ELIMINATING TENNESSEE'S PARENTAL BILL OF *WRONGS* IN FAVOR OF A CHILDREN'S BILL OF *RIGHTS*

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INTRODUCTION

Since 1997, custodial orders issued as part of a divorce or legal separation in Tennessee have included a statutorily prescribed list of parental obligations or rights.[1] This Article explores not only the legislative history of these rights but also the evolution of statutory and common law that evinces a shift in the public policy of this state regarding the importance of shared parenting. This Article will analyze and illustrate the drafting flaws in the Tennessee Parental Bill of Rights ("PBOR"), including its inconsistencies with the shared-parenting approach adopted by Tennessee in 2011,[2] evolving legal and practical views on parenting and parental responsibilities, changes in the ways in which divorced adults communicate with each other and their children, and the standard to facilitate the best interest of children impacted by divorce. We conclude this Article by proposing a new PBOR that better serves both parents and children as they navigate through divorce and visitation.

Several modifications have occurred since the enactment of the original list of rights that will be discussed in detail herein; however, the inclusion of any version of the rights into custodial orders would appear, at least facially, to promote both effective parenting and efficient dissemination of consistent guidelines for parents. The rights enumerated relate to access to the child and those matters important to the upbringing of a child, such as the "right" of a parent to "unimpeded telephone conversations with the child,"[3] to "receive directly from the child's school any educational records customarily made available to parents,"[4] and to be "free of unwarranted derogatory remarks."[5]

Since enactment, these rights have expanded from six[6] to nine,[7] but the real change seems to be a shift from informational and aspirational rights provided to all parents in custodial orders to a list of obligatory parental responsibilities,[8] with most duties falling on the primary residential

1. TENN. CODE ANN. § 36-6-101(a)(3)(B) (originally enacted as of May 30, 1997, Tenn. Pub. Acts ch. 351 § 1).
2. H.B. 571, 107th Gen. Assemb., Reg. Sess. (Tenn. 2011).
3. TENN. CODE ANN. § 36-6-101(a)(3)(B)(i) (2021).
4. *Id.* § (a)(3)(B)(iv).
5. *Id.* § (a)(3)(B)(vi).
6. *Id.* § 36-6-101(a)(3)(B) (originally enacted as of May 30, 1997, Tenn. Pub. Acts ch. 351 § 1).
7. *Id.* (originally enacted as of May 18, 2000, Tenn. Pub. Acts ch. 751 § 1).
8. *Id.* (originally enacted as of April 4, 2014, Tenn. Pub. Acts ch. 617 § 3).

parent. The most recent statutory amendment that adds specific obligations has seemingly transitioned away from encouraging parental cooperation to arming contentious parents with a sword.

The PBOR needs to be rewritten in light of the more modern recognition of the rights and abilities of parents to function and to parent adequately and independently. Further, the statute demands revision to recognize that the rights expressed as belonging to the *parents* would be better served by being implemented from the point of view of the *child*—the true party in interest to all these orders. We propose a paradigm shift from "parental rights" to "children's rights," enforceable by the court sua sponte or by either parent, emphasizing the child's needs as facilitated by shared responsibilities for both parents—a move away from the distinction between custodial and noncustodial parents.

In this Article, the proposed Children's Bill of Rights ("CBOR") balances the interests of the parents with the rights of the children to unimpeded access to each parent. The proposed CBOR will apply to all custodial orders—not just to the orders of those children whose parents were married.[9] Further, the proposed rights will adapt to changes in technology and communication methods since the imposition of the original bill of rights and will recognize that both a child's needs and parents' responsibilities evolve as a child matures. The proposed CBOR is consistent with Tennessee's progress over the past decade toward acknowledgement that shared parenting is in the best interest of children.

I. BACKGROUND

In 1997, the Tennessee General Assembly amended T.C.A. § 36-6-101, which addresses, *inter alia*, judgments and orders in custody matters.[10] Specifically, the legislature adopted a list of rights applicable to the parent who is *not* in possession of the child—the noncustodial parent.[11] Subsection 36-6-101(a)(3) was added and stated:

> Except when the court finds it is not to be in the best interest [sic] of the affected child, each order pertaining to the custody or possession of a child arising from an action for absolute divorce, divorce from bed and board or annulment shall grant to each parent the rights listed in subdivisions (A) through (F) during periods when the child

9. The limiting language of Section 36-6-101 applies the bill of rights only to custodial orders arising from a divorce, legal separation, or annulment.

10. H.B. 1062, 100th Gen. Assemb., Reg. Sess. (Tenn. 1997).

11. Although most of the rights were applicable to noncustodial parents and were designed to address the imbalance of power between the custodial parent, who usually possesses more knowledge of events in the life of the child—such as extra-curricular activities, doctor's appointments, etc.—the list also enumerated circumstances where certain events occurred while the child was with either parent—such as hospitalization.

> is not in that parent's possession or shall incorporate such rights by reference to a prior order. Other orders pertaining to custody or possession of a child may contain the rights listed in subdivision (A) through (F). . . . [12]

By its language, the mandatory application ("*shall* grant") of the rights enumerated in (A) through (F) is limited to custodial orders arising from divorce cases, legal separation cases, or annulments. While not specifically mentioned in T.C.A. § 36-6-101(a)(3), custodial orders relating to children born out of wedlock rely upon T.C.A. § 36-6-110 to incorporate the same rights as parents who conceive children born during the marriage.[13]

The application of the enumerated rights is also limited to each parent "during periods when the child is not in that parent's possession." As will be discussed in greater detail in the Analysis section of this Article, a review of the specific rights reveals that many of the rights are generally applicable to both parents not just during periods in which visitation rights are being exercised. The rights, now colloquially known as the "Parental Bill of Rights," are listed as follows:

> (A) The right to unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations;
> (B) The right to send mail to the child which the other parent shall not open or censor;
> (C) The right to receive notice and relevant information as soon as practicable but within twenty-four (24) hours of any event of hospitalization, major illness or death of the child;
> (D) The right to receive directly from the child's school upon written request which includes a current mailing address and upon payment of reasonable costs of duplicating, copies of the child's report cards, attendance records, names of teachers, class schedules, standardized test scores and any other records customarily made available to parents;

12. TENN. CODE ANN. § 36-6-101(a)(3)(A)–(F) (2021).

13. Tennessee Code Annotated Section 36-6-110, titled "Rights of Noncustodial Parents," refers specifically to the nine rights enumerated for married parents in Section 36-6-101(a)(3). Section 36-6-110 requires a noncustodial parent to "petition" the court to receive the rights, whereas Section 36-6-101(a)(3) requires a court to adopt the rights as part of every custodial order. Moreover, although Section 36-6-101(a)(3) does limit its application to "periods when the child is not in that parent's possession," the rights do theoretically apply to both parents. On the contrary, Section 36-6-110 could arguably be limited to only noncustodial parents.

> (E) The right to receive copies of the child's medical records directly from the child's doctor or other health care provider upon written request which contains a current mailing address and upon payment of reasonable costs of duplication; and
>
> (F) The right to be free of unwarranted derogatory remarks made about him or her or his or her family by the other parent to or in the presence of the child.

Any of the foregoing rights may be denied in whole or in part to one or both parents by the court upon a showing that such denial is in the best interests of the child.[14]

A. Modifications to the PBOR

The PBOR was modified in 1999 to add a provision expressly allowing courts to add additional rights to a particular Order where warranted.[15] The next substantive change came in 2000[16] when § 36-6-101(a)(3)(E) was amended to prevent a parent's address from being shared with another parent or third party when medical records are being provided.

A more significant modification to the statute occurred later in 2000[17] when three additional substantive rights were added:

> (G) The right to be given at least forty-eight (48) hours notice, whenever possible, of all extra-curricular activities, and the opportunity to participate or observe, including, but not limited to, the following:
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> (i) School activities;
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> (ii) Athletic activities;
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> (iii) Church activities; and
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> (iv) Other activities as to which parental participation or observation would be appropriate.
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> (H) The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than two (2) days, an itinerary including telephone numbers for use in the event of an emergency; and

14. H.B. 1062, 100th Gen. Assemb., Reg. Sess. (Tenn. 1997).
15. S.B. 14, 101st Gen. Assemb., Reg. Sess. (Tenn. 1999).
16. H.B. 2510, 101st Gen. Assemb., Reg. Sess. (Tenn. 2000).
17. H.B. 3163, 101st Gen. Assemb., Reg. Sess. (Tenn. 2000).

> (I) The right of access and participation in education, including the right of access to the minor child or children for lunch and other activities, on the same basis that is provided to all parents, provided the participation or access is reasonable and does not interfere with day-to-day operations or with the child's educational performance.[18]

Although the statute underwent a few minor numbering and structural changes,[19] no additional significant modifications occurred until 2014.[20] Citing confusing wording and an inconsistent application of the law,[21] the legislature replaced the previously enumerated nine rights with the following, purportedly more specific, rights:

> (i) The right to unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations. The parent exercising parenting time shall furnish the other parent with a telephone number where the child may be reached at the days and time specified in a parenting plan or other court order or, where days and times are not specified, at reasonable times;
> (ii) The right to send mail to the child which the other parent shall not destroy, deface, open or censor. The parent exercising parenting time shall deliver all letters, packages and other material sent to the child by the other parent as soon as received and shall not interfere with their delivery in any way, unless otherwise provided by law or court order;
> (iii) The right to receive notice and relevant information as soon as practicable but within twenty-four (24) hours of any hospitalization, major illness or injury, or death of the child. The parent exercising parenting time when such event occurs shall notify the other parent of the event

18. *Id.*

19. One such change that has not occurred, but that should, is the introductory language of Tennessee Code Annotated Section 36-6-101(a)(3)(A), which mandates the application of each of the rights. That language states that the court "shall grant to each parent the rights listed in Subdivisions (a)(3)(B)(i)–(vi)" [emphasis added]. However, the rights are provided in Subsections (i)–(ix). Thus, this likely clerical error makes the inclusion of the last three rights (notice of child's activities, notice of leaving the state and access to school and educational activities) in custodial orders arguably optional. *See* TENN. CODE ANN. § 36-6-101(a)(3)(B)(i)–(ix) (2021).

20. S.B. 1488, 108th Gen. Assemb., Reg. Sess. (Tenn. 2014).

21. *Id.*

and shall provide all relevant healthcare providers with the contact information for the other parent;

(iv) The right to receive directly from the child's school any educational records customarily made available to parents. Upon request from one parent, the parent enrolling the child in school shall provide to the other parent as soon as available each academic year the name, address, telephone number and other contact information for the school. In the case of children who are being homeschooled, the parent providing the homeschooling shall advise the other parent of this fact along with the contact information of any sponsoring entity or other entity involved in the child's education, including access to any individual student records or grades available online. The school or homeschooling entity shall be responsible, upon request, to provide to each parent records customarily made available to parents. The school may require a written request which includes a current mailing address and may further require payment of the reasonable costs of duplicating such records. These records include copies of the child's report cards, attendance records, names of teachers, class schedules, and standardized test scores;

(v) Unless otherwise provided by law, the right to receive copies of the child's medical, health or other treatment records directly from the treating physician or healthcare provider. Upon request from one parent, the parent who has arranged for such treatment or health care shall provide to the other parent the name, address, telephone number and other contact information of the physician or healthcare provider. The keeper of the records may require a written request including a current mailing address and may further require payment of the reasonable costs of duplicating such records. No person who receives the mailing address of a requesting parent as a result of this requirement shall provide such address to the other parent or a third person;

(vi) The right to be free of unwarranted derogatory remarks made about such parent or such parent's

family by the other parent to or in the presence of the child;

(vii) The right to be given at least forty-eight (48) hours notice, whenever possible, of all extracurricular school, athletic, church activities and other activities as to which parental participation or observation would be appropriate, and the opportunity to participate in or observe them. The parent who has enrolled the child in each such activity shall advise the other parent of the activity and provide contact information for the person responsible for its scheduling so that the other parent may make arrangements to participate or observe whenever possible, unless otherwise provided by law or court order;

(viii) The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than forty-eight (48) hours, an itinerary which shall include the planned dates of departure and return, the intended destinations and mode of travel and telephone numbers. The parent traveling with the child or children shall provide this information to the other parent so as to give that parent reasonable notice; and

(ix) The right to access and participation in the child's education on the same bases that are provided to all parents including the right of access to the child during lunch and other school activities; provided, that the participation or access is legal and reasonable; however, access must not interfere with the school's day-to-day operations or with the child's educational schedule.[22]

The 2014 modification was designed to add more specificity and obligatory language to the nine enumerated rights, making them more enforceable by existing criminal and civil contempt remedies.[23] Moreover, additional obligations were placed upon the primary residential parent.[24]

22. *Id.*

23. Siew-Ling Shea, *Play Nice and Fair, or be Punished for Misconduct Toward the Other Parent*, 50 TENN. BAR J. 12, 12–14 (2014).

24. One family law commentator wrote, "These revisions place new burdens on the primary residential parent that did not exist before. For example, the custodial parent now has the affirmative obligation to provide the non- custodial parent not only with notice of the child's school, athletic or church activity but also the telephone number of the school, athletic or church official who is 'responsible for scheduling' the activity. For another

The current version of the statute remains substantively unchanged since 2014's extensive amendments.[25]

B. Case Law related to the Parental Bill of Rights

One of the most recent cases interpreting the PBOR is the case of *Sekik v. Abdelnabi*.[26] In this case, the court "revoked" the parental rights usually afforded by § 36-1-101 (a)(3)(b) and found that the exercise of those rights by the father would not be in the child's best interest.[27] Although the case breaks no new ground on the unambiguous language of the statute that affords the court the authority to limit the application of the enumerated rights when the best interest of a child is not served, the opinion refers to the inclusion of those rights into the Permanent Parenting Plan form as "the boilerplate list of parents' rights."[28]

In the case of *In re Diawn B.*, the court, in implicit acknowledgment that rights belong to parents and not to children who are the subject of the rights, held that T.C.A. § 36-6-101(a)(3)(b) is inapplicable to grandparents—even those who have received visitation rights pursuant to T.C.A. § 36-6-306.[29]

The matter of *In re Braylin D.* presents one of the most egregious examples of the use of the PBOR as a sword between parties.[30] In that case, the father successfully petitioned the trial court to modify custody due to the mother's vacation to Canada with the child without providing notice to the father in violation of T.C.A. § 36-6-101(a)(3)(b)(viii).[31] As referenced by the appellate court, the trial court relied upon its determination that the

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example, the custodial parent now has the affirmative obligation to provide 'healthcare providers with the contact information' of the non-custodial parent. Lawyers need to make sure their clients understand these new obligations." K.O. Herston, *Tennessee Family Law Legislative Update 2014*, HERSTON ON TENN. FAM. L. BLOG (July 14, 2014), https://herstontennesseefamilylaw.com/2014/07/14/tennessee-family-law-legislative-update-2014 [https://perma.cc/HU6S-DCRN].

25. *See* H.B. 218, 109th Gen. Assemb. (Tenn. 2015); *see also* S.B. 1618, 111th Gen. Assemb. (Tenn. 2019); H.B. 237, 112th Gen. Assemb. (Tenn. 2021); S.B. 2744, 113th Gen. Assemb. (Tenn. 2023). After submission of this Article for publication, T.C.A. § 36-6-101(a)(3)(B) was amended to add the right to videoconferencing in addition to telephone conversations with the child, if such is available. *See* TENN. CODE ANN. § 36-6-101(a)(3)(B) (2024).

26. *See* Sekik v. Adbelnabi, No. E2019-01302-COA-R3-CV, 2020 WL 6779918, at *1 (Tenn. Ct. App. Nov. 18, 2020); *see also* Dendy v. Dendy, No. E2010-02319-COA-R3CV, 2012 WL 194993, at *28–29 (Tenn. Ct. App. Jan. 20, 2012); Gentry v. Gentry, No. M2004-00640-COA-R3-CV, 2005 WL 901145, at *2 (Tenn. Ct. App. Apr. 18, 2005).

27. *See Sekik*, 2020 WL 6779918, at *1.

28. *Id.* at *7.

29. In re Diawn B., No. M2017-01159-COA-R3-JV, 2018 WL 3530838, at *17 (Tenn. Ct. App. July 23, 2018).

30. In re Braylin D., No. M2015-02491-COA-R3-JV, 2017 Tenn. App. LEXIS 81, at *8 (Tenn. Ct. App. Feb. 7, 2017).

31. *Id.*

mother violated the PBOR as a basis for finding a material change of circumstances, justifying a change of custody:

> . . . there was evidence that the mother did not adhere to the "Rights of Parents" that were made a part of the parenting plan and thus, an order of the court. In one specific example, there was testimony by both sides that the Mother traveled to Canada for a weekend without notifying the father. The Mother argues that her trip was less than forty-eight (48) hours. The Court found it inconceivable that the mother would drive with the child and her boyfriend to Toronto, Canada, to stay for just a couple of hours and then drive back to make it back to Nashville in just under the allotted 48 hours. Furthermore, the Court found that it is not in good faith for the mother to not communicate to the Father her intentions to take the child out of the country for any period of time, *even if it is less than two (2) day*[32] [emphasis added].[33]

Although the trial court found the father had a child support arrearage in the amount of $33,642, the court refused to hold the father in contempt. Further, the court did not give any weight to the father's refusal to support his child when modifying the primary residential parent from mother to father.[34] Between December 22, 2015, when the trial court's modification was granted, and February 7, 2017, when the appellate court reversed the trial court, eight-year-old Braylin was forced to relocate from Nashville, Tennessee, to his father's home in Atlanta, Georgia. Arguably in violation of the rights enumerated in T.C.A. § 36-6-101(a)(3)(b)(viii), Braylin's mother was only allowed visitation rights during this time period.[35]

The appellate court, while finding that the mother did, in fact, violate the PBOR, seemed almost surprised that the trial court would, without evidence of the violation's impact on the child, reverse the parties' custodial rights:

> Neither Mr. Clausi's [a therapist father procured] testimony nor the medical records mention Mother's trip to Canada or that the trip affected Braylin's well-being. Moreover, while [the therapist] testified regarding Braylin's phone calls with Father, there was no evidence that Father's missed phone

32. The statute only requires notice if a parent leaves the state with a child for more than 48 hours. TENN. CODE ANN. § 36-6-101(a)(3)(B)(viii) (2021).

33. In re Braylin D., 2017 Tenn. App. LEXIS 81, at *8.

34. *Id.* at *10.

35. *Id*. at *3.

> calls affected Braylin. As noted earlier, the matters cited by the court are more appropriately addressed in modifying the parenting schedule, rather than changing the designation of primary residential parent. The evidence preponderates against the court's finding that Mother's trip to Canada or the difficulties with Father's phone visitation constituted a material change sufficient to modify custody.[36]

In a similar case, a father succeeded in having the mother held in criminal contempt for failing to comply with the PBOR.[37] The applicable amended parenting plan modified the typical incorporated PBOR to require notification to the other parent whenever the child left the city overnight. The child left the Nashville area overnight, and the mother failed to comply with the notification required by the narrow bill of rights.[38] The court of appeals affirmed the trial court's finding of criminal contempt against the mother and a sentence of twenty days in jail, with sixteen days suspended.

Another parent unsuccessfully attempted to rely upon the PBOR as evidence that the legislature intended to limit a parent's decision-making rights from those naturally provided to all parents.[39] Specifically, the parent desired to impose criminal and monetary sanctions on the opposing parent who listened to her two-year-old child's conversation with his father.[40]

C. Other Pertinent Statutes

As the PBOR has evolved since 1997, so too has the trajectory of custodial and support rights in Tennessee. At least four significant changes to family law in this state have occurred since the adoption of the PBOR: (1) the calculation of child support based upon a shared income model;[41] (2) custodial decisions based upon a presumption of maximum participation by both parents;[42] (3) modification of visitation and custodial rights without regard to whether the parties reasonably anticipated the changes;[43] and (4) the recognition of same-sex marriages/parents.[44]

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36. *Id.* at *11–12.
37. *See* O'Rourke v. O'Rourke, 337 S.W.3d 189, 193–94 (Tenn. Ct. App. 2009).
38. *Id.*
39. *See* Lawrence v. Lawrence, 360 S.W.3d 416, 420 (Tenn. Ct. App. 2010).
40. *See id.* at 417–18, 420.
41. TENN. COMP. R. & REGS. 1240-02-04-.05(1)–(8) (2020).
42. TENN. CODE ANN. § 36-6-106(a) (2021).
43. *See* Armbrister v. Armbrister, 414 S.W.3d 685, 699–701 (Tenn. 2013).
44. *See* Obergefell v. Hodges, 576 U.S. 644, 675–76 (2015).

1. Income Shares Child Support Model

In 2005, the state of Tennessee joined over thirty states[45] that moved from a child support calculation method based upon a percentage of obligor income to an income-shares model. The former, the percentage of obligor income method, based the amount of child support paid solely on the income of the obligor parent.[46] Moreover, the obligor parent was always the noncustodial parent, even if that parent exercised only slightly less visitation with the child.[47] The primary parent was considered the custodial parent while the parent who exercised visitation, also the one who paid child support, was known as the non-custodial parent.[48] For the method of child support calculation, the income of the primary parent was irrelevant, and the only relevant factors were the number of children for whom child support was being paid and the obligor's income.[49] The effect of Tennessee's former model of child support calculation was that a child's lifestyle while with the custodial parent[50] would often be financially bolstered not only by child support from the non-custodial parent but also by the custodial parent's employment—which sometimes was much more lucrative than that of the obligor parent.[51] Hence, when the child would then visit the obligor parent, the same financial resources were not necessarily available, rendering an inconsistent lifestyle for the child.[52]

The income-shares model adopted by the Tennessee Department of Human Services was intended to ensure that the child receives the same proportion of parental income that he or she would have received if both parents lived together.[53] Thus, the income of each parent who would normally contribute to the child's household income continues to contribute to the child's household income in the same proportion, even after divorce or separation. Although the formula is complicated—as it considers income, work-related expenses, unpaid medical and educational expenses, other children, and days in which the child is with either parent—a child

45. TENN. COMP. R. & REGS. 1240-02-04-.03(4) (2020).

46. TENN. COMP. R. & REGS. 1240-02-04-.02(16) (defining the "obligor" as the parent responsible for payment of the child support obligation of the obligee).

47. *Id.*

48. TENN. CODE ANN. § 36-6-113(e) (2022) (defining the "custodial parent" as the "parent with whom the child resides more than fifty (50%) percent of the time").

49. TENN. COMP. R. & REGS. 1240-02-04-.02(5) (2020).

50. Since the adoption of the "maximum participation" statute, discussed *infra*, terms like "visitation," "custodial," and "non-custodial" have been replaced in favor of "primary residential parent," "co-parenting," and "residential schedule."

51. TENN. COMP. R. & REGS. 1240-02-04-.03(2) (2020).

52. TENN. COMP. R. & REGS. 1240-02-04-.04(8)(c).

53. *Child Support Guideline Models*, NCSL (July 10, 2020), https://www.ncsl.org/research/human-services/guideline-models-by-state.aspx#:~:text=The%20Income%20Shares%20Model%20is,if%20the%20parents%20lived%20together [https://perma.cc/7RBC-YULF].

support calculator worksheet has eased this burden for litigants and practitioners.[54]

Perhaps more important than the change in the method of child support calculation, the precision of the income-shares model and the associated worksheet has resulted in limitations on the parties' ability to forgo child support or to accept a drastically reduced sum – in many cases as a bargaining chip to a contested divorce.[55] Children rarely benefit when their access to household income decreases in order for one parent to gain a more favorable property distribution or a more favorable parenting schedule. With the new approach to child support calculation, the legislature limited the circumstances in which any deviation to the statutorily-mandated amount could be agreed upon or approved by the court.

The income-shares approach has been lauded as providing not only more financial consistency for a child living in separate homes but also as providing support comparable to the family's pre-divorce status.[56] Commentators have opined:

> The fundamental premise of the simple income shares model for the determination of child support is that the children of separated parents should receive the same proportion, or "share," of both parents' incomes that they would receive if all of them lived in the same household. When parents live together, each of them helps to meet the economic needs of their children in proportion to their respective incomes. A parent who provides 60% of the total income in a two-parent household is presumed to cover 60% of the family's expenditures on their children. This same principle is assumed to be appropriate when the parents do not live together. In its most basic form, a simple income shares child support order is calculated as follows:
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> (1) Determine each parent's percentage of their combined income;
> (2) Determine the parents' combined monthly expenditures on the children;

54. *Child Support Calculator*, TENN. DEP'T OF HUM. SERVS., https://www.tn.gov/humanservices/for-families/child-support-services/child-support-guidelines/child-support-calculator-and-worksheet-1.html [https://perma.cc/PKP6-KS7Y].

55. TENN. CODE ANN. § 36-5-101(e)(1)(4) (2021).

56. The fundamental premise of the simple income shares model for the determination of child support is that the children of separated parents should receive the same proportion, or "share," of both parents' incomes that they would receive if all of them lived in the same household.

> (3) Pro-rate the expenditures on the children according to each parent's percentage of their combined income. The obligee is presumed to spend his or her share of the obligation directly on the children. The obligor's share becomes the order for child support.[57]

Simply put, Tennessee adopted an alternate method of child support calculation because the new approach was perceived as promoting the welfare and best interests of children.[58] While the prior model of child support focused substantially on the custodial parent and the responsibilities of the noncustodial parent, the new approach focuses exclusively on the needs of the child.

2. Maximum Participation Statute

Since the early 1900s,[59] child custody decisions in Tennessee have been guided by statutes requiring determinations to be made based upon a "best interest of the child" standard.[60] Historically, however, those decisions usually have favored mothers as custodial parents,[61] while leaving fathers as noncustodial—even often referring to them as "visiting"—parents. Tennessee has also specifically disfavored joint-custody arrangements.[62] But, as divorce has become more widespread—and the failures and successes of past custodial orders have piled up, begging for consideration—so too have the vocal frustrations of disenfranchised fathers.[63]

In 1996, legislation was introduced that, if enacted, would have created a presumption that "shared parental responsibility" served a child's

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57. Michelle Beld, *Federal Intent for State Child Support Guidelines: Income Shares, Cost Shares, and the Realities of Shared Parenting*, 37 FAM. L.Q. 165, 174 (2003).

58. TENN. COMP. R. & REGS. 1240-02-04-.03(1)(b) (2020).

59. During the 1800's, fathers were presumed to be the rightful "owner" of their progeny, property, and in most situations, even their wives. *See* MARY ANN MASON, FROM FATHER'S PROPERTY TO CHILDREN'S RIGHTS: A HISTORY OF CHILD CUSTODY 6 (Colum. Univ. Press, 1996).

60. TENN. CODE ANN. § 36-6-106 (2021) (prior versions at Tenn. Pub. Acts ch. 428 § 2 (1995); ch. 1003 §1 (1998); ch. 1095 §§2-3 (1998)).

61. Tennessee Code Annotated Section 36-6-106(d) replaced the former legal principle called the "tender years doctrine" that presumed that mothers were generally better suited for care for younger children. The court originally cited, in Weaver v. Weaver, 261 S.W.2d 145, 148 (Tenn. Ct. App. 1953), that a mother, except in extraordinary circumstances, should be with her child of tender years as the "primary caretaker."

62. *See* Logan v. Logan, 176 S.W.2d 601, 603–04 (Tenn. Ct. App. 1943).

63. Fathers are only deemed the custodial parent in 20.1% of cases. Timothy Grall, *Custodial Mothers and Fathers and Their Child Support: 2017*, U.S. CENSUS BUREAU (May 2020), https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-269.pdf [https://perma.cc/B6NQ-2PCE].

best interest.[64] The proposed statute would have placed the burden of proof on the parent seeking primary custody to show why joint custody acted contrary to the child's best interest.[65] The bill was drastically amended before final legislative consideration, but the momentum toward a more shared approach to parenting did not diminish over time.[66] In fact, that same year, the Tennessee legislature adopted a statutory prohibition against consideration of gender in child custody determinations.[67] In addition, a compromise bill addressing joint custody was enacted:

> Neither a preference nor a presumption for or against joint legal custody, joint physical custody or sole custody is established, but the court shall have the widest discretion to order a custody arrangement that is in the best interest of the child. Unless the court finds by clear and convincing evidence to the contrary, there is a presumption that joint custody is in the best interest of a minor child where the parents have agreed to joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child.[68]

While the state was not ready for sweeping reform of the custody law in 1996, outcry from the bench and bar began to grow, with consideration not only for a shared-custody presumption but also for increasing parental responsibility, in order to fashion custodial arrangements that served children and families. One judge and author encouraged mandatory mediation,[69] mandatory parenting classes,[70] state-funded mediation fees, and court-supervised settlement conferences.[71]

In 2005, legislation was again proposed that would create a rebuttable presumption that shared parenting is in the best interest of the child,[72] but such was met by resistance from the family law bar.[73] Although

64. H.R. 2501, 99th Gen. Assemb. (Tenn. 1996).

65. *Id*.

66. S.B. 2580, 99th Gen. Assemb. (Tenn. 1996).

67. TENN. CODE ANN. § 36-6-101(d) (1996).

68. TENN. CODE ANN. § 36-6-101(a)(2) (2005); § 36-6-101(a)(2)(i) (2006).

69. TENN. CODE ANN. § 36-4-131(a) (2007) (requiring parties to participate in mediation).

70. TENN. CODE ANN. § 36-6-405 (1997) (requiring parents to attend a "parent educational seminar").

71. Judge Don R. Ash, *Bridge Over Troubled Water: Changing the Custody Law in Tennessee*, 27 U. MEM. L. REV. 769, 801–02 (2007).

72. H.B. 1729, 104th Gen. Assemb. (Tenn. 2005) ("Except as provided in the following sentence, the court shall have the widest discretion to order a custody arrangement that is in the best interest of the child. Unless the court finds by a preponderance of the evidence to the contrary, or where the parents have agreed to a different custody arrangement, at a hearing for the purpose of determining the custody of the minor child, there shall be a rebuttable presumption that equally shared parenting is in the best interest of the child. For the purpose of assisting the court in making a determination whether an award

the bill passed the Senate, it was withdrawn before being considered by the House of Representatives.

Between 2010 and 2011, almost 15,000 divorces including children were filed in Tennessee courts—15,000 cases in which judges across this state would be called upon to apply a rather nebulous standard of "best interest of the child" to determine the appropriate dissection of the child's time between two parents.[74] After several failed attempts at ushering in a presumption of joint or shared custody, the Tennessee legislature finally settled on a bill that legislators, the bench, and the bar would endorse. That bill, referred to in this article as the "maximum participation" bill,[75] did not create a presumption of parenting time division per se, nor did it alter the customary factors[76] that courts are required to review in order to apportion custodial time that reflects the best interest of the child. Rather, in a step toward shared parenting, the enacted statute endorsed a two-parent approach to post-divorce child rearing:

> 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 [emphasis added].[77]

Although courts would ultimately need to interpret what "maximum participation" meant when viewed through the lens of the "best interest of the child" standard,[78] the amendment represented a significant step toward shared parenting.

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of equitably shared parenting is inappropriate, the court may direct that an investigation be conducted. The burden of proof necessary to modify and order of shared parenting at a subsequent proceeding shall be by a preponderance of the evidence.").

73. Melissa A. Tracy, *The Equally Shared Parenting Time Presumption–A Cure-All or a Quagmire for Tennessee Child Custody Law?*, 38 U. MEM. L. REV. 153, 166–67 (2007).

74. Ann. Rep. Tenn. Judiciary, *Fiscal Year 2010-2011 Statistics* (2011) (This figure combines the number of filings in Chancery and Circuit courts (7542 & 6644, respectively) but does not specifically include the counties that have, by private act, created subject matter jurisdiction for divorces in the county General Sessions Court.).

75. H.B. 571, 107th Gen. Assemb. (Tenn. 2011).

76. TENN. CODE ANN. § 36-6-106(a)(1)–(16) (2022).

77. TENN. CODE ANN. § 36-6-106(a) (2022) (amended in H.B. 571, 107th Gen. Assemb. (2011)).

78. *See infra* notes 84, 89, 92, 93, 100, 107.

3. *Armbrister v. Armbrister*

A couple of years following the enactment of the "maximum participation" statute, the Tennessee Supreme Court, in an opinion joined by all justices, elevated the interests of a child whose custody was being considered for modification above considerations related to efficiency and predictability for courts and parents.[79]

In the *Armbrister* case, the parents had only been divorced for a couple of years when the father relocated his home, married his pre-divorce paramour, and opened his dental practice in a different location.[80] At the time of the divorce, the initial parenting plan provided the father a rather meager visitation, consisting of eighty-five days per year with the two children.[81] Following a hearing for modification of custody, the trial court awarded the father an increase of parenting time to 143 days per year.[82] The mother appealed the trial court's decision to the court of appeals, alleging that the trial court erred in finding a material change of circumstances had occurred since the entry of the initial custody order.[83] The court of appeals sided with the mother and specifically found, *inter alia*, that some of the changes cited by the father and found by the trial court were not "unanticipated" changes.[84] The father appealed the intermediate appellate court's decision to the Tennessee Supreme Court. The Tennessee Supreme Court, in a lengthy opinion that analyzes the intent of the General Assembly regarding custodial decisions, the history of modification decisions, and the "best interest of the child" standard, reversed the court of appeals' decision and reinstated the trial court's increase in parenting time for the father.[85]

The court's primary question in the *Armbrister* appeal was whether the changes that the father alleged supported the modification of his parenting time were the type of changes that were not reasonably anticipated at the time of the initial custody determination or, more precisely, whether "non-anticipated" was even a statutory condition precedent to being able to modify a parenting plan. The court summarized the history of modifications in Tennessee with multiple statutory amendments as well as various cases interpreting the statutes and the legislative intent related thereto.[86] The genesis of the "non-anticipated" requirement was found by the court to be a 1943 case, *Hicks v. Hicks.*

In *Hicks*, the court ruled that the doctrine of res judicata requires "facts and conditions [to have] emerged since the decree [i.e., the initial

79. *See* Armbrister v. Armbrister, 414 S.W.3d 685, 687 (Tenn. 2013).
80. *Id.* at 689.
81. *Id.* at 688 (The court seemed to rely heavily on father's frequent golf trips to find that father lacked the bond with the children that mother exhibited.).
82. *Id.* at 691.
83. *Id.*
84. *Id.* at 692.
85. *Id.* at 687.
86. *Id.* at 687, 693–707.

custody order], new facts and changed conditions which were not determined and could not be anticipated by the decree, and that the decree is final and conclusive upon all facts and conditions which existed and upon which the decree was made."[87]

The *Armbrister* opinion cites cases subsequent to *Hicks* spanning decades that continued to adopt the "material change of circumstances that could not have been reasonably anticipated" prerequisite to custodial modification.[88] But, in carefully scrutinizing the statutes to determine whether the court and litigants should be bound by the doctrine of stare decisis and *Hicks*, no specific requirement related to the changes in the child's life being "unanticipated" was found. When the court considered the legislative intent undergirding custodial decisions, it cited the following:

> (a) The [G]eneral [A]ssembly recognizes the detrimental effect of divorce on many children and that divorce, by its nature, means that neither parent will have the same access to the child as would have been possible had they been able to maintain an intact family. The [G]eneral [A]ssembly finds the need for stability and consistency in children's lives. The [G]eneral [A]ssembly also has an interest in educating parents concerning the impact of divorce on children. The [G]eneral [A]ssembly recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care.
>
> (b) The [G]eneral [A]ssembly finds that mothers and fathers in families are the backbone of this state and this nation. They teach children right from wrong, respect for others, and the value of working hard to make a good life for themselves and for their future families. *Most children do best when they receive the emotional and financial support of both parents.* The [G]eneral [A]ssembly finds that a different approach to dispute

87. Hicks v. Hicks, 176 S.W.2d 371, 375 (Tenn. Ct. App. 1943).
88. *Armbrister*, 414 S.W.3d at 699–702.

> resolution in child custody and visitation matters is useful.[89]

The court specifically referenced the legislative "shift" related to the importance of shared parenting and noted that even the phrases that have been historically used to describe parenting time have changed.[90] The *Armbrister* court highlighted this paradigm shift when it stated, "In facilitating this different approach, more recently enacted parenting statutes have generally replaced the terms 'custody' and 'visitation' with the terms '[p]arenting responsibilities,' '[p]ermanent parenting plan,' '[p]rimary residential parent,' and '[r]esidential schedule.'"[91]

In reaching its decision to uphold the trial court in *Armbrister*, the Tennessee Supreme Court was clear that not only did it intend to overturn decades of common law that required a showing that the material change of circumstances supporting a modification of a parenting plan was not reasonably anticipated at the time of the entry of the initial order, but also to emphasize that a child's best interest would be paramount to all considerations. Implicitly, the court rejected a rigid application of both the doctrines of stare decisis and res judicata, favoring a child-centered approach to determining whether a child's residential schedule should be changed. The court held that a party seeking to modify a child's residential schedule need only show, by a preponderance of the evidence, that a material change of circumstances has occurred,[92] and that the change affects the best interest of the child.[93]

4. *Obergefell v. Hodges*

A background discussion detailing the historical perspective of statutory and common law related to children and families must contain a reference to the most sweeping family law change in a century – the United States Supreme Court decision in the case of *Obergefell v. Hodges*.[94] Nine years ago, the narrow question decided by *Obergefell* was whether the United States Constitution requires states to issue marriage licenses to same-sex couples and to recognize same-sex marriage licenses issued by other states.[95] The Court, of course, decided the questions in the affirmative

89. *Id.* at 694–95; TENN. CODE ANN. § 36-6-401 (2010).

90. *Armbrister*, 414 S.W.3d at 694–95.

91. *Id.* at 695 (citing TENN. CODE ANN. § 36-6-402(2)–(5) (2010)).

92. *See* Colley v. Colley, No. M2014-02495-COA-R3-CV, 2016 Tenn. App. LEXIS 444, at *33 (Tenn. Ct. App. June 28, 2016) (stating that a "material change" must affect the needs of the child in a "meaningful way").

93. *Id.*

94. *See* Obergefell v. Hodges, 576 U.S. 644, 644 (2015).

95. *Id.* at 659–60, 676–78.

and thus, across the country and in Tennessee[96] in particular, the roles of spouses—and by extension, parents—have been expanded to include nontraditional custodians.

Just as Tennessee has struggled with the implications that *Obergefell* has on marriages, so too has it grappled with the implications that *Obergefell* has on parenting and the typical gender affiliations associated with mothers and fathers. In a more recent case, *Pippin v. Pippin*, the Tennessee Court of Appeals refused to assume a gender-neutral interpretation of the term "father" in a statute providing fathers seeking custody or visitation of a child who previously resided with him.[97] Such narrow interpretation precluded a same-sex "mother," who quite literally performed the artificial insemination of her same-sex partner with donor sperm and thereafter raised the child as a co-parent, from even seeking visitation or custodial rights with the child.[98] Without standing, the court was precluded, through its own ruling, from performing the best-interest analysis to determine the potential negative impact that the loss of such a relationship might have upon the child.[99] And while *Obergefell* is only tangentially related to Tennessee's PBOR, Judge Bennett, in his dissent in *Pippin*, adopts almost parallel reasoning between why the court's narrow interpretation in *Pippin* is wrong and what we would assert is "wrong" about continuing to cling to the PBOR:

> This opinion [the majority] is stuck in the past. In my opinion, *Obergefell* altered the way we must interpret many statutes relating to marriage and parentage. In *Obergefell*, the United States Supreme Court legalized same-sex marriage in the entire United States. It has met with resistance, just like *Brown v. Board of Education of Topeka*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), and other United States Supreme Court cases that required society to alter its thinking about its institutions. . . .
>
> We give great deference to trial courts in the areas of child visitation. When giving his oral decision, the trial judge observed that "There is no question in my mind that it would be in this child's best interest to continue in the only family that he's ever had." The trial court granted Sandra

96. *Id.* at 659 (Tennessee Governor Bill Haslam was named a party in the case as plaintiff DeKoe questioned how Tennessee could deny "one who has served [his] Nation [as an Army Reserve Sergeant First Class] the basic dignity of recognizing his . . . marriage.").

97. Pippin v. Pippin, No. M2018-00376-COA-R3-CV, 2020 Tenn. App. LEXIS 220, at *17–18 (Tenn. Ct. App. May 14, 2020) (The Pippins were a same-sex female couple who birthed a child through artificial insemination. They were not married because their relationship ended just prior to Tennessee allowing same-sex marriage.).

98. *Id.* at *17–18, *21.

99. *Id.* at *12–24.

> visitation during the proceedings and pending the appeal. That speaks volumes. He also said the following:
>
> I don't believe outside of legislative relief that you'll get any relief short of the Tennessee Supreme Court. And if they concern themselves -- boy, that's harsh. If they concern themselves with the best interest of the child, then they'll give the trial-level court something else to work with. . . .
>
> In a judicial system where right and justice are paramount, there is no way that Sandra Pippin should be denied her parental rights to the child. Therefore, I respectfully dissent.[100]

II. ANALYSIS

As referenced at the beginning of this Article, we believe the current Tennessee PBOR is obsolete because not only is it out of step with current trends in work, relationships, and parenting, but also it impedes relations between the parents it purports to help as they co-parent their children after divorce. Each of our observed deficiencies will be analyzed below.

A. The Parental Bill of Rights is Obsolete.

It has been more than twenty-five years[101] since the passage of the Tennessee PBOR, [102] which purported to codify or render parents the right to access their child's information and communicate with their children. The lists of rights is inserted into every parenting plan crafted in Tennessee. [103] Though its purpose can be seen as both advisory and cautionary to the parent who might run afoul of its obligatory terms, the list of parental rights is primarily an attempt to secure a modicum of paternal validation in the custody process. Following efforts by fathers who were not granted custody of their children but still sought the right to make important decisions regarding the children's education and medical care, the Tennessee PBOR was the culmination of efforts to recognize the importance of both parents in the development of children. [104]

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100. *Id.* at *25–26 (Bennett, J., dissenting).

101. TENN. CODE ANN. § 36-6-101(a)(3)(A)–(F) (2021) (originally enacted as of May 13, 1997).

102. *Id.*

103. TENN. CODE ANN. § 36-6-404(a) (2021) (requiring every final decree in a divorce action involving a minor to incorporate a permanent parenting plan).

104. *See* Pizzillo v. Pizzillo, 884 S.W.2d 749, 755 (1994) ("A child's interests are well-served by a custody and visitation arrangement that promotes the development of

However, the last two and a half decades have seen an unprecedented number of changes in marriage and divorce rates, the legal recognition of formerly novel and taboo parenting relationships, the increased use of technology that has altered how and when we communicate, and increased parental relocation spurred in part by internet-driven communication platforms facilitating long-distance relationships.[105] Even before the Covid-19 pandemic, more jurisdictions than ever were implementing or enforcing statutes designed to allow a child's primary custodian the right to relocate with the child for reasons related to work, family support, or romantic relationships.[106] With some jurisdictions allowing relatively easy relocation for personal *parental* reasons, courts have fostered "displaced parenthood," in the noncustodial parent, subjugating the needs of the *child* to the needs and desires of the *parent*. Although the primary residential *parent's* life is made easier or more enjoyable in many circumstances, children are disadvantaged in maintaining the critical relationship with the noncustodial parent. In most cases, the parents of children implicitly, if not expressly, agreed to have and raise a child in a particular geographical area where the children had roots and attachments to friends and teachers and other intangible indicia of identity. To allow a parent with primary custody of a child to move for modest economic advantage or lateral hiring options, or the promise of possible, though not assured, relational bliss is harmful to the parent-child relationship with the involved noncustodial parent *and* the right of the child to know both parents. Tennessee previously maintained statutory authority allowing a primary custodial parent to move residence with a child easily, but, recently, it has moved away from a general "right to move" to a "best interests" test.[107] Along with the decision to make the relocation of a

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relationships with both the custodial and the noncustodial parent. . . . Thus, the courts should devise custody and visitation arrangements that interfere with each parent's relationship with his or her child as little as possible."); *see also* Wix v. Wix, No. M2000-00230-COA-R3-CV, 1988 Tenn. App. LEXIS 144, at *32 (Tenn. Ct. App. Mar. 7, 2001) (The court recognized the importance of both parents in a child's life, stating that "mothers and fathers each make unique and complementary contributions to their children's welfare and emotional development.").

105. Hayley Matthews, *Online Dating Marriage Success Statistics*, DATING ADVICE (Jan. 28, 2024), https://www.datingadvice.com/online-dating/online-dating-marriage-success [https://perma.cc/CRE9-KGW2] (promulgating that over 17% of marriages start through online dating).

106. *See* Hollandsworth v. Knyzewski, 140 S.W.3d 653, 663 (Ark. 2003) (In Arkansas, a rebuttable presumption exists in favor of relocation for the custodial parent with primary custody. The non-custodial parent has the burden to rebut the relocation presumption.); *see also* Adamson v. Dodge, 910 A.2d 821, 823 (Vt. 2006) (holding that in Vermont, while the relocation of a custodial parent may be a ground to modify a preexisting parental rights and responsibilities order, it is not a sufficient ground to order that parent to return to the state). *See generally* Stark v. Anderson, 748 So. 2d 838 (Miss. Ct. App. 1999) (holding that no notification to the non-custodial parent is required and relocation by itself is not a material change that adversely affects the child).

107. *See* TENN. CODE ANN. § 36-6-108 (2018).

residential parent more difficult, Tennessee implemented a markedly different direction with the adoption of the "maximum participation" statute.[108]

Arguably, to secure the goal of "maximum participation" of both parents, the threshold (and subjectively vague) "best interests of the child" standard *must* be determined with the concurrent goal of facilitation of maximum participation in the life of the child by both parents. Now, the standard must be adjusted for the interests of the parents *within* the sphere of the effect on the child. If by "maximum participation" the statute purports to place the custodial and noncustodial parent on similar footing regarding access and possession of children in a post- divorce division of rights *and* responsibilities, then the wide discretion and mandate this section bestows upon the court to "maximize" the rights to children, as well as the rights between parents, places the PBOR woefully out-of-step with the current work, technology, communication, and parenting practices of divorced parents in Tennessee.

B. The Parental Bill of Rights Impedes Co-Parenting.

The Covid-19 pandemic has created new opportunities and obstacles in parenting in the 21st century, exacerbating the already imperfect regime created by labyrinthine family codes and interstate uniform acts as well as rendering the PBOR an antiquated list of hopes and dreams. It both aids and hinders the formerly traditional roles, which pervaded many court decisions throughout the last century.

Since the advent of the PBOR, the domestic landscape, which previously centered on heteronormative ideals of nuclear families and customary roles of caregivers and providers, has changed tremendously. First, changes ensued the advent of same-sex marriage and, naturally following, parentage. Second, changes transpired from the proliferation of more sophisticated children who are familiar with technology that allows them the possibility to access a more expansive and consistent relationship with a distant parent or a parent during that parent's non-visitation time. Last, changes have developed from the evolving disputation of the "single parent attachment theory,"[109] which has been used for decades to disallow

108. TENN. CODE ANN. § 36-6-106(a) (2022).

109. Bowles, originator of the psychological theory, believed the infant attachment to the mother was theorized to be all important to child development to the detriment of all other emotional attachments, especially fathers. However, recent findings and experts dispute that theory. "Family therapy pioneer Salvador Minuchin suggests that in focusing so intensely on the early mother-child bond, attachment-based therapy neglects a vast range of important human influences and experiences "The entire family—not just the mother or primary caretaker— including father, siblings, grandparents, often cousins, aunts and uncles, are extremely significant in the experience of the child," says Minuchin. "And yet, when I hear attachment theorists talk, I don't hear anything about these other important figures in a child's life." *See* Mary Sykes Wylie & Lynn Turner, *Do We Still Need Attachment Theory?*,

non-primary caregivers (usually fathers) from having substantial and meaningful time with their children.

In recent years, pediatric and adolescent mental health professionals have increasingly acknowledged children's needs to have the guidance and involvement of *all* their parents—regardless of gender—within the context of the parent-child relationship.[110] Parents, regardless of their gender or sexual orientation, are capable of exercising a meaningful and substantial amount of time with their children. To its credit, Tennessee has responded to the relatively uniform understanding of the importance of frequent contact between children and a visiting parent. It acknowledges the following statistics in its adoption of the "maximum participation" statute: children who grow up with involved fathers are (1) thirty-nine percent more likely to earn A's in school; (2) forty-five percent less likely to repeat a grade; (3) sixty percent less likely to be suspended or expelled from school; (4) twice as likely to go to college and find stable employment after high-school; (5) seventy-five percent less likely to have a teen birth; and (6) eighty percent less likely to spend time in jail.[111] The "maximum participation" statute supports these outcomes, but the PBOR does not. It does not beg the imagination to believe the adage that it "takes a village" to raise a child.

The more involved a parent, of whatever sexual orientation, is with a child, the better it is for the well-being of the child, assuming the parent-child relationship is supportive and healthy. The groundbreaking *Obergefell* case, recognizing the rights of same-sex parents to marry, crystalized the current discussions of what makes a "good parent."[112] However, while

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PSYCHOTHERAPY NETWORKER (March 2011), https://www.psychotherapynetworker.org/article/attuned-therapist/ [https://perma.cc/SET7-EGMF].

110. Kelly Musick & Ann Meier, *Are Both Parents Always Better Than One? Parental Conflict and Young Adult Well-Being*, 39 SOC. SCI. RSCH. 814, 814–830 (2010) (finding that "children who grow up with two married parents tend to fare better than others, for so long as there is not discord and conflict between the parents). *See What does Scholarly Research Say about the Well-Being of Children with Gay or Lesbian Parents*, CORNELL UNIV. (Dec. 2017), https://whatweknow.inequality.cornell.edu/topics/lgbt-equality/what-does-the-scholarly-research-say-about-the-wellbeing-of-children-with-gay-or-lesbian-parents/ [https://perma.cc/H5NC-4LNK] (providing 75 studies which conclude "that children of gay or lesbian parents fare no worse than other children, while only 4 studies demonstrate that that "children of gay or lesbian parents face added disadvantages").

111. Christine Nord & Jerry West, *Fathers' and Mothers' Involvement in Their Children's Schools by Family Type and Resident Status*, NAT'L CTR. FOR EDUC. STATS., 2001, at 85; Ryan Martin & Brooks Gun, *The Joint Influence of Mother and Father Parenting on Child Cognitive Outcomes at Age 5*, 22 EARLY CHILDHOOD RSCH. Q. 423, 435 (2007); Michael W. Yogman, Daniel Kindlon & Felton Earls, *Father Involvement and Cognitive/Behavioral Outcomes of Preterm Infants*, 34J. AM. ACAD. OF CHILD & ADOLESCENT PSYCH. 58, 64 (1995); Frank F. Furstenberg & Kathleen M. Harris, *When Fathers Matter/Why Fathers Matter: The Impact of the Paternal Involvement on the Offspring of Adolescent Mothers*, *in* THE POLITICS OF PREGNANCY: ADOLESCENT SEXUALITY AND PUBLIC POLICY 189–190 (YALE UNIV. PRESS 1993).

112. *See* Obergefell v. Hodges, 576 U.S. 644, 644 (2015).

Obergefell recognized same-sex marriage equality nationwide, it did *not* change many other issues faced by same-sex partners. For instance, in many states, there exists a "marital presumption" of paternity, providing that children born during a marriage are assumed to be the natural children of the couple—presuming *both* to be the parents. Many of these statutes specifically describe married parents as "father" and "mother," designating the only acceptable gender of each. In many cases, this eliminates a same-sex partner from being legally recognized as a "father" or "mother" of a child, thereby stripping an involved same-sex parent of any rights to the child, even if they were present and acted as a parent.[113] Oftentimes, a same-sex parent lacks legal standing to even raise claims.[114]

If we can acknowledge the integral benefits that each parent provides to a child, then by application, the PBOR needs to acknowledge the additional obligation of each parent to independently *learn to parent*. Parental responsibility should be the joint goal of any enumerated rights related to a child. The PBOR retains the obligation of the custodial parent (at the time and still today, largely mothers) to notify the non-custodial parent of certain information about events and circumstances that each parent should independently have the obligation to seek out and discover. The PBOR reinforces gender stereotypes and allows noncustodial parents to minimize their responsibilities to be involved and instead, creates a dependency upon the custodial parent that does not facilitate independent but cooperative parenting. As the PBOR requires one parent to keep the other parent notified of events, it creates a class system that is hard to justify. It subordinates one parent to the other, sending the message to all parties that a disproportionate relationship exists between the parents and their relative rights.

For as long as custody of children between parents has been contested, courts have wrestled with balancing the right of the parents to meaningful involvement with their children and the right of children to meaningful relationships with both parents. From historic preferences first that fathers were presumptively the ideal custodial parents to the later opposite presumption that mothers were the clear choice of primary care

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113. Pippin v. Pippin, No. M2018-00376-COA-R3-CV, 2020 Tenn. App. LEXIS 220, at *14 (Tenn. Ct. App. May 14, 2020) ("While Tennessee's legislature has generally conferred upon parents the right of custody and control of their children, it has not conferred upon . . . a nonparent who is not and has not been married to either of the children's parents, but who previously maintained an intimate relationship with such a parent and who previously provided care and support to the children[] any right of visitation. Absent statutory authority establishing such a third-party's right to visitation, parents retain the right to determine with whom their children associate.") (quoting In re Thompson, 11 S.W.3d 913, 915 (Tenn. Ct. App. 1999)).

114. *See* Pavan v. Smith, 582 U.S 563, 564–67 (2017); *see also* Frank J. Bewkes, *Unequal Application of the Marital Presumption of Parentage for Same-Sex Parents*, AM. PROGRESS (Nov. 25, 2019), https://www.americanprogress.org/article/unequal-application-marital-presumption-parentage-sex-parents [https://perma.cc/LNF7-9EAE].

and control of children, especially children of so-called "tender years," the preferences of children were often relegated to in camera statements which forced children to choose a favorite. However, while allowed to voice a preference, a child's desires were only considered "advisory," and courts even now are generally not bound by the child's choices. If the best interests of children are actually paramount, the emphasis of the PBOR must shift from parental rights to parental obligations and responsibilities that facilitate the rights and best interest of the child. A change in perspective would be more aligned with the stated public policy of serving the children at the center of these conflicts, shifting the emphasis to a shared effort by the parties to further the best interests of the children instead of the adversarial stance of the current system between the parents.

C. The Parental Bill of Rights Encourages Minimal Communication Between Parents and Their Children.

Specifically in light of the Tennessee statute that purports to mandate each parent to "enjoy the maximum participation possible in the life of the child,"[115] the PBOR does not go far enough to ensure that the needs of children are the primary concern. Instead, it conflates the "best interest of the child" with what is best for the *parent*. Thereby, it maintains the adversarial nature of child custody and prolongs the gamesmanship that ultimately hurts the rights of the children to have access to both parents, as contemplated by the phrase, "maximum participation." One obvious example of this failure is found in the "right" of a parent to "unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations."[116] The section goes further to require the parent exercising parenting time to furnish a phone number where the child may be reached at specific dates and times.[117] While facially reasonable, this provision could also be used as a contemptible violation of the order, if the child is not presented as *ready* and *able* to maintain a conversation with the other parent at a specific number, time, and place.

The law has, for many years, presumed that a parent acts in the best interest of their children.[118] While there are many examples to the contrary,

115. TENN. CODE ANN. § 36-6-106 (2022) ("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.").

116. TENN. CODE ANN. § 36-6-101(a)(3)(B)(i) (LexisNexis 2021) (through the 2021 Reg. and 112th Gen. Assemb., 1st, 2d & 3d Extra. Sess.).

117. *Id.*; *see also supra* text accompanying note 25.

118. *See* Troxel v. Granville, 530 U.S. 57, 68 (2000) ("[O]ur constitutional system long ago rejected any notion that a child is the mere creature of the State and, on the contrary, asserted that parents generally have the right, coupled with the high duty, to recognize and prepare [their children] for additional obligations . . . The law's concept of the family rests

it is a presumption based upon the fundamental thought that a parent's primary concern rests upon the well-being of their children. Assuming this is true, why would the PBOR restrict communication with a child by a parent to two times in a week when the child is with the other parent? While it is possible that some parents could abuse telephonic access to minor children to exert control over their ex-spouse, shouldn't the aspiration of the PBOR be to facilitate maximum participation by both parents and to allow the court to intercede in those circumstances where such freedoms are being abused? Further, shouldn't the purpose be to allow a parent seeking to maintain on-going contact with the child access to that child? Put more directly, what would benefit the child most? Would most children want to be restricted to a designated day or time to call the noncustodial parent to disclose a wonderful thought or thrilling event? Allowing the child to have consistent contact with both parents would act to alleviate some of the losses suffered by children when their parents separate.

D. The Parental Bill of Rights Diminishes Parental Responsibility.

As demonstrated by the participation provision, the present PBOR does not recognize the extent of changes represented by the modern expectations of parents. Specifically, the provision implies that along with responsibility imposed upon each parent for the increased access to children comes the concomitant obligation to be an equal parent of the child. The PBOR in its current form includes a requirement that a custodial parent make the child's schedule and pertinent information available to the other parent when that information is readily available to each parent. This requirement means that the custodial parent must service the entitlement of the other parent to fail to make positive steps to be directly involved in the everyday life of the child.

Further, the current PBOR codifies mandates that can be, and often are, used to facilitate unhealthy control issues between parents. The PBOR provides an opportunity for one parent to use the PBOR to threaten the other with contempt violations of the custody order. If the law has recognized the need and the right of *parents* to spend the greatest amount of time with their children and the parents are capable of spending time with those children, then the PBOR needs to reflect that increased awareness of the influence upon children. Additionally, the PBOR needs to recognize that an equal obligation to reach out and obtain information regarding extracurricular activities and sports activities should be placed upon all

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on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions. More importantly, historically, it has recognized that natural bonds of affection lead parents to act in the best interests of their children.").

persons acting as parents.[119] With increased parental rights and opportunities should come an increase in typical parenting responsibilities. This would remove the cudgel that currently allows one parent to fight the opposing parent, as each parent would be responsible for securing information from the child's sports team, school, or teacher. Therefore, actual knowledge of those events would be presumed and would not be the additional responsibility of the custodial parent to notify the other parent. The events or changes in schedules would be equally available to all parties.

The current PBOR does not acknowledge the reality that many parents communicate important information through the children, even though schedules and calendars are available online. Parents are currently expected to deliver this kind of information to each other. Even if sometimes inaccurate, receiving information from children could provide the parent notice to investigate the appropriate calendar, which could reduce unnecessary friction between the parties as well as eliminate obligatory and unnecessary communication that acts to burden one parent while alleviating parental responsibility of the other.

E. The Parental Bill of Rights is Too Rigid in its Directives for Modes of Communication.

Overall, research suggests that children who come from families that practice open communication are happier, healthier, and more satisfied with their lives.[120] However, when communications are constrained, conflict can arise in the parent-child relationship and, in turn, may lead to the adolescent evincing higher rates of depression, delinquency, substance and alcohol abuse, sexual promiscuity, and lower school performance.[121] Similarly, other researchers have suggested that delinquency may be related to the perceived *lack of communication* in families.[122] If we can accept that frequent and open communication between children and parents is in a child's best interest, then the restrictions in the current PBOR that limit or

119. TENN. CODE ANN. § 36-6-101(a)(3)(B)(vii) (2021) ("The right to be given at least forty-eight (48) hours' notice, whenever possible, of all extracurricular school, athletic, church activities and other activities as to which parental participation or observation would be appropriate, and the opportunity to participate in or observe them. The parent who has enrolled the child in each such activity shall advise the other parent of the activity and provide contact information for the person responsible for its scheduling so that the other parent may make arrangements to participate or observe whenever possible, unless otherwise provided by law or court order. . . .").

120. Tatiana M. Davison & Esteban V. Cardemil, *Parent Child Relationships: Communication and Involvement in Latino Adolescents*, 29 J. EARLY ADOLESCENCE 99, 101 (2009) (citing Sandy Jackson et al., *Adolescents' Perceptions of Communication with Parents Relative to Specific Aspects of Relationships with Parents and Personal Development*, 21 J. ADOLESCENCE 305 (1998)).

121. *Id.*

122. *Id.* (emphasis added).

regiment communication between parents and children are counterproductive to the goals of the state in interceding in parental parenting plans.

While it is always possible that this contact could be aimed to disrupt a parent's visitation time with their child, it must be presumed that any parent who would use this communication as an opportunity to cause problems would also take any opportunity to create chaos. But the parents who believe in acting in their children's best interests should be easy to convince that more communication, including during periods of visitation, will ultimately benefit the child in myriad ways.[123] Equality in access to at least telephone or other modalities would likely minimize conflict between custodial and noncustodial parents.

Further, while the existing PBOR concerns itself primarily with telephonic access by the child to the parents, it would not be an appropriate commentary about a modern PBOR without mentioning the societal changes that the last several years of pandemic living have wrought upon the American household. Huge strides have been made in the use and acceptance of remote communication using software-based applications such as Zoom and Messenger to connect and involve children, parents, and other family members in daily communications with each other.

Remote visitation was not a novel concept prior to the pandemic with web-based applications such as "OurFamilyWizard,"[124] which claims to have existed since 2000. This software was previously used to facilitate difficult parental communications by establishing not only shared calendars where one parent could notify the other parent of important dates but also a method for videoconferencing that allowed parents to remotely contact and be available to their children. The early iteration of this concept was not always efficacious, as the success of the program was very much dependent on the ages of the children, their attention-spans, and the fact that the parties were often trying to communicate across continents. The pandemic, however, has changed that landscape insofar as most children have become much more aware of videoconferencing technology. While they're not making long distance contact, they are often calling classmates who live nearby and attend school virtually—often every day and for multiple time periods. However, children's increased familiarity with technology facilitated by the Covid-19 pandemic is not reflected in the current PBOR and additional means of communication are not considered.[125] Moreover, the PBOR fails to acknowledge that for most of a child's minority, that child is capable of facilitating one's own communication with one's parents, so long as those attempts are parentally facilitated and not thwarted.

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123. *Id.*

124. OUR FAMILY WIZARD, https://www.ourfamilywizard.com [https://perma.cc/LZR6-SGTW] (last visited July 19, 2024).

125. *But see supra* text accompanying note 25.

F. The Parental Bill of Rights Allows Delayed Notification to a Parent of an Emergency Involving Their Children.

Advocating for the closeness of instant communication by cellphone, teleconference, or text should also come with the responsibility of the parents to communicate emergency information *immediately* or as reasonably possible to the other parent or caregiver. The current PBOR gives the possessory parent at the time of an emergency event a twenty-four-*hour* window to communicate urgent information to the other parent, such as when a child is *hospitalized*. Why would the law condone *any* grace period in communicating possible life-and-death circumstances about a child to the other parent? Given the instant nature of technology to link us globally, there is no reason that a parent should be able to delay providing critical information to the other parent in emergent situations up to and including what could be the final moments of a child's life.

The current PBOR is also woefully inadequate to define "urgent information." Does this only require notification of life-threatening information or does ordinary but serious injury also suffice? According to healthychildren.org:

> Emergencies can result from medical illnesses. In an emergency, your child may show any of the following signs: strange or more withdrawn and less alert behavior, unconsciousness or no response when you talk with your child, rhythmic jerking (a seizure), increasing effort or trouble with breathing, skin or lips that look blue, purple, or gray, neck stiffness with fever, increasing or severe persistent pain, a cut that is large, deep, or to the head, chest, or abdomen, bleeding that does not stop after applying pressure for 5 minutes, a burn that is large or involves the hands, feet, groin, chest, or face, any loss of consciousness, ongoing or worsening confusion, headache, or vomiting after a head injury.[126]

Because parents like to know of any illnesses their children have, no matter how innocuous, communication is especially critical here. When parents remain in a romantic relationship, they would most certainly feel obligated to share information about a child's physical and mental well-being. Divorce or separation should not diminish this basic moral obligation. A parent should contact the other parent when faced with

126. *When Your Child Needs Emergency Medical Services*, AM. ACAD. OF PEDIATRICS (Sept. 24, 2019), https://www.healthychildren.org/English/health-issues/injuries-emergencies/Pages/When-Your-Child-Needs-Emergency-Medical-Services.aspx?_gl=1*9eao7k*_ga*MzA1ODU2MDk3LjE3MjEzMjEzNjQ.*_ga_FD9D3XZVQQ*MTcyMTMyMTM2NC4xLjAuMTcyMTMyMTM2NC4wLjAuMA [https://perma.cc/4FB5-9MT4].

physical or mental symptoms that could necessitate medical intervention. This provision in the current PBOR is another section that is woefully out-of-step with the aspiration of "maximum participation."

G. The Parental Bill of Rights is Not Applied Equally to Children Born Out of Wedlock.

The mandatory inclusion of the PBOR into all custody orders could, arguably, fail to apply to children born outside of wedlock.[127] While the language recognizes that custody orders directly connected to a divorce may exist alongside "other" such orders, it differentiates between the children of marriage (for which a divorce, separation, or annulment has been requested) and other children by mandating parental rights of custody and possession of the former while merely suggesting that the same rights "may" pertain to those of the latter.[128] It is a curious thing that this document purports to be a PBOR for all parents in Tennessee and yet is drafted to apparently exclude from its mandatory directives parents who may have had a child out of wedlock. Although T.C.A. §36-6-110 purports to make the rights applicable if a noncustodial biological parent petitions the court, the statute's reference back to the PBOR, which only mandates the inclusion of the rights in orders arising from divorces, annulments, and legal separations, makes its application to children born out of wedlock problematic. What does this say about the relative rights of all parents if the rights with which one expects to gain access to and maximum participation with their children is rendered in such a biased and narrowly viewed way? A bill of rights must acknowledge the rights of all parents and *children* to maintain safe and open contacts with any person who may be designated as a parent of that child, without regard to marital status at the time of conception.

III. PROPOSED CHILDREN'S BILL OF RIGHTS STATUTE

We propose that the PBOR be replaced, in toto, by a Children's Bill of Rights ("CBOR"). Not only will the suggested changes address the deficiencies discussed herein, but also the change in the title alone will also signal Tennessee's commitment to facilitating the best interest of children. The following statute is proposed:

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127. TENN. CODE ANN. § 36-6-101(a)(3)(A) (2021) ("Except when the court finds it not to be in the best interests of the affected child, each order pertaining to the custody or possession of a child *arising from an action for absolute divorce, divorce from bed and board or annulment shall grant* to each parent the rights listed in subdivisions (a)(3)(B)(i)–(vi) during periods when the child is not in that parent's possession or shall incorporate such rights by reference to a prior order. Other orders pertaining to custody or possession of a child *may* contain the rights listed in subdivisions (a)(3)(B)(i)–(vi).") (emphasis added).

128. *Id.*

(A) Except when the court finds it not to be in the best interests of the affected child, each order pertaining to the custody or possession of a child grant to each child the rights listed in subdivisions (a)(3)(B)(i)-(ix) during periods when the child is in a caregiver's possession or shall incorporate such rights by reference to a prior order.

(B) The referenced rights are as follows:

(i) The child shall have the right to unimpeded electronic access by whatever means available to the parties, including but not limited to, cell phone, telephone, tele-conference by handheld device, laptop or desktop computer, by any available software or application available to the parties at any reasonable time and for reasonable durations. The parents in whose possession the child is present at the time of the child's desire to communicate with any other parent shall make the child available for such conversations, whether initiated by the child or the parent, and the parties will work together to ensure the availability of access between parents and the child during periods of possession; The child shall have the right to send and receive email, mail, and texts or other appropriate written messages to any parent or sibling which the parents shall not destroy, deface, open, re-write or censor. The parent in whose possession the child shall be shall notify the child of and deliver to the child all letters, packages and other material sent to the child by another parent or sibling as soon as received and shall not interfere with their delivery in any way, unless otherwise provided by law or court order.

(ii) The child shall have the right to have all parents notified of all information immediately of any hospitalization, major illness or injury, or death of the child, by any means available as expediently as possible. The parent in possession of the

> child when such event occurs shall notify the other parents, or cause to have another designated person notify all other parents if the possessory parent is physically unable to carry out the task, and shall provide all relevant healthcare providers with the contact information for the other parents.
>
> (iii) The child shall have the right to have their parents included in the child's educational development, including the right to give access to any parent the child's educational records customarily made available to parents. Each parent shall have both the right and obligation to secure for themselves the information each academic year regarding the child's school enrollment, including but not limited to the name, address, telephone number and other contact information for the school, once the party enrolling the child in school has provided the location of the school in which the child has been placed. Each parent shall have the right access the child's information directly, and the school is obligated to respond to requests for information, which includes copies of the child's report cards, attendance records, names of teachers, class or organization schedules, school calendars, opportunities for involvement as chaperones, school visitations, standardized scores, and information for setting up individual electronic access to any class, information or grade management system which the school district may employ to make all of the child's information available online. In the case of children who are being homeschooled, the parent responsible for providing homeschooling shall advise the other parents of this fact along with the contact information of any sponsoring entity or other entity involved in the child's education from who the other

parents may gain access to any individual student records or grades available online. The school or homeschooling entity shall be responsible, upon request, to provide to each parent records customarily made available to parents. Additionally, each parent shall have the right of access to the child during lunch and any other school activities for so long as the access does not interfere with the school's day-to-day operations or with the child's educational schedule. The school may require a written request from each parent requesting records, which includes a current mailing address and may further require payment of the reasonable costs of duplicating such records, if hardcopies of the records are requested by a parent, and that cost shall be borne by the requesting party.

(iv) The child shall have the right to involve their caregivers in the physical care and health of the child. Unless otherwise provided by law, each caregiver shall have access to the child's medical, health or other treatment records directly from the treating physician or healthcare provider. Each caregiver who sets an appointment for or treatment of a child in their care shall notify the other caregivers of the appointment, including the time, address, phone number and other contact information of the treating healthcare professional prior to the appointment, and any caregiver shall be allowed to accompany the child to that appointment. Additionally, any caregiver may obtain and have access to the records of thechild either in physical or electronic format either transmitted via mail if available or through a health care web portal or other format, including examination notes, x-rays, prescriptions, or other records. The keeper of the records may require a written request including a current mailing

address and may further require payment of the reasonable costs of duplicating such records. No person who receives the mailing address of a requesting parent as a result of this requirement shall provide such address to another caregiver or a third person.

(v) The child shall have the right to live in an environment in which their best interests are of paramount importance, and they shall have the right not to be degraded or confused by derogatory or hateful remarks made to them about their appearance, their heritage, their parents, caregivers or other relatives made by any person including those parents, caregivers or other family member to the child or in the child's presence. This section shall not be construed to limit or dictate what people say to or feel about one another, but only what takes place within the sensory perception of the child, as no unreasonable and hurtful conflict observed by the child, especially between people they love, is ever in the child's best interests.

(vi) The child shall have the right to the support of as many people as are available to cheer them on during their extracurricular activities. It shall be the responsibility of all parents to share information not reasonably available to all persons involved with the child with all other of the child's parents of any extracurricular school athletic, church, club, musical or other activities at which the child would like to have all parent involvement within a reasonable time of learning of the event, but not less than forty-eight hours notice prior to the event. The parent enrolling the child in the activity shall have the initial responsibility of notifying the other parents of the activity and provide contact information for the person responsible for the activity scheduling, but it shall thereafter be the

individual parent's responsibility to obtain and calendar their reasonable participation in all of the child's activities.

(vii) The child shall have the right to reasonable continuity of their habitual residence, and in the event a parent of the child shall leave the state of habitual residence with the child for any period of time, that parent shall make available within a reasonable amount of time, but not less than forty-eight (48) hours prior notice, to all other parents the planned dates of departure and return, the intended destinations, the mode of travel and telephone or other numbers where the other parents may contact the child while traveling.

In summary, the proposed CBOR incorporates many of the rights afforded a parent in the current PBOR, and it emphasizes best interest and rights of the child. For example, the new bill emphasizes the right of children to unimpeded access to the non-custodial parent. When that child is in the possession of the other parent, the right of the child to engage in and be informed of communication with the other parent as soon as received. Additionally, the new bill places the obligation to obtain important information regarding the child upon the individual parent not on the primary parent to be responsible for notifying the other parent.

CONCLUSION

Over the last few decades, Tennessee's approach to the support and care of children has evolved to a recognition that children benefit from the participation of both parents in their lives. Awarding one parent all the power and all the responsibilities while regulating the other one to a mere supporting role in the life of a child is rarely in a child's best interest. The adoption of an income shares child support model, maximum participation child custody goals, and a renewed focus on the best interest of children has transformed family law policy in this state. Clinging to an obsolete bill of rights that fails to recognize the reality of modern parenting hinders beneficial co-parenting and the best interests of children.

By enacting a CBOR, the title will reflect an obvious shift toward a child-centered list of responsibilities and rights. The portions of the former PBOR that are antiquated can be replaced with rights that facilitate the interest of today's child and family, instead of reflecting the values of the child and family of the last part of the 20th century. Moreover, the newly

enumerated rights will facilitate maximum participation by both parents in all ways, instead of being directed toward the custodial parent in favor of a noncustodial parent. The new CBOR will be obligatory in relation to all temporary and permanent orders affecting all children in this state.