

SENATE BILL 1769

By Haile

AN ACT to amend Tennessee Code Annotated, Title 36,
Chapter 1, Part 1 and Title 37, Chapter 2, Part 4,
relative to adoption.

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

SECTION 1. Tennessee Code Annotated, Section 36-1-102, is amended by deleting subdivision (1)(A)(iv) and substituting instead the following:

(iv) A parent or guardian is incarcerated at the time of the filing of a proceeding, pleading, petition, or amended petition to terminate the parental rights of the parent or guardian of the child who is the subject of the petition for termination of parental rights or adoption, or a parent or guardian has been incarcerated during all or part of the four (4) consecutive months immediately preceding the filing of the action and has:

(a) Failed to visit, has failed to support, or has failed to make reasonable payments toward the support of the child for four (4) consecutive months immediately preceding the parent's or guardian's incarceration;

(b) Failed to visit, has failed to support, or has failed to make reasonable payments toward the support of the child during an aggregation of the first one hundred twenty (120) days of non-incarceration immediately preceding the filing of the action; or

(c) Has engaged in conduct prior to incarceration that exhibits a wanton disregard for the welfare of the child; or

SECTION 2. Tennessee Code Annotated, Section 36-1-102(1), is amended by adding the following new subdivisions:

() For purposes of this subdivision (1), a period of incarceration lasting less than seven (7) consecutive days must be counted as days of non-incarceration;

() For purposes of this subdivision (1), aggregation is accomplished by counting the days preceding, following, and in-between each period of incarceration of at least seven (7) consecutive days;

SECTION 3. Tennessee Code Annotated, Section 36-1-102, is amended by deleting subdivision (25) and substituting instead the following:

(A) "Guardian" means a person or entity appointed by a court to provide care, custody, control, supervision, and protection for a child, and authorized by the court to adopt or consent to the adoption of the child as a result of a surrender, parental consent, or termination of parental rights;

(B) "Guardian" also means a person or entity authorized by a court to adopt or consent to the adoption of a child upon proof that the child is without any living person entitled to notice pursuant to § 36-1-117(a);

(C) For purposes of this part, "guardian" does not include:

(i) A person or entity appointed guardian of a child by a juvenile court pursuant to § 37-1-104;

(ii) A person appointed permanent guardian of a child by a juvenile court pursuant to § 37-1-801 unless that person has also been awarded guardianship pursuant to § 36-1-113(m);

(iii) A person appointed guardian of the person or property of a child, or both, by a court of competent jurisdiction pursuant to § 34-2-101; or

(iv) Any other person or entity appointed guardian of the person or property of a child pursuant to an order that does not specifically include the right to adopt or consent to the adoption of the child and that was not entered as a result of a surrender, parental consent, termination of parental rights, or finding

that the child is without any living person entitled to notice pursuant to § 36-1-117(a);

(D) The rights of the guardian must be terminated by surrender or court order or the guardian must provide consent as defined in subdivision (15)(A) before an order of adoption can be entered; provided, that a guardian's rights need not be terminated when the guardian is the petitioner in an adoption;

(E) When the department or a licensed child-placing agency is the guardian of the child, its rights must be terminated by court action or it must provide consent as defined in subdivision (15)(A) before an adoption can be ordered;

SECTION 4. Tennessee Code Annotated, Section 36-1-102, is amended by deleting subdivision (26) and substituting instead the following:

(A) "Guardianship" means the status created by a court order appointing a person or entity guardian of the child. Guardianship rights are those transferred to the guardian by court order, including the right to provide care, custody, control, supervision, and protection for a child and to adopt or consent to the adoption of the child as a result of a surrender, parental consent, termination of parental rights, or finding that the child is without any living person entitled to notice pursuant to § 36-1-117(a);

(B) Guardianship granted by a court as a result of a surrender, consent, or termination of parental rights, or the equivalent law of any other jurisdiction, may be complete or partial;

(C)

(i) A person or entity has complete guardianship for the purpose of permitting a court to order an adoption when all necessary parental or guardianship rights have been terminated by surrender, consent, waiver of

interest, or court order, and a court with jurisdiction to do so enters an order granting guardianship to that person or entity;

(ii) Complete guardianship entitles the guardian to the right to care for the child as provided under § 37-1-140, or as otherwise provided by the court order, and permits the guardian to place the child for adoption and consent to the adoption, or to be granted an adoption of the child, without further termination of parental or guardian rights;

(iii) A prospective adoptive parent granted complete guardianship is the child's guardian for the purpose of § 37-4-201;

(D)

(i) A person or entity has partial guardianship when a court with jurisdiction to do so enters an order granting guardianship to that person or entity as a result of the surrender, parental consent, or termination of parental rights of at least one (1), but not all, parents or guardians of the child, or as a result of the death of one (1) parent or guardian when the parental or guardianship rights of the remaining parent or guardian have not been terminated by surrender, consent, waiver of interest, or court order pursuant to this part or title 37;

(ii) Partial guardianship entitles the guardian to provide care, supervision, and protection of the child pursuant to § 37-1-140, or to the extent permitted by the court order granting partial guardianship, and permits the guardian to place the child for adoption and consent to that adoption; it does not authorize the court to enter an order of adoption until all remaining parental or guardianship rights have been terminated by surrender, consent, waiver of interest, or court order;

(iii) Upon receiving partial guardianship, the department or licensed child-placing agency may place a child for adoption with prospective adoptive parents

and may consent to the adoption of the child by those prospective adoptive parents; the prospective adoptive parents are required to comply with § 36-1-117 before an adoption can be granted;

SECTION 5. Tennessee Code Annotated, Section 36-1-113(d)(3)(C)(iii), is amended by deleting the language "with the child" and substituting instead the language "with the child, except as provided by contract pursuant to § 36-1-145".

SECTION 6. Tennessee Code Annotated, Section 36-1-113(g)(5), is amended by deleting the language "the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian," and substituting instead the language "a child".

SECTION 7. Tennessee Code Annotated, Section 36-1-113, is amended by deleting subdivision (h)(1)(C) and substituting instead the following:

(C) If a court of competent jurisdiction has made a determination in a criminal or civil proceeding that the parent has committed murder of a child, committed voluntary manslaughter of a child, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of a child, or committed a felony assault that has resulted in serious bodily injury or severe child abuse as defined at § 37-1-102 to a child. For the purposes of this subsection (h), such a determination shall be made by a jury or trial court judge designated by § 16-2-502 through an explicit finding, or by such equivalent courts of other states or of the United States; or

SECTION 8. Tennessee Code Annotated, Section 36-1-117, is amended by deleting subdivision (d)(2) and substituting instead the following:

(2) The legal custodian of the child or any person or entity appointed guardian of the person or property of the child pursuant to an order that does not specifically include the right to adopt or consent to the adoption of the child and that was not entered as a

result of a surrender, parental consent, termination of parental rights, or finding that the child is without any living person entitled to notice pursuant to subsection (a) may only receive notice of the proceeding and may only present evidence as to the child's best interests.

SECTION 9. Tennessee Code Annotated, Section 36-1-117(g)(1), is amended by deleting the language "the parent will have no legal rights to the custody, control, or to visitation with the child in the future" and substituting instead the language "the parent will have no legal rights to custody or control of the child in the future".

SECTION 10. Tennessee Code Annotated, Section 36-1-145, is amended by inserting the following language as a new, appropriately designated subsection:

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(1) A guardian ad litem appointed for the subject child in a contested termination of parental rights is not a necessary party to a contract for post adoption contact. Parties to a proposed agreement shall offer the guardian ad litem an opportunity to participate in the negotiation of the agreement and to review the final agreement before it is executed, and shall provide to the guardian ad litem a copy of the contract for post adoption contact after it is executed.

(2) If the contract for post adoption contact is part of an agreed resolution to a contested termination of parental or guardianship rights action, then the child's guardian ad litem shall advocate for the best interest of the child before the execution of the agreement. The guardian ad litem may request a hearing before the court, prior to resolution of the termination of parental or guardianship rights action, to offer evidence regarding whether the contract for post adoption contact serves the child's best interest. The court may consider the terms of a

contract for post adoption contact in determining whether termination of parental or guardianship rights is in the best interest of the child.

(3) A contract for post adoption contact may not expand or extend the duties of the guardian ad litem after the final resolution of the case in which the guardian ad litem is appointed. If a court determines that a child requires a guardian ad litem in an action to enforce or modify a contract for post adoption contact, the court may make a new guardian ad litem appointment.

SECTION 11. Tennessee Code Annotated, Section 36-1-145(j)(5), is amended by inserting the following language after the first sentence:

If the court that issued the order of adoption is not a Tennessee court and a biological parent residing in Tennessee is seeking enforcement of a contract for post adoption contact, then the biological parent may petition for enforcement of the contract in a court with adoption jurisdiction in the county where the biological parent resides.

SECTION 12. Tennessee Code Annotated, Section 37-2-402, is amended by deleting subdivision (1)(A) and substituting instead the following:

"Abandonment" for purposes of terminating the parental or guardian rights of a parent or a guardian of a child to that child in order to make that child available for adoption, has the same meaning as defined in § 36-1-102;

SECTION 13. This act shall take effect upon becoming a law, the public welfare requiring it.