

SENATE BILL No. 400

By Senator Journey

1-19

9 AN ACT concerning adoption; relating to assertion of parental rights;
10 amending K.S.A. 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.

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

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

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

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

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

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

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

34 (f) Notice of the proceeding shall be given to every person identified
35 as the father or a possible father by personal service, certified mail return
36 receipt requested or in any other manner the court may direct. Proof of
37 notice shall be filed with the court before the petition or request is heard.

38 (g) If, after the inquiry, the court is unable to identify the father or
39 any possible father and no person has appeared claiming to be the father
40 and claiming custodial rights, the court shall enter an order terminating
41 the unknown father's parental rights with reference to the child without
42 regard to subsection (h). If any person identified as the father or possible
43 father of the child fails to appear or, if appearing, fails to claim custodial

1 rights, such person's parental rights with reference to the child shall be
2 terminated without regard to subsection (h).

3 (h) When a father or alleged father appears and asserts parental
4 rights, the court shall determine parentage, if necessary, pursuant to the
5 Kansas parentage act. If a father desires but is financially unable to em-
6 ploy an attorney, the court shall appoint an attorney for the father. There-
7 after, *notwithstanding the provisions of subsection (i)*, the court may order
8 that parental rights be terminated, upon a finding by clear and convincing
9 evidence, of any of the following:

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

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

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

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

18 (5) the father abandoned the mother after having knowledge of the
19 pregnancy;

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

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

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

33 (i) *When a father or alleged father appears and asserts parental rights*
34 *more than 60 days after an adoption is finalized, the court shall consider*
35 *the best interests of the child in determining whether parental rights shall*
36 *be reinstated.*

37 (j) A termination of parental rights under this section shall not ter-
38 minate the right of the child to inherit from or through the parent. Upon
39 such termination, all the rights of birth parents to such child, including
40 their right to inherit from or through such child, shall cease.

41 Sec. 2. K.S.A. 59-2136 is hereby repealed.

42 Sec. 3. This act shall take effect and be in force from and after its
43 publication in the statute book.