

2021 Kansas Statutes

59-2136. Relinquishment and adoption; proceedings to terminate parental rights. (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) 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, or if the father's whereabouts are unknown, the court shall order publication notice of the hearing in such manner as the court deems appropriate.

(d) (1) A petition to terminate parental rights may be filed as part of a petition for adoption or as an independent action. If the request to terminate parental rights is not filed as part of an adoption proceeding, venue shall be in the county in which the child or a parent resides or is found.

(2) The petition may be filed by a parent, the petitioner for adoption, the person or agency having legal custody of the child, or the agency to which the child has been relinquished.

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

(e) 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. 2021 Supp. 23-2208, 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 person has formally or informally acknowledged or declared such person's possible parentage 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. Notice shall be given at least 10 calendar days before the hearing, unless waived by the person entitled to notice. Proof of notice or waiver of notice shall be filed with the court before the petition or request is heard.

(g) (1) 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 consideration of subsection (h).

(2) 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 consideration of subsection (h).

(h) (1) When a father or alleged father appears and claims parental rights, the court shall determine parentage, if necessary pursuant to the Kansas parentage act, K.S.A. 2021 Supp. 23-2201 et seq., and amendments thereto. 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 and find the consent or relinquishment unnecessary, upon a finding by clear and convincing evidence, of any of the following:

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

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

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

(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;

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

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

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

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

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

(B) may 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 immediately 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 immediately preceding the filing of the petition for adoption, then such father has failed or refused to assume the duties of a parent.

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

(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.

History: L. 1990, ch. 145, § 26; L. 1991, ch. 167, § 1; L. 1993, ch. 195, § 3; L. 1993, ch. 277, § 1; L. 2006, ch. 22, § 1; L. 2012, ch. 162, § 76; L. 2018, ch. 118, § 19; July 1.