

SENATE, No. 4193

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED NOVEMBER 22, 2021

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

Senator DECLAN J. O'SCANLON, JR.

District 13 (Monmouth)

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: 12/2/2021)

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

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

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

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

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

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

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

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

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

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

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

39 (1) the basis for the finding; and

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

42 e. As used in this section:

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

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

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

7
8 3. This act shall take effect immediately.

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11 STATEMENT

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

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

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