABLE PERIOD OF TIME.

21 (e) IF A COURT DETERMINES THAT THE RIGHT OF A PARENT OR
22 PROSPECTIVE PARENT WITH A DISABILITY TO PARENTING TIME, PARENTAL
23 RESPONSIBILITIES, FOSTER CARE, GUARDIANSHIP, OR ADOPTION SHOULD BE
24 DENIED OR LIMITED IN ANY MANNER, THE COURT SHALL MAKE SPECIFIC
25 WRITTEN FINDINGS OF FACT AND LAW STATING THE BASIS FOR SUCH A
26 DETERMINATION AND WHY THE PROVISION OF SUPPORTIVE PARENTING
27 SERVICES IS NOT A REASONABLE ACCOMMODATION OR REMEDY TO

1 PREVENT THE DENIAL OR LIMITATION.

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

4 (a) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE
5 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.
6 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING
7 REGULATIONS.

8 (b) "SUPPORTIVE PARENTING SERVICES" MEANS THOSE SERVICES
9 THAT MAY ASSIST A PARENT OR PROSPECTIVE PARENT WITH A DISABILITY
10 IN THE EFFECTIVE USE OF ALTERNATIVE METHODS TO ENABLE THE PARENT
11 OR PROSPECTIVE PARENT WITH A DISABILITY TO FULFILL PARENTAL
12 RESPONSIBILITIES AS SUCCESSFULLY AS A PARENT OR PROSPECTIVE
13 PARENT WITHOUT A DISABILITY.

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

16 **14-10-102. Purposes - rules of construction.** (1) This ~~article~~
17 ~~shall~~ ARTICLE 10 MUST be liberally construed and applied to promote its
18 underlying purposes.

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

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

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

24 (c) To make the law of legal dissolution of marriage more
25 effective for dealing with the realities of matrimonial experience by
26 making an irretrievable breakdown of the marriage relationship the sole
27 basis for its dissolution; AND

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

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

5 **14-10-104.5. Legislative declaration.** The general assembly
6 recognizes that it is in the best interests of the parties to a marriage in
7 which a dissolution has been granted and in which there are children of
8 the marriage for the parties to be able to resolve disputes that arise
9 subsequent to the dissolution in an amicable and fair manner. The general
10 assembly further recognizes that, in most cases, it is in the best interests
11 of the children of the marriage to have a relationship with both parents,
12 INCLUDING A PARENT WITH A DISABILITY, and that, in most cases, it is the
13 parents' right to have a relationship with their children. The general
14 assembly emphasizes that one of the underlying purposes of this ~~article~~
15 ARTICLE 10 is to mitigate the potential harm to the spouses and their
16 children and the relationships between the parents and their children
17 caused by the process of legal dissolution of marriage. The general
18 assembly recognizes that when a marriage in which children are involved
19 is dissolved both parties either agree to or are subject to orders ~~which~~
20 THAT contain certain obligations and commitments. The general assembly
21 declares that the honoring and enforcing of those obligations and
22 commitments made by both parties is necessary to maintaining a
23 relationship that is in the best interest of the children of the marriage. ~~In~~
24 ~~recognition thereof~~ ~~the~~ THEREFORE, THE general assembly ~~hereby~~ declares
25 that both parties should honor and fulfill all of the obligations and
26 commitments made between the parties and ordered by the court.

27 **SECTION 4.** In Colorado Revised Statutes, 19-3-100.5, **amend**

1 (5) as follows:

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

13 **SECTION 5.** In Colorado Revised Statutes, 19-3-507, **amend**
14 (1)(b) as follows:

15 **19-3-507. Dispositional hearing.** (1) (b) Prior to any
16 dispositional hearing, the caseworker of the COUNTY department of
17 human OR SOCIAL services assigned to the case shall submit to the court
18 a statement that details the services that were offered to or provided to the
19 family to prevent unnecessary out-of-home placement of the child and to
20 facilitate the reunification of the child with the family, INCLUDING ANY
21 REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES, AS
22 REQUIRED PURSUANT TO SECTION 19-3-508 (1)(e)(I.5). The statement ~~shall~~
23 MUST contain an explanation of the services or actions that, ~~had~~ IF such
24 services or actions HAD been available, would have been necessary to
25 enable the child to remain at home safely. In the alternative, the
26 caseworker may submit a statement as to why no services or actions
27 would have made it possible for the child to remain at home safely. If the

1 child is part of a sibling group, as defined in section 19-1-103 (98.5), and
2 the child was not placed with his or her siblings, the caseworker shall
3 submit to the court a statement about whether it continues to be in the best
4 interests of the child or the children in the sibling group to be placed
5 separately. If the caseworker locates an appropriate, capable, willing, and
6 available joint placement for all of the children in the sibling group, it
7 shall be presumed that placement of the entire sibling group in the joint
8 placement is in the best interests of the children. Such presumption may
9 be rebutted by a preponderance of the evidence that placement of the
10 entire sibling group in the joint placement is not in the best interests of a
11 child or of the children.

12 **SECTION 6.** In Colorado Revised Statutes, 19-3-508, **amend** (1)
13 introductory portion and (1)(e)(I); and **add** (1)(e)(I.5) as follows:

14 **19-3-508. Neglected or dependent child - disposition -**
15 **treatment plan - concurrent planning.** (1) When a child has been
16 adjudicated to be neglected or dependent, the court may enter a decree of
17 disposition the same day, but in any event it shall do so within forty-five
18 days unless the court finds that the best interests of the child will be
19 served by granting a delay. In a county designated pursuant to section
20 19-1-123, if the child is under six years of age at the time a petition is
21 filed in accordance with section 19-3-501 (2), the court shall enter a
22 decree of disposition within thirty days after the adjudication and shall not
23 grant a delay unless good cause is shown and unless the court finds that
24 the best interests of the child will be served by granting the delay. It is the
25 intent of the general assembly that the dispositional hearing be held on the
26 same day as the adjudicatory hearing, whenever possible. If a delay is
27 granted, the court shall set forth the reasons why a delay is necessary and

1 the minimum amount of time needed to resolve the reasons for the delay
2 and shall schedule the hearing at the earliest possible time following the
3 delay. When the proposed disposition is termination of the parent-child
4 legal relationship, the hearing on termination must not be held on the
5 same date as the adjudication, and the time limits set forth above for
6 dispositional hearings do not apply. When the proposed disposition is
7 termination of the parent-child legal relationship, the court may continue
8 the dispositional hearing to the earliest available date for a hearing in
9 accordance with the provisions of subsection (3)(a) of this section and
10 part 6 of this article 3. When the decree does not terminate the
11 parent-child legal relationship, the court shall approve an appropriate
12 treatment plan that must include but NEED not be limited to one or more
13 of the following provisions: ~~of subsections (1)(a) to (1)(d) of this section:~~

14 (e) (I) ~~Except where the proposed disposition is termination of the~~
15 ~~parent-child legal relationship,~~ The court shall approve an appropriate
16 treatment plan involving the child named and each respondent named and
17 served in the action. However, the court may find that an appropriate
18 treatment plan cannot be devised as to a particular respondent because the
19 child has been abandoned as set forth in section 19-3-604 (1)(a) and the
20 parents cannot be located; ~~or~~ because the child has been adjudicated as
21 neglected or dependent based upon section 19-3-102 (2); or due to the
22 unfitness of the parents as set forth in section 19-3-604 (1)(b). THE COURT
23 SHALL NOT FIND THAT AN APPROPRIATE TREATMENT PLAN CANNOT BE
24 DEVISED OR COMPLETED AS TO A PARTICULAR RESPONDENT UNLESS THE
25 PROVISIONS OF SUBSECTION (1)(e)(I.5) OF THIS SECTION HAVE BEEN MET,
26 WHEN APPLICABLE. When the court finds that an appropriate treatment
27 plan cannot be devised, the court shall conduct a permanency hearing as

1 set forth in section 19-3-702 (1), unless a motion for termination of
2 parental rights has been filed within thirty days after the court's finding.

3 (I.5) IF ONE OR BOTH OF THE PARENTS HAVE A DISABILITY, THE
4 TREATMENT PLAN MUST INCLUDE THE PROVISION OF REASONABLE
5 ACCOMMODATIONS FOR ANY DISABILITY OF ONE OR BOTH PARENTS TO
6 ALLOW FOR THE GREATEST OPPORTUNITY FOR SUCCESSFUL COMPLETION
7 OF THE TREATMENT PLAN.

8 **SECTION 7.** In Colorado Revised Statutes, 19-3-604, **amend**
9 (1)(b) introductory portion and (1)(b)(I) as follows:

10 **19-3-604. Criteria for termination.** (1) The court may order a
11 termination of the parent-child legal relationship upon the finding by clear
12 and convincing evidence of any one of the following:

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

18 (I) An emotional illness, a behavioral or mental health disorder,
19 or an intellectual and developmental disability of the parent of such
20 duration or nature as to render the parent unlikely ~~within a reasonable~~
21 ~~time~~ to care for the ongoing physical, mental, and emotional needs and
22 conditions of the child; EXCEPT THAT THE COURT SHALL NOT MAKE A
23 DETERMINATION OF UNFITNESS BASED SOLELY ON ANY DISABILITY OF ONE
24 OR BOTH PARENTS. THE COURT'S FINDING SHALL INCLUDE CLEAR AND
25 CONVINCING EVIDENCE THAT ACTIVE EFFORTS TO ACCOMMODATE ANY
26 DISABILITY OF ONE OR BOTH PARENTS HAVE BEEN PROVIDED, AND THE
27 PARENT OR PARENTS REMAIN A DIRECT THREAT TO THE CHILD DESPITE

1 SUCH ACCOMMODATIONS;

2 **SECTION 8.** In Colorado Revised Statutes, 19-5-100.2, **amend**
3 (2) as follows:

4 **19-5-100.2. Legislative declaration.** (2) It is the purpose of this
5 ~~article~~ ARTICLE 5 to promote the integrity and finality of adoptions to
6 ensure that children placed in adoptive placements will be raised in stable,
7 loving, and permanent families. IT IS THE FURTHER INTENT OF THE
8 GENERAL ASSEMBLY THAT A PROSPECTIVE PARENT WITH A DISABILITY
9 SHOULD NOT BE DENIED THE OPPORTUNITY TO PROVIDE A PERMANENT
10 ADOPTIVE PLACEMENT FOR A CHILD BASED SOLELY ON THE PARENT'S
11 DISABILITY, AS PROVIDED FOR IN SECTION 24-34-805 (2). The general
12 assembly intends that by enacting this legislation, it will be protecting
13 children from being uprooted from adoptive placements and from the
14 life-long emotional and psychological trauma that often accompanies
15 being indiscriminately moved.

16 **SECTION 9. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.