

First in Adoption Revisions
To Coppock on Tennessee Adoption Law
Effective July 1, 2018

Box on page 12 is amended to remove (3) and (4)

“Putative Father” Defined

T.C.A. § 36-1-117(c) The parental rights of the putative father of a child who has not filed a petition to establish paternity of the child or who has not established paternity of the child who is the subject of an adoption proceeding and who meets any of the following criteria shall be terminated by surrender, parental consent, termination of parental rights pursuant to § 36-1-113, or by waiver of interest, before the court may enter an order of adoption concerning that child:

(1) The biological father of a child 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;

~~(2) The biological father has been specifically identified to the petitioners or their attorney, or to the department, the licensed child-placing agency, or the licensed clinical social worker involved in the care, placement, supervision, or study of the child as the child's father by the child's biological mother in a sworn, written statement or by other information that the court determines to be credible and reliable;~~

(3) The biological father has claimed to the child's biological mother, or to the petitioners or their attorney, or to the department, a licensed child-placing agency, or a licensed clinical social worker who or that is involved in the care, placement, supervision, or study of the child that the biological father believes that the biological father is the father of the child; provided, that if the biological father has previously notified the department of the biological father's claim to paternity of the child pursuant to the putative father registry, § 36-2-318(e)(3), the biological father shall be subject to all the requirements for waiver of notice provisions of § 36-2-318(f)(2) and to all requirements for filing a paternity petition;

(4) The biological father is recorded on the child's birth certificate as the father of the child;

(5) The biological father is openly living with the child at the time the adoption proceeding is commenced and is holding 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, notice shall be given to any man who was openly living with the child at 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

(6) The biological father 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.

New Surrender Form

New Box on Page 37 under the heading 1. Surrender.

The remainder of the presentation of the surrender will require revision and the forms will require substitution accordingly.

T.C.A. § 36-1-111(b)(2) A surrender form shall be legally sufficient if it contains statements comparable to the “Form of Surrender” set form in the subdivision of (b)(3). The information requested on the pre-surrender information forms under subdivision (b)(4) and (b)(5) shall be collected, to the extent that such information is known to the surrendering or accepting parties respectively, on the forms provided in subdivisions (b)(4) and (b)(5) or by a substantially similar method and shall be attached to the surrender form proffered to the judge or officiant for execution.

(3) Provides the surrender form with acceptance

(4) Provides the pre-surrender information form for the surrendering party

(5) Provides the pre-surrender information form for the accepting party

(6) Provides the form for revocation of surrender

New Box on Page 38

Surrenders of those with difficulty understanding

~~T.C.A. 36-1-111 (k)(1)(A) Notwithstanding any other provisions of this part, in obtaining any medical or social background information, contact veto information or other information required as part of the surrender or parental consent process pursuant to this part, the court, or, at its direction, its court officers or its clerks, or other persons authorized to accept a surrender or parental consent pursuant to this part, may accept notarized statements attached to each of the forms promulgated by the department that verify that the informant of the required information has previously reviewed the form or, if unable to read, has had the contents of the form explained to the person, and that the person has accurately supplied the information on the form and the person's responses have not been subject to duress by any person.~~

When a person executing a surrender is unable to read, read in the English language, see, or otherwise unable to review and comprehend the surrender form and attachments offered for the person's signature or provided on the person's behalf, the person shall be provided with appropriate and sufficient assistance to make the documents and attachments understandable to the person both before and during the surrender hearing. The accepting party shall be responsible for payment of the cost of such interpreter or assistance if the surrendering party requires such assistance.

New Box on Page 50

The directions for execution of an unrelated consent will require revision.

Unrelated consent for adoption procedure

T.C.A. § 36-1-116(b)(12)(C) When a parent uses the procedure for a consent in the adoption of an unrelated child the parent shall also complete the information form from § 36-1-111(b)(4) no later than when the petition is signed and such form shall be filed with the court. In order to confirm a parental consent in the adoption of an unrelated child, the surrender form provided at § 36-1-111(b)(2) shall be modified to reflect applicable law and executed by the same procedure provided for the execution of a surrender.

New Box on page 58 before section 2 AND on page 187 after fn. 17

Pseudonyms and Initials

In an adoption petition-

T.C.A. § 36-1-116(b)(1) The full name of the petitioners, however, initials or a pseudonym may be used to promote the safety of the petitioners or of the child, with permission of the court;

In a termination of parental rights petition or adoption and termination of parental rights together-

T.C.A. § 36-1-113(d)(2)(B) Initials or pseudonyms may be used in the petition in lieu of the full names of the petitioners to promote the safety of the petitioners or of the child, with permission of the court;

New Box on page 68 Section 2, after the 3rd paragraph and page 194 just before Section C

Putative Father Registry checks in other states

(T.C.A. § 36-1-116(b)(13)(A))

T.C.A. § 36-1-113(d)(3)(A) The petition, or allegations in the adoption petition, shall contain a verified statement that:

(i) The putative father registry maintained by the department has been consulted within ten (10) working days of the filing of the petition and shall state whether there exists any claim on the registry to the paternity of the child who is the subject of the termination or adoption petition;

~~(ii) Indicates if there exists any other claim or potential claim to the paternity of the child;~~

~~(iii) Describes whether any other parental or guardianship rights have been terminated by surrender, parental consent, or otherwise, and whether any other such rights must be terminated before the child can be made available for adoption;~~

(ii) Any putative father registry maintained by another state in which the child was born has been consulted within ten (10) days of the filing of the petition and shall state whether there exists any claim on that registry to the paternity of the child who is the subject of the termination or adoption petition; and

(iii) If the petitioner knows or has reason to believe that the mother was living or present in another state at the time of the child's conception, any putative father registry maintained by that state has been consulted within ten (10) working days of the filing of the petition and shall state whether there exists any claim on that registry to the paternity of the child who is the subject of the termination or adoption petition.

~~(iv)~~ **(d)(2)(E)** Any notice required pursuant to subdivision (d)(4) has been given; and

~~(v)~~ **(d)(2)(F)** The medical and social history of the child and the child's biological family has been completed to the extent possible on the form promulgated by the department pursuant to § 36-1-111(k); provided, however, the absence of such completed information shall not be a barrier to termination of parental rights.

(B) Any person or persons entitled to notice pursuant to § 36-1-117 shall be named as defendants in the petition to terminate parental rights or in the adoption petition and shall be served with a copy of the petition as provided by law.

New Box on page 68 after the second paragraph of Section 2.

Magic Words for TPR petitions "if granted"

T.C.A. § 36-1-113(d)(3)(C) The petition to terminate, or the adoption petition that seeks to terminate parental rights, shall state that:

(i) The petition or request for termination in the adoption petition, **if granted**, shall have the effect of forever severing all of the rights, responsibilities, and obligations of the parent or parents or the guardian or guardians to the child who is the subject of the order, and of the child to the parent or parents or the guardian or guardians;

Box on Page 83, Section 9

When Abandonment period begins

T.C.A. § 36-1-102(1)(A)(i) - For a period of four (4) consecutive months immediately preceding the filing of a ~~proceeding or pleading~~ **proceeding, pleading, petition or any amended petition** to terminate the parental rights of the parent or parents or the guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, that the parent or parents or the guardian or guardians either have willfully failed to visit or have willfully failed to support or have willfully failed to make reasonable payments toward the support of the child;

Box on Page 113

Willfulness becomes a defense

T.C.A. § 36-1-102 (1) (A) For purposes of terminating the parental or guardian rights of a parent or parents or a guardian or guardians of a child to that child in order to make that child available for adoption, "abandonment" means that:

- (i) For a period of four (4) consecutive months immediately preceding the filing of a proceeding or pleading to terminate the parental rights of the parent or parents or the guardian or guardians of the child who is the subject of the petition for termination of parental rights or adoption, that the parent or parents or the guardian or guardians either have willfully failed to visit or have ~~willfully~~ failed to support or have ~~willfully~~ failed to make reasonable payments toward the support of the child;

(?) For purposes of this subdivision (1), it shall be a defense to abandonment for failure to visit or failure to support that a parent or guardian's failure to visit or support was not willful. The parent or guardian shall bear the burden of proof that the failure to visit or support was not willful. Such defense must be established by a preponderance of evidence. The absence of willfulness is an affirmative defense pursuant to Rule 8.03 of the Tennessee Rules of Civil Procedure.

Box on Page 125

T.C.A. § 36-1-102(1)(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's means;

(C) For purposes of this subdivision (1), "token visitation" means that the visitation, under the circumstances of the individual case, constitutes nothing more than perfunctory visitation or visitation of such an infrequent nature or of such short duration as to merely establish minimal or insubstantial contact with the child;

(D) For purposes of this subdivision (1), "willfully failed to support" or "willfully failed to make reasonable payments toward such child's support" means the willful failure, for a period of four (4) consecutive months, to provide monetary support or the willful failure to provide more than token payments toward the support of the child; **That the parent had only the means or ability to make small payments is not a defense to failure to support if no payments were made during the relevant four-month period;**

(E) For purposes of this subdivision (1), "willfully failed to visit" means the willful failure, for a period of four (4) consecutive months, to visit or engage in more than token visitation; **That the parent had only the means or ability to make very occasional visits is not a defense to failure to visit if no visits were made during the relevant four-month period;**

Box on Page 127

Abandonment of Dependent & Neglected Children

T.C.A. § 36-1-102(1)(A)(ii) and T.C.A. § 36-1-113(g)(1)

(a) ~~The child has been removed from the home or the physical or legal custody of the parent or parents or the guardian or guardians as the result of a petition filed in the juvenile court in which the child was found to be a dependent and neglected child, as defined in § 37-1-102, and the child was placed in the custody of the department or a licensed child placing agency, that~~ **The child has been removed from the home or the physical or legal custody of a parent or parents or guardian or guardians by a court order at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child**

is a dependent and neglected child, and the child was placed in the custody of the department or a licensed child-placing agency:

- (b) The juvenile court found, or the court where the termination of parental rights petition is filed finds, that the department or a licensed child-placing agency made reasonable efforts to prevent removal of the child or that the circumstances of the child's situation prevented reasonable efforts from being made prior to the child's removal; and
- (c) For a period of four (4) months following the **physical** removal, the department or agency made reasonable efforts to assist the parent or parents or the guardian or guardians to establish a suitable home for the child, but that the parent or parents or the guardian or guardians have ~~made~~ **not made reciprocal** reasonable efforts to provide a suitable home and have demonstrated a lack of concern for the child to such a degree that it appears unlikely that they will be able to provide a suitable home for the child at an early date. The efforts of the department or agency to assist a parent or guardian in establishing a suitable home for the child **shall** ~~may~~ be found to be reasonable if such efforts **equal or** exceed the efforts of the parent or guardian toward the same goal, when the parent or guardian is aware that the child is in the custody of the department;

Box on Page 139

Persistence of Conditions

T.C.A. § 36-1-113(g)(3)(A) The child has been removed from the home of the parent or guardian ~~by order of a court~~ for a period of six (6) months **by a court order entered at any stage of proceedings in which a petition has been filed in the juvenile court alleging that a child is a dependent and neglected child, and:**

- (i) The conditions that led to the child's removal **still persist, preventing the child's safe return to the care of the parent or guardian,** or other conditions exist that, in all reasonable probability, would cause the child to be subjected to further abuse or neglect, ~~and that, therefore, prevent~~ **preventing** the child's safe return to the care of the parent ~~or parents~~ or the guardian; ~~or guardians, still persist;~~

(ii) There is little likelihood that these conditions will be remedied at an early date so that the child can be safely returned to the parent ~~or parents~~ or guardian ~~or guardians~~ in the near future; and

(iii) The continuation of the parent or guardian and child relationship greatly diminishes the child's chances of early integration into a safe, stable and permanent home.

(B) The six (6) months must accrue on or before the first date the termination of parental rights petition is set to be heard.

Box on Page 141

Severe Abuse

T.C.A. § 36-1-113(g)(4) The parent or guardian has been found to have committed severe child abuse, as defined in § 37-1-102, under any prior order of a court or is found by the court hearing the petition to terminate parental rights or the petition for adoption to have committed severe child abuse against **any child**; ~~the child who is the subject of the petition or against any sibling or half-sibling of such child, or any other child residing temporarily or permanently in the home of such parent or guardian;~~

2nd Box on Page 151

Failure to Manifest by Act or Omission

T.C.A. 36-1-113(g)(14) A ~~legal~~ parent or guardian has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing 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.

1st box on page 197

Petitioner's review of agency filings

T.C.A. § 36-1-116(e)(6) Court filings in adoption actions by public or private agencies or parties, offered as proof of parentage, termination of parental rights, or related to establishment or termination of guardianship, may be reviewed by all parties to the case if ~~the adoption court so orders~~. **unless the court grants a protective order. If there is no protective order, the agency that made the filing shall, at the time of filing, send a paper or encrypted electronic copy of the filing to the attorney for the petitioners. Petitioners' counsel and the court must receive the submission at least two (2) business days prior to the scheduled hearing to finalize the adoption. A protective order** may be requested by motion of any party or by the agency that made the filing. A protective order ~~may~~ **shall** be granted ~~as well~~ upon showing, ~~by a preponderance of evidence~~, of good cause to restrict the information; **such cause shall be proven by a preponderance of evidence.** The protective order shall be drawn as narrow~~ly~~ as possible while still offering the protections that the court found to be warranted.

2nd Box on Page 186 The bold portion is substantively new. The organization of provisions has been changed also.

Venue

T.C.A. § 36-1-114 The termination or adoption petition may be filed in the county:

(1) Where the petitioners reside;

(2) Where the child resides;

(3) Where, at the time the petition is filed, any respondent resides;

(4) In which is located any licensed child-placing agency or institution operated under the laws of this state having custody or guardianship of the child or to which the child has been surrendered as provided in this part;

(5) Where the child became subject to the care and control of a public or private child-caring or child-placing agency; or

(6) Where the child became subject to partial or complete guardianship **or legal custody** of the petitioners as provided in this part.

Note on page 60 & New Box on page 186

Residency

T.C.A. § 36-1-115(d) The petitioner or petitioners shall ~~have lived, or~~ **and** ~~maintained a~~ their regular place of abode, in this state ~~or on~~ ~~federal territory within the boundaries of this state for six (6) consecutive~~ months ~~immediately preceding the filing of~~ **when** the adoption petition **is filed**. ~~However,~~ Nonresidents may also file a petition to adopt a child in this state, if they file such petition in the county where ~~in~~ ~~which the~~ a court ~~that~~ granted the nonresidents partial or complete guardianship of the child ~~is located~~.

(e) If **one (1) or both of** the petitioners ~~is in~~ **an active duty service member in the United States military, the** service member **and any co-petitioner with the service member may file a petition for adoption in this state without actual residency in this state, if the service member has** ~~stationed out of this state, but had lived, or maintained a regular place of abode, within this state for six (6) consecutive months immediately prior to entering military service,~~ ~~the residency requirement in subsection (d) shall not apply.~~ **or if this state is the service member's state of legal residence as identified to the United states military.**

Box at Page 211

Relative definition expanded

T.C.A. § 36-1-102(44) "Related" means grandparents or any degree of great-grandparents, aunts or uncles, or any degree of great-aunts or great-uncles, or step-parent, or cousins of the first degree, **or first cousins once removed** or any siblings of the whole or half degree or any spouse of the above listed relatives;