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H.B. 352
134th General Assembly

Bill Analysis

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Version: As Passed by the House

Primary Sponsors: Reps. Crawley and Ray

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SUMMARY

- Prohibits a court, public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA) from using a person's disability as a reason to deny or limit that person's care for a minor, except when the court makes a detrimental impact determination.
- Establishes requirements for a court to follow when making a detrimental impact determination that a person who has a disability endangers the health, safety, or welfare of a minor and that the endangerment cannot be eliminated by reasonable modifications or supportive services:
 - Places the burden on the party asserting the detrimental impact to show that impact by clear and convincing evidence;
 - Requires a court to require an evaluation to determine how reasonable modifications and supportive services could alleviate any detrimental impact on a minor and permits a court to order implementation of reasonable modifications and supportive services that alleviate possible detrimental impact;
 - Requires a court, if it determines detrimental impact, to make specific written findings of fact and conclusions of law providing the basis for the determination and why reasonable modifications and supportive services cannot alleviate any detrimental impact.

DETAILED ANALYSIS

Disability generally barred as a factor for minor's caretaker

The bill prohibits, except when a court makes a detrimental impact determination (see below, "**Court determination of detrimental impact**"), a court, public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency

(PNA) from denying or limiting a person from any of the following because the person has a disability:

- Exercising custody, parenting time, or visitation rights with a minor;
- Adopting a minor;
- Serving as a foster caregiver for a minor;
- Appointment as a guardian for a minor.¹

Under the bill, “disability” has the same meaning as in the Americans with Disabilities Act of 1990. In that federal law, “disability” with respect to an individual means “(A) a physical or mental impairment that substantially limits one or more major life activities of such individual, (B) a record of such an impairment, or (C) being regarded as having such an impairment.” A few examples of major life activities listed in the Act are: caring for oneself, performing manual tasks, seeing, hearing, walking, standing, speaking, communicating, working, and the operation of a major bodily function.²

Court determination of detrimental impact

The bill permits a court to determine that a person who has a disability has or could have a detrimental impact on a minor.³

Detrimental impact determination process

Step 1: Assertion of detrimental impact

A party may assert that a person who has a disability would have a detrimental impact on a minor. The burden is on the party asserting the detrimental impact to show, by clear and convincing evidence, that the person endangers the health, safety, or welfare of the minor and that endangerment cannot be eliminated by reasonable modifications or supportive services.⁴

“Clear and convincing evidence” has been defined as a degree of proof that is more than the usual “preponderance of the evidence” standard employed in most civil cases but less than the “beyond a reasonable doubt” standard required in criminal cases.⁵ It is evidence that will produce in the mind of the trier of facts a firm belief or conviction as to the issues to be proved.⁶

¹ R.C. 2131.031.

² R.C. 2131.03; 42 United States Code 12102, not in the bill.

³ R.C. 2131.032(A).

⁴ R.C. 2131.032(A).

⁵ *McLintock v. Sweitzer*, 138 Ohio St. 324, 327-28 (1941).

⁶ *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954).

Step 2: Reasonable modifications and supportive services

The bill requires a court to require an evaluation to determine how reasonable modifications and supportive services could alleviate any detrimental impact on the minor, before it can make a determination of detrimental impact.⁷

The bill also permits a court to order that reasonable modifications and supportive services that alleviate possible detrimental impact be implemented. A court that issues such an order may review the need for continuation of the modifications and services, after a reasonable amount of time.⁸

Step 3: Court's determination

Finally, if the court determines that custody, parenting time, visitation rights, adoption, service as a foster caregiver, or appointment as a guardian should be denied or limited in any manner, it must make specific written findings of fact and conclusions of law providing the basis for the determination and why reasonable modifications and supportive services cannot alleviate any detrimental impact.⁹

HISTORY

Action	Date
Introduced	06-17-21
Reported, H. Civil Justice	11-17-21
Passed House (90-1)	12-08-21

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⁷ R.C. 2131.032(B).

⁸ R.C. 2131.033.

⁹ R.C. 2131.034.