

TENNESSEE'S ADOPTION CODE IN PRACTICE

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INTRODUCTION

Tennessee's Adoption Code, as enacted in 1996 and amended at various times since, is much more comprehensive and specific than the former statute. As a result, special attention is required of lawyers, judges and clerks to be sure parties comply with the specific provisions of the Code. The Department of Children's Services (DCS) has issued numerous "public necessity" rules and regulations, as well as forms, implementing the Code, and they are subject to periodic change.

SUMMARY AND OVERVIEW

Among the most interesting provisions in the Code are as follows:

- It expressly recites that the best interests of children are protected by the Constitutions of both the United States and the State of Tennessee.
- In cases of conflict between the interests of adults and those of children, courts are instructed to favor (not merely consider) the best interests of the child.
- Biological fathers are required to assert their parental interests within 30 days of learning of their alleged paternity, and hearings on termination of parental rights and other procedural aspects of adoption are generally required to be held on an expedited, priority basis, often within 30 days of the time contested rights are asserted. Appeals are required to be heard on an expedited, priority basis, and a one year statute of repose is included, which forbids collateral attack on a final order of termination or of adoption for any reason whatsoever after one year following the final order.
- The rights of biological parents may be terminated by court proceedings based upon the following grounds (among others): abandonment; substantial non-compliance with a foster care plan; removal from a home on the ground of neglect or abuse for a period of 6 months or greater; severe child abuse; or conviction for causing the wrongful death of the other parent. In addition, the parental rights of a person who is not a legal parent may be terminated based upon the following grounds (among others): failure to pay without good cause or excuse a reasonable share of prenatal, natal, and postnatal expenses; failure to pay without good cause reasonable and consistent child support; failure to seek reasonable visitation, and if visitation has been granted, engaging in only token visitation; failure to manifest an ability and willingness to assume legal and physical custody of the

child; a risk of substantial harm to the physical or psychological welfare of the child; or the failure of an unmarried father to file a petition to establish parentage of a child within 30 days of notice of alleged paternity. In addition, a man who has obtained an order of parentage of a child born out of wedlock may nevertheless have his parental rights terminated if he is found to meet any of the other termination criteria mentioned above.

- Surrenders may be taken no sooner than three (3) calendar days after the birth of the child, unless good cause is shown to the court. The surrender may be revoked within 10 days after the date the child is surrendered before the same judge who took the surrender or a designated substitute. However, if the tenth day falls on a weekend or legal holiday, then the last day for revoking is on the next day which is not a weekend or legal holiday.
- A Waiver of Interest and Notice affidavit may be executed by the alleged biological father prior to the birth of the child provided the biological mother has executed a sworn statement naming him as the father, or after birth. The executed waiver terminates the alleged biological father's parental rights and responsibilities without a right to revoke. If an adoption does not occur, however, the father's financial responsibilities and rights may be restored by court order.
- Expenses paid to birth parents or on behalf of birth parents are limited in both time and type of expense.
- Tennessee's Putative Father Registry requires registration prior to or within 30 days after the birth of a child requires a putative father to file change of address information within 10 days of any such change. Registration will subject the registrant to court ordered child support, medical payments and other payments and damages in connection with the paternity of the child. A person who is registered has 30 days from receipt of the notice of a pending adoption or termination proceeding to file a petition to establish parentage or to intervene for the purpose of establishing a claim to paternity. The failure to file a petition or to intervene within 30 days of such notice is a ground for termination of parental rights.
- Final orders of adoption generally are entered after 6 months of the filing of a petition, and may not be challenged for any reason after 1 year their entry.
- Abbreviated preliminary home studies are required before placement in an adoptive home, with complete home studies required within 60 days of such placement. A report to the court by the appointed agency conducting the home study is required before a final order of adoption may be entered.
- Notice of the availability of legal and social counseling must be provided to birth parents. If the birth parent cannot afford such counseling, the adoptive couple must pay for such counseling, and if a birth parent has requested such counseling but has not received it, the court may not accept a surrender of that birth parent's parental rights until such counseling has been provided.

- All fees and expenses charged by attorneys, agencies, and any others involved in the adoption process must be disclosed to the court in the surrender proceeding and in the adoption petition. In the final order the court must approve the fees retroactively or order reimbursement of unauthorized fees and expenses. DCS is required to collect data of fees and expenses and to make that data available to prospective adoptive couples on request, without comment.
- Out-of-state agencies are required to subject themselves to the laws of the State of Tennessee in connection with any adoption originating or occurring in Tennessee.
- Effective July 1, 1996, adoption records (as defined in the statute) became available to all adoptees age 21 and over (or their legal representatives), but a birth parent may file a "contact veto" on the Contact Veto Registry maintained by the Department of Children's Services, on behalf of themselves, their immediate families, and their descendants. In doing so, a birth parent may veto contact by any person who requests information from the adoption records or indicate how and when contact would be permitted. The contact veto may be modified, rescinded, or reinstated at any time.

SPECIFIC STATUTORY PROVISIONS

1. Construction. Section 36-1-101 states that the rights and interests of persons affected by adoption, especially those of the adoptees, are protected by the Constitutions of the United States and the State of Tennessee.

The Section also states that a purpose of the Act is to favor the rights of adopted persons and their families to obtain information about themselves from the adoption records but also to recognize the rights of persons not to be contacted if they do not wish to be contacted.

Finally, this Section states: "In all cases, when the best interests of the child and those of the adults are in conflict, such conflict shall always be resolved to favor the rights and best interests of the child, which interests are hereby recognized as constitutionally protected and, to that end, this part shall be liberally construed."

Thus, the General Assembly has statutorily recognized the constitutional rights of adoptees and the constitutional rights of children to have their best interests favored.

2. Abandonment. Section 36-1-102(1) contains a revised definition of abandonment. It provides that a parent need not be shown to have "evinced a settled purpose for forego all parental rights and responsibilities" in order for abandonment to be found. Instead, the strict statutory four month abandonment period previously in the law is to be enforced.

3. Consent. (102(13)) The definition of consent has been expanded and includes a consent of a biological parent who co-signs an adoption petition in lieu of a surrender. Subsection 36-1-

117(g) of the Act provides specific guidance to the courts on handling consents in lieu of surrenders.

4. Guardians/Guardianship. (102(21) and (22)) The concept of guardianship is dealt with more carefully in the Code than in the past. The concepts of "complete" guardianship and "partial" guardianship are introduced and distinguished. This becomes important when termination of the rights of some, but not all parents or guardians have been accomplished so that a "partial guardianship" continues to exist. Ultimately, all parental and guardianship rights must be adjudicated by the court considering the adoption petition. Upon surrender or the filing of the adoption petition, adoptive parents or agencies accepting surrenders are now granted partial or full guardianship in accordance with the situation.

5. Entities Authorized to Place Children. Section 36-1-108 provides more specificity on what kind of agencies and persons may engage in adoption activities, and what activities will require licensure. In addition, that section requires information to be reported to the court regarding fees charged by agencies and attorneys. That information in turn is required to be reported to DCS, which will establish procedures to assist court officers in obtaining this information and reporting it to DCS.

6. Illegal Payments in Connection with Placement of the Child for Adoption. Section 36-1-109 specifies what types of expenses may be paid in connection with the placement or birth of the child for adoption. Allowable expenses include hospital and medical services for the care of the mother and child and for the birth of the child; reasonable counseling fees for a period of up to one (1) year for the surrendering parent; and for reasonable legal services or costs related to the adoption. Payment for living expenses are limited to reasonable and actual expenses for housing, food, maternity clothes, utilities or transportation, provided that payments for these expenses not exceed ninety (90) days prior to or forty-five (45) days after the birth or surrender of the child or parental consent to the adoption of the child, unless there is prior approval by court order. Expenses paid or promised to be paid must be disclosed in the surrender or with the parental consent and also with the adoption petition.

7. Persons Under 18 Years of Age. Section 36-1-110 specifies that persons under 18 have the legal capacity to surrender a child for adoption. The section also states that the court shall have authority to appoint a guardian ad litem for a minor parent of a child who may be surrendered, in the court's discretion. This section does not state who is to pay for this guardian ad litem, but the assumption is that the adoptive couple will pay this cost.

8. Surrender, Consent and Waiver. Section 36-1-111 is the longest section in the Code. It is intended to make the surrender procedure more precise so that parties and the courts will follow consistent practice. The result, however, is a long and somewhat tedious road map. The following steps must be taken in the surrender (identified by the subdivisions of the Section):

- (a) A preliminary home study or home study must be accomplished and submitted to the court before the court may accept a surrender or a consent to adoption and before the court can enter any order of guardianship giving prospective adoptive parents

guardianship of a child to be adopted. The home study is required to be kept confidential and can only be viewed on order of the court.

(b) Surrenders must be made in chambers except as otherwise provided in the Code, and the right of revocation must be explained.

(c) A prospective adoptive parent must be at least 18 years of age to receive a surrender. DCS or licensed child-placing agencies also may receive surrenders.

(d) Surrenders or consents may not be given prior to the birth of a child, except for surrenders executed in conformity with the laws of another state and except for waivers of parental interest given by biological fathers. In addition, unless waived by the court for good cause shown (entered on the minute book of the court), no surrender or parental consent may be given until 3 calendar days after the birth of the child. The surrendering or consenting parent must receive legal or social counseling if he or she expresses a desire to receive it, and the court is required to receive certification of satisfaction or withdrawal of such a request. Any entity or person who has physical custody of a child under a prior court order must consent to the surrender. Finally, the persons or entity receiving the surrender must have physical custody of the child or must provide an affidavit certifying that they or it will receive physical custody of the child within five days of the surrender or must satisfy the court that they or it have the right to receive physical custody of the child upon the child's release from a health care facility.

(e) The surrender form must state the beginning and ending dates for revocation and must include a place where the date of the expiration of the revocation period can be inserted.

(f) Guardianship is to be granted to DCS or licensed child-placing agencies who receive surrenders as well as to the adoptive parents who accept a surrender. Hence, petition for guardianship should be filed with the surrender, together with a proposed order of guardianship.

(g) Proven identification is required, and names may not be left blank, nor may pseudonyms be provided on the surrender form.

(h) Surrenders may be made by persons who reside in another state or territory in accordance with the laws of that other state or territory or may be made before a judge, chancellor or clerk of any court of such state or territory utilizing the Tennessee procedure.

(i) Surrenders also may be made before officers of the United States armed forces having the right to administer oaths when the surrendering person is in a foreign jurisdiction.

(j) Surrenders by persons who are incarcerated may be made before the warden of the jail or prison, with all signatures being properly notarized.

(k) The court is required to receive under oath the surrender, information on the child's and the surrendering parents' social and medical histories and the histories of their biological relatives, as under current law. The form and other information filed with the court are required to be kept in a separate file designated for the purpose until it is forwarded to the court gaining jurisdiction through an adoption petition. A copy of the background information is required to be furnished to the adoptive parents or their attorney. In addition, an interview with the judge (or other official before whom a surrender is made) is required. Among other things, a statement is required, under oath, as to the following:

- the identity of any other legal or biological parent or legal guardian of the child to be surrendered;
- whether the child is of Native American heritage;
- whether the child is intended to be sent out of state for the purpose of adoption, and if so, that the surrendering parent elects to have Tennessee law apply to the surrender;
- any money, remuneration or other value he or she has received or been promised, or any other person has received or been promised, in connection with the adoption;
- whether he or she desires social counseling;
- whether the person is represented by legal counsel or wishes to be so represented;
- whether the person is freely giving his or her surrender and understands the right to revoke and the time limits for revocation;
- whether the child to be adopted has any real or personal property or expectancy of any kind; and
- the status of legal and physical custody of the child at the time of surrender or immediately thereafter.

In addition, subdivision (k)(3) requires the person surrendering the child or consenting to the child's adoption to complete a form indicating whether that parent wishes to file a contact veto with the Contact Veto Registry. These forms are provided with the surrender.

(l) When a child is being surrendered directly to adopting parent(s), a certification form regarding the desire of a surrendering parent to have legal counseling or social counseling must be included with the surrender papers.

(m) The following documents must be furnished with the surrender when made directly to adoptive parents:

1. A currently effective or updated home study or preliminary home study;
2. Certification of the completion or declining of counseling;
3. An affidavit stating whether the person(s) receiving the surrender has physical custody of the child or when they will receive physical custody;
4. If the child has been brought into Tennessee from another state and compliance with the Interstate Compact for the Placement of Children is required, ICPC Form 100A must be supplied, or a sworn statement to why such form is not required must be provided; and if the child is to be sent out-of-state for adoption, then a statement must be provided that there will be compliance with the interstate compact; and
5. If the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) applies, a sworn statement that there has been compliance with that Act.

(n) A licensed child-placing agency receiving surrenders must complete items 3, 4 and 5 above, and if DCS receives a surrender, it must complete items 3 and 5 above.

(o) The statute reiterates that no surrender may be accepted and no guardianship order may be entered until there has been compliance with the above documentary requirements.

(p) The clerk of the court is required to provide certified copies of the surrender to DCS, the agency or individual(s) to whom the surrender is given, at the receiving person's cost. It is required to remain confidential unless released for inspection by court order.

(q) The person to whom a child is surrendered is required to file a certified copy of the original surrender in the chancery or circuit court where the adoption petition is filed within 15 days of the surrender or within 15 days of when the petitioner or child becomes a resident of Tennessee, whichever is sooner.

(r) A surrender, a confirmed parental consent, or a waiver of interest in accordance with the statute all have the effect of terminating all rights of the parent or guardian who has thus surrendered, consented, or waived interest, subject only to revocation rights as set forth in the statute. A child subject to such a surrender, consent or waiver, however, still is entitled to inherit from the surrendering, consenting or waiving parent until a final order of adoption or termination of parental rights is entered.

The statute states that the person or entity receiving the surrender or consent does not obtain guardianship of the child except by specific court order. In addition, if any other

court has prior jurisdiction over the guardianship of the child, that court retains jurisdiction for the purpose of awarding guardianship or otherwise providing for the disposition of the child until the filing of a petition for adoption. Otherwise, the court before which the surrender is given has the express authority to enter an order of guardianship to the person or entity receiving the surrender.

Hence, the practice is for parties to move the court to enter an order of guardianship at each occasion when a surrender is received. If multiple surrenders are received, the court where the first surrender is filed has first jurisdiction for the purpose of entering a guardianship order.

Subdivision (r)(6) details the guardianship procedure and should be read with care.

(s) Unlike many other states, the Uniform Child Custody Jurisdiction and Enforcement Act (T.C.A. § 36-6-201 et seq.) expressly governs jurisdiction over the disposition of a child subject to multiple claims of jurisdiction.

(t) Subsection (t) governs orders of reference for home studies and court reports with respect thereto. Unless prospective adoptive parents are indigent, they are required to bear the cost of the home study.

(u) Full compliance with the Code's provisions requiring the filing of surrenders in the adoption court is required within 15 days, and an order of guardianship must be obtained within 30 days of the date a parental consent is filed or surrender is given. Failure to meet these time periods constitutes grounds for removal of the child from the physical care and control of the persons receiving the surrender or consent and other court orders.

(v) The court in which a surrender or consent is given has broad jurisdiction to provide for the care and custody of a surrendered child. If proceedings are commenced persons to whom a child has been surrendered and any others having guardianship are necessary parties. Final hearings regarding removal must be held within 30 days of the preliminary hearing (which must be held within 30 days of the triggering event). Orders removing a child from the custody of a person to whom a surrender is given must be based upon clear and convincing evidence.

(w) This subdivision provides for a Waiver of Interest and Notice affidavit, which is effective to terminate the parental rights of an alleged biological father who is not a legal father. The form of the waiver is specified in the statute. It is important to note that the waiver may be executed prior to the birth of the child if the biological mother executes a sworn statement identifying the waiving person as the father of the child to be born. Otherwise, a waiver may be executed at any time after the birth of the child. The waiver must be sworn. There is no provision for revocation following the execution of the waiver. If an adoption does not occur, however, the father's financial responsibilities and rights may be restored by court order.

9. Revocation of Surrenders and Consents. Under Section 36-1-112, the revocation period is 10 calendar days. If the 10th day falls on a Saturday, Sunday, or legal holiday, the last day for revocation is the next day thereafter which is not a Saturday, Sunday, or legal holiday. A revocation is required to be executed under oath by the person who executed the surrender. If the judge before whom the surrender was given is not available to receive a revocation, any other judge who is qualified to receive a surrender may receive the revocation. Revocations after the expiration of the 10 day period are not valid, but the 10 day period may not be cut short by the filing of a petition for adoption. The execution of a revocation of surrender within the 10 day period is a ground for the dismissal of any adoption petition filed within that period.

In addition, a parental consent may be revoked at any time prior to the entry of an order of confirmation of the parental consent by the court where the consent is given.

The form for revocation is attached to the surrender. The original must be maintained in the office of the clerk or the office of the person receiving the surrender, and copies must be sent by certified mail, return receipt requested, to the child's parents, prospective adoptive parents and the local office of DCS or license child placing agency to whom the child had been surrendered. In addition, copies of the revocation and surrender must be sent by certified mail to the DCS State Office in Nashville.

A surrender that has not been revoked, a confirmed consent or a waiver of interest may not be set aside except upon clear and convincing evidence of duress, fraud, intentional misrepresentation or statutory invalidity. Any action based on those grounds must be initiated within 30 days of the execution of the surrender or waiver of interest, or within 30 days of the entry of the order of confirmation of parental consent.

The revocation returns the child's legal status to that which existed before the surrender. Specific procedures must be followed by the court with respect to transferring custody of the child. Reference should be made to Subsection 36-1-112(e) for these provisions.

In short, a return of custody is required within five days of receipt of a revocation by the person to whom surrender was initially given, unless a change of custody is to be contested. The statute provides the means for contest, and requires a petition to be filed within five days and a final hearing on the merits to be held within 30 days of a preliminary hearing unless cause is shown in a written order of the court why a longer period is required before a final hearing may be held.

The child who is the subject matter of such a proceeding must be returned to the custody of the revoking parent unless clear and convincing evidence shows that the child's safety and health would thereby be put in immediate danger. The courts are given expansive authority to deal with custody and guardianship issues in connection with revocation, including ultimate authority to award custody to other persons if required.

10. Termination of Parental Rights. Section 36-1-113 is a provision permitting courts to terminate parental or guardianship rights in a separate proceeding or as part of an adoption proceeding. It grants jurisdiction to chancery, circuit and juvenile courts to terminate parental rights in connection with an adoption. Prospective adoptive parents, a licensed child-placing agency, a guardian ad litem or DCS has standing to file a petition under this section. Termination of parental rights requires clear and convincing evidence of grounds set forth in the section and a finding that termination is in the best interest of the child.

Subsection (d) contains the requirements for the petition. Among these requirements is a verified statement that the Putative Father Registry has been consulted within 10 working days prior to the filing of the petition, whether any other claim of paternity exists, and whether any other termination proceeding or surrender has occurred in connection with the adoption. Persons entitled to notice of adoption proceedings are necessary parties to termination proceedings. Venue lies in the county in which the child currently resides in the physical custody of the petitioners, or in any court which had previously awarded custody of the child.

Subsection (g) contains the grounds for termination. Subdivisions (1) through (5) are essentially those which were included in Title 37 dealing with termination of parental rights with respect to juveniles. Subdivision (6) permits termination in the event of incarceration under a sentence of ten or more years when the child is less than eight years of age. Subdivision (7) permits termination of the parental rights of a parent who has been found guilty or liable for the wrongful death of the other parent or legal guardian. Subdivision (8) deals with the termination of parental rights of a mentally incompetent person.

Subdivision (9) is of particular interest, because it permits the termination of parental rights of a "nonparticipatory" parent who is not a legal parent. The subdivision responds to the Tennessee Supreme Court decision of Nale v. Robertson, which requires a termination of parental rights of the putative father before adjudication of an adoption petition. In this subdivision the General Assembly has attempted to describe a parent who has "failed to seize the opportunity to parent" under the United States Supreme Court decision of Lehr v. Robertson. It also incorporates the ground of a risk of substantial harm to the physical or psychological welfare of a child, recognized by the Tennessee Supreme Court in Hawk v. Hawk.

Also under subdivision (8) are these grounds for terminating the parental rights of a parent who is not a legal parent: failure to pay without good cause or excuse a reasonable share of prenatal, natal, and postnatal expenses; failure to pay without good cause reasonable and consistent child support; failure to seek reasonable visitation, and if visitation has been granted, engaging in only token visitation; failure to manifest an ability and willingness to assume legal and physical custody of a child; or the failure to file a petition to establish parentage a child within 30 days of notice of alleged paternity.

In addition, a man who has obtained an order of parentage of a child born out of wedlock may nevertheless have his parental rights terminated if he is found to meet any of the other termination criteria mentioned above.

Subsection (h) contains specific grounds under which DCS must seek to have parental rights terminated and must make a diligent effort to make an adoption placement.

Subsection (i) contains a list of factors a court is required to consider (among others) in determining whether termination of parental rights is in the best interest of a child. Note that this list of factors differs from (but does not conflict with) the list of factors found in T.C.A. § 36-6-106 dealing with child custody.

Subsection (j) permits a court to admit evidence under the Tennessee Rules of Juvenile Procedure as well as the Tennessee Rules of Evidence.

Subsection (k) requires a hearing to be held within 6 month's of the filing of an adoption petition, unless the court determines that an extension is in the best interest of the child, and requires specific findings of fact and conclusions of law.

Subsection (l) states the effects of an order terminating parental rights, including elimination of any further notice of adoption proceedings to the parent whose rights have been terminated. It also retains inheritance rights of the child to be adopted until a final order of adoption is entered, in spite of termination.

Subsections (m) through (o) authorize the entry of guardianship orders in the event of termination.

Subsection (p) requires that a copy of an order of termination obtained by prospective adoptive parents be filed with their petition for adoption, if that is a separate petition.

Section (q) prohibits a collateral attack on an order terminating parental rights on the basis of defect or irregularity except by timely appeal, and in no event may an order terminating parental rights be collaterally attacked after one year from the date of entry of a final order. The section states that this provision is intended to be a statute of repose.

11. Persons Eligible to File Adoption Petitions. Section 36-1-115 specifies who is entitled to file an adoption petition. A person must be over 18 years of age and must have physical custody or demonstrate the right to receive physical custody of the child to be adopted (unless the petition is an intervening petition). The petitioner must be joined by his or her spouse, and at least one petitioner must have lived or maintained a regular place of abode in Tennessee for six consecutive months proceeding the filing of the petition. The residency requirements do not apply in a related person adoption so long as the petitioner is an actual resident at the time the petition is filed.

12. Contents of Adoption Petitions and Requirements for Home Studies. Section 36-1-116 contains very specific requirements regarding home studies and the contents of adoption petitions. Rather than repeat these specifics here, I simply urge the practitioner to read the Section with care.

13. Necessary Parties. Section 36-1-117 contains provisions dealing with necessary parties, consents and service of process. It is very specific and makes reference to the various surrender, waiver, consent and termination provisions elsewhere in the statute.

Subsection (b) gives the court where the adoption petition is filed exclusive jurisdiction to decide any petition to establish parentage previously filed under Section 36-2-318. The subsection also provides that the granting of an order of parentage does not prevent the termination of parental rights pursuant to a petition filed under Section 36-1-113. The subsection goes on to delineate how the court should deal with custody in the event an order of parentage is granted and parental rights are not terminated. The Uniform Child Custody Jurisdiction and Enforcement Act (T.C.A. § 36-6-201 et seq.) determines jurisdiction if necessary.

Subsection (c) contains the description of biological fathers who are necessary parties to a proceeding if their rights have not previously been surrendered, waived or terminated.

Subsection (d) provides that other biological or legal relatives are not necessary parties to a proceeding unless they are legal guardians.

Subsection (e) provides notice to agencies having custody or partial guardianship of the child.

Subsection (g) contains the provisions permitting a parental consent to be given in lieu of a surrender by a biological parent's joining in the petition for that purpose. The giving of such a consent does not terminate the parental rights of the consenting parent until an order confirming the consent is entered. A notice of at least ten calendar days by the court is required before a confirming order may be entered. The confirming order may not be entered until an interview is conducted as required under the surrender provisions (Section 36-1-111), and the additional documents required for surrenders under that section are provided to the court. Revocation of consent is permitted at any time before confirmation of the consent, utilizing the procedures found in Section 36-1-112.

Subsection (k) recognizes the validity of consents or surrenders under the laws of other nations or states, and permits the filing of copies of such orders or surrenders in satisfaction of the consent requirements of this law.

The remaining subsections deal with service of process, and authorize the entry of default judgments.

14. Dismissal of Adoption Petitions; Court Ordered Revocations. Section 36-1-118 contains very specific requirements regarding when and how courts may or must dismiss adoption petitions. It also states the conditions under which a court directs that surrenders be revoked and Provides that parental rights may be reinstated only with the consent of the surrendering parent. Finally, it deals with the jurisdiction of courts to provide for the legal custody and guardianship of the child after the adoption petition is dismissed. Again, rather than repeat these specifics here, I simply urge the practitioner to read the Section with care.

15. Final Orders of Adoption. Sections 36-1-119 and 36-1-120 deal with final orders of adoption, with the latter Section providing the specific contents of the final order. Again, rather than repeat these specifics here, I simply urge the practitioner to read the Section with care.

16. Effects of Adoptions on Relationships. Sections 36-1-121 and 36-1-122 deal with the effects of adoptions on relationships. Section 36-1-122 contains a statute of repose, making final orders of adoption not subject to collateral attack after one year of their entry.

17. Illegal Custodial Interference. Section 36-1-123 states that any person whose parental or guardianship rights have been terminated in connection with an adoption proceeding who, otherwise then by legal process, obtains custody of a child who has been adopted shall be in violation of and shall be subject to prosecution pursuant to the provisions of T.C.A. § 39-13-306, which is the parental custodial interference statute. This is a Class E felony unless the person taken from lawful custody is returned voluntarily, in which case the custodial interference is a Class A misdemeanor.

18. Expedited Court Schedules of Contested Cases. Section 36-1-124 requires the trial court to expedite all contested termination and adoption proceedings, consistent with due process, by entering scheduling orders and by giving such cases priority over all other civil litigation other than child protective services cases. In addition, all appeals of contested cases must be expedited by the court of appeals consistent with their rules, by the entry of scheduling orders and by giving such appeals priority over all other civil litigation other than child protective services cases. This section expressly states that it is the intent of the General Assembly that the permanency of the placement of a child should not be delayed any longer than is absolutely necessary consistent with the rights of all parties, and that the rights of the child to permanency at the earliest possible date be given priority over all civil litigation other than child protective services cases.

19. Confidentiality of Records and Access Thereto. Sections 36-1-125 through 137 deal with the confidentiality of adoption records, the access to such records by adopted persons and certain others, and the establishment of the Contact Veto Registry. Adoption records (as defined in the statute) are available to all adoptees age 21 and over (or their legal representatives), but a birth parent may file a "contact veto" on the Contact Veto Registry maintained by the Department of Children's Services, on behalf of themselves, their immediate families, and their descendants. In doing so, a birth parent may veto contact by any person who requests information from the adoption records or indicate how and when contact would be permitted. The contact veto may be modified, rescinded, or reinstated at any time. Sections 36-1-301 through 305 require and govern a 15-day advance notice period to be afforded eligible persons who request such advance notice before adoption records are released to any person seeking access to such records.

Section 36-1-125 permits courts to use the adoption records consistent with any pending litigation or court proceedings concerning the adoption. The section also provides that if the adoption records are required to be used in some court other than in the adoption proceeding, the court in which they are to be utilized must enter a protective order to restrict their further disclosure or dissemination. The unauthorized disclosure of any records protected as confidential

is a Class A misdemeanor. The unauthorized disclosure of records for personal gain or a malicious purpose is a Class E felony.

Section 36-1-126 requires that upon the entry of a final order of adoption, all adoption records, reports, etc. in the possession of the courts, the offices of a licensed child-placing agency, licensed social worker, DCS, or the Department of Health shall be placed under seal and disclosed only as provided in the statute. All records relating to the placement of children in the hands of agencies or licensed clinical social workers are required to be forwarded to DCS in the State Office. The agencies are permitted to retain certain limited information, which must be kept confidential for the purpose of advising parties about where and when the adoption proceedings occurred.

The clerk of the court is required to send a certified copy of any order of adoption or dismissal to the DCS State Office adoption unit in Nashville. The clerks of the courts also are authorized to undertake efforts to locate records that may be on the premises of such courts, including records of former county courts. Such records are to be forwarded to DCS.

Section 36-1-127(e)(2) requires the written consent of biological parents who are the victims of rape or incest before identifying information about them may be released.

20. Court Ordered Release of Information. Section 36-1-138 contains the provisions dealing with court ordered release of adoption records. It provides that adoption records, whether sealed or otherwise, may be disclosed pursuant to this section upon a written, sworn motion before the court of original jurisdiction of the adoption proceeding, or, if the proceeding is not yet filed, in the chancery or circuit court of the county where the record is located, or in the chancery or circuit court of any county having a population of 100,000 or greater in the 1990 Federal Census or any subsequent census. Motions filed on the basis of alleged improper denial of access to information by DCS or the Department of Health must be brought in circuit or chancery court for Davidson County. If the court which had original jurisdiction was a county court or a court which no longer exists, the chancery court for the county in which that court had been established has jurisdiction to consider the motion, in addition to the circuit or chancery courts in counties having a population of 100,000 or greater. Agencies and DCS are required to disclose the identity of the court where proceedings occurred when inquired of by an affected person.

The motion must be served on the Commissioner of DCS and the Commissioner of the Department of Health by certified mail or personal service. A hearing is required to be held no sooner than 15 days after the return receipt is dated or after personal service is accomplished.

Subsection (c) provides that the adoption records may be open under whatever conditions the court shall determine necessary if the court finds, for good cause shown, that the best interests of the adoptive person or the public requires disclosure and that one or more of six conditions are met:

- (1) The information is necessary for treating or preventing physical, psychological, or psychiatric conditions described by testimony or affidavit of a "qualified treatment professional" (defined in the section);
- (2) The information is needed to establish legal status or standing for inheritance or property right determinations or for the determination of legal relationships with third parties;
- (3) The information is necessary to prosecute or defend a legal proceeding and that alternative information sources are not available;
- (4) A public agency needs the information in connection with its authorized duties and the information cannot be obtained by any other method, or further delay may result in harm to the adopted person, the person's legal relations or the public;
- (5) The movant alleges that he or she has been improperly denied access to information by DCS or the Department of Health;
- (6) The movant is an individual who alleges wrongful denial of access based on a prior finding of involuntary termination of parental rights.

Subsection (d) requires the court to conduct an in camera inspection of records and permits disclosure only of information necessary to satisfy the disclosure needs stated above.

Under subsection (e) DCS or the Department of Health may consent to the release of sealed post-adoption records or records of birth by agreed order.

Under subsection (f) the court may order DCS to attempt to establish contact with any person or entity for the purpose of obtaining updated medical information, and if such information is obtained, the department may forward the information to a "qualified treatment professional."

Under subsection (g) contact by a party eligible to search records under Section 36-1-127 is not permitted if a contact veto has been registered. DCS is required to inform the court whether any person has filed a contact veto.

21. Penalty for Providing False Information. Section 36-1-139 makes it a Class E felony for any person who knowingly provides false information in connection with any of the adoption records provisions (Sections 36-1-125 through 138 and 141).

22. Putative Father Registry. Section 36-2-318 governs the Putative Father Registry. Under this Section putative fathers are required to register a notice of intent to claim paternity of a child prior to or within 30 days after the birth of the child, unless an order of parentage has been entered on the Registry, or unless a certified copy of a court order adjudicating such person to be the father of a child or a sworn acknowledgement of paternity has been filed with the Registry.

Filers are required to inform the Registry of changes to name or address within ten days of any change.

Any person listed on the Registry is required to be notified by DCS of any adoption proceedings of which it receives notice. In addition, persons listed on the Registry are entitled to notice of any pending adoption or termination proceeding by the petitioners. When a registrant receives notice of adoption or termination proceedings, he has 30 days from receipt of such notice to file a petition to establish parentage or to intervene in the adoption or termination proceedings for the purpose of establishing a claim to paternity or to present a defense to the termination proceedings. The failure of such a person to file a petition to establish parentage or to intervene is sufficient cause for the court to terminate the parental rights of such a person.

CONCLUSION

I hope this summary is useful. Of course, there is no substitute for reading the statute itself!

RDT