

HOUSE BILL No. 2549

By Committee on Judiciary

Requested by Nancy Strouse on behalf of the Kansas Judicial Council

1-18

1 AN ACT concerning adoption; relating to termination of parental rights;
2 requiring petitions to be filed as part of a petition for adoption or in
3 connection with an adoption; setting requirements for petitions filed
4 separately from adoption proceedings; amending K.S.A. 2023 Supp.
5 59-2136 and repealing the existing section.
6

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

8 Section 1. K.S.A. 2023 Supp. 59-2136 is hereby amended to read as
9 follows: 59-2136. (a) The provisions of this section shall apply where a
10 relinquishment or consent to an adoption has not been obtained from a
11 parent and K.S.A. 59-2124 and 59-2129, and amendments thereto, state
12 that the necessity of a parent's relinquishment or consent can be
13 determined under this section.

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

17 (c) The court shall appoint an attorney to represent any father who is
18 unknown or whose whereabouts are unknown. If no person is identified as
19 the father or a possible father, or if the father's whereabouts are unknown,
20 the court shall order publication notice of the hearing in such manner as
21 the court deems appropriate.

22 (d) (1) A petition to terminate parental rights *pursuant to the Kansas*
23 *adoption and relinquishment act* may be filed *only* as part of a petition for
24 adoption or as ~~an independent~~ *a separate action in connection with an*
25 *adoption proceeding filed or to be filed in the same or another proper*
26 *venue.*

27 (2) ~~If the request a petition to terminate parental rights is not filed as~~
28 ~~part of an adoption proceeding, separately from a petition for adoption~~
29 ~~under this act:~~

30 (A) *Venue for the proceedings to terminate parental rights shall be in*
31 *the county in which where the child or a parent resides or is found; and*

32 (B) *an order granting such petition:*

33 (i) *Shall be in substantial compliance with the form set forth by the*
34 *judicial council;*

35 (ii) *is a final judgment that is appealable as a matter of right;*

1 (iii) *if not appealed, shall satisfy the requirement contained in K.S.A.*
2 *59-2128, and amendments thereto, to demonstrate that the necessity for*
3 *the consent or relinquishment is eliminated; and*

4 (iv) *shall be effective only upon the filing of a decree of adoption.*

5 ~~(2)~~(3) The petition to terminate parental rights may be filed by a
6 parent, the petitioner for adoption, the person or agency having legal
7 custody of the child; or the agency to which the child has been
8 relinquished.

9 ~~(3)~~(4) Absent a finding of good cause by a court with jurisdiction
10 under this act, a proceeding to terminate parental rights shall have
11 precedence over any proceeding involving custody of the child under the
12 Kansas family law code, K.S.A. 23-2101 et seq., and amendments thereto,
13 or the protection from abuse act, K.S.A. 60-3101 et seq., and amendments
14 thereto, until a final order is entered on the termination issues or until
15 further orders of the court.

16 (e) In an effort to identify the father, the court shall determine by
17 deposition, affidavit or hearing, the following:

18 (1) Whether there is a presumed father under K.S.A. 23-2208, 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 of
27 support with respect to the child or in connection with such mother's
28 pregnancy; and

29 (6) whether any person has formally or informally acknowledged or
30 declared such person's possible parentage of the child.

31 If the father is identified to the satisfaction of the court, or if more than
32 one man is identified as a possible father, each shall be given notice of the
33 proceeding in accordance 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. Notice shall
37 be given at least 10 calendar days before the hearing, unless waived by the
38 person entitled to notice. Proof of notice or waiver of notice shall be filed
39 with the court before the petition or request is heard.

40 (g) (1) If, after the inquiry, the court is unable to identify the father or
41 any possible father and no person has appeared claiming to be the father
42 and claiming custodial rights, the court shall enter an order terminating the
43 unknown father's parental rights with reference to the child without

1 consideration of subsection (h).

2 (2) If any person identified as the father or possible father of the child
3 fails to appear or, if appearing, fails to claim custodial rights, such person's
4 parental rights with reference to the child shall be terminated without
5 consideration of subsection (h).

6 (h) (1) When a father or alleged father appears and claims parental
7 rights, the court shall determine parentage, if necessary pursuant to the
8 Kansas parentage act, K.S.A. 23-2201 et seq., and amendments thereto. If
9 a father desires but is financially unable to employ an attorney, the court
10 shall appoint an attorney for the father. Thereafter, the court may order that
11 parental rights be terminated and find the consent or relinquishment
12 unnecessary, upon a finding by clear and convincing evidence, of any of
13 the following:

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

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

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

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

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

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

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

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

29 (A) Shall consider all of the relevant surrounding circumstances; and

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

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

40 (4) For the purposes of this subsection, "support" means monetary or
41 non-monetary assistance that is reflected in specific and significant acts
42 and sustained over the applicable period.

43 (i) A termination of parental rights under this section shall not

1 terminate the right of the child to inherit from or through the parent. Upon
2 such termination, all the rights of birth parents to such child, including
3 their right to inherit from or through such child, shall cease.

4 Sec. 2. K.S.A. 2023 Supp. 59-2136 is hereby repealed.

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