

Department of Legislative Services
2016 Session

FISCAL AND POLICY NOTE

First Reader

Senate Bill 704

(Senator Gladden)

Judicial Proceedings

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

This bill establishes that in specified proceedings relating to a Child In Need of Assistance (CINA), guardianship, adoption, custody, and visitation, that a parent, guardian, custodian, or party must have an opportunity to prove that an opportunity for “supportive parenting services” would prevent specified findings, prevent the withholding of consent, or otherwise impact the outcome.

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.

Analysis

Bill Summary: “Supportive parenting services” means services that may assist a blind individual in the effective use of nonvisual techniques and other alternative methods to enable the individual to discharge the individual’s responsibilities to a child as successfully as an individual who is not blind.

In making a disposition on a CINA petition, the blindness of a child’s parent, guardian, or custodian is relevant only to the extent that the court finds, based on clear and convincing evidence in the record, that the blindness affects the ability of the parent, guardian, or custodian to give proper care and attention to the child and the child’s needs. The parent, guardian, or custodian must have an opportunity to prove that supportive parenting services would prevent such a finding. The court may (1) require the provision of supportive

parenting services and (2) review the need for the continuation of supportive parenting services within a reasonable period of time. If the court finds that the blindness of a parent, guardian, or custodian affects that individual's ability to give proper care and attention to the child and the child's needs, the court must specifically state in writing the basis for the finding and the reason that the provision of supportive parenting services is not a reasonable accommodation to prevent the finding. Similar provisions apply to a determination whether to grant custody or guardianship of a CINA to a relative or nonrelative.

A prospective adoptive parent who is blind must have the opportunity to prove that supportive parenting services would prevent the withholding of consent in adoption cases involving a local department, guardian, or child placement agency. If a local department, guardian, or child placement agency withholds consent, the basis for the withholding of consent and the reason that the provision of supportive services is not a reasonable accommodation to prevent the withholding of consent must be specifically stated in writing. These provisions also apply to instances in which a court is ruling on a petition for an independent adoption.

Parents or guardians who are blind must also have an opportunity to prove that supportive parenting services would prevent a determination to commit the child to the custody or guardianship of a local department and place the child in an out-of-home placement. If a local department commits the child to its custody or guardianship and places the child in an out-of-home placement, it must state the basis for the determination and its reasoning in writing, as specified. The Social Services Administration (SSA) must adopt related regulations, as specified.

The bill establishes that in a custody or visitation proceeding, the blindness of a party is relevant only to the extent that the court finds, based on clear and convincing evidence in the record, that the disability affects the best interest of the child. The party alleging that the blindness of the other party affects the child's best interest bears the burden of proof. If the burden is met, the blind party must have the opportunity to prove that supportive parenting services would prevent a finding that the blindness affects the best interest of the child. If the court finds that a party's blindness 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 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. SSA 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.

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.

Additional Information

Prior Introductions: None.

Cross File: None. However, SB 765 (Senator Raskin *et al.* – Judicial Proceedings) is identical.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Disabilities, Department of Human Resources, Department of Juvenile Services, Department of Legislative Services

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min/kdm

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