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## ADOPTION

Adoption establishes a legal parent-child relationship between a child and third persons and terminates existing rights and obligations between a child and his or her biological parents. In Kansas, the Adoption and Relinquishment Act (KSA 59-2111 to 59-2143) governs adoptions, including termination of parental rights and the transfer of legal custody to and creation of legal rights in the adoptive parents. KSA 59-2113 allows any adult or husband and wife to adopt.

KSA 59-2112 defines the different methods of adopting: “adult adoption,” “agency adoption,” “independent adoption,” and “stepparent adoption.” This article focuses on adoption of minors. Agency adoptions are handled by a public or private entity lawfully authorized to place children for adoption, consent to the adoption, and care for children until they are adopted or reach majority. Independent adoptions can occur directly with an adoptive family or through an intermediary such as a doctor, lawyer, or friend. Stepparent adoptions involve the adoption of a minor child by the spouse of a biological parent, which requires termination of the parental rights of only one natural parent.

### Jurisdiction and Venue

In Kansas, district courts may hear adoption petitions; however, the court must have jurisdiction. Generally, Kansas will have jurisdiction if the birth mother and adoptive parents are all Kansas residents. If the child is of Native American heritage, the Indian Child Welfare Act, 25 U.S.C.A. 1901 to 1963, may apply. Further, the parties may need to comply with the Interstate Compact for the Placement of Children, KSA 38-1201 to 38-1206, if the child is born in Kansas and is to be placed with adoptive parents in another state or is born out of state and an agency will be involved in the adoption in Kansas.

Additional requirements exist for intercountry adoptions. KSA 59-2144 states a foreign adoption decree will have the same force and effect as an adoption filed and finalized in Kansas if the person adopting is a Kansas resident; the adoption was obtained pursuant to the laws of the foreign country pertaining to relinquishment, termination of parental rights, and consent to the adoption; the adoption is evidenced by proof of lawful admission into the United States; and the foreign decree is filed and recorded with any county within the state. The U.S. Department of State outlines procedures for intercountry adoptions at <https://travel.state.gov/content/adoptionsabroad/en.html>.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (KSA 23-37,101 to 37,405) applies to adoption proceedings in Kansas. If at the time the petition is filed a proceeding concerning the custody or adoption of the minor is pending in another state exercising jurisdiction pursuant to the UCCJEA, Kansas may not exercise jurisdiction unless the other state’s court stays its proceeding. Similarly, if another state has issued a decree or order concerning custody, Kansas may not exercise jurisdiction unless the court of the state issuing the order does not have continuing jurisdiction, has declined to exercise jurisdiction, or does not

have jurisdiction. For more information on the UCCJEA, see Briefing Book article “Child Custody and Visitation Procedures.”

## **Petition**

KSA 59-2128 lists the required contents of the petition and requires the following items be filed with the petition:

- Written consents to adoption;
- Background information for the child’s biological parents;
- Accounting for all consideration and disbursements; and
- Any required affidavit concerning venue.

## **Consent**

In an independent adoption, KSA 59-2129 requires the consent of:

- The child’s living parents; one of the parents if the other’s consent is unnecessary under KSA 59-2136; the child’s legal guardian if both parents are dead or their consents are unnecessary under KSA 59-2136; or the court terminating parental rights under KSA 38-2270;
- Any court having jurisdiction over the child pursuant to the Revised Code for the Care of Children (The Child in Need of Care (CINC) Code), KSA 38-2201 to 38-2286, if parental rights have not been terminated; and
- Any child over 14 sought to be adopted who is of sound intellect.

For stepparent adoptions, consent must be given by the living parents of a child; one of the parents if the other’s consent is unnecessary under KSA 59-2136; or the judge of any court having jurisdiction over the child pursuant to the CINC Code if parental rights have not been terminated, and any child over 14 sought to be adopted who is of sound intellect.

KSA 59-2114 requires the consent to be in writing and acknowledged before a judge or an officer authorized to take acknowledgments, such as a notary. If acknowledged before a judge, the judge must advise the consenting person of the consequences of the consent. The consent is final when executed, “unless the consenting party, prior to final decree of adoption, alleges and proves by clear and convincing evidence that the consent was not freely and voluntarily given.” Minority of the parent does not invalidate the parent’s consent; however, KSA 59-2115 mandates that birth parents under 18 have the advice of independent legal counsel on the consequences of execution of a consent. Unless the minor is otherwise represented, the petitioner or child placement agency must pay for the cost of independent legal counsel. KSA 59-2116 provides that the natural mother cannot give consent until 12 hours after the birth of the child, but says nothing about the timing of the father’s consent.

For an agency adoption, KSA 59-2129 provides that, once parents relinquish their child to an agency, consent must be given by the authorized representative of the agency and any child over 14 sought to be adopted who is of sound intellect.

### ***Relinquishment***

KSA 59-2124 states relinquishments will be deemed sufficient if in substantial compliance with the form created by the Judicial Council. Like consents, the relinquishment must be in writing and acknowledged by a notary or the court. (Again, the judge must advise the person of the consequences of the relinquishment.) Additionally, KSA 59-2115 requires independent counsel for a minor relinquishing a child, and KSA 59-2116 provides the natural mother cannot relinquish the child until 12 hours after the birth. If the agency accepts the relinquishment, the agency stands *in loco parentis* for the child and has the rights of a parent or legal guardian, including the power to place the child for adoption. If a person relinquishes the child, all parental rights are terminated, including the right to receive notice in subsequent adoption proceedings.

### ***Termination of Parental Rights***

When parents consent to an adoption, they agree to the termination of their parental rights, although the rights are not terminated until the judge makes the final decree of adoption. If a parent does not sign a consent, a court can terminate parental rights pursuant to a CINC proceeding. For more information on CINC proceedings, see Briefing Book article "[Foster Care Services and Child in Need of Care Proceedings](#)."

Additionally, KSA 59-2136 addresses circumstances where the necessity of a parent's consent or relinquishment is in question. While it frequently refers to fathers, it specifies that insofar as it is practicable, those provisions applicable to fathers also apply to mothers. Absent a father's consent, his parental rights must be terminated. If a father is unknown or his whereabouts are unknown, the court must make an effort to identify the father; appoint an attorney to represent him; and, if no person is identified as the father or possible father, order publication notice of the hearing. If identified, he must receive notice of the termination proceedings. If no father is identified or if, after receiving notice, he fails to appear or does not claim custodial rights, the court will terminate his parental rights. If a father is identified to the court and asserts parental rights, the court must determine parentage pursuant to the Kansas Parentage Act (KSA 23-2201 to 23-2225). Further, if the father cannot employ an attorney, the court must appoint one for him. Thereafter, the court may terminate a parent's rights if it determines by clear and convincing evidence:

- The father abandoned or neglected the child after having knowledge of the child's birth;
- The father is unfit or incapable of giving consent;
- The father has made no reasonable efforts to support or communicate with the child after having knowledge of this child's birth;
- 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;

- The father abandoned the mother after having knowledge of the pregnancy;
- The birth of the child was the result of the rape of the mother; or
- The father has failed to assume the duties of a parent for two consecutive years preceding the filing of the petition to adopt.

In determining whether to terminate parental rights, the court may consider and weigh the best interests of the child and disregard incidental visitations, contacts, communications, or contributions.

In a stepparent adoption, KSA 59-2136 provides that if a mother consents to a stepparent adoption when the child has a presumed father, his consent is required unless he is incapable of giving such consent or has failed or refused to assume the duties of a parent for the two consecutive years preceding the filing of the petition for adoption. There is a rebuttable presumption that he has “failed or refused to assume the duties of a parent” if the father, after having knowledge of the child’s birth, has knowingly failed to provide a substantial portion of court-ordered child support when financially able to do so for the two years preceding the filing of the petition for adoption. In determining whether consent is required, the statute allows the court to appoint an attorney to represent a father who is unknown or whose whereabouts are unknown and to disregard incidental visitations, contacts, communications, or contributions. Finally, in determining whether a stepparent adoption should be granted, the court may consider the best interests of the child and the fitness of the nonconsenting parent.

### ***Accounting for Consideration***

KSA 59-2121 requires the petition for adoption to be accompanied by a detailed accounting for all consideration given and all disbursements made in connection with the adoption and placement of a child. The following types of consideration are allowed:

- Reasonable legal and other professional fees rendered in connection with the placement or adoption;
- Reasonable fees of a licensed child-placing agency;
- Actual and necessary expenses incident to placement or adoption;
- Mother’s actual medical expenses attributable to the pregnancy and birth;
- Child’s actual medical expenses; and
- Mother’s reasonable living expenses incurred during or as a result of the pregnancy.

The court can disapprove any consideration it determines to be unreasonable. Knowingly and intentionally receiving or accepting clearly excessive fees or expenses is a severity level 9, nonperson felony. Knowingly failing to list all consideration or disbursements is a class B, nonperson misdemeanor.

## **Assessments**

Pursuant to KSA 59-2132, the petitioner must obtain an assessment performed by a person authorized by the statute to do so and file a report of the assessment with the court at least ten days before the hearing on the petition, including the results of the investigation of the adoptive parents, their home, and their ability to care for the child. The assessment and report are valid only if performed within a year of filing the petition for adoption.

## **Temporary Custody Order**

In an independent or agency adoption, KSA 59-2131 allows the court to issue a temporary custody order pending the hearing. If the court places the child in a home not licensed to provide such care, it must first be assessed by a person or agency authorized to make assessments, or the court may “expeditiously” conduct an evidentiary hearing, including testimony by the petitioners prior to making the placement.

## **Adoption Hearing and Final Decree**

KSA 59-2133 requires the court to set the hearing within 60 days from the date of filing the adoption petition. Additionally, it requires notice be given to birth parents in independent and stepparent adoptions, unless parental rights have been terminated. The court may designate others to be notified. In agency adoptions, notice must be served upon the consenting agency unless waived. After the hearing of the petition, the court considers the assessment and all evidence and, if the adoption is granted, makes a final decree of adoption.

KSA 59-2118 states an adopted child is entitled to the same personal and property rights as a birth child of the adoptive parents, who likewise are entitled to exercise all the rights of a birth parent and are subject to all the liabilities of that relationship. Both KSA 59-2118 and KSA 59-2136 allow children to inherit from their birth parents after parental rights have been terminated, although the birth parents’ right to inherit is severed at that time.

For more information, please contact:

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