

SENATE BILL No. 233

By Committee on Judiciary

2-6

9 AN ACT concerning adoption; relating to relinquishment or consent;
10 amending K.S.A. 2008 Supp. 59-2136 and repealing the existing
11 section.
12

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

14 Section 1. K.S.A. 2008 Supp. 59-2136 is hereby amended to read as
15 follows: 59-2136. (a) The provisions of this section shall apply where a
16 relinquishment or consent to an adoption has not been obtained from a
17 parent and K.S.A. 59-2124 and 59-2129, and amendments thereto, state
18 that the necessity of a parent's relinquishment or consent can be deter-
19 mined under this section.

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

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

30 (d) In a stepparent adoption, if a mother consents to the adoption of
31 a child who has a presumed father under subsection (a)(1), (2) or (3) of
32 K.S.A. 38-1114 and amendments thereto, or who has a father as to whom
33 the child is a legitimate child under prior law of this state or under the
34 law of another jurisdiction, the consent of such father must be given to
35 the adoption unless: (1) Such father has failed or refused to assume the
36 duties of a parent for two consecutive years next preceding the filing of
37 the petition for adoption; or (2) *the father is unfit as a parent* or is inca-
38 pable of giving such consent. In determining whether a father's consent
39 is required under this subsection, the court may disregard incidental vis-
40 itations, contacts, communications or contributions. In determining
41 whether the father has failed or refused to assume the duties of a parent
42 for two consecutive years next preceding the filing of the petition for
43 adoption, there shall be a rebuttable presumption that if the father, after

1 having knowledge of the child's birth, has knowingly failed to provide a
2 substantial portion of the child support as required by judicial decree,
3 when financially able to do so, for a period of two years next preceding
4 the filing of the petition for adoption, then such father has failed or re-
5 fused to assume the duties of a parent. The court may consider the best
6 interests of the child and the fitness of the nonconsenting parent in de-
7 termining whether a stepparent adoption should be granted *or denied*.

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

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

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

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

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

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

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

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

42 (g) If, after the inquiry, the court is unable to identify the father or
43 any possible father and no person has appeared claiming to be the father

1 and claiming custodial rights, the court shall enter an order terminating
2 the unknown father's parental rights with reference to the child without
3 regard to subsection (h). If any person identified as the father or possible
4 father of the child fails to appear or, if appearing, fails to claim custodial
5 rights, such person's parental rights with reference to the child shall be
6 terminated without regard to subsection (h).

7 (h) (1) When a father or alleged father appears and asserts parental
8 rights, the court shall determine parentage, if necessary pursuant to the
9 Kansas parentage act. If a father desires but is financially unable to em-
10 ploy an attorney, the court shall appoint an attorney for the father. There-
11 after, the court may order that parental rights be terminated, upon a
12 finding by clear and convincing evidence, of any of the following:

13 (A) The father abandoned or neglected the child after having knowl-
14 edge of the child's birth;

15 (B) the father is unfit as a parent or incapable of giving consent;

16 (C) the father has made no reasonable efforts to support or com-
17 municate with the child after having knowledge of the child's birth;

18 (D) the father, after having knowledge of the pregnancy, failed with-
19 out reasonable cause to provide support for the mother during the six
20 months prior to the child's birth;

21 (E) the father abandoned the mother after having knowledge of the
22 pregnancy;

23 (F) the birth of the child was the result of rape of the mother; or

24 (G) the father has failed or refused to assume the duties of a parent
25 for two consecutive years next preceding the filing of the petition.

26 (2) In making a finding whether parental rights shall *or shall not* be
27 terminated under this subsection, the court may:

28 (A) Consider and weigh the best interest of the child; and

29 (B) disregard incidental visitations, contacts, communications or
30 contributions.

31 (3) In determining whether the father has failed or refused to assume
32 the duties of a parent for two consecutive years next preceding the filing
33 of the petition for adoption, there shall be a rebuttable presumption that
34 if the father, after having knowledge of the child's birth, has knowingly
35 failed to provide a substantial portion of the child support as required by
36 judicial decree, when financially able to do so, for a period of two years
37 next preceding the filing of the petition for adoption, then such father
38 has failed or refused to assume the duties of a parent.

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

43 Sec. 2. K.S.A. 2008 Supp. 59-2136 is hereby repealed.

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