

## Tenn. Code Ann.

### **§ 36-6-106. Child custody.**

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- (a) In a suit for annulment, divorce, separate maintenance, or in any other proceeding requiring the court to make a custody determination regarding a minor child, the determination shall be made on the basis of the best interest of the child. In taking into account the child's best interest, the court shall order a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child consistent with the factors set out in this subsection (a), the location of the residences of the parents, the child's need for stability and all other relevant factors. The court shall consider all relevant factors, including the following, where applicable:
- (1) The strength, nature, and stability of the child's relationship with each parent, including whether one (1) parent has performed the majority of parenting responsibilities relating to the daily needs of the child;
  - (2) Each parent's or caregiver's past and potential for future performance of parenting responsibilities, including the willingness and ability of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, consistent with the best interest of the child. In determining the willingness of each of the parents and caregivers to facilitate and encourage a close and continuing parent-child relationship between the child and both of the child's parents, the court shall consider the likelihood of each parent and caregiver to honor and facilitate court ordered parenting arrangements and rights, and the court shall further consider any history of either parent or any caregiver denying parenting time to either parent in violation of a court order;
  - (3) 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;
  - (4) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;
  - (5) 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;
  - (6) The love, affection, and emotional ties existing between each parent and the child;
  - (7) The emotional needs and developmental level of the child;
  - (8) The moral, physical, mental 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;
  - (9) The child's interaction and interrelationships with siblings, other relatives and step-relatives, and mentors, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;
  - (10) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

- (11) Evidence of physical or emotional abuse to the child, to the other parent or to any other person. The court shall, where appropriate, refer any issues of abuse to juvenile court for further proceedings;
  - (12) 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;
  - (1) 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;
  - (14) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and
  - (15) Any other factors deemed relevant by the court.
- (b) Notwithstanding any law to the contrary, the court has jurisdiction to make an initial custody determination regarding a minor child or may modify a prior order of child custody upon finding that the custodial parent has been convicted of or found civilly liable for the intentional and wrongful death of the child's other parent or legal guardian.
  - (c) As used in this section, "caregiver" has the meaning ascribed to that term in § 37-5-501.
  - (d) Nothing in subsections (a) and (c) shall be construed to affect or diminish the constitutional rights of parents that may arise during and are inherent in custody proceedings.
  - (e) The disability of a parent seeking custody shall not create a presumption for or against awarding custody to such a party but may be a factor to be considered by the court.
  - (f) If the petitioner knows whether a child has ever been adjudicated by a court as a dependent and neglected or abused child or whether any party to the action has ever been adjudicated by a court as the perpetrator of dependency and neglect or abuse of a minor child, any petition regarding child custody shall include an affirmative statement setting out all applicable adjudications. If an adjudication has occurred as a result of a child protective services investigation, the court may order the department of children's services to disclose information regarding the investigation to protect the child from abuse or neglect consistent with § 37-1-612(h). The court shall consider any such information as a factor in determining the child's best interest.

## **§ 36-6-108. Parental relocation.**

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- (a) After custody or co-parenting has been established by the entry of a permanent parenting plan or final order, if a parent who is spending intervals of time with a child desires to relocate outside the state or more than fifty (50) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:
  - (1) Statement of intent to move;
  - (2) Location of proposed new residence;
  - (3) Reasons for proposed relocation; and
  - (4) Statement that the other parent may file a petition in opposition to the move within thirty (30) days of receipt of the notice.
- (b) Unless the parents can agree on a new visitation schedule, the relocating parent shall file a petition seeking to alter visitation. The court shall consider all relevant factors, including those factors enumerated within subsection (d). The court shall also consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation and determine whether a deviation from the child support guidelines should

be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

- (c)** If the parents are actually spending substantially equal intervals of time with the child and the relocating parent seeks to move with the child, the other parent may, within thirty (30) days of receipt of notice, file a petition in opposition to removal of the child. No presumption in favor of or against the request to relocate with the child shall arise. The court shall determine whether or not to permit relocation of the child based upon the best interests of the child. The court shall consider all relevant factors including those factors found in § 36-6-106(a)(1)-(15).
- (d) (1)** If the parents are not actually spending substantially equal intervals of time with the child and the parent spending the greater amount of time with the child proposes to relocate with the child, the other parent may, within thirty (30) days of receipt of the notice, file a petition in opposition to removal of the child. The other parent may not attempt to relocate with the child unless expressly authorized to do so by the court pursuant to a change of custody or primary custodial responsibility. The parent spending the greater amount of time with the child shall be permitted to relocate with the child unless the court finds:

  - (A)** The relocation does not have a reasonable purpose;
  - (B)** The relocation would pose a threat of specific and serious harm to the child that outweighs the threat of harm to the child of a change of custody; or
  - (C)** The parent's motive for relocating with the child is vindictive in that it is intended to defeat or deter visitation rights of the noncustodial parent or the parent spending less time with the child.

**(2)** Specific and serious harm to the child includes, but is not limited to, the following:

  - (A)** If a parent wishes to take a child with a serious medical problem to an area where no adequate treatment is readily available;
  - (B)** If a parent wishes to take a child with specific educational requirements to an area with no acceptable education facilities;
  - (C)** If a parent wishes to relocate and take up residence with a person with a history of child or domestic abuse or who is currently abusing alcohol or other drugs;
  - (D)** If the child relies on the parent not relocating who provides emotional support, nurturing and development such that removal would result in severe emotional detriment to the child;
  - (E)** If the custodial parent is emotionally disturbed or dependent such that the custodial parent is not capable of adequately parenting the child in the absence of support systems currently in place in this state, and such support system is not available at the proposed relocation site; or
  - (F)** If the proposed relocation is to a foreign country whose public policy does not normally enforce the visitation rights of noncustodial parents, that does not have an adequately functioning legal system or that otherwise presents a substantial risk of specific and serious harm to the child.
- (e)** If the court finds one (1) or more of the grounds designated in subsection (d), the court shall determine whether or not to permit relocation of the child based on the best interest of the child. If the court finds it is not in the best interests of the child to relocate as defined herein, but the parent with whom the child resides the majority of the time elects to relocate, the court shall consider all relevant factors including those factors found in § 36-6-106(a)(1)-(15).
- (f)** The court shall consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation, and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.
- (g)** Nothing in this section shall prohibit either parent from petitioning the court at any time to address issues, such as, but not limited to, visitation, other than a change of custody related to the move. In the event no

petition in opposition to a proposed relocation is filed within thirty (30) days of receipt of the notice, the parent proposing to relocate with the child shall be permitted to do so.

- (h)** It is the legislative intent that the gender of the parent who seeks to relocate for the reason of career, educational, professional, or job opportunity, or otherwise, shall not be a factor in favor or against the relocation of such parent with the child.
- (i)** Either parent in a parental relocation matter may recover reasonable attorney fees and other litigation expenses from the other parent in the discretion of the court.
- (j)** This section shall also apply to a parent who is subject to an injunction pursuant to § 36-6-116 or § 36-4-106(d)(5).