

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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.

HOUSE
Amended 2nd Reading
March 19, 2018

- 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 HAVE FACED 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 HISTORICALLY HAVE
 19 BEEN VULNERABLE TO UNNECESSARY REMOVAL FROM ONE OR BOTH OF

1 THEIR PARENTS' CARE OR ARE RESTRICTED FROM ENJOYING MEANINGFUL
2 TIME WITH ONE OR BOTH PARENTS; AND

3 (IV) CHILDREN HAVE BEEN DENIED THE OPPORTUNITY TO ENJOY
4 THE 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:

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

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

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

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

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

26 (II) A MINOR GUARDIANSHIP PROCEEDING PURSUANT TO TITLE 15,
27 WITHOUT A CLEAR NEXUS TO THE PARENT'S ABILITY TO MEET THE NEEDS

1 OF THE CHILD; OR

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

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

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

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

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

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

1 WITHIN A REASONABLE PERIOD OF TIME.

2 (e) IN A DEPENDENCY AND NEGLECT CASE BROUGHT PURSUANT TO
3 TITLE 19, WHEN A RESPONDENT PARENT'S DISABILITY IS ALLEGED TO
4 IMPACT THE HEALTH OR WELFARE OF A CHILD, THE COURT SHALL FIND
5 WHETHER REASONABLE ACCOMMODATIONS AND MODIFICATIONS, AS
6 REQUIRED BY THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF
7 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND
8 IMPLEMENTING REGULATIONS, WERE PROVIDED TO AVOID NONEMERGENCY
9 REMOVAL ON THE BASIS OF DISABILITY.

10 (f) IN A CASE BROUGHT PURSUANT TO TITLE 14, A MINOR
11 GUARDIANSHIP PROCEEDING PURSUANT TO TITLE 15, OR ARTICLES 4 AND
12 5 OF TITLE 19, IF A COURT DETERMINES THAT THE RIGHT OF A PARENT OR
13 PROSPECTIVE GUARDIAN WITH A DISABILITY TO PARENTING TIME,
14 PARENTAL RESPONSIBILITIES, GUARDIANSHIP, OR ADOPTION SHOULD BE
15 DENIED, RESTRICTED, OR CONDITIONED IN ANY MANNER, THE COURT
16 SHALL MAKE SPECIFIC FINDINGS OF FACT AND LAW STATING THE BASIS FOR
17 SUCH A DETERMINATION AND WHY THE PROVISION OF SUPPORTIVE
18 PARENTING SERVICES IS NOT A REASONABLE ACCOMMODATION OR
19 REMEDY TO PREVENT THE DENIAL OR LIMITATION.

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

22 (a) "DISABILITY" HAS THE SAME MEANING AS SET FORTH IN THE
23 FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C. SEC.
24 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING
25 REGULATIONS.

26 (b) "SUPPORTIVE PARENTING SERVICES" MEANS THE PROVISION OF
27 REASONABLE ACCOMMODATIONS AND MODIFICATIONS AS SET FORTH IN

1 THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF 1990", 42 U.S.C.
2 SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND IMPLEMENTING
3 REGULATIONS, AND ARE DIRECTLY RELATED TO A DISABILITY AND THAT
4 ENABLE A PARENT WITH A DISABILITY TO SAFELY FULFILL PARENTAL
5 RESPONSIBILITIES.

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

8 **14-10-102. Purposes - rules of construction.** (1) This article
9 shall ARTICLE 10 MUST be liberally construed and applied to promote its
10 underlying purposes.

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

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

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

16 (c) To make the law of legal dissolution of marriage more
17 effective for dealing with the realities of matrimonial experience by
18 making an irretrievable breakdown of the marriage relationship the sole
19 basis for its dissolution; AND

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

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

24 **14-10-104.5. Legislative declaration.** The general assembly
25 recognizes that it is in the best interests of the parties to a marriage in
26 which a dissolution has been granted and in which there are children of
27 the marriage for the parties to be able to resolve disputes that arise

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

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

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

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

27 **19-3-100.5. Legislative declarations - reasonable efforts -**

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

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

13 **19-3-208. Services - county required to provide - rules.**
14 (2)(g) SERVICES PROVIDED PURSUANT TO THIS SECTION ARE REQUIRED TO
15 MEET THE PROVISIONS OF THE FEDERAL "AMERICANS WITH DISABILITIES
16 ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED
17 AMENDMENTS AND IMPLEMENTING REGULATIONS.

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

20 **19-3-507. Dispositional hearing.** (1) (c) IF ONE OR BOTH OF THE
21 PARENTS HAVE A DISABILITY, REASONABLE ACCOMMODATIONS AND
22 MODIFICATIONS, AS SET FORTH IN THE FEDERAL "AMERICANS WITH
23 DISABILITIES ACT OF 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS
24 RELATED AMENDMENTS AND IMPLEMENTING REGULATIONS, ARE
25 NECESSARY TO ENSURE THE TREATMENT PLAN COMPONENTS ARE
26 ACCESSIBLE. IF APPLICABLE, ANY IDENTIFIED ACCOMMODATIONS AND
27 MODIFICATIONS MUST BE LISTED IN THE REPORT PREPARED FOR THE

1 DISPOSITIONAL HEARING.

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

4 **19-3-604. Criteria for termination.** (1) The court may order a
5 termination of the parent-child legal relationship upon the finding by clear
6 and convincing evidence of any one of the following:

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

12 (I) An emotional illness, a behavioral or mental health disorder,
13 or an intellectual and developmental disability of the parent of such
14 duration or nature as to render the parent unlikely within a reasonable
15 time to care for the ongoing physical, mental, and emotional needs and
16 conditions of the child. THE COURT SHALL MAKE FINDINGS THAT THE
17 PROVISION OF REASONABLE ACCOMMODATIONS AND MODIFICATIONS
18 PURSUANT TO THE FEDERAL "AMERICANS WITH DISABILITIES ACT OF
19 1990", 42 U.S.C. SEC. 12101 ET SEQ., AND ITS RELATED AMENDMENTS AND
20 IMPLEMENTING REGULATIONS, WILL NOT REMEDIATE THE IMPACT OF THE
21 PARENT'S DISABILITY ON THE HEALTH OR WELFARE OF THE CHILD.

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

24 **19-5-100.2. Legislative declaration.** (2) It is the purpose of this
25 ~~article~~ ARTICLE 5 to promote the integrity and finality of adoptions to
26 ensure that children placed in adoptive placements will be raised in stable,
27 loving, and permanent families. IT IS THE FURTHER INTENT OF THE

1 GENERAL ASSEMBLY THAT A PROSPECTIVE PARENT WITH A DISABILITY
2 SHOULD NOT BE DENIED THE OPPORTUNITY TO PROVIDE A PERMANENT
3 ADOPTIVE PLACEMENT FOR A CHILD BASED SOLELY ON THE PARENT'S
4 DISABILITY, AS PROVIDED FOR IN SECTION 24-34-805 (2). The general
5 assembly intends that by enacting this legislation, it will be protecting
6 children from being uprooted from adoptive placements and from the
7 life-long emotional and psychological trauma that often accompanies
8 being indiscriminately moved.

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