

SENATE BILL 1488

By Bell

AN ACT to amend Tennessee Code Annotated, Title 36,
relative to domestic relations.

WHEREAS, the legislature has determined that subsections 36-6-106(a), 36-6-404(b), and 36-6-108(c) and (e) of the Tennessee Code Annotated establish different factors pertaining to judicial review of custodial arrangements and the establishment of residential schedules for minor children;

WHEREAS, the factors listed in each section differ slightly in their specifics, causing confusion and inconsistent application of the law; and

WHEREAS, the factors that determine custodial arrangements or establish a residential schedule for minor children should be consistent; and

WHEREAS, the legislature has further determined that the wording of Tennessee Code Annotated, subdivision 36-4-106(d)(5) concerning relocation of a parent also causes confusion and inconsistent application of the law; and

WHEREAS, the legislature has further determined that the wording of Tennessee Code Annotated, subdivision 36-6-101(a)(3)(A) concerning the rights of parents also causes confusion and inconsistent application of the law; now, therefore

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

SECTION 1. Tennessee Code Annotated, Section 36-4-106(d)(5), is amended by deleting the language “more than one hundred (100) miles from the marital home” and substituting instead the language “more than fifty (50) miles from the marital home”.

SECTION 2. Tennessee Code Annotated, Section 36-6-101(a)(3), is amended by adding a new subdivision (C) as follows:

All parenting plans submitted to the court by one (1) party only shall contain the notarized signature of that party. All parenting plans submitted to the court by both parties jointly shall contain the notarized signature of both parties.

SECTION 3. Tennessee Code Annotated, Section 36-6-101(a)(3)(A), is amended by deleting subdivisions (i)-(ix) and substituting instead the following:

(i) The right to unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations. The parent exercising parenting time shall furnish the other parent with a telephone number where the child may be reached at the days and time specified in a parenting plan or other court order or, where days and times are not specified, at reasonable times. The parent exercising parenting time shall not remain in the same room as the child, listen in on an extension line or otherwise monitor the conversations, unless otherwise provided by law or court order;

(ii) The right to send mail to the child which the other parent shall not destroy or deface, open or censor. The parent exercising parenting time shall deliver all letters, packages and other material sent to the child by the other parent as soon as received and shall not interfere with their delivery in any way, unless otherwise provided by law or court order;

(iii) The right to receive notice and relevant information as soon as practicable but within twenty four (24) hours of any hospitalization, major illness or injury, or death of the child. The parent exercising parenting time when such event occurs shall notify the other parent of the event and shall provide all relevant health care providers with the contact information for the other parent;

(iv) The right to receive directly from the child's school any educational records customarily made available to parents. The parent enrolling the child in school shall provide to the other parent as soon as available each academic year the name, address, telephone number and other contact information for the school. In the case of children who are being home-schooled, the parent providing the homeschooling shall advise the

other parent of this fact along with the contact information of any sponsoring entity or other entity involved in the child's education. The school or home-schooling entity shall be responsible, upon request, to provide to each parent records customarily made available to parents. The school may require a written request which includes a current mailing address and may further require payment of the reasonable costs of duplicating such records. These records include copies of the child's report cards, attendance records, names of teachers, class schedules, and standardized test scores;

(v) Unless otherwise provided by law, the right to receive copies of the child's medical, health or other treatment records directly from the treating physician or health care provider. The parent who has arranged for such treatment or health care shall provide to the other parent as soon as available the name, address, telephone number and other contact information of the physician or health care provider. The keeper of the records may require a written request including a current mailing address and may further require payment of the reasonable costs of duplicating such records. No person who receives the mailing address of a requesting parent as a result of this requirement shall provide such address to the other parent or a third person;

(vi) The right to be free of derogatory remarks made about the parent or his or her family by the other parent to the child or in the presence of the child. Neither parent shall make such remarks, or allow the children to remain in the presence of third persons making such remarks;

(vii) The right to be given at least forty-eight (48) hours notice, whenever possible, of all extracurricular school, athletic, or church activities, and the opportunity to participate or observe them. The parent who has enrolled the child in each such activity shall advise the other parent of the activity and provide contact information for the person responsible for its scheduling so that the other parent may make arrangements

to participate or observe whenever possible, unless otherwise provided by law or court order;

(viii) The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than forty-eight (48) hours, an itinerary which shall include the planned dates of departure and return, the intended destinations and mode of travel and telephone numbers. The parent traveling with the child or children shall provide this information to the other parent so as to give that parent reasonable notice; and

(ix) The right to access and participation in the child's education on the same bases that are provided to all parents including the right of access to the child during lunch and other school activities; however access must not interfere with the school's day-to-day operations or with the child's educational schedule. Neither parent may advise the child or the child's school that the other parent is not to have lunch with or otherwise have access to the child during the school day and no school is to provide preferred access to either parent to the detriment of the other, unless ordered by a court of competent jurisdiction.

SECTION 4. Tennessee Code Annotated, Section 36-6-106(a), is amended by deleting the language "consistent with the factors set out in subdivisions (a)(1)-(10)", and substituting instead "consistent with the factors set out below", and is further amended by deleting subdivisions (1)-(10) and substituting instead the following:

(1) The parent's ability to instruct, inspire, and encourage the child to prepare for a life of service, and to compete successfully in society as an adult;

(2) The strength, nature, and stability of the child's relationship with each parent, including whether one parent has performed the majority of parenting responsibilities relating to the daily needs of the child;

(3) The willingness and ability of each parent to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interests of the child;

(4) Refusal to attend a court-ordered parent education seminar may be considered by the court as a lack of good faith effort in these proceedings;

(5) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

(6) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

(7) The love, affection, and emotional ties existing between each parent and the child;

(8) The emotional needs and developmental level of the child;

(9) The moral, physical, and emotional fitness of each parent as it relates to their ability to parent the child. The court may order an examination of a party under Rule 35 of the Tennessee Rules of Civil Procedure and, if necessary for the conduct of the proceedings, order the disclosure of confidential mental health information of a party under § 33-3-105(3). The court order required by § 33-3-105(3) must contain a qualified protective order that limits the dissemination of confidential protected mental health information to the purpose of the litigation pending before the court and provides for the return or destruction of the confidential protected mental health information at the conclusion of the proceedings;

(10) The child's interaction and interrelationships with siblings and with significant adults, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

(11) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(12) Evidence of physical or emotional abuse to the child, to the other parent or to any other person;

(13) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

(14) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

(15) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and

(16) Any other factors deemed relevant by the court.

SECTION 5. Tennessee Code Annotated, Section 36-6-108(c), is amended by deleting the language: "The court shall consider all relevant factors including the following where applicable:" and replacing it with the language "The court shall consider all relevant factors including those factors found in § 36-6-106(a)(1)-(16).", and further amended by deleting subdivisions (1)-(11).

SECTION 6. Tennessee Code Annotated, Section 36-6-108(e), is amended by deleting the language "the court shall make a custody determination and shall consider all relevant factors including the following where applicable:" and replacing it with the language "the court shall consider all relevant factors including those factors found in § 36-6-106(a)(1)-(16).", and further amended by deleting subdivisions (1)-(11).

SECTION 7. Tennessee Code Annotated, Section 36-6-404(b), is amended by deleting the language "If the limitations of § 36-6-406 are not dispositive of the child's residential schedule, the court shall consider the following factors:" and substituting instead the language

“If the limitations of § 36-6-406 are not dispositive of the child's residential schedule, the court shall consider the factors found in § 36-6-106(a)(1)-(16).”, and is further amended by deleting subdivisions (1)-(16).

SECTION 8. This law shall take effect July 1, 2014, the public welfare requiring it.