

## HOUSE BILL No. 2914

By Committee on Judiciary

2-14

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9 AN ACT concerning adoption; relating to stepparents; amending K.S.A.  
10 59-2136 and repealing the existing section.

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12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 59-2136 is hereby amended to read as follows: 59-  
14 2136. (a) The provisions of this section shall apply where a relinquishment  
15 or consent to an adoption has not been obtained from a parent and K.S.A.  
16 59-2124 and 59-2129, and amendments thereto, state that the necessity  
17 of a parent's relinquishment or consent can be determined under this  
18 section.

19 (b) Insofar as practicable, the provisions of this section applicable to  
20 the father also shall apply to the mother and those applicable to the  
21 mother also shall apply to the father.

22 (c) In stepparent adoptions under subsection (d), the court may ap-  
23 point an attorney to represent any father who is unknown or whose  
24 whereabouts are unknown. In all other cases, the court shall appoint an  
25 attorney to represent any father who is unknown or whose whereabouts  
26 are unknown. If no person is identified as the father or a possible father,  
27 the court shall order publication notice of the hearing in such manner as  
28 the court deems appropriate.

29 (d) In a stepparent adoption, if a mother consents to the adoption of  
30 a child who has a presumed father under subsection (a)(1), (2) or (3) of  
31 K.S.A. 38-1114 and amendments thereto, or who has a father as to whom  
32 the child is a legitimate child under prior law of this state or under the  
33 law of another jurisdiction, the consent of such father must be given to  
34 the adoption unless such father has failed or refused to assume the duties  
35 of a parent for two consecutive years next preceding the filing of the  
36 petition for adoption or is incapable of giving such consent. In determin-  
37 ing whether a father's consent is required under this subsection, the court  
38 may disregard incidental visitations, contacts, communications or contri-  
39 butions. In determining whether the father has failed or refused to as-  
40 sume the duties of a parent for two consecutive years next preceding the  
41 filing of the petition for adoption, there shall be a rebuttable presumption  
42 that if the father, after having knowledge of the child's birth, has know-  
43 ingly failed to provide a substantial portion of the child support as re-

1 quired by judicial decree, when financially able to do so, for a period of  
2 two years next preceding the filing of the petition for adoption, then such  
3 father has failed or refused to assume the duties of a parent. *The failure*  
4 *of a father to provide a substantial portion of the child support because*  
5 *such father has been convicted and is imprisoned shall not be sufficient*  
6 *to rebut such rebuttable presumption. Failure of the father to either pro-*  
7 *vide a substantial portion of the child support as required by judicial*  
8 *decree or perform the other duties of a parent shall be sufficient for the*  
9 *court to determine that such father's consent is not required in a step-*  
10 *parent adoption. The court may consider the best interests of the child*  
11 *and the fitness of the nonconsenting parent in determining whether a*  
12 *stepparent adoption should be granted.*

13 (e) Except as provided in subsection (d), if a mother desires to relin-  
14 quish or consents to the adoption of such mother's child, a petition shall  
15 be filed in the district court to terminate the parental rights of the father,  
16 unless the father's relationship to the child has been previously termi-  
17 nated or determined not to exist by a court. The petition may be filed by  
18 the mother, the petitioner for adoption, the person or agency having  
19 custody of the child or the agency to which the child has been or is to be  
20 relinquished. Where appropriate, the request to terminate parental rights  
21 may be contained in a petition for adoption. If the request to terminate  
22 parental rights is not filed in connection with an adoption proceeding,  
23 venue shall be in the county in which the child, the mother or the pre-  
24 sumed or alleged father resides or is found. In an effort to identify the  
25 father, the court shall determine by deposition, affidavit or hearing, the  
26 following:

27 (1) Whether there is a presumed father under K.S.A. 38-1114 and  
28 amendments thereto;

29 (2) whether there is a father whose relationship to the child has been  
30 determined by a court;

31 (3) whether there is a father as to whom the child is a legitimate child  
32 under prior law of this state or under the law of another jurisdiction;

33 (4) whether the mother was cohabitating with a man at the time of  
34 conception or birth of the child;

35 (5) whether the mother has received support payments or promises  
36 of support with respect to the child or in connection with such mother's  
37 pregnancy; and

38 (6) whether any man has formally or informally acknowledged or de-  
39 clared such man's possible paternity of the child. If the father is identified  
40 to the satisfaction of the court, or if more than one man is identified as  
41 a possible father, each shall be given notice of the proceeding in accord-  
42 ance with subsection (f).

43 (f) Notice of the proceeding shall be given to every person identified

1 as the father or a possible father by personal service, certified mail return  
2 receipt requested or in any other manner the court may direct. Proof of  
3 notice shall be filed with the court before the petition or request is heard.

4 (g) If, after the inquiry, the court is unable to identify the father or  
5 any possible father and no person has appeared claiming to be the father  
6 and claiming custodial rights, the court shall enter an order terminating  
7 the unknown father's parental rights with reference to the child without  
8 regard to subsection (h). If any person identified as the father or possible  
9 father of the child fails to appear or, if appearing, fails to claim custodial  
10 rights, such person's parental rights with reference to the child shall be  
11 terminated without regard to subsection (h).

12 (h) When a father or alleged father appears and asserts parental  
13 rights, the court shall determine parentage, if necessary pursuant to the  
14 Kansas parentage act. If a father desires but is financially unable to em-  
15 ploy an attorney, the court shall appoint an attorney for the father. There-  
16 after, the court may order that parental rights be terminated, upon a  
17 finding by clear and convincing evidence, of any of the following:

18 (1) The father abandoned or neglected the child after having knowl-  
19 edge of the child's birth;

20 (2) the father is unfit as a parent or incapable of giving consent;

21 (3) the father has made no reasonable efforts to support or commu-  
22 nicate with the child after having knowledge of the child's birth;

23 (4) the father, after having knowledge of the pregnancy, failed with-  
24 out reasonable cause to provide support for the mother during the six  
25 months prior to the child's birth;

26 (5) the father abandoned the mother after having knowledge of the  
27 pregnancy;

28 (6) the birth of the child was the result of rape of the mother; or

29 (7) the father has failed or refused to assume the duties of a parent  
30 for two consecutive years next preceding the filing of the petition.

31 In making a finding under this subsection, the court may disregard  
32 incidental visitations, contacts, communications or contributions. In de-  
33 termining whether the father has failed or refused to assume the duties  
34 of a parent for two consecutive years next preceding the filing of the  
35 petition for adoption, there shall be a rebuttable presumption that if the  
36 father, after having knowledge of the child's birth, has knowingly failed  
37 to provide a substantial portion of the child support as required by judicial  
38 decree, when financially able to do so, for a period of two years next  
39 preceding the filing of the petition for adoption, then such father has  
40 failed or refused to assume the duties of a parent.

41 (i) A termination of parental rights under this section shall not ter-  
42 minate the right of the child to inherit from or through the parent. Upon  
43 such termination, all the rights of birth parents to such child, including

- 1 their right to inherit from or through such child, shall cease.
- 2     Sec. 2. K.S.A. 59-2136 is hereby repealed.
- 3     Sec. 3. This act shall take effect and be in force from and after its
- 4 publication in the statute book.