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Rick Wilborn, Chairperson
Senate Judiciary Committee

RE: House Bill 2481 regarding Proposed Revisions to the Adoption and Relinquishment Act

Mr. Chairman:

Please accept this as my written testimony regarding House Bill 2481. I will not be available to provide oral testimony. Please note the limitations of my objections to the proposed bill. **I support HB 2481 in its entirety but for K.S.A. 59-2136.** K.S.A. 59-2136 is the portion of the Adoption statutes dealing with termination of the rights of biological parents. I believe this section is ambiguously written and has major flaws that will cause courts to struggle with protecting the constitutional rights of biological fathers when adoption petitioners attempt to terminate their parental rights.

Here, I offer a two-page Executive Summary followed by a legal analysis of what is truly an incredibly complex endeavor: determining whether to terminate the parental rights of a biological father so a child can be adopted.

Two-Page Executive Summary of Position Opposing K.S.A. 59-2136

- The proposal of the Kansas Judicial Council Adoption Advisory Committee attempts to deal with the termination of the parental rights of all biological fathers who appear to contest any adoption of their child under a single subsection - K.S.A. 59-2136(h). I believe there should be two subsections, one to deal with putative fathers whose relationship to the child are little more than biological and another to deal with presumed fathers whose parent-child relationships have already been established and recognized by law.

- Not all fathers are similarly situated with respect to their legal rights, but the proposed revisions seek to deal with the rights of all fathers under one single section of the statute. The proponents of the statute in fact are explicit about the wish to treat all biological fathers the same. The rights of presumed fathers are fundamental liberty interests in the care, custody, and control of their children. These rights are protected by the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the United States Constitution and the Bill of Rights of the Kansas Constitution. For putative fathers, the State of Kansas must provide and protect their opportunity to establish their parent-child relationship, but the father must grasp his opportunity to

be a father. The Kansas Supreme Court has stated, "[T]he law presumes that the father starts out with a parental relationship; it is his to abandon, not to conquer."[1]

- On its face, the proposed subsection (h) appears to be an attempt to apply the same criteria to all biological fathers, a practice that would fail to distinguish between presumed fathers (e.g., married fathers, divorced fathers, and unwed paternity-established fathers) and putative fathers (e.g., fathers who may or may not have abandoned their opportunity to achieve legal fatherhood by failing or refusing to assume parental duties).

- Not all seven of the criteria of this subsection would apply to all of the biological fathers the amendments propose are to be adjudicated under this subsection, a fact that is fertile ground for misunderstanding and misapplication of the appropriate law. After determining what procedural and substantive protections are required based upon the whether the biological father is a putative father or a presumed father, a court must look to see if any of the seven possible factual circumstances that justify terminating of the father's rights apply.

- I specifically note (and object) to proposed changes that would make it easier to terminate the rights of presumed fathers by adjudicating them under criteria that were developed for use with putative fathers. Among other things, this document reviews the history of the criteria of K.S.A. 59-2136(h). These criteria were introduced into Kansas law in 1982 and 1983 to deal with putative fathers who appeared in court to contest the adoption of their illegitimate children. These criteria have been described by three justices of the Kansas Supreme Court as applying to fathers whose relationship to the child is "little more than biological." And these criteria have conceptual flaws when viewed through the lens of due process, equal protection, and the rules of statutory construction and interpretation.

- My proposed solution is simple and has three parts. First, Kansas should apply K.S.A. 59-2136(h) to putative fathers who may or may not have abandoned their parental rights by failing or refusing to assume parental duties. Because it was designed and works well in adjudicating those fathers whose links to their children are "little more than biological," subsection (h) would not be changed but for language clearly reflecting the factual situation for which it is intended. In other words, nothing should change with how Kansas courts would adjudicate the adoption of the newborn or young infant children of putative fathers.

- The second part of my proposed solution is to agree to eliminate subsection (d) regarding stepparent adoptions. There are equal protection problems in this statute when some, but not all, fathers who have married or attempted to marry the mothers of the children and no unwed paternity-established fathers qualify for the greater protections (e.g., fewer termination criteria) that are afforded to some presumed fathers under this subsection. All presumed fathers are similarly situated and require the same protections.

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[1] In the Matter of the Adoption of Baby Girl P., 291 Kan. 424, 435, 242 P.3d 11168 (Kan. 2010).

- The third part of the solution is to craft a subsection with criteria regarding factual circumstances under which the rights of all presumed fathers might be terminated. For at least eighty years, the criteria for termination of parental rights of most presumed fathers has been the failure or refusal to assume parental duties for two consecutive years next preceding the adoption. If the time period is the real cause of the disputes in this area, then the conversation about the appropriate time period should occur.

The rest of this document reviews the legal support for what is offered above. It is provided to demonstrate my opposition is grounded in an analysis of the numerous legal principles that are part of proceedings to terminate the parental rights in adoption cases in Kansas.

A Biological Father's Consent to an Adoption is Necessary

A biological father's consent to the adoption of his child is required unless his consent is found unnecessary.[2] The necessity of a parent's consent to an adoption is determined under K.S.A. 59-2136. This testimony is about this statute, its history, and a set of proposed amendments. The black and white nature of the outcome of a contested adoption, the biological father's rights are either affirmed or terminated, is not mirrored in the law. The current statute has numerous ambiguities and flaws. My position is that the proposed amendments of the Kansas Judicial Council's Adoption Advisory Committee, of which I was a member, exacerbate rather than correct these flaws.

Applying K.S.A. 59-2136 is an incredibly complex endeavor. Decisions in disputed adoption cases are context-specific and fact-intensive. The outcome of a contested adoption is dependent upon consideration of all of the surrounding circumstances.[3] The analysis is grounded in the constitutional rights of the parents, particularly those of the biological father whose rights may be involuntarily terminated, and a number of implicit and explicit social policy decisions about the fundamental liberty interests of parents and their parent-child relationships. Adoption involves state action against individuals, a fact that brings procedural and substantive due process principles into play. Adoption is also a creature of statute, a fact that brings equal protection principles and the canons of statutory construction into the analysis. And finally, adoption is about children, a fact that highlights the complex balancing of parental rights and the best interests of children.

My opposition to the current form of K.S.A. 59-2136 stems from a belief it covers two adoption termination of parental rights (TPR) scenarios quite well, but its treatment of two less frequent adoption TPR scenarios is confusing and, if the statutes are not interpreted correctly, arguably unconstitutional. The current statute does well with stepparent adoptions where divorced fathers have abandoned their child for two years or more (the target of 59-2136(d)) and with adoptions of newborns and young children where putative fathers have little more than a biological link to their children (the target of 59-2136(h)).

But it is unclear whether the current statute's treatment of divorced fathers and unwed paternity-established fathers in non-stepparent adoptions under 59-2136(h), where there are

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[2] K.S.A. 59-2129(a)(1)-(2).

[3] In the Matter of the Adoption of G.L.V., 286 Kan. 1034, 190 P.3d 245 (2008); *See also* In re Adoption of S.E.B., 257 Kan. 266, 891 P.2d 440 (1995); In re Adoption of F.A.R., 242 Kan. 231, 747 P.2d 145 (1987).

seven (7) criteria[4] for termination, is constitutional, given that these fathers are similarly situated with the divorced fathers being adjudicated under the single criteria of K.S.A. 59-2136(d). When all presumed fathers (e.g., married fathers, divorced fathers, and unwed paternity-established fathers) are not treated equally because of their marital status, such treatment is inconsistent with equal protection principles and a violation of the Kansas Parentage Act which clearly asserts that, "The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents."[5]

An additional infirmity of the current statute concerns what I view as a flaw in the writing of the statute. This concerns the attempt to adjudicate under K.S.A. 59-2136(h) putative fathers, whose rights are limited to an interest in the opportunity to establish their rights, and certain groups of presumed fathers, whose rights are fundamental liberty interests. The protections provided to presumed fathers should be greater than those offered to putative fathers, but this poorly constructed statute makes that less than clear. Currently, the statute is written as if the parental rights of either a putative father or certain presumed fathers can have their rights terminated under any of the listed criteria. In reality, my view is that some of the criteria currently in K.S.A. 59-2136(h) apply to putative fathers and other criteria apply to presumed fathers. The poor construction of this statute has caused significant problems.

My position is that, if K.S.A. 59-2136 is to be applied at all biological fathers to terminate the parental rights of presumed fathers (e.g., divorced or unwed paternity-established fathers), only K.S.A. 59-2136(h)(1)(g), or the criteria that a father has failed or refused to assume parental duties for two consecutive years next preceding the adoption, can be constitutionally applied because it matches the treatment of similarly situated fathers in K.S.A. 59-2136(d).

The crux of this argument centers on an analysis of K.S.A. 59-2136(h). This analysis includes the legislative history of the particular statutory language in question, how this portion of the statute has been commonly interpreted by courts and judges (including Justices of the Kansas Supreme Court), and application of the canons and rules of statutory construction to this portion of the statute. It is time to fix the problems of using one subsection to apply to two groups of fathers who are not similarly situated.

Legislative History and Case Law of K.S.A. 59-2136(h)

There is a considerable and substantial amount of legal precedent demonstrating that K.S.A. 59-2136(h) applies only to situations where the father's relationship with his child is "little more than biological."

My position is that K.S.A. 59-2136(h) was designed and intended since its inception in 1982 to apply to situations where the father's relationship with the child was "little more than biological."[6] In 1982, essentially what is now 59-2136(h) was passed into law as

[4] While the statute identifies "factors," these subsections of the statute are actually better understood as criteria or specific factual circumstances under which the father's parental rights might be terminated.
[5] K.S.A. 23-2206.
[6] L. 1982, SB 520, ch. 182. Sec. 147.

procedures courts were to use when an unwed putative father appeared to contest the adoption of his "illegitimate" child.[7]

Second, in 1994, a Kansas Court of Appeals panel clearly stated that "[t]hose instances specified under . . . K.S.A. 1993 Supp. 59-2136(h)(1)-(7)[8] in which consent may be declared unnecessary are examples of situations in which the right of a natural father is little more than biological."[9] Eight years later, in 2002, the Kansas Supreme Court affirmed a Kansas Court of Appeals opinion where the panel stated "the instances set out in K.S.A. 59-2136(h)(1)-(7) were examples of 'situations in which the relationship of a natural father is little more than biological."[10]

Third, at least three of the current Justices from the Kansas Supreme Court have referenced these facts from these cases. In 2008, Chief Justice Nuss cited favorably to the 1994 case noted above in his dissent in *In the Adoption of A.A.T.*, a case decided on other grounds. Similarly, the 2002 case was cited with approval by Justice Beier in her 2008 dissent in *In the Adoption of A.A.T.* Ironically, Beier had served on the Court of Appeals panel that reviewed the 2002 case. And finally, in 2010 Justice Luckert, in a concurring opinion, titled a section of her opinion, "Timing Means Different Statutes Regarding Termination of Parental Rights Apply." Within this section, she wrote,

> In this case, K.S.A. 2009 Supp. 59-2136(h)(1) applies to the termination of Devon's parental rights. That provision begins by defining the cases where it applies – "[w]hen a father or alleged father appears and asserts parental rights."

Fourth, at least five of the seven criteria of 59-2136(h) clearly reference putative fathers whose relationship with the child is little more than biological (e.g, father abandoned mother after knowledge of pregnancy, father abandoned or neglected the child after knowledge of the child's birth, father failed to support or communicate with the child after knowledge of child's birth, father failed to support the mother during the last six months of the pregnancy, and child's birth is the result of rape of the mother). These criteria can be appropriately applied to newborns, but not to situations where fathers have earned presumptions that entitled them to their fundamental liberty interests in the care, custody, and control of their children.

Fifth, in its current form, K.S.A. 59-2136(h) is vulnerable to misinterpretations that make it a violation of equal protection principles as well as the Kansas Parentage Act. There are statutory construction problems that apply in this situation. These include:

(1) Each subsection of a statute must be given an independent meaning.[11]

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[7] L. 1982, SB 520, ch. 182, Sec. 147.

[8] What at the time were identified as K.S.A. 59-2136(h)(1)-(7) are identified in the proposal as K.S.A. 59-02136(h)(1)(A)-(G).

[9] In the Matter of the Adoption of Baby Boy N, 19 Kan.App.2d 574, 584, 874 P.2d 680 (1994).

[10] In re Adoption of Baby Girl S., 29 Kan.App.2d 664, 667, 29 P.3d 466 (2001), *aff'd* 273 Kan. 71, 41 P.3d 287 (2002)(adopting Court of Appeals opinion).

[11] State v. Dickson, 275 Kan. 683, 691, 69 P.3d 549 (2003) (noting, "We may presume that the House Judiciary Committee would not formulate one subsection that made another redundant and then retain both. "We may presume the legislature does not enact subsections that make other subsections redundant."); In the Matter of the Adoption of Baby Girl P., 291 Kan. 424, 432, 242 P.3d 2268 (Kan. 2010)(citing to State v. Dickson).

As applied in this scenario, the Advisory Committee wishes to read three of the factors (or criteria) as if words included in these subsections of the statute do not exist; namely, the revisions propose applying the phrases "after knowledge of the pregnancy" and "after knowledge of the birth" as if these apply throughout the minority of the child. In my opinion, applying these criteria throughout the minority of the child is the equivalent of ignoring these words as if they were not there. These words make sense if applied in situations where the father's link to the child is "little more than biological." But what is left of these three subsections (the father abandoned the mother, the father abandoned or neglected the child, and the father failed to support or communicate with the child) conflicts with K.S.A 59-2136(h)(1)(G), which is the criteria that the father has failed or refused to assume parental duties for two consecutive years next preceding the adoption petition.

(2) *In pari materia* principle: Entire act and every part thereof must be reconciled, harmonized and given effect, if possible.

> [I]n cases involving statutory construction, "courts are not permitted to consider only a certain isolated part or parts of an act, but are required to consider and construe together all parts thereof *in pari materia*."[12] "Courts ascertain the legislature's intent behind a particular statutory provision "from a general consideration of the entire act. Effect must be given, if possible, to the entire act and every part thereof. To this end, it is the duty of the court, as far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible.[13]

In this scenario, I argue that failing to view (A), (C), and (E) as specific to the putative father makes them duplicitous with (G). Would not "abandoning mother, "abandoning and neglecting the child," and "failing to support and communicate with the child" be part of the parental duties referred to in (G)?

Applying These Criteria to Presumed Fathers – Should All Biological Fathers be Treated the Same?

Having established the legislative history and intent of K.S.A. 59-2136(h) as applying to fathers whose relationship to the child is little more than biological, the next question is: should all fathers be treated under the same statute? I think not. The reason is that not all fathers have the same rights. Putative fathers have an opportunity interest in their relationship with the child, which pales in comparison and importance with the fundamental liberty interests the Unites States Supreme Court affords to presumed fathers.

As a member of the Adoption Law Advisory Committee, I dissented to the Committee's final report. It is necessary to disclose what I view as the real intent of the revisions in K.S.A. 59-2136: eliminate the two-year period during which a presumed father (e.g., in my language a divorced father or unwed paternity-established father) must have

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[12] Kansas Commission on Civil Rights v. Howard, 218 Kan. 248, Syl. ¶2, 544 P.2d 791 (1975), cited in In re Adoption of G.L.V., 286 Kan. 1034, 190 P.3d 245 (2008).

[13] In re Marriage of Ross, 245 Kan. 591, 594, 783 P.2d 331 (1989), cited in In re Adoption of G.L.V., 286 Kan. 1034, 190 P.3d 245 (2008).

failed or refused to assume his parental duties before his parental rights can be terminated and the adoption can be accomplished without his consent.

In my opinion, the effect of the proposed revision to K.S.A. 59-2136(h), when paired with the Advisory group's proposal to eliminate the separate statutory section on stepparent adoptions, is to eliminate the criteria where a father must have failed or refused to assume his parental duties for two consecutive years next preceding the adoption petition. When the two-year time period is eliminated, the statute would have criteria referencing "abandonment," "abandonment and neglect," and "failed to support or communicate" without definitions or time periods.

Specifically, I noted in my dissent that

> If the amendments to KSA 59-2136 are passed, many biological fathers will lose certain protections for their parental rights and parent-child relationships. They will face more obstacles and be more vulnerable to efforts to terminate their parental rights. One way of thinking about biological fathers in adoption cases is to think about three groups: (1) fathers whose parental rights are established by marriage to the child's mother; (2) unwed fathers who established their parental rights by grasping the opportunity for parenthood;[14] and (3) unwed fathers who have never adequately stepped forward to achieve parenthood.[15]
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> Fathers are important to the psychological development and health of their children.[16] In Kansas and across the United States, the number of children born to unwed parents has significantly increased. The percentage of children born to unwed parents in Kansas rose from 12.2 percent in 1980 to 21.4 percent in 1990 to 37.7 percent in 2010.[17] National estimates place the percentage of children born to unwed parents in 2016 at approximately 40.3 percent.[18] Over this same period, the prejudices and presumptions about unwed fathers have also changed. The growth in expectations, rights, roles and practices of unwed fathers has paralleled these increases. This is not

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[14] *Lehr v. Robertson*, 463 U.S. 248 (1983) (stating, "Where an unwed father demonstrates a full commitment to the responsibilities of parenthood by 'com[ing] forward to participate in the rearing of his child,' *Caban v. Mohammed*, 441 U.S. 380, 392 [1979], his interest in personal contact with his child acquires substantial protection under the Due Process Clause."); In re Adoption of A.A.T., 287 Kan. 590, 601, 196 P.3d 1180 (2008) (noting, "[T]he biological interest gives the father a unique opportunity to develop a relationship with the child; if the father takes that opportunity, he has a protected liberty interest in the fatherhood of that child.").
; *See also* K.S.A. 23-205. "Parent and child relationship defined. As used in this act, "parent and child relationship" means the legal relationship existing between a child and the child's biological or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligations. It includes the mother and child relationship and the father and child relationship."

[15] Milfred D. Dale, Supplemental Statement Regarding the Report of the Judicial Council Adoption Law Advisory Committee, January 19, 2018.

[16] *See* MICHAEL LAMB, THE ROLE OF THE FATHER IN CHILD DEVELOPMENT (5TH ED.)(2010).

[17] State of the Family: Kansas Child & Family Wellbeing Indicators, 2010. Report prepared by Kansas State University and the Kansas Department for Children and Families.
http://www.dcf.ks.gov/Newsroom/Documents/Childhood-Poverty-Task-Force/State%20of%20the%20Family%20Report%20Child%20and%20Family%20Wellbeing%20Indicators%20by%20Dr%20Jared%20Anderson.pdf

[18] Joyce A. Martin, Brady E. Hamilton, Michelle J.K. Osterman, Anne K. Driscoll, & T.J. Mathews, *Births: Final Data for 2015*, 66(1) NATIONAL VITAL STATISTICS REPORTS, January 5, 2017.

to say that adoptions in the appropriate circumstances and adoptive parents are not in the best interests of children. There are clearly times when adoptions are what is best.

An important feature of Kansas law is that fathers who have established their parental rights (i.e., groups 1 and 2) should be treated the same. The guiding principle of the Kansas Parentage Act is "full equality for all children in their legal relationship with both parents."[19] Currently, K.S.A. 59-2136 does not do this. Under K.S.A. 59-2136(d), when a stepparent attempts to adopt a child of a group 1 father (presumed father by marriage or attempted marriage), the stepparent must prove the group 1 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." This is the only grounds upon which a group 1 biological father's rights can be terminated in a step-parent adoption.[20] Group 2 biological fathers do not currently possess this protection [because they cannot qualify under the step-parent adoption statute that is limited to fathers who were married or attempted to marry the mothers of the children, added].

. . .

The Committee notes possible equal protection problems when viewing the differences between challenges to group 1 fathers under K.S.A. 59-2136(d) and the challenges to group 2 fathers under K.S.A. 59-2136(h). I agree with this analysis. However, I dissent from the solution chosen by the Committee. Rather than affording group 2 fathers the same rights as group 1 fathers under K.S.A. 59-2136(d), the Committee proposes the opposite: all fathers will be treated under K.S.A. 59-2136(h) and will be subject to an unfitness challenge at any time.

A plain reading of the K.S.A. 59-2136(h) grounds for termination of father's parental rights, which the Committee seeks to use with all fathers, reveals the far-reaching nature of the proposed changes. Kansas adoption law has a long history of using the standard that a legal father's consent was required for an adoption unless he had failed to assume parental duties for the two years next preceding the adoption petition.[21] While this criterion remains as K.S.A. 59-2136(h)(1)(G), it is effectively rendered moot by the vague, broad grounds for termination outlined in K.S.A. 59-2136(h)(1)(A), (C), and (E) and the possibility of proving unfitness under K.S.A. 59-2136(h)(1)(B).

. . .

The texts of K.S.A. 59-2136(h)(1)(A), (C), and (E) provide no time limitations, qualifications to the phrases, or definitions for key terms: (A) "the father **abandoned or neglected** the child;" (C) "The father has **made no reasonable efforts to communicate with the child** after having knowledge of the child's birth," and (E)."The father **abandoned** the mother after having knowledge of the pregnancy."

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[19] Brian Moline, *The Kansas Parentage Act – A Proposal for Legal Equality for Non-Marital Families*, 52 J. KAN. BAR ASS'N 254 (1983).

[20] *See In the Matter of the Application to Adopt J.M.D. & K.N.D., Minor Children*, 293 P.3d 1196, 260 P.3d 1196 (Kan. 2011).

[21] For example, the 1939 Supplement to the General Statutes notes under 59-2102, "Written consent required. Before a minor child is adopted, consent must be given to such adoption: (1) By the living parents of such child. (2) By the mother of an illegitimate child: Provided, If the father of such illegitimate child has acknowledged paternity and assume the duties of a parent, his consent shall also be required. (3) By one of the parents if the other has failed or refused to assume the duties of a parent for two consecutive years or is in capable of giving such consent."

Within the group process, I inquired as to whether K.S.A. 59-2136(h)(1)(A),(C), and (E) applied to the adoption of newborns or only very young children whose father had never grasped the opportunity for parenthood. This interpretation would fit with the need to expediently deal with newborns and very young children, for whom the two-year wait would be quite problematic. This interpretation was roundly rejected with an insistence these provisions could be interpreted literally. In other words, (A), (C), and (E) could be argued as grounds for terminating a father's parental rights at any time.

Such a reading of these sections renders K.S.A. 59-2136(h)(1)(G) and the two year limitation a moot point. Why would an adoption attorney argue that "the father has failed or refused to assume the duties of a parent two consecutive years immediately preceding the file of the petition" when the broader provisions of (A), (C), and (E) were available? When I asked the Committee this question, the answer was they would plead both arguments. They would only need to prove one.

Among other things, my dissent reflects opposition to allowing K.S.A. 59-2136(A), (C), and (E) to be used at any time to terminate father's parental rights rather than applying these criteria only for newborns or very young children. I argue interpretations embraced by the group effectively render K.S.A. 59-2136(h)(1)(G) as a moot point, or as surplusage with no reasonable application. I argue the presence of (G) is only necessary if (A), (C), and (E) are interpreted as applying to newborns or very young children.

Understanding my argument requires looking at the concepts being used. Aside from the absence of time limitations, I simply cannot reconcile how "a failure to assume parental duties" (G) does not encompass the "abandon or neglect of (A)," the "abandonment" of (E), or the "no reasonable efforts to communicate with the child" of (C). Particularly when all surrounding circumstances in these proceedings must be considered together with the policy that adoption statutes are "strictly construed in favor of maintaining the rights of natural parents,[22] the only reasons for applying (A), (C), and (E) are to defeat the time limitations of (G).

What legal effect would the Committee's proposed amendments to K.S.A. 59-2136 have? For group 3 fathers, there would be no changes. For group 2 fathers, they would also be no changes. They would continue to be treated the same as group 3 fathers despite having stepped up to establish their parental rights. Yet it must also be said that group 2 fathers are denied some of the advantages that have been afforded to group 1 fathers. I argue group 2 fathers should receive the same treatment as group 1 fathers, with whom they share the status of legal parenthood. Group 1 fathers would lose the protections of the limited termination grounds of the current K.S.A. 59-2136(d). These fathers also could now be required to defend against efforts to find them unfit under K.S.A. 59-2136(h).

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[22] *In re Adoption of B.M.W.*, 268 Kan 871, 2 P.3d 159(2000) (holding adoption statutes are "strictly construed in favor of maintaining the rights of natural parents in those cases where it is claimed by reason of a parent's failure to fulfill parental obligations as prescribed by statute, consent to the adoption is not required.").

> The Committee's proposed changes to this statute will likely result in more adoptions generally and more contested adoptions around the fitness issues. The limited grounds for step-parent adoptions no doubt limited adoptions. Expanding the grounds for terminating father's parental rights will likely have the effect of increasing the number of adoptions filed against group 1 fathers. The expanded grounds for terminating will likely increase the number of group 1 fathers whose parental rights and parent-child relationships are contested and possibly terminated. The amendments will increase the costs of these proceedings as those petitioning for adoption plead additional grounds and attorneys for fathers are required to defend against these additional allegations. Many of these fathers will be unable or less able to defend against both the failure to assume parental duties and unfitness allegations. Particularly in the case of Kansas adoptions involving petitions for the termination of parental rights against fathers located out of state, the financial and practical disadvantages these fathers face will be significantly increased.

The Kansas Supreme Court's Protections for Father's Rights

In *In the Matter of the Adoption of Baby Girl P*, the Kansas Supreme Court cogently stated its stance with respect to father's rights:

> We do not find in the statutory scheme a legislative call to make the assertion of parental rights a Herculean task. The preservation of a father's relationship with his child is the starting point of a termination proceeding, not the finish line that a father must labor to reach. The statute requires simply that a father "make reasonable efforts" to support or communicate with his child. K.S.A. 59-2136(h)(1)(C).
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> We have previously held that adoption statutes must be strictly construed in favor of maintaining the rights of natural parents when it is claimed that a parent has failed to fulfill parental obligations. Adoption of G.L.V., 286 Kan. At 1034, Syl. ¶6, 190 P.3d 245. Setting up a series of hurdles that a parent must clear before reaching the point of a protected interest runs counter to our case law and to the statutory framework.[23]
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> "When applying K.S.A. 59-2136(h), Kansas appellate courts have strongly endorsed the parental preference doctrine, required strict compliance, and diligently enforced the clear and convincing evidence standard." Adoption of A.A.T., 287 Kan. At 625, 196 P.3d 1180.
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> . . .
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> "[T]he law presumes that the father starts out with a parental relationship; it is his to abandon, not to conquer."

Proposed Solution

In my opinion, the best solution is for K.S.A. 59-2136(h) to apply to situations where the father's relationship with the child is little more than biological and for another set of criteria to be developed to apply in situations where children have presumed fathers. This is essentially what the current statute does through a

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[23] In the Matter of the Adoption of Baby Girl P., 291 Kan. 424, 435, 242 P.3d 11168 (Kan. 2010).

combination of the stepparent adoption (K.S.A. 59-2136(d)) and K.S.A. 59-2136(h)(1)(G).

I respectfully request that the Senate Judiciary Committee reject the proposed amendments to K.S.A. 59-2136(h).

Milfred D. Dale, PhD, JD

Milfred D. Dale