

**REPORT OF THE JUDICIAL COUNCIL ADOPTION LAW  
ADVISORY COMMITTEE REGARDING TERMINATION OF  
PARENTAL RIGHTS UNDER K.S.A. 59-2136(d)**

**December 1, 2023**

In June 2015, the Judicial Council formed the Adoption Law Advisory Committee (Committee) to undertake a comprehensive review of the Kansas Adoption and Relinquishment Act (KARA). The Judicial Council approved the Committee's recommended statutory amendments in December 2017 and the legislature passed the amendments in the 2018 legislative session.

In 2022, while working on a separate issue related to the 2018 amendments, the Committee learned of cases in which parties had attempted to use K.S.A. 59-2136(d) to support filing a petition for termination of parental rights in cases unrelated to an adoption. The Committee requested and received the Judicial Council's approval to study the issue.

The members of the Adoption Law Advisory Committee are:

**Hon. Thomas Kelly Ryan**, Chair, Olathe; Johnson County District Court Judge  
**Kathy L. Armstrong**, Topeka; Former Assistant General Counsel for Prevention and Protection Services, Kansas Department for Children and Families  
**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 99<sup>th</sup> 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

**DISCUSSION**

The 2018 KARA amendments included revisions to the subsection that is now K.S.A. 59-2136(d). Before the 2018 amendments, language in K.S.A. 59-2136(e) provided for filing a petition for termination of the father's parental rights if a mother desires to relinquish or consents to the adoption of the mother's child. The statute also stated that "where appropriate, the request to terminate parental rights may be contained in a petition for adoption."

In the 2018 amendments, former subsection (e) was stricken and replaced with current subsections (d)(1) and (2), in which the former language was revised and separated into subparagraphs. The comments to the Committee’s 2017 proposed amendments indicate that the revised language was intended to clarify that the request to terminate parental rights may be contained in a petition for adoption or filed as an independent action. Although the prior language did not state the “independent action” option as clearly as in the 2018 amendment, that option was present in the statute prior to the amendments. This is 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 proceeding.

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 order to become a single parent or in any case not related to an adoption proceeding.

In the cases reported to the Committee in which petitions for terminations of parental rights had 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 sentence found in the statutory act governing adoptions may not be excised and used as authority to file a termination proceeding unrelated to an adoption, that is what is happening, and the Committee met several times discussing how best to clarify the language 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 Committee agreed on amendments to subsection (d)(1) that operate to further 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 would require 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. Finally, the Committee added a requirement 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.

## **RECOMMENDATION**

The Committee unanimously recommends K.S.A. 59-2136 be amended to incorporate the following proposed changes:

**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 under this chapter may be filed only as part of a petition for adoption or as an independent a separate action in connection with an adoption proceeding filed or to be filed in the same or another proper venue.

(2) If the request a petition to terminate parental rights is not filed as part of an adoption proceeding; separately from a petition for adoption under this section:

(A) venue for the petition shall be in the county in which where the child or a parent resides or is found; and

(B) an order granting the petition:

(i) shall be in substantial compliance with the form set forth by the judicial council;

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

(iii) if not appealed, shall satisfy K.S.A. 59-2128(a)(10); and

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

~~(2)~~(3) The petition to terminate parental rights 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)~~(4) 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.