

ACT 259

S.B. NO. 947

A Bill for an Act Relating to Families.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to protect the best interests of children parented or cared for by persons with disabilities by prohibiting the disability of a parent or caregiver from being considered as the sole factor in determining the fitness of any:

- (1) Foster parent or resource family;
- (2) Prospective adoptive parent of a minor;
- (3) Prospective guardian of a minor;
- (4) Person seeking custody or visitation of a minor child; or
- (5) Parent or caregiver when evaluating whether a child's family is willing and able to provide the child with a safe family home.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§346- Department standards and requirements; disability. The department shall not consider the disability of a person to be the sole factor in making a determination under section 346-17 or section 346-19.7. If the department makes a determination to deny the petition of a disabled person under section 346-17 or section 346-19.7, the department shall make specific written findings stating the basis for the determination. The party attempting to demonstrate that the disability impairs a person’s ability to parent must prove that the disability is a factor, and demonstrate a clear nexus between the disability and the alleged parental deficiency.”

SECTION 3. Chapter 560, Hawaii Revised Statutes, is amended by adding a new section to article V, part 2 to be appropriately designated and to read as follows:

“§560:5- Judicial appointment of guardian; disability. The court shall not consider the disability of a prospective guardian to be the sole factor in the court’s determination to approve or deny the appointment of a guardian pursuant to this part. If the court makes a determination to deny guardianship to a person who is disabled, the court shall make specific written findings stating the basis for this determination. The party attempting to demonstrate that the disability of a prospective guardian impairs the prospective guardian’s ability to parent must prove that the disability is a factor, and demonstrate a clear nexus between the disability and the alleged parental deficiency.”

SECTION 4. Chapter 571, Hawaii Revised Statutes, is amended by adding a new section to part V to be appropriately designated and to read as follows:

“§571- Criteria and procedure in awarding custody and visitation; disability. The court shall not consider the disability of a person seeking custody or visitation of a minor to be the sole factor in the court’s determination made pursuant to this part. If the court makes a determination to deny custody or visitation to a person who is disabled, the court shall make specific written findings stating the basis for this determination. The party attempting to demonstrate that the disability of a person seeking custody or visitation impairs the person’s ability to parent must prove that the disability is a factor, and demonstrate a clear nexus between the disability and the alleged parental deficiency.”

SECTION 5. Chapter 587A, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

“§587A- Safe family home factors; disability. The court shall not consider the disability of a parent or caregiver to be the sole factor in the court’s determination made pursuant to this part. If the court makes a determination that a child’s family is unable to provide a safe family home and one or more of the child’s parents or caregivers are disabled, the court shall make specific written findings stating the basis for this determination. The party attempting to demonstrate that the disability of a parent or caregiver impairs the parent’s or caregiver’s ability to parent must prove that the disability is a factor, and demonstrate a clear nexus between the disability and the alleged parental deficiency.”

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 7. New statutory material is underscored.¹

SECTION 8. This Act shall take effect upon its approval.

(Approved July 5, 2019.)

Note

1. Edited pursuant to HRS §23G-16.5.