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TO: Senate Judiciary Committee

FROM: Kansas Judicial Council – Austin K. Vincent

DATE: March 6, 2024

RE: HB 2549 - Relating to termination of parental rights in an adoption proceeding.

The Judicial Council and its Adoption Law Advisory Committee (Committee) recommend the passage of HB 2549. This bill amends K.S.A. 59-2136, which governs the termination of parental rights under the Kansas Adoption and Relinquishment Act (KARA).

K.S.A. 59-2136 was amended in 2018 as part of a comprehensive update of KARA that was introduced in HB 2481 and later passed in SB 284. The bill was requested by the Judicial Council, based on recommendations proposed by the Committee in a 2017 report. The comments to the Committee's proposed amendments to K.S.A. 59-2136 indicate that the revised language was intended to clarify that a request to terminate parental rights may be contained in a petition for adoption or filed as an independent action. Although the prior statutory language did not state the "independent action" option as clearly as in the 2018 amendment, that option was present in the statute before it was amended. This was demonstrated in part by the venue provision – different from the venue for filing an adoption – that applied when the request to terminate parental rights was filed separate from the adoption petition.

Although it was not the Committee's intent, the revised statutory language clarifying that a petition to terminate rights may be filed as "an independent action" has given rise to cases being filed by parents simply seeking to terminate the parental rights of the other parent when no adoption is contemplated. The Committee unanimously agreed that no person should be allowed to petition for termination of parental rights under KARA in any case not related to an adoption proceeding.

In the cases reported to the Committee in which petitions for terminations of parental rights have been filed in non-adoption cases, the petitioners appear to have been relying on the sentence in K.S.A. 59-2136(d)(1) that states “A petition to terminate parental rights may be filed as part of a petition for adoption or as an independent action.” Although it seems self-evident that a single sentence found in the statutory act governing adoption may not be excised and used as authority to file a termination proceeding unrelated to an adoption, that is what has been reported to the Committee. The Committee unanimously agreed the language should be clarified to forestall similar attempts to misuse the statute in the future.

In determining the amendments that would be necessary to address the issue, the Committee discussed its reasons for recommending the “independent action” language in 2017. That language was chosen to clarify that a party may file a petition for termination of parental rights prior to or separately from the petition for adoption. In some cases, the birth father may pose a danger to the birth mother or the potential adoptive parents, which makes it prudent to terminate rights first. Once a person’s parental rights have been terminated by the court, the person is not entitled to receive notice of any further proceedings involving the child. There may also be cases in which the birth father may live in a different jurisdiction than the one in which the petition for adoption will be filed. The adoption petitioner may choose to file the petition for termination of parental rights in a location convenient to the birth father and the petition for adoption in a location convenient to the adoptive parents. A majority of the Committee agreed it is important to retain the option of filing a petition for termination of parental rights separately.

The amendments to K.S.A. 59-2136(d)(1) proposed in House Bill 2549 operate to clarify that a petition for termination of parental rights may be filed with or without a petition for adoption and may be in the same or a different venue, while also clearly limiting use of the section to adoption-related cases.

To further discourage attempts to improperly use this statute outside the context of an adoption matter, the Committee drafted several new provisions that are located in what is now subsection (d)(2). This subsection applies only when a petition to terminate parental rights under K.S.A. 59-2136(d) is filed separately from the petition for adoption. New language provides that an order terminating parental rights is appealable as a matter of right and becomes effective only upon the filing of a decree of adoption. If no appeal is taken, the order of termination satisfies K.S.A. 59-2128(a)(10), which requires that a petition for adoption state the facts relied upon in asserting it is unnecessary to obtain a consent or relinquishment from the parent whose rights were terminated. The bill also contains a new requirement in subsection (d)(2)(B)(i) that the order terminating parental rights must be “in substantial compliance with the judicial council form.” Mandating use of an order form to be created by the Judicial Council would ensure that each order issued under the new subsection will inform the parent whose rights have been terminated of the right to appeal and that the order becomes effective only upon the filing of a decree of adoption.

House Amendment to HB 2549

The House amended HB 2549 by adding the entire contents of SB 115, which passed out of this Committee favorably in 2023 and passed in the Senate 39-0. The bill also passed the House 120-3, but it has been caught up in a conference committee since the end of March 2023. Senate Bill 115 amends K.S.A. 59-2133 relating to who must receive notice of the hearing on a petition for adoption. The amendments to K.S.A. 59-2133 in SB 115 include the following:

- reorganizing the statute and separating agency adoptions into two categories, with the notice requirements for private agency adoptions in subsection (c)(2) and the more limited notice requirements for public agency adoptions in subsection (c)(3); and
- expanding the categories of persons entitled to receive notice of the hearing on an adoption petition, but also adding new language in subsection (b) to clarify that receiving notice does not make the recipient a party or confer standing to participate in the proceeding.

The members of the Adoption Law Advisory Committee are:

Hon. Thomas Kelly Ryan, Chair, Olathe; Johnson County District Court Judge

Kathy L. Armstrong, Lenexa; practicing attorney

Martin W. Bauer, Wichita; practicing attorney

Michael J. Belfonte, Independence, Missouri; practicing attorney

Jill Bremyer, McPherson; practicing attorney

Dr. Bud Dale, Topeka; child psychologist and practicing attorney

Allan Hazlett, Topeka; practicing attorney and adjunct professor teaching adoption law at Washburn University School of Law

Rep. Susan Humphries, Wichita; State Representative from the 99th District and practicing attorney

Hon. Rick Macias, Wichita; Sedgwick County District Court Judge

Rachael K. Pirner, Wichita; practicing attorney

Hon. Robb Rumsey, Wichita; Sedgwick County District Court Judge

David H. Snapp, Dodge City; practicing attorney

Austin Kent Vincent, Topeka; practicing attorney

Lisa Williams-McCallum, Topeka; practicing attorney