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Judiciary, Corrections, and Juvenile Justice

H-1 Adoption of Minors: Statutory Overview

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 59-2144) governs adoptions, including termination of parental rights and the transfer of legal custody to and creation of legal rights in the adoptive parents. Any adult or married couple may 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 USC §§ 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. Kansas law provides 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, 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/travel/en/Intercountry-Adoption.html>.

Legislation enacted in 2018 (SB 284) clarifies jurisdiction over adoption proceedings, including a proceeding to terminate parental rights, is governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (KSA 23-37,101 to 37,405). 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 H-2 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, consent is required from:

- The child's living parents; one of the parents if the other's consent is unnecessary pursuant to Kansas law; the child's legal guardian if both parents are dead or their consents are unnecessary; or the court terminating parental rights under the Revised Code for the Care

of Children (the Child in Need of Care [CINC] Code), KSA 38-2201 to 38-2286;

- Any court having jurisdiction over the child pursuant to the CINC Code if parental rights have not been terminated; and
- Any child older than 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; or the judge of any court having jurisdiction over the child pursuant to the CINC Code if parental rights have not been terminated, as well as any child older than 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 inform the consenting person of the legal 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, birth parents younger than 18 must 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. The natural mother cannot give consent until 12 hours after the birth of the child. A father may give consent any time after the birth of a child and may give consent before the birth of the child if he has the advice of independent legal counsel as to the consequences prior to its execution. The attorney providing independent legal advice shall be present at the execution of the consent.

For an agency adoption, once parents relinquish their child to an agency, consent must be given by the authorized representative of the agency and any child older than 14 sought to be adopted who is of sound intellect.

Relinquishment

Relinquishments to an agency 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 inform the person of the legal consequences of the relinquishment.) Similar to consent, the law requires independent counsel for a minor relinquishing a child and provides the natural mother cannot relinquish the child until 12 hours after the birth. A father may relinquish any time after the birth of a child. 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.

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 G-1 Foster Care](#).

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 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 or if the father's whereabouts are unknown, 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 claims 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 and find the consent or relinquishment unnecessary 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 immediately preceding the filing of the petition to adopt.

In determining whether to terminate parental rights, the court must consider all of the relevant surrounding circumstances and may disregard incidental visitations, contacts, communications, or contributions.

Assessments

Petitioners must obtain an assessment performed by a person meeting statutory qualifications and file a report of the assessment with the court 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, the court may 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, in independent and stepparent adoptions, it requires notice be given to parents or possible parents at least ten calendar days before the hearing unless parental rights have been terminated or waived, and to any person who has physical custody of the child, unless waived. The court may designate others to be notified. In agency adoptions, notice must be served upon the consenting agency, the parents or possible parents, any relinquishing party, and any person who has physical custody of the child at least ten calendar days before the hearing, 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.

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.

Recent Legislation

Legislation enacted in 2018, SB 284, created the Adoption Protection Act (codified at KSA 2019 Supp. 60-5322), which states, notwithstanding any other provision of state law and to the extent

allowed by federal law, no child placement agency (CPA) shall be required to perform, assist, counsel, recommend, consent to, refer, or otherwise participate in placement of a child for foster care or adoption when the proposed placement of the child violates the CPA’s sincerely held religious beliefs. The bill also prohibits taking the following actions against a CPA, if taken solely because of the CPA’s objection to providing any of the services described above on the grounds of such religious beliefs:

- State agency or political subdivision denial of a license, permit, or other authorization or denial of renewal, revocation, or suspension of the same;
- Denial of participation in a Department for Children and Families (DCF) program in which CPAs are allowed to participate;
- Denial of reimbursement for performing foster care placement or adoption services on behalf of an entity that has a contract with DCF as a case management contractor; or
- Imposition of a civil fine or other adverse administrative action or any claim or cause of action under any state or local law.

The CPA’s sincerely held religious beliefs must be described in the CPA’s organizing documents, written policies, or such other written document approved by the CPA’s governing body. The provisions of the bill do not apply to an entity while the entity has a contract with DCF as a case management contractor.

The bill also made numerous amendments to the Adoption and Relinquishment Act based on Kansas Judicial Council recommendations.

Legislation introduced in 2019, HB 2164, would repeal the Adoption Protection Act. The bill was referred to the House Committee on Federal and State Affairs. No further action was taken on the bill during the 2019 Session.

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