

Department of Legislative Services  
2016 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

Senate Bill 765

(Senator Raskin, *et al.*)

Judicial Proceedings

Judiciary

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CINA, Guardianship, Adoption, Custody, and Visitation - Disability of Parent,  
Guardian, Custodian, or Party

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This bill establishes that in custody and visitation proceedings, the party alleging that the disability of the other party affects the best interest of the child bears the burden of proof. If the burden of proof is met, the party who has a disability must have an opportunity to prove that “supportive parenting services” would prevent a finding that the disability affects the best interest of the child. The bill also alters the definition of “disability” in provisions of law regarding Child in Need of Assistance (CINA), guardianship, adoption, custody, and visitation proceedings.

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**Fiscal Summary**

**State Effect:** The bill does not materially impact the workload or finances of the Judiciary or the Department of Human Resources.

**Local Effect:** The bill does not materially impact the workload of the circuit courts.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** “Disability” means (1) a physical or mental impairment that substantially limits one or more of an individual’s major life activities; (2) a record of having a physical or mental impairment that substantially limits one or more of an individual’s major life activities; or (3) being regarded as having a physical or mental impairment that substantially limits one or more of an individual’s major life activities. In addition, “disability” must be construed in accordance with the ADA Amendments Act of 2008.

“Supportive parenting services” means services that may assist an individual with a disability in the effective use of techniques and methods to enable the individual to

discharge the individual's responsibilities to a child as successfully as an individual who does not have a disability, including nonvisual techniques for individuals who are blind.

If the court finds that a party's disability affects the child's best interest and denies or limits custody or visitation, the court must specifically state in writing the basis for the finding and its reasoning regarding supportive parenting services, as specified.

**Current Law:** "Disability" is defined as (1) a physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect, or illness, including epilepsy; (2) a mental impairment or deficiency; (3) a record of having a physical or mental impairment as otherwise defined under the bill; or (4) being regarded as having a physical or mental impairment as otherwise defined under the bill. "Disability" includes (1) any degree of paralysis or amputation; (2) blindness or visual impairment; (3) deafness or hearing impairment; (4) muteness or speech impediment; (5) physical reliance on a service animal, wheelchair, or other remedial appliance or device; and (6) intellectual disability and any other mental impairment or deficiency that may have necessitated remedial or special education and related services.

In any custody or visitation proceeding, a disability of a party is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child.

In making a disposition on a CINA petition, a disability of the child's parent, guardian, or custodian is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the ability of the parent, guardian, or custodian to give proper care and attention to the child and the child's needs.

In determining whether to grant custody and guardianship of a CINA to a relative or nonrelative, a disability of the relative or nonrelative is relevant only to the extent that the court finds, based on evidence in the record, that the disability affects the best interest of the child.

A local department, guardian, or child placement agency may not withhold consent for an adoption solely because a prospective adoptive parent has a disability. A court may not deny a petition for an independent adoption solely because the petitioner has a disability.

A child may not be committed to the custody or guardianship of a local department and placed in an out-of-home placement solely because the child's parent or guardian has a disability. The Social Security Administration must adopt regulations that prohibit a local department from seeking the custody or guardianship of a child for placement in foster care solely because the child's parent or guardian has a disability.

**Background:** The ADA Amendments Act of 2008 sets forth rules of construction regarding disabilities, including provisions stating that (1) the definition of disability must be construed in favor of broad coverage; (2) an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability; and (3) an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Department of Disabilities, Department of Human Resources, Department of Juvenile Services, U.S. Equal Employment Opportunity Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2016  
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