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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Crawley and Cross

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SUMMARY

- Prohibits a court, public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA) from using a person's blindness as a reason to deny or limit that person's care for a minor, except when necessary to serve the best interests of the minor.
- Permits a court, PCSA, PCPA, or PNA, when evaluating the best interests of a minor with a particular blind person, to consider a detrimental impact determination.
- Establishes requirements for a court to follow when making a detrimental impact determination that a blindness-connected behavior endangers the health, safety, or welfare of a minor:
  - Places the burden on the party asserting the detrimental impact to show that impact by clear and convincing evidence;
  - Requires a court to permit the person who is blind to demonstrate how supportive services could alleviate any detrimental impact on a minor and permits a court to order implementation of supportive services that alleviate possible detrimental impact;
  - Requires a court, if it determines detrimental impact, to make specific written findings of fact and conclusions of law providing the basis for the determination and why supportive services cannot alleviate any detrimental impact.

DETAILED ANALYSIS

Blindness generally barred as a factor for minor's caretaker

The bill generally prohibits a court, public children services agency (PCSA), private child placing agency (PCPA), or private noncustodial agency (PNA) from denying or limiting a person from any of the following because the person is blind:

- Exercising custody, parenting time, or visitation rights with a minor;
- Adopting a minor;
- Serving as a foster caregiver for a minor;
- Appointment as a guardian for a minor.[1]

"Blind" is defined as either (1) vision 20/200 or less in the better eye with proper correction, or (2) a field defect in the better eye with proper correction that contracts the peripheral field so that the diameter of the visual field subtends an angle no greater than 20°.[2]

Exception: best interests of a minor

The bill permits a court, PCSA, PCPA, or PNA to deny or limit a caretaker from caring for a minor as described above, when necessary to serve the best interests of the minor. [3]

Court determination of detrimental impact

The bill permits a court to determine that a person's blindness has or could have a detrimental impact on a minor.[4] The bill also provides that a court, PCSA, PCPA, or PNA may *consider* a detrimental impact determination when determining the best interests of a minor. [5] (See **Comment**.)

Detrimental impact determination process

Step 1: Assertion of detrimental impact

A party may assert that a person's blindness would have a detrimental impact on a minor. The burden is on the party asserting the detrimental impact to show, by clear and convincing evidence, that a blindness-connected behavior endangers the health, safety, or welfare of the minor.[6]

"Clear and convincing evidence" has been defined as a degree of proof that is more than the usual "preponderance of the evidence" standard employed in most civil cases but less than the "beyond a reasonable doubt" standard required in criminal cases.[7] It is evidence that will produce in the mind of the trier of facts a firm belief or conviction as to the issues to be proved.[8]

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[1] R.C. 2131.031(A).

[2] R.C. 2131.03 and R.C. 3304.28, not in the bill.

[3] R.C. 2131.031(A).

[4] R.C. 2131.032(A).

[5] R.C. 2131.031(B).

[6] R.C. 2131.032(A).

[7] *McLintock v. Sweitzer*, 138 Ohio St. 324, 327-28 (1941).

[8] *Cross v. Ledford*, 161 Ohio St. 469, 477 (1954).

Step 2: Supportive services

The bill requires a court to permit the blind person to demonstrate how supportive services could alleviate any detrimental impact on the minor, before it can make a determination of detrimental impact.[9]

The bill also permits a court to order that supportive services that alleviate possible detrimental impact be implemented. A court that issues such an order may review the need for continuation of the services, after a reasonable amount of time.[10]

Step 3: Court's determination

Finally, if the court determines that custody, parenting time, visitation rights, adoption, service as a foster caregiver, or appointment as a guardian should be denied or limited in any manner, it must make specific written findings of fact and conclusions of law providing the basis for the determination and why supportive services cannot alleviate any detrimental impact.[11]

COMMENT

The bill does not create a new cause of action for detrimental impact on a minor from a caretaker's blindness. It also does not expressly tie proceedings to make that determination to the child-caring situations described in the bill. It provides only that a detrimental impact determination may be considered in determining a child's best interest when a blind person seeks to care for a child as described in the bill.[12]

Despite the bill's uncertainty, it is likely those child-caring situations are the situations in which detrimental impact would be raised. However, with respect to serving as a foster caregiver, it is not clear how courts would become involved since certification of foster caregivers is an administrative function.[13] It is also not clear if the detrimental impact process established in the bill could be used in other situations that might involve the care of a child by a blind person.

[9] R.C. 2131.032(B).

[10] R.C. 2131.033.

[11] R.C. 2131.034.

[12] R.C. 2131.031.

[13] R.C. 5103.02 and 5103.03, not in the bill.

HISTORY

Action	Date
Introduced	04-09-19

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