

SENATE BILL 854

By Black

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 6, Part 1 and Title 37, Chapter 1, Part 8, relative to de facto child custody.

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

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, Part 1, is amended by inserting the following as a new section thereto:

(a) For purposes of this section:

(1) "Lived in the home of a relative for a period of twelve (12) months" means the child's sole residence was the home of the relative and the child spent no more than seven (7) consecutive nights away from the relative's home; and

(2) "Relative" means an individual twenty-one (21) years of age or older who is related to the biological or adoptive parent of the child within the first, second or third degree through blood, marriage or adoption.

(b) If a child has lived in the home of a relative for a period of twelve (12) months or more and the parent or parents subsequently remove such child or threaten to remove such child from the home of the relative, the relative may petition the court to be declared a de facto custodian and seek temporary custody of the child. Such petition shall be brought in the circuit, chancery, general sessions courts with domestic relations jurisdiction of the county in which the child about which the petition is brought currently resides. If child was born out of wedlock, the petition may also be filed in the juvenile court of the county where such child resides.

(c) If a petition is brought pursuant to subsection (b), the court shall conduct a hearing to determine whether the relative should be declared a de facto custodian. If the

court finds by clear and convincing evidence that any one (1) of the following circumstances are present, the court shall declare the relative to be a de facto custodian of the child:

(1) The parent or parents intentionally abandoned the child for a period of twelve (12) months or more and the relative bringing the petition has been the sole caregiver for, and financial supporter of, the child;

(2) The parent or parents have engaged in conduct that will substantially harm the child;

(3) The child will suffer substantial harm if removed from the continued care of the relative; or

(4) There is or has been a valid court order entered into by a court of competent jurisdiction awarding custody to the relative.

(d) However, a relative shall not be declared a de facto custodian if the child's parent or parents were actively serving in the United States armed forces and:

(A) The parent or parents left the child with a relative with the understanding that the custody was temporary while each parent discharged the parent's duties of military service; and

(B) The parent or parents seek to regain custody of the child and establish a parent-child relationship as soon as possible after being assigned to duties that permit a child being cared for in the parents or parents' home.

(e) If the court determines that the relative is a de facto custodian, the court shall determine whether awarding temporary custody to the de facto custodian is in the best interest of the child. The court shall consider all relevant factors, including the factors listed in § 36-6-106, where applicable, and the following factors, where applicable:

- (1) The wishes of the parent or parents, the child, and the de facto custodian as to custody;
- (2) The extent to which the child has been cared for, nurtured, and supported by the de facto custodian;
- (3) The intent of the parent or parents in placing the child with the de facto custodian;
- (4) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence, and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school;
- (5) The relationship the child has cultivated with a family member or children of the de facto custodian;
- (6) The child's adjustment to home, school, and community, and the length of time the child has spent in that home, school, and community;
- (7) The permanence, as a family unit, of the existing or the proposed custodial home;
- (8) The mental and physical health of all persons seeking custody of the child, to the extent applicable to the best interests of the child;
- (9) The capacity and disposition of the parties to give love, affection, and guidance, and to continue educating and raising the child in the cultural background and religion in which the child has been primarily raised; and
- (10) The criminal history or history of alcohol and drug abuse of any person, including the de facto custodian, seeking custody.

(f) After considering all the relevant factors, the court may award temporary custody to a parent, both parents or a de facto custodian, or may award joint custody to any combination of these persons. If custody or joint custody is granted to a de facto custodian, the de facto custodian shall have legal custody for all purposes under the laws of this state.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.