

SENATE BILL 1478

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 36,
relative to visitation rights.

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

SECTION 1. Tennessee Code Annotated, Section 36-6-303, is amended by deleting the section and substituting instead the following:

(a)

(1) If a stepparent or former stepparent presents a petition, or a motion in a pending case to which the movant is a party, for visitation with the stepparent's stepchild or stepchildren or former stepchild or stepchildren to the circuit court, chancery court, general sessions court with domestic relations jurisdiction, or juvenile court of the county in which the stepchild or former stepchild resides, the court shall set the matter for hearing if such visitation is opposed by a parent or custodian or if the petitioner's visitation has been severely reduced by the parent or custodian and any of the following circumstances exist:

(A) The parent of the child to whom the petitioner was married is deceased;

(B) The child's parent and the petitioner are divorced or are in the process of seeking a divorce;

(C) The whereabouts of the child's parent to whom the petitioner is married are unknown;

(D) The court of another state has ordered the visitation between the child and the petitioner;

(E) The child resided in the home of the petitioner for a period of twelve (12) months or more and was subsequently removed from the home by the parent or custodian. A twelve-month relationship establishes a rebuttable presumption that denial of visitation may result in irreparable mental, emotional, or physical harm to the child;

(F) The child and petitioner maintained a significant relationship for a period of twelve (12) months or more immediately preceding severance or severe reduction of the relationship, the relationship was severed or severely reduced by the parent or custodian for reasons other than abuse or presence of danger of substantial mental, emotional, or physical harm to the child, and the severance or severe reduction of this relationship is likely to cause substantial mental, emotional, or physical harm to the child; or

(G) There has been an unreasonable denial of visitation by a parent or custodian and the denial has caused the child severe mental, emotional, or physical harm.

(2) For purposes of this section, "petitioner" has the same meaning as movant, unless the context otherwise requires.

(b)

(1) In considering a petition or motion for visitation, the court shall first determine the presence of a danger of substantial mental, emotional, or physical harm to the child. Such finding of substantial harm may be based upon cessation or severe reduction of the relationship between an unmarried minor child and the petitioner if the court determines, upon sufficient evidence to prompt a reasonable person to believe, that the harm will occur more likely than not, and that:

(A) The child had a significant existing relationship with the petitioner and that loss or severe reduction of the relationship is likely to occasion severe mental, emotional, or physical harm to the child or presents the danger of other direct and substantial harm to the child; or

(B) The petitioner functioned as full-time or primary caregiver such that cessation or severe reduction of the relationship could interrupt provision of the child's daily needs and thus occasion severe mental, emotional, or physical harm to the child or presents the danger of other direct and substantial harm to the child.

(2) For purposes of this section, a petitioner has a significant existing relationship with the child if:

(A) The child resided with the petitioner for at least six (6) consecutive months; or

(B) The petitioner was the full-time or primary caregiver of the child for a period of not less than six (6) consecutive months.

(3) For purposes of this section, a petitioner has functioned as primary caregiver if the child resided with the petitioner more than one-half of the days each month before the relationship was severely reduced or terminated and the petitioner provided material support of the child.

(4) A petitioner is not required to present the testimony or affidavit of an expert witness in order to establish a significant existing relationship with a child or that the loss or severe reduction of the relationship is likely to occasion substantial mental, emotional, or physical harm to the child. Instead, the court shall consider whether the facts of the particular case would lead a reasonable person to believe that there is a significant existing relationship between the

petitioner and child or that the loss or severe reduction of the relationship is likely to cause substantial mental, emotional, or physical harm to the child.

(c) There is a rebuttable presumption that a fit parent's or custodian's actions and decisions regarding the petitioner visitation are not harmful to the child's mental, emotional, or physical health. The burden is on the petitioner to prove that a parent's or custodian's actions and decisions regarding visitation will cause substantial harm to the child's mental, emotional, or physical health.

(d) Upon an initial finding of presence of a danger of substantial mental, emotional, or physical harm to the child, the court shall then determine whether the petitioner's visitation would be in the best interest of the child based upon the factors in subsection (e). Upon a determination that visitation would be in the best interest of the child, reasonable visitation may be ordered.

(e) In determining the best interests of the child under this section, the court shall consider all pertinent matters, including, but not limited to, the following:

- (1) The length and quality of the prior relationship between the child and the petitioner and the role performed by the petitioner;
- (2) The existing emotional ties of the child to the petitioner;
- (3) The preference of the child if the child is determined to be of sufficient maturity to express a preference;
- (4) The effect of hostility between the petitioner and the parent or parents, or custodian or custodians of the child manifested before the child, and the willingness of the petitioner, except in case of abuse, to encourage a close relationship between the child and the parent or parents, or custodian or custodians of the child;
- (5) The good faith of the petitioner in filing the petition or motion;

(6) If one (1) parent or custodian is deceased or missing, the fact that the petitioner requesting visitation is or was the spouse of the deceased or missing parent or custodian;

(7) Any unreasonable deprivation of the petitioner's opportunity to visit with the child by the child's parent or custodian, including denying visitation of the child to the petitioner for a period exceeding ninety (90) days;

(8) Whether the petitioner is seeking to maintain a significant existing relationship with the child;

(9) Whether awarding the petitioner visitation would interfere with the parent-child relationship or the custodian-child relationship;

(10) The child's interactions and interrelationships with siblings, half-siblings, other relatives, and step-relatives;

(11) Any court finding that the child's parent or custodian is unfit; and

(12) Any other factors the court deems relevant.

SECTION 2. This act shall take effect July 1, 2018, the public welfare requiring it, and shall apply to actions commenced on or after that date.