

CHAPTER 22
HOUSE BILL No. 2665

AN ACT concerning adoption; relating to the termination of parental rights; amending K.S.A. 59-2136 and repealing the existing section.

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

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

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

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

(d) In a stepparent adoption, if a mother consents to the adoption of a child who has a presumed father under subsection (a)(1), (2) or (3) of K.S.A. 38-1114 and amendments thereto, or who has a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the consent of such father must be given to the adoption unless such father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption or is incapable of giving such consent. In determining whether a father's consent is required under this subsection, the court may disregard incidental visitations, contacts, communications or contributions. In determining whether the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption, there shall be a rebuttable presumption that if the father, after having knowledge of the child's birth, has knowingly failed to provide a substantial portion of the child support as required by judicial decree, when financially able to do so, for a period of two years next preceding the filing of the petition for adoption, then such father has failed or refused to assume the duties of a parent. *The court may consider the best interests of the child and the fitness of the nonconsenting parent in determining whether a stepparent adoption should be granted.*

(e) Except as provided in subsection (d), if a mother desires to relinquish or consents to the adoption of such mother's child, a petition shall be filed in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court. The petition may be filed by the mother, the petitioner for adoption, the person or agency having custody of the child or the agency to which the child has been or is to be relinquished. Where appropriate, the request to terminate parental rights may be contained in a petition for adoption. If the request to terminate parental rights is not filed in connection with an adoption proceeding, venue shall be in the county in which the child, the mother or the presumed or alleged father resides or is found. In an effort to identify the father, the court shall determine by deposition, affidavit or hearing, the following:

- (1) Whether there is a presumed father under K.S.A. 38-1114 and amendments thereto;
- (2) whether there is a father whose relationship to the child has been determined by a court;
- (3) whether there is a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction;
- (4) whether the mother was cohabitating with a man at the time of conception or birth of the child;
- (5) whether the mother has received support payments or promises of support with respect to the child or in connection with such mother's

pregnancy; and

(6) whether any man has formally or informally acknowledged or declared such man's possible paternity of the child.

If the father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (f).

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

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

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

~~(1)~~ (A) The father abandoned or neglected the child after having knowledge of the child's birth;

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

~~(3)~~ (C) the father has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;

~~(4)~~ (D) the father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;

~~(5)~~ (E) the father abandoned the mother after having knowledge of the pregnancy;

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

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

(2) In making a finding *whether parental rights shall be terminated* under this subsection, the court may:

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

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

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

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

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

Sec. 3. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved March 20, 2006.

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