

## HOUSE BILL No. 2482

By Committee on Judiciary

1-19

1 AN ACT concerning the Kansas adoption and relinquishment act; relating  
2 to parental rights; amending K.S.A. 59-2124 and 59-2134 and K.S.A.  
3 2011 Supp. 59-2136 and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 59-2124 is hereby amended to read as follows: 59-  
7 2124. (a) Any parent or parents or person *in loco parentis* may relinquish a  
8 child to an agency, and if the agency accepts the relinquishment in writing,  
9 the agency shall stand *in loco parentis* to the child and shall have and  
10 possess over the child all rights of a parent or legal guardian, including the  
11 power to place the child for adoption and give consent thereto.

12 (b) All relinquishments to an agency under K.S.A. 59-2111 through  
13 59-2143, and amendments thereto, shall be deemed sufficient if in  
14 substantial compliance with the form for relinquishment set forth by the  
15 judicial council, and shall be executed by: (1) Both parents of the child; (2)  
16 one parent, if the other parent is deceased or the other parent's  
17 relinquishment is found unnecessary under K.S.A. 59-2136, and  
18 amendments thereto; or (3) a person *in loco parentis*.

19 (c) *All relinquishments shall be final when executed, unless a*  
20 *relinquishing party, prior to the final decree of adoption, alleges and*  
21 *proves by clear and convincing evidence that the relinquishment was not*  
22 *freely and voluntarily given. The burden of proving the relinquishment was*  
23 *not freely and voluntarily given shall rest with such relinquishing party.*

24 ~~(e)~~ (d) The relinquishment shall be in writing and shall be  
25 acknowledged before a judge of a court of record or before an officer  
26 authorized by law to take acknowledgments. If the relinquishment is  
27 acknowledged before a judge of a court of record, it shall be the duty of  
28 the court to advise the relinquishing person of the consequences of the  
29 relinquishment.

30 ~~(d)~~ (e) (1) Except as otherwise provided, in all cases where a parent  
31 or person *in loco parentis* has relinquished a child to the agency pursuant  
32 to K.S.A. 59-2111 through 59-2143, and amendments thereto, all the rights  
33 of the parent or person *in loco parentis* shall be terminated, including the  
34 right to receive notice in a subsequent adoption proceeding involving the  
35 child *and the right to inherit from or through such child*.

36 (2) If a parent has relinquished a child to the agency pursuant to

1 K.S.A. 59-2111 through 59-2143, and amendments thereto, based on a  
2 belief that the child's other parent would relinquish the child to the agency,  
3 and such other parent does not relinquish such child to the agency, the  
4 rights of such parent who has relinquished a child to the agency shall not  
5 be terminated.

6 *(3) If the rights of a parent who has not relinquished a child to the*  
7 *agency pursuant to K.S.A. 59-2111 through 59-2143, and amendments*  
8 *thereto, are not terminated under K.S.A. 59-2136, and amendments*  
9 *thereto, thereby prohibiting the adoption of such child, the rights of such*  
10 *other parent who has relinquished the child to the agency shall not be*  
11 *terminated. Upon such relinquishment, all the rights of birth parents to*  
12 *such child, including their right to inherit from or through such child, shall*  
13 *cease.*

14 ~~(e)~~ *(f)* A parent's relinquishment of a child shall not terminate the  
15 right of the child to inherit from or through such parent.

16 Sec. 2. K.S.A. 59-2134 is hereby amended to read as follows: 59-  
17 2134. (a) Upon the hearing of the petition, the court shall consider the  
18 assessment and all evidence, including evidence relating to determination  
19 of whether or not the court should exercise its jurisdiction as provided in  
20 K.S.A. 59-2127, and amendments thereto, offered by any interested party.  
21 If the adoption is granted, the court shall make a final decree of adoption.

22 (b) If the adoption is denied, the court shall enter appropriate orders.  
23 *In consideration of any exigent circumstances*, such orders may include an  
24 order giving temporary custody of the child to *the adoptive family*, another  
25 person or agency for a period not to exceed ~~30~~ 90 days pending  
26 termination of the instant case or a new case being filed.

27 (c) *(1)* The costs of the adoption proceedings shall be paid by the  
28 petitioner or as assessed by the court.

29 *(2) If an attorney is appointed by the court under subsection (h) of*  
30 *K.S.A. 59-2136, and amendments thereto, the court may order reasonable*  
31 *attorney fees to be paid in proportions and at times determined by the*  
32 *court, except that in no case shall payment of such attorney exceed a rate*  
33 *of \$80 per hour and payment shall be made only by the adoptive family,*  
34 *respondent or county. The court may also order the proportion of any*  
35 *indigent party to be paid from the general fund of the county.*

36 Sec. 3. K.S.A. 2011 Supp. 59-2136 is hereby amended to read as  
37 follows: 59-2136. (a) The provisions of this section shall apply where a  
38 relinquishment or consent to an adoption has not been obtained from a  
39 parent and K.S.A. 59-2124 and 59-2129, and amendments thereto, state  
40 that the necessity of a parent's relinquishment or consent can be  
41 determined under this section.

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

1 also shall apply to the father.

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

9 (d) (1) In a stepparent adoption, if a mother consents to the adoption  
10 of a child who has a presumed father under subsection (a)(1), (2) or (3) of  
11 K.S.A. 38-1114, and amendments thereto, or who has a father as to whom  
12 the child is a legitimate child under prior law of this state or under the law  
13 of another jurisdiction, the consent of such father must be given to the  
14 adoption unless: (A) *The father is unfit as a parent or incapable of giving*  
15 *consent; or (B) such father has failed or refused to assume the duties of a*  
16 *parent for two consecutive years next preceding the filing of the petition*  
17 *for adoption or is incapable of giving such consent. In determining*  
18 *whether a father's consent is required under this subsection, the court may*  
19 *disregard incidental visitations, contacts, communications or contributions.*  
20 *In determining whether the father has failed or refused to assume the*  
21 *duties of a parent for two consecutive years next preceding the filing of the*  
22 *petition for adoption, there shall be a rebuttable presumption that if the*  
23 *father, after having knowledge of the child's birth, has knowingly failed to*  
24 *provide a substantial portion of the child support as required by judicial*  
25 *decree, when financially able to do so, for a period of two years next*  
26 *preceding the filing of the petition for adoption, then such father has failed*  
27 *or refused to assume the duties of a parent. ~~The court may consider the~~*  
28 *~~best interests of the child and the fitness of the nonconsenting parent in~~*  
29 *~~determining whether a stepparent adoption should be granted. The court~~*  
30 *shall consider the totality of the circumstances in determining any issue*  
31 *arising before the court under this paragraph.*

32 (2) *In all other stepparent adoptions, the court may order that*  
33 *parental rights be terminated under subsection (h).*

34 (3) *In all stepparent adoptions under this subsection, the court may*  
35 *consider the best interests of the child in determining whether parental*  
36 *rights should be terminated.*

37 (e) Except as provided in subsection (d), if a mother desires to  
38 relinquish or consents to the adoption of such mother's child, a petition  
39 shall be filed in the district court to terminate the parental rights of the  
40 father, unless the father's relationship to the child has been previously  
41 terminated or determined not to exist by a court. The petition may be filed  
42 by the mother, the petitioner for adoption, the person or agency having  
43 custody of the child or the agency to which the child has been or is to be

1 relinquished. Where appropriate, the request to terminate parental rights  
2 may be contained in a petition for adoption. If the request to terminate  
3 parental rights is not filed in connection with an adoption proceeding,  
4 venue shall be in the county in which the child, the mother or the  
5 presumed or alleged father resides or is found. In an effort to identify the  
6 father, the court shall determine by deposition, affidavit or hearing, the  
7 following:

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

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

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

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

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

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

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

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

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

36 (h) (1) When a father or alleged father appears and asserts parental  
37 rights, the court shall determine parentage, if necessary pursuant to the  
38 Kansas parentage act. If a father desires but is financially unable to employ  
39 an attorney, the court shall appoint an attorney for the father. ~~Thereafter,~~  
40 The court may order that parental rights be terminated; upon *consideration*  
41 *of the totality of the circumstances and* a finding by clear and convincing  
42 evidence, of any of the following:

43 (A) The father abandoned or neglected the child after having

1 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  
4 communicate with the child after having knowledge of the child's birth;

5 (D) the father, after having knowledge of the pregnancy *or possible*  
6 *pregnancy*, failed without reasonable cause to provide support for the  
7 mother during the six months prior to the child's birth;

8 (E) the father abandoned the mother after having knowledge of the  
9 pregnancy *or possible pregnancy*;

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

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

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

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

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

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

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

30 (j) *For the purposes of this section, "support" means any tender of*  
31 *(1) significant monetary support or (2) significant nonmonetary support.*

32 Sec. 4. K.S.A. 59-2124 and 59-2134 and K.S.A. 2011 Supp. 59-2136  
33 are hereby repealed.

34 Sec. 5. This act shall take effect and be in force from and after its  
35 publication in the statute book.

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