

SENATE BILL 2633

By Haile

AN ACT to amend Tennessee Code Annotated, Title 36
and Title 37, relative to children.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-1-102(1)(A)(i)(a), is amended by adding "at the time of the filing of a petition for termination of parental rights" after "If the child is four (4) years of age or more".

SECTION 2. Tennessee Code Annotated, Section 36-1-102(1)(A)(i)(b), is amended by adding "at the time of the filing of a petition for termination of parental rights" after "If the child is less than four (4) years of age".

SECTION 3. Tennessee Code Annotated, Section 36-1-102, is amended by deleting subdivision (1)(B) and substituting:

(B) For purposes of this subdivision (1), "token support" means that the support, under the circumstances of the individual case, is insignificant given the parent or guardian's means. The parent or guardian bears the burden of proving by a preponderance of the evidence that any support provided was more than token support.

SECTION 4. Tennessee Code Annotated, Section 36-1-102(1), is amended by adding the following as a new subdivision:

(M) For supplemental petitions to terminate parental rights, the calculation of the applicable time periods for abandonment are calculated from the date a motion to supplement was filed.

SECTION 5. Tennessee Code Annotated, Section 36-1-102, is amended by deleting subdivision (45) and substituting:

(45) "Putative father" means a biological or alleged biological father of a child who, at the time of the filing of a petition to terminate parental rights, or if such petition is not filed, then at the time of the filing of a petition to adopt a child, has not been excluded by DNA testing as described in § 24-7-112 establishing that he is not the child's biological father or that another man is the child's biological father, is not a legal parent, and meets at least one (1) of the following criteria:

(A) The person has filed with the putative father registry, pursuant to § 36-2-318, as described in § 36-1-113(d)(3)(A), a statement of an intent to claim paternity of the child at any time prior to or within thirty (30) days after the child's birth and has notified the registry of all address changes;

(B) The person has claimed to the child's biological mother, or the petitioners or their attorney, or to the department, a licensed child-placing agency, or a licensed clinical social worker who is involved in the care, placement, supervision, or study of the child, a belief that the person is the father of the child and has either paid financial support to or for the benefit of the child or the child's mother during the pregnancy, or when the mother had physical custody of the child, or has made a court filing or appearance consistent with the person's claim of paternity; provided, that if the person has previously notified the department of his claim to paternity of the child pursuant to the putative father registry, § 36-2-318(e)(3), then the person is subject to all requirements for waiver of notice provisions of § 36-2-318(f)(2) and to all requirements for filing a paternity petition;

(C) The person has openly lived with the child and has held himself out as the father of the child; provided, that if custody of the child has been removed from the biological mother by court order, then notice is given to any man who

was openly living with the child at the time of the initiation of the custody or guardianship proceeding that resulted in the removal of the custody or guardianship of the child from the biological mother or biological father, if the man held himself out to be the father of the child at the time of the removal; or

(D) The person has entered a permanency plan under title 37, chapter 2, part 4, or under similar provisions of any other state or territory in which the biological father acknowledges paternity of the child.

SECTION 6. Tennessee Code Annotated, Section 36-1-108(a), is amended by adding the following as a new subdivision:

(5) Child-placing agencies and attorneys who are not licensed by this state must secure the services of a child-placing agency or attorney who is licensed by this state to provide adoption-related services to any adoptive family, expectant parent, or child in this state.

SECTION 7. Tennessee Code Annotated, Section 36-1-109, is amended by deleting subdivision (a)(1)(B) and substituting:

(i) This section does not prohibit the payment by an interested person of reasonable charges or fees for:

(a) Hospital or medical services for the birth of the child;

(b) Medical care and other reasonable birth-related expenses for the mother or child;

(c) Counseling fees for the parents or prospective adoptive parents or child;

(d) Legal services or the reasonable costs of legal proceedings related to the adoption of any child; or

(e) Actual expenses for housing, food, maternity clothing, child's clothing, utilities, or transportation for a reasonable period not to exceed the duration of the pregnancy and ninety (90) days after the birth, surrender, or parental consent to the adoption of the child.

(ii) Upon a motion filed by the prospective adoptive parents, a court with jurisdiction for the surrender or adoption of a child may specifically approve in a written order, based upon a detailed affidavit by a birth mother and other evidence as required by the court, any expenses specifically allowed in this section for a period before or after the periods in subdivision (a)(1)(B)(i).

(iii) Expenses must be incurred directly in connection with:

(a) Maternity, birth, or placement of the child for adoption;

(b) Legal services or costs of legal proceedings directly related to the adoption of the child; or

(c) Counseling, which may occur in person or by virtual means, for a period of up to two (2) years for the parent who surrenders the child or consents to the adoption of the child.

(iv) Reasonable, actual expenses for housing, food, maternity clothing, child's clothing, utilities, or transportation do not include expenses incurred prior to the birth mother becoming pregnant and entering into an adoption plan. These expenses must, whenever possible, be documented by receipts, invoices, rental agreements, or other written verification of expense, and must be reviewed by the court before which the birth mother surrenders or consents to adoption. If documentation is not otherwise available, then the birth mother and prospective adoptive parents shall execute an itemized affidavit stating the specific reason for each payment, the amount paid, the date paid, and to whom each payment was made.

(v) The payment for the expenses may only be for expenses or costs actually incurred during the periods permitted in subdivisions (a)(1)(B)(i)-(iii). This subdivision (a)(1)(B) does not prohibit the actual payment or receipt of payment for expenses or costs after those periods that were actually incurred during those periods.

SECTION 8. Tennessee Code Annotated, Section 36-1-111(b)(3), is amended by deleting "The judge or other officiant has also advised me that once my child is born, I am still free to obtain my own lawyer, who I can consult with prior to and during any reaffirmation of this surrender which I may choose to make" and substituting "The judge or other officiant has also advised me that I have the right to a lawyer".

SECTION 9. Tennessee Code Annotated, Section 36-1-111, is amended by deleting subdivisions (d)(1)–(5) and substituting:

(1) A surrender that does not meet the requirements of subdivision (a)(2) is not valid.

(2) A surrender may be made at any time prior to birth, but a surrender made prior to the birth of a child is not filed with the clerk of court until after the birth of the child and until the surrendering party or parties have filed a written reaffirmation of their desire to surrender the child, unless the surrender was executed in accordance with subsection (g). A surrender made prior to the birth of a child must be reaffirmed within three (3) calendar days of the birth of the child, except for a surrender executed in accordance with subsection (g).

(3) A surrender is not valid unless made after the earlier of discharge from a hospital or other birthing facility or forty-eight (48) hours following the child's birth; provided, that the court may, for good cause shown, which is entered in an order in the minute book of the court, waive this waiting period.

(4) A surrender is not valid if the surrendering party states a desire to receive legal or social counseling until the request is satisfied or withdrawn.

(5) Unless the surrender is made to the physical custodian or unless the exceptions of subdivision (d)(6) otherwise apply, a surrender is not sufficient to make a child available for adoption in any situation where another person or persons, the department, a licensed child-placing agency, or other child-caring agency in this state or any state, territory, or foreign country is exercising the right to physical custody of the child under a current court order at the time the surrender is sought to be executed, or when those persons or entities have any currently valid statutory authorization for custody of the child.

SECTION 10. Tennessee Code Annotated, Section 36-1-113(g)(9), is amended by deleting subdivision (A) and substituting:

(A) The parental rights of a person who is not a legal parent at the time of the filing of a petition to terminate parental rights of such person, or if no such petition is filed, then at the time of the filing of a petition to adopt a child, is the putative father of the child, may also be terminated based upon any one (1) or more of the following additional grounds:

(i) The person has failed, without good cause or excuse, to make reasonable and consistent payments for the support of the child in accordance with the child support guidelines promulgated by the department pursuant to § 36-5-101;

(ii) The person has failed to seek reasonable visitation with the child, and if visitation has been granted, has failed to visit altogether, or has engaged in only token visitation, as defined in § 36-1-102;

(iii) The person has failed to manifest an ability and willingness to assume legal and physical custody of the child;

(iv) Placing custody of the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child; or

(v) The person has failed to file a petition to establish paternity of the child within thirty (30) days after notice of alleged paternity, or as required in § 36-2-318(j), or after making a claim of paternity pursuant to § 36-1-117(c)(2);

SECTION 11. Tennessee Code Annotated, Section 36-1-113(g), is amended by adding the following as a new subdivision:

(16) The court hearing the petition for termination of parental rights finds by clear and convincing evidence that:

(A) The father engaged in an act of unlawful sexual penetration against the child's mother by which the child was conceived and the father:

(i) Used force or coercion to accomplish the act;

(ii) Accomplished the act without the consent of the mother of the child and the father knew or had reason to know at the time of penetration that the mother of the child did not consent;

(iii) Knew or had reason to know that the mother of the child was mentally defective, mentally incapacitated, physically helpless, or a vulnerable adult; or

(iv) Accomplished the sexual penetration by fraud; or

(B) The father engaged in an act against the child's mother that resulted in:

(i) The child's conception; and

(ii) The father's conviction for or plea of guilty to a criminal offense.

SECTION 12. Tennessee Code Annotated, Section 36-1-113(k), is amended by adding the following at the end of the subsection:

A termination of parental rights and a finalization of an adoption may be heard and decided in the same hearing if the court determines it is in the best interest of the child.

SECTION 13. Tennessee Code Annotated, Section 36-1-113, is amended by adding the following as a new subsection:

(s) For the purposes of all grounds for termination of parental rights described in subsection (g), a person is presumed to have knowledge that sexual activity leads to pregnancy. An adult has an affirmative obligation to inquire whether their sexual activity has resulted in a pregnancy, and a minor has such obligation upon attaining eighteen (18) years of age regardless of when the sexual activity occurred. A lack of specific knowledge of a pregnancy or birth of a child does not serve as a defense to a ground for termination of parental rights if the person failed to inquire, or failed to attempt to inquire, whether the person's actions resulted in pregnancy or the birth of a child.

SECTION 14. Tennessee Code Annotated, Section 36-1-116(f), is amended by adding the following as a new subdivision:

(5) An intervening petition for adoption must be decided upon the premise of permissive intervention pursuant to the Tennessee Rules of Civil Procedure. All requirements for prospective adoptive parents and the filing requirements of the petition under any provision of chapter 1 of this title must be met, except for the requirement of having physical custody or the right to receive physical custody at the time of filing.

SECTION 15. Tennessee Code Annotated, Section 36-1-117, is amended by deleting subsection (a) and substituting:

(a) Only a legal parent, guardian, or putative father of the child is a necessary party to the adoption proceeding or to a separate proceeding seeking termination of those rights prior to the entry of an order of adoption and those rights must be terminated prior to the entry of an order of adoption. If a person has surrendered parental or guardianship rights to the child, executed a parental consent, waived the person's rights pursuant to § 36-1-111(s) or (t), or the person's rights have been terminated by court order, then the person is not a necessary party.

SECTION 16. Tennessee Code Annotated, Section 36-1-117, is amended by deleting subsection (c).

SECTION 17. Tennessee Code Annotated, Section 36-1-117(i), is amended by deleting subdivision (i)(1) and substituting:

(1)

(A) When the child who is the subject of the adoption is fourteen (14) years of age or older at any time before the granting of the petition, the adoption court must receive the sworn, written consent of such child to the adoption, which shall be filed with the record, and the consent of such minor shall be recited in the order of adoption. The court shall receive the consent and testimony from the child in chambers, if requested by the child. The consent is legally sufficient if it contains statements comparable to the "Consent to Adoption by Minor" set forth in subdivision (i)(3).

(B)

CONSENT TO ADOPTION BY MINOR WHO IS FOURTEEN (14) YEARS
OF AGE OR OLDER
STATE OF TENNESSEE
COUNTY OF

1. I am _____ [name of child] born on _____.
2. I understand that _____ [name of prospective adoptive parent(s)] have filed a petition to adopt me.
3. I understand that if the Court enters an order of adoption based upon the Petition, that I will become the legal child of _____ [name of prospective adoptive parent(s)] and that he/she/they will become my parents for all purposes, just the same as if I had originally been born to them.
4. I understand that, while I remain under eighteen (18) years of age, my adoptive parents will have the right to determine if I should contact or visit with anyone in my prior legal or birth family.
5. I understand that I will have the right to inherit property from my adoptive parents, and their descendants will have the right to inherit property from me or my descendants but only for property I acquire after the adoption order is entered.
6. No one has pressured me to agree to this adoption, and I believe that my adoption is in my best interest.
7. I freely and voluntarily, without pressure from anyone, consent to this adoption.

This the ____ day of _____, 20__.

FURTHER AFFIANT SAITH NOT

Please Print: _____

Signature: _____

Sworn to and subscribed before me this ____ day of _____, 20__.

Please Print: _____

Judge of the _____ Court for
_____ County, Tennessee

Signature: _____

SECTION 18. Tennessee Code Annotated, Section 36-1-117(j), is amended by deleting subdivision (3) and substituting:

(3) In all other situations under this subsection (j) for adult persons who are the subject of an adoption petition, an order of reference, social investigation, report to the court by a licensed child-placing agency or licensed clinical social worker or the department, putative father registry check in this or any other state, or the waiting period under § 36-1-119 is not required.

SECTION 19. Tennessee Code Annotated, Section 36-1-117, is amended by deleting subdivision (m)(1) and substituting:

(1) Service of process for adoption proceedings and termination proceedings in chancery and circuit courts pursuant to this part and for proceedings to terminate parental rights in juvenile courts are made pursuant to the Tennessee Rules of Civil Procedure and the statutes governing substituted service.

SECTION 20. Tennessee Code Annotated, Section 36-1-117, is amended by deleting subdivision (m)(2).

SECTION 21. Tennessee Code Annotated, Section 36-1-120(e), is amended by designating the existing language as subdivision (e)(1) and adding the following subdivision (e)(2):

(2) Upon entry of the final order of adoption by the court, the clerk of the court shall simultaneously furnish the adoptive parents or their attorney a certified copy of the order of adoption.

SECTION 22. Tennessee Code Annotated, Section 36-1-124, is amended by deleting subsection (a) and substituting:

(a) In all cases where the termination of parental rights or adoption of a child is contested by any person or agency, the trial court shall, consistent with due process, expedite the contested termination or adoption proceeding by setting a scheduling conference within thirty (30) days of the filing of a response or answer to a petition for termination of parental rights or adoption and entering such scheduling orders as are necessary to ensure that the case is not delayed. The court shall give the case priority in setting a final hearing of the proceeding and shall be heard at the earliest possible date over all other civil litigation other than child protective services cases arising under title 37, chapter 1, parts 1, 4, and 6.

SECTION 23. Tennessee Code Annotated, Section 36-1-124, is amended by adding the following as a new subsection:

(d) A notice of appeal in a termination of parental rights action must not be filed by an attorney who is not specifically authorized by the appellant to file a notice of appeal on the appellant's behalf.

SECTION 24. Tennessee Code Annotated, Section 37-1-103, is amended by deleting subsection (c) and substituting:

(c) Except as provided in subsection (d), when jurisdiction has been acquired under this part, jurisdiction continues until the case has been dismissed, or until the custody determination is transferred to another juvenile, circuit, chancery, or general sessions court exercising domestic relations jurisdiction, or until a petition for adoption is filed regarding the child in question as set out in § 36-1-116(f). A juvenile court retains jurisdiction to the extent needed to complete any reviews or permanency hearings for children in foster care as may be mandated by federal or state law; however, only the

adoption court has jurisdiction to modify visitation or custody of the child while the adoption remains pending. This subsection (c) does not establish concurrent jurisdiction for any other court to hear juvenile cases, but permits courts exercising domestic relations jurisdiction to make custody determinations in accordance with this part.

SECTION 25. Tennessee Code Annotated, Section 37-2-415(a), is amended by designating subdivision (25) as subdivision (26) and adding the following as a new subdivision (25):

(25) A foster parent has the right to engage an attorney for the purposes of consultation and advice. The foster parent may invite their attorney to any meeting at which the foster parent is permitted to be present as set out by this title. The foster parent may provide information regarding their circumstances to their attorney without committing a breach of confidentiality, although all confidentiality obligations must then extend to their attorney, as pertains to the identifying information of the foster child and family.

SECTION 26. This act takes effect July 1, 2024, the public welfare requiring it.