

ASSEMBLY, No. 5517

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 17, 2021

Sponsored by:

Assemblywoman YVONNE LOPEZ

District 19 (Middlesex)

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District 37 (Bergen)

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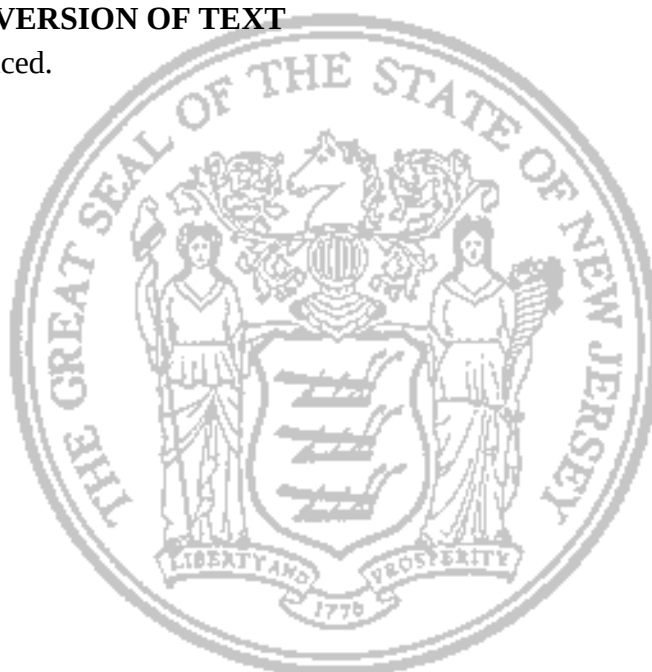
Assemblyman Karabinchak and Assemblywoman Murphy

SYNOPSIS

Prohibits court from awarding custody of or limiting visitation with child based solely on parent's disability; provides that disability of parent is relevant only to extent that court finds disability is detrimental to best interest of child.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/24/2021)

1 AN ACT prohibiting the court from awarding custody of a child
2 based solely on a parent's disability, amending R.S.9:2-4, and
3 supplementing Title 9 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. R.S.9:2-4 is amended to read as follows:

9 9:2-4. The Legislature finds and declares that it is in the public
10 policy of this State to assure minor children of frequent and
11 continuing contact with both parents after the parents have
12 separated or dissolved their marriage and that it is in the public
13 interest to encourage parents to share the rights and responsibilities
14 of child rearing in order to effect this policy.

15 In any proceeding involving the custody of a minor child, the
16 rights of both parents shall be equal and the court shall enter an
17 order which may include:

18 a. Joint custody of a minor child to both parents, which is
19 comprised of legal custody or physical custody which shall include:
20 (1) provisions for residential arrangements so that a child shall
21 reside either solely with one parent or alternatively with each parent
22 in accordance with the needs of the parents and the child; and (2)
23 provisions for consultation between the parents in making major
24 decisions regarding the child's health, education and general
25 welfare;

26 b. Sole custody to one parent with appropriate parenting time
27 for the noncustodial parent; or

28 c. Any other custody arrangement as the court may determine
29 to be in the best interests of the child.

30 In making an award of custody, the court shall consider but not
31 be limited to the following factors: the parents' ability to agree,
32 communicate and cooperate in matters relating to the child; the
33 parents' willingness to accept custody and any history of
34 unwillingness to allow parenting time not based on substantiated
35 abuse; the interaction and relationship of the child with **its** the
36 child's parents and siblings; the history of domestic violence, if
37 any; the safety of the child and the safety of either parent from
38 physical abuse by the other parent; the preference of the child when
39 of sufficient age and capacity to reason so as to form an intelligent
40 decision; the needs of the child; the stability of the home
41 environment offered; the quality and continuity of the child's
42 education; the fitness of the parents; the geographical proximity of
43 the parents' homes; the extent and quality of the time spent with the
44 child prior to or subsequent to the separation; the parents'
45 employment responsibilities; and the age and number of the
46 children. The disability of one or both parents, as defined by

EXPLANATION – Matter enclosed in bold-faced brackets **thus** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 subsection e. of section 2 of P.L. c. (pending before the
2 Legislature as this bill), shall not be the sole factor in the court's
3 decision concerning child custody. A parent shall not be deemed
4 unfit unless the **【parents'】** parent's conduct has a substantial
5 adverse effect on the child.

6 The court, for good cause and upon its own motion, may appoint
7 a guardian ad litem or an attorney or both to represent the minor
8 child's interests. The court shall have the authority to award a
9 counsel fee to the guardian ad litem and the attorney and to assess
10 that cost between the parties to the litigation.

11 d. The court shall order any custody arrangement which is
12 agreed to by both parents unless it is contrary to the best interests of
13 the child.

14 e. In any case in which the parents cannot agree to a custody
15 arrangement, the court may require each parent to submit a custody
16 plan which the court shall consider in awarding custody.

17 f. The court shall specifically place on the record the factors
18 which justify any custody arrangement not agreed to by both
19 parents.

20 (cf: P.L.1997, c.299, s.9)

21
22 2. (New section) a. In any proceeding involving the custody
23 of or visitation with a minor child, the disability of a parent is
24 relevant only to the extent, based on evidence in the record, the
25 court finds that the disability is detrimental to the best interest of
26 the child.

27 b. The parent alleging that the disability of the other parent is
28 detrimental to the best interest of the child is required to show, by
29 clear and convincing evidence, that the disability of the other parent
30 is detrimental to the best interest of the child.

31 c. If the burden of proof is met, the parent with a disability
32 shall have the opportunity to show that supportive parenting
33 services would prevent a finding that the disability is detrimental to
34 the best interest of the child.

35 d. If the court finds that the disability of a parent is detrimental
36 to the best interest of the child and denies or limits custody or
37 visitation, the court shall specifically state in writing:

38 (1) the basis for the finding; and

39 (2) the reason that the provision of supportive parenting services
40 is not a reasonable accommodation to prevent the finding.

41 e. As used in this section:

42 "disability" has the meaning set forth in section 3 of the
43 "Americans with Disabilities Amendments Act of
44 2008," 42 U.S.C. s.12102.

45 "supportive parenting services" means appropriate family-based
46 services, supports, and other reasonable modifications that would
47 provide a parent with a disability a full and equal opportunity to
48 maintain or restore custody of, or maintain, restore, or increase

1 visitation with, the child. These services, supports, and other
2 modifications may include adaptive equipment to maintain,
3 increase, or strengthen the parenting capabilities of the parent with
4 a disability and the provision of other accommodations and adaptive
5 services.

6
7 3. This act shall take effect immediately.
8
9

10 STATEMENT
11

12 This bill provides for the protection of the custody and visitation
13 rights of parents with a disability.

14 New Jersey recognizes that both parents in a child custody
15 dispute have a constitutionally recognized equal, fundamental right
16 to the control and upbringing of a child. The courts make the
17 determination on custody arrangements by applying various
18 statutory factors, such as the interaction of the child with the child's
19 parents and the stability of the home environment, with the best
20 interests of the child as the primary concern.

21 This bill provides that in any child custody proceeding, the
22 disability of one or both parents shall not be the sole factor in the
23 court's decision concerning child custody. The bill also provides
24 that in any custody or visitation proceeding, the disability of a
25 parent is relevant only to the extent that the court finds, by clear and
26 convincing evidence, that the disability is detrimental to the best
27 interest of the child. If the burden of proof is met by the parent
28 alleging that the disability of the other party is detrimental to the
29 best interest of the child, the parent with a disability has the
30 opportunity to provide evidence that supportive parenting services
31 would prevent a finding that the disability is detrimental to the best
32 interest of the child. If the court finds that the disability of a parent
33 is detrimental to the best interest of the child and denies or limits
34 custody or visitation, the court is required to provide for the basis of
35 denying

36 or limiting custody or visitation in writing. The court would also be
37 required to state in writing the reason that the provision of
38 supportive parenting services would not be a reasonable
39 accommodation to prevent the finding.

40 The bill defines "supportive parenting services" as appropriate
41 family-based services, supports, and other reasonable modifications
42 that would provide a parent with a disability a full and equal
43 opportunity to maintain or restore custody of, or maintain, restore,
44 or increase visitation with, the child. These services, supports, and
45 other modifications may include adaptive equipment to maintain,
46 increase, or strengthen the parenting capabilities of the parent with
47 a disability and the provision of other accommodations and adaptive
48 services.